

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 2290

SPONSOR: Banking and Insurance Committee and Senator Clary

SUBJECT: Public Records Exemptions (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>CM</u> | _____ |
| 3. | _____ | _____ | <u>GO</u> | _____ |
| 4. | _____ | _____ | <u>RC</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Current law (s. 717.117, F.S.) provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property held by the Department of Financial Services (DFS or Department). However, such information must be released to certain qualified parties.

Committee Substitute for Senate Bill 2290 expands the public records exemption for unclaimed property records submitted to the Department of Financial Services. Entire social security numbers and financial account numbers cannot be released to qualified parties (attorneys, state-certified public accountants, licensed private investigators, and licensed private investigative agencies) under the bill. However, the last four digits of a social security number may be released to a qualified party. Public records exemptions are created for unclaimed property account dollar amounts and the number of reported shares of stock, which must be released to qualified parties for the limited purpose of locating owners of unclaimed property. Regardless of the exemption, social security numbers, unclaimed property account dollar amounts, and number of reported shares of stock, and financial account numbers held by the Department may be provided to another agency or agency employee in furtherance of the agency's duties. The agency or person receiving the information must maintain its confidentiality. Disclosure of confidential information may be made by a qualified party or the Department if the disclosure is made in good faith to a person whom the qualified party or the Department believes is entitled to the unclaimed property. Confidential information may be used, as needed, in administrative or judicial proceedings and the presiding officer has discretion to maintain the confidentiality of information.

The bill creates public records exemptions for personal photographic identification held by the Department, and a public records exemption for databases subscribed to by the Department if the database vendor requires confidentiality.

The bill creates a public records exemption for information received or created during an investigation or examination by the Department of Financial Services pursuant to Ch. 717, F.S. The exemption lasts 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 exemption continues after the investigation is complete if the information would jeopardize the integrity of another investigation, reveal personal information (except as authorized by 717.1171, F.S.), reveal a confidential source, reveal investigative techniques, reveal a trade secret, or reveal proprietary business information.

The bill provides for future review and reenactment, or the act stands repealed on October 2, 2009. It also provides statements of public necessity for each of the types of information that the bill makes exempt from public disclosure.

This bill amends sections 717.117 and 717.1301 of Florida Statutes.

The bill creates the following sections of the Florida Statutes: 717.1171, 717.12401, 717.12402, 717.1302, and 717.1342.

II. Present Situation:

Unclaimed Property Program

The Department of Financial Services (DFS or Department) administers the Florida Disposition of Unclaimed Property Act. The DFS 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 DFS once the allowable time period for holding unclaimed property has expired. After receipt of a holder's report, DFS must attempt to locate the apparent owner of unclaimed property by publishing or televising notices. 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 or abandoned property until the property is claimed, if ever. There is no statute of limitations period for an owner to claim his or her property.

The Department is authorized to directly contact the owner. In addition, the Department may use other means of notification, including publication of the names of the owners in newspapers, on television, on the Internet, or other promotional efforts.

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.

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 a certain time period after an account becomes inactive. Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the DFS by May 1st 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 prescribe by rule. Under the provisions of s. 717.117, F.S., the report to the DFS 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.

After receipt of the holders' reports, the Department must attempt to locate the apparent owner of property by publishing or televising a notice in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which a holder has a principal place of business. Notifications that are published or televised may consist of the names of the apparent owners of unclaimed property. However, notifications provided directly to the individual, apparent owners are required to include a description of the property.

In addition to the efforts by the DFS to locate the owners of unclaimed property, private investigative agencies, certified public accountants, and attorneys assist apparent owners in recovering unclaimed property, typically for a fee. Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with ch. 493, F.S. Typically, an owner's representative will contact apparent owners of unclaimed property and offer to complete and file the necessary forms with the Department for a fee. In 2001, legislation was enacted which required that agreements between an owner's representative and an owner to either disclose specified information of how the owner can obtain the property directly (at no charge), or to limit fees to 15 percent for unclaimed property with a value of \$250 or more and held by the DFS for 24 months or less, 25 percent for property held by the Department for more than 24 months, and \$25 for property valued less than \$250.

In 1973, the Attorney General opined that the records maintained by the Abandoned Property (Unclaimed Property) section of the Department of Banking and Finance (now the DFS) were public records and were open to public inspection.

Public Records; Exemptions

Section 24(a), Art. I of the Florida Constitution, provides, "*Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.*"

Section 24(c), Art. I of the Florida Constitution, permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, that exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Public Records Exemption for Certain Information in Unclaimed Property Reports

Current law, revised and reenacted in 2002,¹ provides that social security numbers and financial account numbers contained in unclaimed property reports, submitted to the Department, as required under s. 717.117, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution. However, an attorney, Florida-certified public accountant, or private investigator licensed in Florida under ch. 493, F.S., and registered with the Department under ch. 717, F.S., shall have access to the social security number if the information is used for the limited purpose of locating unclaimed property or unclaimed property owners. This section remains subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

The 2002 act that revised and reenacted this public records exemption made a legislative finding that the exemption is a public necessity to prevent identity theft and related crimes. The exemption of the social security number and financial account numbers of apparent owners was said to be necessary to prevent such information from being used in forged documents demonstrating entitlement to abandoned or unclaimed property and thereby defrauding the rightful property owner or the State School Fund. The release of this confidential and exempt information to attorneys, Florida-certified public accountants or private investigators was said to be necessary to facilitate the return of unclaimed property to the rightful owners. The act further found that such professionals are subject to more stringent regulation and oversight than the public as a whole and are the only persons authorized to file claims on behalf of apparent owners of unclaimed property pursuant to ch. 717, F.S.

¹ Chapter 2002-64, L.O.F.

III. Effect of Proposed Changes:

Section 1. Repeals subsection (8) of s. 717.117, F.S. 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 of Financial Services (DFS or Department). However, such information must be released to certain qualified parties (attorneys, certified public accountants, and private investigators licensed in Florida and registered with the Department).

Section 2. Creates s. 717.1171, F.S., which expands the public records exemption for unclaimed property reports submitted to the Department of Financial Services to also include social security numbers, unclaimed property account dollar amounts, the number of reported shares of stock, and financial account numbers. Unclaimed property account dollar amounts and the number of reported shares of stock, and the last four digits of social security numbers must be released to qualified parties (attorneys, state-certified public accountants, licensed private investigators, and licensed private investigative agencies) for the limited purpose of locating owners of unclaimed property, however, entire social security numbers and financial account numbers cannot be disclosed to these parties. Regardless of the exemption, social security numbers, unclaimed property account dollar amounts, and number of reported shares of stock, and financial account numbers held by the Department may be provided to another agency in furtherance of the agency's duties. Any person receiving such information must maintain the confidentiality of such information and refrain from public disclosure. However, disclosure of confidential information may be made by a qualified party or the Department if the disclosure is made in good faith to a person whom the qualified party or the Department believes is entitled to the unclaimed property.

Confidential information may be used, as needed, in administrative or judicial proceedings and the presiding officer has discretion to maintain the confidentiality of information.

The section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2009, unless reviewed and reenacted by the Legislature.

Section 3. Creates s. 717.12401, F.S., a public records exemption for personal photographic identification held by the Department. The exemption does not prohibit the Department from providing such information to law enforcement, an administrative agency, or regulatory organization, and the agency receiving the confidential information must maintain confidentiality. The presiding officer in an administrative, civil or criminal procedure may prevent the disclosure of confidential information offered as evidence.

Section 4. Creates s. 717.12402, F.S., a public records exemption for a database subscribed to by the Department if the database vendor requires confidentiality. The section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2009, unless reviewed and reenacted by the Legislature.

Section 5. Amends subsection (5) of s. 717.1301, F.S. The bill makes confidential information received or created during an investigation or examination by the Department until the

investigation or examination is completed or ceases to be active. Confidential information created in an investigation by the Department must remain confidential after the Department completes its investigation or examination (or it ceases to be active) if disclosure would do any of the following: (1) jeopardize the integrity of another active investigation, (2) reveal the name, address, phone number, social security number, or any other identifying information of a complainant, customer or account holder except as authorized by s. 717.1171, F.S., (3) reveal the identity of a confidential source, (4) reveal investigative techniques or procedures, (5) reveal a trade secret as defined in s. 688.002, F.S., or (6) reveal proprietary business information obtained by the Department from any person which is only made available to the Department on a confidential or similarly restricted basis.

The Department may provide the confidential material to a law enforcement agency, administrative agency, or regulatory organization in the furtherance of its duties. The receiving agency or organization must maintain the confidentiality of the information so long as it would otherwise be confidential. If such confidential information is offered into evidence in a civil, criminal or administrative proceeding, the presiding officer has discretion to prevent the disclosure of the information.

For purposes of s. 717.1301(5), F.S., an investigation or examination is considered “active” so long as the Department or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil or criminal proceeding or to the denial or condition grant of a license, registration or permit. The subsection does not prohibit disclosure of information of information that is required by law to be filed with the Department and, but for the investigation or examination, would be subject to s. 119.07(1), F.S., nor does it prohibit disclosure of information required by law to be filed with the Department or that is otherwise subject to s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

The section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2009, unless reviewed and reenacted by the Legislature.

Section 6. Creates s. 717.1342, F.S., which states that anyone who discloses records that are confidential under ss. 717.1171 or 717.12401, F.S., commits a third-degree felony, punishable as provided in ss. 775.082 or 775.083, F.S.

Section 7. Provides statements of public necessity for making the previously discussed information confidential. 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's license is of concern because it can be used 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 must be made confidential and exempt in order to protect the sensitive nature of the information.

Section 8. The act takes effect October 1, 2004 if HB 1039 (SB 2288) or substantially similar legislation is adopted in the same legislative session or an extension thereof.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24(c), Art. I of the Florida Constitution, provides that public records and public meetings exemptions may be created by general law. Such law must only contain public records or public meeting exemptions.

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, that exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of unclaimed property held by the state may be provided greater confidentiality regarding the value of the property and certain other information, which may make such persons less vulnerable to persons attempting to illegally obtain such property.

Some representatives of private sector entities that locate owners of unclaimed property claim that creating a public records exemption for the social security numbers of the owners of unclaimed property will have a strong adverse effect on the private recovery industry. Such representatives state that many records only have the owner's name and social security number and the exemption would make it very difficult for private businesses to locate the owners of such property. These industry representatives also state that social security numbers are necessary to ensure that property is being returned by private locators to its rightful owners. Representatives from the Department state that the public records exemption for social security numbers is necessary to combat the increasing amount of identity theft as well as to combat fraudulent claims. The Bureau of Unclaimed Property has presented multiple examples where it appears information from the Bureau's owner database has been used to fraudulently obtain unclaimed property. An owner's representative has used social security numbers to create false documents and defraud the Department of \$350,000 in unclaimed property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.