

Date of Hearing: April 30, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1428 (Calderon) – As Introduced February 22, 2019

SUBJECT: Business practices: prepaid credit cards: refund choices

SUMMARY: This bill would require a business that offers a refund to a California-based customer via a prepaid debit card to offer the customer a choice among refund formats, such as offering a refund back to the original form of payment. This bill would exclude retail establishments and restaurants from this requirement and provide for various relevant definitions. Specifically, **this bill would:**

- 1) Require a business that offers a refund to a customer located within California via a prepaid debit card to offer the customer a choice among the following refund formats:
 - A refund back to the original form of payment.
 - A refund via a check.
 - A refund via a prepaid debit card.
- 2) Define various terms for these purposes, including:
 - “Accepted debit card” means any debit card which the debit cardholder has requested and received or has signed, or has used, or has authorized another person to use, for the purpose of obtaining money, property, labor, or services. Any debit card issued in renewal of, or in substitution for, an accepted debit card becomes an accepted debit card when received by the debit cardholder, whether the debit card is issued by the same or by a successor card issuer.
 - “Business” means a proprietorship, partnership, corporation, or other form of commercial enterprise. “Business” does not include a retail establishment or restaurant.
 - “Cardholder” means a natural person to whom a prepaid debit card is issued.
 - “Debit card” means an accepted debit card or other means of access to a debit cardholder’s account that may be used to initiate electronic funds transfers and may be used without unique identifying information such as a personal identification number to initiate access to the debit cardholder’s account.
 - “Prepaid debit card” means a debit card that meets either of the following: (a) a card, code, or other means of access to funds of a recipient that is usable at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines; or, (b) the same as those terms or related terms are defined in the regulations adopted under the (federal) Electronic Fund Transfer Act regarding general use reloadable cards.
 - “Refund” means a return of a sum of money to a customer who has overpaid for services or property or is otherwise owed money by the business.

EXISTING LAW:

- 1) Requires every retail seller which sells goods to the public in this state that has a policy as to any of those goods of not giving full cash or credit refunds, or of not allowing equal exchanges, or any combination thereof, for at least seven days following purchase of the goods if they are returned and proof of their purchase is presented, to conspicuously display that policy either on signs posted at each cash register and sales counter, at each public entrance, on tags attached to each item sold under that policy, or on the retail seller's order forms, if any. This display must state the store's policy, including, but not limited to, whether cash refund, store credit, or exchanges will be given for the full amount of the purchase price; the applicable time period; the types of merchandise which are covered by the policy; and any other conditions which govern the refund, credit, or exchange of merchandise. (Civ. Code Sec. 1723(a).)
- 2) Provides that this law does not apply to food, plants, flowers, perishable goods, goods marked "as is," "no returns accepted," "all sales final," or with similar language, goods used or damaged after purchase, customized goods received as ordered, goods not returned with their original package, and goods which cannot be resold due to health considerations. (Civ. Code Sec. 1723(b).)
- 3) Specifies that any retail store that violates this law shall be liable to the buyer for the amount of the purchase if the buyer returns, or attempts to return, the purchased goods on or before the 30th day after their purchase. Violations of this law are subject to remedies provided in the Consumer Legal Remedies Act. (Civ. Code Sec. 1723(c).)
- 4) Provides that the duties, rights, and remedies of this law are in addition to any others provided by state law. (Civ. Code Sec. 1723(c).)
- 5) Governs gift certificates, as defined, to require certain consumer protections related to expiration dates, service fees, and more. (Civ. Code Sec. 1749.45 et seq.) Defines "gift certificates" for these purposes to generally include gift cards, but excludes gift cards that are 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. (Civ. Code Sec. 1749.45(a).)

FISCAL EFFECT: None. This bill has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to ensure consumer choice in refunds when interacting with non-retail establishments that offer refunds in prepaid debit card format. This is an author-sponsored bill.
- 2) **Author's statement:** According to the author, "AB 1428 is a consumer protection measure. Consumers should be issued refunds in a format that is easy to use, without barriers to fully utilizing the funds they are due back. Unfortunately, prepaid debit cards have less regulatory protections than credit cards or gift cards, making them a generally less preferable financial instrument. While there may be some instances where refund via prepaid debit card is preferable – likely for the unbanked consumer – by and large, given the usage restrictions, maintenance fees, and expiration dates, these payment instruments are not favorable to the

consumer. Use of a prepaid debit card as a refunding method is likely intentionally designed to create ‘slippage,’ e.g. a purposefully constructed payment resulting in pay out of less than 100% of the money owed to a customer. AB 1428 seeks to rectify this wrong, not by outright prohibiting a questionable refund practice, but by allowing the consumer to decide what method of refund they prefer.”

- 3) **California law on refund policies:** In 1990, AB 3047 (Bentley, Ch. 422, Stats. 1990) was enacted to require retail stores with a “no refund, exchange or credit refunds” policy on goods sold to the public to conspicuously display that policy on signs either attached to each item sold under that policy, displayed on the store’s retail order forms, or posted at each cash register or each public entrance. Codified at Section 1723 of the Civil Code, that law only affects stores with a policy to either not give full cash or credit refunds or do not give equal exchanges for at least seven days after the purchase of the goods and exempts certain types of goods or services from this notice requirement. Specifically, the law does not apply to: (1) food, plants, flowers, and perishable goods; (2) goods marked “as is,” “no returns accepted,” “all sales final,” or with similar language; (3) customized goods received as ordered, or goods used or damaged after purchase; (4) goods not returned with their original package; or, (5) goods which cannot be resold due to health considerations.

AB 3047 recognized, as reflected in its findings and declarations, that consumers have a right to know the merchandise return policy of retailers before they purchase goods, that the majority of stores allow returns for credit, exchange, or refund, and that consumers have come to expect these kinds of policies from retailers when there is no notice to the contrary. The bill also recognized that consumers aware of inadequate refund policies are better able to make informed buying decisions. At the time, the proponents of the bill, the Department of Consumer Affairs, explained that consumers frequently seek to return purchased merchandise to the store where they purchased it only to discover that the store in question does not permit refunds, returns, or exchanges.

This bill now seeks to address an issue of consumer choice in the form of refund offered, except with respect to retail establishments and restaurants. For purposes of this bill, “retail establishment” means a store, shop, or other premise that is regularly engaged in the business of selling goods or services, or both, directly to consumers from the location. As such, this bill primarily appears to affect online businesses, only. Even telecommunications stores, or internet service providers, with whom consumers arguably interact mostly online or by phone have “retail” locations which could seemingly be sufficient to exempt them from this bill if they are deemed to “regularly engage in the business of selling goods or services” to the consumer. According to the author, the exclusion of brick and mortar telecommunications or internet service providers that have a retail location is not intended in the bill. Staff notes that the author’s office is working on a more precise description of retail establishment with Legislative Counsel, to ensure that these businesses are not unintentionally exempted.

- 4) **Consumer choice in refunds:** Refunds can be issued under a variety of scenarios, such as when a consumer is not satisfied with a particular good or service, when the product is defective, when a consumer changes their mind about a purchase, or even when a consumer has overpaid for a good or service. Most retail stores allow a customer to return items they buy within a reasonable time for a full refund, credit, or an exchange. When a store clearly displays a limited or no-refund policy, however, refunds and exchanges are not required by law. Some stores charge a “restocking fee” if a consumer returns certain types of products

(such as electronics), and others limit cash refunds but may offer exchanges or store credit. Even still, certain items may be “final sale” or “as is” and cannot be returned. Indeed, some stores may have a policy of not accepting returns or exchanges for any products. (*See* Office of Attorney General, *Refund Policies* < <https://oag.ca.gov/consumers/general/refunds> > [as of Apr. 20, 2019].) Further still, some stores require the original receipt and/or original packaging for goods to process a return, while others do not. Some will only process a return in the form of the original payment; others offer only store credit on a store gift card; some provide greater choice which may include cash back, check, credit on the card used to make the purchase, and so forth.

In 2003, AB 1092 (Harmon, Ch. 116, Stats. 2003) responded to concerns about hidden monthly service or maintenance fees on gift cards (*i.e.* funds paid in advance by a consumer to a retailer, in exchange for which goods or services may be received in the future) after the first 12 or 24 months, which could erode nearly all of the retail value of a commonly purchased \$20 gift certificate or card after just one year. That bill, codified at Section 1749.5 of the Civil Code, generally prohibited the sale of retail gift certificates containing maintenance or service fees and clarified that “gift certificate” includes a gift card. That same statute also generally prohibits gift cards from having expiration dates. (*See* AB 2466, Goldsmith, Ch. 933, Stats. 1996.) For purposes of those laws, “gift certificate” includes 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.

Today, an increasingly common form of refund is the prepaid debit card. These can raise issues that some consumers do not think of, until after it is too late. For example, if a consumer makes a purchase on a prepaid gift card that depletes the card, they will often throw that card away. This can become problematic if, upon returning the goods purchased on that card, they return to the store with their receipt and the store returns the money to that card – a card which no longer exists. It is a problem that can be averted if the consumer is provided choice in the refund format, but this choice does not always get offered to them.

Other issues raised by prepaid debit cards are fees and expirations dates, particularly because the definition of “gift certificates” above excludes such cards that can be used with multiple sellers of goods or services. As noted in background from the author, “unlike gift cards, prepaid debit cards may have an expiration date. Additionally, prepaid debit cards may charge a monthly maintenance or service fee. Some transactions may not be permitted, often involving purchases at gas pumps or stipulations that the card only be used at restaurants if the card has enough funds to cover the entirety of the bill and a hold for an anticipated 20% gratuity. These restrictions can often make the card difficult to fully utilize. That difficulty of use, coupled with the monthly maintenance fees and expiration date, inhibit the ability of the customer to fully acquire the refund they were due at the onset.”

According to the author, at the federal level, the Credit CARD Act of 2009 provides general consumer protections for not only credit cards, but for various types of gift certificates, store gift cards, and prepaid cards. At the same time, the author argues those protections only go so far:

Section 401(a)(2)(A) of the Credit CARD Act defines “general-use prepaid card” as “a card or other payment code or device issued by any person that is (i) redeemable at

multiple, unaffiliated merchants or service providers, or automated teller machines” and “(iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.”

However, certain types of general-use prepaid cards may be excluded from the Credit CARD Act’s regulations. Section 205.20(b) states that general-use prepaid cards do not include any card that is “(4) Not marketed to the general public.” There has been no legal opinion as to whether general-use prepaid cards that are issued as refunds fall into this exclusion. If they do, then they would not necessarily be subject to protections found in the Credit CARD Act, such as [those protections relating to] expiration dates or limits to fees for non-usage.

AB 1428 is needed because the current regulatory framework at the federal level is trending toward less oversight of these prepaid debit cards.

Such potential downsides of prepaid debit cards become increasingly problematic if a consumer does not have a choice and the business solely provides refunds in the form of prepaid debit cards. To that end, this bill would provide consumers in California with greater choice in the form of their refund, when interacting with a business that provides refunds in the form of prepaid debit cards. Arguably, as a matter of public policy, in the absence of protections against expiration dates or service or maintenance fees, the bare minimum that should be offered to a consumer is choice.

5) **Arguments in support:** Consumers Union writes in support of this bill, as follows:

Refunds often represent important household funds that families need, and for some, convenient access to these funds is critical. Prepaid cards issued to unwilling recipients can erect barriers between consumers and their money. The barriers may show up as fees or holds or merchants who don’t accept prepaid cards. AB 1428 ensures that consumers can get their money back via the original purchase method, check or prepaid card, providing clear choices and preserving convenient access to the full value they are due.

The federal Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) provides consumers several gift card protections including limits on expiration dates and fees. Specifically, money on store-issued and bank-issued gift cards cannot expire before 5 years from the date of purchase or when money was last loaded onto the card. Also, inactivity fees (fees for not using the card) are prohibited unless cards have not been used for 12 months. Some states – including California – have adopted rules that give consumers protections above and beyond what the CARD Act requires, including a prohibition on inactivity fees until the card has gone unused for 24 consecutive months.

Unfortunately, the types of prepaid cards being provided to consumers for refunds are not covered by these protections, nor are they covered by the new rule protecting general purpose reloadable prepaid cards. Refund cards are not subject to protection under the federal CARD Act, and refund cards that can be used at more than one merchant are exempt from the protections of the California Civil Code. As a consequence, consumers issued prepaid cards for refunds may find that their funds expire, or that fees eat up the balance before they can use them.

Consumers seeking to get their money back from a business should not be forced to accept a prepaid card that may not serve their purpose or that comes with strings attached. Consumers who are issued refunds should be able to conveniently and easily access every penny they are due, and the best way to ensure this is to give consumers a choice of how they get their money. (Footnotes and emphases omitted.)

- 6) **Support if amended:** The Electronic Transactions Association (ETA) writes a “support if amended” letter, stating that the bill “brings a number of compliance challenges as written. ETA agrees that consumer choice is important when receiving a refund. As such, ETA recommends that the bill be amended to instead offer consumer choice of at least one other method of receiving a refund other than a prepaid debit card.” Specifically, ETA suggests the following alternative language to “allow the consumer to be able to make the choice about refund alternatives at any time (not just before the refund is issued)”:

1748.41 - If a business offers a refund to a customer via a prepaid debit card for a purchase initially completed within California, the business shall provide the customer with at least one other method of receiving the refund other than a prepaid debit card.”

Staff notes that it is unclear what “initially completed within California” means, but given the broad application to online companies, this could undercut the effectiveness of the bill depending on its interpretation. Assuming part of the problem is when the original payment is made in the form of cash, the author may wish to continue to work on this issue and consider clarifying that the customer will have the refund options in subsections (b) or (c) (*i.e.* check or prepaid debit card).

- 7) **Prior legislation:** AB 1092 (Harmon, Ch. 116, Stats. 2003) *See* Comment 4.

AB 2473 (Simitian, Ch. 997, Stats. 2002) required the issuer of a gift certificate to honor the gift certificate even if the issuer files for bankruptcy.

AB 2466 (Goldsmith, Ch. 933, Stats. 1996) *See* Comment 4.

AB 3047 (Bentley, Ch. 422, Stats. 1990) *See* Comment 3.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Reports
Electronic Transactions Association (if amended)

Opposition

None on file

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