



2005 SENATE BILL 292

August 19, 2005 – Introduced by Senators HARSDORF, BRESKE, BROWN, CARPENTER, COGGS, DARLING, DECKER, ELLIS, ERPENBACH, HANSEN, JAUCH, KAPANKE, A. LASEE, LASSA, OLSEN, PLALE, RISSER, ROBSON, ROESSLER, TAYLOR and WIRCH, cosponsored by Representatives KRUSICK, JESKEWITZ, AINSWORTH, BALLWEG, BENEDICT, BERCEAU, BIES, BLACK, BOYLE, FIELDS, FREESE, GIELOW, GRIGSBY, GRONEMUS, HAHN, HINES, HUBLER, KERKMAN, KLEEFISCH, KREIBICH, KREUSER, F. LASEE, LEHMAN, LOEFFELHOLZ, LOTHIAN, MOLEPSKE, MONTGOMERY, MURSAU, NELSON, PARISI, PETROWSKI, PETTIS, POCAN, POPE-ROBERTS, PRIDEMORE, RICHARDS, SCHNEIDER, SHERIDAN, SHERMAN, SHILLING, SINICKI, STASKUNAS, STEINBRINK, STONE, SUDER, TOLES, TOWNSEND, TRAVIS, TURNER, UNDERHEIM, VAN AKKEREN, VAN ROY, VOS, VRUWINK, WASSERMAN, A. WILLIAMS, WOOD, YOUNG and ZEPNICK. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

- 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; and 3) reducing the value of a gift obligation except for the sale price of goods or services provided to the bearer. Furthermore, when a person redeems a gift obligation and the resulting balance of the the gift obligation is less than \$5, the bill requires the person redeeming the gift obligation to refund the balance in cash, upon the request of the person redeeming the gift obligation. The bill also requires a merchant, upon presentation of a gift obligation, to disclose the date when the gift obligation was issued and the remaining balance.

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.

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 for a forfeiture 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 \$500 for each

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violation. Violations may also constitute unfair competition or unfair trade practices.

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:

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.** (a) No person may refuse to honor a valid gift obligation.

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

11 (c) No person may sell a gift obligation that is subject to an expiration date. An
12 expiration date that purports to apply to a gift obligation is void and unenforceable.

13 **(3) REQUIREMENTS.** (a) If the holder of a gift obligation partially redeems the
14 gift obligation, and the resulting balance of the gift obligation is less than \$5, the
15 seller shall, at the holder’s request, refund to the holder the balance of the gift
16 obligation in cash.

17 (b) Upon the presentation of a gift certificate, gift card, or other object or
18 document that evidences a gift obligation, a merchant shall disclose to the bearer all
19 of the following:

20 1. The date on which the gift obligation was issued.

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1 2. The remaining balance of the gift obligation.

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

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

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

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

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

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

23 **(5) EXCEPTION.** Subsection (2) (b) and (c) do not apply to a gift obligation given
24 or sold to a person for an amount that is less than the value of the gift obligation, if
25 the person is an organization that is exempt from federal income tax under section

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1 501 (a) of the Internal Revenue Code or if the person transfers the gift obligation to
2 another primarily for the benefit of an organization that is exempt from federal
3 income tax under section 501 (a) of the Internal Revenue Code.

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

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

11 **SECTION 3. Initial applicability.**

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

15 **SECTION 4. Effective date.**

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

18 (END)