ASSEMBLY BILL NO. 279–ASSEMBLYMEN KIHUEN, PARKS, ANDERSON, ARBERRY, ATKINSON, BEERS, BOBZIEN, BUCKLEY, CLABORN, COBB, CONKLIN, DENIS, GERHARDT, HOGAN, HORNE, KIRKPATRICK, KOIVISTO, MANENDO, MCCLAIN, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL, PIERCE, SEGERBLOM, SMITH AND WOMACK

MARCH 9, 2007

JOINT SPONSORS: SENATORS CARLTON, CARE, TITUS, HORSFORD, LEE AND WOODHOUSE

Referred to Committee on Commerce and Labor

SUMMARY—Requires the unused value of certain gift certificates to escheat to the State. (BDR 52-961)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[**~~omitted material~~**]** is material to be omitted.

AN ACT relating to unclaimed property; requiring a statement to be printed on gift certificates to give notice to buyers that value remaining on gift certificates will be presumed abandoned and escheat to the State if the value is not redeemed or charged by certain dates; requiring the unused value of certain gift certificates to escheat to the State; requiring the State Treasurer in his capacity as the Administrator of Unclaimed Property to hold payments received from abandoned gift certificates in a separate account to be vested in the State of Nevada for educational purposes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that it is a deceptive trade practice if certain requirements are not met in the issuance of a gift certificate. (NRS 598.0921) **Section 1** of this bill provides an additional requirement to include on the gift certificate a notice to the buyer that any value remaining on the certificate is presumed abandoned and will escheat to the State if it is not redeemed or charged by certain dates.

Section 2 of this bill adds a new section to chapter 120A of NRS which provides that the unredeemed or uncharged value remaining on a gift certificate is presumed abandoned on the earlier of the gift certificate's expiration date or, if the certificate does not have an expiration date, 3 years after the date the certificate was issued if it was never used, or 3 years after the date the certificate was last used or value was added. **Section 3** of this bill requires the State Treasurer in his capacity as the Administrator of Unclaimed Property to hold payments received from abandoned gift certificates in a separate account to be vested in the State of Nevada for educational purposes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 598.0921 is hereby amended to read as follows:

598.0921 1. A person engages in a "deceptive trade practice" if, in the course of his business or occupation:

(a) He issues a gift certificate that expires on a certain date, unless either of the following is printed plainly and conspicuously on the front or back of the gift certificate in at least 10-point font and in such a manner that the print is readily visible to the buyer of the gift certificate before the buyer purchases the gift certificate:

(1) The expiration date of the gift certificate; or

(2) A toll-free telephone number accompanied by a statement setting forth that the buyer or holder of the gift certificate may call the telephone number to obtain the balance of the gift certificate and the expiration date of the gift certificate;

(b) ***He issues a gift certificate without a statement printed plainly and conspicuously on the front or back of the gift certificate in at least 10-point font and in such a manner that the print is readily visible to the buyer of the gift certificate before the buyer purchases the gift certificate setting forth in substantially the following form:***

> ***Pursuant to NRS 598.0921 and section 2 of this act, any value remaining on this gift certificate is presumed abandoned and will be delivered to the State of Nevada for educational purposes if it is not redeemed or charged by the earlier of the expiration date printed on this certificate or, if this certificate does not have an expiration date, 3 years after the date this certificate was issued if this certificate was never in use, or 3 years after the date this certificate was last used or value was added.***

(c) He imposes upon the buyer or holder of a gift certificate a service fee, unless each of the following is printed plainly and conspicuously on the front or back of the gift certificate in at least 10-point font and in such a manner that the print is readily visible to the buyer of the gift certificate before the buyer purchases the gift certificate:

(1) The amount of the service fee;

(2) The event or events that will cause the service fee to be imposed;

(3) The frequency with which the service fee will be imposed; and

(4) If the service fee will be imposed on the basis of inactivity, the duration of inactivity that will cause the service fee to be imposed; or

~~[(c)]~~ ***(d)*** Regardless of the notice provided, he imposes upon the buyer or holder of a gift certificate:

(1) A service fee or a combination of service fees that exceed a total of $1 per month; or

(2) A service fee that commences or is imposed within the first 12 months after the issuance of the gift certificate.

2. The provisions of this section do not apply to:

(a) A gift certificate that is issued as part of an award, loyalty, promotional, rebate, incentive or reward program and for which issuance the issuer does not receive money or any other thing of value;

(b) A gift certificate that is sold at a reduced price to an employer or nonprofit or charitable organization, if the expiration date of the gift certificate is not more than 30 days after the date of sale; and

(c) A gift certificate that is issued by an establishment licensed pursuant to the provisions of chapter 463 of NRS.

3. As used in this section:

(a) "Gift certificate" means an instrument or a record evidencing a promise by the seller or issuer of the instrument or record to provide goods or services to the holder of the gift certificate for the value shown in, upon or ascribed to the instrument or record and for which the value shown in, upon or ascribed to the instrument or record is decreased in an amount equal to the value of goods or services provided by the issuer or seller to the holder. The term includes, without limitation, a gift card, certificate or similar instrument. The term does not include:

(1) An instrument or record for prepaid telecommunications or technology services, including, without limitation, a card for prepaid telephone services, a card for prepaid technical support services and an instrument for prepaid Internet service purchased or

otherwise distributed to a consumer of such services, including, without limitation, as part of an award, loyalty, promotional or reward program; or

(2) An instrument or record, by whatever name called, that may be used to obtain goods or services from more than one person or business entity, if the expiration date is printed plainly and conspicuously on the front or back of the instrument or record.

(b) "Issue" means to sell or otherwise provide a gift certificate to any person and includes, without limitation, adding value to an existing gift certificate.

(c) "Record" means information which is inscribed on a tangible medium or which is stored in an electronic or other medium, including, without limitation, information stored on a microprocessor chip or magnetic strip, and is retrievable in perceivable form.

(d) "Service fee" means any charge or fee other than the charge or fee imposed for the issuance of the gift certificate, including, without limitation, a service fee imposed on the basis of inactivity or any other type of charge or fee imposed after the sale of the gift certificate.

Sec. 2. Chapter 120A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any unredeemed or uncharged value remaining on a gift certificate is presumed abandoned and subject to the provisions of this chapter on the earlier of:

(a) The gift certificate's expiration date; or

(b) If the gift certificate does not have an expiration date, the third anniversary of:

(1) The date the gift certificate was issued if the gift certificate is not used after it is issued; or

(2) The date the gift certificate was last used or value was last added to the gift certificate.

2. This section does not create a cause of action against a person who issues or sells a gift certificate.

3. As used in this section, "gift certificate" has the meaning ascribed to it in NRS 598.0921.

Sec. 3. NRS 120A.360 is hereby amended to read as follows:

120A.360 1. Except as otherwise provided in subsections 4 ~~[, 5 and 6,]~~ ***to 7, inclusive,*** all abandoned property other than money delivered to the Administrator under this chapter must, within 2 years after the delivery, be sold by the Administrator to the highest bidder at public sale in whatever manner affords in his judgment the most favorable market for the property involved. The Administrator may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient.

2. Any sale held under this section must be preceded by a single publication of notice thereof at least 2 weeks in advance of the sale in a newspaper of general circulation in the county where the property is to be sold.

3. The purchaser at any sale conducted by the Administrator pursuant to this chapter is vested with title to the property purchased, free from all claims of the owner or prior holder and of all persons claiming through or under them. The Administrator shall execute all documents necessary to complete the transfer of title.

4. The Administrator need not offer any property for sale if, in his opinion, the probable cost of the sale exceeds the value of the property. The Administrator may destroy or otherwise dispose of such property or may transfer it to:

(a) The Nevada Museum and Historical Society, the Nevada State Museum or the Nevada Historical Society, upon its written request, if the property has, in the opinion of the requesting institution, historical, artistic or literary value and is worthy of preservation;

(b) A genealogical library, upon its written request, if the property has genealogical value and is not wanted by the Nevada Museum and Historical Society, the Nevada State Museum or the Nevada Historical Society; or

(c) A veterans' or military museum, upon its written request, if the property has military or military historical value and is not wanted by the Nevada Museum and Historical Society, the Nevada State Museum or the Nevada Historical Society.

➥ An action may not be maintained by any person against the holder of the property because of that transfer, disposal or destruction.

5. Securities listed on an established stock exchange must be sold at the prevailing price for that security on the exchange at the time of sale. Other securities not listed on an established stock exchange may be sold:

(a) Over the counter at the prevailing price for that security at the time of sale; or

(b) By any other method the Administrator deems acceptable.

6. The Administrator shall hold property that was removed from a safe-deposit box or other safekeeping repository for 1 year after the date of the delivery of the property to the Administrator, unless that property is a will or a codicil to a will, in which case the Administrator shall hold the property for 10 years after the date of the delivery of the property to the Administrator. If no claims are filed for the property within that period, it may be destroyed.

7. The Administrator shall hold payments from gift certificates in a separate account to be vested in the State of Nevada for educational purposes.

Sec. 4. This act applies to gift certificates issued on or after October 1, 2007.