



The Consumers Union Model State Gift Card Law

The Consumers Union Model State Gift Card Law provides legislation would prevent consumers from losing money on gift cards. The Model Law eliminates expiration terms and fees, eliminates terms that allow gift cards to devalue over time, enables consumers to redeem gift cards with twenty dollars or less for its cash value, and also requires gift card funds to be set aside and held in a trust so that consumers will be able to obtain the value on their gift cards at a later date.

Gift cards under this model legislation include bank issued cards as well as retailer issued cards. Courts are split as to whether state gift card laws may regulate bank issued cards.¹ Also, states should examine their state trust laws to determine if any additional language should be added to conform to the state's trust law.

Consumers Union is ready to work with states who wish to tackle these additional issues.

Specific Language of Model State Gift Card Law

(1) “Gift card” means a prefunded record evidencing a promise that the issuer will provide goods or services to the holder of its record in the amount shown on, embedded in or associated with its record.

(2) A person may not sell a gift card:

- (a) That has an expiration date;
- (b) That has a value that declines as a result of the passage of time or the lack of use of the card;
- or
- (c) That has any fee.

(3) A gift card with a remaining value of \$20 or less may be redeemed in cash for its cash value.

(4) The value paid by a purchaser of a gift card to the issuer of the gift card is trust property held by the issuer, or its successors in interest, as trustee for the benefit of the holder of the gift card.

¹ 1 See SPGG, LLC v. Blumenthal, 505 F.3d 183 (2d Cir. 2007) and SPGGC, LLC v. Ayotte, 488 F.3d 525 (1st Cir. 2007).

(a) In a separate non-interest bearing account, in any bank or lending institution subject to regulation by this state or any agency of the United States government. The issuer shall not commingle such gift card monies with any other funds, and shall maintain records allocating such monies to individual beneficiaries reflecting the total value, redemption or partial use of the gift cards by holders; or,

(b) In a separate interest bearing account, in any bank or lending institution subject to regulation by this state or any agency of the United States government, in which case the issuer shall receive and collect interest. The issuer shall not commingle such gift card monies with any other funds, and shall maintain records allocating such monies to individual beneficiaries reflecting the total value, redemption or partial use of the gift cards by holders.

(c) Nothing in subsection (4) requires, unless otherwise required by law, the issuer of a gift card to:

1. Redeem a gift card for cash, unless the remaining value is ten dollars or less;
- or
2. Replace a gift card that has been lost or stolen.

(d) Nothing in subsection (4) creates an interest in any specific property of the issuer in favor of a holder of a gift card or in the legal representative of a holder.

(e) Unless otherwise required by law or any agreement between the issuer and the purchaser of a gift card, the issuer of a gift card has no obligation to pay interest on the value of funds held in trust under this section.

(5). This Gift Card Act applies to gift cards that are sold on or after
