

FEDERAL AND STATE GIFT CARD LAWS

(Updated June 25, 2012)

The chart that follows, identifies the laws of the 50 States of the United States of America and the District of Columbia (DC), that regulate gift certificates and/or gift cards (in this introduction we will use the term “gift card” for ease of reference and only make a distinction if one is made in the particular law or regulation. Further, if applicable, we will note if there are differences between the applicability of the law online versus offline (e.g., paper or plastic).

Federal Law

As part of the **Credit Card Act of 2009** (the “Credit Card Act”) which was signed by President Obama on May 22, 2009, the Board of Governors of the Federal Reserve Board on March 23, 2010 issued final rules (“Rules”) regulating gift certificates, store gift cards and general-use prepaid cards. The Rules amend Regulation E to implement the gift card provisions of the Credit Card Act. A copy of the Rules can be found here: <http://www.federalreserve.gov/newsevents/press/bcreg/20100323a.htm>.

Subject to a statutory delay applicable to certain cards issued prior to April 1, 2010, these Rules went into effect on August 21, 2010 and apply to all gift cars sold on or after August 22, 2010. The delay in disclosure requirements results from a law passed by Congress on July 21, 2010 (and the Federal Reserve issued an interim rule on August 11, 2010), which delays the effective date of certain disclosure requirements for cards produced prior to April 1, 2010. The effective date of these disclosure requirements is delayed until January 31, 2011, provided the issuers of cards produced prior to April 1, 2010) still:

- Comply with Rule’s prohibition on the imposition of certain fees;
- Consider and treat such cards as having no expiration date;
- Replace such (lost or stolen) cards with any funds remaining, at the consumer’s request and at no cost to the consumer; and
- Comply with certain other card disclosure requirements that were not subject to delay.

The Rules are intended to provide a uniform, Federally mandated, lowest common denominator of specific consumer protections, without precluding the States from imposing additional or more rigorous protections, whether already in place or enacted in the future. **Thus, if a State law provides greater protection, imposes stricter consumer protection obligations, or deals with areas unrelated to the Federal legislation, State law will continue to apply.**

In brief, as it relates to gift cards, the Rules:

- do not preempt state laws that provide greater consumer protection;
- do not require gift cards to be in a card format;
- prohibit imposition of a dormancy, inactivity or service fee (“fee”) unless there has been no activity for 12 months;
- if a fee is to be charged, as and when permitted, then:
 - certain specified disclosure requirements must be satisfied at or before the time of purchase; and

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- it may not be more than once per month; and
- expiration dates of less than 5 years are prohibited, and the expiration date, if any, must be clearly and conspicuously disclosed.

Excluded from regulation under the Rules are General Use Prepaid Cards, Gift Certificates and Store Gift Cards, which include, among others, an electronic promise, plastic card or payment code device that: (i) is used solely for telephone services (except for those redeemable for mobile applications or mobile Internet service); (ii) is reloadable and not marketed or labeled as a gift card or gift certificate; (iii) is issued as part of a loyalty, award, reward or other promotional program; (iv) is not marketed to the general public; or (v) is issued in paper form only (including for tickets and events). In addition, the Rules detail requirements for qualifying for the reloadable and not marketed as gift cards exclusions, and disclosures on non-physical cards and loyalty, award and promotional program cards.

State Law

While laws of those States that do regulate gift cards have many common features and provisions, one should not assume they are identical or even equivalent. In many cases, they are not. That is why it is imperative, when considering issues related to the development, issuance, distribution, sale, use and redemption of gift cards, to **CONSULT THE SPECIFIC STATUTES** for guidance. Consider the following:

Definitions. The precise definition of a “gift card” (or, more accurately, the definition of what instruments are or are not covered by State gift card legislation) does vary somewhat from State to State.

Escheat, Abandoned Property and Money Transmitter Laws. This chart does **NOT** deal with the various abandoned or unclaimed property, escheat or money transmitter laws and regulations, although the reader should be on notice that many States have laws and regulations dealing with these matters and many relate to gift cards (e.g., the ‘breakage’ or funds left unused on a gift card is subject to escheat under numerous State laws after a period of inactivity).**

In some cases, even States that do not have laws directly regulating gift cards (i.e., we have indicated “None” in the **Applicable Statutes** column), may still have statutes that include gift cards within the definition of those assets, instruments or accounts that are subject to its escheat, abandoned or unclaimed property laws.

State Law Exclusions. Many states have provisions in their gift card laws that exclude or exempt certain instruments (or the context in which such instruments are issued or used) that would otherwise be covered by such statutes. Some of the more typical exclusions refer to cards, certificates and devices that are:

** In the case of New Jersey, we have included reference to the New Jersey unclaimed property statute because it cross references the gift card law and effectively modified the definition of gift card or gift certificate. South Dakota’s unclaimed property law is listed because it addresses expiration dates and activity fees.

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- (i) issued pursuant to an awards, rewards, loyalty or promotion program when no money (or similar consideration) has been given in exchange for the card; or
- (ii) sold below face value; or
- (iii) donated to non-profit charitable organizations for fund raising purposes; or
- (iv) for prepaid telecommunication services; or
- (v) issued by a financial institution and usable with multiple unaffiliated sellers of goods or services; or
- (v) debit cards connected to a person's bank account or electronic funds transfer cards.

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In the interest of keeping the chart readable and manageable, where a State does have exclusions or exemptions that generally all or some of the points noted in the outline above, we have indicated “Yes” in the column titled **Exclusions**. **HOWEVER**, the specific language of each State’s exclusions or exemptions may vary. Not every State includes all of the outlined points above nor does every State include them in exactly the same way. For that reason, while the summary provides valuable guidance and a citation to the specific statute, **YOU MUST CONSULT THE SPECIFIC STATUTE** to determine your compliance obligations in that State.

State	Applicable Statutes	Last Amended	Expiration Dates Permitted?	Inactivity Fees Permitted?	Exclusions	Notes
Alabama	None					
Alaska	None					
Arizona	Ariz. Rev. Stat. Ann. § 44-7401 <i>et seq.</i>		Yes	Yes	Yes, see note above	Law applies to gift cards, gift certificates and electronic gift cards.
Arkansas	Ark. Stat. Ann. §4-88-702-704		Yes, after 2 years.	Yes, after 2 years.	Yes, see note above.	Law applies to general use prepaid cards, gift certificates, and store gift cards.
California	Cal. Civ. Code §§ 1749.45 <i>et seq.</i>		No	Yes, after 2 years of inactivity.	Yes, see note above.	Law applies to gift certificates and gift cards. Gift certificates/cards with a cash value of less than \$10 may be redeemed in cash upon request. §§ 1749.5(b)(2).
Colorado	Laws of 2010, Chapter 180 (Col. Rev. Stat. §6-1-722)	2010	Yes	No	Yes, see note above.	Law applies to gift certificates, gift cards and stored value cards. Gift cards with cash value of \$5 or less may be redeemed for cash upon request.
Connecticut	Conn. Gen. Stat. § 42-460, § 3-56a(5)	2005	No	No	Yes, see note above.	Law applies to gift certificates and gift cards.
Delaware	None					
D.C.	None					
Florida	Fla. Stat. § 501.95	2007	Yes, but only in limited circumstances.	No	Yes, see note above.	Law applies to gift certificates, gift cards and certain credit memos..

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State	Applicable Statutes	Last Amended	Expiration Dates Permitted?	Inactivity Fees Permitted?	Exclusions	Notes
Georgia	Ga. Code Ann. § 10-1-393	2006	Yes, subject to disclosure requirements.	Yes, subject to disclosure requirements.	No	Law applies to gift certificates, store gift cards, and general use pre-paid cards.
Hawaii	Hawaii Rev. Stat. §. 481B-13	2010	Yes, after 5 years, or after 2 years for gift certificates issued only in paper form.	No	Yes, see note above.	Law applies to gift certificates and gift cards.
Idaho	None					
Illinois	815 Ill. Compiled Stat. §. 505/2SS	2007	Yes, after 5 years.	No	Yes, see note above.	Statute is the Consumer Fraud and Deceptive Business Practices Act. Law applies to gift certificates and gift cards.
Indiana	None					
Iowa	Iowa Code §56.9 .	2004	Yes	No, unless there is contract.		Law applies to gift certificates and gift cards.
Kansas	Kan. Stat. Ann. § 50-6108	2006	Yes, after 5 years.	Yes, after 1 year.	Yes, see note above.	Law applies to gift cards and gift certificates.
Kentucky	Ky. Rev. Stat. § 367.890	2010	Yes, after 1 year.	No	Yes, see note above.	Law applies to gift cards and gift certificates.
Louisiana	La. Rev. Stat. Ann., Tit. 51, § 1423	2006	Yes, after 5 years.	Yes, but only a one-time handling fee which shall not exceed \$1.	Yes, see note above.	Statute is the Unfair Trade Practices and Consumer Protection Law. Law applies to gift cards and gift certificates.
Maine	Me. Rev. Stat., Tit. 33, § 1952, Subsec. 4-A, 5-A, 12-A, and 15-A, § 1953, Subsec. 1, Para. G, and §	2011	No	Yes, may only be charged for initial issuance and for each occurrence of adding value to	Yes, see note above.	Law applies to gift cards, gift certificates, online gift accounts and stored value cards. If a gift obligation or stored value card is presented in person as part of a purchase as has a balance of less than \$5 following redemption, upon request merchant

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State	Applicable Statutes	Last Amended	Expiration Dates Permitted?	Inactivity Fees Permitted?	Exclusions	Notes
	1956			card and provided fees are disclosed.		must refund balance in cash.
Maryland	Md. Comm. Code Ann. §§. 14-1319 and 14-1320	2005	Yes, after 4 years.	Yes, after 4 years.	Yes, see note above.	Law applies to gift cards and gift certificates.
Massachusetts	Mass. Gen. Laws, Ch. 255D, § 1, Ch. 200A, § 5D, and Ch. 266, § 75C through 75F	2008	Yes, after 7 years.	No	Yes, see note above.	Law applies to gift cards and gift certificates.
Michigan	Mi. Comp. Laws §§ 445.903e—445.903g	2008	Yes, after 5 years.	Yes, but only a service fee for issuance which cannot be deducted from face-value of card.	Yes, see note above.	Statute is Consumer Protection Act. Law applies to gift cards, gift certificates and stored value cards.
Minnesota	Minn. Stat. § 325G.53	2007	No	No	Yes, see note above.	Law applies to gift cards, gift certificates and stored value cards.
Mississippi	None					
Missouri	None					
Montana	Mont. Code Ann. § 30-14-102, <i>et seq.</i>	2007	No	No	Yes, see note above.	Law applies to a record, including a gift certificate, gift card or stored value card, provided for paid consideration.
Nebraska	R.R.S. Neb. § 69-1301(d); R.R.S. Neb. § 69-1305.03	2008	Yes	Yes	None	Law applies to gift certificates and gift cards.
Nevada	Nev. Rev. Stat. Ann. §	2007	Yes	Yes, after 3 years of inactivity; no	Yes, see note above.	Law applies to gift cards, gift certificates and other similar instruments.

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State	Applicable Statutes	Last Amended	Expiration Dates Permitted?	Inactivity Fees Permitted?	Exclusions	Notes
	598.0921(3)			service fees more than \$1 per month and not within first 12 months.		
New Hampshire	N.H. R.S.A. § 358-A:1, <i>et seq.</i>	2004	Yes, for card values greater than \$100.	No	None	Cards with values in excess of \$100 expire pursuant to escheat laws (N.H. R.S.A. 471-C).
New Jersey	N.J. Stat. § 56:8-110; N.J. Stat § 46-30B, <i>et seq.</i>	2006 (N.J. Stat § 46-30B amended 2010)	Yes. However, if such card is exempt from N.J. Stat § 46-30B, then expiration is only allowed after 24 months from date of sale.	Yes, after 24 months from date of sale or 24 months after most recent activity, but in either case not to exceed \$2 per month, provided that such card is exempt from N.J. Stat § 46-30B, otherwise prohibited.	Yes, see note above	Law applies to gift certificates and gift cards. N.J. Stat § 46-30B is New Jersey's unclaimed property law.
New Mexico	N.M. Stat. Ann. § 57-12-26	2007	Yes, after 60 months.	No	Yes, see note above	Law applies to gift certificates, gift cards, electronic cards and merchandise certificates.
New York	N.Y. Gen. Bus. Law § 396-i	2004	Yes	Yes, after 13 months.	Yes, see note above	Law applies to gift certificates and gift cards.
North Carolina	N.C. Gen. Stat. § 66-67.5	2007	Yes	Yes, after 1 calendar year.	Yes, see note above	Law applies to gift certificates, gift cards and prepaid long distance telephone calling cards.
North Dakota	N.D. Cent. Code § 51-29-01, <i>et seq.</i>	2005	Yes, after 6 years.	No	Yes, see note above	Law applies to gift cards, electronic gift cards, online gift accounts, stored-value cards, store cards, prepaid telephone cards and similar records or cards.

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Ohio	O.R.C. Ann. § 1349.61	2006	Yes, after 2 years.	Yes, after 2 years.	Yes, see note above	Law applies to gift certificates and gift cards.
Oklahoma	15 Okl. Stat. § 796, <i>et seq.</i>	2006	Yes, after 60 months.	Yes, if numerous specific requirements are met.	Yes, see note above	Law applies to gift certificates and gift cards.
Oregon	O.R.S. § 646A.274, <i>et seq.</i>	2011	Yes, after 30 days if: expiration date is disclosed in 10-point font and the card is sold for less than its face value.	No	Yes, see note above	Law applies to gift cards.
Pennsylvania	None					
Rhode Island	R.I. Gen. Laws § 6-13-12	2012	No	No	Yes, see note above	Law applies to gift cards, electronic gift cards, online gift accounts, stored-value cards, store cards, prepaid telephone cards and similar records or cards. Provides exemption for gift cards given to non-profit corporations or associations for fundraising.
South Carolina	S.C. Code Ann. § 39-1-55	2004	Yes, if specific conditions are met.	Yes	None	Law applies to gift certificates and gift cards.
South Dakota	S.D. HB No. 1270 §43-41B-15 (unclaimed property law)	2012	Yes	Yes	None	
Tennessee	Tenn. Code Ann. § 47-18-127	2006	Yes, after 2 years.	Yes, after 2 years.	Yes, see note above	Law applies to gift certificates. Issuance fee prohibited.

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Texas	Tex. Bus. & Com. Code § 604.001 et. seq.	2009	Yes, if properly disclosed.	Yes, after 1 year if reasonable and properly disclosed.	Yes, see note above	
Utah	Utah Code Ann. § 13-11-4	2008	Yes	Yes	None	
Vermont	8 V.S.A. § 2701, et seq.	2012	Yes, after 5 years.	No, with exceptions for licensed money transmitters and financial institutions.	Yes.	Law applies to gift cards, store cards, gift certificates and stored value cards. Following the expiration date of the gift certificate, the unused portion of the gift certificate shall be returned to the holder of the gift certificate, if requested.
Virginia	Va. Code Ann. § 59.1-530, et seq.	2005	Yes	Yes	None	Law applies to gift certificates and gift cards.
Washington	R.C.W. § 19.240.010, et seq.	2004	No	Yes, if specific requirements are met.	Yes, see note above	Law applies to gift cards and gift certificates. If a purchase is made with a gift certificate for an amount that is less than the value of the gift certificate, the issuer must make the remaining value available to the bearer in cash or as a gift certificate at the option of the issuer. If after the purchase the remaining value of the gift certificate is less than five dollars, the gift certificate must be redeemable in cash for its remaining value on demand of the bearer. A gift certificate is valid until redeemed or replaced.
West Virginia	None					
Wisconsin	None					
Wyoming	None					