



# Advertising and Promotions Law

## ALERT

JUNE 2007

LOEB & LOEB adds Knowledge.

### New Gift Card Statutes

Four states have recently enacted laws that create or revise statutes regulating gift cards.

**Minnesota** enacted Senate File Number 69 which creates a new gift certificate law; it takes effect August 1, 2007, and applies to gift certificates issued or sold on or after that date. The law prohibits expiration dates and service fees including dormancy fees, but it does not apply to gift certificates and gift cards that are (1) issued as part of a loyalty, promotional, award, incentive, rebate or other similar purpose without any money or other tangible thing of value being given in exchange; (2) issued by a financial institution, or a subsidiary or affiliate, and that can be used at multiple sellers of goods or services as long as the issuer discloses any expiration date and fee associated with the card; (3) prepaid calling cards; (4) sold below face value or at a volume discount to employers or to nonprofit groups for fundraising purposes; and (5) issued by an employer to an employee for services performed by the employee.

**Montana** enacted House Bill 755 which revises existing gift certificate law and state unclaimed property law. The law was signed by the governor on April 28 and applies retroactively to gift certificates issued or sold after September 30, 2005. The bill adds the term "stored value card" to the definition of gift certificate and it adds the following language to the state's unclaimed property law with regard to when a gift certificate is presumed abandoned: "A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor defined in [Montana Code] 15-30-101. The amount

considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger."

**Nevada** enacted Assembly Bill 279 which revises existing gift certificate law and state unclaimed property law; it applies to gift certificates issued on or after October 1, 2007. The state's existing gift certificate law allows service fees; the bill amends this by allowing dormancy fees only after three continuous years of nonuse. The bill revises the unclaimed property law by indicating that sixty percent of the unredeemed or uncharged value remaining on a gift certificate that has an expiration date is presumed abandoned and subject to escheat. In addition, the bill adds language stating that if the seller or issuer of a gift certificate does not obtain and maintain in its records the name and address of the owner of the gift certificate, then the address of the owner of the gift certificate will be the state Treasurer's address. The bill also instructs the state to create a separate fund for abandoned gift certificates that can be spent only on education.

**New Mexico** enacted House Bill 127 which creates a new gift certificate law and amends state unclaimed property law; it takes effect July 1, 2007. The bill prohibits expiration dates less than 60 months after the date of issue. If a gift certificate does not have an expiration date conspicuously disclosed on it, it is presumed to have no expiration date and will be valid until redeemed or replaced. The bill prohibits an issuer from charging a fee of any kind, includ-

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ing redemption or replacement fees, other than an initial charge that cannot exceed the face value of the card, and the bill prohibits fees that reduce the value of the card including service and dormancy fees. These restrictions do not apply to the following: (1) gift certificates, store gift cards or general use prepaid cards given to a consumer for promotional, award, incentive, rebate or other similar purposes without any money or thing of value being given in exchange; (2) gift certificates, store gift cards or general use prepaid cards that are sold below face value or at a volume discount to employers or nonprofit organizations for fundraising purposes; (3) telephone cards; and (4) gift certificates issued by financial institutions and their subsidiaries and affiliates, credit unions and licensed money transmitters. The bill amends the unclaimed property law by stating that gift certificates will be presumed abandoned after 5 years (previously, gift certificates were presumed abandoned after 3 years).

Twenty-six states now prohibit or limit expiration dates and/or fees. In addition, several states' unclaimed property laws contain provisions that have an impact on how

much - and in what circumstances - the balance on a gift certificate can be reduced by fees to reduce the reportable amount to the state.

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