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To: The Honorable C.T. Wilson, Chair
Economic Matters Committee

From: Steven M. Sakamoto-Wengel, Consumer Protection Counsel for Regulation, Legislation and Policy

Re: Senate Bill 760 – Consumer Protection – Retail Sales of Gift Cards (Gift Card Scams Prevention Act of 2024) (Support with Amendments)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support, with amendments, of Senate Bill 760 submitted by Senator Benjamin F. Kramer. The bill would require businesses that sell “open-loop” gift cards to provide a disclosure to purchasers prepared by the Division and would further require the merchant to provide training on gift card fraud to its employees. The bill would also require secure gift card packaging to prevent tampering with gift cards that are held for sale. Similar provisions for “closed-loop” gift cards would take effect at a later date. However, as discussed below, the Division has significant concerns about the enforcement provisions of SB 760 as amended in the Senate.

Gift cards are an extremely popular form of currency. They can be a good substitute form of payment if you'd rather not pay cash or use a credit card and can make good gifts for holidays or special occasions. Although there are good uses for gift cards, scammers frequently request that their victims provide payment in the form of gift cards. However, unlike credit cards, there typically isn't any recourse for consumers when a gift card is stolen or used without authorization or as payment to a scam artist, so it is very hard to reverse the purchases or get a refund in these situations.

This bill helps to ensure that gift cards are kept in secure packaging or are relatively inaccessible prior to purchase to prevent theft and misuse. In addition, it requires disclosures that will help to better educate consumers about possible scams involving gift cards, as well as training of employees to recognize signs of a scam, which should reduce the number of successful scams.

However, as amended in the Senate, SB 760 eliminates the private right of action under § 13-408 of the Consumer Protection Act, which means that a scam victim who purchases hundreds or thousands of dollars worth of gift cards to pay the scammer because the business failed to post the notices, place the gift cards behind the counter, or properly train their employees has no recourse against the business. The Consumer Protection Division cannot and does not represent individuals and generally brings enforcement actions against a business only where there has been a pattern or practice of violations. Eliminating the private right of action leaves the scam victim without a remedy if the business does not voluntarily agree to compensate the victim.

Additionally, as amended, subsection 14-4606(B) on page 8, lines 17 and 18 of SB 760 provides that for a first violation, the Division may only issue a warning to the violator. It is unlikely that the Division would expend the resources necessary to investigate and prosecute a violation of the law if the only remedy it could seek was a warning, especially if there are victims who have lost money as a result of the violations. The Division has raised its concerns with the sponsor who indicated that was not the intent of the provision, which the sponsor envisioned as creating a right to cure before a business could be charged with violating the law. However, the Division believes it is unnecessary to codify a right to cure in SB 760 as the Division's practice has been, and continues to be, to try to resolve the overwhelming majority of complaints through mediation, not enforcement. Accordingly, the Division requests that the warning provision be removed from SB 760.

For these reasons, we ask that the Economic Matters Committee return a favorable report with amendments restoring the private right of action for victims and removing the provision limiting the Division to issuing a warning for a first violation.

cc: The Honorable Benjamin F. Kramer
Members, Economic Matters Committee