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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-64, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
FINAL ANALYSIS**

BILL #: HB 543, 1ST ENG.
RELATING TO: Public Records
SPONSOR(S): Representative(s) Detert and others
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 3 NAYS 0
- (2) SMARTER GOVERNMENT COUNCIL YEAS 10 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

On April 22, 2002, HB 543, 1st Engrossed was approved by the Governor and became law as Chapter 2002-64, Laws of Florida (act). The effective date of this act is "upon becoming a law," which became law on April 22, 2002.

The Department of Banking and Finance (DBF) administers the Florida Disposition of Unclaimed Property Act. DBF is responsible for receiving unclaimed property, locating the rightful owners, and returning the property to those rightful owners. Once the allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the DBF by May 1 for all property presumed abandoned for the preceding calendar year. Such report usually contains the social security number of the apparent owner.

This act creates a public records exemption for social security numbers and financial account numbers contained in unclaimed property reports, held by DBF. This act allows the release of social security numbers to an attorney, Florida-certified public accountant, a State licensed private investigator, or a licensed private investigative agency, for the purpose of locating abandoned or unclaimed property owners.

This act provides a public necessity statement which states that the public records exemption for social security numbers and financial account numbers of apparent owners of abandoned or unclaimed property is necessary to prevent identity theft and related crimes. Also, this exemption is necessary to prevent such numbers from being used in forged documents demonstrating entitlement to abandoned property and thereby defrauding the rightful property owner or the State School Fund.

This act provides for retroactive application of the public records exemption and provides for future review and repeal of the exemption.

This act does not appear to have a fiscal impact on state or local governments.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | 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. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. 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.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

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

The Abandoned Property Program

The Department of Banking and Finance (DBF) administers the Florida Disposition of Unclaimed Property Act.¹ DBF is responsible for receiving unclaimed property,² locating the rightful owners, and returning the property (or its value, in cases of sold securities) to those rightful owners. DBF is only required to make a one-time attempt to notify owners of unclaimed property.³

Holders of unclaimed property⁴ are required to submit unclaimed property reports to DBF. A check, draft, bank deposit, stock, as well as other intangible property, is presumed abandoned if not claimed for a period of five years. Exceptions to the five-year period include contents in safe deposit boxes,⁵ money orders,⁶ and travelers' checks⁷.

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

¹ Chapter 717, F.S.

² Unclaimed property constitutes any funds or other property, tangible or intangible, which 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.

³ Section 717.118, F.S. DBF may use post, print, visual, telecommunications, or electronic media to satisfy the one-time notice requirement. Owners are not charged for DBF's cost in notification or recovery of the property.

⁴ Holders typically include banks and insurance companies.

⁵ Contents contained in safe deposit boxes are presumed abandoned if not claimed for a period of three years. Section 717.116, F.S.

⁶ Money orders are presumed abandoned if not claimed for a period of seven years. Section 717.104(2), F.S.

⁷ Travelers' checks are presumed abandoned if not claimed for a period of 15 years. Section 717.104(1), F.S.

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 report⁸ with DBF by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year.⁹

After receipt of a holder's report, DBF must attempt to locate the apparent owner of unclaimed 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.¹⁰ In addition to the efforts by DBF to locate the owners of unclaimed property, private investigative agencies,¹¹ certified public accountants, and attorneys assist apparent owners in recovering unclaimed property.

In 1973, the Attorney General opined that the records maintained by the Abandoned Property (Unclaimed Property) Section of DBF are public records and are open to public inspection.¹²

C. EFFECT OF PROPOSED CHANGES:

This act creates a public records exemption for social security numbers and financial account numbers contained in unclaimed property reports, held by the Department of Banking and Finance (DBF), as required under section 717.117, F.S. This act allows the release of social security numbers to an attorney, Florida-certified public accountant, a state licensed private investigator, or a licensed private investigative agency, for the purpose of locating abandoned or unclaimed property owners.

This act provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the public records exemption for social security numbers and financial account numbers of apparent owners of abandoned or unclaimed property is necessary to prevent identity theft and related crimes. Also, this exemption is necessary to prevent such numbers from being used in forged documents demonstrating entitlement to abandoned property and thereby defrauding the rightful property owner or the State School Fund. The release of social security numbers to attorneys, certified public accountants, licensed private investigators, or licensed private investigative agencies is necessary to facilitate the return of unclaimed property to the rightful owners.

This act provides for retroactive application of the public records exemption.¹³

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

⁸ Under the provisions of s. 717.117, F.S., the report to DBF usually contains the name, social security number or federal employer identification number, if known, and the last known address of the apparent owner.

⁹ In lieu of forms, the holder may submit the required information via electronic medium as DBF may prescribe by rule. Section 717.117(1), F.S.

¹⁰ Section 717.118(2)(a), F.S.

¹¹ Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with chapter 493, F.S.

¹² AGO 073-167.

¹³ On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to receive retroactive application. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 26 Fla. L. Weekly S268.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 24, 2002, the Committee on State Administration reported HB 543 favorably with a strike-all amendment. The strike-all amendment maintains the public records exemption created in the bill for social security numbers and financial account numbers contained in unclaimed property reports held by the Department of Banking and Finance. This amendment simply adds language to make the exemption retroactive; removes unnecessary language; and adds clarifying language.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:

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