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

13           The legislature also believes that the State's current gift  
14 certificate law, which also covers gift cards, needs to be  
15 updated. While the law contains several positive elements,  
16 including a prohibition on periodic gift certificate service



1 fees, the law can also be enhanced to increase transparency and  
2 protections for consumers.

3 Accordingly, the purpose this Act is to:

- 4 (1) Establish a new gift card fraud law, under the scope  
5 of the unfair and deceptive practices law, that  
6 requires merchants and third-party gift card resellers  
7 to take certain steps to prevent gift card scams;
- 8 (2) Require the conspicuous provision of information  
9 regarding terms and conditions of gift certificates,  
10 regardless of whether the cards are sold in person,  
11 electronically, or telephonically;
- 12 (3) Extend from two years to four years the minimum  
13 redemption period for paper gift certificates; and
- 14 (4) Establish penalties.

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

18 **"PART . GIFT CARD FRAUD**

19 **§481B-A Definitions.** As used in this part:

20 "Closed-loop gift card" means a card, code, or device that  
21 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 offers  
10 or makes available to consumers any consumer goods, consumer  
11 services, consumer realty, or consumer credit. "Merchant"  
12 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 shall not knowingly sell  
3 a 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) On 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) Is not easily removed or replaced without signs
- 19 of tampering and:



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 (a)  
15 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 is sold exclusively by:

20 (A) A merchant for use only at the retail  
21 establishment of the merchant;



1 (B) A group of affiliated merchants for use only at  
2 the retail establishments of the affiliated  
3 merchants; and

4 (C) Is secured in a physical location within the  
5 merchant's retail establishment that is  
6 accessible only by an employee of the merchant.

7 **§481B-C Merchants; employee training.** A merchant that  
8 displays a gift card for sale at a retail establishment shall  
9 provide training to all employees of the merchant whose duties  
10 regularly include the sale of gift cards to consumers. The  
11 training, at minimum, shall instruct employees how to identify  
12 and respond to gift card fraud in accordance with the guidelines  
13 established pursuant to paragraph (2) of section 481B-D.

14 **§481B-D Model notice; guidelines.** The office of consumer  
15 protection shall:

16 (1) Create a model notice regarding gift cards for use by  
17 merchants that:

18 (A) Cautions a consumer about gift card scams;

19 (B) Instructs a consumer on what to do if the  
20 consumer suspects the consumer may be a victim of  
21 a gift card scam; and



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

- 14 **§481B-E Third-party gift card resellers; information.** (a)
- 15 Subject to subsection (b), when a third-party gift card reseller  
16 buys or sells a gift card as part of a transaction occurring in  
17 the State, the third-party gift card reseller shall record and  
18 for at least three years maintain a copy of the following  
19 information, as applicable:
- 20 (1) The date of the transaction;
- 21 (2) The name of the person who conducted the transaction;



- 1 (3) The name, age, and address of the seller of the gift  
2 card;
- 3 (4) The seller's and consumer's driver's license number or  
4 identification card number;
- 5 (5) A description of the purchased gift card, including:  
6 (A) The retailer for which the gift card is intended  
7 for use; and  
8 (B) The gift card number;
- 9 (6) The specific amount issued on the gift card;
- 10 (7) The prices paid to conduct the transaction; and
- 11 (8) The signature of the consumer.
- 12 (b) The information recorded and maintained under  
13 subsection (a) shall be written chronologically in ink or logged  
14 into a secure database, software system, or other similar  
15 technology platform. Recorded information may not be destroyed,  
16 altered, or erased; provided that a handwritten correction may  
17 be made to an entry of information by drawing a line of ink  
18 through the entry in a manner that retains legibility.
- 19 (c) Information recorded under this section shall be open  
20 to inspection by any duly authorized law enforcement officer:



- 1 (1) During the ordinary business hours of the third-party  
2 gift card reseller; or
- 3 (2) At any other reasonable time.
- 4 (d) A third-party gift card reseller, including an agent  
5 or employee of the third-party gift card reseller, shall not:
- 6 (1) Fail to make an entry of or falsify, destroy, or  
7 remove any information required to be recorded and  
8 maintained under this section;
- 9 (2) Refuse to allow any duly authorized law enforcement  
10 officer to inspect a record of information or gift  
11 cards in the third-party gift card reseller's  
12 possession during the ordinary business hours of the  
13 reseller or at any reasonable time; or
- 14 (3) Fail to maintain a record of each gift card  
15 transaction for at least three years.
- 16 (e) On the filing of an official report to a law  
17 enforcement agency by any person alleging to be a victim of  
18 theft of one or more gift cards with an aggregate value  
19 exceeding \$500, the law enforcement agency may request that the  
20 issuer of the gift cards or the issuer's agents preserve and  
21 provide to the law enforcement agency all relevant evidence



1 reasonably foreseeable to be of assistance to future criminal  
2 actions in accordance with state law.

3 **§481B-F Fraudulent use of a gift card.** (a) A person  
4 commits the offense of fraudulent use of a gift card, if with  
5 intent to defraud, the person:

6 (1) Acquires possession of a gift card or gift card  
7 information without the consent of the gift card  
8 holder, issuer, or seller;

9 (2) Acquires possession of a gift card or gift card  
10 information by exploiting the gift card holder,  
11 issuer, or seller; or

12 (3) Obtains money, goods, services, or anything else of  
13 value with a gift card or gift card information  
14 without the consent of the gift card holder or by  
15 exploiting the gift card holder.

16 (b) Fraudulent use of a gift card is a class C felony if  
17 the value of all money, goods, services, and other things of  
18 value obtained or attempted to be obtained exceeds \$750 in any  
19 six-month period. For the purposes of this section, each  
20 separate use of a credit card that exceeds \$750 constitutes a  
21 separate offense.



1 (c) Fraudulent use of a gift card is a misdemeanor if the  
2 value of all money, goods, services, and other things of value  
3 obtained or attempted to be obtained does not exceed \$750 in any  
4 six-month period."

5 SECTION 3. Section 481B-13, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) [The] Information regarding the date of issuance, any  
8 fees authorized by law, and the expiration date shall be clearly  
9 and conspicuously identified on the face of the gift  
10 certificate[7] or[7, if an electronic card with a banked dollar  
11 value, clearly printed upon a sales receipt transferred to the  
12 purchaser of the electronic card upon the completed  
13 transaction.] its packaging; provided that, if the gift  
14 certificate is sold or issued electronically, the issuer shall  
15 include a conspicuous written statement of the foregoing  
16 information in the electronic message; provided further that, if  
17 the gift card is sold or issued by telephonic means, the issuer  
18 shall state the foregoing information to the purchaser before  
19 the sale. Terms and conditions of the gift certificate shall  
20 not be changed after the date of purchase or issuance, unless



1 the change benefits the consumer. Any waiver or attempted  
2 waiver of the protections under this section is void.

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 on July 1, 2050.



# S.B. NO. 2797 S.D. 2

**Report Title:**

OCP; Gift Cards; Gift Certificates; Consumers; Fraud Prevention; Transparency; Offenses; Penalties

**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 Office of Consumer Protection to create model notices and issue certain guidelines. 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 from two to four years. Establishes penalties. Effective 7/1/2050. (SD2)

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