

## HB0398S01 compared with HB0398

~~text~~ shows text that was in HB0398 but was deleted in HB0398S01.

inserted text shows text that was not in HB0398 but was inserted into HB0398S01.

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Representative Melvin R. Brown proposes the following substitute bill:

### FEES ON GIFT CARDS OR CERTIFICATES

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Melvin R. Brown**

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

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

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

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

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None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

#### **13-11-3. Definitions.**

As used in this chapter:

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

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

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

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

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

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

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

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

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

(b) "Consumer transaction" includes:

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

(A) an offer;

(B) a solicitation;

(C) an agreement; or

(D) performance of an agreement; or

(ii) a charitable solicitation.

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

(4) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

~~{ (5) "Financial institution" means:~~

~~— (a) a state or federally chartered:~~

~~— (i) bank;~~

~~— (ii) savings and loan association;~~

~~— (iii) savings bank;~~

~~— (iv) industrial bank; or~~

~~— (v) credit union; or~~

~~— (b) any other entity under the jurisdiction of the commissioner of financial institutions as provided in Title 7, Financial Institutions Act.~~

† ~~(6)~~5 (a) "Gift certificate" means a record that:

(i) is provided in exchange for consideration paid in advance;

(ii) indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is:

(A) shown on the record; or

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(B) contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device; and

(iii) decreases in value by the amount spent with each use.

(b) "Gift certificate" does not include:

(i) a prepaid calling card;

(ii) a record provided to a consumer pursuant to an award, loyalty, or promotion program for which no money or consideration was given in exchange;

(iii) a record that is sold below face value; or

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

~~[(5)]~~ ~~(47;6)~~ "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

~~[(6)]~~ ~~(48;7)~~ "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

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

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

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

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

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

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

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

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

(i) "going out of business";

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- (ii) "bankruptcy sale";
  - (iii) "lost our lease";
  - (iv) "building coming down";
  - (v) "forced out of business";
  - (vi) "final days";
  - (vii) "liquidation sale";
  - (viii) "fire sale";
  - (ix) "quitting business"; or
  - (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through (ix);
- (e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;
- (f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
- (g) indicates that replacement or repair is needed, if it is not;
- (h) indicates that a specific price advantage exists, if it does not;
- (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;
- (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or
- (ii) fails to honor a warranty or a particular warranty term;
- (k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;
- (l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

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

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

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

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

(ii) the sale price exceeds \$25;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the consumer transaction; or

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

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

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

(ii) an affiliate of a depository institution; or

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

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

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

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

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

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

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

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

(i) is communicated to the buyer; and

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

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

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

~~[(c) Subsections (2)(v) and (4)(b) do {}~~

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

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

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~~Legislative Review Note~~

~~\_\_\_\_\_ as of 2-27-13 3:53 PM~~

~~\_\_\_\_\_ Office of Legislative Research and General Counsel}~~