

House Study Bill 201

SENATE/HOUSE FILE _____
BY (PROPOSED TREASURER OF
STATE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the issuance of gift cards and gift
2 certificates, including providing for abandonment,
3 establishing restrictions on fees and charges, prohibiting
4 expiration dates and other restrictive terms, and making
5 penalties applicable.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 1215XD 82
8 rn/gg/14

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1 1 Section 1. NEW SECTION. 555D.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Gift card" means an electronic payment instrument in
1 5 the form of a plastic card or similar physical medium,
1 6 commonly known as a stored value or prepaid card, in which the
1 7 monetary value is recorded on the card itself or at a central
1 8 database, and which represents a promise by the issuer of the
1 9 card that consumer goods, services, or whatever else the
1 10 issuer provides will be rendered to the bearer of the
1 11 instrument in exchange for monetary value stated or stored on
1 12 or credited to the instrument, but excludes a debit card
1 13 linked to a deposit account in a banking or financial
1 14 organization, a payroll debit card, a government benefit card,
1 15 a flexible spending card, an insurance claim card, an employee
1 16 reward card, a travel expense card, a transportation card, and
1 17 similar electronic payment instruments.
1 18 2. "Gift certificate" means a payment instrument in paper
1 19 or electronic form that represents the promise of the issuer
1 20 of the certificate that goods, services, or whatever else the
1 21 issuer provides will be rendered to the bearer of the
1 22 certificate up to the value of the certificate in the amount
1 23 of money stated on the face of the certificate.
1 24 3. "Issuer" means the retailer, merchant, or vendor who
1 25 issued a gift card or gift certificate, or a provider of
1 26 services, that has the obligation to accept the gift card or
1 27 gift certificate as payment and deliver goods, provide
1 28 services, or render whatever else may be purchased by the card
1 29 or certificate.
1 30 Sec. 2. NEW SECTION. 555D.2 EXPIRATION DATES PROHIBITED
1 31 == EXCEPTIONS.
1 32 1. Except as provided in subsection 2, an issuer of a gift
1 33 card or gift certificate in this state shall not:
1 34 a. Issue a gift card or gift certificate that has an
1 35 expiration date or enforce an expiration date against the
2 1 bearer of a gift card or gift certificate.
2 2 b. Assess or deduct any charge or fee from the monetary
2 3 value of a gift card or gift certificate, including but not
2 4 limited to a service, maintenance, cash-out, reactivation,
2 5 replacement card, dormancy, or inactivity fee.
2 6 c. If a transaction is made with a gift certificate for an
2 7 amount that is less than the value of the certificate, fail or
2 8 refuse to do one of the following:
2 9 (1) Pay the unused balance of the certificate's value to
2 10 the bearer.
2 11 (2) Issue to the bearer a new card or certificate for the
2 12 unused value.
2 13 d. If the remaining value of a gift card or gift
2 14 certificate is less than five dollars, fail or refuse to
2 15 redeem that card or certificate in cash for its remaining
2 16 value on demand of the bearer.

2 17 e. If a gift card or gift certificate remains unused or
2 18 unredeemed for more than three years after it was sold or
2 19 issued, fail or refuse to administer the unused or unredeemed
2 20 proceeds of the card or certificate in accordance with the
2 21 provisions of chapter 556.

2 22 2. a. A person or entity may enforce against the bearer
2 23 an expiration date in a gift card or a gift certificate in
2 24 circumstances where:

2 25 (1) The gift card or gift certificate is issued pursuant
2 26 to an awards, loyalty, or promotional program or in other
2 27 similar circumstances where no money or other thing of value
2 28 is given in exchange for the card or certificate.

2 29 (2) The gift card or gift certificate is donated to a
2 30 charitable organization without any money or other thing of
2 31 value being given in exchange for the card or certificate and
2 32 the charitable organization uses the card or certificate
2 33 solely to provide its charitable services or for its
2 34 fund-raising activities.

2 35 b. An expiration date displayed on a gift card or gift
3 1 certificate which was issued or donated as described in
3 2 paragraph "a", subparagraph (1) or (2), shall be disclosed
3 3 clearly and legibly on the gift card or gift certificate in a
3 4 location on the card or certificate where it is visible to any
3 5 purchaser before purchasing the card or certificate, and shall
3 6 be at least one year from the date the gift card or gift
3 7 certificate is issued and delivered to the bearer.

3 8 3. The provisions of subsection 1 shall not apply to a
3 9 gift card or gift certificate issued by a banking or financial
3 10 organization, as defined in section 556.1, that is organized
3 11 under the federal National Bank Act, 12 U.S.C. } 12, et seq.,
3 12 or the federal Home Owners' Loan Act, 12 U.S.C. } 1461, et
3 13 seq., if all of the following conditions are met:

3 14 a. The federal statutory law and regulations applicable to
3 15 the gift card or gift certificate explicitly permit the
3 16 banking or financial organization to issue the gift card or
3 17 the gift certificate and to impose the expiration dates and
3 18 the type and amount of service fees that the banking or
3 19 financial organization imposes, in the manner in which the
3 20 banking or financial organization has done so.

3 21 b. The banking or financial organization alone has the
3 22 liability to the purchaser or bearer of the gift card or gift
3 23 certificate to redeem the card or certificate.

3 24 c. The contractual relationship in regard to the gift card
3 25 or the gift certificate is solely between the issuing banking
3 26 or financial organization and the purchaser or bearer of the
3 27 card or certificate.

3 28 d. Only the banking or financial organization establishes
3 29 the terms and conditions of the gift card or gift certificate.

3 30 e. Only the banking or financial organization charges,
3 31 retains, and profits from any fees associated with the gift
3 32 card or gift certificate.

3 33 Sec. 3. NEW SECTION. 555D.3 PENALTIES.

3 34 A violation of this chapter is an unlawful practice under
3 35 section 714.16, and is additionally subject to the penalty
4 1 provisions of section 537.5201.

4 2 Sec. 4. NEW SECTION. 556.8A GIFT CARDS AND GIFT
4 3 CERTIFICATES.

4 4 1. For purposes of this section, unless the context
4 5 otherwise requires:

4 6 a. "Domicile" means the state of incorporation of an
4 7 issuer that is a corporation and the state of the principal
4 8 place of business of an issuer that is not a corporation.

4 9 b. "Gift card", "gift certificate", and "issuer" mean the
4 10 same as defined in section 555D.1.

4 11 2. A gift card or gift certificate that remains unused or
4 12 unredeemed for more than three years after it was sold or
4 13 issued is presumed abandoned unless the owner or bearer of
4 14 that card or certificate has within three years either:

4 15 a. Increased or decreased the amount of the value stated
4 16 or stored on, credited to, or represented by the card or
4 17 certificate.

4 18 b. Communicated with the issuer of the card or certificate
4 19 concerning the value of or the balance remaining on the card
4 20 or certificate, in writing or by other means as shown in a
4 21 contemporaneous record prepared by or on behalf of the issuer.

4 22 3. The proceeds of a gift card or gift certificate
4 23 presumed abandoned is the monetary value of the card or
4 24 certificate at the time that the card or certificate is
4 25 presumed abandoned.

4 26 4. A gift card or gift certificate that is presumed
4 27 abandoned is subject to the custody of the treasurer of state

4 28 in any of the following circumstances:

4 29 a. The last known address of the purchaser or bearer of
4 30 the card or certificate, as shown on the records of the
4 31 issuer, is in this state.

4 32 b. The records of the issuer do not show the identity of
4 33 the purchaser or bearer of the card or certificate, but it is
4 34 established that the last known address of the purchaser or
4 35 bearer is in this state.

5 1 c. The records of the issuer of the card or certificate do
5 2 not show any last known address of the purchaser or bearer and
5 3 the issuer is domiciled in this state.

5 4 d. The records of the issuer show that the last known
5 5 address of the purchaser or bearer is in a state that does not
5 6 provide for the escheat or custodial taking of a gift card or
5 7 gift certificate or is in a foreign country and the issuer is
5 8 domiciled in this state.

5 9 e. The records of the seller or issuer show that the gift
5 10 card or gift certificate was purchased or issued in this
5 11 state, the issuer is domiciled in a state that does not
5 12 provide for the escheat or custodial taking of a gift card or
5 13 gift certificate, and the last known address of the purchaser
5 14 or bearer is unknown or in a state that does not provide for
5 15 the escheat or custodial taking of a gift card or gift
5 16 certificate.

5 17 5. The expiration of any period of time for the use or
5 18 redemption of a gift card or gift certificate issued in a
5 19 state permitting an expiration date shall not prevent an
5 20 unused or unredeemed gift card or gift certificate from being
5 21 presumed abandoned and shall not affect the duty of the issuer
5 22 to report and deliver the proceeds of those unused cards or
5 23 unredeemed certificates to the treasurer of state as provided
5 24 in this chapter.

5 25 6. An issuer may redeem a gift card or gift certificate
5 26 after that card or certificate was presumed abandoned and the
5 27 proceeds delivered into the custody of the treasurer of state,
5 28 and the treasurer of state shall reimburse the issuer as
5 29 provided in section 556.14, subsection 4.

5 30 7. It shall be contrary to public policy for an issuer to
5 31 organize or form a subsidiary business entity to be the issuer
5 32 of its gift cards or gift certificates if doing so would
5 33 result in a disposition of unused or unredeemed gift cards or
5 34 gift certificates other than as provided in this section and
5 35 subject to the custody of the treasurer of state.

6 1 8. This section shall not apply to the following gift
6 2 cards and gift certificates:

6 3 a. Gift cards or gift certificates issued pursuant to an
6 4 awards, loyalty, or promotional program or in other similar
6 5 circumstances where no money or other thing of value is given
6 6 in exchange for the card or certificate.

6 7 b. Gift cards or gift certificates donated to a charitable
6 8 organization without any money or other thing of value being
6 9 given in exchange for the card or certificate and the
6 10 charitable organization uses the card or certificate solely to
6 11 provide its charitable services or for its fund-raising
6 12 activities.

6 13 9. This section does not relieve an issuer of an
6 14 obligation arising prior to the effective date of this Act to
6 15 report and pay the proceeds of an unused gift card or an
6 16 unredeemed gift certificate to the treasurer of state.

6 17 Sec. 5. Section 556.9, subsection 2, Code 2007, is amended
6 18 by striking the subsection.

6 19 EXPLANATION

6 20 This bill relates to the issuance of gift cards and gift
6 21 certificates, and the circumstances under which they shall be
6 22 considered unclaimed property.

6 23 The bill defines a "gift card" as an electronic payment
6 24 instrument in the form of a plastic card or similar physical
6 25 medium, in which the monetary value is recorded on the card or
6 26 at a central database, and which represents a promise by the
6 27 issuer of the card that consumer goods, services, or whatever
6 28 else the issuer provides will be rendered to the bearer of the
6 29 instrument in exchange for the monetary value of other
6 30 electronic payment instruments from the definition. The bill
6 31 defines a "gift certificate" as a payment instrument in paper
6 32 or electronic form that represents the promise of the issuer
6 33 of the certificate that goods, services, or whatever else the
6 34 issuer provides will be rendered to the bearer of the
6 35 certificate up to the value of the certificate.

7 1 The bill prohibits the issuance of a gift card or gift
7 2 certificate in Iowa that has an expiration date or the
7 3 enforcing of an expiration date against the bearer of a gift

7 4 card or gift certificate. The bill also prohibits assessing
7 5 or deducting any charge or fee from the monetary value of a
7 6 gift card or a gift certificate, including but not limited to
7 7 a service, maintenance, cash-out, reactivation, replacement
7 8 card, dormancy, or inactivity fee. Additionally, an issuer
7 9 may not fail or refuse to pay the unused balance or issue a
7 10 new card or certificate for that balance if a transaction is
7 11 made with a gift certificate for an amount that is less than
7 12 the value of the certificate, fail or refuse to redeem a card
7 13 or certificate in cash for a remaining value of less than five
7 14 dollars, or fail or refuse to administer a card or certificate
7 15 which remains unused or unredeemed for more than three years
7 16 after it was sold or issued in accordance with the unclaimed
7 17 property provisions of Code chapter 556.

7 18 The bill provides for exceptions to the prohibition against
7 19 expiration dates. The bill provides that a gift card or gift
7 20 certificate may be issued with an expiration date if issued
7 21 pursuant to an awards, loyalty, or promotional program or
7 22 similar circumstances where no money or other thing of value
7 23 is given in exchange for the card or certificate, or if
7 24 donated to a charitable organization without any money or
7 25 other thing of value being given in exchange for the card or
7 26 certificate and the charitable organization uses the card or
7 27 certificate solely to provide its charitable services or for
7 28 its fund-raising activities. In either of these situations,
7 29 the bill provides that an expiration date shall be disclosed
7 30 clearly and legibly on the gift card or gift certificate and
7 31 that the expiration date shall be at least one year from the
7 32 date the gift card or gift certificate is issued and delivered
7 33 to the bearer.

7 34 The bill also specifies that the prohibition shall not
7 35 extend to a gift card or gift certificate issued by a banking
8 1 or financial organization organized under the federal National
8 2 Bank Act or the federal Home Owners' Loan Act, if several
8 3 specified conditions are met.

8 4 The bill prescribes that an issuer in violation of these
8 5 provisions shall be subject to the consumer fraud provisions
8 6 of Code section 716.14, and shall additionally be subject to a
8 7 civil action under Code section 537.5201 in which actual
8 8 damages may be recovered and a penalty assessed in an amount
8 9 not less than \$100 nor more than \$1,000 per violation.

8 10 With reference to Code chapter 556, the bill provides that
8 11 a gift card or gift certificate that remains unused or
8 12 unredeemed for more than three years after it was sold or
8 13 issued is presumed abandoned unless the owner or bearer has
8 14 within the three years either increased or decreased the
8 15 amount of the value stated or stored on, credited to, or
8 16 represented by the card or certificate; or communicated with
8 17 the issuer of the card or certificate concerning the value of
8 18 or the balance remaining on the card or certificate. If
8 19 presumed abandoned, the bill states that the proceeds of a
8 20 gift card or certificate shall be the monetary value of the
8 21 card or certificate at the time that it is presumed abandoned.
8 22 The bill specifies the various instances in which the
8 23 treasurer of state shall assume custody of the gift card or
8 24 certificate presumed abandoned, and provides that an issuer
8 25 may redeem a gift card or gift certificate after that card or
8 26 certificate was presumed abandoned and the proceeds delivered
8 27 into the custody of the treasurer of state, with reimbursement
8 28 by the treasurer of state. The bill states that an issuer
8 29 shall not form a subsidiary business entity to be the issuer
8 30 of its gift cards or gift certificates if doing so would
8 31 result in a disposition of unused or unredeemed gift cards or
8 32 gift certificates other than as provided in the bill and
8 33 subject to the custody of the treasurer of state. The bill
8 34 provides an exception from these unclaimed property provisions
8 35 for gift cards or certificates issued pursuant to an awards,
9 1 loyalty, or promotional program or donated to a charitable
9 2 organization. The bill states that the new provisions
9 3 relating to Code chapter 556 do not relieve an issuer of an
9 4 obligation arising prior to the effective date of the bill to
9 5 report and pay the proceeds of an unused gift card or an
9 6 unredeemed gift certificate to the treasurer of state.

9 7 The bill repeals a provision in Code chapter 556 which
9 8 currently permits the deduction from the face value of a gift
9 9 certificate a charge imposed due to the failure of the owner
9 10 of the gift certificate to present the gift certificate in a
9 11 timely manner if a valid and enforceable written contract
9 12 exists between the issuer and the owner of the gift
9 13 certificate and the issuer regularly imposes such charges and
9 14 does not regularly reverse or otherwise cancel them.

9 15 LSB 1215XD 82
9 16 rn:nh/gg/14.2