S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. HAYES, ALFANO, BARRA, FINCH, GIGLIO, RAIA, SAYWARD, WALKER -- Multi-Sponsored by -- M. of A. HAWLEY, KOLB, REILICH -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to service charges on gift certificates and gift cards

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 396-ii to read as follows:

S 396-II. GIFT CERTIFICATES AND GIFT CARDS. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "GIFT CERTIFICATES" SHALL MEAN A WRITTEN PROMISE IN A SPECIFIED AMOUNT WHICH CANNOT BE INCREASED IN VALUE ON THE FACE THEREOF AND PURCHASED BY A CONSUMER IN EXCHANGE FOR PAYMENT TO PROVIDE MERCHANDISE OR SERVICE IN A SPECIFIED AMOUNT OR OF EQUAL VALUE TO THE BEARER OF THE CERTIFICATE.

(B) "GIFT CARDS" SHALL MEAN A CARD WHICH MAY BE PURCHASED BY A CONSUMER IN EXCHANGE FOR PAYMENT TO PROVIDE MERCHANDISE OR SERVICE IN A SPECIFIED AMOUNT OF EQUAL VALUE TO THE BEARER OF THE CARD.

(C) "DORMANCY" SHALL MEAN NON-USE OF A GIFT CERTIFICATE OR GIFT CARD. ADDING VALUE OR BALANCE INQUIRIES CONSTITUTES USE OF THE GIFT CARD.

2. IT SHALL BE UNLAWFUL FOR ANY BUSINESS ENTITY, INCLUDING, BUT NOT LIMITED TO, SOLE PROPRIETORSHIP, FIRM, COMPANY, PARTNERSHIP, ASSOCIATION OR CORPORATION TO SELL TO A CONSUMER GIFT CERTIFICATES OR GIFT CARDS THAT DIMINISH IN VALUE DUE TO DORMANCY AFTER SUCH GIFT CERTIFICATE OR GIFT CARD IS PURCHASED.

3. NO SURCHARGES OR FEES, INCLUDING, BUT NOT LIMITED TO, DORMANCY, ADMINISTRATIVE, SERVICE, RETROACTIVITY OR REACTIVATION SHALL BE ASSESSED AGAINST GIFT CERTIFICATES OR GIFT CARDS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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4. THE TERMS AND CONDITIONS OF THE GIFT CERTIFICATE OR GIFT CARD SHALL BE CLEARLY AND CONSPICUOUSLY STATED THEREON. THE TERMS AND CONDITIONS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE EXPIRATION DATE.

5. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR SUCH VIOLATION. IN CONNECTION WITH ANY SUCH APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.