

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2335

2005 SENATE JUDICIARY

SB 2335

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

Senate Judiciary Committee

Conference Committee

Hearing Date January 27, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - End

Committee Clerk Signature *Monica L. Salvey*

Minutes: Relating to "Gift Certificates" and abandoned property under the Uniform Unclaimed Property Act.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Holmberg- Dist 17 Introduced bill (Att #1)

Sen. Nelson - Dist 21 - Introduced bill (Att #2)

Wayne Stenehjem - Attorney General (598) Gave testimony - (Att #3) Stated proof of 1997 vote on SB 2327

Perrell D. Grossman - Director Consumer Protection and Antitrust Division office of Attorney General. (meter 1100) Gave testimony (Att #4)

Sen. Trenbeath that the card that he had that had lost value to approximately 85% of its value and eventually be worth nothing. In this bill it will always retain its full value, always. This would include "no service fees".

Sen. Traynor asked if **Mr. Grossman** new how much of the \$55 Billion in 2004 belonged to ND. He did not due to no type of current tracking devices. (meter 1450)

Senator Syverson wanted in for on the transference of the value of the card from the consumer to your office. Are you using serial numbers or how are they going to be tracked. The store would have to maintain a record with minimal info. After 3 years if it was not used or unclaimed then they turn the value of the card to the unclaimed property administration for safe keeping.

What is part of the card only used? This should be tracked by the retailer and reported in as such.

Senator Hacker questioned how difficult would this be for a large stores i.e. Target. Currently these stores are already doing this in other states. This should not be a hardship. **Senator**

Triplett questioned how hard enforcement would be, in which **Mr. Grossman** responded that most business are compliant and are used to keeping records, this should not be problematic.

Marilyn Foss - Bankers Assoc. (meter 2553) Gave Testimony (Att #5) submitted Amendment (Att #6)

Linda Fisher - Unclaimed Property Admin. ND State Land Dept. (meter 3348) Gave testimony. Att #6

.Testimony in Opposition of the Bill:

Dave MacIver - ND Chamber of commerce (meter 4313) Gave Testimony - Att #7

Do to the lack of time. Committee is due on the floor **Senator John (Jack) T. Traynor**,

Chairman closed the Hearing to be continued on another date.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

Senate Judiciary Committee

Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 900
Committee Clerk Signature <i>Maria R Solberg</i>			

Minutes: Relating to "Gift Certificates" and abandoned property under the Uniform Unclaimed Property Act.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing continued from the night session and opened with the following testimony:

Testimony In Support of the Bill:

Perrell Grossman - Attorney Generals Office (meter 120) Submitted Amendment - Att. #1 and revised amendment - Att. #2. The amendments remove the provisions regarding the gift certificates unredeemed balances to the state. In Section 51.29-01; a, b, & c - definition improve the amendments submitted by the Bankers Assoc. to address the concerns of bank cards.

Committee discussed the amendments.

Sen. Traynor asked what the impact would be on the fiscal note if the committee accepted the amendments? It would bring the fiscal note to nothing.

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Senate Judiciary Committee

Bill/Resolution Number SB 2335

Hearing Date February 7, 2005

Sen. Nelson questioned what is chapter 51.15? It is the Consumer Fraud Law and the ability for us to investigate.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Trenbeath made the motion to do pass Mr. Gossman's two amendments and **Sen. Nelson** seconded the motion. All were in favor, motion passes

Sen. Trenbeath made the motion to do pass bill as amended and **Senator Syverson** seconded the motion. All were in favor, motion passes.

Carrier: **Senator Hacker**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

FISCAL NOTE
 Requested by Legislative Council
 03/10/2005

Amendment to: Engrossed
 SB 2335

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0			

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The amendments remove all reference to the Unclaimed Property Act including the requirement for holder remitting of unredeemed gift certificates, and consequently the bill as amended eliminates all revenues and any associated expenses (fiscal impact) to the Common Schools Trust Fund or the Department.

The Attorney General does not anticipate any fiscal impact in the form of revenues, expenditures, or appropriations.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

N/A

Name:	Parrell D. Grossman / Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-5570 328-3622	Date Prepared:	03/12/2005

FISCAL NOTE
 Requested by Legislative Council
 02/09/2005

Amendment to: SB 2335

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The amendments remove all reference to the Unclaimed Property Act including the requirement for holder remitting of unredeemed gift certificates, and consequently the bill as amended eliminates all revenues and any associated expenses (fiscal impact) to the Common Schools Trust Fund or the Department.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Gary D. Preszler	Agency:	Land Department
Phone Number:	328 2800	Date Prepared:	02/10/2005

FISCAL NOTE
 Requested by Legislative Council
 01/24/2005

Bill/Resolution No.: SB 2335

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$122,000	\$0	\$128,000
Expenditures	\$0	\$0	\$0	\$8,100	\$0	\$8,500
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Unclaimed Property Act provides that abandoned property reported by holders is held in the Common Schools Trust Fund for the benefit of the owners or their heirs. This property is held indefinitely or until claimed, and in the interim earnings on that money accrue to the benefit of K-12 public schools.

Senate Bill No. 2335, sections 1 and 2, will require unredeemed gift certificates after 3 years to prospectively be reported and held in the Common Schools Trust Fund.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Taxable sales information from the ND Tax Department reveals 2003 gross sales of approximately \$3.4 billion that may be related to retail sellers that are likely to issue gift certificates. Evidence indicates that approximately 8 percent of the sales are attributable to gift certificate sales with up to 16% never being redeemed. Revenues for this fiscal note estimate 4 percent of sales attributable to gift certificates with 1 percent unredeemed resulting in an annual reported amount accruing to the Common Schools Trust Fund of \$1,350,000. This amount is multiplied by an investment return of 4.5 percent resulting in earnings of \$122,000 available to distribute to Fund beneficiaries.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

It is estimated that the current staff can process the additional holder reports and owner claims as a result of SB2335. Additional publication costs would be incurred and are estimated based on the current costs per owner name multiplied by an estimated 5,000 annual names reported.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The Unclaimed Property Act provides continuing appropriation authority to pay publication costs.

Name:	Gary D. Preszler, Commissioner	Agency:	Land Department
Phone Number:	328 2800	Date Prepared:	01/01/2005

Date: 2/2/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2335

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment by Mr. Grossman

Motion Made By Sen Trenbeath Seconded By Sen Nelson

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/7/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2335

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Trenbeath Seconded By Sen Syverson

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor			Sen. Nelson			
Senator Syverson			Senator Triplett			
Senator Hacker						
Sen. Trenbeath						

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Hacker

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2335: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "to amend and"

Page 1, remove line 3

Page 1, line 4, remove "abandoned property under the Uniform Unclaimed Property Act;"

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove the underscore under lines 3 through 9

Page 4, after line 9, insert:

"The term does not include a general-use prepaid card issued by a prepaid card issuer, including a plastic card or other electronic payment device that is usable at multiple, unaffiliated merchants or service providers or at an automatic teller machine, and purchased or loaded on a prepaid basis; a general-use prepaid card issued by a prepaid card issuer and purchased by a person that is not an individual; or a debit card linked to a deposit account."

Page 4, line 10, remove the underscore under "51-29-02.", remove "Records -", remove the underscore under "Expiration dates - Service fees", remove "- Exemptions", and remove the underscore under the second underscored boldfaced period

Page 4, remove lines 11 and 12

Page 4, line 13, remove "sold, including the state in which the sale of the gift certificate took place." and remove the underscore under "A person"

Page 4, remove the underscore under line 14

Page 4, line 15, remove the underscore under "certificate" and replace "limit the time for redemption of a gift certificate, place an expiration date" with ". A person may not limit the time for redemption of a gift certificate to a date before six years after the date of purchase of the gift certificate, place an expiration date on a gift certificate before six years after the date of purchase of the gift certificate, or include on a gift certificate any statement suggesting that an expiration or redemption date, except as permitted in this section, may apply to a gift certificate."

Page 4, remove lines 16 and 17

Page 4, line 18, remove "2.", remove the underscore under "This section does not apply to", and remove the underscored colon

Page 4, remove lines 19 through 29

Page 4, line 30, remove "b.", replace "A" with "a", and remove the underscore under "gift certificate distributed to a consumer pursuant to an awards, loyalty, or"

Page 4, remove the underscore under line 31

Page 5, remove the underscore under lines 1 through 3

Page 5, remove lines 4 through 7

Page 5, line 8, replace "51-29-04" with "51-29-03" and remove the underscore under "Enforcement - Powers - Remedies - Penalties. The attorney general shall"

Page 5, line 9, remove the underscore under "enforce this chapter" and remove ", excluding section 59-29-03, which must be enforced by the administrator"

Page 5, line 10, remove "of the state abandoned property office" and remove the underscore under ". In enforcing this chapter, the attorney general has all"

Page 5, remove the underscore under lines 11 through 13

Page 5, line 14, remove the underscore under "to all other causes of action, remedies, and penalties as provided in" and replace "chapters 47-30.1 and" with "chapter"

Page 5, remove the underscore under line 15

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2335

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2335

House Judiciary Committee

Conference Committee

Hearing Date 3/9/05

Tape Number	Side A	Side B	Meter #
1	xx		0-24.9
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on SB 2335.

Sen. Ray Holmberg: Sponsor of the bill, support, explained the bill. In 2003, at Christmas, my sister gave me this gift card from a retailer. She paid \$100 in cash, I misplaced it for awhile, but when I tried to spend it, I found it was only worth \$88.00 because there was a fee attached to its nonuse. The clock had started ticking from the time she purchased the card, the summer before, not when I received it or tried to use it. I think her intent was that I would get to spend her generous gift of \$100, not to, as you can see by this card, have it dribble away month by month, as it sat in a desk drawer or someplace else. By the time she got my belated thank you card, I should have said, thank you for the \$90 gift card. Like this mythical situation, many ND citizens find out too late what they get, might not be what they got. SB 2335 is a public policy change about gift cards, and supports the concept that you should get every dollar that your gift was originally for; not a fraction thereof. Those of you who looked at the original bill would

probably agree that it was too far reaching and it went through some substantial changes in the Senate. If you look closely at cards, and what's left of this card, you can look at it, and it lists the kinds of situations that will apply to this card. For example, it will say that it expires in one year, unless forbidden by state law. You will also see if you go to Village Inn, and buy one of their gift cards, it will say a very common phrase, that there is a fee of \$2.00 per month, in print smaller than I can read, unless forbidden by state law, or unless regulated by state law. I think we should join other states, regulate and protect our consumers. I believe you will hear from the AG that this is one of the area's they get a lot of complaints about. The bill in the Senate, after it had its changes, received support from some groups who legitimately had a concern about the original bill.

Representative Delmore: With the 6 years, the only thing I've heard from some constituents, is with 6 years, that if some small businesses that do offer gift certificates, and have a concern that if they close, they wouldn't be able to honor it. Not because they took the amount down, or anything else. Is there some provision for this scenario.

Sen. Ray Holmberg: We found in talking to some small retailers, that might do some kind of gift certificate, that no matter what it says, if you're in a small town and someone walks in with that gift certificate, that was 8 years old, they would honor it. The provision in this particular law, does exempt a gift, if Jerry's Supervalu wanted to give the Boy Scouts some gift certificate, they can certainly have a two month or six month, provision in it that it expires. Six years is consistent with some statute of limitations that the AG's office will be to explain better than I can.

Representative Klemin: Do you know why they are charging these service fees, as you've described.

Sen. Ray Holmberg: What you can find, you can go to magazines, that work in the industry, and they can demonstrate that there is a percentage, 8-15% that are never turned in. So if you are Menards, and you give out these gift cards, you are pretty assured that out of the \$100,000 worth of gift cards that have been sold, that you are going to garner \$15,000 off the top. In direct answer to your question, please repeat the question.

Representative Klemin: What service do the merchants provide in exchange for the service fee.

Sen. Ray Holmberg: You might get from a company that they will handle the card, the distribution for you, pick them up for you, they'll put the logo on it for you. They will want to collect or may want to collect a fee.

Representative Klemin: Who gets the service fee, the company or the merchant that issued it.

Sen. Ray Holmberg: Depends upon. I don't know if Hugo's in Grand Forks, if they are large enough they might do it all themselves, they might do it in-house and then they would keep it. They have a fee of \$2/mo after 1 year.

Representative Klemin: In your case, where the card was issued for \$100, and was worth \$88, who got the \$12.00.

Sen. Ray Holmberg: Starbucks.

Representative Klemin: The merchant.

Sen. Ray Holmberg: Yes, because they are large enough, they would do that themselves. It's interesting, I believe Sen. Nelson had some articles promoting to a smaller venue, come with us

and you're going to get this cash, because they're not all going to be turned in. Originally, the bill set up a burdensome kind of responsibility for the merchant, that they had to keep name and address of the people who bought the card and then at the end of the period, it would all revert back to the unclaimed property of the state of ND; which was old law that had been in effect some years ago, and was repealed some years ago. I would have to mention that both the AG and I voted against that repeal a number of years ago.

Representative Onstad: In your particular situation, you really paid the fee, \$100 gift card and you paid the fee. I don't see where if that part passed, that it's just probably going to get transferred to that person that buys that \$100, that they might just get access to it.

Sen. Ray Holmberg: The situation here is, of course, the sister paid the \$100 and I got, because of my neglect, maybe because she bought it early, I didn't get the full benefit of her gift. I do know that I visited with one large company, furniture company, in Grand Forks, and they're gift certificates are only good for 6 months and then they expire and at 6 months from the time they are purchased, not from the time I tried to use it. But I do have to say that many ND retailers, would honor those things. The problem is when you buy a large chain gift certificate. You will notice that Target will advertise a no-fee, no expiration date, and I think that's a selling point for their store.

Representative Koppelman: Do other states do what your bill seeks to do.

Sen. Ray Holmberg: Yes. I don't have the number of other states that regulate the length of time, whether or not there can be an expiration date, and whether there can or cannot be fees. You can see that on the Village Inn card, just read on the back of that.

Representative Galvin: I was going to ask about services, would this also apply to services.

Sen. Ray Holmberg: If they are gift certificates, if you paid for them.

Representative Galvin: Many times 6 years would be a longer time than their license is for.

Sen. Ray Holmberg: The AG's office is much more attuned to questions like that. It conforms to other statutes, is where the 6 years came from.

Chairman DeKrey: Thank you. Further testimony in support.

Wayne Stenejem, Attorney General: I'm here in support of SB 2335, that deals with this expanding use of gift cards. According to one research firm last year, \$55 billion dollars worth of these gift cards and gift certificates were sold in the US. One estimate was between 4 and 10% of those gift cards that are sold are never redeemed by anybody. They are lost, or just not used. Which means that there is an equivalent of about \$2.2 billion to \$5.5 billion dollars in unredeemed gift certificates floating around. They are very popular as gifts and I know that I am always to buy my son a gift certificate at a local department store, because then I know that's where he's going to be spending the Christmas present, and not using cash. Retailers like these too, because in addition to the fact that a number of the certificates are never redeemed, many people, as many as 55% of the people who come in to redeem the card buy other things as well, as long as they are in the store. But consumers are taking notice of one problem that has arisen with these gift cards, and that is the expiration dates that are appearing, or the service fees that are appearing on these cards, and suddenly people are finding out that the gift they got is not what they thought they were giving or often times they will go into the store and find out that, in fact, they are worthless. Part of the problem is that you have to put on your glasses before you are able to see what should be a large print type warning on the back, saying that after 12 months of nonuse, we deduct \$2/month on these cards. In fact, you don't see that on the package, they're

all wrapped up in a little packaging and it doesn't say on the outside, not until you've purchased them and then you open it up and see that the service charge is assessed. Most people over the age of 45, would not be able to read the fine print regarding the fees. The sponsors of this legislation recognize consumers frustration with these expiration dates and service fees and have introduced this bill to prevent what I think is an unfair practice. The value of the cards really belong to the consumers and should not be prematurely forfeited to the retailer. I do hear from people, and I think most folks who look at these, and get them, are surprised to see that those fees are increasingly being assessed. We get calls in our Consumer Protection Division all the time, and the unfortunate news we have to deliver to them, is that there is nothing we can do, because ND law does not prohibit the practice. Rhode Island, California, Connecticut are some of the states that have enacted legislation in this area. Minnesota is looking at similar legislation. This bill has been through the process in the Senate, through a process of compromise, as well. Because the bill originally would have said we were going back to pre-1997 situation, where these unredeemed gift cards were supposed to go to the Abandoned Property Division of the Board of University and School Land. That, it was felt, really proposed too much of a burden on merchants, who would then have to keep track of who bought them, and turn them over; so in the spirit of compromising and accomplishing what we really want to accomplish, which is to give the consumers who give these or receive these cards, to give them exactly what it was that they were given. Some states do not permit an expiration date, and again in the spirit of compromising this issue, and getting it through the Senate, we decided that we should have some kind of an expiration date, we went with six years. The reason for that, is that is the statute of limitations for collecting a claim on a debt and it seemed to us that made sense, that this same

period of time should apply. I think this law is reasonable. I think it's reasonable for retailers and I think it's fair for consumers, so I hope you will pass the bill.

Chairman DeKrey: Would you like to see an emergency clause added to this bill.

Wayne Stenejhem: Emergency clauses are nice. I don't think that if this is enacted, that we will have a problem. I think we can notify most of the retailers. We have never foreseen, this legislation here in ND, if it weren't for some of the large retailers that we see, such as Starbucks, Barnes & Noble, or Wal-Mart. Everything seemed to be working well, but then they looked at this and found out that they were charging these fees. For the 4-10%, that's pure profit for them. They don't have to provide anything except the card, and most people just think that's fundamentally unfair. As a result, I will tell you this, a lot of merchants have simply heard from consumers and they have stopped charging. Barnes & Noble did quit charging them because they heard an uproar from their customers, as did Target, I don't know if they charged, but they stopped and they are using that as a selling point for their cards. This puts everybody on a same level playing field that is fair.

Chairman DeKrey: Actually, it's an interest free loan to the merchant from the customer.

Wayne Stenejhem: There were some people who were against the bill, because there was this enormous inconvenience of carrying this money on their books, and I said you give me \$10 million dollars and I will happily hold it for you and in 10 years, I will give you your \$10 million dollars back.

Representative Onstad: How does it work, if the card originates from a state where it is okay to charge this fee, in the redemption part where it gets redeemed, how does that work.

Wayne Stenejhem: This will apply to cards that are sold here in North Dakota to ND

consumers. So if you have the card here, any card sold here by the store, will have to comply with the statute if it is enacted.

Representative Klemin: Are we going to hear complaints from these people now that the laws from state to state are all different and it's going to be hard to comply with one or the other.

Wayne Stenejhem: This is the time for them to come in and object if they want to. That's not something we've heard. But we're entitled to protect our consumers here in ND, as we see fit.

Representative Klemin: This could be a new uniform law then.

Wayne Stenejhem: Great idea.

Representative Zaiser: How are you going to determine, where the actual card was purchased. If the card is given to you and it says Wal-Mart on it, is Wal-Mart going to identify itself, that it was a Fargo Wal-Mart.

Wayne Stenejhem: On the back of the card, on the magnetic strip.

Chairman DeKrey: Thank you. Further testimony in support.

Parrell Grossman, Director of the Consumer Protection and Antitrust Division, AG's

Office: Support (see written testimony). I worked with the retailers and business community to reach a reasonable compromise in both looking out after the interests of the businesses that are affected, as well as the consumers. We appreciated their cooperation in that particular regard.

As you may be aware, the Senate has unanimously passed this legislation and so it would be our request that this committee would do the same. To address Representative Delmore's question, in regard to what happens if the business goes out of business. That isn't any different than when a hardware store goes out of business and they sold a warranty for their lawn mower. We simply

tell our consumers, that's just a part of business in ND, and businesses in ND do go out of business and we're not going to hound those individuals once they've discontinued business. We're not going to ask them to escrow \$50,000 in a bank account. I would respectfully suggest to this committee that that's how the AG would continue to treat these situations on a reasonable basis. If you immediately discontinue business, and you have the funds available for that, and consumers wish to redeem those, we would ask that you redeem those, but you aren't going to be able to come forward, in year 6 when a business went out of business in year 4 and ask the AG's office to take some sort of action.

Representative Klemin: What service was it that was being performed in exchange for the service fee being charged.

Parrell Grossman: I think the businesses would indicate that there are some accounting fees, etc, some carrying costs for these cards of maintaining the balances, etc. So I would assume that when they charge some sort of service fee for that, that ostensibly it's for that particular purpose, if I'm understanding your question correctly.

Representative Klemin: Those are bank fees then.

Parrell Grossman: That may be true, if you're a non-banking entity, for instance a McDonalds, McDonalds would probably argue that there are some costs associated with distributing their cards and maintaining those. Not that we necessarily agree with that, but I think they could certainly make that argument, that there are some costs associated with that, and that would probably be the basis for saying that they should be entitled to some fees.

Chairman DeKrey: Thank you. Further testimony in support.

Dave MacIver, ND Chamber of Commerce: I am here representing a number of associations, many of them in the room, along with 18 other chamber of commerce across the state, we stand in support of this bill. You've seen the credit cards that are the gift certificates. What you haven't seen is the one that most of our folks use. Most of the businesses here in ND use regular gift certificates that aren't that sophisticated. You also heard why we didn't like the idea of having everybody keep track of them. Here's a McDonald's card. They come in \$1 denominations. So you give 20 of them out and all of a sudden you have to keep track by each name. But in essence, right now, the 6 years on there for us is an opportunity for the business to get that liability off their books. That's the reason for having it on there. We have a number of merchants in the state, Strauss in Fargo had a gift certificate show up that was 15 years old, they honored the certificate. It's just good business. We found that when we talked to our merchants, and talked to the people that we do business with, none of them charge any fees on their cards. So this is a good piece of legislation and ask for your support.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2335.

Representative Delmore: I move that we add an emergency clause to SB 2335.

Representative Maragos: Seconded.

Chairman DeKrey: Motion carried.

Representative Maragos: I move a Do Pass as amended.

Representative Bernstein: Seconded.

14 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Delmore

Page 11
House Judiciary Committee
Bill/Resolution Number SB 2335
Hearing Date 3/9/05

Chairman DeKrey: Let the record reflect that Representative Charging still has laryngitis, and
voted yes.

Date: 3/9/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2335

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Bernstein

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Representative Delmore	/	
Representative Maragos	/		Representative Meyer	/	
Representative Bernstein	/		Representative Onstad	/	
Representative Boehning	/		Representative Zaiser	/	
Representative Charging	/				
Representative Galvin	/				
Representative Kingsbury	/				
Representative Klemin	/				
Representative Koppelman	/				
Representative Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2335, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2335 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency"

Page 2, after line 12, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2005 TESTIMONY

SB 2335

SB 2335

Att # 1

In 2003 at Christmas my sister gave me this gift card from a retailer. She paid \$100 cash. When I tried to spend it, I found it was only worth \$88 because there was a fee attached to non use after a year... .. And the clock had started ticking from the time she bought the card.. The summer before... not when I got it.

I think her intent was that I get to spend her generous gift... Not have it dribble away, dollar by dollar, month by month. The quintessential liquid asset.

I'm guessing that by the time she got my belated thank you card.. I should have said "Thanks for the \$90.

Like this mythical situation, many North Dakota citizens find out too late.. WHAT THEY GET, MAY NOT BE WHAT THEY GOT !

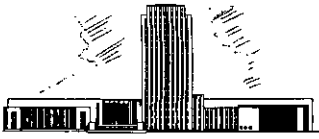
SB 2335 is a statement of public policy about gift cards and supports the concept that You should get every dollar that your sister sent to you.. Not a fraction thereof.

SB 2335 also adds to statute a provision which forbids expiration dates or any suggestion that an expiration date may apply to the gift certificate.

If you look closely at some cards.... It will say in print the size of a scuppernong seed. "service charge will apply, unless regulated by state law." Or it might say... "Expiration date 6 months from purchase, unless forbidden by state law."

I think we should join many other states and regulate and forbid such practices.

The bulk of the bill provides this legislature the opportunity to revisit a law changed in the 1997 session regarding the unclaimed property act. Up until then, all such "expired" property was transferred to the unclaimed property division in Bismarck and any interest earned went to help fund elementary and secondary education in the state.



NORTH DAKOTA SENATE

Att 2



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Carolyn Nelson
District 21
1 Second Street South, #5-109
Fargo, ND 58103-1921
cnelson@state.nd.us

COMMITTEES:
Judiciary
Government and Veterans Affairs

SB 2335

Chairman Traynor and fellow members of the Judiciary Committee. I'm Senator Carolyn Nelson, State senator from District 21, central Fargo.

Back in 1997 the legislature had SB 2327, a bill that dealt with gift certificates. The result of the 31-15 vote got us into the current situation. I'm pleased to say that I voted "no" on that bill. The vote was definitely not along partisan lines.

One need only go to a checkout counter at a local store and you will probably see a display of gift cards in a variety of denominations. Gift cards are advertised as the easy way to buy gifts for teenagers or the folk who have everything. Some stores even issue gift cards in lieu of refunds for returned purchases. The value of these cards should not be diminished to a zero balance by usage fees or limited expiration dates.

Please listen to the testimony of the experts and, in the end, I hope you will be convinced that passage of SB 2335 is in the best interest of the consumer.

Consumers are taking notice and objecting to the expiration dates and service or maintenance fees on gift cards. They are alarmed to find out their gifts have expired and suddenly are worthless, or that the service fees have devoured the gift.

Consumers regularly tell me they believe these practices are not right and they call our consumer protection division to complain. We tell them state law offers no recourse.

The sponsors of this legislation recognize consumers' frustrations with the expiration dates and service fees and have introduced this bill to recognize that the value of the gift cards belongs to the customers and should not be prematurely forfeited to the retailers.

And store policies on these hidden fees are often not prominently displayed.

EXAMPLE

According to estimates by the research firm Tower Group \$55 billion worth of gift certificates were sold in 2004 – a 20% increase over 2003.

One expert estimates that between 4% and 10% of gift certificates are never redeemed. At \$55 billion, that's between \$2.2 billion and \$5.5 billion dollars in unredeemed gift certificates – per year.

Gift certificates are enormously popular as gifts. They are convenient to both the givers and the recipients. Gift certificates can be the perfect gift.

The National Retail Federation has says gift certificates are one of the top ten most popular holiday gifts, and their popularity is increasing.

Gift cards are very beneficial to retailers. According to the Wall Street Journal, research shows that when recipients take the cards to stores to use, they usually spend more than the card's face value.

Rhode Island, California, and Connecticut are some states that prohibit expiration dates and service fees. Massachusetts prohibits expiration dates shorter than 7 years and prohibits service fees.

Pending legislation in Minnesota would prohibit expiration dates and service fees.

Att #36

32nd DAY

but when they on the h Dakota. Hopefully it wonderful state. I'm ou know, politics, it seems to me, it's for us to come together with id finding compromises and doing ified every day for the opportunity p that includes men and women in much.

onorable Senator Byron Dorgan be

MENTS that the amendments on SJ page order with DO PASS, which motion

BE BILL tion to chapter 4-35 of the North sponsibility for persons engaged in an effective date.

which has been read, the roll was SENT AND NOT VOTING.

g; Goetz; Grindberg; Heitkamp; J; LaFountain; Lee; Lindaas; Lips; C.; Nelson, G.; Nething; Redlin; Stenehjem, W.; Tallackson; Wogsland; Yockim

MENTS MOVED that the amendments on the Eleventh order with DO

BE BILL 12-48-03.3 of the North Dakota industries' operating fund; and to

which has been read, the roll was SENT AND NOT VOTING.

r; Freborg; Goetz; Grindberg; ebsbach; Kringstad; LaFountain; Naaden; Nalewaja; Nelson, C.; Sand; Schobinger; Solberg; n; Thane; Thompson; Tomac;

32nd DAY

TUESDAY, FEBRUARY 18, 1997

449

CONSIDERATION OF AMENDMENTS

SB 2324: SEN. WANZEK (Agriculture Committee) MOVED that the amendments on SJ page 415 be adopted and then be placed on the Eleventh order with DO PASS, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2324: A BILL for an Act to amend and reenact sections 35-30-01, 35-30-02, 35-31-01, and 35-31-02 of the North Dakota Century Code, relating to the filing of agricultural processor's liens and agricultural supplier's liens.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Andrist; Berg; Christmann; Cook; DeMers; Fischer; Freborg; Goetz; Grindberg; Heitkamp; Holmberg; Kelsh; Kinnoin; Klein; Krauter; Krebsbach; Kringstad; Lee; Lindaas; Lips; Mathern; Mutch; Mutzenberger; Naaden; Nalewaja; Nelson, C.; Nelson, G.; Nething; O'Connell; Robinson; Sand; Schobinger; Solberg; St. Aubyn; Stenehjem, B.; Tallackson; Thane; Thompson; Tomac; Traynor; Urlacher; Wanzek; Watne; Wogsland; Yockim

ABSENT AND NOT VOTING: Bowman; LaFountain; Redlin; Stenehjem, W.

Engrossed SB 2324 passed and the title was agreed to.

CONSIDERATION OF AMENDMENTS

SB 2327: SEN. COOK (Transportation Committee) MOVED that the amendments on SJ pages 415-416 be adopted and then be placed on the Eleventh order with DO PASS, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2327: A BILL for an Act to amend and reenact subsection 9 of section 47-30.1-01 and section 47-30.1-14 of the North Dakota Century Code, relating to gift certificates and the definition of intangible property under the Uniform Unclaimed Property Act.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 31 YEAS, 15 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

YEAS: Andrist; Berg; Christmann; Cook; Fischer; Goetz; Grindberg; Heitkamp; Klein; Kringstad; LaFountain; Lips; Mathern; Mutch; Mutzenberger; Nalewaja; Nelson, G.; Nething; O'Connell; Robinson; Sand; Schobinger; Solberg; St. Aubyn; Tallackson; Thompson; Traynor; Urlacher; Wanzek; Watne; Wogsland

NAYS: DeMers; Freborg; Holmberg; Kelsh; Kinnoin; Krauter; Krebsbach; Lee; Lindaas; Nelson, C.; Stenehjem, B.; Stenehjem, W.; Thane; Tomac; Yockim

ABSENT AND NOT VOTING: Bowman; Naaden; Redlin

Engrossed SB 2327 passed and the title was agreed to.

CONSIDERATION OF AMENDMENTS

SB 2328: SEN. GRINDBERG (Political Subdivisions Committee) MOVED that the amendments on SJ page 416 be adopted and then be placed on the Eleventh order with DO PASS, which motion prevailed.

SECOND READING OF SENATE BILL

SB 2328: A BILL for an Act to amend and reenact subdivision e of subsection 4 of section 49-23-03 of the North Dakota Century Code and section 9 of chapter 455 of the 1995 Session Laws, relating to the effective date for the one-call excavation notice system.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

AA #4

SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
JANUARY 27, 2005

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2335

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Senate Bill No. 2335.

According to the January 2005 American Banking Journal nearly one-half of American consumers bought at least one gift card in the 2004 holiday season and 28% gave at least three gift cards.

The same percentage of consumers (48%) who bought at least one gift card said they received a gift card.

According to estimates by the research firm Tower Group \$55 billion worth of gift certificates was sold in 2004.

Dan Horne, a gift certificate expert and business professor at Providence, Rhode Island, at estimates that between 4% and 10% of gift certificates are never redeemed. At \$55 billion, that is an equivalent of between \$2.2 billion and 45.5 billion dollars in unredeemed gift certificates.

Gift certificates are enormously popular as gifts. They are convenient to both the givers and the recipients. We know as consumers that we enjoy, restaurants, specialty coffees, books, and music, and everybody else does too. Gift certificates can be the perfect gift.

The National Retail Federation has stated that gift certificates are one of the top ten most popular holiday gifts.

Gift cards are very beneficial to retailers. According to a January 18 article in the Wall Street Journal, research shows that when recipients take the cards to stores and use them, they spend considerably more than the card's face value. According to that article one survey, 55% of gift card users spend more than the initial value of the card.

Another study put that number at 21% but noted that consumers spend an average of *9% more than the card's face value.

Consumers are taking notice and objecting to the expiration dates and service or maintenance fees on gift cards. They are alarmed to find out their gifts have expired and suddenly are worthless, or that the service fees have devoured the gift.

Consumers contact the Consumer Protection Division to complain. They usually call to complain. We do not typically receive formal written consumer complaints regarding gift certificates. We do not encourage consumers to file written complaints, since the current gift certificate practices are not prohibited by law, and we do not have legal authority to act on such complaints.

Senator Holmberg and the other sponsors of this legislation recognize consumer's frustrations with the expiration dates and service fees and have introduced this bill to prevent these practices.

The value of the gift cards belongs to the consumers and should not be prematurely forfeited to the retailers.

Rhode Island, California, and Connecticut are some states that prohibit expiration dates and service fees. Massachusetts prohibits expiration dates shorter than 7 years and prohibits service fees.

Pending legislation in Minnesota would prohibit expiration dates and service fees.

For these reasons, the Attorney General and his Consumer Protection Division urge this committee to give Senate Bill 2335 a "do pass" recommendation.

Thank you for your time and consideration. I will try and answer any questions.

att #5

TESTIMONY OF MARILYN FOSS, NORTH DAKOTA BANKERS ASSOCIATION
SUPPORTING SB 2335 (AS AMENDED)

Chairman Traynor, members of the Senate IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here to present "technical correction" amendments to this bill and, as amended, to support it. I have discussed these amendments with Mr. Grossman and I understand they are acceptable to the office of the attorney general.

At the outset, I want to note that some banks in North Dakota sell branded stored value cards. These are payment instruments, not gift certificates or gift cards. Other examples of bank issued payment instruments are personal checks, traveler's checks, credit cards, and debit cards. Customers buy stored value cards as a safe and convenient method to pay for goods and services that are provided by someone other than the bank. When I say that our stored value cards are "branded" I mean that they are issued under national rules and carry a logo such as "VISATM". The national rules for bank issued stored value cards require banks to protect stored value card holders against theft and loss, include requirements for error resolution, and provide for issuance of a new card when an old card expires without being fully expended. Indeed, the same rules apply to bank issued stored value cards as apply to bank issued credit cards. A branded stored value card is accepted for payment of goods or services by anyone who accepts payment via a credit card of the same brand. **As payment instruments, unspent funds from expired bank issued stored value cards are covered by North Dakota unclaimed property law (primarily NDCC 47-30.1-06) and paid over by banks to the state for credit to the common school trust fund.**

I understood that SB 2335 wasn't intended to change how abandoned bank payment instruments are handled under our unclaimed property laws. But, the way the bill (as originally introduced) uses cross references to definitions and exemptions on page 4, the bill did, unintentionally, do just that. What the amendments do is revise the definition of gift certificate so that the term does not include bank issued stored value cards that are payment instruments, rather than listing them as exempt in the new chapter 51-29. Unclaimed bank stored value card monies will still be turned over to the state as they now are.

I don't really know what the situation was in 1997 when unredeemed gift certificates were exempted from the unclaimed property laws. But currently consumer usage of retailer gift certificates is growing exponentially; the value of unredeemed retailer gift certificates, primarily gift cards, is now in the multiple billions of dollars. ²

¹ Visa is not the only national brand for stored value cards. There are others as well, including Master Card, American Express, and Discover.

² The first retailer gift card was introduced in 1996 by Blockbuster. According to the *ABA Journal*, a daily newspaper for the banking industry, for the 2004 Christmas season approximately 48% of gift buyers purchased at least one gift card as a gift and approximately 48% of gift recipients were given a gift card.

~~Att #6~~

Frankly, with explosive growth, comes attention, including by the members of the NDBA legislative committee. Our bankers hold the view that the common school trust fund is the appropriate repository for funds from unredeemed gift certificates and gift cards. This approach to unredeemed gift certificates has major public benefits in at least two ways:

- 1) all North Dakota schools and residents will benefit from the misfortune of those who lose or, like me, forget about a gift card, and,
- 2) if an owner of an escheated gift certificate finds it- even years later- the owner will be able to recover the funds from the unclaimed property division.

With that, I'll urge you to adopt the amendments and then to give the amended SB 2335 a strong due pass. Thank you.

98% of the gift cards given over the 2004 season were retailer gift cards, not bank issued stored value cards. Retailer gift cards must typically be used to purchase merchandise or services from the seller or, in the case of a mall, from retailers who are tenants of the mall.

A# #6

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335
SENATE JUDICIARY COMMITTEE COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
JANUARY 27, 2005

PRESENTED BY
MARILYN FOSS
GENERAL COUNSEL
NORTH DAKOTA BANKERS ASSOCIATION

Page 4, line 9, after the period insert:

"A gift certificate does not include:

- a. General-use prepaid cards issued by a prepaid card issuer, which means plastic cards or other electronic payment devices which are: (1) usable at multiple, unaffiliated, merchants or service providers, or at automatic teller machines ("ATMs"); and (2) purchased or loaded on a prepaid basis.
- b. General-use prepaid cards issued by a prepaid card issuer and purchased by a business entity or person who is not an individual.
- c. Debit cards linked to a deposit account.

Page 4, line 18, remove the colon

Page 4, remove lines 19 through 29

Page 4, line 30, remove "b."

Page 4, line 30, replace "A" with "a"

Renumber accordingly

1707 North 9th Street
PO Box 5523
Bismarck, ND 58506-5523
Phone: (701) 328-2800
Fax: (701) 328-3650



www.land.state.nd.us
www.discovernd.com

Gary D. Preszler, Commissioner

**TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota State Land Department**

IN SUPPORT OF SENATE BILL NO. 2335

**Senate Judiciary Committee
January 27, 2005**

As you can see, the Senate Bill before you contains two distinct components. The first component, dealing with fees and expirations of gift certificates addresses consumer protection, and the second component deals with North Dakota Uniform Unclaimed Property Act. (NDCC 47-30.1).

From the perspective of our role as unclaimed property custodians, this testimony will share how we believe those two components relate to each other and why we believe that without the unclaimed property component (which pits private escheat vs. public escheat), the consumer protection component is essentially ineffective. If we subscribe to the notion that the property at issue in this bill belongs to the purchaser - and we do - then both components of this bill are of equal and significant relevance.

It is no secret that gift certificate and gift card use among the shopping public has reached record proportions; up from \$36 billion in 2002 to approximately \$55 billion in 2004. A January 3, 2005 USA Today article indicates that up to 8% of sales during the past holiday season were attributed to gift instruments - and for good reason. They are convenient, one size fits all, they don't go out of style, and you can buy them at the last minute at nearly all major retailers and at hundreds of different sites on the internet. So what could possibly be the problem? Fees and expirations, and ultimately, ownership.

Fee structures and expiration policies vary widely from company to company, but the following is an example of one scenario which may in fact sound familiar to some of you. Grandma purchases a \$50 gift card for Little Johnnie in December 2003. By December 2004, fees have diminished its value to \$35, and potentially, by January 2005, it may have expired altogether. Now what Little Johnnie has is a gift card that can be used for nothing more than making noise in his tricycle spokes.

Then there is the issue of expiration. Promo Magazine published an article in October 2004 which stated that of the 139 million cards purchased or received between October 2003 and October 2004, 27% were used the first week and another 31% were used within a month. No statistics were available regarding the remaining 42%, but we did find an advertisement from a card program vendor that stated an average of 16% of cards are never redeemed.

Apply that percentage to just \$1 million in gift card sales, and people have now paid for \$160,000 worth of product they will never receive. Should there be a time limit on how long they are entitled to it?

As unclaimed property custodians, we think not, and that's where the unclaimed property portion of the bill comes into the picture with great significance.

The question we ask ourselves and committee members is this:

Whose money is it - really. Regardless of the time it takes to redeem the gift certificate, does the value of that certificate belong to the retailer or does it belong to the people?

We say "to the people" - and so do the courts. Consider the following excerpt from "Unclaimed Property Laws, Compliance, and Enforcement" ¹

"In an effort to avoid turning property over to the states, some holders have adopted bylaws or utilized contractual provisions to cause a loss of the owner's property rights prior to the time the property would escheat. In "New Jersey v Jefferson Lake Sulphur Company", a corporation amended its charter to provide that dividends not claimed by the owner within three years of the date of issuance would be forfeited to the corporation. Because unclaimed dividends became the property of the corporation prior to the running of the escheat period, the corporation argued that there was no unclaimed property to escheat. The Court rejected this argument, stating that the company had attempted to establish a private escheat law and that such a law cannot circumvent the operation of a public one."

In our opinion, retailers keeping money for unredeemed gift certificates constitutes "private escheat". Therefore, we are in favor of the legislation before you which requires that proceeds for unredeemed gift certificates be reported and remitted to the unclaimed property division. This requirement would accomplish several objectives, and without it, we believe the purchasers' interests are not truly being served. Reporting the property would:

- 1) Eliminate the retailers' administrative liability in handling "old" certificates.
- 2) Forever ensure the right of the purchaser to the original value of their "product", including providing protection of their interest through corporate mergers, buyouts, and bankruptcies.
- 3) Provide owners with one place to look for (or accidentally find) lost or forgotten assets by seeing their name published on our two highly visible internet sites and in our annual newspaper publications.
- 4) Produce revenue for distribution to public schools in North Dakota as a result of investing it as part of the Common Schools Trust Fund, thereby benefiting all of the citizens of North Dakota until it is claimed, instead of solely benefiting the retailer who sold it.

At this point, I would like to draw your attention to Page 4, lines 11-13 of the bill, relating to documenting name and address of purchaser. We understand there may be some question regarding the relevance of this language in the bill. Allow me to explain.

Without a name and address, the process of returning money to owners is severely impeded. Understandably, it's difficult to return money to people if you don't know who they are. North Dakota's Unclaimed Property program is among the top 5 states in the nation in terms of percentage of claims paid to owners on the property we receive. We are constantly improving our outreach program, just recently going live online with 21 other states on a free, searchable web site called *missingmoney.com* that is sponsored by the National Association of Unclaimed Property Administrators. The number of claims paid increases each and every year, and by every indication

will continue to do so. In 2004, we paid over 2,000 claims, totaling \$1.4 million. We couldn't post those types of statistics if we didn't have name and address information.

Furthermore, Supreme Court case law has established priority rules of reporting that say if the owner of unclaimed property is "unknown" or doesn't have a "last-known address" the property must be remitted to the State of Incorporation. As you know, most of the large retailers that operate in our state are probably not incorporated here, meaning property belonging to North Dakota citizens, and sold without a name or address, could wind up in Delaware or some other state. A recently conducted audit of a regional retailer operating several stores in our state, identified several million dollars in unredeemed gift instruments. It is unknown exactly how many of those certificates were purchased by North Dakota citizens, but without a reporting requirement in our unclaimed property law, and without names and addresses, that property is currently headed to another state that is statutorily "set up" to receive the funds.

Incidentally, thirty-nine other states have some form of laws requiring that proceeds for unredeemed gift certificates be reported to their state. Prior to 1997, North Dakota law included a gift certificate reporting requirement as well.

In summary, we feel North Dakota gift certificate reporting requirements should be reinstated. Without the unclaimed property component of the bill, you only increase the costs for the retailer to hold unredeemed certificates and merely delay the date for private escheatment.

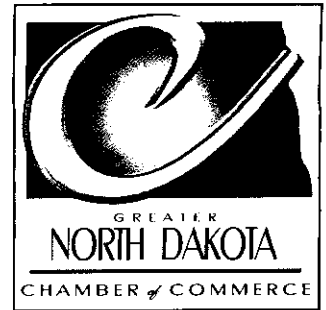
Our office is equipped to handle unclaimed property by forever protecting owners' financial assets, by seeking out owners and reuniting them with their assets, and by investing unclaimed property for the benefit of North Dakota public schools.

We respectfully request a "do pass" recommendation on SB 2335.

[The Department-prepared fiscal note estimates approximately \$1.35 million per year in unredeemed gift certificates would be added to the Common Schools Trust Fund resulting in investment earnings of \$122,000 available to distribute to the benefit of the K-12 public schools.]

¹ Unclaimed Property Laws, Compliance, and Enforcement, Anthony L. Andreoli and J. Brooke Spotswood, CCH Incorporated, 2002.

#7



**Testimony of Dave MacIver
President, Greater North Dakota Chamber of Commerce
Presented to the
Senate Judiciary Committee
January 27, 2005**

SB 2335

Mr. Chairman and members of the Senate Judiciary Committee, my name is Dave MacIver and I am the President of the Greater North Dakota Chamber of Commerce. I am here today representing a coalition which includes area chambers of commerce in North Dakota with over 7,400 member businesses to urge you to **oppose** Senate Bill 2335.

The business community would like to express its opposition to this bill. SB 2335 has the following four points: **Expiration Dates, Limiting Fees, Recording of Data, and Public Policy**, and we are opposed to all four.

First, expiration dates. It is our position that the customer is buying a product. And like that product, there needs to be some responsibility placed on the consumer. Like any other product that the consumer buys, the responsibility of ownership goes with it. For example, when a consumer buys a toaster, it is the customer's responsibility to protect their property. As long as the terms of the product are defined up front and the individual has notice of those terms, it is their product to take care of, i.e. ownership.

We believe that some of this bill may be counter intuitive. First, 51-29-02 (Section 3 of the bill) prevents the business from placing an expiration date upon the gift certificate, so in essence the business is telling the customer that the gift certificate has value indefinitely. But then in 59-29-03 (Section 3 of the bill) mandates any unredeemed portion of the gift certificate reverts to the state. We are afraid that you are preventing business from honoring these older gift certificates, because they have already paid the money over to the state. Otherwise, the business is paying twice—either allow the customer to use the gift certificate and lose money on products because they paid the original money to the State or turn away the customer, which is a bad business decision. For example, Scheels All Sports, Inc. honors one to two gift certificates a month that are up to eight years old. Scheels charges no fees on any gift certificate it sells and they do not limit time of gift certificate because it is a good business practice. But if this law were to pass, should Scheels tell the consumer they have to go to the state to collect their money?

The business community feels that there needs to be some limit on the gift certificate up front so that the consumer knows what they are buying. By placing an expiration date on the gift certificate, it will naturally cause consumer spending, and at the same time, avoid consumer confusion.

Second, as for limiting the fees placed on gift certificates. There are costs of doing business such as: employee training, computer storage, and maintaining programs and databases. It does cost businesses some money to keep this information indefinitely, and it varies from business to business.

Third, recording the data is going to be cumbersome to business and will have an adverse affect on business and consumers. The business community believes that consumers are happy with gift certificates, including electronic gift cards—they are convenient, practical, and extremely versatile. If this bill were to pass, businesses would be forced to stop the customer when they are making purchases to record information about the sale. For some businesses, this is going to mean longer lines for consumers and more cost to businesses.

Lastly, the public policy argument. Abandoned property is when someone who owns a possession and *intentionally* parts with it, i.e. they do not want to own it anymore. At best, it is misplaced property and once found, will be spent by the consumer. A gift certificate is something of value, and that value should remain with the customer, not the state. The business community provides a service to the consumer and should not be encumbered by keeping track of the consumer's property. The way the bill is written, you are asking business to maintain records for the consumer and we are opposed to this concept.

Thank you, Chairman Traynor and members of the Senate Judiciary Committee, for this opportunity to discuss the business community's position on SB 2335. We urge a **DO NOT PASS** for SB 2335. Thank you and I would be happy to answer any questions at this time.

AH #1 2/7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2335
SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN

Page 1, line 2, remove "to amend and"

Page 1, remove line 3

Page 1, line 4, remove "relating to abandoned property under the Uniform Unclaimed Property Act;"

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove the underscore under lines 3 through 9

Page 4, line 9, after the period insert:

"A gift certificate does not include:

- a. General-use prepaid cards issued by a prepaid card issuer, which means plastic cards or other electronic payment devices which are: (1) usable at multiple, unaffiliated, merchants or service providers, or at automatic teller machines ("ATMs"); and (2) purchased or loaded on a prepaid basis.
- b. General-use prepaid cards issued by a prepaid card issuer and purchased by a business entity or person who is not an individual.
- c. Debit cards linked to a deposit account."

Page 4, remove the underscore under line 10

Page 4, line 10, remove "Records -"

Page 4, line 10, remove "- Exemptions"

Page 4, remove lines 11 through 12

Page 4, line 13, remove "sold, including the state in which the sale of the gift certificate took place."

Page 4, line 15, remove lines 15 through 17 and insert immediately thereafter "certificate. A person may not limit the time for redemption of a gift certificate to a date prior to six years after the date of purchase of the gift certificate, place an expiration date on a gift certificate prior to six years after the date of purchase of the gift certificate, or include on a gift certificate any statement suggesting that an expiration or redemption date, except as permitted in this section, may apply to a gift certificate."

Page 4, line 18, remove the colon

Page 4, remove lines 19 through 29

Page 4, line 30, remove "b."

Page 4, line 30, replace "A" with "a"

Page 5, remove the underscore on lines 1 through 3

Page 5, remove lines 4 through 7

Page 5, remove the underscore under line 8

Page 5, remove the underscore under "enforce this chapter"

Page 5, line 9, remove ", excluding section 59-29-03, which must be enforced by the administrator" and insert immediately thereafter a period.

Page 5, line 10, remove "of the state abandoned property office."

Page 5, line 10, remove the underscore under "In enforcing this chapter the attorney general has all"

Page 5, remove the underscore under lines 11 through 13

Page 5, remove the underscore under "to all other causes of action, remedies, and penalties as provided in"

Page 5, line 14 remove "chapters 47-30.1 and" and insert immediately thereafter "chapter"

Renumber accordingly

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AH #2 2/7

SENATE BILL NO. 2335
(2nd REVISED)

A BILL for an Act to create and enact chapter 51-29 of the North Dakota Century Code, relating to gift certificate sales, expiration dates, and service or maintenance fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

51-29-01. Definition. As used in this chapter, "gift certificate" means a record evidencing a promise, made for monetary consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record. The term includes a record that contains a microprocessor chip, magnetic strip, or other means of storage of information that is prefunded and for which the value is decreased upon each use; a gift card; an electronic gift card; an online gift account; a stored-value card; a store card; a prepaid telephone card; or a similar record or card. A gift certificate does not include:

- a. General use pre-paid cards issued by a prepaid card issuer, which means plastic cards or other electronic payment devices which are: (1) usable at multiple, unaffiliated, merchants or service providers, or at automatic teller machines ("ATMs"); and (2) purchased or loaded on a prepaid basis.
- b. General-use prepaid cards issued by a prepaid card issuer and purchased by a business entity or person who is not an individual.
- c. Debit cards linked to a deposit account.

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

- 1. A person may not charge additional monthly or annual service or maintenance fees on a gift certificate. A person may not limit the time for redemption of a gift certificate to a date prior to six years after the date of purchase of the gift certificate, place an expiration date on a gift certificate prior to six years after the date of purchase of the gift certificate, or include on a gift certificate any statement suggesting that an expiration or redemption date, except as permitted in this section, may apply to a gift certificate.
- 2. This section does not apply to a gift certificate distributed to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer. Any restriction or limitation on such gift certificate must be disclosed to the consumer, in writing, at the time the gift certificate is distributed to the consumer.

51-29-04. Enforcement - Powers - Remedies - Penalties. The attorney general shall enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-

15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law.

HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
MARCH 9, 2005

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
ENGROSSED SENATE BILL NO. 2335

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Engrossed Senate Bill No. 2335.

According to the January 2005 American Banking Journal nearly one-half of American consumers bought at least one gift card in the 2004 holiday season and 28% gave at least three gift cards.

The same percentage of consumers (48%) who bought at least one gift card said they received a gift card.

According to estimates by the research firm Tower Group \$55 billion worth of gift certificates was sold in 2004.

Dan Horne, a gift certificate expert and business professor at Providence, Rhode Island, ~~estimates~~ estimates that between 4% and 10% of gift certificates are never redeemed. At \$55 billion, that is an equivalent of between \$2.2 billion and ~~\$~~5.5 billion dollars in unredeemed gift certificates.

Gift certificates are enormously popular as gifts. They are convenient to both the givers and the recipients. We know as consumers that we enjoy, restaurants, specialty coffees, books, and music, and everybody else does too. Gift certificates can be the perfect gift.

The National Retail Federation has stated that gift certificates are one of the top ten most popular holiday gifts.

Gift cards are very beneficial to retailers. According to a January 18 article in the Wall Street Journal, research shows that when recipients take the cards to stores and use them, they spend considerably more than the card's face value. According to that article one survey, 55% of gift card users spend more than the initial value of the card.

Another study put that number at 21% but noted that consumers spend an average of 9% more than the card's face value.

Consumers are taking notice and objecting to the expiration dates and service or maintenance fees on gift cards. They are alarmed to find out their gifts have expired and suddenly are worthless, or that the service fees have devoured the gift.

Consumers contact the Consumer Protection Division to complain. They usually call to complain. We do not typically receive formal written consumer complaints regarding gift certificates. We do not encourage consumers to file written complaints, since the current gift certificate practices are not prohibited by law, and we do not have legal authority to act on such complaints.

The value of the gift cards belongs to the consumers and should not be prematurely forfeited to the retailers.

Senator Holmberg, Representative Charging and the other sponsors of this legislation recognize consumer's frustrations with the expiration dates and service fees and they introduced this bill to address these practices.

Rhode Island, California, and Connecticut are some states that prohibit expiration dates and service fees. Massachusetts prohibits expiration dates shorter than 7 years and prohibits service fees.

Pending legislation in Minnesota would prohibit expiration dates and service fees.

Engrossed Senate Bill No. 2335 prohibits any maintenance or service fees on gift certificates and prohibits expiration dates prior to six years after the date of purchased of the gift certificate.

The Attorney General and his staff appreciated the opportunity to work with our North Dakota business community in amending the legislation to ensure that this legislation represents the interests of all affected persons. The amendments to this engrossed bill now recognize the reasonable interests of both our retailers and our consumers.

These requirements are reasonable to both the retailers that issue the gift certificates and the consumers that purchase the gift certificates. We believe North Dakota consumers will greatly appreciate these changes in the law regarding the sale of gift certificates.

The Senate has now unanimously passed Engrossed Senate Bill No. 2335.

For these reasons, and upon behalf of the sponsors of this legislation, the Attorney General, and his Consumer Protection Division, I respectfully urge this committee to give Engrossed Senate Bill 2335 a "do pass" recommendation.

Thank you for your time and consideration.