

Representative Ty McCartney proposes the following substitute bill:

GIFT CERTIFICATES - ELIMINATING

EXPIRATION DATE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ty McCartney

LONG TITLE

General Description:

This bill modifies the Utah Consumer Sales Practices Act.

Highlighted Provisions:

This bill:

- ▶ prohibits a gift certificate from containing an expiration date within five years after the gift certificate is issued; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-11-3, as last amended by Chapter 57, Laws of Utah 2000

13-11-4, as last amended by Chapter 196, Laws of Utah 2001

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

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



26 **13-11-3. Definitions.**

27 As used in this chapter:

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

32 [~~(a)~~] (i) any oral or written request, including a telephone request;33 [~~(b)~~] (ii) the distribution, circulation, or posting of any handbill, written advertisement,
 34 or publication; or

35 [~~(c)~~] (iii) the sale of, offer or attempt to sell, or request of donations for any book, card,
 36 chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag,
 37 button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection
 38 with which any appeal is made for any charitable purpose, or where the name of any charitable
 39 organization or movement is used or referred to as an inducement or reason for making any
 40 purchase donation, or where, in connection with any sale or donation, any statement is made
 41 that the whole or any part of the proceeds of any sale or donation will go to or be donated to
 42 any charitable purpose.

43 (b) A charitable solicitation is considered complete when made, whether or not the
 44 organization or person making the solicitation receives any contribution or makes any sale.

45 (2) (a) "Consumer transaction" means a sale, lease, assignment, award by chance, or
 46 other written or oral transfer or disposition of goods, services, or other property, both tangible
 47 and intangible (except securities and insurance), including the use or misuse of personal
 48 identifying information of any person in relation to a consumer transaction to, or apparently to,
 49 a person for primarily personal, family, or household purposes, or for purposes that relate to a
 50 business opportunity that requires both his expenditure of money or property and his personal
 51 services on a continuing basis and in which he has not been previously engaged, or a
 52 solicitation or offer by a supplier with respect to any of these transfers or dispositions. [~~(b)~~]

53 (b) "Consumer transaction" includes any offer or solicitation, any agreement, any
 54 performance of an agreement with respect to any of these transfers or dispositions, and any
 55 charitable solicitation as defined in this section.

55a **Ĥ (3) "CONTROL" MEANS:**

55b **(a) OWNERSHIP OF MORE THAN 5% OF THE VOTING SHARES OR OWNERSHIP INTERESTS**
 55c **OF AN ENTITY;**

55d **(b) THE POWER TO VOTE MORE THAN 5% OF THE VOTING SHARES OF AN ENTITY; OR**

55e **(c) THE ABILITY TO INFLUENCE THE MANAGEMENT OF AN ENTITY.** ĥ

56 **Ĥ [~~(3)~~] (4) ĥ** "Enforcing authority" means the Division of Consumer Protection.

57 ~~Ĥ~~ [(4)] (5) ~~ĥ~~ "Final judgment" means a judgment, including any supporting opinion, that
 58 determines the rights of the parties and concerning which appellate remedies have been
 59 exhausted or the time for appeal has expired.

60 ~~Ĥ~~ [(5)] (6) ~~ĥ~~ (a) Except as provided in Subsection ~~Ĥ~~ [(5)] (6) ~~ĥ~~ (b), "gift certificate" means
 60a a certificate,
 61 electronic card, or other medium evidencing the giving of consideration in exchange for the
 62 right to redeem the certificate, electronic card, or other medium:

63 (i) with the person or entity who issued the certificate, electronic card, or other
 64 medium; and

65 (ii) for any of the following:

66 (A) goods;

67 (B) services;

68 (C) credit;

69 (D) money; or

70 (E) anything else of value.

71 (b) "Gift certificate" does not include ~~Ĥ~~ :

71a (i) ~~ĥ~~ a financial transaction card as defined in Section
 72 13-38-101 ~~Ĥ~~ [:] ; OR

72a (ii) A CERTIFICATE, ELECTRONIC CARD, OR OTHER MEDIUM ISSUED BY:

72b (A) A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 7-1-103; OR

72c (B) AN ENTITY THAT:

72d (I) CONTROLS A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 7-1-103;

72e (II) IS CONTROLLED BY AN ENTITY THAT CONTROLS A DEPOSITORY INSTITUTION, AS
 72f DEFINED IN SECTION 7-1-103; OR

72g (III) IS CONTROLLED BY A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 7-1-103. ~~ĥ~~

73 ~~[(5)]~~ ~~Ĥ~~ [(6)] (7) ~~ĥ~~ "Person" means an individual, corporation, government, governmental
 74 subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any
 75 other legal entity.

76 ~~[(6)]~~ ~~Ĥ~~ [(7)] (8) ~~ĥ~~ "Supplier" means a seller, lessor, assignor, offeror, broker, or other person
 77 who regularly solicits, engages in, or enforces consumer transactions, whether or not ~~[he]~~ the
 78 person deals directly with the consumer.

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

80 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

87 (b) indicates that the subject of a consumer transaction is of a particular standard,

88 quality, grade, style, or model, if it is not;

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

91 (d) indicates that the subject of a consumer transaction is available to the consumer for
92 a reason that does not exist;

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

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

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

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

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

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

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

109 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
110 services within the time advertised or otherwise represented or, if no specific time is advertised
111 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
112 applicable time period the supplier provides the buyer with the option to either cancel the sales
113 agreement and receive a refund of all previous payments to the supplier or to extend the
114 shipping date to a specific date proposed by the supplier, but any refund shall be mailed or
115 delivered to the buyer within ten business days after the seller receives written notification
116 from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

117 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
118 within three business days of the time of purchase if the sale is made other than at the supplier's

119 established place of business pursuant to the supplier's personal contact, whether through mail,
120 electronic mail, facsimile transmission, telephone, or any other form of direct solicitation and if
121 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the
122 buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice
123 shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of
124 the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL
125 THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS
126 DAY (or time period reflecting the supplier's cancellation policy but not less than three
127 business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
128 PRODUCT, WHICHEVER IS LATER.";

129 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
130 76, Chapter 6a, Pyramid Scheme Act;

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

134 (p) if a consumer indicates [~~his~~] the consumer's intention of making a claim for a motor
135 vehicle repair against [~~his~~] the consumer's motor vehicle insurance policy:

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

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

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

141 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
142 consumer was initially told [~~he~~] the consumer was responsible to pay as an insurance
143 deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i),
144 even if that amount is less than the full amount the motor vehicle insurance policy requires the
145 insured to pay as a deductible or other copay arrangement, unless:

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

148 (B) the consumer misstates, before the repair is commenced, the amount of money the
149 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in

150 which case, the supplier may charge and collect from the consumer an amount that does not
151 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
152 copay arrangement;

153 (q) includes in any contract, receipt, or other written documentation of a consumer
154 transaction, or any addendum to any contract, receipt, or other written documentation of a
155 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
156 consumer is entitled under this chapter; [or]

157 (r) charges a consumer for a consumer transaction that has not previously been agreed
158 to by the consumer[-]; or

159 (s) imposes on a gift certificate **H WITH A VALUE EXCEEDING \$25 h** :

160 (i) an expiration date within five years after the day on which the gift certificate is
161 issued; or

162 (ii) any limit, within five years after the day on which the gift certificate is issued, on
163 the time during which the gift certificate may be redeemed or used.

Legislative Review Note
as of 2-3-04 2:07 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note**Gift Certificates-Eliminating Expiration Date***23-Feb-04***Bill Number HB0261S01***10:01 AM*

State Impact

The provisions of this bill can be handled within existing budgets.

Individual and Business Impact

Consumers will not lose the value of their gift certificates within five years.

Office of the Legislative Fiscal Analyst