

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair
SB 1272 (Laird) – As Amended April 1, 2024

AS PROPOSED TO BE AMENDED

SENATE VOTE: 30-6

SUBJECT: Gift certificates

SYNOPSIS

The gift card industry is valued at over \$899 billion. It's expected to skyrocket to \$2.3 trillion by 2030. Not surprisingly, according to the National Retail Federation, gift certificates were the second most popular gift during the 2023 holiday season with nearly 80% of gift certificates purchased for restaurants, department stores, and coffee shops.¹

There is a myriad of reasons gift certificates go wholly or partially unused—perhaps you don't shop at that store or eat at that restaurant; perhaps you used part of the gift certificate but a balance remains and it's not worth the inconvenience to return to the place of business or maybe you would have to add your own money to the gift certificate balance to purchase another good or service. Unused balances on gift certificates are 100 percent profit for the retailer—money paid for no service or product. A 2023 report by Credit Summit estimates \$21 billion of unspent money is stored on unused gift cards across America.² Fortunately for Californians gift certificates in the state cannot contain an expiration date and any gift certificate with a value or balance under \$10 is redeemable for cash.

This bill increases the cash redeemable amount to \$25 putting more cash back in the wallets of Californians. The suggested Committee amendments update the definition of "gift certificate" to include "electronic gift cards."

Among those in support are Consumer Watchdog, Public Law Center, and California Low-Income Consumer Coalition. California Retailers Association, California Restaurant Association, and the California Chamber of Commerce are among those in opposition.

SUMMARY: Raises the maximum redeemable cash amount of a gift certificate from up to \$10 to \$25, as adjusted for inflation. Specifically, **this bill:**

- 1) Raises the redeemable cash amount of a gift certificate that is redeemable in cash for its cash value to twenty-five dollars (\$25) or less, beginning January 1, 2025.

¹ Durbin, Dee Ann. "The secret life of gift cards: Here's what happens to the billions that go unspent each year," *Los Angeles Times* (Dec. 25, 2023) <https://www.latimes.com/business/story/2023-12-25/the-secret-life-of-gift-cards-heres-what-happens-to-the-billions-that-go-unspent-each-year>.

² Olds, Rebecca. "\$21 billion — the amount of unspent gift cards Americans have collectively," *Deseret News* (Feb. 24, 2023) <https://www.deseret.com/2023/2/24/23613308/americans-have-21-billion-in-unspent-gift-cards/>.

- 2) Adjusts for inflation, beginning January 1, 2026 and annually, thereafter, the maximum redeemable cash value of a gift certificate based on the California Consumer Price index, rounded to the nearest whole dollar.
- 3) Updates the definition of “gift certificate” to include “electronic gift cards.”

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.)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS:

1) **Background.** Gift certificates make gift giving easy for purchasers, either in-store or online, and allow flexibility for recipients to choose their own gift. Retailers benefit from the sale of gift certificates, increased foot traffic, and potential additional spending beyond the value of the original gift certificate purchase. The global gift card industry was valued at \$984.31 billion dollars in 2023 and is expected to reach approximately \$5 trillion by 2033. The U.S. gift card market was approximately \$275.61 billion in 2023 and is predicted to grow to over \$1.5 trillion by 2033.³

2) **Author's statement.** The author notes:

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.

3) **The need for the bill.** 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 17 years since. In fact, the original version of SB 250 sought to make the threshold \$20 but this was lowered in response to opposition.

Recent estimates suggest that there is approximately \$23 billion currently sitting unused on gift cards nationwide and an estimated 47% of Americans with an unused gift card with an average of \$175 per person.⁴ Many large companies calculate a “breakage” amount each year. Breakage describes the dollar amount of gift cards sold that a company is liable for but estimates will ultimately not be redeemed, based on the company's past averages, creating a windfall profit for the business. In 2022, Starbucks reported \$212 million in breakage.⁵

The author argues that raising the redeemable cash back minimum will put more money back in the pockets of consumers, rather than allowing corporations to profit when the intended goods or services were not provided. Given that businesses have been paid \$23 billion for goods and services that consumers have not received combined with the fact that the amount of redeemable balance has not been raised in 17 years, from a consumer protection perspective increasing that amount to \$25 appears reasonable.

4) **Suggested Committee amendment.** The Committee recommends updating the current definition of “gift certificate” to include electronic gift cards. The amendment is as follows:

³ Precedence Research. *Gift Cards Market (By Card Type: Closed-loop Card, Open-loop Card; By End-user: Retail Establishment, Corporate Institutions) - Global Industry Analysis, Size, Share, Growth, Trends, Regional Outlook, and Forecast 2024-2033*. <https://www.precedenceresearch.com/gift-cards-market>.

⁴ Survey: 47% of U.S. adults have at least one unused gift card. Bankrate.com, (Jul 24, 2023) <https://www.bankrate.com/personal-finance/unused-gift-cards-survey/>.

⁵ Durbin, Dee-Ann. “The dark side of the \$30 billion holiday gift card industry: So much money unspent,” *Fortune* (Dec. 26, 2023), <https://fortune.com/2023/12/26/how-many-gift-cards-unspent-holiday-christmas-season-30-billion-industry/>.

1749.45. (a) As used in this title, “gift certificate” includes gift cards *and electronic gift cards*, but does not include any gift card usable with multiple sellers of goods or services, provided the expiration date, if any, is printed on the card. This exemption does not apply to a gift card usable only with affiliated sellers of goods or services.

5) **Related legislation.** SB 250 (Corbett; Ch. 640, Stats. 2007) allowed any gift card, as defined, with a cash value of less than \$10 to be redeemed in cash for its cash value. In addition, it deleted the exemption for food product gift cards or certificates.

ARGUMENTS IN SUPPORT:

The California Low-Income Consumer Coalition writes:

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.

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.

By passing SB 1272, California will get money back into the hands of consumers at a time when every penny counts for families.

Consumer Watchdog writes:

The Consumer Access to Stored Holdings (CASH) Act, which updates a fifteen year old consumer protection allowing consumers to cash out unused gift cards. SB 1272 will put more cash back in the wallets of Californians by increasing the maximum amount redeemable for cash from a gift certificate or gift card from \$9.99 to \$25 with annual adjustments for inflation.

Our organization has long advocated for measures that enhance consumer protections and ensure fairness in commercial transactions. Senate Bill 1272 addresses a significant issue in the gift card industry, where billions of dollars remain unused on gift cards each year, primarily benefiting the issuing companies. By increasing the cash redeemable amount on a gift certificate, this legislation will enable consumers to access the full value of their gift cards, aligning with Consumer Watchdog's goal of empowering consumers and promoting economic fairness

ARGUMENTS IN OPPOSITION:

A coalition of industry associations including California Retailers Association, California Restaurant Association, and California Chamber of Commerce argues:

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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-income Consumer Coalition
Consumer Attorneys of California
Consumer Watchdog
Public Law Center

Opposition

CalAsian Chamber of Commerce
California Chamber of Commerce
California Fuels and Convenience Alliance
California Restaurant Association
California Retailers Association
Los Angeles County Business Federation (BIZFED)
National Association of Theater Owners of California
National Federation of Independent Businesses
San Francisco Chamber of Commerce
The Retail Gift Card Association
Valley Industry and Commerce Association (VICA)

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