

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 425 Disposition of Unclaimed Property

SPONSOR(S): Insurance & Banking Subcommittee, Clemons

TIED BILLS: **IDEN./SIM. BILLS:** SB 1434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Lee	Topp
3) Commerce Committee	22 Y, 0 N	Fortenberry	Hamon

SUMMARY ANALYSIS

The Division of Unclaimed Property within the Florida Department of Financial Services (DFS) maintains a database of unclaimed property in its possession. Claimants' representatives are registered with DFS (registrants) to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property to file claims on behalf of those claimants. Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants to file a claim on their behalf and to receive a fee for services. Some registrants utilize powers of attorney that contain legal phrases which may be confusing or problematic for claimants. The powers of attorney often also contain irrevocable clauses and stipulations, allow the registrant to claim the property if the claimant fails to do so, or permit the registrant to take legal action against the claimant if the claimant rescinds the power of attorney. The lack of uniformity in the use of the powers of attorney poses problems for consumers and DFS staff.

Florida law does not limit the fees and costs registrants may claim for recovering property for a claimant under certain circumstances. If a claimant signs a Full Disclosure Statement prior to executing of a power of attorney, a claimant's representative may collect unlimited fees and costs for providing services related to the collection of the unclaimed property. If the Full Disclosure Statement is not signed, the fees and costs are capped at 20 percent of the value of the property recovered, and not to exceed \$1,000 per account owned by a natural person and claimed in the recovery. DFS may allow a claimant of unclaimed property to electronically submit a claim for unclaimed property if the amount of the claim is \$1,000 or less.

The bill streamlines the unclaimed property claims law. Under the bill, DFS must adopt forms by rule entitled "Uniform Unclaimed Property Recovery Agreement" (Recovery Agreement) and "Uniform Unclaimed Property Purchase Agreement" (Purchase Agreement) (collectively, the "Agreements"). These forms will be the exclusive means of a registrant engaging a claimant or seller to file an unclaimed property claim with DFS. The Agreements will be similar to the powers of attorney used by many registrants, but will be more claimant-friendly and will provide consumer protections, including a cap on fees and costs that registrants may charge claimants in all circumstances.

The bill specifies what must be contained in the Agreements, including specific information about the amounts claimed or sold, the fees and costs received by the registrant, and identifying information for both the claimant or seller and the registrant. The Agreements cap the total fees and costs, or the total discount amount in the case of a purchase agreement, to no more than 25 percent of the claimed amount. If the total fees and costs exceed 25 percent, the fee shall be reduced to 25 percent and the net balance remitted directly to the claimant by DFS. Furthermore, the bill increases the value of property for which a claimant may submit an electronic claim from \$1,000 to \$2,000.

The bill has an insignificant fiscal impact on the state and does not appear to impact local government revenues or expenditures. The bill may have a positive economic benefit to consumers who have claims for unclaimed property and a negative economic impact on registered claimants' representatives.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Department of Financial Services (DFS) is composed of 13 divisions and one independent office, including the Division of Unclaimed Property. Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. DFS maintains a database of unclaimed property in its possession. More than 350 licensed¹ claimants' representatives are registered with DFS (registrants) to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property held by DFS to file claims on behalf of those claimants.²

Each registrant who files claims utilizes a unique power of attorney through which claimants provide authorization to registrants to file a claim on their behalf and to receive a fee for services.³ While each power of attorney is different, most contain language similar to the following: "I hereby authorize ZYZ Associates to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize."⁴ The lack of uniformity in the use of the powers of attorney poses problems for both consumers and DFS staff. DFS's unclaimed property analysts are required to review and process all documents for each claim, including the unique powers of attorney.⁵

In addition to the language required in the powers of attorney,⁶ some registrants utilize powers of attorney that contain legal phrases such as "representation agreement, assignment, assignment of interest, recovery agreement, or contract," which may be confusing or problematic for claimants.⁷ The powers of attorney often contain irrevocable clauses and stipulations, including assignments of interests and rights, exclusivity provisions, venue and attorney fees provisions.⁸ Some powers of attorney provide that if the claimant fails to act, the registrant can claim their 'assigned property' separate from the claimant.⁹ Furthermore, some registrants will threaten claimants with legal action if the claimants attempt to rescind a power of attorney and file the claims themselves or hire another registrant who charges a lower fee for recovering the unclaimed property on behalf of the claimant.¹⁰

Section 717.135, F.S., contains different limits on the fees and costs that a registrant can recover for obtaining unclaimed property for a claimant. If a Full Disclosure Statement has been provided to an unclaimed property claimant for signature prior to the execution of a power of attorney, fees and costs collected by a claimant's representative for providing services related to the collection of the unclaimed property are unlimited.¹¹ If the Full Disclosure Statement has not been provided to the claimant, then the fees and costs are capped at 20 percent of the value of the property recovered, and not to exceed \$1,000 per account owned by a natural person and claimed in the recovery.¹²

¹ Pursuant to s. 717.124(1), F.S., only Florida-licensed attorneys, Florida-licensed certified public accountants, and or private investigators licensed under ch. 493, F.S., may be registered as claimants' representatives.

² Florida Department of Financial Services (DFS), Agency Analysis of 2021 House Bill 425, p. 1 (Feb. 9, 2021).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *See* s. 717.135, F.S.

⁷ DFS, *supra* note 2, at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 717.135, F.S. The text of the Full Disclosure Statement to be signed by a claimant is located in s. 717.135(3)(a), F.S.

¹² *Id.*

Additionally, DFS may allow a claimant of unclaimed property to electronically submit a claim for unclaimed property if the amount of the claim is \$1,000 or less.¹³ According to DFS, approximately 15 percent of unclaimed property claims are made electronically.¹⁴

Effect of the Bill

The bill changes the unclaimed property claims law to streamline the process for consumers. It provides that DFS must adopt forms by rule entitled “Uniform Unclaimed Property Recovery Agreement” (Recovery Agreement) and “Uniform Unclaimed Property Purchase Agreement” (Purchase Agreement). These Agreements will be the exclusive means of a claimant’s representative engaging a claimant or seller to file an unclaimed property claim with DFS. The Agreements will be similar to the powers of attorney used by many registrants, but will be more claimant friendly and will provide consumer protections, including a cap on fees and costs that registrants may charge claimants in all circumstances.

The bill substantially amends s. 717.135, F.S., to eliminate the current power of attorney requirements and replace them with requirements for the Recovery Agreement and Purchase Agreement. Pursuant to the bill, the Recovery Agreement and Purchase Agreement must include and disclose:

- The total dollar amount of the unclaimed property accounts claimed or sold;
- Either 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 registered claimant’s representative;
- Either 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 registered claimant’s representative;
- The net dollar amount the claimant or seller will receive;
- The unclaimed property account number and name of the owner for each account claimed;
- For the Purchase Agreement, a statement that the purchase price will be remitted to the seller within 30 days after the seller executes the form;
- The name, contact information, and license number of the registered claimant’s representative;
- The manual signature of the claimant or seller and the date signed;
- 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 amount in the case of a purchase agreement, may not exceed 25 percent of the claimed amount. If the total fees and costs exceed 25 percent, the fee shall be reduced to 25 percent and the net balance remitted directly by DFS to the claimant.

The bill also increases the limit of the property value for which an electronic claim can be filed from \$1,000 to \$2,000. The bill allows the claimant to sign the Agreements electronically.

The Recovery Agreement and Purchase Agreement may not contain language that makes them irrevocable or that creates an assignment of any unclaimed property held by DFS. For the Purchase Agreement, the registrant, not the claimant who is selling an account of unclaimed property to the registrant, has to provide proof that the registrant has made payment to the claimant (seller) when filing the claim with DFS. If DFS does not receive proof that the seller received payment, then the claim is void.

All references to “power of attorney” within the remainder of the unclaimed property claims laws are changed to Recovery Agreement and Purchase Agreement, as appropriate, so that these forms will be utilized in unclaimed property claims going forward in lieu of powers of attorney. Section 717.1351, F.S., relating to the acquisition of unclaimed property is repealed, because it is no longer necessary following the additional changes to the unclaimed property claims laws set forth within the bill.

B. SECTION DIRECTORY:

¹³ S. 717.124(7), F.S.

¹⁴ DFS, *supra* note 2, at 2.

Section 1. Amends s. 717.124, F.S., relating to unclaimed property claims.

Section 2. Amends s. 717.12404, F.S., relating to claims on behalf of a business entity or trust.

Section 3. Amends s. 717.1315, F.S., relating to retention of records by claimant's representatives and buyers of unclaimed property.

Section 4. Amends s. 717.1322, F.S., relating to administrative and civil enforcement.

Section 5. Amends s. 717.135, F.S., relating to power of attorney to recover reported property in the custody of the department.

Section 6. Repeals s. 717.1351, F.S., relating to acquisition of unclaimed property.

Section 7. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant fiscal impact on state government. Any changes to the Unclaimed Property Management Information System will have a minimal fiscal impact on the Unclaimed Property Trust Fund.¹⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have positive economic impacts for consumers. By streamlining the unclaimed property claims process using new forms and by capping the fees and costs that a claimant's representative can charge, consumers may be able to keep a greater percentage of the unclaimed property that they recover. The bill may have negative economic impacts for some registered claimants' representatives, as they may receive a reduced percentage of a claimant's property.

¹⁵ DFS, *supra* note 2, at 4.
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D. FISCAL COMMENTS:

Replacing the current fees and costs structure with a 25 percent maximum cap for total fees and costs is more consumer friendly and easier for DFS unclaimed property analysts to review and apply. Increasing the maximum amount of a claim allowed for electronic filing from \$1,000 to \$2,000, will allow more claimants to file claims without the need to submit physical paperwork. This will provide for quicker receipt of property by claimants and greater efficiency for DFS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to promulgate two new forms related to unclaimed property (Recovery Agreement and Purchase Agreement) to be adopted pursuant to rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2021, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the registrant, not the claimant who is selling an account of unclaimed property to the registrant, has to provide proof that the registrant has made payment to the claimant (seller) when filing the claim with DFS.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.