

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1434

INTRODUCER: Banking and Insurance Committee and Senator Wright

SUBJECT: Disposition of Unclaimed Property

DATE: April 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Schrader</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1434 makes revisions to the Florida Disposition of Unclaimed Property Act relating to the claims process under the Act. Specifically, the bill replaces the power of attorney and full disclosure statement process used by claimant representatives as provided in ch. 717, F.S., with a standardized unclaimed property recovery agreement for claimant representatives to use when recovering unclaimed property on behalf of a client claimant. The bill also creates a standardized unclaimed property purchase agreement that must be used by purchasers of unclaimed property held by the Division of Unclaimed Property.

The bill provides that the total fees and costs that may be charged in a recovery agreement, or the total discount in the case of a purchase agreement, may not exceed 30 percent of the claimed amount.

The bill also revises 717.124(7), F.S., to increase from \$1,000 to \$2,000 the maximum recovery value for claims submitted electronically that utilize identity verification processes other than government issued photographic identification or a sworn, notarized statement.

II. Present Situation:

As part of the DFS' statutory responsibilities, the Department is to collect and return unclaimed property belonging to Florida residents.¹ Within the DFS is the Division of Unclaimed Property

¹ Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx> (last visited March 26, 2021).

(Division)—the Division is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them.

Florida Disposition of Unclaimed Property Act

Chapter 717, F.S., is entitled the Florida Disposition of Unclaimed Property Act, over which the DFS is responsible to administer. Unclaimed property is any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.² Until claimed, unclaimed money is deposited into the state school fund to be used for public education. There is no statute of limitations and persons may claim their property at any time and at no cost.³

Delivery of Unclaimed Property held in Safekeeping Repository

Pursuant to s. 717.119(5), F.S., persons holding unclaimed intangible and tangible property (holder) in a safekeeping repository (such as a safe deposit box), are not to release said property to the DFS until at least 120 days after the person files the unclaimed property report required under 717.117, F.S. When sending said property to the DFS, the holder must insure the contents, clearly mark the package to "deliver unopened," and must either deliver the contents in a single shipment or pursuant to a single detailed schedule provided to the department.

DFS Unclaimed Property Database

The DFS maintains a database of all unclaimed property within its possession. According to the DFS, over 350 claimant representatives are registered with the Department to gain access to this database.⁴

Claimant Representatives

Pursuant to s. 717.124, F.S. a claimant representative must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under ch. 493, F.S. A claimant must also register with the DFS on a form designated by the Department and provide certain documentation (including tax identification number, identification, electronic funds transfer information, business address, and employees and agents) and credentials as to their status as an attorney, CPA, or private investigator.⁵

The general business model for registered claimant representatives (representatives) is that they search the DFS unclaimed property database and solicit or seek authorizations from potential claimants to file claims with the DFS on the claimants behalf to recover any of the claimant's

² Sections 717.104-717.116, F.S.

³ Florida Department of Financial Services, *Unclaimed Property*, <https://myfloridacfo.com/Division/UnclaimedProperty/> (last visited March 26, 2021).

⁴ Department of Financial Services, *Legislative Bill Analysis of SB 1434* (March 9, 2021) (on file with Senate Banking and Insurance Committee).

⁵ Section 717.1400, F.S.

unclaimed property held by the Department. Representatives are authorized to charge fees and costs to claimants for their services, subject to certain restrictions (see *Authorized charges* below).

Claim Process for Representatives

In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization. At minimum, the representative must first execute limited power of attorney with the client as provided in s. 717.135, F.S. While s. 717.135, F.S., specifies certain minimum requirements for these powers of attorney, each representative generally has their own, unique, version of these documents and they can vary as to wording, format, credentialing references, and logos. Most of these agreements, according to the DFS, contain some version of the statement that "I hereby authorize...to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize."⁶ Also, according to the DFS, many of these agreements contain legalese which may be difficult for some potential clients to understand.⁷ This language could include: assignments of interest or rights, irrevocable assignments, exclusivity agreements, requirements that the client claimant to act upon all requests and instructions of the representative, venue and attorney fee provisions, and some that provide that if the claimant fails to act, the representative can claim the client claimant's unclaimed property separate from said client.

Authorized Charges

For representatives that have engaged their claimant clients through only a power of attorney, s. 717.135(2), F.S., caps fees and costs at 20 percent per unclaimed property account held by the DFS. The charges cap is calculated based on the value of the property at the time a power of attorney is signed by the claimant with the representative. For claimants who are residents of the United States, the total fees and costs assessed are also limited to \$1,000.

If a representative provides their client with a "full disclosure statement" as provided in s. 717.135(3), F.S., and the client signs and acknowledges said statement before executing a power of attorney with the representative, then fees are limited only those fees disclosed in said statement. Florida provides no hard cap in this situation—fees may be whatever the representative wishes to charge, as long as such fees are properly disclosed.

Filing of Claims by Apparent Owners

The DFS also provides a publicly available version of their unclaimed property database accessible via the Internet.⁸ This version of the database that does not require one to register with the department to conduct a search. Via this form, a member of the public can search for unclaimed property by first and last name, or business name. These results can be further narrowed by providing a middle name and location information. Once a person locates an account that is potentially theirs, they can claim the account and start the process of verifying their identity and recovering their unclaimed property.

⁶ *Supra* note 4.

⁷ *Id.*

⁸ The website is located here: <https://www.fltreasurehunt.gov/ControlServlet?ActionForm=GotoNewPublicSearch>.

Generally, under 717.124(1), F.S., in order to submit a claim, the claimant must provide the DFS with a legible copy of a valid driver license, or other government-issued photographic identification, at the time the original claim form is filed. In lieu of photographic identification, a claimant may also provide the DFS with a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address.

Section 717.124(7), F.S., also allows an apparent owner to file a claim electronically and, if the claim submitted is for \$1,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Implementing this provision, rule 69G-20.0022(2)(c), F.A.C., specifies that the DFS may use an "identity authentication service" to verify identity in such circumstances.

III. Effect of Proposed Changes:

Section 1 amends s. 717.119, F.S., to require that, when a will or trust instrument is included within an unclaimed safe deposit box sent to the DFS under 717.119(5), F.S., the department must provide a copy of the will, trust, and any codicils or amendments to such will or trust, upon request, to anyone who provides the department with evidence of the death of the testator or settlor.

Section 2 of the bill amends s. 717.124, F.S., to significantly revise the claims process for registered claims representatives (representatives) to engage clients and begin the recovery process with the DFS. The bill replaces the power of attorney and full disclosure statement process and replaces them with a standardized recovery agreement (provided in more detail in **Section 5** of the bill).

The section also revises section 717.124(7), F.S., regarding the filing of a claims electronically. The bill provides that if the electronically filed claim submitted is for \$2,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Under current law, this is \$1,000 or less.

Finally, the section makes conforming and technical changes, including removing a provision relating to the DFS being able to deny a claim when a representative refuses to reduce fees and costs being charged to the claimant to the maximum fees and costs allowed under ch. 717, F.S., and removing a requirement that claim documents be manually signed.

Sections 3, 4, and 5 make a conforming changes to ss. 717.12404, 717.1315, and 717.1322, F.S., respectively, to implement changes made by **Sections 1** and **5** of the bill.

Section 6 substantially rewrites s. 717.135, F.S., to eliminate the previous power of attorney-based claim process and replace it with the mandatory use of an "Unclaimed Property Recovery Agreement" or an "Unclaimed Property Purchase Agreement" as the sole agreement to be used by representatives to engage claimant clients. The section provides penalties for representatives that use an agreement other than those approved by the DFS pursuant to the proposed section and voids any recovery attempted by a representative utilizing such an agreement.

The section directs the DFS to adopt by rule forms for these agreements, providing that the agreements must include and disclose all of the following provisions:

- The dollar amount of the unclaimed property accounts to be claimed or sold;
- The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative;
- The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative;
- The net dollar amount to be received by the claimant or the seller;
- The DFS unclaimed property account number;
- For the Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller;
- The name, address, e-mail address, phone number, and license number of the claimant's representative;
- The manual signature of the claimant or seller and the date signed. For claims of \$2,000 or less, the signature may be digital instead;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- The total fees and costs, or the total discount in the case of a purchase agreement, may not exceed 30 percent of the claimed amount. If the total fees and costs exceed 30 percent, the fee shall be reduced to 30 percent and the net balance shall be remitted directly by the department to the claimant.

In contrast to the current requirements under s. 717.135, F.S., the proposed 717.135, F.S., does not specifically require that the representative disclose to the client claimant that the unclaimed property is in the hands of the DFS and provide the DFS's mailing and website addresses.⁹ As noted above, however, the bill does require the representative to provide the client claimant with the DFS account number of the unclaimed property.

The section also includes a requirement that for Unclaimed Property Purchase Agreements, proof that the representative has made payment to the claimant seller must be filed with the DFS along with the claim. If the representative fails to do so, the claim is void.

For both the Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement, the form created by the DFS may not contain language that would make either agreement irrevocable or create an assignment of property held by the DFS.

Additionally, the section authorizes the DFS, once it approves a claim, to pay out any additional account owned by the claimant, provided that a subsequent claim has not been filed, or is not pending for the claimant, at the time the DFS approves the claim.

⁹ Providing this information is required in current law for both the power of attorney and full disclosure statements. *See* s. 717.135(2)(a) and (3)(a), F.S., respectively.

Finally, the section contains a provision clarifying that it does not supersede s. 717.1241, F.S., which provides the process to be used to resolve conflicting claims for unclaimed property.

Section 7 repeals s. 717.1351, F.S., as, with the changes made by the bill, the section is no longer necessary.

Section 8 specifies that the bill shall take effect upon becoming a law.

The DFS asserts that the changes made by the bill should make the process of handling claims made by claims representatives more efficient. In addition, DFS states that the standardization of the agreements, elimination of varying fee caps, and the prohibition against irrevocable or assignment clauses will provide for more consumer protection and make the process more consumer friendly.¹⁰

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Currently, fees and costs are capped at 20 percent when a representative engages their claimant client through only a power of attorney, and if the client is a natural person residing in the United States, fees and costs are also limited to \$1,000 per account. If the

¹⁰ *Supra* note 4.

claimant’s representative uses “full disclosure statement,” however, there is no limit on fees and costs. The bill does away with this dual structure and replaces it with a 30 percent cap on fees and costs. Data provided by the DFS, shows that of the 475,395 claims paid to claimant representatives since July 1, 2016, 24,347 (approximately 5.1 percent) were paid with fees and charges greater than 20 percent and 9,982 (approximately 2.1 percent) were paid with a fees and charges of greater than 30 percent. The average fees and changes paid by client claimants during this time was 13.32 percent—well below the current 20 percent cap for when client claimants are engaged by power of attorney only.¹¹

Thus the bill’s 30 percent limit on fees and costs will affect a relatively small percentage of circumstances where client claimants are paying fees and charges in excess of 30 percent to claims representatives. The significant majority of representatives are not charging fees and costs at the current 20 percent cap (that only applies in certain circumstances), thus one may infer that the raising of the cap to 30 percent is unlikely to result in a significant percentage of client claimants paying higher fees and costs.

C. Government Sector Impact:

The DFS asserts that the changes will make the claim process for unclaimed property more efficient by standardizing the claim form used by claimant representatives. Given this, the DFS may see some reduction in cost in processing such claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 717.119, 717.124 and 717.135.

This bill makes conforming changes to the following sections of the Florida Statutes: 717.12404, 717.1315, and 717.1322.

This bill repeals section 717.1351 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 30, 2021:

The committee substitute:

¹¹ E-mail from Meredith Stanfield of the Florida Department of Financial Services to Kurt Schrader of the Florida Senate Banking and Insurance Committee (March 29, 2021) (on file with Senate Banking and Insurance Committee).

- Specifies that if a will or trust instrument is included within a safe deposit box or other safekeeping repository delivered to DFS, the department must provide a copy of a copy of such will, trust, and any codicils or amendments to such will or trust instrument, upon request to a person providing evidence of the death of the testator or settlor.
- Removes a requirement in s. 717.124(10), F.S., that the signature required to execute an Unclaimed Property Recovery Agreement and an Unclaimed Property Recovery Agreement must be performed “manually.”
- Removes a requirement that claims representatives provide client claimants with the apparent owner names associated with an account for which the representative is proposing to submit a claim.
- Raises the maximum claimant representative fees and charges from 25 to 30 percent. Current law provides no limit on claimant representative fees and charges if the claimant representative fully discloses to the owner that the property is being held by the DFS and provides the mailing address and Internet address for the Division of Unclaimed Property. If no such disclosure is made, current law limits such fees and charges to 20 percent.
- Specifies that a claimant representative using the Unclaimed Property Purchase Agreement form must provide proof that they have made payment to the claimant. The original bill provided that the proof must be that the claimant received said payment.
- Provides technical changes.

B. Amendments:

None.