

HOUSE BILL NO. 755

INTRODUCED BY J. KEANE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE UNIFORM UNCLAIMED PROPERTY ACT DOES NOT APPLY TO CERTAIN GIFT CERTIFICATES; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 30-14-102, MCA, IS AMENDED TO READ:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not ~~mean~~ include:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone



1 calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or
 2 purchased by a consumer;

3 (ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any
 4 money or consideration being given in exchange for the card; or

5 (iii) a gift certificate usable with multiple sellers of goods or services.

6 (6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated
 7 associations, and any other legal entity.

8 (7) "Possessor" means a natural person who has physical control over a gift certificate.

9 (8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services,
 10 any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value,
 11 wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

12

13 **SECTION 2. SECTION 70-9-802, MCA, IS AMENDED TO READ:**

14 **"70-9-802. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

15 (1) "Administrator" means the department of revenue provided for in 2-15-1301.

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

18 (3) "Business association" means a corporation, joint-stock company, investment company, partnership,
 19 unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe
 20 deposit company, financial organization, insurance company, mutual fund, utility, or other business entity
 21 consisting of one or more persons, whether or not for profit.

22 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of
 23 business of a holder other than a corporation.

24 (5) "Financial organization" means a savings and loan association, bank, banking organization, or credit
 25 union.

26 (6) "Gift certificate" has the meaning provided in 30-14-102.

27 ~~(6)~~(7) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner
 28 property that is subject to this part.

29 ~~(7)~~(8) "Insurance company" means an association, corporation, or fraternal or mutual benefit
 30 organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or

1 insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire,
2 health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers'
3 compensation insurance.

4 ~~(8)~~(9) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement
5 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and
6 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance
7 defined as a mineral by the law of this state.

8 ~~(9)~~(10) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals
9 or, upon the abandonment of those payments, all payments that become payable after abandonment. The term
10 includes amounts payable:

11 (a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory
12 royalties, shut-in royalties, minimum royalties, and delay rentals;

13 (b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding
14 royalties, extraction payments, and production payments; and

15 (c) under an agreement or option, including a joint operating agreement, unit agreement, pooling
16 agreement, and farmout agreement.

17 ~~(10)~~(11) (a) "Money order" includes an express money order and a personal money order, on which the
18 remitter is the purchaser.

19 (b) The term does not include a bank money order or any other instrument sold by a financial
20 organization if the seller has obtained the name and address of the payee.

21 ~~(11)~~(12) "Owner" means a person who has a legal or equitable interest in property subject to this part or
22 the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case
23 of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

24 ~~(12)~~(13) "Person" means an individual, business association, financial organization, estate, trust,
25 government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

26 ~~(13)~~(14) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in
27 intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in
28 subsection ~~(13)~~(14)(b), by a government, governmental subdivision, agency, or instrumentality and all income
29 or increments from the property. The term includes property that is referred to as or evidenced by:

30 (i) money, check, draft, deposit, interest, or dividend;

1 (ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum,
2 unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

3 (iii) stock or other evidence of ownership of an interest in a business association or financial organization;

4 (iv) bond, debenture, note, or other evidence of indebtedness;

5 (v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

6 (vi) an amount due and payable under the terms of an annuity or insurance policy, including policies
7 providing life insurance, property and casualty insurance, workers' compensation insurance, or health and
8 disability insurance; and

9 (vii) an amount distributable from a trust or custodial fund that is established under a plan to provide
10 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee
11 savings, supplemental unemployment insurance, or similar benefits.

12 (b) The term does not include property that is held, issued, or owed by a local government entity, as
13 defined in 2-7-501.

14 ~~(14)~~(15) "Record" means information that is inscribed on a tangible medium or that is stored in an
15 electronic or other medium and that is retrievable in perceivable form.

16 ~~(15)~~(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of
17 Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

18 ~~(16)~~(17) "Utility" means a person who owns or operates for public use any plant, equipment, real property,
19 franchise, or license for the transmission of communications or the production, storage, transmission, sale,
20 delivery, or furnishing of electricity, water, steam, or gas."

21

22 **Section 3.** Section 70-9-803, MCA, is amended to read:

23 **"70-9-803. Presumptions of abandonment.** (1) Except as provided in subsection (6), property is
24 presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular
25 property:

26 (a) traveler's check, 15 years after issuance;

27 (b) money order, 7 years after issuance;

28 (c) stock or other equity interest in a business association or financial organization, including a security
29 entitlement under Title 30, chapter 8, 5 years after the earlier of:

30 (i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the

1 apparent owner; or

2 (ii) the date of the second mailing of a statement of account or other notification or communication that
3 was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the
4 apparent owner;

5 (d) debt of a business association or financial organization, other than a bearer bond or an original issue
6 discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent
7 owner;

8 (e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after
9 the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit
10 that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity
11 unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or
12 is evidenced by a memorandum or other record on file with the holder;

13 (f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the
14 obligation accrued;

15 ~~(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if
16 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;~~

17 (G) GIFT CERTIFICATE, 3 YEARS AFTER DECEMBER 31 OF THE YEAR IN WHICH THE CERTIFICATE WAS SOLD, BUT
18 IF REDEEMABLE IN MERCHANDISE ONLY, THE AMOUNT ABANDONED IS CONSIDERED TO BE 60% OF THE CERTIFICATE'S FACE
19 VALUE. A GIFT CERTIFICATE IS NOT PRESUMED ABANDONED IF THE GIFT CERTIFICATE WAS SOLD BY A PERSON WHO IN THE
20 PAST FISCAL YEAR SOLD NO MORE THAN \$200,000 IN GIFT CERTIFICATES, WHICH AMOUNT MUST BE ADJUSTED BY
21 NOVEMBER OF EACH YEAR BY THE INFLATION FACTOR DEFINED IN 15-30-101. THE AMOUNT CONSIDERED ABANDONED
22 FOR A PERSON WHO SELLS MORE THAN THE AMOUNT THAT TRIGGERS PRESUMPTION OF ABANDONMENT IS THE VALUE OF
23 GIFT CERTIFICATES GREATER THAN THAT TRIGGER.

24 ~~(h)(g)(H)~~ amount that is owed by an insurer on a life or endowment insurance policy or an annuity that
25 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable
26 upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under
27 the mortality table on which the reserve is based;

28 ~~(i)(h)(I)~~ property distributable by a business association or financial organization in a course of
29 dissolution, 1 year after the property becomes distributable;

30 ~~(j)(i)(J)~~ property received by a court as proceeds of a class action and not distributed pursuant to the

1 judgment, 1 year after the distribution date;

2 ~~(k)(j)(K)~~ property held by a court, government, governmental subdivision, agency, or instrumentality, 1
3 year after the property becomes distributable;

4 ~~(l)(k)(L)~~ wages or other compensation for personal services, 1 year after the compensation becomes
5 payable;

6 ~~(m)(l)(M)~~ deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes
7 payable;

8 ~~(n)(m)(N)~~ property in an individual retirement account, defined benefit plan, or other account or plan that
9 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date
10 of the distribution or attempted distribution of the property, the date of the required distribution as stated in the
11 plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax
12 laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

13 ~~(o)(n)(O)~~ a patronage refund owed to a member of a rural electric or telephone cooperative organized
14 under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the
15 distribution date;

16 ~~(p)(o)(P)~~ an unclaimed share in a cooperative that is not used for charitable or civic purposes in the
17 community in which the cooperative is located, 5 years after the distribution date; and

18 ~~(q)(p)(Q)~~ all other property, 5 years after the owner's right to demand the property or after the obligation
19 to pay or distribute the property arises, whichever first occurs.

20 (2) At the time that an interest is presumed abandoned under subsection (1), any other property right
21 accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also
22 presumed abandoned.

23 (3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has
24 not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf
25 of the holder with the holder concerning the property or the account in which the property is held and has not
26 otherwise indicated an interest in the property. A communication with an owner by a person other than the holder
27 or its representative who has not in writing identified the property to the owner is not an indication of interest in
28 the property by the owner.

29 (4) An indication of an owner's interest in property includes:

30 (a) the presentment of a check or other instrument of payment of a dividend or other distribution made

1 with respect to an account or underlying stock or other interest in a business association or financial organization
2 or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been
3 received;

4 (b) owner-directed activity in the account in which the property is held, including a direction by the owner
5 to increase, decrease, or change the amount or type of property held in the account;

6 (c) the making of a deposit to or withdrawal from an account in a financial organization; and

7 (d) the payment of a premium with respect to a property interest in an insurance policy; however, the
8 application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance
9 policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the
10 beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender
11 value of a policy by the application of those provisions.

12 (5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to
13 make demand or present an instrument or document otherwise required to obtain payment.

14 (6) The presumption provided in subsection (1) does not apply to:

15 (a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the
16 refunds exclusively for educational purposes; or

17 (b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic
18 purposes in the community in which the cooperative is located."

19
20 **NEW SECTION. SECTION 4. EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS EFFECTIVE ON**
21 **PASSAGE AND APPROVAL AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO GIFT CERTIFICATES ISSUED**
22 **OR SOLD AFTER SEPTEMBER 30, 2005.**

23 - END -