

STATE OF NEW YORK

5771--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 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; and

(2) "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

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

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1 promotional purposes and (ii) the expiration date for the underlying
2 funds.

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

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

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

45 ~~(b) No monthly]~~ fee, redemption fee, service [fees may be assessed
46 against the balance of a gift certificate prior to the twenty-fifth
47 month of dormancy] fee, dormancy fee, latency fee, administrative fee,
48 handling fee, access fee, periodic fee, renewal fee, re-loading fee, or
49 any other fee of any kind.

50 ~~[(c) A service fee may be assessed after the twenty-fourth month of~~
51 ~~dormancy provided that any such fee shall be waived and the gift certifi-~~
52 ~~cate replenished to its value prior to such fees being assessed where~~
53 ~~the holder of such gift certificate presents the certificate within~~
54 ~~three years of issue]~~ (b) No person, firm, partnership, association or
55 corporation shall sell a gift certificate that has a face value or

1 balance that declines as a result of the passage of time or the dormancy
2 of the gift certificate.

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

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

13 5-b. A gift certificate with a remaining value of less than five
14 dollars may be redeemed upon request for its cash value provided that a
15 gift certificate that may be redeemed at more than one merchant shall
16 only be redeemable for such cash value from the merchant from which such
17 gift certificate was acquired.

18 § 2. This act shall take effect 1 year after it shall have become a
19 law.