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TO THE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION,  
BUSINESS, & MILITARY AFFAIRS

TWENTY-FIFTH STATE LEGISLATURE  
Regular Session 2010

Thursday, January 28, 2010  
9:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 2289 -- RELATING TO GIFT CERTIFICATES.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 2289, Relating to Gift Certificates. My name is Stephen Levins, Executive Director of the Office of Consumer Protection. The Department opposes this measure to the extent that it allows for the assessment of a service fee for the holding of use of a gift certificate but supports that portion of the Bill which extends the expiration date from two to five years.

House Bill No. 2289 seeks to legalize a practice that was prohibited by the Hawaii State Legislature less than five years ago, charging service fees on gift

certificates.

The recent amendment to Hawaii's Gift Certificate law only went into effect in July 2005. Pursuant to its terms, no one may charge a consumer a service fee. The law was amended, in large part, because the Legislature was concerned with consumers being saddled with the fees associated with the purchase of gift cards. In the relatively short period of time that has elapsed since the law went into effect, nothing has changed which would warrant the reinstatement of service fees.

During the past Christmas season, thousands of dollars in gift certificates were purchased without fees, directly benefiting Hawaii consumers. Unless compelling reasons are presented for amending the law, yet again, it should not be changed.

Another amendment proposed by House Bill No. 2289 is to extend the expiration period of gift certificates from two to five years. Since recent passage of the federal Credit Card Accountability Responsibility and Disclosure Act of 2009 will impose this requirement on gift card issuers on August 22, 2010, the Department is in accord with this proposal.

Thank you for this opportunity to testify on House Bill No. 2289. I will be happy to answer any questions that the committee members may have.



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January 28, 2010

To: House Committee on Economic Revitalization, Business, & Military Affairs

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

By: Richard C. Botti, President

Re: HB 2289 RELATING TO GIFT CERTIFICATES

Chairs & Committee Members:

We oppose extending the Gift Certificate minimum expiration period from two to five years for the type of certificates described under §481B-13.

The law was most recently increased from one year to two years. That is more than adequate time period for small business to maintain a record of the certificate. The problems created for small retailers and restaurants do not warrant the extension, and 24 months is more than adequate time for the recipient to redeem the certificate.

The bill does not address the most common problem, which is when the business belly-up. Thus, the measure rewards the firm that closes while penalizing the firm doesn't.

Finally, there is the Abandoned Property law, which will require small business to notify the State and pay the State the value of the certificate considered abandoned. This is not realistic for small business.

**[§523A-3] Presumptions of abandonment.** (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:  
(7) Gift certificate not exempt under section 523A-3.5, five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned shall be deemed to be one hundred per cent of the certificate's face value;

We have no problem with the clarification of the definition of "service fee."



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Presentation to the House Committee on Economic Revitalization, Business,  
& Military Affairs  
Thursday, January 28, 2010, at 9:30 a.m., Room 312

Testimony for HB 2289 Relating to Gift Certificates

TO: The Honorable Angus McKelvey, Chair  
The Honorable Isaac Choy, Vice Chair  
Members of the House Committee on Economic Revitalization, Business, &  
Military Affairs

My name is Neal K. Okabayashi and I testify on behalf of the Hawaii Bankers Association.

The purpose of HB 2289 is to make parts of Hawaii's gift card law consistent with the new federal law adopted as part of the Credit Card Act of 2009. However, it does not address the most critical difference between Hawaii law and federal law, which is the definition of a "gift certificate" or gift card.

A gift card is nothing more than a type of prepaid electronic card, also known as a prepaid debit card or stored value card. While the legislative intent was to govern gift cards, the definition of a gift certificate is so broad that with the passage of time and innovation, it now encompasses prepaid electronic cards that are not gift cards. Thus, Hawaii banks are unable to even consider issuing such cards because of the fee restriction imposed on what are not gift cards but fall within Hawaii's overly broad definition.

Because Hawaii's gift card law does not apply to federally chartered banks and savings associations, state chartered banks are placed at a competitive disadvantage because Hawaii's restrictive laws apply only to state banks. Thus, Wal-Mart, through its association with a federal savings bank, can sell in Hawaii, cards which are truly gift cards as well as prepaid electronic cards which are not gift cards but are defined as such under Hawaii law. Walmart sells these cards at its MoneyCenter which leads to the anomaly that Walmart can sell what a local bank cannot.

Federal restrictions on gift cards was adopted as part of the Credit Card Act of 2009. The restrictions in the Credit Card Act apply equally to federally and state chartered banks

and partially levels the playing field regarding gift cards but it does not level the playing field regarding other types of prepaid electronic cards. Thus, a federally chartered financial institution can sell prepaid electronic cards in Hawaii free of the restrictions of Hawaii's gift card law while a Hawaii bank may not.

To even the playing field, we urge this committee to amend the definition of a gift card so that Hawaii's restrictions only applies to gift cards which are gift cards under the federal law.

We suggest that section 481B-13(c) be deleted in its entirety and be replaced by the following language which is taken almost verbatim from the federal statute.

“(c) The terms ‘gift certificate’, and ‘certificate’ do not include an electronic promise, plastic card, electronic card, electronic access device, payment code or device, or other medium that is--

‘(i) used solely for telephone services;

‘(ii) reloadable and not marketed or labeled as a gift card, gift certificate or certificate;

‘(iii) a loyalty, award, or promotional gift card;

‘(iv) not marketed to the general public;

‘(v) issued in paper form only (including for tickets and events); or

‘(vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable.

‘(I) at the event or venue after admission; or

‘(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.”

Adopting the federal definition has two salutary effects. We will have the benefit of the guidance of federal regulation and interpretation on the meaning of a gift card. Secondly, it opens a window for banks to explore banking the unbanked. The common way of banking the unbanked is through the use of prepaid electronic cards, as Walmart is doing. However, given the overly broad, restrictive nature of Hawaii's definition, no Hawaii bank would even entertain the thought of attempting to bank the unbanked through a prepaid electronic card.

Accordingly, we request this Committee adopt our proposed amendment, and as amended, we urge its passage.



Representative Angus McKelvey, Chair  
Representative Isaac Choy, Vice Chair  
Committee on Economic Revitalization, Business & Military Affairs

HEARING      Thursday, January 28, 2010  
                    9:30 am  
                    Conference Room 312  
                    State Capitol, Honolulu, Hawaii 96813

**RE:    HB2289, Relating to Gift Certificates**

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

**RMH supports the intent of HB2289**, which extends the minimum expiration period for gift certificates from two to five years, requires issuers to honor gift certificates during this period, and defines "service fee." With regard to electronic gift cards, harmonizing Hawaii law with the federal statute establishes a consistent and manageable playing field both for businesses and consumers. We do have three concerns:

- Many of our smaller companies have existing inventories of electronic gift cards with two-year expiration dates. And, many of these gift cards are already in the marketplace. May we suggest an approach similar to that in House Bill 2559, SD1 / Act 055, Session Laws of 2008, that provided an **eighteen-month transitional period whereby small businesses were allowed to deplete their inventories, with the provision that they implement a policy to honor all cards with the two-year expiration date for a full five years from issuance?**
- Since the Credit Card Act of 2009 does not apply to traditional paper gift certificates, and for the most part traditional paper gift certificates are issued by very small businesses, we respectfully ask that **paper gift certificates be exempt from the five-year expiration requirement in sections (a) and (b).** Maintaining the two-year exemption will benefit these companies.
- RMH consistently has opposed any and all fees related to gift certificates / gift cards. While back-end fees such as dormancy, holding or usage fees are particularly onerous, we believe that activation or one-time issuance fees are a disservice to our consumers. However, if the Legislature deems the activation/issuance fees reasonable, we respectfully ask that you **set the activation/issuance fee at 1% of the face value of the gift card, up to a maximum of \$5.00, and that the consumer is fully informed of this fee.** We believe this to be in the best interest of the consumer.

Thank you for your consideration and for the opportunity to testify on HB2289.

Carol Pregill, President

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January 28, 2010

Rep. Angus L.K. McKelvey, Chair  
and members of the House Committee on Economic Revitalization, Business, & Military Affairs  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 2289 (Gift Certificates)**  
**Hearing Date/Time: Thursday, January 28, 2010, 9:30 A.M.**

I am the attorney for **Visa, Inc.** ("VISA"). VISA operates the world's largest retail electronic payments network providing processing services and payment product platforms. This includes consumer credit, debit, prepaid and commercial payments. VISA facilitates global commerce through the transfer of value and information among financial institutions, merchants, consumers, businesses, and government entities.

VISA wishes to **comment** on proposed revisions to this Bill.

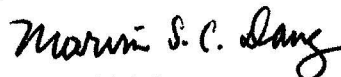
The purpose of this Bill is to extend the minimum expiration period for gift certificates from two to five years and require issuers to honor gift certificates during this period. It also defines "service fee".

We understand that the Hawaii Bankers Association is submitting testimony to delete HRS Section 481B-13(c) and replace it with the following:

"(c) The terms 'gift certificate', and 'certificate' do not include an electronic promise, plastic card, electronic card, electronic access device, payment code or device, or other medium that is--  
'(i) used solely for telephone services;  
'(ii) reloadable and not marketed or labeled as a gift card, gift certificate or certificate;  
'(iii) a loyalty, award, or promotional gift card;  
'(iv) not marketed to the general public;  
'(v) issued in paper form only (including for tickets and events); or  
'(vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable  
'(I) at the event or venue after admission; or  
'(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue."

This wording is consistent with the federal Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act of 2009). To that extent we urge your Committee to amend this Bill as suggested by the Hawaii Bankers Association.

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Visa, Inc.

(MSCD/VISA)

Testimony on

**H.B. NO. 2289 -**

**RELATING TO GIFT CERTIFICATES**

Before the

House Committee on Economic Revitalization, Business & Military Affairs  
Thursday, January 28, 2010, 9:30 a.m., Conference Room 312

By

Matthew M. Matsunaga, Esq.  
Schlack Ito Lockwood Piper & Elkind

Please accept this testimony in **strong support** of HB 2289, which would adopt certain key provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (the "CARD Act" was signed into law by President Obama on May 22, 2009). Specifically, HB 2289 would (1) extend the minimum expiration period for gift certificates from two to five years and (2) clarify the definition of "service fee" under Hawaii's gift certificate law (HRS Section 481B-13).

Spending on gift cards nationally approximated \$25 billion in 2008, and the 24th Annual Holiday Survey conducted by Deloitte indicated that gift cards will be the No. 1 present for the sixth consecutive year in 2009, with 64 percent of consumers saying they'll give or receive them. The CARD Act is an attempt by Congress to provide consumers (1) more time to use gift cards before they lose value and (2) better disclosure on fees and expiration dates. The CARD Act does not apply to traditional paper gift certificates, but generally would apply to plastic cards and other payment codes or devices, including standard gift cards as well as so-called "open-loop" prepaid cards, such as those commonly issued by banks and usable over Visa, MasterCard, American Express, Discover or similar payment networks. The CARD Act does not preempt stricter state laws and takes effect August 22, 2010. The Federal Reserve Board is directed to issue regulations by February 22, 2010 (regarding amount of

dormancy fees, inactivity charges or fees, or service fees that may be assessed, etc.). A summary of the proposed rules is attached for your reference.

Hawaii's gift certificate law provides that gift certificates must be honored for two years from the date of issuance, and that a certificate issuer shall not charge a service fee. "Service fee" is not defined, but is characterized as including a dormancy or inactivity fee. Hawaii's gift certificate law does not distinguish between paper gift certificates and "open-loop" prepaid cards. Further, under the Simon Malls (New Hampshire) decision, due to federal law preemption, national banks and federal savings associations are able to sell gift cards in Hawaii (and charge service fees) without being subject to Hawaii's gift card laws, while our state chartered banks are unable to charge such fees. I've been told that prepaid cards issued by national banks are being sold in Hawaii (e.g., at Home Depot and Safeway) with service fees attached.

This bill would provide a level playing field for all certificate issuers – national banks, state chartered banks, other financial institutions and retailers alike, and bring consistency with Federal law. Hawaii's existing consumer protective laws of prohibiting service fees would not be preempted, but would be clarified as to what constitutes a "service fee" consistent with Federal law.

Thank you for this opportunity to testify.

## Highlights of Proposed Gift Cards Rule

The proposal would amend Regulation E to implement the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act). The proposal would set forth new protections for consumers that purchase or use certain prepaid products, primarily gift cards.

□ **Products covered.** The proposal applies to gift certificates, store gift cards, and general use prepaid cards, as those terms are defined in the Credit CARD Act.

- Covered products include retail gift cards, which can be used to buy goods or services at a single merchant or affiliated group of merchants, and network branded gift cards, which are redeemable at any merchant that accepts the card brand.

- Consistent with the statute, the proposed rule would not apply to other types of prepaid cards, including reloadable prepaid cards that are not marketed or labeled as a gift card or gift certificate, and prepaid cards received through a loyalty, award or promotional program.

□ **Restrictions on dormancy, inactivity, or service fees.** The proposed rule prohibits a person from imposing a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

- Dormancy, inactivity, and service fees may only be assessed for a certificate or card if: (1) there has been at least one year of inactivity on the certificate or card; (2) no more than one such fee is charged per month; and (3) the consumer is given clear and conspicuous disclosures about the fees.

- Fees subject to the proposed restrictions would include monthly maintenance or service fees, balance inquiry fees, and transaction-based fees, such as reload fees and point-of-sale fees.

□ **Restrictions on expiration dates.** The proposed rule prohibits the sale or issuance of a gift certificate, store gift card, or general-use prepaid card that has an expiration date of less than five years after the date a certificate or card is issued or the date funds are last loaded.

- The expiration date restrictions would apply to a consumer's funds, and not to the certificate or card itself. The proposal includes provisions intended to help ensure consumers have at least five years to use a certificate or card from the date of purchase.

- The proposed rule prohibits the imposition of any fees for replacement of an expired card or certificate if the underlying funds remain valid.