

Advertising Alert

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New Jersey's Gift Card Law Requires ZIP Code, Extends Abandonment, Provides "Cash Back"

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Passed on June 25, 2012 and signed into law on June 29, 2012, Senate Bill 1928 (SB1928) amended New Jersey's unclaimed property law. The law, closely watched by issuers of gift cards, provides a five-year abandonment period, a new "cash-back" provision, prohibition of post-purchase fees and expiration dates, disclosure requirements and the collection of ZIP codes from purchasers. Although the new law was intended to fix some of the infirmities of the old law, the data collection provision appears to have the gift card community gearing up for another challenge.

This alert summarizes SB1928, parts of which will be effective as early as September 1, 2012.

Background

In 2010, Assembly Bill 3002 (AB3002) amended New Jersey's unclaimed property law to provide that unused stored value and gift card balances would escheat after two years' inactivity and to require issuers to collect, at minimum, ZIP code information from purchasers. (To read Venable's January 2011 alert about New Jersey's gift card law, please [click here](#).) SB1928 revises some provisions of AB3002 and adds new requirements.

Summary of Provisions of SB1928

The new law provides for a five-year abandonment period (a change from two years in AB3002) before unused balances from gift cards escheat; a previous version of the bill, passed by the Senate Budget Committee in May, would have taken away the state's ability to seize gift cards, but the provision was watered down by the Senate so that it simply extended the abandonment period. Only 60 percent of the abandoned card's value will escheat.

A new provision was also introduced that permits customers to cash in cards with a balance of less than \$5.00, effective September 1, 2012. The law does not require sellers to affirmatively inform customers of the right to request a refund. This "cash-back" provision is important; a number of major gift card sellers have been required to pay large fines in other states for failing to comply with similar laws. Indeed, in 2009, Starbucks was required to pay \$225,000 in civil penalties, costs and restitution to three Northern California district attorneys and post signs informing customers about their right to a refund, and was required to modify its cash register system to provide for an auto-refund capability.

The new law also provides that post-purchase fees are prohibited for cards sold on or after December 1, 2012, although some activation, purchase and similar fees are still permitted. Expiration dates on the funds underlying stored value cards are also prohibited, although the card itself may be expired if the expiration date is properly disclosed. The law imposes very specific requirements with respect to fees, expiration dates, disclosure and similar matters.

Similar to the laws in many other states, the law exempts gift cards donated or sold below face value to a nonprofit, charitable or educational organization, as well as those redeemable for admission to events or venues at particular locations or for goods or services in conjunction with that admission. Promotional and loyalty cards are also exempted, and there are a number of other exemptions, including cards usable at multiple merchants, prepaid telecommunications cards and rewards cards (for which consideration is not paid).

Collection of ZIP Codes

The most controversial provision in the new law is the requirement that gift card sellers collect the ZIP code of purchasers of gift cards in New Jersey, an attenuated version of the data collection requirement in the 2010 law that was added to SB1928 in spite of efforts by retailers and trade groups like the New Jersey Retail Merchants Association. Those following this issue will recall that three of the largest sellers of gift cards in New Jersey pulled their gift cards out of the state in the spring of 2012 rather than

comply with ZIP code collection requirements in the 2010 law, after the requirement was upheld in federal court. (To read Venable's April 2012 alert upon this issue, please [click here](#).) Nonetheless, the new law merely delays, rather than eliminates, the requirement until the first day of the 49th month (or 4 years) following enactment. Notably, New Jersey is still the only state to impose a ZIP code data collection requirement for gift cards.

The gift card community appears to be dissatisfied with the continued inclusion of the ZIP code collection requirement in SB1928. While the reason for the delay is not stated -- ostensibly, it will allow time for the New Jersey Treasury to issue specific guidance on how to comply with the law, and give sellers time to implement new data collection systems and adopt procedures -- it arguably does not address fundamental concerns about cost and the difficulty of imposing controls on third parties collecting personal information from purchasers. Of course, four years also provides ample time to challenge the new law or lobby for yet another version. Indeed, one of the three gift card sellers that pulled its gift cards out of New Jersey has already publicly stated that it plans to challenge the new law. On Friday, June 29, the President and CEO of InComm, one of the companies that announced it was pulling its gift cards from New Jersey, announced that the company will continue to sell gift cards indefinitely in New Jersey as long as there is no requirement to collect consumer information at the point of sale. InComm has also pledged to spend the next four years working to remove the data collection requirement from the law.

Based on this statement and other reactions to the new law, it appears that a challenge to the data collection requirements, and perhaps even other provisions of the new law, is likely. In the immediate term, however, gift card sellers must be cognizant of other requirements of SB1928, such as the cash-back requirement and prohibitions on post-purchase fees and expiration dates, which will be effective as early as September 1, 2012.

If you have questions or concerns regarding the process of implementing these new requirements or your general obligations under this evolving and challenging new law, please contact [Melissa Landau Steinman](#) at 202.344.4972 (mlsteinman@Venable.com) or [Erin E. Seder](#) at 202.344.4212 (eeseder@Venable.com).