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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

(A) "ACQUIRER" MEANS AN INSTITUTION DOING BUSINESS IN THIS STATE PROCESSING MERCHANT ACCOUNTS;

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

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

(D) "FINANCIAL INSTITUTION" MEANS ANY BANK, SAVINGS ASSOCIATION, 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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(E) "INTERCHANGE FEE" MEANS THE FEE THAT AN ACQUIRER PAYS TO AN ISSUING BANK WHEN A CARDHOLDER USES A CREDIT CARD OR DEBIT CARD AS PAYMENT DURING A RETAIL TRANSACTION;

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

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

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

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

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

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

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

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

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

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

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

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

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