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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. DEFINITIONS.

(a) Definition of “Account”.—Section 903 of the
Electronic Fund Transfer Act (15 U.S.C. 1693a) is
amended by striking paragraph (2) and inserting the fol-
lowing:
“(2) the term ‘account’—

“(A) means—

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

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

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

(b) Definition of “Financial Institution”—
Section 903(9) of the Electronic Fund Transfer Act (15
U.S.C. 1693a(9)) is amended by striking “holds an ac-
count” and inserting “manages, provides, or holds an ac-
count containing funds”.

(c) Technical and Conforming Amendments.—
Section 903 of the Electronic Fund Transfer Act (15
U.S.C. 1693a) is amended—

(1) by redesignating paragraph (4) (relating to
the Board of Governors of the Federal Reserve Sys-
tem), as so designated by section 1084(2)(A) of the
Dodd-Frank Wall Street Reform and Consumer Pro-
tection Act (Public Law 111–203; 124 Stat. 2081),
as paragraph (3); and
(2) in paragraph (3), as so redesignated, by
striking “term ‘Bureau’ means the Bureau of Gov-
ernors” and inserting “term ‘Board’ means the
Board of Governors”.

SEC. 3. SPENDING ACCOUNTS.

(a) SPENDING ACCOUNTS.—The Electronic Fund
Transfer Act (15 U.S.C. 1693 et seq.) is amended—
(1) by redesignating section 923 (15 U.S.C.
1693 note), relating to the effective date of the Elec-
tronic Fund Transfer Act, as so designated by sec-
tion 1073 of the Dodd-Frank Wall Street Reform
and Consumer Protection Act (Public Law 111–203;
124 Stat. 2060), as section 925;
(2) by redesignating section 922 (15 U.S.C.
1693r), relating to exemptions for State regulation,
as so designated by section 1073 of the Dodd-Frank
Wall Street Reform and Consumer Protection Act
(Public Law 111–203; 124 Stat. 2060), as section
923; and
(3) by inserting after section 923, as so redesig-
nated, the following:
§ 924. Spending accounts

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

“(1) means a deposit account, other than as defined in subparagraph (A)(i) or (B) of section 903(2)—

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

“(B) that contains the funds of a consumer;

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

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

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

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

“(A) that is operated or managed by a financial institution, or any other person; and

“(B) the funds of which are—
“(i) pooled with the funds of a person other than the person who established the account; or

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

“(3) does not include—

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

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

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

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

“(iii) a health savings account, as defined in section 223(d) of the Internal Revenue Code of 1986; or

“(iv) any other healthcare benefit account, including a healthcare account relating to Medicare or Medicaid benefits;
“(C) a gift certificate, as defined in section 915(a)(2)(B);

“(D) a store gift card, as defined in section 915(a)(2)(C);

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

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

“(G) a non reloadable loyalty, rebate, or promotional card.

“(b) FDIC INSURANCE.—

“(1) INSURANCE REQUIRED.—Spending accounts shall be structured to provide and maintain separate deposit insurance coverage for the funds of each consumer under the applicable regulations of the Federal Deposit Insurance Corporation.

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

“(A) transfer such funds to an account at an insured depository institution (as defined in
section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)); or

"(B) credit the spending account an amount equal to the amount of such funds.

"(c) ALTERNATIVE TO PERIODIC STATEMENT.—

"(1) PERIODIC STATEMENT NOT REQUIRED.—

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

"(A) access to the account balance of the consumer—

"(i) through a readily available telephone line;

"(ii) through the Internet;

"(iii) at an electronic terminal or other device that allows the consumer to make a balance inquiry, by providing balance information or, routinely or upon request, on a receipt provided at the electronic terminal at the time of an electronic fund transfer; and

"(iv) through text messaging;
“(B) notice of the means by which the consumer may access the account balance of the consumer, including any telephone number;

“(C) in response to an oral or written request of the consumer, a written record of the account transactions of the consumer during the 2-year period ending on the date of the request that includes the information required to be provided to the consumer under section 906(c);

“(D) an electronic record, such as a record available on the Internet, of the account transactions of the consumer during the 2-year period ending on the date on which the consumer accesses the electronic record that includes the information required to be provided to the consumer under section 906(c);

“(E) with at least the same frequency as a written periodic statement that would otherwise be required under section 906, notification by email of the availability of an electronic history or an electronic periodic statement, unless the consumer has declined to provide an email address;
“(F) the option to receive a written periodic statement, either a one-time paper statement or continuous regular monthly paper statements with a single request, and clear and conspicuous notice of such option at the time of enrollment and on the website of the financial institution;

“(G) annual notice of the error resolution procedure for the spending account, as prescribed in regulations of the Bureau; and

“(H) any other transaction information that the financial institution elects to make available and that the consumer elects to receive, such as messages or alerts concerning other balance or transaction information.

“(2) FEES PROHIBITED.—

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

“(B) FEES FOR WRITTEN PERIODIC STATEMENT.—A financial institution may charge a fee of not more than $1 for each written periodic statement provided under paragraph (1)(A)(vi).
“(3) NO ELECTION BY CONSUMER.—If the consumer has not elected to receive written periodic or annual statements, has not elected to receive another regular form of transaction information that the Bureau has determined, by rule, to be equivalent to periodic statements, and has not accessed the account online in the preceding 12-month period, the financial institution shall provide an annual notice to the consumer at least annually of the means by which the consumer may access transaction information and the option to enroll in written periodic or annual statements.

“(d) LIMITATIONS ON LIABILITY.—For purposes of section 909(a), reimbursement need not be made to a consumer for a loss relating to a spending account that a financial institution establishes would not have occurred, but for the failure of the consumer to report any unauthorized electronic fund transfer or account error—

“(1) not later than 60 days after the date on which account information that includes the unauthorized electronic fund transfer or account error is provided to or accessed by the consumer under subsection (e); or
“(2) in extenuating circumstances, such as extended travel or hospitalization, within a longer time that is reasonable under the circumstances.

“(e) FEES.—

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

“(A) an annual fee;

“(B) an overdraft fee, including a fee for shortage or nonsufficient funds, or any other fee for a transaction processed for amounts exceeding the account balance;

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

“(D) a fee for a declined transaction;

“(E) a fee for the use of an electronic terminal that is in the network of the issuer;

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

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

“(H) a fee for an inquiry to customer service;
“(I) a finance charge or other fee imposed in connection with an extension of credit;

“(J) an account closing fee or a fee to obtain the remaining balance in the spending account;

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

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

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

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

“(A) a fee for a replacement card—

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

“(ii) that is in addition to the replacement card described in clause (i);

“(B) a fee for expedited delivery of a replacement card;

“(C) a periodic fee, not more frequently than monthly, provided that no periodic fee may be assessed if there has been no deposit or
transaction activity in the account during the preceding 3 months;

“(D) a reload fee, or any other fee for adding value to the spending account, if the financial institution provides a reasonable alternate method for adding value to the spending account without a fee;

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

“(F) a fee for bill payment;

“(G) a fee for a withdrawal by the consumer from an electronic terminal that is—

“(i) located outside the United States;

or

“(ii) not in the network of the financial institution, including a fee to cover the costs of any charge to the financial institution by the owner of the electronic terminal relating to the use of the electronic terminal by the consumer;

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

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

“(3) DISCLOSURE OF FEE INFORMATION.—
“(A) Disclosure Required.—Each financial institution that offers a spending account shall provide to a consumer—

“(i) together with any application, offer, or solicitation for a spending account—

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

“(aa) can be easily understood by the consumer;

“(bb) is clearly and conspicuously displayed to the consumer before purchase; and

“(cc) includes, at a minimum, the amount and a description of each fee that may be charged by the financial institution under paragraph (2); and

“(II) an estimate of the average total monthly cost to a typical consumer for using the spending account, based on a profile of the typical consumer established by the Bureau;
“(ii) on the card or other means of access, a toll-free telephone number and website at which the consumer may access a clear and conspicuous disclosure of the fees that may be charged in connection with the spending account; and

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

“(B) Rules.—Not later than 9 months after the date of enactment of the Prepaid Card Consumer Protection Act of 2011, the Bureau shall establish, by rule, the headings, content, and format of the fee table, estimate, and wallet-sized fee summary required under subparagraph (A).

“(f) Credit Features.—

“(1) In general.—No person may offer or provide a spending account that has a credit feature or that can be linked to a credit account that is automatically repaid from the spending account.

“(2) Exceptions.—Nothing in this subsection prohibits—
“(A) a consumer from making an electronic fund transfer from a spending account to pay a credit account or from setting up preauthorized electronic fund transfers to pay a credit account; or

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

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

“(1) once the account has been inactive for 12 months, or such other period as the Bureau shall establish, by regulation; and

“(2) upon request of the consumer to the financial institution or other person using an easily accessible method of contact, that the account be closed.”.

(b) STUDY.—The Bureau shall establish an implementation plan and timeline for a prepaid card research study to be completed not later than 1 year after the date of enactment of this Act, to determine what, if any, differences there are for both the short- and long-term eco-
nomadic well being of consumers at different income levels
who use spending accounts versus those who use tra-
tional bank accounts for their primary means of making
financial transactions.

(c) Technical and Conforming Amendments.—

(1) Written periodic statements.—Section
906(c) of the Electronic Fund Transfer Act (15
U.S.C. 1693d(c)) is amended in the first sentence of
the matter preceding paragraph (1), by striking “A
financial” and inserting “Except as provided in sec-
tion 924(c), a financial”.

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

SEC. 4. EFFECTIVE DATE.

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