

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 w/CS Public Records Exemptions
SPONSOR(S): Kendrick
TIED BILLS: HB 1039 CS **IDEN./SIM. BILLS:** CS/CS/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>	<u></u>	<u>Williamson</u>	<u>Everhart</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates a public records exemption for certain information regarding unclaimed property. The following held by the Department of Financial Services is confidential and exempt from public disclosure:

- Social security numbers;
- Unclaimed property dollar amounts;
- Number of reported shares of stock;
- Financial account numbers;
- Personal photographic identification; and
- Lists of holders under investigation or examination.

This bill also creates a public records exemption for database subscribed to by the department and information derived from such database. It provides for exceptions to the exemption, provides criminal penalties, provides for future review and repeal, and provides a statement of public necessity.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL IMPACT ON STATE GOVERNMENT" section.

This bill requires a two-thirds vote of the members present and voting for passage.

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

STORAGE NAME: h1041b.sa.doc
DATE: April 13, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

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

This bill creates criminal penalties for violating the public records exemptions.

B. EFFECT OF PROPOSED CHANGES:

Background

The Department of Financial Services (DFS) 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.

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.

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.

Effect of Bill

The bill expands the current public records exemption of social security numbers and financial account numbers contained in reports of unclaimed property to include unclaimed property account dollar

¹ See s. 717.117(8), F.S.

amounts and the number of reported shares of stock. The bill allows for release of unclaimed property dollar amounts, the last four digits of social security numbers, and the number of reported shares of stock to an attorney, a certified public accountant, or a private investigator. It also permits DFS to release such information to another agency in the furtherance of that agency's duties and responsibilities. The receiving person or agency must maintain the confidential and exempt status of such information.

The bill authorizes DFS, an attorney, a public accountant, or a private investigator to disclose in good faith the last four digits of social security numbers, 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 creates a public records exemption for personal photographic identification held by DFS, and authorizes the department to release such identification to any law enforcement agency, administrative agency, or regulatory organization. The receiving agency or organization must maintain the confidential and exempt status of such identification.

The bill creates a public records exemption for a database subscribed to by DFS, and information derived from the database, if the database vendor requires confidentiality. It is unclear why an exemption is required for the database when DFS does not actually access such database. Additionally, this bill raises constitutional concerns because it allows the vendor to determine confidentiality of the database and information. See CONSTITUTIONAL ISSUES.

The bill creates a public records exemption for the list of holders under investigation or examination, or to be investigated or examined. DFS is authorized to provide such confidential and exempt list to a law enforcement or administrative agency or regulatory organization in the furtherance of the agency or organization's duties and responsibilities. The receiving agency or organization must maintain the confidential and exempt status of the list. This exemption does not apply to the disclosure of information required by law to be filed with DFS, and, but for the investigation, would be subject to public record requirements.

Such list of holders must remain confidential and exempt after the investigation or examination is completed or ceases to be active if release would:

- Jeopardize the integrity of 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.
- Reveal a trade secret.

The bill removes the public records exemption for material compiled by DFS in an investigation or examination. It also repeals the more narrow public records exemption for social security numbers and financial account numbers.

The bill provides that it is a felony of the third degree for any person who willfully and knowingly violates the public records exemptions.

If information made confidential and exempt as a result of this bill is offered as evidence in any proceeding, then the presiding officer may prevent the disclosure of such information. This is duplicative of current law.

This bill provides for future review and repeal of the exemptions on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

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.

Section 2 creates s. 717.12401, F.S., to create a public records exemption for personal photographic identification.

Section 3 creates s. 717.12402, F.S., to provide 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., to create a public records exemption for a list of holders under investigation or examination.

Section 5 creates s. 717.1342, F.S., to create criminal penalties.

Section 6 provides a statement of public necessity.

Section 7 repeals s. 717.117(8), F.S., relating to public records exemption for reports of unclaimed property.

Section 8 provides a contingent effective date.

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:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not affect local governments.

2. Expenditures:

The bill does not affect local governments.

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:

Not applicable. This bill does not affect municipal or county government.

2. Other:

This bill authorizes a private vendor to determine whether information should be made confidential and exempt from public disclosure. Article I, s. 24(c) of the State Constitution, specifically authorizes the *Legislature* to create public records exemptions.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

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. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), 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 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. Furthermore, the Open Government Sunset Review Act of 1995² 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.

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

² Section 119.15, F.S.

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.