

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 874

(Senator Folden)

Judicial Proceedings

Criminal Law - Gift Card Crimes

This bill establishes the crime of gift card theft, including prohibitions related to taking, receiving, buying, or selling a gift card under specified circumstances. The bill also prohibits the false embossing or making of gift cards and the signing of a gift card by anyone other than the intended recipient with the intent to defraud. Penalties for violations of the bill's provisions are based on the stored or accessible balance of the gift card.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

“Gift card” means:

- a paper, metal, plastic, or digital instrument or device, including a card with a magnetic stripe, that is issued by an issuer and is able to be used to purchase, either wholly or in part, money, goods, services, or anything of value through presentation of the card on which a prepaid balance of funds is stored; or
- a tangible or intangible instrument or device bearing a code, an account number, or other means of account access that is not encoded or truncated and is able to be used

to purchase, either wholly or in part, money, goods, services, or anything of value through presentation of the code, account number, or account access through which a prepaid balance of funds is stored or accessible.

“Gift card” does not include a credit card, an electronic funds transfer, or money, a check, a draft, or any similar paper instrument.

Gift Card Theft

A person may not, with the intent to defraud, (1) take a gift card from another, or from the possession, custody, or control of another, without the consent of the issuer, original gift card purchaser, or the intended gift card recipient or (2) with knowledge that a gift card has been taken in this manner, receive the gift card with the intent to use or sell the gift card or transfer the gift card to another who is not the issuer, original gift card purchaser, or the intended gift card recipient.

A person is also prohibited from receiving a gift card that the person knows was lost, mislaid, or delivered under a mistake as to the identity or address of the original gift card purchaser or the intended gift card recipient and retaining possession of the gift card with the intent to use or sell the gift card or transfer the gift card to another who is not the issuer, original gift card purchaser, or the intended gift card recipient.

The bill further prohibits a person from (1) selling a gift card unless the person is the issuer or a person authorized by the issuer to sell a gift card or (2) buying a gift card from a person other than the issuer or a person authorized by the issuer to sell a gift card.

A person other than the issuer is prohibited from receiving a gift card that the person knows was taken or retained under circumstances that constitute gift card theft or the prohibitions against buying or selling a gift card described above.

The bill establishes the following penalties for gift card theft, which vary based on the stored or accessible balance of funds on the gift card:

- less than \$100 – misdemeanor, imprisonment for up to 90 days and/or a \$500 maximum fine; and
- \$100 or more – misdemeanor, imprisonment for up to six months and/or a \$500 maximum fine (first conviction) or imprisonment for up to one year and/or a \$500 maximum fine (second or subsequent conviction).

Falsely Embossing or Falsely Making Gift Cards

“Falsely emboss” means to create a gift card without the authorization of the issuer.

“Falsely make” means (1) to alter a gift card that was validly issued or (2) to make or draw, wholly or partly, a device or instrument that purports to be a gift card but that is not a gift card because an issuer did not authorize the making or drawing.

A person may not, with the intent to defraud another, (1) falsely make a purported gift card; (2) falsely emboss a gift card; (3) transfer or possess a falsely made instrument or device that purports to be a gift card, knowing it to be false; or (4) transfer or possess a falsely embossed gift card with knowledge that the gift card was falsely embossed.

The bill also prohibits a person, other than the intended recipient, from signing a gift card with the intent to defraud another.

A violator with respect to a gift card with purported or actual stored or accessible balance of funds less than \$100 is guilty of a misdemeanor and on conviction subject to imprisonment for up to 90 days and/or a \$500 maximum fine.

The bill establishes the following penalties based on the purported or actual stored or accessible balance of funds on the gift card:

- less than \$100 – misdemeanor, imprisonment for up to 90 days and/or a \$500 maximum fine; and
- \$100 or more – misdemeanor, imprisonment for up to six months and/or a \$500 maximum fine (first conviction) or imprisonment for up to one year and/or a \$500 maximum fine (second or subsequent conviction).

Current Law: Existing statute contains similar provisions that pertain to a credit card, which is specifically excluded from the definition of a gift card under the bill. The general theft statute may apply to situations relevant to the bill.

Credit Card Theft

“Credit card” means an instrument or device issued by an issuer for the use of a cardholder in obtaining money, goods, services, or anything of value on credit.

“Credit card” includes:

- a debit card, access card, or other device for use by a cardholder to effect a transfer of funds through an electronic terminal, telephone, or computer;
- a magnetic tape that orders or authorizes a financial institution to debit or credit an account; and
- a code, account number, or other means of account access that is not encoded or truncated and can be used to obtain money, goods, services, or anything of value or initiate a transfer of funds.

“Credit card” does not include a check, draft, or similar paper instrument.

A person may not (1) take a credit card from another, or from the possession, custody, or control of another without the consent of the cardholder or (2) with knowledge that a credit card has been taken under these circumstances receive the credit card with the intent to use it or sell or transfer it to another who is not the issuer or the cardholder.

A person is prohibited from receiving a credit card that the person knows was lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and retaining possession of the credit card with the intent to use, sell, or transfer it to another who is not the issuer or the cardholder.

A person may not sell a credit card unless the person is the issuer or buy a credit card from a person other than the issuer. A person other than the issuer may not receive a credit card that the person knows was taken or retained under circumstances that constitute credit card theft, a violation of the prohibition on fraud in procuring the issuance of a credit card, or a violation of the prohibition on selling or buying a credit card described above.

Violators are guilty of a misdemeanor and subject to imprisonment for up to 18 months and/or a \$500 maximum fine.

Credit Card Counterfeiting

“Falsely emboss” means to complete a credit card without the authorization of the issuer named on the credit card by adding any of the matter, other than the signature of the cardholder, that the issuer requires to appear on a credit card before it can be used by a cardholder.

“Falsely make” means (1) to alter a credit card that was validly issued or (2) to make or draw, wholly or partly, a device or instrument that purports to be a credit card but that is not a credit card because an issuer did not authorize the making or drawing.

A person may not, with the intent to defraud another (1) falsely make a purported credit card; (2) falsely emboss a credit card; (3) transfer or possess a falsely made instrument or device that purports to be a credit card, with knowledge that the instrument or device was falsely made; or (4) transfer or possess a falsely embossed credit card with knowledge that the credit card was falsely made or falsely embossed.

A person other than the cardholder or one authorized by the cardholder may not sign a credit card with the intent to defraud another.

Violators are guilty of the felony of credit card counterfeiting and subject to imprisonment for up to 15 years and/or a \$1,000 maximum fine.

General Theft

Under the general theft statute, a person may not, under specified circumstances, (1) willfully or knowingly obtain or exert unauthorized control over property; (2) obtain control over property by willfully or knowingly using deception; (3) possess stolen property knowing that it has been stolen or believing that it probably has been stolen; (4) obtain control over property knowing that the property was lost, mislaid, or delivered under a mistake as to the identity of the recipient or nature or amount of the property; or (5) obtain the services of another that are available only by compensation by deception or with knowledge that the services are provided without the provider's consent. A violator is required to restore the owner's property or pay the owner the value of the property or services and is subject to the penalties in **Exhibit 1**.

Exhibit 1 Penalties for General Theft

Value of Property and/or Services

Maximum Penalty

Less than \$100*	Misdemeanor – 90 days imprisonment and/or \$500 fine
At least \$100 but less than \$1,500*	Misdemeanor – 6 months imprisonment and/or \$500 fine (first conviction) or 1 year imprisonment and/or \$500 fine (second or subsequent conviction)
Less than \$1,500 (four or more prior theft convictions)**	Misdemeanor – 5 years imprisonment and/or \$5,000 fine
At least \$1,500 but less than \$25,000	Felony – 5 years imprisonment and/or \$10,000 fine
At least \$25,000 but less than \$100,000	Felony – 10 years imprisonment and/or \$15,000 fine
\$100,000 or more	Felony – 20 years imprisonment and/or \$25,000 fine

* Subject to two-year statute of limitations.

** Subject to specified notice requirements.

Source: Department of Legislative Services

Additional Information

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

Designated Cross File: HB 1074 (Delegate Toles) - Judiciary.

Information Source(s): Allegany, Harford, Montgomery, and Talbot counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2025
js/aad

Analysis by: Donovan A. Ham

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