

ASSEMBLY THIRD READING

AB 710 (Irwin)

As Amended March 18, 2025

Majority vote

SUMMARY

Creates four new crimes relating to the theft and forgery of gift cards.

Major Provisions

- 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.

COMMENTS

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."

Arguments 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."

Arguments 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."

FISCAL COMMENTS

Unknown.

VOTES

UPDATED

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