

# STATE OF NEW YORK

8780

## IN SENATE

July 15, 2020

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to fees for gift cards

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

Section 1. Subdivisions 1, 3, 5, and 5-a of section 396-i of the general business law, subdivision 1 as amended by chapter 170 of the laws of 2004 and subdivisions 3 and 5 as amended and subdivision 5-a as added by chapter 329 of the laws of 2016, are amended and a new subdivision 5-b is added to read as follows:

1. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) "gift certificate" shall mean a [written promise or electronic payment device] certificate, electronic card, or other pre-funded record that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) is honored upon presentation[-];

(2) "open loop gift certificate" shall mean a gift certificate redeemable at multiple, unaffiliated merchants or service providers; and

(3) "promotional gift certificate" shall mean a gift certificate issued for no consideration which includes on the front of the gift certificate (i) a statement indicating that the card is issued for promotional purposes and (ii) the expiration date for the underlying funds.

(b) Gift certificate shall not include an electronic payment device linked to a deposit account, or prepaid telephone calling cards regulated under section ninety-two-f of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. §

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

LBD16939-02-0

1 106(c)(2); flexible spending accounts subject to Section 125 of the  
2 Internal Revenue Code, 26 U.S.C. § 125; Archer MSAs as defined in  
3 Section 220(d) of the Internal Revenue Code, 26 U.S.C. § 220(d); depend-  
4 ent care reimbursement accounts subject to Section 129 of the Internal  
5 Revenue Code, 26 U.S.C. § 129; health savings accounts subject to  
6 Section 223(d) of the Internal Revenue Code, 26 U.S.C. § 223(d), as  
7 amended by Section 1201 of the Medicare Prescription Drug, Improvement,  
8 and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts  
9 from which, under the Internal Revenue Code and its implementing regu-  
10 lations, individuals may pay medical expenses, health care expenses,  
11 dependent care expenses, or similar expenses on a pretax basis. Gift  
12 certificate also shall not include a prepaid discount card or program  
13 used to purchase identified goods or services at a price or percentage  
14 below the normal and customary price; provided that ~~the~~ any expiration  
15 date of the prepaid discount card or program is clearly and conspicuously  
16 disclosed. Gift certificate also shall not include payroll cards or  
17 other electronic payment devices which are linked to a deposit account  
18 and which are given in exchange for goods or services rendered.

19 3. The terms and conditions of a gift certificate store credit shall  
20 be clearly and conspicuously stated thereon. Terms ~~[and conditions shall  
21 include the expiration date, whether any fees are assessed against the  
22 balance of the gift certificate, and whether a fee will be charged for  
23 the replacement of a gift certificate that is lost, stolen, or  
24 destroyed, if any. Additional terms]~~ and conditions including, but not  
25 limited to, policies related to refunds, warranties, changes in terms  
26 and conditions, the procedure for the replacement of a gift certificate,  
27 if any, assignment and waiver shall be conspicuously printed: (a) on the  
28 gift certificate; or (b) on an envelope or packaging containing the gift  
29 certificate, provided that a toll free telephone number to access the  
30 additional terms and conditions is printed on the gift certificate; or  
31 (c) on an accompanying document, provided that a toll free telephone  
32 number to access the additional terms and conditions is printed on the  
33 gift certificate.

34 5. (a) No person, firm, partnership, association or corporation shall  
35 charge or assess, or sell or issue any gift certificate subject to, any  
36 activation fee, retroactive ~~[fees shall be assessed against a gift~~  
37 ~~certificate.~~

38 ~~(b) No monthly]~~ fee, redemption fee, service [fees may be assessed  
39 against the balance of a gift certificate prior to the twenty-fifth  
40 month of dormancy] fee, dormancy fee, latency fee, administrative fee,  
41 handling fee, access fee, periodic fee, renewal fee, re-loading fee, or  
42 any other fee of any kind, other than an open loop gift certificate  
43 subject to an initial one-time activation or issuance fee not in excess  
44 of the lesser of four dollars or five percent of the face value of such  
45 open loop gift certificate.

46 ~~[(c) A service fee may be assessed after the twenty-fourth month of~~  
47 ~~dormancy provided that any such fee shall be waived and the gift certif-~~  
48 ~~icate replenished to its value prior to such fees being assessed where~~  
49 ~~the holder of such gift certificate presents the certificate within~~  
50 ~~three years of issue]~~ (b) No person, firm, partnership, association or  
51 corporation shall sell a gift certificate that has a face value or  
52 balance that declines as a result of the passage of time or the dormancy  
53 of the gift certificate.

54 ~~[(d)]~~ (c) For the purposes of this subdivision, "dormancy" shall mean  
55 non-use of a gift certificate. Use of a gift certificate shall include,  
56 but not be limited to, adding value, or purchases.

1 5-a. It shall be unlawful for any person to sell or issue a gift  
2 certificate other than a promotional gift certificate where the gift  
3 certificate or the underlying funds are subject to an expiration date  
4 [~~which is earlier than five years after the date on which the gift~~  
5 ~~certificate was issued, or the date on which funds were last loaded to a~~  
6 ~~store gift card. The terms of expiration shall be clearly and conspicu-~~  
7 ~~ously stated on the gift certificate~~]. The terms of expiration of a  
8 promotional gift certificate, if any, shall be clearly and conspicuously  
9 stated on such promotional gift certificate.

10 5-b. A gift certificate, other than an open loop gift certificate,  
11 with a remaining value of less than five dollars may be redeemed upon  
12 request for its cash value.

13 § 2. This act shall take effect one year after it shall have become a  
14 law.