

2007 SENATE BILL 191

May 21, 2007 – Introduced by Senators SULLIVAN, TAYLOR, HARSDORF, OLSEN, KEDZIE, KREITLOW, BRESKE, PLALE, A. LASEE, KANAVAS, DARLING and GROTHMAN, cosponsored by Representatives GUNDERSON, NEWCOMER, KERKMAN, HAHN, MUSSER, GRIGSBY, BERCEAU, VOS, MOULTON, SHERIDAN, NASS, LEMAHIEU, BIES, ALBERS, A. OTT, KESTELL, PETROWSKI, KLEEFISCH, BOYLE, FIELDS, TAUCHEN, OWENS, GRONEMUS, VAN ROY, NYGREN, STRACHOTA and CULLEN. 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** 100.172 of the statutes; **relating**
2 **to:** disclosure of terms and conditions applicable to the use of gift certificates,
3 gift cards, and other gift obligations and providing penalties.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of gift certificates, gift cards, or similar items (gift obligations). Under the bill, a seller of a gift obligation must provide to a purchaser at the point of sale a conspicuous disclosure of any expiration date that applies to the gift obligation and the terms and amount of any service charge that apply to the gift obligation. The disclosure requirements under the bill do not apply to a document that evidences a transaction in which the obligation to provide goods or services extends to more than one seller of goods or services or to a gift obligation sold by a charitable organization or educational institution. The bill specifies that the bill's disclosure requirements are not satisfied by a disclosure made available by telephone, at a physical address, by mail, or on an Internet Web site, unless the gift obligation is purchased on the Internet.

Under the bill, if the Department of Agriculture, Trade and Consumer Protection (DATCP) has reasonable cause to believe a person has violated the provisions of the bill, and the person has not committed a previous violation, DATCP must send the person a warning letter. If a person has already received a warning letter relating to a separate violation, DATCP may seek injunctive relief or a fine up to \$250 per violation.

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

2 **100.172 Gift obligations. (1) DEFINITIONS.** In this section:

3 (a) “Conspicuous disclosure” does not include any of the following or any
4 combination of the following:

5 1. A disclosure available on an Internet Web site, except with respect to a gift
6 obligation sold at an Internet Web site.

7 2. A disclosure made available by telephone.

8 3. A disclosure available at a physical address.

9 4. A disclosure made available by mail.

10 (b) “Gift obligation” means a written or electronic document that is evidence
11 of an obligation arising from a transaction between a seller and a purchaser under
12 which the seller agrees to provide goods or services at a later date up to the value
13 shown on the document. “Gift obligation” includes a gift certificate, a gift card, and
14 an on-line gift account. “Gift obligation” does not include a written or electronic
15 document that is evidence of any of the following:

16 1. An obligation or transaction where the intent of the obligation or transaction
17 is not to provide a gift to a person other than the seller and purchaser.

18 2. A transaction in which the obligation to provide goods or services extends to
19 more than one seller of goods or services.

20 **(2) RESTRICTIONS; EXCEPTIONS.** (a) No person may sell a gift obligation that
21 expires on a specified date or after a specified period of time unless the person

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1 provides to the purchaser at the point of sale a conspicuous disclosure that the gift
2 obligation expires on the specified date or after the specified period of time.

3 (b) No person may sell a gift obligation to which a service charge applies unless
4 the person provides to the purchaser at the point of sale a conspicuous disclosure of
5 the terms and amount of the service charge.

6 (c) This section does not apply to a gift obligation sold by a charitable
7 organization or a public or private educational institution.

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

10 (b) If the department determines there is reasonable cause to believe that a
11 person has violated this section, and the person has not previously received a
12 warning letter relating to a separate violation, the department shall issue a letter
13 to the person that contains all of the following:

14 1. A statement that the department has determined there is reasonable cause
15 to believe that the person has violated this section.

16 2. A brief description of the nature of the violation.

17 3. A statement of the penalties and remedies that apply to violations of this
18 section.

19 (c) The department may commence an action in the name of the state to restrain
20 by temporary or permanent injunction a violation of this section, if the violator has
21 previously received a warning letter under par. (b) relating to a separate violation
22 of this section. Before entry of final judgment, the court may make any necessary
23 orders to restore to any person any pecuniary loss suffered by the person because of
24 the violation.

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1 (d) A person who sells a gift obligation in violation of this section and who has
2 previously received a warning letter from the department under par. (b) relating to
3 a separate violation may be fined not less than twice the value of the gift obligation
4 sold in violation of this section or \$250, whichever is less, for each violation.

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

7 165.25 (4) (ar) The department of justice shall furnish all legal services
8 required by the department of agriculture, trade and consumer protection relating
9 to the enforcement of ss. 100.171, 100.172, 100.173, 100.174, 100.175, 100.177,
10 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
11 100.50, 100.51, and 100.195 and chs. 126, 136, 344, 704, 707, and 779, together with
12 any other services as are necessarily connected to the legal services.

13 **SECTION 3. Initial applicability.**

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

17 **SECTION 4. Effective date.**

18 (1) This act takes effect on first day of the 12th month beginning after
19 publication.

20 (END)