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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(i) A rewards card includes:

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

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

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

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

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

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

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

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

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

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

(a) Redeem a gift certificate for cash;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A rewards card includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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