H. R. 1825

To amend the Electronic Fund Transfer Act to safeguard consumers in connection with the utilization of certain debit cards.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2001

Mr. Barrett of Wisconsin introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Electronic Fund Transfer Act to safeguard consumers in connection with the utilization of certain debit cards.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Consumer Debit Card
6 Protection Act”.
7
8 SECTION 2. CONGRESSIONAL FINDINGS.
9 The Congress finds the following:
10 (1) There has been a recent trend toward
11 issuing debit cards which can be used like credit
12 cards, largely as replacements for debit cards which
could be used only with a personal identification
number at automated teller machines and a limited
number of retail establishments.

(2) Many times, debit cards that can be used
like credit cards have been issued without providing
adequate disclosure that—

(A) the card may be used to initiate an
electronic fund transfer without the use of a
personal identification number or similar code
or means of access; and

(B) even though the card may carry a logo
associated with credit cards, the card is not a
credit card and the consumer may bear a sig-
nificantly larger liability for an unauthorized
transaction involving such debit card than
would be the case for a similar unauthorized
transaction involving a credit card.

(3) Thus, millions of Americans are—

(A) receiving cards in a form they didn’t
request; and

(B) are carrying such cards around with
them—

(i) without realizing that the cards
have an expanded capability without the
protections against unauthorized transfers
which are typical of cards issued to make
cash withdrawals from automated teller
machines; and

(ii) without fully appreciating the
risks associated with such cards.

(4) Economic stimulation would be enhanced
and competition among the various financial institu-
tions and other companies which issue debit cards
would be strengthened by the informed use of debit
cards by consumers.

SEC. 3. DEFINITIONS.

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

(1) by striking “and” at the end of paragraph
(10);

(2) by striking the period at the end of para-
graph (11) and inserting a semicolon; and

(3) by adding at the end the following new
paragraphs:

“(12) ATM CARD.—The term ‘ATM card’
means any card issued by a financial institution for
use in initiating electronic fund transfers at auto-
mated teller machines and other electronic terminals
which requires a code or other unique form of identi-
(13) **CHECK CARD.**—The term ‘check card’ means any card issued by a financial institution for use in initiating electronic fund transfers from the account of a consumer which does not require the protection of a code or other means of access that uniquely identifies the consumer (and for purposes of this paragraph, a signature shall not be treated as a means of access which uniquely identifies the consumer).”.

**SEC. 4. CHECK CARD REQUIREMENT.**

Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended by adding at the end the following new subsection:

“(e) **CHECK CARD REQUIREMENT.**—Any check card issued by any financial institution to any consumer shall bear the legend ‘Check Card’ in a prominent typeface and in a conspicuous place on the face of the check card.”.

**SEC. 5. DUAL-USE DEBIT CARD.**

(a) **CONSUMER LIABILITY.**—

(1) **IN GENERAL.**—Section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g) is amended—
(A) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively;

(B) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(ii) by inserting "CARDS NECESSITATING UNIQUE IDENTIFIER.—

“(1) IN GENERAL.—" after "“(a)”;

(iii) by striking “other means of access can be identified as the person authorized to use it, such as by signature, photograph,” and inserting “other means of access can be identified as the person authorized to use it by a unique identifier, such as a photograph, retina scan,”; and

(iv) by striking “Notwithstanding the foregoing,” and inserting the following:

“(2) NOTIFICATION.—Notwithstanding paragraph (1),”;

(C) by inserting before subsection (d), as so designated by this section, the following new subsections:
“(b) Cards Not Necessitating Unique Identifier.—A consumer shall be liable for an unauthorized electronic fund transfer only if—

“(1) the liability is not in excess of $50;
“(2) the unauthorized electronic fund transfer is initiated by the use of a card that has been properly issued to a consumer other than the person making the unauthorized transfer as a means of access to the account of that consumer for the purpose of initiating an electronic fund transfer;
“(3) the unauthorized electronic fund transfer occurs before the card issuer has been notified that an unauthorized use of the card has occurred or may occur as the result of loss, theft, or otherwise; and
“(4) such unauthorized electronic fund transfer did not require the use of a code or other unique identifier (other than a signature), such as a photograph, fingerprint, or retina scan.

“(c) Notice of Liability and Responsibility to Report Loss of Card, Code, or Other Means of Access.—No consumer shall be liable under this title for any unauthorized electronic fund transfer unless the consumer has received in a timely manner the notice required under section 905(a)(1), and any subsequent notice required under section 905(b) with regard to any change in the
information which is the subject of the notice required under section 905(a)(1).”.

(2) Conforming Amendment.—Section 905(a)(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)(1)) is amended to read as follows:

“(1) the liability of the consumer for any unauthorized electronic fund transfer and the requirement for promptly reporting any loss, theft, or unauthorized use of a card, code, or other means of access in order to limit the liability of the consumer for any such unauthorized transfer;”.

(b) Validation Requirement for Dual-Use Debit Cards.—

(1) In General.—Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

“(c) Validation Requirement.—No person may issue a card described in subsection (a), the use of which to initiate an electronic fund transfer does not require the use of a code or other unique identifier other than a signature (such as a fingerprint or retina scan), unless—
“(1) the requirements of paragraphs (1) through (4) of subsection (b) are met; and

“(2) the issuer has provided to the consumer a clear and conspicuous disclosure that use of the card may not require the use of such code or other unique identifier.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 911(d) of the Electronic Fund Transfer Act (15 U.S.C. 1993i(d)) (as redesignated by subsection (a)(1) of this section) is amended by striking “For the purpose of subsection (b)” and inserting “For purposes of subsections (b) and (c)”.

SEC. 6. MANAGEMENT PRACTICES RELATING TO THE ISSUANCE OF CHECK CARDS.

Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended by inserting after subsection (e) (as added by section 4 of this Act) the following new subsection:

“(f) PREFERENCE OF CONSUMER.—

“(1) IN GENERAL.—If—

“(A) in response to a request or application by a consumer for an ATM card, a financial institution issues a check card; and

“(B) the consumer refuses to accept a check card,
the issuer shall promptly issue such consumer an
ATM card.

“(2) DEFINITIONS.—For purposes of paragraph
(1), the following definitions shall apply:’’.

SEC. 7. TOLL-FREE TELEPHONE NUMBER FOR REPORTING
LOST OR STOLEN CHECK CARDS OR UNAU-
THORIZED WITHDRAWALS.

(a) IN GENERAL.—Section 906 of the Electronic
Fund Transfer Act (15 U.S.C. 1693d) is amended by add-
ing at the end the following new subsection:

“(g) 24-HOUR, TOLL-FREE, NOTIFICATION SYS-
TEM.—A financial institution which issues a check card
to any consumer shall establish and maintain a 24-hour
notification system, including a toll-free telephone number
at which personnel are continuously accessible, which per-
mits the consumer to immediately report the loss or theft
of the check card or any unauthorized use or suspected
unauthorized use of the card.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—
Section 906(c)(4) of the Electronic Fund Transfer Act (15
U.S.C. 1693d(c)(4)) is amended by inserting after the pe-
riod at the end the following new sentence: “In the case
of a periodic statement for an account from which with-
drawals may be initiated by a check card (as defined in
subsection (g)(2)), the notice required under this para-
graph shall appear in a conspicuous and prominent loca-
tion on the periodic statement under a heading indicating
that the telephone number is a 24-hour, toll-free telephone
number and the notice shall inform the consumer of the
importance of promptly reporting any loss or theft of such
card or any unauthorized use or suspected unauthorized
use of the card.”.

SEC. 8. PROHIBITION ON FEES FOR INSUFFICIENT FUNDS
IN CASE OF CERTAIN UNAUTHORIZED TRANS-
FERS.

Section 909 of the Electronic Fund Transfer Act (15
U.S.C. 1693g) (as amended by section 5 of this Act) is
amended by adding at the end the following new sub-
section:

“(h) PROHIBITION ON CERTAIN FEES.—

“(1) IN GENERAL.—A consumer shall not be
liable for any fee imposed by a financial institution
for insufficient funds in the account of the consumer
if the lack of sufficient funds in such account is due
to an unauthorized electronic fund transfer (from
such account) initiated by the use of a card without
the protection of a code or other means of access
which uniquely identifies the consumer.

“(2) PROMPT RECREDIT OF PRIOR FEES.—
Upon receiving notice from a consumer of an alleged
unauthorized transaction, a financial institution shall promptly credit the account of a consumer for any fee described in paragraph (1) which was imposed before such notice was received.”.

SEC. 9. PROVISIONAL RECREDIT OF UNAUTHORIZED TRANSFERS AFTER 5 BUSINESS DAYS.

Section 908(c) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(c)) is amended by striking “ten business days” and inserting “5 business days”.

SEC. 10. EFFECTIVE DATE.

The amendments made by this Act shall apply after the end of the 1-year period beginning on the date of the enactment of this Act.