Down the Rabbit Hole

An Adventure in the Wonderland of Stored-Value Card Regulation

By Kathleen L. DiSanto*

I. Introduction

***"Curiouser and curiouser!"*[1]**

Recent developments in the stored-value card (SVC) industry coupled with its explosive growth present new regulatory challenges. Reflecting the principles of federalism, SVC products are subject to both state and federal regulation. Much of the state legislation targets consumer protection issues, such as, expiration dates and transactional fees associated with gift cards. Federal law attempts to regulate other SVC products, such as payroll cards, often through regulations promulgated by the Federal Reserve Board. Other federal laws, such as the USA PATRIOT Act or the Banking Secrecy Act ("BSA"), attempt to limit the use of SVC products to perpetrate fraud, terrorism or other criminal activities. The lack of uniformity among state law creates a patchwork of inconsistent legislation, which is further complicated by the overlay of federal law, causing consumer confusion amplified by the diversity of SVC products. Federal legislation, targeting national security and crime, is also problematic as it fails to provide protection where it is needed the most, and creates a false sense of security with respect to the risks posed by SVC products. And if the regulatory scheme imposed by state and federal governments was not complicated enough, SVC regulation is also impacted by private lawmaking instituted by the business practices of powerful third parties, including payment card and banking networks. The risks of not devising an effective regulatory approach to the SVC industry are highly problematic due to the industry's dramatic growth, the increasing use of branded SVC products affiliated with payment networks, and access SVCs provide to the global economy. Enacting a comprehensive body of federal law will reduce the risks posed by SVCs by establishing a consistent domestic law that may serve as a template for creating international policy.

This article will first track the development of the SVC industry to provide a historical context for its rise and an understanding of the present state of the industry. Next, present SVC legislation will be evaluated, and the role of state legislatures, Congress, federal regulatory agencies, and the courts in its creation will be considered. In exploring present regulation, the article will focus on the problems with consumer protection statutes and regulations, and then turn to the challenges of creating legislation that adequately protects national security by limiting criminal and terrorist activity. Subsequently, the potentially negative influence of private lawmaking by payment networks on enacting effective legislation will be addressed. Finally, the article will explain why effective federal legislation is critical in establishing domestic and foreign policy.

II. The History of Stored-Value Cards

***"Begin at the beginning…and go on till you come to the end…"*[2]**

SVCs are defined as smart cards that retain electronic value through the use of a computer chip and deduct prepaid funds from a nonbank account, similar in many ways to debit cards.[3] SVCs include merchant gift cards, prepaid phone cards, payroll cards, and prepaid debit cards branded with a network logo also known as general use prepaid cards.[4] The first SVCs were utilized by transit systems and colleges during the 1970s, followed by the emergence of prepaid phone cards in the 1980s.[5] During the mid 1990s, merchant gift cards emerged, followed by prepaid cards issued by banks.[6] Today, SVCs come from a variety of sources, but only 1% of prepaid gift cards are sold by banks.[7] SVCs also commonly function as paycheck substitutes in the form of payroll cards,[8] and are used by parents as "training debit cards" to teach teens responsible spending habits.[9] SVCs have even been used creatively by state governments and federal agencies to disperse child support payments and compensate consumers for losses.[10]

Closed loop cards, also known as single use cards, were developed first and can only be used at one vendor or for the limited purpose of purchasing the issuer's products.[11] Open loop cards followed, emerging during the 1990s, and were initially used by government entities to replace paper-based food stamps.[12] They include payment network branded cards, such as a Visa gift card, which can be used at any vendor in point of sale transactions or at ATMs.[13] Unlike closed-loop cards, which process the amount charged automatically through the company's internal server, open loop cards are processed like credit and debit cards through existing payment-card networks, including Visa and MasterCard.[14] As a result, the cards can be used at multiple vendors anywhere the brand is accepted, increasing consumer appeal and potential risk of chargeback.[15]

The growth of the SVC market has skyrocketed in the past few years and is projected to continue to drastically expand. It is estimated that nearly 49 million people use SVCs.[16] In 2003, SVC transactions amounted to $42 billion and were projected to reach $72 million in 2006. With more than 2 million programs and 7 million Visa or MasterCard branded SVCs in the marketplace, the industry is both expansive and diverse.

III. The Shortcomings of Existing Legislation

"The question is," said Alice, "whether you can make words mean so many different things."[17]

Most SVC legislation is designed to increase consumer protection, in addition to enhancing national security by discouraging domestic and international criminal use of SVC products. SVC regulations are tailored to specifically target certain types of SVC products, while excluding others. Further, state and federal legislatures approach SVC regulation differently, creating challenges with respect to developing a meaningful and effective body of substantive law.

A. State Consumer Protection

Both state and federal legislative bodies, in addition to the courts, are embracing increased consumer protection with respect to SVC products. Legislation typically targets expiration dates, dormancy and service fees, disclosures, and reporting requirements.[18] The majority of state law efforts, primarily focus on protecting merchant gift card users by banning expiration dates and fees. Consumer protection at the federal level predominantly implicates payroll cards, a type of prepaid debit card often branded with a payment network logo.[19] These legislative enactments have supported the continued growth of the SVC industry by increasing the security of a payment medium. In addition to continuing to fuel gift card sales, the added protections encourage increased use of payment network branded cards by unbanked individuals. Previously an untapped industry, the unbanked population of 36 million represents a $192 billion market.[20] Despite the legislatures' best intentions, existing SVC regulation is problematic due to inconsistencies among state laws and differences between the SVC products targeted by state and federal laws, giving rise to inaccurate consumer expectations.

California was the first state to regulate SVCs, banning expiration dates in 1996.[21] California was a pioneer in SVC regulation, as no other state enacted regulations until well after 2000. In fact, most of the legislative activity has been concentrated in the past six years.[22] One of the most recent law limiting gift card fees and expiration dates was enacted in Michigan in 2007, becoming effective as of November 1, 2008.[23]

While consumers are benefiting from the reforms, state legislation is frequently ineffective. The main problems with state legislation are the lack of regulations in some states and inconsistency among states that have enacted legislation. Over ten years after the first statute was passed banning expiration dates in California, some states have yet to implement any legislative attempts to regulate consumer protection issues associated with SVCs.[24] As of September 2008, 12 states have not enacted any statutes limiting expiration dates or fees associated with gift cards or other SVC products.[25]

Among states with existing legislation, the laws are inconsistent from state to state, as the statutes vary in their location within state codes, scope, language, and requirements. The discrepancies among state regulation are problematic because consumers have difficulty knowing their rights or even locating relevant statutes regulating SVCs within their state's code. For example, most states regulate SVCs through consumer protection statutes, but some states, such as Nebraska, address gift card fees and expiration dates under unclaimed property statutes.[26] While Nebraska's regulations specifically address gift card fees and expiration dates, the Attorney General of Colorado issued an opinion in 2005, suggesting that the broad terms of Colorado's unclaimed property laws apply to SVC products.[27] The oblique terms of the unclaimed property statute fail to mention, specifically, gift cards or other SVC products, and Colorado has yet to pass other guiding legislation specific to consumer protection, leaving its citizens confused and vulnerable. Colorado's misguided attempt to extend an unclaimed property statute to address gift card expiration dates and fees falls short, especially considering that several states, including Alabama and Illinois, expressly exclude gift cards with expiration dates or fees from their abandoned property statutes.[28]

Most states' consumer protection statutes apply only to gift cards that can be redeemed by a single merchant or affiliated merchants.

The scope of state statutes also varies. Most states' consumer protection statutes apply only to gift cards that can be redeemed by a single merchant or affiliated merchants, but some afford the same protections to general use prepaid cards and payroll cards.[29] Arizona's statute, however, is unclear as it excludes "a debit card connected to a person's bank account or an electronic funds transfer card" from its consumer protection laws.[30] While "electronic funds transfer card" would encompass payroll cards and exclude them from the act's provisions, it is unclear whether general-use prepaid cards would be included, especially considering some states specifically exclude general-use cards. Other states provide lesser protections for general use prepaid cards in the same statute or a related section, usually requiring only disclosure of terms instead of regulating the terms themselves.[31] Most state legislatures have missed opportunities to regulate prepaid debit cards processed through national payment networks that can be used at unaffiliated merchants. This type of SVC product needs regulation the most and could provide the greatest benefits to consumers, especially the unbanked consumers.

The scope of consumer protection laws are subject to further limitations, as state statutes commonly exclude SVCs issued as a result of participation in a customer-rewards program, those sold at less than face value through volume discount, cards sold for charitable purchases, and cards issued by banks that can be used at multiple unaffiliated merchants (more commonly referred to as prepaid bank or debit cards).[32] The exclusions can become convoluted where they are not clearly listed. For example, the Kansas statute regulating gift card fees and expiration dates provides two express exclusions in subsection (d).[33] But the statute's scope is more limited than just the two exceptions provided by subsection (d). The statute regulates gift cards, and the definition of gift card in subsection (f) excludes prepaid bank cards, also defined in the same subsection. Because the phrase "gift card" often appears on the card and packaging of Vanilla Visa and similar products, consumers could reasonably expect them to fall within the scope of a gift card statute. The definition of prepaid-bank cards would likely include products like the Vanilla Visa, so such products would actually be excluded from the protections of the statute. Such a result defies reasonable consumer expectation, and is not clear from perusing the statute's express exceptions provided in (d).

Inconsistent language and use of terms is another challenge created by state regulation of SVC products. Several state statutes fail to clearly indicate what constitutes a single merchant, which is troublesome considering that many gift cards are designed for use at multiple affiliated merchants.[34] Because some state statutes expressly indicate that the protections apply to single or affiliated merchants,[35] consumers living in states, including Louisiana and Montana, with statutes that extend protection only to gift cards redeemable at a single merchant may not be protected by the terms of the statute on its face and may only be granted relief through judicial intervention.[36]

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Equally problematic is the patchwork of regulations created by state statutes. For example, a gift card may expire five years from the date of issuance under Kansas law, while all expiration dates are banned in Minnesota. In Hawaii's and New Jersey's regulations, terms impacting expiration dates or fees may be disclosed through a written statement on the card itself, the packaging or on the receipt, while other states, such as Nebraska require the disclosures to be printed on the card in 10-point font and visible at the time of purchase. Furthermore, North Carolina only mandates printing maintenance-fee disclosures on the card, while New Mexico requires expiration dates to be printed on the cards and bans all fees. As a result, SVC issuers are subject to inconsistent requirements, and ensuring compliance with different regulations in over twenty states is a waste of commercial resources. Except for California's outright ban of fees and expiration dates, no one state has established the highest standard that could be followed uniformly by SVC issuers, because the requirements would exceed or meet each state's individual laws.

The penalty for violating a gift card statute also varies from state to state. Arizona limits the consequence to a civil penalty not exceeding $500.[37] Other states allow the holder of the card to recover any lost value in addition to court costs and attorney's fees. Many states, however, do not establish any penalty for violating the statute.

Some courts have supported state legislatures' attempts to provide consumers using SVC products with greater protection. Mirroring trends across the country, the Connecticut legislature adopted a consumer friendly law prohibiting in-state sales of gift cards with inactivity fees and expiration dates. The Second Circuit upheld the Connecticut Gift Card Law in part, determining its prohibition of inactivity fees was not preempted by the National Bank Act ("NBA") or the Commerce Clause.[38] The New York Supreme Court, Appellate Division enabled holders of gift cards to maintain a class action suit against the card issuer to recover damages stemming from a monthly dormancy fee associated with the card.[39]

B. Federal Consumer Protection

Unlike state consumer protection efforts that target primarily merchant gift cards, federal law regulates payroll cards and potentially prepaid debit cards. By expanding the definition of payment instrument, federal regulatory agencies are also increasing protections available to consumers, particularly with payroll cards. Payroll cards, a type of SVC, are now afforded almost all the protections of Regulation E.[40] By passing the Electronic Funds Transfer Act ("EFTA") in 1978, Congress authorized the Board of Governors of the Federal Reserve System to create Regulation E.[41] Regulation E was enacted to extend the protections of the EFTA to debit cards.[42] Effective July 1, 2007, Regulation E's definition of "account" will encompass payroll accounts administered through SVCs. Under Regulation E's protections, payroll account holders using SVCs will have at least sixty days from the date of every transaction listed in the electronic or written statement to report an error.[43]

In addition to Regulation E, payroll cards are also within the purview of Regulation D by defining certain SVC products as demand deposits or transaction accounts.[44] Regulation D establishes minimum reserves that depositary institutions are required to maintain. SVCs are also implicated by Regulation DD's Truth in Savings Act when overdraft protection is provided. Under the Community Reinvestment Act promulgated by Regulation BB, payroll cards could arguably be classified as credit cards, because they are free or low-cost and marketed to increase financial services for lower income brackets. Payroll cards also may receive protection by the Federal Deposit Insurance Corporation ("FDIC").[45] The FDIC has proposed extending deposit insurance to the accounts linked to payroll cards.[46]

While consumer protection measures can bring positive changes, the reforms are frequently accompanied by unwanted, and often unanticipated, effects. Effective regulation is difficult due to the diversity of SVC products. Increased consumer protection with respect to the SVC industry has produced mixed results. Consumers, at large, have benefited from the reforms, but the legislative protections also have caused confusion with respect to consumers' expectations as a result of the wide variety of SVC products and inconsistencies among state regulation. Unbanked individuals have perhaps reaped the greatest reward from increased consumer protection, as the new laws help reduce disparities among services provided by financial institutions versus the SVC industry.[47] Unfortunately, extending consumer protection to SVCs is a double-edged sword, causing negative effects, which threaten the value of any potential benefits. The main problems include exploitation of the unbanked, increased transactional costs changing the landscape of SVC issuers, and unmanageable consequences to fraud.

SVCs can empower the unbanked, but with increased attention from the SVC industry, the unbanked run the risk of being exploited as the central target of the SVC industry's marketing strategies.[48] Enacting consumer protection legislation seems to be a logical way to protect the unbanked, but a patchwork of regulations through state laws only creates more confusion.[49] Modifying federal laws, such as EFTA, that protect users of well established payment media to promote uniformity is not a truly viable solution either, as SVC products are inherently less secure, and allow for greater anonymity than the types of accounts and payments regulated by the federal government. Enacting regulations targeting SVCs or incorporating SVCs into existing law creates the illusion of security. Further, reducing the risks of using SVCs will likely fuel the growth of an already thriving industry by increasing the use of SVC products by all consumers without any concern for the problems linked to SVC use.[50]

Consumer protection may also increase transactional costs, likely pushing banks out of the SVC industry.[51] Financial institutions are one of the most secure SVC providers, so eliminating the presence of banks in the industry will increase risks posed by SVCs.[52] While developing financial tools for unbanked individuals is beneficial, the dangers associated with further enlarging the SVC market are potentially devastating, unless other measures are taken to minimize the risks associated with SVCs.

While reducing transactional risks may protect unbanked persons who rely on these forms of payment to engage in e-commerce, or other transactions that require a credit or debit card, the additional security has a negative effect on the market by subjecting it to additional levels of fraud through money laundering and other illicit activities. The more satisfied consumers become with SVC products due to increased protections created through legislative enactments, the less likely they are to be concerned with the increasing fraud proliferated through the SVC industry, because it will not directly impact the consumer.

C. Legislation Addressing National Security, Terrorism, and Other Crimes

The indirect risks of failing to effectively regulate the SVC industry potentially have the most dangerous consequences to consumers and citizens. In an era of globalization, a uniform payment system offers convenience, efficiency and security. The internationality of payment card networks appears to offer these benefits, but poses additional challenges and risks.[53] Normally, a quasi-cash substitute, with the potential for global use would be embraced, but the exploitation of SVCs' credit-card-like features have the potential to cause troubling effects in the United States due to usage by illegal aliens and terrorists, in addition to domestic fraud concerns.[54] The transnational qualities of SVCs make developing and implementing effective remedies more difficult, and weaken much of the present regulation. Implementing uniform security and protective measures is nearly impossible due to the diversity of the SVC marketplace. As discussed above, even enacting and enforcing domestic regulations is challenging, due to the varying practices of card issuers and the merchants selling the cards.

The risks of not creating legislation that adequately protects national security are great, as prepaid cards are popular internationally, in part because most foreign countries rely on debit cards instead of credit cards.[55] Visa offers an international prepaid card called Electron.[56] It is not sold in the United States, but is accepted by merchants across the country and can be used for mail, phone, and internet purchases, in addition to providing cash advances. The international SVC market is expanding, as MasterCard has recently teamed with ARC to issue prepaid travel cards in the United States.[57] The travel cards allow consumers to obtain local currency at any of the one million plus ATMs in the MasterCard network.[58]

While the PATRIOT Act, coupled with the BSA and other anti-money laundering laws, works to minimize the risks associated with SVCs, in addition to other types of transactions,[59] comprehensive federal regulation of SVCs is needed to provide uniformity with consumer and criminal issues that could serve as a model for creating international law. The current federal laws are designed to require banks to exercise due diligence in documenting consumer identification and transactions,[60] but may not be effective because of the difficulty of international enforcement and SVCs' exemption from some of the key provisions of the BSA.[61]

The PATRIOT Act and the BSA have been somewhat effective in reducing domestic risks of fraud or money laundering facilitated by SVCs, but enforcement in foreign countries is significantly more challenging.[62] For example, if both parties holding cards linked to a payroll account live in the United States, banking officials would not likely encounter much difficulty implementing the procedures requires by the PATRIOT Act and BSA to identify the account owners. However, if one of the cardholders is residing in a foreign country, tracking the person's identity becomes much more difficult. Unfortunately, these transactions involving unidentifiable figures are most easily exploited by wrongdoers and pose the greatest threats to national security.

Without appropriate regulation of the SVC industry, the potential uses of the cards further undermine national security, as funds can be transferred anonymously to parties in foreign countries. SVCs are often used by migrant workers or illegal aliens working in the United States to transfer their wages to their families living in their home country. Cardholders can request two cards, enabling another person in a remote location or in another country to simultaneously access the account.[63] Use by aliens is a rather benign exploitation of the SVC industry, but use by terrorist organizations is a great concern.

Federal legislation regulating criminal uses of SVCs without a substantive body of law controlling SVCs as a whole, is also problematic. Definitions of SVC products that are more relevant to commercial transactions or consumer protection become buried in criminal statutes. This occurs in both state and federal legislation, but could be avoided through crafting a comprehensive federal law that regulates both consumer protection and criminal issues.[64]

Enacting comprehensive federal legislation would benefit domestic and foreign policy. By creating a uniform federal policy, consumer protection will be enhanced and predictable. Further, the body of law regulating SVCs could serve as a model for the global community, decreasing both domestic and international crimes involving fraud, money laundering, and terrorism.

IV. Payment Networks: Self-Interested Private Lawmaking by Payment Networks Undermines Legislative Efforts to Allocate Risk

"And the moral of that is - The more there is of mine, the less there is of yours."[65]

Regulating the SVC industry is challenging, but legislative efforts are further hindered by the impact of payment network policies. The business practices of payment networks impact the allocation of liability between merchants, consumers and the networks. This allocation is problematic because it ineffectively manages fraud caused by SVC products. One of the central goals of law is to assign risk, so the influence of payment networks and their private laws, counters the purpose of initiatives advanced by lawmaking bodies.[66] Private lawmaking by payment networks is not a proper vehicle for advancing legislative goals because the networks are often driven by self-interest and the desire to maximize profitability, instead of long-term effects on the industry.

Fraud has been present since the development of SVC products, but becomes more problematic with the growth of the SVC industry,[67] particularly with the increasing use and marketing of network-branded prepaid cards.[68] Some common types of scams include data theft, data planting, and check-out scams.[69] Early scams typically involved closed-loop cards. While fraud with closed-loop cards is problematic, the market has successfully responded with solutions to minimize the risks posed to consumers who purchase the cards and merchants who accept them.[70] The solutions were easy to identify due to the limited possible uses for a closed-loop card, allowing greater control over the card's use. Unlike closed-loop cards, open-loop cards can be exploited in different ways because of the way they are processed. Using payment networks designed for credit and debit transactions causes processing challenges, which can be exploited by fraudfeasors.[71] Preventing fraud becomes increasingly difficult as the sphere of usage expands, and instead of taking action to reduce its occurrence, the payment networks rely on the chargeback process to protect themselves.

Many legislative efforts apply the principle of the cheapest cost avoider[72] to allocate loss among innocent parties. Placing the loss at the feet of the cheapest cost avoider, typically enables the market to protect itself and allow for further development. However, the principle backfires when applied to the SVC industry due to the influence of the payment networks. Payment networks affect the different ways SVCs are processed and the implementation of the chargeback system. The party who interacts with the wrongdoer is most often identified as the cheapest cost avoider. When applied to situations involving an open-loop SVC, this almost certainly implicates the merchant selling the goods or providing the services, that potentially did not issue or sell the card. Consequently, the merchant is in a worse position to prevent the loss than the SVC issuer and has more at stake than the SVC seller.

Industries that rely on offline processing are exposed to greater risks by accepting SVCs. Restaurants are a classic example, as debit cards are processed offline as signature debits instead of PIN debits and are settled in the same batch as credit cards transactions.[73] Restaurants opt for the delayed processing, because it allows managers to adjust any checks that are improperly closed by servers without impacting the customer accounts. While using signature debits instead of PIN debits exposes any merchant to risk, due to the possibility that the customer will sweep the account linked to the card before the payment is processed,[74] merchants rarely face chargebacks on debit cards due to customer overdraft protection or the particular bank's willingness to make the payment despite insufficient funds based on its relationship with the customer. However, the situation is very different for the restaurant or merchant who accepts an open-loop SVC card. Unlike the debit-card customer who has an established relationship with a financial institution, SVCs are often used by unbanked individuals as discussed in the prior section. Further, many SVCs do not even bear the name of an individual, preventing the merchant from recouping any losses from the customer personally, if desired.

In October 2007, two servers at a Tampa restaurant were arrested for stealing money through a scam involving prepaid Visa cards.[75] If a restaurant guest used all the money on a prepaid Visa card to pay for the meal, the servers made a phone charge, adding on an extra large tip which Visa ultimately rejected. Because the cards did not have names, and were not linked to an account with an identifiable owner, the restaurant paid Visa nearly $2,000 for the charges before discovering its own employees' were involved in the scam.

Holding the restaurant liable for the actions of its employees[76] seems equitable, but the same situation could arise without the server's involvement. Consider the following situation. A person purchases a Visa prepaid gift card for $25 with cash. It is designed for immediate use, so no name appears on the front of the card. The person takes the card to his favorite restaurant, racks up a $50 tab pays $35 cash, instructs the server to put the rest on the card, and leaves a $9 tip, almost exhausting the card's face value. As instructed by her manager, the server checks to make sure the back of the card is signed and the signature matches the card slip. The signatures match, but neither signature is the person's real name. Because $1 value remains on the card, the server returns the card to the person. Instead of throwing the card away or loading additional value on the card, the person then makes an additional purchase for $10, before restaurant's credit card batch settles.

Who should bear the loss? The merchants followed Visa's policies posted on their website for accepting prepaid gift cards bearing the Visa logo, as they ensured the signatures matched.[77] Even though both establishments can produce the signed charge slips, the slips cannot be used to find the wrongdoer, as the only name connected to the transaction is an alias. Placing the loss on either merchant as the cheapest cost avoider who interacted with the wrongdoer doesn't seem like the right result. Further, chargebacks are costly to the merchant as the dollar amount of the transaction is debited from the merchant's Visa account, in addition to incurring processing costs.[78]

Possibly, neither merchant will bear the loss because Visa may decide to cover the charges if either merchant disputes the chargeback.[79] If the merchants do not bear the loss, they are less likely to be concerned with fraud in the market effectuated by SVCs. Merchants even have an incentive to continue accepting SVCs, because the transactional cost per charge is less than the fees assessed per credit card transaction.[80]

Ultimately, Visa or the payment-card network wins no matter where liability is placed. Through private law, the network alone can decide whether a transaction results in a chargeback to the merchant. If the network chooses to issue a chargeback, it benefits economically by accruing additional transaction fees. If the network decides to incur the loss, its image of goodwill and relationship with merchants are enhanced. Merchants are at the mercy of major payment-card networks such as Visa and MasterCard, as their policies dominate the business relationship. Because merchants are dependent on payment card networks to conduct business in an era of electronic commerce and payment systems, their disenfranchised status precludes merchants from having a meaningful regulatory influence on the SVC industry. Payment networks exercise almost absolute domination over the private lawmaking process, and their control further indicates the need for federal regulation of the SVC industry.

V. Making Sense of the Regulatory Wonderland: Many Solutions to a Common Problem

"It would be so nice if something made sense for a change."[81]

Relying on Visa or other SVC issuers to implement practices to lessen the risks associated with SVCs is insufficient, as their main goal is to profit, protect themselves and shift liability to other parties wherever possible.[82] While state legislatures attempt to combat the risks posed by the explosive growth of the SVC industry, consumer protection laws vary from state to state, creating an inconsistent patchwork of regulations which is further undermined by the tendency to allocate loss differently in private lawmaking. Just as EFTA and TILA provide greater protections than bank customer contracts and credit card agreements, involvement from the federal government is necessary to develop meaningful solutions to the problems created by the growing use of SVCs as payment media. Federal law could uniformly address issues of expiration dates and fees, providing meaningful protection for consumers. In addition to resolving the confusion caused by state consumer protection initiatives, the federal government also needs to impose tighter regulations on the SVC industry to protect national security. Due to the prevalence of SVCs in the marketplace, eliminating them is unlikely and impractical. The ability to exploit SVCs turns on the anonymity of the user and diverse practices of merchants and entities selling SVCs.

The hidden identity of the card user is more problematic, as national security issues are raised because a person can engage in transactions anonymously. Many possible solutions exist, and some are fairly simple to implement. At a minimum, the person using the prepaid bank card should be required to provide identification.[83] Another way to reduce the risks of SVCs is to stop the sale of nameless cards or log the identity of the purchaser.

Regulating the SVC industry is critical as electronic payment systems will likely dominate the future of commerce.

The processing method used for SVCs could also be altered to protect merchants and limit the powerful influence of private lawmaking. Some prepaid cards, have safeguards to lessen the issuer's loss. For example, when used at a restaurant, Vanilla Visas automatically place a hold on the entire tab, plus 20% in anticipation of the tip.[84] Prepaid Visas issued by Simon also allow a 20% hold to be placed on funds for a tip.[85]

Another possibility is making chargeback procedures available to the public and merchants. If chargeback policies become accessible, both consumers and merchants can develop reasonable expectations with respect to SVC products. By understanding the risks of accepting SVC products, merchants can minimize the potential for chargebacks by developing their own procedures and policies to reduce loss associated with SVC misuse and fraud.

As a the global leader responsible for protecting the security of the free world, the United States should play a major role in forging treaties to create an international body of law regulating SVCs to prevent exploitation by criminals and terrorists, and to create an exemplary template for domestic regulation at a minimum. While enacting effective domestic legislation is a critical first step, the federal government must do more if it wants to prevent SVCs from funding and supporting terrorist efforts in the future.

VI. Conclusion

Regulating the SVC industry is critical as electronic payment systems will likely dominate the future of commerce. Between 1984 and 1996, payment card transactions increased from 6% to 22% of all transactions.[86] That trend is expected to continue, as load volumes and the sheer number of cards issued are both projected to increase.[87] Regulating network branded gift cards is particularly important as much of the growth in the SVC industry is likely to occur in that sector to attract unbanked individuals. These network-branded cards also pose the greatest risks, as they are afforded the greatest consumer protections, and are most freely alienable with potential for global exploitation.

* Kathleen DiSanto graduated from Stetson University College of Law in May 2008. She would like to thank Professor Kristen Adams for her incredible patience, support and guidance, and the Honorable Catherine McEwen for encouraging and supporting publication efforts. Kathleen would also like to thank her colleagues at a popular steakhouse for sparking her interest in this article's topic.

1. Lewis Carroll, Alice in Wonderland and Through the Looking Glass 23 (Barnes and Noble Books 2004) (1865). Like present attempts to regulate the SVC industry that are riddled with complexity and confusion, Lewis Carroll's fantasy story challenges logic with nonsense.
2. Id. at 138.
3. Financial Management Service, Stored-Value Card, http://www.fms.treas.gov/storedvalue/index.html (last visited July 27, 2008); Federal Reserve Bank of Kansas City, *The Many Uses of Stored-Value Cards,* http://www.kansascityfed.org/PUBLICAT/PSR/Newsletters/StoredValueArticle.pdf (last visited July 27, 2008). *See also* Steven Ritchie, *Will Regulators Burst the Prepaid Bubble?,* 9 N.C. Banking Inst. 201 (2005).
4. Federal Reserve Bank of New York, *Stored-Value Cards: An Alternative for the Unbanked?*, http://www.ny.frb.org/regional/stored_value_cards.html (last visited July 27, 2008). *But see* The Federal Reserve Board, *A Summary of the Roundtable Discussion on Stored-Value Cards and Other Prepaid Products,* http://www.federalreserve.gov/paymentsystems/storedvalue/#fn3r (last visited July 27, 2008). While most sources classify prepaid cards as a type of stored-value product, the Federal Reserve Board distinguishes the two. *Id.* The funds associated with the stored-value cards are recorded on the instrument itself, while prepaid means the value is recorded on a remote database that is accessed when the card is used.
5. The Federal Reserve Board, *A Summary of the Roundtable Discussion on Stored-Value Cards and Other Prepaid Products,* http://www.federalreserve.gov/paymentsystems/storedvalue/#fn3r (last visited July 27, 2008).
6. Ritchie, at 203-204. The first stored-value gift card was issued by Neimann Marcus in 1994, followed by bank issued cards in 1996.
7. Department stores and restaurants are the most common cards purchased, accounting for over 50% of SVC sales. Jim Bruene, *NetBanker, Why Are Only 1% of Prepaid Gift Cards Sold by Banks?,* http://www.netbanker.com/stored_value_cards/ (last visited Nov. 21, 2007). Prepaid Visas, MasterCards, and American Expresses represent 12% of SVCs purchased.
8. Payroll cards are popular with employers as load fees for most payroll cards are 20 cents, while the costs of issuing paychecks ranges from $1.00-$2.00. Lyn Haralson, *Federal Reserve Bank of St. Louis, Stored-Value Cards: Opportunities, Risks,* http://stlouisfed.org/publications/br/2006/c/pages/1-article.html (last visited Jul 27, 2008).
9. *Id.*
10. Government-managed programs have used SVCs to transmit child support payments, unemployment insurance, and workers' compensation. 12 C.F.R. §§ 205.1-22 (2007). Recently, the Federal Trade Commission ("FTC") sent SVCs to compensate victims for loss related to a SkyBiz pyramid scheme. Mark Huffman, *Stored-Value Cards Sent to SkyBiz Victims,* http://www.consumeraffairs.com/news04/2007/05/ftc_sky_biz.html (last visited

9/1/08). Federal Emerency Management Agency ("FEMA") also distributed SVCs to Hurricane Katrina victims. Financial Management Service, *U.S. Treasury Urges Waiver of ATM Surcharges for Katrina Evacuees,* http://www.fms.treas.gov/surcharge_waiver.html (last visited May 19, 2006).
11. Federal Reserve Bank of New York, *see* n. 5; Haralson, *see* n. 9.
12. Federal Reserve Bank of New York, *see* n. 5
13. Arnold S. Rosenberg, *Better Than Cash? Global Proliferation of Payment Cards and Consumer Protection Policy,* 60 Consumer Fin. L.Q. Rep. 426, 433 (2006). Visa, MasterCard, and Discover are some payment networks that offer prepaid-branded cards. Haralson, *see* n. 9.
14. Federal Reserve Board, *see* n. 5.
15. Rosenberg, *see* n. 14, at 429. SVCs are processed like debit cards as any merchant who accepts debit cards is equipped to accept prepaid Visa cards and in some cases are pressured by the network to accept prepaid cards. Federal Reserve Board, *see* n. 5; Visa, Visa Gift Card Sales Associate Training Content Fact Sheet, http://usa.visa.com/download/merchants/visa_ppd_gc_merchant_sell-in.pdf (last visited July 27, 2008). *See also* Haralson, *see* n. 9.
16. Federal Reserve Bank of New York, *see* n. 5.
17. Carroll, *see* n. 2, at 219.
18. American Financial Services Association, *Gift Cards and Stored-Value Cards,* https://www.afsaonline.org/CMS/fileREPOSITORY/AFSA%20KSE%20White%20Paper%20_gift%20card%20stored%20value_%20April%202006.pdf (last visited Apr. 2006).
19. 12 C.F.R. §§ 205.1-22 (2007).
20. Celent, *Where the Banks Aren't: Nontraditional/Nonbank Advances in Branded Prepaid Cards,* http://www.celent.com/PressReleases/20071214/NonbankPrepaid.htm(last visited Dec. 14, 2007).
21. *Id.*
22. Thirty-four of the thirty-eight states that passed laws regulating expiration dates and fees associated with SVCs did so after 2002. California, New Hampshire, Rhode Island, and Maine are the only states that enacted SVC consumer protection legislation before 2000.
23. Mich. Comp. Laws §§ 445.903e-g (2008).
24. The thirty-eight states that have enacted legislation include: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Washington. Only the statutes passed by the Connecticut and New Hampshire legislatures have been preempted in whole or in part by the NBA. *SPGGC, LLC v. Ayotte*, 488 F.3d 525 (1st Cir. 2007); *SPGGC, LLC v. Blumenthal*, 505 F.3d 183 (2d Cir. 2007) *See* Appendix for additional statute information.
25. The twelve states that have not enacted any statutes regulating expiration dates or fees associated with SVCs include Alabama, Alaska, Delaware, Idaho, Indiana, Mississippi, Missouri, Pennsylvania, South Dakota, West Virginia, Wisconsin, and Wyoming.
26. Neb. Rev. Stat. § 69-1305.03 (2007). Maine's proposed legislation also falls under abandoned property law. 33 Me. Rev. Stat. Ann. § 1953 (2007).
27. Colo. Op. Att'y Gen. 05-01 (2005), 2005 WL 4020083. According to the Attorney General, SVCs fall within the broad provisions of the unclaimed property act codified by § 38-13-103 and 104 of the state's code.
28. Ala. Code § 35-12-73 (2004); 765 Ill. Comp. Stat. 1025/10.6 (West 2005). Interestingly, Alabama does not regulate SVCs under another statute, while Illinois provides consumer protection for SVCs in another section of its code.
29. Connecticut regulates general-use prepaid cards as well, in addition to regulations in Georgia and Virginia; see Appendix for a complete list.
30. Ariz. Rev. Stat. Ann. § 44-7402(D)(3) (West 2005).
31. California, Maryland, and others require disclosure of limitations on general-use cards, as well. For a complete list, see Appendix.
32. For example, see Wash. Rev. Code § 19.240.030 (2004).
33. Kan. Stat. Ann. §§ 50-6,108 (2007).
34. For example, consider an Outback gift card. Outback is owned by OSI Restaurant Partners L.L.C., who owns several other restaurants including Carrabbas and Bone Fish Grill. The Outback gift card can be redeemed at any of the OSI concepts. Because the restaurants share an affiliation with their parent company OSI, any gift card issued by a concept which is redeemable at other concepts should still fall under the scope of consumer protection statutes.
35. In an effort to limit the scope of the statute to merchant gift cards, many states, including Arkansas and California, exclude gift cards that are usable at multiple, unaffiliated sellers, but gift cards redeemable at affiliated sellers are still encompassed. Ark. Code Ann. § 4-88-702(5)(A) (2007); Cal. Civ. Code Ann. § 1749.45 (West 2003). Such language would clearly protect the Outback gift card, allowing for consistent application of the statute.
36. The Louisiana statute states, "the term 'gift certificate' shall be a writing identified as a gift certificate or gift card purchased by a buyer for use by a person not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services supplied by the seller." La. Stat. Ann. § 51:1423 (2004). The statute further indicates that it is inapplicable to "gift certificates that are usable with multiple sellers of goods or services. The statute does not define seller or expressly include affiliated sellers, so the ambiguity could limit the scope of consumer protection by excluding products like an Outback gift card. *Id.* The Montana statute also excludes "a gift certificate usable with multiple sellers of goods or services", which also applies to gift cards or stored-value cards as both are included in the definition of gift certificate. Mont. Code Ann. § 30-14-102 (2007).
37. Ariz. Rev. Stat. Ann. § 44-7402(e) (West 2005).
38. *SPGCC, L.L.C. v. Blumenthal,* 505 F.3d 183 (2d Cir. 2007). While the Second Circuit held that the expiration date ban was preempted by the NBA, the enforcement of the Connecticut Gift Card Law's provision eliminating fees did not impact the issuing bank's ability to market SVCs. Instead, the law regulated the creator of the SVC who administers the fee program. *Id.*
39. *Goldman v. Simon Prop. Group, Inc.,* 31 A.D. 3d 382 (N.Y. App. Div. 2006).
40. 12 C.F.R. §§ 205.1-22 (2007)... Regulation E and EFTA provide consumer protection by limiting liability to $50 if the consumer notifies the financial institution within two days of learning of the unauthorized transfers. Kristen D. Adams, Commercial Transactions: A Survey of United States Law with International Perspective 12-22 (West 2007). If the consumer fails to notify the bank or other institution, liability increases to $500 after the two day period. Pursuant to EFTA, a consumer has unlimited liability if they fail to provide notice of unauthorized transfers within 60 days of receiving a statement. *Id.*
41. 12 C.F.R. §§ 205.1-22 (2007).
42. Mark E. Budnitz, *Stored-Value Cards and the Consumer: The Need for Regulation,* 46 Am. U. L. Rev. §§ 1027, 1038, 1041 (1997).

43. Where the financial institution does not issue written statements, consumers have 120 days from the date of the contested charge to report an error. 12 C.F.R. §§ 205.1-22 (2007).
44. Haralson, *see* n. 9.
45. Beth S. DeSimone & Carrie A. O'Brien, *Payroll Cards: Would you like your pay with those fries?,* 9 N.C. Banking Inst. §§ 35 (2005).
46. *Id.*
47. The unbanked enjoy services, including direct deposit, ATM access, overdraft protection, remittance services, and mobile features through SVC products, particularly network-branded cards. Celent, *see* n. 23.
48. The unbanked include not only consumers who choose not to use banking services, but those who are unable to use the banking system due to age, poor credit or legal status in the United States. Federal Reserve Board, *see* n. 5.
49. Sarah Jane Hughes, Stephen T. Middlebrook & Broox W. Peterson, *Developments in the Law Concerning Stored-Value and Other Prepaid Payment Products,* 62 Bus. Law. 229 (Nov. 2006).
50. *Id.*
51. Ritchie, *se* n. 4, at 221.
52. *Id.*
53. Pat O'Brien, Assistant Secretary for Terrorist Financing, recently discussed and identified the challenges created by a global economy in his remarks before the U.S.-Latin American Private Sector Dialogue on Combating Money Laundering and Terrorist Financing on April 11, 2007 http://www.treasury.gov/press/releases/hp346.htm (last visited July 27, 2008). O'Brien noted:

> Globalization creates an environment of great efficiency for legitimate commerce, however, it just as easily aids those involved in illicit financial activity. For example, online and remote banking, stored-value cards, electronic payment systems, and other mechanisms can be of immense value to the public, but they also pose a regulatory and enforcement challenge. This challenge, wherever it exists, must be overcome to ensure a sound global financial system which in turn ensures safe, transparent, efficient, free flows of capital within and across borders. Unchecked, illicit activity can erode the integrity of a nation's financial institutions regardless of the size of the market in question – leaving in its wake serious long-term consequences.

54. Federal Reserve Board, *see* n. 5. Fraud risks actually are increased in international transactions as more retailers are likely to authorize charges under a certain amount offline, enabling fraudfeasors to take advantage of the delayed processing as discussed in the prior section.
55. Rosenberg, *see* 14, at 433. Maintaining large credit card balances while avoiding debit card use is an American phenomenon in comparison to foreign countries.
56. Visa, *Rules for Visa Merchants Card Acceptance and Chargeback Management Guidelines* page 36 http://usa.visa.com/download/merchants/rules_for_visa_merchants.pdf?it=c|/merchants/|Rules%20for%20Visa%20Merchants (last visited Dec. 17, 2007).
57. PR Newswire, *MasterCard Teams with ARC to Launch Prepaid Travel Card,* http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/12-03-2007/0004715197&EDATE= (last visited Dec. 3, 2007).
58. *Id.*
59. Haralson, *see* n. 9. The PATRIOT Act reduces risk associated with SVCs and other money transfers by requiring banks to document customer identification. While the BSA's requirement that financial institutions monitor their customer's transactions does not apply to SVCs, parties involved in an SVC transaction, including the issuer, seller, and redeemer, still must comply with reporting requirements for transfers over $10,000.
60. *Id.*
61. U.S. Dept. of Justice National Drug Intelligence Center, *Prepaid Stored-Value Cards: A Potential Alternative to Traditional Money Laundering Methods,* http://www.usdoj.gov/ndic/pubs11/20777/20777p.pdf (last visited Oct. 31, 2006).
62. Haralson, *see* n. 9.
63. *Id.*
64. Arizona, Louisiana, Maine, Mississippi, Oregon, Virginia, West Virginia, and Wyoming address SVCs in their criminal codes. The criminal codes often do not refer back to a commercial or consumer protection section to define SVC. The same problem is reflected in congressional bills seeking to amend 11 U.S.C. § 5312(a)(3)(D) by defining "stored-value card" in Section 338 of the "Violent Crime Control Act of 2007."
65. Carroll, *see* n. 2, at 105.
66. "The predominant function of modern law is to allocate risk." George L. Priest, The New Legal Structure of Risk Control, in Risk 207, 209 (Edward J. Burger ed., University of Michigan Press 1993).
67. As SVCs remain popular, fraudfeasors continue to find new ways to exploit stored-value products. Evan Schuman, *The Verified Wal-Mart Giftcard That Wasn't,* http://storefrontbacktalk.com/story/121206auction.php (last visited Dec. 12, 2006). *See also* Erica Nelson, *The Gift That Keeps on Taking: How Retailers Can Prevent Gift Card Fraud,* http://www.burnhambrown.com/uploads/content/Gift%20Card%20Fraud%20-%20Nelson.pdf (last visited July 27, 2008).
68. Market analysts believe network-branded prepaid cards are the next big thing emerging in the SVC industry. Celent, *see* n. 23. Criminals also see branded prepaid cards as the next big thing to exploit as average losses for reloadable cards is $99,238.66 compared to $25,545.81 for single-use cards. Nelson, *see* n. 74.
69. Nelson, *see* n. 74. Data theft occurs when the thief copies data from unsold cards and monitors its use. Ultimately, using the card to complete online transactions or generate counterfeit cards. While data theft involves unsold cards, data planting is when an already purchased card is cloned and placed in the store. Upon activation, the cloned card's balance is transferred to the fraudfeasor's card. Check-out scams are typically much simpler than data theft or data planting, as the cashier merely pockets cards with value, by convincing the customer that they are worthless.
70. After the Wal-Mart scam where fraudfeasors scanned the barcodes of gift cards in the store and depleted the balances on the cards after they were purchased, consumers have been urged not to buy gift cards that have exposed barcodes or are not stored in a secured location. Another solution is ordering gift cards online where there is no possibility of a scammer skimming the barcode and stealing the card's value once activated.
71. Federal Reserve Board, *see* n. 5.
72. *See* Guido Calabresi, The Cost of Accidents: A Legal and Economic Analysis (Yale University Press 1970). 73.
Signature debits are favored by consumers as the transaction is not processed in real time. Rosenberg, *see* n. 14, at 428. Even though the interchange fees for signature debits are higher, merchants often opt for signature debits over PIN debits due to consumer preference. *Id.*
74. *Id.*
75. Jason Olson, *Waiters charged with ripping off restaurant*, http://www.abcactionnews.com/news/local/story.aspx?content_id=ead55afc-f97d-4fbe-ba9c-e10a6cbc13f3 (last updated Oct. 2, 2007).
76. Not surprisingly, a recent survey indicated that 62% of gift card losses were due to dishonest employees, compared to 26%

for counterfeit and stolen cards. Nelson, *see* n. 36.
77. Visa, *Rules for Visa Merchants, see* n. 62, at 20.
78. *Id.* at 69.
79. Visa, like other payment-card networks, does not disclose its chargeback policies. Rosenberg, *see* n. 14, at 444. The networks are not required to, as chargeback involves the rights of the issuing bank and the network, instead of the merchant or consumer. *Id.*
80. Christopher Woods, *Stored-Value Cards,* 59 Consumer Fin. L.Q. Rep. 211 (Fall 2005). As a result of the Wal-Mart antitrust litigation, the interchange fees are lower for prepaid cards than with credit cards. The prepaid cards are classified the same as signature debit cards for the purpose of assessing interchange fees.
81. *Alice in Wonderland* (Disney 1951) (motion picture). Just as Alice becomes wiser through her struggles to make sense of the illogical situations she encounters, consumers and legislators, will benefit from examining the paradoxes of the SVC industry and learning to compensate for its shortcomings to minimize risk. Simran Khurana, *Lewis Carroll Quotes: Alice in Wonderland,* http://quotations.about.com/od/moretypes/a/alice4.htm (last visited July 27, 2008).
82. "Private lawmaking by Visa, MasterCard et al. will not protect consumers because the payment card associations' economic incentive is to attract merchants to make the necessary investment in equipment to be able to accept payment cards." Rosenberg, *see* n. 14, at 426.
83. Visa does not even suggest identifying customers in its recommendations for processing SVCs, but instead they just instruct the merchant to inquire about the exact balance. Visa, *Prepaid Gift, Incentive, Promotion, and Rebate Cards Know Now,* http://usa.visa.com/download/merchants/visa_ppd_gc_merchant_tip_sheet.pdf?it=r|/merchants/payment_technologies/gift_card.html|Tip%20Sheet (last visited July 27, 2008).
84. Vanilla Visa Gift Card, https://www.vanillavisa.com/important.html (last updated 11/2/07).

Appendix: State Consumer Protection Regulations

X= no applicable legislation
†= preempted legislation

	Statutes	Expiration Date	Fees	General Use Prepaid Cards Included?
Alabama	X	X	X	X
Alaska	X	X	X	X
Arizona	§§ 44-7401, 7402	Must be visible at time of purchase	Must be visible at time of purchase	?
Arkansas	§§ 4-88-701, 702, 703, 704	Must be at least 2 years after purchase and disclosed at time of purchase, printed on the card in size 10 font; if the disclosure is obscured by packaging, seller must provide a written statement of disclosures	No fees until at least 2 years after purchase and disclosed at time of purchase, printed on the card in size 10 font; if the disclosure is obscured by packaging, seller must provide a written statement of disclosures	Yes
California	§§1749.45, 1749.5	Prohibited	Only if the value of the card is less than $5, the fee is less than $1, no activity for 24 months (including balance inquiries), card is reloadable, and fee disclosure is printed on the card and visible at the time of purchase	No, as long as any expiration date is printed on the card
Colorado	§38-13-103, 104 (see Colo. Atty. Gen. Op. 05-01, 2005 WL 4020083 (Apr. 13, 2005)).	Permitted	Permitted	Yes
Connecticut	§§3-56a, 3-65c, 42-460†	Prohibited† (state law ban preempted by NBA)	Prohibited	Yes
Delaware	X	X	X	X
Florida	§501.95	No expiration dates generally, not less than 3 years if a charitable contribution, not less than 1 year if benefit pursuant to an employee incentive plan, loyalty gift certificates may also have an expiration date	No fees	?

Appendix: State Consumer Protection Regulations Continued

Georgia	§10-1-393(33)(A)	Terms must be included in the packaging at time of purchase, expiration date must be conspicuously printed on the card	Terms must be included in the packaging at time of purchase, amount of fees must be conspicuously printed on the card or on a sticker affixed to the card	Yes
Hawaii	§481B-13	Not less than 2 years after the date of issuance, must be clearly identified on the face of the gift certificate or if an electronic card, clearly printed on the receipt	Prohibited	Yes
Idaho	X	X	X	X
Illinois	§505/2SS	If sold after Jaunary 1, 2008, must be at least 5 years from purchase; if issued before January 1, 2008, the card must state the expiration date where it visible before purchase, unless a toll free phone number is to check balance or expiration date is clearly printed on the card where it is visible prior to purchase	Post-purchase fees prohibited if purchased after January 1, 2008; if purchased before January 1, 2008, card must state fee, amount, frequency, and whether it is triggered by inactivity, statement must be visible prior to purchase	No
Indiana	X	X	X	X
Iowa	§556.9	X	Shall not deduct from value unless an enforceable written contract exists between the issuer and owner	No
Kansas	§50-6,108	Not less than 5 years from the date of purchase if issued after January 1, 2007	No fees during 12 months from the date of issuance	No
Kentucky	§367.890	Not less 1 year after date of issuance	No fees until after expiration date	No
Louisiana	§51:1423	Not less than 5 years from date of issuance, any expiration date shall appear in 10 pt font on the gift certificate	No service fees except a one time handling not to exceed $1 per gift certificate	No

Maine	§§1953(1)(G), 1953(1)(G-1)	No period of limitation	No fees other than issuing or loading fees that must be disclosed in a separate writing	No period of limitation, but other terms and conditions must be disclosed in a separate writing prior to the initial issuance and referenced on the card
Maryland	§§14-1319, 1320	No expiration within 4 years from date of purchase, any expiration date after the 4 years must be printed clearly in at least 10 pt font on the certificate, sticker permanently affixed to the certificate, or on the envelope	No fees within 4 years from date of purchase, any fees after the 4 years must be printed clearly in at least 10 pt font on the certificate, sticker permanently affixed to the certificate, or on the envelope	Subject to expiration date and fees if printed on the card in 10 pt font or written disclosure if hidden by packaging
Massachusetts	§200A§5D, 255D§1	Not less than 7 years from date of issuance, clearly identified on face or for electronic card, printed on receipt	X	No
Michigan	§445.903e, 445.903f, 445.903g	No expiration less than 5 years from date of purchase (effective November 1, 2008)	Inactivity and service fees prohibited, but service fee does not include any fee associated with the sale of the gift certificate, so long as the fee is not deducted from card's value (effective November 1, 2008)	No
Minnesota	§325G.53	Prohibited	Prohibited	Expiration date and fees must be disclosed
Mississippi	X	X	X	X
Missouri	X	X	X	X
Montana	§§30-14-102, 108	Prohibited	Prohibited	No
Nebraska	§69-1305.03	Statement must be printed on the card visible prior to purchase	Statement must be printed on the card visible prior to purchase	No
Nevada	§598.0921	Must disclose the expiration date or a toll free telephone number with a statement explaining how to access balance and expiration information clearly printed on the card in 10 point font	Must be disclosed on the card in at least size 10 font, inactivity fee may not imposed until at least 3 years of nonuse, fees may not exceed $1 per month, service fee may not be imposed during the first 12 months of issuance	No

Appendix: State Consumer Protection Regulations Continued

New Hampshire†	§358-A:2 (entire statute preempted)	No expiration date if gift card value is less than $100, if value is over $100, gift card expires when escheats to the state	Prohibited	No
New Jersey	§56:8-110	No expiration in the 24 months immediately following the date of sale, any expiration date must be disclosed in addition to listing a telephone number allowing consumers to access information concerning expiration in size 10 font on the card, receipt, or package	No fees in 24 months following issuance or activity, fee may not exceed $2 per month, fee must be disclosed in addition to listing a telephone number allowing consumers to access information concerning fees in size 10 font on the card, receipt, or package.	No
New Mexico	§57-12-26	No expiration date less than 60 months from date of issue, no expiration is presumed if a date is not listed conspicuously on the card	Prohibited other than an initial charge	No
New York	§396-i	Terms and conditions must be disclosed	Terms and conditions must be disclosed, no retroactive fees, dormancy fees may not be assessed until after 13th month of inactivity	No
North Carolina	§66-67.5	X	Maintenance fees must be disclosed at the time of purchase, visible on the card itself, no maintenance fees for one calendar year following the date of purchase	No
North Dakota	§51-29-01, 51-29-02	May not expire sooner than 6 years after the date of purchase, any statement suggesting an expiration date except as permitted is prohibited, limitations must be disclosed in writing when certificate is purchased	Service or maintenance fees prohibited	No
Ohio	§1349.61	No expiration date less than 2 years after the card was issued	No fees within 2 years after the card was issued	No

Oklahoma	§796, 797	No expiration date less than 60 days from date of purchase	Prohibited unless remaining value of card is $5 or less when fee is assessed, fee does not exceed $1 per month, no activity for 24 months, holder may add value to the card, and fee is stated in at least 10 point font on the card where it is visible prior to purchase	No
Oregon	§§646.608(ggg)*, 646A.274, 646A.276, 646A.278	Not valid, unless the card states the expiration date after the words "EXPIRES ON" or "EXPIRATION DATE", the card is sold at below face value, and expiration date is at least 30 days after the date of sale	Prohibited	No
Pennsylvania	X	X	X	X
Rhode Island	§6-13-12	Prohibited	Prohibited	No
South Carolina	§39-1-55	No expiration before the first anniversary of the date on which the certificate sold unless the expiration date is on the front of the gift certificate in capitalized letters and 10 point font	Condition relating to use of certificate including fees must be stated on the certificate, envelope, covering, or receipt	No
South Dakota	X	X	X	X
Tennessee	§47-18-127	Not less than 2 years from date of issuance	Not less than 2 years from date of issuance	No
Texas	§35.42	Must be conspicuously disclosed before sale	May impose inactivity fee if reasonable, not assessed until after the first anniversary of the date of sale, and legibly printed on the card; fees must be conspicuously disclosed before sale; issuance, handling, reloading, and replacement fees are permissible if reasonable	No
Utah	§13-11-4	Must be printed in a readable manner on the gift certificate, packaging, or record	Must be printed in a readable manner on the gift certificate,, packaging, or record	No

Appendix: State Consumer Protection Regulations Continued

Vermont	§§2701, 2702, 2703	Not less than 3 years from date of issuance, date of issuance must be clearly identified on face of the gift certificate, or if electronic card, clearly printed on receipt or provide information on website or toll-free phone line; following expiration date, unused portion is to be returned to holder if requested	Prohibited, except a money transmitter may charge a one time issuance fee of the lesser of 10% of the face amount or $10	Yes
Virginia	§§59.1-530, 531	Gift certificate with an expiration date shall state date or telephone number where the holder may obtain information regarding the expiration date of the certificate imprinted on the certificate	If value diminishes over time, certificate shall include a telephone number or internet address where the holder of the certificate may obtain information regarding diminution of value imprinted on the certificate	No
Washington	§§19.240.010, 020, 030, 040	Prohibited unless gift certificate was issued pursuant to customer rewards plan or donated to charitable organization; any expiration date must be disclosed clearly on the certificate	Dormancy fee is enforceable if the amount and frequency of charge is stated on the gift card in at least 6 point font in a location that is visible before purchase, remaining value is $5 or less when fee is assessed, fee does not exceed $1 per month, charge is only assessed when there has been no activity for 24 months, bearer may add value, and remaining balance is available in cash after fee is assessed	Yes
West Virginia	X	X	X	X
Wisconsin	X	X	X	X
Wyoming	X	X	X	X