



Federal Gift Card Bill Would Significantly Affect Promotional and Loyalty Gift Card Programs

On December 10, 2012, Sen. Bob Casey (D-PA) announced his joint sponsorship of [Senate Bill 3636](#), known as the “Gift Card Consumer Protection Act of 2012,” which was originally introduced and referred to the Senate Committee on Banking, Housing, and Urban Affairs on November 26, 2012. The Bill would amend the CARD Act to prohibit all expiration dates and fees associated with inactivity. Currently, if fees and expiration dates are properly disclosed, the CARD Act permits expiration dates after 5 years and permits a single fee per month after thirteen months of inactivity. The Bill would also remove the current exemption for loyalty, award and promotional gift cards, thereby prohibiting all fees and expiration dates for such cards. This would have a tremendous impact on all gift card programs, including in particular purely promotional and customer loyalty/award gift card programs and so-called Daily Deal programs. The latter programs have been structured so that Deal Vouchers distinguish between paid value (which does not expire before 5 years) and promotional value (which often expires earlier). Lastly, the Bill would provide protections for customers holding gift cards issued by a company that files for bankruptcy. This includes prohibiting a company that has filed for Chapter 11 bankruptcy from selling or issuing gift cards and prohibiting any person from re-selling or re-issuing gift cards more than 6 days after the original issuer or seller has filed for Chapter 11 bankruptcy. Moreover, it requires companies in Chapter 11 bankruptcy to honor gift certificates and store gift cards at full value and requires bankruptcy trustees operating the debtor under bankruptcy to honor store gift cards and gift certificates at full value, unless otherwise ordered by the court.

While the bill is in its early stages and it may well not proceed to law, its proposal underscores the difficulty of designing and implementing gift card programs in the ever-changing landscape of gift card regulation at both the state and federal level.

For more information about the content of this alert, please contact [Robert Andalman](#).

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