

➤ Hearing Records ... HR (bills and resolutions)

**** 07hr_sb0245_SC-SBEPWDTCCP_pt01**

**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)**

COMMITTEE NOTICES ...

➤ Committee Reports ... CR
**

➤ Executive Sessions ... ES
**

➤ Public Hearings ... PH
**

➤ Record of Comm. Proceedings ... RCP
**

**INFORMATION COLLECTED BY
COMMITTEE FOR AND AGAINST
PROPOSAL ...**

➤ Appointments ... Appt
**

Name:

➤ Clearinghouse Rules ... CRule
**

➤ Hearing Records ... HR (bills and resolutions)
**

(companion bill: _____)

➤ Miscellaneous ... Misc
**

()



AARP Wisconsin T 1-866-448-3611
222 W. Washington Ave. F 608-251-7612
Suite 600 TTY 1-877-434-7598
Madison, WI 53703 www.aarp.org/wi

August 22, 2007

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

From: Patricia Finder-Stone, AARP WI State President

Re: Support for SB 245, Gift card regulation

Good morning. My name is Patricia Finder-Stone, AARP Wisconsin State President. Thank you for the opportunity to testify in favor of SB 245, regulating gift cards.

You are familiar with the statistics:

- Americans spent about \$55 billion in gift cards every year.
- The average person buys 3 for a total of more than \$100.
- About 10% of all gift cards are never redeemed.

A friend of mine, also an AARP volunteer and a retired accountant, commented that since merchants have the use of the money for all the time the gift card is not redeemed, the card should really grow in value rather than expire. And that makes sense to me.

And I personally have had some negative experiences. When I have bought gift cards, I've wanted to make sure that I, and most importantly, my family and friends received the expected value.

It was most embarrassing recently to hear that the amount of a gift card I purchased for my son-in-law had depreciated sizably when he decided to use it. As my daughter said, "It's like having money expire."

And my grandchildren have asked me not to give them gift certificates anymore, although they are appreciative of the thought. "Grandma, don't give me gift cards. I'd rather have a check. It's hard to decide what I want to buy right away, and then they charge me a fee if I don't use it."

And I was distressed recently when I redeemed a restaurant gift card spending \$18 out of the \$25 gift card I had been presented for my volunteering at a local organization. I was told that I was not due "change" for the card, as it was against their policy. (I should have had that \$7.00 dessert!)

AARP Wisconsin supports SB 245. We urge you to do likewise. Thank you for the opportunity to speak with you today.



September 1, 2005

To: The Wisconsin State Legislature
From: Gail Sumi, Government Affairs Representative – 286-6307
Re: AB 583, related to regulation of gift cards

I was talking with one of our key volunteers regarding AB 583, related to regulation of gift cards, which AARP Wisconsin supports. She asked me to provide you with her feelings on this legislation so I've pasted in her letter to you below.

Thank you to the legislators who co-authored this legislation.

August 16, 2005

An open letter to the Legislature from a grandparent -

As a grandparent, I often struggle with what to give my teenage grandchildren for birthdays and Christmas, so I turn to gift cards. I give them gift cards for electronics, clothes and books.

When I learned that some of the gift cards expire or lose their value over time, I was pretty upset and thought – there oughta be a law! I don't want my money to go to waste.

So I was glad to hear that Rep. Krusick, Sen. Harsdorf and a majority of the legislature had a "truth in gift card" proposal. I read about it in the Milwaukee Journal Sentinel recently and as a member of AARP's State Coordinating Council, I was glad to see that AARP Wisconsin is supporting this legislation.

I hope to see this proposal become law soon. Thanks to everyone who is supporting it.

Sincerely,

A handwritten signature in black ink that reads "Louise Toth".

Louise Toth
South Milwaukee
AARP Wisconsin State Coordinating Council

February 20, 2005 Sunday
Late Edition - Final

SECTION: Section 14WC; Column 3; Westchester Weekly Desk; IN BUSINESS; Pg. 3

LENGTH: 1043 words

HEADLINE: The Gift That Just Stops Giving

BYLINE: By JEFF GROSSMAN

DATELINE: WHITE PLAINS

BODY:

JOYCE HOFFMAN received a Simon Visa GiftCard as a Christmas present in 2003. Believing the card was worth its original purchase price of \$20, she went to cash it in at Bed, Bath and Beyond last February. The store turned it down. Automatic deductions had whittled the card down to a value of \$2.50, Ms. Hoffman said.

The cards, sold at malls owned by the Simon Property Group, are the focus of a lawsuit brought by Eliot Spitzer, the New York State attorney general. They have also angered local consumer advocates. Mr. Spitzer is acting in the wake of counterparts in Massachusetts, Connecticut and Vermont, who all filed lawsuits against the company in November.

Ms. Hoffman went to complain at the Westchester mall in White Plains. "I acted like a crazy lady," she said. "I think they would have called security to remove me, because I started saying, 'I have a gift card from you and it loses value. Two dollars and fifty cents!'"

After a six-month grace period, Simon deducts \$2.50 from the value of the cards every month until they are depleted. Ms. Hoffman did not know that the card she received had been bought long before it was given to her.

In addition to the monthly deductions and an initial cost of \$1.50 on top of the card's value, Simon charges \$5 to replace the cards if they are lost or stolen, and \$7.50 to replace them if they expire, restoring their original value minus any purchases that were made.

A separate fee to check the balance is being discontinued. Although they are sold through the Simon Web site and at the company's malls, the cards carry both a Simon and a Visa logo on the front and are redeemable at any store that accepts Visa cards.

Diane Finkelstein, who teaches nursery school at the Larchmont Temple, tried to use her card at the Eileen Fisher store at the Westchester, not realizing that it had expired. A Simon representative on the telephone told her about the replacement charge. "Not having an option, I said 'fine,'" she said.

The monthly deductions are "aggressively anti-consumer," and the cards are "loaded with fees," said Elaine Price, director of the Westchester County Department of Consumer Protection.

Since Feb. 9, all cards sold at the Westchester and at the Jefferson Valley Mall in Yorktown have carried a sticker affixed to the front explaining the charges. The stickers are being introduced first in the Northeast, and will be on all cards nationwide by March 1, said Billie Scott, a Simon spokeswoman. The card expiration date, which is being changed to 18 months or longer from the purchase date, is embossed on the front of the cards. The monthly deductions, described as an "administrative fee," are explained in bold type on the reverse.

The Indianapolis-based Simon began selling the cards nationally in 2003. Last year, the company sold more than six million of them, according to documents provided by Ms. Scott. More than 90 percent of the cards are used before the deductions begin, the documents say.

PLACARDS at the customer service desk at the Westchester describe each of the charges in large text. On one visit, the sales representative fully explained the costs before selling a card to a potential customer. On a later occasion, after the stickers were attached to the cards, a different employee "strongly" recommended that the purchaser write "use within six months" on the cardboard sleeve that the card is packaged in.

However, the desk at the Jefferson Valley Mall did not have the explanatory placards last Sunday. Instead, an advertisement for the card specified the deductions and the purchase price, but not the other fees. A list of rules and conditions hangs from the packaging sleeve, but the representative did not volunteer any additional information when selling a card.

A New York State law which became effective on Oct. 18 prohibits gift card issuers from deducting monthly administrative fees until a card has been unused for a year, said Christine Pritchard, a spokesperson for Mr. Spitzer. The law also requires replacement charges to be printed on the cards, she said. Penalties can be assessed up to \$1,000 per violation. A Rockland County law had prohibited all fees on gift cards and gift certificates, but it was replaced by the statewide statute.

Mr. Spitzer's office filed the lawsuit against Indianapolis-based Simon in New York State Supreme Court on Feb. 2. The success of his suit may hinge on whether the cards are closer to gift certificates or prepaid debit cards.

The company has argued that the cards are bank products, and therefore controlled exclusively by federal **banking regulations**. The cards are labeled "debit" on the front.

Christopher Lonner, a Scarsdale resident, sued Simon before the New York law came into effect. Mr. Lonner claimed that the fees were unenforceable under longstanding state contract law, and sought to represent a whole class of plaintiffs affected by the charges. Justice Kenneth W. Rudolph of the State Supreme Court, sitting in White Plains, dismissed the case in September. "It is clear that the plaintiff's claims are preempted by federal law," he said. The decision is being appealed, said William Weinstein, Mr. Lonner's attorney.

If the cards are bank instruments, they would be regulated by the federal comptroller of the currency. That office has indicated that state law could apply. In a letter to the Massachusetts attorney general, the comptroller's acting chief counsel said he thought that fees collected by Simon could be subject to state regulation.

Senator Charles E. Schumer introduced federal gift card **legislation**, endorsed by Consumers Union, in October. The **legislation**, sent to the Senate **Banking** Committee, would have allowed monthly fees only if they were \$1 or less, and the card was worth \$5 or less and hadn't been used in two years. Mr. Schumer will be sponsoring a revised gift card bill in the new Congress, with modifications to account for complex instruments like the Simon card, said his spokesman, Israel Klein.

"The consumer does not make the distinction between a gift certificate and a gift card. They just don't," said Ms. Price of the Westchester consumer protection office. "Simon's policy, whether it's legal or not, is not right."



AARP Wisconsin T 1-866-448-3611
222 W. Washington Ave. F 608-251-7612
Suite 600 TTY 1-877-434-7598
Madison, WI 53703 www.aarp.org/wi

August, 2007

AARP Wisconsin Partners with DFI & OPP to Fight Fraud

In late 2006, AARP Wisconsin formed a partnership with the Wisconsin Department of Financial Institutions (DFI) and the Wisconsin Office of Privacy Protection (OPP). The focus of this partnership was to combine resources in order to develop a movement across Wisconsin to address fraud prevention. The outcome of this partnership has been the **AARP Wisconsin Fraud Fighters** and the **Fraud Prevention Lunch and Learn In-service**.

In content and intent, both arms of this campaign are very similar. Our **Fraud Fighters** are comprised of 34 individuals from around our state who have stepped forward as volunteers for AARP. These individuals have been thoroughly screened by AARP and trained by the AARP, DFI & OPP. Their role is to return to their communities and seek out local groups (varies from church groups to civic groups to book clubs, etc.) who wish to receive a fraud prevention presentation.

The program has been extremely well received. Since January 1, 2007, these 34 Fraud Fighters have given more than 130 presentations, reaching out to individuals in their communities in a way that our three partnering agencies could not. They have been featured in multiple radio, TV and print stories about their role in this program, and the requests continue to pour in for their services.

The **Fraud Prevention Lunch and Learn In-Service** was born from the need to look at alternative methods of outreach surrounding the fraud prevention message. As the Boomers move into the AARP demographic, the way in which we convey our information had to change. So, the Lunch and Learn In-Service became our latest venture in outreach, and it has been a resounding success!

This 60-90 minute program was designed to fit into a lunch hour. We contacted several employers around Wisconsin to find 15 that were interested in this educational opportunity. Jeanne Benink of AARP, Susan Schilz of the Office of Privacy Protection and Patricia Struck of the Department of Financial Institutions travel to these employers around Wisconsin and present a detailed program dealing with financial and consumer fraud prevention. In play since May of 2007, over 1,200 employees have received our fraud prevention message. Many of the original 15 businesses have asked us to return for an encore performance because the presentation material is so relevant and easy to incorporate into daily life.

Clearly, the need for education about fraud prevention is still present. AARP, DFI & OPP anticipate that these programs will continue into the future, with expansion of both as a part of the plan.





National Association of Theatre Owners

To: Members, Senate Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection

From: Jason Johns, on behalf of the National Association of Theatre Owners of Wisconsin & Upper Michigan

Re: Opposition to SB 245

Date: August 22, 2007

Members of the Committee;

I am here today to express opposition to SB 245 on behalf of the National Association of Theatre Owners of Wisconsin & Upper Michigan's 52 members representing 681 screens across the state. If SB 245 were to become law, many of our members would have no choice but to discontinue the sale of gift cards. Consumers and business owners across the states will both be losers.

In reaction to the vastly expanding use of gift cards by consumers, attempts have been made to restrict terms & restrictions placed upon these cards by businesses who issue them. We agree that some sort of restriction should be placed upon these gift cards in order to protect consumers and business owners alike. Thus we do support Senator Sullivan's legislation SB 191. However, we cannot support Senator Carpenter's attempt to do so with SB 245.

Issuance of gift cards is a service that our members provide to consumers to allow them to give the pleasure of a night at the movies to a family member or friend. We incur costs associated with providing this service. Some theatre owners decide to absorb these costs as the cost of doing business and others decide to apply expiration dates and/or inactivity service fees to recoup costs they cannot financially absorb. This is a decision that needs to be made by the theatre owner in order to assure the future of their business. SB 245 would take this decision away from the theatre owner and put it into the hands of the state.

Prohibition of expiration dates would result in balance sheets constantly being inflated due to outstanding gift obligations with no definite end date in mind. In line with this, under SB 245, a person may not sell gift obligations if they intend to transfer ownership of their business unless the new owner agrees to honor the gift obligations. This means that the state is regulating the terms of a contract between two private entities and is a clear encroachment into contract law which is retained

by private entities and citizens and regulated by the judicial system. Further, bankruptcy is included as a transfer of the business. So in essence, a member who sells a gift card with no expiration date in 2007 and declares bankruptcy in 2015 would have to make it a requirement of the new business owner to honor the obligation made in 2007. If the new business does not agree, the previous owner is subject to penalties under SB 245 for a gift obligation they sold 8 years earlier but the consumer did not redeem. Does this seem equitable?

In order to provide gift cards, our members contract with private card providers. These providers charge a fee to maintain inactive cards. Prohibition of service fees due to inactivity would shift the costs of inactive cards to our members who have no control over the consumer as to when they redeem these cards. Why should business owners have to pay for maintenance of a gift obligation that a consumer chooses to not redeem or has lost? We want our customers to redeem their cards as no one likes to attend the movies alone and more business is brought in to our theatres. But what sense does it make for us to pay, for example, \$2 a month after a year of inactivity, to maintain a gift obligation that may end up in additional ticket purchase of \$8? If SB 245 were to become law, and service fees were prohibited, our members would be paying upwards of \$25 a year for an indefinite number of years to make \$8? This could result in hundreds, and possibly thousands of dollars in additional costs to our members. And what happens if the card is never redeemed? Do our members just keep on paying the maintenance fees involved?

The penalty provision that provides a right to pecuniary loss of twice the value of the gift card or \$200 to provide DATCP some enforcement "teeth" is unnecessary. DATCP all ready has enforcement provisions under state statute. In this situation, if a customer purchases a \$25 gift card, then "claims" that a member's employee did not honor it, it becomes an issue of "he- said she- said" and in most cases it would not be cost efficient for a member to contest the action. Thus, the consumer has received \$200 for a \$25 purchase. If this is not an incentive for fraud & abuse by a customer then I do not know what is.

We agree with Senator Sullivan and SB 191 that it is a very reasonable expectation of our members to provide conspicuous disclosure of any expiration dates and/or service fees. Just as it is a reasonable expectation that the consumer will redeem the gift card according to the terms of sale. An informed consumer is a smart consumer. Our members cannot control what a consumer does with their gift cards after leaving our premises. However, we can provide the information to assure they receive the full value of what they paid for.

For these reasons we ask that you oppose SB 245 and support SB 191. SB 191 protects the consumer as well as the business owner and is fair to both parties. SB 245 is not.

Thank you,

Jason E Johns, Esq.
Tenuta & Johns, Inc.
On Behalf of NATO





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection

Rod Nilsestuen, Secretary

August 22, 2007

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

Re: SB 245 relating to terms and conditions of gift certificates, gift cards and other gift obligations.

Dear Senator Wirch,

Thank you for the opportunity to provide testimony on SB 245. The Department of Agriculture, Trade & Consumer Protection supports this legislation because it recognizes the legitimate expectation of persons purchasing gift cards and certificates.

When consumers purchase a gift card or certificate for \$25 as a present for another, they expect that the recipient will be able to redeem that card for \$25 worth of merchandise or services at the issuer's place of business. However, Wisconsin consumers are often surprised to find out that when they go to use the gift card, it may be worth significantly less than \$25 or be totally worthless because it has expired or because the retailer has deducted inactivity fees or and/or various service charges.

Every year 10%-15% of the value of gift cards sold in the United States goes unused. Sometimes, unredeemed gift cards are the result of the consumer's choice not to use the card. However, a significant number of gift cards go unredeemed in total or in part because of expiration dates or because the card has a minimal balance left on it. As a result, Wisconsin consumers lose tens of millions of dollars of purchasing power each and every year.

SB 245 would prevent this loss to Wisconsin consumers without a substantial, legitimate cost to the businesses that issue gift cards. In doing so, SB 245 simply implements a policy on which we hope we can all agree – that consumers should get what they paid for.

Thank you for the opportunity to testify on Senate Bill 245.

Respectfully,

Janet Jenkins
Administrator
Division of Trade & Consumer Protection

Agriculture generates \$51.5 billion for Wisconsin

FISCAL ESTIMATE DOA-2048 (R 10/94)	LRB or Bill No. / Adm. Rule No. SB 245 Amendment No. (If Applicable)
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTIVE <input type="checkbox"/> SUPPLEMENTAL	

Subject:
 Terms and conditions of gift certificates, gift cards, and other gift obligations

Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
--	--

Local : <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenues <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
---	---

Fund Source Affected: <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations: 20.115(1)(a)
--	--

Assumptions Used in Arriving at Fiscal Estimate

This bill regulates the sale and redemption of gift certificates, gift cards, and similar items (gift obligations). The bill prohibits the following: 1) failing to honor a valid gift obligation; 2) selling a gift obligation that is subject to an expiration date; 3) reducing the value of a gift obligation except for the sale price of goods or service provided by the bearer; and 4) reducing the value of a gift obligation as a condition of disclosing the value of the gift obligation.

Also under the bill, if a person that owns a business intends to transfer ownership of the business or otherwise cease to operate the business, the person may not issue gift obligations that may be redeemed at the business, unless the intended transferee agrees to honor gift obligations issued by the person.

Currently the Department addresses consumer complaints about gift obligations mostly through mediation and education. However, if this bill were to become law, the department would now have specific statutory authority to enforce violations of the provisions in this bill.

Currently national statistics show over \$80 billion in gift obligations were sold in 2006. Of those approximately 10-15% go unused as a result of: a consumer's choice not to use the card; lost cards; expiration dates; and dormancy service fees. Based on experience, the Department can assume that a portion of the unused gift obligations due to expiration dates and dormancy service fees would result in at least 200 formal written consumer complaints per year. The Department estimates 20 complaints per year will require assignment to investigative staff for detailed investigation. Typically, these investigations will involve multiple jurisdictions. The Department estimates an additional workload of 2000 hours to administer and enforce the law.

Based on these assumptions the Department estimates 1.0 FTE Consumer Protection Investigator will be necessary for enforcement of this law. Additional funding of \$66,200 annually will be necessary to fund this position.

Agency/prepared by: (Name & Phone No.) DATCP Michelle Reinen ph. 608-224-5160	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp, ph. 608-224-4746	Date 08/17/2007
---	--	---------------------------

FISCAL ESTIMATE WORKSHEET

2007 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No. SB 245	Amendment No.
--	---------------

SUBJECT
Terms and conditions of gift certificates, gift cards, and other gift obligations

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):
one time costs: office set up, computer, telephone service, supplies: \$10,000

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
1. State Operations - Salaries and Fringes	\$53,700	\$ - 0
2. (FTE Position Changes)	(1.0 FTE)	(-0 FTE)
3. State Operations - Other Costs	\$12,500	- 0
4. Local Assistance	0	- 0
5. Aids to Individuals or Organizations	0	- 0
TOTAL State Costs by Category	\$66,200	\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$66,200	\$ - 0
2. FED	0	- 0
3. PRO/PRS	0	- 0
4. SEG/SEG-S	0	- 0
III. State Revenues -	Increased Revenue	Decreased Revenue
<small>Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)</small>		
• GPR Taxes	\$ 0	\$ - 0
• GPR Earned	0	- 0
• FED	0	- 0
• PRO/PRS	0	- 0
• SEG/SEG-S	\$0	- 0
TOTAL State Revenues	\$ 0	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$66,200	\$
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency Prepared by: (Name & Phone No.) DATCP Michelle Reinen (608) 224-5160	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp, (608) 224-4746	Date 8/17/2007
---	---	-------------------



WISPIRG

**Standing Up
To Powerful Interests**

122 State St., Ste. 309 www.wispirg.org
Madison, WI 53703 info@wispirg.org
P: (608) 251-9501 F: (608) 287-8865

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.

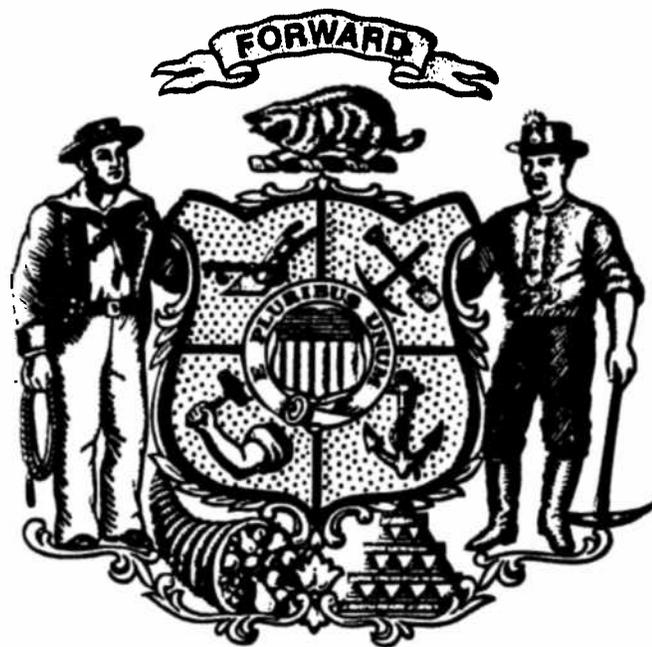
SB245 protects this basic consumer principle; SB191 is insufficient in protecting this consumer principle.

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.





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: MEMBERS OF THE SENATE COMMITTEE ON SMALL BUSINESS, EMERGENCY
PREPAREDNESS, WORKFORCE DEVELOPMENT, TECHNICAL COLLEGES AND
CONSUMER PROTECTION

FROM:  Dan Schmidt, Senior Analyst

RE: Comparison of 2007 Senate Bill 191 (2007 Assembly Bill 360) and 2007 Senate Bill 245
(Assembly Bill 471)

DATE: March 11, 2008

The attached chart compares the general provisions of 2007 Senate Bill 191 to those of 2007 Senate Bill 245 and those of their respective Assembly companion bills, 2007 Assembly Bill 360 and 2007 Assembly Bill 471. All of the bills relate to the terms and conditions of gift certificates, gift cards, or other gift obligations. Please refer to the attached chart for further details.

DWS:wu:ksm

Attachment

COMPARISON OF 2007 SENATE BILL 191/2007 ASSEMBLY BILL 360 AND 2007 SENATE BILL 245/2007 ASSEMBLY BILL 471

Provision	2007 Senate Bill 191/2007 Assembly Bill 360	2007 Senate Bill 245/2007 Assembly Bill 471
1. Definition of Gift Obligation	<p>“Gift obligation” means a written or electronic document that is evidence of an obligation arising from a transaction between a seller and a purchaser under which the seller agrees to provide goods or services at a later date up to the value shown on the document. “Gift obligation” includes a gift certificate, a gift card, and an on-line gift account.</p>	<p>“Gift obligation” means an obligation, evidenced by a gift certificate, gift card, or other object or document, to accept from the holder as payment, up to a specified amount, for a merchant’s goods or services.</p>
2. Prohibitions	<p>Prohibits the sale of a gift obligation that expires on a specified date or after a specified period of time unless the person provides to the purchaser at the point of sale a conspicuous disclosure that the gift obligation expires on the specified date or after the specified period of time and the sale of a gift obligation to which a service charge applies unless the person provides to the purchaser at the point of sale a conspicuous disclosure of the terms and amount of the service charge.</p>	<p>Prohibits the following:</p> <ol style="list-style-type: none"> a. Refusal to honor a valid gift obligation. b. The reduction of the value of a gift obligation, except that when a holder of a gift obligation partially redeems the gift obligation as payment for goods or services, the merchant that provides the goods or services may subtract the sale price of the goods or services. c. Sales of a gift obligation that is subject to an expiration date. d. The reduction of the value of a gift obligation as a condition of disclosing the value of the gift obligation. e. A person that owns a business from issuing a gift obligation that may be redeemed at that business if the person intends to cease operation of the business or if the person intends to transfer ownership of the business, unless the intended transferee has agreed to honor gift obligations issued by the person under the terms and conditions applicable to the person.
3. Exceptions	<p>A gift obligation does not include any of the following:</p> <ol style="list-style-type: none"> a. An obligation or transaction where the intent of the obligation or transaction is not to provide a gift to a person other than the seller and purchaser. 	<p>Prohibitions b. and c. above do not apply to the following:</p> <ol style="list-style-type: none"> a. A gift obligation given or sold to a person for an amount that is less than the value of the gift obligation, if the person is an organization that is exempt from federal income tax under section 501 (a) of the Internal Revenue

Provision	2007 Senate Bill 191/2007 Assembly Bill 360	2007 Senate Bill 245/2007 Assembly Bill 471
	<p>b. A transaction in which the obligation to provide goods or services extends to more than one seller of goods or services. The bill also excludes the following from the definition of "conspicuous disclosure":</p> <ol style="list-style-type: none"> A disclosure available on an Internet Web site, except with respect to a gift obligation sold at an Internet Web site. A disclosure made available by telephone. A disclosure available at a physical address. A disclosure made available by mail. 	<p>Code or if the person transfers the gift obligation to another primarily for the benefit of an organization that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.</p> <ol style="list-style-type: none"> A gift obligation issued for no consideration.
<p>4. Penalties and Remedies</p>	<p>Enforced by the Department of Agriculture, Trade and Consumer Protection:</p> <ol style="list-style-type: none"> If the department determines there is reasonable cause to believe that a person has violated this section, and the person has not previously received a warning letter relating to a separate violation, the department shall issue a letter to the person that contains all of the following: <ol style="list-style-type: none"> A statement that the department has determined there is reasonable cause to believe that the person has violated this section. A brief description of the nature of the violation. A statement of the penalties and remedies that apply to violations of this section. The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section, if the violator has previously received a warning letter under par. (b) relating to a separate violation of this section. Before entry of final judgment, the court may make any necessary orders to restore to any person any pecuniary loss suffered by the person because of the violation. 	<p>Enforced by the Department of Agriculture, Trade and Consumer Protection:</p> <ol style="list-style-type: none"> The department may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section. Before entry of final judgment, the court may make any necessary orders to restore to any person any pecuniary loss suffered by the person because of the violation. The department or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not less than \$100 nor more than \$10,000 for a violation of this section. <p>Private Right of Action:</p> <p>Any person who suffers pecuniary loss because of a violation of this section may commence an action for the pecuniary loss. If the person prevails, the person shall recover twice the amount of the pecuniary loss, or \$200 for each violation, whichever is greater, together with costs, including reasonable attorney fees.</p>

Provision	2007 Senate Bill 191/2007 Assembly Bill 360	2007 Senate Bill 245/2007 Assembly Bill 471
	c. A person who sells a gift obligation in violation of this section and who has previously received a warning letter from the department under par. (b) relating to a separate violation may be fined not less than twice the value of the gift obligation sold in violation of this section or \$250, whichever is less, for each violation.	
5. Effective Date	The Act would take effect on first day of the 12th month beginning after publication and applies to gift obligations sold on the effective date of the Act.	The Act would take effect on the first day of the 6th month beginning after publication and applies to gift obligations sold on the effective date of the Act.

Prepared by:

Dan Schmidt, Senior Analyst
Wisconsin Legislative Council Staff
August 22, 2007