

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 760

(Senator Kramer)

Finance

Economic Matters

Consumer Protection - Retail Sales of Gift Cards (Gift Card Scams Prevention
Act of 2024)

This bill establishes numerous rules and procedures that merchants must follow when selling “open-loop” or “closed-loop” gift cards in the State. The Office of the Attorney General (OAG) must create a model notice regarding open- and closed-loop gift cards for use by merchants that (1) cautions a consumer about gift card scams; (2) instructs a consumer on what to do if the consumer suspects the consumer may be a victim of a gift card scam; and (3) indicates a gift card may not be used to pay debt. Additionally, OAG must issue guidelines regarding the detection and prevention of open- and closed-loop gift card fraud that include (1) information that raises public awareness about gift card fraud; (2) information about how common gift card fraud schemes work; and (3) best practices for a merchant to prevent gift card fraud. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), generally subject to MCPA’s civil and criminal penalty provisions. However, a violator is not subject to specified MCPA penalty provisions related to private causes of actions for damages. **The bill generally takes effect June 1, 2025; however, provisions that apply to closed-loop gift cards take effect October 1, 2025.**

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. OAG’s Consumer Protection Division can handle the bill’s requirements with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

The bill defines several terms related to the sale of retail gift cards:

- “Open-loop gift card” means a card, code, or device that is (1) issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment; (2) payment card network branded; and (3) redeemable on presentation at multiple unaffiliated merchants for goods or services within the payment card network or usable at an automated teller machine.
- “Closed-loop gift card” means a card, code, or device that is (1) issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment and (2) redeemable on presentation by a consumer at a single merchant or a group of affiliated merchants.
- “Third-party gift card reseller” means a merchant who, without authorization from (or affiliation with) the business entity issuing an open- or a closed-loop gift card, is engaged in the business of (1) buying open- or closed-loop gift cards on behalf of consumers or (2) reselling open- or closed-loop gift cards to consumers.

Generally, the bill prohibits a merchant from knowingly selling an open- or a closed-loop gift card to a consumer unless:

- the merchant conspicuously displays a notice in substantially the same form as a model notice created by the bill (1) at or near the physical location where the gift card is displayed for sale or the sale occurs (for an in-person sale) or (2) on the webpage where the gift card is offered for sale or that is displayed immediately before the sale is finalized (for an online sale);
- for an in-person sale of an *open-loop* gift card, the gift card is enclosed in secure packaging that (1) is sealed in a manner that is not easily opened without signs of tampering; (2) conceals all numeric codes specific to the activation or the redemption of the gift card, including any bar code, CVV number, PIN number, or activation code (or displays an activation code, bar code, or other activation data only if the packaging used is more secure than it otherwise would be if the data were fully concealed); and (3) includes a warning not to sell or purchase if the packaging has been broken or indicates tampering; and

- for an in-person sale of a *closed-loop* gift card, the gift card is presented in packaging that (1) conceals or covers, in a manner that is not easily removed or replaced without signs of tampering, all numeric codes specific to the redemption of the gift card (or, if made more secure through partial concealment or covering, partially conceals or covers all numeric codes in the same manner) and (2) includes a warning not to sell or purchase if the packaging has been broken or indicates tampering.

A merchant may sell an open- or a closed-loop gift card that is *not* enclosed in secure packaging if:

- the gift card is a chip-enabled, numberless card that is activated by a consumer after registering the card on the card issuer's website; or
- the gift card is (1) exclusively sold by a merchant for use only at the retail establishment of the merchant (or a group of affiliated merchants for use only at the retail establishments of the affiliated merchants) and (2) is secured in a physical location within the merchant's retail establishment that is accessible only by an employee of the merchant.

A merchant that displays an open- or a closed-loop gift card for sale at a retail establishment must provide training to all employees whose duties regularly include the sale of open- or closed-loop gift cards to consumers on how to identify and respond to gift card fraud in accordance with the guidelines required to be established by OAG under the bill.

OAG must make available online and periodically update the model notice and guidelines.

Third-party Gift Card Resellers

Generally, when a third-party gift card reseller buys or sells an open- or closed-loop gift card as part of a transaction occurring in the State, the third-party gift card reseller must record and (for at least three years) maintain a copy of applicable information (*e.g.*, the date of the transaction, the name of the person who conducted the transaction, a description of the purchased gift card, the specific amount issued on the gift card, etc.).

The information recorded and maintained must chronologically be written in ink or logged into a secure database, software system, or other similar technology platform. Recorded information may not be destroyed, altered, or erased; however, a handwritten correction may be made to an entry of information by drawing a line of ink through the entry in a manner that retains legibility. Information recorded pursuant to these requirements must be open to inspection by any duly authorized law enforcement officer, as specified.

A third-party gift card reseller, including an agent or employee, may not:

- fail to make an entry of or falsify, destroy, or remove any information required to be recorded and maintained pursuant to the bill's requirements;
- refuse to allow any duly authorized law enforcement officer to inspect a record of information or open- or closed-loop gift cards in the third-party gift card reseller's possession, as specified; or
- fail to maintain a record of each open- or closed-loop gift card transaction for at least three years.

On the filing of an official report with a law enforcement agency by any person alleging to be a victim of theft of one or more open- or closed-loop gift cards with an aggregate value exceeding \$500, the law enforcement agency may request that the issuer of the gift cards (or the issuer's agents) preserve and provide to the law enforcement agency all relevant evidence reasonably foreseeable as of assistance to future criminal actions in accordance with State law.

Enforcement Actions by the Office of the Attorney General

Before initiating an enforcement action for a violation of the bill, OAG may issue a notice of violation to the alleged violator if (1) it determines that it is possible to cure the violation; (2) no consumer was harmed as a result of the violation; and (3) the alleged violator has not previously violated the bill's requirements.

If OAG issues a notice of violation pursuant to this authorization, it must provide the alleged violator at least 10 days after the notice of violation is issued to cure the violation. If the alleged violator fails to cure the violation within the specified time period, OAG may initiate an enforcement action for a violation of the bill.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter,
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issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: The bill establishes several requirements for businesses that sell gift cards in the State, including registration and training requirements for employees. Thus, the bill has a meaningful effect on such businesses.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 896 (Delegate Stewart) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510