

FEDERAL LAW

In 2009, Congress passed the Credit Card Accountability Responsibility and Disclosure (CARD) Act, which set consumer protections for gift cards based on many state laws. The law provides that gift cards cannot expire within five years from the date they were activated and generally limits inactivity fee on gift cards except in certain circumstances, such as if there has been no transaction for at least 12 months. The federal law creates a floor for regulation and leaves room for state regulation on redeeming gift cards for cash and unclaimed property provisions.

Dormancy, inactivity and service fees must be disclosed on the card and visible to the consumer without the need to remove packaging or other materials at the time of sale. The amount of such fees, how often fees may be assessed for inactivity must be disclosed prior to purchase, regardless of whether a gift card is purchased in person, on the phone or internet.

A number and a web address, if one is maintained, where consumers may obtain fee information or a replacement gift card must be disclosed.

Information regarding whether funds underlying a gift card may expire must be disclosed on the gift card.

Expiration dates must be 5 years.

Federal law prohibits dormancy, inactivity or service fees on gift cards unless 3 conditions are satisfied:

First: there must be no activity on the card during the one year period before the fee is imposed. If a fee is imposed because of inactivity for one year, and then the consumer uses the card after that fee is removed, you cannot remove another fee until 1 more year of inactivity passes.

Second: Only one fee can be imposed in one calendar month.

Third: dormancy fees must be disclosed "clearly and conspicuously" on the card and provided to the consumer.

Although federal gift card regulations regulate the frequency of fees and require certain disclosures, they do not mandate or limit the amount of any fees imposed.

New limits on inactivity fees

The value of that gift card you buy or receive today could evaporate by \$2.50 or more every month that the card sits unused in a wallet or pocketbook. In industry parlance, this is called a "dormancy fee."

Under the new regulations, dormancy fees cannot be imposed unless the card has been unused for at least 12 months. Only one such fee could be charged per month, and the issuer's policy on dormancy fees must be clearly disclosed.

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) provides consumers several gift card protections including limits on expiration dates and fees. Money on store-issued and bank-issued gift cards cannot expire before 5 years from the date of purchase or when money was last loaded onto the card. Also, inactivity fees (fees for not using the card) are prohibited unless cards have not been used for 12 months. If you have a gift card with a network logo such as Visa or MasterCard, your gift card is protected by the CARD Act.

As the Supreme Court stated in *Altria Group v. Good*, 555 U.S. 70 (2008), a federal law that conflicts with a state law will trump, or "preempt", that state law:

STATE LAW:

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| <p>Colo. Rev. Stat. §6-1-722 "Gift card" means a prefunded tangible or electronic record of a specific monetary value evidencing an issuer's agreement to provide goods, services, credit, money, or anything of value. A "gift card" includes, but is not limited to, a tangible card; electronic card; stored-value card; or certificate or similar instrument, card, or tangible record, all of which contain a microprocessor chip, magnetic chip, or other means for the storage of information and for which the value is decremented upon each use.</p> | <p>Colo. Rev. Stat. §6-1-722(b)(3) Prohibits service fee, a dormancy fee, an inactivity fee, a maintenance fee, or any other type of fee.</p> | <p>Colo. Rev. Stat. §6-1-722(b)(2) On and after the effective date of this section, the issuer shall redeem the remaining value of a gift card for cash if the amount remaining is five dollars or less on request of the holder.</p> | <p>Colo. Rev. Stat. §38-13-108.4 Gift certificate redeemable in cash subject to escheat if unclaimed by owner by more than five years. Certificates issued for food, products, goods or services are not subject to escheat provisions.</p> <p><i>Colo. Rev. Stat. §38-13-108.9 This article does not apply to unclaimed gift cards where the holder or issuer is a business association with annual gross receipts from the sales or issuance of all gift cards totaling \$200,000 or less.</i></p> |
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Signed by governor 3/15/13, Chapter 44

Specifies that the "Unclaimed Property Act" **does not apply** to unclaimed gift cards where the holder or issuer is a business association with annual gross receipts from the sales or issuance of all gift cards totaling \$200,000 or