

Committee Substitute for Senate Bill No. 22-C

An act relating to the Department of Agriculture and Consumer Services; amending s. 501.95, F.S., relating to gift certificates and credit memos; limiting application of prohibitions to purchased instruments; providing for enforcement by the department; providing for retroactive application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.95, Florida Statutes, is amended to read:

501.95 Gift certificates and credit memos.—

(1) As used in this section, the term:

(a) “Credit memo” means a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

(b) “Gift certificate” means a certificate, gift card, stored value card, or similar instrument purchased ~~issued in exchange~~ for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction, but this term shall not include tickets as specified in s. 717.1355 ~~or manufacturer or retailer discounts and coupons.~~

(2)(a) A gift certificate purchased or credit memo ~~sold or issued for consideration~~ in this state may not have an expiration date, expiration period, or any type of postsale charge or fee imposed on the gift certificate or credit memo, including, but not limited to, service charges, dormancy fees, account maintenance fees, or cash-out fees. However, a gift certificate may have an expiration date of not less than 3 years if it is provided as a charitable contribution ~~when no consideration is given to the issuer by the consumer,~~ or not less than 1 year if it is provided as a benefit pursuant to an employee-incentive program, ~~consumer loyalty program, or promotional program when no consideration is given to the issuer by the consumer,~~ and the expiration date is prominently disclosed in writing to the consumer at the time it is provided. In addition, a gift certificate may have an expiration date if it is provided to the recipient, or to a purchaser for transfer to the recipient, as part of a loyalty or promotional program when the recipient does not pay a separate identifiable charge for the certificate, or if it is provided in conjunction with ~~as part of a larger package related to~~ a convention, conference, vacation, or sporting or fine arts event having a limited duration so long as the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or event. An issuer may honor a gift certificate that has expired on or before the effective date of this act.

(b) Paragraph (a) does not apply to a gift certificate or credit memo sold or issued by a financial institution, as defined in s. 655.005, or by a money transmitter, as defined in s. 560.103, if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants.

(c) Enforcement of this section shall be as provided in s. 501.142(3), (4), and (5) for violations of this section.

Section 2. Subsections (3), (4), and (5) of section 501.142, Florida Statutes, read:

501.142 Retail sales establishments; preemption; notice of refund policy; exceptions; penalty.—

(3) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this section or the rules or orders issued under this section:

- (a) Issue a notice of noncompliance pursuant to s. 120.695.
- (b) Impose an administrative fine not to exceed \$100 for each violation.
- (c) Direct the person to cease and desist specified activities.

(4) The administrative proceedings that could result in the entry of an order imposing any of the penalties specified in subsection (3) are governed by chapter 120.

(5) Any moneys recovered by the Department of Agriculture and Consumer Services as a penalty under this section shall be deposited in the General Inspection Trust Fund.

Section 3. The amendment to s. 501.95, Florida Statutes, made by this act applies to all gift cards purchased and credit memos issued on or after June 28, 2007.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor October 26, 2007.

Filed in Office Secretary of State October 26, 2007.