

112TH CONGRESS
1ST SESSION

S. 2030

To provide protection for consumers who have prepaid cards, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2011

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide protection for consumers who have prepaid cards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prepaid Card Con-
5 sumer Protection Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 (a) DEFINITION OF “ACCOUNT”.—Section 903 of the
8 Electronic Fund Transfer Act (15 U.S.C. 1693a) is
9 amended by striking paragraph (2) and inserting the fol-
10 lowing:

1 “(2) the term ‘account’—

2 “(A) means—

3 “(i) a demand deposit, savings de-
 4 posit, or other asset account (other than
 5 an occasional or incidental credit balance
 6 in an open end credit plan, as defined in
 7 section 103(i)), as described in regulations
 8 of the Bureau, established primarily for
 9 personal, family, or household purposes, as
 10 defined by the Bureau, by rule; and

11 “(ii) a spending account, as defined in
 12 section 924(a); and

13 “(B) does not include an account held by
 14 a financial institution pursuant to a bona fide
 15 trust agreement;”.

16 (b) DEFINITION OF “FINANCIAL INSTITUTION”.—
 17 Section 903(9) of the Electronic Fund Transfer Act (15
 18 U.S.C. 1693a(9)) is amended by striking “holds an ac-
 19 count” and inserting “manages, provides, or holds an ac-
 20 count containing funds”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
 22 Section 903 of the Electronic Fund Transfer Act (15
 23 U.S.C. 1693a) is amended—

24 (1) by redesignating paragraph (4) (relating to
 25 the Board of Governors of the Federal Reserve Sys-

1 tem), as so designated by section 1084(2)(A) of the
2 Dodd-Frank Wall Street Reform and Consumer Pro-
3 tection Act (Public Law 111–203; 124 Stat. 2081),
4 as paragraph (3); and

5 (2) in paragraph (3), as so redesignated, by
6 striking “term ‘Bureau’ means the Bureau of Gov-
7 ernors” and inserting “term ‘Board’ means the
8 Board of Governors”.

9 **SEC. 3. SPENDING ACCOUNTS.**

10 (a) SPENDING ACCOUNTS.—The Electronic Fund
11 Transfer Act (15 U.S.C. 1693 et seq.) is amended—

12 (1) by redesignating section 923 (15 U.S.C.
13 1693 note), relating to the effective date of the Elec-
14 tronic Fund Transfer Act, as so designated by sec-
15 tion 1073 of the Dodd-Frank Wall Street Reform
16 and Consumer Protection Act (Public Law 111–203;
17 124 Stat. 2060), as section 925;

18 (2) by redesignating section 922 (15 U.S.C.
19 1693r), relating to exemptions for State regulation,
20 as so designated by section 1073 of the Dodd-Frank
21 Wall Street Reform and Consumer Protection Act
22 (Public Law 111–203; 124 Stat. 2060), as section
23 923; and

24 (3) by inserting after section 923, as so redesi-
25 gnated, the following:

1 **“§ 924. Spending accounts**

2 “(a) DEFINITION.—For purposes of this section, the
3 term ‘spending account’—

4 “(1) means a deposit account, other than as de-
5 fined in subparagraph (A)(i) or (B) of section
6 903(2)—

7 “(A) that is established by a consumer or
8 on behalf of a consumer at an insured deposi-
9 tory institution (as defined in section 3(c) of
10 the Federal Deposit Insurance Act (12 U.S.C.
11 1813(c));

12 “(B) that contains the funds of a con-
13 sumer;

14 “(C) to which payments are to be made by
15 a consumer, or at the direction of a consumer;

16 “(D) to which recurring electronic fund
17 transfers may be made, at the direction of a
18 consumer; or

19 “(E) from which payments may be made
20 at the direction of a consumer through the use
21 of a card, code, or device;

22 “(2) includes a deposit account described in
23 paragraph (1)—

24 “(A) that is operated or managed by a fi-
25 nancial institution, or any other person; and

26 “(B) the funds of which are—

1 “(i) pooled with the funds of a person
2 other than the person who established the
3 account; or

4 “(ii) held in a name other than that
5 of the person who established the account;
6 and

7 “(3) does not include—

8 “(A) a nonreloadable general-use prepaid
9 card, as defined in section 915(a)(2)(A), in an
10 amount that does not exceed \$250;

11 “(B) a general-use prepaid card, as defined
12 in section 915(a)(2)(A), that is solely associated
13 with—

14 “(i) a health plan to which section
15 105 of the Internal Revenue Code of 1986
16 applies;

17 “(ii) a qualified transportation fringe,
18 as defined in section 132(f) of the Internal
19 Revenue Code of 1986;

20 “(iii) a health savings account, as de-
21 fined in section 223(d) of the Internal Rev-
22 enue Code of 1986; or

23 “(iv) any other healthcare benefit ac-
24 count, including a healthcare account relat-
25 ing to Medicare or Medicaid benefits;

1 “(C) a gift certificate, as defined in section
2 915(a)(2)(B);

3 “(D) a store gift card, as defined in sec-
4 tion 915(a)(2)(C);

5 “(E) an electronic promise, plastic card, or
6 payment code or device described in clause (i),
7 (v), or (vi) of section 915(a)(2)(D);

8 “(F) a nonreloadable card labeled as a gift
9 card and marketed solely as a gift card; or

10 “(G) a nonreloadable loyalty, rebate, or
11 promotional card.

12 “(b) FDIC INSURANCE.—

13 “(1) INSURANCE REQUIRED.—Spending ac-
14 counts shall be structured to provide and maintain
15 separate deposit insurance coverage for the funds of
16 each consumer under the applicable regulations of
17 the Federal Deposit Insurance Corporation.

18 “(2) TRANSFER OF FUNDS.—Any person that
19 receives funds in connection with an electronic fund
20 transfer to a spending account shall promptly, and
21 in no event later than 1 business day after the funds
22 are activated—

23 “(A) transfer such funds to an account at
24 an insured depository institution (as defined in

1 section 3(c) of the Federal Deposit Insurance
2 Act (12 U.S.C. 1813(c)); or

3 “(B) credit the spending account an
4 amount equal to the amount of such funds.

5 “(c) ALTERNATIVE TO PERIODIC STATEMENT.—

6 “(1) PERIODIC STATEMENT NOT REQUIRED.—

7 In the case of an electronic fund transfer from a
8 spending account, a financial institution shall not be
9 subject to the requirement under section 906(c) to
10 provide a periodic statement to a consumer, if the fi-
11 nancial institution provides to the consumer—

12 “(A) access to the account balance of the
13 consumer—

14 “(i) through a readily available tele-
15 phone line;

16 “(ii) through the Internet;

17 “(iii) at an electronic terminal or
18 other device that allows the consumer to
19 make a balance inquiry, by providing bal-
20 ance information or, routinely or upon re-
21 quest, on a receipt provided at the elec-
22 tronic terminal at the time of an electronic
23 fund transfer; and

24 “(iv) through text messaging;

1 “(B) notice of the means by which the con-
2 sumer may access the account balance of the
3 consumer, including any telephone number;

4 “(C) in response to an oral or written re-
5 quest of the consumer, a written record of the
6 account transactions of the consumer during
7 the 2-year period ending on the date of the re-
8 quest that includes the information required to
9 be provided to the consumer under section
10 906(c);

11 “(D) an electronic record, such as a record
12 available on the Internet, of the account trans-
13 actions of the consumer during the 2-year pe-
14 riod ending on the date on which the consumer
15 accesses the electronic record that includes the
16 information required to be provided to the con-
17 sumer under section 906(c);

18 “(E) with at least the same frequency as
19 a written periodic statement that would other-
20 wise be required under section 906, notification
21 by email of the availability of an electronic his-
22 tory or an electronic periodic statement, unless
23 the consumer has declined to provide an email
24 address;

1 “(F) the option to receive a written peri-
2 odic statement, either a one-time paper state-
3 ment or continuous regular monthly paper
4 statements with a single request, and clear and
5 conspicuous notice of such option at the time of
6 enrollment and on the website of the financial
7 institution;

8 “(G) annual notice of the error resolution
9 procedure for the spending account, as pre-
10 scribed in regulations of the Bureau; and

11 “(H) any other transaction information
12 that the financial institution elects to make
13 available and that the consumer elects to re-
14 ceive, such as messages or alerts concerning
15 other balance or transaction information.

16 “(2) FEES PROHIBITED.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), a financial institution may
19 not charge a fee for any service provided under
20 paragraph (1).

21 “(B) FEE FOR WRITTEN PERIODIC STATE-
22 MENT.—A financial institution may charge a
23 fee of not more than \$1 for each written peri-
24 odic statement provided under paragraph
25 (1)(A)(vi).

1 “(3) NO ELECTION BY CONSUMER.—If the con-
2 sumer has not elected to receive written periodic or
3 annual statements, has not elected to receive another
4 regular form of transaction information that the Bu-
5 reau has determined, by rule, to be equivalent to
6 periodic statements, and has not accessed the ac-
7 count online in the preceding 12-month period, the
8 financial institution shall provide an annual notice to
9 the consumer at least annually of the means by
10 which the consumer may access transaction informa-
11 tion and the option to enroll in written periodic or
12 annual statements.

13 “(d) LIMITATIONS ON LIABILITY.—For purposes of
14 section 909(a), reimbursement need not be made to a con-
15 sumer for a loss relating to a spending account that a fi-
16 nancial institution establishes would not have occurred,
17 but for the failure of the consumer to report any unau-
18 thorized electronic fund transfer or account error—

19 “(1) not later than 60 days after the date on
20 which account information that includes the unau-
21 thorized electronic fund transfer or account error is
22 provided to or accessed by the consumer under sub-
23 section (c); or

1 “(2) in extenuating circumstances, such as ex-
2 tended travel or hospitalization, within a longer time
3 that is reasonable under the circumstances.

4 “(e) FEES.—

5 “(1) FEES PROHIBITED.—Except as provided
6 in paragraph (2), a financial institution may not
7 charge in connection with a spending account—

8 “(A) an annual fee;

9 “(B) an overdraft fee, including a fee for
10 shortage or nonsufficient funds, or any other
11 fee for a transaction processed for amounts ex-
12 ceeding the account balance;

13 “(C) a usage fee for use at the point of
14 sale;

15 “(D) a fee for a declined transaction;

16 “(E) a fee for the use of an electronic ter-
17 minal that is in the network of the issuer;

18 “(F) any fee during periods of inactivity or
19 dormancy, including a periodic fee charged
20 after more than 6 months of inactivity;

21 “(G) a fee for a balance inquiry or access
22 to transaction information;

23 “(H) a fee for an inquiry to customer serv-
24 ice;

1 “(I) a finance charge or other fee imposed
2 in connection with an extension of credit;

3 “(J) an account closing fee or a fee to ob-
4 tain the remaining balance in the spending ac-
5 count;

6 “(K) a fee for any activity not described in
7 paragraph (2);

8 “(L) any fee prohibited by applicable State
9 law; or

10 “(M) any fee of any kind that would cause
11 the balance to become negative.

12 “(2) FEES PERMITTED.—A financial institution
13 may charge in connection with a spending account—

14 “(A) a fee for a replacement card—

15 “(i) of not more than \$5 for the first
16 replacement card requested by a consumer
17 during any 12-month period; and

18 “(ii) that is in addition to the replace-
19 ment card described in clause (i);

20 “(B) a fee for expedited delivery of a re-
21 placement card;

22 “(C) a periodic fee, not more frequently
23 than monthly, provided that no periodic fee may
24 be assessed if there has been no deposit or

1 transaction activity in the account during the
2 preceding 3 months;

3 “(D) a reload fee, or any other fee for add-
4 ing value to the spending account, if the finan-
5 cial institution provides a reasonable alternate
6 method for adding value to the spending ac-
7 count without a fee;

8 “(E) a fee for a transfer from the spending
9 account to another account;

10 “(F) a fee for bill payment;

11 “(G) a fee for a withdrawal by the con-
12 sumer from an electronic terminal that is—

13 “(i) located outside the United States;

14 or

15 “(ii) not in the network of the finan-
16 cial institution, including a fee to cover the
17 costs of any charge to the financial institu-
18 tion by the owner of the electronic terminal
19 relating to the use of the electronic ter-
20 minal by the consumer;

21 “(H) a fee for a purchase or a withdrawal
22 in a foreign currency; and

23 “(I) an activation, initiation, or enrollment
24 fee.

25 “(3) DISCLOSURE OF FEE INFORMATION.—

1 “(A) DISCLOSURE REQUIRED.—Each fi-
2 nancial institution that offers a spending ac-
3 count shall provide to a consumer—

4 “(i) together with any application,
5 offer, or solicitation for a spending ac-
6 count—

7 “(I) a table of any fees that may
8 be charged in connection with the
9 spending account that—

10 “(aa) can be easily under-
11 stood by the consumer;

12 “(bb) is clearly and con-
13 spicuously displayed to the con-
14 sumer before purchase; and

15 “(cc) includes, at a min-
16 imum, the amount and a descrip-
17 tion of each fee that may be
18 charged by the financial institu-
19 tion under paragraph (2); and

20 “(II) an estimate of the average
21 total monthly cost to a typical con-
22 sumer for using the spending account,
23 based on a profile of the typical con-
24 sumer established by the Bureau;

1 “(ii) on the card or other means of ac-
2 cess, a toll-free telephone number and
3 website at which the consumer may access
4 a clear and conspicuous disclosure of the
5 fees that may be charged in connection
6 with the spending account; and

7 “(iii) a wallet-sized summary of any
8 fees that may be charged in connection
9 with the spending account and a toll-free
10 telephone number for customer service re-
11 lating to the spending account.

12 “(B) RULES.—Not later than 9 months
13 after the date of enactment of the Prepaid Card
14 Consumer Protection Act of 2011, the Bureau
15 shall establish, by rule, the headings, content,
16 and format of the fee table, estimate, and wal-
17 let-sized fee summary required under subpara-
18 graph (A).

19 “(f) CREDIT FEATURES.—

20 “(1) IN GENERAL.—No person may offer or
21 provide a spending account that has a credit feature
22 or that can be linked to a credit account that is
23 automatically repaid from the spending account.

24 “(2) EXCEPTIONS.—Nothing in this subsection
25 prohibits—

1 “(A) a consumer from making an elec-
2 tronic fund transfer from a spending account to
3 pay a credit account or from setting up
4 preauthorized electronic fund transfers to pay a
5 credit account; or

6 “(B) a financial institution from offsetting
7 an inadvertent negative balance in a spending
8 account against the next deposit to that ac-
9 count, provided that the consumer is not
10 charged a fee or finance charge.

11 “(g) CLOSURE OF DORMANT ACCOUNTS.—A finan-
12 cial institution or other person that provides, holds, or
13 manages a spending account shall close the account and
14 refund any remaining funds to the consumer—

15 “(1) once the account has been inactive for 12
16 months, or such other period as the Bureau shall es-
17 tablish, by regulation; and

18 “(2) upon request of the consumer to the finan-
19 cial institution or other person using an easily acces-
20 sible method of contact, that the account be closed.”.

21 (b) STUDY.—The Bureau shall establish an imple-
22 mentation plan and timeline for a prepaid card research
23 study to be completed not later than 1 year after the date
24 of enactment of this Act, to determine what, if any, dif-
25 ferences there are for both the short- and long-term eco-

1 nomic well being of consumers at different income levels
2 who use spending accounts versus those who use tradi-
3 tional bank accounts for their primary means of making
4 financial transactions.

5 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) WRITTEN PERIODIC STATEMENTS.—Section
7 906(c) of the Electronic Fund Transfer Act (15
8 U.S.C. 1693d(c)) is amended in the first sentence of
9 the matter preceding paragraph (1), by striking “A
10 financial” and inserting “Except as provided in sec-
11 tion 924(c), a financial”.

12 (2) ERROR RESOLUTION.—Section 908(a) of
13 the Electronic Fund Transfer Act (15 U.S.C.
14 1693f(a)) is amended by striking “or notification
15 pursuant to section 906(b)” and inserting “, notifi-
16 cation pursuant to section 906(b), or written or elec-
17 tronic documentation pursuant to section 924(c)”.

18 **SEC. 4. EFFECTIVE DATE.**

19 This Act and the amendments made by this Act shall
20 become effective 9 months after the date of enactment of
21 this Act.

○