

By: Gallegos

S.B. No. 192

A BILL TO BE ENTITLED

AN ACT

relating to the expiration of or a fee charged in relation to a gift certificate.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 48 to read as follows:

CHAPTER 48. ISSUANCE OR SALE OF GIFT CERTIFICATES

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Artistic or cultural organization" means a nonprofit organization operating exclusively to provide artistic or cultural exhibitions, presentations, or performances for viewing by the public, including:

(A) an exhibition or presentation of works of art;

(B) an object of cultural or historical significance displayed in an art or history museum;

(C) a musical or dramatic performance; or

(D) an educational seminar or program on an artistic, cultural, or historical subject.

(2) "Financial institution" means a state or national bank, state or federal savings and loan association, state or federal savings bank, or state or federal credit union doing business in this state.

(3) "Gift certificate" includes a gift card used for

1 the same purpose as a gift certificate.

2 (4) "Value of a gift certificate" means the original  
3 value of the gift certificate, less any amount charged against the  
4 balance of the certificate.

5 Sec. 48.002. EXPIRATION OF GIFT CERTIFICATE PROHIBITED.

6 (a) A person may not issue or sell a gift certificate that provides  
7 that the certificate expires after a certain date.

8 (b) This section does not apply to a gift certificate:

9 (1) that states the expiration date on the front of the  
10 certificate or on the back of the certificate in at least 10-point  
11 type; and

12 (2) that is:

13 (A) distributed by the issuer to a consumer under  
14 an awards or loyalty program or by other means without the consumer  
15 giving money or any other thing of value in exchange for the  
16 certificate;

17 (B) donated by the issuer to a nonprofit or  
18 charitable organization without the organization giving money or  
19 any other thing of value in exchange for the certificate if the  
20 certificate:

21 (i) is used to provide charitable services;  
22 or

23 (ii) is used for fund-raising purposes and  
24 expires on or after the first anniversary of the date on which the  
25 certificate is issued by the organization; or

26 (C) issued by an artistic or cultural  
27 organization to a consumer if:

1                   (i) the certificate is redeemable solely  
2 for goods or services provided in this state by the organization;

3                   (ii) the value of the certificate at the  
4 time of expiration will accrue solely to the benefit of the  
5 organization; and

6                   (iii) the certificate expires on or after  
7 the third anniversary of the date on which the certificate is issued  
8 by the organization.

9           Sec. 48.003. SERVICE OR INACTIVITY FEES PROHIBITED. (a) A  
10 person may not issue or sell a gift certificate that:

11                   (1) provides for a fee in connection with the sale or  
12 issuance of the certificate; or

13                   (2) provides that a fee is charged against the value of  
14 the certificate, including a fee charged after a certain period of  
15 time because the holder of the certificate has not used the  
16 certificate within that period.

17           (b) Subsection (a)(2) does not apply to a gift certificate  
18 if:

19                   (1) the issuer permits the holder of the certificate  
20 to add value to the certificate;

21                   (2) the value of the gift certificate is \$5 or less  
22 each time the fee is charged;

23                   (3) the amount of the fee does not exceed \$1 per month;

24                   (4) there has been no activity with respect to the gift  
25 certificate, including a purchase, balance inquiry, or the adding  
26 of value to the certificate, for at least 24 consecutive months  
27 after the date of sale or issuance; and

1           (5) the issuer discloses on the front or back of the  
2 certificate a statement in at least 6-point type that:

3                   (A) a fee will be charged against the value of the  
4 certificate if there has been no activity with respect to the  
5 certificate for at least 24 consecutive months after the date of  
6 sale or issuance; and

7                   (B) contains the amount of the fee and how often  
8 the fee will be charged.

9           (c) If a holder of a gift certificate makes a purchase for an  
10 amount that is less than the value of the gift certificate, the  
11 holder may, after the amount of the purchase is charged against the  
12 balance of the certificate:

13                   (1) redeem the remaining value of the certificate in  
14 cash; or

15                   (2) replace the gift certificate at no additional cost  
16 to the holder, unless the remaining value of the certificate is less  
17 than \$5.

18           Sec. 48.004. CONFLICTING PROVISION VOID. A provision of a  
19 gift certificate that violates this chapter is void but does not  
20 affect the validity of the certificate.

21           Sec. 48.005. INJUNCTIVE RELIEF. The attorney general or  
22 the prosecuting attorney in the county in which a violation of this  
23 chapter occurs may bring an action in the name of the state to  
24 restrain or enjoin a person from violating this chapter.

25           Sec. 48.006. APPLICABILITY OF CHAPTER. This chapter does  
26 not apply to a gift certificate that is:

27                   (1) issued or sold by a financial institution or a

1 subsidiary of the institution; and

2 (2) usable with multiple unaffiliated sellers of goods  
3 or services.

4 SECTION 2. Chapter 48, Business & Commerce Code, as added by  
5 this Act, applies only to a gift certificate or gift card issued or  
6 sold on or after the effective date of this Act. A gift certificate  
7 or gift card issued or sold before the effective date of this Act is  
8 governed by the law in effect when the certificate or card was  
9 issued or sold, and the former law is continued in effect for that  
10 purpose.

11 SECTION 3. This Act takes effect September 1, 2005.