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

Date Completed: 6-4-07

### **CONTENT**

**Senate Bills 387 (S-2) and 388 (S-2) would amend the Michigan Consumer Protection Act and the Uniform Unclaimed Property Act, respectively, to do all of 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 after it was issued and before it expired; or charging a fee if a consumer did not use a gift certificate or card.**
- 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 an uninterrupted period of five years.**
- Include gift cards in the definition of "intangible property" under the Uniform Unclaimed Property Act.**

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)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bill 387 (S-2)**

Any additional costs associated with enforcing the Michigan Consumer Protection Act or promulgating any new rules to implement it due to this proposed change should be absorbable within the Office of Attorney General's existing budget.

#### **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.