

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 Judiciary Committee

BILL: CS/SB 2048

INTRODUCER: Banking and Insurance Committee and Senator Lynn

SUBJECT: Probate

DATE: April 20, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sumner</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill reinstates and amends a 2004 provision in law that provides that an intestate estate may pass to the descendants of the decedent’s great-grandparents if any descendant of the great-grandparents was a Holocaust victim. The ability for the descendant to receive the intestate property is effective through December 31, 2010.

It makes the following changes to s. 732.402, F.S., of the Florida Probate Code regarding property that is classified as “exempt property”:

- Household furniture and appliances – Increases the net value from up to \$10,000 to up to \$20,000.
- Motor vehicles – Limits the number of automobiles held in the decedent’s name from all automobiles to up to two motor vehicles that do not have a gross vehicle weight over 15,000 pounds.
- College Funds – Expands the scope of the funds to all qualified tuition programs authorized by s. 529 of the Internal Revenue Code, rather than only Florida Prepaid College Program contracts and Florida College Savings agreements.

The bill deletes a cross reference in s. 733.602, F.S. By deleting the cross-reference a personal representative will have to adhere to all standards of care applicable to trustees.

This bill substantially amends the following sections of the Florida Statutes: 732.103, 732.402, and 733.602.

II. Present Situation:

Escheat

When a person dies and leaves an estate without being survived by a person entitled to part or all of the estate, such property shall escheat (revert) to the state.¹ Property that escheats to the state is sold and the proceeds from the sale are paid to the Chief Financial Officer and deposited in the State School Fund.²³ A person claiming to be entitled to the proceeds from the sale of escheated property may reopen the administration to assert entitlement within 10 years after payment is made to the CFO.⁴ After 10 years, however, the state's rights to the proceeds are absolute and the property has escheated to the state.⁵

Section 732.103, F.S., contains the intestate succession rules that are used to determine entitlement to property when a decedent dies intestate (without disposing of the property via a will). If there is no will, property descends as follows:

- Surviving spouse of the decedent as provided in s. 732.102, F.S.⁶ If none then:
- Descendants of the decedent. If none then:
- Equally to the father and mother of the decedent, or the survivor of them. If none then:
- Brothers and sisters of the decedent and the descendants of deceased brothers and sisters.

If none of the above are entitled to the property, then the estate is divided equally (half and half) between the decedent's paternal and maternal kindred as follows:

- To the grandfather and grandmother equally, or to the survivor of them. If none, then:

¹ Section 732.107, F.S.

² Section 732.107(2), F.S.

³ The State School Fund is also known as the State School Trust Fund, created pursuant to s. 1010.71, F.S.

⁴ Section 732.107(3), F.S.

⁵ Property held by a guardian that cannot make a distribution to a ward becomes the final property of the state five years after it is turned over to the CFO pursuant to s. 744.534, F.S.

⁶ Section 732.102, F.S., provides The intestate share of the surviving spouse is:

(1) If there is no surviving descendant of the decedent, the entire intestate estate.

(2) If there are surviving descendants of the decedent, all of whom are also lineal descendants of the surviving spouse, the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated to the surviving spouse to satisfy the \$60,000 shall be valued at the fair market value on the date of distribution.

(3) If there are surviving descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

- Uncles and aunts and descendants of deceased uncles and aunts of the decedent. If none, then:
- To other kindred who survive, in the order stated above.
- If there is no kindred among the decedent's paternal and maternal line as described above, then the entire property goes to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate.

In 2004,⁷ the Legislature created subsection (6) of s. 732.103, F.S., to temporarily expand the above intestacy succession if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), F.S.⁸ In such a circumstance, a court was required to allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage.⁹ Outside of this exception, the intestacy statute only looks to the grandparents of the decedent, not great-grandparents, to locate an heir. However, the expansion was only effective for proceedings filed on or before December 31, 2004.¹⁰

Unclaimed Property

Generally, all property, real and personal, and every right to property of any nature are subject to escheat to the state.¹¹ Abandoned property is also subject to escheat to the state under appropriate statutes.¹² The escheat of abandoned property does not constitute a taking of property without due process of law in violation of the U.S. Constitution.¹³

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time.¹⁴ Essentially, the unclaimed property laws cover financial accounts, but not real property or other personal property such as automobiles, furniture, jewelry (if not in a safe deposit box), and other items. 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 are all potentially unclaimed property.¹⁵ Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department of Financial Services (DFS).¹⁶ There is no time limit for the owner to make a claim for unclaimed property.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the State School Trust Fund within the Department of Education (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed

⁷ Section 145, ch. 2004-390, L.O.F.

⁸ "Holocaust victim" is defined as "any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi Germany, or countries allied with Nazi Germany."

⁹ Section 732.103(6), F.S.

¹⁰ *Id.*

¹¹ See ch. 716, F.S.

¹² Section 716.02, F.S.

¹³ *Cockrill v. California*, 268 U.S. 258 (1925).

¹⁴ Sections 717.102 and 717.1035, F.S.

¹⁵ Sections 717.104 through 717.116, F.S.

¹⁶ Section 717.119, F.S.

Property Trust Fund) for the prompt payment of verified claims.¹⁷ Approximately \$1.5 billion has been transferred to the Florida Department of Education since the program's inception, including \$267,095,187 transferred to the State School Fund in Fiscal Year 2005-2006.

Any person claiming an interest in unclaimed property may file a claim with the department for unclaimed property.¹⁸ Within 90 days of the receipt of a properly submitted claim for unclaimed property (though potentially extendable for 60 additional days for good cause), the department determines the claim.¹⁹ When a claim is determined in favor of the claimant, the department delivers the property or the amount the department received from the sale of the property plus any applicable interest.²⁰ An estate may claim unclaimed property only after the heir or legatee of the decedent entitled to the property has been located.²¹ An estate that receives unclaimed property before the heir or legatee has been located is personally liable for the unclaimed property and must immediately return the full amount of the unclaimed property to the DFS.²²

Probate – Exempt Property

Certain property is made “exempt” by the probate code.²³ Exempt property is property that is exempt from the claims of creditors, and thus is given to beneficiaries notwithstanding whether there are sufficient assets to pay all of the claims against the estate.²⁴ Exempt property as set forth in the Probate Code is in addition to protected homestead,²⁵ statutory entitlements,²⁶ and property passing under the will or by intestate succession.²⁷ Exempt property includes:

- (a) Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$10,000 as of the date of death.
- (b) All automobiles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal automobiles.

¹⁷ Section 717.123(1), F.S., provides that “[a]ll funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund.”

¹⁸ Section 717.124, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 717.12405, F.S.

²² *Id.*

²³ See part IV, ch. 732, F.S.

²⁴ Section 732.402, F.S.

²⁵ Section 731.201(32), F.S., provides that the term “‘Protected homestead’ means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.”

²⁶ The term “statutory entitlements” is not defined but would include homestead, exempt property, elective share, pretermitted share, family allowance, and any other property that a person is entitled to receive from an estate by statute.

²⁷ Section 732.402(4), F.S.

(c) Stanley G. Tate Florida Prepaid College Program contracts purchased and Florida College Savings agreements established under part IV of chapter 1009.

(d) All benefits paid pursuant to s. 112.1915, F.S. (teachers and school administrators; death benefits).²⁸

Exempt property values have not been changed since 1981. When the statute was first created in 1974, it exempted up to \$5,000 in furniture and appliances and up to \$1,000 in personal effects.²⁹ In 1975, automobiles were added to the \$5,000 limit for furniture and appliances.³⁰ In 1981, the statute was amended to include as exempt property all automobiles used as personal vehicles, regardless of the value, up to \$10,000 in furniture, furnishings, or appliances, and retained the \$1,000 for personal effects.³¹ The \$1,000 exemption for personal effects was removed in 1985.³²

Personal Representative – General Duties

The duties and powers of a personal representative³³ commence upon appointment, although prior acts that are beneficial to the estate occurring before appointment are ratified by the appointment of the personal representative.³⁴ The general duties of a personal representative include:

- Observing, as a fiduciary, the standards of care applicable to trustees as described by part VII of ch. 736, F.S.³⁵
- Settling and distributing the estate of the decedent in accordance with the terms of the decedent's will and the Probate Code as expeditiously and efficiently as is consistent with the best interests of the estate.
- Using the authority conferred by the Probate Code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.³⁶

III. Effect of Proposed Changes:

Section 1. The bill reinstates and amends s. 732.103(6), F.S. When enacted in 2004, it was created to temporarily expand the intestacy succession if any of the descendants of the

²⁸ Section 732.402(2), F.S.

²⁹ Section 1, ch. 74-106, L.O.F.

³⁰ Section 19, ch. 75-220, L.O.F.

³¹ Section 1, ch. 81-238, L.O.F.

³² Section 3, ch. 85-79, L.O.F.

³³ Section 731.201(27), F.S., provides that the "personal representative" is "the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor."

³⁴ Section 733.601, F.S.

³⁵ In 2006, this cross-reference was incorrectly changed to part VII of ch. 736, F.S. See s. 37, ch. 2006-217, L.O.F. The duties and powers of trustees statutes were moved to part VIII of ch. 736, F.S., that year, not part VII. See s. 8, ch. 2006-217, L.O.F.

³⁶ Section 733.602, F.S.

decedent's great-grandparents were Holocaust victims.³⁷ It was limited to proceedings filed on or before December 31, 2004. The bill limits the property that can be claimed to only estate property deposited with the Chief Financial Officer regardless of whether the specified 10-year escheatment period has run. The ability for the descendant to receive intestate property under this section is effective through December 31, 2010.

Section 2. The bill makes the following changes to the property that a spouse or surviving children of a decedent have a right to:

- Household furniture and appliances – Increases up to a net value of \$20,000 from \$10,000.
- Motor vehicles – Limits the number of automobiles held in the decedent's name from all automobiles to up to two motor vehicles that do not have a gross vehicle weight over 15,000 pounds
- College Funds – Expands the scope of the funds to all qualified tuition programs authorized by s. 529 of the Internal Revenue Code, rather than only Florida Prepaid College Program contracts and Florida College Savings agreements.

Section 3. The bill amends s. 733.602, F.S., referring to the duties a personal representative (trustee) has in administering a probate estate. The bill revises language relating to the standards of care applicable to a personal representative by deleting a cross-reference to part VII of ch. 736, F.S. This existing cross-reference is inaccurate and limits the applicable standards. By deleting the cross-reference, a personal representative will have to adhere to all standards of care applicable to trustees.

Section 4. The act is effective July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, Section 11, of the Florida Constitution, prohibits special laws that effectuate a change in the laws of descent. The bill may also raise equal protection concerns by distinguishing between persons (collateral heirs such as second cousins) whose claims for

³⁷ *Supra* note 8.

escheated property are allowed or prohibited, depending on whether they are descendants of Holocaust victims.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow certain descendants of Holocaust victims to claim property that has already escheated to the state; current law prohibits claims by any person on property that has escheated past the statutory period for making a claim.

C. Government Sector Impact:

The DFS states that the amount of property that escheats to the state varies each year. For fiscal year 2008-2009, a total of \$29,308,732.76 is expected escheat to the state. Under the proposed bill, those monies will be potentially subject to claims by qualified parties. Funds that escheat to the state are deposited in the State School Trust Fund within the Department of Education, except for a \$15 million balance that is retained in the Unclaimed Property Trust Fund. The bill does not provide the funding source for payment of claims of escheated property, but such funds would presumably be appropriated from the trust State School Trust Fund.

The department also states that there are no provisions in the escheatable property statutes, case law, or existing regulations to “reverse” escheat, which makes it difficult to know how to effectuate the bill’s requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 April 15, 2006:

The committee substitute places the provisions of the bill relating to claims of property by specified descendants of holocaust victims in the probate code, rather than the unclaimed property law. The committee substitute also adds provisions amending the definition of “exempt property” under the probate code and makes a clarifying change to the duties of a personal representative under the probate code.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
