



# Senate

General Assembly

**File No. 192**

January Session, 2009

Substitute Senate Bill No. 925

*Senate, March 25, 2009*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING GIFT CERTIFICATES AND ESTABLISHING A RETAIL GIFT CARD AND CERTIFICATE GUARANTY FUND.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2009*) (a) As used in this section  
2 and section 2 of this act, "gift card" or "gift certificate" shall have the  
3 same meaning as "gift certificate", as defined in subdivision (5) of  
4 section 3-56a of the general statutes, as amended by this act.

5 (b) No owner of an establishment that sells goods, food or services  
6 to the public at retail, or agent of such owner, shall issue a gift card or  
7 gift certificate without having paid to the Connecticut Retail Gift Card  
8 and Certificate Guaranty Fund the annual fee established pursuant to  
9 section 2 of this act.

10 (c) A violation of any provision of this section shall constitute an  
11 unfair or deceptive practice under subsection (a) of section 42-110b of  
12 the general statutes.

13       Sec. 2. (NEW) (*Effective October 1, 2009*) (a) The Commissioner of  
14 Consumer Protection shall establish and maintain the "Connecticut  
15 Retail Gift Card and Certificate Guaranty Fund" in accordance with the  
16 provisions of this section.

17       (b) On October 1, 2009, and annually thereafter, each owner of an  
18 establishment that sells goods, food or services to the public at retail,  
19 or agent of such owner, shall pay a fee of twenty-five dollars for each  
20 such establishment, subject to the provisions of subsection (k) of this  
21 section. Such payments shall be made annually to the fund established  
22 pursuant to subsection (a) of this section, except that the  
23 Commissioner of Consumer Protection may assess a reduced fee if, on  
24 July first immediately preceding the due date of such fee, the fund  
25 balance exceeds five hundred thousand dollars. In determining the fee  
26 to be assessed, the commissioner shall consider the amount necessary  
27 to meet reasonably anticipated disbursements from the fund, less  
28 reimbursements and fee revenue, while maintaining a fund balance of  
29 not less than five hundred thousand dollars.

30       (c) Payments received under subsection (b) of this section shall be  
31 credited to the fund established pursuant to subsection (a) of this  
32 section. Moneys in the fund may be invested or reinvested in the same  
33 manner as funds of the state employees retirement system, and the  
34 interest derived from such investments shall be credited to the fund.

35       (d) If a retail establishment is no longer in operation at the location  
36 where the gift card or certificate was issued, the gift card or certificate  
37 holder may apply to the commissioner for payment of any  
38 unexpended balance on such gift card or certificate from the fund.

39       (e) The commissioner shall provide application forms for payment  
40 from the guaranty fund. The application shall include: (1) The name  
41 and address of the retail establishment, (2) the amount of the gift card  
42 or certificate, and (3) such other information required by the  
43 commissioner. No application for payment from the fund shall be  
44 accepted by the commissioner more than six months after the date of  
45 the closing of the location of the retail establishment that issued the gift

46 card or certificate.

47 (f) The commissioner shall proceed upon such application and may  
48 hold a hearing in accordance with the provisions of chapter 54 of the  
49 general statutes. Notwithstanding the provisions of chapter 54 of the  
50 general statutes, the decision of the commissioner shall be final with  
51 respect to such application. The commissioner may hear applications  
52 of all consumers submitting claims against a single retail establishment  
53 in one proceeding.

54 (g) The commissioner shall issue an order requiring payment from  
55 the fund of any sum the commissioner finds to be payable upon such  
56 application. The total compensation payable from the fund relating to  
57 the closing of any one retail establishment location shall not exceed  
58 seventy-five thousand dollars.

59 (h) In order to preserve the integrity of the fund, the commissioner  
60 may order payments to be made out of such fund for amounts less  
61 than the actual loss incurred by any gift card or certificate holder.

62 (i) When the commissioner has caused any sum to be paid from the  
63 fund to a gift card or certificate holder, the commissioner shall be  
64 subrogated to all of the rights of such holder, up to the amount paid,  
65 and the holder shall assign all of his or her right, title and interest in  
66 the claim, up to such sum paid, to the commissioner and any amount  
67 and interest recovered by the commissioner on such claim shall be  
68 deposited to the fund.

69 (j) The Department of Consumer Protection may be reimbursed in  
70 an annual amount of not more than fifty thousand dollars of the  
71 resources of the fund to pay for the costs of administering such fund.

72 (k) The provisions of this section and section 1 of this act shall only  
73 apply to retail establishments that issue or intend to issue gift cards or  
74 gift certificates in this state in total amounts exceeding five thousand  
75 dollars in a calendar year. No owner of a retail establishment or agent  
76 of such owner shall be required to pay in excess of one thousand

77 dollars per calendar year to the fund established pursuant to  
78 subsection (a) of this section.

79 (l) The commissioner may adopt regulations, in accordance with  
80 chapter 54 of the general statutes, to carry out the purposes of this  
81 section.

82 Sec. 3. Subdivision (5) of section 3-56a of the general statutes is  
83 repealed and the following is substituted in lieu thereof (*Effective July*  
84 *1, 2009*):

85 (5) "Gift certificate" means a record evidencing a promise, made for  
86 consideration or donated to a charitable or political organization, by  
87 the seller or issuer of the record that goods or services will be provided  
88 to the owner of the record to the value shown in the record and  
89 includes, but is not limited to, a record that contains a microprocessor  
90 chip, magnetic stripe or other means for the storage of information that  
91 is prefunded and for which the value is decremented upon each use, a  
92 gift card, an electronic gift card, stored-value card or certificate, a store  
93 card, or a similar record or card, but "gift certificate" does not include  
94 prepaid calling cards regulated under section 42-370 or prepaid  
95 commercial mobile radio services, as defined in 47 [C.F.R.] CFR Sec.  
96 20.3.

97 Sec. 4. Section 42-460 of the general statutes is repealed and the  
98 following is substituted in lieu thereof (*Effective July 1, 2009*):

99 (a) No person may sell or issue a gift certificate [, as defined in  
100 section 3-56a,] that is subject to an expiration date, a dormancy charge  
101 or fee, escheat charge or fee, inactivity charge or fee or any similar  
102 charge, fee or penalty for inactivity. No gift certificate or any  
103 agreement with respect to such gift certificate may contain language  
104 suggesting that an expiration date or such dormancy, escheat,  
105 inactivity or similar charge, fee or penalty for inactivity may apply to  
106 the gift certificate. As used in this section, "gift certificate" shall have  
107 the same meaning as defined in subdivision (5) of section 3-56a, as  
108 amended by this act; and "inactivity fee" means a deduction against the

109 balance on such gift certificate when the balance or any portion of such  
110 balance has not been spent within a specified time.

111 (b) Nothing in this section shall be construed to prevent a holder  
112 from honoring a gift certificate, the unredeemed value of which has  
113 been reported to the Treasurer pursuant to part III of chapter 32, and  
114 thereafter seeking reimbursement from the Treasurer.

115 (c) Any person selling or issuing a gift certificate that is not subject  
116 to the provisions of this section because such provisions are preempted  
117 by the federal National Bank Act shall provide a clear and conspicuous  
118 description on such gift certificate or on a label affixed on such gift  
119 certificate of any expiration date, dormancy, escheat or inactivity  
120 charge or fee or any similar charge, fee or penalty for inactivity related  
121 to such gift certificate.

122 (d) A violation of the provisions of this section shall be an unfair or  
123 deceptive trade practice under subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	New section
Sec. 2	October 1, 2009	New section
Sec. 3	July 1, 2009	3-56a(5)
Sec. 4	July 1, 2009	42-460

**GL**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Consumer Protection, Dept.	GF - Cost	285,000	285,000
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential
Consumer Protection, Dept.	RMOF - Revenue Gain	up to 500,000	up to 500,000
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	165,000	165,000

**Municipal Impact:** None

### **Explanation**

The bill results in a cost to the state of approximately \$450,000 including fringe benefits due to the need for three special investigators, an attorney and clerical staff in the Department of Consumer Protection (DCP) to oversee the Connecticut Retail Gift Card and Certificate Guaranty Fund and to investigate complaints concerning such gift certificates and gift cards.

Additionally the bill establishes the Connecticut Retail Gift Card and Certificate Guaranty Fund which would have deposits of up to \$500,000 placed in it through an annual fee of \$25 per location paid by

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

retail establishments offering such cards and certificates. A total of \$50,000 of the funds in the guaranty fund could be used by the DCP for administrative costs which would partially offset the need for additional funds in the DCP.

Finally the bill results in a potential revenue gain due to potential violations of the Connecticut Unfair Trade Practices Act (CUTPA).

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 925*****AN ACT CONCERNING GIFT CERTIFICATES AND ESTABLISHING  
A RETAIL GIFT CARD AND CERTIFICATE GUARANTY FUND.*****SUMMARY:**

This bill (1) establishes the Connecticut Retail Gift Card and Certificate Guaranty Fund, (2) imposes an annual \$25 fee to pay for the fund, and (3) authorizes the Department of Consumer Protection (DCP) to administer the fund and applications to it.

The bill also (1) amends the definition of gift certificates to include a record evidencing a promise donated to a charitable organization; (2) prohibits the sale of gift cards or certificates with dormancy, escheat, or inactivity charges, fees, or penalties; and (3) requires gift certificates not subject to state law to contain clear and conspicuous descriptions of any expirations, charges, fees, or penalties.

EFFECTIVE DATE: October 1, 2009, except for the sections relating to gift certificate definitions and prohibitions, which are effective July 1, 2009.

**RETAIL GIFT CARD AND CERTIFICATE GUARANTY FUND**

Any owner of a retail establishment selling goods, food, or services to the public who issues, or intends to issue, gift cards or gift certificates for more than \$5,000 in total per year must pay an annual fee of \$25, apparently per location, to the Connecticut Retail Gift Card and Certificate Guaranty Fund, up to a total of \$1,000 per calendar year. Issuing the gift cards without paying to the fund is an unfair trade practice (see BACKGROUND).

DCP is authorized to assess a reduced fee if the balance of the fund exceeds \$500,000 on the July 1 immediately preceding the due date of

the fee. To determine the reduced fee, DCP must consider the amount necessary to meet reasonable anticipated disbursements, less reimbursements and fee revenue, while maintaining a \$500,000 balance minimum. Money in the fund may be invested or reinvested in the same manner as funds in the state employees retirement system. The interest derived from the investments must be credited to the fund.

When a retail establishment is no longer in business at the location where the gift certificate was issued, certificate holders may apply to DCP for payment from the fund. Applications must include (1) the name and address of the retail establishment, (2) the amount of the gift card or gift certificate, and (3) other required information. No application will be accepted more than six months after the closing of the location that issued the gift card or certificate. DCP may hold a hearing on applications and issue a final decision as a contested case under the provisions of the Uniform Administrative Procedure Act (UAPA). DCP may hear all buyers submitting claims against a retail establishment in one proceeding. The commissioner is also authorized to adopt regulations under the UAPA.

The total payable compensation per establishment cannot exceed \$75,000. DCP may order payments on claims to be less than the actual loss incurred. Once any amount of a claim has been paid, DCP is subrogated to (or substituted in place of the holder) all rights up to the amount paid and the holder assigns all rights, title, and interest in the claim to DCP. Any amount or interest then recovered by DCP must be deposited in the fund. DCP may be reimbursed up to \$50,000 annually from the fund for its administrative costs.

### **GIFT CERTIFICATE DEFINITIONS AND PROHIBITIONS**

The bill expands the restrictions on gift cards to prohibit the sale of, issuance of, or agreement with respect to a gift card subject to dormancy, escheat, or inactivity charges, penalties, or fees. An inactivity fee is a deduction against the gift certificate balance when the balance or any portion of it has not been spent within a specified time.

The bill also requires sellers of gift certificates backed by federal banks (and not subject to state law) to provide a clear and conspicuous description on the gift certificate or on an affixed label of any expiration date, dormancy, escheat, or inactivity fee or charge.

A violation of the provisions related to gift card fees is an unfair trade practice.

## **BACKGROUND**

### ***Gift Certificate***

The law defines “gift certificate” as a record evidencing a promise, made for consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record. It includes (1) a record that contains a microprocessor chip, magnetic strip, or other means to store information that is pre-funded and for which an amount is deducted from the stored value upon each use; (2) a gift card; (3) a stored-value card or certificate; (4) a store card; or (5) a similar record or card. It does not include prepaid calling cards or prepaid commercial mobile radio services (CGS § 3-56a (5)).

### ***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

## **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 10 Nay 9 (03/10/2009)