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BILL ANALYSIS

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Senate Bill 388 (as enacted)
House Bills 4050 and 4317 (as enacted)
House Bill 4680 (as enacted)
Sponsor: Senator Nancy Cassis (S.B. 388)
Representative Fred Miller (H.B. 4050)
Representative Mark Meadows (H.B. 4317)
Representative Michael Sak (H.B. 4680)

Senate Committee: Commerce and Tourism
House Committee: Commerce (S.B. 388 & H.B. 4050)
First House Committee: New Economy and Quality of Life (H.B. 4317 & 4680)
Second House Committee: Commerce (H.B. 4317 & 4680)

Date Completed: 4-15-09

CONTENT

Senate Bill 388 amended the Uniform Unclaimed Property Act to do the following:

- Specify that a gift certificate, gift card, or credit memo is presumed abandoned if it is not claimed or used five years after becoming payable or distributable, or if it is partially used or claimed one or more times but subsequently not claimed or used for five years.
- Specify that the Act does not apply to a gift certificate that is issued for retail goods or services by a person engaged in the retail sale of goods or services.

House Bills 4050, 4317, and 4680 amended the Michigan Consumer Protection Act to prohibit a retailer from doing any of the following:

- Selling a gift certificate that expires in less than five years.
- Refusing to accept a gift certificate, except after an expiration date that is at least five years after the purchase date.
- Restricting the use of a gift certificate in a manner that is consistent with its terms and conditions.

PUBLIC ACT 208 of 2008
PUBLIC ACTS 210 & 211 of 2008
PUBLIC ACT 209 of 2008

- Altering terms or conditions of a gift certificate after it is issued.
- Failing to disclose that terms and conditions apply to a gift certificate or card, if there are terms and conditions.
- Refusing to accept a gift certificate and apply it to a purchase if its value is less than the purchase price.
- Charging an inactivity fee or other service fee for the possession or use of a gift certificate.

House Bill 4317 also includes violations of those prohibitions as unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.

Senate Bill 388 took effect on September 30, 2008. House Bills 4050, 4317, and 4680 took effect on November 1, 2008. All of the bills were tie-barred.

Senate Bill 388

The Uniform Unclaimed Property Act specifies the conditions under which property is considered abandoned; provides for public notice of abandoned property; and provides for the disposition, sale, reclaiming, and reimbursement for sale of abandoned property. The Act creates a general

presumption of abandonment of tangible or intangible property that is held, issued, or owing in the ordinary course of business and remains unclaimed by the owner for more than five years. The Act also provides for the abandonment of specific types of property. Abandoned property must be delivered to the custody of the State, and subsequently may be claimed by the owner.

Previously, a gift certificate or credit memo issued in the ordinary course of an issuer's business that remained unclaimed by the owner for more than five years after becoming payable or distributable was presumed abandoned. In the case of a gift certificate, the amount presumed abandoned was the price paid by the purchaser for the gift certificate.

The bill provides, instead, that a gift certificate, gift card, or credit memo is presumed abandoned if either of the following applies:

- The certificate, card, or memo is not claimed or used for a period of five years after becoming payable or distributable.
- The certificate, card, or memo is used or claimed one or more times without exhausting its full value, but subsequently is not claimed or used for an uninterrupted period of five years.

A gift certificate or gift card is considered to have been claimed or used if there is any transaction processing activity on the certificate or card, including redeeming, refunding, or adding value to it. Activity initiated by the issuer of the certificate or card, including assessing inactivity fees or similar service fees, does not constitute transaction processing activity.

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

The bill specifies that the Act does not apply to a gift certificate as defined in Section 3e of the Michigan Consumer Protection Act (added by House Bill 4050), that is issued for retail goods or services by a person engaged in the retail sale of goods or services.

The Act includes gift certificates in its definition of "intangible property". The bill refers to gift certificates and gift cards, except as otherwise provided in the bill.

The Act provides that the expiration of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator (the State Treasurer) as required by the Act. The bill specifies that this provision does not apply to gift cards or gift certificates.

House Bill 4050

The bill added Section 3e to the Michigan Consumer Protection Act, to prohibit a person engaged in the retail sale of goods or services from doing any of the following in connection with a gift certificate issued for retail goods or services:

- Refusing to accept a gift certificate in payment for goods or services used or bought for use primarily for personal, family, or household purposes, including goods or services advertised on sale or pursuant to a liquidation or closeout, except for a gift certificate presented for redemption after an expiration date that does not violate Section 3g (enacted by House Bill 4680).
- Restricting the holder of a gift certificate from using it in a manner that is consistent with its stated terms and conditions.
- Altering any term or condition of a gift certificate after it is issued.
- If a gift certificate has any terms and conditions, failing to include in any advertisement or promotion for the gift certificate a notice stating that "terms and conditions are applied to gift certificates and gift cards".
- Refusing to accept the gift certificate and apply it to the purchase price of goods or services, if the value of the certificate or its remaining balance is less than the purchase price of the goods or services.

If a gift certificate has any terms or conditions, the bill prohibits the retailer from

failing to disclose those terms and conditions by conspicuously printing them on one of the following:

- The gift certificate.
- The envelope or packaging containing the gift certificate, if a toll-free telephone number to gain access to those terms and conditions is printed on the gift certificate.
- A separate printed document delivered to the purchaser, if a toll-free telephone number to gain access to those terms and conditions is printed on the gift certificate.

If a gift certificate offered for sale by mail has any terms or conditions, the bill prohibits the retailer from failing to disclose them to a prospective buyer by conspicuously stating in the offer that "terms and conditions are applied to gift certificates and gift cards". If a gift certificate is offered for sale by electronic, computer, or telephonic means, the retailer may not fail to disclose its terms and conditions by including a statement that "terms and conditions are applied to gift certificates or gift cards" before the prospective buyer is able to purchase the certificate, or conspicuously including that statement in the electronic message offering the gift certificate for purchase.

For purposes of all three House bills, "gift certificate" means a written promise or a gift card or other electronic payment device that meets all of the following:

- Is usable at a single retailer, at an affiliated group of retailers that share the same name, mark, or logo, or at multiple, unaffiliated retailers or service providers.
- Is issued in a specified amount.
- May or may not be increased in value or reloaded.
- Is purchased or loaded on a prepaid basis for the future purchase or delivery of goods or services.
- Is honored upon presentation.

"Gift certificate" does not include any of the following:

- A general use, prepaid card or other electronic payment device issued 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 regulated under State or Federal law, or a card used in connection with prepaid wireless telephone service.
- An electronic payment device used to gain access to an account from which an individual may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis under the Internal Revenue Code or regulations adopted pursuant to that Code.
- A prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program 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.
- 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.
- A gift certificate distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program, if the consumer or employee is not required to give consideration for the gift certificate.

The term also does not include an electronic credit voucher issued by the holder of a certificate issued under Chapter 411 (Air Carrier Certificates) or a permit issued under Chapter 413 (Foreign Air Transportation) of Title 49 of the U.S. Code (49 USC 41101-41113 or 49 USC 41301-41313).

"Person engaged in the retail sale of goods" includes a person conducting a closeout, liquidation, or going-out-of-business sale on behalf of the person engaged in the retail sale of goods or that person's creditors.

"Use" of a gift certificate includes making purchases with or adding value to the gift certificate. "Terms and conditions" includes an expiration date or a fee charged for the replacement of a gift certificate that is lost, stolen, or destroyed.

House Bill 4317

The Michigan Consumer Protection Act provides that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful, and contains a list of such practices. The Attorney General may bring an action to enjoin a method, act, or practice that violates the Act. The court may award costs to the prevailing party and may assess a civil fine of up to \$25,000 for a persistent and knowing violation.

The bill includes in the list of unlawful methods, acts, or practices a violation of Section 3e, 3f, or 3g (enacted by House Bills 4050, 4317, and 4680, respectively).

Section 3f prohibits a person engaged in the retail sale of goods or services from charging to a consumer an inactivity fee or other service fee for the possession or use of a gift certificate. "Service fee" does not include any fee charged to and paid by a consumer in connection with the sale of a gift certificate, unless the fee is deducted or debited from the face value of the gift certificate.

House Bill 4680

The bill enacted Section 3g of the Michigan Consumer Protection Act to prohibit a person engaged in the retail sale of goods or services from selling to a consumer a gift certificate that expires within a period of less than five years.

MCL 557.222 et al. (S.B. 388)
445.903e (H.B. 4050)
445.903 et al. (H.B. 4317)
445.903g (H.B. 4680)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The Office of Attorney General's existing budget should be able to absorb any additional costs associated with enforcing the Michigan Consumer Protection Act or promulgating any new rules to implement it due to these changes.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.