

Date of Hearing: March 25, 2025

Counsel: Ilan Zur

**ASSEMBLY COMMITTEE ON PUBLIC SAFETY**

Nick Schultz, Chair

AB 710 (Irwin) – As Amended March 18, 2025

**SUMMARY:** Creates four new crimes relating to the theft and forgery of gift cards. Specifically, **this bill:**

- 1) Provides that a person who, with the intent to defraud, acquires or retains possession of a gift card or gift card redemption information without the consent of the cardholder, card issuer, or gift card seller is guilty of theft.
- 2) Provides that a person who, with the intent to defraud, alters or tampers with a gift card is guilty of forgery, punishable by imprisonment in county jail not exceeding one year or imprisonment in county jail for 16 months, two years, or three years.
- 3) Provides that a person who, with the intent to defraud, uses a gift card or gift card redemption information for the purpose of obtaining money, goods, services, or anything else of value that has been obtained in violation of either of the above crimes is guilty of theft.
- 4) Provides that person who, with the intent to defraud, devises a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of false or fraudulent pretenses, representations, or promises is guilty of theft.
- 5) Provides that if the value of all money, goods, services, and other things of value obtained exceeds \$950, the person is guilty of grand theft.
- 6) Defines the below terms as follows:
  - a) “Cardholder” means a person to whom a physical or virtual gift card is issued through a purchase or a person who receives a gift card from a willing party.
  - b) “Card issuer” means a person that issues a gift card or the agent of that person with respect to that card.
  - c) “Gift card” means a physical or digital card, code, or device that is either activated or inactivated and is 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 can be either of the following:
    - i) A closed-loop gift card, meaning that it is redeemable upon presentation by a consumer at a single merchant or group of affiliated merchants; or

- ii) An open-loop gift card, meaning that it is redeemable upon presentation by a consumer at multiple unaffiliated merchants for goods or services within the payment card network.
- d) “Gift card redemption information” means information unique to a gift card that allows the cardholder to access, transfer, or spend the funds accessed by the gift card.
- e) “Gift card seller” means a merchant that is engaged in the business of selling open-loop or closed-loop gift cards to consumers.
- f) “Value” means the greatest amount of economic loss the owner of the property might reasonably suffer, including the full monetary face value of a gift card or the potential value for variable load gift cards.

#### **EXISTING LAW:**

- 1) States that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. Divides theft into two degrees, petty theft and grand theft. (Pen. Code §§ 484, subd. (a), 486.)
- 2) Provides that in determining the value of the property obtained pursuant to the above, the reasonable and fair market value shall be the test, in determining the value of services received the contract price shall be the test, and if there be no contract price, the reasonable and going wage for the service rendered shall govern. (Pen. Code, § 484, subd. (a).)
- 3) Punishes petty theft as a misdemeanor, punishable by fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)
- 4) Defines grand theft as theft of money, labor, real or personal property of a value exceeding \$950, and punishes grand theft as a “wobbler” – subject to imprisonment in county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)
- 5) Provides that in any case involving one or more acts of theft or shoplifting, including but not limited to, shoplifting, theft, and petty theft, the value of property or merchandise stolen may be aggregated into a single count or charge, with the sum of the value of all property or merchandise being the values considered in determining the degree of theft. (Pen. Code, § 490.2.)
- 6) Defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950. Shoplifting is. Shoplifting shall be punished as a misdemeanor. (Pen. Code, § 459.5.)
- 7) Makes it a crime to buy or receive stolen property. If the value of the property is less than \$950, the offense is a misdemeanor punishable by imprisonment in county jail for one year.

If the value of the property is over \$950, the offense is punishable as a “wobbler” – subject to imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489, 496.)

- 8) Provides that a person who has two or more prior convictions for specified theft offenses and who is convicted of petty theft or shoplifting, is punishable by imprisonment in county jail for up to one year, or by 16 months, or two or three years, and makes a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison.. (Pen. Code, § 666.1, subd. (a).)
- 9) Provides that a person that unlawfully possesses property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, where the property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value; and value of the possessed property exceeds \$950, is guilty of unlawful deprivation of a retail business opportunity, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in county jail for 16 months, two years, or three years. (Pen. Code, § 496.6.)
- 10) Provides that any person that: 1) acts in concert with one or more persons to steal merchandise with the intent to sell, exchange, or return the merchandise for value; 2) acts in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen; 3) acts as the agent of another individual or group of individuals to steal merchandise from one or more merchant as part of a plan to commit theft; or, 4) recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake acts of theft, is guilty of organized retail theft. (Pen. Code, § 490.4, subd. (a).)
- 11) Punishes organized retail theft as follows:
  - a) If violations of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds \$950 the offense is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony;
  - b) Any other violation of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,
  - c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony. (Pen. Code, § 490.1, subd. (b).)

- 12) Creates several crimes pertaining to the theft and forgery of debit and credit cards (also known as “access cards”). (Pen. Code, §§ 484e, 484f, 484g, 484h.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Organized criminal networks within California and across the United States are stealing gift cards in bulk from retailers and manipulating gift card packaging to steal the card information. Offenders then stealthily return the cards to store displays and drain the funds after a customer purchases and loads the card with funds.

“Whether you got a gift card for your birthday, from a charitable organization after a disaster, or rely on gift cards due to lack of traditional banking access, every Californian deserves peace of mind when receiving a gift card. We must close loopholes that enable scammers to take advantage of California consumers and sow seeds of distrust in our economy. AB 710 hold organized retail crime networks accountable and ensures that consumers can confidently purchase, share, receive and use their gift cards.”

- 2) **Need for this Bill:** Reports suggest that there is a growing trend where people are stealing gift cards, for the purposes of defrauding consumers. For example, people steal numerous gift cards from a retail business. Upon stealing such cards, they gain access to the gift card or otherwise access redemption information using specified technological equipment, and subsequently return that card to the retail business. Once a consumer purchases the card (i.e. loads the card with a certain amount of funds), the people who stole the card proceeds to utilize the gift card redemption information they have secured to steal the loaded funds directly from the consumer. As stated in a recent report on rising gift card fraud:

Experts say there are numerous ways fraudsters can steal gift card balances before the intended recipients can use them. The cards are often displayed in kiosks on sales floors, allowing scammers to steal them and copy their barcode numbers and PINs or security codes before returning the tampered cards to the store. The thieves then wait for the cards to be purchased and loaded with money by unsuspecting customers before they use the stolen codes and pins to drain the funds from the cards.<sup>1</sup>

- 3) **Effect of this Bill:** AB 710 creates four new crimes specific to the theft of gift cards. Such crimes are in addition to California’s existing theft statutes that, by punishing theft of any property generally, already encompass theft of gift cards.

First, it provides that a person who, with the intent to defraud, acquires or retains possession of a gift card or gift card redemption information without the consent of the cardholder, card issuer, or gift card seller is guilty of theft. Second, it provides that a person who, with the intent to defraud, alters or tampers with a gift card is guilty of forgery, punishable as a “wobbler” – subject to imprisonment in a county jail not exceeding one year, or by

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<sup>1</sup> Mussa, *The gift card industry is booming – and so is related fraud and organized crime*, CBC (March 10, 2025), available at: <https://www.cbc.ca/news/gopublic/go-public-gift-cards-theft-organized-crime-1.7475283>

imprisonment in the county jail for 16 months, two years, or three years. Notably, this new forgery crime would apply irrespective of whether any harm or loss occurs due to such tampering. In effect this purports to treat forgery of a gift card similar to forgery of critical legal documents such as wills, deeds, and records of evidence, as well as akin to credit card fraud. (Pen. Code, §§ 470, 473.)

Third, it provides that a person who, with the intent to defraud, uses a gift card or gift card redemption information for the purpose of obtaining money, goods, services, or anything else of value that has been obtained in violation of either of the above crimes is guilty of theft.

Fourth, it states that person who, with the intent to, defraud, devises a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of false or fraudulent pretenses, representations, or promises is guilty of theft. In practice, this would make it a crime for a person to devise a mental criminal scheme, without requiring any actual action from the offender. As discussed more below, this is inconsistent with fundamental principles of criminal law and can be expected to open this bill up to litigation.

Finally, AB 710 would define “value,” for the purposes of this bill to mean the greatest amount of economic loss the owner of the property might reasonably suffer, including the full monetary face value of a gift card or the potential value for variable load gift cards. As discussed more below, this definition of value is inconsistent with the definitions of value elsewhere in the Penal Code, and can be expected to punish persons for the most potential harm they *could* have caused, even if little to no harm actually occurs.

- 4) **Existing Penalties for Conduct Prohibited by this Bill:** There are numerous criminal penalties that can already be used to address the type of gift card schemes at issue here, many of which were specifically created by the Legislature last year to address concerns of rising retail theft. Further, Proposition 36, which was passed by the voters in November of 2024 established additional penalties for repeat theft violators, and made it easier to prosecute grand theft. Available tools that can be utilized to target gift card theft schemes include the following:

*a) Theft*

A person who feloniously steals or takes away the personal property of another, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. If the value of the property is under \$950, it is petty theft punishable by imprisonment in county jail for one year. If the value of stolen property exceeds \$950, the offense can be charged as grand theft, punishable by imprisonment in a county jail for up to one year, or by imprisonment in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 487, 489, 496.)

Here, a person who steals numerous gift cards from a store, gains access to the gift card redemption information, returns those cards, and subsequently steals money from consumers who have loaded them with money, can be prosecuted for theft in numerous ways. First, the initial theft of the gift cards themselves can be prosecuted as either petty theft, or grand theft, depending on the number of cards stolen. Second, the subsequent theft from consumers, once

they have loaded money onto the cards, can additionally be prosecuted as theft of the consumer's personal property.

Notably, after the passage of Prop 36 in November of 2024, it is now easier for prosecutors to charge persons with grand, rather than petty theft. First, Prop 36 targeted repeat theft offenders, by making a conviction for theft and shoplifting, where that person has two prior theft convictions, punishable by imprisonment in county jail for up to one year or by 16 months, or two or three years; and it made a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison. (Pen. Code, § 666.1, subd. (a).) Here, a person with two priors who is caught stealing gift cards, whether they ultimately defraud consumers or not, can face up to three years in county jail. (Pen. Code, § 666.1, subd. (a).)

Second, Prop 36 made it easier to aggregate the value of stolen property in order to trigger the \$950 grand theft threshold. Previously, the value of stolen property could be aggregated to charge grand theft where the acts were motivated by one intention, one impulse, and one plan. (Pen. Code, § 487, subd. (e).) However, Prop 36 authorized a more generous method of aggregation by stating that, in multiple cases of theft the value of property may be aggregated into a single charge, with the sum of the value of all property or merchandise being the value considered in determining the degree of theft. (Pen. Code, § 490.3.) As such, pursuant to Prop 36's aggregation standard, prosecutors will have greater leeway to aggregate all theft associated with the type of gift card scheme at issue in this bill, making it easier to charge such persons with grand theft.

*b) Organized Retail Theft:*

A person commits organized retail theft where they: 1) act in concert with one or more persons to steal merchandise with the intent to sell, exchange, or *return the merchandise for value*; 2) act in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen; 3) act as the agent of another individual or group of individuals to steal merchandise from one or more merchant as part of a plan to commit theft; or, 4) recruit, coordinate, organize, supervise, direct, manage, or finance another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).) Violations of the above provisions that are committed on two or more separate occasions within a one-year period, and where the aggregated value of the merchandise exceeds \$950, are in most cases punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or a felony.

Here, individuals who act in concert to steal gift cards from a store and subsequently return those cards for the purposes of defrauding consumers can be prosecuted for organized retail theft, as that statute specifically covers the theft of property and the subsequent *return* of such property for value. More importantly, organizing, directing, and financing such gift card schemes is punishable by up to 16 months, two years, or three years in county jail for first time violations under the organized retail theft statute.

*c) Receipt of Stolen Property*

Any persons who receives stolen gift cards for the purpose of gaining access to gift card redemption information and subsequently returning such cards for the purpose of defrauding

consumers can be prosecuted for receipt of stolen property. Under existing law, it is a crime to buy or receive stolen property, knowing the property is stolen. Receipt of stolen property is punishable as a wobbler, depending on the amount stolen. (Pen. Code, §§ 487, 489, 496.) As such, persons who are not directly involved in the theft of gift cards from a retail business, but nonetheless participate by receiving such cards and gaining access to gift card redemption information, can be prosecuted for receipt of stolen property.

*d) Deprivation of a Retail Opportunity*

Gift card fraud schemes can be prosecuted under the specific statute of deprivation of a retail business opportunity. The statute provides that a person that unlawfully possesses property acquired through one or more acts of theft from a retail business, where the property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value, and value of the possessed property exceeds \$950, is guilty of unlawful deprivation of a retail business opportunity, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the county jail for 16 months, two years, or three years. (Pen. Code, § 496.6.)

This statute is particularly applicable to the type of gift card schemes at issue because it targets unlawful possession of property that is stolen from a retail business, where the property is not possessed for personal use, and the person has intent to return the merchandise for value. Here a person who possesses hundreds of stolen gift cards that have not yet been loaded with funds will undoubtedly meet the requirement that they are not possessing the property for personal use. Further, to be convicted of this crime a person does not actually need to return the merchandise for value, but simply requires intent to do so.

*e) Retail Crime Restraining Orders*

Retailers now have statutory authority to petition for retail crime restraining orders, prohibiting persons convicted of specified theft offenses from entering the premises of a retail establishment, and such orders may be valid for up to two years. (Pen. Code, § 490.8, subd. (a).) These specifically apply to shoplifting, any theft from a retail establishment, and any organized retail theft. Given that the type of gift card scheme at issue here can already be prosecuted as theft as well as organized retail theft, a person who steals gift cards from a retail business may be subject to up to two year restraining order, a violation of which is a misdemeanor.

*f) Sentence Enhancements.*

Additionally, a person who steals gift cards, where the ultimate value of the amount stolen exceeds \$50,000, can be subject to additional sentence enhancements created by Prop. 36. Specifically, Prop. 36 provided that, if a person takes any property in the attempted commission of a felony, or commits a felony violation including receiving stolen property, the court shall impose additional sentence enhancements of between one year and four years, depending on the value of the property taken. (Pen. Code, § 12022.6.) Here, given the proposed method of valuating gift cards in this bill, a person who steals or receives hundreds of stolen gift cards could not only be prosecuted with felony grand theft but also could be subject to multi-year enhancements, even if no consumers are ultimately defrauded.

Given the significant effort the Legislature has made in recent years to provide prosecutor's with tools to prosecute organize theft, and increase punishments associated with such theft, the need for this bill is unclear.

- 5) **Conspiracy for Organized Gift Card Schemes:** The author cites the concern that persons who steal hundreds of gift cards with the intent defraud consumers, but are caught before they are able to do, will not be adequately held accountable. Specifically, they cite the concern that the market value of hundreds of cards, which are not loaded with any money, will be under \$950, in which case such persons cannot be charged with grand theft. But persons who steal hundreds of gift cards, but are caught prior to returning the gift card to stores and defrauding consumers, may be charged with conspiracy or attempt to commit all the aforementioned crimes.

A conspiracy to commit a crime requires an agreement between two or more people to commit a crime, where one or more persons commits an overt act to further that agreement. (Pen. Code, § 182.) Notably, a conspiracy to commit a felony (e.g. felony grand theft, felony organized retail theft, felony deprivation of a retail opportunity, felony receipt of stolen property, etc.) is punished “in the same manner and to the same extent as provided for the punishment of that felony.” (*Ibid.*) Further, for persons that conspire to commit two or more felonies, which have different punishments, and the commission of those felonies constitute one offense of conspiracy, the penalty is the felony with the greater maximum term. (*Ibid.*) As such, where a person is caught stealing hundreds of gift cards, law enforcement may secure search warrants to identify evidence demonstrating intent to commit the type of gift card scheme at issue here, enabling prosecutors to charge such persons with conspiracy to commit the aforementioned crimes. Additionally, while this bill intends to target organized gift card schemes, in the case of a person without co-conspirators, prosecutors can charge that person with attempt to commit the aforementioned crimes.

- 6) **Constitutional Concerns:** Two provisions of this bill authorize disproportionate punishments such that they can reasonably be expected to open this bill up to litigation.

First, a core principal of criminal law, is that every crime, except for strict liability offenses, “has two components: (1) an act or omission, sometimes called the *actus reus*; and (2) a necessary mental state, sometimes called the *mens rea*.” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) This bill would make it a crime for a person to intend to defraud and to devise a specified scheme. This would not require any actual action by the defendant. For example, a person who plans in their head how to steal gift cards would be guilty of theft under this bill, even if their mental plan resulted in no physical act of any kind. Such an intent-only crime, absent any action, is inconsistent with a core criminal law principle. As previously noted, conspiracy and attempt are available for persons with the requisite intent and who take some actions to complete those crimes, even if the crime itself is not ultimately committed.

Second, AB 710 proposes a new method of valuating stolen property that purports to punish persons who steal gift cards that have not been loaded with money, for theft of the maximum possible value had the cards been loaded with the maximum possible amount. Specifically, it defines “value” to mean “the greatest amount of economic loss the owner of the property *might reasonably suffer*, including the full monetary face value of a gift card or the *potential value for variable load gift cards*.”



This punishes persons not for the harm they caused, but the most potential harm they could have caused, undermining the constitutional principle of proportionate punishment. The Eight Amendment of the U.S. Constitution outlines this proportionality, prohibiting “imposition of a sentence that is grossly disproportionate to the severity of the crime.” (*Ewing v. California* (2003) 538 U.S. 11, 21.) Here, a person who is caught stealing 101 gift cards that have not been purchased or loaded with any actual money, where the maximum amount of money that can be added to each card is \$500, could be prosecuted for \$50,500 worth of theft, punishable by up to four years of incarceration (up to three years for grand theft, plus an additional one year under the sentence enhancements). Alternatively, a person who steals two gift cards that could be loaded with up to \$500, that are each loaded with \$10 by subsequent purchasers, instead of being prosecuted for the \$20 that was stolen, could be prosecuted for theft of \$1,000 and punished by up to three years in county jail.

In addition to constitutional and fairness concerns, this method of valuating property is inconsistent with how property is valued for the purposes of theft of other types of property. Specifically, in determining the value of stolen property under California law “the reasonable and fair market value shall be the test, in determining the values of services received the contract price shall be the test, and if there be no contract price, the reasonable and going wage for the service rendered shall govern.” (Pen. Code, § 484, subd. (a).)

- 7) **Reports of Exaggerated Losses by Retailers:** Some complaints of retail theft have been overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department’s data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year.<sup>2</sup>

Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation and might be a key reason why we’re seeing any theft bump at all. Things have become expensive – “we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole.” Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins.<sup>3</sup>

What’s more, the National Retail Federation has not solidified any data around increased

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<sup>2</sup> See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <<https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html>> ; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <<https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>>; CNN Business, *‘Maybe We Cried Too Much’ Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <<https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <<https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>>.)

<sup>3</sup> (Freight Waves, *What’s Behind the Reports of ‘Unprecedented’ Retail Theft* (Oct. 2023). Available at: <<https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <<https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-rises-on-grocery-inflation>>.)

rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. “Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionately affect marginalized people.”<sup>4</sup>

From 2020 to 2021, the number of news stories covering smash-and-grab incidents nearly doubled. However, the information available does show that the vast majority of shoplifting is not committed by mobs of people.<sup>5</sup>

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

Notably, consumers are still facing the negative impact of the pandemic’s price hikes, as the Commission’s report finds that some in the grocery [including drug stores] retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated today.

Retail stores actually saw significant profits over the past few years despite claims that stores are losing profits as a result of theft and other market forces.<sup>6</sup>

Finally, the Federal Bureau of Investigation (FBI) data on crime statistics reports that crime is actually down nationwide by a significant margin – contributing to the conclusion that the crime rate was a temporary phenomenon brought on by the pandemic and rapidly escalating costs for basic goods and services.<sup>7</sup>

- 8) **Argument in Support:** According to the *California District Attorneys Association*, “As you are aware, sophisticated thieves are increasingly targeting gift cards due to their ease of transferability and resale. These thefts are costly to consumers and retailers. And, though current law already penalizes various forms of access card fraud, AB 710 is a necessary and timely update to explicitly criminalize theft and fraud of gift cards.

“AB 710 is a necessary legislative update that targets a modern method of financial fraud and theft. The bill aligns with existing theft and forgery statutes but will improve current provisions by specifically criminalizing fraudulent possession, alteration, and misuse of gift cards. In this way AB 710 will strengthen consumer protection and prosecutorial effectiveness in addressing retail crime.”

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<sup>4</sup> (CNBC, *Companies say organized retail crime is on the rise, but there’s no data to prove it.* (Aug. 2023). Available at < <https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>>.)

<sup>5</sup> (Council on Criminal Justice, *Shoplifting Trends: What You Need to Know* (Nov. 2023) Available at: <<https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>>.)

<sup>6</sup> Federal Trade Commission, “*Feeding America in a Time of Crisis, The United States Grocery Supply Chain and the COVID-19 Pandemic*” (March 21, 2024).

<sup>7</sup> FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <<https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>>.)

- 9) **Argument in Opposition:** According to *Californians United for a Responsible Budget*, “AB 710...would create multiple new criminal offenses for gift card theft and forgery. This legislature should protect small businesses and consumers from gift card scams. However, AB 710 needlessly expands the Penal Code without providing the protection Californians deserve.

“Instead of AB 710, the legislature should follow the model set by other states and pass smarter, tailored solutions that will keep our communities safe and thriving. For example, New Jersey requires sellers to train employees to identify and mitigate gift card scams, and New York passed a law to alert customers of potential gift card scams and ways they can protect themselves against fraud. Most importantly, legislators can target the heart of the problem by requiring gift card sellers to distribute gift cards with improved and secure packaging, as Maryland legislators did.

“First, AB 710 is unnecessary because existing laws already cover these crimes. The four new proposed gift card crimes are already punishable under California’s larceny statute, and the proposed new forgery crime is already punishable under the existing forgery and counterfeiting statute. Adding redundant statutes will further complicate the Penal Code without addressing any gaps in enforcement. Research is clear that lengthening sentences does not effectively deter crime—in this case, few people are likely to know about this obscure law change, let alone factor it into their actions.

“Second, AB 710’s overbroad language risks inflating the prison population. For example, under this bill, a person who “devises a scheme to obtain a gift card” could be sentenced to prison. This implies that the intent to steal a gift card—with no corresponding action—could be penalized, contradicting one of the most basic protections in criminal law, namely that someone cannot be punished for their thoughts alone.

“Additionally, AB 710 redefines the threshold for felony theft (\$950) by basing convictions on “what one might reasonably suffer,” including “the potential value” of the gift card. Research shows retail theft penalties disproportionality harm Black and Latinx people, thus AB 710 risks exacerbating racial disparities in the criminal legal system.

“All Californians deserve thriving local economies, and both businesses and customers deserve to be protected from gift card scams. But adding a redundant law will waste taxpayer resources without addressing people’s real concerns. Instead, we need proven solutions that prevent crime like empowering employees and increasing awareness of gift card scams.”

**10) Prior Legislation:**

- a) AB 2943 (Zbur), Chapter 168, Statutes of 2024, creates a new crime of unlawful deprivation of a retail business opportunity and make various changes to provisions of law on arrest authority, aggregation, and probation terms for theft-related offenses.
- b) AB 3209 (Berman), Chapter 169, Statutes of 2024, allows a court to issue an order prohibiting a person from being present on the grounds of, or any parking lot adjacent to and used to service, a retail establishment and any other retail establishments in that chain or franchise, as specified.

- c) AB 1802 (Jones-Sawyer), Chapter 166, Statutes of 2024, eliminates the sunset date for the crime of organized retail theft and for the existence of a taskforce established by the California Highway Patrol to analyze organized retail theft and vehicle burglary and to assist local law enforcement in counties identified as having elevated property crime.
- d) AB 1960 (Soria), Chapter 220, Statutes of 2024, re-enacts a sentence enhancement for felony offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts, but lowers the amounts to below 2017 levels when the enhancement sunset.
- e) SB 982 (Wahab), Chapter 982, Statutes of 2024, bill removes the sunset date on the provision of law that criminalizes organized retail theft, thereby making the operation of the law permanent.
- f) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.
- g) AB 329 (Ta), of the 2023-2024 Legislative Session, would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.
- h) AB 2356 (Rodriguez), Chapter 22, Statutes of 2022, expanded the definition of “grand theft” where the aggregate amount taken by all participants exceeds \$950.
- i) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from \$950 to \$400. AB 1603 failed passage in this Committee.
- j) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.
- k) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

**REGISTERED SUPPORT / OPPOSITION:****Support**

California Attractions and Parks Association  
California Business Properties Association  
California Chamber of Commerce  
California District Attorneys Association  
California Grocers Association  
California Retailers Association  
California State Sheriffs' Association  
National Association of Theatre Owners of California  
Nfib California

San Bernardino County District Attorney's Office  
San Diego County District Attorney's Office  
San Francisco District Attorney Brooke Jenkins  
Tri County Chamber Alliance  
Ventura County District Attorney's Office

**Oppose**

ACLU California Action  
All of Us or None Los Angeles  
California Attorneys for Criminal Justice  
California for Safety and Justice  
Californians United for A Responsible Budget  
Ella Baker Center for Human Rights  
Initiate Justice  
Initiate Justice Action  
Justice2jobs Coalition  
LA Defensa  
Legal Services for Prisoners With Children  
Local 148 Los Angeles County Public Defender's Union  
San Francisco Public Defender  
Silicon Valley De-bug  
Smart Justice California, a Project of Tides Advocacy  
Vera Institute of Justice

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