

ASSEMBLY, No. 3002

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 24, 2010

Sponsored by:

Assemblyman DECLAN J. O'SCANLON, JR.

District 12 (Mercer and Monmouth)

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Senator A.R.Bucco

SYNOPSIS

Adjusts time periods for presumptions of abandonment, limits issuer imposed dormancy fees, and provides for related administration for certain unclaimed property.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2010)

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1 AN ACT concerning presumptions of abandonment, issuer imposed
2 dormancy fees and related administration of certain unclaimed
3 properties, amending and supplementing chapter 30B of Title 46
4 of the Revised Statutes and repealing parts of the statutory law.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. R.S.46:30B-6 is amended to read as follows:
10 46:30B-6. Definitions.

11 As used in this chapter:

12 a. "Administrator" means the Treasurer of the State of New
13 Jersey, any individual serving as the Acting Treasurer in the
14 absence of the appointed Treasurer, and any State employee to
15 whom the Treasurer has delegated authority to administer the
16 provisions of this chapter and to execute any pertinent documents;

17 b. "Apparent owner" means the person whose name appears on
18 the records of the holder as the person entitled to property held,
19 issued, or owing by the holder;

20 c. (Deleted by amendment, P.L.2002, c.35).

21 d. "Business association" means a corporation, joint stock
22 company, investment company, business trust, partnership,
23 unincorporated association, joint venture, limited liability company,
24 safe deposit company, safekeeping depository, financial
25 organization, insurance company, mutual fund, utility or other
26 business entity consisting of one or more persons, whether or not
27 for profit;

28 e. "Domicile" means the state of incorporation of a corporation
29 and the state of the principal place of business of an unincorporated
30 person;

31 f. "Financial organization" means a savings and loan
32 association, building and loan association, credit union, savings
33 bank, industrial bank, bank, banking organization, trust company,
34 safe deposit company, private banker, or any organization defined
35 by other law as a bank or banking organization;

36 g. "Holder" means a person, wherever organized or domiciled,
37 who is the original obligor indebted to another on an obligation;

38 h. "Insurance company" means an association, corporation,
39 fraternal or mutual benefit organization, whether or not for profit,
40 which is engaged in providing insurance coverage, including
41 accident, burial, casualty, credit life, contract performance, dental,
42 fidelity, fire, health, hospitalization, illness, life (including
43 endowments and annuities), malpractice, marine, mortgage, surety,
44 and wage protection insurance;

45 i. (Deleted by amendment, P.L.2002, c.35).

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 j. (Deleted by amendment, P.L.2002, c.35).

2 k. "Owner" means a person having a legal or equitable interest
3 in property subject to this chapter or the person's legal
4 representative and includes, but is not limited to, a depositor in the
5 case of a deposit, a beneficiary in the case of a trust other than a
6 deposit in trust, and a creditor, claimant, or payee in the case of
7 other property;

8 l. "Person" means an individual, business association, state or
9 other government, governmental subdivision or agency, public
10 corporation, public authority, estate, trust, two or more persons
11 having a joint or common interest, or any other legal or commercial
12 entity;

13 m. "State" means any state in the United States, district,
14 commonwealth, territory, insular possession, or any other area
15 subject to the jurisdiction of the United States;

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

21 o. "Mineral" means gas, oil, coal, other gaseous, liquid and
22 solid hydrocarbons, oil shale, cement material, sand and gravel,
23 road material, building stone, chemical raw material, gemstone,
24 fissionable and nonfissionable ores, colloidal and other clay, steam
25 and other geothermal resources, or any other substance defined as a
26 mineral by the law of this State;

27 p. "Mineral proceeds" means amounts payable for the
28 extraction, production, or sale of minerals, or, upon the
29 abandonment of those payments, all payments that become payable
30 thereafter, and includes, but is not limited to, amounts payable:

31 for the acquisition and retention of a mineral lease, including
32 bonuses, royalties, compensatory royalties, shut-in royalties,
33 minimum royalties, and delay rentals;

34 for the extraction, production, or sale of minerals, including net
35 revenue interests, royalties, overriding royalties, extraction
36 payments, and production payments; and

37 under an agreement of option, including a joint operating
38 agreement, pooling agreement, and farm-out agreement;

39 q. "Money order" means an express money order and a
40 personal money order, on which the remitter is the purchaser;

41 r. "Property" means tangible property described in
42 R.S.46:30B-45 or a fixed and certain interest in intangible property
43 that is held, issued, or owed in the course of a holder's business, or
44 by a government, government subdivision, agency, or
45 instrumentality, and all income or increments therefrom, and
46 includes property that is referred to as or evidenced by:

47 money, a check, draft, deposit, interest, or dividend;

48 stored value card;

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1 credit balance, customer's overpayment, security deposit, refund,
2 credit memorandum, unpaid wage, unused ticket, mineral proceeds
3 or unidentified remittance;
4 stock or other evidence of ownership of an interest in a business
5 association or financial organization;
6 a bond, debenture, note, or other evidence of indebtedness;
7 money deposited to redeem stock, bonds, coupons, or other
8 securities or distributions;
9 an amount due and payable under the terms of an annuity or
10 insurance policy, including policies providing life insurance,
11 property and casualty insurance, workers compensation insurance,
12 or health and disability insurance; and
13 an amount distributable from a trust or custodial fund established
14 under a plan to provide health, welfare, pension, vacation,
15 severance, retirement, death stock purchase, profit sharing,
16 employee savings, supplemental unemployment, insurance, or
17 similar benefits; **[and]**

18 s. "Record" means information that is inscribed on a tangible
19 medium or that is stored in an electronic or other medium and is
20 retrievable in perceivable form; and

21 t. "Stored value card" means a record that evidences a
22 promise, made for monetary or other consideration, by the issuer or
23 seller of the record that the owner of the record will be provided,
24 solely or a combination of, merchandise, services, or cash in the
25 value shown in the record, which is pre-funded and the value of
26 which is reduced upon each redemption. The term "stored value
27 card" includes, but is not limited to the following items: paper gift
28 certificates, records that contain a microprocessor chip, magnetic
29 stripe or other means for the storage of information, gift cards,
30 electronic gift cards, rebate cards, stored-value cards or certificates,
31 store cards, and similar records or cards.

32 (cf: P.L.2002, c.35, s.3)

33

34 2. R.S.46:30B-11 is amended to read as follows:

35 46:30B-11. Presumption of abandonment of travelers check.
36 Subject to R.S.46:30B-14, any sum payable on a travelers check
37 that has been outstanding for more than **[15]** three years after its
38 issuance is presumed abandoned unless the owner, within **[15]**
39 three years, has communicated in writing with the issuer concerning
40 it or otherwise indicated an interest as evidenced by a
41 contemporaneous memorandum or other record on file prepared by
42 an employee of the issuer.

43 (cf: P.L.2002, c.35, s.10)

44

45 3. R.S.46:30B-12 is amended to read as follows:

46 46:30B-12. Presumption of abandonment of money order.
47 Subject to R.S.46:30B-14, any sum payable on a money order or
48 similar written instrument that has been outstanding for more than

1 **【seven】** three years after its issuance is presumed abandoned unless
2 the owner, within **【seven】** three years, has communicated in writing
3 with the issuer concerning it or otherwise indicated an interest as
4 evidenced by a contemporaneous memorandum or other record on
5 file prepared by an employee of the issuer.

6 (cf: P.L.2002, c.35, s.11)

7

8 4. R.S.46:30B-13 is amended to read as follows:

9 46:30B-13. Limitation on holder's power to impose service
10 charges. A holder may not deduct from the amount of a travelers
11 check or money order any charge imposed by reason of the failure
12 to present the instrument for payment unless there is a valid and
13 enforceable written contract between the issuer and the owner of the
14 instrument pursuant to which the issuer may impose a charge and
15 the issuer regularly imposes the charges and does not regularly
16 reverse or otherwise cancel them. The amount of the deduction
17 shall be limited to an amount **【that is not unconscionable】** not to
18 exceed \$2 per month. Notwithstanding any provision of this section
19 to the contrary, no service charge, dormancy fee or other similar
20 charge shall be imposed against a travelers check or money order
21 within the twelve months immediately following the date of sale.

22 (cf: P.L.2002, c.35, s.12)

23

24 5. (New section) a. A stored value card for which there has
25 been no stored value card activity for two years is presumed
26 abandoned.

27 b. The proceeds of a stored value card presumed abandoned
28 shall be the value of the card, in money, on the date the stored value
29 card is presumed abandoned.

30 c. An issuer of a stored value card shall obtain the name and
31 address of the purchaser or owner of each stored value card issued
32 or sold and shall, at a minimum, maintain a record of the zip code
33 of the owner or purchaser.

34 If the issuer of a stored value card does not have the name and
35 address of the purchaser or owner of the stored value card, the
36 address of the owner or purchaser of the stored value card shall
37 assume the address of the place where the stored value card was
38 purchased or issued and shall be reported to New Jersey if the place
39 of business where the stored value card was sold or issued is located
40 in New Jersey.

41 d. Nothing in this section shall be construed to prevent an issuer
42 from honoring a stored value card, the unredeemed value of which
43 has been reported to the State Treasurer pursuant to R.S.46:30B-1 et
44 seq., and thereafter seeking reimbursement from the State Treasurer
45 pursuant to R.S.46:30B-62.

46 e. This section does not apply to a stored value card that is
47 distributed by the issuer to a person under a promotional or
48 customer loyalty program or a charitable program for which no

1 monetary or other consideration has been tendered by the owner and
2 this section does not apply to a stored value card issued by any
3 issuer that in the past year sold stored value cards with a face value
4 of \$250,000 or less. For purposes of this subsection, sales of stored
5 value cards by businesses that operate either (1) under the same
6 trade name as or under common ownership or control with another
7 business or businesses in the State, or (2) as franchised outlets of a
8 parent business, shall be considered sales by a single issuer.

9 f. The State Treasurer is authorized to grant an exemption from
10 such provisions concerning stored value cards, on such terms and
11 conditions as the State Treasurer may require, for a business or
12 class of businesses that demonstrate good cause to the satisfaction
13 of the State Treasurer. In exercising his discretion pursuant to this
14 section, the State Treasurer may consider relevant factors including,
15 but not limited to, the amount of stored value card transactions
16 processed, the technology in place, whether or not stored value
17 cards issued contain a microprocessor chip, magnetic strip, or other
18 means designed to trace and capture information about place and
19 date of purchase, and such other factors as the State Treasurer shall
20 deem relevant.

21 g. Notwithstanding the provisions of this act or any other law to
22 the contrary, only a stored value card which is exempt from the
23 provisions of this act pursuant to subsection e. or f. of this section
24 shall be deemed a gift card or gift certificate for purposes of
25 P.L.2002, c.14 (C.56:8-110 et seq.).

26 h. As used in this section:

27 "Stored value card activity" means the purchase or issuance of
28 the stored value card, a transaction executed by the owner that
29 increased or decreased the value of the stored value card, or
30 communication by the owner of the stored value card with the
31 issuer of the stored value card concerning the value of the balance
32 remaining on the stored value card as evidenced by a
33 contemporaneous record prepared by or on behalf of the issuer.

34 "Issuer" means an issuer or seller of a stored value card that is a
35 person, retailer, merchant, vendor, provider or business association
36 with the obligations of a holder to accept the stored value card as
37 redeemable for, solely or a combination of, merchandise, services,
38 or cash, and to report and deliver proceeds of the stored value card
39 if abandoned.

40
41 6. Section 37 of P.L.2002, c.35 (C.46:30B-43.1) is amended to
42 read as follows:

43 37. Limitation on holder's power to impose charges. A holder
44 **[may not deduct from the amount of any instrument] of property**
45 **subject to R.S.46:30B-42, section 5 of P.L. , c. (C.)**
46 **(pending before the legislature as this bill), and R.S.46:30B-43**
47 **[any] shall not impose on the property a dormancy charge**
48 **[imposed by reason of the failure to present the instrument for**

1 payment unless there is a valid and enforceable written contract
2 between the issuer and owner of the instrument pursuant to which
3 the issuer may impose a ~~】 or fee, abandoned property charge~~ **【and**
4 the issuer regularly imposes the charges and does not regularly
5 reverse or otherwise cancel them. The amount of the deduction
6 shall ~~】 or fee, unclaimed property charge or fee, escheat charge or~~
7 ~~fee, inactivity charge or fee, or any similar charge, fee or penalty~~
8 ~~for inactivity with respect to the property. Neither the property nor~~
9 ~~an agreement with respect to the property may contain language~~
10 ~~suggesting that the property may be~~ **【limited to an amount that is**
11 ~~not unconscionable】 subject to that kind of charge, fee or penalty~~
12 ~~for inactivity.~~

13 (cf: P.L.2002, c.35, s.37)

14

15 7. R.S.46:30B-62 is amended to read as follows:

16 46:30B-62. Reimbursement of holder paying claim. A holder
17 who has paid money to the administrator pursuant to this chapter
18 may make payment to any person appearing to the holder to be
19 entitled to payment and, upon filing proof of payment and proof
20 that the payee was entitled thereto, the administrator shall promptly
21 reimburse the holder for the payment without imposing any fee or
22 other charge. If reimbursement is sought for a payment made on a
23 negotiable instrument, including a stored value card, travelers check
24 or money order, the holder shall be reimbursed under this section
25 upon filing proof that the instrument was duly presented and that
26 payment was made to a person who appeared to the holder to be
27 entitled to payment. The holder shall be reimbursed for payment
28 made under this section even if the payment was made to a person
29 whose claim was barred under R.S.46:30B-88.

30 (cf: P.L.1989, c.58, s.1)

31

32 8. The following sections are repealed:

33 Sections 1 through 3 of P.L.2007, c.326 (C.56:8-182 et seq.).

34

35 9. This act shall take effect July 1, 2010 and apply to travelers
36 checks, money orders, stored value cards, credit balances, customer
37 overpayments, security deposits, refunds, credit memoranda, unused
38 tickets, or similar instruments outstanding on and after the July 1,
39 2010, including, but not limited to, those outstanding instruments
40 issued before July 1, 2010.

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STATEMENT

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45 This bill modifies the State's unclaimed property laws to adjust
46 the time periods for presumptions of abandonment, limit issuer
47 imposed dormancy fees, and provide for related administration of
48 certain unclaimed property. The primary purposes of this measure

1 are to protect New Jersey consumers from certain commercial
2 dormancy fee practices and modernize the State's unclaimed
3 property laws.

4 The bill provides the following presumptions of abandonment:

- 5 • Adjusts the period of time which triggers abandonment for
6 travelers checks from 15 to 3 years;
- 7 • Adjusts the period of time which triggers abandonment for
8 money orders from 7 to 3 years; and
- 9 • Creates a 2 year trigger for abandonment of stored value cards.

10 The bill's definition of stored value cards, includes, but is not
11 limited to, paper gift certificates, gift cards and rebate cards.

12 The bill also limits the imposition of dormancy fees as follows:

- 13 • Precludes the imposition of dormancy fees on travelers checks
14 or money orders in the first 12 months after issuance and limits
15 permissible dormancy fees to \$2 per month; and
- 16 • Precludes the imposition of dormancy fees on stored value
17 cards, credit balances, overpayments, security deposits, unused
18 tickets, refunds, credit memoranda and similar instruments.

19 The bill also includes stored value cards into an existing
20 reimbursement process for escheated properties so that if an
21 escheated stored value card is subsequently claimed by an owner
22 and honored by the issuer, the State can reimburse the issuer.

23 Additionally, the bill requires stored value card issuers to obtain
24 the name and address of purchasers and to maintain, at a minimum,
25 a record of the zip code of the purchaser. In instances where an
26 issuer does not have the name and address of a purchaser, the
27 address of the purchaser shall assume the address of the place where
28 the stored value card is purchased, if that place is located in New
29 Jersey. These provisions are designed to modernize the State's
30 unclaimed property processes relative to other states and enhance
31 New Jersey's capacity to protect its residents' stored value cards
32 from being subject to the escheatment processes of other states.

33 Stored value cards issued under a promotional program, customer
34 loyalty program, charitable program or by a business selling
35 \$250,000 or less of stored value cards in the prior year are
36 exempted from the stored value card provisions of the bill.

37 The bill also authorizes the State Treasurer to grant an exemption
38 from such provisions concerning stored value cards, on such terms
39 and conditions as the State Treasurer may require, for a business or
40 class of businesses that demonstrate good cause. In determining
41 whether to exercise the discretion to grant an exemption, the State
42 Treasurer may consider relevant factors including, but not limited
43 to, the amount of stored value card transactions processed, the
44 technology in place, whether or not stored value cards issued
45 contain a microprocessor chip, magnetic strip, or other means
46 designed to trace and capture information about place and date of
47 purchase, and such other factors as the State Treasurer shall deem
48 relevant.

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1 The bill specifies that only stored value cards exempted from the
2 unclaimed property provisions of the bill shall be deemed gift cards
3 or gift certificates subject to the consumer protections provided
4 under P.L.2002, c.14 (C.56:8-110 et seq.).

5 The bill takes effect July 1, 2010 and applies to stored value
6 cards, travelers checks, money orders and certain similar
7 instruments outstanding on and after July 1, 2010, including, but
8 not limited to, those issued before July 1, 2010.