

2005 SENATE BILL 392

October 17, 2005 – Introduced by Senators LAZICH, BROWN and ROESSLER, cosponsored by Representatives NASS, SUDER, HAHN, PETROWSKI, ALBERS, PETTIS and AINSWORTH. Referred to Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.

1 **AN ACT to amend** 165.25 (4) (ar); and **to create** 100.172 of the statutes; **relating**
2 **to:** the sale of gift certificates, gift cards, and other gift obligations and
3 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 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.

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.

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:

SENATE BILL 392**SECTION 1**

1 **SECTION 1.** 100.172 of the statutes is created to read:

2 **100.172 Gift obligations. (1) DEFINITION.** In this section, “gift obligation”
3 means a written or electronic document that is evidence of an obligation arising from
4 a transaction between a seller and a purchaser under which the seller agrees to
5 provide goods or services at a later date up to the value shown on the document. “Gift
6 obligation” includes a gift certificate, a gift card, and an on–line gift account. “Gift
7 obligation” does not include a written or electronic document that is evidence of any
8 of the following:

9 (a) An obligation or transaction where the intent of the obligation or
10 transaction is not to provide a gift to a person other than the seller and purchaser.

11 (b) A transaction in which the obligation to provide goods or services extends
12 to more than one seller of goods or services.

13 **(2) RESTRICTIONS.** (a) No person may sell a gift obligation that expires on a
14 specified date or after a specified period of time unless the person provides to the
15 purchaser a conspicuous disclosure that the gift obligation expires on the specified
16 date or after the specified period of time.

17 (b) No person may sell a gift obligation to which a service charge applies unless
18 the person provides to the purchaser, in writing or in an electronic format, a
19 conspicuous disclosure of the terms and amount of the service charge.

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

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

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

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

4 3. A statement of the penalties and remedies that apply to violations of this
5 section.

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

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

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

17 165.25 (4) (ar) The department of justice shall furnish all legal services
18 required by the department of agriculture, trade and consumer protection relating
19 to the enforcement of ss. 100.171, 100.172, 100.173, 100.174, 100.175, 100.177,
20 100.18, 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42,
21 100.50 and 100.51 and chs. 126, 136, 344, 704, 707, and 779, together with any other
22 services as are necessarily connected to the legal services.

23 **SECTION 3. Initial applicability.**

