

## **BILL ANALYSIS**

Senate Research Center

S.B. 1809  
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Criminal Justice  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Gift card fraud has been on the rise, with criminals exploiting various methods to illegally obtain or use gift cards. This includes stealing gift card numbers, tampering with physical cards, and using stolen credit card information to purchase gift cards. Such activities not only result in financial losses for consumers and businesses but also undermine consumer confidence in using gift cards as a secure method of payment. The bill seeks to address these issues by creating specific offenses and penalties, thereby providing law enforcement with the tools needed to prosecute offenders effectively. Gift cards are often targeted by fraudsters due to their monetary value and the ease with which they can be transferred and used. By establishing clear legal definitions and penalties for fraudulent actions involving gift cards, the bill aims to protect consumers, card issuers, and merchants from financial losses and to uphold the integrity of the gift card market.

SECTION 1: The amendment to Penal Code Subchapter D, Chapter 32 introduces a new section, 32.56, to the Texas Penal Code, which specifically addresses fraudulent activities involving gift cards.

Section. 32.56: Fraudulent Use or Possession of Gift Card or Gift Card Redemption Information:  
Subsection (a): Definitions

- (1) "Cardholder": Defined as the person who receives or purchases a gift card, whether physical or virtual.
- (2) "Card issuer": The entity or its agent that issues the gift card.
- (3) "Gift card": A prepaid card, code, or device redeemable for goods or services, which can be either activated or inactivated.
- (4) "Gift card redemption information": Unique information that allows access to the funds on a gift card.
- (5) "Gift card seller": A merchant who sells gift cards to consumers.

Subsection (b): Offenses

A person commits an offense if they, with intent to harm or defraud:

- (1) acquire or retain a gift card or redemption information without consent from the cardholder, card issuer, or gift card seller.
- (2) alter or tamper with a gift card.
- (3) use or attempt to use a fraudulently obtained or altered gift card to obtain goods, services, or anything of value.

Subsection (c): Penalties

The penalties for offenses are based on the value of the gift card(s) involved:

- (1) Class C Misdemeanor: If the value is less than \$100.
- (2) Class B Misdemeanor: If the value is \$100 or more but less than \$750.
- (3) Class A Misdemeanor: If the value is \$750 or more but less than \$2,500.
- (4) State Jail Felony: If the value is \$2,500 or more but less than \$30,000.
- (5) Third Degree Felony: If the value is \$30,000 or more but less than \$150,000.
- (6) Second Degree Felony: If the value is \$150,000 or more but less than \$300,000.
- (7) First Degree Felony: If the value is \$300,000 or more.

S.B. 1809 Committee Substitute:

It broadens the applicability to include tampering with gift card packaging.

It adds two definitions for the following terms: "counterfeit gift card" and "digital imprint."

It further defines the offense to include: possession and transportation of stolen gift cards, gift card redemption information or counterfeit gift cards; possession of the unlawfully obtained data stored on the digital imprint of a gift card; and the transport of an un-activated gift card or gift card redemption information into a retail location with the intent to display it for sale.

Adds a rebuttable presumption related to possession of three or more gift cards and related items.

Changes the penalty structure from a value-based penalty (based on the monetary value of the gift cards stolen) to the punishment being linked to the number of items the actor unlawfully possesses. The base penalty is a state jail felony for possession of less than five items involved.

Adds prosecutorial discretion for the offense.

S.B. 1809 amends current law relating to the creation of the offense of fraudulent use, possession, or tampering with a gift card, gift card packaging, or gift card data or redemption information.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 32, Penal Code, by adding Section 32.56, as follows:

Sec. 32.56. FRAUDULENT USE, POSSESSION, OR TAMPERING WITH GIFT CARD, GIFT CARD PACKAGING, OR GIFT CARD DATA OR REDEMPTION INFORMATION. (a) Defines "cardholder," "card issuer," "counterfeit gift card," "digital imprint," "gift card," "gift card redemption information," and "gift card seller."

(b) Provides that a person commits an offense if the person, with the intent to harm or defraud another:

(1) 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;

(2) alters or tampers with a gift card or gift card packaging;

(3) 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 Subdivision (1); or

(4) 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.

(c) Provides 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, a rebuttable presumption exists that the actor possesses each item without the consent of the cardholder, card issuer, or gift card seller.

(d) Provides that the presumption established under Subsection (c) does not apply 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 penal law of this state.

(e) Provides that an offense under this section is:

(1) a state jail felony if the actor engaged in conduct described by Subsection (b) with respect to fewer than five unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards;

(2) a felony of the third degree if the actor engaged in conduct described by Subsection (b) with respect to five or more but fewer than 10 unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards;

(3) a felony of the second degree if the actor engaged in conduct described by Subsection (b) with respect to 10 or more but fewer than 50 unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards; or

(4) a felony of the first degree if the actor engaged in conduct described by Subsection (b) with respect to 50 or more unactivated gift cards, counterfeit gift cards, or digital imprints or gift card redemption information of gift cards.

(f) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 2. Effective date: September 1, 2025.