



Four States Enact or Amend Laws Regulating Gift Cards

Hawaii enacted the Uniform Unclaimed Property Act which addresses gift cards, and three states amended their gift card statutes and/or unclaimed property laws.

Hawaii H.B. 2559 takes effect July 1, 2009, and provides that a gift certificate is presumed abandoned, and therefore subject to escheat, five years after December 31 of the year in which the certificate was sold. If the gift certificate is redeemable in merchandise only, the amount abandoned is 100% of the gift certificate's face value.

This provision does not apply to gift certificates that have no expiration date, no expiration period, and no type of post-sale charge or fee (including but not limited to service charges, dormancy fees, account maintenance fees, cash-out fees, replacement card fees, and activation or reactivation charges).

In addition, the above provision does not apply to gift certificates issued before January 1, 2010, that have an expiration date, expiration period, or any type of post-sale charge or fee if it is the policy and practice of the issuer of the gift certificate to: (a) honor the gift certificate after its expiration date or the end of its expiration period; and (b) eliminate all post sale charges and fees.

Gift certificate is defined as a "written promise or electronic payment device that is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated mer-

chants or service providers; is issued in a specific amount (which may or may not be denominated on the gift certificate or gift card); may or may not be increased in value or reloaded; is purchased, or loaded, or both, on a prepaid basis for the future purchase or delivery of any goods or services; and is honored upon presentation." This definition does not include an electronic payment device linked to a deposit account or prepaid telephone calling cards.

Maine L.D. 2181 amends the state's unclaimed property law by requiring that gift cards or stored value cards with a balance of \$5 or less that are redeemed in person be redeemed in cash at the holder's request. This requirement does not apply to pre-funded bank cards, promotional gift cards, prepaid telephone cards, gift cards that had an original face value of less than \$5, or a gift card provided as a refund for merchandise returned without a receipt. The amendment takes effect November 1, 2008.

Massachusetts S.B. 2345 takes effect June 9, 2008, and makes several changes to the state's gift certificate law and unclaimed property law. For gift certificates that prohibit the purchaser or holder from adding value to the certificate, when the certificate has been redeemed for at least 90% of its face value, the purchaser or holder shall elect to either receive the balance in cash or continue using the certificate. For gift certificates which allow the purchaser or holder to add value to the certificate, when the certificate has a value of \$5.00 or less, the purchaser or holder shall

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elect to receive the balance in cash or continue using the certificate.

The bill adds two new provisions relating to fees. Whoever sells or offers to sell a gift certificate, as defined by the statute, that imposes dormancy fees, latency fees, administrative fees, periodic fees, service fees or other fees that have the effect of reducing the total value amount for which the holder may redeem such gift certificate, shall be punished by a fine of not more than \$ 300 per violation.

However, whoever sells or offers to sell a gift certificate that imposes any fees or charges including, but not limited to, purchase fees, activation fees, renewal fees or cancellation fees, shall provide to consumers notice of any such fees, in writing, on the gift certificate, on the packaging of the gift certificate, or on both. (While such fees must be disclosed they are, presumably, permissible if their cost is added to the cost of the gift certificate rather than deducted from the value of the certificate.) Failure to print such notice shall be punished by a fine of not more than \$ 300 per violation.

The bill also provides a \$300 penalty if someone redeems a gift certificate and deducts a gratuity from the gift certificate without the holder's consent.

Finally, the bill amends the definition of gift certificate as follows: "A gift certificate shall not include pre-paid calling arrangements . . . or any electronic card usable with multiple unaffiliated sellers of goods or services."

Nebraska L.B. 668 revises the state's unclaimed property statute relating to when gift cards (including gift certificates) must be reported as unclaimed property. This bill takes effect July 18, 2008.

A gift card that is not assessed any fees and does not have an expiration date is not presumed to be abandoned and therefore does not need to be reported as unclaimed property. (Previously, this provision applied only to gift cards with a face value of less than \$100 and gift cards

with a face value of \$100 or more were presumed abandoned after three years from issuance.)

The bill makes a similar change to the exception to the above rule. Previously, gift cards with a face value of less than \$100 were not presumed abandoned, even if they contained expiration dates or fees, as long as the issuer's practice and policy was to waive all post-sale charges or fees and to honor such gift card, at no additional cost to the holder whenever presented at full face value or the value remaining after any applicable purchases, expiration date notwithstanding. A written notice of such policy and practice must be posted conspicuously at each site in all Nebraska locations at which the issuer distributes or redeems a gift card.

The bill amended this by deleting the restriction to gift cards with a face value of less than \$100, so it now applies to gift cards of any amount when the issuer meets the requirements described above. General use prepaid cards are exempted.

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