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Rhode Island and Michigan Gift Card Developments

Rhode Island amended its existing gift card law and Michigan enacted a new gift card statute.

Rhode Island House Bill 7398 amends Rhode Island General Laws Section 6-13-12 by adding the term "any surcharge" to the list of prohibited fees which also include "additional monthly or annual service or maintenance fees." "Surcharge" is not defined in the bill and additional information as to what types of charges would be prohibited as "surcharges" was not available at the time of publication of this Alert.

The bill also adds the following types of cards to the list of cards that are exempt from the prohibition on fees and expiration dates: "Gift cards or prepaid or store value cards that are issued by state-chartered financial institutions and credit unions or that are issued by third-party issuers usable at multiple, unaffiliated merchants or service providers, provided that said financial institutions, credit unions or third-party issuers comply with the guidelines on disclosure and marketing as published by the Office of the Comptroller of the Currency." This bill took effect without the governor's signature on July 4.

Michigan enacted four bills that together create a new gift card statute and amend existing unclaimed property law. House Bill 4317 prohibits sellers and issuers of gift certificates or gift cards from charging an inactivity fee or other service fee when a consumer uses a gift certificate or gift card. House Bill 4680 prohibits selling a gift certificate or gift card to a consumer that expires within a period of less than 5 years.

House Bill 4050 adds a new section to the state's Consumer Protection Act that makes it unlawful for a retailer of goods or services to (among other things): (1) restrict the holder of a gift certificate from using the gift certificate in a manner consistent with the stated terms and conditions of the gift certificate; (2) alter any term or condition of a gift certificate after it is issued; (3) fail to disclose any terms and conditions to a prospective purchaser as specified in the bill; (4) fail to disclose any terms and conditions by printing them on the gift certificate, the envelope or packaging containing the gift certificate if a toll-free telephone number to access the terms and conditions is printed on the gift certificate, or a separate printed document delivered to the purchaser, if a toll-free telephone number to access the terms and conditions is printed on the gift certificate; and (5) if the value of the gift certificate or remaining balance of the gift certificate is less than the purchase price of goods or services, refuse to accept the gift certificate and apply it to the purchase price of the goods or services. This last prohibition appears to require retailers to process split tender transactions.

"Gift certificate" does not include certain prepaid cards and certificates, such as a general use, prepaid card or other electronic payment device that is issued or sponsored by a financial institution in a predetermined amount and is usable at multiple, unaffiliated retailers or at automated teller machines, a prepaid telephone calling card regulated under state or federal law or a card used in connection with pre-

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paid wireless telephone service, or a gift certificate distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program, if the consumer or employee is not required to give consideration for the gift certificate.

These three bills take effect November 1, 2008.

Senate Bill 388 amends the Uniform Unclaimed Property Act to conform with the new gift card law. For example, it states that a gift certificate, gift card, or credit memo would be presumed abandoned if it were not claimed or used 5 years after becoming payable or distributable, or if it were partially used or claimed once or more but subsequently not claimed or used for 5 years. This bill takes effect September 30, 2008.

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