



State of Wisconsin
2005 - 2006 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 392**

May 4, 2006 – Offered by Representatives KRUSICK, JESKEWITZ, HUBLER and FRIESE.

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 substitute amendment regulates the sale and redemption of gift certificates, gift cards, and similar items (gift obligations). The substitute amendment prohibits the following: 1) failing to honor a valid gift obligation; 2) selling a gift obligation that is subject to an expiration date that is less than three years after the date on which the gift obligation is issued; 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. The substitute amendment requires a person who issues a gift obligation to disclose in writing at the time of issuance any applicable expiration date and the terms under which the value of the gift obligation may be reduced.

Under the substitute amendment, the prohibition numbered 3, above, does not apply to a gift obligation if more than three years have elapsed since the gift obligation was issued. Also under the substitute amendment, the prohibitions numbered 2 and 3, above, and the written disclosure requirement 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.

The Department of Agriculture, Trade and Consumer Protection or the district attorney, under the substitute amendment, may enforce the provisions of the substitute amendment by bringing an action for a forfeiture (civil penalty) of up to \$10,000 or a fine of up to \$5,000 for each violation. Also, the substitute amendment 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. Violations may also constitute unfair competition or unfair trade practices.

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) No person may reduce the value of a gift obligation, except that when a
9 holder of a gift obligation partially redeems the gift obligation as payment for goods
10 or services, the merchant that provides the goods or services may subtract the sale
11 price of the goods or services. This paragraph does not apply to a gift obligation if
12 more than 3 years have elapsed since the gift obligation was issued.

13 (c) No person may sell a gift obligation that expires less than 3 years after the
14 date on which the gift obligation is issued. An expiration date that is less than 3 years
15 after the date on which the gift obligation is issued is void and unenforceable until
16 3 years after the date on which the gift obligation is issued.

17 (d) A person who issues a gift obligation shall disclose in writing at the time
18 the gift obligation is issued all of the following:

1 1. Any expiration date that applies to the gift obligation.

2 2. The terms under which the value of the gift obligation may be reduced.

3 (e) No person who sells a gift obligation may reduce the value of a gift obligation
4 as a condition of disclosing the value of the gift obligation.

5 **(3) PENALTIES AND REMEDIES.** (a) Any person who suffers pecuniary loss because
6 of a violation of this section may commence an action for the pecuniary loss. If the
7 person prevails, the person shall recover twice the amount of the pecuniary loss, or
8 \$200 for each violation, whichever is greater, together with costs, including
9 reasonable attorney fees, notwithstanding s. 814.04 (1).

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

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

17 (d) A person who violates this section may be fined not less than \$25 nor more
18 than \$5,000 for each violation.

19 (e) Practices in violation of this section may also constitute unfair methods of
20 competition or unfair trade practices under s. 100.20 or fraudulent representations
21 under s. 100.18.

22 **(4) EXCEPTION.** Subsection (2) (b) to (d) do not apply to a gift obligation given
23 or sold to a person for an amount that is less than the value of the gift obligation, if
24 the person is an organization that is exempt from federal income tax under section
25 501 (a) of the Internal Revenue Code or if the person transfers the gift obligation to

1 another primarily for the benefit of an organization that is exempt from federal
2 income tax under section 501 (a) of the Internal Revenue Code.

3 **SECTION 2.** 165.25 (4) (ar) of the statutes is amended to read:

4 165.25 (4) (ar) The department of justice shall furnish all legal services
5 required by the department of agriculture, trade and consumer protection relating
6 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
7 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,
8 and 100.51, and 100.55 and chs. 126, 136, 344, 704, 707, and 779, together with any
9 other services as are necessarily connected to the legal services.

10 **SECTION 3. Initial applicability.**

11 (1) This act first applies to gift obligations, as defined in section 100.55 (1) of
12 the statutes, as created by this act, that are sold on the effective date of this
13 subsection.

14 **SECTION 4. Effective date.**

15 (1) This act takes effect on first day of the 6th month beginning after
16 publication.

17 (END)