

**2003 DRAFTING REQUEST**

**Bill**

Received: 10/21/2003

Received By: **mglass**

Wanted: **Soon**

Identical to LRB:

For: **Mary Lazich (608) 266-5400**

By/Representing: **Cathleen Connolly**

This file may be shown to any legislator: **NO**

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Gift card expiration dates and service charges

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	mglass 01/26/2004	kgilfoy 01/26/2004	rschluet 01/27/2004	_____	sbasford 01/27/2004	sbasford 02/11/2004 sbasford 02/11/2004	

FE Sent For:

*AX*  
*intro*

<END>

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1?	mglass	11-1/27 Kmg		 27 4			

FE Sent For:

<END>

## Gibson-Glass, Mary

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**From:** Connolly, Cathy  
**Sent:** Monday, October 27, 2003 9:37 AM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: Drafting Request from Senator Lazich

Thanks Mary  
Cathy

-----Original Message-----

**From:** Connolly, Cathy  
**Sent:** Friday, October 17, 2003 9:20 AM  
**To:** Kite, Robin  
**Subject:** Drafting Request from Senator Lazich

Hi Robin:

I hope you were able to get the information from Richard, if not, let me know and I will send copies. I had the opportunity to talk with Senator Lazich about how she would like to address the gift card issues. Her focus is on notice to both the buyer and recipient. If the seller is going to put an expiration date on the card, the date must be told (verbally) and put in writing to the buyer and must be in writing on the gift card itself so that the recipient gets notice. One of the laws Richard found talks about the size and location of the information on the card - that is a good idea. Same deal with the service charges - notice of when the service charge starts to be applied and how much per month it will be, again both the buyer and recipient have to get notice.

We talked about simply not allowing expiration dates or service charges, but the Senator feels that is a business decision - what is important is that consumers get notice of the company's policies so they can make an informed decision about purchasing the gift card.

Please let me know when you will have a first draft - the Senator would like a draft to use as the basis of discussion with the relevant departments.

Cathleen Connolly  
Legislative Aide  
Office of Senator Mary Lazich  
(608) 266-5400

## Kite, Robin

---

**From:** Marchant, Robert  
**Sent:** Friday, October 10, 2003 12:03 PM  
**To:** Kite, Robin  
**Subject:** RE: Request for Drafting and Research

Robin--

I don't think it is mine. It doesn't seem to impact either unclaimed property or consumer lending.

Rob

-----Original Message-----

**From:** Kite, Robin  
**Sent:** Friday, October 10, 2003 9:02 AM  
**To:** Marchant, Robert  
**Subject:** FW: Request for Drafting and Research

Rob:

Do you think this request is yours or mine?

Robin

-----Original Message-----

**From:** Sen.Lazich  
**Sent:** Thursday, October 09, 2003 2:30 PM  
**To:** Kite, Robin; Roe, Richard  
**Subject:** Request for Drafting and Research

Dear Robin and Richard:

Senator Lazich received a complaint from a constituent about the expiration of gift cards without notice to the consumer. The card does not carry an expiration date on the card, or on the folder that the card was in. In addition she was told that after the card becomes a year or maybe two years old, a certain amount of money is deducted each month as a "service charge". It is unclear what the "service" being provided to the buyer or the recipient is exactly. Eventually the card becomes worthless.

The Senator is considering drafting legislation that requires an expiration date to be on the card and that informs the buyer and recipient of any service charges that will be imposed by the company issuing the card. This should also be on the card in type legible enough to be read by a consumer without a magnifying glass. In the alternative, legislation that prohibits an expiration date or a service charge on gift cards might be appropriate. The constituent thinks that other states have the type of protections she is interested in seeing in Wisconsin.

The two companies that the constituent is personally aware of engaging in this behavior are Blockbuster Video and Kohl's Department Stores.

The Senator would like to know what other states have done and how it has worked out before deciding exactly what to do. Also if Wisconsin has laws that cover or partly cover this area the Senator would like to know what those laws are and how they operate. DATCP told the constituent that Blockbuster was not doing anything illegal under Wisconsin law.

Please call me with any questions or concerns.

Cathleen Connolly  
Legislative Aide  
Office of Senator Mary Lazich  
(608) 266-5400

DEERING'S CALIFORNIA CODES ANNOTATED  
 ADVANCE LEGISLATIVE SERVICE  
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2003 REGULAR SESSION  
 CHAPTER 116 (Assembly Bill No. 1092)

2003 Cal ALS 116; 2003 Cal AB 1092; Stats 2003 ch 116

Approved by Governor July 23, 2003. Filed with Secretary of State July 24, 2003. Urgency legislation is effective immediately, Non-urgency legislation will become effective January 1, 2004

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 To view the next section, type .np\* and TRANSMIT.  
 To view a specific section, transmit p\* and the section number. E.g. p\*1  
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DIGEST:

AB 1092, Harman. Gift certificates: service fees.

Existing law prohibits the sale of any gift certificate that contains an expiration date, except as specified.

This bill would also prohibit the sale of any gift certificate that contains a service fee, except as specified. For the purposes of these provisions, the bill would clarify that "gift certificate" includes gift cards, except for certain cards that may be used with multiple sellers of goods or services, as specified. The bill would also provide that the provision above does not prevent an issuer of a gift certificate from including on any gift certificate that the purchaser is entitled to a full refund of the amount paid under specified circumstances, and would make a conforming change to a related provision.

This bill would declare that its provisions are severable and that specified provisions apply prospectively.

SYNOPSIS:

An act to amend Section 1749.5 of, and to add Section 1749.45 to, the Civil Code, and to amend Section 1520.5 of the Code of Civil Procedure, relating to gift certificates.

NOTICE: [A> Uppercase text within these symbols is added <A]  
 \* \* \* indicates deleted text

TEXT:

The people of the State of California do enact as follows:

[\*1] SECTION 1. Section 1749.45 is added, immediately preceding Section 1749.5, to Title 1.4A (commencing with Section 1749.5) of Part 4 of Division 3 of the Civil Code, to read:

@ 1749.45.

(a) As used in this title, "gift certificate" includes gift cards, but

does not include any gift card usable with multiple sellers of goods or services, provided the expiration date, if any, is printed on the card. This exemption does not apply to a gift card usable only with affiliated sellers of goods or services.

(b) Nothing in this title prohibits those fees or practices expressly permitted by Section 17538.9 of the Business and Professions Code with respect to a prepaid calling card, as defined in that section, that is issued solely to provide an access number and authorization code for prepaid calling services.

[\*2] SECTION 2. Section 1749.5 of the Civil Code is amended to read:  
 @ 1749.5.

(a) \* \* \* It is unlawful for any person or entity to sell a gift certificate to a purchaser \* \* \* [A> THAT CONTAINS ANY OF THE FOLLOWING: <A]

[A> (1) AN <A] expiration date.

[A> (2) A SERVICE FEE, INCLUDING, BUT NOT LIMITED TO, A SERVICE FEE FOR DORMANCY, EXCEPT AS PROVIDED IN SUBDIVISION (E). <A]

[A> (B) <A]Any gift certificate sold after\* \* \* [A> JANUARY 1, 1997, IS <A] redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.

\* \* \* [A> (C) <A] A gift certificate sold without an expiration date is valid until redeemed or replaced.

\* \* \* [A> (D) <A] This section\* \* \* [A> DOES <A] not apply to any of the following gift certificates issued on or after January 1, 1998, provided the expiration date appears in capital letters in at least 10-point font on the front of the gift certificate:

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

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

(3) Gift certificates that are issued for a food product.

[A> (E) PARAGRAPH (2) OF SUBDIVISION (A) DOES NOT APPLY TO A DORMANCY FEE ON A GIFT CARD THAT MEETS ALL OF THE FOLLOWING CRITERIA: <A]

[A> (1) THE REMAINING VALUE OF THE GIFT CARD IS FIVE DOLLARS (\$ 5) OR LESS EACH TIME THE FEE IS ASSESSED. <A]

[A> (2) THE FEE DOES NOT EXCEED ONE DOLLAR (\$ 1) PER MONTH. <A]

[A> (3) THERE HAS BEEN NO ACTIVITY ON THE GIFT CARD FOR 24 CONSECUTIVE MONTHS, INCLUDING, BUT NOT LIMITED TO, PURCHASES, THE ADDING OF VALUE, OR BALANCE INQUIRIES. <A]

[A> (4) THE HOLDER MAY RELOAD OR ADD VALUE TO THE GIFT CARD. <A]

[A> (5) A STATEMENT IS PRINTED ON THE GIFT CARD IN AT LEAST 10-POINT FONT STATING THE AMOUNT OF THE FEE, HOW OFTEN THE FEE WILL OCCUR, THAT THE FEE IS TRIGGERED BY INACTIVITY OF THE GIFT CARD, AND AT WHAT POINT THE FEE WILL BE CHARGED. THE STATEMENT MAY APPEAR ON THE FRONT OR BACK OF THE GIFT CARD, BUT SHALL APPEAR IN A LOCATION WHERE IT IS VISIBLE TO ANY PURCHASER PRIOR TO THE PURCHASE THEREOF. <A]

[A> (F) NOTHING IN PARAGRAPH (1) OF SUBDIVISION (A) PREVENTS AN ISSUER OF GIFT CERTIFICATES FROM INCLUDING ON ANY GIFT CERTIFICATE A PROVISION THAT ENTITLES THE PURCHASER TO A FULL REFUND OF THE AMOUNT THAT HE OR SHE PAID FOR THAT GIFT CERTIFICATE UPON THE OCCURRENCE OF THE FOLLOWING CIRCUMSTANCES: <A]

[A> (1) THE GIFT CERTIFICATE IS PURCHASED AS A GIFT FOR ANOTHER PERSON. <A]

[A> (2) THE TIME IN WHICH THE GIFT CERTIFICATE MAY BE REDEEMED IS DISCLOSED ON THE GIFT CERTIFICATE. <A]

[A> (3) THE HOLDER OF THE GIFT CERTIFICATE DOES NOT REDEEM THE GIFT CERTIFICATE WITHIN THE TIME DESCRIBED IN PARAGRAPH (2). <A]

[A> (G) THE CHANGES MADE TO THIS SECTION BY THE ACT ADDING THIS SUBDIVISION SHALL APPLY ONLY TO GIFT CERTIFICATES ISSUED ON OR AFTER JANUARY 1, 2004. <A]

[\*3] SECTION 3. Section 1520.5 of the Code of Civil Procedure is amended to read:

@ 1520.5.

Section 1520 \* \* \* [A> DOES <A] not apply to gift certificates subject to Title 1.4A (commencing with Section \* \* \* [A> 1749.45 <A]) of Part 4 of Division 3 of the Civil Code. However, Section 1520 \* \* \* [A> APPLIES <A] to any gift certificate \* \* \* [A> THAT HAS <A] an expiration date and that is given in exchange for money or [A> ANY <A] other thing of value.

[\*4] SECTION 4. The enactment of this act creates no inference with respect to the validity or invalidity of any service fee imposed prior to the effective date of this act.

[\*5] SECTION 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.



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STATENET  
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NEW JERSEY 210TH LEGISLATURE

P.L.2002, CHAPTER 14

ASSEMBLY, NO. 555 (FIRST REPRINT)

2002 N.J. ALS 14; 2002 N.J. Laws 14; 2002 N.J. Ch. 14; 2002 N.J. A.N. 555

SYNOPSIS: AN ACT Requires gift certificates to be valid until redeemed unless conditions and limitations are fully disclosed. An Act concerning gift certificates and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]  
[D> Text within these symbols is deleted <D]

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To view the next section, type .np\* and TRANSMIT.  
To view a specific section, transmit p\* and the section number. E.g. p\*1  
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Be It Enacted by the Senate and General Assembly of the State of New Jersey:

[\*1] 1. a. A gift certificate issued by a retail [D> mercantile or service <D] [A> MERCHANDISE <A] establishment [D> for merchandise or service <D] shall be valid until presented in exchange for that merchandise [D> or service <D] , or shall have any and all conditions and limitations: (1) disclosed to the purchaser of the gift certificate at the time of purchase and (2) conspicuously printed on the gift certificate.

b. As used in this act, " gift certificate " means a written promise given in exchange for payment to provide merchandise [D> or a service <D] in a specified amount or of equal value to the bearer of the certificate.

[A> AS USED IN THIS ACT, "MERCHANDISE" MEANS AND INCLUDES ANY OBJECTS, WARES, GOODS, COMMODITIES, SERVICES OR ANYTHING OFFERED, DIRECTLY OR INDIRECTLY, TO THE PUBLIC FOR SALE. <A]

[A> AS USED IN THIS ACT, "RETAIL MERCHANDISE ESTABLISHMENT" MEANS ANY PLACE OF BUSINESS WHERE MERCHANDISE IS EXPOSED OR OFFERED FOR SALE AT RETAIL TO MEMBERS OF THE CONSUMING PUBLIC. <A]

2002 N.J. ALS 14, \*1; 2002 N.J. Laws 14;  
2002 N.J. Ch. 14; 2002 N.J. A.N. 555

[D> 2. A retail mercantile or service establishment issuing a gift certificate shall maintain a record of the transaction for the issuance of each such certificate for not less than 12 months following the date of purchase of the gift certificate. <D]

[\*2] 2. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement this act.

[\*3] 3. It is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to violate the provisions of this act.

[\*4] 4. This act shall take effect on the first day of the fourth month following enactment, except that section 2 shall take effect immediately.

HISTORY:

Approved April 9, 2002

SPONSOR: Imprevduto

CONNECTICUT ADVANCE LEGISLATIVE SERVICE  
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## CONNECTICUT JUNE 30TH SPECIAL SESSION

## JUNE 30 SPECIAL SESSION, PUBLIC ACT NO. 03-1

## HOUSE BILL NO. 6802

2003 Ct. ALS 1; 2003 Ct. P.A. 1; 2003 Ct. HB 6802

SYNOPSIS: AN ACT CONCERNING EXPENDITURES AND REVENUE FOR THE BIENNIUM ENDING  
 JUNE 30, 2005.

## NOTICE:

[A&gt; UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED &lt;A]

[D&gt; Text within these symbols is deleted &lt;D]

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 To view the next section, type .np\* TRANSMIT.To view a specific section, transmit p\* and the section number. e.g. p\*1  
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Be it enacted by the Senate and House of Representatives in General Assembly  
 convened:

[\*1] Section 1. (Effective from passage) The following sums are  
 appropriated for the annual period as indicated and for the purposes described.

## GENERAL FUND 2003-2004

\$

## LEGISLATIVE

## LEGISLATIVE MANAGEMENT

Personal Services	33,463,431
Other Expenses	13,799,514
Equipment	923,500
Minor Capital Improvements	900,000
Interim Committee Staffing	584,000
Interim Salary/Caucus Offices	504,000
OTHER THAN PAYMENTS TO LOCAL GOVERNMENTS	
Interstate Conference Fund	275,000

[A] (5) " GIFT CERTIFICATE " MEANS A RECORD EVIDENCING A PROMISE, MADE FOR CONSIDERATION, BY THE SELLER OR ISSUER OF THE RECORD THAT GOODS OR SERVICES WILL BE PROVIDED TO THE OWNER OF THE RECORD TO THE VALUE SHOWN IN THE RECORD AND INCLUDES, BUT IS NOT LIMITED TO, A RECORD THAT CONTAINS A MICROPROCESSOR CHIP, MAGNETIC STRIPE OR OTHER MEANS FOR THE STORAGE OF INFORMATION THAT IS PREFUNDED AND FOR WHICH THE VALUE IS DECREMENTED UPON EACH USE, A GIFT CARD, AN ELECTRONIC GIFT CARD, STORED-VALUE CARD OR CERTIFICATE, A STORE CARD, OR A SIMILAR RECORD OR CARD, BUT " GIFT CERTIFICATE " DOES NOT INCLUDE PREPAID CALLING CARDS REGULATED UNDER SECTION 42-370 OR PREPAID COMMERCIAL MOBILE RADIO SERVICES, AS DEFINED IN 47 C.F.R. SEC. 20.3; <A]

[A] (6) "HOLDER" <A] means any person in possession of property subject to this part which belongs to another, or who is trustee in case of a trust, or who is indebted to another on an obligation subject to this part; [D] "last-known address" <D]

[A] (7) "INSURANCE COMPANY" MEANS AN ASSOCIATION, CORPORATION OR FRATERNAL OR MUTUAL BENEFIT ORGANIZATION, WHETHER OR NOT FOR PROFIT, ENGAGED IN THE BUSINESS OF PROVIDING LIFE ENDOWMENTS, ANNUITIES OR INSURANCE, INCLUDING ACCIDENT, BURIAL, CASUALTY, CREDIT LIFE, CONTRACT PERFORMANCE, DENTAL, DISABILITY, FIDELITY, FIRE, HEALTH, HOSPITALIZATION, ILLNESS, LIFE, MALPRACTICE, MARINE, MORTGAGE, SURETY, WAGE PROTECTION AND WORKERS' COMPENSATION INSURANCE; <A]

[A] (8) "LAST-KNOWN ADDRESS" <A] means a description of the location of the apparent owner sufficient for the purpose of delivery of mail. [D] "life insurance corporation" means any association or corporation transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities; "owner" <D]

[A] (9) "MINERAL" MEANS GAS; OIL; OTHER GASEOUS, LIQUID, AND SOLID HYDROCARBONS; OIL SHALE; CEMENT MATERIAL; SAND AND GRAVEL; ROAD MATERIAL; BUILDING STONE; CHEMICAL RAW MATERIAL; GEMSTONE; FISSIONABLE AND NONFISSIONABLE ORES; COLLOIDAL AND OTHER CLAY; STEAM AND OTHER GEOTHERMAL RESOURCE; OR ANY OTHER SUBSTANCE DEFINED AS A MINERAL BY THE LAW OF THIS STATE; <A]

[A] (10) "MINERAL PROCEEDS" MEANS AMOUNTS PAYABLE FOR THE EXTRACTION, PRODUCTION OR SALE OF MINERALS, OR, UPON THE ABANDONMENT OF THOSE PAYMENTS, ALL PAYMENTS THAT BECOME PAYABLE THEREAFTER, AND "MINERAL PROCEEDS" INCLUDES AMOUNTS PAYABLE: (A) FOR THE ACQUISITION AND RETENTION OF A MINERAL LEASE, INCLUDING BONUSES, ROYALTIES, COMPENSATORY ROYALTIES, SHUT-IN ROYALTIES, MINIMUM ROYALTIES AND DELAY RENTALS; (B) FOR THE EXTRACTION, PRODUCTION OR SALE OF MINERALS, INCLUDING NET REVENUE INTERESTS, ROYALTIES, OVERRIDING ROYALTIES, EXTRACTION PAYMENTS AND PRODUCTION PAYMENTS; AND (C) UNDER AN AGREEMENT OR OPTION, INCLUDING A JOINT OPERATING AGREEMENT, UNIT AGREEMENT, POOLING AGREEMENT AND FARM-OUT AGREEMENT; <A]

[A] (11) "OWNER" <A] means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this part, or [D] his <D] [A] SUCH PERSON'S <A] legal representative; [D] "person" <D]

[A] (12) "PERSON" <A] means any individual, business association, [A]

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IOWA 79TH GENERAL ASSEMBLY -- SECOND SESSION

CHAPTER 1059

HOUSE FILE 2497

2002 Ia. ALS 1059; 2002 Ia. Ch. 1059; 2002 Ia. LAWS 1059; 2001 Ia. HF 2497

SYNOPSIS: AN ACT RELATING TO CHARGES IMPOSED ON UNCLAIMED GIFT CERTIFICATES.

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]  
[D> Text within these symbols is deleted <D]

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To view the next section, type .np\* TRANSMIT.  
To view a specific section, transmit p\* and the section number. e.g. p\*1  
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

[\*1] Section 1. Section 556.9, Code 2001, is amended to read as follows:

556.9 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON [A> -- GIFT CERTIFICATES <A] .

[A> 1. <A] All intangible personal property, not otherwise covered by this chapter, including any income or increment [D> thereon <D] [A> EARNED ON THE PROPERTY <A] and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

[A> 2. AN ISSUER OF A GIFT CERTIFICATE SHALL NOT DEDUCT FROM THE FACE VALUE OF THE GIFT CERTIFICATE ANY CHARGE IMPOSED DUE TO THE FAILURE OF THE OWNER OF THE GIFT CERTIFICATE TO PRESENT THE GIFT CERTIFICATE IN A TIMELY MANNER, UNLESS A VALID AND ENFORCEABLE WRITTEN CONTRACT EXISTS BETWEEN THE ISSUER AND THE OWNER OF THE GIFT CERTIFICATE PURSUANT TO WHICH THE ISSUER REGULARLY IMPOSES SUCH CHARGES AND DOES NOT REGULARLY REVERSE OR OTHERWISE CANCEL THEM. FOR PURPOSES OF THIS SUBSECTION, " GIFT CERTIFICATE " MEANS A MERCHANDISE CERTIFICATE CONSPICUOUSLY DESIGNATED AS A GIFT CERTIFICATE, AND GENERALLY

2002 Ia. ALS 1059, \*1; 2002 Ia. Ch. 1059;  
2002 Ia. LAWS 1059; 2001 Ia. HF 2497

PURCHASED BY A BUYER FOR USE BY A PERSON OTHER THAN THE BUYER. <A]

HISTORY:

Approved by the Governor April 1, 2002

SPONSOR: House Commerce and Regulation Committee

NOTES:

HOUSE FILE 2497

MAINE ADVANCE LEGISLATIVE SERVICE  
STATENET

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MAINE 121ST LEGISLATURE -- FIRST REGULAR SESSION

CHAPTER 339

HOUSE PROPOSAL 1084 - LEGISLATIVE DOCUMENT 1479 - P.L. 339

2003 Me. ALS 339; 2003 Me. Laws 339; 2003 Me. Ch. 339; 2003 Me. HP 1084

SYNOPSIS: An Act To Protect Maine Consumers from Hidden Fees and Charges

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

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To view the next section, type .np\* TRANSMIT.

To view a specific section, transmit p\* and the section number. e.g. p\*1  
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Be it enacted by the People of the State of Maine as follows:

[\*1] Sec. 1. 33 MRSA Section 1952, sub-Sections 4-A and 5-A are enacted to read:

[A> 4-A. FACE VALUE. "FACE VALUE" MEANS THE ORIGINAL PURCHASE PRICE OR ORIGINAL ISSUED VALUE OF A GIFT OBLIGATION IF UNUSED OR, IF PARTIALLY USED, THE REMAINING BALANCE PRIOR TO THE DEDUCTION OF ANY SERVICE CHARGES, FEES OR DORMANCY CHARGES. <A]

[A> 5-A. GIFT OBLIGATION. "GIFT OBLIGATION" MEANS AN OBLIGATION OF A BUSINESS ASSOCIATION ARISING FROM A TRANSACTION BETWEEN THE BUSINESS ASSOCIATION AND A CONSUMER TO PROVIDE GOODS OR SERVICES AT A FUTURE DATE. THIS INCLUDES, BUT IS NOT LIMITED TO, A GIFT CERTIFICATE, GIFT CARD, ON-LINE GIFT ACCOUNT OR OTHER REPRESENTATION OR EVIDENCE OF THE OBLIGATION. <A]

[\*2] Sec. 2. 33 MRSA Section 1953, sub-Section 1, Paragraph G, as amended by PL 2003, c. 20, Pt. T, Section 21, is further amended to read:

G. A gift [D> certificate <D] [A> OBLIGATION <A] , 3 years after December 31st of the year in which the [D> certificate was sold; the <D] [A> GIFT OBLIGATION OCCURRED. A PERIOD OF LIMITATION MAY NOT BE IMPOSED ON THE OWNER'S RIGHT TO REDEEM THE GIFT OBLIGATION. THE <A] amount unclaimed is the [D> price

2003 Me. ALS 339, \*2; 2003 Me. Laws 339;  
2003 Me. Ch. 339; 2003 Me. HP 1084

paid by the purchaser for <D> [A> FACE VALUE OF <A] the gift [D> certificate <D> [A> OBLIGATION <A] , except that the amount unclaimed is 60% of the [D> certificate's <D> [A> GIFT OBLIGATION'S <A] face value if the issuer of the [D> certificate <D> [A> GIFT OBLIGATION <A] does not impose a dormancy charge [D> or period of limitations on the owner's right to redeem the certificate at 100% of face value <D> [A> . FEES OR CHARGES MAY NOT BE IMPOSED ON GIFT OBLIGATIONS UNLESS THEY ARE NOTED ON THE GIFT OBLIGATION AND ARE IN ACCORDANCE WITH SECTION 1956. THE AMOUNT OF THESE CHARGES OR FEES MAY NOT BE UNCONSCIONABLE <A] ;

HISTORY:

Enacted by the Governor May 29, 2003

SPONSOR: Brannigan



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NEW HAMPSHIRE FIRST YEAR OF THE 158TH SESSION OF THE GENERAL COURT

CHAPTER 193

HOUSE BILL 259

2003 NH ALS 193; 2003 NH Ch. 193; 2003 NH HB 259

SYNOPSIS: AN ACT relative to the regulation of gift certificates under the consumer protection act and establishing a study committee relative to the regulation of gift certificates.

NOTICE:  
[A] UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]  
[D] Text within these symbols is deleted <D]

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To view the next section, type .np\* TRANSMIT.  
To view a specific section, transmit p\* and the section number. e.g. p\*1  
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Be it Enacted by the Senate and House of Representatives in General Court convened:

[\*1] 193:1 New Paragraph; Consumer Protection; Definition of Gift Certificate Added. Amend RSA 358-A:1 by inserting after paragraph IV the following new paragraph:

IV-a. " Gift certificate " means a written promise given in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount.

[\*2] 193:2 Consumer Protection Act; Acts Unlawful; Restriction on Sale and Use of Gift Certificates. Amend RSA 358-A:2, XIII to read as follows:

XIII. Selling gift certificates having a face value of less than \$ 100 to purchasers which contain expiration dates. Gift certificates having a face value of \$ 100 or more shall expire when escheated to the state as abandoned property pursuant to RSA 471-C. [D] This paragraph shall not apply to gift certificates for which monetary consideration is not given or that are distributed to a consumer for promotional purposes. Nor shall this paragraph

apply to season passes or coupons that are nonrefundable and nonredeemable. <D]  
[A> DORMANCY FEES, LATENCY FEES, OR ANY OTHER ADMINISTRATIVE FEES OR SERVICE  
CHARGES THAT HAVE THE EFFECT OF REDUCING THE TOTAL AMOUNT FOR WHICH THE HOLDER  
MAY REDEEM A GIFT CERTIFICATE ARE PROHIBITED. THIS PARAGRAPH SHALL NOT APPLY  
TO SEASON PASSES. <A]

[\*3] 193:3 Committee Established. There is established a committee to  
study the regulation of gift certificates under the consumer protection act.

[\*4] 193:4 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of  
the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate  
when attending to the duties of the committee.

[\*5] 193:5 Duties. The committee shall study the regulation of gift  
certificates under the consumer protection act. The committee shall examine  
application of the statute to gift cards and shall consider the possibility of  
prohibiting dormancy fees and similar administrative charges.

[\*6] 193:6 Chairperson; Quorum. The members of the study committee shall  
elect a chairperson from among the members. The first meeting of the committee  
shall be called by the first-named senate member. The first meeting of the  
committee shall be held within 45 days of the effective date of this section.  
Three members of the committee shall constitute a quorum.

[\*7] 193:7 Report. The committee shall report its findings and any  
recommendations for proposed legislation to the senate president, the speaker of  
the house of representatives, the senate clerk, the house clerk, the governor,  
and the state library on or before November 1, 2004.

[\*8] 193:8 Effective Date.

I. Sections 1 and 2 of this act shall take effect January 1, 2004.

II. The remainder of this act shall take effect upon its passage.

HISTORY:

Approved by the Governor June 30, 2003

SPONSOR: Stone

LEVEL 1 - 25 OF 315 STORIES

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Orange County Register (California)

August 17, 2003, Sunday

SECTION: Business

LENGTH: 1256 words

HEADLINE: Cards with a catch cards with a catch // Gift cards are increasingly popular, but make sure to read the fine print.

BYLINE: By LISA MUNOZ, The Orange County Register

BODY:

So much for hassle-free gift-giving.

That's what Norman Vinson thinks.

Last Christmas, Vinson, 67, a retired insurance broker from Brea, bought his wife, Arlene, several \$50 gift cards at the Brea Mall.

The cards seemed easy enough to use, but when she tried to pay for \$109 worth of lingerie at a mall department store with two of the cards and \$9 in cash, her cards were declined because they weren't worth enough.

"I was totally embarrassed," she said.

The couple called the toll-free number on the back of the cards to check the balances. They learned they were being charged a \$2.50 monthly service fee for not using the entire value of the cards within six months.

And the phone calls, it turned out, cut the cards' value further by 50 cents each.

"Here's the whole thing about the whole shootin' match: You go in and buy a \$50 gift card and you assume you're buying someone a certificate that they can use for \$50," said Vinson. That's not necessarily true, he has learned.

Gift cards have steadily grown in popularity with both retailers and consumers since the late 1990s.

But the Vinsons, and an increasing number of other consumers, have learned that gift cards can come with many strings attached.

Consumers like gift cards mostly for their convenience. Retailers like them for many reasons. The cards save sales that otherwise would be lost if a shopper cannot find an appropriate gift, they give retailers access to consumers' dollars until recipients use the cards, and, if a recipient never redeems the card, the retailer has made pure profit.

In addition, about two-thirds of gift-card recipients spend 15 percent to 20 percent more than the face value of the card, just as Arlene Vinson was trying to do.

The cards have also cut down significantly on fraud because, unlike gift certificates, they cannot easily be forged, said Rob Markey, a director of Boston consulting firm Bain & Co.

Since 1997, sales of gift cards have grown 15 percent to 35 percent annually, with 2003 sales estimated at \$42 billion to \$45 billion, according to a Bain & Co. study.

The success of The Gap's gift-card program in 1998 inspired other retailers to follow suit, Markey said. Gift cards now constitute 5 percent of retail sales at stores like J.C. Penney and Wal-Mart, according to investment bank Salomon Smith Barney.

Technologically, pre-paid calling cards were the predecessor of current gift cards. In recent years, advances in technology made gift cards more efficient, which increased their appeal among merchants.

"The gift-card industry has been dominated by larger retailers, but over the course of the last several years, the technology for offering gift cards has evolved so that it's enabled smaller and smaller retailers to offer them economically," Markey said. "Now you can be a medium-sized regional retailer and actually afford a gift-card program."

#### Widespread use

From clothing stores to home-improvement centers to restaurants, retailers of all types now offer gift cards.

The Bank of America- issued cards resemble a credit card and can be used anywhere Visa is accepted. Customers purchase them in values ranging from \$20 to \$500, but unlike many retailer- issued gift cards, the card is not reloadable. Customers can buy a Bank of America Visa gift card directly from one of the bank's branches.

The cards that Vinson bought his wife were Visa gift cards sold by Minneapolis- based Simon Property Group, which owns the Brea Mall.

"We sell a lot of them. We sell millions of them," said Darren Thomas, the Brea Mall marketing director for Simon Property Group. The mall is currently promoting the cards with parents as a way of letting their teenagers do their own back-to-school shopping, while imposing a spending limit.

Other shopping center companies also have their own cards. For example, Westfield Shopping Centers, which operates Main Place in Santa Ana, has a card associated with American Express.

The growing popularity of the gift cards has led to the gradual replacement of paper gift certificates, except for at mostly smaller, non-chain, local retailers.

### Legal UNCERTAINTY

As large national retailers such as The Gap, Pacific Sunwear, Target and Macy's phase out paper gift certificates, a legal issue has arisen -- are gift cards covered by the state laws that regulate gift certificates?

California law prohibits any gift certificates issued in the state from having an expiration date.

In April, Los Angeles consumer attorneys filed a class-action lawsuit over gift-card policies against Simon Property Group, Brea Mall, Visa U.S.A. Inc., Bank of America and other malls that Simon owns.

The suit, filed in Orange County Superior Court by the law offices of Kevin T. Barnes, alleges that, by charging monthly service fees, the cards defraud consumers and violate the state's gift-certificate law.

The suit seeks repayment of money lost in expired cards, attorney's fees, and punitive damages.

Mike Klarfeld, an attorney in San Diego who formerly specialized in consumer lawsuits related to gift certificates, has moved on to lawsuits about gift cards. He has sued Home Depot, PetSmart and Barnes and Noble over monthly service fees they charge on unused gift cards.

"Call it anything you want, but (a monthly service fee) has the same effect as an expiration date," he said.

The legal landscape changed last month, when California passed a law specifically prohibiting expiration dates or service fees on gift cards sold after Jan. 1, 2004. The only exception is cards that haven't been used in more than two years and with a value of less than five dollars.

The state law clarifies the rules for cards issued by California companies, but leaves the situation unsettled for cards issued by national financial institutions. No federal law covers gift cards specifically.

Simon Property Group had no comment on the gift-card lawsuit, but Thomas said it told employees that, because Bank of America issues the Visa gift cards, the cards are covered by federal law, not state law.

"The law is in a state of flux and it's difficult to say how it's going to shake out," said plaintiffs attorney Gregg Lander, an associate of Barnes.

At Brea Mall, the Vinsons eventually were shown the rules for using gift cards, including how to buy items that cost more than the value left on a card.

But they still ended up paying \$35 in \$2.50 monthly service fees for their 14 cards.

"I can guarantee you one thing: I'm not buying any more Simon gift cards," said Vinson. But he probably will buy other retailers' gift cards, he said.

And so will millions of other consumers.

At Bain & Co, Markey estimates gift-card sales will continue to grow, though not as rapidly as in the past.

They will remain popular with consumers because they are convenient and portable, he said.

But they aren't as popular as a well-chosen gift.

In a survey Bain conducted earlier this year, consumers ranked "an item selected especially for me" as the No. 1 ideal gift.

Even "a near miss," a gift that was almost right, scored higher than "gift card or gift certificate from a favorite store."

In last place -- cash. People like to know that the gift-giver has thought about their specific wishes.

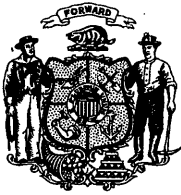
Said Markey: "The research that we've done with consumers, both in giving and receiving, shows: 'It's the thought that counts.'"

(714) 796-6749 or [lmunozfocregister.com](http://lmunozfocregister.com)

more on gift cards

GRAPHIC: Unexpected gifts: Norman Vinson purchased Visa gift cards at the Brea Mall as a present for his wife, Arlene. They didn't know not using the cards would trigger a service fee.

LOAD-DATE: August 22, 2003



State of Wisconsin  
2003 - 2004 LEGISLATURE

RMR  
LRB-3533/3 1  
MGG:.....  
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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT <sup>Sen. Cat.</sup> relating to: <sup>the</sup> sale of gift certificates, gift cards, and other gift  
2 obligations, requiring the exercise of rule-making authority, and providing  
3 penalties.

**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 ~~that~~ the Department of Agriculture, Trade and Consumer Protection (DATCP) promulgate a rule defining the term "conspicuous". The rules must require that expiration dates be written in at least ~~10~~ <sup>10</sup>-point ~~font~~ <sup>type size</sup>. The bill also requires DATCP to promulgate a rule setting forth the service charge terms that must be disclosed. <sup>to</sup>

The bill authorizes DATCP to bring an action to enjoin persons from these restrictions. Persons who violate these laws are also subject to ~~the~~ forfeitures, 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.

to

ten (civil penalties)

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

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

<sup>(B)</sup> gift

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

<sup>(B)</sup> 100.172 **Gift certificates, cards, and other gift obligations.** (1)

DEFINITIONS. In this section:

(a) "Conspicuous" has the meaning given by the department by rule.

(b) "Gift obligation" means a written or electronic document that is evidence of an obligation arising from a transaction between a seller and a purchaser under which the seller will provide goods or services at a later date up to the value shown on the document. "Gift obligation" includes a gift certificate, a gift card, and an on-line gift account. "Gift obligation" does not include any type of obligation or transaction where the intent of the obligation or transaction is <sup>(B)</sup> ~~not to~~ provide a gift to a person other than the seller and purchaser.

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

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

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

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



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

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

(3) RULES. (a) The department shall, by rule, define "conspicuous" for purposes of this section. The rule shall include a requirement that any expiration date be in at least 10-point type size.

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

(4) PENALTIES AND REMEDIES. (a) The department may exercise its authority under ss. 93.14 and 93.15 to investigate violations of this section. *may commence an action for the pecuniary loss*

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

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

(d) The department or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than ~~\$25~~ <sup>\$100</sup> nor more than ~~\$15,000~~ <sup>\$10,000</sup> for a violation of this section.

*may be fined*

*in the county jail*

*imprisoned for not more than*

1 (e) A person who violates this section is subject to a fine of not less than \$25  
2 nor more than \$5,000 or ~~imprisonment not to exceed~~ one year, or both, for each  
3 violation.

4 (f) This section does not preempt the administration or enforcement of s.  
5 100.18 or 100.20. Practices in violation of this section may also constitute unfair  
6 methods 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 that are sold on the effective date  
23 of this ~~act~~ *subsection*

24 **SECTION 5. Effective date.**

*as defined in section 100.172 of the statutes, as created by this act, (1)(b)*



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3533/10n

MGG: King

The remedies and penalties and the effective date found in this draft are modeled after those found in 2003 Senate Bill 124, which deals with certain billing practices for consumer goods and services. Please let me know if you want any changes.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3533/1dn  
MGG:kmg:rs

January 27, 2004

The remedies and penalties and the effective date found in this draft are modeled after those found in 2003 Senate Bill 124, which deals with certain billing practices for consumer goods and services. Please let me know if you want any changes.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
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LEGAL SECTION: (608) 266-3561  
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January 27, 2004

### MEMORANDUM

To: Senator Lazich

From: Mary Gibson-Glass, Senior Legislative Attorney

Re: LRB-3533/1 Gift card expiration dates and service charges

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

\_\_\_\_ JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3215 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.