

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 837 Unclaimed Property

SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Burton

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee	19 Y, 0 N, As CS	Hinshelwood	Hamon

SUMMARY ANALYSIS

Under the Florida Disposition of Unclaimed Property Act, the Division of Unclaimed Property, a division within the Department of Financial Services (DFS), is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. There is no statute of limitations for an owner's claim; the owner may claim his or her property at any time and at no cost.

For particular kinds of property, the Act provides varying time periods to trigger a finding that such property is presumed unclaimed and must be turned over to the DFS. The presumption of unclaimed property as to money in a checking account, savings account, or certificate of deposit arises 5 years after the last communication with the borrower or activity on the account. The bill provides a shorter time period for the presumption of unclaimed property to arise for an account, which is \$10,000 or less, at a banking or financial organization. The bill would allow the 5-year time period to be shortened to 25 months following the date of death of the last surviving account owner if proof of death is established by one of two means. Proof of death may be established by either:

- Presentation of an original or certified copy of the death certificate; or
- Comparison of the banking or financial organization's record of ownership against the United States Social Security Administration Death Master File or any database or service that the DFS determines is at least as comprehensive as the United States Social Security Administration Death Master File for the purpose of indicating that a person has died.

The bill provides that no duty is created for the banking or financial organization to make an effort to establish proof of an owner's death and does not otherwise affect the duties of the banking or financial organization under ch. 717, F.S., relating to disposition of unclaimed property.

The bill has an indeterminate positive fiscal impact on the state and private sector.

The bill becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unclaimed Property

In 1987, the state enacted the Florida Disposition of Unclaimed Property Act (Act). The Act is based on the Uniform Unclaimed Property Act adopted by the Uniform Law Commission. The Act protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.

Under the Act, the Division of Unclaimed Property, a division within the DFS, is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. There is no statute of limitations in the Act for an owner's claim; the owner may claim his or her property at any time and at no cost.

Generally, all intangible property, including any income thereon 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 five years after the property becomes payable or distributable, unless otherwise provided in the Act.¹ For particular kinds of property, the Act provides varying time periods to trigger a finding that such property is presumed unclaimed and must be turned over to the DFS. For example, the presumption of unclaimed property arises for:

- *Traveler's checks* 15 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.²
- *Money orders* 7 years after its issuance if, within that time, the owner has not communicated in writing with the issuer concerning it or otherwise indicated an interest in it.³
- *Sums payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable* 5 years after it was payable, or after its issuance if payable on demand, if, within that time, the owner has not communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest in it.⁴
- *Checking or savings deposits or a certificate of deposit, including interest or dividends thereon, held by a banking or financial organization* 5 years after the owner last:
 - Increased or decreased the amount of the deposit;
 - Increased or decreased the amount of another deposit with the banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other deposit are regularly sent, with the owner with regard to the deposit that would otherwise be presumed unclaimed;
 - Communicated with the banking or financial organization concerning the property;
 - Otherwise indicated an interest in the property;
 - Communicated in writing with the banking or financial organization concerning another relationship with such banking or financial organization;
 - Otherwise indicated an interest concerning another relationship with such banking or financial organization so long as the banking or financial organization communicates in writing, at the address to which communications regarding the other relationship are regularly sent, with the owner with regard to the property that would otherwise be presumed unclaimed.⁵
- *Intangible property held by fiduciaries* 5 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of

¹ S. 717.102(1), F.S.

² S. 717.104(1), F.S.

³ S. 717.104(2), F.S.

⁴ S. 717.105, F.S.

⁵ S. 717.106, F.S.

principal or income, communicated concerning the property, or otherwise indicated an interest in it.⁶

- *Intangible property held by fiduciaries under trust instruments* 2 years after it has become payable or distributable if, within that time, the owner has not increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest in it.⁷
- *Tangible and intangible property held by a banking or financial organization in a safe-deposit box* 3 years after the lease or rental period on the box has expired.⁸

Holders of unclaimed property are required to file an annual report of unclaimed property with the DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year.⁹ The report and transmittal must include all property considered unclaimed in the previous calendar year.¹⁰ Holders of inactive accounts having a value of \$50 or more are required to use due diligence to locate and notify the apparent owners at least 60 days but not more than 120 days prior to filing the report of unclaimed property with the DFS.¹¹ The report of unclaimed property must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address.¹²

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹³ Any person who pays or delivers property to the DFS in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.¹⁴ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.¹⁵ Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.¹⁶ The DFS maintains a website at which members of the public can search for unclaimed property to which they may be entitled.¹⁷

The Act provides a process for a deceased owner's beneficiaries to claim the property without an order of a probate court if all of the unclaimed property held by the DFS on behalf of the owner has an aggregate value of \$10,000 or less and no probate proceeding is pending.¹⁸ To do so, the claimant must file with the DFS an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid.¹⁹ The claimant must provide any additional information reasonably necessary to make a determination of entitlement.²⁰ If the owner died testate,²¹ the claim must be accompanied by a copy of the will.²² Each person receiving property under this process is personally liable for all lawful claims against the estate of the owner, but only to the extent of the value of the property received by such person under this process, exclusive of the

⁶ S. 717.112(1), F.S.

⁷ S. 717.1125, F.S.

⁸ S. 717.116, F.S.

⁹ Ss. 717.117(3) and 717.119, F.S.

¹⁰ *Id.*

¹¹ S. 717.117(4), F.S.

¹² S. 717.117(1), F.S.

¹³ S. 717.1201, F.S.

¹⁴ *Id.*

¹⁵ S. 717.117 and 717.124, F.S.

¹⁶ S. 717.124, F.S.

¹⁷ FLTreasureHunt.gov, <https://www.fltreasurehunt.org/> (last visited Mar. 16, 2019).

¹⁸ S. 717.1243, F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ "Testate" means "having left a will at death." BLACK'S LAW DICTIONARY 713 (3d ed. 1996).

²² S. 717.1243, F.S.

property exempt from claims of creditors under the constitution and laws of Florida.²³ Any heir or devisee²⁴ of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and will be awarded costs and attorney's fees.²⁵

The DFS is required to make a determination on a claim within 90 days.²⁶ If a claim is determined in favor of the claimant, the DFS must deliver or pay over to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.²⁷ All proceeds from unclaimed property are deposited by the DFS into the Unclaimed Property Trust Fund.²⁸ The DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by the DFS in administering and enforcing the Act.²⁹ All remaining funds must be deposited into the State School Fund to be used for public education.³⁰

Effect of the Bill

The bill provides a shorter time period for the presumption of unclaimed property to arise for an account, which is \$10,000 or less, at a banking or financial organization. Under current law, the presumption of unclaimed property as to money in a checking account, savings account, or certificate of deposit arises 5 years after the last communication with the borrower or activity on the account. The bill would allow such time period to be shortened to 25 months following the date of death of the last surviving account owner if proof of death is established by one of two means. Proof of death may be established by either:

- Presentation of an original or certified copy of the death certificate; or
- Comparison of the banking or financial organization's record of ownership against the United States Social Security Administration Death Master File or any database or service that the DFS determines is at least as comprehensive as the United States Social Security Administration Death Master File for the purpose of indicating that a person has died. The comparison must use the name and either the social security number or the date of birth of the owner. An owner is presumed deceased if the date of his or her death is indicated by the comparison made under this paragraph unless the banking or financial organization has in its records competent and substantial evidence that the person is living, including, but not limited to, a contact made by the banking or financial organization with such person or his or her legal representative.

The bill provides that no duty is created for the banking or financial organization to make an effort to establish proof of an owner's death and does not otherwise affect the duties of the banking or financial organization under ch. 717, F.S., relating to disposition of unclaimed property.

The bill would take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 717.106, F.S., relating to bank deposits and funds in financial organizations.

Section 2. Provides that the bill will take effect upon becoming law.

²³ *Id.*

²⁴ "Devisee" means "a recipient of property by will." BLACK'S LAW DICTIONARY 207 (3d ed. 1996).

²⁵ S. 717.1243, F.S.

²⁶ S. 717.124(1), F.S.

²⁷ S. 717.124, F.S.

²⁸ S. 717.123, F.S.

²⁹ *Id.*

³⁰ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in more unclaimed property being paid to the state and, therefore, may have a positive impact on revenues to the Unclaimed Property Trust Fund and State School Fund. The bill's positive impact is indeterminate, as it is unknown how many small accounts would qualify for the shortened time period for the presumption of unclaimed property to arise.

2. Expenditures:

House staff consulted with staff at the DFS who indicated that the bill would not have a fiscal impact on their agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would positively impact the private sector. The bill may increase the speed and decrease the expense for members of the public to locate and receive money for which they are the rightful beneficiaries. The bill also provides a means by which banks and other financial institutions can more quickly clear dormant small accounts off of their books. The bill's positive impact is indeterminate, as it is unknown how many small accounts would qualify for the shortened time period for the presumption of unclaimed property to arise.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute accomplishes the same goal of the underlying bill which was intended to help the rightful beneficiaries obtain funds held in dormant small bank accounts in a more expedient and less expensive manner. The committee substitute accomplishes this goal through use of the existing unclaimed property process by shortening the time period for the presumption of unclaimed property to arise for a decedent's account, which is \$10,000 or less, at a banking or financial organization.

On March 28, 2019, the Commerce Committee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute clarifies that the banking or financial organization may, but is not required to, take initiative to establish proof of an account owner's death.

The staff analysis has been updated to reflect the committee substitute.