

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Commerce Committee

BILL: CS/CS/SB 1638

INTRODUCER: Commerce Committee, Banking and Insurance Committee, Senator Constantine and others

SUBJECT: Gift Certificates and Credit Memos; Unclaimed Property

DATE: March 23, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/CS
2.	Gordon	Cooper	CM	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

This Committee Substitute (CS) 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 post-sale charge or fee, such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The CS creates the following exemptions to this requirement:

- A gift certificate may have an expiration date of not less than 3 years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided;
- A gift certificate may have an expiration date of not less than 1 year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provide;
- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, or sporting or fine arts event having a limited duration if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or sporting or fine arts event; and
- 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 multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

The terms “gift certificate” and “credit memo” are defined by the CS.

This CS provides that an unredeemed gift certificate or credit memo is not required to be reported as unclaimed property.

This CS creates the following sections of the Florida Statutes: 501.95 and 717.1045.

II. Present Situation:

Unclaimed Property

The Florida Disposition of Unclaimed Property Act (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., places an obligation on 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. Representatives from the Department indicate that the means used to find lost property owners include social security numbers, direct mailing, Department of Highway Safety and Motor Vehicle files and state payroll records, newspaper advertisements, and a state website, 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, which 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. 717.117(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, 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.

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

Regulation of Gift Certificates in Other States

Beginning with California 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 are some examples).

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.

III. Effect of Proposed Changes:

Section 1. This section of the CS makes explicit that s. 501.95, F.S., will apply to the custodial holding of unredeemed gift certificates and credit memos.¹ Currently, s. 717.103(6), F.S., provides, in pertinent part, that unclaimed intangible property belongs to the state if the transaction occurred in this state and “its escheat or unclaimed property law is not applicable to the property.” Section 2 of this bill explicitly exempts the unclaimed value on gift cards and gift certificates from escheat to the state. By stating that the legislation refers to the “custodial holding” of those items, the CS clarifies that the new exemption would apply to the unclaimed value on gift cards and certificates. This language is intended to prevent the assertion of claims from other states over the unclaimed value on those items.

This section also creates s. 501.95, F.S., to require 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 post-sale charge or fee such as a service charge, dormancy fee, account maintenance fee, or cash-out fee. The CS creates exemptions to this requirement:

- A gift certificate may have an expiration date of not less than 3 years if it is provided as a charitable contribution where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided;
- A gift certificate may have an expiration date of not less than 1 year if it is provided as a benefit pursuant to an employee incentive program, consumer-loyalty program, or promotional program where payment of consideration is not required and the expiration date is prominently disclosed in writing to the consumer at the time it is provided;

¹ This intent language appears to have been misplaced; instead, it should be inserted into ch. 717, F.S., which contains the Florida Disposition of Unclaimed Property Act.

- A gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, or sporting or fine arts event having a limited duration if the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or sporting or fine arts event. However, an issuer may honor a gift certificate that has expired on or before the effective date of this act.
- 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 multiple unaffiliated merchants that accept monetary consideration remitted through the financial institution or money transmitter that sold or issued the gift certificate or credit memo.

The CS defines a “gift certificate” as 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. A “credit memo” is defined as 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. Thus, a credit memo will be issued in the circumstance where a consumer returns merchandise to a merchant and is given a store credit.

Section 2. Creates s. 717.1045, F.S., to specify that a gift certificate or credit memo, as those terms are defined in s. 501.95, F.S., (see section 1 of the CS) 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 and is not subject to a claim made by any state acting on behalf of a purchaser or owner.

Section 3. The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS will prohibit some gift certificates and credit memos from having expiration dates and charging fees. Consumers in the state will benefit from not being subject to losing part or all of the value of the item for which they paid simply due to the passage of time.

Federal and state-chartered banks and credit unions would not be subject to the provisions of the CS prohibiting gift certificates and credit memos from having fees and expiration dates.

Private businesses, as well as state and federally regulated banks, and credit unions will benefit from not being required to report or turn over property (funds) that the business holds because the owner of the unclaimed property has not redeemed the gift certificate or credit memo. If the gift certificate or credit memo is never used by the owner, the business or financial institution will keep the funds. However, the owner of the gift certificate or credit memo would benefit from being able to use the item at any time, rather than having to make a claim with the Bureau of Unclaimed Property to receive the value of the property once it is presumed unclaimed.

C. Government Sector Impact:

The Bureau of Unclaimed Property would no longer receive funds related to gift certificates and credit memos as defined by this CS, resulting in a small reduction in the funds that might be eventually deposited in the State School Trust Fund.

VI. Technical Deficiencies:

The intent language added into section 1 of this CS is misplaced. The language is intended to refer to ch. 717, F.S., which governs the disposition of unclaimed property, and should be placed there by an amendment.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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