



Oregon

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State Land Board

**Testimony of
Patrick Tate, Trust Property Manager
Department of State Lands
on
Senate Bill 113
Senate Committee on General Government and Accountability
March 8, 2017**

Kate Brown

Governor

Dennis Richardson

Secretary of State

Tobias Read

State Treasurer

Thank you for the opportunity to provide testimony on Senate Bill 113. The intent of the bill is that the retailer listed on a gift card as the provider of services must transfer to the state any remaining balance on the gift card within five years of the last transaction date that involved a purchase. The Department does not have a position on the bill.

The bill would require the company that provides goods or services for a gift card, even if the company does not hold the gift card funds, to report any remaining balance from a gift card to the Department of State Lands via the requirements of the Uniform Disposition of Unclaimed Property Act. After transfer, the card would be considered void and the card holder would not be able to redeem the remaining balance on the gift card from the provider of goods and services.

As currently written, the bill would primarily impact Oregon companies that issue gift cards and companies that allow some form of registration that captures a name and address. Some other companies might also need to file reports, after determining several custody factors.

Administratively, all states incorporate rules of custody in their unclaimed property laws to clarify which state has priority to the custody of unclaimed funds. These rules were developed from the decisions in U.S. Supreme Court Cases: Texas vs. New Jersey, and Delaware vs. New York.

The basic rules are:

1. The state of the last known address of the owner has primary right to custody.
2. If the address of the owner is unknown or in a foreign country, the state of incorporation has primary right to custody.
3. If state in 1 or 2 above does not provide for the custodial taking or escheat of the unclaimed funds, a state may claim if the transaction arose in that state.

Complying with the bill's requirements will be fairly straightforward for situations meeting rules 1 or 2 above. It will be difficult for companies and the Department of State Lands to determine those situations where another state's law does not provide for reporting of gift cards. Similar to the current law in Oregon, 30+ states have developed consumer protection statutes that protect the owners of gift cards. Most require the issuer of gift cards to continue to honor gift cards indefinitely.

The requirement that the provider of the goods and services must submit the unpaid balance after five years, even if they did not sell the gift cards is a potential issue. Many large retailers contract out their gift card services to a third party. In most cases, the contractor holds the funds and the "provider of services" receives some pre-defined percentage of the gross receipts.

There would likely be legal challenges that the party required to remit the funds is not in the position to respond to the statute's requirements. If the bill passes, the Department will create rules to address the practical transfer of the funds. Essentially, we would be representing the missing cardholder and the provider of services would request redemption on our behalf from the gift card company holding the funds so they could pass the funds through to us. While we believe we can address the practical transfer of the funds, we believe some underlying legal issues remain with administering the bill's requirements.

Thank you again for the opportunity to provide testimony to the committee today.