

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 1398

SPONSOR: Banking and Insurance Committee and Senator Carlton

SUBJECT: Unclaimed Property

DATE: March 20, 2001 REVISED: _____

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

I. Summary:

The Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.) provides the statutory procedure for the escheat (reversion)¹ and disposition of presumed abandoned property to the state. The Department of Banking and Finance 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 committee substitute substantially revises the Florida Disposition of Unclaimed Property Act, in ch. 717, F.S., as follows:

1. Changes references from abandoned property to unclaimed property;
2. Revises requirements for recovery services agreements to include the option to disclose specified information or to limit fees to 15 percent for all contracts with a dollar value of \$250 or more or \$25 for all contracts with a dollar value of less than \$250;
3. Removes the one-time notification limitation imposed on the Department of Banking and Finance for notifying owners of unclaimed property;
4. Revises reporting requirements for holders of unclaimed property;
5. Allows for direct payments to the owner of the unclaimed property after authorized fee deductions to the attorney, certified public accountant, or private investigative agency;
6. Places an affirmative duty on holders of unclaimed property to use reasonable and prudent efforts to locate apparent owners through at least one active search for the owner within 180 days after an account becomes inactive (2 years from the date of specified activities);
7. Revises the procedure for the Department of Banking and Finance to resolve disputes and conflicts among claims;

¹ The reversion of such property is based on the presumption that there is no heir to assume the property upon the death of the owner.

8. Includes certified public accountants among persons authorized to file claims as owner's representatives;
9. Requires owners' representatives to maintain certain records and requires representatives to provide such records to the Department of Banking and Finance;
10. Exempts a licensed, Florida-certified public accountant who is acting within the scope of the practice of public accounting, as defined in ch. 473, F.S., from the regulatory provisions for private investigative agencies under ch. 493, F.S.;
11. Increases the maximum aggregate amount of unclaimed property from \$1,000 to \$5,000 in small estate accounts in which heirs must now submit an affidavit stipulating to specified expenses in claiming property;
12. Clarifies that the 10-year statute of limitations period to claim property escheated to the state begins from the time the property is received by the state; and
13. Eliminates a claimant's entitlement to interest on amount of unclaimed property.

This bill amends the following sections of the Florida Statutes: 215.965, 717.101, 717.102, 717.103, 717.1035, 717.104, 717.105, 717.106, 717.107, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.118, 717.119, 717.1201, 717.122, 717.123, 717.124, 717.1241, 717.1243, 717.125, 717.129, 717.1315, 717.132, 717.135, 717.138, 732.107, 493.6101, and 493.6102. The bill repeals section 717.137, Florida Statutes. The bill creates section 717.138, Florida Statutes.

II. Present Situation:

The Florida Disposition of Unclaimed Property Act (Ch. 717, F.S.) provides the statutory procedure for the escheat (reversion)² and disposition of presumed abandoned property to the state. Generally, all property, real and personal, and every right of property of any nature are subject to escheat to the State.³ 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 and abandoned property until the property is claimed, if ever. See s. 717.139, F.S. There is no statute of limitations period for an owner to claim his or her property.

The Department of Banking and Finance 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 only a one-time attempt to notify owners of unclaimed property. See s. 717.118, F.S. The department may use post, print, visual, telecommunications, or electronic media, with the exception of publication on the Internet, to satisfy the one-time notice requirement.⁴ Owners are not charged for the department's cost in notification or recovery of the property.

² The reversion of such property is based on the presumption that there is no heir to assume the property upon the death of the owner.

³ Escheat of abandoned property to the State under appropriate statutes does not constitute a taking of property without due process of law in violation of the Federal Constitution, as established in *Cockrill v. California* 268 US 258, 69 L Ed 944, 45 S Ct 490 (1925).

⁴ The last major revision to the Act was in 1996. See ch. 96-301, Laws of Florida. The revisions included, but were not limited to: 1) Allowing the Department of Banking and Finance to use alternative means (in lieu of newspaper publication requirements of names of owners of unclaimed property of all accounts valued at more than \$50) such as direct mailing and

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 department. 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).

In general, once the allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the Department of Banking and Finance by May 1 for all property presumed abandoned for the preceding fiscal year. Within 120 days prior to the filing, a holder must mail a written notice to the apparent owner of such property (valued at \$50 or more).

Within 13 months after receipt of the holders' reports, the department must attempt to locate the apparent owner of property valued at or above \$100 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.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the department into the Department of Education School Trust Fund (State School Fund), except for a \$3 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.

In addition to the efforts by the department to locate the owners of unclaimed property, private investigative agencies 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. According to the Department of Banking and Finance, 20 states currently limit their finder's fees to 10 percent or less and 10 states limit fees to more than 15 percent. These fee agreements, however, are unenforceable if made within 90 days after the Department of Banking and Finance attempted to notify the apparent owner or within 12 months after such property was reported to the department. See s. 717.135, F.S. These fee agreements must include these disclosure requirements to ensure that owners are apprised of their rights.

The issues of notice, disclosure and statutory time periods have been raised as areas of concern. For example, the statutory time periods under s. 717.135, F.S., are relatively unenforceable since the Department of Banking and Finance is not a party to the fee agreement between an owner's representative and an owner of unclaimed property. (See Office of Program Policy Analysis and

electronic media for owner notification, 2) Reducing the dormancy period for presuming abandoned property from seven years to five years for most types of unclaimed property and from seven years to three years for safe deposit box items, and 3) Increasing the minimum value of owner accounts that required notice and publication from \$50 to \$100, and 4) Imposing an one-time notification limitation on the department.

Government Accountability, Progress Report No. 99-13, *Unclaimed Property Program's Alternative Owner Notification Means is Cost-Effective, November 1999*.) Moreover, there is no prohibition against an owner's representative from contacting or contracting with apparent owners and no requirement that the owner be informed of when or if the department has attempted to notify him or her, or when the property was reported to the department. Therefore, according to the Department of Banking and Finance, it is unlikely that an owner would even know if the agreement was void or unenforceable and would not be in a position to enforce his or her rights anyway.

III. Effect of Proposed Changes:

This bill substantially revises ch. 717, F.S., relating to unclaimed property. The following sections are amended solely to replace the term, "abandoned property," with the term, "unclaimed property," and to make conforming technical changes: ss. 717.102, 717.103, 717.1035, 717.104, and 717.105, F.S. (sections 2 through 6); ss. 717.107 and 717.108, F.S. (sections 8 and 9); s. 717.109, F.S. (section 10), s. 717.111, F.S. (section 12); ss. 717.113, 717.115, and 717.116, F.S. (sections 14 through 16), s. 717.1201, F.S. (section 20); ss. 717.125, and 717.129, F.S. (sections 26 and 27). The following statutory sections are similarly amended to reflect the universal change in terminology but also are amended to make the following specific changes:

Section 1. Amends s. 717.101, F.S., to add a definition of "due diligence" as it relates to efforts to be taken by property holders to locate owners of unclaimed property (See section 17). Due diligence is defined to mean the use of reasonable and prudent methods under particular circumstances to locate apparent owners of inactive accounts using the taxpayer identification number or social security number. The section also amends the definition of "last known address" to include any partial description of the location of the apparent owner sufficient to establish that the owner was a resident of Florida.

Section 7. Amends s. 717.106, F.S., to add that first class mail sent to the apparent owner, which is not returned as undeliverable, is considered as an indication of an active account in a banking or financial organization so that the account would not be presumed unclaimed.

Section 11. Amends s. 717.1101, F.S., to clarify, in the case of an owner of stock or other security of a business association, who has failed to claim a dividend or distribution for 5 years, that the stock will not be considered abandoned until five consecutive dividends have not been claimed by the owner after the 5-year presumptive period.

Section 13. Amends s. 717.112, F.S., to provide that intangible property issued by a governmental subdivision and held in an agency capacity for the governmental subdivision, is presumed unclaimed after 1 year, unless the owner has, within 1 year after such property has become payable, communicated concerning the property, or otherwise indicated an interest in the property. Current law does not expressly address this type of property for purposes of determining whether it is presumed unclaimed.

Section 17. Amends s. 717.117, F.S., to remove the requirement that reports of unclaimed property with the department be verified by representatives of the respective private corporation or unincorporated association submitting the report.

This section is also amended to require insurance companies to provide the insured's or the annuitant's date of birth to assist in the proper identification of the individual and to place an affirmative duty on the part of the holder of property (i.e., one in possession of property belonging to another, a trustee, or one indebted to another) to use due diligence to locate apparent owners. The holder is required to make at least one search for the owner within 180 days after an account becomes inactive. An account is considered inactive two years from the date of the last owner-initiated account activity, the date of the expiration on the instrument or contract, or the date when the first-class mail was returned as undeliverable.

Section 18. Amends s. 717.118, F.S., to differentiate between active attempts by the department to contact owners of property (i.e., direct contact) and passive attempts (i.e., publication in newspapers, posting on the Internet, or television advertisements), and to place an affirmative duty on the department to make at least one active attempt to notify owners of unclaimed property. Presently, the department is limited to making a single attempt to notify owners of the existence of abandoned property held by the department. The department is no longer required to publish any items more than \$100.

Section 19. Amends s. 717.119, F.S., to authorize unclaimed property holders to remit funds through electronic funds transfer. Cash and coin items identified as having numismatic (collector's) value are required to be remitted to the department in their original form. Similarly, holders are now required to remit stocks in lieu of sale proceeds from stocks to the department. This section requires that any authorized extension of time for the remittance of property be in writing.

Section 21. Amends s. 717.122, F.S., to clarify that if, at a public sale of unclaimed property, the department determines that the cost of the public sale of unclaimed property would probably exceed the value of the property, and the department decides not to sell the property at that time, that the department may dispose of the property as it deems appropriate. In addition, this section specifies that if unclaimed securities are sold at the request of the owner, the owner's account will no longer be reimbursed from the State School Fund for the amount of the brokerage fees.

Section 22. Amends s. 717.123, F.S., to increase the minimum balance of the trust fund that the department can retain for the payment of unclaimed property claims and administrative costs from \$3 million to \$8 million. This section eliminates the reference to a separate account for the retention of funds to pay claims and costs of the program, and specifically designates the Unclaimed Property Trust Fund as the depository for all funds received under this chapter. Any proceeds amount over the \$8 million balance retained by the department are deposited into the State School Fund.

Section 23. Amends s. 717.124, F.S., to include a Florida certified public accountant among the persons authorized to file claims for unclaimed property and to receive payment as an owner's representative through the execution of a power of attorney in lieu of an assignment. It revises the payment distribution to direct payment of approved claims for unclaimed cash

accounts to be made to the owner after the deduction of fees to be forwarded to the attorney, accountant or private investigative agency. It allows for such payments to be made by electronic funds transfer and on a periodic schedule not to exceed 31-day intervals.

Section 24. Amends s. 717.1241, F.S., to revise the department's responsibilities in the event of a dispute or conflicting claims by authorizing the department 1) to remit the property to the person who first filed a claim with the department 2) to remit to the owner, in the event an owner's claim and owner's representative claim are received by the department on the same day, or 3) to remit to the owner's representative who first signed a contract with the property owner, in the event two or more owner's representatives claims are received by the department on the same day.

Section 25. Amends s. 717.1243, F.S., to require that all claims made by a beneficiary of a deceased owner must be accompanied by an order of probate court or alternatively, an affidavit stipulating that all funeral expenses, expenses of the last illness, and all other just claims, have been paid. Currently, it is adequate to stipulate that there were sufficient assets in the estate of the owner to cover expenses. Also, the bill holds all persons receiving property under this section personally liable for all lawful claims against the deceased owner's estate but only to the extent of the property's value. Any heir or devisee lawfully entitled to the property may enforce his or her rights in appropriate proceedings against the person(s) who received the property and shall be awarded taxable costs, including attorney's fees. This section is also amended to apply to small estates with aggregate amounts of property totaling \$5,000 or less in lieu of the current \$1,000 or less. The requirement that there be no pending probate action remains unchanged.

Section 28. Creates s. 717.1315, F.S., to specify record keeping requirements for an owner's representative. An owner's representative would be required to maintain all books and records as prescribed by department rules for at least 3 years after the date of an initial agreement. A representative may keep all records at one central location in the state. The registrant must notify the state of the locale of the records, which must be made available to the department upon a request for production by the department.

Section 29. Amends s. 717.132, F.S., to specify that all administrative fines collected by the department will be deposited into the Unclaimed Property Trust Fund prior to transfer to the State School Fund. Section 717.123, F.S., presently requires that all funds received under this chapter be deposited into the State School Fund. As to fines, however, in practice, fines are currently deposited into the Department of Banking and Finance Regulatory Trust Fund.

Section 30. Amends s. 717.135, F.S., relating to contracts between an apparent owner and an owner's representative to locate reported property and fee caps. All contracts between an owner and their representative (i.e., licensed heir finder agency) must be in writing and submitted by the owner's representative, along with the claim form, to the department.

All agreements for compensation between an owner's representative and an owner must either disclose certain information or abide by a fee schedule for the recovery of property. If the owner's representative chooses the disclosure option, the agreement must disclose: 1) the property is being held by the department pursuant to Chapter 717, Florida Statutes; 2) the type of entity which held the property last; 3) the date of the holder's last contact with the owner; and 4)

the approximate value and type of property the owner's representative is seeking to recover. If the heir finder chooses to follow the fee cap option, the heir finder may impose a 15 percent fee for all contracts with dollar values of \$250 and above, or \$25 for each contract with a dollar value below \$250. Fees for cash accounts shall be based on the value of the property at the time the agreement for recovery is signed by the apparent owner. Fees for accounts containing securities or other intangibles which are not converted to cash shall be based on the purchase price of the intangible as quoted on a national exchange or other market on which the ownership interest is regularly traded at the time the securities or intangibles is remitted to the owner or owner's representative.

Provisions also indicate the time for valuation of property for purposes of determining the appropriate fee under the schedule for contracts opting. Contracts made in connection with guardianship proceedings or the probate proceedings are exempt from the provisions of subsection (1).

Subsection (2) provides informational requirements applicable to agreements for recovery of specific type of property. However, at a minimum, all agreements for recovery of any type of property must include the name, address, professional license number of the owner's representative, taxpayer identification number or social security number of the owner, telephone number of the owner and the profession license number of the owner's representative.

Subsection (2) eliminates the restriction against the enforceability of agreements for recovery of property executed before 90-days after a department's attempted notification or 12-month after property is reported. Therefore, these contracts may now be entered into at any time.

Section 31. Amends s. 717.138, F.S., to authorize the department to adopt rules to allow for the electronic filing of fees, forms, and reports required by ch. 717.

Section 32. Amends s. 732.107, F.S., to specify that the ten-year statute of limitations for a person claiming to be entitled to the estate of a decedent for property escheated to the state begins to toll after the payment to the Treasurer. In addition, this section eliminates a claimant's entitlement to interest on escheated property successfully reclaimed by a claimant.

Section 33. Amends s. 215.965, F.S., to correct a statutory cross-reference.

Section 34. Amends s. 493.6102, F.S., to exempt those licensed Florida-certified public accountants who are acting within the scope of the practice of public accounting, as defined in ch. 473, F.S., from the private investigative agency provisions of ch. 493, F.S.

Section 35. Repeals s. 717.137, F.S., relating to outdated reporting requirements.

Section 36. Provides an effective date of October 1, 2001.

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 bill may benefit consumers with the new requirement for owners' representatives in recovery services or heir finders' agreements to either disclose information regarding the holder and location of abandoned property or to abide by the statutory fee schedule for the recovery of such property. According to the department, an estimated \$1.4 million of the annual amount previously paid to owners' representatives in Florida would, instead, be returned to the apparent owners (excluding claims involving heirs or guardians) as a result of the implementation of the new disclosure requirements and the fee limitations.

Contingent upon the fees presently charged by owners' representatives, some owners' representatives might find it necessary to adjust their fees to compete, as well as comply with the statutory caps.

The bill may encourage greater compliance and increase the reporting of unclaimed property by holders of said property by minimizing deterrence or barriers to reporting. However, the elimination of verification requirements for reporting unclaimed property may also reduce the accuracy of information surrounding the reports of unclaimed property.

If an apparent owner of unclaimed securities requests that the securities be sold, the owner will now have to incur the broker fees associated with the sale. Additionally, a claimant will no longer be entitled to payment of interest by the state as a result of the claimant's successful action asserting rights to the estate of a decedent for property escheated to the state. According to the department, \$8,900 was paid in interest for fiscal year 1998-99 and \$32,600 was paid in interest for fiscal year 1997-98.

C. Government Sector Impact:

The Department of Banking and Finance estimates it will be able to increase the total amount of funds transferred to the State School Fund by \$29,000 per year by requiring claimants to incur the brokerage fees, if they request the sale of the stocks or bonds.

In addition, the increase in the maximum amount that may be retained by the department from \$3 million to \$8 million will reduce the bi-weekly requests to re-transfer funds from the State School Trust Fund back to the Unclaimed Property Trust Fund due to insufficient funds available to pay out claims. According to the Department of Banking and Finance, the department received \$115 million in unclaimed property and \$47 million in claims was paid out to apparent owners for the fiscal year 1998-99. Also, approximately \$71 million was transferred to the State School Fund during that time.

The department will no longer be required to initiate notice of unclaimed property within 13 months or to publish in the newspaper items worth more than \$100 if alternative methods of notification can be used first.

VI. Technical Deficiencies:

The following sections may need conforming amendments as they reference ~~A~~abandoned property in ch. 717, F.S., which has now been changed to ~~A~~unclaimed property in s. 240.553, F.S., relating to the Florida College Savings Program; s. 409.25658, F.S., relating to the use of unclaimed property for past due child support; s. 607.14401, F.S., relating to deposits of a dissolved corporation with the Department of Banking and Finance; s. 617.14401, F.S., relating to deposits of a dissolved not-for-profit corporation with the Department of Banking and Finance; and s. 657.033, F.S., relating to unclaimed accounts or abandoned property in a credit union.

VII. Related Issues:

It is uncertain what, if any, impact the substitution of the term ~~A~~unclaimed property for ~~A~~abandoned property may have on case law precedent applying to abandoned property.

VIII. Amendments:

None.