

3435

2009-2010 Regular Sessions

I N S E N A T E

March 19, 2009

Introduced by Sen. MONSERRATE -- read twice and ordered printed, and  
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to merchants  
access to credit card rules and rates

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

1 Section 1. The general business law is amended by adding a new section  
2 518-b to read as follows:

3 S 518-B. MERCHANTS ACCESS TO CREDIT CARD RULES AND RATES. 1. AS USED  
4 IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

5 (A) "ACQUIRER" MEANS AN INSTITUTION DOING BUSINESS IN THIS STATE PROC-  
6 ESSING MERCHANT ACCOUNTS;

7 (B) "CREDIT CARD" MEANS A VALID CARD AUTHORIZING THE CARDHOLDER TO BUY  
8 GOODS OR SERVICES ON CREDIT AND BEARING THE SERVICE MARK OF A CREDIT  
9 CARD ASSOCIATION OR NETWORK. SUCH TERM SHALL INCLUDE THE NUMBER  
10 ASSIGNED TO AN INSTRUMENT OR DEVICE DESCRIBED IN THIS PARAGRAPH EVEN IF  
11 THE PHYSICAL INSTRUMENT OR DEVICE IS NOT USED OR PRESENTED;

12 (C) "DEBIT CARD" MEANS: (I) ANY INSTRUMENT OR DEVICE WHETHER KNOWN AS  
13 A DEBIT CARD, ELECTRONIC BENEFIT TRANSFER CARD OR ANY OTHER ACCESS  
14 INSTRUMENT OR DEVICE, OTHER THAN A CHECK, THAT IS SIGNED BY THE HOLDER  
15 OR OTHER AUTHORIZED SIGNATORY ON THE DEPOSIT ACCOUNT THAT DRAWS MONIES  
16 FROM A DEPOSIT ACCOUNT IN ORDER TO OBTAIN MONEY, GOODS, SERVICES OR  
17 ANYTHING ELSE OF VALUE; (II) ANY STORED VALUE CARD, SMART CARD OR OTHER  
18 INSTRUMENT OR DEVICE THAT ENABLES A PERSON TO OBTAIN GOODS, SERVICES OR  
19 ANYTHING ELSE OF VALUE THROUGH THE USE OF VALUE STORED ON THE INSTRUMENT  
20 OR DEVICE; AND (III) THE NUMBER ASSIGNED TO AN INSTRUMENT OR DEVICE  
21 DESCRIBED IN SUBPARAGRAPHS (I) OR (II) OF THIS PARAGRAPH EVEN IF THE  
22 PHYSICAL INSTRUMENT OR DEVICE IS NOT USED OR PRESENTED;

23 (D) "FINANCIAL INSTITUTION" MEANS ANY BANK, SAVINGS ASSOCIATION,  
24 SAVINGS BANK, CREDIT UNION OR INDUSTRIAL LOAN COMPANY;

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

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1 (E) "INTERCHANGE FEE" MEANS THE FEE THAT AN ACQUIRER PAYS TO AN ISSU-  
2 ING BANK WHEN A CARDHOLDER USES A CREDIT CARD OR DEBIT CARD AS PAYMENT  
3 DURING A RETAIL TRANSACTION;

4 (F) "ISSUING BANK" MEANS A FINANCIAL INSTITUTION WHICH ISSUES CREDIT  
5 OR DEBIT CARDS TO CARDHOLDERS;

6 (G) "MERCHANT ACCOUNT" MEANS A BANK ACCOUNT THAT ALLOWS A MERCHANT TO  
7 ACCEPT CREDIT CARD OR DEBIT CARD PAYMENTS;

8 (H) "MERCHANT" MEANS A PERSON OR ENTITY AUTHORIZED TO DO BUSINESS IN  
9 THIS STATE WHICH OFFERS GOODS OR SERVICES FOR SALE IN THIS STATE;

10 (I) "CREDIT CARD ASSOCIATION" MEANS ANY ENTITY FORMED TO ADMINISTER  
11 AND PROMOTE CREDIT CARDS.

12 2. A CREDIT CARD ASSOCIATION, ISSUING BANK OR ACQUIRER FACILITATING  
13 THE ACCEPTANCE OF CREDIT OR DEBIT CARD TRANSACTIONS IN THE STATE SHALL:

14 (A) MAKE AVAILABLE TO A MERCHANT LOCATED IN THIS STATE A COMPLETE  
15 PAPER COPY OF THE CONTRACT, RATES, INCLUDING THE APPLICABLE INTERCHANGE  
16 FEES, AND RULES WHICH APPLY TO THAT MERCHANT AS REFERENCED IN THE  
17 CONTRACT, EITHER INDIVIDUALLY OR THROUGH AN ACQUIRER; AND

18 (B) NOTIFY A MERCHANT LOCATED IN THIS STATE WHEN A REFERENCED RATE OR  
19 RULE HAS BEEN CHANGED OR A NEW RATE AND RULE ADDED WHICH APPLIES TO THAT  
20 MERCHANT PRIOR TO THE EFFECTIVE DATE OF THE NEW OR REVISED RATE OR RULE  
21 AND PROVIDE A WRITTEN COPY OF THE NEW OR MODIFIED RATE OR RULE TO SUCH  
22 MERCHANT. INSTEAD OF PROVIDING A PAPER COPY OF THE NOTICES REQUIRED  
23 HEREIN, THE CONTRACTING ENTITY, ISSUING BANK OR CREDIT CARD ASSOCIATION  
24 MAY PROVIDE THE MERCHANT WITH ACCESS TO THE RATES OR RULES IN A FORM  
25 THAT MAY BE DOWNLOADED AND PRINTED BY THE MERCHANT PRIOR TO THE EFFEC-  
26 TIVE DATE OF SUCH RATE OR RULE.

27 3. A CONTRACT AUTHORIZING A MERCHANT TO ACCEPT A CREDIT OR DEBIT CARD  
28 SHALL CONTAIN:

29 (A) THE COMPLETE SCHEDULE OF INTERCHANGE FEES, CREDIT CARD AND DEBIT  
30 CARD TRANSACTION RATES AND ANY OTHER FEES THAT THE FINANCIAL INSTITUTION  
31 OR ACQUIRER CHARGES TO MERCHANTS; AND

32 (B) A NOTICE THAT IDENTIFIES WHICH RATES AND RULES APPLY TO THE  
33 MERCHANT AND THE SITUATIONS IN WHICH THOSE RATES AND RULES APPLY. AN  
34 ISSUING BANK AND CREDIT CARD ASSOCIATION SHALL PROVIDE TO AN ACQUIRER  
35 ANY INFORMATION NECESSARY TO COMPLY WITH THE PROVISIONS OF THIS SECTION.

36 4. A VIOLATION OF THIS SECTION SHALL BE DEEMED TO BE UNLAWFUL DECEP-  
37 TIVE ACTS AND PRACTICES UNDER SECTION THREE HUNDRED FORTY-NINE OF THIS  
38 CHAPTER. ALL OF THE REMEDIES, POWERS, DUTIES AND PENALTIES PERTAINING TO  
39 UNLAWFUL DECEPTIVE ACTS AND PRACTICES UNDER SECTION THREE HUNDRED  
40 FORTY-NINE OF THIS CHAPTER SHALL APPLY TO VIOLATIONS OF THIS SECTION.

41 S 2. If any section, subdivision, sentence, clause or phrase of this  
42 legislation is for any reason held to be invalid or unconstitutional by  
43 a decision of any court of competent jurisdiction such decision shall  
44 not affect the validity of the remaining portions of this legislation.  
45 The legislature hereby declares that it would have passed this legis-  
46 lation and each section, subdivision, sentence, clause or phrase not  
47 declared invalid or unconstitutional without regard to whether any  
48 portion of the legislation would subsequently be declared invalid or  
49 unconstitutional.

50 S 3. This act shall take effect on the one hundred eightieth day after  
51 it shall have become a law.