

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Banking & Securities (Sub)</u>	<u>7 Y, 0 N</u>	<u>Sheheane</u>	<u>Billmeier</u>
2) <u>Commerce</u>	<u>17 Y, 0 N w/CS</u>	<u>Sheheane</u>	<u>Billmeier</u>
3) <u>State Administration</u>	_____	_____	_____
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. The bill provides that the last four digits of social security numbers may be released to certain licensed individuals. 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 the current exemption of social security numbers and financial account numbers contained in reports of unclaimed property held by the department to include unclaimed property account dollar amounts and the number of reported shares of stock. The bill allows for unclaimed property dollar amounts, the last four digits of social security numbers, 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.

Section 4

The bill provides that 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.

Any list of holders relative to an investigation or examination 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. 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.

Section 5

The bill provides that the criminal penalty for disclosure of confidential records is a third degree felony.

Section 6

Provides a statement of public necessity.

Section 7

Repeals subsection (8) of s. 717.117, F.S.

Section 8

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. 717.1342, F.S., creating criminal penalties.

Section 6. Provides a statement of public necessity.

Section 7. Repeals subsection (8) of s. 717.117, F.S.

Section 8. 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 complete social security numbers which they use to locate unclaimed property owners. The bill allows for the locators to have access to the last four digits of a social security number. This may cause an 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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

In the meeting on March 24, 2004, the Subcommittee on Banking and Securities recommended the bill favorable with one strike all amendment. The amendment provides that the last four digits of an individual's social security number may be released to licensed attorneys, certified public accountants, and private investigators. The amendment also removes a provision which provided civil liability to a person who furnished information to the department.

In the meeting on March 31, 2004, the Commerce Committee adopted the strike all amendment and passed the bill favorably as a committee substitute.