

STATE ESCHEAT LAWS AS
APPLIED TO GIFT CERTIFICATES
1 June 2014*

- Alabama: Generally, Ala. Code § 35-12-70 *et seq.* Effective May 12, 2004, Alabama revised its escheat law completely. *See* H.B. 684. The new escheat period is three years after June 30 of the year sold for gift certificates. The amount presumed abandoned is valued at 60% of the face value of the gift certificate, if the certificate is redeemable for merchandise only. Ala. Code § 35-12-72(a)(17). However, certain gift certificates are exempt from escheat under another section of the new law that states that the following is exempt from reporting: a gift card or certificate or in-store merchandise credit issued or maintained by any person ***engaged primarily in the business of selling tangible personal property at retail*** Ala. Code § 35-12-73(b)(1). A gift certificate that expires before it is used escheats to the state.
- Alaska: Generally, Alaska Stat. § 34.45.110 *et seq.* Three years for gift certificates. Alaska Stat. § 34.45.240(a). The amount presumed abandoned is the purchase price of the certificate. A gift certificate that expires before it is used escheats to the state.
- Arizona: Generally, Ariz. Rev. Stat. Ann. § 44-301 *et seq.* Gift certificates are specifically excluded from the definition of personal property subject to escheat. Ariz. Rev. Stat. Ann. §§ 44-301(15). Effective November 1, 2005, gift certificates must clearly and conspicuously disclose any expiration date, fees that may be imposed, and when such fees may be incurred. The disclosure must be (i) conspicuously printed on the front of the gift certificate for paper certificates, (ii) made orally before purchase for telephone sales, and (iii) made accessible online before purchase for online sales. Gift certificates must be honored in accordance with their disclosed terms. Ariz. Rev. Stat. Ann. §§ 44-7402(A), (B), (C). Arizona law contains an exemption for gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, or sold below face value or donated to non-profit organizations for fundraising, prepaid telephone cards, and debit cards connected to a bank account. Ariz. Rev. Stat. Ann. §§ 44-7402(D).
- Arkansas: Generally, Ark. Code Ann. § 18-28-201. Gift certificates issued by any ***person in the business of selling tangible personal property at retail*** are not included in the definition of intangible property that is subject to escheat. Ark. Code § 18-28-201(13)(B). Gift cards/certificates may not expire or carry dormancy or other fees for two years. They may expire thereafter if the expiration date is printed clearly in a conspicuous place on

the front or back of the gift certificate, the store gift card, or the general use prepaid card in at least 10-point type. Ark. Code §4-88-703(a) and (c). They may carry fees after two years if: (a) the amount of the fee; (b) the circumstances under which the fee will be imposed; (c) the frequency with which the fee will be imposed; and (d) whether the fee is triggered by inactivity are printed clearly in a conspicuous place on the front or back of the gift certificate, the store gift card, or the general use prepaid card in at least 10-point type. Ark. Code §4-88-703(c). There are some minor exceptions to these prohibitions. For example, certificates may contain expiration dates if: (a) they are distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange for the gift certificate, (b) they are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those certificates is not more than 30 days after the date of sale, or (c) they are issued by financial institutions for use at multiple unaffiliated sellers of goods and services. Ark. Code 4-88-704.

California:

Effective January 1, 1997, any gift certificate that is ***sold*** cannot contain an expiration date and must be redeemable for their cash value or replaced with a new gift certificate at no cost to the purchaser or holder. Cal. Civ. Code §§ 1749.5(a) and (b)(1) (Deering). Accordingly, gift certificates are not subject to escheat. Cal Civ. Proc. Code § 1520.5. Certificates may contain expiration dates, if they are distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in exchange for the gift certificate, they are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those certificates is not more than 30 days after the date of sale, or they are sold for food products such as groceries (this exception does not apply to gift certificates for restaurant meals). Cal. Civ. Code §§ 1749.5(d)(1), (2), and (3). The expiration date must be on the front of such certificates in capital letters in at least 10-point font. Cal. Civ. Code § 1749.5(c). Cal Civ. Proc. Code § 1520.5 (Deering). The term “gift certificate” specifically includes gift cards, except for certain cards that may be used with multiple sellers of goods or services (*e.g.*, cards that can be used at various stores in a shopping mall) and prepaid calling cards. Cal. Civ. Code § 1749.45(a). Gift certificates cannot contain dormancy or other service fees, but a gift card may contain a dormancy fee if (1) the value remaining on the gift card is \$5.00 or less each time the fee is assessed, (2) the dormancy fee is \$1.00 per month or less, (3) the card has been inactive for 24 consecutive months (for example, no purchases, “reloading,” or balance inquiries), (4) the holder may reload or add value to the card, and (5) the card contains a statement

in at least 10-point type stating the amount and frequency of the fee, that the fee is triggered by inactivity, and at what point the fee will be charged. This statement may be in the front or back of the card, but it must be visible to the purchaser prior to sale. Cal. Civ. Code § 1749.5(e). Effective in 2008, a gift card issuer will be required to provide cash back to gift card holders for any card with a remaining value of less than \$10. Cal. Civ. Code § 1749.5(b)(2). The same exceptions found in Cal. Civ. Code §§ 1749.5(d)(1), (2), and (3) apply to the cash redemption right. Cal. Civ. Code §§ 1749.5(d). A gift certificate or gift card that is sold to the purchaser as a gift for another person may state a date by which the recipient must redeem the certificate or card. Because this is an exception to the “no expiration date” rule, a seller that chooses to state a redemption date on a gift card or gift certificate must give the purchaser a full refund of the amount paid for the certificate or card if the recipient does not redeem it by the redemption date. Cal. Civ. Code §§ 1749.5(a)(1) and (f). Gift certificates purchased before 1997, and which contain expiration dates, are still subject to escheat after three years. Cal. Civ. Proc. Code §§ 1520(a) and 1520.5.

Colorado:

Generally, Colo. Rev. Stat. § 38-13-101 *et seq.* Five years for a gift certificate that is redeemable in cash. Escheat law does *not* apply to gift certificates that are redeemable for food, products, goods, or services. Colo. Rev. Stat. §§ 38-13-102(7)(a)(II) and 38-13-108.4. In addition, the state’s unclaimed property law does not apply to gift cards issued by businesses with gross receipts of \$200,000 or less from the sale or issuance of all gift cards. Colo. Rev. Stat. § 38-13-108.9. The Colorado Consumer Protection Act (“CCPA”) provides that issuers may not impose dormancy or any other fees that reduce a certificate’s value. Colo. Rev. Stat. § 6-1-722(3). A gift card does not include a prefunded tangible or electronic record issued by a government agency, a gift certificate that is issued only in paper form, a prepaid telecommunications or technology card, a certificate issued to a consumer under an awards, loyalty, or promotional program for which no money or other item of value was exchanged, and a card that is donated or sold below face value at a volume discount to an employer or charitable organization for fundraising purposes. Colo. Rev. Stat. § 6-1-722(1)(a). A gift card issuer will be required to provide cash back to gift card holders for any card with a remaining value of \$5 or less. Colo. Rev. Stat. § 6-1-722(2). The CCPA’s rules prohibiting fees and requiring cash redemption do not apply to open-loop gift cards (*i.e.*, those that are usable at multiple unaffiliated sellers of goods and services). Colo. Rev. Stat. § 6-1-722(1)(b). The state attorney general has ruled that a gift certificate that expires before it is used escheats to the state.

- Connecticut: Generally, Conn. Gen. Stat. § 3-56a. For many years, Connecticut has provided strong consumer protection with respect to prepaid gift cards. Thus, gift certificates may not contain expiration dates, and issuers may not impose dormancy or any other fees that reduce a certificate's value. Conn. Gen. Stat. §§ 42-460 and 3-65c; Conn. Pub. Act 3-1 (2003), §§ 83, 84. Gift certificates are not subject to escheat. Conn. Gen. Stat. § 3-73a(e). In 2013, Connecticut amended its laws to harmonize its laws with the Credit CARD Act of 2009. Thus, effective October 1, 2013, it refers to an open-loop card as a "general-use prepaid card" and defines it as a gift card that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines. General-use prepaid cards may not contain expiration dates or impose dormancy fees. Conn. Gen. Stat. §§ 42-460a and 3-65c. Also effective October 1, 2013, it defines a "linked prepaid card" as a gift card that permits its purchaser or one who increases or reloads funds on such a card to (1) receive back the unexpended balance and accrued interest on such balance by way of a financial account that is linked to such card, code or device, (2) receive back the unexpended balance and accrued interest in an expedited manner, and (3) transfer the unexpended balance to a bank offering a higher yield and insurance from the FDIC on such balance. Linked prepaid cards may not contain expiration dates or impose reloading or any other fees. Conn. Gen. Stat. § 42-460a. (Technically, linked prepaid and general-use prepaid cards may expire, but the underlying funds do not. As a result, the consumer may contact the issuer for a replacement card.) Linked prepaid cards and general-use prepaid cards are excluded from the definition of a gift certificate.
- Delaware: Generally, Del. Code Ann. tit. 12, § 1197. The shorter of five years or the expiration period (if any) less one day for gift certificates (although the issuer may continue to hold the unused amount of the certificate and may report and pay it to the state as if the period of dormancy were 5 years). Gift certificates issued by restaurant retailers with a face value of no more than \$5 are not subject to escheat. Del. Code Ann. tit. 12, §§ 1198(9) and (11). Any gift card provisions, including expiration dates of less than five years, are invalid as applied to the State escheator, if doing so would have the effect of defeating escheat. Del. Code tit. 12, § 1212. The state has three years to determine any deficiency in reporting, unless there is a material omission, in which case the period is extended to six years.
- District of Columbia: Generally, D.C. Code Ann. § 42-201 *et seq.* Five years for gift certificates. D.C. Code Ann. § 42-214. A gift certificate that expires before it is used escheats to the District. D.C. Code Ann. § 42-229.

- Florida: Generally, Fla. Stat. ch. 717.001 *et seq.* Gift certificates are not subject to escheat. Fla. Stat. ch. 717.1045. However, gift certificates sold or issued by financial institutions or money transmitters are subject to escheat (presumably after 5 years). Fla. Stat. ch. 717.1045(4). The term “gift certificate” specifically includes a certificate, gift card, stored value card, or similar instrument issued in exchange for monetary consideration when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction. Fla. Stat. ch. 501.95(1)(b). Effective June 28, 2007, gift certificates may not contain expiration dates, and issuers may not impose dormancy or any other fees that reduce a certificate’s value. Fla. Stat. ch. 501.95(2)(a). However, a gift certificate may have an expiration date of not less than 3 years if it is provided as a charitable contribution when no consideration is given to the issuer by the consumer, or not less than 1 year if it is provided as a benefit pursuant to an employee incentive program, consumer loyalty program, or promotional program when no consideration is given to the issuer by the consumer, and the expiration date is prominently disclosed in writing to the consumer at the time it is provided. In addition, a gift certificate may have an expiration date if it is provided as part of a larger package related to a convention, conference, vacation, or sporting or fine arts event having a limited duration so long as the majority of the value paid by the recipient is attributable to the convention, conference, vacation, or event. Fla. Stat. ch. 501.95(2)(a). The new law does not apply to gift certificates sold or issued by a financial institution or by a money transmitter, if the gift certificate or credit memo is redeemable by multiple unaffiliated merchants. Fla. Stat. ch. 501.95(2)(b). Florida law provides that contract provisions cannot be used to defeat its escheat statute. Fla. Stat. Ann. Ch. 717.129.
- Georgia: Generally, Ga. Code Ann. § 44-12-190 *et seq.* Five years for gift certificates. Ga. Code Ann. §§ 44-12-192(10)(B) and 44-12-205. Gift card/certificate issuers must include the terms of the card in the packaging that accompanies the card at the time of purchase and make such terms available upon request. Issuers must also print conspicuously the expiration date, if any, on the card and the amount of any dormancy or nonuse fees on the card or on a sticker affixed to the card. *See* Ga. Code Ann. § 10-1-393(b)(33). Georgia law provides that contract provisions cannot be used to defeat its escheat statute. Ga. Code Ann. §§ 44-12-226.
- Hawaii: Generally, Haw. Rev. Stat. § 523A-1 *et seq.* Five years for gift certificates/cards. Haw. Rev. Stat. §§ 523A-2 and 523A-14. Note, however, that the expiration date of a gift certificate must be stated on its face (or it may be printed on a sales receipt in the case of a gift card), and

it cannot be less than five years (for gift cards) or two years (for paper certificates). Haw. Rev. Stat. § 481B-13(b). Hawaii prohibits dormancy or any other fees that reduce a certificate's value, but it permits one-time activation or issuance fees as long as they do not exceed the lesser of 10% of its value or \$5. Haw. Rev. Stat. § 481B-13(a). Certificates may contain expiration dates, if they are issued as part of an awards, loyalty, or promotional program, or to a charity, for free (*i.e.*, not for money or any other thing of value) provided that the expiration date appears on the gift certificate or the sales receipt. Haw. Rev. Stat. § 481B-13(c). Any gift certificate that lacks an expiration date shall never expire. Haw. Rev. Stat. §§ 481B-13(b) and (c). A gift certificate that expires before it is used escheats to the state. Haw. Rev. Stat. § 523A-29(a).

Idaho: Generally, Idaho Code § 14-501 *et seq.* Gift certificates with a prominently displayed expiration date are not subject to escheat. Idaho Code § 14-502(2)(b). Gift certificates with no expiration date escheat after five years. Idaho Code §§ 14-501(10)(b) and 14-514. The amount presumed abandoned is the purchase price of the certificate. Idaho law appears unsettled regarding whether an expired gift certificate would escheat to the state.

Illinois: Generally, Ill. Rev. Stat. ch. 765, § 1025/1 *et seq.* Five years for gift certificates. Ill. Rev. Stat. ch. 765, § 1025/9. State escheat laws apply only to gift certificates that expire or that have language indicating that dormancy or other similar fees are imposed. Escheat laws do not apply to certificates that have an expiration date, but the issuer has a (written and posted) policy of honoring expired certificates. Ill. Rev. Stat. ch. 765, § 1025/10.6. Effective January 1, 2008, no person shall sell a gift certificate that is subject to an expiration date earlier than five years after the date of issuance or that is subject to a post-purchase fee. Ill. Rev. Stat. ch. 815, § 505/2SS(b). Any gift certificate issued prior to 2008 that is subject to a dormancy or other similar fee must contain a clear and conspicuous statement visible to a purchaser prior to the purchase stating the amount of the fee, how often it will occur, that the fee will be triggered by inactivity, and at what point it will be charged. Expiration dates must also be set forth in a clear and conspicuous statement visible to a purchaser prior to the purchase. Ill. Rev. Stat. ch. 815, §§ 505/2SS(b) and (c). The disclosure requirements pertaining to dormancy fees and expiration dates do not apply to certificates distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in direct exchange or solely for the gift certificate, to gift certificates that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those

certificates is not more than 30 days after the date of sale, or to gift certificates that are sold for food products. Ill. Rev. Stat. ch. 815, § 505/2SS(e). The term “gift certificate” specifically includes gift cards, except for certain cards that may be used with multiple sellers of goods or services (*e.g.*, cards that can be used at various stores in a shopping mall) and prepaid calling cards. Ill. Rev. Stat. ch. 815, § 505/2SS(a). A gift certificate that expires before it is used escheats to the state. *People ex rel. Callahan v. Marshall Field & Co.*, 404 N.E.2d 368 (Ill. App. Ct. 1980).

Indiana: Generally, Ind. Code Ann. § 32-34-1 *et seq.* (Burns). Gift certificates are not subject to escheat. Ind. Code Ann. §§ 32-34-1-1(f).

Iowa: Generally, Iowa Code § 556.1 *et seq.* Funds represented by a gift certificate balance that has not been presented within five years from its date of issuance are presumed abandoned. Iowa Code §§ 556.9(1)(c) and 556.1(10)(b). The issuer of a gift certificate may not impose any dormancy fees unless under a valid contract between the issuer and the owner of the gift certificate, and the issuer regularly imposes such charges and does not regularly reverse or cancel them. Iowa Code § 556.9(2)(a). A gift certificate that is redeemable for merchandise only and is not subject to an expiration date or dormancy fees shall continue in force and be eligible for presentation for an indefinite period of time, and it shall not be subject to a presumption of abandonment (*i.e.*, it shall not be subject to escheat). Iowa Code § 556.9(2)(b). A gift certificate is defined as a merchandise certificate conspicuously designated as such “and generally purchased by a buyer for use by someone other than the buyer.” Iowa Code § 537.1301(22); Iowa Code § 556.9(2)(c). While Iowa law is unclear, it appears that a gift certificate that expires before it is used escheats to the state. Iowa Code § 556.16.

Kansas: Generally, Kan. Stat. Ann. § 58-3934. Kansas amended its law to exclude gift certificates from the definition of personal property subject to escheat. Kan. Stat. Ann. § 58-3934(n)(2). Under Kansas H.B. 2658 (enacted as part of the state’s consumer protection laws), gift cards sold on or after January 1, 2007, cannot expire for 5 years after the date of purchase. Kan. Stat. Ann. § 50-6108(a). Gift card issuers cannot impose dormancy or any other fees that reduce a certificate’s value within 12 months of the date of issuance. Kan. Stat. Ann. § 50-6108(c). These restrictions do not apply to gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, or to those sold below face value or at a volume discount to employers or to non-profit organizations for fundraising purposes. Kan. Stat. Ann. § 50-6108(d). All conditions and limitations must be disclosed at the time of purchase. Kan. Stat. Ann. § 50-6108(e). A gift card or certificate sold without an expiration date is

valid until redeemed or replaced, and a merchant shall not be required to redeem gift cards for cash. Kan. Stat. Ann. § 50-6108(b). Gift cards do not include prepaid bank cards. Kan. Stat. Ann. § 50-6108(f).

Kentucky:

Gift cards/certificates are not specifically included in the definition of property subject to escheat. Ky. Rev. Stat. Ann. § 393.010. However, intangible property generally escheats to the state after seven years. Ky. Rev. Stat. Ann. § 393.090. Kentucky S.B. 49 has created a new section to chapter 367 of the Kentucky Revised Statutes (Consumer Protection Laws) applicable to gift cards. As a result, no person or entity may (a) sell a **gift card** containing an expiration date less than one year after issuance, or (b) impose service charges or other fees (*e.g.*, dormancy, latency, or administrative fees) that reduce the value of the gift card for at least one year or until the expiration date on the card has expired, whichever occurs later. Ky. Rev. Stat. Ann. § 367.890(3). If a gift card does not contain an expiration date, it is valid until it is redeemed or replaced with a new card. Ky. Rev. Stat. Ann. § 367.890. There are some minor exceptions to these prohibitions. For example, as long as a gift card does not expire for at least 120 days, it may contain expiration dates if: (a) it is distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in exchange for the gift certificate; (b) it is sold below face value at a volume discount to employers or to nonprofit or charitable organizations for fundraising purposes; (c) it is sold by a nonprofit or charitable organization for fundraising purposes; or (d) it is given by an employer to an employee for use at the employer's business establishment (including a group of merchants affiliated with that business establishment). Ky. Rev. Stat. Ann. § 367.890. The term "**gift card**" specifically includes gift certificates and electronic cards, but it specifically excludes certain cards that may be used at multiple, unaffiliated sellers of goods or services (*e.g.*, cards that can be used at various stores in a shopping mall), prepaid calling cards, and cards issued by a merchant for a promotional program for which no separate monetary consideration is given. Ky. Rev. Stat. Ann. § 367.890(1). If a person imposes a fee in violation of the new Kentucky law, he will be liable for attorney's fees and costs in addition to actual damages. S.B. 49, § 6.

Louisiana:

Generally, La. Rev. Stat. Ann. § 9:151 *et seq.* (West). Three years after December 31 of the year sold for gift certificates. La. Rev. Stat. Ann. § 9:154(A)(6). The definition of gift certificates has been expanded so that it clearly encompasses gift cards and merchandise credits as well as paper certificates. La. Rev. Stat. Ann. § 51:1423(A). The expiration date of a gift certificate or merchandise credit must be stated on its face in capital letters in at least 10-point font, and it cannot be less than five years. La.

Rev. Stat. Ann. § 51:1423(B)(1). Dormancy and other service fees are not permitted, except for one-time handling fee that cannot exceed \$1.00 per certificate. La. Rev. Stat. Ann. § 51:1423(B)(2). Gift certificates sold without an expiration date shall be valid until redeemed or replaced. La. Rev. Stat. Ann. § 51:1423(C). Louisiana law contains an exemption for gift certificates that are (a) distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, (b) sold below face value or donated to non-profit organizations for fundraising purposes, or (c) usable with multiple sellers of goods and services. La. Rev. Stat. Ann. § 51:1423(D). It also contains an exemption for cards “issued by federally insured deposit institutions.” La. Rev. Stat. Ann. § 51:1423(F). A gift certificate that expires before it is used escheats to the state. La. Rev. Stat. Ann. § 9:171.

Maine:

Generally, Me. Rev. Stat. Ann. tit. 33, § 1951 *et seq.* (West). For gift cards or stored value cards, two years after December 31 of the year sold, or the most recent transaction involving the obligation or stored-value card occurred, whichever is later. The amount presumed abandoned is 60% of the face value of the cards. Beginning in 2012, a gift obligation or stored-value card is not presumed abandoned if it was sold by a single issuer who in the past calendar year sold no more than \$250,000 in face value of gift obligations or stored-value cards. (Issuers under common ownership or control and franchises are considered single issuers.) Maine prohibits expiration dates and dormancy fees, but it allows a transaction fee for the initial issuance of a gift card and for each time value is added to the card, if such fees are disclosed prior to issuance. Me. Rev. Stat. Ann. tit. 33, §§ 1953(1)(G) and 1952(13)(B). A gift card issuer is required to provide cash back to gift card holders for any card with a remaining value of less than \$5.00. Me. Rev. Stat. Ann. tit. 33, § 1953(1)(G)(5). Different rules apply for a prefunded bank card, which is defined as “a device issued by a financial organization that enables the holder to transfer the underlying funds to multiple merchants at the merchants’ point-of-sale terminals.” Me. Rev. Stat. Ann. tit. 33, § 1952(12-A). For prefunded bank cards, the escheat period is three years after December 31 of the year sold, or the most recent activity involving the prefunded bank card occurred, whichever is later. Me. Rev. Stat. Ann. tit. 33, § 1953(1)(G-1). The amount presumed abandoned is the face value of the prefunded bank card. Apparently, dormancy and other fees can be imposed on a prefunded bank card, if they are disclosed in advance. All issuers must obtain the address of the purchaser. If the gift certificate is less than \$50, however, issuers do not need to obtain the address as long as they have adopted a system for identifying the last known address of the purchaser that is acceptable to the state escheat administrator. A gift certificate that

expires before it is used escheats to the state. Me. Rev. Stat. Ann. tit. 33, § 1970(1).

Maryland:

Generally, Md. Code Ann. Com. Law I § 17-101 *et seq.* Gift certificates are specifically excluded from the definition of personal property subject to escheat. Md. Code Ann. Com. Law I § 17-101(m)(1). Maryland prohibits gift certificates from expiring before four years and from imposing dormancy or any other fees that reduce a certificate's value during that time. Md. Code Ann. Com. Law I § 14-1319(B). Expiration dates and fees that take effect after four years must be disclosed in at least 10-point font on the card, on a sticker permanently affixed to the card, or on an envelope that contains the card. Md. Code Ann. Com. Law I § 14-1319(C). Terms and conditions on gift certificates cannot be changed after the date of purchase or issuance, unless the change improves such terms and conditions. Md. Code Ann. Com. Law I § 14-1319(D). Fees or expiration dates that violate the new law will be invalid. Md. Code Ann. Com. Law I § 14-1319(E). The definition of a "gift certificate" excludes gift cards/certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, prepaid telephone cards, prepaid technical support cards, prepaid cards for Internet services, coupons for discounted goods and services, and gift cards that are processed through a national credit or debit card service and can be used at multiple unaffiliated sellers. Md. Code Ann. Com. Law I § 14-1319(A)(2). These cards and bank-issued stored value cards may have shorter expiration dates and contain dormancy and other fees, as long as such fees are prominently disclosed in at least 10-point type. If the cards are sold online or over the telephone, the disclosures must be made orally or online, as the case may be, prior to purchase. Md. Code Ann. Com. Law I § 14-1320.

Massachusetts:

Generally, Mass. Gen. Laws ch. 200A, § 1 *et seq.* The definition of gift certificates has been expanded so that it clearly encompasses gift cards and merchandise credits as well as paper certificates. Mass. Gen. Laws ch. 255D, § 1; Mass. Gen. Laws ch. 93, § 14S. Gift certificates are specifically excluded from the definition of personal property subject to escheat. Mass. Gen. Laws ch. 200A, §§ 1, 5. Note, however, that the expiration date of a gift certificate or merchandise credit must be stated on its face, and it cannot be less than seven years. Mass. Gen. Laws ch. 200A, § 5D. Anyone who sells or offers to sell gift certificates that impose a time limit of less than seven years or that impose any fees or charges, and anyone who refuses to honor a gift certificate before it reaches its expiration date can be fined up to \$300. Mass. Gen. Laws ch. 266, §§ 75C, D, and E. Massachusetts also prohibits dormancy or any

other fees that reduce a certificate's value for seven years. Gift certificates not clearly marked with a date of issuance and a date of expiration shall be good forever. (For a gift card, the dates will be considered clearly marked if they are printed on the sales receipt, are available on-line, or can be obtained by calling a toll-free telephone number.) Ch. 510 of the Act of 2002, § 8. If 90% or more of a gift certificate has been used, the consumer may elect to receive cash for the balance. Mass. Gen. Laws ch. 200A, §5D.

Michigan:

Generally, Mich. Stat. Ann. § 26.1055, *et seq.*, or Mich. Comp. Laws § 567.235 *et seq.* Five years for gift certificates (if there has been no use or activity), or five years after last use. Mich. Stat. Ann. § 26.1055(15) or Mich. Comp. Laws § 567.235(15). The amount presumed abandoned is the purchase price of the certificate. Effective November 1, 2008, gift cards/certificates cannot expire for five years and cannot contain dormancy fees. Mich. Comp. Laws §§ 445.903f and 445.903g. In addition, retailers cannot alter the terms of a gift card/certificate after it is issued, cannot refuse to accept gift cards during sales, liquidations, or close-outs, and cannot refuse to honor gift cards/certificates as partial payment for costlier items. Mich. Comp. Laws § 445.903e(1). Gift certificates are defined for purposes of Michigan consumer protection law by Mich. Comp. Laws § 445.903e(2)(b). Those certificates do not escheat to the state. Mich. Comp. Laws § 567.235(15)(4). There are nine categories of exclusions from the definition of gift certificates in § 445.903e: (a) 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, (b) an electronic payment device linked to a deposit account, (c) a prepaid telephone calling card regulated under state or federal law or a card used in connection with prepaid wireless telephone service, (d) an electronic payment device used to access an account from which an individual may pay medical expenses, health care expenses, dependent care expenses, or similar expenses, (e) a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price, if any expiration date of the prepaid discount card or program is clearly and conspicuously disclosed, (f) a payroll card or other electronic payment device linked to a deposit account and given in exchange for goods or services rendered, (g) a gift certificate sold below face value or at a volume discount to an employee, to a nonprofit or charitable organization, or to an educational institution for fund-raising purposes, (h) 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, and (i) an electronic credit voucher

issued by certain U.S. or foreign air carriers. Mich. Comp. Laws § 445.903e(3). These types of certificates that are not covered by Michigan's consumer protection laws, do escheat to the state. A gift certificate that expires before it is used escheats to the state.

- Minnesota: Generally, Minn. Stat. Ann. § 345.31 *et seq.* Gift certificates are specifically excluded from the definition of personal property subject to escheat. Minn. Stat. Ann. § 345.39. Gift certificates may not contain expiration dates, and issuers may not impose dormancy or any other fees that reduce a certificate's value. Minn. Stat. Ann. § 325G.53(2). These restrictions do not apply to gift certificates (1) that are distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in exchange for the gift certificate, (2) that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes, (3) that are issued by an employer to an employee in recognition of services performed by the employee. State law also does not apply to debit cards or other legal access devices used to access a deposit account and that are subject to the federal disclosure rules in the Electronic Fund Transfer Act, 15 U.S.C. §1693 *et seq.* (and its implementing Regulation E), to bank cards usable at multiple sellers of goods and services (as long as expiration dates and fees are disclosed), and prepaid calling cards. Minn. Stat. Ann. § 325G.53(3).
- Mississippi: Generally, Miss. Code Ann. § 89-12-1 *et seq.* Five years for gift certificates. Miss. Code Ann. §§ 89-12-14 or 89-12-15 and 89-12-3(f). Mississippi law appears unsettled regarding whether an expired gift certificate would escheat to the state. Miss. Code Ann. § 89-12-35.
- Missouri: Generally, Mo. Rev. Stat. § 447.500 *et seq.* (Vernon). Five years for gift certificates. Mo. Rev. Stat. §§ 447.535, 447.536. The amount presumed abandoned is 60% of the face value of the cards for those that may be redeemed for merchandise only; however, the state shall reimburse the owner for the full value of the card. Missouri law appears unsettled regarding whether an expired gift certificate would escheat to the state.
- Montana: Generally, Mont. Code Ann. § 70-9-801 *et seq.* For gift cards or stored value cards, three years after December 31 of the year in which the cards were sold, but if the cards are redeemable for merchandise only, the amount presumed abandoned is 60% of their face value. Mont. Code Ann. § 70-9-803(1)(g). A gift certificate is not presumed abandoned if it was sold by a person who sold no more than \$200,000 in gift certificates in the past fiscal year (adjusted annually for inflation November of each year). The amount considered abandoned for a person who sells more than the

amount that triggers presumption of abandonment is the value of gift certificate's greater than that trigger. Mont. Code Ann. § 70-9-803(1)(g). Gift certificates may not contain expiration dates, and issuers may not impose dormancy or any other fees that reduce a certificate's value. Mont. Code Ann. §§ 30-14-108(1) and (3). If the remaining value of a certificate is less than \$5, the holder may elect to receive cash for the balance, if the original value of a certificate had been more than \$5. Mont. Code Ann. § 30-14-108(4). These restrictions do not apply to gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, prepaid telephone or technical support cards, and gift cards that can be used at multiple unaffiliated sellers. Mont. Code Ann. § 30-14-102(5)(b).

Nebraska:

Generally, Neb. Rev. Stat. § 69-1301 *et seq.* Three years after issuance for gift certificates. Neb. Rev. Stat. § 69-1305.03. As a result of L.B. 668, enacted on March 10, 2008, Nebraska exempts all gift certificates/cards that do not contain fees or an expiration date from its escheat laws. Neb. Rev. Stat. §§ 69-1305.03(a) and (b). Gift certificates/cards that contain expiration dates or post-sale fees continue to escheat after three years. Neb. Rev. Stat. § 69-1305.03(c). It also exempts gift certificates/cards issued before November 2, 2006 (which are less than three years old) with a face value of less than \$100 if the issuer publicly posts, prior to July 1, 2006, its policy of charging no fees and honoring them even if they have expired. Such notice must be posted conspicuously in at least 10-point font in all Nebraska locations where the card is distributed or redeemed. Neb. Rev. Stat. § 69-1305.03(d). Any expiration date and the amount, frequency, and trigger for dormancy fees must be shown clearly and conspicuously on the card or certificate prior to purchase. Neb. Rev. Stat. §§ 69-1305.03(f) and (g). The statutory restrictions on expiration dates and dormancy fees do not apply to a general-use prepaid card cards usable with multiple, unaffiliated sellers of goods and services. Neb. Rev. Stat. § 69-1305.03(h). General-use prepaid cards escheat after five years from the date of the last transaction initiated by the card owner, however. Neb. Rev. Stat. § 69-1308(b). Nebraska law appears unsettled regarding whether an expired gift certificate would escheat to the state. Neb. Rev. Stat. § 69-1315.

Nevada:

Generally, Nev. Rev. Stat. Ann. § 120A.010 *et seq.* Sixty percent of the unredeemed or uncharged value remaining on a gift certificate that is issued or sold in Nevada and which has an expiration date is presumed abandoned on the expiration date and subject to escheat. Nev. Rev. Stat. §§ 120A.520, sections 1 and 2. Presumably, gift certificates without expiration dates are not subject to escheat. Gift certificates may contain

expiration dates and impose service or any other fees that reduce a certificate's value only if the expiration dates or fees are printed in 10-point font on the certificate or the certificate contains a toll-free number the holder can call to obtain expiration date, unused balance, and/or dormancy fee information. If a service (dormancy) fee is based on inactivity, the duration of such inactivity cannot be less than 3 years. Nev. Rev. Stat. §§ 598.0921(1)(a) and (b). Service fees cannot be imposed in the first 12 months after issuance (sale) and cannot exceed \$1/month. Nev. Rev. Stat. § 598.0921(1)(c). The term "gift certificate" is defined broadly and specifically includes gift cards. Nev. Rev. Stat. § 598.0921(3). These various restrictions do not apply to gift certificates or cards issued pursuant to an awards, loyalty, promotional, rebate, or incentive program, as long as the issuer does not receive money or any other thing of value in exchange for the gift certificate, sold below face value to employers or to nonprofit and charitable organizations if the expiration date on those certificates is not more than 30 days after the date of sale, used at multiple unaffiliated sellers (as long as the expiration date is printed plainly and conspicuously on the front or back of the certificate), and prepaid telephone, technical support, or Internet service cards. Nev. Rev. Stat. §§ 598.0921(2).

New Hampshire: Generally, N.H. Rev. Stat. Ann. § 471-C:1 *et seq.* Gift certificates of \$100 or less may not have an expiration date and are not subject to escheat. This provision does not apply to gift certificates for which no monetary consideration is given or that are distributed to consumers for promotional purposes. N.H. Rev. Stat. §§ 358-A:2(XIII) and 471-C:16. All other gift certificates, including those having a face value in excess of \$100, are presumed abandoned after five years. N.H. Rev. Stat. §§ 471-C:1(XI)(b) and 471-C:2(I). A gift certificate must expire when escheated to the state as abandoned property. N.H. Rev. Stat. § 471-C:33. New Hampshire prohibits dormancy or any other fees that reduce a certificate's value. N.H. Rev. Stat. § 358-A:2(XIII).

New Jersey: Until recently gift certificates were not specifically included in the detailed definition of intangible property that is subject to the state's escheat laws and, therefore, are not subject to escheat. Generally, N.J. Rev. Stat. § 46:30B-1 *et seq.* (N.J. Rev. Stat. § 46:30B-6); *New Jersey v. Sperry & Hutchinson Co.*, 157 A.2d 505 (N.J. 1960). It is state public policy that contract provisions cannot be used to defeat its escheat statute. *In the Matter of Unclaimed Property Office*, 706 A.2d 1177 (N.J. Super. Ct. App. Div. 1998), *aff'd*, 722 A.2d 536 (N.J. 1999). New Jersey prohibits gift certificates from expiring before two years and from imposing dormancy or any other fees that reduce a certificate's value during that time or within two years of the most recent activity or transaction. All

terms and conditions regarding expiration dates and dormancy fees must be disclosed to the buyer at the time of purchase and printed conspicuously on the gift certificate. Dormancy fees cannot exceed \$2/month. N.J. Rev. Stat. § 56:8-110(a).

On June 29, 2010, New Jersey amended its gift card laws substantially in A.B. 3002. It defined a “stored value card” to include paper gift certificates, records that contain a microprocessor chip, magnetic stripe or other means for the storage of information, gift cards, electronic gift cards, rebate cards, stored-value cards or certificates, store cards, and similar records or cards. N.J. Rev. Stat. § 46:30B-6(t). More controversially, the amendment would require card issuers to collect the purchaser’s name and address and to maintain, at a minimum, the purchaser’s zip code, and it 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. As a result, the state would be allowed to collect the unused amount on such cards as unclaimed property. Gift cards would be presumed abandoned if there has been no activity on the card for two years, and dormancy fees would also be completely prohibited. The amendment applies to all cards, including retroactively to those issued before July 1, 2010, its effective date. Section 5, A.B. 3002 (June 29, 2010).

In a suit American Express and others brought, a federal district court in New Jersey enjoined enforcement of the provision naming New Jersey as the location of the funds on unused cards (if the card is sold in the state), and prohibited the state from applying its statute retroactively, but it left in place the provision requiring issuers to collect the purchaser’s zip code. The Third Circuit affirmed the district court’s ruling in all respects on January 5, 2012 in *New Jersey Retail Merchants Association v. Sidamon-Eristoff*, No. 10-4551 (3d Cir. Jan. 5, 2012), available at http://www.uppo.org/resource/resmgr/legislative_alert_docs/new_jersey_gift_card_litigat.pdf (visited Jan. 12, 2012). Accordingly, New Jersey cannot impose a “third priority” rule of escheat based on place of purchase, nor can it apply the statute retroactively.

As a result of the litigation and other developments, New Jersey enacted S.B. 1928 to revise how it will now treat the expanded definition of stored value cards under its escheat laws. Under the new law, an SVC issued prior to July 1, 2010 is not subject to New Jersey's unclaimed property statute. For an SVC issued July 1, 2010 or later for which there has been no activity for five years, the amount that is presumed to be abandoned is 60% of its value on the date it is presumed abandoned. N.J. Rev. Stat. §§ 46:30B-42.1(a) and (b). “General purpose reloadable cards” (*i.e.*, open

loop cards issued by a bank or financial institution that can be used at multiple merchants and that are reloadable by the user) are not subject to escheat. N.J. Rev. Stat. § 46:30B-42.1(k). The escheat provisions also do not apply to (a) stored value cards that are distributed by the issuer to a person under a promotional, incentive, rewards or customer loyalty program or a charitable program for which no monetary or other consideration has been tendered by the owner, (b) cards that are donated or sold below face value to a nonprofit or charitable organization or an educational organization, (c) a stored value card issued by any issuer that in the past year sold stored value cards with a face value of \$250,000 or less, and (d) certain cards that are redeemable for event/venue admission and/or goods or services in conjunction with admission to such events. N.J. Rev. Stat. § 46:30B-42.1(e). The funds associated with an SVC sold on or after December 1, 2012 cannot expire. N.J. Rev. Stat. § 46:30B-42.1(i). Likewise, and SVC sold on or after December 1, 2012 cannot impose a dormancy fee, but it may impose an activation, purchase, issuance or other similar fee, and it may impose a replacement fee for lost or stolen cards. N.J. Rev. Stat. § 46:30B-42.1(j). If an SVC is deemed to be a gift card or certificate, the issuer will be required to provide cash back to the card holders for any card with a remaining value of less than \$5. N.J. Rev. Stat. § 56:8-110(c) and N.J. Rev. Stat. § 46:30B-42.1(h). The new law also repealed the “place of purchase” presumption and delayed the data collection requirement for merchants (the requirement that they collect zip codes from purchasers of cards) until July 1, 2016. N.J. Rev. Stat. § 46:30B-42.1(c)

New Mexico:

Generally, N.M. Stat. Ann. § 7-8A-1 *et seq.* (Michie). Five years after December 31 of the year sold for gift certificates. For gift certificates that are redeemable only in merchandise, the amount presumed abandoned is valued at 60% of the face value of the gift certificate. N.M. Stat. Ann. § 7-8A-2(a)(7). A gift certificate shall not have an expiration date less than 60 months after the date upon which the gift certificate was issued. If the gift certificate does not have a conspicuous expiration date on it, it shall be presumed to have no expiration date and shall be valid until redeemed or replaced. N.M. Stat. Ann. § 57-12-26(B). New Mexico prohibits dormancy or any other fees that reduce a certificate’s value. N.M. Stat. Ann. § 57-12-26(B). The restrictions on dormancy fees and expiration dates not apply to cards that are (a) distributed by the issuer to a person under a promotional, incentive, rewards or customer loyalty program or a charitable program for which no monetary or other consideration has been tendered by the owner, or (b) donated or sold below face value to a nonprofit or charitable organization. N.M. Stat. Ann. § 57-12-26(A). They also do not apply to cards issued by financial institutions for use at multiple unaffiliated sellers of goods and services. N.M. Stat. Ann. § 57-

12-26(A)(3). A gift certificate that expires before it is used escheats to the state. N.M. Stat. Ann. § 7-8A-19.

New York:

Five years for gift certificates. N.Y. Aband. Prop. Law § 1315 (McKinney). Gift certificates are defined broadly to include gift cards. The terms and conditions of a gift certificate must be disclosed to the purchaser either on a sign that is conspicuously posted, or they must be stated conspicuously in an offer made by mail. Terms and conditions must be conspicuously printed on the gift certificate, an envelope or packaging containing the certificate or an additional printed document, provided that the gift certificate contains a toll-free telephone number where the terms and conditions can be accessed. Gift certificates must be honored in accordance with such terms. N.Y. Gen. Bus. Law § 396-i (McKinney). New York law contains an exemption for gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, or sold below face value or at a volume discount to employees, to non-profit organizations, or to educational institutions for fundraising purposes. N.Y. Gen. Bus. Law § 396-i(3-b) (McKinney). No monthly fee can be assessed against a gift certificate before the thirteenth month of inactivity. N.Y. Gen. Bus. Law § 396-i(5) (McKinney). A gift certificate that expires before it is used escheats to the state. *In the Matter of Kimberley's A Day Spa, Ltd. v. Hevesi*, 2006 NYSlipOp 26075 (N.Y. Sup. Ct. Jan. 5, 2006) http://www.courts.state.ny.us/reporter/3dseries/2006/2006_26075.htm (visited Aug. 31, 2006).

North Carolina:

Generally, N.C. Gen. Stat. § 116B-51 *et seq.* Three years for gift certificates. The amount presumed abandoned is valued at 60% of the unredeemed portion of the face value of the gift certificate. N.C. Gen. Stat. §§ 116B-52(11)(B) and 116B-53(c)(8). Gift certificates with no expiration date are not subject to escheat. N.C. Gen. Stat. § 116B-54(b). Maintenance or dormancy fees must be disclosed conspicuously on the card itself at the time of purchase and can be imposed only after one year from the date of purchase. N.C. Gen. Stat. § 66-67.5. The restrictions on dormancy fees and expiration dates do not apply to cards issued by financial institutions for use at multiple unaffiliated sellers of goods and services. N.C. Gen. Stat. § 66-67.5(d). A gift certificate that expires before it is used escheats to the state. N.C. Gen. Stat. § 116B-71.

North Dakota:

Generally, N.D. Cent. Code § 47-30.1-01 *et seq.* Gift certificates are no longer specifically included in the detailed definition of intangible property that is subject to the state's escheat laws and are presumably not subject to escheat. N.D. Cent. Code §§ 47-30.1-01. North Dakota

prohibits gift certificates from expiring before six years after purchase, and prohibits issuers from imposing dormancy or any other fees that reduce a certificate's value. N.D. Cent. Code § 51-29-02. The term "gift certificate" is defined broadly and specifically includes gift cards. N.D. Cent. Code § 51-29-01. The restrictions on dormancy fees and expiration dates do not apply to gift certificates/cards issued pursuant to an awards, loyalty, promotional, rebate, or incentive program, as long as the issuer does not receive money or any other thing of value in exchange for the gift certificate, and to reloadable cards that can be used at multiple unaffiliated sellers. N.D. Cent. Code § 51-29-02. Contract provisions cannot be used to defeat North Dakota's escheat statute.

Ohio:

Generally, Ohio Rev. Code Ann. § 169.01 *et seq.* Gift certificates are specifically excluded from the definition of personal property subject to escheat. Ohio Rev. Code Ann. §§ 169.01(B)(2)(d) and 169.02(P). Ohio prohibits gift cards from having expiration dates that are less than two years after the date of issuance and the imposition of dormancy or any other fees that reduce a certificate's value for two years. Ohio Rev. Code Ann. §§ 1349.61(A)(1) and (2). The prohibitions against expiration dates and dormancy fees do not apply if the gift card: (a) is distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in exchange for the gift certificate; (b) is sold below face value at a volume discount to employers or to nonprofit or charitable organizations for fundraising purposes, if the expiration date is not more than 30 days after the date of sale; (c) is sold by a nonprofit or charitable organization for fundraising purposes; (d) is given by an employer to an employee for use at the employer's business establishment (including a group of merchants affiliated with that business establishment); (e) is usable at multiple, unaffiliated sellers of goods and services; or (f) is given by an employer to an employee in recognition of services performed. Ohio Rev. Code Ann. § 1349.61(C). A gift card does not include prepaid calling cards. Ohio Rev. Code Ann. § 1349.61(E)(1). A gift card without an expiration date is valid until redeemed or replaced with a new card. Ohio Rev. Code Ann. § 1349.61(B). Ohio law is unclear on whether an expired gift certificate would escheat to the state.

Oklahoma:

Gift certificates are not specifically included in the detailed definition of intangible property. Generally, Okla. Stat. tit. 60, § 651. However, because Oklahoma law is not clear, gift certificates might escheat after five years. Okla. Stat. tit. 60, § 658. Credit memos for more than \$50 escheat after 5 years. Okla. Stat. tit. 60, § 657.1(a). Oklahoma prohibits gift certificates from expiring before 60 months and from imposing dormancy or any other fees that reduce a certificate's value during that

time unless some very stringent restrictions are met (*e.g.*, the certificate's value is no more than \$5 each time the fee is assessed, the fee does not exceed \$1 per month, and there has been no activity for 24 consecutive months). Okla. Stat. tit. 15, §§ 797(A) and (D). Gift certificates will be redeemable in cash or replaced at no cost. Okla. Stat. tit. 15, § 797(B). The new law applies only to certificates that can be used to buy goods or services at a single merchant or a group of merchants that have common corporate control. In other words, it does not apply to bank-issued stored value cards. Okla. Stat. tit. 15, § 796. The restrictions on expiration dates and dormancy fees do not apply to gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money in exchange, or sold below face value or at a volume discount to employers or to non-profit organizations for fundraising (if the expiration date is not more than 30 days after the date of sale), or issued for a food product. Any expiration date permitted must be in capital letters in at least 10-point font on the front of the card. Okla. Stat. tit. 15, § 797(C). Contract provisions cannot be used to defeat Oklahoma's escheat law. Okla. Stat. tit. 60, § 666.

Oregon:

Generally, Ore. Rev. Stat. § 98.302 *et seq.* Gift certificates are not subject to escheat. Ore. Rev. Stat. § 98.302(8). Expiration dates are prohibited on gift cards unless: (1) the gift card bears, in at least 10-point type, the words "EXPIRES ON" or "EXPIRATION DATE" followed by the date on which the card expires, (2) the card is sold below its face value, and (3) the gift card does not expire until at least 30 days after the date of sale. Ore. Rev. Stat. § 646A.278. Dormancy and other fees are prohibited. Ore. Rev. Stat. § 646A.276. A gift card does not include prepaid calling cards or any gift card usable with more than one seller of goods or services. Ore. Rev. Stat. § 646A.274. A gift card issuer will be required to provide cash back to gift card holders for any card with a remaining value of less than \$5. Ore. Rev. Stat. § 646A.276(1)(d). Contract provisions cannot be used to defeat the escheat law of Oregon. Ore. Rev. Stat. § 98-342.

Pennsylvania:

Generally, Pa. Stat. Ann. tit. 72, § 1301 *et seq.* (Purdon). Gift certificates unredeemed for two years after the expiration of their redemption period, or five years from the date of issuance if they contain no expiration date, are presumed abandoned and escheat to the state. Pa. Stat. Ann. tit. 72, § 1301.6(1). Effective January 9, 2007, under Pennsylvania 2006 Act 138, "qualified gift cards," *i.e.*, those without expiration dates or dormancy fees are not subject to escheat. Pa. Stat. Ann. tit. 72, § 1301.6(1). Under the 2006 Act, the term "gift card" is defined broadly, but it does not include "general use prepaid cards," *i.e.*, cards issued by a financial institution or a licensed money transmitter usable at multiple unaffiliated merchants or

service providers. Pa. Stat. Ann. tit. 72, § 1301.1. Pennsylvania law appears unsettled regarding whether an expired gift certificate would escheat to the state. Pa. Stat. Ann. tit. 72, § 1301.16.

Rhode Island: Generally, R.I. Gen. Laws § 33-21.1-1 *et seq.* Gift certificates cannot contain expiration dates (or other time limits on redemption), or any maintenance or service fees, therefore, they are not subject to escheat. R.I. Gen. Laws § 6-13-12. (The escheat period had been three years for gift certificates. R.I. Gen. Laws § 33-21.1-14.) A gift card issuer is required to provide cash back to gift card holders for any card with a remaining value of less than \$1.00. R.I. Gen. Laws § 6-13-12. The restrictions on expiration dates and dormancy fees do not apply to gift certificates distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange, prepaid wireless telephone cards or telephone service cards, and for general use prepaid cards issued by a third party prepaid card issuer. R.I. Gen. Laws § 6-13-12(b), (c), and (d). Record keeping can be quite onerous, especially for certificates valued at more than \$50.

South Carolina: Generally, S.C. Code Ann. § 27-18-10 *et seq.* Gift certificates are not specifically included in the detailed definition of intangible property and are not subject to escheat. S.C. Code Ann. § 27-18-20(10). Nonetheless, has defined the term “gift certificate” in the Trade and Commerce title of its Code to mean a certificate issued or sold by a person engaged in the business of offering goods or services for sale at retail, and it specifically includes gift cards. S.C. Code Ann. § 39-1-55(A). A gift certificate may not expire prior to one year after it is sold or issued, unless the expiration date is on the front of the certificate in capital letters in at least 10-point font. S.C. Code Ann. § 39-1-55(B). A gift certificate with an expiration date that does not conform to subsection (B) is deemed to expire in one year. S.C. Code Ann. § 39-1-55(A). Any dormancy or other fees that decrease the value of a certificate over time must be stated clearly on the certificate, the envelope, the covering of the certificate, or the receipt. If such fees are not stated clearly, a consumer may redeem the certificate for its unused value (without allowing dormancy and other similar fees). S.C. Code Ann. § 39-1-55(C).

South Dakota: Generally, S.D. Codified Laws Ann. § 43-41B-1 *et seq.* Five years for gift certificates. S.D. Codified Laws Ann. § 43-41B-15. The state’s escheat provisions do not apply to any gift certificate or closed-loop prepaid card that has no expiration date and that is not subject to a dormancy, inactivity, or service fee. S.D. Codified Laws Ann. § 43-41B-43. The state’s escheat provisions do not apply to an open-loop prepaid card for

which the underlying funds do not expire and the records of the depository institution do not disclose the identity of the owner. S.D. Codified Laws Ann. § 43-41B-40. A gift certificate that expires before it is used escheats to the state. S.D. Codified Laws Ann. § 43-41B-30.

Tennessee:

Generally, Tenn. Code Ann. § 66-29-101 *et seq.* A gift certificate is presumed abandoned on the earlier of (1) the expiration date of the certificate, or (2) two years from the date it was issued. Tenn. Code Ann. § 66-29-135(a). A gift certificate may not contain an expiration date that is less than two years after issuance. Tenn. Code Ann. § 47-18-127(a). If the certificate contains no expiration date, it is valid until redeemed or replaced with a new card. Dormancy fees cannot be imposed for two years after issuance, and issuance fees are prohibited. Tenn. Code Ann. §§ 47-18-127(b) and (c). For a gift certificate issued after 1996 that is redeemable for merchandise only, the amount presumed abandoned is 60% of its face value. Tenn. Code Ann. § 66-29-135(b). A gift certificate issued after 1998 is not subject to escheat in Tennessee if no dormancy fee is imposed and the certificate states that it does not expire, it bears no expiration date, or it states that the expiration date does not apply in Tennessee. Tenn. Code Ann. § 66-29-135(c). The prohibitions against expiration dates and dormancy fees do not apply if the gift card: (a) is distributed by an issuer to a consumer pursuant to an awards, loyalty, or promotional program, as long as the consumer does not give money or any other thing of value in exchange for the gift certificate; (b) is sold below face value at a volume discount to employers or to nonprofit or charitable organizations for fundraising purposes; (c) is sold by a nonprofit or charitable organization for fundraising purposes; (d) is given by an employer to an employee for use at the employer's business establishment (including a group of merchants affiliated with that business establishment); (e) is usable at multiple, unaffiliated sellers of goods and services; or (f) is given by an employer to an employee in recognition of services performed. Tenn. Code Ann. § 47-18-127(d). Gift certificates do not include prepaid calling cards. Tenn. Code Ann. § 47-18-127(e). Tennessee law appears unsettled regarding whether an expired gift certificate would escheat to the state.

Texas:

Not covered specifically. Generally, Tex. Prop. Code Ann. § 72.101 (Vernon). Generally, gift certificates ("stored value cards") escheat after three years. Tex. Prop. Code Ann. § 72.101(a). The state defines stored value cards broadly as a means of storing information that is prefunded and the value of which is reduced on redemption. An SVC specifically includes gift certificates and cards. Tex. Bus. & Com. Code Ann. § 604.001. If the holder of the card is unknown, the SVC escheats on the earlier of (1) its expiration date, (2) the third anniversary of the date of

issuance, or (3) the first anniversary of the date of issuance if the SVC is not used after it is issued, or the date the SVC was last used or value was last added to the SVC, if the SVC's value represents wages. Tex. Prop. Code Ann. § 72.1016(b). Texas permits expiration dates if they are clearly and conspicuously disclosed at the time of purchase. Tex. Bus. & Com. Code Ann. § 604.101. It also permits fees if they are reasonable, not imposed until after one year after the card is issued or sold, and they are clearly and conspicuously disclosed at the time the card is issued or sold. Tex. Bus. & Com. Code Ann. §§ 604.052 and 604.101. Issuers of an SVC may impose issuance, handling, reloading, and replacement fees. Tex. Bus. & Com. Code Ann. § 604.051. An expiration date and fees that may reduce the card's value must be legibly printed on it. Tex. Bus. & Com. Code Ann. § 604.102. The restrictions on expiration dates and dormancy fees do not apply to SVCs that (i) are issued by federally insured financial institutions (*i.e.*, stored value cards that can be used at multiple unaffiliated sellers) or issued by an air carrier holding a certificate of public convenience, (ii) are prepaid calling cards, (iii) are distributed by an issuer pursuant to an awards, rewards, loyalty, incentive, rebate, or promotional program, as long as the recipient does not give money in exchange, (iv) are sold below face value or donated to employees of the seller or issuer, to non-profit organizations, or to educational institutions for fundraising purposes, or (v) do not expire and for which the seller does not charge a fee other than issuance, handling, reloading, and replacement fees. Tex. Bus. & Com. Code Ann. § 604.002.

Utah:

Generally, Utah Code Ann. § 67-4a-101 *et seq.* Gift cards are not subject to escheat. Utah Code Ann. §§ 67-4a-102(11) and 67-4a-211. It is a violation of the Utah Consumer Sales Practices Act (CSPA) to issue a gift certificate that contains an expiration date or deducts a fee without disclosing the fee in a readable manner on the gift certificate or its packaging. Utah Code Ann. § 13-11-4(2)(v). A gift certificate, instrument, or other record that does not print an expiration date on the gift certificate or its packaging in accordance with subsection (2)(v) does not expire. Utah Code Ann. § 13-11-4(4)(a). A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee. Utah Code Ann. § 13-11-4(4)(b). The CSPA does not apply to a gift certificate, instrument, or other record useable at multiple, unaffiliated sellers of goods or services if an expiration date is printed on the gift certificate, instrument, or other record. Utah Code Ann. § 13-11-4(4)(c). Detailed record keeping is required.

Vermont:

Generally, Vt. Stat. Ann. tit. 27, § 1208 *et seq.* Gift certificates are not specifically included in the detailed definition of intangible property and are not subject to escheat. Vt. Stat. Ann. tit. 27, § 1241(13). Vermont prohibits gift certificates from expiring before the later of five years after issuance or the date funds were last loaded, and it prohibits dormancy or any other fees that reduce a certificate's value. Vt. Stat. Ann. tit. 8, §§ 2702 and 2703(a). The expiration date must be clearly identified on the certificate or card or otherwise made available, if not the certificate or card is deemed to have no expiration dates. Following the expiration date of the certificate, the unused portion of the gift certificate shall be returned to the holder of the gift certificate, if requested. Vt. Stat. Ann. tit. 8, § 2702. If the remaining value on a gift certificate is less than \$1.00, the certificate or card is redeemable in cash upon demand. Vt. Stat. Ann. tit. 8, § 2704. At the holder's request, the issuer must provide the amount of the unused balance left on the card and its expiration date. Vt. Stat. Ann. tit. 8, § 2705. The prohibitions against expiration dates and dormancy fees do not apply to (1) a loyalty, award, or promotional gift certificate where no money or other thing of value is given in exchange for the certificate, provided that it complies with the disclosures in § 2702a, (2) the promotional value of a loyalty, award, or promotional gift certificate, provided that it complies with the disclosures in § 2702a, (3) a gift certificate donated to a charitable organization and used for fund-raising, without any money or other thing of value being given in exchange for the gift certificate by the charitable organization, provided that the expiration date is clearly and legibly printed on the gift certificate, (4) prepaid calling cards, (5) a season pass, a discount ski card, or a record sold for admission to any seasonal recreational activity, and (6) certain types of payroll cards. Vt. Stat. Ann. tit. 8, § 2707. Section 2702a requires the following information on a loyalty, award, or promotional gift certificate: (a) a statement on the front of the certificate that it is issued for loyalty, award, or promotional purposes, (b) the expiration date must be clearly and legibly disclosed on the gift certificate, (c) the amount of fees (if any) must be clearly and legibly disclosed on the gift certificate, and (d) a toll-free number or Web site address a consumer can access to obtain fee information must be disclosed on the certificate. Vt. Stat. Ann. tit. 8, § 2702a.

Virginia:

Generally, Va. Code Ann. § 55-210.1 *et seq.* (Michie). Gift certificates redeemable in merchandise, in services, or through future purchases are exempt from escheat. Va. Code Ann. § 55-210.8:1(B). Five years for other gift certificates issued in the ordinary course of business. Va. Code Ann. § 55-210.8:1(A). Virginia law requires a gift certificate issued by a merchant in Virginia to have clearly and permanently affixed to it either an expiration date for the certificate or a telephone number or Internet

address at which information about its expiration and diminution in value over time (if any) may be obtained. Va. Code Ann. § 59.1-531.

Washington:

Generally, Wash. Rev. Code § 63.29.010 *et seq.* Gift cards or certificates issued on or after July 1, 2004 cannot contain expiration dates, dormancy charges, or any other fees (including services fees). Wash. Rev. Code § 19.240.020. A gift card issuer is required to provide cash back to gift card holders for any card with a remaining value of less than \$5.00. Wash. Rev. Code §§ 19.240.020(3). There are some minor exceptions to these prohibitions. For example, certificates may contain expiration dates if: (a) they are distributed by an issuer pursuant to an awards, loyalty, or promotional program, as long as the recipient does not give money or any other thing of value in exchange for the gift certificate, or they are donated to charity to be used solely to provide charitable services; (b) they are donated to charity for use in its fundraising, as long as the expiration date is at least one year from the date they are issued by the charity; or (c) they are redeemable for goods or services provided in the state by artistic and cultural organizations. Wash. Rev. Code §§ 19.240.030, 19.240.050, and 19.240.060. Code § 19.240.020 notwithstanding, gift certificates may contain dormancy fees if (1) the value remaining on the gift card is \$5.00 or less each time the fee is assessed, (2) the dormancy fee is \$1.00 per month or less, (3) the card has been inactive for 24 consecutive months (for example, no purchases, “reloading,” or balance inquiries), (4) the holder may reload or add value to the card, and (5) the card contains a statement in at least 6-point type stating the amount and frequency of the fee, that the fee is triggered by inactivity, and at what point the fee will be charged, and (6) after a dormancy fee is imposed, the remaining value of the certificate is redeemable in cash on demand. Wash. Rev. Code §§ 19.240.040. Gift certificates are no longer subject to escheat, including those that may contain expiration dates and dormancy fees as set forth in Wash. Rev. Code §§ 19.240.030 through 19.240.060. Wash. Rev. Code § 63.29.020(6). Otherwise, gift certificates issued in the ordinary course of business escheat after three years. Wash. Rev. Code § 63.29.140. The prohibition of expiration dates and dormancy fees does not apply to gift certificates issued by financial institutions. Wash. Rev. Code §§ 19.240.100.

West Virginia:

Generally, W. Va. Code § 36-8-1 *et seq.* Three years after December 31 of the year sold for gift certificates. If a gift certificate is redeemable only in merchandise, the amount presumed abandoned is valued at 60% of the face value of the gift certificate. W. Va. Code § 36-8-2(a)(7). A gift certificate that expires before it is used escheats to the state. W. Va. Code § 36-8-19.

- Wisconsin: Generally, Wisc. Stat. § 177.01 *et seq.* Gift certificates are not specifically included in the definition of property subject to escheat. (Wisc. Stat. § 177.14 no longer includes gift certificates.)
- Wyoming: Generally, Wyo. Stat. § 34-24-100 *et seq.* Three years for gift certificates of more than \$100. Wyo. Stat. § 34-24-114(a). Apparently, escheat does not apply to gift certificates that are \$100 or less. Wyoming does not prohibit expiration dates or fees for certificates, but it does have detailed record keeping requirements. Wyo. Stat. §§ 34-24-114(d) and 34-24-118.

* State laws that may apply to gift cards/certificates may have been preempted at least in part by the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit CARD Act”) and the rules that the Federal Reserve System has promulgated thereunder. You should consult the federal rules in conjunction with this survey of state gift card escheat laws.