HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions	5 Y, 0 N	Holt	Haug
2) Jobs & Entrepreneurship Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates two new sections. One section relates to gift certificates and credit items. Definitions are provided for the terms “credit memo” and “gift certificate.” The bill provides that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration date, expiration period, or any type of post sale charge or fee imposed. However, the bill provides exception for certain types of gift certificates. Moreover, conditionally the provisions of this new section do not apply to defined financial institutions or defined money transmitters.

The second section relates to unredeemed gift certificates or similar credit items. The bill provides legislative intent. Provisions are included that relate to when such certificates and credit items are not required to be reported as unclaimed property. Property rights related to the consideration paid for an unredeemed gift certificate or credit memo are also included.

There is no apparent fiscal impact.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: This bill provides that certain unredeemed gift certificates or credit memos may not have an expiration date, expiration period, or any type of post-sale charge or fee imposed, i.e. Lowe's or Outback. However, an exception to this provision is included for a gift certificate provided as a free benefit, such as employee incentive, consumer loyalty, or promotional programs.

Safeguard individual liberty: The bill exempts financial institutions as defined in 655.005,[1] F.S, money transmitters as defined in s. 560.103,[2] F.S. from the above provisions. These entities will be allowed to issue cards that have expiration dates and/or post-sale charges such as dormancy fees, inactivity fees, monthly maintenance fees and replacement fees to use against the value of their cards.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Through information provided to staff the following summary was developed:
Gift cards and similar instruments (stored value cards, pre-paid debit cards, travel cards, benefit cards, etc.) have become a multi-billion dollar industry. Studies show that in 2006, consumers spent nearly $80 billion dollars on gift cards nationwide. These same studies show that approximately 10% of the cards will never be redeemed. Retailers, restaurants and financial institutions recognize that unused balances (commonly referred to as "breakage") on these cards will add up to significant revenues – at least $430 million from 2006 sales in Florida alone.

There are two primary types of gift cards, those issued by a retailer or restaurant for use at one or more corporate-affiliated entities (referred to as "closed loop" cards – bought at Lowe's, used at Lowe's), and others issued by a financial institution for use at merchants that accept credit cards or debit cards (referred to as "open loop" or "bank" cards – used anywhere that accepts Visa/MasterCard).

Many cards also contain expiration dates and/or post-sale charges such as dormancy fees, inactivity fees, monthly maintenance fees and replacement fees for lost or damaged cards – all of which use up or reduce the value of the card. While initially, almost all such cards contained expiration dates and/or fees, many retailers and restaurants have discontinued issuing cards with expiration dates and post-sale charges. However, most "open loop" cards issued by financial institutions continue to impose expiration dates and/or post-sale fees.

In 1996, the Florida Legislature removed the words "gift certificates" as one of several named types of unclaimed property. The Legislature, however, did not specifically exempt them. This led to uncertainty within the Bureau of Unclaimed Property as to the intent of the legislature. The Department of Financial Services (Department) accepts this type of unclaimed property, but does not require holders to report it or audit for it, thus has received relatively little property of that type. Since 1996, the Department has received approximately $1.5 million in unclaimed property associated with unredeemed gift certificates/cards.

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[1] (h) "Financial institution" means a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union.

[2] (11) "Money transmitter" means any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, funds transmitter, or deferred presentment provider.

It is estimated if unused/unredeemed card values were required to be reported/remitted as unclaimed property, receipts from cards sold in 2006 alone, just in Florida, could result in more than $430 million in unclaimed property receipts.

There is currently no law dealing with the issue of expiration dates or post-sale charges on these types of instruments.

Unclaimed Property Overview

Chapter 717, F.S., Disposition of Unclaimed Property Act (Act), provides the statutory procedures for the escheat (reversion) and disposition of presumed abandoned property to the state. 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 general rule for property presumed unclaimed, s. 717.102, F.S., reads:

> (1) All intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than 5 years after the property becomes payable or distributable is presumed unclaimed, except as otherwise provided by this chapter.
>
> (2) Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

Additionally, s. 717.1035, F.S., relating to property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, created, or otherwise located in the state provides:

> (1) All intangible property, including, but not limited to, any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within 3 years after the date prescribed for payment or delivery, is presumed to be unclaimed property and subject to the custody of this state as such if:
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> (a) The last known address of the owner is unknown; and
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> (b) The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or the person or entity is incorporated, organized, created, or otherwise located in this state.
>
> (2) The provisions of subsection (1) shall not apply to property which is or may be presumed unclaimed and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection (1).
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> (3) The provisions of subsection (1) shall apply to all property held at the time of enactment, or at any time thereafter, regardless of when such property became or becomes presumptively unclaimed.

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), according to information provided to staff,.

The Department of Financial Services (Department) administers the Act, through its Bureau of Unclaimed Property. Section 717.118, F.S., reads in part:

> (1) It is specifically recognized that the state has an obligation to make an effort to notify owners of unclaimed property in a cost-effective manner. In order to provide all the citizens of this state an effective and efficient program for the recovery of unclaimed property, the department shall use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than $250 with a reported address or taxpayer identification number. Such active attempt to notify apparent owners shall include any attempt by the department to directly contact the owner. Other means of notification, such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts and items in which the department does not directly attempt to contact the owner are expressly declared to be passive attempts. Nothing in this subsection precludes other agencies or entities of state government from notifying owners of the existence of unclaimed property or attempting to notify apparent owners of unclaimed property.
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> (3) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed unclaimed under s. 717.104.

The general rule for taking custody of intangible unclaimed property is provided in section 717.103, F.S. In part, the section reads:

> Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of the department as unclaimed property if the conditions leading to a presumption that the property is unclaimed as described in ss. 717.102 and 717.105-717.116 are satisfied. . .

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 items, (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, 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.)

Once a claim is made with the Department, the Department has 90 days to make a determination of its merit, (s. 717.124, F.S.).

For holders of inactive accounts that are presumed unclaimed property, s. 171.117, F.S., provides in part:

> (1) Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property under this chapter shall report to the department on such forms as the department may prescribe by rule. In lieu of forms, a report identifying 25 or more different

apparent owners must be submitted by the holder via electronic medium as the department may prescribe by rule.

(4) Holders of inactive accounts having a value of $50 or more shall use due diligence to locate apparent owners. Not more than 120 days and not less than 60 days prior to filing the report required by this section, the holder in possession of property presumed unclaimed and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the apparent owner's last known address informing the apparent owner that the holder is in possession of property subject to this chapter, if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

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. In lieu of forms, the holder may electronically submit the required information 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 staff information, for the holder of funds stemming from unused gift certificates, prepaid debit cards, and similar items are turned in, the Department also 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 these types of unclaimed property make claim, 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.

However, it should be noted that the Bureau of Unclaimed Property often does not have any contact information for the owners of such property, as unused gift certificates, prepaid debit cards, and similar items; because, the merchants from whom such items are purchased often will not collect or track such information. 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 these items.

<u>Regulation of Gift Certificates in Other States</u>

States other than Florida deal with the escheat of gift certificates and similar items in various ways. Some states exempt such items from unclaimed property reporting, other states require all such items to be reported, and others states require the reporting of only certain types of gift certificates as unclaimed property.

Through research conducted by Senate staff, the following abbreviated information was gathered from other states:

Beginning in 1997, a number of states have passed laws regarding the sale of gift certificates (also defined as gift cards in some states). The regulation has included creating statutory definitions of what a gift certificate or gift card is (enacted by 29 states), provisions regarding expiration dates (enacted by 28 states), and provisions regarding fees (enacted by 28 states).

For 2007, legislation regarding gift certificates and similar items has been introduced in 29 states, indicating a great deal of ongoing interest nationally in revising regulations covering such items. The various regulations are largely state-specific, as the various states have different definitions of terms such as “gift certificate” and “gift card,” with regulation in each state determined, in large part, by how those terms are defined.

Regulation of expiration dates takes three forms. Some states prohibit expiration dates pursuant to a gift card or gift certificate, such as Arizona, California, and Connecticut. Other states place minimum time periods before which a gift certificate or gift card cannot expire. For instance, Massachusetts requires expiration dates on gift certificates to be at least 7 years after issuance, while Ohio requires expiration dates on gift cards to be at least 2 years after issuance. The majority of states that have passed legislation require the conspicuous disclosure of an expiration date, but do not place any minimum requirements (Georgia, Illinois, Maryland, and New York).

There are also three ways by which states regulate fees associated with gift certificates or gift cards. Fees are strictly prohibited in some states such as Connecticut, Hawaii, and New Hampshire. Other states, such as Arizona, Georgia and Illinois, allow fees but require them to be conspicuously printed. The third approach allows certain types of fees in certain situations. For instance, California prohibits fees other than dormancy fees on gift cards that cannot be used with multiple sellers of goods or services. Nevada requires that all fees on gift certificates cannot exceed $1 per month or be imposed within the first 12 months of the gift certificate's issuance.

<u>Effects of Proposed Changes</u>:

Section 1: The bill creates 501.95, F.S. As used in this section the following terms are defined:

(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.

The bill requires that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration date, expiration period, or any type of post-sale charge or fee imposed, including but not limited to, service charges, dormancy fees, account maintenance fees, or cash-out fees.

An exception is provided for a gift certificate given as a free benefit through an employee incentive, consumer loyalty, or promotional programs. These types of certificates may have an expiration date of not less than 3 years.

The prohibitions against expiration dates, expiration periods, or post-sale charges or fees, do not apply to gift certificates or credit memos sold or issued by a financial institution, as defined in s. 655.055, F.S., (state-chartered banks and credit unions), or by a money transmitter, as defined in s. 560.103, F.S., if the gift certificate or credit memo is redeemable by all merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

Section 2. 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

The bill specifies that notwithstanding s. 717.117, F.S., that an unredeemed gift certificate or credit memo as defined in s. 501.95, F.S., 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.

Section 3: This act shall take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: The bill creates 501.95, F.S. Definitions are provided. Provisions related to expiration or any type of post-sale charge or fee, as well as exceptions.

Section 2: The bill creates s. 717.1045, F.S. Legislative intent is provided. Provisions related to unredeemed gift certificates or credit memos as defined in s. 501.95, F.S.

Section 3: 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

On March 22, 2007, the Committee on Financial Institutions adopted one strike-all amendment. The amendment creates two new sections. One section relates to gift certificates and credit items. Definitions are provided for the terms “credit memo” and “gift certificate.” The bill provides that a gift certificate or credit memo sold or issued for consideration in this state may not have an expiration date, expiration period, or any type of post sale charge or fee imposed. However, the bill provides exception for certain types of gift certificates. Moreover, conditionally the provisions of this new section do not apply to defined financial institutions or defined money transmitters.

The second section relates to unredeemed gift certificates or similar credit items. The bill provides legislative intent. Provisions are included that relate to when such certificates and credit items are not required to be reported as unclaimed property. Property rights related to the consideration paid for an unredeemed gift certificate or credit memo are also included.