

HB

314

HD1

A BILL FOR AN ACT

RELATING TO GIFT CERTIFICATES.

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

1 SECTION 1. Section 481B-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§481B-13 Gift certificates.** (a) Any restaurant or
4 person engaged in the business of offering services or goods for
5 sale at retail may allow customers to purchase gift
6 certificates. A certificate issuer shall not charge a service
7 fee, including but not limited to a service fee for dormancy or
8 inactivity. Any activation or issuance fee charged shall not
9 exceed the lesser of ten per cent of the face value of the
10 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 five years after the date of
17 issuance; provided that the expiration date of certificates



1 issued only in paper form shall be not less than two years after
2 the date of issuance. If the gift certificate does not have an
3 expiration date, it shall be valid in perpetuity.

4 (c) For any gift certificate with a remaining balance less
5 than \$5, the certificate issuer shall redeem the remaining value
6 of the gift certificate for cash.

7 [~~e~~] (d) Gift certificates that are issued as part of an
8 awards, loyalty, or promotional program, or to a not-for-profit
9 charity organization, where no money or anything of value is
10 given to the issuer by the consumer in exchange for the gift
11 certificate, are exempt from this section; provided that the
12 expiration date, if any, appears on the gift certificate or
13 accompanying printed receipt.

14 [~~d~~] (e) Any violation of this section shall constitute
15 an unfair or deceptive act or practice in the conduct of trade
16 or commerce within the meaning of section 480-2.

17 [~~e~~] (f) As used in this section, unless the context
18 requires otherwise:

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



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

- 13 (1) Used solely for telephone services;
- 14 (2) Reloadable and not marketed or labeled as a gift card,
15 gift certificate, or certificate;
- 16 (3) A loyalty, award, or promotional gift card;
- 17 (4) Not marketed to the general public; or
- 18 (5) Redeemable solely for admission to events or venues at
19 a particular location or group of affiliated
20 locations, which may also include services or goods
21 obtainable:



- 1 (A) At the event or venue after admission; or
- 2 (B) In conjunction with admission to such events or
- 3 venues, at specific locations affiliated with and
- 4 in geographic proximity to the event or venue.

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

8 SECTION 2. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 3. This Act shall take effect on January 1, 2112.



Report Title:

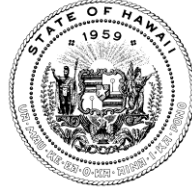
Gift Certificates; Cash Redemption

Description:

Requires a certificate issuer to redeem the remaining value of a gift certificate for cash if the gift certificate has a value less than \$5. (HB314 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Wednesday, February 20, 2019
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 314, H.D. 1, RELATING TO GIFT CERTIFICATES**

Chair Takumi and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this bill.

The purpose of this bill is to require a certificate issuer to redeem the remaining value of a gift certificate for cash if the gift certificate has a value of less than \$5.

Currently, 12 states have laws requiring that a merchant issue cash on unused gift certificate balances. Favorable consideration of this measure will allow Hawaii to join other states in requiring gift certificate issuers to provide cash to consumers if the remaining certificate balances amount to less than \$5.

Thousands of Hawaii consumers received gift certificates during the recent holiday season. Although many certificates had just a few dollars remaining on the balance, most merchants did not provide the remaining cash to consumers but instead returned certificates with balances that will probably go unused or forgotten or become

lost. Many consumers simply do not regard a gift certificate with a small balance worth the effort to carry around. This is supported by statistics issued by Consumer Reports, which reported that billions of dollars are left unspent and unredeemed on gift certificates in the United States each year.

Hawaii law mandates that balances left on unredeemed gift certificates do not belong to the merchant. Rather, the balances remaining after the expiration dates must escheat to the State as unclaimed property under Hawaii Revised Statutes section 523A-9. Consequently, requiring merchants to provide cash to consumers does not deprive them of anything they are entitled to and in fact facilitates the disposition of funds that might otherwise have to be turned over to the State as unclaimed.

This measure will help ensure that consumers receiving gift certificates obtain their full benefits. Thank you for the opportunity to testify on this bill.



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TO:
Committee on Consumer Protection and Commerce
Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 20, 2019
TIME: 2pm
PLACE: Conference Room 329

RE: HB314 Relating to Gift Certificates

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

HFIA is in opposition to this measure requiring an issuer of a gift certificate to redeem the remaining value of the gift certificate for cash if it has a value of less than \$5. Creating and issuing gift cards incurs expenses for retailers and in many cases retailers are charged a fee for processing a gift card, similar to credit card processing. Small retailers often use third party providers for gift cards and are not reimbursed for the card until after it is redeemed. Retailers also do not charge fees on gift cards. For retailers this bill would essentially reduce the value of all gift cards by \$4.99, this could pose a significant loss for retailers and trying to manage this change would also create an accounting and administrative burden.

Many gift cards currently on the market can be purchased at one location and used at a different place. The amount of gift cards is also frequently up to the seller, with reloadable cards that can have their value set at as little as a penny. Buyers could theoretically buy gift cards, set the value at just under \$5 and redeem them for cash, which is not the intent of gift certificates.

Mandating that retailers must give cash for a gift card when the value drops below \$5 creates the potential for a loss on each gift card they issue. This creates a financial burden and risk for retailers and discourages them from offering gift cards to their customers. For these reasons we ask that this measure be held.



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To: Rep. Roy M. Takumi, Chair
 Rep. Linda Ichiyama, Vice Chair
 Members of Committee on Consumer Protection & Commerce

From: Victor Lim, Legislative Lead
 Hawaii Restaurant Association

Subj: HB 314 HD 1 Relating to Gift Certificates

Date: February 16, 2019

We at the Hawaii Restaurant Association representing over 3,500 restaurants in Hawaii opposes HB 314 HD 1 requiring the business that issuer of the Gift Certificate/Gift Cards with a remaining balance of less than \$ 5 for cash.

For a high end retailer or restaurant this bill might work but for many of the businesses that also cater to the lower end of the price range on merchandise and foods, this poses a major problem especially if you sell many items at the \$ 1 or \$2 range, be it a pack of gum, a shave ice, or a cup of coffee or drink.

At many of the quick service restaurants, the \$ 5 denomination gift card is quite popular where many people buy them to give to students so that they are used to foods. If the purchase is more than what's the value on the card, the customer can supplement the balance with cash so that the value of the card is fully utilized. These cards are also reloadable.

This bill will create an operational nightmare for many of the quick service restaurants that sell a lot of these reloadable gift cards at the \$ 5 increment level.

Thank you very much for giving us this opportunity to share our views with your committee and please let us know if you have further questions on this.

Aloha.





**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 20, 2019**

Re: HB 314 HD1 Relating to Gift Certificates

Good afternoon Chairperson Takumi and members of the House Committee on Consumer Protection and Commerce. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

While we understand the intent of this measure, RMH is in opposition to HB 314 that would require a certificate issuer to redeem the remaining value of a gift certificate for cash if the gift certificate has a value of less than \$5.

Retailers will honor gift cards to their stores for amounts as low as 1 penny. We are seeing a change from gift certificates to gift cards to now E-gift cards that can be sent to or downloaded onto smart phones and customers will have it with them provided they remember to bring their phone.

Most store and restaurant gift cards and certificates already state that they are non-refundable and non-returnable. Some store policies do not give cash refunds when merchandise is returned without a receipt and put the balance on a gift card. Retailers take the merchandise back in good faith that it was in fact purchased from that store, but without a receipt we cannot be certain it was in fact purchased at that store.

This cash back would also apply to FREE gift cards that companies give away as promotions. Many companies do not distinguish between the FREE gift cards and the gift cards people purchase. To create new cards to distinguish between the two would cost a retailer a substantial amount of money.

Many retail stores carry items that can be purchased for \$5 or less with the use of a gift card or an E-gift card. Most retailers today issue gift cards whose amounts are determined by the purchaser. Some can be loaded for as little as 1 penny to \$1, \$10, \$100 or more. Many of these gift cards are also able to be reloaded and do not have expiration dates. This bill would allow people gift cards in the amounts of \$5 or less to redeem for cash without purchasing an item.

In addition there are also third party resellers who have gift card malls for other company's restaurant, attractions, retail, home improvement... This would be like the rack of gift cards you see at grocery stores for movies, online merchants and more. Under this measure, the gift card could be purchased at a 3rd party location and then have cash redeemed at the business associated with the gift card and not where it was originally purchased.

Furthermore, while many gift cards can be used to make purchases only at a specific retail store, some gift cards are actually reloadable prepaid cards that are similar to debit cards and lets the customer not only make purchases at any retail store that accepts that card network but also can be used to withdraw cash at ATMs, banks as well as used on web features such as bill pay.

We respectfully request that you hold this measure. Mahalo again for this opportunity to testify.