

**Consumer, Corporate and Insurance Services Division  
Office of the Attorney General  
Gift Card Legislation**

**Consultation Paper**

Dated: November 24, 2009

The Office of the Attorney General is seeking public comment on the enactment of gift card legislation. All stakeholders are invited to comment to the Consumer, Corporate and Insurance Services Division about the need for gift card legislation and the recommended scope of the legislation.

**BACKGROUND**

Gift cards have become very popular in recent years, with most large retailers offering them to their customers. These cards are attractive to consumers who find them a convenient gift that the recipient can use to buy the goods or services of their choice. Retailers can build store loyalty and draw in new customers through offering gift cards.

However, with the increased popularity of gift cards, consumer complaints about the cards have also grown. Where consumers have paid full value for a card bearing a monetary value, it can be a shock to discover that the entire value has been lost because an expiry date has passed. It can also be a surprise to see the value of a card reduced by various fees such as activation fees, dormancy fees and user fees.

Due to these concerns, many jurisdictions in Canada have adopted gift card legislation. Generally, this legislation does three things:

- it prohibits expiry dates on most gift cards;
- it prohibits most administrative fees;
- it requires clear disclosure of all fees and other terms and conditions.

To date, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and New Brunswick have gift card legislation in force. Nova Scotia has put gift card regulation-making powers into its consumer legislation, but has not yet made the regulations required to put the law into place. Quebec has introduced a bill to amend its consumer protection legislation to include gift card regulation that is at present before their legislature.

**PROPOSED LEGISLATION**

Attached to this consultation paper as an appendix is a draft statute and regulations proposed for Prince Edward Island. The legislation is closely modelled on the New Brunswick legislation.

While Nova Scotia's regulations are not yet in force, it is to be noted that Nova Scotia and New Brunswick have committed to take a harmonized approach to gift card legislation. In the New Brunswick - Nova Scotia Partnership Agreement on Regulation and the Economy (PARE) these provinces have agreed to:

“move incrementally forward on regulations for gift cards, keeping current on each others’ plans. The objective will be for both NB and NS to meet national standards, expected around 2010. Harmonization of provisions regulating expiry dates, fees and other terms associated with gift cards would benefit national retailers by letting them continue to issue the same card in all provinces. Businesses will be more efficient as they will have fewer individual provincial regulations to meet”.

While not a party to PARE, Prince Edward Island has the same commitment to harmonization of gift card legislation as do the other Maritime provinces. To that extent, there is a strong bias toward enactment of gift card legislation that is as similar as possible to that of New Brunswick and Nova Scotia's while ensuring that the comments and views of Islanders are taken into account.

## **SUMMARY OF PROPOSED LEGISLATION**

The proposed legislation:

- applies to all gift cards issued or sold on or after the legislation comes into force;
- prohibits expiry dates on all gift cards except
  - those issued or sold for charitable purposes,
  - those issued or sold for a specific good or service,
  - those issued for a marketing, advertising or promotional purpose;
- prohibits the issuance of gift cards for less than the payment made;
- prohibits all fees except
  - on charitable purpose gift cards,
  - on marketing, advertising or promotional purpose gift cards,
  - for replacing a lost or stolen gift card,
  - for customizing a gift card,
  - dormancy fees for multiple store gift cards;
- requires disclosure in writing when the gift card is issued of
  - all restrictions, limitations, terms and conditions including any permitted fees or expiry date,
  - a description of how the consumer can get information on the card including its remaining balance.

The prohibitions and requirements of the Act are enforced primarily through:

- making a card with an expiry date valid indefinitely by operation of law;
- providing for refunds for purchasers who paid illegal fees;
- making it an offence to contravene the legislation.

## COMMENTS

Written comments are welcomed by January 31, 2010. Any group who would like to meet with officials of the Consumer, Corporate and Insurance Services Division should contact the Division to arrange for an appointment.

Please send your comments to:

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Electronic copies of this paper may be found at [www.gov.pe.ca/consumerservices](http://www.gov.pe.ca/consumerservices).

CONSULTATION DRAFT  
November 17, 2009 Draft  
*Gift Cards Act*

**BILL NO.**

**2009**

**Gift Cards Act**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. In this Act, “gift card” means, subject to the regulations, an electronic card, written certificate or other voucher or device with a monetary value, that is issued or sold in exchange for the future purchase or delivery of goods or services, and includes a gift certificate. *Definition*
2. This Act applies to gift cards issued or sold on or after the day this Act comes into force, except as may be provided in the regulations. *Application*
3. (1) No person shall issue or sell a gift card that has an expiry date, except as may be provided in the regulations. *No expiry date*
  - (2) A gift card that is issued or sold with an expiry date in contravention of subsection (1) is redeemable as if it had no expiry date if the gift card is otherwise valid. *Idem*
  - (3) A gift card that is issued or sold without an expiry date is valid until fully redeemed or replaced. *Idem*
4. (1) No person shall issue or sell a gift card for less than the value of the payment made by the purchaser of the gift card. *Value of card*
  - (2) No person shall charge a fee to the purchaser or holder of a gift card for anything in relation to the gift card, except as may be permitted by the regulations. *Limit on fees*
  - (3) A purchaser or holder of a gift card who paid a fee that was charged in contravention of subsection (2) may demand a refund of that fee by giving written notice to the person who charged the fee within one year after the date on which the fee was paid. *Refund of fee*
  - (4) A person who receives a notice demanding a refund under subsection (3) shall provide the refund within 15 days after receiving the notice. *Idem*

- 5.** (1) A person who issues or sells a gift card shall clearly disclose the following information at the time the gift card is issued or sold:
- Disclosure of information
- (a) all restrictions, limitations, terms and conditions imposed in respect of the use, redemption or replacement of the gift card, including any permitted fee or expiry date;
  - (b) a description of the way in which a consumer can obtain information respecting the gift card, including any remaining balance; and
  - (c) any other information as may be required by regulation.
- Idem*
- (2) The information described in subsection (1) shall be provided in the manner and form as may be prescribed by regulation.
- 6.** (1) Any natural person who contravenes or violates any provision of this Act or the regulations is guilty of an offence and for which no penalty is otherwise specifically provided in this Act or the regulations, is liable, on summary conviction, to a fine of not less than \$200 or more than \$10,000, or to imprisonment for 90 days, or to both, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.
- Offence and penalty
- Idem*
- (2) Any corporation which contravenes or violates any provision of this Act or the regulations is guilty of an offence and for which no penalty is otherwise specifically provided in this Act or the regulations, is liable, on summary conviction, to a fine of not less than \$1,000 or more than \$500,000, or its directors to imprisonment for 90 days, or to both, and to pay such restitution as the judge thinks fit to any person aggrieved or affected by the contravention or violation.
- Idem*
- (3) Any officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in, or participates in, the commission of an offence by that corporation under subsection (2) is guilty of an offence and is liable, in respect of the commission of an offence by the corporation under subsection (2), to any penalty set out in subsection (1).
- Personal liability of corporate officers
- 7.** The Lieutenant Governor in Council may make regulations
- Regulations
- (a) extending or limiting the meaning of “gift card”;
  - (b) exempting classes of gift cards from the application of this Act or any provision of it;
  - (c) exempting classes of persons who issue, sell or redeem gift cards from the application of this Act or any provision of it;
  - (d) governing the use of expiry dates for gift cards that are exempt from subsection 3(1);
  - (e) respecting the imposition of restrictions, prohibitions and other terms and conditions on the issuance, sale, redemption, replacement and use of gift cards;

- (f) governing any fees that may be charged in relation to gift cards, including prescribing the amount of a fee or a method of determining the amount of a fee;
- (g) prescribing information to be provided in relation to gift cards, and the manner and form of providing that information;
- (h) defining, for the purposes of this Act and the regulations, any word or phrase that is used in this Act or the regulations but not defined in this Act;
- (i) respecting any matter that the Lieutenant Governor in Council considers necessary for the administration of this Act.

**EC2009-**  
**GIFT CARDS ACT**  
**GENERAL REGULATIONS**

Pursuant to section 7 of the *Gift Cards Act* R.S.P.E.I. 1988, Cap. G-4.1, Council made the following regulations:

1. In these regulations Definitions
  - (a) “Act” means the *Gift Cards Act* R.S.P.E.I. 1988, Cap. G-4.1 Act
  - (b) “multiple-store card” means a gift card that may be redeemed for goods or services at multiple unaffiliated sellers. multiple-store card
  
2. The following gift cards may have expiry dates: Permitted expiry date
  - (a) those issued or sold for a charitable purpose;
  - (b) those issued or sold for a specific good or service;
  - (c) those issued for a marketing, advertising or promotional purpose.
  
3. (1) A person who issues or sells a gift card may charge fees on the following gift cards: Permitted fees
  - (a) those issued or sold for a charitable purpose; and
  - (b) those issued for a marketing, advertising or promotional purpose.

(2) A person who issues or sells a gift card may charge a fee for replacing a lost or stolen card or to customize a card. *Idem*

(3) A person who issues or sells a multiple-store card may begin to charge a dormancy fee of up to \$2.50 per month on the unredeemed balance on the card no earlier than *Idem*
  - (a) 15 months after the card was issued, sold or last used; or
  - (b) 18 months after the card was issued, sold or last used, if the card holder requests an extension in the fifteenth month after the card was issued, sold or last used.

(4) The time limits in subsection (3) begin to run each time a multiple-store card is used. *Idem*
  
4. (1) A person who issues or sells a gift card must provide the information prescribed in subsection 5(1) of the Act in writing. Disclosure of restrictions, limitations, terms and conditions

(2) A multiple-store card that provides for a dormancy fee shall include: *Idem*

- (a) a prominent notice on the front of the card indicating that the back of the card contains information about the fee;
- (b) information on the back of the card clearly describing the amount payable for the fee and the number of months that must elapse before the fee applies.

Commencement

**5.** These regulations come into force on .....