

STATE OF NEW YORK

5771

2019-2020 Regular Sessions

IN SENATE

May 14, 2019

Introduced by Sen. MAYER -- 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 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. For the purposes of this section, "gift certificate" shall mean a ~~[written promise or electronic payment device 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]~~ certificate, electronic card, or other pre-funded record that evidences the giving of consideration in exchange for the right to redeem such record for goods, services, credit, or money of at least an equal value to the amount shown on, embedded in, or associated with, such record. 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. § 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. § 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. § 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. § 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. § 223(d), as amended by Section 1201 of the

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

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1 Medicare Prescription Drug, Improvement, and Modernization Act of 2003,
2 Pub. L. No. 108-173; or similar accounts from which, under the Internal
3 Revenue Code and its implementing regulations, individuals may pay
4 medical expenses, health care expenses, dependent care expenses, or
5 similar expenses on a pretax basis. Gift certificate also shall not
6 include a prepaid discount card or program used to purchase identified
7 goods or services at a price or percentage below the normal and custom-
8 ary price; provided that ~~[the]~~ any expiration date of the prepaid
9 discount card or program is clearly and conspicuously disclosed. Gift
10 certificate also shall not include payroll cards or other electronic
11 payment devices which are linked to a deposit account and which are
12 given in exchange for goods or services rendered.

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

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

32 ~~(b) No monthly]~~ fee, redemption fee, service ~~[fees may be assessed~~
33 ~~against the balance of a gift certificate prior to the twenty-fifth~~
34 ~~month of dormancy]~~ fee, dormancy fee, latency fee, administrative fee,
35 handling fee, access fee, periodic fee, renewal fee, re-loading fee, or
36 any other post-purchase fee of any kind.

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

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

48 5-a. It shall be unlawful for any person to sell or issue a gift
49 certificate where the gift certificate or the underlying funds are
50 subject to an expiration date ~~[which is earlier than five years after~~
51 ~~the date on which the gift certificate was issued, or the date on which~~
52 ~~funds were last loaded to a store gift card. The terms of expiration~~
53 ~~shall be clearly and conspicuously stated on the gift certificate].~~

54 5-b. A gift card with a remaining value of twenty dollars or less may
55 be redeemed for its cash value.

56 § 2. This act shall take effect immediately.