

Date: February 26, 2015

To: Uniform Law
Commission, Revise the
Uniform Unclaimed
Property Act Drafting
Committee

From: Steve Kranz and Diann L.
Smith on behalf of the Retail
Industry Leaders Association

Re: Comments of the Retail Industry Leaders Association Regarding Gift Certificates,
Gift Cards and Stored Value Cards

The Retail Industry Leaders Association, on behalf of its member companies, submits these comments regarding the treatment of gift certificates, gift cards and certain stored value cards in the Corrected Draft of the Revised Uniform Unclaimed Property Act, circulated on February 16, 2015.

Retail Industry Leaders Association

The Retail Industry Leaders Association (RILA) represents most of America's leading retailers. RILA is the retail industry's advocate before lawmakers, telling the industry's stories and informing lawmakers of the impact and consequences of the decisions they make. RILA was established in 1969 and today supports more than 200 member companies representing more than \$1.5 trillion in sales, providing millions of jobs and operating more than 100,000 stores domestically and worldwide.

Support for Positions Taken by Other Holder Groups Regarding Gift Certificate, Gift Card, and Stored Value Card Exclusion and Related Concepts.

In order avoid duplication of comments and wasting this Committee's time, RILA notes as a preliminary matter that it supports and adopts the comments submitted by several other holder advocates. Primarily, RILA joins with the National Retail Federation in support of their position on the issue of gift certificates, gift cards and certain stored value cards. Specifically, RILA proposes that the ULC's Revised Uniform Unclaimed Property Act not include gift certificates, gift cards, or certain stored value cards within the types of property subject to remittance to a state. RILA also supports the ABA's proposal to exclude from the definition of "property" property that does not include any prepaid obligation redeemable for cash. RILA also supports UPPO's similar proposed exclusion.

The reasons that the Drafting Committee should adopt this position include:

1. Promotion of Uniformity: The majority of states do not require most types of gift certificates, gift cards and stored value cards be remitted as unclaimed property. Thirty-one states currently have some version of an exclusion.
2. Respect for Contract Rights and the Derivative Rights Doctrine: RILA supports NRF's and the ABA's position regarding the appropriate application of the derivative rights doctrine vis-à-vis gift certificates, gift cards, and stored value cards. Excluding such cards from the definition of property subject to remittance to the states respects the contract rights of the parties and upholds the concept that the state should not obtain rights greater than the property owner itself.
3. Protection of the Consumer: States are not in a better position than retailers to protect consumers with regarding to gift cards. RILA members generally do not impose expiration dates or dormancy fees on such cards. RILA members also accept cards and certificates from their predecessor entities. Since a customer finding a forgotten or lost card is most likely to contact the vendor rather than the vendor's state of incorporation, retaining the value at the vendor best protects a gift card owner's expectations and property.

Specific Comments Regarding Provisions in Corrected Draft of Revised Uniform Unclaimed Property Act

The draft was only recently released and RILA and its members have not had time to fully digest and discuss the implications of the revisions. However, the following items are of interest to RILA and its members.

Section 2(8): The definition of "gift card" should be removed and gift cards should be specifically excluded from property subject to remittance to the states.

Section 2(9): The definition of "gift obligation" is overly broad and could encompass items for which no consideration was paid. It is not clear why this term is defined as it does not seem to be used elsewhere in the Act.

Section 2(19): The definition of property should exclude gift cards (as well as gift certificates).

Section 2(21): The definition of stored value card should clearly state that such cards exclude cards redeemable solely for goods and services.

Section 3(a)(7): Gift cards should be excluded from the definition of property subject to remittance and thus no dormancy period designation is necessary.

Section 3(i): RILA supports the provision in the draft of a *de minimis* amount excluded from reporting and remittance requirements. RILA suggests either that the *de minimis* amount be increased to \$100 or some type of inflation index be applied to increase the amount over time.

Section 5(5) and (6): RILA supports the limitation of the third-priority rule for the reasons stated in the Reporter's Comments.

Conclusion: Excluding gift cards and similar items from the definition of property subject to remittance to the states as unclaimed property is of significant importance to RILA and its members. RILA hopes to work with this Committee, and the Commission as a whole, to accomplish this. RILA and its members will also continue to work with legislators at the individual state level to continue the trend toward exclusion. The most efficient and productive method to achieve uniformity in this area is to conform the revised Act to the modern legislative movement toward exclusion.