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

7608

I N S E N A T E

April 26, 2010

Introduced by Sen. PERALTA -- (at request of the Consumer Protection Board) -- 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 general use prepaid cards

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

Section 1. The general business law is amended by adding a new section 396-ii to read as follows:

S 396-II. GENERAL USE OF PREPAID CARDS. 1. DEFINITIONS. (A) "GENERAL USE PREPAID CARD" MEANS A CARD OR OTHER PAYMENT CODE OR DEVICE ISSUED BY ANY INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR ENTITY THAT UPON PRESENTATION IS (I) REDEEMABLE AT UNAFFILIATED MERCHANTS OR SERVICE PROVIDERS, OR AUTOMATED TELLER MACHINES; (II) ISSUED IN A REQUESTED AMOUNT, WHETHER OR NOT THAT AMOUNT MAY, AT THE OPTION OF THE ISSUER, BE RELOADED TO INCREASE ITS VALUE AT A LATER PERIOD IN TIME; (III) PURCHASED OR LOADED ON A PREPAID BASIS; AND (IV) HONORED BY MERCHANTS FOR GOODS AND SERVICES, OR (V) USED TO ACCESS CASH AT AN AUTOMATED TELLER MACHINE. SUCH TERM SHALL NOT INCLUDE AN ELECTRONIC BENEFIT TRANSFER CARD ISSUED PURSUANT TO SECTION TWENTY-ONE-A OF THE SOCIAL SERVICES LAW.

(B) "CLEAR AND CONSPICUOUS" OR "CLEARLY AND CONSPICUOUSLY" MEANS IN LARGER TYPE THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR COLOR TO THE SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM THE SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS, IN A MANNER THAT CLEARLY CALLS ATTENTION TO THE LANGUAGE. IN THE CASE OF AN AUDIO DISCLOSURE, "CLEAR AND CONSPICUOUS" AND "CLEARLY AND CONSPICUOUSLY" MEANS IN A VOLUME AND CADENCE SUFFICIENT TO BE READILY AUDIBLE AND UNDERSTANDABLE.

2. PRIOR TO THE SALE OF A GENERAL USE PREPAID CARD, THE CONSUMER SHALL RECEIVE CLEAR AND CONSPICUOUS DISCLOSURE THAT TERMS AND CONDITIONS APPLY TO SUCH CARD. SUCH CLEAR AND CONSPICUOUS DISCLOSURE SHALL INCLUDE:

(A) NOTICE ON THE GENERAL USE PREPAID CARD STATING "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY";

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

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(B) NOTICE IN ALL ADVERTISEMENTS, SOLICITATIONS OR PROMOTIONS FOR GENERAL USE PREPAID CARDS, WHICH SHALL STATE "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY";

(C) IN ANY WRITTEN OR VERBAL OFFER A STATEMENT THAT ADVISES "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY"; AND

(D) FOR PURCHASES VIA ELECTRONIC, COMPUTER, OR TELEPHONIC MEANS, NOTICE THAT "IMPORTANT TERMS AND CONDITIONS AFFECTING THE BALANCE APPLY" SHALL BE PROVIDED PRIOR TO THE CUSTOMER'S PURCHASE OF THE GENERAL USE PREPAID CARD, OR WRITTEN NOTICE WITHIN THE ELECTRONIC MESSAGE OFFERING A GENERAL USE PREPAID CARD FOR PURCHASE.

3. (A) THE FOLLOWING TERMS AND CONDITIONS OF A GENERAL USE PREPAID CARD SHALL BE CLEARLY AND CONSPICUOUSLY DISCLOSED PRIOR TO THE SALE OF THE GENERAL USE PREPAID CARD: (I) THE EXPIRATION DATE; (II) ANY FEES ASSESSED TO ACTIVATE OR INITIATE THE GENERAL USE PREPAID CARD; (III) ANY FEES CHARGED AGAINST THE BALANCE OF THE GENERAL USE PREPAID CARD, INCLUDING BUT NOT LIMITED TO MAINTENANCE FEES, MONTHLY FEES, ANNUAL FEES, POINT OF SALE FEES, AUTOMATED TELLER MACHINE TRANSACTION FEES, OUT-OF-NETWORK AND INTERNATIONAL AUTOMATED TELLER MACHINE FEES, TRANSACTION LIMIT FEES, BILL PAYMENT FEES, PHONE OR ONLINE TRANSACTION FEES, MONEY TRANSFER FEES, INACTIVITY FEES, DISPUTE FEES, CUSTOMER SERVICE CALL FEES, AND RELOAD FEES CHARGED BY THIRD PARTIES; (IV) ANY CONDITIONS WHICH LIMIT A CONSUMER'S ABILITY TO ACCESS THE FULL VALUE OF THE MONEY PLACED ON THE GENERAL USE PREPAID CARD; (V) WHETHER A FEE WILL BE CHARGED FOR THE REPLACEMENT OF A GENERAL USE PREPAID CARD THAT IS LOST, STOLEN, OR DESTROYED; (VI) ANY POLICIES RELATED TO REFUNDS, WARRANTIES, CHANGES IN TERMS AND CONDITION, ASSIGNMENT AND WAIVER; AND (VII) ANY ADDITIONAL TERMS AND CONDITIONS.

(B) ANY GENERAL USE PREPAID CARD TERMS AND CONDITIONS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE PROVIDED EITHER (I) VIA A TOLL FREE TELEPHONE NUMBER, IF AN ACTIVE TOLL FREE TELEPHONE NUMBER IS CLEARLY AND CONSPICUOUSLY PROVIDED ON AN ENVELOPE OR PACKAGING CONTAINING THE GENERAL USE PREPAID CARD, ALONG WITH A NOTICE ADVISING CONSUMERS THAT SUCH NUMBER PROVIDES IMPORTANT INFORMATION FOR CONSUMERS TO ACCESS THE COST OF THE CARD AND THE IMPORTANT TERMS AND CONDITIONS; OR (II) ON A PRINTED DOCUMENT ACCOMPANYING THE GENERAL USE PREPAID CARD, PROVIDED THAT THE CONSUMER CAN EASILY REVIEW SUCH PRINTED DOCUMENT BEFORE PURCHASING THE CARD, AND AN ACTIVE TOLL FREE TELEPHONE NUMBER IS INCLUDED FOR THE CONSUMER TO ACCESS FURTHER INFORMATION.

4. THE REQUIREMENTS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL NOT APPLY TO A GENERAL USE PREPAID CARD THAT HAS NO TERMS AND CONDITIONS.

5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT UNCLAIMED FUNDS RELATED TO GENERAL USE PREPAID CARDS FROM BECOMING ABANDONED UNDER SECTION THIRTEEN HUNDRED FIFTEEN OF THE ABANDONED PROPERTY LAW.

6. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AND INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE

HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

7. NO RETROACTIVE FEES SHALL BE ASSESSED AGAINST A GENERAL USE PREPAID CARD.

8. THE PROVISIONS OF THIS SECTION SHALL BE EXCLUSIVE AND SHALL PREEMPT ANY PROVISIONS OF LOCAL LAW, ORDINANCE OR CODE, AND NO LOCALITY SHALL IMPOSE REQUIREMENTS THAT ARE INCONSISTENT WITH OR MORE RESTRICTIVE THAN THOSE SET FORTH IN THIS SECTION.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.