

**WISCONSIN STATE
LEGISLATURE COMMITTEE
HEARING RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on
Small Business,
Emergency
Preparedness,
Workforce
Development,
Technical Colleges &
Consumer Protection**

(SC-SBEPWDTCCP)

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**Testimony of the Wisconsin Bankers Association
Michael Semmann, Director Government Relations**

**Senate Committee
on
Small Business, Emergency Preparedness, Workforce Development,
Technical Colleges and Consumer Protection**

August 22, 2007

Testimony in support to Senate Bill 191

Chairman Wirch and members of the Committee:

Thank you for the opportunity to testify on behalf of the Wisconsin Bankers Association (WBA) regarding Senate Bill 191 (SB 191). My name is Michael Semmann, Director Government Relations for WBA. The Wisconsin Bankers Association is the state's largest financial industry trade association, representing 300 commercial banks and savings institutions, their nearly 2,300 branch offices and 28,000 employees.

Working with a broad coalition, Senator Sullivan crafted Senate Bill 191 to accomplish the goal of regulating gift cards by creating a clear, consistent standard requiring conspicuous disclosure of all terms and conditions at the point of sale. This difficult task deserves to be recognized and the banking industry requests the committee to pass SB 191.

Many consumers are familiar with products known as gift cards or pre-paid cards for use at retail outlets, such as shopping malls. Gift Card sales have been steadily increasing over the past several years and were purchased in record number last holiday season. However, the emergence of these types of payment products have created new challenges and prompted questions from regulators, processors, merchants and consumers in an attempt to quantify these products to determine their place in the market. Unfortunately, the complexity of these products precludes a concise description regarding functionality, both from a retail and regulatory perspective.

Clearly consumer demand for gift cards will not decrease in the near future and SB 191 presents a unique opportunity to create a clear regulatory framework for consumers, businesses and state regulators. Strict regulations governing specific

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business practices could damage the gift card market or create barriers that many smaller merchants would not be able to overcome. A tightly regulated product could negatively affect sales or customer perception.

In many ways, SB 191 establishes a level regulatory playing field that does not disadvantage smaller businesses by using existing federal guidance standards adopted by the Office of the Comptroller of the Currency in 2006.

The Wisconsin Bankers Association, with the help of its member banks, has created a list of frequently asked questions about gift cards. These questions address many of the issues raised by consumers and legislators.

How is a bank gift card different from a retailer's gift card?

Because bank gift cards are branded by Visa, MasterCard or American Express, they can be used at any merchant that accepts debit card products worldwide.

How much does a bank gift card cost?

Each retail branch sets the purchase price which ranges from \$0 to \$5. One large financial institution estimates that nearly 96% of all its gift cards sold are purchased at \$2.00 each. This covers the costs of producing the card, distribution, maintaining and tracking its information, fraud protection, and the fee bank pays for selling it.

Do bank gift cards have an expiration date? Why is it necessary?

Bank gift cards typically expire 20-24 months after they are purchased. One bank has indicated that on average, 96.6% of these gift cards are used in full before they expire. The expiration date is stamped clearly on the front of the card, just like your credit or debit card. Typically VISA, MasterCard and American Express require expiration dates to be stamped on all their products to monitor the card and prevent fraud.

Card scammers have developed technology that can change the magnetic stripe on an unexpired card so they can spend money from another person's credit, debit or even gift card. If the scammer re-stripes a card, the merchant can verify the information on the receipt against the card and prevent the transaction from being processed.

If the card expires, is the remaining balance on the card gone?

NO! While the card may expire because of processor requirements, the balance of the card does not. Some banks ensure the balance can be transferred to a new gift card by purchasing another \$2.00 card BEFORE the original card expires. Fees can cost as much as \$15.00 to replace the card after it expires.

What if I forget about the gift card and don't realize it is about to expire?

After the card expires, some banks will send a letter to the registered cardholder to remind them that they have a card. Many gift card recipients can register as cardholders on the internet or by calling their bank's toll free customer service line. Otherwise this notice will go to the purchaser of that gift card if he or she is registered.

What information does the purchaser receive when buying the gift card?

Along with the gift card, the purchaser receives packaging that contains information on all fees, costs, usage rules and services. A sticker is almost always placed on the front of the card that discloses applicable service fees and calls attention to the terms and the website.

Can the gift card be used to make purchases on the internet or by mail or phone?

Yes. The cardholder must register certain personal information before purchases can be made in these ways.

Does the information disclosed at purchase of a gift card meet federal guidelines?

Yes. In 2006, the OCC came out with guidelines requiring full disclosure of all terms and conditions of gift cards sold by national banks. In fact, many banks have used disclosures consistent with those recommended by the OCC since before they were published.

What happens if the gift card is lost or stolen?

Bank gift cards can be replaced if lost or stolen. To do so, the cardholders must call the toll free number with their gift card number and typically pay a service fee for a new card to be issued with the remaining balance on it.

Are there any fees for normal usage of the card if the card is used up within 12 months?

ALMOST NEVER. Approximately 92% of all bank gift cards are completely used up within 12 months, and therefore, most cards are never subject to a maintenance fee. After that, banks typically charge a maintenance fee. However, some banks are moving away from these types of fees.

If the value of my gift card is less than the cost of a purchase, can I still use it?

YES. Just like with credit or debit cards, the merchant can split payment between the gift card and another method of payment.

How do I check the balance of my gift card?

Typically, banks have a website that can be checked at any time, day or night or a toll-free number that customers can call. Fees vary on

Also, an increasing number of merchants are now able to print the remaining card balance on the sales receipt after a purchase is made.

Do banks keep all of the money that is not spent on their gift cards?

Typically, after the gift card expires, no more maintenance fees are assessed. The bank maintains the record of that gift card until either the card holder transfers the balance to a new gift card or until the bank is legally required to escheat that money to the state in which the card was purchased. WBA understands that a question exists under Wisconsin law about the process of escheatment.

In conclusion, SB 191 is the best model for regulation of the gift card industry in Wisconsin. It creates a level playing field for all businesses while informing consumers of the terms and conditions of the product they are purchasing.

The Wisconsin Bankers Association respectfully asks you to support SB 191 and I thank you for consideration of our request. I would be happy to answer any questions.

Michael Semmann is the Director Government Relations for the Wisconsin Bankers Association. He can be contacted at (608) 41-1206 or msemmann@wisbank.com.



WISPIRG

**Standing Up
To Powerful Interests**

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To: Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges, and Consumer Protection
From: Bruce Speight, WISPIRG Advocate
Date: August 22, 2007
Re: Senate Bills 191 and 245

Good morning Chairman Wirch and members of the committee. Thank you for the opportunity to speak today. My name is Bruce Speight and I am a Public Interest Advocate for WISPIRG, the Wisconsin Public Interest Research Group. WISPIRG is a statewide non-profit, non-partisan public interest organization that stands up to powerful interests. We represent 9,000 members across the state.

I am here today in strong support of SB245 and in opposition to SB191. WISPIRG strongly supports protecting consumers' right to receive the full value of a product or service that they have purchased. In fact, a core and basic principle of the marketplace is the idea that when a transaction is made, both the consumer and the vendor are making a commitment in good faith to each other. In the case of gift cards, a consumer makes a financial commitment to a vendor under the agreement that that vendor will provide whatever service or product they are selling, at the value identified on the gift card or certificate, without exception. It's a basic principle, you get what you pay for. The vendor has been compensated for their product or service, the consumer should receive that product or service at full value. Anything less simply undermines the commitment that the vendor has made.

SB245 protects this basic consumer principle; SB191 is insufficient in protecting this consumer principle.

SB191 allows a vendor to offer a consumer something less than what they have paid for, so long as it is "conspicuously disclosed" to the consumer. Moreover, in most cases, the recipient of a gift card or certificate is not present for the 'conspicuous disclosure' at the time the transaction is made; therefore there is no guarantee that any limitations or exceptions on the gift card or certificate are disclosed to the gift recipient.

In many cases, businesses are already benefiting from the profits generated from unredeemed gift cards; the only losers are consumers. According to the Department of Agriculture, Trade and Consumer Protection, shoppers lose about 10% of the value of gift cards sold in Wisconsin—or \$11 million per year—because of expiration dates. In fact, gift card holders lose more to expiration dates, fees and lost cards than to both debit and credit card fraud combined (\$8 billion lost nationally to expiration dates and fees vs. \$3.5 billion to fraud).

WISPIRG thanks Representatives Krusick and Jeskewitz and Senators Carpenter and Coggs for introducing the Smart Shoppers' Gift Card Bill, SB245, and for taking action against unfair gift card practices. Numerous states and the Federal Trade Commission have also stepped in to restore fairness to a system that has gotten out of control—**it's wrong when consumers give their friends and loved ones a gift that turns into the incredible shrinking gift. No amount of disclosure can fix the essential unfairness of watching a gift disappear.** On behalf of our members, I urge you to stand up for Wisconsin consumers and support SB245 and oppose SB191.

Thank you for the opportunity to comment today.





Serving the
Lodging Industry
for Over 100 Years

August 22, 2007

To: Senate Small Business Committee
Senator Wirch, Chairman
From: Trisha Pugal, CAE
President, CEO
RE: SB 191 Gift Certificate/Cards Disclosure

On behalf of the Wisconsin Innkeepers Association, representing over 1,000 hotels, motels, resorts, condos, inns, and Bed & Breakfasts throughout Wisconsin, we respectfully ask for your support of SB 191 relating to Disclosure requirements for Gift Certificates and Gift Cards.

Most lodging properties in our state donate a certain amount of gift certificates or gift cards, that can be used at their property, for the benefit of local charities or other non-profits to use in fundraisers to raise monies for important causes.

In addition, most lodging properties also make available to the general public purchasable gift certificates or gift cards that also may be used at their property. Many, but not all, absorb the costs of providing this service. Others may choose to share the cost of the service with the buyer.

We feel that conspicuous disclosure of any expiration date or service fees by the seller for gift certificates or gift cards (as is included in SB 191) is not only a reasonable requirement that we can support, but also is a good business decision. This allows the consumer to make their own decision as to what they wish to purchase, just as they do with their other purchases.

Please support SB 191.

Cc: WIA Executive Committee
Kathi Kilgore, WIA Lobbyist Partner

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State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

August 22, 2007

The Honorable Robert Wirsch, Chair
Committee on Small Business, Emergency Preparedness,
Workforce Development, Technical Colleges and Consumer Protection

Re: SB 191 relating to disclosure of terms and conditions applicable to the use of gift certificates, gift cards and other gift obligations.

Dear Senator Wirsch,

Thank you for permitting the Department of Agriculture, Trade and Consumer Protection the opportunity to provide testimony on SB 191. We oppose this bill as it does not go far enough to recognize the legitimate expectation of persons purchasing gift cards and certificates – to get what they paid for.

Consumers should get what they paid for, at least for a reasonable period of time, before fees and expiration dates kick in. Under this bill, the seller of gift cards can impose a 30 day, 6 month, 1 year or whatever other expiration the seller chooses on the gift card as long as the gift card seller discloses that to the purchaser. Similarly, a gift card seller can impose whatever inactivity or other charges the seller wants as long as those fees/charges are disclosed. Thus, if a seller imposes a \$2.50/mo. Inactivity charge on a \$25 gift certificate starting the date of sale, the entire value of the card will be gone in less than a year. As a result, we think more than disclosure is needed; after all, the business isn't losing any money since the consumer already paid for the gift card. In any event only disclosure should be in writing to avoid any "he said/she said" issues. The current bill permits verbal disclosure.

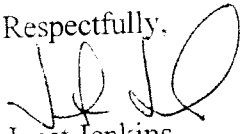
Second, Sec. 100.172(1)(b)2 of the bill excepts from the definition of gift obligation any transaction in which the obligation to provide goods or services extends to more than one seller of goods or services. This exception means that shopping malls, which sell gift cards good at any store in the mall can do whatever they want without any disclosures. It also likely means that businesses that are individually owned, but part of a franchise can also do whatever they want with their gift cards without any disclosure.

Finally, the bill also requires that the department issue a warning to any business before it can take enforcement action for violating this law. With all due respect, such a penalty scheme provides little if any incentive for compliance. It sends a signal that business is free to violate the law unless or until they get caught, and even then they don't have to be concerned because all the department can do is send them a warning letter.

Agriculture generates \$51.5 billion for Wisconsin

Thank you for the opportunity to testify on Senate Bill 191.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Jenkins', written in a cursive style.

Janet Jenkins

Administrator

Division of Trade & Consumer Protection



No
Date

Good morning. My name is Dave Kotwitz, I am here on behalf of Piggly Wiggly in Edgerton. I am also representing the Wisconsin Grocers Association including more than 1,000 retailers, distribution centers and brokers in the retail food industry. I am here in support of Senate Bill 191 which requires retailers to fully disclose expiration dates and services fees associated with a gift obligation or gift card.

As you know, gift card sales have jumped significantly in the past few years. This Holiday season, it was estimated that \$18.5 billion in sales was generated from gift cards nationally. People are purchasing gift cards at increasing rates and this legislation will only benefit the trend.

Grocers in Wisconsin offer both gift cards and gift certificates as a convenience for their customers as well as a way to bring new customers into their stores. Gift obligations offered by grocers vary in many ways, but most have an expiration date and many of the chain stores with gift card programs charge service fees as well.

Expiration dates on gift obligations enable businesses to account for revenues and liabilities. Without expiration dates, money can be unclaimed for unknown periods of time. Most retailers clearly state an expiration date and want their customers to use the cards.

According to the Food Marketing Institute, which is our national association, fees or expirations for store-issued gift cards usually allow a period between 1-3 years before issuing fees on dormant accounts. The fee

is usually the same fee third party administrators charge the retailers for maintaining the dormant account.

The increase of gift card sales is somewhat of a misrepresentation of the actual sales that a business can count as revenue. Many believe that retailers profit when consumers either do not use the obligation to its full value or simply do not use it at all. However, accounting practices prevent retailers from counting the obligation as a sale until an exchange for merchandise has taken place.

Senate Bill 191 requires that the expiration date and service fees are conspicuously disclosed, which provides that the consumer is clearly informed of the restrictions of the obligation. On behalf of the Wisconsin Grocers Association, we ask for your support of SB 191 and believe that it protects both businesses and consumers who use gift cards.

Thank you.





No
Date

What is the Wisconsin Coalition for Consumer Choice (WCCC)?

- Advocacy organization working to unite consumer, financial & privacy organizations that are committed to maintaining and advancing consumer choice and privacy in the Wisconsin financial services marketplace
- The WCCC is a conduit between customers who utilize financial products/services & legislators who are interested in their perspective and story
- We will work on any and all proposals that further regulate, oversee or monitor consumers and the financial services they utilize in ways that would violate their privacy or limit their consumer choices in WI
- As of August, 2007 the WCCC is supported by almost 13,000 Wisconsin consumers
- WCCC currently focused on the following policy areas:
 - Disclosure of social security numbers
 - Prohibiting use of social security numbers
 - State do not call list
 - REAL ID
 - Opposition to state and federal sponsored data bases

WCCC Supports Passage of SB 191

- SB 191 is pro-consumer legislation that is supported by businesses
 - Strikes a perfect balance of consumer education / protection and business sense
 - Point of sale disclosures of term and expiration provides consumers with knowledge that was once assumed
 - Provides a road map for small and large business issuing the cards and certificates
 - Establishing requirements for consumer education is good for businesses large and small
- The DATCP warning and subsequent fines for second and multiple violations are fair and reasonable
- We applaud the authors of this legislation and are encouraged by the bi-partisan co-sponsorship the bill has received





Wisconsin State Senate

Testimony for SB 191, Gift Card Legislation

No
Date

Mr. Chairman and members of the committee, thank you for giving me the opportunity to testify about the gift card legislation that Representative Gunderson and I have introduced. It has been a pleasure to work with him on this bill and I commend him for his leadership in the past on this issue. I am also especially proud of the fact that are twelve Senators and twenty seven Representatives that are co-sponsoring this legislation, a long list of legislators from all parts of the political spectrum.

This legislation seeks to regulate gift cards in a way that both protects consumers and allows the small businesses that utilize gift cards to have clear standards for issuing them. Right now, there are really no solid regulations on the books that govern gift cards, which has lead to confusion and mixed standards in the business community and consumers. We have crafted legislation that seeks to set these standards without stepping in to the marketplace and over regulating the businesses that sell these cards. As you will hear today from a variety of groups, the businesses that use these cards range anywhere from large retailers to small, Mom and Pop stores. While we recognize the need to set clear standards for the use of gift cards, we also realize that there are no “one-size fits all” regulations that can be crafted in order to allow consumers to use these cards and businesses to sell them.

The bill requires that a business that sells a gift card must “conspicuously disclose” if gift cards have an expiration date, service fees, or terms and conditions. This disclosure is negatively defined, meaning that we created a list of methods that do not meet the level of “conspicuous disclosure.” In doing so, we have boxed the industry in to a place that requires them to provide the consumer with the important information that they need to be informed of, but does not get in the way of their ability to sell the gift cards that best suit their business.

The bill also includes an exception for schools, churches, and other charitable organizations, exempting them from enforcement measures. Without that, thousands of schools and churches participating in useful and well intentioned “scrip” programs to raise money for playgrounds, church youth groups, and other beneficial programs could then inadvertently be subjected to punitive enforcement measures by the legislature or else be forced to jettison their community fundraising operations as a protective measure.

Some have suggested that requiring disclosure for gift cards is not enough, and that hard lines must be drawn in terms of expiration dates and service charges. While those concerns are valid, we respectfully think that a consumer should be empowered to make a decision to buy a gift card or not, provided that they are aware of all the relevant information that goes along with that purchase.

The issue is prohibition of any expiration dates or service fees. We do not believe that it is our role as legislators to tell a business they have to present a liability on its books that lasts indefinitely or burdens them with further costs. After all, gift cards are in fact a product that a business sells. They are a certificate for service at that business, and hence there is a very different interpretation that must be applied.

I believe this bill is the responsible moderate solution, providing protection for the consumer where none currently exists, but also without harming the growing gift card industry. I thank the Committee for holding this hearing and ask for a yes when this bill comes for a vote.





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Weaker holiday gift card sales

Even though more than half of shoppers will buy gift cards, sales will fall this season, according to a survey.

November 13 2007: 10:19 AM EST

NEW YORK (CNNMoney.com) -- Fewer shoppers who are stumped on what to buy this holiday season will turn to gift cards, a survey released Tuesday showed.

The National Retail Federation forecast that gift card sales this holiday season will total \$26.3 billion, down from the actual \$27.8 billion spent last year, according to a study conducted by BIGresearch.

Although sales are expected to weaken, the average shopper still will spend more on gift cards (\$122.59) than they did last year (\$116.51).

"Many consumers pulled back on spending for themselves this year and are hoping to receive a gift card so they can purchase something they may have had their eye on for months," Tracy Mullin, NRF President and CEO said in a statement.

According to the survey, gift cards will be the one of the most popular gifts this holiday with 56.6 percent of consumers planning to buy one compared to other top selling gifts like clothing, toys and books.

Of those planning to buy a gift card, 87.7 percent of shoppers said they plan to purchase two or more gift cards.

"As consumers become more strapped for time, they are constantly looking for ways to make holiday shopping easier and less stressful," Phil Rist, Vice President of Strategy for BIGresearch said in a statement. "Gift cards allow for a faster and more convenient way to buy gifts for family and friends." ■

Wal-Mart cautious on holiday earnings

Recalls scare parents away from hot toys



Find this article at:

http://money.cnn.com/2007/11/13/news/economy/gift_cards/index.htm?postversion=2007111310

Check the box to include the list of links referenced in the article.

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ConsumerMan: Avoid the pitfalls of gift cards

Gift cards seem like no-brainers, but why not just give cash?

By Herb Weisbaum

updated 7:45 p.m. CT, Wed., Nov. 14, 2007



How could anyone not like gift cards? They are easy to buy and great to receive — the perfect present for the hard-to-buy-for person on your list. With a gift card you never give the wrong size or color. So why is Consumer Reports launching a public education campaign to warn shoppers about the pitfalls of gift cards?

"We've gotten a lot of complaints from readers recently about them, and it's clear that an enormous amount of money is going to waste here," says Greg Daugherty, the magazine's executive editor.

Consumer Reports says about \$8 billion worth of gift cards given last holiday season still have not been redeemed. Some cards were lost, others are forgotten. It seems like we all have a few. "I have them around my house in various places," Daugherty tells me.

He's not alone. The magazine surveyed gift card recipients and found that 27 percent of them have not used one or more of the cards they received last year. Why not?

- 58 percent said they didn't have time
- 35 percent said they couldn't find anything they wanted to buy
- 32 percent said they forgot about the card
- 4 percent said they tried to redeem the cards too late — they had expired
- 3 percent said the cards were lost

To launch its gift card campaign, Consumer Reports bought a full-page advertisement in Tuesday's New York Times. The ad called unused cards "easy money" for retailers.

"That couldn't be further from the truth," says Ellen Davis of the National Retail Federation. "Unredeemed gift cards are hardly easy money."

Davis says merchants want people to spend their gift cards as quickly as possible because gift cards do not count as a sale until they are redeemed. "So if you buy a gift card this holiday season and the recipient doesn't spend it until 2009, a retailer is not going to be able to put that gift card on their books until 2009," she says.

Retailers also hope that when you come in with that gift card you'll spend more than the value of the card. Consumer Reports calls that another downside to giving gift cards.

In most states, if a gift card is not used within a few years it is considered unclaimed property, and the retailer must give that money to the state. "It's not leftover money that most retailers can put in their pocket," says Davis.

Consumer Reports sees it differently. The retailer can take advantage of the float — investing the money spent on the gift card until it's used to buy something. "It's not a good thing for consumers regardless of where the money happens to be on the accounting ledger," says Daugherty. "It's a winning proposition for stores all around, but not for consumers."

Gift cards are expected to be one of the most popular gift items again this holiday season. And no wonder. You can buy them everywhere, they're a green gift (no extra packaging) and there's a card for almost everything now — including golf courses, spas and state parks.

Customized gift cards are the latest thing. American Express has nine types of gift cards, including ones for kids, teens and newlyweds. Use the movie-lovers AMEX gift card at certain movie chains and you'll get a free

box of popcorn.

According to a recent National Retail Federation survey, 88 percent of consumers plan to buy two or more gift cards this year. The survey found the average consumer plans to spend \$122 on gift cards for a total of \$26.3 billion, up \$1.5 billion from 2006.

All gift cards are not the same

Buy the wrong gift card and it could be worth nothing when your friend or loved ones tries to use it. That's because some gift cards expire. Others have inactivity fees that will reduce their value by a couple of dollars every month.

A Bankrate.com survey found that store gift cards are the best deal for consumers. There's rarely a purchase fee, and most have no expiration date. Bloomingdale's and Macy's are the exceptions — their gift cards expire two years from the date of last value added. (Note: in some states, such as Washington, by law, gift cards sold by retailers cannot expire.)

Compare that with cards issued by shopping malls and credit card companies. Bankrate.com found that all the issuers they checked charge a fee on top of the face value of the card — from \$3.95 to \$9.95 — and all of these cards will eventually expire.

"You need to read the fine print to see what the terms and conditions are," says Ellen Cannon, Bankrate.com's managing editor. "It can make a big difference in the gift you're actually giving."

Consumer Reports has this advice: Think twice about giving gift cards issued by a bank. "While bank cards generally can be used at more retailers than store cards," the magazine warns, "they're often loaded with fees and restrictions." If you must give a bank card, the magazine says, find one that doesn't charge maintenance fees until at least a year after the card is issued.

Caution: It's very risky to buy gift cards from online auctions or classified ads. The offer may be mighty tempting — a \$100 card for just \$25. But many of the cards sold this way are counterfeit or stolen. There's no way to know. You could buy one and be left holding the bag.

The bottom line

Buying a gift card is easy, but it still takes some thought. What does the person like? Where do they shop? Is that card worth enough? It can be frustrating to get a \$25 gift card when you can't buy anything in the store for that price. And be sure to send along the receipt — it may be needed to replace a lost or stolen card — plus information on terms and conditions. If you receive a gift card, go online and register it. This may help you get the card replaced if something happens to it.

More information

- Consumer Reports: Avoid Gift Card Pitfalls
- Bankrate.com: 2007 Gift Card Survey
- National Retail Federation: Top Ten Tips for Buying Gift Cards
- National Retail Federation: Gift Cards More Popular Than Ever

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