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

983

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the signature of authorized representatives on certain instruments

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 38-B to read as follows:

ARTICLE 38-B

SIGNATURE OF AUTHORIZED REPRESENTATIVES

SECTION 825. DEFINITIONS.

826. SIGNATURE BY AUTHORIZED REPRESENTATIVE.

S 825. DEFINITIONS. AS USED IN THIS ARTICLE:

(A) "ACCOUNT" MEANS ANY ACCOUNT WITH A BANK AND INCLUDES A CHECKING, TIME, INTEREST, SAVINGS, OR NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNT;

(B) "BANK" MEANS AND INCLUDES ANY ENTITY ENGAGED IN THE BUSINESS OF BANKING;

(C) "CONSUMER" MEANS ANY NATURAL PERSON;

(D) "CONSUMER TRANSACTION" MEANS THE PURCHASE OR LEASE OF OR THE ATTEMPT TO PURCHASE OR LEASE ANY GOODS OR SERVICES BY A CONSUMER, OR THE EXTENSION OF OR THE ATTEMPT TO EXTEND CREDIT TO ANY CONSUMER, FOR PERSONAL, HOUSEHOLD, OR FAMILY PURPOSES;

(E) "ENTITY" MEANS A NATURAL PERSON, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER LEGAL ORGANIZATION;

(F) "ITEM" MEANS ANY INSTRUMENT FOR THE PAYMENT OF MONEY, INCLUDING BUT NOT LIMITED TO A NONNEGOTIABLE INSTRUMENT, BUT DOES NOT INCLUDE MONEY; AND

(G) "NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNT" MEANS AN ACCOUNT AUTHORIZED BY SUBDIVISION A OF SECTION EIGHTEEN HUNDRED THIRTY-TWO OF TITLE TWELVE OF THE UNITED STATES CODE.

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

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S 826. SIGNATURE BY AUTHORIZED REPRESENTATIVE. (A) NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, NO ENTITY SHALL SEEK TO ACQUIRE, SHALL ACQUIRE, OR SHALL EXERCISE THE POWERS OR AUTHORITY OF AN AUTHORIZED REPRESENTATIVE OF A CONSUMER, AS PROVIDED IN PART FOUR OF ARTICLE THREE OF THE UNIFORM COMMERCIAL CODE, IN A CONSUMER TRANSACTION FOR THE PURPOSE OF SIGNING ANY ITEM, UNLESS SUCH POWERS OR AUTHORITY ARE CONFERRED IN A WRITING THAT IS SIGNED BY THE CONSUMER WHO IS TO BE BOUND THEREBY AND IN WHICH THE SCOPE OF THE AUTHORIZED REPRESENTATIVE'S AUTHORITY IS CLEARLY AND SPECIFICALLY DESCRIBED IN SUCH CONSUMER'S HAND-WRITING.

(B) ANY ITEM SIGNED BY AN AUTHORIZED REPRESENTATIVE IN A CONSUMER TRANSACTION IN VIOLATION OF SUBDIVISION (A) OF THIS SECTION IS NOT PROP-ERLY PAYABLE FROM THE ACCOUNT OF ANY CONSUMER AT A BANK. IF SUCH ITEM IS PAID BY A BANK IN VIOLATION OF THIS SECTION, THE CONSUMER IS ENTITLED TO A CREDIT FOR THE AMOUNT OF THE ITEM ON THE DAY FOLLOWING THE DATE ON WHICH SUCH CONSUMER DEMANDS SUCH CREDIT.

(C) IN CASE OF A DISPUTE AS TO WHETHER OR NOT A SIGNATURE BY AN AUTHORIZED REPRESENTATIVE ON AN ITEM IN A CONSUMER TRANSACTION COMPLIES WITH THE REQUIREMENTS OF THIS SECTION, A BANK HAS THE BURDEN OF PROVING COMPLIANCE AND, UNTIL IT DOES SO, SHALL CREDIT THE CONSUMER'S ACCOUNT FOR THE FULL AMOUNT OF SUCH ITEM ON THE BANKING DAY FOLLOWING THE DATE ON WHICH THE CONSUMER HAS DEMANDED SUCH CREDIT AS PROVIDED IN SUBDIVI-SION (B) OF THIS SECTION.

(D) ANY ENTITY THAT SIGNS AN ITEM AS AN AUTHORIZED REPRESENTATIVE OF A CONSUMER IN A CONSUMER TRANSACTION IN VIOLATION OF THE PROVISIONS OF THIS SECTION, AND ANY BANK THAT FAILS TO CREDIT A CONSUMER'S ACCOUNT IN ACCORDANCE WITH THE PROVISIONS SPECIFIED IN THIS SECTION, IS LIABLE TO SUCH CONSUMER FOR THREE TIMES THE AMOUNT OF SUCH ITEM OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, PLUS COURT COSTS AND REASONABLE ATTOR-NEY'S FEES.

S 2. This act shall take effect immediately.