

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1434

INTRODUCER: Senator Wright

SUBJECT: Disposition of Unclaimed Property

DATE: March 29, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 1434 makes revisions to the Florida Disposition of Unclaimed Property Act relating to the claims process under the Act. Specifically, the bill replaces the power of attorney and full disclosure statement process used by claimant representatives as provided in ch. 717, F.S., with a standardized uniform recovery agreement for claimant representatives to use when recovering unclaimed property on behalf of a client claimant.

The bill also revises 717.124(7), F.S., to revise the maximum recovery value for claims submitted electronically that utilize identity verification processes other than government issued photographic identification or a sworn, notarized statement.

**II. Present Situation:**

As part of the DFS' statutory responsibilities, the Department is to collect and return unclaimed property belonging to Florida residents.<sup>1</sup> Within the DFS is the Division of Unclaimed Property (Division)—the Division is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them.

**Florida Disposition of Unclaimed Property Act**

Chapter 717, F.S., is entitled the Florida Disposition of Unclaimed Property Act, over which the DFS is responsible to administer. Unclaimed property is 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,

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<sup>1</sup> Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx> (last visited March 26, 2021).

security and utility deposits, and contents of safe deposit boxes.<sup>2</sup> Until claimed, unclaimed money is deposited into the state school fund to be used for public education. There is no statute of limitations and persons may claim their property at any time and at no cost.<sup>3</sup>

### **DFS Unclaimed Property Database**

The DFS maintains a database of all unclaimed property within its possession. According to the DFS, over 350 claimant representatives are registered with the Department to gain access to this database.<sup>4</sup>

### **Claimant Representatives**

Pursuant to s. 717.124, F.S. a claimant representative must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under ch. 493, F.S. A claimant must also register with the DFS on a form designated by the Department and provide certain documentation (including tax identification number, identification, electronic funds transfer information, business address, and employees and agents) and credentials as to their status as an attorney, CPA, or private investigator.<sup>5</sup>

The general business model for registered claimant representatives (representatives) is that they search the DFS unclaimed property database and solicit or seek authorizations from potential claimants to file claims with the DFS on the claimants behalf to recover any of the claimant's unclaimed property held by the Department. Representatives are authorized to charge fees and costs to claimants for their services, subject to certain restrictions (see *Authorized charges* below).

### ***Claim Process for Representatives***

In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization. At minimum, the representative must first execute limited power of attorney with the client as provided in s. 717.135, F.S. While s. 717.135, F.S., specifies certain minimum requirements for these powers of attorney, each representative generally has their own, unique, version of these documents and they can vary as to wording, format, credentialing references, and logos. Most of these agreements, according to the DFS, contain some version of the statement that "I hereby authorize...to file a claim on my behalf for the unclaimed property accounts listed and to receive the fee I authorize."<sup>6</sup> Also, according to the DFS, many of these agreements contain legalese which may be difficult for some potential clients to understand.<sup>7</sup> This language could include: assignments of interest or rights, irrevocable assignments, exclusivity agreements, requirements that the client claimant to act upon all requests and instructions of the representative, venue and attorney fee provisions,

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<sup>2</sup> Sections 717.104-717.116, F.S.

<sup>3</sup> Florida Department of Financial Services, *Unclaimed Property*, <https://myfloridacfo.com/Division/UnclaimedProperty/> (last visited March 26, 2021).

<sup>4</sup> Department of Financial Services, *Legislative Bill Analysis of SB 1434* (March 9, 2021) (on file with Senate Banking and Insurance Committee).

<sup>5</sup> Section 717.1400, F.S.

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Id.*

and some that provide that if the claimant fails to act, the representative can claim the client claimant's unclaimed property separate from said client.

### ***Authorized Charges***

For representatives that have engaged their claimant clients through only a power of attorney, s. 717.135(2), F.S., caps fees and costs at 20 percent per unclaimed property account held by the DFS. The charges cap is calculated based on the value of the property at the time a power of attorney is signed by the claimant with the representative. For claimants who are residents of the United States, the total fees and costs assessed are also limited to \$1,000.

If a representative provides their client with a "full disclosure statement" as provided in s. 717.135(3), F.S., and the client signs and acknowledges said statement before executing a power of attorney with the representative, then fees are limited only those fees disclosed in said statement. Florida provides no hard cap in this situation—fees may be whatever the representative wishes to charge, as long as such fees are properly disclosed.

### **Filing of Claims by Apparent Owners**

The DFS also provides a publicly available version of their unclaimed property database accessible via the Internet.<sup>8</sup> This version of the database that does not require one to register with the department to conduct a search. Via this form, a member of the public can search for unclaimed property by first and last name, or business name. These results can be further narrowed by providing a middle name and location information. Once a person locates an account that is potentially theirs, they can claim the account and start the process of verifying their identity and recovering their unclaimed property.

Generally, under 717.124(1), F.S., in order to submit a claim, the claimant must provide the DFS with a legible copy of a valid driver license, or other government-issued photographic identification, at the time the original claim form is filed. In lieu of photographic identification, a claimant may also provide the DFS with a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address.

Section 717.124(7), F.S., also allows an apparent owner to file a claim electronically and, if the claim submitted is for \$1,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Implementing this provision, rule 69G-20.0022(2)(c), F.A.C., specifies that the DFS may use an "identity authentication service" to verify identity in such circumstances.

### **III. Effect of Proposed Changes:**

**Section 1** of the bill amends s. 717.124, F.S., to significantly revise the claims process for registered claims representatives (representatives) to engage clients and begin the recovery process with the DFS. The bill replaces the power of attorney and full disclosure statement process and replaces them with a standardized uniform recovery agreement (provided in more detail in **Section 5** of the bill).

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<sup>8</sup> The website is located here: <https://www.fltreasurehunt.gov/ControlServlet?ActionForm=GotoNewPublicSearch>.

The section also revises section 717.124(7), F.S., regarding the filing of a claims electronically. The bill provides that if the electronically filed claim submitted is for \$2,000 or less, the DFS may use a form of identity verification other than a government issued photographic identification or a sworn, notarized statement. Under current law, this is \$1,000 or less.

Finally, the section makes conforming and technical changes, including removing a provision relating to the DFS being able to deny a claim when a representative refuses to reduce fees and costs being charged to the claimant to the maximum fees and costs allowed under ch. 717, F.S.

**Sections 2, 3, and 4** make a conforming changes to ss. 717.12404, 717.1315, and 717.1322, F.S., respectively, to implement changes made by **Sections 1 and 5** of the bill.

**Section 5** substantially rewrites s. 717.135, F.S., to eliminate the previous power of attorney-based claim process and replace it with the mandatory use of a “Uniform Unclaimed Property Recovery Agreement” or a “Uniform Unclaimed Property Purchase Agreement” as the sole agreement to be used by representatives to engage claimant clients. The section provides penalties for representatives that use an agreement other than those approved by the DFS pursuant to the proposed section and voids any recovery attempted by a representative utilizing such an agreement.

The section directs the DFS to adopt by rule forms for these agreements, providing that the agreements must include and disclose all of the following provisions:

- The dollar amount of the unclaimed property accounts to be claimed or sold;
- The total percentage of all authorized fees and costs to be paid to the claimant’s representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant’s representative;
- The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant’s representative or the total net dollar amount to be received by the purchasing claimant’s representative;
- The net dollar amount to be received by the claimant or the seller;
- The DFS unclaimed property account number and name of the apparent owner;
- For the Uniform Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller;
- The name, address, e-mail address, phone number, and license number of the claimant’s representative;
- The manual signature of the claimant or seller and the date signed. For claims of \$2,000 or less, the signature may be digital instead;
- The social security number or taxpayer identification number of the claimant or seller, if available; and
- The total fees and costs, or the total discount in the case of a purchase agreement, may not exceed 25 percent of the claimed amount. If the total fees and costs exceed 25 percent, the fee shall be reduced to 25 percent and the net balance shall be remitted directly by the department to the claimant.

In contrast to the current requirements under s. 717.135, F.S., the proposed 717.135, F.S., does not specifically require that the representative disclose to the client claimant that the unclaimed property is in the hands of the DFS and provide the DFS's mailing and website addresses.<sup>9</sup> As noted above, however, the bill does require the representative to provide the client claimant with the DFS account number of the unclaimed property.

The section also includes a requirement that for Uniform Unclaimed Property Purchase Agreements, proof that the seller has received payment from the representative must be filed with the DFS along with the claim. If the representative fails to do so, the claim is void.

For both the Uniform Unclaimed Property Recovery Agreement and the Uniform Unclaimed Property Purchase Agreement, the form created by the DFS may not contain language that would make either agreement irrevocable or create an assignment of property held by the DFS.

Finally, the section authorizes the DFS, once it approves a claim, to pay out any additional account owned by the claimant, provided that a subsequent claim has not been filed, or is not pending for the claimant, at the time the DFS approves the claim.

**Section 6** repeals s. 717.1351, F.S., as, with the changes made by the bill, the section is no longer necessary.

**Section 7** provides an effective date for the bill.

The DFS asserts that the changes made by the bill should make the process of handling claims made by claims representatives more efficient. In addition, DFS states that the standardization of the agreements, elimination of varying fee caps, and the prohibition against irrevocable or assignment clauses will provide for more consumer protection and make the process more consumer friendly.<sup>10</sup>

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>9</sup> Providing this information is required in current law for both the power of attorney and full disclosure statements. See s. 717.135(2)(a) and (3)(a), F.S., respectively.

<sup>10</sup> *Supra* note 4.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill appears that it will result, in some circumstances, in claimants receiving a greater percentage of their claims when represented by claims representatives. Conversely, some representatives will receive a lower percentage of a claim as compensation. Currently, fees and charges are capped at 20 percent when a representative engages their claimant client through only a power of attorney; where a representative uses “full disclosure statement,” fees do not have a hard cap. The proposed bill does away with this dual structure and replaces it with a 25 percent cap on fees and charges.

C. Government Sector Impact:

The DFS asserts that the changes will make the claim process for unclaimed property more efficient by standardizing the claim form used by claimant representatives. Given this, the DFS may see some reduction in cost in processing such claims.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 717.124 and 717.135.

This bill makes conforming changes to the following sections of the Florida Statutes: 717.12404, 717.1315, and 717.1322.

This bill repeals section 717.1351 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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