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State of Minnesota

S.F. No. 126 - Gift Cards

Author: Senator Charles W. Wiger

Prepared by: Christopher B. Stang, Senate Counsel (651/296-0539)

Date: February 17, 2005

Section 1 regulates gift certificates and gift cards.

Subdivision 1 provides that it is unlawful for any person to sell a gift certificate or gift card that contains an expiration date or service fee, except as otherwise provided in subdivision 5.

Subdivision 2 requires that a gift certificate or gift card sold on or after January 1, 2006, be redeemable in cash for its cash value or subject to replacement with a new gift certificate or gift card at no cost.

Subdivision 3 provides that a gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

Subdivision 4 provides that this section does not apply to gift certificates or gift cards distributed pursuant to an awards, loyalty, or promotional program without money or other thing of value being given; sold below face value at a volume discount to employers or nonprofit organizations for fund-raising purposes if the expiration date is not more than 30 days after sale; or issued for a food product. The expiration date must appear in ten-point font on the front of the gift certificate or gift card.

Subdivision 5 allows dormancy fees on gift cards that meet the following criteria: (1) the remaining value of the card is $5 or less; (2) the fee does not exceed $1.00 per month; (3) there has been no activity on the card for 24

months; (4) the holder may reload or add value to the card; and (5) disclosure related to the fee is printed on the card in 10 point font.

Subdivision 6 states that nothing in subdivision 1, clause 1, prevents an issuer of gift certificates or gift cards from including on the gift certificate or gift card a provision that entitles the purchaser to a full refund of the amount paid upon the occurrence of specified circumstances.

Section 2 provides that a gift certificate or gift card constitutes value held in trust by the issuer on behalf of the beneficiary of the gift certificate or gift card. An issuer of a gift certificate or gift card in bankruptcy is required to continue to honor the gift card on the ground that the value constitutes trust property of the beneficiary. This section does not create a fiduciary duty for the issuer or require the issuer to pay interest on the value held in trust unless otherwise provided by law.

CBS:cs

Senator Wiger introduced--

S.F. No. 126: Referred to the Committee on Commerce.

A bill for an act

relating to consumer protection; regulating gift certificates and gift cards; proposing coding for new law in Minnesota Statutes, chapter 325E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [325E.59] [GIFT CERTIFICATES AND GIFT CARDS.]

Subdivision 1. [PROHIBITED SALES.] It is unlawful for any person or entity to sell a gift certificate or gift card to a purchaser that contains:

(1) an expiration date; or

(2) a service fee, including, but not limited to, a service fee for dormancy, except as provided in subdivision 5.

Subd. 2. [HOW REDEEMED.] Any gift certificate or gift card sold after January 1, 2006, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate or gift card at no cost to the purchaser or holder.

Subd. 3. [VALIDITY.] A gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

Subd. 4. [NONAPPLICATION.] This section does not apply to any of the following gift certificates or gift cards issued on or after January 1, 2006, provided the expiration date appears in capital letters in at least 10-point font 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 pursuant to an awards, loyalty, or

promotional program without any money or other thing of value being given in exchange for the gift certificate or gift card by the consumer;

(2) gift certificates or gift cards that are sold below face value at a volume discount to employers or nonprofit and charitable organizations for fund-raising purposes if the expiration date on those gift certificates or gift cards is not more than 30 days after the date of sale; and

(3) gift certificates or gift cards that are issued for a food product.

Subd. 5. [GIFT CARD DORMANCY FEE.] Subdivision 1, clause (2), does not apply to a dormancy fee on a gift card that meets all of the following criteria:

(1) the remaining value of the gift card is $5 or less each time the fee is assessed;

(2) the fee does not exceed $1 per month;

(3) there has been no activity on the gift card for 24 consecutive months, including, but not limited to, purchases, the adding of value, or balance inquiries;

(4) the holder may reload or add value to the gift card; and

(5) a statement is printed on the gift card in at least 10-point font stating the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift card, and at what point the fee will be charged. The statement may appear on the front or back of the gift card, but shall appear in a location where it is visible to any purchaser prior to the purchase thereof.

Subd. 6. [EXCEPTION.] Nothing in subdivision 1, clause (1), prevents an issuer of gift certificates or gift cards from including on any gift certificate or gift card a provision that entitles the purchaser to a full refund of the amount that the purchaser paid for that gift certificate or gift card upon the occurrence of the following circumstances:

(1) the gift certificate or gift card is purchased as a gift for another person;

(2) the time in which the gift certificate or gift card may be redeemed is disclosed on the gift certificate or gift card; and

(3) the holder of the gift certificate or gift card does not redeem the gift certificate or gift card within the time described in clause (2).

Sec. 2. [325E.60] [GIFT CERTIFICATE OR GIFT CARD AS TRUST.]

(a) A gift certificate or gift card constitutes value held in trust by the issuer of the gift certificate or gift card on behalf of the beneficiary of the gift certificate or gift card. The value represented by the gift certificate or gift card belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

(b) An issuer of a gift certificate or gift card who is in bankruptcy shall continue to honor a gift certificate or gift card issued before the date of the bankruptcy filing on the grounds that the value of the gift certificate or gift card constitutes trust property of the beneficiary.

(c)(1) This section does not alter the terms of a gift certificate or gift card. The terms of a gift certificate or gift card may not make its redemption or other use invalid in the event of a bankruptcy.

(2) This section does not require, unless otherwise required by law, the issuer of a gift certificate or gift card to:

(i) redeem a gift certificate or gift card for cash;

(ii) replace a gift certificate or gift card that has been lost or stolen; or

(iii) maintain a separate account for the funds used to purchase the gift certificate or gift card.

(d)(1) This section does not create an interest in favor of the beneficiary of the gift certificate or gift card in any specific property of the issuer.

(2) This section does not create a fiduciary or

1 quasi-fiduciary relationship between the beneficiary of the gift
2 certificates or gift cards and the issuer, unless otherwise
3 provided by law.
4 (3) The issuer of a gift certificate or gift card has no
5 obligation to pay interest on the value of the gift certificate
6 or gift card held in trust under this section, unless otherwise
7 provided by law.

Senators Jungbauer and Nienow introduced--

S.F. No. 219: Referred to the Committee on Commerce.

A bill for an act

relating to consumer protection; regulating gift certificates and gift cards; providing penalties and remedies; proposing coding for new law in Minnesota Statutes, chapter 325E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [325E.59] [GIFT CERTIFICATES AND GIFT CARDS.]

Subdivision 1. [DEFINITION OF GIFT CERTIFICATE OR GIFT CARD.] For purposes of this section and section 325E.60, "gift certificate" or "gift card" means a prefunded tangible or electronic record evidencing an issuer's agreement to provide goods, services, credit, money, or anything of value. The terms include but are not limited to a tangible card, electronic card, store-valued card, or certificate or similar instrument, card, or tangible record that contains a microprocessor chip, magnetic chip, or other means for the storage of information and for which the value is reduced upon each use.

Subd. 2. [PROHIBITED SALES.] It is unlawful for any person to sell a gift certificate or gift card to a purchaser that contains:

(1) an expiration date; or

(2) a service fee, including, but not limited to, a service fee for dormancy.

Subd. 3. [HOW REDEEMED.] Any gift certificate or gift card sold on or after August 1, 2005, is redeemable in cash for its

cash value, or subject to replacement with a new gift certificate or gift card at no cost to the purchaser or holder.

Subd. 4. [VALIDITY.] A gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

Subd. 5. [NONAPPLICATION.] This section does not apply to any of the following gift certificates or gift cards issued on or after August 1, 2005, provided the expiration date appears in capital letters in at least 10-point font 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 pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate or gift card by the consumer; and

(2) gift certificates or gift cards that are sold below face value at a volume discount to employers or nonprofit and charitable organizations for fund-raising purposes if the expiration date on those gift certificates or gift cards is not more than 30 days after the date of sale.

Subd. 6. [EXCEPTION.] Nothing in subdivision 2, clause (1), prevents an issuer of gift certificates or gift cards from including on any gift certificate or gift card a provision that entitles the purchaser to a full refund of the amount that the purchaser paid for that gift certificate or gift card upon the occurrence of the following circumstances:

(1) the gift certificate or gift card is purchased as a gift for another person;

(2) the time in which the gift certificate or gift card may be redeemed is disclosed on the gift certificate or gift card; and

(3) the holder of the gift certificate or gift card does not redeem the gift certificate or gift card within the time described in clause (2).

Sec. 2. [325E.60] [GIFT CERTIFICATE OR GIFT CARD AS TRUST.]

(a) A gift certificate or gift card constitutes value held

in trust by the issuer of the gift certificate or gift card on behalf of the beneficiary of the gift certificate or gift card. The value represented by the gift certificate or gift card belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

(b) An issuer of a gift certificate or gift card who is in bankruptcy shall continue to honor a gift certificate or gift card issued before the date of the bankruptcy filing on the grounds that the value of the gift certificate or gift card constitutes trust property of the beneficiary.

(c)(1) This section does not alter the terms of a gift certificate or gift card. The terms of a gift certificate or gift card may not make its redemption or other use invalid in the event of a bankruptcy.

(2) This section does not require, unless otherwise required by law, the issuer of a gift certificate or gift card to:

(i) redeem a gift certificate or gift card for cash;

(ii) replace a gift certificate or gift card that has been lost or stolen; or

(iii) maintain a separate account for the funds used to purchase the gift certificate or gift card.

(d)(1) This section does not create an interest in favor of the beneficiary of the gift certificate or gift card in any specific property of the issuer.

(2) This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificates or gift cards and the issuer, unless otherwise provided by law.

(3) The issuer of a gift certificate or gift card has no obligation to pay interest on the value of the gift certificate or gift card held in trust under this section, unless otherwise provided by law.

Sec. 3. [325E.61] [PENALTIES AND REMEDIES.]

Any person found to have violated section 325E.59 or

1 325E.60 is subject to the penalties and remedies provided in
2 section 8.31.

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State of Minnesota

S.F. No. 219 - Gift Cards

Author: Senator Michael J. Jungbauer

Prepared by: Christopher B. Stang, Senate Counsel (651/296-0539)

Date: February 17, 2005

Section 1 regulates gift certificates and gift cards.

Subdivision 1 defines "gift certificates" and "gift cards" for purposes of the bill.

Subdivision 2 provides that it is unlawful for any person to sell a gift certificate or gift card that contains an expiration date or a service fee.

Subdivision 3 requires that any gift certificate or gift card sold on or after August 1, 2005, be redeemable in cash for its cash value or subject to replacement with a new gift certificate or gift card at no cost.

Subdivision 4 provides that a gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

Subdivision 5 provides that this section does not apply to gift certificates or gift cards distributed pursuant to an awards, loyalty, or promotional program without money or other thing of value being given, or sold below face value at a volume discount to employers or nonprofit organizations for fund-raising purposes if the expiration date is not more than 30 days after sale. The expiration date must appear in ten-point font on the front of the gift certificate or gift card.

Subdivision 6 states that nothing in subdivision 2, clause 1, prevents an issuer of gift certificates or gift cards from including on the certificate or card a provision that entitles a purchaser to a full refund of the amount paid under specified circumstances.

Section 2 provides that a gift certificate or gift card constitutes value held in trust by the issuer on behalf of the beneficiary of the gift certificate or gift card. An issuer of a gift certificate or gift card in bankruptcy is required to honor the gift certificate or gift card on the ground that the value constitutes trust property of the benficiary. This section does not create a fiduciary duty for the issuer, or require the issuer to pay interest on the value held in trust unless otherwise provided by law.

Section 3 provides that persons found to have violated the act are subject to the penalties and remedies provided in Minnesota Statutes, section 8.31.

CBS:cs

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State of Minnesota

S.F. No. 200 - Gift Cards

Author: Senator Wes Skoglund

Prepared by: Christopher B. Stang, Senate Counsel (651/296-0539)

Date: February 17, 2005

Section 1 regulates gift certificates and gift cards.

Subdivision 1 defines "gift certificate" for purposes of the bill.

Subdivision 2 makes it unlawful for any person to sell a gift certificate that has an expiration date or a service fee of any kind.

Subdivision 3 allows a holder to receive back cash if the holder has used a specified percentage of the value of the gift certificate.

Subdivision 4 provides that the remedies of Minnesota Statutes, section 8.31, apply to violations of this section.

CBS:cs

Senator Skoglund introduced--

S.F. No. 200: Referred to the Committee on Commerce.

A bill for an act

relating to commerce; prohibiting expiration dates and service fees on gift certificates and gift cards; proposing coding for new law in Minnesota Statutes, chapter 325G.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [325G.53] [GIFT CERTIFICATES.]

Subdivision 1. [DEFINITION.] For purposes of this section, "gift certificate" means a tangible record evidencing a promise, made for consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record and includes, but is not limited to, a gift card, stored-value card, store card, or a similar record or card that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, and for which the value is decreased upon each use. "Gift certificate" does not include certificates distributed to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the certificate by the consumer and certificates sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes and whose expiration dates are not less than 30 days after the date of sale.

Subd. 2. [PROHIBITIONS.] It is unlawful for any person or

1 entity to sell a gift certificate that is subject to an
2 expiration date or a service fee of any kind, including, but not
3 limited to, a service fee for dormancy.
4 Subd. 3. [BALANCE IN CASH.] If a holder of a gift
5 certificate has used at least ... percent of the value of the
6 gift certificate, the holder is entitled to receive the balance
7 in cash.
8 Subd. 4. [REMEDIES.] The remedies of section 8.31 apply to
9 violations of this section.

2-23-05

Senator Metzen moves to amend S.F. No. 200 as follows:

Page 2, line 5, delete "..." and insert "ten" 90

Page 2, line 7, before the period, insert "from the issuer of the card"

Adopted 2-23-05

Senator Metzen moves to amend S.F. No. 200 as follows:

Page 2, delete lines 4 to 7, and insert:

"Subd. 3. [BALANCE IN CASH.] The holder of a gift certificate is entitled to receive the balance in cash from the issuer if the remaining value of the gift certificate is $5 or less."

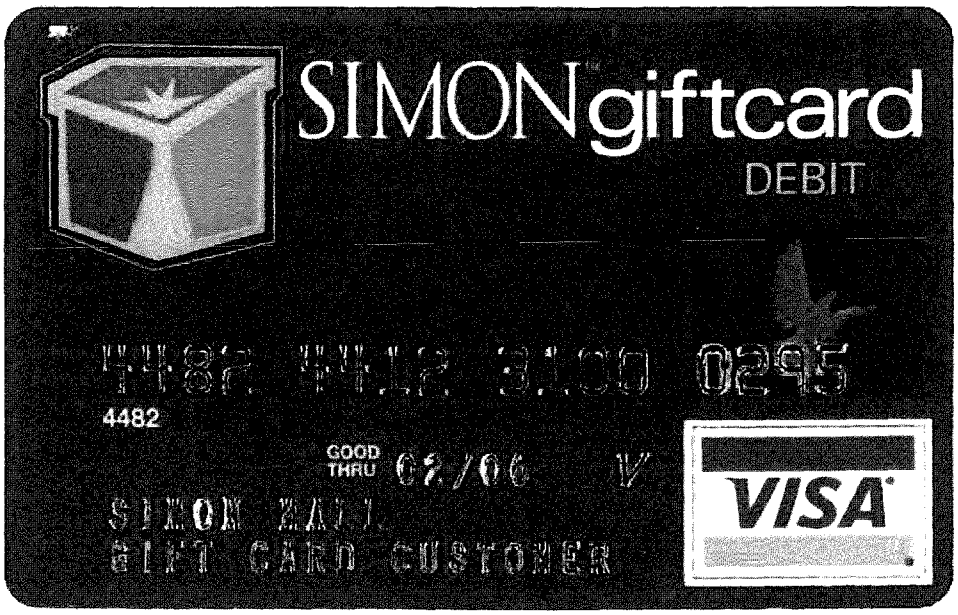
Adopted 2-23-05

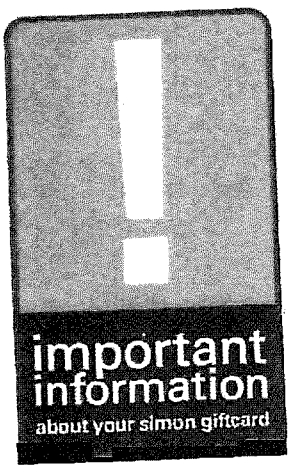
Senator Anderson moves to amend S.F. No. 200 as follows:

Page 2, after line 7, insert:

"Subd. 4. [PAYMENT OF DEBT.] The value of a gift certificate can be used at any time to pay debt the holder of the gift certificate owes to the issuer of the gift certificate."

Page 2, line 8, delete "4" and insert "5"





Merchants cannot access your card balance.

To check your balance:

-
-
-

When using your Simon Giftcard to make a purchase that is greater than the amount on the card, tell the cashier you would like to pay the difference first, and then use your card to pay the balance.

4482441231000295 954

Authorized signature

Not valid unless signed

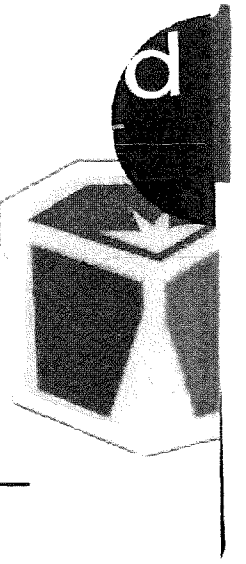
To determine the available balance on this gift card, call 1-888-203-9678 anytime, 24 hours a day, or visit www.simongiftcard.com or the Simon Marketplace where your gift card was purchased. The Simon™ Gift Card is the property of and is issued by Bank of America, N.A., pursuant to a license from Visa U.S.A. Inc., and must be returned upon request. The Simon Gift Card is a prepaid, stored-value card. Each time you use your Simon Gift Card, the amount of the transaction will be deducted from the available balance of the card. The funds allocated to a transaction are not allowed to exceed the available balance of the card. An administrative fee of $2.50 per month will be deducted from your balance beginning with the seventh month from the month of card purchase. This gift card expires on the date listed on the front of the card, except where prohibited by law.

www.simongiftcard.com

I'm a SIMON™ for you

from

_____



It's easy to use your Simon Gift Card.

Let's get acquainted.

Please allow me to briefly introduce myself. I'm the Simon Gift Card, a prepaid card that lets you shop everywhere Visa debit cards are accepted. My value is limited to the amount of money that was stored on me at the time of purchase. Each time you use me, the amount is deducted from my balance. I know we're going to have a great time together, but before you put me in your wallet, sign me, write down my card number in a safe place, and please take a few moments to review some important information about me!

What am I worth?

Always know the exact dollar amount available on your card. Merchants do not have access to this information and cannot determine the balance on your card. **Check your balance at www.simongiftcard.com or by calling 1-888-203-9678.**

What happens when I'm not enough?

If you try to spend more than the amount available on your Simon Gift Card, the card will be declined. To purchase an item that costs more than the available amount on your card, you will need to combine the value of your Simon Gift Card with another form of payment. Follow these simple steps for a smooth transaction:

- Inform cashier in advance you will be using two forms of payment.
- Pay cashier the difference first with the alternate form of payment.
- Present the Simon Gift Card and state specific amount to be used.

Never let me go.

Be sure to keep your Simon Gift Card (even after my balance has been depleted) in case you need to return any items purchased with the card.

Know my number.

Keep a record of your Simon Gift Card number in a safe place, separate from your card.

If you experience problems when we're shopping together, please review these helpful hints!

I've been declined. Why?

If a merchant declines your card, immediately verify the balance on your card by calling 1-888-203-9678 or by visiting www.simongiftcard.com. The merchant cannot check your available balance.

- If the purchase is greater than the value on the card, follow the procedures outlined above for combining forms of payment.
- If your card was declined and there are sufficient funds to cover the purchase, contact our customer service center at 1-888-203-9678.

I can go anywhere Visa debit cards are accepted, but some places require special treatment.

The Simon Gift Card can be used anywhere Visa debit cards are accepted. You may find these tips helpful when using the card at:

- **Restaurants and beauty salons.** It's customary for service-oriented merchants to automatically factor in an additional 25% to cover any tip you may leave on the card. If your total bill, after adding in the additional 25%, exceeds the amount on the gift card, it will be declined. You should ensure that your gift card has an available balance that is 25% greater than your total bill.
- **Gas stations.** If you pay at the pump, the terminal may check to see if you have funds to pay for a minimum amount of $30 up to a maximum amount of $50 worth of gas. You can avoid this by prepaying for your gas inside the station.
- **Hotels or car rental agencies.** Companies specializing in travel services may automatically factor in an additional 25% to cover incidental charges that you might incur. You should ensure that your gift card has an available balance that is 25% greater than your total bill.

Do I ever expire?

Yes! Your Simon Gift Card expires when the remaining value is $0 or on the expiration date on the front of the card, whichever comes first. There is an administrative fee of $2.50 per month, which will be waived for the first six months. Beginning with the seventh month after the card issue date, the administrative fee will be automatically deducted from the card balance on the first day of each month until the value reaches $0. If you have a balance remaining after the expiration date, call 1-888-203-9678 to request a new card. The new gift card will have the value equal to the remaining balance of the expired card, minus a $7.50 reissue fee. Or apply the remaining balance before the expiration date toward the purchase of a new card (the handling fee for a new card will apply). See Terms and Conditions on back.

Help! What if I'm lost or stolen?

Immediately report lost or stolen cards by calling 1-888-203-9678. You will need the card number to cancel the card and have a replacement card issued. Always keep a record of your Simon Gift Card number in a safe place, separate from the card.

Purchase date: Initial card value:

Keep track of the amounts you spend and the balance on your card:

Amount spent	New balance
$ _____	$ _____
$ _____	$ _____
$ _____	$ _____

You can check your balance at:

- 1-888-203-9678.
- www.simongiftcard.com.
- the Simon Marketplace.

Remember to record your giftcard number in a safe place.

Cardholder Agreement/Gift Card Terms and Conditions

The following are the terms and conditions that govern the use of the Simon Gift Card ("Gift Card"). Please read them carefully, and keep them for future reference. The Gift Card is neither a credit card nor an FDIC-insured deposit account. This Gift Card is issued by Bank of America, N.A., pursuant to license from Visa U.S.A., Inc. The purchaser agrees that all terms on the Gift Card and in these terms and conditions apply to purchaser and to any subsequent holder of the card by gift or otherwise. The Gift Card may not be refunded or exchanged for cash or credit.

Using This Gift Card

The Simon Gift Card is an instant-issue Visa prepaid card. The Gift Card may be used when making purchases from any merchant that accepts Visa debit cards. The total dollar amount of purchases made with the Gift Card will be automatically deducted from the value of the card. At the time of purchase, cardholder must sign the terminal receipt and keep it for his/her records. When using the Simon Gift Card in restaurants, drinking establishments, and hair and nail salons, please keep in mind that the proprietor might secure an authorization/approval on the card for an amount up to 25 percent more than the total bill. The entire secured amount may remain unavailable for up to three business days. This is done to take into account a tip/gratuity; however, only the amount the cardholder authorizes will be deducted from the value of the card. Hotels, car rental agencies, and gas stations may also secure an authorization/approval on the card at a set limit above the final amount the cardholder authorizes. This is done to ensure that adequate funds are available to cover the final purchase. Cardholder can obtain additional information regarding the Simon Gift Card at the Simon Marketplace.

Transactions made in currencies other than U.S. dollars will be converted to U.S. dollars under regulations established by Visa and may include a margin and/or fees charged directly by Visa. Conversion to U.S. dollars may occur on a date other than the date of the transaction; therefore, the conversion rate may be different from the rate in effect at the time of the transaction. Cardholder agrees to pay the converted amount. For these transactions, the rate of exchange between the transaction currency and the billable currency is either a wholesale market rate or the government-mandated rate in effect one day prior to Visa International processing date, increased by one percent.

After the amount available on the Gift Card has been exhausted, all transactions will be declined. Transactions that exceed the remaining card balance will also be declined.

To check the available balance on the Gift Card or to review recent transactions at no charge, cardholder may visit www.simongiftcard.com. Or cardholder can call 1-888-203-9678 anytime, 24 hours a day, seven days a week. The first balance inquiry by phone is free. Beginning with the second call, a $.50 charge per call will be assessed against the card balance. Cardholder may also visit the Simon Marketplace to review the Gift Card balance and recent transactions at no charge.

Bank of America, N.A., Visa, Simon Property Group, and their affiliates, employees, and agents are not responsible for the services or merchandise purchased with the Gift Card and are not responsible for the return or exchange of merchandise purchased with the Gift Card.

By use of this Gift Card, cardholder agrees that issuer is not liable for any consequential damages, direct or indirect. If cardholder thinks an error has occurred involving a transaction, that error needs to be adjusted and resolved with the merchant at whose establishment the transaction was made. Exchange or return of merchandise purchased in whole or in part with the Simon Gift Card will be governed by the procedures and policies of each merchant and applicable law. If cardholder receives a credit, the credit may not be added to the available funds for seven business days. Return and refund policies are dependent on the merchant from whom the purchase was made. At the time of any exchange or return, cardholder should present both the merchandise receipt and the Gift Card.

Error Resolution Procedures

In case of errors or disputes about transactions arising from the use of the Gift Card, call our customer service line at the phone number listed on the back of the card as soon as possible. We must hear from cardholder no later than 90 days after the date of the transaction in question, and cardholder must provide the following information:

- Cardholder name and Gift Card number;
- A description of the suspected error or the transaction cardholder is unsure about and an explanation as to why cardholder believes it is an error; and
- The dollar amount of the suspected error; and
- Gift Card's initial value load amount; and
- Information about the five most recent Gift Card transactions, if applicable.

If cardholder tells us by phone, we will require that cardholder send the complaint or question in a signed affidavit, within 10 business days. Generally, we will tell cardholder the results of our investigation within 10 business days after we hear from cardholder and will correct any error promptly. If we need more time, however, we may take up to 45 calendar days to investigate cardholder's complaint or question.

The Gift Card can be replaced if it is lost or stolen, with certain restrictions. Cardholder will be required to provide his/her name, the Gift Card number, original value, and transaction history in the event cardholder reports the Gift Card lost or stolen. Cardholder should immediately call 1-888-203-9678 to report a card lost or stolen. Simon Property Group reserves the right to require an affidavit and conduct an investigation into the validity of any request. Cardholder will not be liable for transactions identified by us as unauthorized. There will be a $5 reissue fee for any lost/stolen card, and it will be deducted from the balance on the card. A reissued card may take up to 30 days to process.

Disclosure of information about cardholder's Gift Card account or transactions to third parties will only be made when it is necessary to complete a transaction, when it is required to comply with government agency or court orders, or if cardholder gives written permission to do so.

The issuer may be liable for failure to complete transactions under certain circumstances, expressly excluding (but not by way of limitation) the following:

- If through no fault of ours, cardholder does not have enough money on the Gift Card to cover a transaction; or
- If the transaction would exceed cardholder's available funds; or
- If the terminal or system was not working properly; or
- If circumstances beyond our control (such as flood or fire) prevent the transaction, despite reasonable precautions that we have taken; or
- If there are other exceptions stated in these terms and conditions or provided by law.

Preauthorized/Recurring Payments

Cardholder agrees not to make preauthorized or recurring regular payments through the use of the Gift Card.

Service Charges

There is an administrative fee of $2.50 per month, which will be waived for the first six months. Beginning in the seventh month after the card issue date, the administrative fee will be automatically deducted from the card balance on the first day of each month until the value reaches $0. A $5 fee will be assessed to replace a lost or stolen card. A $7.50 fee will be assessed to replace an expired card.

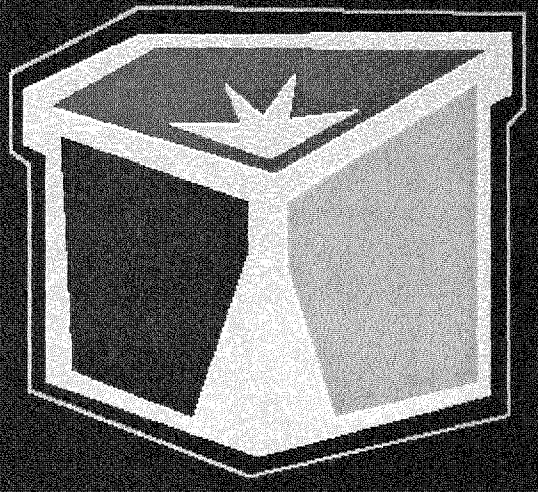
Expiration

The Gift Card expires when the remaining value is $0 or on the expiration date shown on the front of the card, whichever comes first. If there is a balance remaining after the expiration date, cardholder can call 1-888-203-9678 at any time during the next 12 months (or any longer period required by law) to request that a new Gift Card be issued. The new Gift Card will have a value equal to the remaining balance of the expired card minus a $7.50 reissue fee. The expiration date on the new Gift Card will be at least one year from the date of reissue.

Authorized signature Not valid unless signed

To determine the available balance on this Simon Giftcard ("Giftcard"), call 1-888-203-9678 anytime, 24 hours a day, or visit www.simongiftcard.com or Simon Guest Services. The Giftcard is the property of and is issued by Bank of America, N.A., pursuant to a license from Visa U.S.A. Inc. and must be returned upon request. The Giftcard is a prepaid card. Each time you use your Giftcard, the amount of the transaction will be deducted from the available balance of the card. The funds allocated to a transaction are not allowed to exceed the available balance of the card. An administrative fee of $2.50 per month will be deducted from your balance beginning with the seventh month from the month of card purchase. This Giftcard expires on the date listed on the front of the card, except where prohibited by law. Complete Terms and Conditions are on your card carrier and also at www.simongiftcard.com.

Bank of America



SIMON™ giftcard

DEBIT

Bank of America

4000 1234 5678

9010

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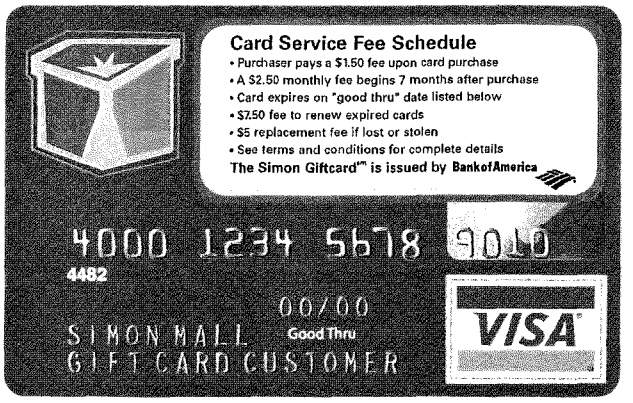
Good Thru

SIMON MALL
GIFT CARD CUSTOMER

VISA®



Card Service Fee Schedule

- Purchaser pays a $1.50 fee upon card purchase
- A $2.50 monthly fee begins 7 months after purchase
- Card expires on "good thru" date listed below
- $7.50 fee to renew expired cards
- $5 replacement fee if lost or stolen
- See terms and conditions for complete details

The Simon Giftcard℠ is issued by BankofAmerica

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SIMON MALL Good Thru
GIFT CARD CUSTOMER

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Printer note: Magenta outlines on top four stickers do not print.

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See terms and conditions for complete details.
The Simon Giftcard™ is issued by BankofAmerica

Proofing notes:

1. New headline is "Card Service Fee Schedule." Expiration note is not part of a fee schedule. OK?

2. Will we be producing separate stickers for affinity cards (because handling fee is larger to accommodate charitable donation)?

I'm a SIMON for you

from

_____

It's easy to use your Simon Gift Card.

What Is a Simon Gift Card?

This card is a gift that has been chosen especially for you. It is not a credit card, it is an account, not a credit card. It has a set dollar value that you can use to make purchases from merchants that accept Simon up to the amount shown on the reverse side. Remember to keep track of your expenditures on the card, and always be sure you know the remaining balance. One easy way to keep track of your balance is to visit www.simongiftcard.com before your shopping trip.

How Can the Simon Gift Card Be Used?

Use your Simon Gift Card when making purchases from any merchant that accepts Visa. The total dollar amount of purchases made with the card will be automatically deducted from the value of the card. When using your Simon Gift Card in restaurants, drinking establishments, and bars and nightclubs, please keep in mind that the proprietor might secure an authorization/approval on your card for an amount up to 30 percent more than the total bill. This is done to take into account tip/gratuity, however, only the amount you authorize will be deducted from the value of the card. You can obtain additional information regarding the Simon Gift Card by calling 1-888-203-9678 or by stopping by the Simon Marketplace where this gift card is purchased.

What if I Want to Buy Something That Costs More Than the Value of the Simon Gift Card?

When using your Simon Gift Card to make a purchase that is greater than the amount on the card, tell the cashier you would like to pay the difference first and then use your card to pay the remaining balance. The value of your Simon Gift Card can be combined with cash or a check when you are making a purchase. At the option of each merchant, the value of your Simon Gift Card may also be combined with a credit card or debit card when you are making a purchase.

How Do I Find Out the Balance on the Card?

There are three ways you can keep track of your balance: call the toll free number 1-888-203-9678 anytime, 24 hours a day, to receive an updated balance; visit www.simongiftcard.com; or stop by the Simon Marketplace at the Simon mall where this gift card was purchased.

Can I Use the Simon Gift Card After the Gift Amount Has Been Spent?

No. Once you have spent the total amount that was loaded on your card at the time of purchase, your Simon Gift Card account will be closed.

How Long Will I Be Able to Use the Simon Gift Card?

The gift card expires on the date printed on the front of the card, except where prohibited by law. An administrative fee of $2.50 per month will be deducted from your balance beginning in the seventh month from the month of card purchase.

Can the Simon Gift Card Be Replaced if It Is Lost or Stolen?

Yes, but certain restrictions apply. Call 1-888-203-9678 to report your Simon Gift Card lost or stolen. You will need to know your gift card number, so be sure to record it in a safe place. You may be required to provide additional information, and it could take up to 30 days to process your request.

Purchase date: Initial card value:

Use these lines to keep track of the amounts you spend along with the new balance on your Simon Gift Card.

Amount spent: New balance:

$ $

$ $

$ $

You can check your balance at:

- 1-888-249-4[illegible]
- www.simongiftcard.com
- the Simon Shopping[illegible] where your gift card was purchased.

VISA

SIMON

If you experience problems when we're shopping together, please review these helpful hints!

I've been declined. Why?

If a merchant declines your card, immediately verify the balance on your card by calling 1-888-203-9678 or by visiting www.simongiftcard.com. The merchant cannot check your available balance.

- If the purchase is greater than the value on the card, follow the procedures outlined above for combining forms of payment.
- If your card was declined and there are sufficient funds to cover the purchase, contact our customer service center at 1-888-203-9678.

I can go anywhere Visa is accepted, but some places require special treatment.

The Simon Gift Card can be used anywhere Visa is accepted. You may find these tips helpful when using the card at the following locations:

- **Restaurants and beauty salons.** It's customary for service-oriented merchants to automatically factor in an additional 25% to cover any tip you may leave on the card. If your total bill, after adding in the additional 25%, exceeds the amount on the gift card, it will be declined. You should ensure that your gift card has an available balance that is 25% greater than your total bill.
- **Gas stations.** If you pay at the pump, the terminal may check to see if you have funds to pay for an amount up to $30 worth of gas. You can avoid this problem by prepaying for your gas inside the station.
- **Hotels or car rental agencies.** Companies specializing in travel services may automatically factor in an additional 25% to cover incidental charges that you might incur. You should ensure that your gift card has an available balance that is 25% greater than your total bill.

Do I ever expire?

Yes! Your Simon Gift Card expires when the remaining value is $0 or on the expiration date shown on the front of the card, whichever comes first. An administrative fee of $2.50 per month will be deducted from your balance beginning in the seventh month from the month of card purchase. If you have a balance remaining after the expiration date, call 1-888-203-9678 to request a new card. The new gift card will have the value equal to the remaining balance of the expired card, minus a $7.50 reissue fee. Or apply the remaining balance before the expiration date toward the purchase of a new card (the handling fee for a new card will apply). See Terms and Conditions inside.

Help! What if I'm lost or stolen?

Immediately report lost or stolen cards by calling 1-888-203-9678. You will need to have the card number to cancel the card and have a replacement card issued. Always keep a record of your Simon Gift Card number in a safe place, separate from the card.

simon.com

SIMON MALLS

SIMONgiftcard™ Terms and Conditions

It's a pleasure to meet you.

Please allow me to briefly introduce myself. I'm the Simon Gift Card, a prepaid card that lets you shop everywhere Visa is accepted. My value is limited to the amount of money that was loaded on me at the time of purchase. Each time you use me, the amount is deducted from my balance. I know we're going to have a great time together, but before you put me in your wallet, sign me, write down my card number in a safe place, and please take a few moments to review some important information about me.

What am I worth?

Always know the exact dollar amount available on your card. Merchants do not have access to this information and cannot determine the balance on your card. **Check your balance at www.simongiftcard.com or by calling 1-888-203-9678.**

What happens when I'm not enough?

If you try to spend more than the amount available on your Simon Gift Card, the card will be declined. To purchase an item that costs more than the available amount on your card, you will need to combine the value of your Simon Gift Card with another form of payment. Follow these simple steps for a smooth transaction:

- Inform cashier in advance you will be using two forms of payment.
- Pay cashier the difference first with the alternate form of payment.
- Present the Simon Gift Card and state specific amount to be used.

Never let me go.

Be sure to keep your Simon Gift Card even after my balance has been depleted in case you need to return any items purchased with the card.

Know my number.

Keep a record of your Simon Gift Card number in a safe place, separate from your card.

Cardholder agreement/Simon Gift Card terms and conditions

The following are the terms and conditions that govern the use of the Simon Gift Card ("Gift Card"). Please read them carefully, and keep them for future reference. The Gift Card is neither a credit card nor an FDIC-insured deposit account. This Gift Card is issued by Bank of America, N.A., pursuant to a license from Visa U.S.A. Inc. The purchaser agrees that all terms on the Gift Card and in these terms and conditions apply to purchaser and to any subsequent holder of the card by gift or otherwise. The Gift Card may not be refunded or exchanged for cash or credit.

Using this Gift Card

The Simon Gift Card is an instant-issue Visa prepaid card. The Gift Card may be used when making purchases from any merchant that accepts Visa. The total dollar amount of purchases made with the Gift Card will be automatically deducted from the value of the card. At the time of purchase, cardholder must sign the terminal receipt and keep it for his/her records. When using the Simon Gift Card in restaurants, drinking establishments, and hair and nail salons, please keep in mind that the proprietor might secure an authorization/approval on the card for an amount up to 25% more than the total bill. The entire secured amount may remain unavailable for up to three business days. This is done to take into account a tip/gratuity; however, only the amount the cardholder authorizes will be deducted from the value of the card. Hotels, car rental agencies, and gas stations may also secure an authorization/approval on the card at a set limit above the final amount the cardholder authorizes. This is done to ensure that adequate funds are available to cover the final purchase. Cardholder can obtain additional information regarding the Simon Gift Card at the Simon Marketplace.

Conversion to U.S. dollars

Transactions made in currencies other than U.S. dollars will be converted to U.S. dollars under regulations established by Visa and may include a margin and/or fees charged directly by Visa. Conversion to U.S. dollars may occur on a date other than the date of the transaction; therefore, the conversion rate may be different from the rate in effect at the time of the transaction. Cardholder agrees to pay the converted amount. For these transactions, the rate of exchange between the transaction currency and the billable currency is either a wholesale market rate or the government-mandated rate in effect one day prior to Visa International processing date, increased by 1%.

Overspending

After the amount available on the Gift Card has been exhausted, all transactions will be declined. Transactions that exceed the remaining card balance will also be declined.

Balance inquiries

To check the available balance on the Gift Card or to review recent transactions at no charge, cardholder may visit www.simongiftcard.com. Or cardholder can call 1-888-203-9678 anytime, 24 hours a day, seven days a week. The first balance inquiry by phone is free. Beginning with the second call, a $.50 charge per call will be assessed against the card balance. Cardholder may also visit the Simon Marketplace to review the Gift Card balance and recent transactions at no charge.

Returned or exchanged merchandise

Bank of America, N.A., Visa, Simon Property Group, and their affiliates, employees, and agents are not responsible for the services or merchandise purchased with the Gift Card and are not responsible for the return or exchange of merchandise purchased with the Gift Card. By use of this Gift Card, cardholder agrees that issuer is not liable for any consequential damages, direct or indirect. If cardholder thinks an error has occurred involving a transaction, that error needs to be adjusted and resolved with the merchant at whose establishment the transaction was made. Exchange or return of merchandise purchased in whole or in part with the Simon Gift Card will be governed by the procedures and policies of each merchant and applicable law. If cardholder receives a credit, the credit may not be added to the available funds for seven business days. Return and refund policies are dependent on the merchant from whom the purchase was made. At the time of any exchange or return, cardholder should present both the merchandise receipt and the Gift Card.

Error resolution procedures

In case of errors or disputes about transactions arising from the use of the Gift Card, call our customer service line at the phone number listed on the back of the card as soon as possible. We must hear from cardholder no later than 90 days after the date of the transaction in question, and cardholder must provide the following information:

- Cardholder name and Gift Card number;
- A description of the suspected error or the transaction cardholder is unsure about and an explanation as to why cardholder believes it is an error; and
- The dollar amount of the suspected error; and
- Gift Card's initial value load amount; and
- Information about the five most recent Gift Card transactions, if applicable.

If cardholder tells us by phone, we will require that cardholder send the complaint or question in a signed affidavit, within 10 business days. Generally, we will tell cardholder the results of our investigation within 10 business days after we hear from cardholder and will correct any error promptly. If we need more time, however, we may take up to 45 calendar days to investigate cardholder's complaint or question.

Your liability for lost or stolen card or unauthorized transactions

The Gift Card can be replaced if it is lost or stolen, with certain restrictions. Cardholder will be required to provide his/her name, the Gift Card number, original value, and transaction history in the event cardholder reports the Gift Card lost or stolen. Cardholder should immediately call 1-888-203-9678 to report a card lost or stolen. Simon Property Group reserves the right to require an affidavit and conduct an investigation into the validity of any request. Cardholder will not be liable for transactions identified by us as unauthorized. There will be a $5 reissue fee for any lost/stolen card, and it will be deducted from the balance on the card. A reissued card may take up to 30 days to process.

Disclosure of information to third parties

Disclosure of information about cardholder's Gift Card account or transactions to third parties will only be made when it is necessary to complete a transaction, in complying with government agency or court orders, or if cardholder gives written permission to do so.

Liability for failure to complete transactions

The issuer may be liable for failure to complete transactions under certain circumstances, expressly excluding (but not by way of limitation) the following:

- If through no fault of ours, cardholder does not have enough money on the Gift Card to cover a transaction; or
- If the transaction would exceed cardholder's available funds; or
- If the terminal or system was not working properly; or
- If circumstances beyond our control (such as flood or fire) prevent the transaction, despite reasonable precautions that we have taken; or
- If there are other exceptions stated in these terms and conditions or provided by law.

Preauthorized transfers/recurring payments

Cardholder agrees not to make preauthorized or recurring regular payments through the use of the Gift Card.

Service charges

If a balance remains on the Gift Card after the sixth month, the Gift Card will be charged a $2.50 monthly service fee. The fee will be deducted automatically, starting on the seventh month after the month of purchase, from any remaining value on the card on the first day of the month until the value reaches zero. A $5 fee will be assessed to replace a lost or stolen card. A $7.50 fee will be assessed to replace an expired card.

Expiration

The Gift Card expires when the remaining value is $0 or on the expiration date shown on the front of the card, whichever comes first. If there is a balance remaining after the expiration date, cardholder can call 1-888-203-9678 at any time during the next 12 months (or any longer period required by law) to request that a new Gift Card be issued. The new Gift Card will have a value equal to the remaining balance of the expired card minus a $7.50 reissue fee. The expiration date on the new Gift Card will be at least one year from the date of reissue.

December 31, 2004

To the Editor:

State Senator Wes Skoglund's proposal to legislate gift card rules is a necessary protection against an outrageous consumer rip-off by some retailers. Consider the fantastic advantages of gift cards to the retailer: 1) The card is an interest-free loan to the retailer until the card holder makes a purchase; 2) Card holders may never use the card, effectively forfeiting the entire card value to the retailer; 3) Card holders are more likely to use the cards on higher-profit non-sale items because gift cards are an unexpected windfall of purchasing power to the holder; 4) Gift cards get customers in the store who might make purchases beyond the value of the card and/or become long-term repeat customers.

Evidently, some local retailers aren't satisfied with the natural advantages of the gift card concept. They see gift cards as an opportunity to shake down customers with additional "non-use" fees, "activation" fees, and "no cash redemption" policies.

Crossroads Mall imposes a $2 per month non-use fee if the card is not used within one year of purchase. The Olive Garden and Caribou Coffee also charge monthly non-use fees. The Mall of America charges a $2.50 per month fee beginning six months after a gift card's purchase, whether the card is used or not.

Crossroads charges a $1.50 "activation" fee at the time of the card's purchase (a $20 card costs $21.50). An "activation" fee is a fancy term for the incidental cost of ringing up a sale (otherwise known as "the cost of doing business") with a hefty profit margin tacked on.

The "no cash redemption" policy is another rule that retailers use to boost gift card profits. A customer who pays for a $17.87 purchase with a $20 gift card should be able to receive $2.13 in cash. Instead, many stores like Target and the retailers already mentioned, force customers to carry any remaining balances on the cards. This no cash redemption policy increases the likelihood that customers will forfeit low card balances to the store.

The argument in support of these extra fees is that retailers incur extra costs to provide gift cards, including transactions costs, database management costs to track card holder purchasing activity, and fees paid to credit card companies to manage these programs. As a consumer, my response to these pleas that gift cards are a financial burden to retailers is: Do you want my business or don't you? The natural financial and marketing advantages of the cards to the retailer, as noted earlier, are more than sufficient for retailers to offer them. We don't need to worry about gift cards driving retailers to bankruptcy.

To prevent the further fleecing of the public on gift cards, Senator Skoglund's legislative proposal would ban gift card expiration dates and service fees. It would also require a cash balance return if a certain percentage of a card's value has been used.

As a professor of service operations management, I tell my students to speak up when service providers are providing poor value. In the case of gift cards, customers should protest to the

managers of the stores that impose these excessive practices, write letters to the CEOs of these companies, and consider giving cash gifts to friends and relatives instead of gift cards (isn't that what they really want?). I also believe legislative intervention is required because retailers have made gift card rules so complex that they confuse the public and take unfair advantage.

My advice to retailers: Walk the talk. Don't refer to customers as "guests" and then dun them with fees and policies that are designed to confuse and exploit the customer for profit advantage. When my guests come over for dinner, I don't charge them an "access fee" because I shoveled my sidewalk, an "activation fee" because I turned on my oven, or a "non-use" fee when they don't eat dessert. If I did these things, I wouldn't have any guests to invite to dinner.

Retailers, please take note. If your goal is to develop long-term customer relationships, then forget the add-on fees and design a service experience that meets customers' needs for value, service, and trust. If you succeed, profits will follow.

Michael Pesch, Ph.D.
Professor of Operations Management
Herberger College of Business
St. Cloud State University

With some gift cards, it's use it soon or lose it

Service charges and expiration dates can be a 'gotcha' for procrastinators.

By Melissa Levy 12-30-04
Star Tribune Staff Writer

Gift cards have become an increasingly popular holiday present. But Scrooge can be lurking nearby, with expiration dates and service fees nibbling at the gift.

At least one local lawmaker wants Minnesota to join dozens of other states in trying to end that practice.

Major retailers such as Target, Best Buy and Marshall Field's don't have restrictions on gift cards, but bank-branded cards issued by Twin Cities area malls impose charges if the cards aren't used within a certain number of months. For example, the Simon Visa Giftcard, sold at the Mall of America and Maplewood Mall, deducts a monthly fee of $2.50 after six months of non-use. Similar fees kick in after a year with gift cards issued by malls including Burnsville Center to Southdale Center.

CARDS continues on A15:
— About half of the cards will be redeemed in January.

Service charges
Some local gift cards that charge you for not using them promptly:

Caribou Coffee
Mall of America
Maplewood Mall
Burnsville Center
Southdale Center
Amazon.com

Thursday, December 30 • 2004

CARDS from A1

States are regulating fees and terms of use

Sen. Wes Skoglund, DFL-Minneapolis, plans to introduce legislation next week that would ban expiration dates and service fees on gift cards.

He wants a $25 gift card to be worth $25, no matter when it is redeemed.

"People pay real money, total value, for these things," Skoglund said in an interview Wednesday. "Most people don't know that there's frequently an erosion factor in gift cards — that they're worth less the longer you hold them."

More than $17 billion of gift cards were expected to be sold nationally this holiday season, according to the National Retail Federation.

The cards were expected to be the most popular choice among Twin Cities shoppers, topping standbys such as apparel, books and toys, according to November survey by consulting firm Deloitte & Touche. The average Minnesotan planned to give about five gift cards this holiday season. And 22 percent of those polled admitted to still not having used as many as five gift cards from last year.

About half of all gift cards are redeemed in January, said Tara Weiner, national managing partner of Deloitte's consumer business industries practice. But nearly 30 percent of the cards from last year's holiday season still aren't fully redeemed, she said.

That can present an accounting challenge to retailers, because most don't count the revenue from gift cards until they are redeemed.

Market correction

More than two dozen states have enacted or considered gift-card legislation in 2004 alone, according to the National Conference of State Legislatures' Web site.

When the topic came up in Minnesota last year, Buzz Anderson, the president of the Minnesota Retailers Association, said he told lawmakers: "If you do nothing, this issue will resolve itself."

As the popularity of gift cards has grown, so has the aggressive marketing by retailers. One reason: Merchants know that customers tend to spend more than a gift card's face value during their shopping trip. And the cards build loyalty to a particular store.

Shiny gift cards now often come packaged in an attractive envelope and are adorned with a bevy of designs. Competition also has prompted chains to drop their gift card expiration dates and service fees, Anderson said. For example, Sears ended its two-year expiration date on gift cards last year.

"It's correcting itself in the market," so a gift card law is not needed, Anderson said.

Malls argue that they must charge fees for their gift cards because they can't absorb the costs of administering them like a traditional store. In return, customers get the convenience of a card issued by a bank that can be used at a wider variety of stores.

In the first year that Burnsville Center issued American Express-branded gift cards, there was "more positive response than negative," marketing director Lisa Foss said. She said some shoppers weren't pleased with the $2 fee to activate the card. The card — good at the mall's 150 stores — also has a $2.50 monthly charge starting with the 12th month of dormancy.

Simon Property Group, the Indianapolis-based operator of Mall of America and Maplewood Mall, sold 6 million gift cards nationwide last year in the first year of its program. The company said it fully discloses all fees and meets all legal requirements.

"Simon Property Group is not a retailer, and the Simon Visa Giftcard is not a retailer card," a spokeswoman said in a prepared statement issued Wednesday. "It is a Bank of America-issued Visa debit card, can be used anywhere that Visa debit cards are accepted and comes with built-in protections like those of other payment products, all of which carry fees and expiration dates."

Melissa Levy is at mlevy@startribune.com.

Got a gift card? Know the risks

Gift cards are a $55 billion industry and growing. One potential pitfall: monthly service fees.

December 29, 2004: 12:24 PM EST
By Krysten Crawford, CNN/Money staff writer

NEW YORK (CNN/Money) - Those who got a gift card this year instead of yet another pair of Oomphies slippers should keep this in mind: that $50 electronic gift certificate might not be worth $50 for long.

In fact, it might be worth nothing.

It's the dirty little secret of select gift cards: activation charges, monthly service fees, unreturned balances, and expiration dates that can render worthless Grandma's new and much-welcomed form of expressing love.

Not all gift cards carry these stealth costs, but enough of them do that they're capturing the attention of legislators, regulators and lawyers.

Last month the attorneys general of Massachusetts, New Hampshire and Connecticut sued Simon Property Group, the country's largest owner of shopping malls, over one of its gift cards.

Called the Simon Visa Giftcard, the prepaid electronic card levies a $2.50 monthly surcharge starting six months after it is issued and, according to one state lawsuit, deducts 50 cents for each balance check and $5 for replacing a lost or stolen card. The gift card, which can be used at any store that accepts Visa, also expires after a year.

Some Fortune 500 companies have been sued too. In lawsuits filed recently in Illinois, a consumer charged Wal-Mart Stores, Inc. (Research) and Kmart Holding Corporation (Research) of violating the law by refusing to refund gift card balances of $1.39 and 52 cents, respectively. The complaints also accuse the retailers of charging illegal expiration and non-usage fees.

While $2.50 here and 52 cents there doesn't sound worth quibbling about, the numbers add up to huge savings for gift card issuers, argues Dale McCormick who, as Maine's Treasurer, regulates gift cards on behalf of state consumers.

"We're talking big dollars," said McCormick. For consumers to buy a gift card and then watch the card's value diminish with or without actual purchases, "doesn't make sense."

controversy over gift card policies. In the six or seven states that have done so, the hot issue now are cash-back policies, according to Griffin.

To maximize their profits, most retailers require that the cards be redeemed for merchandise only and not cash.

"There are lawsuits in California that basically say that retailers should be like ATM machines and that if my grandmother gets a $50 card and doesn't like any of the store's products, she ought to be able to march into the retailer and say 'give me $50,'" said Griffin. Retailers, however, counter that they're not banks, that it costs them money to set up and administer a gift card program and that the cards are transferable, meaning anyone can sell or give their card to someone else.

So which side is winning the argument? "It's unresolved," said Griffin, noting that two California trial courts have sided with consumers and two have favored retailers.

"The issue is headed up to the appellate courts," he said. ■

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Disappearing-Card Trick

Gift cards, one of the most popular holiday purchases, can lose value if not used quickly

y SONJA STEPTOE

AFTER ARLENE VINSON'S FAVORITE boutique in her hometown of Brea, Calif., went out of business a few years ago, her husband Norman—perplexed about what to give her for Christmas—decided that about 20 of the $50 bank-issued gift cards sold at their neighborhood mall would be the ideal gift; she could redeem them at any store in the shopping center. But nearly six months later, when Arlene tried to buy a $20.50 blouse with $2.50 in cash plus a gift card with $18 of unspent credit, the sales clerk said it couldn't be done, citing a fine-print rule on the back of the card prohibiting purchases for more than the available balance. Norman eventually had to pay cash for the blouse.

The Vinsons got another jolt shortly thereafter when they discovered that if they didn't spend all the money remaining on the cards within six months, the issuing bank would begin subtracting a monthly $2.50 ormancy fee from each one and the cards' value would expire altogether by 2005. "I thought I was buying something that would be worth $50 and would be good forever, just like a gift certificate," says Norman. "It was very irritating because nobody told me anything [about all the conditions] up front." The joy that millions will feel when they find prepaid cards in their Christmas stockings—retailers estimate that consumers will spend some $17 billion on them this season—could turn into misery if they don't understand the myriad rules, fees and conditions attached.

The proliferation of gift cards has already sparked an outcry from consumer groups concerned about their lack of regulation. In the mid-1990s a few big specialty retailers and major department stores began issuing cards with magnetic strips and a preset or unlimited value as cheaper, more secure alternatives to paper gift certificates, which are easy to counterfeit. Card sales grew between 15% and 35% annually from 1997 to 2004, and while the issuing stores waited for the redemptions, they locked in enormous future revenues and racked up hefty interest income. Until now, regulators have trod lightly because they recognized the benefits to consumers, according to Deborah Thoren-Peden, a partner at the Pillsbury Winthrop LLP law firm and head of its consumer-and-retail-practice group. "They were concerned that if they said a lot of laws applied to them, it would crush the industry," she says.

All sorts of businesses quickly realized that the cards were cash cows. Now banks, credit-card companies, various financial-services providers and such chains as Starbucks sell branded prepaid cards—not only at their own outlets but also through grocery stores and shopping malls as well as over the Internet. The newly reopened toy store F.A.O. Schwarz is even offering a $100,000 gift card. Some of the cards include ATM access. Some let holders reload them; others permit transfer of funds to other cards or individuals. In one of the latest incarnations, at last count about 1,000 companies give their workers electronic-payroll cards to access accounts holding their wages, bonuses and commissions. Last year prepaid-card sales were $45 billion, and in 2006 sales are expected to hit $90 billion.

Now that the market is robust, the government is considering requiring issuers of payroll cards and certain other prepaid cards to insure the underlying accounts, and the Federal Reserve is proposing that they also reimburse holders of payroll cards for unauthorized uses under the same terms as those for bank debit cards. Many card issuers are building consumer protections into their products on their own. Safeway stores, for example, don't sell cards with expiration dates or dormancy fees.

Unwilling to rely on the goodwill of issuers, consumer advocates have begun pushing for bans on expiration dates and user fees for all the products, plus replacement if the cards are lost or stolen as well as clear avenues to get cash for unspent funds. "Until Congress acts, there's very little protection for users of bank-issued cards," says Gail Hillebrand, an attorney with Consumers Union. "If you receive a gift card, make sure you know what you're getting into."

Consumer advocates preach caveat emptor, but the Vinsons have decided to just say no. Last Christmas, Norman bought Arlene a St. John knit suit—and charged it. ■

GIVE MORE, GET LESS

- This holiday season 74.3% of consumers will purchase gift cards, up from 69.9% in 2003
- Gift-card sales totaled $45 billion in 2003; sales are expected to hit $54 billion this year
- The average consumer will spend $80.45 on gift cards this year
- About 12% of the gift cards' value won't be redeemed
- 63% of consumers are unaware that gift cards have fees if not used by a set date

MARK RICHARDS FOR TIME

ONE-STOP SHOPPING: An array of gift cards sold at a California supermarket

Time 12-6-04

More gift card owners resell them

EBay and other Web sites are popular places to buy, sell or trade the cards.

By Bruce Mohl
Boston Globe 12-30-04

Gift cards are supposed to be a way around the hassles of returns and exchanges, but they've become so popular that a secondary market has sprung up allowing consumers to buy, sell and trade them.

The Web sites serving as middlemen for gift card transactions say many consumers have more cards than they can use or cards from a store they don't frequent. The ideal solution is to turn these excess cards into some cash or swap them for a card issued by a favorite store.

The business still is in its infancy, but it may catch on with gift card sales growing so fast. Some analysts are projecting that gift cards will be the most popular purchase this holiday season, and sales of retailer gift cards are expected to grow to $58 billion in 2007 from $48 billion this year.

EBay on Tuesday listed nine pages of gift cards on its auction Web site. A $25 Target gift card sold for $22.54 with free shipping. A $175 Macy's gift card sold for $146.50, including shipping.

SwapAGift.com and Cardavenue.com let their customers trade cards as well as buy and sell them. Cardavenue customers, for example, were looking to trade their Circuit City, Best Buy and Blockbuster cards. A SwapAGift customer was willing to sell a $150 Tiffany gift card for $135, or swap it for an Olive Garden card of equal value.

SwapAGift says it is so confident of the resale market that it will buy gift cards issued by about 30 major retailers and pay 70 percent of the remaining value.

SwapAGift charges sellers and traders $3.99 for each listing. Cardavenue charges sellers and traders 6.25 percent of the card's value or price, plus a 50-cent closing fee. EBay charges the seller a percentage of the sale price plus a sliding-scale fee.

CONTINUED

Edgar Dworsky, editor of Consumerworld.org, said he worries about the potential for fraud, since there's no way to tell from looking at a card whether it has any value left. "It's too risky in my view," he said. But Bob Butler, the president of Cardavenue.com, which launched in October, said he has encountered no fraud problems so far. He said he would refer to the police anyone who fails to deliver a card as promised. "They should be charged with theft or mail fraud," he said.

Simon Visa Giftcard Media Fact Sheet

How Does the Simon Visa Giftcard Work?

The Simon Visa Giftcard is a prepaid payment card available for consumer gift-giving, as well as corporate incentive, rebate, and promotional uses. The Simon Visa Giftcard is an ideal choice for birthdays, holidays, weddings, and all your gift-giving occasions. The recipient can use the Simon Visa Giftcard to buy what they want, where they want, when they want at any of the millions of locations worldwide where Visa consumer debit cards are accepted. Like other Visa cards, the Simon Visa Giftcard offers all the protection and security features cardholders have come to expect from Visa. So unlike cash, the Simon Visa Giftcard can be replaced if lost or stolen.

How is the Simon Visa Giftcard Different From A Credit or Debit Card?

- *Prepaid payment card.* The Simon Visa Giftcard is a prepaid payment card. Spending on the Simon Visa Giftcard is limited to the amount of money placed on the card. Each time the Simon Visa Giftcard is used, the purchase amount is deducted from the card balance. Cardholders can check the Simon Visa Giftcard's balance, either online or by phone, to help ensure sufficient funds are available for purchases.
- *Non-personalized.* The Simon Visa Giftcard is a non-personalized card embossed with the card number.

How is the Simon Visa Giftcard Different From Store-Issued Gift Certificates /Cards?

Store-issued gift certificates/cards can generally only be used at the retailer who issues the certificate/card. Simon Visa Giftcards are issued by Bank of America, a national bank and a Visa Member financial institution, and can be used at any merchant location that accepts Visa consumer debit cards.

Gift Card Fees

The additional services and features offered by the Simon Visa Giftcard require significant infrastructure and handling costs. The $1.50 handling fee on the Simon Visa Giftcard allows us to provide this high quality product and its many features and benefits to our customers. (This is among the lowest fees in the industry for bank-issued cards of this type; upfront fees for these types of cards range from $3.95 to $11.95 at most banks.)

Other fees which *may* apply in certain circumstances include:

- A service fee of $2.50 per month which would apply beginning in the 7th month after issuance. Visa research indicates that most gift card recipients spend the entire balance on their cards during the first three months making it unlikely that most cardholders will experience a monthly maintenance fee. A customer can either spend the remaining balance before the next monthly fee, or purchase a new Simon Visa Giftcard with the balance remaining on original card if they have no immediate plans to spend.
- Free balance inquiry available at any Simon Marketplace location and at www.simongiftcard.com. In addition, consumers can also call the 1-800 number for balance inquiry or other questions about the Simon Visa Giftcard, in which case the first call is free, and all calls thereafter are $.50 each.
- Other fees apply for replacement of lost/stolen cards.
- A shipping and handling fee applies to Simon Visa Giftcards purchased on www.simon.com
- The service fee is clearly explained on the back of the Giftcard. All potential fees associated with the Giftcard are explained in the Terms and Conditions that accompany the card.

Gift Card Benefits

For Consumers:

- *Convenient to purchase.* Simon Visa Giftcards can be purchased at more than 150 Simon malls throughout the United States and on www.simon.com
- *A welcome gift.* With the Simon Visa Giftcard, gift givers can give a gift they know the recipient will use and will not have to return.
- *Affordable.* The Simon Visa Giftcard may be purchased for the amounts that gift givers wish to spend, allowing it to fit within any budget: the minimum denomination is $20, and the maximum denomination is $500.

For Recipients:

- *Convenience.* Simon Visa Giftcard recipients can select the gifts they want from their favorite merchants without having to worry about unwanted gifts that are inconvenient to return.
- *Security.* Like other Visa card products, the Simon Visa Giftcard offers all the protection and security policies, such as the Zero Liability policy, cardholders have come to expect.

Senator Scheid from the Committee on Commerce, to which was referred

S.F. No. 200: A bill for an act relating to commerce; prohibiting expiration dates and service fees on gift certificates and gift cards; proposing coding for new law in Minnesota Statutes, chapter 325G.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. [325G.53] [GIFT CERTIFICATES.]

Subdivision 1. [DEFINITION.] For purposes of this section, "gift certificate" means a tangible record evidencing a promise, made for consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record and includes, but is not limited to, a gift card, stored-value card, store card, or a similar record or card that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, and for which the value is decreased upon each use.

Subd. 2. [PROHIBITIONS.] It is unlawful for any person or entity to sell a gift certificate that is subject to an expiration date or a service fee of any kind, including, but not limited to, a service fee for dormancy.

Subd. 3. [NONAPPLICATION.] The provisions of this section shall not apply to gift certificates:

(1) distributed to a consumer for loyalty, promotional, award, incentive, rebate, or other similar purposes without any money or other tangible thing of value being given by the consumer in exchange for the gift certificate or gift card;

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

(3) that are debit cards or other legal access devices used to access a deposit account and that are subject to the federal disclosure rules in the Electronic Fund Transfer Act, 15 United States Code, section 1693, et seq., and its implementing Regulation E, as amended from time to time; or

(4) that are stored-value cards sold primarily for

redemption by the purchaser that can be used at multiple sellers of goods or services, provided the expiration date, if any, is printed on the card and the issuer has disclosed any applicable fees.

Subd. 4. [BALANCE IN CASH.] The holder of a gift certificate is entitled to receive the balance in cash from the issuer if the remaining value of the gift certificate is $5 or less.

Subd. 5. [PAYMENT OF DEBT.] The value of a gift certificate can be used at any time to pay debt the holder of the gift certificate owes to the issuer of the gift certificate.

Subd. 6. [REMEDIES.] The remedies of section 8.31 apply to violations of this section."

And when so amended the bill do pass. Amendments adopted. Report adopted.

Linda Scheid
(Committee Chair)

February 28, 2005
(Date of Committee recommendation)