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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 27, 2011

Introduced by M. of A. WEPRIN, P. RIVERA, DenDEKKER, JAFFEE, MARKEY, WEINSTEIN, ENGLEBRIGHT, MILLMAN, MAGNARELLI, PERRY, KAVANAGH, SCHROEDER -- Multi-Sponsored by -- M. of A. BRENNAN, CAHILL, CAMARA, COLTON, CYMBROWITZ, GALEF, GLICK, GOTTFRIED, HEASTIE, HEVESI, HOOPER, LANCMAN, LATIMER, LENTOL, LIFTON, LUPARDO, MAGEE, McENENY, NOLAN, PAULIN, REILLY, SWEENEY, WEISENBERG, ZEBROWSKI -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the imposition of a surcharge by a seller in a sales transaction on a holder who uses a debit card

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

Section 1. Section 518 of the general business law, as added by chapter 160 of the laws of 1984, is amended to read as follows:

S 518. [Credit] PAYMENT card surcharge prohibited. 1. No seller in any sales transaction may impose a surcharge on a holder who elects to use a credit card OR DEBIT CARD in lieu of payment by cash, check, or similar means. FOR PURPOSES OF THIS SECTION, "DEBIT CARD" INCLUDES A PREPAID CARD OR OTHER MEANS OF ACCESS TO PREPAID FUNDS THAT MAY BE USED TO INITIATE ELECTRONIC FUNDS TRANSFERS AND MAY BE USED WITHOUT UNIQUE IDENTIFYING INFORMATION SUCH AS A PERSONAL IDENTIFICATION NUMBER TO INITIATE ACCESS TO PREPAID FUNDS.

2. NOTHING IN THIS SECTION SHALL PROHIBIT ANY SELLER FROM:

A. OFFERING DISCOUNTS TO A BUYER TO INDUCE THE BUYER TO PAY BY CASH, CHECK, DEBIT CARD OR SIMILAR MEANS RATHER THAN BY CREDIT CARD OR DEBIT CARD, IF SUCH DISCOUNTS ARE OFFERED TO ALL PROSPECTIVE BUYERS AND DISCLOSED CLEARLY AND CONSPICUOUSLY; OR

B. IMPOSING A SURCHARGE ON A HOLDER WHO, IN CONNECTION WITH A CREDIT CARD OR DEBIT CARD TRANSACTION, RECEIVES CASH BACK BEYOND THE PURCHASE AMOUNT OF THE SALES TRANSACTION, BUT SUCH SURCHARGE MAY ONLY BE APPLIED IF DISCLOSED CLEARLY AND CONSPICUOUSLY TO THE HOLDER PRIOR TO THE

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

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COMPLETION OF THE TRANSACTION AND ONLY APPLIED TO THE AMOUNT OF CASH BACK PROVIDED BY THE SELLER.

3. NO PERSON MAY PROHIBIT A SELLER FROM:

A. OFFERING DISCOUNTS TO A BUYER TO INDUCE PAYMENT BY CASH, CHECK, DEBIT CARD OR SIMILAR MEANS RATHER THAN BY CREDIT CARD OR DEBIT CARD IF SUCH DISCOUNTS ARE CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION; OR

B. IMPOSING A SURCHARGE ON A HOLDER WHO, IN CONNECTION WITH A CREDIT CARD OR DEBIT CARD TRANSACTION, RECEIVES CASH BACK BEYOND THE PURCHASE AMOUNT OF THE SALES TRANSACTION, BUT SUCH SURCHARGE MAY ONLY BE APPLIED IF DISCLOSED CLEARLY AND CONSPICUOUSLY TO THE HOLDER PRIOR TO THE COMPLETION OF THE TRANSACTION AND ONLY APPLIED TO THE AMOUNT OF CASH BACK PROVIDED BY THE SELLER.

4. AN ELECTRONIC PAYMENT SYSTEM MAY NOT, DIRECTLY OR THROUGH ANY AGENT, PROCESSOR OR MEMBER OF SUCH SYSTEM, IMPOSE ANY REQUIREMENT, CONDITION, PENALTY OR FINE IN A CONTRACT WITH A SELLER RELATING TO THE DISPLAY, AT THE POINT OF SALE, OF PRICING FOR GOODS OR SERVICES OFFERED BY SELLER, INCLUDING A DISPLAY RELATING TO A DISCOUNT TO INDUCE PAYMENT BY CASH, CHECK OR SIMILAR MEANS. THIS PROHIBITION SHALL NOT APPLY WITH RESPECT TO THE DISPLAY OF PRICING FOR GOODS OR SERVICES IN ADVERTISEMENTS.

5. Any seller who violates the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or a term of imprisonment up to one year, or both.

6. IF AN ELECTRONIC PAYMENT SYSTEM IMPOSES A FINE ON AN ACQUIRER THAT RESULTS IN THE PAYMENT BY A SELLER THAT VIOLATES ANY PROVISION OF THIS SECTION, THE ELECTRONIC PAYMENT SYSTEM SHALL BE LIABLE TO THE SELLER FOR THE AMOUNT OF ANY SUCH FINE PAID BY THE SELLER, AND, IN ADDITION, SUBJECT TO A CIVIL PENALTY UP TO TWICE THE AMOUNT OF SUCH FINE.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.