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

(b) Gift certificate shall not include an electronic payment device linked to a deposit account **or which is covered by the exclusion set forth in 15 U.S.C. § 1693I-1(a)(2)(D)(ii)**, 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 Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that [~~the~~] **any** expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

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

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

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

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

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

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

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

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

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