SENATE BILL REPORT
SB 5988

As of January 16, 2024

Title: An act relating to gift certificates as unclaimed property.

Brief Description: Concerning gift certificates as unclaimed property.

Sponsors: Senators Trudeau, Nguyen, Conway, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Liias, Nobles, Saldaña, Stanford, Valdez and Wilson, C..

Brief History:
Committee Activity: Ways & Means: 1/16/24.

Brief Summary of Bill

- Requires gift certificates, including gift cards, to be reported as unclaimed property after three years for holders with total revenue exceeding $100 million.
- Exempts gift certificates from reporting as unclaimed property if the gift certificate allows for purchases exclusively through paid membership programs costing at least $50 annually.
- Modifies the requirement for holders of property presumed abandoned to send a notification to the apparent owner by changing the property value from $75 to $50.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Tianyi Lan (786-7432)

Background: Unclaimed Property. Unclaimed property is monetary assets or tangible property held by an organization that has lost contact with the owner. Property is considered unclaimed after it has been held for a designated period of time with no activity or owner contact, and a good faith effort has been made to locate the owner.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Generally speaking, the dormancy period is three years except that the state law sets specific time periods for certain types of property. The holder of property presumed abandoned must provide notice to the apparent owner if the value of the property is $75 or more. It is then turned over to the state to safeguard until it is returned to the owner.

Typical unclaimed property includes bank accounts, insurance proceeds, securities, utility and phone company deposits, uncashed checks, safe deposit box or bank repository contents, and customer/patient credits. Unclaimed property does not include real estate, vehicles, and most other physical property.

Each year, banks and other businesses turn over unclaimed property to the state. The funds are held in perpetuity until claimed by the rightful owner or heir. Specific for safe deposit box contents, if the owner does not claim the items, the state must sell the contents at public auction within five years. Proceeds from each sale, less any auction and bank fees, are available for the owner to claim indefinitely.

The Department of Revenue (DOR) is the custodian for unclaimed property, and administers the Unclaimed Property program to find the rightful owners. Certain entities are required to report unclaimed property to DOR, including banking and financial institutions, utilities, businesses, and governments. These businesses and other entities report unclaimed property annually by October 31 and are typically referred to as holders. Any individual or business can search DOR's system for unclaimed property DOR is holding in their name. If they find property in their name, the owner or claimant can file to get their property back. This may include an heir or someone filing for an elder who cannot file on their own.

Since 1955, over $3 billion in unclaimed property has been turned over to DOR. In fiscal year 2023, the Unclaimed Property program received property worth more than $322 million and returned $138.9 million of the unclaimed property received to its rightful owners.

<u>Gift Certificates.</u> Gift certificates, including gift cards, abandoned are not required to be reported as unclaimed property. Gift certificates are defined in statute as an instrument evidencing a promise by the seller that consumer goods or services will be provided to the bearer of the record to the value or credit shown in the record. A gift card is a gift certificate 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. Customers may request a cash refund if their gift certificate balance is less than $5.

Gift certificates and gift cards may not charge dormancy or inactivity fees. Expiration dates are not allowed for any gift cards or gift certificates, except for:

- those issued pursuant to an awards or loyalty program; and
- gift certificates donated to a charitable organization without any money or other thing of value given in exchange.

Gift certificates with an allowable expiration date must clearly and legibly disclose the expiration date on the gift certificate.

Summary of Bill: Gift certificates, including gift cards, are presumed abandoned if they remain unclaimed by the owner for more than three years after becoming payable or distributable and must be reported to DOR, similar to other types of unclaimed property.

Gift certificates issued by a holder for products, goods, or services exclusively through paid membership programs costing at least $50 annually are exempt from unclaimed property reporting requirements.

Businesses whose total revenue does not exceed $100 million in the prior fiscal year are exempt from unclaimed property reporting requirements for gift certifications.

Holders who have reported the funds on gift certificates as presumed abandoned and delivered the property to DOR must accept the presumed abandoned gift certificate as payment from the owner, if DOR has not notified the holder the property has been claimed. The holder may file a claim for reimbursement from DOR.

The bill applies to gift certificates issued or reloaded with funds on or after July 1, 2024.

The property value threshold requiring a holder of property presumed abandoned to send notice to the apparent owner is lowered from $75 to $50.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: 70 percent of Fortune 500 retailer companies in Washington already have the unclaimed property reporting process in the states in which they're incorporated. It was required until 2004 when the state amended the Uniform Unclaimed Property Act. The state gave up 2.7 million unspent gift cards which is inflated to 250 million. Even gift cards don't expire in Washington, what is next if they're lost or misplaced? This bill is an attempt to get the money back to consumers and if not, then get back to the community by way of the unclaimed property. With the established process, the state is more incentivized to give back dollars to consumers than to corporations.

With continued high rates of economic insecurity in Washington State, it's critical that the Legislature takes action to protect Washington consumers. This legislation combined with

Senate Bill 5987 makes it easier for consumers to use the entire balance of their gift cards and eliminates the incentive for businesses to engage in practices that increase their revenue without providing services. There are no additional requirements for tracking and reporting consumer data. The built-in process in the Unclaimed Property program requires reporting information when it's available.

The legislation is about basic fairness and about increasing the likelihood that money paid for gift cards ends up in the hands of consumers. If the property continues to remain unclaimed, it should go to the public good and be used by the state to increase the well-being of individuals and communities. We shouldn't be struggling to keep pace with the status quo when the status quo is not good enough. Since 2004, many corporations have incorporated in the state to keep consumers unspent gift card money while we continue struggling to find public investments that can transform people's lives. The unspent money added up to at least $255 million last year that huge retailers were able to claim as corporate revenue to increase profits. Revenue from this bill is desperately needed for many public services.

There is no legal basis for not including gift cards in the unclaimed property act. There are also no constitutional issues with respect to the proposed bill or to the Unclaimed Property Act. The bill strengthens protections for all Washingtonians against unnecessary and sometimes deceptive practices that heavily impact households at the lowest income levels. Last year, 41 percent of households with combined incomes below $550,000 had unused gift cards with an average of about $130. This legislation would basically become a common-sense consumer protection bill particularly to provide some relief to Washingtonians and low-income consumers.

Technology exists for businesses to be able to return the money to the original purchasers instead of keeping it for their own.

CON: From the perspective of third-party providers, the challenge of the bill is that it interrupts the information transfer process. Assuming that something is unclaimed, it is not abandoned or lost at any point 10 years down the road even if it's in a junk drawer. Consumers can still take that gift card, swipe it, and guarantee full value and 100 percent validation of that card.

The language is unclear about how it will impact franchisees, like grocery outlets with global revenue of over $100 million. The bill does not explicitly create a registry which is needed in order to be consumer-friendly.

Section 3 of the bill states that the holder of property presumed abandoned shall send to the apparent owner notice by first class US Mail. We understand that we would need to collect personal identifying information, even if it's just first name, last name, and address to be able to notify consumers.

Since gift cards do not expire in Washington State, you should not require the retailers to hand them over. 30 states nationwide do not exempt gift cards. Many of them do not require reporting at face value, including Delaware. There are some constitutional issues depending on how this is implemented.

The bill impacts loyalty points programs and suggests that rewards, incentives, rebates, and promotions are dangerous to consumers. These programs are wildly popular for industries and customers and help create recurring business. They are also programs that customers voluntarily sign up for, and can leave at any time. Loyalty programs sustain and stabilize the revenue of businesses during slow times. 5 percent of the revenue runs through loyalty programs and the bill would make them unsustainable. Customers do not need to be protected from their loyalty points and indeed loyalty points need to be protected from this legislation.

It's unclear for businesses the impact or effect that the legislation would have. There will be administrative nightmares for businesses in terms of managing their own gift cards and gift cards that they sell on behalf of other retailers. The broad language impacts a variety of retailers and businesses which interact with customers in different ways. The bill does not allow businesses to continue to work with customers on those unclaimed receipts that they have.

OTHER: From an administrative perspective, the bill still has unaddressed issues in order to be administrable and to achieve what is intended. Under this bill, the Unclaimed Property program becomes an option for consumers to claim unclaimed gift card by providing the unique number attached to it. The gift card itself would still be a valid gift card for consumers to spend but the dollar amount would be reported to the Department of Revenue. In the case consumers use the unclaimed gift card, the company would seek a refund or a reimbursement from DOR since they have turned over the value of the unclaimed gift cards.

Unclaimed property being a standalone fund maintains a balance and then the rest is swept over to the general fund as essentially a loan to the state. But it at all times remains the rightful property of the owners. Limited to data availability, the fiscal note does not reflect the assumptions that companies might relocate or move their gift card portion to another state that is more favorable. Due to the possibility, the fiscal estimations is on the low side of the range in terms of revenues that could be brought into the state.

Persons Testifying: PRO: Misha Werschkul, Washington State Budget and Policy Center; Michele Thomas, Washington Low Income Housing Alliance; Tymmony Keegan; Tom Sterken, Keller Rohrback L.L.P.; Micaela Romero, WashingtonCAN; Emma Scalzo, Balance Our Tax Code; Suresh Chanmugam, Tech 4 Housing.

CON: Crystal Leatherman, Washington Retail Association; Lars Erickson, Seattle Metropolitan Chamber of Commerce; Katie Beeson, Washington Food Industry Association (WFIA); Holly Chisa, InComm Payments; Emily Shay, Association of Washington

Businesses; Patrick Reynolds, Council of State Taxation; Phillip Rouse, Retail Gift Card Association; Julia Gorton, Washington Hospitality Association; Cooper Mills, Fire and Vine Hospitality; Brandon Houskeeper, NW Grocery Association.

OTHER: Steve Ewing, Dept. of Revenue.

Persons Signed In To Testify But Not Testifying: No one.