



Testimony of Denise L. Nappier
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SUBMITTED TO THE GENERAL LAW COMMITTEE
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Senator Colapietro, Representative Stone, and members of the General Law Committee, thank you for the opportunity to submit testimony regarding Connecticut's law as it relates to gift cards. There are a number of proposed bills before you that would carve out an exemption for gift cards from the State's escheat provisions, namely: House Bill 5073, *An Act Concerning the Escheating of Gift Certificates to the State*; Senate Bill 123, *An Act Concerning the Expiration of Gift Certificates*; and Senate Bill 414, *An Act Concerning the Escheating of Gift Certificates or Gift Cards to the State*.

Each of these bills, to varying degrees, changes Connecticut's landmark Gift Card law in significant ways. But before I delve into the impact of these suggested changes, I think it is important to remember how we got here.

Many of you will recall that two years ago, I came before this legislature to discuss what was then the well-kept secret of gift cards... if you didn't use them fast enough, their value would diminish, month after month, until it was all gone. There weren't very many consumers that were familiar with dormancy charges, but this legislature changed that. Connecticut became one of the first states in the country to prohibit these anti-consumer dormancy charges, and eliminate expiration dates on gift cards and gift certificates, so that consumers wouldn't find their cards worthless if they didn't get to their local retailer fast enough.

In the two years since that law passed, a few things have happened. First, Connecticut consumers can now rely on the fact that a \$20 gift card they receive will be worth \$20 whenever they choose to use it – even if they wait awhile. Second, some retailers have recognized the attractiveness of that new reality, and have advertised, in an effort to attract customers, that gift cards in Connecticut do not expire or lose value to fees and other charges. And third, nearly every state in the nation, in one way or another, has recognized the value of protecting the value of consumer gift cards, and is taking steps to do what Connecticut has already done.

And one more thing has happened. One retailer, which happens to be the largest owner of shopping malls in the world, has chosen to fight Connecticut's law. The Simon Property Group, which owns the Crystal Mall in Waterford and Clinton Crossing, has said they don't have to follow the law, because federal law supercedes it, and they've been assessing unconscionable charges left and right. That has led to the following: First, consumers have been extraordinarily critical of the mall company's anti-consumer action. Second, the attorneys general of three states, including Connecticut, have come to the defense of our law and are seeking a court order to force Simon to comply with it. And third, the federal Office of Comptroller of the Currency has weighed in on the issue, and came out firmly in support of Connecticut's law and against Simon's interpretation.

Now, all of this is to say that the law Connecticut passed two years ago is doing what it was intended to do. It is benefiting our State and its citizens. It is providing important protections. And it is following through on the basic premise of unclaimed property law in this State and around the country. Which brings me to the legislation now before you.

The proposals would remove or diminish an important aspect of the comprehensive bill passed in 2003, and I would urge the Committee's careful consideration of the adverse and, perhaps, unintended consequences should these measures be enacted.

There are three grounds upon which I base these cautionary remarks:

- First, these measures would erode the considerable consumer protections passed by this General Assembly in 2003, in the form of Public Act 03-1, which this body and the general public have come to know as the Gift Card Law.
- Second, the bill, if enacted, would have a negative fiscal impact on the State, which, in the current fiscal context, is no small matter.
- And third, it would place Connecticut at a disadvantage relative to other states that will receive the unredeemed value of gift certificates that ought to remain in Connecticut. In other words, the money will be going somewhere, just not to Connecticut.

As members of this Committee are likely aware, within the last several years gift certificates and gift cards have become increasingly popular among consumers. Nationally, expenditures on gift certificates are significant and steadily increasing, growing from \$37 billion in annual sales for 2002 to an estimated \$55 billion in 2004. Current projections estimate that sales could grow to as much as \$85 billion by 2007. The National Retail Federation projects that 75 percent of shoppers will have bought at least one gift card in 2004.

Those were the types of numbers we were seeing when we proposed this legislation, and as the gift card segment of the retail industry continues to grow, consumers rightly view Connecticut's comprehensive law as a critical protection.

Central to that protection was the provision that made clear that gift cards unused after three years -- which, by the way, had always been reportable as unclaimed property -- would continue to be reported to the State for custody by the Treasurer until those assets were returned to the rightful owners.

It is generally estimated that anywhere from five to fifteen percent of all gift cards sold are never used. Unclaimed gift cards, as with many other types of unclaimed property, are turned over to the State's Treasury for deposit in the General Fund until such time as rightful owners are found. You may be interested to know that we are on target with initial projections for Fiscal Year 2005, and expect to collect more than \$1.8 million in unused gift cards. Conservatively, the Treasury expects roughly \$4 million to be turned over to the State in Fiscal Year 2006, and as much as \$6 million in 2007. These numbers could grow as the volume of gift cards sold increases.

Why should that money be escheated to the Treasury? Well, because those unused assets are treated in precisely the same way as other unclaimed assets, for the benefit and protection of rightful owners... and that process goes to the heart of what unclaimed property funds, in Connecticut and states across the country, are all about.

The foundation of unclaimed property law is to use assets that would otherwise lay unclaimed and inactive for the greater good of the citizens within a given jurisdiction. And as those assets are used for the public benefit, the right of the rightful owner to claim those funds never waivers, and remains in effect forever.

It is a system that works, both for claimants, who sometimes come forward years later, staking their claim to assets they lost or inherited, and for the general public. You should know that I take quite seriously the responsibility for finding the rightful owners of abandoned property. **Last year, we returned over \$10 million to owners**—the largest dollar amount in one year in the **70-year history** of the State's unclaimed property program. Over the past six years, we have returned a record amount of ***\$58 million to rightful owners***.

At the same time, we have also been successful in our efforts to turn over unclaimed property to the State for the benefit of all of its citizens. During Fiscal Year 2004, a **record \$104 million** in unclaimed property was remitted to the Treasury for deposit in the General Fund.

That is what Connecticut's unclaimed property program does -- it retains abandoned assets for later claim by rightful owners, while at the same time using those funds, in the meantime, for the greater good.

Under Connecticut's law, the same will be true for the unused portion of gift card assets, beginning three years after the 2003 law took effect. And it is my contention that consumers benefit more under Connecticut's current law than if gift cards were exempt from escheat.

Should this legislature decide to carve out an unusual exemption for gift cards, a few things will happen. First, consumers will have no recourse if, a few years from now, a retailer has gone out of business and the consumer has still holds a gift card with unused value. It will be worthless. Had that unused value been turned over to the Treasury's unclaimed property fund, the consumer could recapture it.

Second, that extraordinary exemption cannot relieve a retailer, incorporated under the laws of another state and governed by those laws, from the obligation of reporting the unredeemed value of gift cards sold in Connecticut to other states. So that money may still be going somewhere -- only not to the consumer, the retailer, or our State. This Committee will shortly hear testimony from Attorney Robert Krenkowitz, a national expert in the field of unclaimed property, who can talk in greater depth about the implications of federal law and the impact this proposed legislation could have.

And lastly, if this legislature were to carve out an exemption for gift cards, holders of many other types of unclaimed property could well be clamoring for the same benefit in next year's session. If gift cards become exempt, why not bank accounts? Or money orders? Or travelers' checks? The inevitable slippery slope is something this Committee should carefully consider.

Let me also make one last point. In a twist of logic that may sound reasonable on its face, some have suggested that requiring businesses to escheat the unused value of gift cards to the State is itself anti-consumer. They say, wouldn't it be easier for the gift card to retain its value forever, so that the consumer can walk into a store at any time, years later, and use their card.

Well, the current Connecticut law permits that. It permits retailers, even after they have escheated value to the State, to honor the gift card, and simply receive reimbursement from the Treasury. And we are committed to working with the retail community to put in place an effective system to do just that.

And of course that argument doesn't take into consideration those circumstances where the retailer isn't around years later. We've certainly seen our share of businesses shut their doors forever in recent years... the names Caldors and Bradlees readily come to mind.

But perhaps most importantly, that argument fails to recognize that a significant portion of the assets of gift cards will go unused. That is a fact that is not likely to change, so the question is, where are those assets best utilized? These are assets bought and paid for by consumers, so it is reasonable that these assets be used to benefit the public at large. That is what unclaimed property law is all about.

Before I conclude, let me also say that if there are minor revisions to the law, such as how it deals with small business, for example, that are necessary, I would be happy to work with the Committee, and the legislature, to accomplish those changes. But I would caution against any wholesale changes to a landmark law that is protecting consumers and benefiting our entire State.

Thank you for the opportunity to share the Treasury's concerns regarding these issues. I would be happy to respond to any questions that members of this Committee may have.