

# STATE OF NEW YORK

3467--B

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 -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to 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

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

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

6 (b) Gift certificate shall not include an electronic payment device  
7 linked to a deposit account or which is covered by the exclusion set  
8 forth in 15 U.S.C. § 1693I-1(a)(2)(D)(ii), or prepaid telephone calling  
9 cards regulated under section ninety-two-f of the public service law.  
10 Gift certificate also shall not include flexible spending arrangements  
11 as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C.  
12 § 106(c)(2); flexible spending accounts subject to Section 125 of the  
13 Internal Revenue Code, 26 U.S.C. § 125; Archer MSAs as defined in  
14 Section 220(d) of the Internal Revenue Code, 26 U.S.C. § 220(d); depend-  
15 ent care reimbursement accounts subject to Section 129 of the Internal  
16 Revenue Code, 26 U.S.C. § 129; health savings accounts subject to  
17 Section 223(d) of the Internal Revenue Code, 26 U.S.C. § 223(d), as  
18 amended by Section 1201 of the Medicare Prescription Drug, Improvement,  
19 and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts  
20 from which, under the Internal Revenue Code and its implementing regu-  
21 lations, individuals may pay medical expenses, health care expenses,  
22 dependent care expenses, or similar expenses on a pretax basis. Gift  
23 certificate also shall not include a prepaid discount card or program  
24 used to purchase identified goods or services at a price or percentage  
25 below the normal and customary price; provided that ~~the~~ any expiration  
26 date of the prepaid discount card or program is clearly and conspicuously  
27 disclosed. Gift certificate also shall not include payroll cards or  
28 other electronic payment devices which are linked to a deposit account  
29 and which are given in exchange for goods or services rendered.

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

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

50 ~~(b) No monthly]~~ fee, redemption fee, service [fees may be assessed  
51 ~~against the balance of a gift certificate prior to the twenty-fifth~~  
52 ~~month of dormancy]~~ fee, dormancy fee, latency fee, administrative fee,  
53 handling fee, access fee, periodic fee, renewal fee, re-loading fee, or  
54 any other fee of any kind, other than an open loop gift certificate  
55 subject to an initial one-time activation or issuance fee reasonably

1 related to the cost of the issuer issuing the open loop gift certificate  
2 and which shall in no event be in excess of nine dollars.

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

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

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

23 5-b. A gift certificate, other than an open loop gift certificate or a  
24 promotional gift certificate, with a remaining value of less than five  
25 dollars may be redeemed upon request for its cash value.

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