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

6969

2011-2012 Regular Sessions

I N A S S E M B L Y

April 6, 2011

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Banks

AN ACT to amend the general business law, in relation to limiting the liability of a debit cardholder for unauthorized use of a debit card

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

Section 1. Section 512 of the general business law, as amended by chapter 556 of the laws of 1987, is amended to read as follows:

S 512. Limitation of liability for unauthorized use of a credit card or a debit card. 1. A provision which imposes liability upon a holder for a cash advance or loan or for the purchase or lease of property or services obtained by the unauthorized use of a credit card or a debit card shall not be enforceable to the extent that it imposes a greater liability upon the holder than is imposed upon the holder of a credit card under the provisions of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

2. (A) A CARDHOLDER SHALL BE LIABLE FOR THE UNAUTHORIZED USE OF A DEBIT CARD ONLY IF:

(1) THE CARD IS A DEBIT CARD WHICH THE CARDHOLDER HAS REQUESTED AND RECEIVED OR HAS SIGNED OR HAS USED, OR AUTHORIZED ANOTHER TO USE, FOR THE PURPOSE OF OBTAINING MONEY, PROPERTY, LABOR, OR SERVICES;

(2) THE LIABILITY IS NOT IN EXCESS OF FIFTY DOLLARS;

(3) THE CARD ISSUER GIVES ADEQUATE NOTICE TO THE CARDHOLDER OF THE POTENTIAL LIABILITY;

(4) THE CARD ISSUER HAS PROVIDED THE CARDHOLDER WITH A DESCRIPTION OF A MEANS BY WHICH THE CARD ISSUER MAY BE NOTIFIED OF LOSS OR THEFT OF THE CARD, WHICH DESCRIPTION MAY BE PROVIDED ON THE FACE OR REVERSE SIDE OF EACH MONTHLY, QUARTERLY OR OTHER PERIODIC ACCOUNT STATEMENT ISSUED TO THE CARDHOLDER BY THE CARD ISSUER, AS APPLICABLE, OR ON A SEPARATE NOTICE ACCOMPANYING SUCH STATEMENT;

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

LBD10531-02-1

(5) THE UNAUTHORIZED USE OCCURS BEFORE THE CARD ISSUER HAS BEEN NOTIFIED THAT AN UNAUTHORIZED USE OF THE DEBIT CARD HAS OCCURRED OR MAY OCCUR AS THE RESULT OF LOSS, THEFT, OR OTHERWISE; AND

(6) THE CARD ISSUER HAS PROVIDED A METHOD WHEREBY THE USER OF SUCH CARD CAN BE IDENTIFIED AS THE PERSON AUTHORIZED TO USE IT.

(B) FOR PURPOSES OF THIS SECTION, A CARD ISSUER HAS BEEN NOTIFIED WHEN SUCH STEPS AS MAY BE REASONABLY REQUIRED IN THE ORDINARY COURSE OF BUSINESS TO PROVIDE THE CARD ISSUER WITH THE PERTINENT INFORMATION HAVE BEEN TAKEN, WHETHER OR NOT ANY PARTICULAR OFFICER, EMPLOYEE, OR AGENT OF THE CARD ISSUER DOES IN FACT RECEIVE SUCH INFORMATION.

(C) IN ANY ACTION BY A CARD ISSUER TO ENFORCE LIABILITY FOR THE USE OF A DEBIT CARD, THE BURDEN OF PROOF IS UPON THE CARD ISSUER TO SHOW THAT THE USE WAS AUTHORIZED OR, IF THE USE WAS UNAUTHORIZED, THEN THE BURDEN OF PROOF IS UPON THE CARD ISSUER TO SHOW THAT THE CONDITIONS OF LIABILITY FOR THE UNAUTHORIZED USE OF A DEBIT CARD, AS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION, HAVE BEEN MET.

(D) NOTHING IN THIS SUBDIVISION IMPOSES LIABILITY UPON A CARDHOLDER FOR THE UNAUTHORIZED USE OF A DEBIT CARD IN EXCESS OF HIS OR HER LIABILITY FOR SUCH USE UNDER OTHER APPLICABLE LAW OR UNDER ANY AGREEMENT WITH THE CARD ISSUER.

(E) EXCEPT AS PROVIDED IN THIS SUBDIVISION, A CARDHOLDER SHALL NOT INCUR ANY LIABILITY FROM THE UNAUTHORIZED USE OF A DEBIT CARD.

S 2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all transactions occurring on and after such effective date.