

28 As used in this chapter:

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

33 ~~[(a)]~~ (i) any oral or written request, including a telephone request;

34 ~~[(b)]~~ (ii) the distribution, circulation, or posting of any handbill, written advertisement,
35 or publication; or

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

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

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

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

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

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

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

55 (b) "Consumer transaction" includes:

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

58 (A) an offer;

- 59 (B) a solicitation;
- 60 (C) an agreement; or
- 61 (D) performance of an agreement; or
- 62 (ii) a charitable solicitation.
- 63 (3) "Control" means:
- 64 (a) ownership of more than 5% of the voting shares or ownership interests of an entity;
- 65 (b) the power to vote more than 5% of the voting shares of an entity; or
- 66 (c) the ability to influence the management of an entity.
- 67 [~~3~~] (4) "Enforcing authority" means the Division of Consumer Protection.
- 68 [~~4~~] (5) "Final judgment" means a judgment, including any supporting opinion, that
- 69 determines the rights of the parties and concerning which appellate remedies have been
- 70 exhausted or the time for appeal has expired.
- 71 (6) (a) Except as provided in Subsection (6)(b), "gift certificate" means a certificate,
- 72 electronic card, or other medium evidencing the giving of consideration in exchange for the
- 73 right to redeem the certificate, electronic card, or other medium:
- 74 (i) with the person or entity who issued the certificate, electronic card, or other
- 75 medium; and
- 76 (ii) for any of the following:
- 77 (A) goods;
- 78 (B) services;
- 79 (C) credit;
- 80 (D) money; or
- 81 (E) anything else of value.
- 82 (b) "Gift certificate" does not include:
- 83 (i) a financial transaction card as defined in Section 13-38-101; or
- 84 (ii) a certificate, electronic card, or other medium issued by:
- 85 (A) a depository institution, as defined in Section 7-1-103; or
- 86 (B) an entity that:
- 87 (I) controls a depository institution, as defined in Section 7-1-103;
- 88 (II) is controlled by an entity that controls a depository institution, as defined in Section
- 89 7-1-103; or

90 (III) is controlled by a depository institution, as defined in Section 7-1-103.

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;

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

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

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

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

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

119 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
120 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if

121 the representation is false; or

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

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

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

132 (i) cancel the sales agreement and receive a refund of all previous payments to the
133 supplier if the refund is mailed or delivered to the buyer within ten business days after the day
134 on which the seller receives written notification from the buyer of the buyer's intent to cancel
135 the sales agreement and receive the refund; or

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

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

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

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

144 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
145 76, Chapter 6a, Pyramid Scheme Act;

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

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

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

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

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

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

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

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

168 (q) includes in any contract, receipt, or other written documentation of a consumer
169 transaction, or any addendum to any contract, receipt, or other written documentation of a
170 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
171 consumer is entitled under this chapter;

172 (r) charges a consumer for a consumer transaction that has not previously been agreed
173 to by the consumer;

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

176 (i) the consumer transaction; or

177 (ii) the person's ability to benefit from the consumer transaction; [~~or~~]

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

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

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

- 183 (iii) an entity regulated under Title 7, Financial Institutions Act[-]; or
184 (u) imposes on a gift certificate with a value exceeding \$25:
185 (i) an expiration date within five years after the day on which the gift certificate is
186 issued; or
187 (ii) any limit, within five years after the day on which the gift certificate is issued, on
188 the time during which the gift certificate may be redeemed or used.
189 (3) (a) The notice required by Subsection (2)(m) shall:
190 (i) be a conspicuous statement written in dark bold with at least 12 point type on the
191 first page of the purchase documentation; and
192 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
193 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
194 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
195 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
196 LATER".
197 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
198 cancellation policy:
199 (i) is communicated to the buyer; and
200 (ii) offers greater rights to the buyer than Subsection (2)(m).

Legislative Review Note
as of 1-24-06 2:29 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Gift Certificates - Limiting Expiration Date***26-Jan-06***Bill Number: HB0324***4:24 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