

7184

I N S E N A T E

March 19, 2010

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

1 Section 1. Subdivision 1 of section 396-i of the general business law,
2 as amended by chapter 170 of the laws of 2004, is amended to read as
3 follows:
4 1. For the purposes of this section, "gift certificate" shall mean a
5 written promise or electronic payment device that: (i) is usable at a
6 single merchant or an affiliated group of merchants that share the same
7 name, mark, or logo, or is usable at multiple, unaffiliated merchants or
8 service providers; and (ii) is issued in a specified amount; and (iii)
9 may or may not be increased in value or reloaded; and (iv) is purchased
10 and/or loaded on a prepaid basis for the future purchase or delivery of
11 any goods or services; and (v) IF ISSUED BY A SINGLE MERCHANT OR AN
12 AFFILIATED GROUP OF MERCHANTS THAT SHARE THE SAME NAME, MARK OR LOGO,
13 MAY BE USED TO PAY DOWN ANY DEBT OWED TO OR ANY CREDIT CARD ISSUED BY
14 SUCH MERCHANT OR AFFILIATED GROUP OF MERCHANTS; AND (VI) is honored upon
15 presentation. Gift certificate shall not include an electronic payment
16 device linked to a deposit account, or prepaid telephone calling cards
17 regulated under section ninety-two-f of the public service law. Gift
18 certificate also shall not include flexible spending arrangements as
19 defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S
20 106(c)(2); flexible spending accounts subject to Section 125 of the
21 Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in
22 Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); depend-
23 ent care reimbursement accounts subject to Section 129 of the Internal
24 Revenue Code, 26 U.S.C. S 129; health savings accounts subject to
25 Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as
26 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.

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

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

14 3-D. NO SINGLE MERCHANT OR AFFILIATED GROUP OF MERCHANTS THAT SHARE
15 THE SAME NAME, MARK OR LOGO, WHICH ISSUES GIFT CERTIFICATES OR STORE
16 CREDITS SHALL IN ANY MANNER RESTRICT THE HOLDER OF A GIFT CERTIFICATE OR
17 STORE CREDIT FROM ELECTING TO USE SUCH GIFT CERTIFICATE OR STORE CREDIT
18 TO PAY DOWN ANY DEBT OWED TO OR ANY CREDIT CARD ISSUED BY SUCH MERCHANT
19 OR AFFILIATED GROUP OF MERCHANTS.

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

22 (g) "Gift certificate" shall mean a written promise or electronic
23 payment device that: (i) is usable at a single merchant or an affiliated
24 group of merchants that share the same name, mark, or logo, or is usable
25 at multiple, unaffiliated merchants or service providers; and (ii) is
26 issued in a specified amount; and (iii) may or may not be increased in
27 value or reloaded; and (iv) is purchased and/or loaded on a prepaid
28 basis for the future purchase or delivery of any goods or services; and
29 (v) IF ISSUED BY A SINGLE MERCHANT OR AN AFFILIATED GROUP OF MERCHANTS
30 THAT SHARE THE SAME NAME, MARK OR LOGO, MAY BE USED TO PAY DOWN ANY DEBT
31 OWED TO OR CREDIT CARD ISSUED BY SUCH MERCHANT OR AFFILIATED GROUP OF
32 MERCHANTS; AND (VI) is honored upon presentation. Gift certificate shall
33 not include an electronic payment device linked to a deposit account, or
34 prepaid telephone calling cards regulated under section ninety-two-f of
35 the public service law. Gift certificate also shall not include flexible
36 spending arrangements as defined in Section 106(c)(2) of the Internal
37 Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending accounts subject
38 to Section 125 of the Internal Revenue Code, 26 U.S.C. S 125; Archer
39 MSAs as defined in Section 220(d) of the Internal Revenue Code, 26
40 U.S.C. S 220(d); dependent care reimbursement accounts subject to
41 Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health
42 savings accounts subject to Section 223(d) of the Internal Revenue Code,
43 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare
44 Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L.
45 No. 108-173; or similar accounts from which, under the Internal Revenue
46 Code and its implementing regulations, individuals may pay medical
47 expenses, health care expenses, dependent care expenses, or similar
48 expenses on a pretax basis. Gift certificate also shall not include a
49 prepaid discount card or program used to purchase identified goods or
50 services at a price or percentage below the normal and customary price;
51 provided that the expiration date of the prepaid discount card or
52 program is clearly and conspicuously disclosed. Gift certificate also
53 shall not include payroll cards or other electronic payment devices
54 which are linked to a deposit account and which are given in exchange
55 for goods or services rendered.

56 S 4. This act shall take effect immediately.