

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 127

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO TRADE PRACTICES; REGULATING THE SALE AND REDEMPTION
OF GIFT CERTIFICATES; ESTABLISHING PENALTIES; AMENDING A
SECTION OF THE UNCLAIMED PROPERTY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] GIFT CERTIFICATES--EXPIRATION--
FEES--PENALTIES.--

A. As used in this section, "gift certificate"
means a writing identified as a gift certificate that is not
redeemable in cash and is usable in its face amount in lieu of
cash in exchange for goods or services supplied by a seller,
but does not include a gift certificate useable with multiple
unaffiliated sellers or goods or services. "Gift certificate"
includes an electronic card with a banked dollar value, a
merchandise credit, a certificate where the issuer has received

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underscored material = new
[bracketed material] = delete

1 payment for the full face value for the future purchase or
2 delivery of goods or services and any other medium that
3 evidences the giving of consideration in exchange for the right
4 to redeem the certificate, electronic card or other medium for
5 goods or services of at least an equal value. "Gift
6 certificate" does not include:

7 (1) gift certificates, store gift cards or
8 general use prepaid cards distributed to a consumer for
9 promotional, award, incentive, rebate or other similar purposes
10 without any money or other tangible thing of value being given
11 by the consumer in exchange for the gift certificate, store
12 gift card or general use prepaid card;

13 (2) gift certificates, store gift cards or
14 general use prepaid cards that are sold below face value or at
15 a volume discount to employers or to nonprofit and charitable
16 organizations for fund-raising purposes;

17 (3) written promises, plastic cards or other
18 electronic devices that are:

19 (a) used solely for telephone services;

20 or

21 (b) are associated with a deposit,
22 checking, savings or similar account at a banking or other
23 similarly regulated financial institution and that provide
24 payments solely by debiting such account; and

25 (4) gift certificates issued by banks, savings

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1 and loan associations and their affiliates and subsidiaries,
 2 licensed money transmitters or credit unions operating pursuant
 3 to the laws of the United States or New Mexico.

4 B. A gift certificate shall not have an expiration
 5 date less than sixty months after the date upon which the gift
 6 certificate was issued. If an expiration date is not
 7 conspicuously stated on a gift certificate, that gift
 8 certificate shall be presumed to have no expiration date and
 9 shall be valid until redeemed or replaced.

10 C. An issuer of a gift certificate shall not charge
 11 a fee of any kind in relation to the sale, redemption or
 12 replacement of a gift certificate other than an initial charge
 13 not exceeding the face value of the gift certificate, nor may a
 14 gift certificate be reduced in value by any fee, including a
 15 service or dormancy fee.

16 D. A violation of this section shall constitute an
 17 unfair or deceptive trade practice and shall be subject to the
 18 penalties set forth in the Unfair Practices Act.

19 Section 2. Section 7-8A-2 NMSA 1978 (being Laws 1997,
 20 Chapter 25, Section 2) is amended to read:

21 "7-8A-2 PRESUMPTIONS OF ABANDONMENT.--

22 [~~(a)~~] A. Property is presumed abandoned if it is
 23 unclaimed by the apparent owner during the time set forth below
 24 for the particular property:

25 (1) traveler's check, fifteen years after

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1 issuance;

2 (2) money order, seven years after issuance;

3 (3) stock or other equity interest in a
4 business association or financial organization, including a
5 security entitlement under Article 8 of the Uniform Commercial
6 Code, five years after the earlier of:

7 [~~(i)~~] (a) the date of the most recent
8 dividend, stock split or other distribution unclaimed by the
9 apparent owner; or

10 [~~(ii)~~] (b) the date of the second
11 mailing of a statement of account or other notification or
12 communication that was returned as undeliverable or after the
13 holder discontinued mailings, notifications or communications
14 to the apparent owner;

15 (4) debt of a business association or
16 financial organization, other than a bearer bond or an original
17 issue discount bond, five years after the date of the most
18 recent interest payment unclaimed by the apparent owner;

19 (5) a demand, savings or time deposit,
20 including a deposit that is automatically renewable, five years
21 after the earlier of maturity or the date of the last
22 indication by the owner of interest in the property; but a
23 deposit that is automatically renewable is deemed matured for
24 purposes of this section upon its initial date of maturity,
25 unless the owner has consented to a renewal at or about the

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1 time of the renewal and the consent is in writing or is
2 evidenced by a memorandum or other record on file with the
3 holder;

4 (6) money or credits owed to a customer as a
5 result of a retail business transaction, three years after the
6 obligation accrued;

7 (7) gift certificate, [~~three~~] five years after
8 December 31 of the year in which the certificate was sold, but
9 if redeemable in merchandise only, the amount abandoned is
10 deemed to be sixty percent of the certificate's face value;

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

18 (9) property distributable by a business
19 association or financial organization in a course of
20 dissolution, one year after the property becomes distributable;

21 (10) property received by a court as proceeds
22 of a class action and not distributed pursuant to the judgment,
23 one year after the distribution date;

24 (11) property held by a court, government,
25 governmental subdivision, agency or instrumentality, one year

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1 after the property becomes distributable;

2 (12) wages or other compensation for personal
3 services, one year after the compensation becomes payable;

4 (13) deposit or refund owed to a subscriber by
5 a utility, one year after the deposit or refund becomes
6 payable;

7 (14) property in an individual retirement
8 account, defined benefit plan or other account or plan that is
9 qualified for tax deferral under the income tax laws of the
10 United States, three years after the earliest of the date of
11 the distribution or attempted distribution of the property, the
12 date of the required distribution as stated in the plan or
13 trust agreement governing the plan or the date, if determinable
14 by the holder, specified in the income tax laws of the United
15 States by which distribution of the property must begin in
16 order to avoid a tax penalty; and

17 (15) all other property, five years after the
18 owner's right to demand the property or after the obligation to
19 pay or distribute the property arises, whichever first occurs.

20 [~~(b)~~] B. At the time that an interest is presumed
21 abandoned under Subsection [~~(a)~~] A of this section, any other
22 property right accrued or accruing to the owner as a result of
23 the interest, and not previously presumed abandoned, is also
24 presumed abandoned.

25 [~~(e)~~] C. Property is unclaimed if, for the

1 applicable period set forth in Subsection [~~(a)~~] A of this
2 section, the apparent owner has not communicated in writing or
3 by other means reflected in a contemporaneous record prepared
4 by or on behalf of the holder, with the holder concerning the
5 property or the account in which the property is held and has
6 not otherwise indicated an interest in the property. A
7 communication with an owner by a person other than the holder
8 or its representative who has not in writing identified the
9 property to the owner is not an indication of interest in the
10 property by the owner.

11 [~~(d)~~] D. An indication of an owner's interest in
12 property includes:

13 [~~(i)~~] (1) the presentment of a check or other
14 instrument of payment of a dividend or other distribution made
15 with respect to an account or underlying stock or other
16 interest in a business association or financial organization
17 or, in the case of a distribution made by electronic or similar
18 means, evidence that the distribution has been received;

19 [~~(ii)~~] (2) owner-directed activity in the
20 account in which the property is held, including a direction by
21 the owner to increase, decrease or change the amount or type of
22 property held in the account;

23 [~~(iii)~~] (3) the making of a deposit to or
24 withdrawal from a bank account; and

25 [~~(iv)~~] (4) the payment of a premium with

1 respect to a property interest in an insurance policy; but the
2 application of an automatic premium loan provision or other
3 nonforfeiture provision contained in an insurance policy does
4 not prevent a policy from maturing or terminating if the
5 insured has died or the insured or the beneficiary of the
6 policy has otherwise become entitled to the proceeds before the
7 depletion of the cash surrender value of a policy by the
8 application of those provisions.

9 ~~(e)~~ E. Property is payable or distributable for
10 purposes of the Uniform Unclaimed Property Act (1995)
11 notwithstanding the owner's failure to make demand or present
12 an instrument or document otherwise required to obtain
13 payment."

14 Section 3. SEVERABILITY.--If any part or application of
15 this act is held invalid, the remainder or its application to
16 other situations or persons shall not be affected.

17 Section 4. APPLICABILITY.--The provisions of this act
18 apply to gift certificates sold or offered for sale on or after
19 July 1, 2007.

20 Section 5. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007.