

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1272 (Laird)  
Version: April 1, 2024  
Hearing Date: April 9, 2024  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Gift certificates

**DIGEST**

This bill provides that a gift certificate with a cash value less than or equal to \$25 must be redeemable in cash, increasing that threshold from \$10.

**EXECUTIVE SUMMARY**

Existing law makes it unlawful to sell a gift certificate or gift card that contains an expiration date or service fee, except as specified. A gift certificate sold after January 1, 1997, is redeemable in cash or subject to replacement with a new gift certificate. However, where the cash value is less than \$10, the gift certificate must be redeemable in cash for its cash value.

Given the concerns with the amount of unused gift certificates that consumers are unable to meaningfully use, this bill provides that the gift certificate must be redeemable in cash if the cash value is less than or equal to \$25. The author's goal is to "put more money back in the pockets of consumers."

The bill is author-sponsored. It is supported by the Consumer Attorneys of California and Public Law Center. It is opposed by a coalition of industry associations, including the California Retailers Association.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Makes it unlawful for any person or entity to sell a gift certificate to a purchaser that contains any of the following:
  - a) An expiration date.

- b) A service fee, including, but not limited to, a service fee for dormancy, except as provided. (Civ. Code § 1749.5(a).)
- 2) Provides that any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder. Notwithstanding that provision, any gift certificate with a cash value of less than \$10 is redeemable in cash for its cash value. (Civ. Code § 1749.5(b).
- 3) Provides that the above provisions do not apply to any of the following gift certificates issued on or after January 1, 1998, if the expiration date appears in capital letters in at least 10-point font on the front of the gift certificate:
  - a) Gift certificates that are distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer.
  - b) Gift certificates that are donated or sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those gift certificates is not more than 30 days after the date of sale.
  - c) Gift certificates that are issued for perishable food products. (Civ. Code § 1749.5(d).)
- 4) Provides that a “gift certificate” includes gift cards, but does not include any gift card usable with multiple sellers of goods or services, as provided. This exemption does not apply to a gift card usable only with affiliated sellers of goods or services. (Civ. Code § 1749.45.)
- 5) Provides that if a legal obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation. (Civ. Code § 1448.)

This bill raises the threshold for eligibility for a cash redemption to \$25 or less.

### COMMENTS

#### 1. Consumer rights in connection with gift certificates

This bill deals with consumer rights in connection with gift certificates and gift cards that have gone unused. According to a CNN report:

Almost two-thirds of American consumers have at least one unspent gift card tucked away in a drawer, pocket, wallet or purse. And at least half of those consumers lose a gift card before they use it, according to a new

report from Credit Summit, an online provider of financial advisory services.

The report said there is as much as \$21 billion of unspent money tied up in unused and lost gift cards. Of those surveyed, a majority of respondents said their unredeemed cards were worth \$200 or less.<sup>1</sup>

Current law prohibits such cards from having an expiration date and provides a means for redeeming the cards. A gift certificate is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder. The general rule of law is that where a legal obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation. (Civ. Code § 1448.) Therefore, the issuer of the gift certificate could choose whether to provide a consumer a cash refund or simply issue a new card.<sup>2</sup>

To provide consumers more rights with respect to gift certificates with lower remaining values, SB 250 (Corbett, Ch. 640, Stats. 2007) amended that law providing that notwithstanding the existing provision, any gift certificate with a cash value of less than \$10 is redeemable in cash for its cash value. This allows consumers the ability to get the value of their cards where the remaining balance is extremely low.

That amount has not changed in the 17 years since. In fact, the original version of SB 250 sought to make the threshold \$20 but lowered it in response to opposition.

This bill makes the first change to that threshold, providing consumers the right to redeem for cash value gift certificates of \$25 or less. According to the author:

SB 1272, the Consumer Access to Stored Holdings Act or CASH Act, will raise the maximum dollar amount on a gift card a consumer can redeem for cash. The current limit of \$9.99 was set 15 years ago and an increase is long overdue. This increase will put more cash back in the wallets of Californians at a time when every penny truly counts.

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<sup>1</sup> Parija Kavilanz, *Americans have a collective \$21 billion in unspent gift cards* (February 23, 2023) CNN, <https://www.cnn.com/2023/02/23/business/gift-cards-unused/index.html> [as of Mar. 28, 2024].

<sup>2</sup> See also *Marilao v. McDonald's Corp.* (S.D. Cal. 2009) 632 F. Supp. 2d 1008, 1012 (“it is the vendor who holds the right to select whether to redeem a gift card in cash for its cash value or to provide a replacement card at no cost to the purchaser or holder”).

## 2. Stakeholder positions

The Consumer Attorneys of California write in support:

The gift card industry is a multi-billion dollar industry, valued at \$899.3 billion in 2023, with expectations of reaching a value of \$2.3 trillion by 2030. There is up to \$21 billion of unspent money estimated to be sitting on unused gift cards, according to a 2023 report by Credit Summit. 47% of Americans have unused gift cards, wasted in wallets and junk drawers. Many consumers feel it is not worth the hassle to cash out less than \$10, while even more are completely unaware of their right to redeem gift certificates for cash. This leaves millions of dollars meant to be redeemed for services and goods unspent, a major loss for consumers. In an attempt to use the entirety of a gift card, a consumer will likely spend beyond the remaining amount, also leading to a loss.

Writing in support, the Public Law Center argues:

Once purchased, the profit from the sale of a gift card is immediately available to the issuing company. There is a nearly 100 percent profit margin if the consumer does not use the gift card. Every cent of unspent gift cards adds up to hundreds of millions of dollars captured by companies every single year with no exchange for goods or services. Gift certificates are gifted with the intention of being entirely spent by the receiver, and the law should allow them to do so.

A coalition of industry associations, including the California Fuels and Convenience Alliance, write in opposition:

Forcing merchants to offer cash back at a \$25 threshold poses considerable challenges. This bill would force businesses to maintain substantial cash on hand especially on days like Black Friday and the days after Christmas when demand for cash back could surge. This not only strains financial resources on small businesses, but also significantly heightens security risks. With retail theft on the rise, holding increased amounts of cash in-store makes these businesses prime targets for theft.

From a fraud prevention perspective, the bill potentially exacerbates the risk. Gift cards are vulnerable to fraud, and the requirement for this level of cash back may serve as a mechanism for fraudsters to launder money. The prospect of purchasing gift cards with illicit funds, only to cash them back through legitimate channels, is a concern.

Concerns were also raised by those in opposition that raising the threshold for cash redemption would jeopardize a federal exemption and require collection of personal information from consumers when selling gift cards pursuant to the federal Bank Secrecy Act. The United States Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued regulations regarding compliance with that Act. Relevant here:

Closed loop prepaid access is a type of prepaid access that can be used for goods or services. See 31 CFR 1010.100(kkk). The regulations exclude from the definition of a prepaid program an arrangement that provides closed loop prepaid access to funds limited to \$2,000 or less that can be associated with a prepaid access device or vehicle on any day. See 31 CFR 1010.100(ff)(4)(iii)(A).<sup>3</sup>

Essentially, gift cards for \$2,000 or less that can only be used in a closed universe do not need to comply with all the regulatory requirements at issue. Relevant to the money laundering concern as well, in its rulemaking process, FinCEN responded to comments from retailers that these programs should be exempted given that they are commonly issued in denominations of \$500 or less by stating: "Such low dollar limits and the inability, except under rare, de minimis situations, to convert closed loop prepaid access to cash make it an inefficient, cumbersome tool for use by money launderers."<sup>4</sup>

While there is claim that raising the redeemable amount from \$10 to \$25 will affect the determination that this is no longer de minimis, subsequent guidance from FinCEN states: "As FinCEN has explained, refunds of de minimis amounts required by applicable state law are consistent with the definition of 'closed loop prepaid access' and do not negate the exclusion of closed loop prepaid access from the definition of a prepaid program."<sup>5</sup>

Also of note, is FinCEN's discussion in that guidance of a Massachusetts law that could provide cash redemption well in excess of \$25, as proposed by this bill:

We understand that Massachusetts law concerning non-reloadable closed loop prepaid access is structured differently than the laws of other states requiring refunds on closed loop prepaid access. Massachusetts law requires that for such products a consumer be provided cash redemption when 90% or more of the initial prepaid access value has been depleted. Depending on the original value, **this may significantly exceed the fixed amount currently required by any other state law.** When Massachusetts

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<sup>3</sup> *Frequently Asked Questions regarding Prepaid Access* (March 24, 2016) FinCEN, <https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-regarding-prepaid-access>.

<sup>4</sup> 76 Fed. Reg. 45403, 45407.

<sup>5</sup> See fn 3.

law applies to closed loop prepaid access, but only when Massachusetts law applies, **FinCEN deems a refund required by Massachusetts law to be de minimis for purposes of determining whether closed loop prepaid access exception applies.**<sup>6</sup>

Therefore, it is unlikely that California raising their threshold to \$25 will impact the calculus of what is deemed de minimis given the Massachusetts law provides for much higher cash redemption and is still considered below the threshold. It also would not likely change the equation from a money-laundering perspective given the suspicious activity reporting threshold is \$2,000.

### **SUPPORT**

Consumer Attorneys of California  
Public Law Center

### **OPPOSITION**

CalAsian Chamber of Commerce  
California Chamber of Commerce  
California Fuels and Convenience Alliance  
California Restaurant Association  
California Retailers Association  
National Federation of Independent Businesses  
National Association of Theater Owners of California

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: SB 250 (Corbett, Ch. 640, Stats. 2007) *See* Comment 1.

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<sup>6</sup> *Ibid* (emphasis added). *See also*, Mass. Ann. Laws ch. 200A, § 5D.