

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 853 w/CS Unclaimed Property

**SPONSOR(S):** Representative Fiorentino

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking &amp; Securities (Sub)</u>	<u>7 Y, 0 N</u>	<u>Cutchins</u>	<u>Whitfield</u>
2) <u>Commerce</u>	<u>12 Y, 0 N w/CS</u>	<u>Cutchins</u>	<u>Whitfield</u>
3) <u>Finance and Tax</u>	<u>20 Y, 0 N w/CS</u>	<u>Adam Shamy</u>	<u>Jose Diez-Arguelles</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

In Florida, reversion of property to the state is based on the presumption that there is no heir to assume the property upon the death of the owner. The state has jurisdiction to take charge of unclaimed property. It is within the power of the Legislature to establish a reasonable time for succession and to determine what shall become of unclaimed property and the conditions upon which it shall pass to the state. The Florida Disposition of Unclaimed Property Act<sup>1</sup> (the act) provides the obligations of the "holder" of property presumed abandoned and provides a mechanism for the disposition of such property.

The statutory language in the act that establishes this methodology has been amended over the years to accommodate the evolution of debt instruments and has consequently become somewhat obtuse. Additionally, there are some situations in which the ownership rights of the intangible property do not result in some type of paper trail that can be used to establish dormancy. The current statutes do not specifically provide a trigger date for this situation so the department only receives unclaimed debt instruments that produce due and payable sums of some type. This bill revises the act to clarify, but not change, the current methodology for determining when equity and debt instruments of business associations will be presumed unclaimed. The bill also identifies those instruments that do not produce some type of due and payable sum and establishes that the trigger for presuming them to be unclaimed will be five years after the date of maturity or redemption.

In the process of demutualizing insurance companies, when the company's net worth is transferred to its owners in the form of intangible property, there are certain owners whose accounts are identified as having matured or redeemable but have been unclaimed for some reason. Because the demutualization process is the only catalyst for action and subsequent contact on some of these matured and redeemable policies, insurance companies going through this process have used the time of demutualization as the trigger date for determining dormancy of the policy. This bill provides a specific trigger for determining the dormancy period. This will require insurance companies to immediately remit the unclaimed stock or cash related to policies whose dormancy periods have reached the five year threshold according to the new trigger date and not the date of demutualization.

Finally, because the administrative procedure for firearm disposal can be costly, this bill effectively gets the department out of the business of having to handle unclaimed firearms, except for the ones already turned over to the department, by having them turned over to a law enforcement agency for disposal.

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<sup>1</sup> Chapter 717, Florida Statutes

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0853e.ft.doc

**DATE:** April 9, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **General Provisions for Determination of Unclaimed Property Status**

In Florida, reversion of property to the state is based on the presumption that there is no heir to assume the property upon the death of the owner. The state has jurisdiction to take charge of unclaimed property. It is within the power of the Legislature to establish a reasonable time for succession and to determine what shall become of unclaimed property and the conditions upon which it shall pass to the state. Escheat of unclaimed 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* (1925) 268 US 258, 69 L Ed 944, 45 S Ct 490. Generally, all property, real and personal, and every right of property of any nature, are subject to escheat to the state.

The Florida Disposition of Unclaimed Property Act<sup>2</sup> provides the obligations of the “holder” of property presumed abandoned and provides a mechanism for the disposition of such property. Under this Act, the Department of Financial Service’s (DFS) Unclaimed Property Program 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 authorized to make a one-time attempt to notify owners of unclaimed property. There is no monetary charge to owners for the department’s notification or for the recovery of the property. Owners have the right to claim their property at any time.

Unclaimed property constitutes any funds or other property, tangible or intangible, which has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, traveler’s checks, un-cashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safety deposit boxes. Banks, insurance companies, and other holders of unclaimed property must submit unclaimed property to the DFS. The Act establishes that all checks, drafts, money orders, bank deposits, stocks, as well as other intangible property, is “presumed abandoned” if unclaimed for a period of five years. Notable exceptions include a three-year period for contents in safe-deposit boxes, a seven-year period for money orders, and a 15-year period for traveler’s checks.

Section 717.1101, F.S., provides several instances for the presumption of unclaimed ownership of stocks, bonds or some other type of intangible rights to the property or assets of a business association, where the association actually holds the property or assets. The active or dormant nature of the ownership of such stocks or other intangible interests is evidenced by the claim of dividends, distributions, or other payable sums that are derived from the ownership right. Section 717.1101, F.S., establishes that the dormancy period begins five years after the owner has not claimed a dividend,

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<sup>2</sup> Chapter 717, Florida Statutes

distribution, or other payable sum, and hasn't communicated with the association (in a prescribed fashion<sup>3</sup>) within that five years.

Exceptions to this provision are given for situations in which dividends, distributions, and other payable sums are not due and payable at regular intervals or are set up to be reinvested in the association for a greater benefit to the owner. In situations where the claims are irregularly due and payable, the statutes provide that the dormancy period will be triggered when at least five *consecutive* payable sums have not been claimed and that the period of dormancy, in such a case, will begin when the first consecutive payable sum was due.

The statutory language in s. 717.1101, F.S., that establishes this methodology, has been amended over the years to accommodate the evolution of debt instruments and has consequently become somewhat obtuse. Additionally, there are some situations in which the ownership rights of the intangible property do not result in some type of paper trail, like a dividend payment, that can be used to establish dormancy. The current statutes do not specifically provide a trigger date for this situation so the department only receives unclaimed debt instruments that produce due and payable sums of some type.

This bill revises s. 717.1101, F.S., clarifying, but not changing, the methodology for determining when equity and debt instruments of business associations will be presumed unclaimed. This is accomplished by identifying the three types of debt and equity instruments,<sup>4</sup> providing a general method for determining whether the instruments are dormant,<sup>5</sup> and then outlining under each type what will trigger the process for determining whether the instrument is unclaimed. In doing this, the bill identifies those instruments (matured or redeemed debt) that do not produce some type of due and payable sum, and establishes that the trigger for presuming them to be unclaimed will be five years after the date of maturity or redemption. To be in compliance with this provision, a business association will now have to report this type of debt instrument to the department. The provisions for ceasing the running of the five year dormancy periods are retained and more clearly stated in the bill's revision of this section.

One thing this revision does is specifically exclude bearer bonds and original issue discount bonds from the provision governing unmatured or unredeemed debt. Those terms are then included in the definition for intangible property under s. 717.101, F.S., so that they can be governed by the general provisions for determining unclaimed property provided in s. 717.102, F.S.

### **Unclaimed Demutualization Proceeds**

Demutualization refers to the process of converting a mutual insurance company (which is owned by its policy holders) to a publicly held insurance company (which is owned by its shareholders). During this process, a company's net worth is transferred to its owners in the form of stock, cash, or a policy credit. In a situation where this has been accomplished, there are certain owners whose accounts have matured or become redeemable but have been unclaimed for some reason or other. The department and industry representatives report that during the demutualization process, the insurance companies involved have aggressively sought to locate the owners of these debt instruments, and have been successful for owners "lost" in recent years. However, for policies issued prior to 1984, it has been more difficult because such policies did not typically contain social security numbers.

Because the demutualization process is the only catalyst for action and subsequent contact on some of these matured and redeemable policies, insurance companies going through this process have used

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<sup>3</sup> Written communication with the association or its agent, or other communication evidenced by memorandum or other record on file with the association or its agent.

<sup>4</sup> Stock or other equity interest, unmatured or unredeemed debt, and matured or redeemed debt.

<sup>5</sup> Unclaimed distribution, returned statement of account or other type of notification or communication, holder discontinuation of notice to owner.

the time of demutualization as the trigger date for determining dormancy of the policy. The provisions of this bill specifically provide that the date to be used as the trigger for determining dormancy will be five years after the date of last contact with the policyholder, or the date the property became payable or distributable (matured or became redeemable), whichever occurred earlier. This will require insurance companies to immediately remit the unclaimed stock or cash related to policies whose dormancy periods have reached the five year threshold according to the new trigger date and not the date of demutualization.

### **Unclaimed Firearms**

In addition to intangible property, the department also receives unclaimed tangible items such as firearms. Even though the department has the authority to dispose of tangible items after a period of time, the disposal of firearms can be administratively cumbersome due to other state and federal requirements, such as three day waiting periods and background checks. If the expected return on the sale of such items is low, the administrative cost of the sale could make it impractical.

This bill effectively gets the department out of the business of having to handle unclaimed firearms, except for the ones already turned over to the department. The bill requires any firearms found in an unclaimed safe-deposit box or safe keeping repository be delivered by the holder to a law enforcement agency for disposal. In regard to the firearms the department is currently holding, if the department ascertains that they have historical value, it is authorized to sell them to any person who has a federal firearms license. The department is also authorized to turn over any firearms it has that are not historically valuable to a law enforcement agency for disposal. Finally, the bill excuses the department from any liability for firearms it turns over to a law enforcement agency.

#### **C. SECTION DIRECTORY:**

**Section 1** amends paragraph (d) of subsection (12) of s. 717.101, F.S., revising the definition of intangible property to include bearer bonds and original issue discount bonds in the list of illustrations for debt instruments for which moneys are deposited to redeem.

**Section 2** creates s. 717.1071, F.S., to establish a trigger date for when property payable or distributable as the result of a demutualization process of an insurance company will be considered unclaimed property.

**Section 3** amends s. 717.1101, F.S., to clarify the methodology for determining when equity and debt instruments of business associations will be presumed unclaimed. This section also identifies those instruments that do not produce some type of due and payable sum and establishes a dormancy trigger date for such instruments.

**Section 4** amends subsection (5) of s. 717.119, F.S., to require the delivery of unclaimed firearms found in safe-deposit boxes to law enforcement agencies for disposal and to authorize the department to sell firearms it holds to federally licensed persons or turn them over to a law enforcement agency for disposal.

**Section 5** makes this act effective upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

Upon enactment, it has been estimated by DFS that the State School Trust Fund will receive \$65M from demutualized insurance companies.

Non-recurring Effects:	FY02-03	FY03-04	FY04-05
State School Trust Fund	\$ 30 M	\$ 35 M	N/A

2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The estimated total of \$ 65 M would come from 10-20 major insurance companies over the course of FY 02-03 and FY 03-04.

**D. FISCAL COMMENTS:**

These funds are already identified for delivery to the department as unclaimed property but at a later date than this bill establishes.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

N/A

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Committee Substitute contains unrelated language from the title of another bill inadvertently inserted between lines 43 and 57. Lines 44 through 56 of the bill should be removed.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2003, the Subcommittee on Banking and Securities adopted a technical amendment to remove duplicative language. The Commerce Committee adopted this amendment on March 31, 2003, and made the bill a Committee Substitute.

On April 9, 2003, the Committee on Finance and Tax adopted a technical amendment to remove erroneous language.