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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the coronavirus  
2 disease (COVID-19) pandemic devastated the economy, workforce,  
3 businesses, and the people. In the aftermath, gift card scams  
4 have increased significantly, particularly through gift card  
5 draining, in which nefarious individuals steal gift cards from  
6 store displays, then copy card and personal identification  
7 numbers from the cards, and return the cards to shelves. After  
8 honest consumers purchase those gift cards and load them with  
9 value, the scammers then use the stolen information to drain the  
10 cards of that value. The legislature believes that it is  
11 necessary to shield consumers from these practices.

12           The legislature also believes that the State's current gift  
13 certificate law, which also covers gift cards, needs to be  
14 updated. While the law contains several positive elements,  
15 including a prohibition on periodic gift certificate service  
16 fees, the law can also be enhanced to increase transparency and  
17 protections for consumers.



1 Accordingly, the purpose this Act is to:

2 (1) Establish a new gift card fraud law, under the scope  
3 of unfair and deceptive practices law, which requires  
4 merchants and third-party gift card resellers to take  
5 certain steps to prevent gift card scams;

6 (2) Requires the conspicuous provision of information  
7 regarding terms and conditions of gift certificates,  
8 regardless of whether the cards are sold in person,  
9 electronically, or telephonically; and

10 (3) Extends from two years to four years the minimum  
11 redemption period for paper gift certificates.

12 SECTION 2. Chapter 481B, Hawaii Revised Statutes, is  
13 amended by adding a new part to be appropriately designated and  
14 to read as follows:

15 **"PART**

16 **GIFT CARD FRAUD**

17 **§481B-A Definitions.** For the purposes of this part,  
18 except as the context otherwise requires:

19 "Closed-loop gift card" means a card, code, or device that  
20 is:



1 (1) Issued to a consumer on a prepaid basis primarily for  
2 personal, family, or household purposes in a specified  
3 amount, regardless of whether that amount may be  
4 increased or reloaded in exchange for payment; and

5 (2) Redeemable on presentation by a consumer at a single  
6 merchant or a group of affiliated merchants.

7 "Gift card" means a closed-loop gift card or an open-loop  
8 gift card.

9 "Merchant" means a person who directly or indirectly either  
10 offers or makes available to consumers any consumer goods,  
11 consumer services, consumer realty, or consumer credit.

12 "Merchant" includes a person:

13 (1) Who, directly or indirectly, purchases or offers to  
14 purchase any consumer goods or consumer realty from a  
15 consumer; or

16 (2) In the business of paying off consumer debt in  
17 connection with the purchase of any consumer goods or  
18 consumer realty from a consumer.

19 "Open-loop gift card" means a card, code, or device that  
20 is:



1 (1) Issued to a consumer on a prepaid basis primarily for  
2 personal, family, or household purposes in a specified  
3 amount, regardless of whether that amount may be  
4 increased or reloaded in exchange for payment;

5 (2) Payment card network branded; and

6 (3) Either:

7 (A) Redeemable on presentation at multiple  
8 unaffiliated merchants for goods or services  
9 within the payment card network; or

10 (B) Usable at an automated teller machine.

11 "Person" means an individual, corporation, business trust,  
12 statutory trust, estate, trust, partnership, association, two or  
13 more persons having a joint or common interest, or any other  
14 legal or commercial entity.

15 "Third-party gift card reseller" means a merchant that,  
16 without authorization from or affiliation with the business  
17 entity issuing a gift card, is engaged in the business of:

18 (1) Buying gift cards on behalf of consumers; or

19 (2) Reselling gift cards to consumers.



1           **§481B-B Merchants; sales of gift cards.** (a) Except as  
2 provided in subsection (b), a merchant may not knowingly sell a  
3 gift card to a consumer unless:

4           (1) All gift cards for sale are locked in an enclosed  
5 display case, which may be opened only by the merchant  
6 or the merchant's employees;

7           (2) The merchant conspicuously displays a notice in  
8 substantially the same form as the model notice  
9 created pursuant to paragraph (1) of section 481B-D:

10           (A) For an in-person sale, at or near the physical  
11 location where:

12                   (i) The gift card is displayed for sale; or

13                   (ii) The sale occurs; or

14           (B) For an online sale, on the webpage:

15                   (i) In which the gift card is offered for sale;

16                           or

17                   (ii) That is displayed before the sale is

18                           finalized;

19           (3) For an in-person sale of an open-loop gift card, the  
20 gift card is enclosed in secure packaging that:



- 1 (A) Is sealed in a manner that is not easily opened  
2 without producing signs of tampering;
- 3 (B) Except as provided subparagraph (C), conceals all  
4 numeric codes specific to the activation or  
5 redemption of the gift card, including any bar  
6 code, card verification value number, personal  
7 identification number, or activation code;
- 8 (C) Displays an activation code, bar code, or other  
9 activation data only if the packing used is more  
10 secure than it otherwise would be if the data  
11 were fully concealed; and
- 12 (D) Includes a warning that states the following or  
13 uses language substantially similar to the  
14 following: "Do not sell or purchase if packaging  
15 has been broken or indicates tampering"; and
- 16 (4) For an in-person sale of a closed-loop gift card, the  
17 gift card is presented in packaging that:
- 18 (A) In a manner that is not easily removed or  
19 replaced without signs of tampering;



1 (i) Fully conceals or covers all numeric codes  
2 specific to the redemption of the gift card;  
3 or

4 (ii) Partially conceals or covers all numeric  
5 codes specific to redemption of the gift  
6 card; provided that the partial concealment  
7 or covering is more secure than full  
8 concealment of covering; and

9 (B) Includes a warning that states the following or  
10 uses language substantially similar to the  
11 following: "Do not sell or purchase if packaging  
12 has been broken or indicates tampering".

13 (b) A merchant may sell a gift card that is not enclosed  
14 in secure packaging as otherwise required under subsection

15 (a)(2) if:

16 (1) The gift card is a chip-enabled, numberless card that  
17 is activated by a consumer after registering the card  
18 on the card issuer's website; or

19 (2) The gift card:

20 (A) Is sold exclusively by:



- 1                   (i) A merchant for use only at the retail
- 2                   establishment of the merchant;
- 3                   (ii) A group of affiliated merchants for use only
- 4                   at the retail establishments of the
- 5                   affiliated merchants; and
- 6                   (iii) Is secured in a physical location within the
- 7                   merchant's retail establishment that is
- 8                   accessible only by an employee of the
- 9                   merchant.

10           **§481B-C Merchants; employee training.** A merchant that  
11 displays a gift card for sale at a retail establishment shall  
12 provide training to all employees of the merchant whose duties  
13 regularly include the sale of gift cards to consumers. The  
14 training, at minimum, shall instruct employees how to identify  
15 and respond to gift card fraud in accordance with the guidelines  
16 established pursuant to paragraph (2) of section 481B-D.

17           **§481B-D Model notice; guidelines.** The office of consumer  
18 protection shall:

- 19           (1) Create a model notice regarding gift cards for use by
- 20           merchants that:
- 21           (A) Cautions a consumer about gift card scams;



- 1 (B) Instructs a consumer on what to do if the
- 2 consumer suspects the consumer may be a victim of
- 3 a gift card scam; and
- 4 (C) Indicates that a gift card may not be used to pay
- 5 debt;
- 6 (2) Issue guidelines regarding the detection and
- 7 prevention of gift card fraud that include:
- 8 (A) Information that raises public awareness about
- 9 gift card fraud;
- 10 (B) Information about how common gift card fraud
- 11 schemes work; and
- 12 (C) Best practices for a merchant to prevent gift
- 13 card fraud; and
- 14 (3) Make available online and periodically update the
- 15 model notice and guidelines required under this
- 16 section.

17 **§481B-E Third-party gift card resellers; information.** (a)

18 Subject to subsection (b), when a third-party gift card reseller

19 buys or sells a gift card as part of a transaction occurring in

20 the State, the third-party gift card reseller shall record and



1 for at least three years maintain a copy of the following  
2 information, as applicable:

- 3 (1) The date of the transaction;
- 4 (2) The name of the person who conducted the transaction;
- 5 (3) The name, age, and address of the seller of the gift  
6 card;
- 7 (4) The seller's and consumer's driver's license number or  
8 identification card number;
- 9 (5) A description of the purchased gift card, including:
  - 10 (A) The retailer for which the gift card is intended  
11 for use; and
  - 12 (B) The gift card number;
- 13 (6) The specific amount issued on the gift card;
- 14 (7) The prices paid to conduct the transaction; and
- 15 (8) The signature of the consumer.

16 (b) The information recorded and maintained under  
17 subsection (a) shall chronologically be written in ink or logged  
18 into a secure database, software system, or other similar  
19 technology platform. Recorded information may not be destroyed,  
20 altered, or erased; provided that a handwritten correction may



1 be made to an entry of information by drawing a line of ink  
2 through the entry in a manner that retains legibility.

3 (c) Information recorded under this section shall be open  
4 to inspection by any duly authorized law enforcement officer:

5 (1) During the ordinary business hours of the third-party  
6 gift card reseller; or

7 (2) At any other reasonable time.

8 (d) A third-party gift card reseller, including an agent  
9 or employee of the third-party gift card reseller, shall not:

10 (1) Fail to make an entry of or falsify, destroy, or  
11 remove any information required to be recorded and  
12 maintained under this section;

13 (2) Refuse to allow any duly authorized law enforcement  
14 officer to inspect a record of information or gift  
15 cards in the third-party gift card reseller's  
16 possession during the ordinary business hours of the  
17 reseller or at any reasonable time; or

18 (3) Fail to maintain a record of each gift card  
19 transaction for at least three years.

20 (e) On the filing of an official report to a law  
21 enforcement agency by any person alleging to be a victim of



1 theft of one or more gift cards with an aggregate value  
2 exceeding \$500, the law enforcement agency may request that the  
3 issuer of the gift cards or the issuer's agents preserve and  
4 provide to the law enforcement agency all relevant evidence  
5 reasonably foreseeable as of assistance to future criminal  
6 actions in accordance with state law."

7 SECTION 3. Section 481B-13, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "(b) ~~[The]~~ Information regarding the date of issuance, any  
10 applicable fees, and the expiration date shall be clearly and  
11 conspicuously identified on the face of the gift certificate,  
12 ~~or[, if an electronic card with a banked dollar value, clearly~~  
13 ~~printed upon a sales receipt transferred to the purchaser of the~~  
14 ~~electronic card upon the completed transaction.]~~ its packaging;  
15 provided that if the gift certificate is sold or issued  
16 electronically, the seller or issuer shall include a conspicuous  
17 written statement of the foregoing information in the electronic  
18 message; provided further that if the gift card is sold or  
19 issued by telephonic means, the seller or issuer shall state the  
20 foregoing information to the purchaser before the sale. Terms  
21 and conditions of the gift certificate shall not be changed



1 after the date of purchase or issuance, unless the change  
2 benefits the consumer.

3       The expiration date shall be not less than five years after  
4 the date of issuance; provided that the expiration date of  
5 certificates issued only in paper form shall be not less than  
6 [~~two~~] four years after the date of issuance. If the gift  
7 certificate does not have an expiration date, it shall be valid  
8 in perpetuity."

9       SECTION 4. In codifying the new sections added by section  
10 2 of this Act, the revisor of statutes shall substitute  
11 appropriate section numbers for the letters used in designating  
12 the new sections in this Act.

13       SECTION 5. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16       SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18       SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

Lynn DeCote BR



# S.B. NO. 985

**Report Title:**

Gift Cards; Gift Certificates; Consumers; Fraud Prevention;  
Transparency

**Description:**

Establishes a new gift card fraud law, under the scope of unfair and deceptive practices law, which requires merchants and third-party gift card resellers to take certain steps to prevent gift card scams. Requires the conspicuous provision of information regarding terms and conditions of gift certificates, regardless of whether the cards are sold in person, electronically, or telephonically. Extends the minimum redemption period for paper gift certificates to 4 years.

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