

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 304 of the Regular Session

1 State of Arkansas

As Engrossed: H2/15/07 S2/28/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 1455

4
5 By: Representatives Bond, Breedlove, Cash, Cheatham, Cook, Cornwell, Edwards, Glidewell,

6 Harrelson, D. Johnson, J. Johnson, Medley, Pate, Pickett, Pierce, Powers, S. Prater, Reep, L. Smith,

7 Thyer, Webb, Wells, Wood

8 By: Senator Bookout

9
10
11 **For An Act To Be Entitled**

12 AN ACT TO REGULATE UNFAIR AND DECEPTIVE ACTS AND
13 PRACTICES IN CONNECTION WITH GIFT CARDS; AND FOR
14 OTHER PURPOSES.

15
16 **Subtitle**

17 THE FAIR GIFT CARD ACT.

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code Title 4, Subchapter 88 is amended to add a
23 new subchapter to read as follows:

24
25 4-88-701. Short title.

26 This act shall be known and may be cited as the "Fair Gift Card Act."

27
28 4-88-702. Definitions.

29 As used in this subchapter:

30 (1) "Debit card" means any card issued by a financial
31 institution to a consumer for use in initiating an electronic fund transfer
32 from the account of the consumer at the financial institution for the purpose
33 of transferring money between accounts or obtaining money, property, labor,
34 or services;

35 (2) "Dormancy fee" or "inactivity charge or fee" means a fee,



1 charge, or a penalty for nonuse or inactivity of a gift certificate, store
2 gift card, or prepaid general use card;

3 (3) "Financial institution" means a state or national bank, a
4 state or federal savings and loan association, a mutual savings bank, a state
5 or federal credit union, or any other person that, directly or indirectly,
6 holds a transaction account belonging to a consumer;

7 (4)(A) "General use prepaid card" means a card or other
8 electronic payment device issued by a bank or financial institution that is:

9 (i) Usable at multiple, unaffiliated merchants or
10 service providers or at automated teller machines;

11 (ii) Issued in a requested amount whether or not
12 that amount may be, at the option of the issuer, increased in value or
13 reloaded if requested by the holder;

14 (iii) Purchased or loaded on a prepaid basis; and

15 (iv) Honored, upon presentation, by merchants for
16 goods or services, or at automated teller machines.

17 (B) "General use prepaid card" does not include:

18 (i) A debit card that is linked to a demand deposit
19 account or a share draft account; and

20 (ii) A written promise, plastic card, or other
21 electronic device that is:

22 (a) Used solely for telephone services; or

23 (b) Associated with a demand deposit,
24 checking, savings, or similar account in the name of the individual at a bank
25 or financial institution that provides payment solely by debiting the
26 account;

27 (5)(A) "Gift certificate" means a written promise that is:

28 (i) Usable at a single merchant or an affiliated
29 group of merchants that share the same name, mark, or logo;

30 (ii) Issued in a specific amount and cannot be
31 increased;

32 (iii) Purchased on a prepaid basis in exchange for
33 payment; and

34 (iv) Honored upon presentation by the single
35 merchant or affiliated group of merchants for goods or services.

36 (B) "Gift certificate" does not include a written promise,

1 plastic card, or other electronic device that is:

2 (i) Used solely for telephone services; or

3 (ii) Associated with a demand deposit account,
4 checking account, savings account, or similar account in the name of the
5 individual at a bank or financial institution that provides payment solely by
6 debiting the account;

7 (6) "Service fee" means a periodic fee, charge, or penalty for
8 holding or use of a gift certificate, store card, or prepaid general use
9 card;

10 (7)(A) "Store gift card" means a plastic card or other
11 electronic payment device that is:

12 (i) Usable at a single merchant or an affiliated
13 group of merchants that share the same name, mark, or logo;

14 (ii) Issued in a specified amount and may or may not
15 be increased in value or reloaded;

16 (iii) Purchased on a prepaid basis in exchange for
17 payment; and

18 (iv) Honored upon presentation by the single
19 merchant or affiliated group of merchants for goods or services.

20 (B) "Store gift card" does not include a written promise,
21 plastic card, or other electronic device that is:

22 (i) Used solely for telephone services; or

23 (ii) Associated with a demand deposit account,
24 checking account, savings account, or similar account in the name of the
25 individual at a bank or financial institution that provides payment solely by
26 debiting the account; and

27 (8)(A) "Transaction account" means a deposit or account on which
28 the depositor or account holder is permitted to make withdrawals by
29 negotiable or transferable instrument, a payment order of withdrawal,
30 telephone transfer, or other similar method for the purpose of making
31 payments or transfers to third persons or others.

32 (B) "Transaction account" includes demand deposits,
33 negotiable order of withdrawal accounts, savings deposits subject to
34 automatic transfers, and share draft accounts.

35
36 4-88-703. Regulation of unfair and deceptive acts and practices in

1 connection with gift cards.

2 (a) A person shall not sell or issue a gift certificate, a store gift
3 card, or a general use prepaid card that is subject to an expiration date
4 earlier than two (2) years from the date of issuance or sale of the gift
5 certificate, store gift card, or general use prepaid card.

6 (b) A dormancy fee, an inactivity charge or fee, or a service fee
7 shall not be charged on a gift certificate, a store gift card, or a general
8 use prepaid card before two (2) years from the date of issuance or sale of
9 the gift certificate, store gift card, or general use prepaid card.

10 (c) Upon the expiration of the two (2) year time period referenced in
11 subdivision (b) of this section, a gift certificate, a store gift card, or a
12 general use prepaid card may be subject to expiration or a post-sale fee,
13 including a service fee, a dormancy fee, an account maintenance fee, a cash-
14 out fee, a gift card replacement fee, an activation fee, or a reactivation
15 fee, if the following disclosures are printed clearly in a conspicuous place
16 on the front or back of the gift certificate, the store gift card, or the
17 general use prepaid card in at least ten (10) point type:

18 (1) The date on which the gift certificate, the store gift card,
19 or the general use prepaid card expires; and

20 (2) With respect to a post sale fee:

21 (A) The amount of the fee;

22 (B) The circumstances under which the fee will be imposed;

23 (C) The frequency with which the fee will be imposed; and

24 (D) Whether the fee is triggered by inactivity.

25 (d) If the disclosures required by subsection (c) of this section are
26 hidden by the packaging of the gift certificate, the store gift card, or the
27 general use prepaid card, the seller or issuer shall give the purchaser a
28 written statement of the disclosures before the gift certificate, the store
29 gift card, or the general use prepaid card is sold or issued.

30 (e)(1) If a gift certificate, a store gift card, or a general use
31 prepaid card is sold or issued by electronic means, the seller or issuer
32 shall include a conspicuous written statement of the information required by
33 subsection (c) of this section in the electronic message offering the gift
34 certificate, the store gift card, or the general use prepaid card.

35 (2) If a gift certificate, a store gift card, or a general use
36 prepaid card is sold or issued by telephonic means, the seller or issuer

1 shall state the information required by subsection (c) of this section to the
2 purchaser.

3 (f) A term or condition disclosed under subsection (c) of this section
4 shall not be changed after the date of purchase or issuance of the gift
5 certificate, store gift card, or general use prepaid card unless the change
6 benefits the holder of the gift certificate, store gift card, or general use
7 prepaid card.

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9 4-88-704. Exclusions.

10 The prohibitions and requirements of this subchapter shall not apply to
11 gift certificates, store gift cards, or general use prepaid cards that:

12 (1) Are distributed pursuant to an award, loyalty, or
13 promotional program and for which there is no money or other value exchanged;

14 (2) Expire not later than thirty (30) days after the date they
15 are sold and are sold below the face value of the gift certificate, the store
16 gift card, or the general use prepaid card to an employer, or to a nonprofit
17 or charitable organization for fundraising purposes; or

18 (3) Are usable with multiple, unaffiliated sellers of goods or
19 services and are issued by a financial institution under § 4-88-702(3).

20
21 4-88-705. Enforcement.

22 A violation of the provisions of this subchapter shall constitute a
23 deceptive and unconscionable trade practice as defined by § 4-88-101 et seq.,
24 and is subject to all the authority, remedies, and penalties granted under
25 those sections.

26
27 4-88-706. Rules.

28 (a) The State Bank Department shall promulgate rules pertaining to the
29 regulation of state-chartered banks and the selling of gift cards.

30 (b) The department shall have authority of the sale of gift cards by
31 state-chartered banks and promulgate rules based on guidance issued by the
32 Comptroller of the Currency in Office of the Comptroller of the Currency
33 Bulletin 2006-34 on August 14, 2006.

34
35 /s/ Bond

36 APPROVED: 3/16/2007