

**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 Governmental Oversight and Accountability

**BILL:** CS/SB 464

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Flores

**SUBJECT:** Disposition of Unclaimed Property

**DATE:** April 3, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 464 authorizes the Department of Financial Services to allow an apparent owner of unclaimed property to electronically submit a claim to the department. If the electronically submitted claim is for \$1,000 or less, the department may use an alternative method of identity verification. The bill also clarifies that property reported or remitted to the Chief Financial Officer pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S., is also subject to the unclaimed property provisions of s. 717.124, F.S.

This bill substantially amends section 717.124 of the Florida Statutes.

**II. Present Situation:**

**Disposition of Unclaimed Property**

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless

otherwise provided in the chapter.<sup>1</sup> The time period for utility<sup>2</sup> deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or advance payment was made is presumed unclaimed.<sup>3</sup> Certain types of unclaimed property, including security deposits having a value of less than \$10, are not to be presumed unclaimed.<sup>4</sup>

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable.<sup>5</sup> At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.<sup>6</sup>

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property.<sup>7</sup> The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.<sup>8</sup>

Generally, after the receipt of unclaimed property the department sells all non-cash property to the highest bidder at a public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists.<sup>9</sup> The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund.<sup>10</sup> The department is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the State School Fund.

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<sup>1</sup> Section 717.102(1), F.S.

<sup>2</sup> Section 717.101 (23), F.S., defines the term “utility” to mean a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

<sup>3</sup> Section 717.108, F.S.

<sup>4</sup> Section 717.117(1)(h), F.S.

<sup>5</sup> Section 717.117, F.S.

<sup>6</sup> Section 717.119, F.S.

<sup>7</sup> Section 717.1201, F.S.

<sup>8</sup> Section 717.118, F.S.

<sup>9</sup> Section 717.122, F.S.

<sup>10</sup> Section 717.123, F.S.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

#### *Unclaimed Property Claims*

Section 717.124, F.S., provides that any person claiming an interest in any property delivered to the department may file a claim for the property. The claimant, or the claimant's representative, must provide the department with a legible copy of a valid driver's license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver's license at the time the original claim form is filed, the department must be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, 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. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule.

The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

#### *Existing Rulemaking Authority*

Section 717.138, F.S., provides the department has authority to adopt rules pursuant to implement the provisions of chapter 717, F.S. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter.

### **III. Effect of Proposed Changes:**

The bill authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department, notwithstanding any other provision of law. The bill provides no standards or guidelines as to what those rules should contain. The department has indicated this will allow for greater efficiency,<sup>11</sup> which should help speed up the return of unclaimed property to owners.

The bill also applies the procedures of ch. 717, F.S., to property reported or remitted by the Chief Financial Officer pursuant to:

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<sup>11</sup> DFS bill analysis dated January 30, 2013 (On file with the Senate Banking and Insurance Committee.)

- Section 43.19, F.S., Money Paid into Court; unclaimed funds: Provides that unclaimed funds held in the court registry for 5 years shall be deposited with the Chief Financial Officer to the credit of the State School Fund. Accounts/funds held in perpetuity.
- Section 45.032, F.S., Disbursement of Surplus Funds after Judiciary Sale: Provides that unclaimed funds as a result of a property foreclosure are to be deposited with the Chief Financial Officer. Accounts/funds held in perpetuity.
- Section 732.107, F.S., Escheat: Property held by an Estate without Heirs ‘escheats’ to the state. Accounts/funds can be claimed for 10 years, after which the funds permanently escheat.
- Section 733.816, F.S., Disposition of Unclaimed Property Held by Personal Representatives: Property held by a Personal Representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer. Accounts/funds can be claimed for 10 years, after which the funds permanently escheat.
- Section 744.534, F.S., Disposition of Unclaimed Funds Held by Guardian: Property held by a Legal Guardian that cannot be distributed to a ward or ward’s estate is deposited into the court registry and then is deposited with the Chief Financial Officer. Accounts/funds can be claimed for 5 years, after which the funds permanently escheat.

The bill takes effect July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing for the electronic submission of claims may help speed up the return of unclaimed property to owners.

C. Government Sector Impact:

The bill may help DFS staff to analyze and process claims quicker.

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 Governmental Oversight and Accountability on April 2, 2013:**

The CS specifies that if an electronically submitted claim for unclaimed property is for \$1,000 or less, the department may use an alternative method of identity verification.

B. Amendments:

None.