STATE OF NEW YORK

9900

IN SENATE

September 4, 2024

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to enacting the "New York gift certificate scam prevention act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York gift certificate scam prevention act".

§ 2. Paragraph (a) of subdivision 1 of section 396-i of the general business law, as amended by chapter 668 of the laws of 2021, is amended to read as follows:

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

(1) "gift certificate" shall mean [~~a 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~~] **an open loop gift certificate or a closed loop gift certificate**;

(2) "open loop gift certificate" shall mean a gift certificate redeemable at multiple, unaffiliated merchants or service providers; [~~and~~]

(3) **"closed loop gift certificate" shall mean a card, code, or device that is:**

(i) issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether such amount may be increased or reloaded in exchange for payment; and

(ii) redeemable on presentation by a consumer at a single merchant or a group of affiliated merchants.

(4) "promotional gift certificate" shall mean a gift certificate issued for no consideration which includes on the front of the gift

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

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certificate (i) a statement indicating that the card is issued for promotional purposes and (ii) the expiration date for the underlying funds; and

(5) "third-party gift certificate reseller" shall mean a merchant who, without authorization from or affiliation with the business entity issuing an open loop gift certificate, is engaged in the business of buying open loop gift certificates or reselling open loop gift certificates to consumers.

§ 3. Subdivisions 4, 5, 5-a, 5-b and 6 of section 396-i of the general business law are renumbered subdivisions 5, 6, 7, 8 and 9, and a new subdivision 4 is added to read as follows:

4. (a) For an in-person sale of a gift certificate, such gift certificate shall be enclosed in secure packaging that:

(i) is sealed in a manner that is not easily opened without signs of tampering;

(ii) except as otherwise provided in subparagraph (iii) of this paragraph, conceals all numeric codes specific to the activation or the redemption of such gift certificate, including but not limited to, bar codes, CVV numbers, PIN numbers, and activation codes;

(iii) displays an activation code, bar code, or other activation date only if the packaging used is more secure than it otherwise would be if the data were fully concealed; and

(iv) includes the following warning or a substantially similar warning that states the following language: "DO NOT SELL OR PURCHASE IF PACKAGING HAS BEEN BROKEN OR INDICATES TAMPERING".

(b) A merchant may sell a gift certificate that is not enclosed in secure packaging as required under paragraph (a) of this subdivision if (i) such gift certificate is a chip-enabled, numberless card that is activated by a consumer after registering such gift certificate on the issuer's website; or (ii) such gift certificate is sold exclusively by such merchant or a group of affiliated merchants for use only at the retail establishments of such merchant or affiliated merchants and is secured in a physical location within such merchant's retail establishment that is accessible only by an employee of such merchant.

(c) A merchant that displays a gift certificate for sale at a retail establishment shall provide training to all employees of such merchant whose duties regularly include the sale of open loop gift certificates and/or closed loop gift certificates to consumers on how to identify and respond to gift certificate scams.

(d) (i) Subject to the provisions of subparagraph (ii) of this paragraph, when a third-party gift certificate reseller sells an open loop gift certificate as part of a transaction occurring in this state, such third-party gift certificate reseller shall record and maintain for a minimum of three years, a copy of the following:

(1) The name of the person who conducted the transaction;

(2) The name, age, and address of the seller of the open loop gift certificate;

(3) The seller's and consumer's driver's license or other identification card number;

(4) A description of the purchased open loop gift certificate including the retailer for which such open loop gift certificate is intended for use and such open loop gift certificate's identification number;

(5) The specific amount issued on the open loop gift certificate;

(6) The prices paid to conduct the transaction; and

(7) The signature of the consumer.

(ii) (1) The information recorded and maintained under this paragraph shall be recorded chronologically in ink writing or logged into a secure database, software system, or other similar technology platform. Except as provided in clause two of this subparagraph, recorded information made in ink writing shall not be destroyed, altered, or erased within the time frame such recorded information is required to be kept under subparagraph (i) of this paragraph.

(2) A handwritten correction may be made to an entry of information by drawing a line of ink through such entry in a manner that retains legibility. Information recorded under this section shall be open to inspection by any duly authorized law enforcement officer: (A) during the ordinary business hours of the third-party gift certificate reseller; or (B) at any reasonable time.

(3) A third-party gift certificate reseller, including an agent or employee of such third-party gift certificate reseller, shall not: (A) fail to make an entry of or falsify, destroy, or remove any information required to be recorded and maintained under this section; (B) refuse to allow any duly authorized law enforcement officer to inspect a record of information or open loop gift certificate in such third-party gift certificate reseller's possession during the ordinary business hours of such reseller or at any reasonable time; or (C) fail to maintain a record of each open loop gift certificate and transaction for at least three years as required under subparagraph (i) of this paragraph.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.