

**GIFT CARD PROVISIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Val L. Peterson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies a provision relating to gift certificates and similar records.

**Highlighted Provisions:**

This bill:

▶ modifies a provision which makes it a deceptive act or practice for a supplier, knowingly or intentionally, to issue a certain gift certificate, instrument, or other record without providing information about an expiration date and fee charged against the balance; and

▶ modifies that provision into a provision making it a deceptive act or practice for a supplier, knowingly or intentionally, to issue a gift certificate, instrument, or other record that is scheduled to expire or if a fee is to be charged against the balance.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-11-4**, as last amended by Laws of Utah 2010, Chapter 54

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



28 Section 1. Section **13-11-4** is amended to read:

29 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

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

43 (i) "going out of business";

44 (ii) "bankruptcy sale";

45 (iii) "lost our lease";

46 (iv) "building coming down";

47 (v) "forced out of business";

48 (vi) "final days";

49 (vii) "liquidation sale";

50 (viii) "fire sale";

51 (ix) "quitting business"; or

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

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

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

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

- 59 (h) indicates that a specific price advantage exists, if it does not;
- 60 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier  
61 does not have;
- 62 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a  
63 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if  
64 the representation is false; or
- 65 (ii) fails to honor a warranty or a particular warranty term;
- 66 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an  
67 inducement for entering into a consumer transaction in return for giving the supplier the names  
68 of prospective consumers or otherwise helping the supplier to enter into other consumer  
69 transactions, if receipt of the benefit is contingent on an event occurring after the consumer  
70 enters into the transaction;
- 71 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the  
72 services within the time advertised or otherwise represented or, if no specific time is advertised  
73 or represented, fails to ship the goods or furnish the services within 30 days, unless within the  
74 applicable time period the supplier provides the buyer with the option to:
  - 75 (i) cancel the sales agreement and receive a refund of all previous payments to the  
76 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day  
77 on which the seller receives written notification from the buyer of the buyer's intent to cancel  
78 the sales agreement and receive the refund; or
  - 79 (ii) extend the shipping date to a specific date proposed by the supplier;
- 80 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the  
81 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale  
82 within three business days of the time of purchase if:
  - 83 (i) the sale is made other than at the supplier's established place of business pursuant to  
84 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,  
85 telephone, or any other form of direct solicitation; and
  - 86 (ii) the sale price exceeds \$25;
- 87 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title  
88 76, Chapter 6a, Pyramid Scheme Act;
- 89 (o) represents that the funds or property conveyed in response to a charitable

90 solicitation will be donated or used for a particular purpose or will be donated to or used by a  
91 particular organization, if the representation is false;

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

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

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

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

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

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

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

111 (q) includes in any contract, receipt, or other written documentation of a consumer  
112 transaction, or any addendum to any contract, receipt, or other written documentation of a  
113 consumer transaction, any confession of judgment or any waiver of any of the rights to which a  
114 consumer is entitled under this chapter;

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

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

119 (i) the consumer transaction; or

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

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

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

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

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

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

131 (v) (i) issues a gift certificate, instrument, or other record in exchange for payment to  
132 provide the bearer, upon presentation, goods or services in a specified amount [~~without printing~~  
133 ~~in a readable manner on the gift certificate, instrument, packaging, or record any expiration~~  
134 ~~date or information concerning~~]; and

135 (ii) (A) the gift certificate, instrument, or other record is scheduled to expire; or

136 (B) a fee is to be charged and deducted from the balance of the gift certificate,  
137 instrument, or other record; or

138 (w) misrepresents the geographical origin or location of the supplier's business in  
139 connection with the sale of cut flowers, flower arrangements, or floral products.

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

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

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

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

150 (i) is communicated to the buyer; and

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

152           (4) (a) A gift certificate, instrument, or other record that does not print an expiration  
153 date in accordance with Subsection (2)(v) does not expire.

154           (b) A gift certificate, instrument, or other record that does not include printed  
155 information concerning a fee to be charged and deducted from the balance of the gift  
156 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

157           (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other  
158 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is  
159 printed on the gift certificate, instrument, or other record.

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**Legislative Review Note**  
as of **2-1-12 6:30 AM**

**Office of Legislative Research and General Counsel**