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

6898

I N S E N A T E

March 4, 2016

Introduced by Sen. AVELLA -- 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, in relation to gift certificates and gift cards; and to repeal certain provisions of such law relating thereto

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 Section 396-i of the general business law is REPEALED and a new section 396-i is added to read as follows:

S 396-I. GIFT CERTIFICATES AND GIFT CARDS. 1. FOR THE PURPOSES OF THIS SECTION:

(A) THE TERM "GIFT CERTIFICATE" SHALL MEAN A WRITTEN PROMISE IN A SPECIFIED AMOUNT WHICH CANNOT BE INCREASED IN VALUE ON THE FACE THEREOF AND PURCHASED BY A CONSUMER IN EXCHANGE FOR PAYMENT TO PROVIDE MERCHANDISE OR SERVICE IN A SPECIFIED AMOUNT OR OF EQUAL VALUE TO THE BEARER OF THE CERTIFICATE.

(B) "GIFT CARDS" SHALL MEAN A CARD WHICH MAY BE PURCHASED BY A CONSUMER IN EXCHANGE FOR PAYMENT TO PROVIDE MERCHANDISE OR SERVICE IN A SPECIFIED AMOUNT OF EQUAL VALUE TO THE BEARER OF THE CARD.

2. IT IS UNLAWFUL FOR ANY PERSON OR ENTITY TO SELL A GIFT CERTIFICATE OR GIFT CARD TO A PURCHASER THAT CONTAINS ANY OF THE FOLLOWING:

(A) AN EXPIRATION DATE; OR

(B) A SERVICE FEE, INCLUDING, BUT NOT LIMITED TO, A SERVICE FEE FOR DORMANCY, EXCEPT AS PROVIDED IN SUBDIVISION SIX OF THIS SECTION.

3. (A) ANY GIFT CERTIFICATE SOLD AFTER JANUARY FIRST, NINETEEN NINETY-SEVEN, IS REDEEMABLE IN CASH FOR ITS CASH VALUE, OR SUBJECT TO REPLACEMENT WITH A NEW GIFT CERTIFICATE AT NO COST TO THE PURCHASER OR HOLDER.

(B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, ANY GIFT CERTIFICATE WITH A CASH VALUE OF LESS THAN TEN DOLLARS IS REDEEMABLE IN CASH FOR ITS CASH VALUE.

4. A GIFT CERTIFICATE SOLD WITHOUT AN EXPIRATION DATE IS VALID UNTIL REDEEMED OR REPLACED.

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

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5. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING GIFT CERTIFICATES ISSUED ON OR AFTER JANUARY FIRST, NINETEEN HUNDRED NINETY-EIGHT, PROVIDED THE EXPIRATION DATE APPEARS IN CAPITAL LETTERS IN AT LEAST TEN-POINT FONT ON THE FRONT OF THE GIFT CERTIFICATE:

(A) GIFT CERTIFICATES THAT ARE DISTRIBUTED BY THE ISSUER TO A CONSUMER PURSUANT TO AN AWARDS, LOYALTY, OR PROMOTIONAL PROGRAM WITHOUT ANY MONEY OR OTHER THING OF VALUE BEING GIVEN IN EXCHANGE FOR THE GIFT CERTIFICATE BY THE CONSUMER;

(B) GIFT CERTIFICATES THAT ARE DONATED OR SOLD BELOW FACE VALUE AT A VOLUME DISCOUNT TO EMPLOYERS OR TO NONPROFIT AND CHARITABLE ORGANIZATIONS FOR FUNDRAISING PURPOSES IF THE EXPIRATION DATE ON THOSE GIFT CERTIFICATES IS NOT MORE THAN THIRTY DAYS AFTER THE DATE OF SALE; OR

(C) GIFT CERTIFICATES THAT ARE ISSUED FOR PERISHABLE FOOD PRODUCTS.

6. PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION DOES NOT APPLY TO A DORMANCY FEE ON A GIFT CARD THAT MEETS ALL OF THE FOLLOWING CRITERIA:

(A) THE REMAINING VALUE OF THE GIFT CARD IS FIVE DOLLARS OR LESS EACH TIME THE FEE IS ASSESSED;

(B) THE FEE DOES NOT EXCEED ONE DOLLAR PER MONTH;

(C) THERE HAS BEEN NO ACTIVITY ON THE GIFT CARD FOR TWENTY-FOUR CONSECUTIVE MONTHS, INCLUDING, BUT NOT LIMITED TO, PURCHASES, THE ADDING OF VALUE, OR BALANCE INQUIRIES; AND

(D) THE HOLDER MAY RELOAD OR ADD VALUE TO THE GIFT CARD.

7. A STATEMENT IS PRINTED ON THE GIFT CARD IN AT LEAST TEN-POINT FONT STATING THE AMOUNT OF THE FEE, HOW OFTEN THE FEE WILL OCCUR, THAT THE FEE IS TRIGGERED BY INACTIVITY OF THE GIFT CARD, AND AT WHAT POINT THE FEE WILL BE CHARGED. THE STATEMENT MAY APPEAR ON THE FRONT OR BACK OF THE GIFT CARD, BUT SHALL APPEAR IN A LOCATION WHERE IT IS VISIBLE TO ANY PURCHASER PRIOR TO THE PURCHASE THEREOF.

8. AN ISSUER OF GIFT CERTIFICATES MAY ACCEPT FUNDS FROM ONE OR MORE CONTRIBUTORS TOWARD THE PURCHASE OF A GIFT CERTIFICATE INTENDED TO BE A GIFT FOR A RECIPIENT, PROVIDED THAT EACH CONTRIBUTOR IS PROVIDED WITH A FULL REFUND OF THE AMOUNT THAT HE OR SHE PAID TOWARD THE PURCHASE OF THE GIFT CERTIFICATE UPON THE OCCURRENCE OF ALL OF THE FOLLOWING:

(A) THE FUNDS ARE CONTRIBUTED FOR THE PURPOSE OF BEING REDEEMED BY THE RECIPIENT BY PURCHASING A GIFT CERTIFICATE.

(B) THE TIME IN WHICH THE RECIPIENT MAY REDEEM THE FUNDS BY PURCHASING A GIFT CERTIFICATE IS CLEARLY DISCLOSED IN WRITING TO THE CONTRIBUTORS AND THE RECIPIENT.

(C) THE RECIPIENT DOES NOT REDEEM THE FUNDS WITHIN THE TIME DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION.

9. FOR PURPOSES OF THIS SECTION, "CASH" INCLUDES, BUT IS NOT LIMITED TO, CURRENCY OR CHECK. IF ACCEPTED BY BOTH PARTIES, AN ELECTRONIC FUNDS TRANSFER OR AN APPLICATION OF THE BALANCE TO A SUBSCRIBER'S WIRELESS TELECOMMUNICATIONS ACCOUNT IS PERMISSIBLE.

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