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

7555

2009-2010 Regular Sessions

I N A S S E M B L Y

April 14, 2009

Introduced by M. of A. ORTIZ, GALEF, GREENE, WEISENBERG, ROBINSON, PEOPLES -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BING, CAHILL, CLARK, FARRELL, GOTTFRIED, HOOPER, MAYERSOHN, MILLMAN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the expiration or diminishing in value of gift certificates or store credits

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

Section 1. Section 396-i of the general business law, as amended by chapter 170 of the laws of 2004, subdivisions 2-a, 3, 3-a, 3-b, 3-c and 5 as amended and subdivision 6 as added by chapter 507 of the laws of 2004, is amended to read as follows:

S 396-i. Acceptance of [unexpired] gift certificates. 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, 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

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

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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.

1-a. No person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, of the merchandise of any such person, firm, partnership, association or corporation, shall refuse to accept such gift certificate or store credit in payment for goods or services used or bought for use primarily for personal, family or household purposes, including, but not limited to, goods or services advertised on sale or pursuant to a liquidation or close-out[, provided that if the certificates or the terms of the store credits limit the period of time during which they may be used, they are presented for redemption before the expiration of such period of time].

2. No person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, shall in any manner restrict the holder of a gift certificate or store credit from electing use of such gift certificate or store credit in a manner not inconsistent with stated terms of such gift certificate or store credit, nor shall any person, firm, partnership, association or corporation who or which issues gift certificates or store credits, or who or which conducts a "closing out sale" or "defunct business sale" as such terms are defined in section five hundred eighty-one of this chapter, alter the term of a gift certificate or store credit after it has been issued.

2-a. (a) The terms and conditions of a gift certificate shall be disclosed to the purchaser:

(i) on a sign conspicuously posted stating "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS"; or (ii) conspicuously stated in an offer made by mail thus: "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS".

(b) For purchases via electronic, computer, or telephonic means, the statement "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS" shall be stated prior to the customer's purchase of the gift certificate or conspicuously written within the electronic message offering a gift certificate for purchase.

(c) All advertisements or promotions for gift certificates shall include a notice in like or similar term to the following: "TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS".

3. The terms and conditions of a gift certificate store credit shall be clearly and conspicuously stated thereon. Terms and conditions shall include [the expiration date, whether any fees are assessed against the balance of the gift certificate, and whether a fee will be charged for the replacement of a gift certificate that is lost, stolen, or destroyed. Additional terms and conditions including], but not be limited to, policies related to refunds, warranties, changes in terms and

conditions, assignment and waiver shall be conspicuously printed: (a) on the gift certificate; or (b) on an envelope or packaging containing the gift certificate, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate; or (c) on an accompanying printed document, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate.

3-a. The requirements of subdivisions two-a and three of this section shall not apply to a gift certificate that has no terms and conditions.

3-b. Subparagraph (i) of paragraph (a) of subdivision two-a of this section shall not apply to gift certificates:

(a) sold below face value or at a volume discount to employees, to nonprofit and charitable organizations, or educational institutions for fundraising purposes; or

(b) distributed to a consumer or employee pursuant to an awards, rewards, loyalty, or promotional program without any consideration being given in exchange for the gift certificate by the consumer or employee.

3-c. Nothing in this section shall be construed to prevent unclaimed funds related to gift certificates from becoming abandoned under section thirteen hundred fifteen of the abandoned property law.

4. NO GIFT CERTIFICATE OR STORE CREDIT SHALL HAVE AN EXPIRATION DATE OR ANY OTHER DIMINUTION IN VALUE FOR FAILURE TO USE SUCH GIFT CERTIFICATE OR STORE CREDIT BEFORE A SPECIFIED 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 violations; 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.

[5. (a) No retroactive fees shall be assessed against a gift certificate.

(b) No monthly service fees may be assessed against the balance of a gift certificate prior to the thirteenth month of dormancy.

(c) For the purposes of this subdivision, "dormancy" shall mean non-use of a gift certificate. Use of a gift certificate shall include, but not be limited to, adding value, or purchases.]

6. 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. This act shall take effect immediately and shall apply to gift certificates or store credits sold or issued on and after such effective date.