

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 3036

58th Legislature
2004 Regular Session

Passed by the House March 17, 2004
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 5, 2004
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 3036** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 3036

Passed Legislature - 2004 Regular Session

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 and 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 an instrument evidencing a promise by
15 the seller or issuer of the record that consumer goods or services will
16 be provided to the bearer of the record to the value or credit shown in
17 the record and includes gift cards.

18 (6) "Bearer" 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" means to sell or otherwise provide a gift certificate
22 to any person, and includes reloading or adding value to an existing
23 gift certificate.

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

25 NEW SECTION. **Sec. 3.** (1) Except as provided in sections 4 through
26 8 of this act, it is unlawful for any person or entity to issue, or to
27 enforce against a bearer, a gift certificate that contains:

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

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

34 (3) If a purchase is made with a gift certificate for an amount
35 that is less than the value of the gift certificate, the issuer must
36 make the remaining value available to the bearer in cash or as a gift
37 certificate at the option of the issuer. If after the purchase the

1 remaining value of the gift certificate is less than five dollars, the
2 gift certificate must be redeemable in cash for its remaining value on
3 demand of the bearer. A gift certificate is valid until redeemed or
4 replaced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) The expiration date is at least three years from the date the
26 gift certificate is issued by the artistic and cultural organizations;
27 and

28 (4) The unused value of the gift certificate at the time of
29 expiration accrues solely to the benefit of artistic and cultural
30 organizations.

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

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

5 NEW SECTION. **Sec. 10.** (1) A gift certificate constitutes value
6 held in trust by the issuer of the gift certificate on behalf of the
7 beneficiary of the gift certificate. The value represented by the gift
8 certificate belongs to the beneficiary, or to the legal representative
9 of the beneficiary to the extent provided by law, and not to the
10 issuer.

11 (2) An issuer of a gift certificate who is in bankruptcy shall
12 continue to honor a gift certificate issued before the date of the
13 bankruptcy filing on the grounds that the value of the gift certificate
14 constitutes trust property of the beneficiary.

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

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

19 (a) Redeem a gift certificate for cash;

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

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

23 (5) This section does not create an interest in favor of the
24 beneficiary of the gift certificate in any specific property of the
25 issuer.

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

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

32 NEW SECTION. **Sec. 11.** This chapter does not apply to gift
33 certificates issued by financial institutions as defined in RCW
34 30.22.041 or their operating subsidiaries that are usable with multiple
35 unaffiliated sellers of goods or services.

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

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

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

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

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

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

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

17 (5) "Business association" means a nonpublic corporation, joint
18 stock company, investment company, business trust, partnership, or
19 association for business purposes of two or more individuals, whether
20 or not for profit, including a banking organization, financial
21 organization, insurance company, or utility.

22 (6) "Domicile" means the state of incorporation of a corporation
23 and the state of the principal place of business of an unincorporated
24 person.

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

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

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

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

32 (b) A trustee, or

33 (c) Indebted to another on an obligation.

34 ~~((+9))~~ (10) "Insurance company" means an association, corporation,
35 fraternal or mutual benefit organization, whether or not for profit,
36 which is engaged in providing insurance coverage, including accident,
37 burial, casualty, credit life, contract performance, dental, fidelity,

1 fire, health, hospitalization, illness, life (including endowments and
2 annuities), malpractice, marine, mortgage, surety, and wage protection
3 insurance.

4 ~~((+10+))~~ (11) "Intangible property" does not include contract
5 claims which are unliquidated but does include:

6 (a) Moneys, checks, drafts, deposits, interest, dividends, and
7 income;

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

12 (c) Stocks, and other intangible ownership interests in business
13 associations;

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

16 (e) Liquidated amounts due and payable under the terms of insurance
17 policies; and

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

22 ~~((+11+))~~ (12) "Last known address" means a description of the
23 location of the apparent owner sufficient for the purpose of the
24 delivery of mail.

25 ~~((+12+))~~ (13) "Owner" means a depositor in the case of a deposit,
26 a beneficiary in case of a trust other than a deposit in trust, a
27 creditor, claimant, or payee in the case of other intangible property,
28 or a person having a legal or equitable interest in property subject to
29 this chapter or his legal representative.

30 ~~((+13+))~~ (14) "Person" means an individual, business association,
31 state or other government, governmental subdivision or agency, public
32 corporation, public authority, estate, trust, two or more persons
33 having a joint or common interest, or any other legal or commercial
34 entity.

35 ~~((+14+))~~ (15) "State" means any state, district, commonwealth,
36 territory, insular possession, or any other area subject to the
37 legislative authority of the United States.

1 (~~(15)~~) (16) "Third party bank check" means any instrument drawn
2 against a customer's account with a banking organization or financial
3 organization on which the banking organization or financial
4 organization is only secondarily liable.

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

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

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

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

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

26 (4) This chapter does not apply to property covered by chapter
27 63.26 RCW.

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

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

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

34 (6) This chapter does not apply to a gift certificate subject to
35 the prohibition against expiration dates under section 3 of this act or
36 to a gift certificate subject to sections 4 through 7 of this act.

1 However, this chapter applies to gift certificates presumed abandoned
2 under RCW 63.29.110.

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

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

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

13 (3) A gift certificate that is presumed abandoned under this
14 section may, but need not be, included in the report as provided under
15 RCW 63.29.170(4). If a gift certificate that is presumed abandoned
16 under this section is not timely reported as provided under RCW
17 63.29.170(4), sections 1 through 12 of this act apply to the gift
18 certificate.

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

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

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

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

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

35 (c) In the case of the contents of a safe deposit box or other
36 safekeeping repository or in the case of other tangible property, a

1 description of the property and the place where it is held and where it
2 may be inspected by the department, and any amounts owing to the
3 holder;

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

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

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

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

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

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

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

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

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

36 NEW SECTION. **Sec. 17.** Sections 1 through 12 of this act
37 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.

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