

STATE OF NEW YORK

4629

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

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

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

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

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

17 (2) "open loop gift certificate" shall mean a gift certificate redeem-
18 able at multiple, unaffiliated merchants or service providers; and

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

24 (b) Gift certificate shall not include an electronic payment device
25 linked to a deposit account, or prepaid telephone calling cards regu-

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

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

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

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

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

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

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

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

13 5-b. A gift certificate, other than an open loop gift certificate or a
14 promotional gift certificate, with a remaining value of less than five
15 dollars may be redeemed upon request for its cash value.

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