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I N   S E N A T E

March 26, 2010

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Introduced by Sens. SCHNEIDERMAN, FOLEY, HUNTLEY, KRUEGER, MONTGOMERY, PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to prohibiting the imposition of a surcharge by a seller in a sales transaction on a holder who uses a debit card

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 518 of the general business law, as added by chap-  
2     ter 160 of the laws of 1984, is amended to read as follows:  
3     S 518. [Credit] PAYMENT card surcharge prohibited. 1. No seller in  
4     any sales transaction may impose a surcharge on a holder who elects to  
5     use a credit card OR DEBIT CARD in lieu of payment by cash, check, or  
6     similar means. FOR PURPOSES OF THIS SECTION, "DEBIT CARD" INCLUDES A  
7     PREPAID CARD OR OTHER MEANS OF ACCESS TO PREPAID FUNDS THAT MAY BE USED  
8     TO INITIATE ELECTRONIC FUNDS TRANSFERS AND MAY BE USED WITHOUT UNIQUE  
9     IDENTIFYING INFORMATION SUCH AS A PERSONAL IDENTIFICATION NUMBER TO  
10    INITIATE ACCESS TO PREPAID FUNDS.  
11    2. NOTHING IN THIS SECTION SHALL PROHIBIT ANY SELLER FROM:  
12    A. OFFERING DISCOUNTS TO A BUYER TO INDUCE THE BUYER TO PAY BY CASH,  
13    CHECK, DEBIT CARD, OR SIMILAR MEANS RATHER THAN BY CREDIT CARD OR DEBIT  
14    CARD, IF SUCH DISCOUNTS ARE OFFERED TO ALL PROSPECTIVE BUYERS AND  
15    DISCLOSED CLEARLY AND CONSPICUOUSLY; OR  
16    B. IMPOSING A SURCHARGE ON A HOLDER WHO, IN CONNECTION WITH A CREDIT  
17    CARD OR DEBIT CARD TRANSACTION, RECEIVES CASH BACK BEYOND THE PURCHASE  
18    AMOUNT OF THE SALES TRANSACTION, BUT SUCH SURCHARGE MAY ONLY BE APPLIED  
19    IF DISCLOSED CLEARLY AND CONSPICUOUSLY TO THE HOLDER PRIOR TO THE

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

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1 COMPLETION OF THE TRANSACTION AND ONLY APPLIED TO THE AMOUNT OF CASH  
2 BACK PROVIDED BY THE SELLER.

3 3. NO PERSON MAY PROHIBIT A SELLER FROM:

4 A. OFFERING DISCOUNTS TO A BUYER TO INDUCE PAYMENT BY CASH, CHECK,  
5 DEBIT CARD OR SIMILAR MEANS RATHER THAN BY CREDIT CARD OR DEBIT CARD IF  
6 SUCH DISCOUNTS ARE CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION; OR

7 B. IMPOSING A SURCHARGE ON A HOLDER WHO, IN CONNECTION WITH A CREDIT  
8 CARD OR DEBIT CARD TRANSACTION, RECEIVES CASH BACK BEYOND THE PURCHASE  
9 AMOUNT OF THE SALES TRANSACTION, BUT SUCH SURCHARGE MAY ONLY BE APPLIED  
10 IF DISCLOSED CLEARLY AND CONSPICUOUSLY TO THE HOLDER PRIOR TO THE  
11 COMPLETION OF THE TRANSACTION AND ONLY APPLIED TO THE AMOUNT OF CASH  
12 BACK PROVIDED BY THE SELLER.

13 4. AN ELECTRONIC PAYMENT SYSTEM MAY NOT, DIRECTLY OR THROUGH ANY  
14 AGENT, PROCESSOR, OR MEMBER OF SUCH SYSTEM, IMPOSE ANY REQUIREMENT,  
15 CONDITION, PENALTY, OR FINE IN A CONTRACT WITH A SELLER RELATING TO THE  
16 DISPLAY, AT THE POINT OF SALE, OF PRICING FOR GOODS OR SERVICES OFFERED  
17 BY SELLER, INCLUDING A DISPLAY RELATING TO A DISCOUNT TO INDUCE PAYMENT  
18 BY CASH, CHECK, OR SIMILAR MEANS. THIS PROHIBITION SHALL NOT APPLY WITH  
19 RESPECT TO THE DISPLAY OF PRICING FOR GOODS OR SERVICES IN ADVERTISE-  
20 MENTS.

21 5. Any seller who violates the provisions of this section shall be  
22 guilty of a misdemeanor punishable by a fine not to exceed five hundred  
23 dollars or a term of imprisonment up to one year, or both.

24 6. IF AN ELECTRONIC PAYMENT SYSTEM IMPOSES A FINE ON AN ACQUIRER THAT  
25 RESULTS IN THE PAYMENT BY A SELLER THAT VIOLATES ANY PROVISION OF THIS  
26 SECTION, THE ELECTRONIC PAYMENT SYSTEM SHALL BE LIABLE TO THE SELLER FOR  
27 THE AMOUNT OF ANY SUCH FINE PAID BY THE SELLER, AND, IN ADDITION,  
28 SUBJECT TO A CIVIL PENALTY UP TO TWICE THE AMOUNT OF SUCH FINE.

29 S 2. This act shall take effect on the one hundred twentieth day after  
30 it shall have become a law.