



Gift Cards and Loyalty Programs: Balancing the Legal Risks and Rewards

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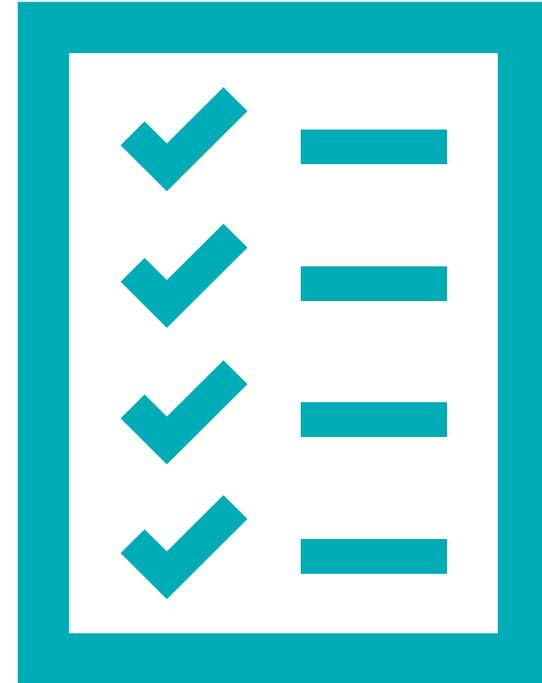
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Agenda

1. Introduction
2. Loyalty/Rewards Programs
3. CARD Act
4. State Gift Card Laws
5. Anti-Scam Laws
6. Unclaimed Property & Escheat
7. Privacy Considerations for Loyalty Programs



Loyalty/Reward Programs

A Little History....

Loyalty programs have been around for hundreds of years — going back as far as ancient Egypt (according to Loyalty & Reward Co., a loyalty consulting firm).

- In 1793, a New Hampshire merchant began rewarding customers with copper tokens that could be accumulated and used for future purchases, generating repeat visits (the core behavioral objective of loyalty program design). The idea was quickly replicated by other retailers.
- In the 1890s, companies began using physical stamps to reward loyal customers who made purchases. Customers could earn stamps when making purchases and then stick them into collecting books that could be exchanged for rewards. S&H Green Stamps are the most well-known example of these stamp books.
- In 1981, a major U.S. airline launched the world’s first currency-based frequent flyer program allowing program members to earn miles based on miles flown. A boom in miles and points-based loyalty programs ensued, including a program from Holiday Inn, the first hotel program. Then banks and retailers replicated the approach.
- Today, the market is booming — according to a **2024 report** from Fortune Business Insights, the global loyalty market is projected to grow from \$13.31 billion in 2024 to \$41.21 billion by 2032.

Loyalty Programs are Regulated Under Consumer Protection—and Other Laws

- Federal/state laws prohibit merchants from engaging in unfair and deceptive trade practices, *e.g.*:
 - Promoting a loyalty program in a false and misleading manner.
 - Failing to disclose material terms clearly and conspicuously.
 - Failing to provide rewards as promised.
- **Recent cases:**
 - Major airline sued for expiring customer points without notice.
 - Circa Resort Group sued for reducing customer’s earned comps in rewards program with add-on fees and “taxes.”
 - NAD found dark patterns with Pier 1’s \$9.99/month “Rewards membership,” which was automatically added to customer’s carts with a pre-checked checkbox. Pier 1 then advertised that it offered a 10% discount that was available only with the membership.
- **Other types of laws regulating loyalty programs:**
 - Contract
 - Money Transmission/AML
 - CAN-SPAM and TCPA
 - Sweepstakes and Contests
 - Tax/Unclaimed Property

Congressional Activity on Loyalty Programs

- **Credit Card Competition Act (2023)**—sought to lower credit card exchange fees.
- **Protect Your Points Act (S. 5272)(introduced Sept. 2024)**: New legislation that would strengthen consumer protections by requiring greater transparency from airlines' frequent flyer, points, and loyalty programs.

Would give the DOT and CFPB explicit authority to:

- Prohibit airlines from including provisions in their loyalty program terms and conditions that reserve their right to make changes at any time without notice.
- Require airlines to display the real-time financial value of one point/mile on every page of their website, making it easier for consumers to compare point values across airlines.
- Require airlines to show airfare and add-on pricing in both dollar and points/miles values simultaneously.
- Prohibit accrued points/miles from expiring.
- Prohibit charging fees for transferring points between family members or others in the same program.

CFPB Targeting Credit Card Rewards Programs?

In May, the CFPB published a report highlighting widespread consumer complaints about credit card rewards programs.

- The CFPB identified four recurring issues across several hundred complaints it analyzed regarding credit card rewards programs.
- Chopra: Interested in protecting points, stopping bait-and-switch scams, protecting fair and competitive market for credit card rewards.

Key Findings:

- **Bait-and-Switch Tactics:** Credit card companies often promote rewards in marketing but hide complex terms in fine print, making it difficult for consumers to redeem rewards.
- **Devaluation of Rewards:** Issuers and partners often devalue rewards after consumers have earned them by raising the number of points or miles needed for redemption.
- **Redemption Issues:** Consumers face technical glitches and customer service issues that delay/block ability to redeem rewards, especially when transferring points to third-party merchants.
- **Revocation of Rewards:** Consumers reported losing earned rewards when accounts close or due to expiration policies, often without notice.

DOT Inquiry into Airline Rewards Programs

- DOT has announced it is investigating potential unfair practices in the rewards programs of four major U.S. airlines .
- Airlines are required to submit data on:
 - Devaluation of earned rewards
 - Hidden and dynamic pricing
 - Extra fees
 - Reduction in competition and consumer choice
- Goal: Ensure transparency, fairness, and protect the value of consumers' earned rewards.



Notice of Changes

What kind of notice is generally required when making changes?

- Many loyalty programs have, in the past, provided for little or no notice (0 to 60 days)
- New laws require minimum notice period for specific industries (e.g., credit card—45 days to give notice and then 90 days before change), depending on nature of change under NY law; CFPB looking at issue and DOT likely will as well
 - Additionally, UDAP arguments may dictate in favor of at least some notice, particularly if program is run in other countries as well
- Program terms should have a notice provision that defines: (1) **how** notice of changes will be provided; (2) how **much** notice will be provided; and (3) how members will **accept changes**.
 - Stating “Company will provide notice of changes” without defining method of notice (e.g., posting on website, email) may be too vague and potentially result in liability.
- Acceptance: Click to accept? Continued participation? Best practice may vary based on type of term (e.g., arbitration, reduction of value).
 - Notice is always important in consumer terms, but particularly if you want to use an arbitration clause: **MUST** be clearly and conspicuously disclosed.

Advance Notice of Changes: New York GBL § 520-e

- **New provision to New York General Business Law (§ 520-e), effective December 2023,** requires that cardholders receive advance notice of changes to credit card accounts and the reward programs associated with those accounts “as soon as possible,” and within **45 days**.
- **Grace Period Requirement:** Requires **90-day** grace period from the date that notice is sent to redeem any points associated with the rewards program
- Changes requiring notice: Changes with effect of “eliminating points, reducing the value of points, affecting the ability of a holder to accumulate points, limiting or reducing rewards availability, limiting a holder’s use of points or the credit card account, otherwise diminishing the value of the rewards program or the credit card account to the holder or changing the obligations of the holder with respect to the rewards program or credit card account.”
- **Provisions are not waivable and cannot be disclaimed:** Any agreement that attempts to waive, limit, or disclaim the rights conferred by the new law is deemed “void as contrary to public policy”.
- **Broad Applicability**
 - Defines “credit card points” as any “denominated units that can be accumulated in an account in connection with a credit card, loyalty, or other incentive program . . . Which are redeemable, fungible, or otherwise exchangeable, in whole or in part, for rewards.”
 - Does law apply only to points accrued with credit card, or to related program points?
 - Defines “rewards” to be almost anything of value, including travel benefits.
 - Cases of fraud or misuse are exempted
- Should this timing be more broadly used?

NFT Loyalty Programs

Loyalty programs where NFTs are offered as rewards (with or without other offerings) may raise unique considerations:

- How will you award the NFTs? If there is any variation in who gets what, you may trigger sweepstakes/lottery and discrimination/human rights issues
 - Are you disclosing all costs and requirements associated with the program, e.g., the requirement to have an NFT wallet?
- How will terms and conditions for the program be communicated? It's common to have a website in addition to the smart contract, particularly if there is a “gamified” element
- Intellectual property and other restrictions: What rights will you grant to NFT recipients? Will you offer assignment or exclusive/nonexclusive license?
- Will you allow resale and when/how? Relatedly, what is the value of the NFT?
- Bank Secrecy Act/Anti-money laundering — Consider any virtual currency implications, particularly if any cryptocurrency element is involved or if the NFT has value

*Starbucks had an NFT loyalty program, where the NFTs were intended to act similarly to gift cards, until recently — when it was dropped without much discussion (although there are still NFTs incorporated into the “regular” program)



Gift Cards

CARD Act Overview

- The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “CARD Act”) is a federal law implemented by Regulation E which is a federal regulation imposed by the Consumer Financial Protection Bureau that applies to instruments such as gift cards/certificates.
- Regulation E serves as a floor for the regulation of gift cards as many states have enacted their own, stricter gift card laws.
- The types of regulated instruments include:
 - Gift Certificates
 - Store Gift Cards
 - General-Use Prepaid Cards



The definitions for each type of instrument contain subtle differences and thus it will be important to pay attention to those nuances when determining if your company’s practices will be covered by the CARD Act.

CARD Act Definitions

The CARD Act regulates three types of instruments, which are defined as “**a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer**” that are issued:

- Gift certificate
- Store gift card
- General-use prepaid card.

Three main types of requirements/restrictions:

- **Fees.** Regulated instruments may not be subject to dormancy fees, inactivity fees, or service fees unless certain requirements are met.
- **Expiration.** Regulated instruments may not expire earlier than five years after the date of issue.
- **Disclosures.** If a company wants to impose an expiration date or fee, they must be disclosed before purchase, along with a toll-free telephone number (if maintained) and a website that a consumer may use to obtain further information must be disclosed.

CARD Act – Exclusions

Excluded from the CARD Act are any card, code, or device that is:

1. Usable solely for telephone services;
2. Reloadable and not marketed or labeled as a gift card or gift certificate;
3. **A loyalty, award, or promotional gift card;**
4. Not marketed to the general public;
5. Issued in paper form only; or
6. Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to events or venues, either at the event/venue or at specific locations affiliated with and in geographic proximity thereto.



The question of whether a card, credit or other item is excluded or exempt from the CARD Act can be extremely important to the extent that a seller wants to expire it, e.g.,:

- Promotional, loyalty, and rewards cards;
- Merchandise credits;
- Points and other types of credits.

CARD Act – Loyalty, award, or promotional gift card

To be eligible for the loyalty, award, or promotional gift card exclusion from the CARD Act, the card must be issued in connection with such a program, redeemable at one or more merchants, or usable at automated teller machines and it must disclose the following, if applicable:

- A. A **statement** indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
- B. The **expiration date** for the underlying funds, which must be included on the front of the card, code, or other device;
- C. The amount of any **fees** that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
- D. A **toll-free telephone number** and, if one is maintained, a **website**, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.



State Gift Card Laws

State Gift Card Laws: Where the Action Is

Expiration Dates: Many states prohibit expiration altogether, while others permit with extra requirements.

Dormancy and Service Fees: States may prohibit fees, or permit them but require clear disclosure, or allow only under specific circumstances or after certain time period.

“Cash-back” redemption requirements for unused portions of gift cards: Many class actions, enforcement actions brought against large companies for failure to comply with cash-back law. Note that the refund need only be provided only on request.

Anti-Scam Provisions: Federal and state laws being passed intended to protect public against efforts to “drain” credit cards through posting and packaging requirements.



New York

In 2021, New York amended its gift card law, N.Y. Gen. Bus. Law § 396-i. The amendments imposed requirements on gift cards purchased in the state after December 10, 2022.

1. Eliminates most fees (activation, dormancy, administrative, reloading etc.)
2. Extends expiration dates (**from 5 to 9 years**).
3. Prohibits devaluation of funds from lack of use.
4. Establishes a cash redemption mechanism (if remaining value is less than \$5.00)

Law also requires disclosing the terms and conditions on the gift card and in advertisements or promotions for the gift cards.

- Enforcement is through the NY Attorney General which can issue injunctive relief and order restitution and civil penalties.
- Revised unclaimed property requirements.

New York also added anti-scam provisions.



State Enforcement: Cash Redemption

In July 2024, Home Depot agreed to settle \$750,000 to settle a civil lawsuit with the Los Angeles County District Attorney, who alleged violations of a state law mandating cash redemption for gift cards under \$10.

Home Depot agreed to comply with the following terms:

- Program its point-of-sale registers in California that are cash-disbursing to automatically cash out gift cards with outstanding balance of less than \$10.
- Include notice on its gift card and website that gift card may be redeemed for cash where required by law.
- Post notice about gift card redemption in its California stores' Customer Service or returns area for six months.
- Provide training regarding gift card redemption to its register-trained associates and customer care associates in California.



State Anti-Scam Gift Card Laws

Delaware, Maryland, New Jersey, Rhode Island, and New York

Gift Card Anti-Scam Activity

The U.S. Department of Homeland Security “Project Red Hook” Task Force: investigation of 3 types of scam conduct:

1. **Card tampering:** criminals manipulating gift card packaging to access the card’s information before it is sold. Once a consumer purchases and loads funds onto the card, the criminals quickly drain the balance.
2. **Online attacks:** criminals gain access to gift card accounts through phishing schemes or hacking. Stolen card information is then sold on the dark web or used to make unauthorized purchases.
3. **Victim-assisted fraud:** telemarketing scammers deceive individuals into purchasing gift cards and providing the redemption codes; often involves impersonation of authority figures or loved ones in distress, convincing victims to act quickly. The redemption codes are then sold to criminal organizations, who use them to buy goods that are shipped overseas for resale.

Gift card draining investigation:

- Led to about 100 arrests, of whom 80 to 90 were Chinese nationals or Chinese Americans.
- “Runner” steals gift cards, obtained the card numbers and drained the balance before returning the worthless card to store shelves for later purchase by consumers.
- A single “runner” – driving from store to store – could swipe thousands of cards and return them after tampering in a very short time.

Delaware

- Enacted September 2024
- “Gift card” means a tangible electronic payment device that:
 - (1) Is issued in a specific amount
 - (2) May or may not be increased in value or reloaded
 - (3) Is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services
 - (4) Is honored upon presentation **at third-party locations**
- No person, firm, partnership, association, retailer, or corporation may sell a gift card to a purchaser unless the seller displays a conspicuous notice where or near where the gift card is physically displayed or at or near each physical location where the sale occurs.
- The notice required by subsection (b) of this section must caution the purchaser about prepaid card scams and instruct the purchaser on what to do if they suspect they might be a victim of such a scam.

New York

New York requires gift card sellers to display a conspicuous notice at or near where the gift card is displayed or near the physical location where the sale occurs. The notice must:

1. Caution the purchaser about prepaid card scams; and
2. Instruct the purchaser what to do if they suspect they may be a potential scam victim.

In 2023, New York passed Senate Bill 1329, which required the NY Consumer Protection Division to create a model notice which gift card sellers could use to comply with the above notice requirement.

Pending bill, SB 9900, “New York Gift Certificate Scam Prevention Act” that would impose packaging security, training, and record-keeping requirements for gift certificate sellers.

SCAM ALERT!

**Buying a gift card to
pay someone?**



Be aware gift cards are
for gifts, **NOT** payments.

If anyone insists you pay with gift cards, decline
the offer and report the incident to the NYS
Division of Consumer Protection at **800-697-1220**



Department of State
Consumer Protection

New Jersey

- New Jersey has been actively warning consumer about rampant gift card fraud, releasing an official notice in June 2022.
- New Jersey requires all retail gift card sellers to train employees on how to identify and respond to gift card fraud.
- Failure to comply can result in a civil penalty of \$1,000 and enforced by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.
- In June 2024, the New Jersey Assembly introduced A.B. 4636, that would require retail gift card sellers to post a conspicuous notice near the physical location where gift cards are displayed for sale, to caution consumers about gift card fraud and to instruct consumers on steps to take if fraud is suspected.

GIFT CARD FRAUD
A Guide for Consumers and Retailers
consumer *alert*

Rhode Island

Rhode Island Gen Laws § 6-59-2

Sellers must post a conspicuous notice, in a form prescribed by the department of business regulation, at or near where the gift card is displayed and at or near the physical location where the sale occurs, that:

- **(1)** Cautions the purchaser about prepaid card scams; and
- **(2)** Instructs the purchaser on what to do if they suspect they might be a potential victim of such a scam.



Maryland Gift Card Scams Prevention Act of 2024

Maryland Governor signed Senate Bill 760 into law in May 2024. This bill establishes numerous rules and procedures that merchants must follow when selling “open-loop” or “closed-loop” gift cards in the state.

Open-loop: (1) Payment card network branded; and (2) Redeemable on presentation at multiple unaffiliated merchants for goods or services within the payment card network; or useable at an automated teller machine.

Closed-loop: Redeemable on presentation by a consumer at a single merchant or a group of affiliated merchants.

Notice requirements for Merchants selling both open- and closed-loop gift cards:

- Conspicuously displays a notice in substantially the same form as a model notice created by the bill (1) at or near the physical location where the gift card is displayed for sale, or the sale occurs or (2) **on the webpage** where the gift card is offered for sale or that is displayed immediately before the sale is finalized.

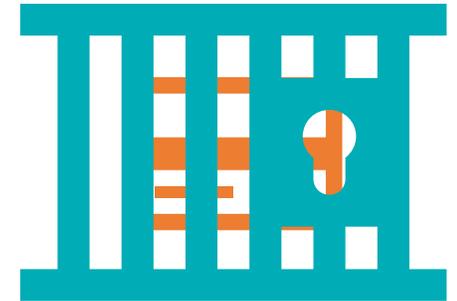
Maryland Gift Card Scams Prevention Act of 2024 – Packaging Requirements

Closed-loop Card Requirements (in-person sale)

- The gift card packaging (1) conceals or covers, in a manner that is not easily removed or replaced without signs of tampering all numeric codes specific to the redemption of the gift card; and (2) includes a warning not to sell or purchase if the packaging has been broken or indicates tampering.

Open-loop Card Requirements (in-person sale)

- (1) is sealed in a manner that is not easily opened without signs of tampering; (2) conceals all numeric codes specific to the activation or the redemption of the gift card and (3) includes a warning not to sell or purchase if the packaging has been broken or indicates tampering.



Unclaimed Property and Escheat

Gift Cards as Unclaimed Property

Escheat law provides that property may be presumed abandoned if there is no activity with respect to the property for a specified period of time

Are gift cards that have been unused for a certain period of time required to be reported as abandoned property?

- Some states exclude or exempt all GCs from abandoned property laws (e.g., AZ, CT, IN, MD).
- Still others exempt specific types of GCs, e.g., gift cards issued for food, products goods or services (CO).
- Some states specifically exempt “merchandise points” (AZ, NC)
- Others have created exceptions for “loyalty cards” (DE, IL).
- Some states consider only gift cards that expire to be escheatable.
- Many states have a “promotional, loyalty or rewards” exception for GCs.

Priority rules established by Supreme Court determine which states rules apply (and whether gift cards will be exempt from reporting).

- 1st priority: state of residence of owner or purchaser—do you have their address(es)?
- 2nd priority: state of domicile of issuer—is it worth it to incorporate a gift card subsidiary?

State Enforcement: Unused Gift Cards

- **In 2022, New York State Attorney General collected \$36 million in a settlement with H&M.**
- The NY AG alleged H&M withheld unused balances on gift cards that should have been transferred to the Office of Unclaimed Funds.
- H&M allegedly entered into a contract with an out-of-state company and claimed that under that state's law, H&M had no obligation to transfer unused funds to New York.
 - Traditionally, many sellers have not collected name and address information when selling gift card in order to avoid escheat. H&M used the relationship with the third party company to avoid collecting name/address information.
- According to the NY AG, the out-of-state company did not take over the gift-card business. Instead, H&M continued to run that business itself — and the money from the sale of gift cards never left its accounts.
 - This type of arrangement has also been challenged numerous times in Delaware. *See, e.g., Delaware ex rel. French v. Card Compliant LLC et al..*



Do Loyalty Points Escheat?

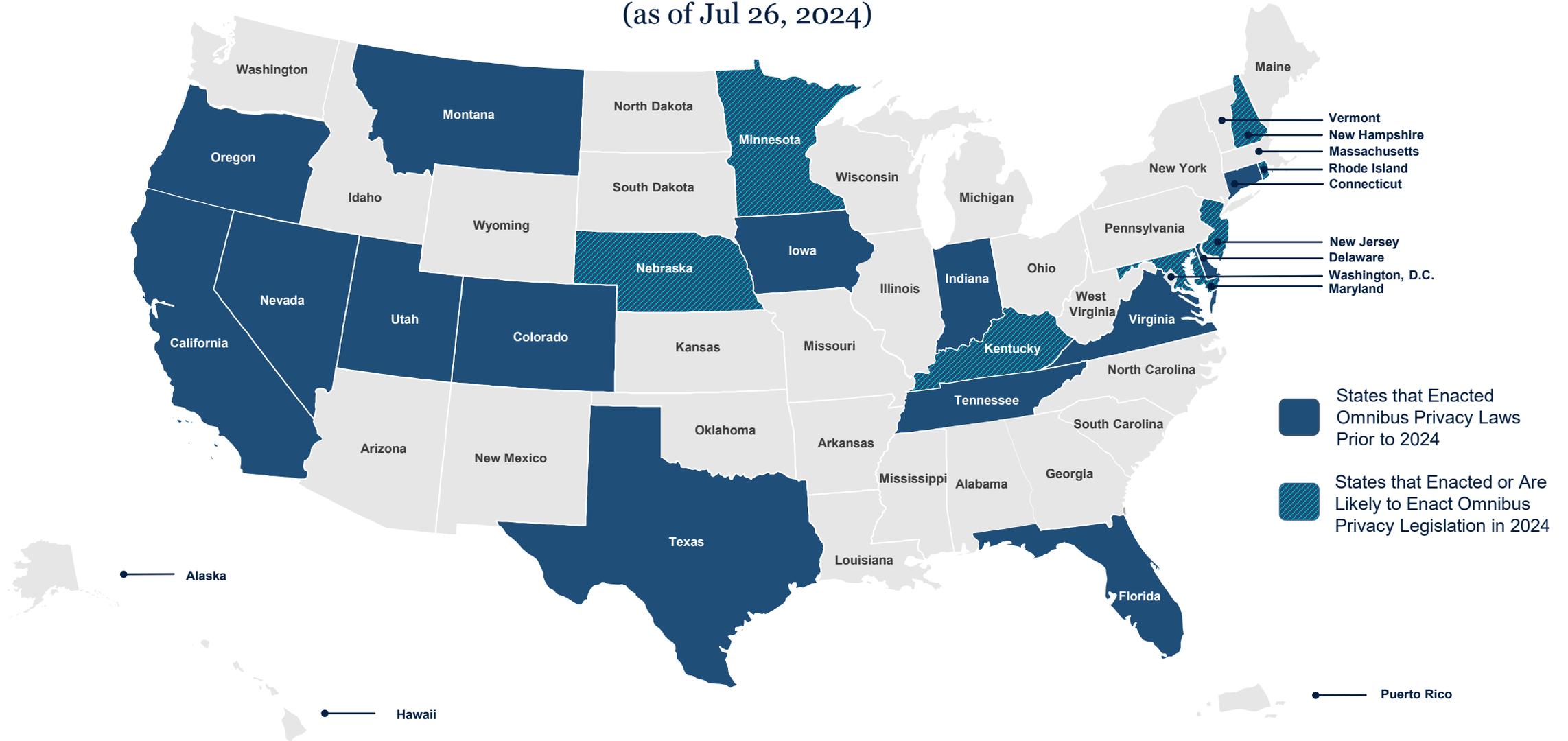
- Some state laws include broad exemption from escheat for “loyalty cards.”
 - May require escheat if there was “any consideration” – purchase, or providing a service, or taking some other action beneficial to the issuer.
- An owner of a loyalty reward card has a right to demand products or services in exchange for his reward points, but not a cash equivalent value of the points on his card. Likewise, the holder has no obligation to pay a cash equivalent value to the owner; rather, the holder’s obligation is to exchange a product or service, but only when the owner uses or redeems her or his points.
 - Arguably, the underlying business transaction that caused the points to be generated should not count as monetary consideration because presumably the transaction was a fair exchange for goods or services at their market value.
- Holder may need to rely on the derivative rights doctrine that a state succeeds only to the rights an owner of unclaimed property has to or in the property that is presumed abandoned, and just as the owner has no right to cash equivalent of the loyalty reward, neither does the state have the authority to demand the cash equivalent.
 - What is the value to escheat?



Loyalty and Gift Card Programs: Privacy and Consent

Enacted Omnibus State Privacy Laws

(as of Jul 26, 2024)



How State Laws Regulate Loyalty Programs?

A Deep Dive into California and Colorado

- California/CCPA: Regulates “financial incentives”
 - “Program, benefit, or other offering, including payments to consumers, for the collection, retention, or sharing of personal information. Price or service differences are types of financial incentives.”
- Colorado/CPA: Regulates “bona fide loyalty programs”
 - “A loyalty, rewards, premium feature, discount, or club card program established for the genuine purpose of providing Bona Fide Loyalty Program Benefits to Consumers that voluntarily participate in that program, such that the primary purpose of Processing Personal Data through the program is solely to provide Bona Fide Loyalty Program Benefits to Consumers that voluntarily participate.”
 - “Bona Fide Loyalty Program Benefit” = “an offer of superior price, rate, level, quality, or selection of goods or services provided to a Consumer through a Bona Fide Loyalty Program. Such benefits may be provided directly by a Controller or through a Bona Fide Loyalty Program Partner.”

Consent (CCPA + CPA)

- Under the CCPA, a business must obtain **opt-in** consent from consumers before enrolling them in a loyalty program, and consumers must be able to revoke their consent at any time. Cal. Civ. Code § 1798.125(b)(3).
- The CPA does not contain consent requirements specific to enrollment in a loyalty program, but it does provide that a consumer’s participation in such a program must be “voluntary.” Colo. Rev. Stat. § 6-1-1308(1)(d).
 - Obtaining consent under the CCPA will satisfy Colorado’s voluntary participation requirements.
 - The CPA generally requires opt-in consent before processing sensitive data about Colorado consumers, including in connection with a loyalty program. *Id.* § 6-1-1308(7).

Notice (CCPA)

- Both the CCPA and CPA require specific notices to consumers at the point of registration for the loyalty program. The notice may be given on the registration page or by providing a link that takes the consumer directly to the section of the privacy policy that contains the material terms of the program. Cal. Code Regs. tit. 11, § 7016(c); 4 Colo. Code Regs. § 904-3, Rule 6.05(F)(1).
- In California, required disclosures include the following:
 - A summary of the financial incentive offered;
 - A description of the offering's material terms, including: (1) the categories of personal information implicated; and (2) the value of the personal information.
 - How the consumer can opt-in;
 - Notice of the right to withdraw from the offering and how to do so; and
 - An explanation of how the price or service difference is reasonably related to the value of the consumer's data, including: (1) an estimate of the data's value; and (2) a description of the methods used to calculate the value. *See* Cal. Code Regs. tit. 11, § 7016(d).

Notice (CPA)

- In Colorado, required disclosures include the following:
 - The categories of personal data collected through the program that will be sold or processed for targeted advertising, if any;
 - The categories of third parties that will receive personal data (in a level of detail that gives consumers a meaningful understanding of the type of, business model of, or processing conducted by the third party) as a result of the program, including whether personal data will be provided to data brokers;
 - A list of any loyalty program “partners” (as defined by the CPA), and the benefits provided by each partner;
 - If applicable, an explanation of why deleting personal data would make it impossible to provide loyalty program benefits;
 - If applicable, an explanation of why sensitive data is required to deliver program benefits; and
 - A link to the business’s privacy policy. *See* 4 Colo. Code Regs. § 904-3, Rule 6.05(F).

5 Potential Pitfalls

1. Auto-enrollment: not permitted in California; maybe not permitted in Colorado.
 - Auto-enrollment problematic for other reasons, e.g., no consent to loyalty program terms such as arbitration provisions
2. Sensitive Data Collection.
3. Consumers in their professional capacity are not exempt in California.
4. Processing consumer rights' requests while continuing to provide loyalty program benefits.
5. Data sales!

Enforcement

On Data Privacy Day, Attorney General Bonta Puts Businesses Operating Loyalty Programs on Notice for Violations of California Consumer Privacy Act

Press Release / On Data Privacy Day, Attorney General Bonta Puts Businesses ...



Friday, January 28, 2022

Contact: (916) 210-6000, agprossoffice@doj.ca.gov

Businesses are required under CCPA to provide a notice of financial incentive if profiting from the collection of customers' personal information.

Wrap-Up/Practice Tips

Important to think about the what, where and why with loyalty programs, gift cards, and related programs like sweepstakes, contests, auctions, CCVs and even influencer/UGC programs:

- What platform? Online, social, mobile, brick-and-mortar, or some combination
- Promotional, purchase or both?
- Are material terms being clearly and conspicuously disclosed?
- How are you advertising/promoting the program? Are you being consistent with your terms?
- What information are you collecting from participants (and what are you doing with it/who are you sharing it with)?
- Are you securing all necessary permissions and rights?
- Are you preparing/providing for the inevitability of modification/change?
- Many companies that have run into trouble in these areas have done so at least in part because they failed to properly consider these questions in advance....

Consider the effect of new technologies — keep an eye on how the law is developing.

- Digital consent
- Virtual currency and AML
- Charitable promotions and CCVs

Today's Speakers



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Melissa Steinman focuses on advertising and marketing, promotions, consumer protection, antitrust, trade regulation, and consumer product safety. In addition to counseling and compliance, she also actively represents clients in government investigations and defends clients against class actions. Melissa represents a broad array of clients, including consumer products and hospitality brands, media and tech companies, retailers, gaming and software companies, start-ups, celebrities, producers, charities, and trade associations. She is particularly well known for her deep knowledge of promotions law, including sweepstakes, contests, gift cards, loyalty programs, and charitable promotions, and she speaks and writes frequently on the topic in the United States and internationally.



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Brian Tengel provides legal and business advice to clients seeking guidance on consumer privacy and data security issues. Brian offers practical, tailored solutions to manage data concerns so clients can focus on achieving their business objectives, rather than the legal hurdles that stand in their way. He also regularly defends clients in investigations before congressional committees and the Federal Trade Commission (FTC), among other regulatory bodies. Brian brings to his practice years of experience counseling clients on advertising and marketing matters, giving him keen insight into the unique needs of consumer-driven businesses and an understanding of how they use data.

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Jay Prapaisilp advises clients regarding regulatory and litigation matters related to advertising. Jay reviews marketing and advertising for regulatory compliance, including consumer goods and services claims, terms and conditions, email and text messaging campaigns, and endorsements and reviews. He is a member of Venable's Autorenewal Solutions team, which guides clients through all phases of auto renewing subscription services. Jay handles matters involving Federal Trade Commission (FTC), state attorney general, and California district attorney task force investigations. He has also assisted companies defending against competitor challenges before the National Advertising Division (NAD) and National Advertising Review Board (NARB).



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