S T A T E O F N E W Y O R K

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Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. GREENE, HEASTIE, HOOPER, MAGEE, MAYERSOHN, McENENY, MENG, ORTIZ, POWELL, J. RIVERA, ROBINSON, TOWNS, WRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the personal property law and the banking law, in relation to excluding finance, service or interest charges and other authorized fees from the amount used to determine whether the specified credit limit has been exceeded for the purpose of imposing an overlimit charge in retail instalment credit agreements and other installment obligations

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

Section 1. The closing paragraph of subdivision 5 of section 413 of the personal property law is designated paragraph (c), and paragraph (b) of such subdivision, as amended by chapter 1 of the laws of 1994, is amended to read as follows:

(b) In addition to the service charge on outstanding indebtedness permitted under subdivision three of this section, the seller or holder may charge, receive and collect any one or more of the fees and charges described in this paragraph, provided that any such fee or charge is provided for in the retail instalment credit agreement. When credit cards are issued in connection with a retail instalment credit agreement, the retail instalment credit agreement may provide for an annual fee for membership in the credit card plan. If a buyer has requested the issuance of a credit card, the fee for the first year may be charged by the seller or holder at any time. The seller or holder shall in each subsequent year in which an annual fee is payable, send the buyer in or with the statement for the monthly billing period before that in which the fee is to be billed, a notice that the annual fee will be billed in the next monthly statement. A buyer who is not delinquent or otherwise in breach of any term of the agreement with the seller or holder shall

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

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have the right during the first six months after the annual fee is billed to notify the seller or holder in writing, at its address on the credit agreement, to terminate the buyer's account and request a refund of the unused portion of the annual fee previously paid. Upon receipt of the termination notice and refund request from such buyer, the seller or holder shall refund to the buyer the unused pro-rata share of any annual fee previously paid as of the first billing statement date after receipt of the termination notice. The retail [installment] INSTALMENT credit agreement may provide for the assessment of a fee for any [installment] INSTALMENT which is not paid on or before the date on which it is due. A seller or holder that imposes a fee for late payments without allowing a grace period of at least ten days must credit any cash payment made by a buyer to an authorized representative of the seller or holder at all stores, or to a teller at a branch where deposits are accepted, as of the date of the receipt of the payment. The retail [installment] INSTALMENT credit agreement may, in addition, provide for an overlimit charge. The overlimit charge may be imposed whenever the specified credit limit is exceeded BY THE TOTAL AMOUNT OF PURCHASES MADE OR CASH ADVANCES OBTAINED, OR BOTH, AS THE CASE MAY BE, but not more than once in a monthly billing cycle. FINANCE, SERVICE AND INTEREST CHARGES, AND ALL OTHER FEES AND CHARGES INCLUDING BUT NOT LIMITED TO COMMISSIONS, EXPENSES, FINES AND PENALTIES AUTHORIZED BY THIS SECTION OR BY THE TERMS OF THE RETAIL INSTALMENT CREDIT AGREEMENT SHALL BE EXCLUDED FROM DETERMINATION OF WHETHER THE SPECIFIED CREDIT LIMIT IS EXCEEDED. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement. The retail [installment] INSTALMENT credit agreement also may provide for: (i) a returned payment charge, in the amount set forth in section 5-328 of the general obligations law, for any check or other method of payment that is returned unpaid, excluding payment made by automated teller machine or other electronic media; (ii) a charge for replacement of lost or stolen credit cards, which charge shall be applied only where a buyer has suffered a lost or stolen credit card after two replacements thereof; (iii) a charge for additional credit cards for the buyer's account; and (iv) a charge for copies of sales slips, monthly statements and other documents when such copies are not required by federal or state law governing billing error disputes.

S 2. Subparagraph (vii) of paragraph e of subdivision 5 of section 108 of the banking law, as amended by chapter 1 of the laws of 1994, is amended to read as follows:

(vii) an overlimit charge which may be imposed whenever the specified credit limit is exceeded BY THE TOTAL AMOUNT OF PURCHASES MADE OR CASH ADVANCES OBTAINED, OR BOTH, AS THE CASE MAY BE, but not more than once in a monthly billing cycle. FINANCE, SERVICE AND INTEREST CHARGES, AND ALL OTHER FEES AND CHARGES INCLUDING BUT NOT LIMITED TO COMMISSIONS, EXPENSES, FINES AND PENALTIES AUTHORIZED BY THIS SECTION OR BY THE TERMS OF THE RETAIL INSTALLMENT CREDIT AGREEMENT SHALL BE EXCLUDED FROM DETERMINATION OF WHETHER THE SPECIFIED CREDIT LIMIT IS EXCEEDED. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement; and

S 3. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to retail instalment credit agreements under section 413 of the personal property law and to installment obligations under section 108 of the banking law, that are issued, renewed, amended or restated on or after the effective date of this act.