

## **Prepared Testimony for Raised S.B. No. 912 (2013)**

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### **AN ACT CONCERNING PREPAID CARDS.**

To permit a purchaser of or individual who increases or reloads funds onto a general-use prepaid card, code or device to (1) receive back the unexpended balance and accrued interest on such balance by way of a financial account that is linked to such card, code or device, (2) receive back the unexpended balance and accrued interest in an expedited manner, and (3) transfer the unexpended balance to a bank offering a higher yield and insurance from the FDIC on such balance.

#### **Introduction**

While the use of prepaid cards (prepaid debit cards, gift cards, phone cards, etc.) has exploded in recent years, there are several shortcomings which make them a suboptimal consumer value proposition.

#### **Problems**

When a purchaser of a prepaid gift card purchases/loads funds on the card, he/she effectively surrenders control of those funds to first, the retailer or bank that issued the card and, second, to the recipient of the prepaid gift card. Per current Connecticut laws (Conn. Gen. Stat. §42-460, 2011 Public Act 201, Conn. Gen. Stat. §3-65c), and Conn. Gen. Stat. §3-73a), there is no expiration date for prepaid cards and, while the intent of the current statute is good, as it allows a cardholder to redeem the value loaded on the card at any point in the future, the reality is that as time progresses, it is less and less likely that the loaded, unspent funds will ever be utilized by the card recipient.

While statistics vary greatly on the amount of unspent balances that remain on a prepaid gift card after one year, the consensus appears to be that approximately 25% of a card's balance remains unspent after one year (a total of \$41 billion in unspent gift cards from 2005-2011) and that balance is unlikely to be spent after one year. (Source: Consumer Reports)

**Problem #1:** The unspent card balance is money that could be used in commerce in Connecticut and it is going unused – per the Connecticut Prepaid Statutes, – in perpetuity.

**Problem #2:** This unspent money is being held by the issuing banks and retailers allowing them free use of consumers' funds indefinitely and, without paying any interest on the unspent balance. The issuing banks and retailers can invest this free, unused "float" indefinitely because

the Connecticut Prepaid Statute neither allows a finite expiration date nor allows unused funds to escheat to the state.

**Problem #3:** Connecticut state-chartered banks cannot compete in the prepaid space with federally-chartered banks, as federally-chartered banks *can* issue prepaid gift cards in Connecticut with a five-year (5-year) expiration date per the national CARD Act. This has been confirmed by Connecticut Department of Consumer Protection Commissioner Rubenstein and is addressed on the Connecticut Department of Consumer Protection Commissioner Web site (<http://www.ct.gov/dcp/site/default.asp>).

***"There are two sets of law that may apply to gift certificates and gift cards. Gift certificates and gift cards that are sold in Connecticut and that are not issued by or backed by a Federal financial institution are covered under Connecticut state law. Gift certificates and gift cards that are sold in Connecticut and that are issued by or backed by a Federal financial institution are covered by Federal law.***

*Gift certificates issued by Connecticut retailers will most likely be covered under the Connecticut state law. Gift cards issued by Connecticut retailers generally fall under Connecticut state law. However, bank-issued or backed cards, including some cards issued by malls, fall under Federal law.*

*Note also that gift certificates and gift cards that are sold online or on the phone that are shipped into Connecticut are subject to Connecticut state law unless they are issued by or backed by a Federal financial institution.*

***Fees and expiration dates:***

*If Connecticut state law applies gift certificates and gift cards may not have an expiration date or inactivity fee.*

***If Federal law applies gift cards purchased on or after August 22, 2010 may not have an expiration date within the first five years from issue and may not have initial fees during the first twelve months."*** (Content Last Modified on 2/5/2013)

**Problem #4:** A critical problem with the current federal statute, as it applies to Connecticut consumers per the Connecticut Department of Consumer Protection, is that of "inactivity" fees, which allows a bank issuer of an open-loop (can be used anywhere (Visa, MasterCard, American Express, Discover)) to begin charging an "inactivity" fee after twelve (12) months of card inactivity. These *monthly* fees range from \$2.50-3.00 and are charged every month until an open-loop prepaid gift card's entire balance is depleted; for a \$25 gift card, the entire balance would be depleted in just 10 months through the "inactivity" fee.

**Problem #5:** Another problem that arises under the current Connecticut Prepaid Statute is that banks and retailers have to account for unspent prepaid gift card balances in perpetuity by carrying them as a liability on their balance sheets because there is no expiration date.

**Problem #6:** Not only do retailers have to account for these balances indefinitely as liabilities, but they want the funds to be spent, as the vast majority of prepaid gift card recipients spend more than the balance of the prepaid gift card when using it at a retailer or restaurant.

### Solution

S.B. No. 912 (2013) offers a simple, consumer-friendly solution to all of the aforementioned problems associated with the current Connecticut Prepaid Statute. It allows a purchaser of a prepaid gift card to link his/her financial account (checking, savings, money market, credit card or debit card) to give a gift card, to set the card's expiration date (no less than 90 days) and, which, would be embossed on the prepaid gift card, and then to receive back all of the unspent card balance at expiry from a bank or retailer along with any interest an issuing bank might pay.

**Problem #1:** The unspent card balance is money that could be used in commerce in Connecticut and it is going unused – per the Connecticut Prepaid Statute, in perpetuity

**Solution:** The unspent card balance is returned to the original purchaser/loader of the prepaid gift card.

**Problem #2:** This unspent money is being held by the issuing banks and retailers allowing them free use of consumers' funds indefinitely and, without paying any interest on the unspent balance. The issuing banks and retailers can invest this free, unused "float" indefinitely because the Connecticut Prepaid Statute neither allows a finite expiration date nor allows unused funds to escheat to the state.

**Solution:** The banks and retailers no longer have free, indefinite use of consumers' "float"; it is returned at the card's expiration date (set by the purchaser/loader) to the linked financial account of the prepaid gift card purchaser/loader.

**Problem #3:** Connecticut state-chartered banks cannot compete in the prepaid space with federally-chartered banks, as federally-chartered banks *can* issue prepaid gift cards in Connecticut with a five-year (5-year) expiration date per the national CARD Act. This has been confirmed by Connecticut Department of Consumer Protection Commissioner Rubenstein and is addressed on the Connecticut Department of Consumer Protection Commissioner Web site (<http://www.ct.gov/dcp/site/default.asp>).

**Solution:** S.B. No. 912 (2013) will allow Connecticut state-chartered banks to compete on equal terms with the large federally-chartered banks by allowing a finite expiration date and return of the unspent card balances to their existing customers. S.B. No. 912 (2013) may also help the Ct state-chartered banks attract new customers, as the proposed legislation is extremely consumer-friendly.

**Problem #4:** A critical problem with the current statute, as addressed above, is that of “inactivity” fees, which allows a bank issuer of an open-loop (can be used anywhere (Visa, MasterCard, American Express, Discover)) to begin charging an “inactivity” fee after twelve (12) months of card inactivity. These *monthly* fees range from \$2.50-3.00 and are charged every month until an open-loop prepaid gift card’s entire balance is depleted; for a \$25 gift card, the entire balance would be depleted in just 10 months through the “inactivity” fee.

**Solution:** Consumers can avoid the insidious monthly “inactivity” fees, which can deplete a gift card’s entire unspent balance rapidly, by setting an expiration date for the gift card at one-year from the purchase date assuring that no “inactivity” fees are ever incurred, even for open-loop prepaid gift cards that are issued in Connecticut by a federally-chartered bank.

**Problem #5:** Another problem that arises under the current Connecticut Prepaid Statute is that banks and retailers have to account for the unspent prepaid gift card balances in perpetuity by carrying them as a liability on their balance sheets because there is no expiration date.

**Solution:** With a finite prepaid gift card expiration date, the accounting issue for issuing banks and retailers disappears.

**Problem #6:** Not only do retailers have to account for these balances indefinitely as liabilities, but they want the funds to be spent, as the vast majority of prepaid gift card recipients spend more than the balance of the prepaid gift card when using it at a retailer or restaurant.

**Solution:** With the expiration date embossed on the prepaid gift card, card recipients will be aware of the date by which they have to spend the loaded funds, which will lead to less unused balances and, by proxy, more money spent at the Connecticut retailers that issue these cards.

### Opposition?

As S.B. No. 912 (2013) appears to be very consumer-friendly, who would oppose it?

In written testimony submitted in opposition of similar proposed legislation in 2012 (S.B. 201), Visa opposed the proposed legislation. Visa’s testimony began:

*“Visa opposes SB 201, which would repeal a 2012 supplement to the Connecticut General Statutes regarding “general-use prepaid cards”, and would replace it with a substitute. This substitute would provide that a general-use prepaid card may not include an expiration date for*

*the underlying funds that are redeemable through the use of the card. As a result of these provisions, SB 201 would likely preclude banks from issuing general-use prepaid cards in Connecticut.”*

As S.B. 912 (2013), like S.B. 201 (2012), explicitly states that a general-use prepaid card may include an expiration date, Visa’s testimony in opposition was completely flawed.

But why would Visa oppose such a consumer-friendly bill? We believe that Visa is opposed for two reasons. First, by including a finite expiration date for a “general-use prepaid card”, Visa’s bank and retail customers will not be able to hold onto consumers’ funds indefinitely and earn free interest on consumers’ unspent prepaid card balances.

More importantly, we believe Visa is opposed because by allowing a finite expiration date, consumers would be able to avoid the insidious “inactivity” fees that allow a bank that issues “general-use prepaid cards”, or Visa itself, to collect these fees monthly until an entire prepaid card’s balance is exterminated. This is a most consumer-unfriendly practice that S.B. 912 (2013) would obviate. Even if Connecticut-chartered banks are prohibited from imposing these “inactivity” fees, the implications for Visa’s business on the national level, through federally-chartered banks, with regard to “inactivity” fees is very clear.

**Conclusion:** For all of the reasons stated, we believe S.B. 912 (2013) is extremely consumer-friendly legislation that will allow Connecticut prepaid gift card purchasers to set a prepaid gift card’s expiration date at purchase and then to receive back all of the unspent gift card balance at the card’s expiration date, via a linked financial account, and potentially any interest a bank might also pay on that unused balance.

By setting an expiration date for a prepaid gift card, the purchaser of the card is able to preclude a bank that issues an open-loop gift card from charging “inactivity” fees, which can rapidly deplete the gift card’s balance.

Finally, banks and retailers will not have to carry, indefinitely, unspent prepaid balances as a liability on their balance sheets, if consumers that purchase their gift cards specify an expiration date (default of 5 years per the federal CARD Act) with a linked financial account.

**Note:** We have met or spoken with the following regarding the proposed legislation:

**Connecticut Banking Department:** Howard Pitkin, Commissioner and Jim Heckman, Division Director

**Connecticut Department of Consumer Protection,** Bill Rubenstein, Commissioner

**Connecticut Bankers Association,** Tom Mongellow, Executive Vice President & Treasurer

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