

HB

49

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: HB049CS(L&C)-LAW-CIV-03-24-08
 Bill Version: CSHB049(L&C)
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to credit memos, gift certificates, and gift cards. RDU Civil
 Component Commercial & Fair Business
 Sponsor REPRESENTATIVE(s) GATTO
 Requester HOUSE FINANCE Component Number _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The bill would amend existing and establish new statute to regulate the sale, transfer and ultimate disposition of gift cards. The bill would also make violation of certain gift card prohibitions an unlawful trade practice. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 3/24/08 7:37 AM
 Date 3/24/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 49(L&C)
() Publish Date: _____

Identifier (file name): CSHB49(L&C)-DOR-TAX-3-21-08 Dept. Affected: Revenue 04
Title: Gift Cards RDU: Taxation and Treasury
Sponsor: Gallo Component: Tax Division
Requester: House Finance Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES		0.0	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()		0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Rachel Lewis and Nels Tomlinson
Division: Tax Division
Approved by: Jerry Burnett
Department of Revenue

Phone: (907) 465-5885
Date/Time: 3/21/08 7:30 AM
Date: March 21, 2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. CS HB 49(L&C)

ANALYSIS CONTINUATION

Bill Language: This bill would redefine gift cards, using the new definition from AS 45.45.940. It would clarify that gift cards become unclaimed property after three years. It would remove expiration dates from gift cards. It would also add other conditions under which gift cards could be sold, and would make violating any of these conditions an unlawful trade practice

Revenues: This bill will have no significant effect on revenue. Over the past 22 years, very little money from unclaimed gift cards has been turned over to the Department of Revenue's Unclaimed Property Unit, and a total of \$50,000 of that money has been deposited in the general fund in that period. The Department anticipates that in the future, contributions to the general fund from this source will continue close to the long-term average of approximately \$2,300 per year.

This bill may make businesses more aware of the need to turn over unclaimed gift cards to the Department. However, any increase in revenues to the general fund which might result is anticipated to be a small fraction of the current \$2,300 yearly average, and hence negligible.

Fines and forfeitures from unlawful trade practice enforcement related to gift cards are unknown.

Expenditures: It is not anticipated that this bill will result in any additional expenditures for the Department of Revenue. The current volume of unclaimed gift cards reported to the Unclaimed Property Unit is quite small, and the Department does not anticipate appreciable change in their workload stemming from this bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM

March 25, 2008

SUBJECT: CSHB 49(FIN) relating to gift cards
(Work Order No. 25-LS0263(O))

TO: Representative Mike Chenault
Representative Kevin Meyer
Co-chairs of the House Finance Committee
Attn: Shar Smith

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Federal preemption. Please be aware that the federal laws that govern national financial institutions may preempt this bill as it applies to national financial institutions and their agents.¹
2. Interstate commerce. Because this bill could apply to out-of-state businesses that issue gift cards this application to interstate commerce raises a constitutional interstate commerce issue. Whenever a bill establishes a requirement that may affect persons operating from another state, there is always a question whether the requirement places a burden on interstate commerce that would not satisfy the federal constitutional commerce clause. Unless the burden it imposes on interstate commerce is clearly excessive in relation to the anticipated local benefits, the requirement is likely to be valid under the commerce clause. I do not have enough information to evaluate the burden that this bill will impose.

If I may be of further assistance, please advise.

TLB:med
08-221.med

Enclosure

¹ See APGGC v. Ayotte, 488 F.3d 525 (1st Cir. 2007).

3/25/08 adopted

25-LS0263NL
Bannister
3/19/08

CS FOR HOUSE BILL NO. 49()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GATTO, GARDNER, SEATON AND GRUENBERG, Crawford, Gara

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to gift certificates and gift cards, and to unclaimed property; and
2 making a violation of certain gift card prohibitions an unlawful trade practice."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 34.45.240 is amended to read:

5 Sec. 34.45.240. Gift cards [CERTIFICATES] and credit memos. (a) A gift
6 card [CERTIFICATE] or a credit memo, issued in the ordinary course of an issuer's
7 business, that remains unclaimed by the owner for more than three years after
8 becoming payable or distributable is presumed abandoned.

9 (b) In the case of a gift card [CERTIFICATE], the amount presumed
10 abandoned is the balance remaining on [PRICE PAID BY THE PURCHASER FOR]
11 the gift card [CERTIFICATE]. In the case of a credit memo, the amount presumed
12 abandoned is the amount credited to the recipient of the memo.

13 * Sec. 2. AS 34.45.760(8) is amended to read:

14 (8) "gift card [CERTIFICATE]" has the meaning given in

1 AS 45.45.940 [MEANS AN OBLIGATION OF A BUSINESS ASSOCIATION
2 ARISING FROM A TRANSACTION BETWEEN THE BUSINESS ASSOCIATION
3 AND A CONSUMER TO PROVIDE GOODS OR SERVICES AT A FUTURE
4 DATE; "GIFT CERTIFICATE" INCLUDES A GIFT CERTIFICATE, STORED
5 VALUE CARD, GIFT CARD, ON-LINE GIFT ACCOUNT, OR OTHER
6 REPRESENTATION OR EVIDENCE OF THE OBLIGATION OF A BUSINESS
7 ASSOCIATION];

8 * Sec. 3. AS 34.45.760(11) is amended to read:

9 (11) "intangible property"

10 (A) includes

11 (i) money, checks, drafts, warrants, deposits, interest,
12 dividends, and income;

13 (ii) credit balances, customer overpayments, gift cards
14 [CERTIFICATES], security deposits, refunds, credit memos, unpaid
15 wages, and unidentified remittances;

16 (iii) stocks and other intangible equity interests in
17 business associations;

18 (iv) money deposited to redeem stocks, bonds, coupons,
19 and other securities, or to make distributions;

20 (v) amounts due and payable under the terms of
21 insurance policies;

22 (vi) amounts distributable from a trust or custodial fund
23 established under a plan to provide health, welfare, pension, vacation,
24 severance, retirement, death, stock purchase, profit-sharing, employee
25 savings, supplemental unemployment insurance, or similar benefits;
26 and

27 (vii) amounts due and payable as mineral proceeds;

28 (B) does not include

29 (i) unused airline tickets;

30 (ii) shares of stock issued by a corporation organized
31 under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) or

1 unclaimed dividends payable on the shares of stock; or

2 (iii) overpaid contributions by employers to the
3 unemployment compensation fund under AS 23.20.130;

4 * Sec. 4. AS 45.45 is amended by adding a new section to article 12 to read:

5 Sec. 45.45.940. Gift cards. (a) A person may not sell or offer to sell a gift card
6 unless the

7 (1) gift card is redeemable at full face value in perpetuity; and

8 (2) gift card's date of issuance is clearly

9 (A) identified on the face of the gift card; or

10 (B) printed, if the gift card is an electronic card with a banked
11 dollar value, on a sales receipt transferred to the buyer or another holder of the
12 electronic card or available through an Internet site or a toll-free telephone line.

13 (b) A person may not sell or offer to sell a gift card that imposes dormancy
14 fees, latency fees, administrative fees, periodic fees, service fees, or other fees that
15 have the effect of reducing the total amount for which the holder may redeem a gift
16 card.

17 (c) This section does not apply to a gift card that

18 (1) is distributed by the issuer of the gift card under an awards, loyalty,
19 or promotional program if the recipient does not give the issuer money or another
20 thing of value in exchange for the gift card;

21 (2) is donated to a nonprofit organization or a charitable organization
22 for fundraising purposes; or

23 (3) can be used to purchase goods or services from more than one
24 seller of goods or services.

25 (d) In this section,

26 (1) "device" includes an electronic card, but does not mean an access
27 number or authorization code, whether manually or electronically dialed, to make
28 calls;

29 (2) "gift card" means a device that is usable up to its face amount
30 instead of cash in exchange for goods or services, except telephone services, supplied
31 by a seller.

1
2

* Sec. 5. AS 45.50.471(b) is amended by adding a new paragraph to read:
(53) violating AS 45.45.940 (gift cards).

Alaska State Legislature

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Representative Carl Gatto
Co-Chair, House Resources Committee
District 13 - Palmer

SECTIONAL ANALYSIS CSHB 49(L&C)

"An Act relating to credit memos, gift certificates, and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

Section 1 – Amends AS 34.45.240 to replace the original reference of “gift certificate” with “gift card” and provides conforming amendments to the original statutes structure based on this change.

Section 2 – Amends AS 34.45.760(8) to provide a definitional reference for the new definition of “gift card” as found in AS 45.45.940.

Section 3 – Amends AS 34.45.760(11) to add “gift cards” as “intangible property” and provides the statutory definitional reference for gift cards.

Section 4 – Creates a new subsection under AS 45.45 to properly define “gift cards” and the new definition covers previous references to “gift certificate”. This new section also identifies exclusions to the applicability of the new gift card provisions.

Section 5 – Adds a reference to “gift cards” to unlawful acts and practices under AS 45.50.471.

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SPONSOR STATEMENT CSHB 49 (L&C)

"An Act relating to credit memos, gift certificates, and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

Retailers and banks have been offering electronic "gift cards" in response to growing consumer demand for easier and more convenient gift options. Similar to a credit or debit card, these electronic gift cards allow recipients the flexibility to use the card at multiple locations. Most banks and retailers that issue these types of credit devices allow gift givers to choose from amounts as low as \$10 and as high as \$1,000.

Unfortunately, some banks and retailers have used this new opportunity to erode the purchasing power of gift cards by attaching a variety of fees and service charges, often failing to clearly explain these provisions to purchasers and recipients. Commonly, issuers will attach a "dormancy fee" of \$2.50 or greater that is deducted monthly from the remaining balance as well as an "activation fee" of \$5 or more in order to begin using the card. A \$100 gift card would lose 35% of its value in one calendar year without making one purchase. Lastly, some of the issuers include expiration dates less than Alaska's unclaimed property laws.

In the last 5 years a number of states have adopted measures to limit or restrict fees attached to these gift cards as well as establish standard expiration periods allowing consumers a reasonable period to use their gift cards. HB 49 is modeled closely after Massachusetts statute that was adopted in 2002 and amended in 2003 and it is one of the most restrictive state laws in the country.

HB 49 will protect Alaska's consumers from unnecessary fees and prevent erosion of purchasing power. I urge your support of HB 49.

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EXPLANATION OF CHANGES CSHB 49(L&C)

25-LS0263\K

"An Act relating to credit memos, gift certificates, and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

Section 1 – Amends AS 34.45.240 to alter the original reference of “gift certificate” to “gift card” pursuant to the new definition contained in the bill.

Section 2 – Amends AS 34.45.760(8) to reference the “gift card” definition found in AS 45.45.940.

Section 3 – Amends AS 34.45.760(11) to add “gift cards” to the list of items included under intangible property.

Section 4 – Substantially alters provisions of “gift cards” from the previous version (25-LS0263\C) by stipulating:

- 1) Gift cards have no expiration date (page 3, line 7); and
- 2) Redemption/refund requirement for remaining balances has been removed.
- 3) Excluding gift cards that awarded under a loyalty or promotional program, cards donated to a nonprofit organization, and “open universe” cards that may be used at multiple retailers (page 3, lines 18-24);
- 4) The definition of “device” has been refined to clarify that this section or the definitions contained therein do not apply telephone calling cards.
- 5) The definition of “gift cards” has been altered to remove the reference to the “purchaser” or “recipient” and to further stipulate that this does not apply to telephone calling cards

Consumers Union

Nonprofit Publisher
of Consumer Reports

State Gift Card Consumer Protection Laws*

California:

- No expiration dates and no fees, with one exception.
- Permits a \$1 per month fee only when the card has a balance of \$5 or less, the card has been unused for 24 months, and the card is reloadable.
- Covers gift cards usable at a single store or chain. Multiple-use gift cards are not covered.

Connecticut:

- No expiration dates.
- No inactivity fees.

Hawaii:

- No expiration within the first two years.
- No fees.
- Effective July 1, 2005.

Illinois:

- Before Jan. 1, 2005, cards which do not have an expiration fee do not escheat to the state.
- Starting Jan. 1, 2005, cards must also have no service fees in order to avoid escheat.

Iowa

- No fees unless there is a written contract between the card issuer and the holder of the gift card.

Louisiana:

- No expiration dates shorter than five years.
- No service fees, except for a one-time handling fee of \$1.
- Covers cards issued to be redeemed in goods or services provided by the card seller.

Maine:

- No expiration dates.
- No fees unless printed on the card, allowed by written contract with the card owner, and not unconscionable.

Massachusetts:

- No expiration for the first seven years.
- Attorney General has stated that inactivity fees violate the state's rule against expiration within the first seven years.

Maryland:

- No expiration for the first four years.
- No fees for the first four years.
- Fees that do apply after the first four years must be disclosed on the certificate or card, attached sticker, or envelope, and may not be changed except to benefit the consumer.
- Does not apply to cards processed through a national debit or credit card service that are usable at multiple unaffiliated sellers of goods or services.
- Effective July 1, 2006

New Hampshire:

- For gift cards over \$100, no expiration earlier than the date the funds escheat to the state.
- For gift cards of \$100 or less, no expiration dates.

- No fees on cards of any amount.

New Jersey:

- Cards are "valid until presented."
- All other restrictions must be conspicuously printed on the card.
- Covers cards issued by retail merchandise establishments.

New York:

- No monthly service fees before 13th month of dormancy.

Nevada:

- No fees for the first 12 months.
- After 12 months, fees may not exceed \$1 per month.
- Covers gift cards usable at a single store or chain. Multiple use cards are not covered.

Rhode Island:

- No expiration dates.
- No monthly or annual service or maintenance fees.

South Carolina:

- No expiration within the first year.
- Fees permitted but must be disclosed on certificate, envelope, covering, or receipt.

Tennessee:

- Card issuer is exempt from turning unused funds over to the state if the card has no expiration date and no dormancy fees.

Vermont:

- No expiration within the first three years.

- No fees, except a licensed money transmitter, financial institution or credit union may charge a one time issuance fee the smaller of \$10 or 10%.
- Effective: July 1, 2005.

Washington:

- Prohibits expiration dates and all fees, with one exception.
- Permits a \$1 per month fee only when the card has a balance of \$5 or less, the card has been unused for 24 months, the card is reloadable, and the fee is disclosed on the card.
- Does not apply to gift cards issued by a financial institution or its operating subsidiary if usable at multiple unaffiliated sellers of goods or services.

*This is a summary of key features of many state gift card laws. Consumers Union does not give legal advice. Gift card laws are changing rapidly. Please consult the laws of your state for more information.

Prepared by:
Gail Hillebrand
Consumers Union of U.S., Inc.
West Coast Office
1535 Mission St.
San Francisco CA 94103
Updated: June 24, 2005

expiration of prepaid bank cards within 24 months immediately following the date of sale by the original purchaser of the card; 2) prohibits the charging of a dormancy fee against a prepaid bank card within 24 months immediately following the date of sale, and within 24 months immediately following the most recent activity or transaction in which the card is used; 3) limits the dormancy fee, when applicable, charged against a prepaid bank card to no more than \$2.00 per month; and 4) requires appropriate disclosure of the above card expiration and dormancy fee provisions to prepaid bank card consumers.

A.B. 3866

Makes it an unlawful practice under the Consumer Fraud Act to sell certain products via an Internet auction. The bill targets those products typically stolen from retailers by shoplifting gangs and resold over the Internet. The bill makes it an unlawful practice for a person to sell a value loaded card via Internet auction unless the seller provides to the auctioneer, as well as the company's general counsel, a written or electronic record of the purchase or acquisition of the value loaded card, including the serial number and amount of the value loaded card; the date of purchase of the value loaded card; and the name, address and phone number of the person from whom that value loaded card was purchased or acquired. If a person sells an aggregate of five or more value loaded cards in contemporaneous Internet auctions conducted by an Internet auctioneer, the Internet auctioneer has 24 hours to notify the retailer of the sale in writing or electronically. The auctioneer must give the retailer relevant information about the seller, including the sales history and all aliases and accounts used by the person. The bill requires Internet auctioneers to immediately terminate an Internet auction if they receive information providing a reasonable basis to conclude that the auction violates the bill's provisions or that the merchandise is stolen. Internet auctioneers who affirmatively demonstrate that they have received the information required by the bill will not be deemed liable.

New York**A.B. 41**

Prohibits the sale of gift certificates and gift cards that diminish in value due to dormancy; and prohibits surcharges and fees on gift certificates and gift cards.

Utah**H.B. 261**

Makes it a violation of Title 13, Chapter 11, Utah Consumer Sales Practices Act, to issue a gift certificate that has an expiration date or deducts a fee without disclosing the expiration date or fee on the gift certificate or its packaging; provides that a gift certificate that does not disclose an expiration date or fee neither expires nor is subject to a fee; and makes technical changes.

Virginia**H.B. 2552**

Expands the existing provisions regarding gift certificate disclosures to prohibit the issuer of a gift certificate from charging a maintenance fee, service fee, inactivity fee, or other fee on the gift certificate. Gift certificate issuers are also prohibited from placing an expiration date or otherwise limiting the time for the redemption of a gift certificate and from issuing a gift certificate that diminishes in value over time unless the gift certificate was issued pursuant to an awards or loyalty program where no money or thing of value exchanged or was donated to a charitable organization. The definition of a gift certificate is expanded to include any record that contains a microprocessor chip, magnetic strip, or other storage medium that is prefunded and for which the value is adjusted upon each use. The definition also includes card-activated prepaid long distance telephone service. The measures apply to all issuers of gift certificates in the Commonwealth; currently, the gift certificate disclosure requirements apply only to merchants.

2006 Legislation**Connecticut****S.B. 503**

Requires retailers holding closing-out sale licenses to (1) honor their gift cards and certificates, (2) allow gift card and certificate holders to redeem them for either consumer goods or their cash value, and (3) include in all advertisements a notice that gift cards and certificates may be redeemed before the store closes. It prohibits them from selling, offering to sell, or advertising the sale of gift cards or certificates after applying for a closing-out sale license.

Hawaii**H.B. 1980**

Passed House 3/7/06

Exempts multi-use gift cards from definition of gift certificate.

H.B. 3084

Adds maintenance fees as a fee that is prohibited from being charged to dormant or inactive gift certificates.

S.D. 2096

Exempts multi-use gift cards from definition of gift certificate.



States Challenge Mall Gift Cards

November 7, 2004

Gift certificate and gift cards have become increasingly popular gifts at holiday time, but consumers should be aware that many come with hidden fees and may have a limited life span.

Massachusetts and Connecticut are taking a chain of shopping malls to court. The states have filed suit against Simon Malls, charging the national mall chain is selling gift cards that violate state consumer protection laws.

"These 'gift cards' are riddled with additional charges that Massachusetts consumers should not have to pay," Massachusetts Attorney General Tom Reilly said. "Despite the name, these gift cards are not what they seem."

Reilly said the cards violate the Massachusetts Gift Certificate law, which requires that gift cards be redeemable at full face value for seven years.

"Simon says - but Simon Property fails to tell the truth, when it subtracts \$2.50 a month from consumer gift cards six months or older," Connecticut Attorney General Richard Blumenthal said. "Simon illegally picks its customers' pockets to reactivate cards with unused balances."

"Card purchasers intend to give a gift to friends or loved ones, not to an already wealthy mall owner. State law - as well as logic and fairness - demand that gift cards retain their value just like dollars in a drawer," Blumenthal said.

In the Massachusetts lawsuit, Reilly charges that Simon Malls imposes a one-year expiration date on its cards and charges consumers numerous fees that significantly reduce the value of the card before it expires. Those charges include a \$2.50 dormancy fee that Simon automatically charges after the card has been held for six months, an initial fee to purchase the card, and fees for checking the card's balance or transferring the balance to another card.

While the state gift certificate law requires gift cards to be redeemable at full face value for seven years, a Simon Gift Card with a \$25 face value is worth only \$12.50 after the eleventh month, and would expire - be worth nothing at all - after one year.

The lawsuit alleges that these gift cards are subject to Massachusetts law, and not immune from state enforcement under the National Bank Act because they are not a bank product, as Simon Malls contends in a recent lawsuit. Reilly also alleges that Simon Malls does not sufficiently disclose fees connected with the card before consumers purchase them.

Connecticut's suit charges Simon is illegally imposing expiration dates on gift cards and charging fees on unused balances. The suit also charges that Simon fails to properly inform customers of two additional fees: a 50-cent charge to check the card balance and a \$5 fee to replace a stolen or lost card.

Simon Property Group is based in Indiana and owns and operates regional malls throughout the United States, including 14 in Massachusetts.

[Back to the top](http://www.consumeraffairs.com) (<http://www.consumeraffairs.com>)



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

NR 2006-84

FOR IMMEDIATE RELEASE
August 14, 2006

Contact: Robert M. Garsson
(202) 874-4294

OCC Issues Guidance on Gift Cards

WASHINGTON – The Office of the Comptroller of the Currency today issued guidance on disclosure and marketing issues associated with gift cards. The guidance focuses on the need for national banks that issue gift cards to do so in a manner in which both purchasers and recipients are fully informed of the product's terms and conditions.

"The gift card market is growing rapidly, and the terms and conditions of various cards can vary widely," said Comptroller of the Currency John C. Dugan. "It's very important that national banks engaged in this business adopt robust disclosure policies so that consumers understand what they are getting when they buy or receive a gift card."

Gift cards present special challenges because disclosures to a purchaser may not be adequate for a gift card recipient. The OCC expects national banks that issue gift cards not only to inform purchasers about material terms and conditions, but to take appropriate steps so that critical information is likely to be available to recipients as well.

Basic information that is most essential to a gift card recipient's decisions about when and how to use the card should be provided on the gift card itself, or on a sticker or tape affixed to the gift card. Disclosures should generally tell consumers:

- The expiration date of the card (which should appear on the front of the card);
- The amount or the existence of any monthly maintenance, dormancy, usage or similar fees;
- How to obtain additional information about their cards or other customer service (for example, by providing a toll free number or website address).

In addition, since the user of the gift card is generally not the person who purchased the product, issuers should provide information for card recipients and encourage purchasers to pass it on. These disclosures could be carried in promotional packaging or inserted into an accompanying sleeve and include such information as the name of the issuing bank, any fees that may apply and what to do if the card is lost or stolen.

The OCC's new guidance also advises national banks to avoid practices that could be misleading to consumers. For example, issuers should not advertise a gift card with "no

expiration date" if monthly service or maintenance fees, dormancy fees or similar charges can consume the card balance. Similarly, if fees may consume the card balance before the stated expiration date, disclosures related to that expiration date should explain that possibility. Issuers should also avoid describing gift cards as if they are gift certificates or other payment instruments more familiar to consumers, or as products that carry federal deposit insurance.

The full text of the guidance is available on the news release page of the OCC's web site.

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The Office of the Comptroller of the Currency was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving the banking needs of their customers in the best possible manner. OCC press releases and other information are available at <http://www.occ.gov>. To receive OCC press releases and issuances by email, subscribe at <http://www.occ.gov/listserv.htm>.



NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

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OCC Reminds Consumers of Holiday Tips on Gift Cards

WASHINGTON – As the holiday shopping season gets underway, the Office of the Comptroller of the Currency (OCC) wants consumers to know that it is important to check carefully the terms and conditions that apply to gift cards they buy or receive.

People thinking about purchasing gift cards should consult a 2004 OCC Consumer Advisory that provides important information about such issues as fees and expiration dates, and explains how to handle complaints and lost or stolen cards.

“As we enter the holiday season, it is especially important that consumers be alert to the wide variety of terms and conditions available in the gift card market,” said Comptroller John C. Dugan. “By asking a few questions based on the information provided in our Advisory, holiday shoppers will be able to select the gift card that best meets their requirements for this popular product.”

Some issuers, for example, deduct a monthly fee from the gift card or apply inactivity fees if the card has not been used for some period of time. Gift card holders may not realize that the value of their cards has been reduced until they use them for a purchase.

The OCC suggests that consumers make sure they have received disclosures on some of the important terms and conditions of the gift card they purchase, including:

- The fees, if any, that apply to the gift card, including those that apply after the sale and reduce the value of the card
- The expiration date of the gift card
- The procedures to follow in the event a card is lost or stolen
- The locations at which the gift card can be used
- The procedures to follow in the event there are problems with the gift card

If these disclosures are not stated on the gift card itself, or its packaging, the OCC suggests that consumers check to see if there is a toll-free number or Web site that will provide this information.

Some gift cards are issued by banks and some are issued by nonbank companies. The OCC has been providing periodic guidance to national banks on the subject of stored-value cards, including gift cards. The most recent OCC guidance on gift cards was issued on August 14, 2006, and addressed disclosure and marketing issues associated

with gift cards.

Consumers are encouraged to read "*Gift Cards: OCC Provides Holiday Tips for Consumers*" on the OCC's Web site: www.occ.gov/ftp/release/2004-108a.pdf.

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CONSUMER BEAT

The Boston Globe

Bill could run bank gift cards out of Mass.

By Bruce Mohl, Globe Staff | April 9, 2006

Beacon Hill lawmakers are trying to rein in bank-issued gift cards by outlawing the fees the cards depend on for a profit, a move that could have the effect of running the cards right out of the state.

The Senate has approved and sent to the House a bill that broadens the existing gift-card law to include bank-issued cards and to prohibit all customer fees for a period of seven years.

Industry analysts say bank-issued cards, which differ from retail gift cards in that they can be used virtually anywhere the card issuer (Visa, MasterCard, or American Express) is accepted, may not be able to survive if they are forced to eliminate their fees.

Senator Michael W. Morrissey, a Quincy Democrat who helped draft the gift-card legislation, said American Express representatives have told him the company would stop selling its cards in Massachusetts if the bill passes. American Express has already stopped shipping cards to Connecticut, Hawaii, New Hampshire, Rhode Island, and Vermont because of restrictions in those states. A company spokesman declined to comment.

Morrissey said the legislation would give Attorney General Thomas F. Reilly greater leverage in his lawsuit against a popular bank card issued by Indianapolis-based Simon Property Group, which operates malls in Massachusetts and across the country.

"It's like driving a knife through their heart," Morrissey said. "If we pass this, we will definitely make the attorney general's job easier."

Sarah Nathan, a Reilly spokeswoman, said the attorney general supports the legislation for the reason he sued Simon, to protect consumers. "Consumers should not have to worry that hidden fees and charges will wipe out the value of a gift card," she said.

Stewart A. Stockdale, chief marketing officer for Simon, said consumers know the pros and cons of bank-issued cards, which can be used in most stores, and retail cards, which can be redeemed only at the issuing store.

"The national trend is to incorporate that distinction into local legislation, focusing on consumer disclosure and customer education -- rather than fee prohibitions -- and allowing consumers to choose which option best suits their needs. It appears that, so far, the Massachusetts Legislature has chosen not to follow this trend," Stockdale said.

Stockdale declined to say what Simon would do if the gift-card legislation passes, other than to say that the Simon card "has been operated, and will continue to be operated, in compliance with all applicable law."

Several states give special treatment to bank-issued cards. New Jersey, for example, passed a gift-card law in January that prohibited dormancy, or inactivity, fees for at least two years. Prepaid bank-issued cards were exempted from the law.

Gift cards have become an enormous business since Blockbuster issued the first one in 1996. The Tower Group, a Needham research firm owned by MasterCard, estimates total sales this year of \$61.8 billion, with the market split between retail cards (\$50.8 billion) and prepaid bank cards (\$11 billion).

The prepaid market, consisting of cards directed at shoppers, consumers without bank accounts, and

corporations looking for a way to reward employees, is expected to grow 42 percent over the next two years to \$15.6 billion.

But as the prepaid market expands, it is bumping up against state laws restricting the fees and expiration dates of gift cards. Reilly, for example, sued Simon Property Group in November 2004, alleging it was violating the state gift-card law by selling a card that expired after one year and assessed \$2.50-a-month dormancy fees after six months.

Simon has since modified the card's terms, imposing the \$2.50-a-month fee after 13 months and making the card last at least 20 months. The card also comes with an initial \$2 to \$3 handling fee.

Simon has argued that its card is issued by a federally chartered bank and therefore not subject to state regulation. But that assertion was undercut by the US Office of Comptroller of the Currency, which notified Reilly and Simon that state restrictions on gift card fees are not preempted by federal regulations or law.

With Reilly's case against Simon dragging on in state court, the new gift-card legislation was drafted to give the attorney general more ammunition. Morrissey said anger about gift card fees is so great on Beacon Hill that he attracted more than 80 cosponsors with little effort.

Massachusetts law requires gift cards to last seven years, but the law is vague. Reilly has interpreted the language to mean that a card must last seven years before any fees can reduce its value, but the law doesn't specifically prohibit fees and it's not clear whether the law even applies to a card that could be redeemed anywhere.

The bill moving through the Legislature expands the definition of a gift card to cover cards that can be redeemed at multiple locations and prohibits "dormancy fees, latency fees, gratuities, or any other administrative fees or service charges that have the effect of reducing the total amount."

If the law passes or Reilly prevails in court, the bank-issued cards may have a tough time surviving here. Retail cards can operate without fees because cardholders eventually have to return to the store that issued the card to buy something. Owners of prepaid cards, by contrast, can shop almost anywhere, so the bank offering the card needs fee income to turn a profit.

Dennis Moroney, senior bank cards analyst at the Tower Group, said the market for prepaid gift cards is so big and expanding so fast that banks may just increase their up-front handling fees to cover their costs. He said rising fees could turn off consumers and pressure the federal government to develop a national gift-card policy.

"Your state is rattling the cage here," Moroney said. "In the end, like most things in life, there's probably going to be a compromise."

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