

Legislative Analysis



UNCLAIMED PROPERTY: GIFT CARDS AND CERTIFICATES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 388 (Substitute H-1)
Sponsor: Sen. Nancy Cassis
House Committee: Commerce
Senate Committee: Commerce and Tourism

Complete to 10-30-07

A SUMMARY OF SENATE BILL 388 AS REPORTED FROM HOUSE COMMITTEE

Senate Bill 388 would amend the Uniform Unclaimed Property Act (MCL 567.222 et al.) to address when a gift certificate or gift card is considered abandoned property. Generally speaking, the bill would exempt gift certificates and gift cards issued by retailers from being considered abandoned property under the act.

The Uniform Unclaimed Property Act establishes a system whereby the state becomes the perpetual custodian of abandoned or unclaimed property until the property owner claims the property (or the value of the property), which the property owner, or an heir, can do at any time. This is sometimes referred to as the escheats process.

Senate Bill 388 (H-1) is tie-barred to House Bills 4050, 4317, and 4680, each of which would amend the Michigan Consumer Protection Act (MCL 445.903 et al.) to prohibit retailers of goods and services from engaging in certain practices in connection with gift certificates. They are described fully later. (See also the summary of those bills dated 10-16-07.) In its Senate-passed form, Senate Bill 388 was tie-barred to Senate Bill 387, which addresses the same consumer protection topics as the House bills.

Senate Bill 388 contains the following provisions.

****** The Uniform Unclaimed Property Act (the escheats process) would not apply to gift certificates and gift cards if no inactivity fee or similar service fee is assessed against the certificate or card. Currently, the act says that a gift certificate that remains unclaimed by the owner for more than five years after becoming payable is presumed abandoned.

[Note that House Bill 4317, which is a companion bill to the H-1 version of Senate Bill 388, would prohibit charging an inactivity fee or other service fee to a consumer for the possession or use of a gift certificate. This means gift certificates and gift cards that fall within the definition found in House Bill 4050 would not be subject to the unclaimed property statute.

However, the definition of "gift certificate" does not include all kinds of gift cards; notably excluded are cards issued by financial institutions for use at multiple, unaffiliated

retailers or at automated teller machines. See the description of House Bill 4050 later in this summary.]

** A gift card or certificate, if covered by the act, would be presumed abandoned if either (1) it was not claimed or used for a period of five years or more after becoming payable or distributable; or (2) it was claimed or used one or more times without exhausting its full value and subsequently was not claimed or used for an uninterrupted period of five years.

** In the case of a gift certificate, the owner is presumed to be a gift recipient of the gift certificate, and the amount presumed abandoned is the price paid by the purchaser for the gift certificate, less the total of any purchases or fees assessed against the gift certificate.

The bill contains an effective date of April 1, 2008.

Tie-Barred Bills

House Bill 4050 (H-3) would create a new Section 3E to provide an extensive list of prohibitions. It is described in detail later.

House Bill 4317 (H-2) would add a new Section 3F which would prohibit charging an inactivity fee or other service fee to a consumer for the possession or use of a gift certificate. The bill would also amend Section 3 to include all the prohibitions in the three new sections (3E, 3F, and 3G) among the general list of unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade that are unlawful under the act.

House Bill 4680 (H-2) would add a new Section 3G which would prohibit selling a gift certificate or gift card to a consumer that expires within a period of less than five years.

The term "gift certificate" would include gift cards and other electronic payment devices.

The Michigan Consumer Protection Act is enforced by the Attorney General and by local prosecutors. Also, individuals, firms, and other entities can bring private actions to enforce the law in some circumstances.

House Bill 4050

Generally, the bill would prohibit the following:

- Refusing to accept a gift certificate in payment for goods and services used or bought for use primarily for personal, family, or household purposes, including goods or services advertised on sale or as part of a liquidation or closeout. (This does not apply if the gift certificate has a legal expiration date and is presented for redemption after that date.)

- Restricting the holder of the certificate from using it consistent with its terms and conditions.
- Altering any term or condition after the certificate is issued.
- Failing to disclose any terms or conditions to a prospective purchaser. (The bill specifies how these terms and conditions are to be disclosed.)
- Failing to disclose any terms or conditions by conspicuously printing them either on the certificate; on the envelope or packaging (if a toll-free number is on the certificate); or in a separate printed document (if a toll-free number is on the certificate).
- Failing, in any advertisement or promotion, to disclose through a notice that the certificate has terms or conditions.
- Refusing to apply a certificate or the balance of a certificate to the purchase price in cases where the purchase price of goods or services exceeds the value of the certificate or balance.

The bill defines "terms and conditions" so that the phrase includes, but is not limited to, and expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

The bill defines "gift certificate" as a written promise or a gift card or other electronic payment device that (1) is usable at a single retailer, at an affiliated group of retailers sharing the same name, mark, or logo, or at multiple, unaffiliated retailers or service providers; (2) is issued in a specified amount; (3) may or may not be increased in value or reloaded; (4) is purchased or reloaded on a prepaid basis for the future purchase or delivery of goods or services; and (5) is honored upon presentation.

The term "gift certificate" would not include: a general use, prepaid card or other electronic payment device issue or sponsored by a financial institution in a predetermined amount and usable at multiple, unaffiliated retailers or at automated teller machines; an electronic payment device linked to a deposit account; a prepaid telephone calling card; an electronic payment device used to access an account from which an individual can pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pre-tax basis under the federal Internal Revenue Code; a prepaid discount card or program used to purchase identified goods and services at a price or percentage below the normal and customary price, if any expiration date is clearly and conspicuously disclosed; a payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered; a gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or to an educational institution for fund-raising purposes; or a gift certificate distributed to a consumer or employee under an awards, rewards, loyalty, or promotional program, if there is no charge to the consumer or employee.

FISCAL IMPACT:

Senate Bill 388 would have no significant fiscal impact on the state.

Legislative Analyst: Chris Couch
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.