

# STATE OF NEW YORK

4730

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

Introduced by M. of A. WALTER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to service charges on gift certificates and gift cards

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section  
2 396-ii to read as follows:

3 § 396-ii. Gift certificates and gift cards. 1. For the purposes of  
4 this section:

5 (a) "gift certificates" shall mean a written promise in a specified  
6 amount which cannot be increased in value on the face thereof and  
7 purchased by a consumer in exchange for payment to provide merchandise  
8 or service in a specified amount or of equal value to the bearer of the  
9 certificate.

10 (b) "gift cards" shall mean a card which may be purchased by a consum-  
11 er in exchange for payment to provide merchandise or service in a speci-  
12 fied amount of equal value to the bearer of the card.

13 (c) "dormancy" shall mean non-use of a gift certificate or gift card.  
14 Adding value or balance inquiries constitutes use of the gift card.

15 2. It shall be unlawful for any business entity, including, but not  
16 limited to, sole proprietorship, firm, company, partnership, association  
17 or corporation to sell to a consumer gift certificates or gift cards  
18 that diminish in value due to dormancy after such gift certificate or  
19 gift card is purchased.

20 3. No surcharges or fees, including, but not limited to, dormancy,  
21 administrative, service, retroactivity or reactivation shall be assessed  
22 against gift certificates or gift cards.

23 4. The terms and conditions of the gift certificate or gift card shall  
24 be clearly and conspicuously stated thereon. The terms and conditions  
25 shall include, but are not limited to, the expiration date.

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

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1     5. Whenever there shall be a violation of this section, an application  
2 may be made by the attorney general in the name of the people of the  
3 state of New York to a court or justice having jurisdiction by a special  
4 proceeding to issue an injunction, and upon notice to the defendant of  
5 not less than five days, to enjoin and restrain the continuance of such  
6 violation; and if it shall appear to the satisfaction of the court or  
7 justice that the defendant has, in fact, violated this section, an  
8 injunction may be issued by such court or justice, enjoining and  
9 restraining any further violation, without requiring proof that any  
10 person has, in fact, been injured or damaged thereby. In any such  
11 proceeding, the court may make allowances to the attorney general as  
12 provided in paragraph six of subdivision (a) of section eighty-three  
13 hundred three of the civil practice law and rules and direct restitu-  
14 tion. Whenever the court shall determine that a violation of this  
15 section has occurred, the court may impose a civil penalty of not more  
16 than one thousand dollars for such violation. In connection with any  
17 such application, the attorney general is authorized to take proof and  
18 make a determination of the relevant facts and to issue subpoenas in  
19 accordance with the civil practice law and rules.

20     § 2. This act shall take effect on the sixtieth day after it shall  
21 have become a law.