

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1039 w/CS Unclaimed Property  
**SPONSOR(S):** Kendrick  
**TIED BILLS:** HB 1041 **IDEN./SIM. BILLS:** SB 2288

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking &amp; Securities (Sub)</u>	<u>6 Y, 0 N</u>	<u>Sheheane</u>	<u>Billmeier</u>
2) <u>Commerce</u>	<u>15 Y, 2 N w/CS</u>	<u>Sheheane</u>	<u>Billmeier</u>
3) <u>Public Safety &amp; Crime Prevention</u>	<u></u>	<u></u>	<u></u>
4) <u>Finance &amp; Tax</u>	<u></u>	<u></u>	<u></u>
5) <u>Commerce &amp; Local Affairs Approp. (Sub)</u>	<u></u>	<u></u>	<u></u>
6) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

CS/HB 1039 amends the laws governing the disposition of unclaimed property. The bill requires electronic holder reporting for property holders that have unclaimed property that in aggregate belongs to 25 or more apparent owners. The bill permits the sale of unclaimed property via the internet. The sale of unclaimed safe deposit box contents is tax exempt under the bill.

The bill increases the amount of money held in the Unclaimed Property Trust Fund from \$8 million to \$15 million.

The bill establishes procedures for handling claims filed by multiple parties on the same account. Hearings regarding the disposition of unclaimed property are to take place in Tallahassee, Florida, unless otherwise agreed to. The bill requires claimants to file certified copies of death certificates or court documents necessary to show entitlement to unclaimed property.

The bill enumerates the grounds for disciplinary action against a property holder or locator and the punishments available. Grounds for disciplinary action include not complying with the provisions of Ch. 717, F.S., not complying with rules or orders adopted pursuant to the chapter, or not abiding by a written agreement entered into with the Department of Financial Services, criminal conduct, and other grounds. The bill establishes a formal registration process for owner representatives and states the causes for disciplinary action and penalties for violating registration regulations.

The bill allows the Bureau of Unclaimed Property 90 days to attempt to notify and return to the account owners unclaimed property prior to releasing information regarding the unclaimed property. The bill establishes procedures for handling claims filed by multiple parties on the same account.

According to the Department of Financial Services, this bill would allow the Bureau of Unclaimed Property to retain up to \$15 million in the Unclaimed Property Trust Fund for the purpose of paying claims. See "Fiscal Analysis and Economic Impact Statement."

This bill shall take effect October 1, 2004.

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

**STORAGE NAME:** h1039b.com.doc  
**DATE:** April 12, 2004

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

#### Present Situation

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

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 unclaimed property.<sup>2</sup> Under the Act, the Department of Financial Service’s (Department) Unclaimed Property Program is responsible for receiving property, attempting to locate the rightful owners, and returning the property (or its value in cases of sold securities) to them. 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.<sup>3</sup> The Department is required to make a one-time attempt to notify owners of unclaimed property.<sup>4</sup> 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 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.<sup>5</sup> 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 an \$8 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.<sup>6</sup>

The Department Financial Services administers the Act . Representatives from the Department indicate that the means used to find lost property owners include social security numbers, direct mailing, the

<sup>1</sup> See ss. 717.001-717.1401, F.S.

<sup>2</sup> 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 268 US 258, (1925). Generally, all property, real and personal, and every right of property of any nature, is subject to escheat to the state.

<sup>3</sup> See s. 717.139, F.S.

<sup>4</sup> See s. 717.118(1), F.S.

<sup>5</sup> See ss. 717.117, F.S. and 717.119, F.S.

<sup>6</sup> See s. 717.123, F.S.

state DMV files and state payroll records, newspaper advertisements, and a state-run website (<http://up.dbf.state.fl.us/>) with the names of apparent owners of unclaimed property and information on where unclaimed property can be found. It is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to them.

In addition to the efforts by the Department to match people with their unclaimed property, there are private investigative agencies, commonly referred to as finders or locators, which locate owners of unclaimed property and offer their services to recover the property for a fee. Finders and locators generally contact owners and may offer a percentage-based fee, or a sliding scale fee, to complete and file the necessary paperwork to the department to process the claim.

According to the Department, there is a delay of a few weeks up to six months from the date the Department receives a report from a property holder and the date in which the property is received by the Department. When the Department receives the property, the property is matched to the report and the Department either places the report on the unclaimed property roll or pays the claim if a claim for the property is on file. Finder agencies routinely make public record requests of the Department, seeking current reports of unclaimed property by holders. Finders then take whatever information the Department has at that time and research public databases in an attempt to find owners to offer them collection services.

## **Proposed Changes**

### **Definitions (Section 1)**

The bill amends s. 717.101, F.S., to create definitions of “claimant” and ultimate equitable owner”, and to amend the definition of “owner”. A “claimant” is defined to be the person on whose behalf a claim is filed. “Owner” is amended to include the beneficiary of a deposit in trust, and to exclude claimants. An “ultimate equitable owner” is a natural person who owns or controls an ownership interest in a corporation or any other form of business organization.

### **Contact by the Owner of Property (Section 2)**

Section 717.106(1)(b) states that certain funds in a financial institution are considered unclaimed unless the owner has made contact in writing with the financial institution within an uninterrupted 5 year period. The bill amends s. 717.106(1), F.S., to allow phone contact by the owner of property with the financial institution to interrupt the 5 year period. Section 717.106(1)(f), F.S., provides that if the financial institution sends first class mail to the owner that is not returned to the financial institution as undeliverable, the 5 year period is interrupted. The bill removes this provision.

### **Life Insurance Policies (Section 3)**

The bill amends s. 717.107, F.S., to require life insurance companies to report to the state interest on unclaimed matured life insurance policies.

### **Refunds by Business Associations (Section 4)**

The bill amends s. 717.109, F.S., to require specific statutory authority (rather than an order of a court or agency) for deviating from the requirements of s. 717.109, F.S., for a court or administratively ordered refund by a business association.

### **Safe Deposit Box (Section 5)**

Section 717.116, F.S., provides that property held in a safe deposit box that has not been claimed within 3 years after the lease has expired is presumed unclaimed. This bill amends s. 717.116, F.S., to provide that this provision only applies to safe-deposit boxes held by banking or financial organizations.

## **Information Filed with the Department (Section 6)**

The bill requires the Department to provide information contained in a report (not including confidential information) filed with the Department to any person who requests it within 90 days after the report has been processed. The department contends that this time period will allow time to contact owners. Representatives of finders agencies contend that there is no need for a delay.

The bill amends s. 717.117, F.S., to require any holder of unclaimed property belonging to 25 or more owners to submit via electronic means any information (generally regarding the property and its owner) that the Department requires by rule. The Department is given authority to levy a \$500 maximum fine for failure to timely report the information required. The fine may also be levied for failure to submit the report by the due date (May 1). This bill removes a mandatory penalty for failure to timely file reports and permits the Department to waive this penalty. Along with a written request, a showing of good cause by the requesting party is now necessary for the Department to grant a postponement of the reporting date.

Currently, all holders of inactive accounts are required to use due diligence to locate apparent owners. The bill restricts this requirement to accounts that have a value of \$50 or more. The bill also states that an account is inactive if 2 years have passed since the expiration date on an instrument or contract, if 2 years have passed since the last owner initiated activity, or first class mail has been returned as undeliverable.

The bill states that an account is presumed unclaimed if the holder is not able to contact the apparent owner by telephone, the first-class mail notice is returned to the holder as undeliverable, or the apparent owner does not contact the holder in response to the first-class mail notice.

## **Notification (Section 7)**

The bill amends s. 717.118, F.S., to state that the Department must make at least one active attempt to notify the owners of unclaimed property that is valued at more than \$100, and for which the Department has a reported address or tax ID number. Currently, the department must make the attempt for all property regardless of having an address or tax ID number. Requirements regarding televised or published notifications are deleted.

## **Safe Deposit Box Contents (Section 8)**

The bill amends s. 717.119, F.S., to establish guidelines for the delivery of safe deposit box contents to the Department. The delivery must be insured by the property holder for the estimated value of the property, the safe deposit box contents must be delivered in a single shipment, and the package must be marked "deliver unopened". The bill allows financial institutions to provide a single shipping schedule with safe deposit boxes remitted to the Department in lieu of a single shipment of safe deposit boxes. The bill increases the penalties for the late delivery of safe deposit box contents to the department from \$10 per day up to a maximum \$1,000 to a \$100 fine for delivery that is late by 30 days or less, and a \$500 fine for each successive 30 day period up to a maximum annual \$4,000 fine. The bill deletes a provision permitting the Department to postpone the delivery upon written request of the deliverer.

## **Negotiable Instrument (Section 9)**

The bill amends s. 717.1201, F.S., to remove the requirement for the holder of a negotiable instrument to file proof of payment before receiving reimbursement from the Department.

## **Internet Sale (Section 10)**

The bill amends s. 717.122, F.S., to permit the Department to sell unclaimed property via public auction on the internet. Auctions may continue to be held at a physical location. When the contents of a safe deposit box are sold at auction, the department must proportionately deduct auction fees and expenses from the amount posted to the owner's account. No actions may be maintained against the Department for a decision to decline the highest bid at an action or withholding any unclaimed property from sale. The bill deletes a provision deducting fees from the sale of securities from the payment made to the owner of the security who is requesting payment. The bill makes the sale of unclaimed tangible personal property exempt from ch. 212, F.S., taxes.

## **Unclaimed Property Trust Fund (Section 11)**

The bill amends s. 717.123(1), F.S., to increase the amount of money that may be held in the Unclaimed Property Trust Fund from \$8 million to \$15 million.

## **Unclaimed Property Claim (Section 12)**

The bill amends s. 717.124, F.S., which contains the provisions for making an unclaimed property claim with the Department. The bill permits a claimant's representative to file a claim. A "claimant's representative" must be registered with the Department under ch. 717, F.S., and be licensed in Florida as an attorney, certified public accountant, or a private investigator. The bill requires an original power of attorney executed by the owner of unclaimed property to be filed with the Department in order for a claimant's representative to claim unclaimed property on the owner's behalf. Payment of fees and costs authorized pursuant to a written power of attorney are to be made to the licensed employer of the attorney, accountant or private investigator. The bill requires a claimant or claimant's representative to include a photo ID with a claim or a notarized, sworn statement may be used by an unclaimed property claimant in lieu of a photographic identification.

The bill also establishes time periods for processing a claim. The Department may within 90 days of receiving a claim, return any claim that has apparent errors or omissions, or that provides for the receipt of fees and costs greater than permitted under ch. 717, F.S. The Department must retain a copy or electronic image of the claim and may ask the claimant's representative to provide additional information. A claim is deemed withdrawn if a claimant or claimant's representative fails to respond to a request for additional information within 60 days after being notified of any apparent errors or omissions.

The department must process and resolve a claim within 90 days after receipt of the claim or the response of the claimant to a request for additional information. The department may extend the 90 day period by an additional 60 days if good cause exist or if the unclaimed property is 1) owned by a person who has been a debtor in bankruptcy, 2) reported with an address outside the United States, 3) being claimed by a person outside the United States, or 4) contains documents filed in support of the claim that are not in the English language and are not accompanied by a translation. The Department shall deny any claim when the claimant's representative has refused to authorize the Department to reduce the fees and costs to the maximum permitted.

The bill states that when the Department pays a claim worth \$250 or less and a subsequent claimant comes forward, the exclusive remedy of the subsequent claimant is against the person who received the property from the department. The bill requires the contents of a safe deposit box to be delivered directly to the claimant regardless of any agreement to the contrary.

The bill deletes provisions that require the payments of claims made to attorneys, accountants or private investigative agencies to be deposited into a trust or escrow account in a financial institution authorized to accept such deposits and located in Florida. The bill also deletes a requirement that the

attorney, accountant or private investigative agency distribute the property to the claimant within 10 days of the final credit of deposit into the trust or escrow account.

The bill states that the department is not administratively liable (in addition to not being civilly or criminally liable) for good faith distribution of property or funds.

### **Accounts with More than One Name (Section 13)**

The bill creates s. 717.12403, F.S., which establishes the guidelines for processing accounts that are held in more than one person's name. When an unclaimed demand, savings or checking account in a financial institution is reported as an "and" account, and is in the name of 2 or more persons who are not beneficiaries, a presumption exists that each person on the account must claim it in order for the Department to approve the claim. The presumption may be rebutted by a showing that entitlement to the account has been transferred to another person, or by clear and convincing evidence that the account should have been reported by the financial institution as an "or" account. When the unclaimed account is an "and" account and one of the persons on the account is deceased, the Department will presume that the account is a survivorship account unless clear and convincing evidence is presented otherwise, or it can be shown that entitlement to the account has been transferred to another person.

If the unclaimed demand is reported as an "or" account in the name of 2 or more persons who are not beneficiaries, the Department will presume that any person listed on the account may claim the entire account. This presumption can be rebutted by evidence the account has been transferred to another person, or by clear and convincing evidence the financial institution should have reported the account as an "and" account. If the account does not specify whether it is an "and" or an "or" account, the department will presume the account is an "or" account, a presumption that can be rebutted by evidence the account has been transferred, or clear and convincing evidence that the account is an "and" account. If the department distributes funds in accordance with this section, it has acted in good faith.

### **Dissolved Corporations (Section 14)**

The bill creates s. 717.12404, F.S., to establish guidelines for processing accounts held in the name of a dissolved corporation. Claims for property reported in the name of a dissolved corporation must be made by a majority of the living officers and directors identified on the last corporate filing with the Department of State or other appropriate official if incorporated in another state. The claim must be accompanied by records of the last annual report of the corporation filed with the Florida Department of State or in the state of incorporation.

### **Estates (Section 15)**

The bill creates s. 717.12405, F.S., to require that an estate or the representative of an estate may only claim unclaimed property after the heir or legatee of the decedent entitled to the property has been located. If the estate or estate representative receives unclaimed property before the heir is located, the estate or representative is personally liable for the property and must return the full amount of the property to the Department.

### **Conflicting Claims (Section 16)**

The bill amends s. 717.1241, F.S., regarding the procedures to be followed when multiple, conflicting claims are made for unclaimed property. If the owner and owner's representative both file a claim, the Department will give the property to the person who made the first complete claim, unless both complete claims are submitted the same day, in which case the property goes to the owner. If two owner's representatives submit claims on the same day, the property goes to the owner's representative charging the lowest fee. If the fee charge is the same, then the fees are divided equally

between the owner's representatives. The bill states a claim is complete when entitlement to the unclaimed property has been established.

### **Beneficiary (Section 17)**

The bill amends s. 717.1242(1), F.S., to include a beneficiary as a person who can claim property held in a deceased person's name.

### **Agency Statements (Section 18)**

The bill creates s. 717.1244, F.S., to state that the Department must rely on the applicable statutory, regulatory, common and case law in determining the merits of an unclaimed property claim. Agency statements that apply such law to unclaimed property claims are not agency statements subject to s. 120.56(4), F.S, regarding challenging agency statements defined as rules.

### **Hearings (Section 19)**

The bill amends s. 717.126, F.S., to state that hearings regarding the disposition of property by the Department take place in Tallahassee, Florida, unless otherwise agreed to. Upon request of a party, the presiding officer may conduct the hearing at an alternate remote video location.

The bill also states that when a claimants makes a claim that he or she is entitled to property, having the same name as that reported to the Department is not sufficient to prove entitlement to the property.

### **Death Certificate Requirements (Section 20)**

The bill creates s. 717.1261, F.S., to require a claimant claiming entitlement to unclaimed property by means of the death of one or more persons to file a certified copy of a death certificate of the decedent or decedents.

### **Court Documents (Section 21)**

The bill creates s. 717.1262, F.S., to require any person who claims entitlement to unclaimed property by reason of a court document to file a certified copy of the court document with the Department.

### **Investigations (Section 22)**

The bill amends s. 717.1301, F.S., regarding investigations by the Department. The bill specifies that if the Department results in disclosure of a reportable property, the Department may assess the costs of an investigation against a property holder at the rate of \$100 per 8-hour day (rather than \$100 per day) if an investigation reveals property that should be delivered to the Department. The property holder may also be required to pay per diem fees, but no more than for 30 days of work per year unless the investigation is due to fraud, in which case there is no limit. Failure to pay the fee within 30 days after being notified the fee is due results in a requirement of paying the Department 12% interest per annum on the fee.

### **Records Retention (Section 23)**

The bill amends s. 717.1315, F.S., and makes a technical change regarding records retention by an owner's representative.

### **Corrective Action (Section 24)**

The bill amends s. 717.132(2), F.S., which permits the Department to serve cease and desist orders and to take corrective action when the chapter is being violated. The bill defines the term "corrective

action” for purposes of the subsection to include refunding excessive charges, requiring a person to return unclaimed property, requiring a holder to remit unclaimed property, and requiring a holder to correct a report that contains errors or omissions.

### **Disciplinary Action (Section 25)**

The bill creates s. 717.1322, F.S., to enumerate the grounds for disciplinary action against a property holder or locator and the punishments available. Grounds for disciplinary action include not complying with the provisions of Ch. 717, F.S., not complying with rules or orders adopted pursuant to the chapter, or not abiding by a written agreement entered into with the Department. Fraud or deception in any matter over which the Department has jurisdiction is a ground for discipline, as is fraudulent misrepresentation or concealment of a matter that must be furnished to the apparent or actual owner of property. Acting as a claimant’s representative without being a registered attorney, accountant, or private investigator or not having a durable power of attorney to receive property of the owner is another ground for discipline. Other grounds for discipline include criminal conduct, failure to timely pay fees or fines as required by the chapter, illegal or excessive charges in an unclaimed property transaction, false or deceptive advertising, and failure to maintain and make available records and documents required by statute or the Department, failure to meet the net worth requirements, failure to authorize release to the Department records possessed by a third party, and receiving or soliciting consideration to be paid in advance of the approval of a claim under this chapter.

The Department may promulgate an order that denies a registration for an act that occurs before or after the effective date of this act. The Department may also revoke a registration, place a registrant on probation, or place permanent restrictions on a registration. Other punishments include issuing a reprimand, imposing an administrative fine of up to \$2,000 per act, or prohibiting a person from being an agent, employee, or ultimate equitable owner of a registrant.

The bill states the grounds for the revocation, suspension or restriction of a previously granted registration. The grounds are making a material misstatement of fact in an application for registration, or having a professional license denied, suspended, revoked or acted against for fraud. Pleading nolo contendere or a conviction for a crime involving fraud, dishonest dealing, or moral turpitude is a ground, as are insolvency, lack of honesty, or financial irresponsibility.

### **Action against a Holder (Section 26)**

The bill creates s. 717.1331, F.S., which allows the Department to initiate an action against a holder to recover unclaimed property. If the Department prevails in a civil or administrative action it initiated to recover unclaimed property, the holder must pay the Department’s costs and attorney’s fees.

### **Administrative Proceedings (Section 27)**

The bill creates s. 717.1333, F.S., which, during an administrative proceeding under s.120.569 and 120.57, allows for the authentication of a document to be used as competent evidence upon the oath of an auditor, examiner, or investigator during cross examination. The bill also allows liability to be estimated when there are insufficient records to make a complete report of what is owed by the holder.

### **Penalties (Section 28)**

The bill creates subsection (5) of s. 717.134, F.S., which allows the Department to impose penalties on property holders who willfully do not report required information. The maximum penalty is \$500 per day up to a maximum of \$5,000 and 25% of the value of property willfully not reported. The penalty may be waived if the holder can show good cause. If the holder acted in good faith and without negligence, the penalty must be waived.

## **False Property Claims (Section 29)**

The bill creates s. 717.1341, F.S., which establishes the guidelines and penalties for filing an invalid or false property claim. A person who receives property and is not entitled to do so is liable for the property and must return it immediately to the Department plus 12% interest of the property's value. Stocks or bonds must be returned (or, if sold, the proceeds of the sale), plus any dividends, interest, or brokerage fees and 12% interest on all of the above.

The bill allows the Department to bring a civil or administrative action to recover unclaimed property paid to a person who should not have received it, against a person who aids another person to receive property they are not entitled to, or against a person who attempts to receive unclaimed property to which they are not entitled. If the Department prevails in such an action, the maximum fine on a person who violates this section knowingly, recklessly, or in deliberate ignorance of the truth, is 3 times the value of the property received. If the Department wins an action for improperly receiving unclaimed property, the person against whom the action is brought must pay the Department's attorney's fees.

The bill prohibits knowingly filing (or helping or conspiring to file) a claim for unclaimed property the person is not entitled to receive. A person who receives property worth more than \$50,000 has committed a first degree felony. If the property is worth more than \$10,000 up to \$50,000, then the person has committed a second degree felony, and if the property value is from \$250 to \$10,000 then a person has committed a third degree felony. If the property is worth over \$50 up to \$250 then the person has committed a first degree misdemeanor, and if the property is worth \$50 or less then the person has committed a second degree misdemeanor.

## **Recovering Property in Custody of the Department (Section 30)**

The bill amends s. 717.135, F.S., regarding agreements to recover reported property in the custody of the Department. The fee cap on locator claims is set at 20% for all unclaimed property accounts unless the locator discloses the property is being held by the Bureau of Unclaimed Property and other required information. Previously, the fee limitation was 15% for accounts worth \$250 or more and held by the Department for 24 months or less, and 25% for such accounts held by the Department for over 24 months. The bill also establishes a form for agreements between a claimant's representative and a claimant to recover property for a fee.

## **Entitlement to Unclaimed Property (Section 31)**

The bill creates s. 717.1351, F.S., and mandates that a contract to acquire ownership or entitlement to unclaimed property from the person entitled to the property must have a purchase price that discounts the value of the unclaimed property 20% or less. A person who attempts to acquire ownership or entitlement to unclaimed property must be licensed in the state as a lawyer, CPA, or private investigator and be registered with the Department. A purchaser of unclaimed property from the rightful owner must disclose to the rightful owner that the property is being held by the Bureau of Unclaimed Property, the name of the person who last held the property before it became unclaimed and when the holder last contacted the owner, the approximate value (if known) of the property, and what type of property is at issue. The bill prescribes forms and procedures for purchasing unclaimed property from the rightful owner. The licensing provisions of ch. 493, F.S., are applicable to this section.

## **Registering as a Property Locator (Section 32)**

The bill creates s. 717.1400, F.S., to provide requirements for registering with the department as a property locator. Private investigators, accountants and attorneys licensed in Florida must submit required proof of licensure, the applicants business address and phone number, the names of agents or employees designated to work on behalf of the investigator along with a copy of each person's photo ID, sufficient information to enable electronic funds transfers by the department, and the investigator's

tax ID number if the applicant desires to have applicant's fees sent directly to the private investigator. Audited financial statements or a \$100,000 surety bond must also be presented to the department. a registrant must notify the department in writing within 30 days of a material change in the status of registration. A private investigator must notify the department within 30 days of their Class "C" or "A" license being renewed.

The bill establishes the grounds upon which the department may revoke or deny the registration of a property locator. A registration may be denied by the department if the applicant has committed any violations specified in ss. 717.001-717.1401, F.S. Registrations based upon false or misleading information are void, though the registration must be reinstated after correct information is provided. Failure to timely report a material change in registration status is void, until the department is notified of the change. A registration is void if the registrant's license is denied, suspended or revoked for theft, fraud, misrepresentation, dishonest dealing, or moral turpitude, unless the suspension or revocation is stayed. A registration is also void if the registrant has pled nolo contendere or convicted of a crime involving theft, fraud, misrepresentation, dishonest dealing, or moral turpitude, even if adjudication is withheld. A registrant cannot have a name that indicates the registrant is affiliated with any governmental agency. The department must deny licensure to any person who assisted (or had an agent, employee, or ultimate equitable owner assist) another person to receive an aggregate of more than \$50,000 during a 5 year period of unclaimed property they were not entitled to receive, unless the applicant has remitted all such funds to the department. A person who has a registration file with the department prior to the effective date of this act may continue to file claims prior to either the issuance of a registration by the department or proposed agency action to deny the application.

### **Tax Exemption for Safe Deposit Box Contents (Section 33)**

The bill amends s. 212.02(2), F.S., to allow the sale of tangible contents of safe deposit boxes to be tax exempt by excluding sales of safe deposit box contents from the definition of "business" for purposes of sales taxes.

### **Access to Driver's License Photo Images (Section 34)**

The bill amends s. 322.142, F.S., to allow the Department to have access to digital driver's license photo images held by the Department of Highway Safety and Motor Vehicles.

### **Access to Patient Records (Section 35)**

The bill amends s. 395.3025, F.S., to allow the Department or its agents to access patient records held by the health care industry for the purpose of auditing and identifying unclaimed property held by the health care industry.

### **This bill will take effect October 1, 2004. (Section 36)**

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

Section 1. Amends s. 717.101, F.S., to add definitions.

Section 2. Amends s. 717.106, F.S., to add language providing that an owner of a demand, savings, or time deposit may communicate by telephone to claim said property.

Section 3. Amends s. 717.107, F.S., providing language stating that the funds unclaimed for more than five years under any life insurance or endowment policy will include any amount payable under s. 627.4615, F.S.

Section 4. Amends s. 717.109, F.S., clarifying that refunds held by business associations shall be in accordance with current law.

Section 5. Amends s. 717.116, F.S., providing clarifying language relating to safe-deposit boxes held by financial organizations.

Section 6. Amends s. 717.117, F.S., requiring holders reporting 25 or more names to report electronically and provides other regulations and penalties relating to reports.

Section 7. Amends s. 717.118, F.S., defining which accounts the Department of Financial Services will attempt to locate.

Section 8. Amends s. 717.119, F.S., to establish guidelines for delivery of safe-deposit box contents and to increase penalties for late delivery of safe-deposit contents. The bill allows financial institutions to provide a single shipping schedule with safe deposit boxes remitted to the Department in lieu of a single shipment of safe deposit boxes.

Section 9. Amends s. 717.1201, F.S., providing technical changes relating to holder reimbursements.

Section 10. Amends 717.122, F.S., providing language to allow sale of tangible contents via the internet, to define costs to be deducted from the sale of contents, and to make the sale of unclaimed safe-deposit box contents tax exempt.

Section 11. Amends s. 717.123, F.S., to increase the limit of funds held in the Unclaimed Property Trust Fund from \$8 million to \$15 million.

Section 12. Amends s. 717.124, F.S., requiring that a claimant's representative must be an attorney licensed to practice law in Florida.

Section 13. Amends s. 717.12403, F.S., establishing guidelines for processing accounts held in more than one person's name.

Section 14. Amends s.717.12404, F.S., establishing guidelines for processing accounts held in the name of a dissolved corporation.

Section 15. Amends s. 717.12405, F.S., providing a technical change involving estate claims.

Section 16. Amends s. 717.1241, F.S., establishing guidelines for processing conflicting claims.

Section 17. Amends s. 717.1242, F.S., to incorporate a technical change.

Section 18. Amends s. 717.1244, F.S., to incorporate a technical change.

Section 19. Amends s. 717.126, F.S., to incorporate a technical change and to establish a venue for hearings.

Section 20. Amends s. 717.1261, F.S., to require a claimant to file a certified copy of a death certificate.

Section 21. Amends s. 717.1262, F.S., to require a claimant to file a certified copy of a court document.

Section 22. Amends s. 717.1301, F.S., to incorporate a technical change relating to examination fees.

Section 23. Amends s. 717.1315, F.S., incorporating a technical change relating to records retention by locaters.

Section 24. Amends s. 717.132, F.S., defining “corrective action” as it relates to enforcement of the statute.

Section 25. Amends s. 717.1322, F.S., defining grounds for disciplinary action by a holder or locator.

Section 26. Amends s. 717.1331, F.S., allowing the Department to initiate an action against a holder and collect attorney’s fees if the Department prevails.

Section 27. Amends s. 717.1333, F.S., providing technical language related to examinations and estimating amounts due by a holder with insufficient records.

Section 28. Amends s. 717.134, F.S., altering holder penalty provisions to include “willfully failing” to supply the Department with required information.

Section 29. Amends s. 717.1341, F.S., to establish guidelines and penalties for filing invalid or false claims.

Section 30. Amends s. 717.135, F.S., altering the fee cap on locator claims and changes fees from a “per claim” basis to a “per account” basis.

Section 31. Amends s. 717.1351, F.S., establishing a standard “Purchase Agreement” and limits discount of claim to 20%.

Section 32. Amends s. 717.1400, F.S., establishing a registration process for locators and requirements of surety bond or audited net work statements. This section also establishes on what grounds the Department may revoke or deny registration of a locator.

Section 33. Amends s. 212.02, F.S., to allow for sale of tangible contents of safe-deposit boxes to be tax exempt.

Section 34. Amends s. 322.142, F.S., to allow the Department to gain access to digital driver’s license images held by the Department of Highway Safety and Motor Vehicles.

Section 35. Amends s. 395.3025, F.S., allowing the Department or its agents to access patient records held by health care industry for the purpose of auditing for unclaimed property.

Section 36. This bill will take effect October 1, 2004.

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

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

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

According to the Department of Financial Services, there is no fiscal impact expected to state government as a result of this bill.

#### **2. Expenditures:**

According to the Department of Financial Services, there is no fiscal impact expected to state government as a result of this bill.

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

1. Revenues:

According to the Department of Financial Services, there is no fiscal impact expected to local governments as a result of this bill.

2. Expenditures:

According to the Department of Financial Services, there is no fiscal impact expected to local governments as a result of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 6 of the bill requires the Department to provide information contained in an unclaimed property report to anyone who requests it after a 90 day holding period. The Department contends that this will allow them time to contact missing property owners. Representatives of finders agencies contend that the delay may lessen the effectiveness of their business and result in fewer customers using their business.

The bill creates s. 717.1400, F.S., and it is possible that bonding and/or net worth requirements in the bill may impact a percentage of those in the asset locator industry. The fiscal impact on the industry as a whole is not predictable.

D. FISCAL COMMENTS:

According to the Department of Financial Services, this bill would allow the Bureau of Unclaimed Property to retain up to \$15 million in the Unclaimed Property Trust Fund for the purpose of paying claims. This would lower the amount of money transferred to the State School Trust Fund in FY 2004-05 by \$7 million. However, it will lessen the need of the Bureau to request funds back from the Department of Education due to insufficient money in the Unclaimed Property Trust Fund, which occurs at least five times annually.

### 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. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Financial Services to prescribe by rule forms of disclosure in regards to the location, acquisition, and registration of unclaimed property. The bill authorizes the department to prescribe by rule the particular time each year that a private investigator must provide an audited financial statement to the department.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

In the meeting on March 24, 2004, the Subcommittee on Banking and Securities recommended a strike all amendment to the bill. The strike all amendment makes the following changes:

- Increases from 15 to 30 the number of days a registrant has to provide the Department of Financial Services with updated personal information in the case of a change during the registration process.
- Provides that a notarized, sworn statement may be used by an unclaimed property claimant in lieu of a photographic identification.
- Revises administrative provisions to make technical changes.

In the meeting on March 31, 2004, the Commerce adopted the strike all amendment recommended by the Subcommittee on Banking and Securities and passed the bill as a committee substitute.