

Hearing testimony – John M. Abel re: Public Hearing - April 30 - HB 1977 and HB 2186 (The Consumer Protection, Technology, and Utilities Committee)

Good morning Chairmen Matzie, Marshall and Members of the Consumer Protection and Utilities Committee.

My name is John Abel. I am the Chief Deputy Attorney General and Director of the Bureau of Consumer Protection within the Office of Attorney General. On behalf of our office, I would like to thank you for inviting us here today to speak about two pending House bills that go a long way to enhance consumer protection for all Pennsylvanians. The Attorney General's Office, and the Bureau of Consumer Protection in particular, is committed to fighting for Pennsylvania consumers and is always looking for ways to improve the current laws. This office believes that full and fair disclosure to consumers is an important part of consumer protection and these bills are instrumental in letting consumers know about fees and warning consumers about gift card scams.

I will first discuss HB 1977 which would amend the Pennsylvania Unfair Trade Practices and Consumer Protection Law by requiring the disclosure of fees for credit or debit card transactions. This amendment would make it illegal for a business to fail to conspicuously display or otherwise clearly disclose any surcharge, fee or fine relating to a credit card or debit card transaction. We agree that consumers should know upfront that these fees will be charged. Consumers will then have the option to go ahead with the purchase or consider other means to purchase the product or service at issue. This not only helps the consumer, but would aid the business to make sure its customers are happy and are not otherwise confused.

In our view, this type of conduct would already be considered a violation of what we call the catchall found at Section XXI of the current law that prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. We would not oppose a belt and suspenders approach to make it clear that these disclosures are required as a matter of law. We would suggest placing any new prohibition after the existing subsection XXI – the so-called catchall - since we have many references to it and it could be confusing to lawyers and the public if it were renumbered.

Let me now turn to HB 2186 that is aimed at preventing gift card scams.

We greatly appreciate this effort to try and prevent these scams which at times appear to approach epidemic proportions here in Pennsylvania. We hear practically every day about consumers who lose much money in getting caught up in some sort of gift card scam where the perpetrator (often who is outside of our jurisdiction) is having a consumer go to a retailer and buy gift cards to be paid as part of a broader scam, such as the so-called Grandparents or Romance Scam. One way to address this scam, as the legislation wisely seeks to do, is to provide prominent written warning signs inside retail stores, in hopes that consumers might read them before they buy the gift cards at the urging of scammers. The idea is that every step helps; a warning to a consumer at the front end informing purchasers whom to contact if they believe they might be victim to such a scam is a positive measure. The proposed legislation would require these notices both at the physical location where the gift cards or gift certificates are displayed, as well as at all points of sale.

Our office has been active in this area addressing the problem of gift card scams. For instance, our office worked with Walmart, Target and Best Buy and those companies agreed to make major changes to their gift card policies. The most common changes were:

- **Reduction in Gift Card Limits** – Retailers significantly reduced both the monetary limit that can be placed on an individual gift card and the total amount that can be loaded onto gift cards during the same transaction.
- **Restrictions on Redemption of Retail Gift Cards for Other Gift Cards** – Retailers placed new restrictions on the redemption of their retail gift cards for third party cards such as iTunes, Steam, or Google Play. Scammers often use the proceeds of fraud to purchase these third party cards because they can be resold on the black market.
- **Enhanced Employee Training** – Retailers committed to enhancing employee training to help their employees identify the warning signs of gift card scams and warn potential victims when appropriate.

Additionally, the Bureau of Consumer Protection has established a specialized rapid response Scam Team that consists of five full-time employees. To our knowledge, we are the only state with such a team that immediately jumps on a scam complaint in an attempt to assist the consumer. Once a complaint or call comes in, the team contacts the victim right away to reassure them and assist with completing complaint forms and collecting relevant documents. The Scam Team then contacts and communicates with the various gift card issuers or administrators as well as retailers that sold the gift cards. In some instances, we have been successful in getting the retailer to refund the victim. As an example:

- Consumer received a call alleging fraudulent charges on his Amazon account. Consumer does not have an Amazon account. The call was then transferred to an imposter posing as the “FBI” and “CIA” who alleged consumer’s social security number had been used in connection to federal crimes and fraudulent bank

accounts which were involved in drug smuggling and money laundering. Scammer threatened to suspend consumer's social security number and told him he would lose all his assets for 9 years. In order to take care of this matter the consumer needed to purchase gift cards and to go to his bank and remove cash. Consumer then went to the store and purchased 20 store cards at two different self-checkouts on the same day. The scammer instructed the consumer to tell employees, if questioned, the cards were for the consumer's employees. Unfortunately, the consumer was not questioned by any employees. The consumer then read the gift card numbers to the scammer. After the consumer filed a complaint with our Scam Team, one of our Agents contacted the retailer. In this case, the store issued a full refund to consumer for \$9,985.

The Scam Team also plays an active part in educating the public by conducting outreach events regularly and often in collaboration with other law enforcement agencies.

Despite our efforts, gift cards do continue to be a major source of financial harm to Pennsylvania consumers. In the last 12 months, nearly 300 consumers filed complaints with our office with a loss of over \$1.2M resulting from scams involving gift cards.

Given this background, this office supports the provision requiring all retailers to provide clear signage. We also support that this office provide such model signage.

The proposed legislation also wisely requires retailers to train all managers on how to identify and respond to gift card fraud, specifically laying out what that training should include. The Bureau believes that such responsibility should remain with the retailers, as opposed to this

office developing training for them. As a matter of policy, this office as a law enforcement body does not typically provide legal advice to businesses. If the Bureau ends up being responsible for model training, then some retailers may see the training as a way to “off-load” their responsibility for preventing scams. The retailer has the resources and is on the front line of this scam and as such is in a better position to implement and update any necessary training. Therefore, we would suggest that the provision requiring this office to provide “model training” be stricken from the proposed legislation.

It is also important that this law would only stand as a “floor” as to what businesses must do to prevent gift card scams under the PA Unfair Trade Practices and Consumer Protection Law. To that end, we suggest that instead of this tiered enforcement approach set forth in Section 9.5(f)(i)-(5), that the legislation simply state that failure to comply with these provisions shall be deemed to be a violation of the PA Unfair Trade Practices and Consumer Protection Law.

Thank you for this opportunity to speak with you this morning. I would be happy to answer any questions.



April 25, 2024

Chairman Matzie, Chairman Marshall and Honorable Members of the House Consumer Protection, Technology and Utilities Committee,

On behalf of the member companies of the Pennsylvania Retailers' Association (PRA), thank you for allowing us to submit written testimony regarding **HB 2186**. The prevention of gift card fraud is of extreme importance to retailers, and should this legislation become law, PRA and our member companies stand ready to work with the Attorney General's Bureau of Consumer Protection to raise awareness and formulate a model training program for retailers across the Commonwealth.

I am happy to report that most, if not all PRA member companies have already actively engaged in a multi-layered and comprehensive approach to combating fraud, including training store associates and deploying the latest prevention technology.

The types of training vary, with the use of both written materials and in-person training. Some retailers also provide online training, with testing for proficiency that includes a review/retake if not passed the first time. For many, these trainings occur upon hire as part of the onboarding process, and some retailers have annual/seasonal refresher training courses.

The topics in training typically cover all types of pre-paid cards (i.e. open and closed loop, cellular, gaming, other brands); the current trends in the fraud landscape - what to watch for/patterns of behavior, prevention tactics and ways to help victims if they come into stores; the varying types of scams; how to report to law enforcement; know when to ask a manager for help, and how to handle escalation.

Additional best practices that many retailers already engage in are point of sale (POS) prompts at certain dollar levels; warnings on cards and packaging; limits on how much can be purchased in a day or in a transaction; manager approval required for higher purchases, and signage as well as staff reminders. However, it is important to note, one of the most important best practices retailers engage in is to not alert criminals to every layer of security used to thwart their efforts.

With regard to the legislation as currently written, we do respectfully request consideration be given to amending the signage requirement. The bill requires retailers to, "clearly and conspicuously post the notice required under subsection (a) **at or near the physical location** where gift cards or gift certificates are displayed for sale **and at all points of sale.**" Depending on numerous factors (retail category, size of store, number of associates, etc.) clearly no two retailers are alike. And as already stated, most if not all PRA members have already begun to address this issue, including signage and POS prompts, and should be allowed some flexibility. A simple, "clear and conspicuous" standard is all that is needed for a signage requirement.

Again, thank you for the ability to submit written testimony on this important matter, and please do not hesitate to reach out with any questions you may have at john@paretailers.org or on my cell at (609) 213-6866.

Sincerely,

John Holub
Executive Director