

GIFT CARD AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

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:

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

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) whether or not monies may be added to the payment device after use, is:

83 (i) prefunded before use; and

84 (ii) decremented upon each use; and

85 (d) is redeemable for goods or services.

86 [(H)] (12) "Government entity" means:

87 (a) the state;

88 (b) ~~any~~ an administrative unit of the state;

89 (c) ~~any~~ a political subdivision of the state;

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

93 [~~(12)~~] (13) "Holder" means a person, wherever organized or domiciled, who is:

- 94 (a) in possession of property belonging to another;
- 95 (b) a trustee;
- 96 (c) indebted to another on an obligation; or
- 97 (d) charged with the duty of paying or delivering intangible property under Section
98 67-4a-302.

99 [~~(13)~~] (14) "Insurance company" means an association, corporation, fraternal or mutual
100 benefit organization, whether or not for profit, that is engaged in providing insurance coverage,
101 including:

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

119 [~~(14)~~] (15) (a) "Intangible property" includes:

- 120 (i) [~~monies, checks, drafts, deposits~~] money, a check, a draft, a deposit in a financial

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

- 152 (i) bonuses;
- 153 (ii) delay rentals;
- 154 (iii) shut-in royalties; and
- 155 (iv) minimum royalties.
- 156 ~~[(18)]~~ (19) (a) "Money order" means a negotiable draft issued by a business association
- 157 for which the business association is not directly liable.
- 158 (b) "Money order" does not mean a cashier's check.
- 159 ~~[(19)]~~ (20) "Net intangible property" means intangible property that is held, issued, or
- 160 owing in the ordinary course of a holder's business;
- 161 (a) plus any income or increment derived from ~~[it]~~ the intangible property; and
- 162 (b) less any lawful charges.
- 163 ~~[(20)]~~ (21) "Owner" means:
- 164 (a) a depositor in the case of a deposit;
- 165 (b) a beneficiary in the case of a trust other than a deposit in trust;
- 166 (c) a creditor, claimant, or payee in the case of other intangible property; or
- 167 (d) a person or that person's legal representative having a legal or equitable interest in
- 168 property subject to this chapter.
- 169 ~~[(21)]~~ (22) (a) "Ownership purchase funds" means any funds paid toward the purchase
- 170 of a share, a mutual investment certificate, or any other interest in a banking or financial
- 171 organization.
- 172 (b) "Ownership purchase funds" includes any interest or dividends paid on those funds.
- 173 ~~[(22)]~~ (23) "Person" means:
- 174 (a) an individual;
- 175 (b) a business association;
- 176 (c) a government entity;
- 177 (d) a public corporation;
- 178 (e) a public authority;
- 179 (f) an estate;
- 180 (g) a trust;
- 181 (h) two or more persons having a joint or common interest; or
- 182 (i) any other legal or commercial entity.

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

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

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

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

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

191 **67-4a-211. Gift certificates -- Credit memos -- Gift cards.**

192 (1) As used in this section:

193 (a) "Purchaser" means a person who purchases a gift certificate.

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

195 ~~[(1)]~~ (2) ~~[A gift certificate greater than \$25 or a credit memo]~~ The following that
 196 remains unreconsidered for more than five years after issuance is considered abandoned[-]:

197 (a) a gift certificate greater than \$25; or

198 (b) a credit memo.

199 ~~[(2)]~~ (3) (a) In the case of a gift certificate, the amount considered abandoned under
 200 this section is the price paid for the gift certificate itself.

201 (b) In the case of a credit memo, the amount considered abandoned under this section
 202 is the amount credited as shown on the credit memo itself.

203 ~~[(3)]~~ (4) The amount of a gift certificate or credit memo considered abandoned is
 204 subject to the custody of this state when the records of the issuer:

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

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

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

212 (d) ~~[the records of the issuer]~~ show that the state contained in the address of the
 213 purchaser or recipient, or if none, the state where the gift certificate or credit memo was issued,

214 is a state whose escheat or unclaimed property law does not provide for the escheat or custodial
215 taking of a gift [~~certificates and~~] certificate or a credit [~~memos~~] memo, and the issuer is
216 domiciled in Utah.

217 (5) This chapter does not apply to a gift card if:

218 (a) the monies attached to the gift card do not expire solely because the gift card is not
219 used; and

220 (b) no charge is imposed for not using the gift card.

Legislative Review Note
as of 2-23-09 6:10 PM

Office of Legislative Research and General Counsel