

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 468

SPONSOR: Banking and Insurance Committee and Senator Burt

SUBJECT: Public Records/Abandoned Property

DATE: January 9, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute creates a public records exemption for certain information related to reports of unclaimed property submitted to the Department of Banking and Finance. The social security number and the financial account numbers of apparent owners of the abandoned or unclaimed property would be confidential and exempt. This public records exemption would be subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature. However, an attorney, Florida-certified public accountant, or private investigator licensed in Florida under chapter 493, F.S., and registered with the Department of Banking and Finance under chapter 717, F.S., would continue to have access to the social security number if the information was used for the limited purpose of locating unclaimed property or unclaimed property owners.

The bill also provides that the exemption of this information from public records is necessary to prevent identity theft, related crimes and the misuse of such information to claim entitlement to property and defraud the rightful property owner or the State. The release of this confidential and exempt information to an attorney, a certified public accountant or a private investigator is necessary to facilitate the return of unclaimed property to the rightful owners.

This bill amends s. 717, 117, Florida Statutes.

II. Present Situation:

The Florida Disposition of Unclaimed Property Act¹ (the “Act”) provides the statutory procedure for the escheat (reversion) and disposition of presumed abandoned property to the state. Generally, all property, real or personal, and every right of property of any nature are subject to escheat to the State. The general purpose of the Act is to protect the interest of missing owners of property while the State derives a benefit from the unclaimed or abandoned property until the property is claimed, if ever.² There is no statute of limitations period for an owner to claim his or her property.

The Department of Banking and Finance (DBF) administers the Act. It is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to them. The department is required to make at least one active attempt to notify owners of unclaimed property in a cost-effective manner.³ The department is authorized to directly contact the owner. In addition, the department may use other means of notification, including publication of the names of the owners in newspapers, on television, on the Internet, or other promotional efforts.

Unclaimed property constitutes 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. Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the DBF. A check, draft, bank deposit, stock, as well as other intangible property, is presumed abandoned if unclaimed for a period of 5 years. Notable exceptions to the 5-year period include contents in safe deposit boxes (3 years), money orders (7 years), and travelers’ checks (15 years).

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (2 years from the date of specified activities). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the DBF by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. In lieu of forms, the holder may submit the required information via electronic medium as the department may prescribe by rule. Under the provisions of s. 717.117, F.S., the report to the DBF generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

After receipt of the holders’ reports, the DBF must attempt to locate the apparent owner of property by publishing or televising a notice in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which a holder has a principal place of business.⁴ Notifications that are published or televised may consist of the

¹ Ch. 717, F.S.

² Section 717.139, F.S.

³ Section 717.118, F.S.

⁴ Section 717.118, F.S.

names of the apparent owners of unclaimed property. However, notifications provided directly to the individual, apparent owners are required to include a description of the property.

In addition to the efforts by the DBF to locate the owners of unclaimed property, private investigative agencies, certified public accountants, and attorneys assist apparent owners in recovering unclaimed property. Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with ch. 493, F.S. Typically, an owner's representative will contact apparent owners of unclaimed property and offer to complete and file the necessary forms with the department for a fee.

In 2001, legislation was enacted (ch. 2001-36, L.O.F.) which revised the requirements for recovery services agreements between an owner's representative and an owner to include the option to disclose specified information⁵ or to limit fees to 15 percent for all contracts with a dollar value of equal to or greater than \$250 that are held by the DBF for 24 months or less (25 percent for property held by the department for more than 24 months) or \$25 for all contracts with a dollar value of less than \$250.

In 1973, the Attorney General opined that the records maintained by the Abandoned Property (Unclaimed Property) Section of the DBF were public records and were open to public inspection.⁶

Public Records Exemptions – Article I, s. 24(a), Florida Constitution, provides, "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."

Article I, s. 24(c), Florida Constitution, permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

⁵ This information includes: disclosing that the property is held by the Department of Banking and Finance, identifying the person or entity that held the property prior to the property becoming unclaimed, and disclosing the approximate value and type of the property. [s. 717.135, F.S.]

⁶ AGO 073-167.

- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

III. Effect of Proposed Changes:

Section 1. Provides that social security numbers and financial account numbers contained in unclaimed property reports, submitted to the Department of Banking and Finance, as required under s. 717.117, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution. This section would be subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature. However, an attorney, Florida-certified public accountant, or private investigator licensed in Florida under chapter 493, F.S. and registered with the Department of Banking and Finance under chapter 717, F.S., would continue to have access to the social security number if the information was used for the limited purpose of locating unclaimed property or unclaimed property owners.

Section 2. Provides that the Legislature finds that the exemption from public-record requirements provided in this act is a public necessity to prevent identity theft and related crimes. The exemption of the social security number and financial account numbers of apparent owners is necessary to prevent such information from being used in forged documents demonstrating entitlement to abandoned or unclaimed property and thereby defrauding the rightful property owner or the State School Fund. The release of this confidential and exempt information to attorneys, Florida-certified public accountants or private investigators is necessary to facilitate the return of unclaimed property to the rightful owners.

Section 3. Provides that this act would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The exemption would protect individuals reported as apparent owners of unclaimed property from potential identity theft and other misuses of personal and financial information.

Attorneys, certified-public accountants, and private investigators use these reports to solicit business from individuals that have been reported as apparent owners of property. By allowing the heir finders to retain access to the social security numbers, the heir finders would continue to be able to solicit business from apparent owners of unclaimed property.

C. Government Sector Impact:

Indeterminate. The department would be responsible for ensuring that the social security numbers and financial accounts that are contained in the reports remain confidential and exempt. The department would no longer be required to provide access to such records, except to attorneys, certified public accountants, and private investigators.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.