



2007 SENATE BILL 245

July 25, 2007 - Introduced by Senators CARPENTER and COGGS, cosponsored by Representatives KRUSICK, JESKEWITZ, HRAYCHUCK, GRIGSBY, HAHN, HUBLER, MOLEPSKE, A. OTT, A. WILLIAMS, ZEPNICK, SCHNEIDER and SOLETSKI. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

1 **AN ACT to amend** 165.25 (4) (ar); and **to create** 100.55 of the statutes; **relating**
2 **to:** terms and conditions of gift certificates, gift cards, and other gift obligations
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill regulates the sale and redemption of gift certificates, gift cards, and similar items (gift obligations). The bill prohibits the following: 1) failing to honor a valid gift obligation; 2) selling a gift obligation that is subject to an expiration date; 3) reducing the value of a gift obligation except for the sale price of goods or services provided to the bearer; and 4) reducing the value of a gift obligation as a condition of disclosing the value of the gift obligation. Under the bill, the prohibitions numbered 2 and 3, above, do not apply to a gift obligation given or sold for less than face value to a nonprofit organization or to a person who transfers the gift obligation to another primarily for the benefit of a nonprofit organization or to a gift obligation issued for no consideration. Also under the bill, if a person that owns a business intends to transfer ownership of the business or otherwise cease to operate the business, the person may not issue gift obligations that may be redeemed at the business, unless the intended transferee agrees to honor gift obligations issued by the person. The provisions of the bill do not apply to certain state chartered financial institutions to the extent that federal law preempts or prohibits the application of the provisions of the bill to certain federally chartered financial institutions.

The Department of Agriculture, Trade and Consumer Protection or the district attorney, under the bill, may enforce the provisions of the bill by bringing an action

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for a forfeiture (civil penalty) of up to \$10,000. Also, the bill creates a private right of action in which a person may recover the greater of twice the person's pecuniary loss or \$200 for each violation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.55 of the statutes is created to read:

2 **100.55 Gift obligations. (1) DEFINITION.** In this section, “gift obligation”
3 means an obligation, evidenced by a gift certificate, gift card, or other object or
4 document, to accept the gift certificate, gift card, or other object or document from the
5 holder as payment, up to a specified amount, for a merchant's goods or services.

6 **(2) PROHIBITIONS; TERMS OF GIFT OBLIGATIONS.** (a) No person may refuse to honor
7 a valid gift obligation.

8 (b) Subject to sub. (4), no person may reduce the value of a gift obligation, except
9 that when a holder of a gift obligation partially redeems the gift obligation as
10 payment for goods or services, the merchant that provides the goods or services may
11 subtract the sale price of the goods or services.

12 (c) Subject to sub. (4), no person may sell a gift obligation that is subject to an
13 expiration date. An expiration date that purports to apply to a gift obligation is void
14 and unenforceable.

15 (d) No person who sells a gift obligation may reduce the value of a gift obligation
16 as a condition of disclosing the value of the gift obligation.

17 (e) No person that owns a business may issue a gift obligation that may be
18 redeemed at that business if the person intends to cease operation of the business or
19 if the person intends to transfer ownership of the business, unless the intended
20 transferee has agreed to honor gift obligations issued by the person under the terms

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1 and conditions applicable to the person. For purposes of this paragraph, a person
2 intends to cease operation of the business or transfer ownership of the business if any
3 of the following applies:

4 1. The person enters into an agreement to sell the business.

5 2. The person enters into an agreement to sell realty, fixtures, or personalty
6 associated with the business without which the business is unable to continue
7 operating, and the person does not actively seek to replace the realty, fixture, or
8 personalty.

9 3. The person files for bankruptcy in a manner that requires the person to
10 relinquish ownership of the business.

11 4. The person takes an action similar to the actions described in subd. 1. to 3.
12 that commits the person to relinquishing ownership of the business to another
13 person.

14 **(3) PENALTIES AND REMEDIES.** (a) Any person who suffers pecuniary loss because
15 of a violation of this section may commence an action for the pecuniary loss. If the
16 person prevails, the person shall recover twice the amount of the pecuniary loss, or
17 \$200 for each violation, whichever is greater, together with costs, including
18 reasonable attorney fees, notwithstanding s. 814.04 (1).

19 (b) The department may commence an action in the name of the state to
20 restrain by temporary or permanent injunction a violation of this section. Before
21 entry of final judgment, the court may make any necessary orders to restore to any
22 person any pecuniary loss suffered by the person because of the violation.

23 (c) The department or any district attorney may commence an action in the
24 name of the state to recover a forfeiture to the state of not less than \$100 nor more
25 than \$10,000 for a violation of this section.

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1 **(4) EXCEPTIONS.** (a) Subsection (2) (b) and (c) does not apply to any of the
2 following:

3 1. A gift obligation given or sold to a person for an amount that is less than the
4 value of the gift obligation, if the person is an organization that is exempt from
5 federal income tax under section 501 (a) of the Internal Revenue Code or if the person
6 transfers the gift obligation to another primarily for the benefit of an organization
7 that is exempt from federal income tax under section 501 (a) of the Internal Revenue
8 Code.

9 2. A gift obligation issued for no consideration.

10 (b) This section does not apply to a state chartered bank, trust company,
11 savings and loan association, savings bank, or credit union, or to a subsidiary of a
12 state chartered bank, trust company, savings and loan association, savings bank, or
13 credit union, to the extent that federal law preempts or prohibits the application of
14 this section to a federally chartered bank, trust company, savings and loan
15 association, savings bank, or credit union of the same type.

16 **SECTION 2.** 165.25 (4) (ar) of the statutes, as affected by 2005 Wisconsin Act 458,
17 is amended to read:

18 165.25 **(4)** (ar) The department of justice shall furnish all legal services
19 required by the department of agriculture, trade and consumer protection relating
20 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
21 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
22 100.50, 100.51, and ~~100.195~~ 100.55 and chs. 126, 136, 344, 704, 707, and 779,
23 together with any other services as are necessarily connected to the legal services.

24 **SECTION 3. Initial applicability.**

