



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 387 (Substitute S-2 as passed by the Senate)
Senate Bill 388 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Nancy Cassis
Committee: Commerce and Tourism

Date Completed: 9-20-07

RATIONALE

Michigan law does not regulate the expiration of gift certificates or gift cards. Some retailers issue gift certificates or gift cards that include expiration dates while others do not, and some charge fees or decrease the value of the certificate or card if it is not redeemed within a certain time frame. Gift card and certificate expiration dates can vary widely, with some redeemable only for very short periods and others good for months or years after their purchase. Some people believe that this inconsistency in the length of time gift certificates or cards can be used and the assessment of fees for inactivity are inconvenient and unfair to consumers. It has been suggested that gift certificates and gift cards issued in Michigan should be redeemable for at least five years, and that they should not lose value for nonuse during that time.

In addition, under the Uniform Unclaimed Property Act, a gift certificate that remains unclaimed for more than five years is presumed to be abandoned property, which, under the Act, must be delivered to the custody of the State and subsequently may be claimed by the owner. Some people believe that an unused gift card or certificate should not be considered unclaimed property under the Act unless an inactivity or similar fee is assessed against the card or certificate.

CONTENT

Senate Bill 387 (S-2) would amend the Michigan Consumer Protection Act to do the following:

- **Prohibit as an unfair trade practice issuing a gift certificate or card that expired in less than five years; failing to disclose the expiration date conspicuously on the gift certificate or card, if it had an expiration date; failing to honor a gift certificate or card before it expired; or charging a fee if a consumer did not use a gift certificate or card.**
- **Specify that "gift certificate or gift card" would not include a card or certificate issued by a financial institution or one that was usable at multiple sellers of goods or services.**

Senate Bill 388 (S-2) would amend the Uniform Unclaimed Property Act to do the following:

- **Specify that a gift certificate, gift card, or credit memo would be presumed abandoned if it were not claimed or used five years after becoming payable or distributable, or if it were partially used or claimed once or more but subsequently not claimed or used for five years.**
- **Specify that the Act would not apply to a gift certificate or card if no inactivity fee or similar service fee were assessed against it.**

The bills are tie-barred and would take effect on April 1, 2008.

Senate Bill 387 (S-2)

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 would include in the list of unlawful methods, acts, or practices, for a person engaged in the retail sale of goods or services, doing any of the following in connection with a gift certificate or gift card for retail goods or services:

- Issuing to a consumer a gift certificate or gift card that expired in less than five years.
- Failing to disclose the expiration date by conspicuously printing it on the gift certificate or gift card, if the certificate or card had an expiration date.
- Failing to honor a gift certificate or gift card presented by a consumer after the date it was issued and before its expiration date, if any.
- Charging an inactivity fee or other similar service fee to a consumer if he or she did not use a gift certificate or gift card.

"Gift certificate or gift card" would mean a gift certificate or gift card that evidences a promise, made for consideration, by the seller or issuer of the certificate or card that goods or services will be provided to the holder of the certificate or card for the value shown. The term would include a gift certificate or gift card that contains a microprocessor chip, magnetic stripe, or other means for the storage of information that is prefunded and for which the value is decreased upon each use, a gift card, an electronic gift card, a stored value card or certificate, a store card, or a similar certificate or card. The term would not include a gift certificate or gift card that is issued or sponsored by a financial institution or is usable at multiple sellers of goods or services. (Separate subsidiaries of the same parent entity or separate franchisees of the same franchisor would not be considered multiple sellers.)

"Financial institution" would mean a bank, bank and trust, national bank, savings bank, savings and loan association, credit union, or money transmitter organized under the laws of Michigan, another state, the District

of Columbia, the United States, or any U.S. territory or protectorate, and their respective subsidiaries, affiliates, or holding companies.

Senate Bill 388 (S-2)

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.

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

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

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

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

In the case of a gift certificate or gift card, the owner would be presumed to be a gift recipient of the certificate or card, and the amount presumed abandoned would be 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 would not apply to a gift certificate or gift card if no inactivity fee or similar service fee were assessed against the certificate or card.

The Act includes gift certificates in its definition of "intangible property". The bill would refer 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 would not apply to gift cards or gift certificates.

MCL 445.903 (S.B. 387)
567.222 et al. (S.B. 388)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Often, the purchaser or recipient of a gift card or certificate will set it aside to use in the future or put it away somewhere and forget about it. It can be frustrating for that person to realize, upon deciding to use the gift or finding it months, or even years, later, that the card or certificate is no longer redeemable because it has expired. Neither the gift recipient nor the purchaser, then, receives the goods or services that were paid for in advance. The seller, meanwhile, retains the money paid for the gift card or certificate without providing commensurate goods or services.

Senate Bill 387 (S-2) would address this by making it an unlawful trade practice under the Michigan Consumer Protection Act for a retailer to issue a gift card or certificate that expired in less than five years, fail to disclose an expiration date conspicuously on a card or certificate, fail to honor a gift card or certificate before it expired, or charge an inactivity fee for the nonuse of a gift card or certificate. The bill would be a strong consumer protection measure for purchasers and recipients of gift certificates and cards. A five-year minimum for the redemption of gift certificates or cards would give consumers a reasonable and consistent period in which to use their gifts while also establishing a consistent minimum expiration date for the convenience and benefit of both consumers and merchants. Prohibiting retailers from charging inactivity fees for nonuse of a gift card or certificate also would protect consumers by ensuring that the person who redeemed the gift received the value of goods or services paid for by its purchaser.

Response: Some businesses and consumers advocate a prohibition against any expiration date on gift certificates or cards. The National Restaurant Association, for instance, is opposed to expiration dates and dormancy fees because its members would rather bring customer traffic to their doors than lose customers by failing to honor a gift certificate or card. Also, any expiration on the redemption of gift cards or certificates would deprive consumers of the goods or services whose value was paid for by the purchaser of the card, particularly since, under Senate Bill 388 (S-2), the value of an unused gift card or certificate typically could not be claimed as abandoned property under the Uniform Unclaimed Property Act.

Supporting Argument

Under Senate Bill 387 (S-2), the definition of "gift certificate or gift card" would exclude a card or certificate that was issued or sponsored by a financial institution or usable at multiple sellers of goods or services (such as the stores within a mall). Unlike gift cards or certificates issued by a single retailer, these types of prepaid cards operate similarly to credit or debit cards in that they use the infrastructure of a bankcard payment network such as Visa, MasterCard, Discover, or American Express. The ability to generate fee revenue for the use of those systems is essential to the

economic viability of these popular consumer products.

Response: If cards or certificates issued by a financial institution or redeemable at multiple sellers were excluded from the bill's requirements, those issuers would be exempt from the prohibition against charging fees, but could issue gift cards that had a short expiration period and would not have to display the expiration date conspicuously.

Supporting Argument

The bills would clarify the treatment of unredeemed gift cards and certificates under the Uniform Unclaimed Property Act. Gift certificates (but not gift cards) currently are included in the Act's definition of "intangible property", and therefore are subject to the requirements for abandoned intangible property. This means that if a gift certificate is not used after five years, the seller is supposed to turn over its value to the State, and the owner should be able to recover that amount from the State. The seller, however, can refuse to honor a gift certificate after it expires, which might be in as little as 90 days, and keep the money until the property is legally considered abandoned. The recipient, who cannot redeem the gift certificate, also cannot recover its value from the State without waiting several years, and then can do so only if the seller complies with the Act.

Furthermore, most people who purchase gift certificates or cards do so to give gifts to others and are not required to register the certificate or card in the name of the recipient. If that card or certificate, then, is no longer the property of the purchaser and the recipient has no proof of ownership, it would be difficult for either party to reclaim the property from the State. On the other hand, enforcing the Act in cases of unclaimed gift cards and certificates could create an administrative nightmare for the Department of Treasury as well as the retail industry.

Senate Bill 388 (S-2) would exclude from the Uniform Unclaimed Property Act a gift certificate or card if no inactivity fee or similar service fee were assessed against it. Since Senate Bill 387 (S-2) would prohibit the assessment of such fees on gift certificates or cards issued by a single seller of goods or services, those cards or certificates would not constitute abandoned

property under the Act after going unclaimed for more than five years. Gift card or certificate issuers would have to turn over to the State the value of unclaimed cards and certificates only if the issuers charged inactivity or similar fees.

Response: Gift certificates or cards should be exempt from the Uniform Unclaimed Property Act only if they had no expiration date. If a certificate or card expired and were not turned over to the State as unclaimed property, the purchaser or gift recipient never would have a way to redeem the value of the purchased gift. This would result in a windfall to the seller.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 387 (S-2)

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 this proposed change.

Senate Bill 388 (S-2)

The bill would have no fiscal impact on State or local government.

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.