

(S. B. 371)

**(No. 31-2015)**

(Approved March 19, 2015)

## **AN ACT**

To enact the “Gift Card Act” in order to regulate the sale and use of gift cards in Puerto Rico.

### **STATEMENT OF MOTIVES**

A gift card is a prepaid card designed to be purchased by a consumer and given to another as a gift or a token of appreciation. The recipient of such cards may access and spend the value associated therewith using it as if it were a debit card.

The first gift card using a payment infrastructure was introduced in the market in the early 1990s and, currently, it is one of the most popular gifts purchased. Gift card donors usually know the stores preferred by gift card recipients based on the products used by the latter, to wit, personal care products, clothing, sports and entertainment accessories, and home products.

There are two types of gift cards: “open loop” gift cards that may be used for purchases anywhere the logo (Visa, Master Card, American Express, etc.) is accepted; and “closed loop” gift cards valid only in a specific retail business or group of businesses. The latter are the most common gift cards in the market and are issued usually by a merchant or service provider and not by a financial institution, as in the case of “open loop” gift cards. “Open loop” gift cards are governed by the Office of the Comptroller of the Currency (OCC), attached to the U. S. Department of the Treasury, whereas “closed loop” gift cards are subject to the state rules.

Businesses not only benefit from the sale of such gift cards, but also from the additional expense incurred by the card recipient, plus the profit made as a result of associated charges or fees.

In 2009, the United States Congress passed the “Credit Card Accountability Responsibility and Disclosure Act” for the purposes of regulating aspects such as service or inactivity fees, and the expiration date of gift cards. Said Federal law seeks to protect consumers from unexpected costs, and requires that terms and conditions be clearly stated. It also prohibits retailers from setting expiration dates within less than five (5) years from the date of purchase, while it allows local governments to set longer expiration dates. Likewise, it prohibits retailers from charging inactivity and service fees unless there has been no transaction for at least twelve (12) months from the date of purchase.

It is worth mentioning that the “Credit Card Act” amendments establish that the Federal law shall not prevail over state laws that may provide greater protection to consumers than those established therein.

In the past, Legislation that addressed this issue has been introduced to no avail, because of the need to clarify the type of cards to which the provisions thereof would apply. This time around, the measure is more specific and addresses the concerns of retailers with regards to certain definitions.

This Legislative Assembly deems it necessary to protect our consumers who are the weakest link in the chain. Therefore, we believe that fair legislation must be approved to regulate commercial instruments known as gift cards.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Title.-

This Act shall be known as the “Gift Cards Act.”

## Section 2.- Definitions.-

For purposes of this Act, the following terms shall have the meaning stated below:

a) **Bank.-** means a commercial bank organized and authorized to do business in the Commonwealth of Puerto Rico under Act No. 55 of May 12, 1933, as amended, better known as the “Banking Law.”

b) **Maintenance Fees.-** means the costs charged by the company or business with juridical personality that issues the card in order to keep the card active.

c) **Department.-** means the Department of Consumer Affairs.

d) **Affiliate Business.-** means a company or business with juridical personality controlling, controlled by or under the common control with other company or business with juridical personality.

e) **Inactivity Period.-** means the period of time during which a gift card has not been used, regardless of the length thereof.

f) **Gift Card.-** means a prepaid card that is not rechargeable and has a specific monetary consideration entailing an agreement entered into with the issuer so that the cardholder may use it any time he/she chooses to acquire goods or services, up to the specified amount. This term includes, but is not limited to a tangible card, an electronic card or similar instrument that contains a microprocessor chip, magnetic strip, or other data storage medium.

g) **Open Loop Gift Card.-** means a gift card that may be used to acquire goods or services in different establishments, other than an affiliated group, where the brand (Visa, Master Card, American Express, etc.) is accepted.

h) **Rechargeable Gift Card.-** means a card, code, or other device that allows the cardholder to add funds after the initial purchase or issue, according to the terms and conditions thereof.

### Section 3.- Expiration Date.-

Gift cards may have an expiration date limiting the use of funds, which shall not be less than five (5) years as of the date of issue. This expiration date shall be clearly stated in the card in order to be valid. Otherwise, it shall be understood that the card has no expiration date.

### Section 4.- Charges – Prohibition.-

No gift card initial issue or activation fee, inactivity fee or maintenance fee with respect to a gift card shall be charged.

### Section 5.- Cash Balance.-

When the balance of a gift card is less than five dollars (\$5.00), the cardholder shall be entitled to redeem it for cash. The business for which the gift card was issued shall have the exclusive obligation to issue the reimbursement.

### Section 6.- Rulemaking Authority.-

The Department of Consumer Affairs shall be entrusted with overseeing faithful compliance with this Act and shall promulgate regulations to such purposes within a term of ninety (90) days after the approval of this Act. This regulations shall include the penalties to be imposed on the issuer or business that fails to comply with the provisions of this Act. The Department shall inform the People and business on the provisions of this Act.

### Section 7.- Exclusions.-

The provisions of this Act shall not apply to certificates issued in paper form, prepaid telecommunications cards, open loop gift cards, rechargeable cards, and card that are not marketed or identified as gift cards, cards issued as an award or promotional program, which do not require a disbursement of money in exchange, or those gift cards that have been purchased on a date prior to the effective date of this Act. The provisions of this Act shall not apply to gift cards, of any type, that were issued and/or administered by a bank in Puerto Rico.

Section 8.- Severability Clause.-

If any clause, paragraph, article, section, subsection, or part of this Act were held to be unconstitutional by a competent Court, such holding shall not affect, impair, or invalidate the remaining provisions thereof. The effect of such holding shall be limited to the clause, paragraph, article, section, subsection, or part of the Act thus held to be unconstitutional.

Section 9.- Effectiveness.-

This Act shall take effect ninety (90) days after its approval, except for Section 6, which shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 31-2015 (S. B. 371)** of the **5<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to enact the "Gift Card Act" in order to regulate the sale and use of gift cards in Puerto Rico.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 12<sup>th</sup> day of February, 2016.

Juan Luis Martínez Martínez  
Director