

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2288

SPONSOR: Banking and Insurance Committee and Senator Clary

SUBJECT: Unclaimed Property

DATE: March 18, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2288 (bill) amends the laws governing the reporting and disposition of unclaimed property, as regulated by the Department of Financial Services (Department) pursuant to ch. 717, F.S. The bill makes the following changes:

- Requires electronic reporting of property by holders that have unclaimed property that belongs to 25 or more apparent owners.
- Permits the sale of unclaimed property via the internet.
- Provides a sales tax exemption for the sale of unclaimed property by the Department.
- Increases the amount of money held in the Unclaimed Property Trust Fund from \$8 million to \$15 million, before a transfer of the excess is made to State School Trust Fund.
- 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.
- Revises the order of priority for claims filed by multiple parties on the same account.
- Requires hearings regarding the disposition of unclaimed property to take place in Tallahassee, Florida.
- Requires claimants to file certified copies of death certificates or court documents necessary to show entitlement to unclaimed property.
- Establishes requirements for making a property claim on behalf of a business or trust.
- Specifies grounds for disciplinary action and penalties against a property holder or locator, including not complying with the provisions of the chapter or rules or orders of the Department, or not abiding by a written agreement entered into with the Department, criminal conduct, and other grounds.

- Establishes a formal registration process for owner representatives and states the causes for disciplinary action and penalties for violating registration regulations.
- Authorizes the Bureau of Unclaimed Property to initiate actions against property holders and to collect attorney's fees if successful.
- Authorizes the Department to impose penalties for failure to willfully report property to the Department along with necessary information.
- Prohibits a person from receiving property that he or she is not entitled to receive or making an invalid or false claim to receive property. Authorizes the Department to bring a civil or administrative action to recover property remitted to a person not entitled to receive it, or against a person involved in receiving or attempting to receive unclaimed property they are not entitled to. Establishes criminal penalties for knowing involvement in filing a claim for unclaimed property the person is not entitled to receive.
- Changes the fee cap on locator agreements to 20 percent per property account on all claims unless the locator discloses to the rightful owner that the property is being held by the Bureau of Unclaimed Property and other required information. The fee cap does not apply to property that has not been through probate proceedings. Establishes a standard form for a "Recovery Agreement." 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 percent or less.
- Allows the Department to gain access to digital driver's license images held by the Department of Highway Safety and Motor Vehicles (DHSMV). The DFS or its agents are also given authority to access patient records held by the health care industry for the purpose of auditing the health care industry for unclaimed property.

This bill amends the following sections of the Florida Statutes: 717.101, 717.106, 717.107, 717.109, 717.116, 717.117, 717.118, 717.119, 717.1201, 717.122, 717.123, 717.124, 717.1241, 717.1242, 717.126, 717.1301, 717.1315, 717.132, 717.134, 717.135, 212.02, 322.142, and 395.3025.

The bill creates the following sections of the Florida Statutes: 717.12403, 717.12404, 717.12405, 717.1244, 717.1261, 717.1262, 717.1322, 717.1331, 717.1333, 717.1341, 717.1351, and 717.1400.

II. Present Situation:

Unclaimed Property

The Florida Disposition of Unclaimed Property Act (ch. 717, F.S.) provides the statutory procedure for the escheat (reversion)¹ and disposition of presumed abandoned property to the state. Generally, all property, real and personal, and every right of property of any nature are subject to escheat to the state.² 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

1. The reversion of such property is based on the presumption that there is no heir to assume the property upon the death of the owner.

2. Escheat of abandoned 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, 69 L Ed 944, 45 S Ct 490 (1925).

until the property is claimed, if ever. (s. 717.139, F.S.) There is no statute of limitations period for an owner to claim his or her property.

The Department Financial Services (Department) administers the Act.³ Representatives from the Department indicate that the means used to find lost property owners include social security numbers, direct mailing, the state DMV files and state payroll records, newspaper advertisements, and a state-run website (<http://up.dbf.state.fl.us/>) 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.

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. 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.

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (2 years from the date of specified activities). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the DFS by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. In lieu of forms, the holder may submit the required information via electronic medium as the Department may provide by rule. Under the provisions of s. 717.117, F.S., the report to the DBF generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

III. Effect of Proposed Changes:

Section 1. 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.

Section 2. Current law states that deposits in a financial institution are considered unclaimed unless the owner has made contact with the financial institution within an uninterrupted 5 year period. This section 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. The bill also deletes language that

3. Effective January 7, 2003, the Unclaimed Property Program of the Department of Banking and Finance was transferred to the Department of Financial Services (ch. 2002-404, L.O.F.)

states 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.

Section 3. Amends s. 717.107, F.S., to require life insurance companies to report to the state interest on unclaimed matured life insurance policies.

Section 4. 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.

Section 5. Amends s. 717.116, F.S., to specify that a safe-deposit box must be held by a banking or financial institution for purposes of the Department collecting tangible and intangible property.

Section 6. 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 bill revises the Department's authority to levy a fine of \$10 per day, up to \$500 for failure to timely report the information required. The fine may also be levied for failure to include in a report all required information. 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. 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.

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 provides that banks and financial institutions are subject to the same provisions as applied to other holders of owner's accounts as to when an account is deemed to be inactive, which triggers a requirement that the holder conduct at least one search for the owner using due diligence. As amended, 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.

Section 7. Amends s. 717.118, F.S., to limit the Department's duty to make at least one active attempt to notify the owners of unclaimed property only for 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.

Section 8. 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.” If multiple shipments are used, the holder must provide the Department with a detailed shipping schedule that includes tracking information for the packages. 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.

Section 9. Amends s. 717.1201, F.S., to remove the requirement for the holder of a negotiable instrument to pay the owner before receiving reimbursement from the Department.

Section 10. 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 (s. 212.05, F.S., contains provisions regarding a sales tax on the sale of tangible personal property).

Section 11. Amends s. 717.123(1), F.S., to increase the minimum balance of the Unclaimed Property Trust Fund that the Department can retain for the payment of unclaimed property claims and administrative costs from \$8 million to \$15 million. Any proceeds over the \$15 million balance retained by the Department are deposited into the State School Fund.

Section 12. 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.

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 exists 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 must 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.

Section 13. 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.

Section 14. 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 an officer or director 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. Claims made on behalf of a dissolved corporation, a business other than an active corporation or a trust must include a copy of the driver's license (or if unavailable photo ID issued by the US or a foreign government) of the person acting on behalf of that entity. A claim filed without the required photo ID is void.

Section 15. 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.

Section 16. Amends s. 717.1241, F.S., to revise the procedures to be followed when multiple, conflicting claims are made for unclaimed property. Currently, when conflicting claims are received by the Department after ownership has been established, the unclaimed property is given to the person who submitted the first claim received by the Department. If an owner's claim and an owner's representative's claim are received by the Department on the same day, the owner gets the unclaimed property. If multiple claims by owner's representatives are received by the Department on the same day, the property goes to the owner's representative who has the earliest dated contract with the owner of the property.

Under the bill, 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.

Section 17. Amends s. 717.1242(1), F.S., to include a "beneficiary" as defined in s. 731.201, F.S., rather than an "heir" as a person who can claim property held in a deceased person's name. This change incorporates the correct terminology specified in the Probate Code.

Section 18. 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.

Section 19. 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 by the parties. 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 claimant 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.

Section 20. 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(s).

Section 21. 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.

Section 22. Amends s. 717.1301, F.S., regarding investigations by the Department. The bill specifies 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 bill adds that the property holder may also be required to pay travel expenses and per diem subsistence allowance, but for no more than 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 percent interest per annum on the fee.

Section 23. Amends s. 717.1315, F.S., and makes a technical change regarding records retention by an owner's representative.

Section 24. 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.

Section 25. 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 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 the registrant's employer. (See Section 32 that requires property locators to be registered with the Department.)

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.

Section 26. 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 they initiated to recover unclaimed property, the holder must pay the Department's costs and attorney's fees.

Section 27. Creates s. 717.1333, F.S., which, during an administrative proceeding under ss.120.569 or 120.57, F.S., 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.

Section 28. 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 percent 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.

Section 29. 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 interest calculated at a rate set in accordance with s. 55.03(1), F.S., 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 interest (set in accordance with s. 55.03(1), F.S.) 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 or to offset amounts owed to the Department against amounts owed to an owner representative, 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 does so regarding property worth more than \$50,000 is guilty of 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 third degree felony has been committed. If the property is worth over \$50 up to \$250 then the person commits a first degree misdemeanor, and if the property is worth \$50 or less then the person has committed a second degree misdemeanor.

Section 30. Amends s. 717.135, F.S., regarding agreements to recover reported property in the custody of the Department. The fee cap on locator claims would be set at 20 percent for all unclaimed property accounts unless the locator discloses the property is being held by the Bureau of Unclaimed Property and other required information. Currently, the fee limitation is \$25 for accounts worth less than \$250, 15 percent for accounts worth \$250 or more and held by the Department for 24 months or less, and 25 percent for such accounts held by the Department for over 24 months. The fee cap would not apply if probate proceedings must be initiated on an estate that has never been probated in order to recover property for a claimant. The bill also establishes a form for agreements between a claimant's representative and a claimant to recover property for a fee.

Section 31. Creates s. 717.1351, F.S., and mandates that a contract to acquire ownership or entitlement to unclaimed property from the person(s) entitled to the property must have a purchase price that discounts the value of the unclaimed property 20 percent or less. A person who attempts to acquire ownership or entitlement to unclaimed property must be licensed in the state as a lawyer, certified public accountant, 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, and requires the claimant to include a copy of a valid driver's license (or other photo ID issued by a domestic or foreign government) of the seller(s) at the time the claim is filed. The licensing provisions of ch. 493, F.S., are applicable to this section.

Section 32. 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 tax ID number if the investigator's employer if the applicant desires to have applicant's fees sent directly to the private investigator. A registrant must notify the Department in writing within 15 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.

Section 33. 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.

Section 34. 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.

Section 35. 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.

Section 36. The act is effective October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Section 10 of the bill makes the sale of unclaimed tangible personal property exempt from ch. 212, F.S. sales tax. The exemption should not have a fiscal impact because the Department of Financial Services (DFS) has not collected a sales tax on the sale of such items since receiving an informal opinion from the Florida Department of Revenue (DOR) dated July 20, 2001, stating that such sales meet the “occasional sales” exemption under Florida law (Administrative Rule 12A-1.037(1), F.A.C.). Under s. 212.02(2), F.S., the term “business” does not include persons who engage in occasional or isolated sales or transactions involving tangible personal property who does not hold him or herself out as engaged in business. In its informal opinion, the DOR stated that the sale at public auction of unclaimed personal property by the DFS is not taxable because they are “occasional sales.”

B. Private Sector Impact:

The bill establishes a 90 day period during which the Department must process a claim. Some representatives of private sector entities that locate the owners of unclaimed property assert the proposed 90 day period is unnecessarily long and delay the return of property to its rightful owner. Representatives from the Department state that the 90 day period is only a maximum time period and many claims will be processed in less time. The Department’s representatives claim the 90 day period is necessary due to the high volume of claims that the Bureau of Unclaimed Property receives and the complexity of some of the claims.

The bill imposes larger fines on property locators for failure to register with the Department (section 25), failure to report required information (section 28), and filing an invalid or false property claim (section 29).

Section 30 of the bill changes the fee cap on locator claims to 20 percent of the unclaimed property’s value (unless the locator discloses in writing to the owner that the Department holds the property and other required information). Previously, the cap was \$25 for accounts worth less than \$250, 15 percent for accounts worth \$250 or more and held by the Department for 24 months or less, and 25 percent for accounts worth \$250 or more and held by the Department for more than 24 months. The new cap increases fees on accounts worth less than \$100, but decreases fees for accounts worth more than \$100 but less than \$250. Fees are increased for accounts worth \$250 or more and held by the Department for 24 months or less, but decreased for accounts worth \$250 or more and held by the Department for over 24 months.

C. Government Sector Impact:

The bill raises the amount retained in the Unclaimed Property Trust Fund from \$8 million to \$15 million before the excess amount is transferred to the State School Trust Fund. The Department states the change will lessen the need of the Bureau of Unclaimed Property to request funds to be transferred back from the State School Trust Fund due to insufficient

money to pay claims in the Unclaimed Property Trust Fund. In fiscal year 2002-2003, the Bureau of Unclaimed Property collected 161.3 million dollars in unclaimed property and refunded 76.6 million to owners and their representatives. A net transfer of 95.1 million dollars was made to the State School Trust Fund.

Representatives from the Department state that the bill will not have any negative fiscal impact upon the Department. However, representatives from the Department indicate that a budget request will be made for approximately \$300,000 to pay for additional employees to help ensure uninsured property is returned promptly and to combat fraud.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
