

MAINE STATE LEGISLATURE

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1008

L.D. 1084

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 737, L.D. 1084, Bill, "An Act To Make Dormancy Fees on Gift Cards Illegal"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Gift Obligations, Stored-value Cards and Prefunded Bank Cards'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 33 MRSA §1952, sub-§4-A, as enacted by PL 2003, c. 339, §1, is amended to read:

4-A. Face value. "Face value" means the original purchase price or original issued value of a gift obligation, prefunded bank card or stored-value card if unused or, if partially used, the remaining balance prior to the deduction of any service charges, fees or dormancy charges when not prohibited.

Sec. 2. 33 MRSA §1952, sub-§§10-A and 12-A are enacted to read:

10-A. Multiple merchants. "Multiple merchants" means all merchants of goods or services, not just those associated with the issuer of a prefunded bank card or a particular business or group of businesses, that accept electronic transactions.

12-A. Prefunded bank card. "Prefunded bank card" means a device issued by a financial organization that enables the holder to transfer the underlying funds to multiple merchants at the merchants' point-of-sale terminals. For purposes of this subsection, "underlying funds" means the funds received by the financial organization that issued the card in exchange for the issuance of the card. A prefunded bank card must provide value from multiple merchants.

Sec. 3. 33 MRSA §1952, sub-§13, ¶B, as enacted by PL 1997, c. 508, Pt. A, §2 and affected by §3, is amended to read:

B. Credit balance, customer's overpayment, gift certificate, gift obligation, prefunded bank card, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

Sec. 4. 33 MRSA §1953, sub-§1, ¶G, as amended by PL 2005, c. 12, Pt. GG, §1, is repealed and the following enacted in its place:

G. A gift obligation or stored-value card, 2 years after December 31st of the year in which the obligation or the most recent transaction involving the obligation or stored-value card occurred, whichever is later, including the initial issuance and any subsequent addition of value to the obligation or stored-value card. A period of limitation may not be imposed on the owner's right to redeem the gift obligation or stored-value card. The amount unclaimed is 60% of the gift obligation's or stored-value card's face value. Notwithstanding section 1956, fees or charges may not be imposed on gift obligations or stored-value cards, except that the issuer may charge a transaction fee for the initial issuance and for each occurrence of adding value to an existing gift obligation or stored-value card. These transaction fees must be disclosed in a separate writing prior to the initial issuance or referenced on the gift obligation or stored-value card. This paragraph does not apply to prefunded bank cards;

Sec. 5. 33 MRSA §1953, sub-§1, ¶G-1 is enacted to read:

G-1. A prefunded bank card, 3 years after December 31st of the year in which the obligation or the most recent activity involving the prefunded bank card occurred, whichever is later, including the initial issuance and any subsequent addition of value to the prefunded bank card. A period of limitation may not be imposed on the owner's right to redeem the prefunded bank card. Any terms and conditions must be

disclosed in a separate writing prior to the initial issuance and referenced on the prefunded bank card;

SUMMARY

This amendment replaces the bill.

This amendment updates the definitions in the unclaimed property laws of "face value" and "property" to include "gift obligation," "prefunded bank card" and "stored-value card" where appropriate. It also revises the definition of "face value" to limit the deduction of service charges, fees and dormancy charges, when not prohibited, to be consistent with the other provisions of this amendment.

This amendment creates a definition of "prefunded bank card" to mean a device issued by a financial organization that enables the cardholder to transfer the underlying funds to multiple merchants at the merchants' point-of-sale terminals. For purposes of this definition, "underlying funds" means the funds received by the financial organization that issued the card in exchange for the issuance of the card. This definition is consistent with language relied upon by the Federal Deposit Insurance Corporation. See FDIC General Counsel's Opinion Letter No. 8, GC8, August 2, 1996; FDIC Financial Institution Letter, FIL-44-2004. A prefunded bank card must provide value from multiple sellers. "Multiple merchants" is defined to encompass any merchant of goods or services, not just those associated with the issuer of the card or a particular business or group of businesses, that accepts electronic transactions. An example of a card that does not qualify as a prefunded bank card is a card accepted by only a specific merchant or a restricted pool of merchants at one or more locations.

This amendment establishes the presumptive abandonment period of prefunded bank cards as 3 years. The amount abandoned is 100% of the face value or balance of the prefunded bank card. The financial organization that issued the prefunded bank card may impose dormancy fees consistent with the Maine Revised Statutes, Title 33, section 1956. The terms and conditions must be disclosed in a separate writing prior to the initial issuance and must be referenced on the prefunded bank card.

This amendment revises the presumptive abandonment period for gift obligations and stored-value cards to clarify that the presumptive abandonment period begins to run from the last date that activity was recorded for that gift obligation or stored-value card. If the gift obligation or stored-value card is not used, it is presumed abandoned 2 years after December 31st

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2 of the year in which the obligation occurred, meaning when the
3 gift obligation or stored-value card was initially issued. If an
4 existing gift obligation or stored-value card has value added to
5 it, it is presumed abandoned 2 years after December 31st of the
6 year in which the value was added, if no activity was recorded
7 pertaining to the gift obligation or stored-value card since the
8 value was added. Otherwise, the presumptive abandonment period
9 begins to run from December 31st of the year in which the last
10 activity pertaining to the gift obligation or stored-value card
11 was recorded.

12 This amendment prohibits the issuer from imposing any fees
13 or charges on the gift obligation or stored-value card, except
14 that the issuer may charge a transaction fee for the initial
15 issuance and for adding value to the gift obligation or
16 stored-value card. The transaction fees must be disclosed in a
17 separate writing prior to the initial issuance or must be noted
18 on the gift obligation or stored-value card. Although current
19 law authorizes dormancy charges for other unclaimed property,
20 dormancy charges are prohibited for gift obligations and
21 stored-value cards. The unclaimed amount of a gift obligation or
22 stored-value card when it is turned over to the state unclaimed
23 property account is 60% of the face value, allowing the issuer to
24 retain the remaining 40%.