**Retail Gift Card Association**

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March 7, 2016

Banking Committee
c/o Gray Winfield and Matthew Lesser, Committee Co-Chairs
Room 2400, Legislative Office Building
Hartford, CT 06106

**RE: RAISED BILL 5564: AN ACT CONCERNING CARD BALANCES**

Dear Mr. Winfield and Mr. Lesser:

The Retail Gift Card Association (the "RGCA") was founded in 2008 and is a trade association of diverse retailers committed to promoting and protecting the use of gift cards. Members are generally have a regional or national reach, including the top retailers in the nation, with traditional "closed-loop"[1] gift card programs. We have enclosed a list of our membership to this letter for your reference. Our members are impacted financially and operationally each time new state and federal legislation is enacted, but appreciate the need to regulate, within reason, the prepaid card industry for the benefit of consumers.

RGCA members follow a code of principles to promote best practice standards, enabling the prepaid card industry to grow and shape in ways that benefit members and consumers alike. Based on this code of principles, RGCA members do not charge any fees associated with gift cards and gift cards never expire.

The financial and operational implications of Raised Bill 5564 would have a severely negative impact on the industry without a beneficial impact to consumers. As such and as more fully explained below, the RGCA strongly opposes Raised Bill 5564.

## I. Background on Cash Redemption Laws

Cash redemption laws began emerging in the late 1990's, with California enacting the first requirement in 1997. At that time, most retail gift card issuers charged late fees or set an expiration date for the card as the only means to remove outstanding liabilities for gift cards from their books. It followed that legislators wanted to protect consumers with cash back redemption laws to avoid expiration or fees.

Generally speaking, cash redemption laws require retailers to refund gift card consumers the remaining balance of the gift card in cash, once the balance reaches a certain threshold. There are currently ten (10) states that have cash redemption requirements for gift cards. Each state and its corresponding dollar threshold appear below:

| State | Dollar Threshold |
|---|---|
| California | Less than $10 |

[1] "Closed-loop" refers to a type of gift card that can only be used at a single merchant or a defined group of merchants.

| | |
|---|---|
| Colorado | $5 or less |
| Massachusetts | Less than $5 for reloadable cards only |
| Maine | Less than $5 |
| Montana | Less than $5 for cards initially loaded over $5 |
| New Jersey | Less than $5 for cards initially loaded over $5 |
| Oregon | Less than $5 |
| Rhode Island | Less than $1 |
| Vermont | Less than $1 |
| Washington | Less than $5 |

The application of these various state laws also depends on the type of prepaid card involved. Some states require cash redemption only for closed-loop cards, but not "promotional" closed-loop cards. Other states do not exempt cards issued by financial institutions, commonly referred to as "open loop" cards.

## II. **<u>RGCA Opposition to Raised Bill 5564</u>**

The RGCA opposes Raised Bill 5564 due to the logistical and financial impact it will have on gift card programs, without a positive effect for consumers. Primarily, the bill as written will have extreme fraud implications and managing the logistics of yet another unique state cash back redemption law will be cost-prohibitive. The legislation also frustrates the purpose of Federal anti-money laundering laws and the purpose of gift cards in general.

### A. <u>Fraud Implications of Raised Bill 5564</u>

Cash back redemption laws result in credit card and other related fraud. In states with $5 or $10 cash redemption thresholds, the amount of fraud is significantly greater than with the lower $1 threshold. Persons committing this type of fraud typically purchase multiple gift cards with a stolen credit card then turn around and cash each card out for a quick $5 or $10 profit. Other times, cards are purchased at a discount online, a practice that is not condoned by the RGCA, and those committing fraud cash out those cards for additional profit. The amount of time and expense involved in monitoring and controlling gift card cash back fraud frustrates a retailer's ability to provide fee free gift cards.

Based on the RGCA's experience with cash redemption fraud, the result of Raised Bill 5564 would be far-reaching due to the lack of a dollar threshold for cash redemption. Persons committing fraud could obtain hundreds of dollars in cash, without any protection to the retailer. Many retailers may choose to stop selling gift cards in Connecticut due to the costly burden of this legislation.

As an alternative, the RGCA urges the committee to revise Raised Bill 5564 to include a cash redemption threshold of less than $1.00. At this threshold, the incident rate of fraud is extremely low and much more manageable from a cost perspective. It would ensure that consumers benefit from retrieving a low dollar amount in cash, while safe-guarding retailers from fraud.

### B. <u>Logistical Implications of Raised Bill 5564</u>

The logistical implications of Raised Bill 5564 also raise the cost of managing programs with little to no benefit to consumers. As indicated by the chart above, retailers already face a challenging labyrinth of varying state law to comply with existing cash back requirements. The current point of sale ("POS") technology is not equipped to automatically prompt a POS employee to provide cash back if the sale takes place in a cash redemption state. For RGCA members that sell and redeem gift cards in many, if not all, continental United States, the difference between compliance and a class action law suit comes down to adequate training of a POS worker, a typically high-turnover position for most retailers.

Based on the potential liability for violating Raised Bill 5564, again RGCA members may find that selling cards in Connecticut is too cost prohibitive. The alternative proposed earlier of limiting cash redemption to less than $1 will, at the very least, provide a familiarity and consistency for retailers when training employees. Revising the damages available for violation of the cash redemption law is another alternative that would ease the burden of this legislation. Class actions and punitive damages are excessive and unnecessary when consumers are able to be made whole simply by getting the cash refund to which they were otherwise entitled.

### C. Raised Bill 5564 Frustrates Federal Law

The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") promulgated regulation aimed at reducing money laundering with prepaid cards. FinCEN's "Final Rule on Prepaid Access"[2] exempts closed-loop retailers from compliance as long as certain conditions are met. One important condition is that cards cannot be available for cash redemption unless "de minimis" cash redemption is otherwise required by law. The purpose for this particular rule is clearly aimed at curbing money laundering where proceeds from a crime are used to purchase a gift card, which can then "clean" the criminal money by redeeming the card for cash.

It is arguable whether Raised Bill 5564 would be in direct violation of federal law due to the absence of a redemption threshold. Connecticut would become a hot bed for money launderers wishing to take advantage of the cash redemption requirement. Again, many retailers may be forced to withdraw sales in Connecticut due to the fears of violating federal law.

### D. Cash Redemption Frustrates the Purpose of a Gift Card

Finally, the purpose of a gift card is frustrated by a no-limit cash redemption requirement. Most gift card purchasers intend to give the card to someone else as a gift. The ultimate recipient is free to use the gift card until the balance reaches zero. At this point in time, no RGCA members – or any other closed-loop provider of which the RGCA is aware - impose expiration dates or fees on the card. In other words, gift cards are truly available to the consumer forever. In that way, having a cash redemption requirement is unnecessary, because the card can always be used to redeem goods and services, as was intended by the purchaser.

Furthermore, many gift card purchasers gift the card instead of cash because they intend to control how the end-user spends the money. The best example of this situation occurs when a parent gives their child a gift card as opposed to cash. The parents can rest easy knowing their child cannot purchase anything other than what the parent has deemed appropriate according to the store from which they purchase the card. By giving the gift card recipient access to cash value, the parent's control of the situation has been circumvented, thus making the gift card a less attractive vehicle for controlled spending.

Limiting the dollar threshold for cash redemption would help align the purpose and intention of a gift card with its actual use. The RGCA again urges the Committee to adopt a threshold of less than $1 for this reason.

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[2] 76 FR 45409-45410, July 29, 2011

III. Conclusion

Raised Bill 5564 negatively impacts the industry, without a foreseeable benefit to consumers, primarily due to the lack of a dollar threshold. While the RGCA opposes a cash back redemption requirement of any kind, the impact of this legislation financially, logistically, and with Federal law, would be greatly reduced by a threshold of less than $1.

Thank you for considering the comments of the Retail Gift Card Association. We sincerely appreciate the opportunity.

Sincerely,

Retail Gift Card Association

By: Mike Pennington
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