

108TH CONGRESS  
2D SESSION

# S. 2969

Entitled the “Fair Gift Card Act”.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 9, 2004

Mr. SCHUMER introduced the following bill; which was read twice and referred  
to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

Entitled the “Fair Gift Card Act”.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Gift Card Act”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) GIFT CERTIFICATE, STORE GIFT CARD,  
8 OTHER PREPAID CARDS.—The terms “gift certifi-  
9 cate”, “store gift card”, and “general-use prepaid  
10 card” have the following meanings:

11 (A) GIFT CERTIFICATE.—The term “gift  
12 certificate” means a written promise that is—

1 (i) usable at a single merchant or an  
2 affiliated group of merchants that share  
3 the same name, mark, or logo;

4 (ii) issued in a specified amount and  
5 cannot be increased;

6 (iii) purchased on a prepaid basis in  
7 exchange for payment; and

8 (iv) honored upon presentation by  
9 such single merchant or affiliated group of  
10 merchants for goods or services.

11 (B) STORE GIFT CARD.—The term “store  
12 gift card” means a plastic card or other elec-  
13 tronic payment device that is—

14 (i) usable at a single merchant or an  
15 affiliated group of merchants that share  
16 the same name, mark, or logo;

17 (ii) issued in a specified amount and  
18 may or may not be increased in value or  
19 reloaded;

20 (iii) purchased on a prepaid basis in  
21 exchange for payment; and

22 (iv) honored upon presentation by  
23 such single merchant or affiliated group of  
24 merchants for goods or services.

25 (C) GENERAL-USE PREPAID CARD.—

(i) IN GENERAL.—The term “general-use prepaid card” means a card or other electronic payment device issued by a bank or financial institution, or by a licensed money transmitter that is—

(I) usable at multiple, unaffiliated merchants or service providers, or at automated teller machines;

(II) issued in a requested amount whether or not that amount may be, at the option of the issuer, increased in value or reloaded if requested by the holder;

(III) purchased or loaded on a prepaid basis; and

(IV) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

(ii) EXCEPTION.—The term “general-use prepaid card” does not include a debit card that is linked to a demand deposit or share draft account.

(D) EXCLUSION.—The terms “gift certificate”, “store gift card”, and “general-use pre-

1           paid card” do not include a written promise,  
2           plastic card, or other electronic device that is—

3                   (i) used solely for telephone services;

4                   or

5                   (ii) associated with a demand deposit,  
6           checking, savings or similar account in the  
7           name of the individual at a bank or finan-  
8           cial institution, and that provides payment  
9           solely by debiting such account.

10           (2) DEBIT CARD.—The term “debit card” has  
11           the meaning given that term under section 603(r)(3)  
12           of the Fair Credit Reporting Act (15 U.S.C.  
13           1681a(r)(3)).

14           (3) FINANCIAL INSTITUTION.—The term “fi-  
15           nancial institution” has the meaning given that term  
16           under section 603(f) of the Fair Credit Reporting  
17           Act (15 U.S.C. 1681a(f)).

18           (4) DORMANCY FEE; INACTIVITY CHARGE OR  
19           FEE.—The terms “dormancy fee” and “inactivity  
20           charge or fee” mean a fee, charge, or penalty for  
21           non use or inactivity of a gift certificate, store gift  
22           card, or prepaid general-use card.

23           (5) SERVICE FEE.—The term “service fee”  
24           means a periodic fee, charge, or penalty for holding

1 or use of a gift certificate, store card, or prepaid  
 2 general use card.

3 (6) LICENSED MONEY TRANSMITTER.—The  
 4 term “licensed money transmitter” means a person  
 5 who sells or issues payment instruments or engages  
 6 in the business of receiving money for transmission  
 7 or transmitting money within the United States or  
 8 to locations abroad by any and all means, including  
 9 but not limited to payment instrument, wire, fac-  
 10 simile or electronic transfer.

11 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**  
 12 **AND PRACTICES IN CONNECTION WITH GIFT**  
 13 **CARDS.**

14 (a) IMPOSITION OF FEES OR CHARGES.—

15 (1) IN GENERAL.—Except as provided for in  
 16 paragraphs (2), (3), and (4) it is unlawful for any  
 17 person to impose with respect to a gift certificate,  
 18 store gift card, or general-use prepaid card a dor-  
 19 mancy fee, inactivity charge or fee or a service fee.

20 (2) EXCEPTION.—A dormancy fee, inactivity  
 21 charge or fee, or service fee described in paragraph  
 22 (1) may be charged with respect to a gift certificate,  
 23 store gift card, or general-use prepaid card if—

1 (A) at the time the charge or fee is as-  
2 sessed the certificate or card has a remaining  
3 value of \$5 or less;

4 (B) the charge or fee does not exceed \$1;

5 (C) there has been no activity with respect  
6 to the certificate or the card for at least 24 con-  
7 secutive months;

8 (D) the holder of the certificate or the card  
9 may reload or add value to the certificate or the  
10 card; and

11 (E) the requirements of paragraph (3) are  
12 met.

13 (3) REQUIREMENTS.—The requirements of this  
14 paragraph are that—

15 (A) the certificate or card clearly and con-  
16 spicuously states in 10-point font—

17 (i) that a charge or fee described in  
18 paragraph (1) may be charged; and

19 (ii) the amount of the charge or fee,  
20 how often the charge or fee may be as-  
21 sessed, and that the charge or fee may be  
22 assessed for inactivity; and

23 (B) the issuer of the certificate or card in-  
24 forms the purchaser of the charge or the fee be-  
25 fore the certificate or card is purchased, regard-

1 less of whether the certificate or card is pur-  
2 chased in person, over the Internet, or by tele-  
3 phone.

4 (4) EXCLUSION.—The prohibitions and require-  
5 ments contained in this subsection shall not apply to  
6 gift certificates that—

7 (A) are distributed pursuant to an award,  
8 loyalty, or promotional program and with re-  
9 spect to which there is no money or other value  
10 exchanged; or

11 (B) expire not later than 30 days after the  
12 date they are sold and are sold below the face  
13 value of the certificate to an employer, or to a  
14 nonprofit or charitable organization for fund-  
15 raising purposes.

16 (b) LIMITATIONS ON EXPIRATION DATE.—

17 (1) IN GENERAL.—Except as provided in para-  
18 graph (2), it is unlawful for any person to sell or  
19 issue a gift certificate, store gift card, or general-use  
20 prepaid card that is subject to an expiration date.

21 (2) EXCEPTIONS.—A gift certificate, store gift  
22 card, or general-use prepaid card may contain an ex-  
23 piration date if the expiration date is not less than  
24 5 years from the date the card is purchased. Expira-

1       tion terms must be prominently disclosed in at least  
2       10-point font and in all capital letters.

3   **SEC. 4. RELATION TO STATE LAWS.**

4       The Act and any regulations or standards established  
5   pursuant to this Act shall not supersede any State law  
6   or regulation with respect to charges, fees, and expiration  
7   dates of gift certificates, store gift card, or general-use  
8   prepaid cards.

9   **SEC. 5. ENFORCEMENT.**

10       (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A  
11   violation of this Act shall be treated as a violation of a  
12   rule defining an unfair or deceptive act or practice pre-  
13   scribed under section 18(a)(1)(B) of the Federal Trade  
14   Commission Act (15 U.S.C. 57a(a)(1)(B)).

15       (b) ACTIONS BY THE COMMISSION.—The Federal  
16   Trade Commission shall enforce this Act in the same man-  
17   ner, by the same means, and with the same jurisdiction,  
18   powers, and duties as though all applicable terms and pro-  
19   visions of the Federal Trade Commission Act (15 U.S.C.  
20   41 et seq.) were incorporated into and made a part of this  
21   Act.

22       (c) INDIVIDUAL CAUSE OF ACTION.—Nothing in this  
23   Act shall be construed to limit an individual's rights to



- 1 enforce a State law relating to unfair or deceptive acts
- 2 or practices.

