

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. [~~H~~]

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.

56 (3) "Enforcing authority" means the Division of Consumer Protection.

57 (4) "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 (5) "Gift certificate" means any certificate, electronic card, or other medium evidencing
61 the giving of consideration in exchange for the right to redeem the certificate, electronic card,
62 or other medium for any of the following:

63 (a) goods;

64 (b) services;

65 (c) credit;

66 (d) money; or

67 (e) anything else of value.

68 [~~5~~] (6) "Person" means an individual, corporation, government, governmental
69 subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any
70 other legal entity.

71 [~~6~~] (7) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person
72 who regularly solicits, engages in, or enforces consumer transactions, whether or not [~~he~~] the
73 person deals directly with the consumer.

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

75 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
113 within three business days of the time of purchase if the sale is made other than at the supplier's
114 established place of business pursuant to the supplier's personal contact, whether through mail,
115 electronic mail, facsimile transmission, telephone, or any other form of direct solicitation and if
116 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the
117 buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice
118 shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of
119 the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL
120 THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS

121 DAY (or time period reflecting the supplier's cancellation policy but not less than three
122 business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
123 PRODUCT, WHICHEVER IS LATER.";

124 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
125 76, Chapter 6a, Pyramid Scheme Act;

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

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

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

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

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

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

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

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

148 (q) includes in any contract, receipt, or other written documentation of a consumer
149 transaction, or any addendum to any contract, receipt, or other written documentation of a
150 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
151 consumer is entitled under this chapter; [~~or~~]

152 (r) charges a consumer for a consumer transaction that has not previously been agreed
153 to by the consumer[-]; or
154 (s) imposes on a gift certificate:
155 (i) an expiration date within five years after the day on which the gift certificate is
156 issued; or
157 (ii) any limit, within five years after the day on which the gift certificate is issued, on
158 the time during which the gift certificate may be redeemed or used.

Legislative Review Note
as of 1-27-04 7:06 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0261

Gift Certificates-Eliminating Expiration Date

02-Feb-04
4:40 PM

State Impact

Costs 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