

By: Senator(s) Hyde-Smith

To: Judiciary, Division B

SENATE BILL NO. 2660

1 AN ACT TO MAKE UNLAWFUL THE SALE OF A GIFT CERTIFICATE THAT
2 CONTAINS AN EXPIRATION DATE OR A SERVICE FEE, WITH CERTAIN
3 EXCEPTIONS; TO PROVIDE FOR APPLICATION OF THIS SECTION; TO AMEND
4 SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
5 VIOLATIONS OF THIS ACT ARE SUBJECT TO CIVIL AND CRIMINAL PENALTIES
6 UNDER THE CONSUMER PROTECTION STATUTES; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** (1) It is unlawful for any person or entity to
9 sell a gift certificate to a purchaser that contains any of the
10 following:

11 (a) An expiration date.

12 (b) A service fee, including, but not limited to, a
13 service fee for dormancy, except as provided in subsection (5).

14 (2) Any gift certificate sold after July 1, 2004, is
15 redeemable in cash for its cash value, or subject to replacement
16 with a new gift certificate at no cost to the purchaser or holder.

17 (3) A gift certificate sold without an expiration date is
18 valid until redeemed or replaced.

19 (4) This section does not apply to any of the following gift
20 certificates issued on or after July 1, 2004, provided the
21 expiration date appears in capital letters in at least 10-point
22 font on the front of the gift certificate:

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

27 (b) Gift certificates that are sold below face value at
28 a volume discount to employers or to nonprofit and charitable
29 organizations for fund-raising purposes if the expiration date on

30 those gift certificates is not more than thirty (30) days after
31 the date of sale.

32 (c) Gift certificates that are issued for a food
33 product.

34 (5) Paragraph (b) of subsection (1) does not apply to a
35 dormancy fee on a gift card that meets all of the following
36 criteria:

37 (a) The remaining value of the gift card is Five
38 Dollars (\$5.00) or less each time the fee is assessed.

39 (b) The fee does not exceed One Dollar (\$1.00) per
40 month.

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

44 (d) The holder may reload or add value to the gift
45 card.

46 (e) A statement is printed on the gift card in at least
47 10-point font stating the amount of the fee, how often the fee
48 will occur, that the fee is triggered by inactivity of the gift
49 card, and at what point the fee will be charged. The statement
50 may appear on the front or back of the gift card, but shall appear
51 in a location where it is visible to any purchaser prior to the
52 purchase thereof.

53 (6) Nothing in subsection (1) prevents an issuer of gift
54 certificates from including on any gift certificate a provision
55 that entitles the purchaser to a full refund of the amount that he
56 or she paid for that gift certificate upon the occurrence of the
57 following circumstances:

58 (a) The gift certificate is purchased as a gift for
59 another person.

60 (b) The time in which the gift certificate may be
61 redeemed is disclosed on the gift certificate.

62 (c) The holder of the gift certificate does not redeem
63 the gift certificate within the time described in paragraph (b).

64 (7) This section shall apply only to gift certificates
65 issued on or after July 1, 2005.

66 **SECTION 2.** Section 75-24-5, Mississippi Code of 1972, is
67 amended as follows:

68 75-24-5. (1) Unfair methods of competition affecting
69 commerce and unfair or deceptive trade practices in or affecting
70 commerce are prohibited. Action may be brought under Section
71 75-24-5(1) only under the provisions of Section 75-24-9.

72 (2) Without limiting the scope of subsection (1) of this
73 section, the following unfair methods of competition and unfair or
74 deceptive trade practices or acts in the conduct of any trade or
75 commerce are hereby prohibited:

76 (a) Passing off goods or services as those of another;

77 (b) Misrepresentation of the source, sponsorship,
78 approval, or certification of goods or services;

79 (c) Misrepresentation of affiliation, connection, or
80 association with, or certification by another;

81 (d) Misrepresentation of designations of geographic
82 origin in connection with goods or services;

83 (e) Representing that goods or services have
84 sponsorship, approval, characteristics, ingredients, uses,
85 benefits, or quantities that they do not have or that a person has
86 a sponsorship, approval, status, affiliation, or connection that
87 he does not have;

88 (f) Representing that goods are original or new if they
89 are reconditioned, reclaimed, used, or secondhand;

90 (g) Representing that goods or services are of a
91 particular standard, quality, or grade, or that goods are of a
92 particular style or model, if they are of another;

93 (h) Disparaging the goods, services, or business of
94 another by false or misleading representation of fact;

95 (i) Advertising goods or services with intent not to
96 sell them as advertised;

97 (j) Advertising goods or services with intent not to
98 supply reasonably expectable public demand, unless the
99 advertisement discloses a limitation of quantity;

100 (k) Misrepresentations of fact concerning the reasons
101 for, existence of, or amounts of price reductions;

102 (l) Advertising by or on behalf of any licensed or
103 regulated health care professional which does not specifically
104 describe the license or qualifications of the licensed or
105 regulated health care professional;

106 (m) Selling a gift certificate to a purchaser which
107 contains an expiration date, fee or other prohibited condition
108 prescribed in Section 1 of Senate Bill No. 2660, 2005 Regular
109 Session.

110 **SECTION 3.** This act shall take effect and be in force from
111 and after July 1, 2005.