EHB 1986

THE STATE SENATE
Thursday, April 7, 2005

ENGROSSED

House Bill No. 1986

As Amended

ENGROSSED HOUSE BILL NO. 1986 - By: INGMIRE, HILLIARD and SHERRER of the House and LERBLANCE of the Senate.

An Act relating to contracts; enacting the Gift Certificate and Gift Card Disclosure Act; providing definitions; prohibiting the sale of certain gift certificates or gift cards; providing exceptions; allowing multiple contributors for a gift certificate or gift card under certain circumstances; specifying applicability to certain gift certificates or cards; declaring value of gift certificates or gift cards held in trust by issuer; requiring gift certificates or gift cards be honored for value regardless of issuer bankruptcy; providing certain limitations of the Gift Certificate and Gift Card Disclosure Act; prohibiting waiver; **providing exceptions**; providing penalty for violations; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 795 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Gift Certificate and Gift Card Disclosure Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 796 of Title 15, unless there is created a duplication in numbering, reads as follows:

(Bold face denotes Committee Amendments)

As used in the Gift Certificate and Gift Card Disclosure Act:

1. "Gift card" shall mean a plastic card or other electronic payment device which is:

a. issued in a predenominated amount or in an amount requested by the consumer,

b. usable to purchase goods and/or services only at a single merchant or group of merchants that are affiliated through common corporate ownership or control, and

c. purchased by a consumer on a prepaid basis in exchange for payment;

2. "Gift certificate" shall mean a written promise which is:

a. issued in a specified amount, indicated on its face, and cannot be increased in value,

b. usable to purchase goods and/or services only at a single merchant or a group of merchants that are affiliated through common corporate ownership or control, and

c. purchased by a consumer on a prepaid basis in exchange for payment; and

3. "Issuer" shall mean a person or entity engaged in the business of offering goods and/or services for sale at retail who sells gift certificates or gift cards to consumers.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 797 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person or entity to sell a gift certificate or gift card whenever to a purchaser that contains any of the following:

1. An expiration date; and

2. A service fee including, but not limited to, a service fee for dormancy, except as provided in subsection E of this section.

B. A gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

C. This section does not apply to any of the following gift certificates or gift cards issued on or after November 1, 2005, provided the expiration date appears in capital letters in at least ten-point font on the front of the gift certificate or gift card:

1. Gift certificates or gift cards 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 or gift card by the consumer;

2. Gift certificates or gift cards 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 or gift cards is not more than thirty (30) days after the date of sale; and

3. Gift certificates or gift cards that are issued for a food product.

D. Paragraph 2 of subsection A of this section does not apply to a dormancy fee on a gift card or gift certificate that meets all of the following criteria:

1. The remaining value of the gift card or gift certificate is Five Dollars ($5.00) or less each time the fee is assessed;

2. The fee does not exceed One Dollar ($1.00) per month;

3. There has been no activity on the gift card or gift certificate for twenty-four (24) consecutive months including, but not limited to, purchases, the adding of value, or balance inquiries;

4. The holder may reload or add value to the gift card or gift certificate; and

5. A statement is printed on the gift card or gift certificate in at least ten-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 or gift certificate, and at what point the fee will be charged. The statement may appear on the front or back of the gift card or gift certificate, but shall appear in a location where it is visible to any purchaser prior to the purchase thereof.

E. An issuer of gift certificates or gift cards may accept funds from one or more contributors toward the purchase of a gift certificate or gift card intended to be a gift for a recipient, provided that each contributor is provided with a full refund of the amount that person paid toward the purchase of the gift certificate or gift card upon the occurrence of all of the following:

1. The funds are contributed for the purpose of being redeemed by the recipient by purchasing a gift certificate or gift card;

2. The time in which the recipient may redeem the funds by purchasing a gift certificate or gift card is clearly disclosed in writing to the contributors and the recipient; and

3. The recipient does not redeem the funds within the time described in paragraph 2 of this subsection.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 798 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. A gift certificate or gift card constitutes value held in trust by the issuer of the gift certificate or gift card on behalf of the beneficiary of the gift certificate or gift card. The value represented by the gift certificate or gift card belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

B. An issuer of a gift certificate or gift card or who is in bankruptcy shall continue to honor a gift certificate or gift card issued prior to the date of the bankruptcy filing on the grounds that the value of the gift certificate or gift card constitutes trust property of the beneficiary.

C. 1. This section does not alter the terms of a gift certificate or gift card. The terms of a gift certificate or gift card may not make its redemption or other use invalid in the event of a bankruptcy.

2. This section does not require, unless otherwise required by law, the issuer of a gift certificate or gift card to:

a. redeem a gift certificate or gift card for cash,

b. replace a gift certificate or gift card that has been lost or stolen, or

c. maintain a separate account for the funds used to purchase the gift certificate or gift card.

D. 1. This section does not create an interest in favor of the beneficiary of the gift certificate or gift card in any specific property of the issuer;

2. This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificates or gift cards and the issuer, unless otherwise provided by law; and

3. The issuer of a gift certificate or gift card has no obligation to pay interest on the value of the gift certificate or gift card held in trust under this section, unless otherwise provided by law.

Any waiver of the provisions of Title 15 of the Oklahoma Statutes is contrary to public policy, and is void and unenforceable.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 798 of Title 15, unless there is created a duplication in numbering, reads as follows:

For the purposes of this act, the term "gift certificate" or "gift card" shall not include any of the following:

1. Prepaid telephone calling cards that are purchased for retail use; or

2. Telephone calling cards that are provided on a promotional basis.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799 of Title 15, unless there is created a duplication in numbering, reads as follows:

Any violation of the Gift Certificate and Gift Card Disclosure Act shall be enforced pursuant to the provisions of Section 761.1 of Title 15 of the Oklahoma Statutes.

SECTION 7. This act shall become effective November 1, 2005.

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-4-05 - DO PASS, As Amended.