

SENATE BILL 418

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CF HB 126

By: **Senators Pugh, Conway, Exum, Harrington, King, Lenett, Peters,
Rosapepe, and Stone**

Introduced and read first time: February 2, 2009

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Gift Certificates – Balances – Presumption of**
3 **Abandonment**

4 FOR the purpose of providing that on a certain date the balance remaining on a gift
5 certificate sold in the State shall be presumed to be abandoned; requiring each
6 issuer of gift certificates sold in the State to report to the Comptroller certain
7 information regarding certain gift certificate transactions in the State and to
8 remit to the Comptroller a certain percentage of the remaining balances on
9 certain gift certificates on or before a certain date each year; requiring the
10 Comptroller to distribute certain funds to the General Fund of the State on or
11 before a certain date each year; altering the information that must be printed
12 on a gift certificate, a sticker permanently affixed to a gift certificate, or an
13 envelope containing a gift certificate; requiring each issuer of a gift certificate
14 sold in the State to maintain accounts, books, and records relating to the
15 issuance and sale of the gift certificate for a certain period of time; requiring, for
16 each gift certificate sold in the State, that the issuer's accounts, books, and
17 records include certain information or list the Comptroller as custodian on
18 behalf of the purchaser; requiring the issuer to make the accounts, books, and
19 records available for inspection by the Comptroller on request; establishing
20 certain penalties; providing that, if a conflict exists between certain provisions
21 of law, a certain provision shall apply; altering a certain definition; and
22 generally relating to balances on gift certificates.

23 BY repealing and reenacting, with amendments,
24 Article – Commercial Law
25 Section 14–1319
26 Annotated Code of Maryland
27 (2005 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Commercial Law**

4 14–1319.

5 (a) (1) In this section, “gift certificate” means a device constructed of
6 paper, plastic, or any other material that is:

7 (i) Sold or issued by a person for a cash value that can be used
8 to purchase goods or services; or

9 (ii) Issued as a store credit for returned goods.

10 (2) “Gift certificate” does not include:

11 (i) A prepaid telephone calling card;

12 (ii) A prepaid technical support card;

13 (iii) A prepaid card for Internet services;

14 (iv) A coupon for discounted goods or services;

15 (v) A gift certificate that is distributed to an individual under
16 an awards, loyalty, or promotional program in which the recipient does not give money
17 or value for the gift certificate; [or]

18 (vi) A gift card that:

19 1. Is processed through a national credit or debit card
20 service; and

21 2. May be used to purchase goods or services from
22 multiple unaffiliated sellers of goods or services;

23 **(VII) A GIFT CERTIFICATE THAT IS SOLD BY A CHARITABLE**
24 **OR NONPROFIT ORGANIZATION;**

25 **(VIII) A CARD ISSUED BY AN EMPLOYER TO AN EMPLOYEE AS**
26 **PROOF OF WAGES PAID TO THE EMPLOYEE; OR**

27 **(IX) A CARD ISSUED BY A PUBLIC TRANSIT FACILITY FOR**
28 **THE PAYMENT OF ANY TRANSIT FARES, PARKING FEES, OR TRANSIT-RELATED**
29 **EXPENSES.**

1 (b) A person may not sell or issue a gift certificate that, within 4 years after
2 the date of purchase, is subject to expiration or a fee or charge of any kind.

3 (c) (1) **THE BALANCE REMAINING ON A GIFT CERTIFICATE SOLD IN**
4 **THE STATE SHALL BE PRESUMED TO BE ABANDONED ON THE LATER OF:**

5 (i) **THE DATE THAT IS 4 YEARS AFTER THE DATE THE GIFT**
6 **CERTIFICATE IS PURCHASED; OR**

7 (ii) **THE DATE THAT IS 1 YEAR AFTER THE DATE OF THE**
8 **LAST ACTIVITY ON THE GIFT CERTIFICATE, INCLUDING A PURCHASE, ADDITION**
9 **OF VALUE, OR BALANCE INQUIRY.**

10 (2) **ON OR BEFORE MARCH 1 OF EACH YEAR, EACH ISSUER OF**
11 **GIFT CERTIFICATES SOLD IN THE STATE SHALL:**

12 (i) **REPORT TO THE COMPTROLLER REGARDING GIFT**
13 **CERTIFICATE TRANSACTIONS IN THE STATE FOR THE PREVIOUS CALENDAR**
14 **YEAR, INCLUDING THE AGGREGATE NUMBER AND VALUE OF GIFT CERTIFICATES**
15 **SOLD IN THE STATE, THE AMOUNT OF THE BALANCE REMAINING ON EACH GIFT**
16 **CERTIFICATE SOLD IN THE STATE THAT WAS PRESUMED TO BE ABANDONED**
17 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, AND ANY OTHER INFORMATION**
18 **THAT THE COMPTROLLER REQUIRES BY REGULATION; AND**

19 (ii) **REMIT TO THE COMPTROLLER 70% OF THE BALANCE**
20 **REMAINING ON EACH GIFT CERTIFICATE THAT WAS PRESUMED TO BE**
21 **ABANDONED UNDER PARAGRAPH (1) OF THIS SUBSECTION DURING THE**
22 **PREVIOUS CALENDAR YEAR.**

23 (3) **ON OR BEFORE APRIL 1 OF EACH YEAR, THE COMPTROLLER**
24 **SHALL DISTRIBUTE ALL REVENUES RECEIVED UNDER PARAGRAPH (2) OF THIS**
25 **SUBSECTION TO THE GENERAL FUND OF THE STATE.**

26 [(c)] (D) Any term or condition concerning expiration or a fee or charge that
27 takes effect more than 4 years after the date of purchase, **AND NOTICE OF THE**
28 **PRESUMPTION OF ABANDONMENT UNDER SUBSECTION (C)(1) OF THIS SECTION,**
29 must be printed clearly in at least 10 point type in a visible place on:

30 (1) The front or back of the gift certificate;

31 (2) A sticker permanently affixed to the gift certificate; or

32 (3) An envelope containing the gift certificate.

1 [(d)] (E) Unless the change benefits the consumer, a term or condition
2 disclosed under subsection [(c)] (D) of this section may not be changed after the date of
3 purchase or issuance.

4 [(e)] (F) (1) A gift certificate that is sold or issued in violation of this section
5 shall be considered valid and may not be subject to expiration or any fee or charge.

6 (2) **NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION,**
7 **THE BALANCE REMAINING ON A GIFT CERTIFICATE SHALL BE PRESUMED TO BE**
8 **ABANDONED IN ACCORDANCE WITH SUBSECTION (C)(1) OF THIS SECTION.**

9 (G) (1) **EACH ISSUER OF A GIFT CERTIFICATE SOLD IN THE STATE**
10 **SHALL MAINTAIN ACCOUNTS, BOOKS, AND RECORDS RELATING TO THE**
11 **ISSUANCE AND SALE OF THE GIFT CERTIFICATE.**

12 (2) **FOR EACH GIFT CERTIFICATE SOLD IN THE STATE, THE**
13 **ISSUER'S ACCOUNTS, BOOKS, AND RECORDS SHALL:**

14 (I) **INCLUDE THE NAME AND ADDRESS OF THE PURCHASER**
15 **OF THE GIFT CERTIFICATE; OR**

16 (II) 1. **LIST THE COMPTROLLER AS CUSTODIAN ON**
17 **BEHALF OF THE PURCHASER; AND**

18 2. **INCLUDE THE NAME AND ADDRESS OF THE**
19 **COMPTROLLER.**

20 (3) **THE ISSUER SHALL MAINTAIN THE ACCOUNTS, BOOKS, AND**
21 **RECORDS FOR AT LEAST 2 YEARS AFTER THE DATE THE BALANCE ON THE GIFT**
22 **CERTIFICATE IS PRESUMED TO BE ABANDONED UNDER SUBSECTION (C)(1) OF**
23 **THIS SECTION.**

24 (4) **ON REQUEST, THE ISSUER SHALL MAKE AVAILABLE ALL OF**
25 **THE ACCOUNTS, BOOKS, AND RECORDS MAINTAINED UNDER THIS SUBSECTION**
26 **FOR INSPECTION BY THE COMPTROLLER.**

27 [(f)] (H) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
28 **SUBSECTION, A violation of any provision of this section:**

29 [(1)] (I) **Is an unfair or deceptive trade practice within the meaning**
30 **of Title 13 of this article; and**

31 [(2)] (II) **Is subject to the enforcement and penalty provisions**
32 **contained in Title 13 of this article, except § 13-411 of this article.**

1 (2) A PERSON WHO VIOLATES SUBSECTION (C) OR (G) OF THIS
2 SECTION:

3 (I) IS NOT SUBJECT TO PARAGRAPH (1) OF THIS
4 SUBSECTION; AND

5 (II) IS SUBJECT TO THE ENFORCEMENT AND PENALTY
6 PROVISIONS CONTAINED IN § 17-323 OF THIS ARTICLE.

7 (I) IF A CONFLICT EXISTS BETWEEN A PROVISION OF THIS SECTION
8 AND A PROVISION OF TITLE 17 OF THIS ARTICLE, THE PROVISION OF THIS
9 SECTION SHALL APPLY.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2009.