

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Public Records Exemptions
SPONSOR(S): Kendrick
TIED BILLS: HB 1039 **IDEN./SIM. BILLS:** SB 2290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Banking & Securities (Sub)		Sheheane	Billmeier
2) Commerce			
3) State Administration			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a public records exemption for social security numbers, unclaimed property dollar amounts, the number of reported shares of stock, and financial account numbers held by the Department of Financial Services (department). The confidential and exempt status of such social security numbers, unclaimed property dollar amounts, the number of reported shares of stock, and financial account numbers is contingent upon special terms and conditions that limit the right to inspect or copy such information. This bill provides for expiration of the exemption, provides for future review and repeal of the exemption, and provides a statement of public necessity.

This bill requires a two-thirds vote of the members present and voting for passage because it is creating a new public records exemption.

This bill is not expected to affect state or local government revenues or expenditures.

The bill takes effect October 1, 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:

Background

The Department of Financial Services administers the Florida Disposition of Unclaimed Property Act. The department is responsible for receiving unclaimed property, locating the rightful owner, and returning the property (or its value, in cases of sold securities) to the rightful owner. Holders of unclaimed property are required to submit unclaimed property reports to the department once the allowable time period for holding unclaimed property has expired. After receipt of a holder’s report, the department must make one active attempt to locate the apparent owner of unclaimed property. An active attempt is described as any attempt to directly contact the owner.

Current law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property held by the department.¹ Such numbers may be released for the limited purpose of locating owners of abandoned or unclaimed property to: an attorney, Florida-certified public accountant, private investigator, or private investigative agency.

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, which locate owners of unclaimed property and offer their services to recover the property for a fee. Finders 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 (referred to as “balancing” 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.

¹ See s. 717.117(8), F.S.

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995 provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: (1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; (2) protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or (3) protecting trade or business secrets.

Effect of Bill

Section 1

This bill expands that exemption to include unclaimed property account dollar amounts and the number of reported shares of stock. The bill allows for unclaimed property dollar amounts and the number of reported shares of stock to be released to an attorney, a certified public accountant, or a private investigator. The bill also allows for social security numbers, unclaimed property dollar amounts, the number of reported shares of stock, and financial account numbers held by the department to be provided to another agency in the furtherance of that agency's duties. The agency or person receiving such information is to maintain the confidential status of the information. The bill provides that if the information made confidential as a result of this bill is offered as evidence in any proceeding, then the presiding officer may prevent the disclosure of such information. The bill provides that an attorney, a public accountant, or a private investigator may disclose in good faith unclaimed dollar amounts and the number of reported shares of stock to a person who they believe to be entitled to the unclaimed property. The bill also provides that the department or an employee of the department may disclose in good faith unclaimed property dollar amounts and the number of reported shares of stock to a person believed to be entitled to the unclaimed property.

Section 2

The bill provides a public records exemption for a personal photographic identification held by the department unless the photographic identification is requested by any law enforcement, administrative agency, or regulatory organization. The bill provides that if this information is offered as evidence in any proceeding, then the presiding officer may prevent the disclosure of such information. Any agency or person receiving such information is to maintain the confidential status of the information.

Section 3

This bill provides a public records exemption for a database subscribed to by the department if the database vendor requires confidentiality.

Sections 4 and 5

The bill provides that information relating to an investigation or examination conducted by the department, including the list of property holders under investigation, is confidential until the investigation is complete or inactive. If the information is submitted to another law enforcement or administrative agency, the information remains confidential until that agency's investigation is complete or inactive. The confidentiality requirements do not apply to the disclosure of information required by law to be filed with the department and, but for the investigation, would be subject to public record requirements.

Consumer complaints and other information relative to an investigation are to remain confidential (except as necessary for the Department to enforce ch. 717, F.S.) after the investigation is complete or inactive if the disclosure would jeopardize another active investigation, reveal identifying information (name, social security number, address, phone number, or other information) of a complainant, customer or account holder, disclose the identity of a confidential source, disclose investigative techniques or procedures, or reveal a trade secret. If department personnel are involved in an investigation that endangers their physical safety, identifying information of that person or family members (names, addresses, phone numbers, places of work, photos, locations of schools or day care facilities) is confidential. The section does not prohibit providing information to a law enforcement or administrative agency, which in turn must maintain confidentiality. If the department receives confidential information from law enforcement or another agency, then confidentiality must be maintained. The presiding officer in an administrative, civil or criminal procedure may prevent the disclosure of confidential information offered as evidence. The bill grants privilege against civil liability to a person who furnishes information or evidence to the department unless the person acted in bad faith or with malice in providing the evidence.

Section 6

The bill provides that anyone who discloses records that are confidential under ss. 717.1171 or 717.12401, F.S., commits a third degree felony.

Section 7

The bill provides statements of public necessity for making the previously discussed information confidential. The bill states that exempting social security numbers and financial account numbers is a public necessity because such information could be used to fraudulently claim entitlement to unclaimed property. Additionally, social security numbers must be kept confidential because they can be used to obtain an individual's personal records. Keeping confidential unclaimed property account dollar amounts and the number of reported shares of stock is a public necessity in order to prevent criminal elements from identifying which unclaimed property accounts to claim via forged documents.

Providing access for qualified parties (attorneys, state certified CPAs, Florida licensed private investigators, Florida licensed private investigative agencies and their employees) to the types of information exempted in the bill is necessary to facilitate the return of unclaimed property to rightful owners. Qualified parties are subject to more stringent regulation and oversight than the general public and are the only persons authorized to file claims on behalf of apparent owners of unclaimed property under s. 717.124, F.S. It is also necessary for the Department or a qualified party holding confidential information to disclose in good faith such information to a person who reasonably believed to be entitled to unclaimed property.

Exempting drivers licenses and other personal photographic identification is necessary to prevent identity theft and because such information could be used to fraudulently claim entitlement to

unclaimed property. Release of a driver license is of concern because it can be sued to obtain an individual's personal records. Keeping information from databases the Department subscribes to is necessary because the Department must use the most up-to-date database resources to verify property claims in a cost effective manner and prevent fraud. The exemption for information related to open investigations by the Department or other law enforcement or administrative agencies is necessary to preserve the integrity of the investigation. Sensitive information related to another active investigation, a complainant, a confidential source, investigative techniques and procedures, trade secrets and at-risk personnel and their families must be made confidential and exempt in order to protect the sensitive nature of the information.

Section 8

Provides for future review and repeal of public records exemptions.

Section 9

This bill will take effect October 1, 2004.

C. SECTION DIRECTORY:

Section 1. Creates s. 717.1171, F.S., to create a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers and provides exemptions.

Section 2. Creates s. 717.12401, F.S., creating a public records exemption for personal photographic identification.

Section 3. Creates s. 717.12402, F.S., providing a public records exemption for a database subscribed to by the department if the vendor requires confidentiality.

Section 4. Amends s. 717.1301, F.S., removing language relating to investigations, examinations, and subpoenas.

Section 5. Creates s. 717.1302, F.S., creating a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of shares of stock, and financial account numbers contained in an investigation or examination.

Section 6. Creates s. 717.1342, F.S., creating criminal penalties.

Section 7. Provides a statement of public necessity.

Section 8. Provides for future review and repeal of public records exemptions.

Section 9. This bill will take effect October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill is not expected to have an impact on state government revenues.

2. Expenditures:

This bill is not expected to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is not expected to affect local government revenues.

2. Expenditures:

The bill is not expected to affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With passage of the bill, finder and locator agencies would not have access to social security numbers which they use to locate unclaimed property owners. This would likely cause a significant economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill creates a new public records exemption and therefore requires a 2/3 favorable vote for passage.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates s. 717.1171, F.S., which provides a public records exemption for social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers held by the department. This provision will prohibit any person from acquiring such information. Currently, in s. 717.117(8), F.S., social security numbers and financial account numbers may be acquired by attorneys, private investigators, and certified public accountants for the purpose of locating unclaimed property owners. This may present a conflict with two sections of law containing inconsistent provisions.

The sponsor has indicated he will offer an amendment to address this inconsistency.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A