

Washington State Adopts Gift Certificate Law (April 1, 2004)

On March 26, 2004, Washington Governor Gary Locke signed into law [House Bill 3036](#) which regulates the issuance of gift certificates and gift cards. The law represents a compromise between consumer advocates and businesses by extending certain benefits to consumers (namely limiting the use of expiration dates and fees) and removing the previous requirement that abandoned gift certificates be paid to the state. This new law will be applicable to gift certificates issued on or after July 1, 2004, and those gift certificates presumed abandoned on or after July 1, 2004.

Companies that issue gift certificates and gift cards will immediately feel the impact of this law. Issuers will need to ensure that their programs for certificates or gift cards are compliant. Issuers also will need to assess the lawfulness and sufficiency of any language on the actual gift certificates or gift cards. In addition, the new law is a significant planning opportunity for companies that are looking for a favorable forum in which to establish a gift card subsidiary.

Key provisions of the law are as follows:

- **Definition of Gift Certificate.** 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." A "gift card" means a record 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.
- **Prohibitions.** Subject to limited exceptions, a gift certificate may not be issued or enforced against a bearer if it contains:
 - (a) an expiration date;
 - (b) a service or other fee, or
 - (c) a dormancy or inactivity clause.
- **Limited Cash Back Requirement.** If a purchase is made with a gift certificate for an amount that is less than the value of the certificate, the issuer must make the remaining value available in cash or as a gift certificate at the option of the issuer. A gift certificate is valid until redeemed or replaced. If the remaining value is less than \$5.00, the certificate is redeemable in cash on demand.

- Expiration Dates. Expiration dates are permitted under limited circumstances.
 - (a) Loyalty Programs and Charities. The certificate was issued pursuant to a loyalty or awards program or it was donated to a charity if the certificate is used by the charity (pursuant to 26 USC 501(c)(3)) solely to provide charitable services. In either case, the issuer has received no money or other thing of value in exchange. The expiration date is clearly and legibly disclosed.
 - (b) Fundraising. The certificate was donated to a charity and is used for fundraising activities without any money or other thing of value being given in exchange. The expiration date is at least 1 year from the date the certificate was issued to the charity and is clearly printed in at least 10-point font on the back of the certificate.
 - (c) Cultural Organizations. The certificate is redeemable solely for goods or services in the state of Washington by artistic and cultural organizations (pursuant to RCW 82.04.4328). The expiration date is at least 3 years from the date the certificate was issued to the organization and is clearly printed in at least 10-point font on the back of the certificate. Any unused value must accrue to the organization.
- Dormancy Fees for Gift Cards. A gift card may contain a dormancy or inactivity clause provided:
 - (a) In at least 6-point font, the gift card must state the amount of the charge, the frequency of the charge, and that the charge is triggered by card inactivity. The statement must be visible to any purchaser before the purchase of the card;
 - (b) The remaining value of gift card is \$5.00 or less each time the dormancy charge is assessed;
 - (c) The dormancy charge does not exceed \$1.00 per month.
 - (d) The charge may only be assessed when there has been no activity on the gift card for twenty-four consecutive months, including, but not limited to, purchases, the adding of value, or balance inquiries.
 - (e) The bearer may reload or add value to the gift card; and
 - (f) After the dormancy charge is assessed, the remaining value of the gift certificate is redeemable in cash on demand.
- Bankruptcy. As with California, the law attempts to elevate the status of gift certificates in bankruptcy. Specifically, gift certificates are deemed to be property held in trust by the issuer on behalf of the beneficiary with the value of the certificate belonging to the beneficiary not the issuer. An issuer in bankruptcy must continue to honor the certificates issued prior to the bankruptcy filing date. However, issuers are not required to redeem the certificates for cash, replace a lost or stolen certificate, or maintain separate accounts for certificate funds. These provisions are deemed not to create a fiduciary or quasi-fiduciary relationship nor an interest in favor of the beneficiary in any specific property of the issuer.

- Exemption from Unclaimed Property. Gift certificates subject to the prohibitions on expiration dates and dormancy fees are exempt from Washington's abandoned property law, RCW 63.29.020. Previously, gift certificates unclaimed after 3 years were presumed abandoned. Gift certificates also did not expressly include stored-value cards.