
Government of the District of Columbia



Department of Insurance, Securities and Banking

Testimony of
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Associate Commissioner for Banking

A Public Hearing

on the

“Gift Card Protection Act of 2009”
Bill 18-323

Committee on Public Services and Consumer Affairs
Muriel Bowser, Chairperson
Council of the District of Columbia

October 7, 2009
1:00 PM

John A. Wilson Building
1350 Pennsylvania Avenue, NW, Room 412
Washington, DC 20004

Good afternoon Chairperson Bowser, Members of the Committee on Public Services and Consumer Affairs, and Committee staff. I am Howard Amer, Associate Commissioner for Banking in the Department of Insurance, Securities and Banking and I have been asked to present testimony today on the proposed “Gift Card Protection Act of 2009.”

Customer protection is one of the primary missions of the Department of Insurance, Securities and Banking and our role as a regulator of financial institutions operating in the District gives us a unique perspective on financial matters affecting the residents of the District of Columbia. It is from that perspective that I offer my comments to the Committee today.

As I understand it, the bill before you would prohibit gift certificates and gift cards from expiring or being subject to fees for a period of four years from issuance. Presently, some gift certificates and gift cards include an expiration date of less than four years and some include dormancy or inactivity fees that reduce the balance remaining on the card. The terms of the expiration and fees charged may not be disclosed to the purchaser at the time of sale or may be disclosed in fine print on the back of the card or other sales material. As such, the purchaser may be unaware of these restrictions that lessen the value of the card unless used on a timely basis.

Most gift certificates and gift cards are sold directly by a retailer or by a third-party agent such as a grocer, supermarket or discount store that sells the product on behalf of the retailer. In many cases, gift cards require activation through an electronic information exchange at the point of sale

that confirms the purchase transaction has been completed and validates that the gift card is authorized for immediate use. The electronic storage of the remaining value on the gift card ordinarily is maintained by a third-party provider of data services who also executes any periodic fees or expiration cutoffs per the instructions of the card's originating retailer.

Early expiration dates and periodic fees for inactivity are meant to generate additional income for the vendors to the detriment of the original purchaser or recipient of the gift card. Vendors sometimes defend these practices as necessary to cover on-going operational costs for maintenance of the program. In some cases, the customer is unaware of the declining value of the card or its expiration until a purchase is attempted and the card is rejected for either insufficient funds or due to its expiration.

These issues are clearly relevant in the District but they are of national significance as well. Indeed, at the behest of the Congress and the federal banking agencies, the President signed into law "The Credit Card Act of 2009" (the "Act") on May 22, 2009, less than five months ago. Among other things, the Act addresses gift card issues as follows:

- Gift cards are required to remain active for at least five years from the date of purchase.
- Dormancy or inactivity fees can not be imposed unless there has been no activity in a 12-month period.
- Dormancy, inactivity fees and expiration dates must be clearly disclosed to gift card buyers at the time of purchase.
- The law takes effect nine months after the signing of the bill or approximately February 22, 2010.

Given the federal law will soon take effect and that it provides a national standard on this subject, consideration should be given to aligning the expiration and inactivity fee restrictions in the District's proposed bill with those contained in the federal law to avoid confusion between federal requirements and those adopted by the District and other states, many of which have restrictions comparable to those contained in the current proposal.

I would also like to note for your awareness that the Department of Insurance, Securities and Banking, like other state bank regulators, does not have jurisdiction over the sales practices or conditions imposed on gift certificates and gift cards issued directly by retail vendors that are redeemable by the issuer only for goods or services. Indeed, the Department's authority is limited to the activities of District chartered banks and money service businesses that sell gift cards which may be used for the payment of money, including those that are redeemable for cash.

I would be happy to respond to any questions you might have.