

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

(1) gift certificates, store gift cards or general use prepaid cards distributed to a consumer for promotional, award, incentive, rebate or other similar

purposes without any money or other tangible thing of value being given by the consumer in exchange for the gift certificate, store gift card or general use prepaid card;

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

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

(a) used solely for telephone services;
or

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

(4) gift certificates issued by banks, savings and loan associations and their affiliates and subsidiaries, licensed money transmitters or credit unions operating pursuant to the laws of the United States or New Mexico.

B. A gift certificate shall not have an expiration date less than sixty months after the date upon which the gift certificate was issued. If an expiration date is not conspicuously stated on a gift certificate, that gift certificate shall be presumed to have no expiration date and

shall be valid until redeemed or replaced.

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

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

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

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

A. Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) traveler's check, fifteen years after issuance;
- (2) money order, seven years after issuance;
- (3) stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 of the Uniform Commercial Code, five years after the earlier of:

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

apparent owner; or

(b) 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;

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

(5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed 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;

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

(7) gift certificate, five years after December 31 of the year in which the certificate was sold, but

if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three 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;

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

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

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

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

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

(14) 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, three 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; and

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

B. At the time that an interest is presumed abandoned under Subsection A of this section, 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.

C. Property is unclaimed if, for the applicable period set forth in Subsection A of this section, 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.

D. An indication of an owner's interest in property includes:

(1) 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;

(2) 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;

(3) the making of a deposit to or withdrawal from a bank account; and

(4) the payment of a premium with respect to a property interest in an insurance policy; but 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.

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

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

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

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