PRINTER'S NO. 206

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 207 Session of 2009

INTRODUCED BY GODSHALL, PRESTON, DONATUCCI, GIBBONS, GROVE, MELIO, MOUL, PYLE, REICHLEY AND SIPTROTH, FEBRUARY 2, 2009

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 2, 2009

AN ACT

Amending the act of December 17, 1968 (P.L.1224, No.387), entitled "An act prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, giving the Attorney General and District Attorneys certain powers and duties and providing penalties," further providing for definitions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2(4) of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, reenacted and amended November 24, 1976 (P.L.1166, No.260), is amended by adding subclauses and the section is amended by adding a definition to read:

Section 2. Definitions.--As used in this act.

* * *

(4) "Unfair methods of competition" and "unfair or deceptive acts or practices" mean any one or more of the following:

* * *

<u>(xxii) Selling or offering to sell, by a person engaged in the retail sale of goods or services, a gift certificate to a</u>

consumer that expires within a period of less than five years.

(xxiii) Charging, by a person engaged in the retail sale of goods or services, an inactivity fee or other service fee for the possession or redemption of a gift certificate. For purposes of this clause, "service fee" does not include any fee charged to or paid by a consumer in connection with the sale of a gift certificate, unless the fee is deducted or debited from the face value of the gift certificate.

(xxiv) In the retail sale of goods or services in which the purchaser presents for redemption a gift certificate, engaging in any of the following:

(A) Refusing to accept the gift certificate, if the goods or services are used or purchased primarily for personal, family or household purposes, including, but not limited to, goods or services advertised on sale or pursuant to a liquidation or closeout. This subclause does not apply if the gift certificate has an expiration date that complies with law and is not presented for redemption after the expiration date.

(B) Restricting the holder of the gift certificate from using the gift certificate in a manner consistent with the stated terms and conditions on the gift certificate.

(C) Altering any term or condition of the gift certificate after it is issued.

(D) Refusing to redeem the gift certificate and apply it to the purchase price of the goods or services if the value of the gift certificate or remaining balance of the gift certificate is less than the purchase price of the goods or services.

(xxv) Failing to disclose the terms and conditions of a gift certificate to a prospective purchaser of the gift certificate by doing any of the following:

(A) Failing to include in any advertisement or promotion for the gift certificate, whether by mail or electronic, computer or telephonic means, a notice stating that terms and conditions are applied to the gift certificate.

(B) Failing to conspicuously print the terms and conditions on the gift certificate, the envelope or packaging containing the gift certificate or a separate printed document delivered to the purchaser of the gift certificate.

(5) (i) "Gift certificate" means a written promise or a gift card or other electronic payment device that meets all of the following:

(A) Is usable at a single retailer, is usable at an affiliated group of retailers that share the same name, mark or logo or is usable at multiple, unaffiliated retailers or service providers.

(B) Is issued in a specified amount.

(C) May or may not be increased in value or reloaded.

(D) Is purchased or loaded on a prepaid basis for the future purchase or delivery of goods or services.

(E) Is designed to be redeemed upon presentation.

(ii) The term does not include any of the following:

(A) A general use, prepaid card or other electronic payment device that is issued or sponsored by a financial institution in a predetermined amount and is usable at multiple, unaffiliated retailers or at automated teller machines. "Financial institution" means a bank, bank and trust, national bank, savings bank, savings and loan association, credit union or money transmitter organized under the laws of this Commonwealth, another state, the District of Columbia, the United States or any territory or protectorate of the United States and their

respective subsidiaries, affiliates or holding companies.

(B) An electronic payment device linked to a deposit account.

(C) A prepaid telephone calling card regulated under Federal or State law or a card used in connection with prepaid wireless telephone service.

(D) An electronic payment device used to access an account from which an individual may pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pretax basis under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(E) A prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program is clearly and conspicuously disclosed.

(F) A payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered.

(G) A gift certificate sold below face value or at a volume discount to an employe, to a nonprofit or charitable organization or to an educational institution for fundraising purposes.

(H) A gift certificate distributed to a consumer or employe pursuant to an awards, rewards, loyalty or promotional program, if the consumer or employe is not required to give consideration for the gift certificate.

(I) An electronic credit voucher issued by a person that holds a certificate issued under 49 U.S.C. Ch. 411 (relating to air carrier certificates) or 413 (relating to foreign air

1 transportation).

2 Section 2. This act shall take effect in 60 days.