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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 6212

ENTITLED, AN ACT RELATING TO COMMERCIAL LAW – GENERAL REGULATORY PROVISIONS – GIFT CARD FRAUD

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender opposes HB6212, which would subject perpetrators of offenses involving gift cards to the penalties of larceny and/or forgery. While we understand the goal of protecting consumers from scams, we do not believe this legislation effectively achieves it, and may have unintended consequences. Much of the conduct that the bill seeks to criminalize is already covered by existing statutes. More troubling, however, are the provisions that impose severe penalties for actions that may not constitute theft at all.

Section (a) of the proposed bill states that “[a]ny person who, with intent to defraud, acquires or retains possession of a gift card . . . without the consent of the cardholder, card issuer, or gift card seller” is guilty of larceny. This conduct is already covered under existing larceny laws—stealing a \$50 gift card is no different than stealing \$50 in cash.

This section also prohibits acquiring “gift card redemption information” without consent, again with intent to defraud. This provision presumably aims to target people who steal gift card balances by doing the following:

1. Acquiring the gift card redemption information from the card;
2. Tracking the card online to find out when it has been activated; and
3. Redeeming the gift card before the person to whom the card was issued does.

However, the bill as proposed criminalizes the conduct at step one—merely acquiring the information—before any loss has occurred. If a person never uses the card redemption information, no theft has taken place, and the cardholder has suffered no harm.

Additionally, proposed section (b) makes it a forgery offense—punishable by up to ten years in prison—to alter or tamper with a gift card with intent to defraud.¹ Again, this section could punish a person for victimless conduct. If an individual scratches off the sticker covering the

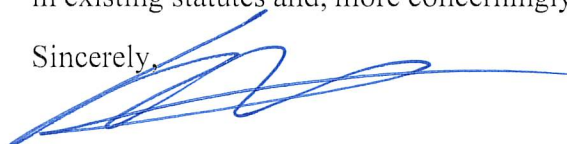
¹ We would also note that the proposed amendment in section 6-59-1 defines “forgery” as “any person who, with the intent to defraud, alters or tampers with a gift card.” (Emphasis added.) The drafters presumably intended to define the crime itself, rather than the person who committed it.

redemption information of a not-yet-activated gift card, they have arguably tampered with it, but if they do not follow through with recording or using the information to redeem the gift card, no fraud or loss occurs.

Subsection (c) of the proposed bill covers conduct that is already proscribed by R.I.G.L. § 11-52-2, entitled "Access to computer for fraudulent purposes." Finally, the bill's proposed definition of "cardholder" in § 6-59-1 may not include gift-card recipients, since it only references those to whom the card is "issued" or who agree to pay obligations arising from its issuance.

In conclusion, while we understand gift cards scams are a growing concern, our office believes that HB6212 is not the right solution. The bill criminalizes conduct that is already covered in existing statutes and, more concerningly, reaches conduct that results in no actual theft or harm.

Sincerely,



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