

Senator Wayne L. Niederhauser proposes the following substitute bill:

GIFT CARD AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill modifies the Unclaimed Property Act to address gift cards.

Highlighted Provisions:

This bill:

- ▶ defines "gift card";
- ▶ exempts a gift card that meets certain conditions from the Unclaimed Property Act;

and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-4a-102, as last amended by Laws of Utah 2004, Chapter 92

67-4a-211, as last amended by Laws of Utah 1998, Chapter 248

Be it enacted by the Legislature of the state of Utah:

1st Sub. S.B. 270



26 Section 1. Section **67-4a-102** is amended to read:

27 **67-4a-102. Definitions.**

28 As used in this chapter:

29 (1) "Administrator" means the deputy state treasurer assigned by the state treasurer to
30 administer the law governing unclaimed property in Utah.

31 (2) "Apparent owner" means the person whose name appears on the records of the
32 holder as the person entitled to property held, issued, or owing by the holder.

33 (3) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or
34 financial organization is directly liable.

35 (b) "Bank draft" includes:

36 (i) a cashier's [~~checks~~] check; and

37 (ii) a certified [~~checks~~] check.

38 (c) "Bank draft" does not include:

39 (i) a traveler's [~~checks~~] check; or

40 (ii) a money [~~orders~~] order.

41 (4) "Banking organization" means:

42 (a) a bank;

43 (b) an industrial bank;

44 (c) a trust company;

45 (d) a savings bank; or

46 (e) any organization defined by other law as a bank or banking organization.

47 (5) "Business association" means a nonpublic corporation, joint stock company,
48 investment company, business trust, partnership, or association for business purposes of two or
49 more individuals, whether or not for profit, including:

50 (a) a banking organization;

51 (b) a financial organization;

52 (c) an insurance company; or

53 (d) a utility.

54 (6) "Cashier's check" means a check that:

55 (a) is drawn by a banking organization on itself[;];

56 (b) is signed by an officer of the banking organization[~~, authorizing~~]; and

- 57 (c) authorizes payment of the amount shown on its face to the payee.
- 58 (7) "Class action" means a legal action:
- 59 (a) certified by the court as a class action; or
- 60 (b) treated by the court as a class action without being formally certified as a class
- 61 action.
- 62 (8) (a) "Deposit in a financial institution" means a demand, savings, or matured time
- 63 deposit with a banking or financial organization.
- 64 (b) "Deposit in a financial institution" includes:
- 65 (i) any interest or dividends on a deposit; and
- 66 (ii) a deposit that is automatically renewable.
- 67 (9) "Domicile" means:
- 68 (a) the state of incorporation of a corporation; and
- 69 (b) the state of the principal place of business of an unincorporated person.
- 70 (10) "Financial organization" means:
- 71 (a) a savings and loan association; or
- 72 (b) a credit union.
- 73 (11) "Gift card" means a payment device such as a plastic card that:
- 74 (a) is usable at:
- 75 (i) a single merchant;
- 76 (ii) an affiliated group of merchants; or
- 77 (iii) multiple, unaffiliated merchants;
- 78 (b) contains a means for the electronic storage of information including:
- 79 (i) a microprocessor chip;
- 80 (ii) a magnetic stripe; or
- 81 (iii) a bar code;
- 82 (c) is prefunded before it is used, whether or not monies may be added to the payment
- 83 device after it is used; and
- 84 (d) is redeemable for goods or services.
- 85 [~~(11)~~] (12) "Government entity" means:
- 86 (a) the state;
- 87 (b) [~~any~~] an administrative unit of the state;

- 88 (c) [~~any~~] a political subdivision of the state;
- 89 (d) [~~any~~] an administrative unit of a political subdivision of the state; or
- 90 (e) [~~any~~] an officer or employee of an entity described in Subsections [~~(11)~~] (12)(a)
- 91 through (d).

92 [~~(12)~~] (13) "Holder" means a person, wherever organized or domiciled, who is:

- 93 (a) in possession of property belonging to another;
- 94 (b) a trustee;
- 95 (c) indebted to another on an obligation; or
- 96 (d) charged with the duty of paying or delivering intangible property under Section
- 97 67-4a-302.

98 [~~(13)~~] (14) "Insurance company" means an association, corporation, fraternal or mutual

99 benefit organization, whether or not for profit, that is engaged in providing insurance coverage,

100 including:

- 101 (a) accident insurance;
- 102 (b) burial insurance;
- 103 (c) casualty insurance;
- 104 (d) credit life insurance;
- 105 (e) contract performance insurance;
- 106 (f) dental insurance;
- 107 (g) fidelity insurance;
- 108 (h) fire insurance;
- 109 (i) health insurance;
- 110 (j) hospitalization insurance;
- 111 (k) illness insurance;
- 112 (l) life insurance, including endowments and annuities;
- 113 (m) malpractice insurance;
- 114 (n) marine insurance;
- 115 (o) mortgage insurance;
- 116 (p) surety insurance; and
- 117 (q) wage protection insurance.

118 [~~(14)~~] (15) (a) "Intangible property" includes:

- 119 (i) [~~monies, checks, drafts, deposits~~] money, a check, a draft, a deposit in a financial
 120 institution, interest, [~~dividends~~] a dividend, and income;
- 121 (ii) a credit [~~balances~~] balance, a customer [~~overpayments~~] payment, a gift [~~certificates~~]
 122 certificate over \$25, a security [~~deposits~~] deposit, [~~refunds~~] a refund, a credit [~~memos~~] memo,
 123 unpaid wages, an unused airline [~~tickets~~] ticket, and an unidentified [~~remittances~~] remittance;
- 124 (iii) [~~stocks~~] a stock, a mutual [~~funds~~] fund, and other intangible ownership interests in
 125 a business [~~associations~~] association;
- 126 (iv) monies deposited to redeem [~~stocks, bonds, coupons~~] a stock, bond, or coupon,
 127 and other securities or to make [~~distributions~~] a distribution;
- 128 (v) [~~bonds, notes~~] a bond, note, and any other debt [~~obligations~~] obligation;
- 129 (vi) [~~amounts~~] an amount due and payable under the terms of an insurance [~~policies~~]
 130 policy;
- 131 (vii) [~~amounts~~] an amount distributable from a trust or custodial fund established under
 132 a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock
 133 purchase, profit sharing, employee savings, supplemental unemployment insurance or similar
 134 benefits; and
- 135 (viii) [~~amounts~~] an amount distributable from a mineral interest in land.
- 136 (b) "Intangible property" does not include patronage capital of an electric, telephone,
 137 and agricultural [~~cooperatives~~] cooperative.
- 138 [~~(15)~~] (16) "Last-known address" means a description of the location of the apparent
 139 owner sufficient for the purpose of the delivery of mail.
- 140 [~~(16)~~] (17) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other
 141 substance that is ordinarily and naturally considered a mineral, regardless of the depth at which
 142 the oil, gas, uranium, sulphur, lignite, coal, or other substance is found.
- 143 [~~(17)~~] (18) "Mineral proceeds" includes:
- 144 (a) all obligations to pay resulting from the production and sale of minerals, including:
- 145 (i) net revenue interest;
- 146 (ii) royalties;
- 147 (iii) overriding royalties;
- 148 (iv) production payments; and
- 149 (v) joint operating agreements; and

150 (b) all obligations for the acquisition and retention of a mineral lease, including:

151 (i) bonuses;

152 (ii) delay rentals;

153 (iii) shut-in royalties; and

154 (iv) minimum royalties.

155 ~~[(18)]~~ (19) (a) "Money order" means a negotiable draft issued by a business association
156 for which the business association is not directly liable.

157 (b) "Money order" does not mean a cashier's check.

158 ~~[(19)]~~ (20) "Net intangible property" means intangible property that is held, issued, or
159 owing in the ordinary course of a holder's business:

160 (a) plus any income or increment derived from ~~[it]~~ the intangible property; and

161 (b) less any lawful charges.

162 ~~[(20)]~~ (21) "Owner" means:

163 (a) a depositor in the case of a deposit;

164 (b) a beneficiary in the case of a trust other than a deposit in trust;

165 (c) a creditor, claimant, or payee in the case of other intangible property; or

166 (d) a person or that person's legal representative having a legal or equitable interest in
167 property subject to this chapter.

168 ~~[(21)]~~ (22) (a) "Ownership purchase funds" means any funds paid toward the purchase
169 of a share, a mutual investment certificate, or any other interest in a banking or financial
170 organization.

171 (b) "Ownership purchase funds" includes any interest or dividends paid on those funds.

172 ~~[(22)]~~ (23) "Person" means:

173 (a) an individual;

174 (b) a business association;

175 (c) a government entity;

176 (d) a public corporation;

177 (e) a public authority;

178 (f) an estate;

179 (g) a trust;

180 (h) two or more persons having a joint or common interest; or

181 (i) any other legal or commercial entity.

182 [~~(23)~~] (24) "State" means any state, district, commonwealth, territory, insular
183 possession, or any other area subject to the legislative authority of the United States.

184 [~~(24)~~] (25) "Utility" means a person who owns or operates for public use any plant,
185 equipment, property, franchise, or license for:

186 (a) the transmission of communications, including cable television; or

187 (b) the production, storage, transmission, sale, delivery, or furnishing of electricity,
188 water, steam, or gas.

189 Section 2. Section **67-4a-211** is amended to read:

190 **67-4a-211. Gift certificates -- Credit memos -- Gift cards.**

191 (1) As used in this section:

192 (a) "Purchaser" means a person who purchases:

193 (i) a gift certificate; or

194 (ii) a gift card that is not excluded from this chapter under Subsection (5).

195 (b) "Recipient" means a person who receives a credit memo.

196 [~~(1)~~] (2) [~~A gift certificate greater than \$25 or a credit memo~~] The following that
197 remains unreconsidered for more than five years after issuance is considered abandoned[-]:

198 (a) a gift certificate greater than \$25;

199 (b) a gift card that:

200 (i) has attached to ~~it~~ \hat{S} \rightarrow [it] more than \leftarrow \hat{S} \$25 \hat{S} \rightarrow [when purchased] \leftarrow \hat{S} ; and

201 (ii) is not excluded from this chapter under Subsection (5); or

202 (c) a credit memo.

203 [~~(2)~~] (3) (a) In the case of a gift certificate, the amount considered abandoned under
204 this section is the price paid for the gift certificate itself.

205 (b) In the case of a gift card described in Subsection (2)(b), is the amount of money
206 attached to the gift card at the time the gift card is considered abandoned.

207 [~~(b)~~] (c) In the case of a credit memo, the amount considered abandoned under this
208 section is the amount credited as shown on the credit memo itself.

209 [~~(3)~~] (4) The amount of a gift certificate, gift card described in Subsection (2)(b), or
210 credit memo considered abandoned is subject to the custody of this state when the records of
211 the issuer:

212 (a) ~~[the records of the issuer]~~ show that the last-known address of the purchaser ~~[of the~~
 213 ~~certificate]~~ or recipient ~~[of the memo]~~ is in Utah;

214 (b) ~~[the records of the issuer]~~ do not show the address of the purchaser or recipient, but
 215 do show that the gift certificate ~~↳~~ ~~[, gift card,]~~ ~~←~~ or credit memo was issued in Utah;

216 (c) ~~[the records of the issuer]~~ do not show the address of the purchaser or of the
 217 recipient and do not show the state where the gift certificate, gift card, or credit memo was
 218 issued, but the issuer is domiciled in Utah; or

219 (d) ~~[the records of the issuer]~~ show that the state contained in the address of the
 220 purchaser or recipient, or if none, the state where the gift certificate, gift card, or credit memo
 221 was issued, is a state whose escheat or unclaimed property law does not provide for the escheat
 222 or custodial taking of a gift ~~[certificates and]~~ certificate, gift card, or a credit [memos] memo,
 223 and the issuer is domiciled in Utah.

224 (5) This chapter does not apply to a gift card if the monies attached to the gift card:

225 (a) do not expire; and

226 (b) are not subject to a ~~↳~~ [post-sale] monthly post sale ~~←~~ :

227 (i) ~~↳~~ [monthly] ~~←~~ maintenance fee or charge; or

228 (ii) dormancy fee or charge.

S.B. 270 1st Sub. (Green) - Gift Card Amendments - As Amended

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will reduce state revenues by \$100,000 in FY 2010 and by \$110,000 in FY 2011. This ten percent per annum increase will likely continue in FY 2012 and for the foreseeable future.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Uniform School Fund	\$0	\$0	\$0	\$0	(\$110,000)	(\$110,000)
Uniform School Fund, One-time	\$0	\$0	\$0	\$0	\$10,000	\$0
Total	\$0	\$0	\$0	\$0	(\$100,000)	(\$110,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses providing gift cards as stipulated in the bill will benefit from the value of unredeemed cards.