

HOUSE BILL REPORT

EHB 3036

As Passed Legislature

Title: An act relating to gift certificates.

Brief Description: Modifying unclaimed property laws for gift certificates.

Sponsors: By Representatives Hunter, Cairnes, Roach and Nixon.

Brief History:

Committee Activity:

Finance: 2/3/04, 2/5/04 [DP].

Floor Activity:

Passed House: 2/16/04, 94-0.

Passed Senate: 3/5/04, 49-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Prohibits issuers of gift certificates and stored value cards, with a few exceptions, from including inactivity charges or expiration dates on the certificates.
- Exempts gift certificates and stored value cards from the Uniform Unclaimed Property Act.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 9 members: Representatives McIntire, Chair; Hunter, Vice Chair; Cairnes, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Ahern, Conway, Morris, Roach and Santos.

Staff: Mark Matteson (786-7145).

Background:

The Uniform Unclaimed Property Act governs the disposition of intangible property that is unclaimed by its owner. A business that holds unclaimed intangible property must transfer it to the Department of Revenue (DOR) after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the holding period is three years. After the holding period has passed, the business in possession of the property transfers the property to the DOR.

Under the program, the DOR's duty is to find the rightful owner of the property, if possible. The DOR sends notices to the last known addresses of owners, places advertisements with names of owners in newspapers, sends press releases to television and radio stations, and undertakes other efforts to find owners. The DOR is not required to publish or mail notices when the property value is less than \$75. Abandoned property turned over to the DOR is deposited to the state general fund. However, the owner of unclaimed property may still come forward and obtain reimbursement from the state general fund at any time.

Abandoned property is turned over from many sources, including retailers. The types of abandoned property that are subject to the DOR program include gift certificates. In recent years, the DOR has received about \$2.7 million annually in abandoned gift certificate property.

Under the Uniform Unclaimed Property Act, the value of the gift certificate that must be reported if abandoned is the value paid by the purchaser, without any consideration of fees or charges that may have been deducted. This requirement is different than that for some other forms of unclaimed property, such as bank accounts, for which dormancy fees are allowed if there is a contract between the holder of the property and the owner, and if the holder regularly imposes such charges. Gift certificates and other abandoned property are not subject to expiration; a person may claim the property at any time.

Gift cards or stored value cards are instruments that contain value that may be redeemed for goods or services sold by the retailer. Some gift cards are issued with dormancy fees, inactivity charges, or other service charges. Such fees are typically activated if no activity has occurred on the card for an established amount of time, or following an established amount of time after the purchase or first use of the card. The fees are deducted from the remaining balance on the card, typically on a monthly basis. Gift cards may also be issued with expiration dates, which eliminate any remaining stored value on the card on a specific date.

Gift cards are not explicitly addressed under the unclaimed property statutes. The position of the DOR is that, for unclaimed property purposes, such cards are a form of gift certificate, and the amount that would be presumed abandoned is the balance on the card at the time that value was added most recently to the card.

In recent years, the use of gift cards has become widespread, relative to the use of traditional gift certificates. The Consumers Union reports that about \$45 billion in gift cards was purchased nationwide in 2003. Some states, including California and Massachusetts, have recently enacted laws to address issues relating to inactivity charges and expiration dates.

Summary of Engrossed Bill:

Abandoned property on gift certificates is exempt from the Uniform Unclaimed Property Act under certain conditions. A gift certificate is defined to mean a record evidencing a promise by a seller to provide goods or services for the value of the record. Gift certificates include gift cards.

In general, it is illegal for any person to issue a gift certificate that contains an expiration date or fee, including gift certificates that are issued along with a retail sale. Several exceptions are provided from this requirement, as long as the expiration date is clearly legible on the certificate. Exceptions are allowed for gift certificates issued pursuant to awards or loyalty programs or for gift certificates donated to charity for use by the charity in providing charitable services. A third exception is provided for gift certificates donated to charities for fund raising purposes, if the expiration date is at least one year from issuance by the charity. A fourth exception is provided for gift certificates sold by an artistic or cultural organization, if the expiration date is at least three years from date of issuance and if the remaining value of certificates at the time of expiration accrues to the benefit of the organization.

If there is a balance on a gift certificate, then that balance must be made available as cash or gift certificate at the option of the retailer. If the balance is less than \$5, the balance must be made available as cash if demanded by the consumer.

Gift certificates may contain inactivity fees under certain circumstances. A fee is allowed if several conditions are met: a statement is printed in at least 6 point font with the amount of fee, frequency, and an explanation that the fee is triggered by inactivity; the statement is visible prior to purchase; the remaining value on the card is \$5 or less; the fee does not exceed \$1 per month; there has been no activity for 24 consecutive months; and the holder is allowed to reload the card.

The requirement that the date be clearly legible on the certificate may be met by affixing a sticker with the date onto the certificate.

Gift certificates must be honored prior to bankruptcy proceedings. Gift certificates may not be redeemed for cash unless the remaining value is \$5 or less. Issuers are not required to replace certificates if stolen, pay interest on unredeemed balances, or maintain separate accounts to cover the value of gift certificates. Gift certificates do not create an interest in any property of the issuer or create a fiduciary relationship with the issuer.

The new requirements do not apply to gift certificates issued by financial institutions and that are usable with multiple unaffiliated sellers. In a dissolution of a business association, an issuer is not required to honor a gift certificate if the certificate has been presumed abandoned and delivered to the DOR.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed, except sections 13 and 14, which takes effect on July 1, 2004, and sections 15 and 16, which takes effect January 1, 2005.

Testimony For: We need additional consumer protection on gift certificates. It is important not to have their value reduced or expired, and to not have to call the DOR to get the value of the property.

The unclaimed property laws are a bedrock component of consumer protection. Part of the essence of this is that if you hold property that belongs to another that goes unclaimed, then in the absence of being able to track down the owner, the benefit of the property should accrue to the state. While the state is trying to find the owner, the public receives the benefit in the mean time. However, gift certificates and gift cards seem a little different from the consumer perspective. And consumers are currently on their own to discern whether there are fees or expiration dates on cards; there doesn't seem to be any statutory protections. While the state does not recognize expiration dates, it is virtually impossible for the state to determine who is the owner. So this bill seems to provide a reasonable trade off between prohibiting cards from expiring and having fees and escheating to the state.

One out of every 10 purchases at Starbucks is paid by stored value cards. Under current law, unused value on these cards escheat to the state after three years. Stored value cards are much like cash. No identification is required when a purchase is made. Starbucks provides a system to allow purchasers to register their cards, but very few people do. Mobility is very important to the consumer. Twenty states have exempted gift cards from escheat laws. This will put Washington companies on a level playing field.

For smaller businesses, the labor involved in tracking gift certificate or gift card purchases is very difficult, especially in circumstances where the card may have been paid by a group as a gift. Escheating is impossible for us to explain, and so in the past we have honored old gift certificates. However, with the new three-year period we are going to have to direct people to the DOR.

Testimony Against: None.

Persons Testifying: (In support) Representative Hunter, prime sponsor; Kim Clauson, Washington State Restaurant Association; Elsie McClure, Starbucks; Lane Hoss, Anthony's Restaurant; and Julie Sexton, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.