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GOLDEN STATE REPORT

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DATES TO REMEMBER

- CRA Annual Meeting
July 17, 2007, Sacramento
- Last Day for Bills to Clear Policy Committee
July 13, 2007
- Legislature's Summer Recess
July 20, to August 20, 2007
- Last Day for Bills to Clear Fiscal Committee
August 31, 2007

LEGISLATIVE UPDATE

AB 722, Levine, received lots of publicity once the press discovered the legislation that would ban **sale of incandescent light bulbs**. However, it was amended last week to remove the ban on sales, and now requires that lumens-per-watt energy efficiency standards be phased in between 2010 and 2016.

AB 1108, Ma, originally prohibited sales of products containing bishphenol A (BPA), which is in **hard plastics** such as baby bottles and toys, and phthalates, which are in **soft plastic products** such as shower curtains, baby bath books and rubber duckies. We were successful in getting BPA removed entirely from the bill, and it now relates only to phthalates. CRA still opposes the bill because, while some of the categories of phthalates have been phased out of certain products, there are other chemicals in the phthalate category that have been cleared for safety by federal sources. CRA is also a plaintiff in a lawsuit against the City of San Francisco alleging its passage of an ordinance banning sale of phthalate-containing children's products was preempted by federal law.

SB 250, Corbett, would require **gift certificates** under \$20 to be redeemable in cash. Also, under current law,

gift certificates for food products may have expiration dates on them—SB 250 would have removed that provision. However, the author has reinstated it, solving one of our issues. There are rumors the author may reduce the threshold to \$10. The bill passed the Senate Floor this week 24-15, a 3-vote margin of victory. The Assembly Business and Professions Committee will hear the bill on June 12.

SB 388, Corbett: This bill would prohibit an entity that issues a card with an **RFID** tag or an item with an RFID tag, *that is capable of being scanned for personal information*, must provide disclosures including 1: a statement about authentication or encryption used to safeguard the information; 2) the information that is transmitted to the RFID scanner upon scanning; and 3) steps a recipient may take to prevent unauthorized access or scanning of the card or item. While some retailers are using RFID, none are apparently using RFID tags that contain personal information and thus would not be affected by this bill. The bill barely passed the Senate last week—the final vote was 22-17. 21 votes were needed.

AB 779, Jones, which would require

retailers to reimburse financial institutions for the cost of reissuing credit cards after a **retailer's data breach**, passed the Assembly 58-2, and now goes to the Senate. CRA remains strongly opposed.

AB 1673, Feuer, would require retailers to discount **rebates** to the customer at point of sale and seek reimbursement from the manufacturer directly. The bill passed the Assembly on a 42-31 vote, a bare majority of 1 vote, with bipartisan opposition. The bill now goes to the Senate.

SB 974, Lowenthal, the **cargo fee** bill, passed the Senate, as expected, June 6, on a 22-12 vote.

AB 97, Mendoza, was amended to extend the proposed **trans fat ban** to 2010 for all products except fried dough and cake batter products and 2012 for those fried dough and cake batter products (doughnuts primarily). It also now preempts local governments from adopting their own versions of trans fat bans. While CRA members would prefer no ban at all, the change to a later effective date and the addition of statewide preemption is so positive that we will remove our opposition and now be neutral on the bill.

STATE TO ADOPT PLASTIC BAG RECYCLING REPORTING REGULATIONS

The state Integrated Waste Management Board will adopt, on June 12, emergency regulations to implement AB 2449 of last year, which requires **supermarkets and pharmacies over 10,000 square feet**, to have recycling bins for customer return of plastic carryout bags, and a program to ensure the bags are indeed sent out for proper recycling.

The regulations will require retailers, as of **July 1** of this year, to keep records on the weight of plastic bags received by the retailer, and, at the back end, the weight of all plastic film (bags and other plastics) sent for recycling. The invoices from your bag suppliers should contain the front-end weight information (or you can add it to your contract), and the weight of all plastic recycled at the back end can be accounted

for by your distribution centers, your wholesalers, your recyclers, or your own back-room staff. We assured that the regulations do NOT require you to count or in any way separate out bags from the rest of the plastic you recycle---other plastic put in the bins by customers, as well as shrink wrap and other plastic generated by the store. Our thanks to members Walgreen's, Raley's and Safeway for participation in the development of the regulations to assure they are not burdensome. The only problem now is timing---the Board wants stores to begin recordkeeping **July 1**, but since that is only two weeks after adoption of the regulations, it is aware that this is logistically impossible. As soon as the regulations are finalized and adopted, we will be sending them out.

LOCAL ISSUES

~The **San Francisco** ordinance banning sale of **children's products containing bisphenol A** has been rescinded and signed by the Mayor. This is a result of the lawsuit brought by CRA, the American Chemistry Council and others---the lawsuit spurred the City to voluntarily rescind its ban and the suit will be dropped.

~No news on the **plastic bag ban**---the first one applicable to ALL store types---in **Oakland**. The bag manufacturers have engaged a local political consultant, and an effort is underway to coordinate the small businesses in the City that are adversely affected by the proposed ban: small grocers, restaurants, and dry cleaners. Because CRA members are mostly large businesses, we have been asked to remain outside the political fight, but remain on call to help if necessary.

~There will be a meeting with **San Francisco** Supervisor Alioto-Pier to discuss an ordinance requiring stores that sell **cough and cold products** to post a sign warning parents about use of these products in children under age 2, on June 14th. CRA will be in attendance and our goal is to assure that any sign requirement is not burdensome, is reasonable, and does not impute any liability to the seller.

THE GIFT THAT KEEPS ON TAKING: HOW RETAILERS CAN PREVENT GIFT CARD FRAUD

by Erica Shelley Nelson

Burnham Brown, Associate Member of CRA

Gift cards have become an easy and profitable way for retailers to increase revenue. However, as gift cards become more common in the marketplace, the potential for fraud increases. This article not only provides information about how retailers can deter gift card fraud and reduce company losses, but also dispels some myths about the prevalence of gift card fraud in the retail industry.

There are three general types of gift card fraud: data theft, data planting, and check-out scams. Additional gift card fraud scams include stealing credit cards and using them to purchase prepaid gift cards. (This credit card scam recently led to six arrests and approximately \$8 million in reported losses to WAL-MART and issuing banks).

1. **Data Theft:** This type of gift card fraud involves copying data from unsold cards and using a retailer's website or 800-number to check the status of the card. When the gift cards are purchased or money added, the thieves use the data to buy goods online or to create counterfeit cards.

2. **Data Planting:** Data planting involves cloning already purchased cards and planting them in stores. When the cloned cards are activated, the money is transferred to the thief's card.

3. **Check-Out Scams:** Check-out scams are typically carried out by employees and often require insider knowledge or access. In this situation, the cashier pretends the card is empty or not activated and persuades the customer to give the cashier the "worthless" card. In another type of check-out scam, the cashier may pocket activated cards at the register and give customers look-alike cards.

These are just a few of the methods thieves and dishonest employees use to commit gift card fraud. Nevertheless, retailers play an integral role in preventing gift card fraud and losses. Measures can be taken to prevent gift card fraud, including protecting the gift card itself; utilizing good controls at point of sale; and educating and screening employees.

Protecting the Gift Card

One of the principal ways retailers can curb gift card fraud is by protecting the security of the gift card itself by using tamper-resistant packages, encrypted magnetic strips, and scratch-off codes and numbers. Additional methods include storing blank gift cards in an area where gift cards are more visible, and making sure employees review card stocks for missing cards.

Good Controls at Point of Sale

Because gift cards are a form of tender, the point of sale is often where fraud occurs. As a result, retailers should be particularly cognizant about the controls used at point of sale, and specifically aware of how the point of sale issues, redeems, cashes and activates gift cards. Typical problems and solutions are:

Problem 1: Allowing activation of the gift card once the card is scanned but before the transaction has been tendered and completed.

Solution: *Confirm tender.* Fraud can be avoided by confirming tender before placing value on the card. (This ensures the gift card is not purchased with a stolen credit card or bad check).

Problem 2: Post-voiding a transaction, or shutting down the register in the middle of a transaction. Dishonest employees may use either of these methods to steal activated cards from their employer.

Solutions: *Institute point of sale exception reporting.* This allows retailers to compare incoming point of sale data with an established base of data, typically developed by the loss prevention team. This assists

the retailer in identifying transactions that might indicate fraud or loss.

Implement a *thorough employee screening process*. By protecting the gift card and implementing good controls at point of sale, retailers are taking necessary steps in protecting themselves from gift card fraud.

Educate and Screen Employees

Retailers should also educate their employees about gift card fraud and implement proper screening mechanisms to weed out thieving employees. Popular screening measures identified in the recent Retail Security Survey, described below, include verification of past employment history, criminal conviction checks, and multiple interviews. Further screening measures include checking personal references, drug testing, and credit history checks.

The Reality of Gift Card Fraud

Although gift card fraud should be a concern to retailers, the reality is that losses due to gift card fraud actually represent a small percentage of overall losses. In 2005, the University of Florida conducted a National Retail Security Survey, which was sponsored by the National Retail Federation the ASIS Foundation, Tyco, ADT, and Stored Value Systems, and included 156 responding retail chains representing 30 different retail markets, including discount stores; men's and women's apparel retailers; supermarkets and grocery stores; home centers, hardware, and lumber stores. The participating retail chains ranged from very small, one-company stores, to very large, 7,700 company stores with multi-billion dollar sales.

The survey found that gift card sales are on the rise, with average gift card sales over \$100 million in 2005. The survey also tracked company losses due to gift card fraud. According to the 75 responding retailers, an average total of \$72,900.74 is lost each year to gift card fraud.

The survey revealed that gift card losses are significantly higher among the 60 percent of retailers whose

gift cards can have value added to them after the initial purchase. Consequently, the average losses for addable value v. one-time use gift cards are \$99,238.66 vs. \$25,245.81, respectively. Retailers estimate that 62 percent of gift card losses are attributable to dishonest employees; 13 percent to counterfeit or skimmed cards; and 13 percent to stolen cards. This survey demonstrates that gift card fraud constitutes a small portion of company losses. Nonetheless, retailers should still be aware of the various types of gift card fraud and the best ways to prevent these types of company losses.

The reality is that as gift cards become more popular, there is a greater potential for fraud. Retailers play a large role in the whole process and can actively deter gift card fraud and dramatically reduce associated company losses by adopting certain measures, such as gift card protection, good controls at point of sale, and screening and educating employees.

E-MAIL SCAM ALERT

The law firm of Fulbright & Jaworski L.L.P. reports that several of its clients have received e-mail that appears to come from the IRS. The e-mail declares the recipient to either be the subject of a criminal investigation or be entitled to a refund. Both types of e-mail direct the recipient to a website where they are asked to give personal information.

These e-mails are not from the IRS. They are designed to get personal information from the recipient. In some cases, the e-mails have attachments or ask the recipient to click on a website that installs software to allow a person to have remote access to the e-mail recipient's computer.

If you receive such an e-mail, do not open any attachments or click on the website link. The IRS asks that you forward it to phishing@irs.gov. More information is available from the IRS at <http://www.irs.gov/individuals/article/0,,id=155344,00.html>.