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**HOUSE BILL 2095**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Alvarado, Berry, Ryu, Senn, Reed, Gregerson, Ormsby, Ramel, Macri, Street, Chopp, Mena, Goodman, Berg, Doglio, Cortes, Wylie, Pollet, and Kloba

AN ACT Relating to gift certificates as unclaimed property; amending RCW 19.240.005, 63.30.010, and 63.30.280; adding a new section to chapter 63.30 RCW; and creating a new section.

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 as unclaimed property.~~)) The legislature intends that consumers have the option to collect balances on abandoned gift certificates either directly through the retailer or through Washington's unclaimed property program. Washington's unclaimed property program is a free public service that returned over $100,000,000 in property to rightful owners in fiscal year 2023. The legislature finds that giving consumers the option to collect balances from abandoned gift certificates through unclaimed property will reduce the incentive for large companies to adopt predatory or deceptive practices regarding gift certificate usage because companies must escheat abandoned gift certificate balances while they remain unspent and, therefore, will not be able to keep revenue from unspent gift certificates. The legislature intends to exempt small businesses from the requirements for reporting gift certificates as unclaimed property. The legislature finds that funds for the unclaimed property account are tracked by the Washington state economic and revenue forecast council and are part of state nontax sources that provide funding for state government and its existing institutions. 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 this chapter ((~~168, Laws of 2004~~)) be construed to apply to cards or other payment instruments issued for payment of wages or other intangible property. To that end, the legislature intends that this chapter ((~~168, Laws of 2004~~)) should be liberally construed to benefit consumers and that any ambiguities should be resolved by applying the ((~~[revised]~~)) revised uniform unclaimed property act to the intangible property in question.

**Sec.**  RCW 63.30.010 and 2022 c 225 s 102 are each amended to read as follows:

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

(1) "Administrator" means the department of revenue established under RCW 82.01.050.

(2) "Administrator's agent" means a person with which the administrator contracts to conduct an examination under RCW 63.30.570 through 63.30.690 on behalf of the administrator. The term includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

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

(4) "Business association" means a corporation, joint stock company, investment company other than an investment company registered under the investment company act of 1940, as amended, 15 U.S.C. Secs. 80a-1 through 80a-64, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(5) "Confidential information" means records, reports, and information that are confidential under RCW 63.30.820.

(6) "Domicile" means:

(a) For a corporation, the state of its incorporation;

(b) For a business association whose formation requires a filing with a state, other than a corporation, the state of the principal place of business of such a business association, if formed under the laws of a state other than the state in which its principal place of business is located, unless determined to be otherwise by a court of competent jurisdiction;

(c) For a federally chartered entity or an investment company registered under the investment company act of 1940, as amended, 15 U.S.C. Secs. 80a-1 through 80a-64, the state of its home office; and

(d) For any other holder, the state of its principal place of business.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Email" means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

(9) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(10) "Game-related digital content" means digital content that exists only in an electronic game or electronic game platform. The term:

(a) Includes:

(i) Game-play currency such as a virtual wallet, even if denominated in United States currency; and

(ii) The following if for use or redemption only within the game or platform or another electronic game or electronic game platform:

(A) Points sometimes referred to as gems, tokens, gold, and similar names; and

(B) Digital codes; and

(b) Does not include an item that the issuer:

(i) Permits to be redeemed for use outside a game or platform for:

(A) Money; or

(B) Goods or services that have more than minimal value; or

(ii) Otherwise monetizes for use outside a game or platform.

(11) "Gift certificate" means a record described in RCW 19.240.010, and includes both gift cards and gift certificates, including both tangible instruments and electronic records. A "gift certificate" that stores, or allows customers to earn, loyalty points is still a gift certificate.

(12) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this chapter.

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

(14) "Loyalty card" means a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program which may be used or redeemed only to obtain goods or services or a discount on goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(15) "Mineral" means gas, oil, coal, oil shale, other gaseous liquid or solid hydrocarbon, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by law of this state other than this chapter.

(16) "Mineral proceeds" means an amount payable for extraction, production, or sale of minerals, or, on the abandonment of the amount, an amount that becomes payable after abandonment. The term includes an amount payable:

(a) For the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

(b) For the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

(c) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(17) "Money order" means a payment order for a specified amount of money. The term includes an express money order and a personal money order on which the remitter is the purchaser.

(18) "Municipal bond" means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(19) "Net card value" means the original purchase price or original issued value of a stored value card, plus amounts added to the original price or value, minus amounts used and any service charge, fee, or dormancy charge permitted by law.

(20) "Nonfreely transferable security" means a security that cannot be delivered to the administrator by the depository trust clearing corporation or similar custodian of securities providing posttrade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

(21) "Owner" means a person that has a legal, beneficial, or equitable interest in property subject to this chapter or the person's legal representative when acting on behalf of the owner. The term includes:

(a) A depositor, for a deposit;

(b) A beneficiary, for a trust other than a deposit in trust;

(c) A creditor, claimant, or payee, for other property; and

(d) The lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(22) "Payroll card" means a record that evidences a payroll card account as defined in Regulation E, 12 C.F.R. Part 1005, as it existed on January 1, 2023.

(23) "Person" means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(24) "Property" means tangible property described in RCW 63.30.080 or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government, governmental subdivision, agency, or instrumentality. The term:

(a) Includes all income from or increments to the property;

(b) Includes property referred to as or evidenced by:

(i) Money, virtual currency, interest, or a dividend, check, draft, deposit, or payroll card;

(ii) A credit balance, customer's overpayment, stored value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance;

(iii) A security except for:

(A) A worthless security; or

(B) A security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;

(iv) A bond, debenture, note, or other evidence of indebtedness;

(v) Money deposited to redeem a security, make a distribution, or pay a dividend;

(vi) An amount due and payable under an annuity contract or insurance policy; ((~~and~~))

(vii) An amount 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 a similar benefit; and

(viii) A gift certificate; and

(c) Does not include:

(i) Property held in a plan described in section 529A of the internal revenue code, as it existed on January 1, 2023, 26 U.S.C. Sec. 529A;

(ii) Game-related digital content;

(iii) A loyalty card;

(iv) ((~~A gift certificate complying with chapter 19.240 RCW;~~

~~(v)~~)) Store credit for returned merchandise; and

((~~(vi)~~)) (v) A premium paid by an agricultural fair by check. For the purposes of this subsection, the following definitions apply:

(A) "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

(B) "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.

(25) "Putative holder" means a person believed by the administrator to be a holder, until the person pays or delivers to the administrator property subject to this chapter or the administrator or a court makes a final determination that the person is or is not a holder.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Security" means:

(a) A security as defined in RCW 62A.8-102;

(b) A security entitlement as defined in RCW 62A.8-102, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) Registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) Payable to the order of the person; or

(iii) Specifically indorsed to the person; or

(c) An equity interest in a business association not included in (a) or (b) of this subsection.

(28) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Stored value card" means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record. The term:

(a) Includes:

(i) A record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, which is and whose value or amount is decreased on each use and increased by payment of additional consideration; and

(ii) A payroll card; and

(b) Does not include ((~~a loyalty card, gift certificate, or~~)) game-related digital content.

(31) "Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services:

(a) Transmission of communications or information;

(b) Production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or

(c) Provision of sewage or septic services, or trash, garbage, or recycling disposal.

(32) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(a) The software or protocols governing the transfer of the digital representation of value; or

(b) Game-related digital content((~~; or~~

~~(c) A loyalty card or gift certificate~~)).

(33) "Worthless security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this chapter.

(34) "Loyalty points" means a benefit to a consumer without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services.

**Sec.**  RCW 63.30.280 and 2022 c 225 s 501 are each amended to read as follows:

(1) Subject to subsection (2) of this section, the holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with RCW 63.30.290 in a format acceptable to the administrator not more than 180 days nor less than 60 days before filing the report under RCW 63.30.220 if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

(b) The value of the property is ((~~$75~~)) $50 or more.

(2) If an apparent owner has consented to receive email delivery from the holder, the holder shall send the notice described in subsection (1) of this section both by first-class United States mail to the apparent owner's last known mailing address and by email, unless the holder believes that the apparent owner's email address is invalid.

NEW SECTION. **Sec.**  A new section is added to chapter 63.30 RCW to read as follows:

GIFT CARDS PRESUMED ABANDONED.

(1) Subject to RCW 63.30.120, a gift certificate is presumed abandoned if it remains unclaimed by the owner for more than three years after becoming payable or distributable.

(2) The amount presumed abandoned in a gift certificate is the net value on the gift certificate at the time it is presumed abandoned.

(3) A gift certificate that is lawfully issued under chapter 19.240 RCW and that is presumed abandoned under this section must be included in the report to the administrator concerning such property as provided in RCW 63.30.220.

(4) A holder who has reported the funds on a gift certificate as presumed abandoned under RCW 63.30.220 and delivered the property to the administrator under RCW 63.30.340 must accept the presumed abandoned gift certificate as payment from the owner, if the administrator has not notified the holder that the property has been claimed. The holder may file a claim for reimbursement from the administrator under RCW 63.30.360(1)(b).

(5) The administrator must notify the holder if the administrator has paid or delivered to the owner the gift certificate funds under RCW 63.30.550.

(6) Gift certificates issued to customers by a holder that allow for the purchasing of products, goods, and services only through paid membership programs, which cost at least $50 annually, are exempt from the requirements of subsections (1), (2), and (3) of this section.

(7) Holders whose total revenue does not exceed $100,000,000 in the prior fiscal year are exempt from the requirements of subsections (1), (2), and (3) of this section.

NEW SECTION. **Sec.**  This act applies to gift certificates issued or reloaded with funds on or after July 1, 2024.

**--- END ---**