

SENATE BILL NO. 135
INTRODUCED BY M. TROPILA
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STATE EQUITY IN THE VALUE OF ABANDONED GIFT CERTIFICATES AND STORED VALUE CARDS; REVISING AND CLARIFYING CERTAIN PROVISIONS OF THE CONSUMER PROTECTION ACT RELATED TO GIFT CERTIFICATES IN ORDER TO PROVIDE CONFORMITY BETWEEN THAT ACT AND THE UNIFORM UNCLAIMED PROPERTY ACT; REQUIRING ISSUERS OF GIFT CERTIFICATES AND ISSUERS OF STORED VALUE CARDS TO OBTAIN THE NAME AND THE ADDRESS OF THE PERSON ENTITLED TO THE PROPERTY; PROVIDING THAT THE DEPARTMENT OF REVENUE, AS ADMINISTRATOR OF THE UNIFORM UNCLAIMED PROPERTY ACT, IS PRESUMED THE OWNER OF A GIFT CERTIFICATE OR STORED VALUE CARD UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 30-14-102, 30-14-108, 70-9-802, 70-9-803, AND 70-9-806, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Gift certificates and stored value cards -- record of ownership -- administrator presumed owner under certain conditions. (1) Subject to subsection (2), a person who sells or issues a gift certificate or stored value card in this state shall obtain the name and address of the person entitled to the gift certificate or stored value card and maintain a record of the owner's name and address.

(2) If a person who sells or issues a gift certificate or stored value card in this state does not obtain the name and address of the person entitled to the gift certificate or stored value card, then the department of revenue, as administrator of the Uniform Unclaimed Property Act under Title 70, chapter 9, part 8, is presumed to be the owner.

Section 2. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, ~~including a gift card,~~ that is provided for consideration paid consideration in advance and that ~~indicates evidences~~ a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record ~~or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device.~~ The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not mean include:

(i) ~~prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;~~

~~—(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or~~

~~(iii)(ii) a gift certificate usable with multiple sellers of goods or services;~~

(iii) a gift certificate that is sold below face value or donated to:

(A) an employee of the seller or issuer;

(B) a nonprofit or charitable organization; or

(C) an educational institution for fund-raising purposes;

(iv) a gift certificate that is issued by a bank, savings and loan association, credit union, or other financial institution that is exempt from the provisions of Title 70, chapter 9, part 8, or this part by reason of federal law;
or

(v) a gift certificate that is issued by an air carrier holding a certificate of public convenience and necessity under Title 49, chapter 411, of the United States Code.

(6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) "Possessor" means a natural person who has physical control over a gift certificate or stored value card.

(8) (a) "Stored value card" means a record that is provided for consideration paid in advance and that evidences a promise by the seller or issuer of the record that goods or services will be provided to the possessor of the record for the value contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device that is capable of electronically adding to or reducing the value of the record.

(b) The term does not include:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a stored value card provided to a consumer pursuant to any award, loyalty, or promotional program without any money or consideration being given in exchange for the card;

(iii) a stored value card usable with multiple sellers of goods or services;

(iv) a stored value card that is sold below face value or donated to:

(A) an employee of the seller or issuer;

(B) a nonprofit or charitable organization; or

(C) an educational institution for fund-raising purposes;

(v) a stored value card that is issued by a bank, savings and loan association, credit union, or other financial institution that is exempt from the provisions of Title 70, chapter 9, part 8, or this part by reason of federal law; or

(vi) a stored value card that is issued by an air carrier holding a certificate of public convenience and necessity under Title 49, chapter 411, of the United States Code.

(9) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 3. Section 30-14-108, MCA, is amended to read:

"30-14-108. Termination of gift certificate or stored value card prohibited -- value of gift certificate

or stored value card -- fee limitation -- redemption --posting required. (1) A gift certificate or stored value card is valid until redemption and does not terminate. A gift certificate or stored value card is considered trust property of the possessor if the issuer or seller of the gift certificate or stored value card declares bankruptcy after issuing or selling the gift certificate or stored value card.

(2) The value represented by the gift certificate or stored value card belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a gift certificate or stored value card presented by an individual whose name does not match the name on the gift certificate or stored value card.

(3) The value of a gift certificate or a stored value card is reduced by the amount spent with each use.

(4) A gift certificate or a stored value card may not be reduced in value by any fee, including a dormancy fee applied if a the gift certificate or stored value card is not used.

~~(4)~~(5) If the original value of the gift certificate or stored value card was more than \$5 and the remaining value is less than \$5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the gift certificate or stored value card for cash."

Section 4. Section 70-9-802, MCA, is amended to read:

"70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Gift certificate" has the meaning provided in 30-14-102.

(7) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

~~(7)~~(8) "Insurance company" means an association, corporation, or fraternal or mutual benefit

organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

~~(8)~~(9) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

~~(9)~~(10) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

~~(10)~~(11) (a) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

~~(11)~~(12) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

~~(12)~~(13) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

~~(13)~~(14) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in subsection ~~(13)(b)~~ (14)(b), by a government, governmental subdivision, agency, or instrumentality and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(i) money, check, draft, deposit, interest, or dividend;

(ii) credit balance, customer's overpayment, gift certificate, stored value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include property that is held, issued, or owed by a local government entity, as defined in 2-7-501.

~~(14)~~(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

~~(15)~~(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(17) "Stored value card" has the meaning provided in 30-14-102.

~~(16)~~(18) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

Section 5. Section 70-9-803, MCA, is amended to read:

"70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the

apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) unspent amount of a gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's ~~face value~~ unspent amount;

(h) unspent amount of a stored value card, 3 years after December 31 of the year in which the card was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the card's unredeemed value;

(i) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

~~(j)~~(j) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

~~(k)~~(k) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

~~(l)~~(l) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

~~(m)~~(m) wages or other compensation for personal services, 1 year after the compensation becomes

payable;

~~(m)~~(n) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

~~(n)~~(o) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

~~(o)~~(p) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

~~(p)~~(q) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

~~(q)~~(r) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; ~~however,~~
However, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located."

Section 6. Section 70-9-806, MCA, is amended to read:

"70-9-806. Dormancy charge -- exception. A Except as provided in 30-14-108(4) with respect to a gift certificate or stored value card, a holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 9. Applicability.** [This act] applies to gift certificates and stored value cards issued or sold after June 30, 2007.

- END -

