

1 **FEES ON GIFT CARDS OR CERTIFICATES**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Melvin R. Brown**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions in the Utah Consumer Sales Practices Act related to gift
10 certificates.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ prohibits application of an expiration date or a service fee, including a dormancy
15 fee, to a gift certificate; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **13-11-3**, as last amended by Laws of Utah 2004, Chapter 55

24 **13-11-4**, as last amended by Laws of Utah 2012, Chapter 152

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **13-11-3** is amended to read:



28 **13-11-3. Definitions.**

29 As used in this chapter:

30 (1) "Charitable solicitation" means any request directly or indirectly for money, credit,
31 property, financial assistance, or any other thing of value on the plea or representation that it
32 will be used for a charitable purpose. A charitable solicitation may be made in any manner,
33 including:

34 (a) any oral or written request, including a telephone request;

35 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
36 publication; or

37 (c) the sale of, offer or attempt to sell, or request of donations for any book, card,
38 chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag,
39 button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection
40 with which any appeal is made for any charitable purpose, or where the name of any charitable
41 organization or movement is used or referred to as an inducement or reason for making any
42 purchase donation, or where, in connection with any sale or donation, any statement is made
43 that the whole or any part of the proceeds of any sale or donation will go to or be donated to
44 any charitable purpose. A charitable solicitation is considered complete when made, whether
45 or not the organization or person making the solicitation receives any contribution or makes
46 any sale.

47 (2) (a) "Consumer transaction" means a sale, lease, assignment, award by chance, or
48 other written or oral transfer or disposition of goods, services, or other property, both tangible
49 and intangible (except securities and insurance) to, or apparently to, a person for:

50 (i) primarily personal, family, or household purposes; or

51 (ii) purposes that relate to a business opportunity that requires:

52 (A) expenditure of money or property by the person described in Subsection (2)(a); and

53 (B) the person described in Subsection (2)(a) to perform personal services on a
54 continuing basis and in which the person described in Subsection (2)(a) has not been
55 previously engaged.

56 (b) "Consumer transaction" includes:

57 (i) any of the following with respect to a transfer or disposition described in Subsection
58 (2)(a):

- 59 (A) an offer;
- 60 (B) a solicitation;
- 61 (C) an agreement; or
- 62 (D) performance of an agreement; or
- 63 (ii) a charitable solicitation.
- 64 (3) "Enforcing authority" means the Division of Consumer Protection.
- 65 (4) "Final judgment" means a judgment, including any supporting opinion, that
- 66 determines the rights of the parties and concerning which appellate remedies have been
- 67 exhausted or the time for appeal has expired.
- 68 (5) "Financial institution" means:
- 69 (a) a state or federally chartered:
- 70 (i) bank;
- 71 (ii) savings and loan association;
- 72 (iii) savings bank;
- 73 (iv) industrial bank; or
- 74 (v) credit union; or
- 75 (b) any other entity under the jurisdiction of the commissioner of financial institutions
- 76 as provided in Title 7, Financial Institutions Act.
- 77 (6) (a) "Gift certificate" means a record that:
- 78 (i) is provided in exchange for consideration paid in advance;
- 79 (ii) indicates a promise by the issuer or seller of the record that goods or services will
- 80 be provided to the possessor of the record for the value that is:
- 81 (A) shown on the record; or
- 82 (B) contained within the record by means of a microprocessor chip, magnetic stripe,
- 83 bar code, or other electronic information storage device; and
- 84 (iii) decreases in value by the amount spent with each use.
- 85 (b) "Gift certificate" does not include:
- 86 (i) a prepaid calling card;
- 87 (ii) a record provided to a consumer pursuant to an award, loyalty, or promotion
- 88 program for which no money or consideration was given in exchange;
- 89 (iii) a record that is sold below face value; or

90 (iv) a card or other device used to access a deposit account.

91 [~~(5)~~] (7) "Person" means an individual, corporation, government, governmental
92 subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any
93 other legal entity.

94 [~~(6)~~] (8) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person
95 who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals
96 directly with the consumer.

97 Section 2. Section **13-11-4** is amended to read:

98 **13-11-4. Deceptive act or practice by supplier.**

99 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
100 violates this chapter whether it occurs before, during, or after the transaction.

101 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
102 practice if the supplier knowingly or intentionally:

103 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
104 performance characteristics, accessories, uses, or benefits, if it has not;

105 (b) indicates that the subject of a consumer transaction is of a particular standard,
106 quality, grade, style, or model, if it is not;

107 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
108 has been used to an extent that is materially different from the fact;

109 (d) indicates that the subject of a consumer transaction is available to the consumer for
110 a reason that does not exist, including any of the following reasons falsely used in an
111 advertisement:

112 (i) "going out of business";

113 (ii) "bankruptcy sale";

114 (iii) "lost our lease";

115 (iv) "building coming down";

116 (v) "forced out of business";

117 (vi) "final days";

118 (vii) "liquidation sale";

119 (viii) "fire sale";

120 (ix) "quitting business"; or

121 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
122 (ix);

123 (e) indicates that the subject of a consumer transaction has been supplied in accordance
124 with a previous representation, if it has not;

125 (f) indicates that the subject of a consumer transaction will be supplied in greater
126 quantity than the supplier intends;

127 (g) indicates that replacement or repair is needed, if it is not;

128 (h) indicates that a specific price advantage exists, if it does not;

129 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
130 does not have;

131 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
132 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
133 the representation is false; or

134 (ii) fails to honor a warranty or a particular warranty term;

135 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
136 inducement for entering into a consumer transaction in return for giving the supplier the names
137 of prospective consumers or otherwise helping the supplier to enter into other consumer
138 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
139 enters into the transaction;

140 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
141 services within the time advertised or otherwise represented or, if no specific time is advertised
142 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
143 applicable time period the supplier provides the buyer with the option to:

144 (i) cancel the sales agreement and receive a refund of all previous payments to the
145 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day
146 on which the seller receives written notification from the buyer of the buyer's intent to cancel
147 the sales agreement and receive the refund; or

148 (ii) extend the shipping date to a specific date proposed by the supplier;

149 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
150 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale
151 within three business days of the time of purchase if:

152 (i) the sale is made other than at the supplier's established place of business pursuant to
153 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
154 telephone, or any other form of direct solicitation; and

155 (ii) the sale price exceeds \$25;

156 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
157 76, Chapter 6a, Pyramid Scheme Act;

158 (o) represents that the funds or property conveyed in response to a charitable
159 solicitation will be donated or used for a particular purpose or will be donated to or used by a
160 particular organization, if the representation is false;

161 (p) if a consumer indicates the consumer's intention of making a claim for a motor
162 vehicle repair against the consumer's motor vehicle insurance policy:

163 (i) commences the repair without first giving the consumer oral and written notice of:

164 (A) the total estimated cost of the repair; and

165 (B) the total dollar amount the consumer is responsible to pay for the repair, which
166 dollar amount may not exceed the applicable deductible or other copay arrangement in the
167 consumer's insurance policy; or

168 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
169 consumer was initially told the consumer was responsible to pay as an insurance deductible or
170 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
171 amount is less than the full amount the motor vehicle insurance policy requires the insured to
172 pay as a deductible or other copay arrangement, unless:

173 (A) the consumer's insurance company denies that coverage exists for the repair, in
174 which case, the full amount of the repair may be charged and collected from the consumer; or

175 (B) the consumer misstates, before the repair is commenced, the amount of money the
176 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
177 which case, the supplier may charge and collect from the consumer an amount that does not
178 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
179 copay arrangement;

180 (q) includes in any contract, receipt, or other written documentation of a consumer
181 transaction, or any addendum to any contract, receipt, or other written documentation of a
182 consumer transaction, any confession of judgment or any waiver of any of the rights to which a

183 consumer is entitled under this chapter;

184 (r) charges a consumer for a consumer transaction or a portion of a consumer
185 transaction that has not previously been agreed to by the consumer;

186 (s) solicits or enters into a consumer transaction with a person who lacks the mental
187 ability to comprehend the nature and consequences of:

188 (i) the consumer transaction; or

189 (ii) the person's ability to benefit from the consumer transaction;

190 (t) solicits for the sale of a product or service by providing a consumer with an
191 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
192 the consumer to purchase a product or service, unless the supplier is:

193 (i) a depository institution under Section 7-1-103;

194 (ii) an affiliate of a depository institution; or

195 (iii) an entity regulated under Title 7, Financial Institutions Act;

196 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
197 request for payment for a product or service the person has not ordered or used, or that implies
198 that the mailing requests payment for an ongoing product or service the person has not received
199 or requested;

200 (v) issues [~~a gift certificate, instrument, or other record~~] an instrument or record, other
201 than a gift certificate that is subject to Subsection (4)(a), in exchange for payment to provide
202 the bearer, upon presentation, goods or services in a specified amount without printing in a
203 readable manner on the [~~gift certificate,~~] instrument[~~, packaging,~~] or record any expiration date
204 or information concerning a fee to be charged and deducted from the balance of the [~~gift~~
205 ~~certificate,~~] instrument[~~;~~] or other record; or

206 (w) misrepresents the geographical origin or location of the supplier's business.

207 (3) (a) The notice required by Subsection (2)(m) shall:

208 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
209 first page of the purchase documentation; and

210 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
211 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
212 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
213 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS

214 LATER".

215 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
216 cancellation policy:

217 (i) is communicated to the buyer; and

218 (ii) offers greater rights to the buyer than Subsection (2)(m).

219 (4) (a) A gift certificate~~[, instrument, or other record that does not print an expiration~~
220 ~~date in accordance with Subsection (2)(v) does not expire]~~ may not expire or be subject to any
221 type of service fee, including a fee for dormancy.

222 ~~[(b) A gift certificate, instrument, or other record that does not include printed~~
223 ~~information concerning a fee to be charged and deducted from the balance of the gift~~
224 ~~certificate, instrument, or other record is not subject to the charging and deduction of the fee.]~~

225 ~~[(c) Subsections (2)(v) and (4)(b) do]~~

226 (b) Subsection (4)(a) does not apply to a gift certificate~~[, instrument, or other record]~~
227 issued by a financial institution that is useable at multiple, unaffiliated sellers of goods or
228 services if an expiration date and fee associated with the gift certificate is printed on the gift
229 certificate~~[, instrument, or other record].~~

230 (c) An instrument or record issued in exchange for payment to provide the bearer, upon
231 presentation, goods or services in a specified amount, other than a gift certificate that is subject
232 to Subsection (4)(a), does not expire and may not be subject to any type of service fee if written
233 notice of the expiration date or written disclosure of the fee is not printed, in a readable
234 manner, on the instrument or record.

Legislative Review Note
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Office of Legislative Research and General Counsel