



# CONNECTICUT BANKERS ASSOCIATION

**TO: MEMBERS OF THE GENERAL LAW COMMITTEE**

**FR: CONNECTICUT BANKERS ASSOCIATION**  
**CONTACTS: TOM MONGELLOW, FRITZ CONWAY**

**RE: S.B. 892, AN ACT CONCERNING GIFT CARDS**

**POSITION: OPPOSE**

This bill would impose new restraints on the gift cards that are issued or sold by banks in connection with so-called "open systems". These restraints are unfair and unreasonable and we strongly oppose this bill. Indeed, as an alternative, we would encourage the Committee to consider the adoption of an amendment to exempt these cards from the definition of "gift certificates", and thereby allow state chartered banks to compete on even footing with national banks when selling "open system" gift cards.

By way of background, existing Connecticut law prohibits expiration dates on gift certificates. Connecticut law also prohibits the charging of certain fees in connection with gift certificates. These restraints are understandable in the context of a traditional "gift certificate" that is issued by a single store or restaurant to permit the purchase of a good or service from that particular store or restaurant.

However, "open system" gift cards are quite different from "gift certificates". They are issued by banks who are members of open network systems; the same systems that accept Visa, MasterCard, American Express, etc. This means that the cards can be used all over the world with *any* merchant that accepts cards on these systems. Expiration dates are included on the cards, but that is done as a *security* feature (similar to the expiration date on a credit or debit card). Once the card has expired, *the value is not lost*. The holder of the card can typically request a refund (or a new card) through the issuing bank. Fees are sometimes charged on these cards because, unlike a gift certificate, the issuing bank will not be the seller of the underlying goods or services purchased with the card. It does not stand to directly benefit from the purchase. The bank is, instead, providing a financial service (production and encoding of the card, continuing access to the networks, processing the payments, etc). The bank should be free to charge what the marketplace is willing to pay for these services.

Recent court cases have made it clear that a state cannot prohibit a national bank from issuing an open system gift card containing an expiration date. These same preemption principles prevent a state from restricting the fees a national bank can charge. In Connecticut, this has resulted in a competitive disadvantage for state chartered banks that wish to offer these popular products. SB 892 could further compound that competitive disadvantage by (i) requiring segregated escrow accounts or lines of credit to back the cards (which is not necessary in the context of a bank issued card); and (ii) requiring additional cumbersome disclosures if the state chartered bank sells a card issued by a national bank.

We submit that these provisions are not warranted and will harm the Connecticut banking industry. The more reasonable approach would be to amend the definition of "gift certificate" to exempt these open system gift cards and thereby allow Connecticut banks to offer these popular cards. In so doing, the activities of the Connecticut bank would be subject to the supervision of the Connecticut Department of Banking. Again, the State of Connecticut has no jurisdiction over cards issued directly by national banks.