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

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2009-2010 Regular Sessions

I N  S E N A T E

February 9, 2009

Introduced by Sens. MORAHAN, DIAZ -- 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, the banking law and the personal property law, in relation to prohibiting unsolicited mailing of credit card applications

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

Section 1. The opening paragraph and subdivision 9 of section 520 of the general business law, the opening paragraph as added by chapter 200 of the laws of 1987 and subdivision 9 as added by chapter 485 of the laws of 1996, are amended and three new subdivisions 10, 11 and 12 are added to read as follows:

Any application form [or preapproved written solicitation] to enter into a credit card agreement for personal, family, or household purposes which is mailed to an individual residing in this state on or after January first, nineteen hundred eighty-eight, by or on behalf of [a] AN issuer, whether or not the issuer is located in this state, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the issuer, and, any application primarily for a credit card to be used for personal, family or household purposes which is distributed or made available in this state to a resident of this state on or after January first, nineteen hundred eighty-eight in an office or other place of business owned or operated by the issuer, shall contain the following disclosures in chart form and shall put chart headings in bold face type of at least ten point in size and material inside the chart of at least eight point type in size. Such chart shall use substantially the same format and terminology shown below. In completing the chart with the information required for each category, the guidelines hereinafter contained in the corresponding subdivisions numbered one through four shall be utilized:

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

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| Annual Percentage Rate (1) | Variable Rate Index and Spread (1a) | Annualized Membership Fee (2) | Grace Period for Purchases (3) | Cash Advance Fee, Transaction Fee, Late Fee, and Over-the-Limit Fees(4) |
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(9) Any application form [or preapproved written solicitation] to enter into a retail installment credit agreement in which the retail seller or financing agency may take or retain a purchase money security interest, as set forth in paragraph (c) of subdivision twelve of section four hundred thirteen of the personal property law, which is mailed or otherwise made available to an individual residing in this state on or after the effective date of this subdivision, by or on behalf of an issuer, whether or not the issuer is located in this state, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the issuer, shall contain a clear and conspicuous written notice or disclosure to the buyer that the retail seller or financing agency has or may retain a security interest in merchandise covered under paragraph (c) of subdivision twelve of section four hundred thirteen of the personal property law until the full payment price of said merchandise is paid. Further provided, however, in all instances, said written notice must be provided to any buyer prior to the first transaction made under any such retail installment credit agreement in which a security interest has been or may be taken or retained.

(10) EXCEPT AS PROVIDED IN SUBDIVISION TWELVE OF THIS SECTION, IT SHALL BE UNLAWFUL FOR ANY FINANCIAL INSTITUTION, RETAIL MERCHANT OR OTHER PERSON TO MAIL OR OTHERWISE DELIVER ANY CREDIT CARD APPLICATION OR CREDIT CARD IN THIS STATE.

(11) UPON CONVICTION OF A VIOLATION OF THIS SECTION, A FINE OF NO MORE THAN ONE THOUSAND DOLLARS PER OCCURRENCE SHALL BE IMPOSED.

(12) THIS SECTION SHALL NOT APPLY TO ANY CREDIT CARD APPLICATION OR CREDIT CARD WHEN MAILED OR OTHERWISE DELIVERED EITHER:

(A) IN RESPONSE TO A REQUEST OR APPLICATION FOR A CREDIT CARD; OR

(B) AS A REPLACEMENT FOR A CREDIT CARD PREVIOUSLY ISSUED TO THE PERSON TO WHOM THE CREDIT CARD IS SHIPPED OR MAILED.

S 2. The third undesignated paragraph of paragraph (b) of subdivision 5 of section 108 of the banking law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

A written agreement, whether it provides for a fixed or variable interest rate, may provide for an introductory rate of interest at either a fixed or a variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the borrower. Such

disclosure shall be contained on an application form [or pre-approved written solicitation] as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the interest rate upon expiration of an introductory rate shall not be considered a variable rate or a change in terms. The interest rate in effect after expiration of an introductory rate may apply to all amounts due under the agreement regardless of when incurred and disclosure of the same shall be provided to the borrower in the written agreement.

S 3. Paragraph (a) of subdivision 3 of section 413 of the personal property law, as amended by chapter 1 of the laws of 1994, is amended to read as follows:

(a) A seller may, in a retail [instalment] INSTALLMENT credit agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive and collect the service charge authorized by this article, which service charge shall not exceed the rate or rates agreed upon by the seller and the buyer, including, in accordance with the provisions of the credit agreement, rates that may vary, from time to time computed, for the purposes of this section, on the outstanding indebtedness from month to month, or if the service charge so computed is less than seventy cents for any month, seventy cents. If the credit agreement provides for a variable rate of service charge, such rate shall be determined at regular intervals as set forth in the credit agreement and in accordance with such regulations as the banking board shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the seller and (d) approved by the superintendent, (e) such charges in credit agreements shall be based on the index values, or the index numbers plus or minus additional percentage points provided, however, that variations in the charge must correspond directly to the movements of the index values plus or minus additional percentage points only. Once such charge is established no lending institution may add any factors to increase the charge other than variations in the established index without the prior approval of the banking board.

The banking board shall adopt regulations with respect to credit agreements that provide for a variable rate of service charge, including but not limited to: (a) providing for disclosure to the buyer by the seller of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the buyer by the seller of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the buyer by the seller prior to any rate increase or change in the terms of payment. The regulations shall allow a seller, holder or financing agency after choosing an approved index to choose a spread and a minimum and maximum rate of service charge at its discretion. A retail [instalment] INSTALLMENT credit agreement, whether it provides for a fixed or variable service charge, may provide for an introductory rate of service charge at either a fixed or variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the buyer. Such disclosure shall be contained on an application form [or pre-approved written solicitation] as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the service charge rate upon expiration of an introductory

rate shall not be considered a variable rate or a change in terms. The service charge rate in effect after expiration of an introductory rate may apply to all amounts due under the credit agreement regardless of when incurred, and disclosure of the same shall be provided to the buyer in the written agreement.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.