



Advanced Media  
and Technology

LAW BLOG



## Third Circuit Bars Enforcement of New Jersey's Amended Gift Card Law

March 16, 2011 10:10 AM | by Jill Westmoreland and Rosa Walker

The U.S. Court of Appeals for the Third Circuit granted New Jersey retailers' emergency motion for an injunction barring enforcement of New Jersey's recently amended law governing stored value cards including gift cards. The court also instructed the parties to submit a proposed expedited briefing schedule so that the court could issue an opinion on the constitutionality of New Jersey's law quickly.

In an effort to collect unused money on stored value cards sold in New Jersey, New Jersey [amended its unclaimed property law](#) to require card issuers to collect the purchaser's name and address and to maintain, at a minimum, the purchaser's zip code. The amendment also provided that if a card is sold in New Jersey, and the card issuer does not have the name and address of the purchaser, then the location of the purchaser is presumed to be New Jersey, which would allow the state to collect the unused amount on such cards as unclaimed property. The law also purported to apply to all outstanding cards as of July 1, 2010, even those issued before July 1, 2010.

New Jersey retailers and trade groups filed several lawsuits to enjoin enforcement of the law. The plaintiffs asserted that the amended law is contrary to a New Jersey state supreme court decision holding that gift cards are exempt from escheat (*Matter of November 8, 1996, Determination of the State of New Jersey*, 156 N.J. 381 (1998)). The plaintiffs also argued that the law as amended is preempted by federal law, which establishes a priority scheme to determine which state can claim unclaimed property when more than one state may have an interest in it (see *Texas v. New Jersey*, 379 U.S. 674 (1965)), and is unconstitutional under the Due Process, Contract, and Takings Clauses of the U.S. Constitution and the [New Jersey Constitution](#).

The federal district court in New Jersey, in separate orders, enjoined enforcement of the provision naming New Jersey as the location of the funds on unused cards, but did not enjoin the provision requiring issuers to collect the purchaser's zip code. New Jersey's Treasurer issued a [notice](#) indicating that it would begin enforcement of the zip code collection provision on February 1, 2011. Both sides appealed to the Third Circuit and, on January 31, the Court granted the retailers' emergency motion to enjoin enforcement of all parts of the amended law.

*This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

© 2011 Loeb & Loeb LLP. All rights reserved.