

Are New Rules for Gift Cards on the Horizon?

by KENNETH C. OH on JANUARY 10, 2013

Chances are that you are either gave or received a gift card this holiday season. The National Retail Federation estimates that over 80 percent of shoppers purchased at least one gift card in 2012, and sales of gift cards are expected to have surpassed the \$110 billion mark at the close of 2012 with estimates that they will reach \$130 billion by 2015, according to research organization CEB TowerGroup.

In the wake of their surging popularity, gift cards are also receiving increased regulatory scrutiny. In 2009, the Credit Card Accountability Responsibility and Disclosure (CARD) Act provided the first federal consumer protections for gift cards. The law provides that gift cards cannot expire within five years from the date they were activated and generally prohibits inactivity fees except in certain circumstances.

However, state and federal lawmakers are still pushing for tougher laws that specifically target gift card transactions. Last November, Sen. Richard Blumenthal introduced the Gift Card Consumer Protection Act of 2012, which would provide increased consumer protections for gift cards. The proposed legislation would prohibit the imposition of a dormancy fee or inactivity charge and remove all expiration dates. It would also prevent companies that file for bankruptcy from selling gift cards and require them to accept and honor unredeemed gift cards. The proposed legislation would also extend protections to loyalty, promotion, and award cards. While these cards currently have short life spans, the new bill would prevent them from expiring. The Gift Card Protection Act is expected to be reintroduced in the new Congress.

Even if the bill fails to advance, new gift card rules could still be on the horizon, as the Consumer Fraud Protection Bureau has also flagged them as an issue of concern.

"We are considering how best to extend protections to prepaid cardholders in the event that a card is lost or stolen, unauthorized charges are made or a processing error results in an incorrect charge amount," CPFB director Richard Cordray stated last year. "Of course, even if the funds are secure, a prepaid card can still be risky for consumers in other ways. If you do not know the card's fee structure, it is easy to rack up charges unknowingly."

Given the potential impact on New York and New Jersey businesses offering gift cards, we will continue to track the progress of any proposed regulations.

If you have any questions about the proposed regulations or would like to discuss your company's gift card policies, please contact me, Kenneth Oh, or the Scarinci Hollenbeck attorney with whom you work.