

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 420 An Act To Amend the Maine Revised Unclaimed Property Act

Public Hearing Date: February 25, 2021

SUMMARY

This bill amends the Maine Revised Unclaimed Property Act in the following ways.

1. It provides that fee restrictions do not apply to any stored-value obligation that enables the holder to transfer the underlying funds to multiple unaffiliated merchants at the merchants' point-of-sale terminals or online or at an automated teller machine.

2. It provides that an automatic reinvestment of dividends or interest or an automatic withdrawal of disclosed fees is not an indication of an apparent owner's interest in property for purposes of determining when property is presumed abandoned.

TESTIMONY

Proponents

- Representative Rielly, sponsor (written testimony)
- Laura Hudson, Director of Internal Operations, Office of the Treasurer (written testimony)
- Jeff Chetkauskas, Office of the Treasurer (written testimony)
- Ann Robinson, American Express
 - Introduced this legislation at the specific request of the Office of the State Treasurer.
 - LD 420 makes two clarifying changes to the Revised Uniform Unclaimed Property Act (RUUPA).
 - The first part clarifies the intent of fee restrictions on stored-value obligations. Stored-value obligations are instruments such as preloaded cards.
 - Current language in RUUPA has been interpreted by some card merchants as not allowing certain long-standing allowable fees related to these cards.
 - LD 420 clarifies which fees are permissible and which fees are not. Some further amendments may be necessary.
 - The second part of LD 420 corrects what may have been a language error in RUUPA: it clarifies that with regard to accounts at financial institutions, automatic reinvestment of dividends or interest or automatic withdrawals of fees do not prevent the account from being considered dormant or unclaimed.
 - This will prevent certain financial accounts from never being reported as unclaimed property or being depleted by automatic fees.
 - Stored-value obligations allow for the replenishing/reloading of funds on a card or other device.
 - Some examples would be a Dunkin Donuts card where funds can be reloaded to cover purchases, or an iTunes account online to purchase music. These obligations/cards are issued by and usable at, a single retailer.

- Stored-value obligations are not gift cards, in which the balance can only be depleted after issuing, and to which additional deposits cannot be made. An example of a gift card would be an LL Bean Gift Card.
- Prefunded bank cards, also called open-loop cards, are cards that operate essentially like a bank account in that they can be used with multiple merchants, the amount stored on the card can be increased, and the card can be used to withdraw cash at an ATM. Thus, these cards are distinguishable from reloadable cards that are issued by, and usable at, a single retailer.
- After this law took effect, our department heard from industry that current law prevents the charging of standard fees associated with the use of stored value obligations.
- We took the position that it was not our intent to forbid issuance of fees between merchants for example, or fees for withdrawing cash using stored value obligations.
- We explained that we would pursue a legislative fix. That’s why we are here today.
- Under the old Unclaimed Property statute, stored-value cards (a refillable Dunkin Donuts card) and prefunded gift cards (like VISA debit cards) fell under separate definitions.
- Prefunded bank cards have not changed and allow for fees to be charged, like dormancy fees, to the cards, as defined by the contract with the card.
- With the adoption of RUUPA, the definition of “stored value obligation” in the 2020 legislation included reloadable, open-loop cards. Due to the nature, purpose and available uses of these reloadable, open loop cards, however, there are standard fees that apply and have long been present.
- Our amendment restores the intent of the enactment of the 2020 legislation with respect to – and only to – the reloadable, open-loop cards.
- The next section of LD 420 seeks to clarify that certain activity with accounts at financial institutions, namely the automatic reinvestment of funds (think of a CD) or withdrawal of fees does not restart the clock for determining when property becomes dormant.
- By error or oversight, current law treats certain activity as that activity which indicates interest or active ownership in property when it probably should not. Current law states that automatic reinvestment of dividends and interest indicates that a financial account is not unclaimed or not dormant.
- An example of this would be a savings account where there is monthly interest, or a CD with dividends that might be automatically reinvested.
- It’s possible that the owner of either account is deceased or disconnected from the account, but it continues into perpetuity as if the owner was involved.
- To achieve this correction, language in part two of LD 420 provides that an automatic reinvestment of dividends or interest or an automatic withdrawal of disclosed fees is not an indication of an apparent owner’s interest in property for purpose of determining when property is presumed abandoned.
- Section 1 corrects unintended confusion and ambiguity caused by last year’s legislation – it is not about unclaimed property
- Authorizes fees for open-loop cards in their normal active use
- If we can’t offer the product, unclaimed nature is moot
- Continued to offer cards consistent with the advice of the State Treasurer

Opponents

- None

Neither for nor against

- None

FISCAL IMPACT:

Not yet determined

BACKGROUND

The Revised Uniform Unclaimed Property Act (RUUPA) was enacted last year (replacing a previous version of the Uniform Unclaimed Property Act).

Unclaimed Property consists of money and other financial assets that are considered lost or abandoned when an owner cannot be located after a specified period of time of inactivity. It includes items such as bank accounts, uncashed checks, life insurance policies, unpaid wages, stocks and dividends, refunds and safe deposit box contents. Unclaimed Property does not include real estate, animals or vehicles.

The holder of the unclaimed property, such as a bank or an insurance company, is required to report unclaimed property in its possession and transfer it to the Office of the State Treasurer. The property "escheats" to the State. The Treasurer holds those assets until the rightful owner claims it.

Property is considered "unclaimed" after a specific period of time has run based on the type of property. That period of time is called the "dormancy period," and it starts to run after the most recent indication of the named or presumed owner's activity with the property.

The state regulation of gift cards and stored-value obligations is part of the unclaimed property act because it the only way to apply the unclaimed property reporting and escheatment requirements to the balance remaining on unclaimed cards and obligations. This statute became the only place to regulate the collection of fees.

This bill does not apply to gift obligations. But here is information about gift obligations in case you want to compare with stored-value obligations

11. Gift obligation. "Gift obligation" means a record evidencing an obligation of a business association arising from a transaction between the business association and a consumer to provide goods or services at a future date for a specified amount shown in the record.

A. A gift obligation:

- (1) Is a bearer instrument not associated with an account holder or individual;
- (2) May be decreased in value only by redemption for merchandise, goods or services; and
- (3) Unless required by law, may not be redeemed for or converted into money or otherwise monetized. [

B. "Gift obligation" does not include account credits or account balances, including credits or balances funded by gift obligations.

RUUPA provides strict requirements for gift obligations about fees and provides that the right to redeem the gift obligation never expires:

§2067. When gift obligation presumed abandoned

1. Presumed abandoned after 2 years. Subject to section 2070, a gift obligation is presumed abandoned 2 years after December 31st of the year in which the obligation arises or the most recent transaction involving the obligation occurs, whichever is later.

2. Amount unclaimed. The amount unclaimed of a gift obligation is as follows:

- A. For a gift obligation whose issuance or whose most recent transaction, whichever is later, occurred during calendar year 2019 or earlier, 60% of the net obligation value at the time it is presumed abandoned;

B. For a gift obligation whose issuance or whose most recent transaction, whichever is later, occurred during calendar year 2020, 40% of the net obligation value at the time it is presumed abandoned;

C. For a gift obligation whose issuance or whose most recent transaction, whichever is later, occurred during calendar year 2021, 20% of the net obligation value at the time it is presumed abandoned; and

D. For a gift obligation whose issuance or whose most recent transaction, whichever is later, occurred during calendar year 2022 or after, 0% of the net obligation value at the time it is presumed abandoned.

3. Not presumed abandoned; sales by a single issuer under \$250,000. A gift obligation is not presumed abandoned if it was sold by a single issuer who in the past calendar year sold no more than \$250,000 in face value of gift obligations. Sales of gift obligations are considered sales by a single issuer if the sales were by businesses that operate either:

A. Under common ownership or control with another business or businesses in the State; or

B. As franchised outlets of a parent business.

4. No period of limitation for redemption. A period of limitation may not be imposed on the owner's right to redeem the gift obligation.

5. No charges or fees; exception, disclosure. Notwithstanding section 2112, fees or charges may not be imposed on gift obligations, except that the issuer may charge a transaction fee for the initial issuance. The fee must be disclosed in a separate writing prior to the initial issuance or referenced on the gift obligation.

6. Redemption; balance in cash. If a gift obligation is redeemed in person and a balance of less than \$5 remains following redemption, at the consumer's request the merchant redeeming the gift obligation must refund the balance in cash to the consumer. This subsection does not apply to a gift obligation with an initial value of \$5 or less.

Section 1 amends the language governing stored-value obligations.

30. Stored-value obligation. "Stored-value obligation" means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services or money will be provided to the owner of the record in the amount of the value or amount shown in the record. "Stored-value obligation":

A. Includes a record that contains or consists of a microprocessor chip, magnetic strip or other means for the storage of information, that is prefunded and the value or amount of which is decreased on each use and increased by payment of additional consideration; and

B. Does not include a loyalty obligation, a gift obligation or game-related digital content.

RUUPA provides different requirements for stored-value obligations. This is the section that Section 1 of the bill amends.

§2066. When stored-value obligation presumed abandoned

1. Presumed abandoned after 3 years. Subject to section 2070, the net obligation value of a stored-value obligation is presumed abandoned on the latest of 3 years after:

A. December 31st of the year in which the obligation is issued or additional funds are deposited into it;

B. The most recent indication of interest in the obligation by the apparent owner; and

C. A verification or review of the balance by or on behalf of the apparent owner.

2. Amount presumed abandoned. The amount presumed abandoned in a stored-value obligation is the net obligation value at the time it is presumed abandoned.

3. No period of limitation, charges or fees; exceptions, disclosure.

Notwithstanding section 2112, fees, charges or a period of limitation may not be imposed on stored-value obligations, except that the issuer may charge a transaction fee for the initial issuance and for each occurrence of adding value to an existing stored-value obligation. These fees must be disclosed in a separate writing prior to the initial issuance or referenced on the stored-value obligation.

4. Redemption; balance in cash. If a stored-value obligation is redeemed in person and a balance of less than \$5 remains following redemption, at the consumer's request the merchant redeeming the stored-value obligation must refund the balance in cash to the consumer. This subsection does not apply to a stored-value obligation with an initial value of \$5 or less, or a stored-value obligation that is not purchased but provided as a promotion or as a refund for merchandise returned without a receipt.

Section 2 of the bills addresses a completely different issue. It changes the determination of what indicates an owner's active interest in a specific type of property: an account at a financial organization. A deposit or withdrawal by the owner is accepted as the owner's interest in the account, and the owner hasn't abandoned or forgotten it. Current law includes automatic withdrawals authorized by the owner as well as automatic reinvestment of dividends and interest. "Automatic" in that the owner does not actively make the withdrawal or reinvestment, but they are done pursuant to an agreement entered into by the owner with the financial organization.

Section 2 amends the law to provide that the automatic reinvestment of dividends or interest is NOT an indication of the owner's interest in the account. Similarly, the withdrawal of a disclosed fee is NOT an indication of the owner's interest in the account. With these changes, the dormancy period begins to run from the owner's most recent actual deposit or withdrawal.

At the end of the dormancy period (I believe it is 3 years for accounts covered by this change), the holder of the account (the financial organization) is required to report the unclaimed balance in the account and transfer the amount to the State Treasurer.

§2070. Indication of apparent owner

1. Period of abandonment. The period after which property is presumed abandoned is measured from the later of:

- A. The date the property is presumed abandoned under this subchapter; and
- B. The latest indication of interest by the apparent owner in the property.

2. Indication of interest. Under this Act, an indication of an apparent owner's interest in property includes:

...

- E. A deposit into or withdrawal from an account at a financial organization by the apparent owner, including an automatic withdrawal previously authorized or an automatic reinvestment of dividends or interest;