

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1259                                  Disposition of Unclaimed Property  
**SPONSOR(S):** Grant  
**TIED BILLS:**    **IDEN./SIM. BILLS:** SB 1638

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Committee on Financial Institutions	_____	Holt	Haug
2) Jobs & Entrepreneurship Council	_____	_____	_____
3) Policy & Budget Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill creates and new section relating to unclaimed property. The bill provides that an unredeemed gift certificate or credit memo is not required to be reported as unclaimed property. The terms "gift certificate" and "credit memo" are defined by the bill.

The bill requires that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration period, or any type of post-sale charge or fee such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. These requirements do not apply to an entity regulated by the Office of the Comptroller of the Currency (federally regulated national banks).

This bill creates the following sections of the Florida Statutes: 717.1045.

There is no apparent fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: This bill provides that an unredeemed gift certificate or credit memo is subject only to any rights of a purchaser or owner thereof and is not subject to a claim made by any state acting on behalf of a purchaser or owner.

#### B. EFFECT OF PROPOSED CHANGES:

##### Unclaimed Property Background

The Florida Disposition of Unclaimed Property Act (ch. 717, F.S.) provides the statutory procedure for the escheat (reversion) 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. 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. 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 U.S. 258 (1925). 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 until the property is claimed, if ever, (s. 717.139, F.S.).

The Department of Financial Services (Department) administers the Act, through its Bureau of Unclaimed Property. Section 717.118, F.S., requires the state to notify owners of unclaimed property accounts valued at over \$100, in a cost-effective manner, including through attempts to directly contact the owner. Through information provided to staff, representatives from the Department indicate that the means used to find lost property owners include social security numbers, direct mailing, Department of Motor Vehicle files and state payroll records, newspaper advertisements, and a state website, [www.fltreasurehunt.org](http://www.fltreasurehunt.org), where unclaimed property can be found. The Department is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to them, (s. 717.130, F.S.). Once a claim is made through filing a form with the Department, the Department has 90 days to determine the claim, (s. 717.124, F.S.).

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time, (ss. 717.102, 717.1035, F.S.) 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 are all potentially unclaimed property, (ss. 717.104 through 717.116, F.S.). Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department (s. 717.119, F.S.). 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 a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims, (see; generally, s. 717.123, F.S.)

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through written notice to the apparent owner's last known address (if known) between 60 and 120 days after an account becomes inactive, (s. 171.117(4), F.S.). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the Department by May 1, for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. However, credit balances, customer overpayments, security deposits, and refunds with a value under \$10 are presumed unclaimed. In lieu of forms, the holder may submit the required information via electronic medium as the Department may provide by rule, (s. 717.117, F.S.). Under the provisions of s. 717.117(1)(a), F.S., the report to the Department 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.

According to representatives from the Bureau of Unclaimed Property, when the holder of funds stemming from unused gift certificates, prepaid debit cards, and similar items requests to do so, the Department accepts such funds as unclaimed property and notes the source and time period of the funds (i.e. gift cards from the holder purchased in 1998). In order for the owner of unclaimed property to claim such funds, he or she must present the receipt, the debit card/certificate, or similar proof of entitlement to such funds. If it is established that the claimant or owner is entitled to funds from the time period and source from a holder that turned such property over to the Department, then the owner will be paid by the Department. It should be noted that the Bureau of Unclaimed Property often does not have any contact information for the owners of such property, as the merchants from whom such items are purchased often will not collect or track it. However, in the case of a debit card purchased from a bank, credit union, or money transmitter, the property holder should have information regarding the purchaser of the item.

#### Effects of Proposed Changes:

Section 1. The bill creates s. 717.1045, F.S., with legislative intent that reads:

It is the intent of the Legislature that this chapter applies to the custodial holding of unredeemed gift certificates and credit memos except as expressly provided in subsection (3).

Also, included in the bill are the following definitions:

(a) "Credit memo" means a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

(b) "Gift certificate" means a certificate, gift card, stored value card, or similar instrument issued in exchange for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

Further, the bill provides that an unredeemed gift certificate or credit memo is not required to be reported as unclaimed property. The consideration paid for an unredeemed gift certificate or credit memo is the property of the issuer of the unredeemed gift certificate or credit memo. An unredeemed gift certificate or credit memo is subject only to any rights of a purchaser or owner thereof and is not subject to a claim made by any state acting on behalf of a purchaser or owner.

The bill also requires that a gift certificate or credit memo sold or issued for consideration in this state, other than a gift certificate or credit memo issued by an issuer that is regulated by the Office of the Comptroller of the Currency, may not have an expiration date, expiration period, or any type of post-sale charge or fee imposed including but not limited to a service charge, dormancy fee, account maintenance fee, or cash-out fee.

Section 2: This act shall take effect upon becoming a law.

#### C. SECTION DIRECTORY:

Section 1: Creates s. 717.1045, relating to Gift certificates and similar credit items

Section2 Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None apparent.
2. Expenditures:  
None apparent.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None apparent.
2. Expenditures:  
None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None apparent.

D. FISCAL COMMENTS:

None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES