

8550

2015-2016 Regular Sessions

I N A S S E M B L Y

October 30, 2015

Introduced by M. of A. ORTIZ, GALEF, PEOPLES-STOKES -- Multi-Sponsored
by -- M. of A. CAHILL, CLARK, FARRELL, GOTTFRIED, HOOPER -- 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:

1 Section 1. Section 396-i of the general business law, as amended by
2 chapter 170 of the laws of 2004, subdivisions 2-a, 3, 3-a, 3-b, 3-c and
3 5 as amended and subdivision 6 as added by chapter 507 of the laws of
4 2004, is amended to read as follows:
5 S 396-i. Acceptance of [unexpired] gift certificates. 1. For the
6 purposes of this section, "gift certificate" shall mean a written prom-
7 ise or electronic payment device that: (i) is usable at a single
8 merchant or an affiliated group of merchants that share the same name,
9 mark, or logo, or is usable at multiple, unaffiliated merchants or
10 service providers; and (ii) is issued in a specified amount; and (iii)
11 may or may not be increased in value or reloaded; and (iv) is purchased
12 and/or loaded on a prepaid basis for the future purchase or delivery of
13 any goods or services; and (v) is honored upon presentation. Gift
14 certificate shall not include an electronic payment device linked to a
15 deposit account, or prepaid telephone calling cards regulated under
16 section ninety-two-f of the public service law. Gift certificate also
17 shall not include flexible spending arrangements as defined in Section
18 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible
19 spending accounts subject to Section 125 of the Internal Revenue Code,
20 26 U.S.C. S 125; Archer MSAs as defined in Section 220(d) of the Inter-
21 nal Revenue Code, 26 U.S.C. S 220(d); dependent care reimbursement
22 accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C.
23 S 129; health savings accounts subject to Section 223(d) of the Internal
24 Revenue Code, 26 U.S.C. S 223(d), as amended by Section 1201 of the
25 Medicare Prescription Drug, Improvement, and Modernization Act of 2003,
26 Pub. L. No. 108-173; or similar accounts from which, under the Internal
27 Revenue Code and its implementing regulations, individuals may pay

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

LBD03575-01-5

1 medical expenses, health care expenses, dependent care expenses, or
2 similar expenses on a pretax basis. Gift certificate also shall not
3 include a prepaid discount card or program used to purchase identified
4 goods or services at a price or percentage below the normal and custom-
5 ary price; provided that the expiration date of the prepaid discount
6 card or program is clearly and conspicuously disclosed. Gift certificate
7 also shall not include payroll cards or other electronic payment devices
8 which are linked to a deposit account and which are given in exchange
9 for goods or services rendered.

10 1-a. No person, firm, partnership, association or corporation who or
11 which issues gift certificates or store credits, or who or which
12 conducts a "closing out sale" or "defunct business sale" as such terms
13 are defined in section five hundred eighty-one of this chapter, of the
14 merchandise of any such person, firm, partnership, association or corpo-
15 ration, shall refuse to accept such gift certificate or store credit in
16 payment for goods or services used or bought for use primarily for
17 personal, family or household purposes, including, but not limited to,
18 goods or services advertised on sale or pursuant to a liquidation or
19 close-out[, provided that if the certificates or the terms of the store
20 credits limit the period of time during which they may be used, they are
21 presented for redemption before the expiration of such period of time].

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

35 2-a. (a) The terms and conditions of a gift certificate shall be
36 disclosed to the purchaser:

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

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

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

49 3. The terms and conditions of a gift certificate store credit shall
50 be clearly and conspicuously stated thereon. Terms and conditions shall
51 include [the expiration date, whether any fees are assessed against the
52 balance of the gift certificate, and whether a fee will be charged for
53 the replacement of a gift certificate that is lost, stolen, or
54 destroyed. Additional terms and conditions including], but not be limit-
55 ed to, policies related to refunds, warranties, changes in terms and
56 conditions, assignment and waiver shall be conspicuously printed: (a) on

1 the gift certificate; or (b) on an envelope or packaging containing the
2 gift certificate, provided that a toll free telephone number to access
3 the additional terms and conditions is printed on the gift certificate;
4 or (c) on an accompanying printed document, provided that a toll free
5 telephone number to access the additional terms and conditions is print-
6 ed on the gift certificate.

7 3-a. The requirements of subdivisions two-a and three of this section
8 shall not apply to a gift certificate that has no terms and conditions.

9 3-b. Subparagraph (i) of paragraph (a) of subdivision two-a of this
10 section shall not apply to gift certificates:

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

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

17 3-c. Nothing in this section shall be construed to prevent unclaimed
18 funds related to gift certificates from becoming abandoned under section
19 thirteen hundred fifteen of the abandoned property law.

20 4. NO GIFT CERTIFICATE OR STORE CREDIT SHALL HAVE AN EXPIRATION DATE
21 OR ANY OTHER DIMINUTION IN VALUE FOR FAILURE TO USE SUCH GIFT CERTIF-
22 ICATE OR STORE CREDIT BEFORE A SPECIFIED DATE.

23 5. Whenever there shall be a violation of this section, an application
24 may be made by the attorney general in the name of the people of the
25 state of New York to a court or justice having jurisdiction by a special
26 proceeding to issue an injunction, and upon notice to the defendant of
27 not less than five days, to enjoin and restrain the continuance of such
28 violations; and if it shall appear to the satisfaction of the court or
29 justice that the defendant has, in fact, violated this section, an
30 injunction may be issued by such court or justice, enjoining and
31 restraining any further violation, without requiring proof that any
32 person has, in fact, been injured or damaged thereby. In any such
33 proceeding, the court may make allowances to the attorney general as
34 provided in paragraph six of subdivision (a) of section eighty-three
35 hundred three of the civil practice law and rules and direct restitu-
36 tion. Whenever the court shall determine that a violation of this
37 section has occurred, the court may impose a civil penalty of not more
38 than one thousand dollars for such violation. In connection with any
39 such application, the attorney general is authorized to take proof and
40 make a determination of the relevant facts and to issue subpoenas in
41 accordance with the civil practice law and rules.

42 [5. (a) No retroactive fees shall be assessed against a gift certif-
43 icate.

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

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

49 6. The provisions of this section shall be exclusive and shall preempt
50 any provisions of local law, ordinance or code, and no locality shall
51 impose requirements that are inconsistent with or more restrictive than
52 those set forth in this section.

53 S 2. This act shall take effect immediately and shall apply to gift
54 certificates or store credits sold or issued on and after such effective
55 date.