

2006 Legislative Trends and Highlights

GIFT CARDS

Arizona Senate Bill 1299, effective October 31, 2005, requires that gift card fees and expiration dates be conspicuously disclosed to consumers before purchase is made. Loyalty cards, prepaid telephone cards, and cards sold below face value to a nonprofit are exempt from this requirement.

Connecticut Senate Bill 123, effective October 1, 2005, exempts gift certificates from the unclaimed property law as of the effective date. Connecticut has also repealed the provision it adopted in 2003, in which the default address for a gift certificate was deemed to be that of the State Treasurer. Companies that failed to report or deliver abandoned gift certificates to the Treasurer prior to August 16, 2003, are not liable to the Treasurer for interest or any other penalty relating to such failure.

Georgia Senate Bill 13, effective October 1, 2005, provides that failure to notify consumers of certain information, including expiration dates and dormancy fees for gift certificates, may be deemed an unfair or deceptive practice in consumer transactions.

Nebraska Legislative Bill 173, effective November 2, 2006, excludes from reporting gift certificates having a face value of less than one hundred dollars, which are not assessed any fees and which do not have an expiration date. Gift certificates containing an expiration date or having fees have a dormancy period of three years. The dormancy period for general-use prepaid cards is five years after the last transaction initiated by the card owner.

New Jersey Assembly Bill 1079, effective July 4, 2006, provides that gift certificates sold after effective date shall retain full unused value until presented for merchandise, or have all conditions below disclosed to purchaser at time of purchase. No gift certificate or card shall expire within 24 months following sale. No dormancy fee shall be charged with 24 months of sale or within 24 months immediately following the most recent transaction in it was used. A dormancy fee may not exceed \$2 per month. Terms of expiration date or dormancy fee shall be disclosed to a consumer in the manner specified within the act. No action for violations relating to font size of notice to consumers may be enforced on or before 365 days following date of enactment.

North Dakota Senate Bill 2335, effective August 1, 2005, defines gift certificate as a record, including a magnetic record, evidencing a promise by the seller or issuer that goods or services will be provided to the owner of record. It does not include a prepaid card or debit card. No additional monthly or annual or maintenance fees may be charged. The gift certificate may not expire earlier than 6 years after the date of purchase.

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Ohio Senate Bill 33, effective March 14, 2006, provides that gift cards may not contain an expiration date that is earlier than two years after the issuance of the card and may not be subject to fees that reduce the value of the card within that two year period.

Oklahoma House Bill 1986, effective November 1, 2005, is a "Gift Certificate and Gift Card Disclosure Act." Gift card and gift certificate are defined. It is unlawful to sell a gift certificate that contains an expiration date less than 60 months from the date of purchase, or a service fee, including a dormancy fee, unless certain requirements are met. Issuers in bankruptcy must continue to honor gift certificates during the bankruptcy.

Oklahoma House Bill 2635, effective November 1, 2006, amends the gift card law to include "prepaid service arrangements."

Rhode Island Senate Bill 1221, effective July 19, 2005, expands the definition of "gift certificate" to include "a prepaid long distance telephone service that is activated by a prepaid card that requires dialing an access number or an access code for each call in addition to dialing the phone number to which the user of the prepaid card seeks to connect." An exemption of prepaid cards usable at multiple, unaffiliated merchants or service providers was eliminated. The legislation passed without the governor's signature.

Rhode Island Senate Bill 491, effective July 7, 2005, provides that gift certificates are not presumed abandoned.

Tennessee House Bill 2574, effective July 1, 2006, provides that no person may sell a gift certificate containing an expiration date of less than two years or charge a fee for the issuance of a gift certificate, but this section does not apply to loyalty or charitable fund raising gift cards or to a gift card usable with multiple, unaffiliated sellers of good or services. No service charges may be charged within two years of the issuance of the gift certificate. If the gift certificate does not contain an expiration date, then it is valid until redeemed or replaced. A gift certificate does not include a prepaid telephone calling card.

Texas Senate Bill 446, effective September 1, 2005, defines "stored value card." The definition does not apply to:

- a card that is distributed pursuant to a loyalty or promotional program and not issued in exchange for money;
- a card that is sold below face value or donated;
- a card that is issued by a financial institution acting as a financial agent for the United States or Texas;
- certain prepaid calling cards;
- cards that do not expire and for which the seller does not charge fees other than for reasonable handling fees for issuance or adding of value, access to an unmanned teller machine, and for replacement fee for lost or expired cards. Stored value cards are deemed abandoned, unless the exceptions listed above apply, to the extent of unredeemed value,
- On the earlier of the card's expiration date,
- The third anniversary of the date the card was issued, if it is not used,

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- Or the first anniversary of the date the card was issued, or the date the card was last used or value was added, if the card's value represents wages.

If the holder sells or issues a stored value card in Texas and does not obtain the name and address of the owner, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller. Fees may not be charges against a stored value card once it is deemed abandoned. These changes apply only to stored value cards issued or activated on or after the effective date of this legislation.

Virginia House Bill 2218, effective July 1, 1005, requires that certain disclosures be made on gift certificates, such as a statement of the expiration date of the certificate or a telephone number or Internet address where this information may be obtained. Similar bill: Virginia Senate Bill 1241.

Virginia Senate Bill 1241, effective July 1, 2005, establishes required disclosures for gift certificates issued in Virginia. The date of expiration and a telephone number or Internet address must be imprinted on the certificate. Similar bill: Virginia House Bill 2218.

Vermont House Bill 198, effective July 1, 2005, requires that gift certificates may not expire prior to three years after the date of issuance. The date of issuance and expiration date must be identified on the card, or if it is an electronic card with a banked dollar value, then the information must be printed on the receipt, or made available to the purchaser by means of an internet site or a toll free information telephone line. If there is no expiration date communicated as described, the card shall be deemed to have no expiration date. Following the date of expiration, any unused portion shall be returned to the holder of the gift certificate, if requested. Dormancy fees and other administration fees are prohibited. If the balance on a gift certificate is less than \$1, the certificate shall be redeemable in cash for the remaining value upon demand of the certificate holder. The bill also adds other provisions relating to gift certificates and responsibilities of issuers, including monetary penalties. A violation of these provisions is also deemed a violation of the Vermont consumer fraud act and a consumer may bring a private action for violation. Exemptions from the provisions include:

1. Gift certificates issued pursuant to a loyalty program.
2. Gift certificates donated to a charitable organization and issued without any money or thing of value given in exchange.
3. Prepaid calling cards issued solely to provide an access number and authorization code for prepaid calling services.
4. Gift certificates for food products, provided the expiration date is printed on the face or back in at least 10-pt font.
5. Ski season passes or discount ski cards sold for admission to a recreational activity.

Vermont Senate Bill 158, effective July 1, 2006, is a version of the Uniform Unclaimed Property Act (1995). The legislature deliberately omitted gift cards from the definitions in the act.

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DORMANCY PERIODS (NON-SECURITIES)

Arizona Senate Bill 1148, effective March 31, 2006, increases the dormancy period for tangible property held in a safe deposit box or other safekeeping depository from one year to three years.

Delaware Senate Bill 25, effective April 27, 2005, requires holders to immediately report and pay over property that would ordinarily be payable to this state but which some other state might require be paid to the other state because of a shorter abandonment period.

Florida Senate Bill 1330, effective July, 1 2005, reduces the dormancy period for credit union accounts to five years.

New York Senate Bill 6460, effective April 26, 2006. The dormancy period for unclaimed dividends, underlying and unexchanged shares and dividend reinvestment plans is reduced to three years. The dormancy period for negotiable instruments under the uniform commercial code or for certified checks held by banking organizations is reduced to three years. The dormancy period for outstanding checks for goods or for services is reduced to three years.

New York Senate Bill 6460, effective April 26, 2006, provides that unclaimed securities or dividends, which have a foreign address, held by banking organizations as agent or trustee for the owner of American depository receipts, are deemed abandoned and reportable to New York.

Vermont House Bill 464 makes numerous changes. The dormancy period is reduced to 3 years for banking or financial institution property; insurance company property, utility deposits and refunds, undistributed dividends and distributions, property held by fiduciaries, property held by courts and public officers and agencies, and miscellaneous intangible property. Property distributable in the course of a demutualization is deemed abandoned 2 years from the date of the demutualization if the owner's last known address is known to be incorrect, and there has been no owner activity within the period.

Vermont Senate Bill 158, effective July 1, 2006, is a version of the Uniform Unclaimed Property Act (1995). The dormancy period for most property types is three years, except for

1. Traveler's checks, 15 years;
2. Money orders, seven years,
3. Property distributable in a dissolution, one year;
4. Class action proceeds, one year;
5. Property held by courts or governmental agencies, one year;
6. Wages, one year;
7. Safe Deposit box contents, five years.

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DORMANCY PERIODS (SECURITIES)

Florida House Bill 1527, effective June 8, 2005, makes a number of changes: The dormancy period of all securities related property (including debt, other than bearer bonds or original issue discount bonds) is reduced to three years. The dormancy period for matured bearer and original issue discount bonds is three years.

New York Senate Bill 6460, effective April 26, 2006. The dormancy period for unclaimed dividends, underlying and unexchanged shares and dividend reinvestment plans is reduced to three years.

North Carolina House Bill 672, effective June 30, 2005, reduces the dormancy period for all securities related property from five to three years. The amendment covers underlying shares, dividend reinvestment plan shares, non-dividend paying stock, dividends, amounts from a demutualized insurance company, and all debt evidenced by a matured or called bearer bond or an original issue discount bond, if a principal or interest payment is unclaimed by the apparent owner. According to information received by ACSUPCH, the state has decided that it will delay formal implementation of the 3 year abandonment period reduction until the May 2006 report (which is limited to life insurers); the first unclaimed securities report for other companies at 3 years will be November 1, 2006.

Oklahoma Senate Bill 451, effective November 1, 2005, reduces the dormancy period for all securities related property to three (3) years.

Tennessee Senate Bill 3182, effective July 1, 2006, reduces the dormancy period for undistributed dividends and distributions of business associations to three years. According to the state administrator, the reduction applies to all securities. Although the bill is effective July 1, 2006, the first holder reports to be affected by the change are due May 1, 2007. The administrator has informally advised ACSUPCH that all reporting May 2007 will be acceptable (either five or three), but thereafter reporting must conform to the three year dormancy period.

Wisconsin Senate Bill 424, effective May 10, 2006, reduces the dormancy period on securities related property to 3 years. The cut-off date for abandonment is the end of the preceding fiscal year.

PUBLICATION REQUIREMENTS

Arizona House Bill 2870, effective September 23, 2006, changes state publication requirements, eliminating the newspaper publication of the owner's name and address. Instead, a general notice is to be published at least semiannually in each county in a newspaper of general circulation. The general notice includes a toll free number and the department's web site address. The department web site is not required to include owner information on a property that has a total value of less than \$50 or information concerning traveler's checks, money orders or similar instruments.

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Oklahoma Senate Bill 451, effective November 1, 2005, Publication of notice by the State Treasurer is to take place during the year following the filing of the report.

South Carolina House Bill 4810, effective June 14, 2006, The State Treasurer may publish annual notice to owners by electronic means or in a newspaper of general circulation (this section is a proviso that has appeared in prior budget bills, according to the administrator.)

Vermont Senate Bill 158, effective July 1, 2006, is a version of the Uniform Unclaimed Property Act (1995). The treasurer must post names of apparent owners on the treasurer's website on the internet and may use other means to provide notice to apparent owners. The treasurer is not required to publish any item less than \$100 in value.

Washington Senate Bill 5948, effective July 24, 2005, simplifies the procedure for publishing notice by the state unclaimed property department, requiring that only a summary explanation of how an owner may obtain information about unclaimed property be included in a newspaper of general circulation.

Nebraska Legislative Bill 476, effective September 5, 2005, modifies the publication requirements for owners whose address is unknown, now requiring that notice be published in a legal newspaper of statewide circulation.

CONFIDENTIALITY ISSUES

Arizona House Bill 2088, effective September 21, 2006, further defines the extent to which confidential information relating either to claimants or to holders may be disclosed by the department.

Michigan Senate Bill 272, effective September 29, 2005, is a budget bill that adds a provision permitting the department of treasury to sell non-confidential information to interested entities. The fees for customized listings are included in the legislation.

North Carolina Senate Bill 1048, effective December 1, 2005, prohibits a business from communicating an individual's social security number to the general public and from taking other actions relating to an individual's social security number. However, these prohibitions do not apply to the collection, use, or release of a social security number to locate an individual who is due an unclaimed property benefit.

North Dakota House Bill 1149, effective August 1, 2005, simplifies the list of unclaimed securities and funds that must be maintained by the state administrator and made available to the public. No amounts will be included. Reports are exempt from open records until 24 months following the date payment or delivery is made. At this time, the full report is available for inspection or copying.

Virginia House Bill 2032, effective July 1, 2005, excludes from the Freedom of Information Act certain records pertaining to Treasury audit examinations.

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MUSEUMS AND MILITARY AWARDS

Arkansas House Bill 2823, effective July 14, 2005, establishes procedures for museums holding abandoned or undocumented property.

Georgia Senate Bill 195, effective May 3, 2006, provides that property on loan to a museum or archive repository is abandoned when the loan agreement expires or when there has been no contact with the owner for seven years and may become the property of the museum after certain notice requirements are met. Museum property is exempted from the unclaimed property law.

Nevada Senate Bill 270, effective July 1, 2005. The Administrator may transfer property having military or military historical value to a veterans' or military museum, if it is not wanted by the Nevada Museum and Historical Society or other specified agencies.

New York Senate Bill 3091, effective July 26, 2006, provides that unclaimed military awards, medals or decorations found in safe deposit boxes will not be sold. They are to be delivered to the Division of Military and Naval Affairs of the Executive Department and held indefinitely or until reclaimed by the lawful owner.

OFFSETS

Colorado House Bill 1044, effective August 10, 2005, authorizes the offset of outstanding court fines, fees, costs, restitution, delinquent child support, and delinquent state taxes against an unclaimed property claim. Owners can be required to submit social security or FEIN numbers. The bill is effective ninety days after the adjournment of the general assembly.

Massachusetts House Bill 4169, effective June 8, 2006, provides that child support obligations or state tax liability may be applied to an owner's unclaimed property interest.

Nebraska Legislative Bill 771, effective March 13, 2006, authorizes the State treasurer to make payment on a claim by someone other than the owner to whom the owner owes an arrearage of a support obligation.

Texas House Bill 81, effective September 1, 2005, provides that a lienholder or the attorney general on behalf of the lienholder may submit a claim for child support arrearages to be satisfied from unclaimed property reported in the name of the person owing child support.

Virginia House Bill 2642, effective July 1, 2005, permits the Treasurer to deduct from a claim costs of notices, sales or other related expenses.

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EXEMPTIONS (OTHER THAN GIFT CERTIFICATES)

Florida House Bill 1527, effective June 8, 2005, makes a number of changes, including a narrowly defined exemption for certain property held by a health care provider to a managed care payor.

Georgia House Bill 431, effective May 4, 2005, adds a new section to Georgia's unclaimed property law permitting electric cooperatives to donate unclaimed property for approved uses, including charitable, educational, or economic development purposes. The co-op must have previously published the owner's name and address on the co-op's website for at least six months. Within three to six months before the last date for claiming the property, the co-op must have published in a designated source directions for accessing the names of owners on the co-op's website or in the main office of the co-op.

Mississippi House Bill 1222, effective July 1, 2006, excludes self-insured workers' compensation groups or associations comprised of members who have joint and several liability for the workers' compensation obligations of the other members from the definition of "insurance corporation" in the unclaimed property law.

Nevada Senate Bill 209, effective July 1, 2005, exempts capital credits (unclaimed for one year after the date they are authorized for distribution) from the unclaimed property act if certain conditions of notice to the member are met. If the notice conditions are complied with, the capital credit reverts to the cooperative. This provision applies to any capital credit authorized for distribution on or after July 1, 2005.

North Carolina House Bill 1023, effective August 31, 2005, provides that unclaimed lottery prizes are not abandoned property and may be used by the Lottery Commission to enhance other prizes

Washington House Bill 1158, effective July 22, 2005, provides that excess proceeds from property foreclosures held by counties, cities, and towns are excluded from the unclaimed property law requirements.

Washington House Bill 1703, effective July 24, 2005, provides that a public transportation authority holding unclaimed funds representing value on abandoned fare cards may retain the funds until the owner reclaims them.

NEW CATEGORIES OF PROPERTY ADDED

Connecticut Senate Bill 229, effective October 1, 2006, adds a provision assigning a 7 year dormancy period for money orders on which a business association is directly liable.

Florida House Bill 65, effective July 1, 2006, provides that any remaining surplus funds after a foreclosure sale are to be reported to the Chief Financial Officer.

Rhode Island House Bill 5465, effective July 8, 2005, provides that when a financial institution with capital stock converts to a general business corporation, if it is holding

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funds for safekeeping or for other purposes as defined by the RI laws pertaining to financial institutions, it shall turn over such property to the State Treasurer as unclaimed property.

South Carolina House Bill 3767, effective June 9, 2005, provides that tax refund checks returned as undelivered to the Department of Revenue are unclaimed property.

Tennessee Senate Bill 1432, effective July 1, 2005, provides that property remaining in court ordered receiverships is to be directed by the court to the state treasurer under the Uniform Disposition of Unclaimed property Act.

West Virginia House Bill 4049, effective July 1, 2006, provides that any assets presumed abandoned in the West Virginia College Prepaid Tuition and Savings Program will be reported and remitted to the unclaimed property administrator.

The legislation reviewed above includes bills passed in 2005 that were not included in the preceding NAUPA Legislative Update.

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