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

10438

I N A S S E M B L Y

March 25, 2010

Introduced by M. of A. WEISENBERG, BARRA -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the abandoned property law, in relation to requiring a merchant to accept a gift certificate issued by such merchant as payment for credit extended by the merchant to the holder of the gift certificate

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

Section 1. Subdivision 1 of section 396-i of the general business law, as amended by chapter 170 of the laws of 2004, is amended to read as follows:

1. For the purposes of this section, "gift certificate" shall mean a written promise or electronic payment device that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) IF ISSUED BY A SINGLE MERCHANT OR AN AFFILIATED GROUP OF MERCHANTS THAT SHARE THE SAME NAME, MARK OR LOGO, MAY BE USED TO PAY DOWN ANY DEBT OWED TO OR ANY CREDIT CARD ISSUED BY SUCH MERCHANT OR AFFILIATED GROUP OF MERCHANTS; AND (VI) is honored upon presentation. Gift certificate shall not include an electronic payment device linked to a deposit account, or prepaid telephone calling cards regulated under section ninety-two-f of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare Prescription Drug, Improvement,

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

LBD15369-01-0

and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that the expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

S 2. Section 396-i of the general business law is amended by adding a new subdivision 3-d to read as follows:

3-D. NO SINGLE MERCHANT OR AFFILIATED GROUP OF MERCHANTS THAT SHARE THE SAME NAME, MARK OR LOGO, WHICH ISSUES GIFT CERTIFICATES OR STORE CREDITS SHALL IN ANY MANNER RESTRICT THE HOLDER OF A GIFT CERTIFICATE OR STORE CREDIT FROM ELECTING TO USE SUCH GIFT CERTIFICATE OR STORE CREDIT TO PAY DOWN ANY DEBT OWED TO OR ANY CREDIT CARD ISSUED BY SUCH MERCHANT OR AFFILIATED GROUP OF MERCHANTS.

S 3. Subdivision (g) of section 103 of the abandoned property law, as added by chapter 170 of the laws of 2004, is amended to read as follows:

(g) "Gift certificate" shall mean a written promise or electronic payment device that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) IF ISSUED BY A SINGLE MERCHANT OR AN AFFILIATED GROUP OF MERCHANTS THAT SHARE THE SAME NAME, MARK OR LOGO, MAY BE USED TO PAY DOWN ANY DEBT OWED TO OR CREDIT CARD ISSUED BY SUCH MERCHANT OR AFFILIATED GROUP OF MERCHANTS; AND (VI) is honored upon presentation. Gift certificate shall not include an electronic payment device linked to a deposit account, or prepaid telephone calling cards regulated under section ninety-two-f of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that the expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

S 4. This act shall take effect immediately.