

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, AUBRY, BENEDETTO, BRENNAN, CAHILL, CAMARA, CERETTO, COLTON, COOK, CRESPO, CYMBROWITZ, DenDEKKER, ENGLEBRIGHT, GALEF, GIBSON, GLICK, GOTTFRIED, GUNTHER, HEASTIE, HEVESI, HOOPER, JACOBS, JAFFEE, KAVANAGH, KELLNER, LAVINE, LENTOL, LIFTON, LUPARDO, MAGNARELLI, MARKEY, MILLMAN, PAULIN, PERRY, RAMOS, RIVERA, ROSENTHAL, SCHIMEL, STEVENSON, SWEENEY, THIELE, 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:

1 Section 1. Section 518 of the general business law, as added by chap-
2 ter 160 of the laws of 1984, is amended to read as follows:
3 S 518. [Credit] PAYMENT card surcharge prohibited. 1. No seller in
4 any sales transaction may impose a surcharge on a holder who elects to
5 use a credit card OR DEBIT CARD in lieu of payment by cash, check, or
6 similar means. FOR PURPOSES OF THIS SECTION, "DEBIT CARD" INCLUDES A
7 PREPAID CARD OR OTHER MEANS OF ACCESS TO PREPAID FUNDS THAT MAY BE USED
8 TO INITIATE ELECTRONIC FUNDS TRANSFERS AND MAY BE USED WITHOUT UNIQUE
9 IDENTIFYING INFORMATION SUCH AS A PERSONAL IDENTIFICATION NUMBER TO
10 INITIATE ACCESS TO PREPAID FUNDS.
11 2. NOTHING IN THIS SECTION SHALL PROHIBIT ANY SELLER FROM:
12 A. OFFERING DISCOUNTS TO A BUYER TO INDUCE THE BUYER TO PAY BY CASH,
13 CHECK, DEBIT CARD OR SIMILAR MEANS RATHER THAN BY CREDIT CARD OR DEBIT
14 CARD, IF SUCH DISCOUNTS ARE OFFERED TO ALL PROSPECTIVE BUYERS AND
15 DISCLOSED CLEARLY AND CONSPICUOUSLY; OR
16 B. IMPOSING A SURCHARGE ON A HOLDER WHO, IN CONNECTION WITH A CREDIT
17 CARD OR DEBIT CARD TRANSACTION, RECEIVES CASH BACK BEYOND THE PURCHASE

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

1 AMOUNT OF THE SALES TRANSACTION, BUT SUCH SURCHARGE MAY ONLY BE APPLIED
2 IF DISCLOSED CLEARLY AND CONSPICUOUSLY TO THE HOLDER PRIOR TO THE
3 COMPLETION OF THE TRANSACTION AND ONLY APPLIED TO THE AMOUNT OF CASH
4 BACK PROVIDED BY THE SELLER.

5 3. NO PERSON MAY PROHIBIT A SELLER FROM:

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

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

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

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

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

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