

By Senator Wise

5-1490A-04

See HB 1053

1 A bill to be entitled
2 An act relating to gift certificates; creating
3 s. 501.95, F.S.; providing that it is unlawful
4 for any person or entity to sell a gift
5 certificate that contains an expiration date or
6 a service fee; providing general requirements
7 with respect to gift certificates; providing
8 for applicability and construction of the act;
9 authorizing a fee; providing a definition;
10 providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Section 501.95, Florida Statutes, is
15 created to read:

16 501.95 Gift certificates; sale of gift certificates
17 containing expiration dates or service fees prohibited.--

18 (1) PROHIBITED ACTIVITIES.--It is unlawful for any
19 person or entity to sell a gift certificate to a purchaser
20 that contains:

21 (a) An expiration date.

22 (b) A service fee, including, but not limited to, a
23 service fee for dormancy.

24 (2) GENERAL PROVISIONS.--

25 (a) Any gift certificate sold after July 1, 2004, is
26 redeemable in cash for its cash value at no cost to the
27 purchaser or holder.

28 (b) A gift certificate sold without an expiration date
29 is valid until redeemed or replaced.

30 (c)1. A gift certificate constitutes value held in
31 trust by the issuer of the gift certificate on behalf of the

1 beneficiary of the gift certificate. The value represented by
2 the gift certificate belongs to the beneficiary or to the
3 legal representative of the beneficiary to the extent provided
4 by law, and not to the issuer.

5 2. An issuer of a gift certificate who is in
6 bankruptcy shall continue to honor a gift certificate issued
7 prior to the date of the bankruptcy filing on the grounds that
8 the value of the gift certificate constitutes trust property
9 of the beneficiary.

10 (3) APPLICABILITY.--This section does not apply to any
11 of the following gift certificates issued on or after July 1,
12 2004, provided the expiration date appears in capital letters
13 in at least 10-point type on the front of the gift
14 certificate:

15 (a) Gift certificates that are distributed by the
16 issuer to a consumer pursuant to an awards, loyalty, or
17 promotional program without any money or other thing of value
18 being given in exchange for the gift certificate by the
19 consumer.

20 (b) Gift certificates that are sold below face value
21 at a volume discount to employers or to nonprofit and
22 charitable organizations for fundraising purposes if the
23 expiration date on the gift certificates is not more than 30
24 days after the date of sale.

25 (c) Gift certificates that are issued for a food
26 product.

27 (4) CONSTRUCTION.--

28 (a) This section does not alter the terms of a gift
29 certificate. The terms of a gift certificate may not make its
30 redemption or other use invalid in the event of a bankruptcy.

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1 (b) Unless otherwise required by law, this section
2 does not require the issuer of a gift certificate to:

3 1. Replace a gift certificate that has been lost or
4 stolen.

5 2. Maintain a separate account for the funds used to
6 purchase the gift certificate.

7 (c)1. This section does not create an interest in
8 favor of the beneficiary of a gift certificate in any specific
9 property of the issuer.

10 2. This section does not create a fiduciary or
11 quasi-fiduciary relationship between the beneficiary of a gift
12 certificate and the issuer, unless otherwise provided by law.

13 3. The issuer of a gift certificate has no obligation
14 to pay interest on the value of a gift certificate held in
15 trust under this section, unless otherwise provided by law.

16 (d) Nothing in this section prohibits fees customarily
17 charged for or practices customarily associated with prepaid
18 calling cards that are issued solely to provide an access
19 number and authorization code for prepaid telecommunication
20 services.

21 (5) FEE.--An issuer of a gift certificate may assess a
22 fee of up to \$1 for each gift certificate issued to cover
23 costs associated with printing or producing the gift
24 certificate, provided that such fee is paid by the purchaser
25 of the gift certificate at the time of purchase and is not
26 deducted from the value of the gift certificate.

27 (6) DEFINITION.--As used in this section, "gift
28 certificate" includes gift cards, gift cards usable only with
29 affiliated sellers of goods or services, and gift cards usable
30 with multiple sellers of goods or services.

31 Section 2. This act shall take effect July 1, 2004.