

## 2003 SENATE BILL 459

February 13, 2004 – Introduced by Senators LAZICH, SCHULTZ and PLALE, cosponsored by Representatives JESKEWITZ, SINICKI, BLACK, MUSSER, NASS, ALBERS, TAYLOR, HINES, WASSERMAN, SHILLING, HAHN, BERCEAU, PETROWSKI, GRONEMUS and SCHNEIDER. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1     **AN ACT to amend** 165.25 (4) (ar) and 814.04 (intro.); and **to create** 100.172 of  
2             the statutes; **relating to:** the sale of gift certificates, gift cards, and other gift  
3             obligations, requiring the exercise of rule-making authority, and providing  
4             penalties.

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### *Analysis by the Legislative Reference Bureau*

This bill regulates the sale of gift certificates, gift cards, or similar items (gift obligation) if the gift obligation has an expiration date or is subject to a service charge. Under the bill, any expiration date, and the amount and terms of any service charge, must be disclosed conspicuously in writing to the purchaser, must be orally disclosed to the purchaser, and must be written on the gift obligation. The bill requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate a rule defining the term “conspicuous.” The rules must require that expiration dates be written in at least ten-point type size. The bill also requires DATCP to promulgate a rule setting forth the service charge terms that must be disclosed.

The bill authorizes DATCP to bring an action to enjoin persons from these restrictions. Persons who violate these laws are also subject to forfeitures (civil penalties) and criminal penalties. In addition, the bill does not preclude these violations from being prosecuted as unfair methods of competition, unfair trade practices, or fraudulent representations under existing laws. The bill allows an individual to bring a civil action for violation of these laws.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 100.172 of the statutes is created to read:

2           **100.172 Gift certificates, gift cards, and other gift obligations. (1)**

3           DEFINITIONS. In this section:

4           (a) “Conspicuous” has the meaning given by the department by rule.

5           (b) “Gift obligation” means a written or electronic document that is evidence  
6 of an obligation arising from a transaction between a seller and a purchaser under  
7 which the seller will provide goods or services at a later date up to the value shown  
8 on the document. “Gift obligation” includes a gift certificate, a gift card, and an  
9 on-line gift account. “Gift obligation” does not include any type of obligation or  
10 transaction where the intent of the obligation or transaction is to not provide a gift  
11 to a person other than the seller and purchaser.

12           **(2) RESTRICTIONS.** (a) No person may sell a gift obligation that has an expiration  
13 date unless all of the following apply:

14           1. The purchaser of the gift obligation, before the purchase is completed,  
15 receives a written disclosure stating in a conspicuous manner the expiration date  
16 and is informed orally of the expiration date.

17           2. The expiration date is written in a conspicuous manner on the gift obligation.

18           (b) No person may sell a gift obligation to which a service charge applies unless  
19 all of the following apply:

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1           1. The purchaser of the gift obligation, before the purchase is completed,  
2 receives a written disclosure that states in a conspicuous manner the terms and  
3 amount of the service charge and is informed orally of those terms and amount.

4           2. The terms and amount of the service charge are written in a conspicuous  
5 manner on the gift obligation.

6           **(3) RULES.** (a) The department shall, by rule, define “conspicuous” for purposes  
7 of this section. The rule shall include a requirement that any expiration date be in  
8 at least 10–point type size.

9           (b) The department shall promulgate a rule stating the information that must  
10 be disclosed as terms of a service charge under sub. (2) (b).

11           **(4) PENALTIES AND REMEDIES.** (a) The department may exercise its authority  
12 under ss. 93.14 and 93.15 to investigate violations of this section.

13           (b) Any person who suffers pecuniary loss because of a violation of this section  
14 may commence an action for the pecuniary loss. If the person prevails, the person  
15 shall recover twice the amount of the pecuniary loss, or \$200 for each violation,  
16 whichever is greater, together with costs, including reasonable attorney fees.

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

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

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1 (e) A person who violates this section may be fined not less than \$25 nor more  
2 than \$5,000 or imprisoned for not more than one year in the county jail, or both, for  
3 each violation.

4 (f) This section does not preempt the administration or enforcement of s. 100.18  
5 or 100.20. Practices in violation of this section may also constitute unfair methods  
6 of competition or unfair trade practices under s. 100.20 or fraudulent  
7 representations under s. 100.18.

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

9 165.25 (4) (ar) The department of justice shall furnish all legal services  
10 required by the department of agriculture, trade and consumer protection relating  
11 to the enforcement of ss. 100.171, 100.172, 100.173, 100.174, 100.175, 100.177,  
12 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,  
13 100.50 and 100.51 and chs. 126, 136, 344, 704, 707, and 779, together with any other  
14 services as are necessarily connected to the legal services.

15 **SECTION 3.** 814.04 (intro.) of the statutes is amended to read:

16 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.172 (4) (b),  
17 100.30 (5m), 106.50 (6) (i), and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d),  
18 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3),  
19 895.80 (3), 943.212 (2) (b), 943.245 (2) (d), and 943.51 (2) (b), when allowed costs shall  
20 be as follows:

21 **SECTION 4. Initial applicability.**

22 (1) This act first applies to gift obligations, as defined in section 100.172 (1) (b)  
23 of the statutes, as created by this act, that are sold on the effective date of this  
24 subsection.

25 **SECTION 5. Effective date.**

