

By: Senator(s) Hyde-Smith

To: Judiciary, Division B

SENATE BILL NO. 2040

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 LAW; 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, 2005, 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, 2005, provided the  
21 expiration date appears in capital letters in at least ten-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 ten-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) of  
64 this subsection.

65 (7) This section shall apply only to gift certificates  
66 issued on or after July 1, 2007.

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

69 75-24-5. (1) Unfair methods of competition affecting  
70 commerce and unfair or deceptive trade practices in or affecting  
71 commerce are prohibited. Action may be brought under Section  
72 75-24-5(1) only under the provisions of Section 75-24-9.

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

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

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

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

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

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

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

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

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

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

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

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

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

107 (m) Charging an increased premium for reinstating a  
108 motor vehicle insurance policy that was cancelled or suspended by  
109 the insured solely for the reason that he was transferred out of  
110 this state while serving in the United States Armed Forces or on  
111 active duty in the National Guard or United States Armed Forces  
112 Reserve. It is also an unfair practice for an insurer to charge  
113 an increased premium for a new motor vehicle insurance policy if  
114 the applicant for coverage or his covered dependents were  
115 previously insured with a different insurer and canceled that  
116 policy solely for the reason that he was transferred out of this  
117 state while serving in the United States Armed Forces or on active  
118 duty in the National Guard or United States Armed Forces Reserve.  
119 For purposes of determining premiums, an insurer shall consider  
120 such persons as having maintained continuous coverage. The  
121 provisions of this paragraph (m) shall apply only to such  
122 instances when the insured does not drive the vehicle during the  
123 period of cancellation or suspension of his policy;

124 (n) selling a gift certificate to a purchaser if it is  
125 subject to an expiration date, fee or other prohibited condition

126 proscribed by Section 1 of Senate Bill No. 2040, 2007 Regular  
127 Session.

128           **SECTION 3.** This act shall take effect and be in force from  
129 and after July 1, 2007.