

BILL ANALYSIS

C.S.H.B. 3014

By: Lambert

Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that while gift card fraud can take several forms, an increasingly common and pervasive form is card tampering, which is the act of compromising a gift card package to steal sensitive information and then placing the package back into stores to be sold to consumers. While the Penal Code currently contains various fraud offenses, the code doesn't specifically address the fraudulent use or possession of gift cards or gift card redemption information. C.S.H.B. 3014 seeks to address this issue by creating an offense involving this conduct, thereby giving law enforcement the ability to press charges if a suspect acquired possession of gift cards or gift card redemption information without the consent of the card holder, issuer, or seller.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3014 amends the Penal Code to create the offense of fraudulent use, possession, or tampering with a gift card, gift card packaging, or gift card data or redemption information for a person who does the following with the intent to harm or defraud another:

- acquires or retains possession of a gift card, a digital imprint, or gift card redemption information without the consent of the cardholder, card issuer, or gift card seller;
- alters or tampers with a gift card or gift card packaging;
- possesses, transports, uses, or attempts to use a gift card, a digital imprint, or gift card redemption information to obtain goods, services, or anything else of value with knowledge that the gift card is a counterfeit gift card or that the gift card, digital imprint, or gift card redemption information has been obtained in violation of the bill's provisions; or
- transports an unactivated gift card into a retail location that sells gift cards and places or attempts to place the gift card on a gift card rack, kiosk, or other display in a manner that would entice the public to purchase the gift card.

The bill establishes that, if an actor possesses three or more gift cards, counterfeit gift cards, or digital imprints or the gift card redemption information obtained from three or more gift cards, it is a rebuttable presumption that the actor possesses each item without the consent of the cardholder, card issuer, or gift card seller. The bill makes that rebuttable presumption

inapplicable to a business or other commercial entity or a governmental agency that is engaged in a business activity or governmental function that does not violate a state penal law.

C.S.H.B. 3014 establishes penalties for the offense ranging from a state jail felony to a first degree felony depending on the number of unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards involved. If conduct that constitutes an offense under the bill's provisions also constitutes an offense under any other law, the actor may be prosecuted for either offense or both.

C.S.H.B. 3014 defines the following terms for purposes of the offense:

- "cardholder" as a person to whom a physical or virtual gift card is given or any person who purchased the gift card;
- "card issuer" as any person that issues a gift card or the agent of that person with respect to the card;
- "counterfeit gift card" as a gift card that, as follows:
 - purports on the front or back of the card to have been issued by an issuer that did not issue the card;
 - has been altered to contain a digital imprint other than that which was placed on the card by the issuer;
 - contains a digital imprint with account or other information differing from that which is printed or embossed on the card; or
 - has been altered to change the account or other information, including an image or code, on the front or back of the card from that which was printed or embossed on the card by the issuer;
- "digital imprint" as the digital data placed on a gift card's magnetic strip or chip;
- "gift card" as a card, code, or device that is issued to a consumer on a prepaid basis in a specified amount and redeemable upon presentation for the purchase of goods or services and that is either activated or inactivated;
- "gift card redemption information" as information unique to each gift card that allows the cardholder to access, transfer, or spend funds on the gift card; and
- "gift card seller" as a merchant engaged in the business of selling gift cards to consumers.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3014 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced and the substitute both create an offense but differ with respect to the conduct that constitutes that offense as follows:

- the substitute includes the following among such conduct, which the introduced did not:
 - acquiring or retaining possession of a digital imprint without the consent of the cardholder, card issuer, or gift card seller; and
 - altering or tampering with gift card packaging;
- whereas the introduced included among that conduct using or attempting to use a gift card or gift card redemption information to obtain an item of value with knowledge that the card or information has been obtained without the requisite consent, the substitute includes among that conduct possessing, transporting, using, or attempting to use a gift card, a digital imprint, or gift card redemption information to obtain an item of value with knowledge that the gift card is counterfeit or that the card, imprint, or information has been obtained without the requisite consent; and

- the substitute includes among such conduct transporting an unactivated gift card into a retail location that sells gift cards and places or attempts to place the gift card on a display in a manner that would entice the public to purchase the gift card, which the introduced did not include.

The substitute accordingly changes the name of the offense from fraudulent use or possession of a gift card or gift card redemption information, as in the introduced, to the fraudulent use, possession, or tampering with a gift card, gift card packaging, or gift card data or redemption information.

Whereas the introduced established penalties for the offense ranging from a Class C misdemeanor to a first degree felony depending on the value of the gift card, gift cards, or gift card redemption information involved, the substitute establishes penalties ranging from a state jail felony to a first degree felony depending on the number of unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards involved.

The substitute includes provisions, absent from the introduced, that do the following:

- establish a rebuttable presumption that an actor possesses each applicable item without the consent of the cardholder, card issuer, or gift card seller;
- make that rebuttable presumption inapplicable to certain businesses or other commercial entities or governmental agencies;
- establish that, if conduct that constitutes an offense under the bill's provisions also constitutes an offense under any other law, the actor may be prosecuted for either offense or both; and
- define the terms "counterfeit gift card" and "digital imprint" for purposes of the offense.