

Mark Your Calendar: Sept. 1, N.J. Requires Cash Back for Certain Stored Value Cards

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On June 29, 2012, Governor Chris Christie signed into law Senate Bill 1928, a bill approved by both the New Jersey Assembly and Senate on June 25, 2012. Among other things, S.B. 1928 requires that certain stored value cards be redeemable for cash starting September 1, 2012.

Beginning September 1, 2012, if a stored value card or stored value card deemed a gift card or gift certificate is redeemed and a balance of less than \$5 remains on the card after redemption, at the owner's request, the merchant or other entity redeeming the card is required to refund the balance in cash to the owner. See N.J. Rev. Stat. §§ 46:30B-42.1 5.h (stored value cards), 56:8-110 1.c (a stored value card deemed a gift card or gift certificate).

A "stored value card" is a record that evidences a promise, made for monetary or other consideration, by the issuer or seller of the record that the owner of the record will be provided, solely or a combination of, merchandise, services, or cash in the value shown in the record, which is pre-funded and the value of which is reduced upon each redemption; it includes paper gift certificates, products that contain a microprocessor chip, magnetic stripe or other means for the storage of information, gift cards, and rebate cards. A "gift card" is a "a tangible device, whereon is embedded or encoded in an electronic or other format a value issued in exchange for payment, which promises to provide to the bearer merchandise of equal value to the remaining balance of the device," and a "gift certificate" is "a written promise given in exchange for payment to provide merchandise in a specified amount or of equal value to the bearer of the certificate." Gift cards and gift certificates do not include prepaid telecommunications or technology cards, prepaid bank cards or rewards cards.

The cash back requirement in Section 46:30B-42.1 5.h does not apply to (1) a non-reloadable stored value card with an initial value of \$5 or less; or (2) a stored value card that is not purchased but is provided in lieu of a refund for returned merchandise; or (3) a stored value card that can be redeemed at multiple merchants that are not under common ownership or control, including but not limited to network-branded stored value cards. Similarly, the cash back requirement in Section 56:8-110 1.c does not apply to (1) a non-reloadable stored value card with an initial value of \$5 or less; or (2) a stored value card that is not purchased but is provided in lieu of a refund for returned merchandise; or (3) a stored value card that can be redeemed at multiple merchants that are not under common ownership or control, including but not

limited to network-branded stored value cards; or (4) a rewards card; or (5) a stored value card that is donated or sold below face value to a nonprofit or charitable organization or an educational organization; or (6) a stored value card that is redeemable for admission to events or venues at a particular location or group of affiliated locations, or for goods or services in conjunction with admission to those events or venues, or both, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

Issuers, merchants and other entities subject to the cash-back obligation are not required to advertise the availability of a refund balance redemption. However, they may elect to include a disclosure or may, in the alternative, include a statement on the stored value card or other marketing materials that the card "is not redeemable for cash except as required by law" or similar statement.

The new law contemplates significant civil penalties for a violation of the law. "A merchant or other entity required to comply with the provisions of this subsection shall be liable to a penalty of \$500 for each violation plus restitution of the amount of the cash value remaining on the stored value card, provided however that the amount of the penalty shall be trebled for an aggregate of such violations occurring during any 12 month period. Failure to provide requested cash redemption for each stored value card shall be considered a separate violation." The Director of the Division of Consumer Affairs, or the director's designee, is empowered to enforce the law and "to assess a penalty against the person alleged to have committed the violation.... [and] return to the owner of the card the amount of the cash value remaining on the card." It contemplates that "this shall be the sole remedy available to the owner for those violations."

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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