

# MARYLAND RETAILERS ALLIANCE

*The Voice of Retailing in Maryland*



## **HB1074 Criminal Law - Gift Card Crimes**

**House Judiciary Committee**

**February 18, 2025**

**Position:** Favorable

**Summary:** Prohibiting a person from taking a certain gift card from another or receiving a gift card with the intent to use, sell, or transfer the gift card in a certain manner; prohibiting a person from receiving a gift card that the person knows was lost, mislaid, or delivered under a mistake and retaining possession in a certain manner; prohibiting a person from selling and buying a gift card under certain circumstances; etc.

**Written Comments:** The Maryland Retailers Alliance writes in strong support of **HB1074 Criminal Law – Gift Card Crimes**. Though the Gift Scams Prevention Act of 2024 has established a new packaging regime to help tackle the ever-growing issue of gift card fraud, it does not address the remaining issue that retailers face in situations of gift card theft: retailers struggle to pursue cases against perpetrators of gift card theft under current law because gift cards have no monetary value before they are activated. HB1074 would explicitly prohibit theft of gift cards with the intent to commit fraud, and would categorize such theft as a misdemeanor crime. This would allow retailers, law enforcement, and prosecution teams to further address the issue of gift card scams with the ability to pursue perpetrators of theft.

Gift card fraud can fall into several categories of theft scheme:

1. The perpetrator uses one of several fraud techniques to directly acquire a card, such as using a stolen credit card to buy a gift card.
2. The perpetrator adds an innocent shell to the scheme who is tricked into buying the card with the shell's money.
3. The focus of the fraud switches to stealing an existing card, or the funds thereon, out from under an innocent cardholder.
4. The fraudster attacks the card balance limit by scamming below the limit at retailers who elect not to authorize cards or by fraudulently beating the limit on large purchases.
5. The perpetrator goes straight to the heart of the matter and uses of counterfeit codes or instruments.
6. The card is purchased as a part of illicit or money laundering activities.

7. The fraud's focus is switched from the gift card to identity theft with the perpetrator seeking personal identifiable information on cardholders for later illicit purposes.

Below are additional explanations about the components of these schemes:

- ☐ Fraud Purchaser: When a gift card is procured by fraud the sales transaction may be voidable for fraud. If the matter remains unresolved with the impacted parties during the fraud investigation, then an issuer might consider treating the remaining card liability as void by virtue of fraud. If no card funds were received by the issuer during the fraud, then the issuer might void the liability, debit the card liability and credit the unpaid receivable related to the card purchase. If card funds were received for the card purchase, then the issuer might reclassify the stale liability as a payment obligation to victim and escheat the unclaimed liability to the second priority state. That will remove the liability (without the fraud benefiting the issuer) with the funds being available at the second priority state for those who might claim them.
- ☐ Innocent Shill. When an innocent shill is tricked by a fraudster into purchasing a gift card with the shill's own funds, the card purchase is legitimate to the unknowing issuer. Further, the issuer likely will remain in the dark until after the resultant card liability is used upon completion of the scheme and, thus, in no position to block it. If, however, the card is blocked with funds on it and the shill comes forward during the fraud investigation, then appease the cardholder. Consider allowing the cardholder to use the remaining funds on the blocked card or consider replacing the blocked card with a new card. If the card remains unclaimed by the shill, then consider treating the gift card as a regular gift card obligation owed to the shill with respect to (a) escheating the card if the obligation is subject to escheat or (b) derecognizing the card liability, if escheat does not apply, by debiting the liability using GAAP rules and crediting revenue.
- ☐ Hacker. If a card is blocked and frozen to stop or prevent a fraudster from stealing an existing card or the funds thereon and if the card funds are legitimately claimed later by the rightful cardholder, then appease the cardholder. Consider allowing the cardholder to use the remaining funds on the blocked card or consider replacing the blocked card with a new card. If the card funds remains unclaimed by the cardholder, then treat the gift card as a regular gift card obligation owed to the cardholder with respect to (a) escheating the card if the obligation is subject to escheat or (b) derecognizing the card liability, if escheat does not apply, by debiting the liability using GAAP rules and crediting revenue.

- Balance Manipulator. Typically this type of fraud is designed to and results in a negative card balance. Credit the negative balance and debit fraud expense.
- Counterfeiter. Typically this type of fraud does not result in liabilities appearing on the books of the issuer. Counterfeiters operate off books. If, however, the fraud is sophisticated and the perpetrator is populating liabilities in the system, then the fake transactions can be viewed as void by virtue of fraud. Reverse the liabilities.
- Money Launderer. If card funds were placed on the gift cards, but it happened as part of illicit or money laundering activities, then follow the instructions of the applicable law enforcement authorities. They may request the card be unblocked for tracing purposes. They may also seize the funds as part of the criminal process. If after the investigation, funds remain on the card and not seized by the authorities, then consider treating the gift card as a gift card obligation owed to the cardholder with respect to (a) escheating the card if the obligation is subject to escheat or (b) derecognizing the card liability, if escheat does not apply, by debiting the liability using GAAP rules and crediting revenue. If an issuer desires not to appear as benefiting from revenue derived by derecognition, then consider classifying the obligation as payment obligation to victim and escheat the card to the issuer's second priority state.
- Identity Thief. Typically, identity theft results from an invasion of issuer's data files and, in and of itself, does not create gift card liabilities on the issuer's balance sheet. Process the unwanted invasion as a security matter.
- Is the Block an Expiration Date? The block of a gift card, for legitimate fraud reasons, arguably should not be considered an expiration date, because the rightful card owner is not precluded from gaining access to the underlying card funds if the card owner follows proper protocols to claim the funds. An issuer might consider adding information in its terms-and-conditions or in its tips-on-use advising cardholders about what to do if their card is blocked for fraud.
- What about fraudulent names? When a fake name is used to buy a card (in programs that require names) the ploy sometimes is a nuisance like a cardholder claiming to be Santa Clause from the North Pole. Other times, however, it is serious such as using a stolen name to acquire an instrument. In the former situation, consider proceeding in the ordinary

course without blocking the instrument. In the latter, however, the first category of fraud is in play so consider that course of action. If the escheat path is used to remove the liability, consider ignoring the fraudulent name for the purpose of applying the first priority rule and proceed to escheat to the second priority state. The name arguably is void for fraud instead of being inaccurate or a mistake.

- Can we appease a victim by giving cash? In addition to the appeasement techniques described above, some might ask if an issuer can refund cash to the victim. As a practical matter, the appeasement techniques described above fit the Hacker scenario in that that cardholder wanted the gift card in the first place. The techniques, however, are less conclusive to the Innocent Shill who often never intended to own the gift card for personal purposes. In the Innocent Shill situation, appeasement by cash may be preferable to the victim. This raises questions about whether cash appeasement (in an amount above the state mandated cash back rules) triggers an AML violation. The argument that cash appeasement does not cause an AML problem in this situation is that the cash is being refunded to resolve a dispute over whether the card is void for fraud and should never have existed in the first place. So the payment is not cash back on an existing card. It is cash returned because the card should not have existed.

Because at this time there is very little retailers, law enforcement and prosecutors can do to address these types of crimes, we urge the legislature to take action by supporting this important piece of legislation before you.