

HB 3036 - H AMD 975

By Representative Hunter

ADOPTED 02/16/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
4 relieve businesses from the obligation of reporting gift certificates
5 as unclaimed property. In order to protect consumers, the legislature
6 intends to prohibit acts and practices of retailers that deprive
7 consumers of the full value of gift certificates, such as expiration
8 dates, service fees, and dormancy and inactivity charges, on gift
9 certificates. The legislature does not intend that this act be
10 construed to apply to cards or other payment instruments issued for
11 payment of wages or other intangible property. To that end, the
12 legislature intends that this act should be liberally construed to
13 benefit consumers and that any ambiguities should be resolved by
14 applying the uniform unclaimed property act to the intangible property
15 in question.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Artistic and cultural organization" has the same meaning as in
19 RCW 82.04.4328.

20 (2) "Charitable organization" means an organization exempt from tax
21 under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C.
22 Sec. 501(c)(3)).

23 (3) "Fund-raising activity" has the same meaning as in RCW
24 82.04.3651.

25 (4) "Gift card" means a record as described in subsection (5) of
26 this section in the form of a card, or a stored value card or other
27 physical medium, containing stored value primarily intended to be
28 exchanged for consumer goods and services.

1 (5) "Gift certificate" means an instrument evidencing a promise by
2 the seller or issuer of the record that consumer goods or services will
3 be provided to the bearer of the record to the value or credit shown in
4 the record and includes gift cards.

5 (6) "Bearer" means a person with a right to receive consumer goods
6 and services under the terms of a gift certificate, without regard to
7 any fee, expiration date, or dormancy or inactivity charge.

8 (7) "Issue" means to sell or otherwise provide a gift certificate
9 to any person, and includes reloading or adding value to an existing
10 gift certificate.

11 (8) "Stored value" has the same meaning as in RCW 19.230.010.

12 NEW SECTION. **Sec. 3.** (1) Except as provided in sections 4 through
13 8 of this act, it is unlawful for any person or entity to issue, or to
14 enforce against a bearer, a gift certificate that contains:

15 (a) An expiration date;

16 (b) Any fee, including a service fee; or

17 (c) A dormancy or inactivity charge.

18 (2) If a gift certificate is issued with the sale of tangible
19 personal property or services, the gift certificate is subject to
20 subsection (1) of this section.

21 (3) If a purchase is made with a gift certificate for an amount
22 that is less than the value of the gift certificate, the issuer must
23 make the remaining value available to the bearer in cash or as a gift
24 certificate at the option of the issuer. If after the purchase the
25 remaining value of the gift certificate is less than five dollars, the
26 gift certificate must be redeemable in cash for its remaining value on
27 demand of the bearer. A gift certificate is valid until redeemed or
28 replaced.

29 (4) This section does not require, unless otherwise required by
30 law, the issuer of a gift certificate to replace a lost or stolen gift
31 certificate.

32 NEW SECTION. **Sec. 4.** (1) It is lawful to issue, and to enforce
33 against the bearer, a gift certificate containing an expiration date
34 if:

1 (a) The gift certificate is issued pursuant to an awards or loyalty
2 program or in other instances where no money or other thing of value is
3 given in exchange for the gift certificate.

4 (b) The gift certificate is donated to a charitable organization
5 without any money or other thing of value being given in exchange for
6 the gift certificate if the gift certificate is used by a charitable
7 organization solely to provide charitable services.

8 (2) The expiration date must be disclosed clearly and legibly on
9 any gift certificate described in subsection (1) of this section.

10 NEW SECTION. **Sec. 5.** It is lawful to issue, and to enforce
11 against the bearer, a gift card containing a dormancy or inactivity
12 charge if:

13 (1) A statement is printed on the gift card in at least six-point
14 font stating the amount of the charge, how often the charge will occur,
15 and that the charge is triggered by inactivity of the gift card. The
16 statement may appear on the front or back of the gift card, but shall
17 appear in a location where it is visible to any purchaser before the
18 purchase of the gift card;

19 (2) The remaining value of the gift card is five dollars or less
20 each time the charge is assessed;

21 (3) The charge does not exceed one dollar per month;

22 (4) The charge can only be assessed when there has been no activity
23 on the gift card for twenty-four consecutive months, including but not
24 limited to, purchases, the adding of value, or balance inquiries;

25 (5) The bearer may reload or add value to the gift card; and

26 (6) After a dormancy or inactivity charge is assessed, the
27 remaining value of the gift certificate is redeemable in cash on
28 demand.

29 NEW SECTION. **Sec. 6.** It is lawful to issue, and to enforce
30 against the bearer, a gift certificate containing an expiration date
31 if:

32 (1) The gift certificate is donated to a charitable organization
33 and is used for fund-raising activities of a charitable organization,
34 without any money or other thing of value being given in exchange for
35 the gift certificate by the charitable organization;

1 (2) The expiration date is clearly and legibly printed on the front
2 or face of the gift certificate, or printed on the back of the
3 certificate in at least ten-point font; and

4 (3) The expiration date is at least one year from the date the gift
5 certificate is issued by the charitable organization.

6 NEW SECTION. **Sec. 7.** It is lawful to issue, and to enforce
7 against the bearer, a gift certificate containing an expiration date
8 if:

9 (1) The gift certificate is redeemable solely for goods or services
10 provided in the state of Washington by artistic and cultural
11 organizations;

12 (2) The expiration date is clearly and legibly printed on the front
13 or face of the gift certificate, or printed on the back of the
14 certificate in at least ten-point font;

15 (3) The expiration date is at least three years from the date the
16 gift certificate is issued by the artistic and cultural organizations;
17 and

18 (4) The unused value of the gift certificate at the time of
19 expiration accrues solely to the benefit of artistic and cultural
20 organizations.

21 NEW SECTION. **Sec. 8.** A requirement under sections 4 through 7 of
22 this act that a statement or expiration date be printed on a gift
23 certificate is satisfied if the statement appears as otherwise required
24 on a sticker permanently affixed to the gift certificate.

25 NEW SECTION. **Sec. 9.** An issuer is not required to honor a gift
26 certificate presumed abandoned under RCW 63.29.110, reported, and
27 delivered to the department of revenue in the dissolution of a business
28 association.

29 NEW SECTION. **Sec. 10.** (1) A gift certificate constitutes value
30 held in trust by the issuer of the gift certificate on behalf of the
31 beneficiary of the gift certificate. The value represented by the gift
32 certificate belongs to the beneficiary, or to the legal representative

1 of the beneficiary to the extent provided by law, and not to the
2 issuer.

3 (2) An issuer of a gift certificate who is in bankruptcy shall
4 continue to honor a gift certificate issued before the date of the
5 bankruptcy filing on the grounds that the value of the gift certificate
6 constitutes trust property of the beneficiary.

7 (3) The terms of a gift certificate may not make its redemption or
8 other use invalid in the event of a bankruptcy.

9 (4) This section does not require, unless otherwise required by
10 law, the issuer of a gift certificate to:

11 (a) Redeem a gift certificate for cash;

12 (b) Replace a lost or stolen gift certificate; or

13 (c) Maintain a separate account for the funds used to purchase the
14 gift certificate.

15 (5) This section does not create an interest in favor of the
16 beneficiary of the gift certificate in any specific property of the
17 issuer.

18 (6) This section does not create a fiduciary or quasi-fiduciary
19 relationship between the beneficiary of the gift certificates and the
20 issuer unless otherwise provided by law.

21 (7) The issuer of a gift certificate has no obligation to pay
22 interest on the value of a gift certificate held in trust under this
23 section, unless otherwise provided by law.

24 NEW SECTION. **Sec. 11.** This chapter does not apply to gift
25 certificates issued by financial institutions as defined in RCW
26 30.22.041 or their operating subsidiaries that are usable with multiple
27 unaffiliated sellers of goods or services.

28 NEW SECTION. **Sec. 12.** An agreement made in violation of the
29 provisions of this chapter is contrary to public policy and is void and
30 unenforceable against the bearer.

31 **Sec. 13.** RCW 63.29.010 and 1983 c 179 s 1 are each amended to read
32 as follows:

33 As used in this chapter, unless the context otherwise requires:

1 (1) "Department" means the department of revenue established under
2 RCW 82.01.050.

3 (2) "Apparent owner" means the person whose name appears on the
4 records of the holder as the person entitled to property held, issued,
5 or owing by the holder.

6 (3) "Attorney general" means the chief legal officer of this state
7 referred to in chapter 43.10 RCW.

8 (4) "Banking organization" means a bank, trust company, savings
9 bank, land bank, safe deposit company, private banker, or any
10 organization defined by other law as a bank or banking organization.

11 (5) "Business association" means a nonpublic corporation, joint
12 stock company, investment company, business trust, partnership, or
13 association for business purposes of two or more individuals, whether
14 or not for profit, including a banking organization, financial
15 organization, insurance company, or utility.

16 (6) "Domicile" means the state of incorporation of a corporation
17 and the state of the principal place of business of an unincorporated
18 person.

19 (7) "Financial organization" means a savings and loan association,
20 cooperative bank, building and loan association, or credit union.

21 (8) "Gift certificate" has the same meaning as in section 2 of this
22 act.

23 (9) "Holder" means a person, wherever organized or domiciled, who
24 is:

- 25 (a) In possession of property belonging to another,
- 26 (b) A trustee, or
- 27 (c) Indebted to another on an obligation.

28 ~~((9))~~ (10) "Insurance company" means an association, corporation,
29 fraternal or mutual benefit organization, whether or not for profit,
30 which is engaged in providing insurance coverage, including accident,
31 burial, casualty, credit life, contract performance, dental, fidelity,
32 fire, health, hospitalization, illness, life (including endowments and
33 annuities), malpractice, marine, mortgage, surety, and wage protection
34 insurance.

35 ~~((10))~~ (11) "Intangible property" does not include contract
36 claims which are unliquidated but does include:

1 (a) Moneys, checks, drafts, deposits, interest, dividends, and
2 income;

3 (b) Credit balances, customer overpayments, gift certificates,
4 security deposits, refunds, credit memos, unpaid wages, unused airline
5 tickets, and unidentified remittances, but does not include discounts
6 which represent credit balances for which no consideration was given;

7 (c) Stocks, and other intangible ownership interests in business
8 associations;

9 (d) Moneys deposited to redeem stocks, bonds, coupons, and other
10 securities, or to make distributions;

11 (e) Liquidated amounts due and payable under the terms of insurance
12 policies; and

13 (f) Amounts distributable from a trust or custodial fund
14 established under a plan to provide health, welfare, pension, vacation,
15 severance, retirement, death, stock purchase, profit sharing, employee
16 savings, supplemental unemployment insurance, or similar benefits.

17 ~~((+11+))~~ (12) "Last known address" means a description of the
18 location of the apparent owner sufficient for the purpose of the
19 delivery of mail.

20 ~~((+12+))~~ (13) "Owner" means a depositor in the case of a deposit,
21 a beneficiary in case of a trust other than a deposit in trust, a
22 creditor, claimant, or payee in the case of other intangible property,
23 or a person having a legal or equitable interest in property subject to
24 this chapter or his legal representative.

25 ~~((+13+))~~ (14) "Person" means an individual, business association,
26 state or other government, governmental subdivision or agency, public
27 corporation, public authority, estate, trust, two or more persons
28 having a joint or common interest, or any other legal or commercial
29 entity.

30 ~~((+14+))~~ (15) "State" means any state, district, commonwealth,
31 territory, insular possession, or any other area subject to the
32 legislative authority of the United States.

33 ~~((+15+))~~ (16) "Third party bank check" means any instrument drawn
34 against a customer's account with a banking organization or financial
35 organization on which the banking organization or financial
36 organization is only secondarily liable.

1 (~~(16)~~) (17) "Utility" means a person who owns or operates for
2 public use any plant, equipment, property, franchise, or license for
3 the transmission of communications or the production, storage,
4 transmission, sale, delivery, or furnishing of electricity, water,
5 steam, or gas.

6 **Sec. 14.** RCW 63.29.020 and 2003 1st sp.s. c 13 s 1 are each
7 amended to read as follows:

8 (1) Except as otherwise provided by this chapter, all intangible
9 property, including any income or increment derived therefrom, less any
10 lawful charges, that is held, issued, or owing in the ordinary course
11 of the holder's business and has remained unclaimed by the owner for
12 more than three years after it became payable or distributable is
13 presumed abandoned.

14 (2) Property, with the exception of unredeemed Washington state
15 lottery tickets and unrepresented winning parimutuel tickets, is payable
16 and distributable for the purpose of this chapter notwithstanding the
17 owner's failure to make demand or to present any instrument or document
18 required to receive payment.

19 (3) This chapter does not apply to claims drafts issued by
20 insurance companies representing offers to settle claims unliquidated
21 in amount or settled by subsequent drafts or other means.

22 (4) This chapter does not apply to property covered by chapter
23 63.26 RCW.

24 (5) This chapter does not apply to used clothing, umbrellas, bags,
25 luggage, or other used personal effects if such property is disposed of
26 by the holder as follows:

27 (a) In the case of personal effects of negligible value, the
28 property is destroyed; or

29 (b) The property is donated to a bona fide charity.

30 (6) This chapter does not apply to a gift certificate subject to
31 the prohibition against expiration dates under section 3 of this act or
32 to a gift certificate subject to sections 4 through 7 of this act.
33 However, this chapter applies to gift certificates presumed abandoned
34 under RCW 63.29.110.

1 **Sec. 15.** RCW 63.29.140 and 2003 1st sp.s. c 13 s 7 are each
2 amended to read as follows:

3 (1) A gift certificate or a credit memo issued in the ordinary
4 course of an issuer's business which remains unclaimed by the owner for
5 more than three years after becoming payable or distributable is
6 presumed abandoned.

7 (2) In the case of a gift certificate, the amount presumed
8 abandoned is the price paid by the purchaser for the gift certificate.
9 In the case of a credit memo, the amount presumed abandoned is the
10 amount credited to the recipient of the memo.

11 (3) A gift certificate that is presumed abandoned under this
12 section may, but need not be, included in the report as provided under
13 RCW 63.29.170(4). If a gift certificate that is presumed abandoned
14 under this section is not timely reported as provided under RCW
15 63.29.170(4), sections 1 through 12 of this act apply to the gift
16 certificate.

17 **Sec. 16.** RCW 63.29.170 and 2003 c 237 s 1 are each amended to read
18 as follows:

19 (1) A person holding property presumed abandoned and subject to
20 custody as unclaimed property under this chapter shall report to the
21 department concerning the property as provided in this section.

22 (2) The report must be verified and must include:

23 (a) Except with respect to travelers checks and money orders, the
24 name, if known, and last known address, if any, of each person
25 appearing from the records of the holder to be the owner of property
26 with a value of more than fifty dollars presumed abandoned under this
27 chapter;

28 (b) In the case of unclaimed funds of more than fifty dollars held
29 or owing under any life or endowment insurance policy or annuity
30 contract, the full name and last known address of the insured or
31 annuitant and of the beneficiary according to the records of the
32 insurance company holding or owing the funds;

33 (c) In the case of the contents of a safe deposit box or other
34 safekeeping repository or in the case of other tangible property, a
35 description of the property and the place where it is held and where it

1 may be inspected by the department, and any amounts owing to the
2 holder;

3 (d) The nature and identifying number, if any, or description of
4 the property and the amount appearing from the records to be due, but
5 items with a value of fifty dollars or less each may be reported in the
6 aggregate;

7 (e) The date the property became payable, demandable, or
8 returnable, and the date of the last transaction with the apparent
9 owner with respect to the property; and

10 (f) Other information the department prescribes by rule as
11 necessary for the administration of this chapter.

12 (3) If the person holding property presumed abandoned and subject
13 to custody as unclaimed property is a successor to other persons who
14 previously held the property for the apparent owner or the holder has
15 changed his or her name while holding the property, the holder shall
16 file with the report all known names and addresses of each previous
17 holder of the property.

18 (4) The report must be filed before November 1st of each year and
19 shall include, except as provided in RCW 63.29.140(3), all property
20 presumed abandoned and subject to custody as unclaimed property under
21 this chapter that is in the holder's possession as of the preceding
22 June 30th. On written request by any person required to file a report,
23 the department may postpone the reporting date.

24 (5) After May 1st, but before August 1st, of each year in which a
25 report is required by this section, the holder in possession of
26 property presumed abandoned and subject to custody as unclaimed
27 property under this chapter shall send written notice to the apparent
28 owner at the last known address informing him or her that the holder is
29 in possession of property subject to this chapter if:

30 (a) The holder has in its records an address for the apparent owner
31 which the holder's records do not disclose to be inaccurate;

32 (b) The claim of the apparent owner is not barred by the statute of
33 limitations; and

34 (c) The property has a value of more than seventy-five dollars.

35 NEW SECTION. **Sec. 17.** Sections 1 through 12 of this act
36 constitute a new chapter in Title 19 RCW.

1 NEW SECTION. **Sec. 18.** Sections 1 through 12 of this act apply to:
2 (1) Gift certificates issued on or after July 1, 2004; and
3 (2) Those gift certificates presumed abandoned on or after July 1,
4 2004, and not reported as provided in RCW 63.29.170(4).

5 NEW SECTION. **Sec. 19.** Sections 13 and 14 of this act take effect
6 July 1, 2004.

7 NEW SECTION. **Sec. 20.** Sections 15 and 16 of this act take effect
8 January 1, 2005."

9 Correct the title.

EFFECT: Applies the general prohibitions on inactivity fees and expiration dates to gift certificates that are issued along with a sale. Deletes the exception to the prohibitions for gift certificates issued for promotional purposes, and provides instead that a gift certificate that is issued pursuant to an awards or loyalty program, without any other condition, may expire. Deletes the conditions for the exception to the prohibition on expiration dates for gift certificates donated to charity for fundraising purposes. Modifies the conditions under which a gift certificate sold by an artistic or cultural organization may expire, in that the expiration date must be printed clearly on the front or in at least 10-point font on the back. Provides an exception to the prohibition on expiration dates for gift certificates donated to charity and used solely to provide charitable purposes. Allows stickers to be affixed to cards if there is a requirement to show the expiration date. Exempts gift certificates issued by financial institutions from the expiration date prohibition. Provides that, in situations where inactivity fees are allowed, the explanatory statement must be in at least 6-point font, instead of 10-point font.

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