

ACT 195

H.B. NO. 2289

A Bill for an Act Relating to Gift Certificates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that on May 22, 2009, President Obama signed into law the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (which may be cited as the Credit CARD Act of 2009), which imposes sweeping changes to credit card industry practices and includes important provisions that create new federal regulation of the issuance and sale

of gift cards, gift certificates, and open-loop prepaid cards. The new law applies to both issuers and sellers of prepaid stored value products and sets minimum fees, expiration limits on prepaid products, and requires certain disclosures to consumers in connection with fees and expiration dates. Notably, the Credit CARD Act of 2009 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.

Key provisions of the Credit CARD Act of 2009, relating to gift cards include:

- (1) Fees may not be imposed unless there has been no activity for at least a twelve-month period prior to the date of the fee;
- (2) Only one fee may be charged per month;
- (3) Gift cards must remain valid for at least five years; and
- (4) Permitted fees and expiration dates must be conspicuously disclosed.

There are several exemptions that include telephone services products, promotional cards, paper gift certificates, and products for event or venue admission, which take effect on August 22, 2010. The Credit CARD Act of 2009 also requires the Federal Reserve Board to issue rules it considers necessary to carry out the Act.

The legislature further finds that it is in the best interests of consumers in the State of Hawaii to adopt some of the key provisions of the Credit CARD Act of 2009. The purpose of this Act is to adopt these protections in Hawaii's laws.

SECTION 2. Section 481B-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Any restaurant or person engaged in the business of offering services or goods for sale at retail may allow customers to purchase gift certificates~~]; provided that the certificate issuer shall honor the certificate for a period of at least two years from the date of issuance~~. A certificate issuer shall not charge a service fee, including but not limited to a service fee for dormancy or inactivity. Any activation or issuance fee charged shall not exceed the lesser of ten per cent of the face value of the certificate or \$5.

(b) The date of issuance and the expiration date shall be clearly identified on the face of the gift certificate, or, if an electronic card with a banked dollar value, clearly printed upon a sales receipt transferred to the purchaser of the electronic card upon the completed transaction. The expiration date shall be not less than ~~[two] five years after the date of issuance[-]; provided that the expiration date of certificates issued only in paper form shall be not less than two years after the date of issuance.~~ If the gift certificate does not have an expiration date, it shall be valid in perpetuity."

2. By amending subsection (e) to read:

"(e) As used in this section, unless the context requires otherwise:

"Certificate issuer" or "issuer" means a restaurant or a person engaged in the business of offering services or goods for sale at retail who sells gift certificates to customers.

"Gift certificate" or "certificate" includes any electronic card with a banked dollar value where the issuer has received payment for the full banked dollar value for the future purchase or delivery of goods or services, any certificate where the issuer has received payment for the full face value of the certificate

for future purchases or delivery of goods or services, and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, or services of at least an equal value. “Gift certificate” or “certificate” does not include a card, certificate, or other medium that is:

- (1) Used solely for telephone services;
- (2) Reloadable and not marketed or labeled as a gift card, gift certificate, or certificate;
- (3) A loyalty, award, or promotional gift card;
- (4) Not marketed to the general public; or
- (5) 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:
 - (A) At the event or venue after admission; or
 - (B) In conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

“Service fee” means a periodic fee, charge, or penalty for holding or use of a gift certificate, but does not include a one-time initial activation or issuance fee.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)