



GOV. MSG. NO. 687

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 2289 HD2 SD1 CD1

On July 6, 2010, House Bill No. 2289, entitled "A Bill for an Act Relating to Gift Certificates" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to amend Hawaii's gift certificate law by (1) extending the minimum expiration date on certain gift certificates from two to five years; (2) conforming Hawaii's definition of "gift certificate" to the definition under federal law; and (3) permitting issuers of gift certificates to charge a limited activation fee.

I support extending the minimum expiration date on gift certificates and conforming Hawaii's definition of "gift certificate" to the federal definition as these amendments have the potential to benefit consumers. However, I question permitting gift card issuers to charge an activation or issuance fee for the purchase of a gift card. Currently, such fees are prohibited under Hawaii law. This bill does limit the fee to the lesser of ten percent of the face value of the certificate or \$5, and requires the fee to be disclosed in advance.

I understand the fees will cover some of the cost of producing, shipping and marketing gift cards. Nevertheless, I would have preferred that the current total prohibition on fees be kept intact, as Hawaii consumers deserve to have their money go towards the items that may be purchased with the gift cards, and not fees imposed by the card issuers.

The Honorable Colleen Hanabusa, President
and Members of the Senate
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For the foregoing reasons, I allowed House Bill No. 2289 to become law as Act 195, effective July 6, 2010, without my signature.

Sincerely,



LINDA LINGLE

ACT 195

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2289
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO GIFT CERTIFICATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that on May 22, 2009,
2 President Obama signed into law the Credit Card Accountability,
3 Responsibility, and Disclosure Act of 2009 (which may be cited
4 as the Credit CARD Act of 2009), which imposes sweeping changes
5 to credit card industry practices and includes important
6 provisions that create new federal regulation of the issuance
7 and sale of gift cards, gift certificates, and open-loop prepaid
8 cards. The new law applies to both issuers and sellers of
9 prepaid stored value products and sets minimum fees, expiration
10 limits on prepaid products, and requires certain disclosures to
11 consumers in connection with fees and expiration dates.
12 Notably, the Credit CARD Act of 2009 does not apply to
13 traditional paper gift certificates, but generally would apply
14 to plastic cards and other payment codes or devices, including
15 standard gift cards as well as so-called "open-loop" prepaid
16 cards, such as those commonly issued by banks and usable over
17 Visa, MasterCard, American Express, Discover, or similar payment
18 networks.

HB2289 CD1 HMS 2010-3290



1 Key provisions of the Credit CARD Act of 2009, relating to
2 gift cards include:

- 3 (1) Fees may not be imposed unless there has been no
4 activity for at least a twelve-month period prior to
5 the date of the fee;
- 6 (2) Only one fee may be charged per month;
- 7 (3) Gift cards must remain valid for at least five years;
8 and
- 9 (4) Permitted fees and expiration dates must be
10 conspicuously disclosed.

11 There are several exemptions that include telephone
12 services products, promotional cards, paper gift certificates,
13 and products for event or venue admission, which take effect on
14 August 22, 2010. The Credit CARD Act of 2009 also requires the
15 Federal Reserve Board to issue rules it considers necessary to
16 carry out the Act.

17 The legislature further finds that it is in the best
18 interests of consumers in the State of Hawaii to adopt some of
19 the key provisions of the Credit CARD Act of 2009. The purpose
20 of this Act is to adopt these protections in Hawaii's laws.

21 SECTION 2. Section 481B-13, Hawaii Revised Statutes, is
22 amended as follows:



1 1. By amending subsections (a) and (b) to read:

2 "(a) Any restaurant or person engaged in the business of
3 offering services or goods for sale at retail may allow
4 customers to purchase gift certificates [~~;~~ ~~provided that the~~
5 ~~certificate issuer shall honor the certificate for a period of~~
6 ~~at least two years from the date of issuance~~]. A certificate
7 issuer shall not charge a service fee, including but not limited
8 to a service fee for dormancy or inactivity. Any activation or
9 issuance fee charged shall not exceed the lesser of ten per cent
10 of the face value of the certificate or \$5.

11 (b) The date of issuance and the expiration date shall be
12 clearly identified on the face of the gift certificate, or, if
13 an electronic card with a banked dollar value, clearly printed
14 upon a sales receipt transferred to the purchaser of the
15 electronic card upon the completed transaction. The expiration
16 date shall be not less than [~~two~~] five years after the date of
17 issuance [~~-~~]; provided that the expiration date of certificates
18 issued only in paper form shall be not less than two years after
19 the date of issuance. If the gift certificate does not have an
20 expiration date, it shall be valid in perpetuity."

21 2. By amending subsection (e) to read:



1 "(e) As used in this section, unless the context requires
2 otherwise:

3 "Certificate issuer" or "issuer" means a restaurant or a
4 person engaged in the business of offering services or goods for
5 sale at retail who sells gift certificates to customers.

6 "Gift certificate" or "certificate" includes any electronic
7 card with a banked dollar value where the issuer has received
8 payment for the full banked dollar value for the future purchase
9 or delivery of goods or services, any certificate where the
10 issuer has received payment for the full face value of the
11 certificate for future purchases or delivery of goods or
12 services, and any other medium that evidences the giving of
13 consideration in exchange for the right to redeem the
14 certificate, electronic card, or other medium for goods, food,
15 or services of at least an equal value. "Gift certificate" or
16 "certificate" does not include a card, certificate, or other
17 medium that is:

- 18 (1) Used solely for telephone services;
19 (2) Reloadable and not marketed or labeled as a gift card,
20 gift certificate, or certificate;
21 (3) A loyalty, award, or promotional gift card;
22 (4) Not marketed to the general public; or



1 (5) Redeemable solely for admission to events or venues at
2 a particular location or group of affiliated
3 locations, which may also include services or goods
4 obtainable:

5 (A) At the event or venue after admission; or

6 (B) In conjunction with admission to such events or
7 venues, at specific locations affiliated with and
8 in geographic proximity to the event or venue.

9 "Service fee" means a periodic fee, charge, or penalty for
10 holding or use of a gift certificate, but does not include a
11 one-time initial activation or issuance fee."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2010.

APPROVED this day of , 2010

GOVERNOR OF THE STATE OF HAWAII

