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### Gift Card Round-Up for 2007

Several state gift card bills were passed in late 2007, with most of them taking effect in early 2008, and two circuit courts issued decisions on whether state gift card laws apply to bank-issued gift cards.

#### New or Amended State Gift Card Laws

**California** Senate Bill 250 amended existing state law by providing that any gift certificate with a cash value of less than ten dollars is redeemable in cash for its cash value. Pursuant to the statute, cash can include currency or check, or, if accepted by both parties, an electronic funds transfer or an application of the balance to a subscriber's wireless telecommunications account. The bill also deleted the exemption for food product gift certificates, except those issued for perishable food products. This bill took effect on January 1, 2008.

**Illinois** House Bill 369 amended existing law by prohibiting gift certificates that contain an expiration date less than 5 years from the date of issue and prohibiting a post-purchase fee. Specifically, the face value of a gift certificate may not be reduced in value and the holder of a gift certificate may not be penalized in any way for non-use or untimely redemption of the gift certificate. These provisions apply to gift certificates issued on or after January 1, 2008. Certain gift certificates are exempted, including prepaid phone cards, gift certificates usable with multiple sellers of goods or services, promotional gift certificates and gift certificates issued for a food product.

**Florida** Senate Bill 22 was enacted just four months after the governor signed a bill creating a gift card statute (Senate Bill 1638, summarized in our August 2007 Alert ). S.B.

22 amends the statute by clarifying the status of gift cards given as part of a promotional program. The bill amends the definition of gift certificate and makes changes to the provision that describes restrictions on expiration dates and post-sale fees. As amended, a gift certificate that is provided as part of a loyalty or promotional program when the recipient does not pay a separate identifiable charge for the certificate may have an expiration date. This change applies retroactively to gift certificates issued on or after June 28, 2007.

**Oregon** House Bill 2513 created a new gift card statute that prohibits expiration dates and service and dormancy fees. The definition of gift card is very broad and does not exempt gift cards provided as part of a loyalty or promotional program, although it does exempt prepaid telephone calling cards and cards usable with more than one seller of goods or services. Expiration dates are allowed on cards that are sold at a cost below face value as long as the card does not expire less than 30 days after the date of sale and the expiration date is printed on the card in at least 10-point font. The law applies to gift cards that are sold on or after January 1, 2008.

**North Carolina** Senate Bill 1517 created a new gift card statute. The law requires that a seller of gift cards conspicuously disclose on the gift card itself, at the time of purchase, any maintenance fees, and prohibits the charge of any maintenance fee within one year of the date of purchase. Maintenance fee is defined as "any fee that

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the owner of the gift card is subject to when the gift card is redeemed, including a service or inactivity fee.” There is no explicit exemption for gift cards issued as part of a loyalty or promotional program, but the definition of gift card refers to “monetary consideration.” The maintenance fee requirements do not apply to gift cards issued by a financial institution or its operating subsidiary and that are usable at multiple unaffiliated sellers of goods or services. However, the statute does apply to stored value cards and certain prepaid phone cards. The law applies to gift cards sold on or after December 1, 2007.

### Bank-Issued Gift Cards in the Courts

In October, 2007, the U.S. Court of Appeals for the Second Circuit affirmed in part and reversed in part a lower court’s decision relating to Connecticut’s gift card statute as it applies to bank-issued gift cards. Connecticut’s law (Conn. Gen. Stat. §§3-65c, 42-460) prohibits the sale of any gift certificate with an expiration date or that is subject to inactivity or dormancy fees. The seller of a mall gift card issued by banks argued that the Connecticut law does not apply to gift cards issued by banks. The appeals court ruled that the law’s prohibition of inactivity or dormancy fees does apply to bank-issued gift cards sold by a non-banking third party, but the issue of whether the expiration date prohibition is preempted was remanded for further proceedings.

In May, 2007, the U.S. Court of Appeals for the First Circuit held, in a decision seemingly at odds with the Second

Circuit’s decision, that New Hampshire’s gift card law, that prohibits expiration dates for gift cards valued at \$100 or less, and prohibits dormancy or other administrative fees, does not apply to gift cards issued by national banks and national thrifts, even if marketed and sold by a non-banking entity, because the state gift card law is preempted by federal banking laws.

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