

**SENATE BILL NO. 2335**

Introduced by

Senators Holmberg, Hacker, Nelson

Representatives Charging, Delzer, Owens

1 A BILL for an Act to create and enact chapter 51-29 of the North Dakota Century Code, relating  
2 to gift certificate sales, expiration dates, and service or maintenance fees; to amend and  
3 reenact sections 47-30.1-01 and 47-30.1-14 of the North Dakota Century Code, relating to  
4 abandoned property under the Uniform Unclaimed Property Act; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 47-30.1-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **47-30.1-01. Definitions and use of terms.** As used in this chapter:

- 9 1. "Administrator" means the administrator of the state abandoned property office.
- 10 2. "Apparent owner" means the person whose name appears on the records of the  
11 holder as the person entitled to property held, issued, or owing by the holder.
- 12 3. "Banking organization" means a bank, trust company, savings bank, private  
13 banker, or any organization defined by other law as a bank or banking  
14 organization.
- 15 4. "Business association" means a corporation, limited liability company, joint-stock  
16 company, investment company, business trust, partnership, or association for  
17 business purposes of two or more individuals, whether or not for profit, including a  
18 banking organization, financial organization, insurance company, or utility.
- 19 5. "Domicile" means the state of incorporation of a corporation or state of organization  
20 of a limited liability company and the state of the principal place of business of an  
21 unincorporated person.
- 22 6. "Financial organization" means a savings and loan association or credit union.
- 23 7. "Gift certificate" has the same meaning as the term is defined in section 51-29-01.
- 24 8. "Holder" means a person, wherever organized or domiciled, who is:

- 1           a. In possession of property belonging to another;
- 2           b. A trustee; or
- 3           c. Indebted to another on an obligation.
- 4       ~~8.~~ 9. "Insurance company" means an insurance company as defined by section
- 5           26.1-02-01 and also includes a benevolent society, nonprofit health service
- 6           corporation, and health maintenance organization.
- 7       ~~9.~~ 10. "Intangible property" includes:
- 8           a. Moneys, checks, drafts, deposits, interest, dividends, and income.
- 9           b. Credit balances, customer overpayments, security deposits, refunds, credit
- 10           memos, gift certificates, unpaid wages, unused airline tickets, and unidentified
- 11           remittances.
- 12           c. Stocks and other intangible ownership interests in business associations.
- 13           d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or
- 14           to make distributions.
- 15           e. Amounts due and payable under the terms of insurance policies.
- 16           f. Amounts distributable from a trust or custodial fund established under a plan
- 17           to provide health, welfare, pension, vacation, severance, retirement, death,
- 18           stock purchase, profit sharing, employee savings, supplemental
- 19           unemployment insurance, or similar benefits.
- 20           g. Amounts distributable from a mineral interest in land.
- 21       ~~10.~~ 11. "Last known address" means a description of the location of the apparent owner
- 22           sufficient for the purpose of the delivery of mail.
- 23       ~~11.~~ 12. "Mineral proceeds" means all obligations to pay resulting from the production and
- 24           sale of minerals, including net revenue interest, royalties, overriding royalties,
- 25           production payments, and joint operating agreements and all obligations for the
- 26           acquisition and retention of a mineral lease, including bonuses, delay rentals,
- 27           shut-in royalties, and minimum royalties.
- 28       ~~12.~~ 13. "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust
- 29           other than a deposit in trust, a creditor, claimant, or payee in the case of other
- 30           intangible property, or a person having a legal or equitable interest in property
- 31           subject to this chapter or that person's legal representative.

- 1    ~~13.~~ 14. "Person" means an individual, business association, state or other government  
2                    including the government of the United States, governmental subdivision or  
3                    agency, public corporation, public authority, estate, trust, two or more persons  
4                    having a joint or common interest, or any other legal or commercial entity.
- 5    ~~14.~~ 15. "State" means any state, district, commonwealth, territory, insular possession, or  
6                    any other area subject to the legislative authority of the United States.
- 7    ~~15.~~ 16. "Utility" means a person who owns or operates for public use any plant, equipment,  
8                    property, franchise, or license for the transmission of communications or the  
9                    production, storage, transmission, sale, delivery, or furnishing of electricity, water,  
10                   steam, or gas.

11                **SECTION 2. AMENDMENT.** Section 47-30.1-14 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13                **47-30.1-14. Credit memos and gift certificates.**

- 14                1. A credit memo or gift certificate issued in the ordinary course of an issuer's  
15                    business which remains unclaimed by the owner for more than three years after  
16                    becoming payable or distributable is presumed abandoned.
- 17                2. In the case of a credit memo, the amount presumed abandoned is the amount  
18                    credited to the recipient of the memo.
- 19                3. In the case of a gift certificate, the amount presumed abandoned is the price paid  
20                    by the purchaser.
- 21                4. Sums payable on a gift certificate may be subjected to the custody of this state as  
22                    abandoned property if:
- 23                    a. The records of the issuer show that the gift certificate was purchased in this  
24                    state;
- 25                    b. The issuer has its principal place of business in this state and the records of  
26                    the issuer do not show the state in which the gift certificate was purchased; or
- 27                    c. The issuer has its principal place of business in this state, the records of the  
28                    issuer show the state in which the gift certificate was purchased and the laws  
29                    of the state of purchase do not provide for the escheat or custodial taking of  
30                    the property or its escheat or unclaimed property law is not applicable to the  
31                    property.

1           **SECTION 3.** Chapter 51-29 of the North Dakota Century Code is created and enacted  
2 as follows:

3           **51-29-01. Definition.** As used in this chapter, "gift certificate" means a record  
4 evidencing a promise, made for monetary consideration, by the seller or issuer of the record  
5 that goods or services will be provided to the owner of the record to the value shown in the  
6 record. The term includes a record that contains a microprocessor chip, magnetic strip, or other  
7 means of storage of information that is prefunded and for which the value is decreased upon  
8 each use; a gift card; an electronic gift card; an online gift account; a stored-value card; a store  
9 card; a prepaid telephone card; or a similar record or card.

10          **51-29-02. Records - Expiration dates - Service fees - Exemptions.**

11          1. A person that sells a gift certificate for any product or merchandise sold by the  
12 person must record the sale and keep an accurate record of each gift certificate  
13 sold, including the state in which the sale of the gift certificate took place. A person  
14 may not charge additional monthly or annual service or maintenance fees on a gift  
15 certificate, limit the time for redemption of a gift certificate, place an expiration date  
16 upon a gift certificate, or include on a gift certificate any statement suggesting that  
17 an expiration date may apply to the gift certificate.

18          2. This section does not apply to:

19           a. A general-use prepaid card issued by a third-party prepaid card issuer  
20 including a plastic card or other electronic payment device that is:

21               (1) Usable at any multiple unaffiliated merchant or service provider or at an  
22 automatic teller machine;

23               (2) Issued in a requested amount that may be, at the option of the issuer,  
24 increased to value or reloaded if requested by the holder;

25               (3) Purchased or loaded on a prepaid basis by a consumer and does not  
26 include a debit card linked to a deposit account, or a card purchased by  
27 a business entity; and

28               (4) Honored upon presentation by a merchant for goods or services or  
29 honored at an automatic teller machine.

30           b. A gift certificate distributed to a consumer pursuant to an awards, loyalty, or  
31 promotional program without any money or other thing of value being given in

1                   exchange for the gift certificate by the consumer. Any restriction or limitation  
2                   on such gift certificate must be disclosed to the consumer, in writing, at the  
3                   time the gift certificate is distributed to the consumer.

4                   **51-29-03. Disposition of unredeemed gift certificates.** Upon expiration of three  
5 years after the date the gift certificate becomes payable or distributable, any unredeemed  
6 portion of the gift certificate remaining reverts to the administrator of the state abandoned  
7 property office for custody as abandoned property under chapter 47-30.1.

8                   **51-29-04. Enforcement - Powers - Remedies - Penalties.** The attorney general shall  
9 enforce this chapter, excluding section 59-29-03, which must be enforced by the administrator  
10 of the state abandoned property office. In enforcing this chapter, the attorney general has all  
11 the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter  
12 or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The  
13 remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition  
14 to all other causes of action, remedies, and penalties as provided in chapters 47-30.1 and  
15 51-15 and as otherwise provided by law.