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SB 760: Maryland Regulated Retail Display of ‘Closed-Loop’ Gift Cards

Go-To Guide

- On Sept. 24, 2024, Maryland Gov. Wes Moore signed **SB 760** into law.
- Beginning Oct. 1, 2025, Maryland merchants selling prepaid gift cards redeemable only at their stores must display fraud warnings, use tamper-proof packaging, and train employees on fraud prevention.

SB 760¹ adds several requirements to Maryland’s Consumer Protection Act that implement new safeguards aimed at preventing gift card fraud.

This GT Alert discusses requirements related to the sale of “closed loop” gift cards, defined as cards issued to consumers on a prepaid basis and redeemable on presentation only at the merchant’s store(s). (See discussion at end of this Alert regarding “open loop” cards usable with multiple different merchants.) When selling a closed loop gift card in a Maryland retail store, the merchant must

- display warning language “at or near” the point of sale to caution consumers about potential scams,
- comply with specific packaging requirements to prevent tampering, and

¹ Acts 2024, Ch. 463; MD. CODE ANN., COM. LAW §§ 14-4601 – 14-4606

- provide instruction to employees engaged in the sale of such cards, all as further described below.

A. Warning Language ‘At or Near’ the Point of Sale

The merchant must conspicuously display a warning notice at or near the physical location where the gift card is displayed for sale, or where the sale occurs. The notice must

- i. caution consumers about gift card scams,
- ii. instruct consumers what to do if they suspect they are a victim of a gift card scam, and
- iii. indicate that the gift card may not be used to pay debt.

The Maryland Division of Consumer Protection will publish a model notice, which merchants are encouraged to adopt. As of this writing, the model notice has not yet been published.

B. Gift Card Packaging Requirements

Gift cards generally must be enclosed in packaging not easily removed or replaced without signs of tampering. Additionally, the packaging must either

- i. fully conceal all numeric codes specific to the card’s redemption, or
- ii. partially conceal all such codes if the card can be made more secure through partial (rather than full) concealment.

Such packaging must also display the following suggested warning:

“DO NOT SELL OR PURCHASE IF PACKAGING HAS BEEN BROKEN OR INDICATES TAMPERING.”

While merchants can use language that is “substantially similar” (rather than identical) to the suggested warning, the Maryland Division of Consumer Protection recommends they adopt the language exactly as displayed to help avoid any potential dispute about the disclosure’s validity.

Packaging Exception: Chip-Enabled Cards

In the case of chip-enabled gift cards – i.e., cards without a displayed numeric code that become enabled via registration on the card issuer’s website – the above packaging requirements can be avoided if the cards meet the following conditions:

- i. the card must be sold exclusively by the merchant, or a group of affiliated merchants, for use only at the retail store(s) of the merchant(s); and
- ii. the card must be secured in a physical location within the merchant’s retail store that only the merchant’s employees can access.

C. Training Requirement

Merchants offering closed loop gift cards must provide training to all employees whose duties regularly include selling such cards, including instruction on how to identify and respond to gift card fraud. The Maryland Division of Consumer Protection will publish the exact nature and content of this required instruction, but as of this writing, specific instructional requirements have not yet been published.

Risks and Penalties of Non-Compliance

Businesses should be wary of government enforcement efforts. Violating the new statute may constitute an unfair, abusive, or deceptive trade practice, which might result in penalties under the Maryland Consumer Protection Act – including restitution and injunctive relief – and the possibility of state attorneys’ fees and costs. (See, e.g., MD. CODE ANN., COM. LAW §§ 13-402, 13-046). Consumer class actions may also be brought alleging violation of the law.

Takeaways

Companies offering closed-loop gift cards for sale in Maryland should review their packaging and marketing materials to ensure conformity with the requirements outlined in the law. Such companies should also monitor publications from the Maryland Division of Consumer Protection for further detail regarding the model warning notice and instructional requirements for employees.

‘Open Loop’ Gift Cards

SB 760 includes additional requirements for the sale of “open loop” gift cards, which are redeemable with multiple, unaffiliated merchants operating within that payment card’s network. Any seller of such cards should review the law carefully to understand the separate requirements applicable to “open loop” cards.

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