
HOUSE BILL 3036

State of Washington 58th Legislature 2004 Regular Session

By Representatives Hunter, Cairnes, Roach and Nixon

Read first time 01/27/2004. Referred to Committee on Finance.

1 AN ACT Relating to gift certificates; amending RCW 63.29.010,
2 63.29.020, 63.29.140, and 63.29.170; adding a new chapter to Title 19
3 RCW; creating a new section; and providing effective dates.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

3 (1) "Artistic or cultural organization" has the same meaning as in
4 RCW 82.04.4328.

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

8 (3) "Fund-raising activity" has the same meaning as in RCW
9 82.04.3651.

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

14 (5) "Gift certificate" means a record evidencing a promise by the
15 seller or issuer of the record that consumer goods or services will be
16 provided to the holder of the record for the value or credit shown in
17 the record and includes gift cards.

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

21 (7) "Issue" includes reloading or adding value to an existing gift
22 certificate.

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

24 NEW SECTION. **Sec. 3.** (1) Except as provided in section 4 of this
25 act, it is unlawful for any person or entity to sell, issue, or enforce
26 against a holder, a gift certificate that contains:

- 27 (a) An expiration date;
28 (b) Any fee, including a service fee; or
29 (c) A dormancy or inactivity charge.

30 (2) If a purchase is made with a gift certificate for an amount
31 that is less than the value of the gift certificate, the issuer must
32 make the remaining value available to the holder in cash or as a gift
33 certificate. If after the purchase the remaining value of the gift
34 certificate is less than five dollars, the gift certificate must be
35 redeemable in cash for its remaining value. A gift certificate is
36 valid until redeemed or replaced.

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

4 (a) The gift certificate is issued pursuant to a promotional
5 program, without any money or other thing of value being given in
6 exchange for the gift certificate;

7 (b) The expiration date appears in capital letters in at least ten-
8 point font on the front of the gift certificate;

9 (c) The expiration date is at least three years from the date the
10 gift certificate is issued; and

11 (d) A statement is printed on the gift certificate that the gift
12 certificate is for promotional purposes only and not for sale or
13 purchase.

14 (2) It is lawful to issue, and enforce against the holder, a gift
15 certificate containing an expiration date, and for a charitable
16 organization to sell a gift certificate containing an expiration date
17 as part of its fund-raising activities if:

18 (a) The gift certificate is donated by the issuer to a charitable
19 organization and is used for fund-raising activities, without any money
20 or other thing of value being given in exchange for the gift
21 certificate to the issuer;

22 (b) The expiration date appears in capital letters in at least ten-
23 point font on the front of the gift certificate;

24 (c) The expiration date is at least three years from the date the
25 gift certificate is issued; and

26 (d) A statement is printed on the gift certificate that the gift
27 certificate was provided as a donation.

28 (3) It is lawful to sell, issue, and enforce against the holder, a
29 gift certificate containing an expiration date that is at least three
30 years from the date the gift certificate is issued if the gift
31 certificate is redeemable solely for goods or services provided in the
32 state of Washington by artistic or cultural organizations, and the
33 unused value of the gift certificate at the time of expiration accrues
34 solely to the benefit of artistic or cultural organizations.

35 (4) It is lawful to sell, issue, and enforce against the holder, a
36 gift certificate containing a dormancy or inactivity charge if:

37 (a) A statement is printed on the gift card in at least ten-point
38 font stating the amount of the charge, how often the charge will occur,

1 and that the charge is triggered by inactivity of the gift card. The
2 statement may appear on the front or back of the gift card, but shall
3 appear in a location where it is visible to any purchaser before the
4 purchase of the gift card;

5 (b) The remaining value of the gift card is five dollars or less
6 each time the charge is assessed;

7 (c) The charge does not exceed one dollar per month;

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

11 (e) The holder may reload or add value to the gift card.

12 NEW SECTION. **Sec. 5.** An issuer is not required to honor a gift
13 certificate presumed abandoned under RCW 63.29.110 and reported and
14 delivered to the department of revenue in the dissolution of a business
15 association.

16 NEW SECTION. **Sec. 6.** (1) A gift certificate constitutes value
17 held in trust by the issuer of the gift certificate on behalf of the
18 beneficiary of the gift certificate. The value represented by the gift
19 certificate belongs to the beneficiary, or to the legal representative
20 of the beneficiary to the extent provided by law, and not to the
21 issuer.

22 (2) An issuer of a gift certificate who is in bankruptcy shall
23 continue to honor a gift certificate issued before the date of the
24 bankruptcy filing on the grounds that the value of the gift certificate
25 constitutes trust property of the beneficiary.

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

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

30 (a) Redeem a gift certificate for cash;

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

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

34 (5) This section does not create an interest in favor of the
35 beneficiary of the gift certificate in any specific property of the
36 issuer.

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

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

7 NEW SECTION. **Sec. 7.** This chapter does not apply to gift
8 certificates issued by federally chartered banks or their operating
9 subsidiaries that are usable with multiple unaffiliated sellers of
10 goods or services.

11 NEW SECTION. **Sec. 8.** An agreement made in violation of the
12 provisions of this chapter is contrary to public policy and is void and
13 unenforceable against the holder.

14 **Sec. 9.** RCW 63.29.010 and 1983 c 179 s 1 are each amended to read
15 as follows:

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

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

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

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

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

27 (5) "Business association" means a nonpublic corporation, joint
28 stock company, investment company, business trust, partnership, or
29 association for business purposes of two or more individuals, whether
30 or not for profit, including a banking organization, financial
31 organization, insurance company, or utility.

32 (6) "Domicile" means the state of incorporation of a corporation
33 and the state of the principal place of business of an unincorporated
34 person.

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

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

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

7 (a) In possession of property belonging to another,

8 (b) A trustee, or

9 (c) Indebted to another on an obligation.

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

17 (~~(10)~~) (11) "Intangible property" does not include contract
18 claims which are unliquidated but does include:

19 (a) Moneys, checks, drafts, deposits, interest, dividends, and
20 income;

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

25 (c) Stocks, and other intangible ownership interests in business
26 associations;

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

29 (e) Liquidated amounts due and payable under the terms of insurance
30 policies; and

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

35 (~~(11)~~) (12) "Last known address" means a description of the
36 location of the apparent owner sufficient for the purpose of the
37 delivery of mail.

1 insurance companies representing offers to settle claims unliquidated
2 in amount or settled by subsequent drafts or other means.

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

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

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

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

11 (6) This chapter does not apply to a gift certificate subject to
12 the prohibition against expiration dates under section 3 of this act or
13 to a gift certificate subject to section 4 of this act. However, this
14 chapter applies to gift certificates presumed abandoned under RCW
15 63.29.110.

16 **Sec. 11.** RCW 63.29.140 and 2003 1st sp.s. c 13 s 7 are each
17 amended to read as follows:

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

22 (2) In the case of a gift certificate, the amount presumed
23 abandoned is the price paid by the purchaser for the gift certificate.
24 In the case of a credit memo, the amount presumed abandoned is the
25 amount credited to the recipient of the memo.

26 (3) A gift certificate that is presumed abandoned under this
27 section may, but need not be, included in the report as provided under
28 RCW 63.29.170(4). If a gift certificate that is presumed abandoned
29 under this section is not timely reported as provided under RCW
30 63.29.170(4), sections 1 through 8 of this act apply to the gift
31 certificate.

32 **Sec. 12.** RCW 63.29.170 and 2003 c 237 s 1 are each amended to read
33 as follows:

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

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

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

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

12 (c) In the case of the contents of a safe deposit box or other
13 safekeeping repository or in the case of other tangible property, a
14 description of the property and the place where it is held and where it
15 may be inspected by the department, and any amounts owing to the
16 holder;

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

21 (e) The date the property became payable, demandable, or
22 returnable, and the date of the last transaction with the apparent
23 owner with respect to the property; and

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 13.** Sections 1 through 8 of this act constitute
13 a new chapter in Title 19 RCW.

14 NEW SECTION. **Sec. 14.** Sections 1 through 8 of this act apply to:

15 (1) Gift certificates sold or issued on or after July 1, 2004; and

16 (2) Those gift certificates presumed abandoned on or after July 1,
17 2004, and not reported as provided in RCW 63.29.170(4).

18 NEW SECTION. **Sec. 15.** Sections 1 through 10 of this act take
19 effect July 1, 2004.

20 NEW SECTION. **Sec. 16.** Sections 11 and 12 of this act take effect
21 January 1, 2005.

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