

STATE OF NEW YORK

3467--A

Cal. No. 488

2021-2022 Regular Sessions

IN SENATE

January 29, 2021

Introduced by Sens. MAYER, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

LBD02680-05-1

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 certif-
6 icate 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 conspicu-
23 ously 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 expiration date, if any, the activation fee, if any,
34 the procedure for the replacement of a gift certificate, if any, assign-
35 ment and waiver shall be conspicuously printed: (a) on the gift certif-
36 icate; or (b) on an envelope or packaging containing the gift certif-
37 icate, provided that a toll free telephone number to access the
38 additional terms and conditions is printed on the gift certificate; or
39 (c) on an accompanying document, provided that a toll free telephone
40 number to access the additional terms and conditions is printed on the
41 gift certificate.

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

46 ~~(b) No monthly]~~ fee, redemption fee, service [fees may be assessed
47 against the balance of a gift certificate prior to the twenty-fifth
48 month of dormancy] fee, dormancy fee, latency fee, administrative fee,
49 handling fee, access fee, periodic fee, renewal fee, re-loading fee, or
50 any other fee of any kind, other than an open loop gift certificate
51 subject to an initial one-time activation or issuance fee reasonably
52 related to the cost of the issuer issuing the open loop gift certificate
53 and which shall in no event be in excess of nine dollars.

54 ~~[(c) A service fee may be assessed after the twenty-fourth month of~~
55 ~~dormancy provided that any such fee shall be waived and the gift certif-~~
56 ~~icate replenished to its value prior to such fees being assessed where~~

1 ~~the holder of such gift certificate presents the certificate within~~
2 ~~three years of issue]~~ (b) No person, firm, partnership, association or
3 corporation shall sell a gift certificate that has a face value or
4 balance that declines as a result of the passage of time or the dormancy
5 of the gift certificate.

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

9 5-a. It shall be unlawful for any person to sell or issue a gift
10 certificate other than a promotional gift certificate where the underly-
11 ing funds are subject to an expiration date, provided that a gift
12 certificate may be subject to an expiration date which is not earlier
13 than [~~five~~] the later of nine years after the date on which the gift
14 certificate was issued, or the date on which funds were last loaded to a
15 store gift card. The terms of expiration of a gift certificate, if any,
16 shall be clearly and conspicuously stated on [~~the~~] such gift certif-
17 icate.

18 5-b. A gift certificate, other than an open loop gift certificate or a
19 promotional gift certificate, with a remaining value of less than five
20 dollars may be redeemed upon request for its cash value.

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