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

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I N A S S E M B L Y

May 6, 2010

Introduced by M. of A. PHEFFER, CHRISTENSEN, BENEDETTO, STIRPE, GALEF, JAFFEE, NOLAN, ROSENTHAL, KOON, TITUS, FIELDS -- Multi-Sponsored by -- M. of A. BOYLAND, CRESPO, DESTITO, GIBSON, GLICK, GOTTFRIED, HOOPER, JEFFRIES, JOHN, KAVANAGH, MAGEE, MAYERSOHN, REILLY, ROBINSON, TOBACCO -- (at request of the Consumer Protection Board) -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to general use prepaid 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. GENERAL USE OF PREPAID CARDS. 1. DEFINITIONS. (A) "GENERAL USE PREPAID CARD" MEANS A CARD OR OTHER PAYMENT CODE OR DEVICE ISSUED BY ANY INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY THAT UPON PRESENTATION IS (I) REDEEMABLE AT UNAFFILIATED MERCHANTS OR SERVICE PROVIDERS, OR AUTOMATED TELLER MACHINES; (II) ISSUED IN A REQUESTED AMOUNT, WHETHER OR NOT THAT AMOUNT MAY, AT THE OPTION OF THE ISSUER, BE RELOADED TO INCREASE ITS VALUE AT A LATER PERIOD IN TIME; (III) PURCHASED OR LOADED ON A PREPAID BASIS; AND (IV) HONORED BY MERCHANTS FOR GOODS AND SERVICES, OR (V) USED TO ACCESS CASH AT AN AUTOMATED TELLER MACHINE. SUCH TERM SHALL NOT INCLUDE AN ELECTRONIC BENEFIT TRANSFER CARD ISSUED PURSUANT TO SECTION TWENTY-ONE-A OF THE SOCIAL SERVICES LAW, OR A GIFT CERTIFICATE AS DEFINED IN SECTION THREE HUNDRED NINETY-SIX-I OF THIS ARTICLE.

(B) "CLEAR AND CONSPICUOUS" OR "CLEARLY AND CONSPICUOUSLY" MEANS IN LARGER TYPE THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR COLOR TO THE SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM THE SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS, IN A MANNER THAT CLEARLY CALLS ATTENTION TO THE LANGUAGE. IN THE CASE OF AN AUDIO DISCLOSURE, "CLEAR AND CONSPICUOUS" AND "CLEARLY AND CONSPICUOUSLY" MEANS IN A VOLUME AND CADENCE SUFFICIENT TO BE READILY AUDIBLE AND UNDERSTANDABLE.

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

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2. PRIOR TO THE SALE OF A GENERAL USE PREPAID CARD, THE CONSUMER SHALL RECEIVE CLEAR AND CONSPICUOUS DISCLOSURE THAT TERMS AND CONDITIONS APPLY TO SUCH CARD. SUCH CLEAR AND CONSPICUOUS DISCLOSURE SHALL INCLUDE:

(A) NOTICE ON THE GENERAL USE PREPAID CARD STATING "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY";

(B) NOTICE IN ALL ADVERTISEMENTS, SOLICITATIONS OR PROMOTIONS FOR GENERAL USE PREPAID CARDS, WHICH SHALL STATE "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY";

(C) IN ANY WRITTEN OR VERBAL OFFER A STATEMENT THAT ADVISES "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY"; AND

(D) FOR PURCHASES VIA ELECTRONIC, COMPUTER, OR TELEPHONIC MEANS, NOTICE THAT "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY" SHALL BE PROVIDED PRIOR TO THE CUSTOMER'S PURCHASE OF THE GENERAL USE PREPAID CARD, OR WRITTEN NOTICE WITHIN THE ELECTRONIC MESSAGE OFFERING A GENERAL USE PREPAID CARD FOR PURCHASE.

3. (A) THE FOLLOWING TERMS AND CONDITIONS OF A GENERAL USE PREPAID CARD SHALL BE CLEARLY AND CONSPICUOUSLY DISCLOSED PRIOR TO THE SALE OF THE GENERAL USE PREPAID CARD: (I) THE EXPIRATION DATE; (II) ANY FEES ASSESSED TO ACTIVATE OR INITIATE THE GENERAL USE PREPAID CARD; (III) ANY FEES CHARGED AGAINST THE BALANCE OF THE GENERAL USE PREPAID CARD, INCLUDING BUT NOT LIMITED TO MAINTENANCE FEES, MONTHLY FEES, ANNUAL FEES, POINT OF SALE FEES, AUTOMATED TELLER MACHINE TRANSACTION FEES, OUT-OF-NETWORK AND INTERNATIONAL AUTOMATED TELLER MACHINE FEES, TRANSACTION LIMIT FEES, BILL PAYMENT FEES, PHONE OR ONLINE TRANSACTION FEES, MONEY TRANSFER FEES, INACTIVITY FEES, DISPUTE FEES, CUSTOMER SERVICE CALL FEES, AND RELOAD FEES CHARGED BY THIRD PARTIES; (IV) ANY CONDITIONS WHICH LIMIT A CONSUMER'S ABILITY TO ACCESS THE FULL VALUE OF THE MONEY PLACED ON THE GENERAL USE PREPAID CARD; (V) WHETHER A FEE WILL BE CHARGED FOR THE REPLACEMENT OF A GENERAL USE PREPAID CARD THAT IS LOST, STOLEN, OR DESTROYED; (VI) ANY POLICIES RELATED TO REFUNDS, WARRANTIES, CHANGES IN TERMS AND CONDITION, ASSIGNMENT AND WAIVER; AND (VII) ANY ADDITIONAL TERMS AND CONDITIONS.

(B) ANY GENERAL USE PREPAID CARD TERMS AND CONDITIONS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE PROVIDED EITHER (I) VIA A TOLL FREE TELEPHONE NUMBER, IF AN ACTIVE TOLL FREE TELEPHONE NUMBER IS CLEARLY AND CONSPICUOUSLY PROVIDED ON AN ENVELOPE OR PACKAGING CONTAINING THE GENERAL USE PREPAID CARD, ALONG WITH A NOTICE ADVISING CONSUMERS THAT SUCH NUMBER PROVIDES IMPORTANT INFORMATION FOR CONSUMERS TO ACCESS THE COST OF THE CARD AND THE IMPORTANT TERMS AND CONDITIONS; OR (II) ON A PRINTED DOCUMENT ACCOMPANYING THE GENERAL USE PREPAID CARD, PROVIDED THAT THE CONSUMER CAN EASILY REVIEW SUCH PRINTED DOCUMENT BEFORE PURCHASING THE CARD, AND AN ACTIVE TOLL FREE TELEPHONE NUMBER IS INCLUDED FOR THE CONSUMER TO ACCESS FURTHER INFORMATION.

4. NO RETROACTIVE FEES SHALL BE ASSESSED AGAINST A GENERAL USE PREPAID CARD.

5. THE REQUIREMENTS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL NOT APPLY TO A GENERAL USE PREPAID CARD THAT HAS NO TERMS AND CONDITIONS.

6. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT UNCLAIMED FUNDS RELATED TO GENERAL USE PREPAID CARDS FROM BECOMING ABANDONED UNDER SECTION THIRTEEN HUNDRED FIFTEEN OF THE ABANDONED PROPERTY LAW.

7. 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

VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AND 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 EACH 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.

8. THE PROVISIONS OF THIS SECTION SHALL BE EXCLUSIVE AND SHALL PREEMPT ANY PROVISIONS OF LOCAL LAW, ORDINANCE OR CODE, AND NO LOCALITY SHALL IMPOSE REQUIREMENTS THAT ARE INCONSISTENT WITH OR MORE RESTRICTIVE THAN THOSE SET FORTH IN THIS SECTION.

S 2. 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) is honored upon presentation. Gift certificate shall not include an electronic payment device linked to a deposit account, GENERAL USE PREPAID CARD AS DEFINED IN SECTION THREE HUNDRED NINETY-SIX-II OF THIS ARTICLE, 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 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.