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

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I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JACOBS, GREENE -- Multi-Sponsored by -- M. of A. ABBATE, BRENNAN, CHRISTENSEN, CYMBROWITZ, DINOWITZ, ENGLEBRIGHT, GALEF, GLICK, GOTTFRIED, HIKIND, HOYT, P. RIVERA, SWEENEY, WEINSTEIN -- read once and referred to the Committee on Banks

AN ACT to amend the general business law, in relation to restricting the disclosure of personal information contained in electronic fund transfers

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 article 24-D to read as follows:

ARTICLE 24-D

ELECTRONIC FUND TRANSFER PRIVACY ACT

SECTION 375. SHORT TITLE.
375-A. DEFINITIONS.
375-B. EXPECTATION OF CONFIDENTIALITY.
375-C. DISCLOSURE TO A GOVERNMENT AUTHORITY; COURT ORDER.
375-D. CIVIL REMEDIES.
375-E. SEPARABILITY CLAUSE; CONSTRUCTION.

S 375. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "ELECTRONIC FUND TRANSFER PRIVACY ACT".

S 375-A. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "ACCESS DEVICE" MEANS A CARD, CODE OR OTHER MEANS OF ACCESS TO CONSUMER'S ACCOUNT, OR ANY COMBINATION THEREOF, THAT MAY BE USED BY THE CONSUMER FOR THE PURPOSE OF INITIATING ELECTRONIC FUND TRANSFERS.

(B) "ACCOUNT" MEANS A DEMAND, TIME OR SAVINGS DEPOSIT, OR OTHER CONSUMER ASSET ACCOUNT, OTHER THAN AN OCCASIONAL OR INCIDENTAL CREDIT BALANCE, HELD EITHER DIRECTLY OR INDIRECTLY BY A FINANCIAL INSTITUTION AND ESTABLISHED FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

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

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(C) "CONSUMER" MEANS A NATURAL PERSON.
(D) "ELECTRONIC FUND TRANSFER" MEANS ANY TRANSFER OF FUNDS, OTHER THAN A TRANSACTION ORIGINATED BY CHECK, DRAFT, OR SIMILAR PAPER INSTRUMENT, WHICH IS INITIATED THROUGH AN ELECTRONIC BRANCH, TELEPHONE INSTRUMENT, OR COMPUTER OR MAGNETIC TAPE OR POINT-OF-SALE TERMINAL SO AS TO ORDER, INSTRUCT OR AUTHORIZE A FINANCIAL INSTITUTION TO DEBIT OR CREDIT AN ACCOUNT. SUCH TERM INCLUDES BUT IS NOT LIMITED TO POINT-OF-SALE TRANSFERS, AUTOMATED TELLER MACHINE TRANSACTIONS, DIRECT DEPOSIT OR WITHDRAWALS OF FUNDS AND TRANSFERS INITIATED BY TELEPHONE.
(E) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONAL BANK, A STATE OR FEDERAL SAVINGS AND LOAN ASSOCIATION, A STATE OR FEDERAL MUTUAL SAVINGS BANK, A CO-OPERATIVE BANK, A STATE OR FEDERAL CREDIT UNION, OR ANY OTHER PERSON WHO, DIRECTLY OR INDIRECTLY, HOLDS AN ACCOUNT BELONGING TO A CONSUMER. THE TERM ALSO INCLUDES ANY PERSON WHO ISSUES AN ACCESS DEVICE AND AGREES WITH A CONSUMER TO PROVIDE ELECTRONIC FUND TRANSFER SERVICES.
(F) "GOVERNMENT AUTHORITY" MEANS ANY FEDERAL, STATE, OR LOCAL UNIT OF GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF.
(G) "ITEM" MEANS ANY INSTRUMENT FOR THE PAYMENT OF MONEY, WHETHER OR NOT IT IS NEGOTIABLE AND WHETHER OR NOT IT TAKES A PAPER FORM.
(H) "PERSON" MEANS A NATURAL PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, GOVERNMENT AUTHORITY, OR OTHER LEGAL ENTITY.
(I) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS ANY INFORMATION THAT IDENTIFIES ANY INDIVIDUAL AS A CONSUMER HAVING AN ACCOUNT AFFECTED BY AN ELECTRONIC FUND TRANSFER OR THAT OTHERWISE PROVIDES INFORMATION ABOUT THAT INDIVIDUAL, HIS ACCOUNT AND THE ELECTRONIC FUND TRANSFER.
S 375-B. EXPECTATION OF CONFIDENTIALITY. (A) NO FINANCIAL INSTITUTION, OR ITS OFFICERS, EMPLOYEES OR AGENTS, MAY DISCLOSE THE EXISTENCE, LOCATION, DATE, TIME, CONTENTS, EFFECT OR MEANING OF ANY ITEM INVOLVED IN AN ELECTRONIC FUND TRANSFER MADE BY A CONSUMER EXCEPT TO:
(1) THE CONSUMER MAKING THE TRANSFER;
(2) ANY OTHER PERSON WHO IS A PARTY TO THE ELECTRONIC FUND TRANSFER OR IS NECESSARY TO EFFECTUATE THE TRANSFER, BUT ONLY TO THE EXTENT THAT THE INFORMATION IS NECESSARY TO EFFECTUATE THE TRANSFER;
(3) AN OFFICER, EMPLOYEE OR AGENT OF THE FINANCIAL INSTITUTION HOLDING THE CONSUMER'S ACCOUNT AFFECTED BY THE TRANSFER FOR THE SOLE PURPOSE OF SERVICING THE ACCOUNT RELATIONSHIP, BUT ONLY TO THE EXTENT ACTUALLY NECESSARY;
(4) A PERSON AUTHORIZED BY LAW TO HAVE ACCESS TO THE RECORDS OF THE FINANCIAL INSTITUTION IN THE COURSE OF SUCH PERSON'S OFFICIAL DUTIES;
(5) ANY SUPERVISORY OR REGULATORY AGENCY IN THE EXERCISE OF ITS SUPERVISORY OR REGULATORY FUNCTION OR DISCLOSURE THAT IS OTHERWISE REQUIRED BY ANY LAW OR REGULATION OF SUCH AN AGENCY;
(6) A GOVERNMENT AUTHORITY PURSUANT TO A COURT ORDER AS PROVIDED FOR IN SECTION THREE HUNDRED SEVENTY-FIVE-C OF THIS ARTICLE; OR
(7) PURSUANT TO THE WRITTEN AUTHORIZATION OF THE CONSUMER MAKING THE TRANSFER; PROVIDED, HOWEVER, THAT SUCH AUTHORIZATION SHALL NOT REMAIN IN EFFECT LONGER THAN FORTY-FIVE DAYS.
(B) NO FINANCIAL INSTITUTION MAY SELL OR OTHERWISE DISCLOSE LISTS CONTAINING PERSONALLY IDENTIFIABLE INFORMATION CONCERNING CONSUMERS USING ELECTRONIC FUND TRANSFER SYSTEMS.
(C) ANY PERSON RECEIVING PERSONALLY IDENTIFIABLE INFORMATION PURSUANT TO SUBDIVISION (A) OF THIS SECTION SHALL NOT REDISCLOSE THAT INFORMATION TO ANOTHER PERSON UNLESS AUTHORIZED TO DO SO BY LAW.
(D) EACH FINANCIAL INSTITUTION SHALL MAINTAIN REASONABLE PROCEDURES ACCEPTABLE TO THE BANKING DEPARTMENT DESIGNED TO PREVENT ANY DISCLOSURE, OTHER THAN A DISCLOSURE PERMITTED BY SUBDIVISION (A) OF THIS SECTION, OF

PERSONALLY IDENTIFIABLE INFORMATION RELATING TO AN ELECTRONIC FUND TRANSFER. IF A FINANCIAL INSTITUTION BECOMES AWARE OF AN UNAUTHORIZED DISCLOSURE, IT SHALL, NOT LATER THAN THREE DAYS AFTER OBTAINING SUCH KNOWLEDGE, DISCLOSE TO THE APPLICABLE CONSUMER BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, THE FACT OF THE OCCURRENCE OF THE UNAUTHORIZED DISCLOSURE AND THE PARTICULARS THEREOF KNOWN TO THE SERVICE PROVIDER OR TO THE FINANCIAL INSTITUTION.

(E) NO PERSON MAY OBTAIN PERSONALLY IDENTIFIABLE INFORMATION RELATING TO ANY ELECTRONIC FUND TRANSFER ORIGINATED BY OR ADDRESSED TO A CONSUMER EXCEPT AS PROVIDED IN SUBDIVISION (A) OF THIS SECTION.

(F) A FINANCIAL INSTITUTION MAY NOT INCORPORATE ITS ELECTRONIC FUND TRANSFER SYSTEM LINES WITH ANY OTHER ELECTRONIC FUND TRANSFER SYSTEM FOR THE PURPOSE OF ASCERTAINING THE PHYSICAL LOCATION OF A CONSUMER USING AN ELECTRONIC FUND TRANSFER SYSTEM AT THE TIME OF EFFECTING A TRANSFER.

(G) NOTHING IN THIS SECTION SHALL PRECLUDE A BANKING INSTITUTION FROM NOTIFYING APPROPRIATE OFFICIALS OF SUSPECTED VIOLATIONS OF LAW. PROVIDED HOWEVER, THAT ANY ACCESS TO CUSTOMER RECORDS BY A LAW ENFORCEMENT AGENCY OR OFFICIAL THEREOF SHALL BE GOVERNED BY SECTION THREE HUNDRED SEVENTY-FIVE-C OF THIS ARTICLE.

S 375-C. DISCLOSURE TO A GOVERNMENT AUTHORITY; COURT ORDER. A FINANCIAL INSTITUTION MAY DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION RELATING TO AN ELECTRONIC FUND TRANSFER IF:

(A) THE FINANCIAL INSTITUTION IS SERVED WITH A SEARCH WARRANT WHICH PARTICULARLY DESCRIBES THE INFORMATION OR MATERIAL REQUIRED TO BE DISCLOSED. IN SUCH EVENT THE FINANCIAL INSTITUTION SHALL (1) DISCLOSE ONLY THE INFORMATION AND MATERIAL THUS DESCRIBED AND (2) UNLESS THE WARRANT EXPRESSLY PROVIDES TO THE CONTRARY, IMMEDIATELY NOTIFY IN WRITING THE INDIVIDUAL OR ENTITY INVOLVED THAT SUCH DISCLOSURE HAS BEEN MADE;

(B) THE FINANCIAL INSTITUTION IS SERVED WITH A SUBPOENA WHICH PARTICULARLY DESCRIBES THE INFORMATION OR MATERIAL REQUIRED TO BE DISCLOSED. IN SUCH EVENT, UNLESS OTHERWISE PROVIDED BY COURT ORDER, OR UNLESS THE SUBPOENA STATES ON ITS FACE THAT IT IS SERVED ON BEHALF OF A JUDGMENT CREDITOR SEEKING TO ENFORCE A JUDGMENT WHICH HAS BEEN ENTERED AND REMAINS UNSATISFIED, THE FINANCIAL INSTITUTION SHALL NOT COMPLY WITH SUCH SUBPOENA UNTIL EXPIRATION OF SEVEN DAYS AFTER IT SHALL HAVE PROVIDED THE INDIVIDUAL OR ENTITY INVOLVED WITH WRITTEN NOTICE OF SUCH SUBPOENA, WHICH NOTICE SHALL BE PROVIDED IMMEDIATELY UPON RECEIPT OF SUCH SUBPOENA. SUCH SEVEN DAY PERIOD SHALL BE MEASURED FROM THE DATE OF MAILING BY FIRST CLASS MAIL BY THE FINANCIAL INSTITUTION OF THE REQUIRED NOTIFICATION;

(C) NOTWITHSTANDING THE FOREGOING IF THE SEARCH WARRANT OR SUBPOENA PROVIDES THAT THE INFORMATION REQUESTED SHALL BE PRODUCED IN A COURT, SUCH DISCLOSURE MAY BE MADE PRIOR TO THE EXPIRATION OF SUCH SEVEN DAY PERIOD IN COMPLIANCE WITH THE TERMS OF THE SEARCH WARRANT OR SUBPOENA.

S 375-D. CIVIL REMEDIES. (A) A CONSUMER AGGRIEVED BY VIOLATION OF THIS ARTICLE MAY MAINTAIN A CIVIL ACTION FOR DAMAGES AND FOR EQUITABLE RELIEF.

(B) ANY PERSON WHO DISCLOSES PERSONALLY IDENTIFIABLE INFORMATION IN VIOLATION OF THIS ARTICLE OR WHO OTHERWISE ENGAGES IN CONDUCT IN VIOLATION OF THIS ARTICLE SHALL BE LIABLE TO THE AGGRIEVED CONSUMER ACTING EITHER IN AN INDIVIDUAL CAPACITY OR AS THE MEMBER OF A CLASS FOR AN AMOUNT EQUAL TO THE SUM OF:

(1) ANY ACTUAL DAMAGES SUSTAINED BY THE CONSUMER OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER, AS A RESULT OF THE DISCLOSURE;

(2) IN THE CASE OF ANY SUCCESSFUL ACTION FOR DAMAGES, THE PLAINTIFF'S REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF LITIGATION REASONABLY INCURRED.

(C) IN ANY CIVIL ACTION BROUGHT UNDER THIS SECTION IN WHICH THE PLAINTIFF OR PLAINTIFFS HAVE SUBSTANTIALLY PREVAILED, THE COURT, IN ADDITION TO ANY ACTUAL DAMAGES OR EQUITABLE RELIEF, MAY AWARD SUCH PUNITIVE DAMAGES AS MAY BE WARRANTED.

(D) NO ACTION UNDER THIS SECTION SHALL BE BROUGHT LATER THAN TWO YEARS FROM THE DATE OF THE DISCOVERY OF THE VIOLATION, BUT IN NO CASE SHALL SUCH AN ACTION BE BROUGHT LATER THAN SEVEN YEARS FROM THE DATE OF THE VIOLATION.

S 375-E. SEPARABILITY CLAUSE; CONSTRUCTION. (A) IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF IS HELD INVALID, THE REMAINDER OF THIS ARTICLE AND THE APPLICATION OF ANY PROVISION TO OTHER PERSONS OR CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

(B) THIS ARTICLE SHALL BE LIBERALLY CONSTRUED TO EFFECT THE PURPOSES THEREOF.

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