

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 7, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Steve Kelly, Department of Commerce
Wes Ashton, Overland Park Chamber
Secretary Wagon, Department of Revenue
Representative David Huff
Representative John Edmonds
Representative Ray Merrick
Ron Hein, Kansas Restaurant and Hospitality Association
Emile Burdette Rush, Attorney General's, Consumer Protection
Albert Thompson, Topeka citizen
Mike Mirosław, President, Store Financial
Michelle Hamilton, Attorney, Store Financial

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2856-Extension of IMPACT program** by introducing Steve Kelly, Deputy Secretary with the Department of Commerce to give his testimony as a proponent on **HB 2856**. Mr. Kelly presented written testimony. (Attachment 1) Mr. Kelly stated the 2005 Legislature amended the IMPACT statute to allow enhanced use for non-training projects. This change was made at the request of the Department of Commerce in consort with a number of Chambers of Commerce. It allowed Kansas to improve our competitiveness in the face of aggressive new economic development measures that were passed by the Missouri legislature. The change to the IMPACT law was made for a limited time only with the understanding that the Department of Commerce and Revenue would work on an analysis of our various programs and come to the 2006 Legislature with the information necessary to modify programs and approaches to be effective in the future. The work has been hampered by lack of data. We have been able to use the financing available through this change to successfully incent projects such as the retention of the Applebees headquarters in Lenexa and the expansion of the Farmers Insurance customer service operation in Olathe. He urged the Committee to give favorable consideration of this bill.

Chairperson Brownlee introduced Secretary Wagon from the Department of Revenue to give her testimony as a proponent for **HB 2856**. Secretary Wagon did not present written testimony. Secretary Wagon gave a brief statement acknowledging she is in strong support of the bill and believes it is the best tool for job retention. She urged the Committee to vote favorably on **HB 2856**.

Chairperson Brownlee introduced Wes Ashton representing the Overland Park Chamber and Overland Park Economic Council. Mr. Ashton presented written testimony. (Attachment 2) Mr. Ashton stated the 2005 Legislature had an extremely positive and immediate effect on economic development projects in Overland Park, as well as the state. This is an improved economic development tool for Kansas, and helped to make their offers more competitive with neighboring states. The benefits of this bill apply statewide; helping create and retain jobs across Kansas. Since the amendments to the IMPACT program last year, there have been five projects in Johnson County alone that have utilized the program. The success for Kansas occurred because of the flexibility this legislation provides. Some of the projects would simply not have been able to use our previous traditional incentives which were restricted primarily to training. In closing, Mr. Ashton stated that passage of the bill would give the Legislature more time to continue looking at options for improving our competitive position with neighboring states in economic development.

Chairperson Brownlee opened the floor for questions. Senator Kelly asked the question of why they were

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 7, 2006 in Room 123-S of the Capitol.

asking for an extension to 2008 rather than making this permanent. Mr. Kelly stated they are still gathering data and would have that information before the extension runs out and they would be able to determine if this is the way to continue or if there is another way that would benefit the state better.

Being no further questions or discussion on **HB 2856**, Chairperson Brownlee closed the hearing.

Chairperson Brownlee called the Committee's attention to the fact there was an oversight on a conceptional bill at the request of Senator Wysong who asked for the statute to be amended which gives the purpose of the Senate Commerce Committee and the House Eco Devo Committee to add a 6th item regarding workforce development and Chairperson Brownlee would like to add it to this bill. She stated the Committee would look closer at the balloon one day this week.

Chairperson Brownlee opened the hearing on **HB 2658-Gift certificates, restrictions** by introducing Representative David Huff to give his testimony as a proponent of **HB 2658**. Representative Huff offered written testimony. (Attachment 3) Representative Huff stated **HB 2658** relates to the purchasing and redemption of a gift certificate or gift card. He stated when a gift card is purchased it is paid for in advance and there is no reason there should be an expiration date or reduction of value. He stated he had a business tell him they rely on less than 100% redemption of the prepaid certificates and cards for extra profits. In closing, Representative Huff stated **HB 2658** eliminates the expiration date and the reduction of value on a gift certificate or gift card that was paid for in advance.

Chairperson Brownlee introduced Representative John Edmonds to give his testimony as a proponent of **HB 2658**. Representative Edmonds offered written testimony. (Attachment 4) Representative Edmonds stated he wished to address one specific point of implementation. You may hear from vendors that the costs of record keeping justify their behavior, or that accounting standards greatly increase the cost of carrying gift certificates and the like on the company books. He stated as a practicing CPA that nothing could be further from the truth. In any retail establishment, the numbers of cash, check, and credit card transactions dwarfs the likely volume associated with gift certificates. Secondly, although GAAP does call for specific treatment in the recording of contingent liabilities associated with gift certificates, these are intended to be accounted for in the aggregate, not as individuals, and thus would usually be captured by a single monthly or annual journal entry.

Chairperson Brownlee introduced Representative Ray Merrick to give his testimony as a proponent of **HB 2658**. Representative Merrick stated he was in support of the bill. He feels when a customer pays for a gift certificate, the gift certificate should not have an expiration date or penalty if it is not used by a certain date because the store has already received the money.

Chairperson Brownlee introduced Ron Hein representing the Kansas Restaurant and Hospitality Association to give his testimony as a proponent of **HB 2856**. Mr. Hein presented written testimony. (Attachment 5) Mr. Hein stated although they had previously opposed similar legislation, they stand in support of this bill as amended in the House. Mr. Hein stated when a gift card is purchased for a stated monetary value, and that gift certificate expires and the recipient of the gift certificate is not able to redeem that certificate due to its expiration, the result is frustration and anger. He stated he does have some issues with this bill with some of the language; which is a drafting error and he would like for the language to be cleaned up. Also, he stated the penalty, pursuant to the Consumer Protection Act, would be a \$10,000 civil penalty per occurrence which he feels does not fit the crime. In closing he asked the Committee to address these issues, but either way, the KRHA supports the bill.

Upon the completion of Mr. Hein's testimony, there was discussion with the Committee regarding the punishment for the crime and Mr. Hein's concerns.

Chairperson Brownlee introduced Emile Burdette Rush from the Attorney General's Consumer Protection Division, to give her testimony as a neutral party to **SB 2856**. Ms. Rush presented written testimony. (Attachment 6) Ms. Rush stated the Attorney General's Office raises no objection to the temporal limits on gift certificated proposed by this bill and it is unlikely that such an addition to the KCPA will create any substantial burden on the Attorney's Office. She stated a quick review of other state statutes reveals that a

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 7, 2006 in Room 123-S of the Capitol.

handful of states prohibit gift certificate expiration dates.

Chairperson Brownlee introduced Albert Thompson to give his testimony as a proponent of **SB 2856** with an added amendment. Mr. Thompson presented written testimony. (Attachment 7) Mr. Thompson stated he is testifying as a private citizen in Topeka. He urged the Committee to consider including within its scope the amendment he is offering today. He stated his amendment would reduce the abusive effects of certain pricing practices associated with so called "mail in rebate" schemes. Kansas consumers are routinely bombarded with a plethora of advertisements touting ostensibly low prices for a wide variety of goods and services-products that simply cannot be purchased for the stated price. They cannot be purchased for the stated price because the actual dollar amounts required to bring these items home or obtain these services are often two to three times the stated prices, and the purchaser is required to embark upon a tortuous "mail in rebate" process obviously designed to dissuade, deflect, and discourage the consumer's recapture of funds. Mr. Thomas offered amendments to the Committee addressing his concerns.

Upon Conclusion of Mr. Thompson's testimony, Chairperson Brownlee entered in discussion with Ms. Rush, asking if the Attorney General's office could do a search to see if any other states are addressing the issue of rebates. Brian Brown, Deputy Attorney General, entered the discussion and stated he had seen more complaints on rebates than gift cards. He further stated issuers of gift cards in this state should be bonded to protect the consumer. He also discussed the punishment for **HB 2856**. Mr. Thompson entered the discussion siting more facts of the research he had done on the issue of rebates.

Chairperson Brownlee introduced Mike Miroslaw, President of Store Financial to give his testimony as an opponent of **HB 2856**. Mr. Miroslaw offered written testimony for himself and Michelle Hamilton and stated she would speak upon conclusion of his testimony. (Attachment 8) Mr. Miroslaw gave a little background of his company. He stated Store Financial Services is located in Johnson County and employs 41 people in their office. He stated that Store Financial Services handles the gift card programs at Kansas shopping centers including Oak Park Mall, the Legends Shopping Center at Village West (pending) , Town Center Plaza and the City of Prairie Village, Kansas. He further stated their gift cards operate on the MasterCard platform.

Upon the conclusion of Mr. Miroslaw's testimony, Chairperson Brownlee introduced Michelle Hamilton, Counsel for Store Financial Services. Ms. Hamilton stated Store Financial Services is opposed to **HB 2658** in its current form and would suggest the following changes. In Section 1 (c) which reads "no dormancy fee shall be charged against a gift certificate", should be stricken; in Section 2, (f), (1) which reads "Dormancy fee means a charge imposed against the unused value of a gift certificate or gift card due to inactivity", should also be stricken. And lastly, Section 2, (f), (3) in the last line the language "but shall not include a card issued by a retail merchant or a card issued by a shopping mall for use at multiple locations", should also be stricken. In closing. Ms. Hamilton urged the Committee to accept the changes.

Upon the conclusion of Ms. Hamilton's testimony there was discussion with the Committee and Ms. Hamilton and Mr. Miroslaw. The Committee was told many states have legislation similar to this legislation on gift cards. The Committee has concerns about the fine print with the terms and conditions of gift certificates. Mr. Brown, the Deputy Attorney General, stated he felt he had a solution for some of the concerns of the Committee and Chairperson Brownlee by adding certain language. Chairperson Brownlee asked Helen Pedigo, to get with Deputy Attorney Brown to discuss his language changes.

With no further discussion, Chairperson Brownlee adjourned the meeting at 9:30 a.m. with the next scheduled meeting being Wednesday, March 8, 2006 at 8:30 a.m. in room 123S.



Howard R. Fricke, Secretary

HB 2856

Testimony Presented by Steve Kelly

Senate Commerce Committee

March 7, 2006

For more information on this topic contact:

Patty Clark

Phone: (785) 296-3481

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Senate Commerce Committee
March 7, 2006

Attachment 1-1

Good afternoon, I am Steve Kelly with the Kansas Department of Commerce. I appreciate the opportunity to express our support for HB 2856.

The 2005 Legislature amended the IMPACT statute to allow enhanced use for non-training projects. This change was made at the request of the Department of Commerce in consort with a number of Chambers of Commerce. It allowed Kansas to improve our competitiveness in the face of aggressive new economic development measures that were passed by the Missouri legislature. The change to the IMPACT law was made for a limited time only with the understanding that the Departments of Commerce and Revenue would work on analysis of our various programs and come to the 2006 Legislature with the information necessary to modify programs and approaches to be effective in the future. As you were told by Secretary Wagnon last week, the work has been hampered by a lack of data. While that is being addressed, Kansas should not lose the tool we've had in place for the past year. We have been able to use the financing available through this change to successfully incent projects such as the retention of the Applebees headquarters in Lenexa and the expansion of the Farmers Insurance customer service operation in Olathe.

We would appreciate your favorable consideration of this bill. I am happy to answer any questions you may have.



LEGISLATIVE TESTIMONY

March 7, 2006

TO: Senators Karin Brownlee and Nick Jordan, Co-Chairs
Members, Senate Commerce Committee

FROM: Wes Ashton, Overland Park Chamber of Commerce

RE: HB 2856- IMPACT Program Provisions

Co-Chairs Brownlee and Jordan, and members of the committee, thank you for the opportunity to testify today in support of HB 2856, which would extend the changes made last session to the IMPACT program and allow for greater flexibility in its use.

Last session when the Chamber supported this concept, it was in response to the fact that in Kansas, we were often at a competitive disadvantage in the economic development arena, particularly when it came to retaining high quality jobs. Other states' offers were significantly higher than what was available in Kansas for retention and recruitment incentives.

The changes made in the 2005 Legislature had an extremely positive and immediate effect on economic development projects in Overland Park, as well as the state. This was an improved economic development tool for Kansas, and helped to make our offers more competitive with neighboring states. The benefits of this bill apply statewide; helping create and retain jobs across Kansas.

Since the amendments to the IMPACT program last year, there have been five projects in Johnson County alone that have utilized the program. These successes for Kansas occurred because of the flexibility this legislation provides. Some of the projects would simply not have been able to use our previous traditional incentives which were restricted primarily to training.

In Overland Park this year, IMPACT improvements have allowed us to create incentives in conjunction with the Department of Commerce and the City of Overland Park for two significant projects, one for attraction of new jobs, and the other for retention of a rapidly growing company. Earlier this year, Prescription Solutions began operations in Overland Park, bringing \$34 million in investment, and an eventual employment of 1300. IMPACT assisted us in retaining Capital One Home Loans, keeping 149 high paying jobs in OP, and eventual employment growth of an additional 751 jobs and \$49 million investment. The provisions included in HB 2856 would continue the positive impact of the last year through 2008.

There are three other examples in Johnson County of the success of IMPACT this past year. All three were courted by another state as well as by other cities in Kansas. Each of these ultimately

made the decision to stay in Kansas, and our flexibility with IMPACT provisions was critical to each project. These projects were:

Applebee's - 543 jobs retained; \$45 million capital investment

Farmer's Insurance - 280 jobs retained; 483 new; \$24 million capital investment

Freightquote.com - 408 jobs retained; 267 new; \$18 million capital investment

These successes are why the Chamber is so supportive of HB 2856, which will extend our ability to be competitive in retention and attraction for the next two years.

Passage of this bill will give the Legislature more time to continue looking at options for improving our competitive position with neighboring states in economic development. This bill gives the State and local units of government the needed flexibility to work out appropriate agreements with companies considering relocation and expansion in Kansas.

Thank you for your consideration of this important issue and the opportunity to offer testimony in support of HB 2856.

3
Thank you Chairman Brownlee, Chairman Jordan & Ranking member Kelly,

HB-2658 relates to the purchasing and redemption of a gift certificate or gift card. When you pre-purchase or receive a certificate or card that has been paid for in advance there is no reason there should be an expiration date or reduction of value. The retailer or business has the money in advance.

Most business in Kansas honor certificates & cards even with an expiration date, but some don't.

Typically if you have overlooked your certificate or card, find it, look at the expiration date, and it is expired you throw it away. I had a business tell me that they rely on less than 100% redemption of these prepaid certificates and cards for extra profits. Yes we do have some business who will not redeem a certificate or card after an expiration date, even though it was prepaid. This is when our citizens truly get perturbed and contact their Legislator or the consumer protection division of the Attorney General's office. HB-2658 eliminates the expiration date and the reduction of value on a gift certificate or gift card that was paid for in advance. There are now 14 states which have this type of law.

I will stand for questions.

Senate Commerce Committee

March 7, 2006

Attachment

3-1

Rep. David Huff

Bill Brief for HB 2658

Sponsored by: Rep. David Huff

Final Action: Be passed
As amended

Reporting Committee: House Commerce

Date: 2-23-06

A Bill Concerning: Gift Certificates and gift cards; concerning certain restrictions.

What Bill Does: Makes prepaid gift cards and gift certificates not lose their value for lack of use over a 5 year period.

Political Reality/Implications: Good for our constituents who buy prepaid gift certificates and gift cards knowing they will retain their full prepaid value with a 5 year expiration date. This is a common sense & consumer friendly bill.

Committee Amendments: Amended gift cards into bill with certificates!

Possible Floor Amendments: None expected

Proponents:

Rep David. Huff
Rep. John Edmonds
Rep. Ray Merrick
Ron Hein - Restaurant & Food Dealers Assoc
Emilie Rush- Attorney General's Office

Opponents: None

Fiscal Note: None

Who will carry the Bill: Rep. David Huff

Is this bill ready to run on the floor? Yes/No: Yes

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2658

As Amended by House Committee on
Commerce and Labor

Brief*

HB 2658 would make it a violation of the Kansas Consumer Protection Act from and after January 1, 2007, to sell a gift card or gift certificate containing an expiration date which is less than five years from the date of purchase.

The above provision would not apply to any of the following gift certificates for gift cards provided the expiration date appears on the front of the gift certificate or gift card:

- Gift certificates or gift cards that are distributed by the issuer to a consumer without any money or other thing of value being given in exchange for the gift certificate or gift card by the consumer; or
- Gift certificates or gift cards that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes.

The bill would provide that a merchant shall not be required to redeem a gift card or gift certificate for cash. No dormancy fee shall be charged against a gift certificate or gift card. No fees may be charged against the balance of a gift card or gift certificate within 12 months from the date of issuance of the card.

Background

The bill was supported by Representatives Huff, Merrick and Edwards and representatives of the Kansas Restaurant and Hospitality Association and the Kansas Attorney General's Office. The Kansas Chamber of Commerce and Industry provided written testimony as a neutral party.

The House Committee amendments were clarifying in nature.

The bill has no fiscal impact on the state.

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HOUSE OF REPRESENTATIVES

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JOHN T. EDMONDS

112TH DISTRICT

CHAIRMAN

COMMITTEE ON FEDERAL AND STATE AFFAIRS

LEGISLATIVE POST AUDIT COMMITTEE

JOINT COMMITTEE ON PENSIONS, INVESTMENTS AND BENEFITS

March 7, 2006

Senator Brownlee & Senator Jordan
Senate Committee on Commerce

Thank you for the opportunity to rise in support of Representative Huff and as a proponent of House Bill 2658.

I have long felt that the abuses perpetrated on some consumers by vendors of gift certificates and such are nothing short of unconscionable. No vendor should be allowed to take the customer's money and then wiggle out of some or all of the obligation by the use of service charges, expiration dates, or other similar devices. After all, its not as if the money expires, and the vendor actually benefits from inflation if the customer delays, since the certificate loses purchasing power over time. But these are acceptable risks, not the near thievery associated with the practices that HB 2658 addresses.

I wish to address one specific point of implementation. You may hear form vendors that the costs of record keeping justify their behavior, or that accounting standards greatly increase the cost of carrying gift certificates and the like on the company books. I will tell you, as a practicing CPA that nothing could be further from the truth. In any retail establishment, the numbers of cash, check and credit card transactions dwarfs the likely volume associated with gift certificates. Any competently run accounting system that can deal with the former can easily deal with the later. Secondly, although GAAP does call for specific treatment in the recording of contingent liabilities associated with gift certificates, these are intended to be accounted for in the aggregate, not as individuals, and thus would usually be captured by a single monthly or annual journal entry.

Thank you, again, for the opportunity to appear before you. I would hope that the Committee will favorably consider the provisions of HB 2658 and recommend it favorably for passage.

Senate Commerce Committee

March 7, 2006

Attachment

4-1

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

Testimony re: HB 2658
Senate Commerce Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
March 7, 2006

Madame Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association (KRHA). The KRHA is the trade association for restaurant, hotel, lodging and hospitality businesses in Kansas.

KRHA supports the intent of HB 2658 and, although we have previously either opposed similar legislation, or have supported the legislation but only with amendments to address concerns we have, we stand in support of this bill as it has been amended in the House.

For the record, Rep. Huff introduced a similar bill in 2002 which the KRHA opposed. Several of the concerns raised by us at that time have been solved with the legislation before you today. We especially appreciate Rep. Huff addressing our concerns regarding donated gift certificates, as this bill is limited to gift certificates which are purchased for face value, and redemption for cash issues, both of which were addressed in the House.

When a gift certificate is purchased for a stated monetary value, and that gift certificate expires and the recipient of the gift certificate is not able to redeem that certificate due to its expiration, the result is frustration and anger. Most businesses will honor expired gift certificates despite the expiration date because it is good business to do so. They will make a happy customer rather than sending away an unhappy customer who will complain to his or her friends and acquaintances about the "loss" sustained.

However, our Association would raise three issues which we thought were addressed in the House Commerce Sub-Committee on this legislation, but which, for different reasons, bear addressing.

First, and most simply, there was what appears to be a technical Revisor's error on page 2, lines 19-20. Although this issue does not directly impact the KRHA, the subcommittee clearly struck all language after the word "both" on line 19, and all language on line 20 except the period. The bracket at the end of line 20 of the bill was the second bracket of what was to be deleted language. I have talked to Norm Furse about this and he has

Senate Commerce Committee

March 7, 2006

Attachment 5-1

March 7, 2006

Page 2

assured me this was just a drafting error.

Secondly, again a technical issue that warrants revision: On page 2, subsection 1(f)(3), gift certificate is defined as "...a written promise given in exchange for payment..." However, on page 1, at subsection 1(d), the bill reads "This section shall not apply to any of the following gift certificates...[including] gift certificates...distributed by the issuer... Without any money or other thing of value being given in exchange..." Such "gift certificates" do not even meet the definition of "gift certificates" on page 2. I think this can easily be corrected by the Revisor by amending the definition in subsection 1(f)(3) appropriately.

Lastly, KRHA opposed the provision of the original bill which made this subject to penalties pursuant to the Consumer Protection Act. The penalties for the Consumer Protection Act are set out in K.S.A. 50-636 (see attachment) and provide for up to a \$10,000 civil penalty **per occurrence**. At the subcommittee meeting, Rep. Scott Schwab made a motion to delete what was then subsection 1(g) (current bill subsection 1(d)) so as to "eliminate the penalty under the Consumer Protection Act." The motion passed unanimously. He did not address what was then subsection 1(h), currently subsection 1(h) of the amended House Bill.

When the full committee considered the subcommittee report, the Revisor pointed out that the subcommittee had deleted the language about unconscionable acts, but had not deleted current subsection 1(g), and therefore there would still be penalties pursuant to the Consumer Protection Act, contrary to Rep. Schwab's stated intent.

The problem now is that the bill is unclear as to whether there is a penalty or not. The intent of the subcommittee was that there not be a penalty. The full committee never address, nor did the subcommittee correct, the Revisor's comment. However, to confuse the matter more, K.S.A. 50-636 requires "the commission of any act or practice **declared to be a violation** of this act [the Consumer Protection Act] shall render the violator liable" to the appropriate parties who can seek remedies pursuant to the CPA. This bill does not **declare a violation of this bill to be a violation of the CPA**. HB 2658 merely says that the bill "shall be a part of and supplemental to the Kansas consumer protection act."

I would interpret the language of the bill as that it is **not** a violation of the CPA. That would clearly comply with the subcommittee's intent. But the failure to more clearly state whether this bill is simply to be placed into the statutes as a part of the CPA, or to address whether a violation of this bill is actually a violation of the CPA, since there is no

March 7, 2006

Page 3

such "declaration", leaves the public with legal uncertainty.

This problem needs to be resolved, and I would suggest a resolution that either makes it clear that there is no penalty, or sets a penalty which is more consistent with the level of the offense in violation of this legislation. This act would subject the business to substantial litigation costs and penalties well beyond the value of any certificate that would ever be sold by any of our members. We would suggest that the punishment doesn't fit the crime, especially with regards to a statute which may not be widely known by the public and which is applicable to virtually any business in or out of the state. .

We hope this committee will address these issues, but either way, the KRHA supports the bill.

Thank you very much for permitting me to testify and I will be happy to yield to questions.

50-636

Chapter 50.--UNFAIR TRADE AND CONSUMER PROTECTION

Article 6.--CONSUMER PROTECTION

50-636. Civil penalties.(a) The commission of any act or practice declared to be a violation of this act shall render the violator liable to the aggrieved consumer, or the state or a county as provided in subsection (c), for the payment of a civil penalty, recoverable in an individual action, including an action brought by the attorney general or county attorney or district attorney, in a sum set by the court of not more than \$10,000 for each violation. An aggrieved consumer is not a required party in actions brought by the attorney general or a county or district attorney pursuant to this section.

(b) Any supplier who willfully violates the terms of any court order issued pursuant to this act shall forfeit and pay a civil penalty of not more than \$20,000 per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an order shall retain jurisdiction, and in such cases, the attorney general, acting in the name of the state, or the appropriate county attorney or district attorney may petition for recovery of civil penalties.

(c) In administering and pursuing actions under this act, the attorney general and the county attorney or district attorney are authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(d) Any act or practice declared to be a violation of this act not identified to be in connection with a specific identifiable consumer transaction but which is continuing in nature shall be deemed a separate violation each day such act or practice exists.

History: L. 1973, ch. 217, § 14; L. 1974, ch. 230, § 4; L. 1976, ch. 236, § 6; L. 1978, ch. 210, § 2; L. 1991, ch. 159, § 9; L. 1993, ch. 177, § 3; L. 2001, ch. 105, § 2; July 1.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

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ATTORNEY GENERAL

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Testimony of
Emilie Burdette Rush
Office of Attorney General Phill Kline
Consumer Protection Division
Before the Senate Commerce and Labor Committee
Re: HB 2658
March 7, 2006

Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Phill Kline and to provide testimony regarding House Bill 2658. My name is Emilie Burdette Rush, and I serve in the Attorney General's Consumer Protection Division.

The Attorney General's Office raises no objection to the temporal limits on gift certificates proposed by this bill. It is unlikely that such an addition to the KCPA will create any substantial burden on the Attorney General's Office.

Under the current scope of the KCPA, any litigant can plead a cause of action when confronted with a gift card that contains objectively deceptive or unconscionable terms. The Office of Attorney General has not been faced with the opportunity to so litigate in the past years. Furthermore, a review of the Consumer Protection Division's database reveals business failure and/or bankruptcy after the sale of gift cards as the most significant problem faced by Kansas gift card holders who turn to the Consumer Protection Division for assistance. In most such instances consumers have no recourse other than that held by the class of unsecured creditors under bankruptcy law.

A quick review of other state statutes reveals that a handful of states prohibit gift certificate expiration dates. Several other states stop short of placing an outright prohibition on expiration dates but do set minimum expiration terms. A chart summarizing each states' gift certificate and gift card statutes compiled by the National Conference of State Legislatures has been provided for your review.

Under the current scope of the KCPA, a litigant who has been victimized by the sale of a gift card by would be able to sustain litigation only if the Kansas court determined that the terms of the gift card were misrepresented or unconscionable. While the KCPA contains general principles guiding a court in making this decision, there is no statute that specifically addresses the terms of gift cards. The passage of HB 2658 would address this lack of statutory guidance by rendering certain temporal limits unconscionable per se, and, as such, would be expected to result in a change in current practices as to the placing of temporal limits upon gift cards. This is especially the case given that failure to obey the law after the passage of HB 2658 could result in a maximum fine of \$10,000

Senate Commerce Committee

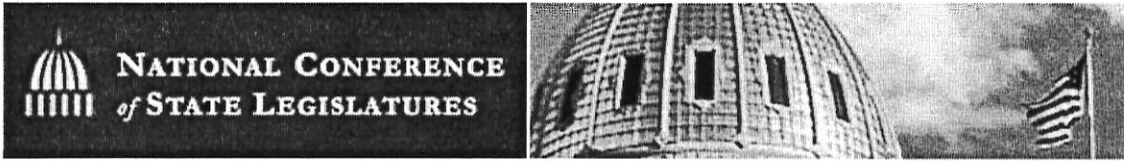
March 7, 2006

Attachment 6-1

Page 2

according to KSA 50-636 and double of that fine if the temporal limits were an artifice intended to take advantage of the aged or disabled according to KSA 50-677.

I thank you, on behalf of Attorney General Phill Kline, for this opportunity to testify before this Committee.



Gift Cards and Gift Certificates Statutes and Recent Legislation

Last Updated: November 8, 2005

NCSL Contact: Heather Morton, Denver (303) 364-7700

STATE STATUTES

State:	Expiration Date Provision:	Fee Provision:	Escheat Provsion:
Alabama			2004 Act 440 Ala Code §35-12-70 <i>et seq.</i> Gift certificate is presumed abandoned three years after June 30 of the year it was sold. If redeemable in merchandise only, amount abandoned is 60 percent of the certificate's face value.
Alaska			2004 Chapter 90 Alaska Stat. §34.45.110 <i>et seq.</i> Gift certificate is presumed abandoned three years after is it unclaimed by the owner. Amount presumed abandoned is the price paid by the purchaser for the gift certificate.
Arizona	2005 Chapter 315 Ariz. Rev. Stat. Ann. §44-7202 Must disclose expiration date	2005 Chapter 315 Ariz. Rev. Stat. Ann. §44-7202 Must disclose amount of fee and when fee is incurred	Ariz. Rev. Stat. Ann. §44-301 <i>et seq.</i> Gift certificates/cards are not considered property
Arkansas			Ark. Stat. Ann. §18-28-201(13)(B) Gift certificates are not specifically included.
California	Cal. Civil Code §1749.5-§1749.51 Expiration date prohibited	Cal. Civil Code §1749.5-§1749.51 Dormancy fee allowed; all other fees prohibited	Cal. Civ. Proc. Code §1520.5 Gift certificates purchased after 1997 are not subject to escheat.
Colorado			Colo. Rev. Stat. §38-13-101 <i>et seq.</i> Gift certificate redeemable in cash subject to escheat if unclaimed by owner by more than five years.
Connecticut	2005 Public Act 05-189 Conn. Gen. Stat. §42-460 Expiration date prohibited	2005 Public Act 05-189 2005 Public Act 05-273 Conn. Gen. Stat. §3-60(d) Service fees prohibited	2005 Public Act 05-189 2003 Public Act 03-1 Conn. Gen. Stat. §3-56(a) <i>et seq.</i> The value of a gift certificate that is not redeemed three years after the later of 1) the date of purchase or issuance of the gift certificate, or 2) the date of the last transaction by the owner that increased or decreased the value of the gift certificate, is presumed abandoned.
Delaware			Del. Code Ann. tit. 12, §1197 <i>et seq.</i> If owner dies intestate, is missing for more than five years or abandons property it reverts to the state.

4
6-8

District of Columbia			D.C. Code Ann. §41-101 <i>et seq.</i> Gift certificates and credit memos held or owing in the ordinary course of the holder's business that have remained unclaimed by the owner for more than five years after becoming payable or distributable are presumed abandoned. If a gift certificate or credit memo is redeemable for cash or merchandise, its value for purposes of this chapter shall be the amount paid by the purchaser.
Florida			Fla. Stat. §717.001 <i>et seq.</i> Gift certificates are not specifically included.
Georgia	2005 Act 367 Ga. Code §10-1-393 An expiration date must be conspicuous	2005 Act 367 Ga. Code §10-1-393 Amount of dormancy/non-use fees must be conspicuously printed	Ga. Code §44-12-205 A gift certificate unclaimed by the owner five years after it is issued is abandoned.
Hawaii	2004 Act 136 Hawaii Rev. Stat. §481B-13 An expiration date must be greater than two years and conspicuous; if no expiration date, valid in perpetuity	2004 Act 136 Hawaii Rev. Stat. §481B-13 Service fees prohibited	Hawaii Rev. Stat. §523A-1 <i>et seq.</i> Any property unclaimed by the owner for five years is abandoned; includes gift certificates
Idaho			Idaho Code §14-501 <i>et seq.</i> Any property unclaimed by the owner for five years is abandoned; gift certificates with an expiration date expire as per that date.
Illinois	2004 Public Act 93-945 Ill. Rev. Stat. ch. 815, §505/2QQ Expiration date or toll-free phone number to inquire regarding expiration date must be conspicuous	2004 Public Act 93-945 Ill. Rev. Stat. ch. 815, §505/2QQ All fees, if any, must be disclosed conspicuously on the gift certificate.	2004 Public Act 93-945 Ill. Rev. Stat. ch. 765, §1025/1 <i>et seq.</i> Only applies to gift certificates/cards with an expiration date or fees. After property is abandoned, it reverts to either the state or the holder.
Indiana			Ind. Code §32-34-1-1 Gift certificates and gift cards are exempted from unclaimed property act.

5
6-4

Iowa		Iowa Code §556.9 No fee can be charged unless there is a contract	Iowa Code §556.1 <i>et seq.</i> Gift certificates unclaimed by the owner three years after issuance are abandoned.
Kansas			Kan. Stat. Ann. §58-3934 Gift certificates are not specifically included.
Kentucky			Ky. Rev. Stat. §393.010 Gift certificates are not specifically included.
Louisiana	2004 Act 69 La. Rev. Stat. Ann. §51:1423 An expiration date must be greater than five years and conspicuous	2004 Act 69 La. Rev. Stat. Ann. §51:1423 No service fees; one-time handling fee less than \$1 allowed	La. Rev. Stat. Ann. §9:151 <i>et seq.</i> Gift certificate is presumed abandoned three years after December 31st of the year it was sold.
Maine	2005 Chapter 357 Me. Rev. Stat. Ann. tit. 33, §1953(1)(G) No limit on when owner can redeem gift certificate	2005 Chapter 357 Me. Rev. Stat. Ann. tit. 33, §1953(1)(G) Me. Rev. Stat. Ann. tit. 33, §1956 No service fees; one-time handling fee and added-value fee allowed if disclosed in writing	2005 Chapter 357 Me. Rev. Stat. Ann. tit. 33, §1951 <i>et seq.</i> Gift certificates/cards are presumed abandoned two years after December 31st of the year of the last transaction.
Maryland	2005 Chapter 456 An expiration date must be greater than four years and conspicuous on a gift certificate; gift cards can be subject to an expiration date.	2005 Chapter 456 Service fees cannot be charged until more than four years after gift certificate is sold. Gift cards are subject to service fees without limit.	Md. Commercial Code Ann. §17-101(m) Gift certificates are exempted from unclaimed property act.
Massachusetts	2003 Chapter 18 Mass. Gen. Laws. Ann. ch. 200A, §5D Mass. Gen. Laws Ann. ch. 266, §75C A gift certificate expiration date must be at least seven years after issuance.		Mass. Gen. Laws. Ann. ch. 200A, §1 Gift certificates are exempted from unclaimed property act
Michigan			Mich. Comp. Laws §567.221 <i>et seq.</i> Any property unclaimed by the owner for five years is

6
6-5

			abandoned; includes gift certificates.
Minnesota			Minn. Stat. §345.39 Gift certificates are exempted from definition of intangible property.
Mississippi			Miss. Code Ann. §89-12-1 <i>et seq.</i> Any property unclaimed by the owner for five years is abandoned; includes gift certificates.
Missouri			Mo. Rev. Stat. §447.500 <i>et seq.</i> Intangible property unclaimed by the owner for five years is abandoned; gift certificates not mentioned.
Montana	2005 Chapter 291 Expiration dates prohibited	2005 Chapter 291 Mont. Code Ann. §70-9-806 Service fees on gift certificates prohibited	Mont. Code Ann. §70-9-801 <i>et seq.</i> Gift certificate is presumed abandoned three years after December 31st of the year it was sold. If redeemable in merchandise only, amount abandoned is 60 percent of the certificate's face value.
Nebraska			Neb. Rev. Stat. §69-1301 <i>et seq.</i> A gift certificate unredeemed for more than three years is abandoned. Presumed amount abandoned is the face value of the certificate itself.
Nevada	2005 Chapter 336 Expiration date or a toll-free phone number to inquire regarding expiration date must be conspicuous.	2005 Chapter 336 No service fees within the first year of issuance; after the first year, all fees, if any, must be disclosed on the gift certificate	Nev. Rev. Stat. §120A.010 <i>et seq.</i> Intangible property unclaimed by the owner for three years is abandoned; includes gift certificates.
New Hampshire	N.H. Rev. Stat. Ann. §358-A:2 Expiration date prohibited for gift certificates valued at less than \$100; expiration date allowed for gift certificate valued at more than \$100.	N.H. Rev. Stat. Ann. §358-A:2 Service fees on gift certificates prohibited.	N.H. Rev. Stat. Ann. §471-C:1 <i>et seq.</i> Any gift certificate remitted to the state prior to January 1, 1998 is deemed abandoned.

7
6-6

New Jersey	N.J. Rev. Stat. §56:8-110 Expiration date must be disclosed to purchaser and conspicuously displayed on gift certificate.		N.J. Rev. Stat. §46:30B-1 Gift certificates are not specifically included.
New Mexico			N.M. Stat. Ann. §7-8A-1 <i>et seq.</i> Gift certificate is presumed abandoned three years after December 31st of the year it was sold. If redeemable in merchandise only, amount abandoned is 60 percent of the certificate's face value.
New York	2004 Chapter 171 2004 Chapter 507 N.Y. General Business law §396-i Expiration date must be conspicuously disclosed to purchaser	2004 Chapter 171 N.Y. General Business law §396-i Any service fees must be conspicuously disclosed to purchaser; no service fee before the 13 th month after issuance.	2004 Chapter 170 N.Y. Abandoned Property Law §103 N.Y. Abandoned Property Law §1315 Property unclaimed by the owner for five years is abandoned; gift certificates are included.
North Carolina		N.C. Gen. Stat. §116B-57 Reasonable dormancy fee may be assessed on abandoned property	N.C. Gen. Stat. §116B-51 <i>et seq.</i> Gift certificate with an expiration date is presumed abandoned three years after the year it was sold. Amount abandoned is 60 percent of the certificate's face value.
North Dakota	2005 S.B. 2335 N.D. Cent. Code §51-29-02 An expiration date must be more than six years	2005 S.B. 2335 N.D. Cent. Code §51-29-02 Service fees prohibited	N.D. Cent. Code §47-30.1-01 <i>et seq.</i> Gift certificates are not specifically included.
Ohio			Ohio Rev. Code Ann. §169.01(B)(2)(d) Gift certificates are exempted from unclaimed property fund.
Oklahoma	2005 Chapter 233 An expiration date must be greater than five years.	2005 Chapter 233 Service fees prohibited	Okla. Stat. tit. 60, §651 <i>et seq.</i> Gift certificates are not specifically included.
Oregon			Or. Rev. Stat. §98.302(8) Gift certificates are not specifically included.
Pennsylvania			Pa. Cons. Stat. tit. 72, §1301 <i>et seq.</i> Gift certificates not specifically included.

6-9

Rhode Island	2004 Chapter 548 R.I. Gen. Laws §6-13-12 Expiration dates prohibited	2004 Chapter 548 R.I. Gen. Laws §6-13-12 Service fees prohibited	2005 Chapter 202 R.I. Gen. Laws §33-21.1-1 <i>et seq.</i> A gift certificate is never presumed abandoned.
South Carolina	2004 H.B. 4688 S.C. Code Ann. §39-1-55 Disclosed expiration date allowed; if undisclosed, can't be less than one year.		S.C. Code Ann. §27-18-10 <i>et seq.</i> Gift certificates are not specifically included.
South Dakota			S.D. Codified Laws Ann. §43-41B-1 <i>et seq.</i> A gift certificate unclaimed by its owner five years after it was sold is abandoned. Amount abandoned is the price paid by the purchaser for the certificate.
Tennessee			Tenn. Code Ann. §66-29-135 Gift certificate is presumed abandoned if it remains unclaimed either before the expiration date or two years after it is issued. Amount abandoned is the price paid by the purchaser of the certificate. If the certificate is redeemable for merchandise only, amount abandoned is 60 percent of price paid by purchaser for the certificate. A gift certificate issued after December 31, 1998, shall not be abandoned property and shall not be subject to this part if the issuer of the certificate does not impose a dormancy charge and when the gift certificate: 1) Conspicuously states that the gift certificate does not expire; 2) Bears no expiration date; or 3) States that a date of expiration printed on the gift certificate is not applicable in Tennessee. Property described above, without regard to any activity or inactivity within the past five years, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take such property by will and no one to take such property by intestate succession.
Texas	2005 S.B. 446 Tex. Business & Commerce Code Ann. §35.42 Expiration date must be disclosed to purchaser	2005 S.B. 446 Tex. Business & Commerce Code Ann. §35.42 Any fee or charge must be disclosed to purchaser.	Tex. Property Code Ann. §72.1016 The stored value card is presumed abandoned to the extent of its unredeemed value on the earlier of: the card's expiration date; or three years after the card was issued, if the card is not used after it is issued, or the date the card was last used.
Utah			Utah Code Ann. §67-4a-101 <i>et seq.</i> A gift certificate greater than \$25 is abandoned if it is unused for five years. The amount considered abandoned is the amount paid for the gift certificate itself.

9
6-8

Vermont	2005 Act 39 Vt. Stat. Ann. tit. 8, §2701 <i>et seq.</i> An expiration date must be greater than three years and conspicuous.	2005 Act 39 Vt. Stat. Ann. tit. 8, §2701 <i>et seq.</i> Service fees prohibited	Vt. Stat. Ann. tit. 27, §1208 <i>et seq.</i> Gift certificates are not specifically included.
Virginia	2005 Chapter 269 and 303 Va. Code §59.1-531 Expiration date, toll-free phone number, or Web site to inquire regarding expiration date must be conspicuous.	2005 Chapter 269 and 303 Va. Code §59.1-531 Requires all fees to be disclosed.	Va. Code §55-210.1 <i>et seq.</i> A gift certificate is abandoned if it is unclaimed by the owner for greater than five years.
Virgin Islands			V.I.C. tit. 28, §652 <i>et seq.</i>
Washington	2004 Chapter 168 Wash. Rev. Code §19.240.005 <i>et seq.</i> Expiration date allowed when no money paid for gift certificate or when certificate is valid for artistic or cultural organizations and disclosed to the user.	2004 Chapter 168 Wash. Rev. Code §19.240.005 <i>et seq.</i> Dormancy fees are allowed if disclosed to the purchaser and if the card hasn't been used in at least 24 consecutive months.	Wash. Rev. Code §63.29.010 <i>et seq.</i> A gift certificate is presumed abandoned if it is unclaimed for more than three years, and if it was purchased with consideration.
West Virginia			W. Va. Code §36-8-1 <i>et seq.</i> Gift certificate is presumed abandoned three years after December 31st of the year it was sold. If redeemable in merchandise only, amount abandoned is 60 percent of the certificate's face value.
Wisconsin			Wis. Stat. §177.01 <i>et seq.</i> Gift certificates are not specifically included.
Wyoming			Wyo. Stat. §34-24-100 <i>et seq.</i> A gift certificate greater than \$100 and unredeemed for three years is presumed abandoned. The amount deemed abandoned is the price paid for the certificate itself.

STATE LEGISLATION

2005 Legislation

10
6-5

In Support of HB 2658

Testimony of Albert B. Thompson
815 SW Western
Topeka, KS 66606

Senate Commerce Committee
0830 hrs, 03/07/06
Room 123 South

Chairpersons Brownlee and Jordan and other members of the Commerce Committee:

My name is Albert B. Thompson, of 815 SW Western, Topeka, Kansas, and I appear before you today in support of HB 2658. This legislation establishes important economic safeguards for Kansas consumers through the imposition of reasonable restrictions upon the issuance of gift certificates and gift cards by merchant vendors within the state of Kansas. The untimely expiration of such certificates and cards would be prohibited by this legislation, and full disclosure of any conditions or limitations associated with a certificate or card is required at the time of purchase.

The above premises notwithstanding, to further enhance the value of this legislation to Kansas consumers, I urge you to consider including within its scope the amendments I propose today; amendments that I feel reduce the abusive effects of certain pricing practices associated with so called "mail in rebate" schemes. Kansas consumers are routinely bombarded with a plethora of advertisements touting ostensibly low prices for a wide variety of goods and services - products that simply cannot be purchased for the stated price. They cannot be purchased for the stated price because the actual dollar amounts required to bring these items home or obtain these services are often two to three times the stated prices, and the purchaser is required to embark upon a tortuous "mail in rebate" process obviously designed to dissuade, deflect, and discourage the consumer's recapture of funds.

As is patently obvious, any discounts or sale incentives that vendors or manufacturers choose to advertise within the context of the prices of goods or services should be reflected within the checkout amounts paid for those goods and services. Unfortunately, "mail in rebate" schemes ensure that such discounts and incentives are hopelessly enmeshed within an unnecessarily complicated and burdensome system of online registrations, UPC proof of purchase and sales receipt postings, weird timetables designed to frustrate consumers' efforts toward reimbursement, and delays of at least eight to ten weeks in the eventual receipt of such "rebated" funds.

In support of the forgoing, I urge you to consider including the following amendments to the current version of HB 2658 "As Amended by House Committee":

On line 10 of page 1 by striking "and", and substituting ",", and by adding ", and rebates" immediately after "cards"

On line 23 of page 2 by striking everything after "Sec. 2.", by striking all of line 24 of page 2, and

Senate Commerce Committee

March 7, 2006

Attachment 7-1

by inserting the following:

On and after January 1, 2007, no person, firm, partnership, association or corporation shall advertise for sale any goods or services for any amount other than the amount for which such goods or services may be purchased, irrespective of any rebates of any kind other than instant rebates.

Rebates may be offered by persons, firms, partnerships, associations or corporations, but no such rebates, except for instant rebates, shall be included within any quoted or advertised price of any goods or services offered for sale.

As used within this section:

"Rebate" means either an instant rebate, or any system or scheme whereby a consumer is required to perform certain tasks, make certain postings, or execute certain online filings in order to recapture any or all of the purchase price paid for goods or services.

"Instant Rebate" means a discount to a consumer at the time goods or services are purchased, and that is fully reflected in the actual price paid for such goods or services.

(d) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I thank the Chairpersons and the committee for this opportunity to appear before you today, and now stand for any questions you may have.

Tuesday, March 7, 2006

House Bill 2658

Testifying as Opponent:

Store Financial Services, LLC
7171 W. 95th Street - 4th Floor
Overland Park, KS 66212
913.648.2214 or 800.755.5001
Fax 800.755.5205

Mike Miroslaw, Chief Executive Officer
Michelle Hamilton, Counsel

Store Financial opposes the House Bill 2658 in its current form and suggests the following changes:

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2658
By Representative Huff
1-19

AN ACT relating to gift certificates and gift cards; concerning certain restrictions.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) On and after January 1, 2007, no person, firm, partnership, association or corporation shall sell a gift certificate or gift card to a purchaser containing an expiration date which is less than five years from the date of purchase.

(b) A gift certificate or gift card sold without an expiration date is valid until redeemed or replaced. A merchant shall not be required to redeem a gift card or gift certificate for cash.

(c) ~~No dormancy fee shall be charged against a gift certificate or gift card.~~ No fees may be charged against the balance of a gift card or gift certificate within 12 months from the date of issuance of the card.

(d) This section shall not apply to any of the following gift certificates or gift cards issued on and after January 1, 2007, provided the expiration date appears on the front of the gift certificate or gift card:

(1) Gift certificates or gift cards that are distributed by the issuer to a consumer without any money or other thing of value being given in exchange for the gift certificate or gift card by the consumer; or

Senate Commerce Committee

March 7, 2006

Attachment

8-1

(2) gift certificates or gift cards that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fund-raising purposes.

(e) All conditions and limitations shall be disclosed to the purchaser of a gift certificate or gift card at the time of purchase. If such conditions or limitations are not complied with by the purchaser, the issuer shall not be required to, but may, redeem such gift certificate or gift card.

(f) As used in this section:

~~(1) "Dormancy fee" means a charge imposed against the unused value of a gift certificate or gift card due to inactivity;~~

~~(2) (1) "gift card" means a tangible device, whereon is embedded or encoded in an electronic or other format a value issued in exchange for payment, which promises to provide to the bearer merchandise of equal value to the remaining balance of the device.~~

"Gift card" does not include a prepaid bank card;

~~(3) (2) "gift certificate" means a written promise given in exchange for payment to provide merchandise in a specified amount or of equal value to the bearer of the certificate. "Gift certificate" does not include a prepaid bank card;~~

~~(4) (3) "prepaid bank card" means a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution in a predenominated amount useable at multiple, unaffiliated merchants or at automated teller machines, or both, but shall not include a card issued by a retail merchant or a card issued by a shopping mall for use at multiple locations.~~

(g) This section shall be part of and supplemental to the Kansas consumer protection act.
Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

INFORMATION ABOUT STORE FINANCIAL SERVICES (SFS)

- SFS is a Johnson County, Kansas company started in 2003.
- SFS employs 41 people at its office in Johnson County.
- At least 90% of SFS's investors are Kansas residents and include several successful businessmen in the Kansas City area. The capital investments in SFS exceed \$5,000,000.00.
- SFS handles the gift card programs at Kansas shopping centers including Oak Park Mall, the Legends Shopping Center at Village West (pending), Town Center Plaza, and the City of Prairie Village, Kansas.
- SFS believes that is one of the five fastest growing companies in the Kansas City area.

- SFS currently administers 195 programs and is one of the fastest growing program processors in North America.
- SFS has been nominated for the Kansas Governor's Exporter of The Year Award 2006.

ABOUT OUR PRODUCT

- The gift cards operate on the MasterCard platform.
- To use the MasterCard platform, the gift cards must be issued by a sponsor bank.
- The gift cards are prepaid stored value cards, in that they are loaded with funds at the time of purchase. They are single load gift cards which cannot be reloaded with additional funds.
- The funds loaded upon a gift card are not held by the malls, by SFS, or by any merchant at the malls. The funds are immediately transferred to and held at and by the sponsor bank in a pooled account. Each gift card is tied to a gift card account which is tracked within the pooled account.
- The gift card program is a multiple retailer program, in that the gift cards may be used at multiple retailers located in or around the shopping centers. The programs are not single retailer programs, where gift certificates are confined to use at a single retailer. The gift card programs are selective authorization programs under which the gift cards are authorized for use only at the retailers which are located at the shopping center or the chamber of commerce.
- The retailers at the shopping center or chamber did not create or design the program. They are “participating merchants” by virtue of the fact that they happen to be tenants of the shopping center or members of the chamber that accept MasterCard at their stores. They do not receive any compensation for accepting the gift card other than the profit earned on the sales of their goods or services when the gift card is used.
- When the gift card is redeemed with a retailer, the transactions are processed, settled and paid by the sponsor bank through the MasterCard or Visa networks, in the same manner as a transaction using a debit or credit card. The merchant swipes the gift card, completes the transaction, and is reimbursed by the sponsor bank from the gift card account.

POST-SALE SERVICES

- SFS activates the gift card for use; creates and processes the gift card account; and processes and records all transactions on the gift card account. This transaction

service is substantial. It consists of authorizing a purchase at the time of the transaction and the later processing of the settlement and payment on the transaction. At a high redemption period in 2005, SFS was required to process more than ten gift card transactions per second at hundreds of retailers.

- SFS maintains the network for the gift card, consisting of a sponsor bank and MasterCard; provides, maintains, and upgrades the hardware and software used for the entire system; provides the proprietary software, known as CardPoint, used to operate the system; and stores computer data for the gift card at multiple locations, including one or more hardened facilities.
- SFS reconciles the gift card accounts daily and provides reports when desired by the shopping center and processors concerning the gift card account.
- SFS provides and maintains systems that allows the cardholder and shopping center to access gift card account information on a 24/7 basis through the internet, by automated phone inquiry, and through customer service. The information accessible by the cardholder includes the terms and conditions of the gift card, the original funded amount and date of activation of the gift card account, the balance of the gift card account, and the place and amount of each transaction on the gift card account.
- SFS provides and maintains systems allowing the cardholder to make gift card account balance inquiries. A cardholder may make balance inquiries at a merchant, by automated telephone inquiry on a 24/7 basis, through the internet on a 24/7 basis, by calling SFS customer care, and at kiosk machines maintained at some shopping centers. When the gift card is used at merchants located throughout the network, SFS also transmits the remaining available balance to the transaction receipt which is provided by the redeeming merchant to the cardholder at the time of purchase.
- SFS provides customer service via a toll free number to the cardholder, shopping center, and all participating merchants. The SFS service systems provide automated information and access to customer service representatives. When access to a representative is sought, the SFS service program maintains a high standard, in that it has an average time from call to a representative contact of less than five seconds per call.
- SFS maintains a program for replacement of the lost, stolen, or damaged gift cards; maintains a program to credit the balance of the gift card account upon merchandise returns; and maintains a program for cash reimbursement of a gift card in the event of program termination.
- SFS supports the immediate activation feature of the gift cards. A consumer is permitted to use a gift card immediately upon activation. There is no waiting period to allow the funds supporting the gift card to be received by the sponsor bank. This permits a gift card purchased on a birthday to be used on a birthday, or a card purchased the night before a holiday to be used on that holiday. SFS bears economic

risk from this feature which arises from the ability of the cardholder to use the gift card before the funds are received. Depending on the date of purchase, the float period can be as long as four calendar days. SFS also maintains systems to preclude or minimize abuse of this feature.

- SFS monitors the program for “suspicious activities” and maintains fraud and error protections for each gift card. Multiple retailer stored value gift cards are subject to the all of the fraud and error risks that accompany debit or credit cards. Because gift cards are high volume, low dollar, and anonymous products, they have are subject to additional risks of fraud and error. Schemes may be attempted to use a \$50.00 card to make a \$500.00 purchase, or to use a \$50.00 card to make ten \$25.00 purchases at different retailers. SFS provides services to monitor and minimize fraud and errors. SFS also bears economic risk arising from such activities for each gift card.
- SFS maintains “below limit” insurance for the gift card accounts. This insurance provides coverage for misuse of a gift card arising from the failure of a merchant to seek proper authorization of small dollar transactions on a gift card.
- SFS maintains programs for audits, including a program for the SAS 70 audit of the gift card computer systems. The SAS 70 audit will be completed periodically by independent certified public accountants pursuant to Statement on Auditing Standards No. 70 – Audits of Service Organizations (“SAS 70”). The SAS 70 audit is in addition to annual financial audits of SFS.
- The services and features listed above are expected, if not demanded, by the consumers of modern gift cards. The gift cards used in the SFS programs do not have expiration dates. Therefore, SFS is required to provide these post-purchase services in support of each gift card for many years after the funds are loaded on the gift card account.