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

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. ORTIZ, ROBINSON -- Multi-Sponsored by -- M. of A. CLARK, HIKIND, HOOPER, J. RIVERA, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the sale and use of 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 399-j to read as follows:

S 399-J. SALE AND USE OF GIFT CERTIFICATES AND GIFT CARDS. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "GIFT CERTIFICATE" SHALL MEAN A WRITING IDENTIFIED AS A GIFT CERTIFICATE BY A CONSUMER FOR USE BY A CUSTOMER, WHETHER OR NOT REDEEMABLE FOR CASH, AND USABLE FOR ITS FACE AMOUNT IN LIEU OF CASH FOR THE EXCHANGE OF GOODS OR SERVICES SUPPLIED BY THE SELLER. GIFT CERTIFICATES SHALL INCLUDE ELECTRONIC OR MAGNETIC CARDS WITH A BANKED DOLLAR VALUE, A MERCHANDISE CREDIT, A CERTIFICATE WHERE THE ISSUER HAS RECEIVED PAYMENT FOR THE FULL FACE VALUE FOR THE FUTURE PURCHASE OR DELIVERY OF GOODS OR SERVICES, AND ANY OTHER MEDIUM THAT EVIDENCES THE GIVING OF CONSIDERATION IN EXCHANGE FOR THE RIGHT TO REDEEM IT FOR GOODS OR SERVICES OF AT LEAST AN EQUAL VALUE. PRE-PAID CALLING ARRANGEMENTS, SUCH AS PRE-PAID PHONE CARDS, ARE NOT CONSIDERED GIFT CERTIFICATES FOR THE PURPOSE OF THIS SECTION.

B. "ELECTRONIC GIFT CARD" OR "MAGNETIC GIFT CARD" SHALL MEAN A CARD WITH A BANKED DOLLAR VALUE THAT MAY BE REDEEMED FOR GOODS OR SERVICES WHEREBY THE DOLLAR AMOUNT OF THE CARD IS REDUCED ACCORDINGLY.

2. DURATION OF GIFT CERTIFICATE. A. ANY GIFT CERTIFICATE ISSUED TO A CONSUMER SHALL BE VALID AND REDEEMABLE FOR A MINIMUM OF SEVEN YEARS.

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

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B. ANY GIFT CERTIFICATE, OTHER THAN AN ELECTRONIC OR MAGNETIC GIFT CARD, THAT IS NOT CLEARLY MARKED WITH BOTH A DATE OF ISSUANCE AND A DATE OF EXPIRATION SHALL BE VALID AND REDEEMABLE IN PERPETUITY.

C. AN ELECTRONIC OR MAGNETIC GIFT CARD THAT IS NOT CLEARLY MARKED WITH BOTH A DATE OF ISSUANCE AND A DATE OF EXPIRATION MUST HAVE THE DATE OF ISSUANCE AND THE DATE OF EXPIRATION EITHER: (I) CLEARLY PRINTED ON A SALES RECEIPT, GIVEN TO THE CUSTOMER AT THE TIME OF THE SALE; OR (II) AVAILABLE THROUGH A WEBSITE AND A TOLL-FREE TELEPHONE NUMBER LISTED ON THE CARD. IF THE CUSTOMER DOES NOT RECEIVE A RECEIPT WITH RESPECTIVE DATES PRINTED ON IT, OR SUCH DATES ARE NOT AVAILABLE THROUGH THE INTERNET AND A TOLL-FREE TELEPHONE LINE, THEN THE ELECTRONIC OR MAGNETIC GIFT CARD SHALL BE VALID AND REDEEMABLE IN PERPETUITY.

D. NO GIFT CERTIFICATE SHALL DIMINISH IN VALUE FOR ANY REASON OTHER THAN FOR THE PURCHASE OF GOODS OR SERVICES BY THE CONSUMER.

3. REDEMPTION OF REMAINDER OF A GIFT CERTIFICATE. IF A GIFT CERTIFICATE HAS LESS THAN TEN PERCENT OF ITS ORIGINAL BALANCE REMAINING AFTER A PURCHASE, THE MERCHANT MUST OFFER THE CUSTOMER A CHOICE OF HAVING THE REMAINING BALANCE RETURNED IN THE FORM OF CASH OR IN THE FORM OF ANOTHER GIFT CERTIFICATE.

4. FINES AND PENALTIES FOR FAILING TO REDEEM A VALID GIFT CERTIFICATE. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS ACTUAL DAMAGES OR THREE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO TWO THOUSAND FIVE HUNDRED DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all gift certificates issued on or after such effective date.