

## Massachusetts Statute Concerning Gift Certificates Triggers Latest Wave of Class Action Litigation

Plaintiff class-action lawyers are now invoking the Massachusetts Gift Certificate Statute, General Laws Chapter 200A, Section 5D, as their latest vehicle to bring putative class action claims against companies doing business in Massachusetts under the Massachusetts Consumer Protection Act (Chapter 93A). The allegations are relatively straightforward – consumers allegedly are (1) being misled about their rights, under certain circumstances, to redeem gift certificates for cash, and (2) not being allowed to redeem their gift certificates for cash when requested. These practices allegedly are unfair or deceptive under Chapter 93A.

Chapter 200A, Section 5D provides, in part:

A purchaser or holder of a gift certificate, which, by its terms, prohibits the purchaser, or holder from adding value thereto and which has been redeemed for at least 90 percent of its face value shall make an election to receive the balance in cash or continue using the gift certificate. A purchaser or holder of a gift certificate which, by its terms, authorizes the purchaser or holder to add value thereto and which has been redeemed in part, such that the value remaining is \$5.00 or less, shall make an election to receive the balance in cash or continue using the gift certificate.

Section 5D also provides that a gift certificate shall be valid for not less than seven years after its date of issuance and the date of issuance and expiration date shall be clearly identified on the face of the certificate. Alternatively, if an electronic certificate with a banked dollar value is used, the expiration date and date of issuance must be clearly printed upon a sales receipt or otherwise made available to the purchaser through means of an Internet site or a toll-free telephone number. Also, a gift certificate not

clearly marked with an expiration date (or for which the expiration date is not otherwise made available as provided above) shall be redeemable in *perpetuity*.

Regardless of these statutory mandates, a common battleground in many claims brought under Section 5D centers around whether or not the subject item is a “gift certificate.” Section 5D defines “gift certificate” by reference to Chapter 255D, Section 1, which, in turn, provides that a “gift certificate” is:

[A] writing identified as a gift certificate purchased by a buyer for use by a person other than the buyer not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services supplied by the seller. A gift certificate shall include an electronic card with a banked dollar value, a merchandise credit, a certificate where the issuer has received payment for the full face value for the future purchase or delivery of goods or services and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card or other medium for goods, food, services, credit or money of at least an equal value.<sup>1</sup>

Moreover, Massachusetts has four criminal statutes<sup>2</sup> imposing fines in connection with certain gift certificate practices. Specifically, a seller or offeror shall be punished by a fine of not more than \$300 for committing the following acts:

- > Imposing a time limit of less than seven years within which a gift certificate may be redeemed.<sup>3</sup>
- > Refusing to redeem the gift certificate before it has reached the expiration date.<sup>4</sup>
- > Imposing dormancy fees, latency fees, administrative fees, periodic fees, service fees or other fees that have the effect of reducing the total value amount for which the holder may redeem a gift certificate.<sup>5</sup>
- > Imposing any fees or charges including, but not limited to, purchase fees, activation fees, renewal fees or cancellation fees, and failing to provide to consumers notice of any such fees, in writing, on the gift certificate, on the packaging of the gift certificate, or on both.<sup>6</sup>
- > Deducting a gratuity from a gift certificate without the consent of the holder.<sup>7</sup>

Businesses dealing with these types of lawsuits may face significant challenges depending on their practices, and this litigation trend is likely to target any company doing business in Massachusetts considering the availability of multiple damages and recovery of attorneys' fees and costs under Chapter 93A. As a result, businesses that offer an item or product that could be characterized as a “gift

<sup>1</sup> Section 1, however, expressly excludes pre-paid calling arrangements (defined by Chapter 64H, Section 1) or any electronic card usable with multiple unaffiliated sellers of goods or services.

<sup>2</sup> Mass. Gen. Laws ch. 266, §§ 75C-F.

<sup>3</sup> Mass. Gen. Laws ch. 266, § 75C. This section does not apply when the purchaser of the gift certificate is not obligated to pay for it until the time of use.

<sup>4</sup> *Id.*

<sup>5</sup> Mass. Gen. Laws ch. 266, § 75D.

<sup>6</sup> Mass. Gen. Laws ch. 266, § 75E.

<sup>7</sup> Mass. Gen. Laws ch. 266, § 75F.

certificate” should carefully review their disclosure and redemption practices to ensure compliance with Massachusetts law.

Any questions about the propriety of your policies should be brought to the attention of your Greenberg Traurig attorney to discuss strategies to minimize potential liability.

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