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**SUBSTITUTE SENATE BILL 5654**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Financial Institutions, Economic Development & Trade  
(originally sponsored by Senators Mullet, Wilson, L., and O'Ban)

READ FIRST TIME 02/08/19.

1 AN ACT Relating to rewards cards; amending RCW 19.240.005,  
2 19.240.010, 19.240.080, 19.240.090, 19.240.100, 63.29.020, and  
3 63.29.140; reenacting and amending RCW 63.29.010; and adding a new  
4 section to chapter 19.240 RCW.

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

6 **Sec. 1.** RCW 19.240.005 and 2004 c 168 s 1 are each amended to  
7 read as follows:

8 It is the intent of the legislature to relieve businesses from  
9 the obligation of reporting gift certificates and rewards cards as  
10 unclaimed property. In order to protect consumers, the legislature  
11 intends to prohibit acts and practices of retailers that deprive  
12 consumers of the full value of gift certificates, such as expiration  
13 dates, service fees, and dormancy and inactivity charges, on gift  
14 certificates. The legislature does not intend that chapter 168, Laws  
15 of 2004 be construed to apply to cards or other payment instruments  
16 issued for payment of wages or other intangible property or rewards  
17 cards. To that end, the legislature intends that chapter 168, Laws of  
18 2004 should be liberally construed to benefit consumers and that any  
19 ambiguities should be resolved by applying the uniform unclaimed  
20 property act to the intangible property in question.

1       **Sec. 2.** RCW 19.240.010 and 2011 c 213 s 1 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

10       (3) "Fund-raising activity" has the same meaning as in RCW  
11 82.04.3651.

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

16       (b) "Gift card" does not include prepaid telephone calling cards  
17 or prepaid commercial mobile radio services as defined in 47 C.F.R.  
18 20.3, or rewards cards.

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

23       (b) "Gift certificate" does not include prepaid telephone calling  
24 cards or prepaid commercial mobile radio services as defined in 47  
25 C.F.R. 20.3, or rewards cards.

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

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

32       (8) "Stored value" has the same meaning as the term "closed loop  
33 (~~stored value device~~) prepaid access" defined in RCW 19.230.010.

34       (9) "Cardholder" means the holder of a rewards card, regardless  
35 of whether the rewards card is represented by a card or an electronic  
36 record.

37       (10)(a) "Rewards card" means any loyalty, incentive, or  
38 promotional program managed by a financial organization or a business  
39 association, whether represented by a card or electronic record, and  
40 established for the purpose of providing cardholder awards, rewards,

1 or other amounts to compensate the cardholder for the cardholder's  
2 relationship with the entity sponsoring the rewards card, provided  
3 that no direct money was paid by the cardholder for the rewards card.

4 (b) (i) A rewards card includes:

5 (A) Cards or electronic records consisting of points, cash, or  
6 other tokens of value given to a cardholder as a reward or incentive  
7 for engaging in a transaction or a series of transactions; or

8 (B) The portion of a rewards card funded by the issuer as a  
9 reward or incentive when the rewards card is partially loaded by the  
10 cardholder; or

11 (ii) A rewards card is not a gift card or gift certificate.

12 **Sec. 3.** RCW 19.240.080 and 2004 c 168 s 9 are each amended to  
13 read as follows:

14 An issuer is not required to honor a gift certificate or a  
15 rewards card presumed abandoned under RCW 63.29.110, reported, and  
16 delivered to the department of revenue in the dissolution of a  
17 business association.

18 **Sec. 4.** RCW 19.240.090 and 2004 c 168 s 10 are each amended to  
19 read as follows:

20 (1) A gift certificate constitutes value held in trust by the  
21 issuer of the gift certificate on behalf of the beneficiary of the  
22 gift certificate. The value represented by the gift certificate  
23 belongs to the beneficiary, or to the legal representative of the  
24 beneficiary to the extent provided by law, and not to the issuer.

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

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

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

33 (a) Redeem a gift certificate for cash;

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

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

1 (5) This section does not create an interest in favor of the  
2 beneficiary of the gift certificate in any specific property of the  
3 issuer.

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

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

10 (8) For the purpose of this section, only a rewards card is  
11 subject to the same provisions as a gift certificate.

12 **Sec. 5.** RCW 19.240.100 and 2004 c 168 s 11 are each amended to  
13 read as follows:

14 (1) This chapter does not apply to gift certificates issued by  
15 financial institutions as defined in RCW ((30.22.041)) 30A.22.041 or  
16 their operating subsidiaries that are usable with multiple  
17 unaffiliated sellers of goods or services.

18 (2) This chapter applies to rewards cards, regardless of issuer,  
19 but only to the extent specifically stated in this chapter.

20 **Sec. 6.** RCW 63.29.010 and 2012 c 117 s 177 are each reenacted  
21 and amended to read as follows:

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

23 (1) "Apparent owner" means the person whose name appears on the  
24 records of the holder as the person entitled to property held,  
25 issued, or owing by the holder.

26 (2) "Attorney general" means the chief legal officer of this  
27 state referred to in chapter 43.10 RCW.

28 (3) "Banking organization" means a bank, trust company, savings  
29 bank, land bank, safe deposit company, private banker, or any  
30 organization defined by other law as a bank or banking organization.

31 (4) "Business association" means a nonpublic corporation, joint  
32 stock company, investment company, business trust, partnership, or  
33 association for business purposes of two or more individuals, whether  
34 or not for profit, including a banking organization, financial  
35 organization, insurance company, or utility.

36 (5) "Department" means the department of revenue established  
37 under RCW 82.01.050.

1 (6) "Domicile" means the state of incorporation of a corporation  
2 and the state of the principal place of business of an unincorporated  
3 person.

4 (7) "Fare card" means any pass or instrument, and value contained  
5 therein, purchased to utilize public transportation facilities or  
6 services. "Fare card" does not include "gift card" or "gift  
7 certificate" as those terms are defined in RCW 19.240.010.

8 (8) "Financial organization" means a savings and loan  
9 association, cooperative bank, building and loan association, or  
10 credit union.

11 (9) "Gift certificate" has the same meaning as in RCW 19.240.010,  
12 regardless of whether the gift certificate is represented by a card  
13 or an electronic record.

14 (10) "Holder" means a person, wherever organized or domiciled,  
15 who is:

16 (a) In possession of property belonging to another;

17 (b) A trustee; or

18 (c) Indebted to another on an obligation.

19 (11) "Insurance company" means an association, corporation,  
20 fraternal or mutual benefit organization, whether or not for profit,  
21 which is engaged in providing insurance coverage, including accident,  
22 burial, casualty, credit life, contract performance, dental,  
23 fidelity, fire, health, hospitalization, illness, life (including  
24 endowments and annuities), malpractice, marine, mortgage, surety, and  
25 wage protection insurance.

26 (12) "Intangible property" does not include contract claims which  
27 are unliquidated but does include:

28 (a) Moneys, checks, drafts, deposits, interest, dividends, and  
29 income;

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

35 (c) Stocks, and other intangible ownership interests in business  
36 associations;

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

39 (e) Liquidated amounts due and payable under the terms of  
40 insurance policies; and

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

6 (13) "Last known address" means a description of the location of  
7 the apparent owner sufficient for the purpose of the delivery of  
8 mail.

9 (14) "Owner" means a depositor in the case of a deposit, a  
10 beneficiary in case of a trust other than a deposit in trust, a  
11 creditor, claimant, or payee in the case of other intangible  
12 property, or a person having a legal or equitable interest in  
13 property subject to this chapter or his or her legal representative.

14 (15) "Person" means an individual, business association, state or  
15 other government, governmental subdivision or agency, public  
16 corporation, public authority, estate, trust, two or more persons  
17 having a joint or common interest, or any other legal or commercial  
18 entity.

19 (16) "State" means any state, district, commonwealth, territory,  
20 insular possession, or any other area subject to the legislative  
21 authority of the United States.

22 (17) "Third party bank check" means any instrument drawn against  
23 a customer's account with a banking organization or financial  
24 organization on which the banking organization or financial  
25 organization is only secondarily liable.

26 (18) "Utility" means a person who owns or operates for public use  
27 any plant, equipment, property, franchise, or license for the  
28 transmission of communications or the production, storage,  
29 transmission, sale, delivery, or furnishing of electricity, water,  
30 steam, or gas.

31 (19) "Cardholder" means the holder of a rewards card, regardless  
32 of whether the rewards card is represented by a card or an electronic  
33 record.

34 (20) (a) "Rewards card" means any loyalty, incentive, or  
35 promotional program managed by a financial organization or a business  
36 association, whether represented by a card or electronic record, and  
37 established for the purpose of providing cardholder awards, rewards,  
38 or other amounts to compensate the cardholder for the cardholder's  
39 relationship with the entity sponsoring the rewards card, provided  
40 that no direct money was paid by the cardholder for the rewards card.

1 (b) A rewards card includes:

2 (i) Cards or electronic records consisting of points, cash, or  
3 other tokens of value given to a cardholder as a reward or incentive  
4 for engaging in a transaction or a series of transactions; or

5 (ii) The portion of a rewards card funded by the issuer as a  
6 reward or incentive when the rewards card is partially loaded by the  
7 cardholder.

8 (c) A minimal annual fee charged to a cardholder for any loyalty,  
9 incentive, or promotional program is not direct money paid by the  
10 cardholder for a rewards card.

11 **Sec. 7.** RCW 63.29.020 and 2015 3rd sp.s. c 6 s 2101 are each  
12 amended to read as follows:

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

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

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

27 (4) This chapter does not apply to property covered by chapter  
28 63.26 RCW.

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

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

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

35 (6) This chapter does not apply to a gift certificate or a  
36 rewards card lawfully issued under chapter 19.240 RCW, except  
37 lawfully issued gift certificates presumed abandoned under RCW  
38 63.29.110. Nothing in this section limits the application of chapter  
39 19.240 RCW.

1 (7) Except as provided in RCW 63.29.350, this chapter does not  
2 apply to excess proceeds held by counties, cities, towns, and other  
3 municipal or quasi-municipal corporations from foreclosures for  
4 delinquent property taxes, assessments, or other liens.

5 (8) (a) This chapter does not apply to a premium paid by an  
6 agricultural fair by check.

7 (b) For the purposes of this subsection the following definitions  
8 apply:

9 (i) "Agricultural fair" means a fair or exhibition that is  
10 intended to promote agriculture by including a balanced variety of  
11 exhibits of livestock and agricultural products, as well as related  
12 manufactured products and arts, including: Products of the farm home  
13 and educational contests, displays, and demonstrations designed to  
14 train youth and to promote the welfare of farmers and rural living;  
15 and

16 (ii) "Premium" means an amount paid for exhibits and educational  
17 contests, displays, and demonstrations of an educational nature. A  
18 "premium" does not include judges' fees and expenses; livestock sale  
19 revenues; or prizes or amounts paid for promotion or entertainment  
20 activities such as queen contests, parades, dances, rodeos, and  
21 races.

22 **Sec. 8.** RCW 63.29.140 and 2015 3rd sp.s. c 6 s 2102 are each  
23 amended to read as follows:

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

28 (2) In the case of a gift certificate, the amount presumed  
29 abandoned is the price paid by the purchaser for the gift  
30 certificate. In the case of a credit memo, the amount presumed  
31 abandoned is the amount credited to the recipient of the memo.

32 (3) A gift certificate that is lawfully issued under chapter  
33 19.240 RCW and that is presumed abandoned under this section may, but  
34 need not, be included in the report as provided under RCW  
35 63.29.170(4).

36 (4) Rewards cards must not be included in the report as provided  
37 under RCW 63.29.170.

1        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 19.240  
2    RCW to read as follows:

3        A minimum annual fee charged to a cardholder for any loyalty,  
4    incentive, or promotional program is not direct money paid by the  
5    cardholder for a rewards card.

--- **END** ---