

111TH CONGRESS  
2D SESSION

# S. 4041

To amend the Electronic Fund Transfer Act to provide protection for consumers who have prepaid cards, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2010

Mr. MENENDEZ (for himself, Mr. DURBIN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Electronic Fund Transfer Act 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 2010”.

6 **SEC. 2. DEFINITIONS.**

7 (a) DEFINITION OF “ACCOUNT”.—Section 903 of the  
8 Electronic Fund Transfer Act (15 U.S.C. 1693a) is

1 amended by striking paragraph (2) and inserting the fol-  
2 lowing:

3 “(2) the term ‘account’—

4 “(A) means—

5 “(i) a demand deposit, savings de-  
6 posit, or other asset account (other than  
7 an occasional or incidental credit balance  
8 in an open end credit plan as defined in  
9 section 103(i) of this Act), as described in  
10 regulations of the Bureau, established pri-  
11 marily for personal, family, or household  
12 purposes, including a payroll card account,  
13 as defined by the Bureau by rule; and

14 “(ii) a spending card account, as de-  
15 fined in section 924(a); and

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

19 (b) DEFINITION OF “FINANCIAL INSTITUTION”.—

20 Section 903(9) of the Electronic Fund Transfer Act (15  
21 U.S.C. 1693a(9)) is amended by striking “holds an ac-  
22 count” and inserting “provides or holds an account con-  
23 taining funds”.

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

4 (1) by redesignating paragraph (4) (relating to  
5 the Board of Governors of the Federal Reserve Sys-  
6 tem), as so designated by section 1084(2)(A) of the  
7 Dodd-Frank Wall Street Reform and Consumer Pro-  
8 tection Act (Public Law 111–203; 124 Stat. 2081),  
9 as paragraph (3); and

10 (2) in paragraph (3), as so redesignated by  
11 paragraph (1) of this subsection, by striking “term  
12 ‘Bureau’ means the Bureau of Governors” and in-  
13 sserting “term ‘Board’ means the Board of Gov-  
14 ernors”.

15 **SEC. 3. SPENDING CARD ACCOUNTS.**

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

18 (1) by redesignating section 923 (15 U.S.C.  
19 1693 note), relating to the effective date of the Elec-  
20 tronic Fund Transfer Act, as so designated by sec-  
21 tion 1073 of the Dodd-Frank Wall Street Reform  
22 and Consumer Protection Act (Public Law 111–203;  
23 124 Stat. 2060), as section 925;

24 (2) by redesignating section 922 (15 U.S.C.  
25 1693r), relating to exemptions for State regulation,

1 as so designated by section 1073 of the Dodd-Frank  
2 Wall Street Reform and Consumer Protection Act  
3 (Public Law 111–203; 124 Stat. 2060), as section  
4 923; and

5 (3) by inserting after section 923, as redesignig-  
6 nated by paragraph (2), the following:

7 **“§ 924. Spending card accounts**

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

10 “(1) means an asset account, other than as de-  
11 fined in subparagraph (A)(i) or (B) of section  
12 903(2)—

13 “(A) that is established by a consumer or  
14 on behalf of a consumer;

15 “(B) that contains the funds of a con-  
16 sumer;

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

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

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

1           “(2) includes an asset account described in  
2 paragraph (1)—

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

5           “(B) the funds of which are—

6           “(i) pooled with the funds of a person  
7 other than the person who established the  
8 account; or

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

12          “(3) does not include—

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

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

19           “(i) a health plan to which section  
20 105 of the Internal Revenue Code of 1986  
21 applies;

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

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

4           “(iv) any other healthcare benefit ac-  
5           count, including a healthcare account relat-  
6           ing to Medicare or Medicaid benefits;

7           “(C) a gift certificate, as defined in section  
8           915(a)(2)(B);

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

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

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

16          “(G) a nonreloadable loyalty, rebate or  
17          promotional card.

18          “(b) FDIC INSURANCE.—

19               “(1) INSURANCE REQUIRED.—A financial insti-  
20               tution may only offer electronic fund transfer serv-  
21               ices in connection with a spending card account if  
22               the account is insured under, and complies with the  
23               requirements for pass-through deposit insurance  
24               under, section 11 of the Federal Deposit Insurance  
25               Act (12 U.S.C. 1821).

1           “(2) TRANSFER OF FUNDS.—Any person that  
2           accepts funds in connection with an electronic fund  
3           transfer to a spending card account shall promptly,  
4           and in no event later than 24 hours after the person  
5           accepts the funds—

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

10                   “(B) credit the spending card account an  
11                   amount equal to the amount of such funds.

12           “(c) ALTERNATIVE TO PERIODIC STATEMENT.—

13                   “(1) PERIODIC STATEMENT NOT REQUIRED.—  
14           In the case of an electronic fund transfer from a  
15           spending card account, a financial institution shall  
16           not be subject to the requirement under section  
17           906(c) to provide a periodic statement to a con-  
18           sumer, if—

19                   “(A) the financial institution provides to  
20                   the consumer—

21                           “(i) access to the account balance of  
22                           the consumer—

23                                   “(I) through a readily available  
24                                   telephone line;

25                                   “(II) through the Internet; and

1                   “(III) at an electronic terminal  
2                   or other device that allows the con-  
3                   sumer to make a balance inquiry, by  
4                   providing balance information or, rou-  
5                   tinely or upon request, on a receipt  
6                   provided at the electronic terminal at  
7                   the time of an electronic fund trans-  
8                   fer;

9                   “(ii) notice of the means by which the  
10                  consumer may access the account balance  
11                  of the consumer, including any telephone  
12                  number;

13                  “(iii) in response to an oral or written  
14                  request of the consumer, a written record  
15                  of the account transactions of the con-  
16                  sumer during the 2-year period ending on  
17                  the date of the request that includes the  
18                  information required to be provided to the  
19                  consumer under section 906(c);

20                  “(iv) an electronic record, such as a  
21                  record available on the Internet, of the ac-  
22                  count transactions of the consumer during  
23                  the 60-day period ending on the date on  
24                  which the consumer accesses the electronic  
25                  record that includes the information re-

1           required to be provided to the consumer  
2           under section 906(c);

3           “(v) with at least the same frequency  
4           as a written periodic statement that would  
5           otherwise be required under section 906,  
6           notification by email of the availability of  
7           an electronic history or an electronic peri-  
8           odic statement, unless the consumer has  
9           declined to provide an email address;

10          “(vi) the option to receive a written  
11          periodic statement and notice of such op-  
12          tion;

13          “(vii) annual notice of the error reso-  
14          lution procedure for the spending card ac-  
15          count, as prescribed in regulations of the  
16          Bureau; and

17          “(viii) any other transaction informa-  
18          tion that the financial institution elects to  
19          make available and that the consumer  
20          elects to receive, such as messages or  
21          alerts concerning balance levels or account  
22          activity; or

23          “(B) the consumer does not provide a valid  
24          address to the card issuer.

25          “(2) FEES PROHIBITED.—

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

5           “(B) FEE FOR WRITTEN PERIODIC STATE-  
6           MENT.—A financial institution may charge a  
7           fee of not more than \$1 for each written peri-  
8           odic statement provided under paragraph  
9           (1)(A)(vi).

10          “(3) NO ELECTION BY CONSUMER.—If a con-  
11          sumer does not provide an email address to a finan-  
12          cial institution and does not elect to receive written  
13          periodic statements under paragraph (1)(A)(vi), the  
14          financial institution shall provide a written state-  
15          ment to the consumer at least once each year, at no  
16          cost to the consumer, that contains the date, source,  
17          and amount of each transaction made or fee  
18          charged, together with such additional information  
19          as the Bureau may require.

20          “(d) LIMITATIONS ON LIABILITY.—For purposes of  
21          section 909(a), reimbursement need not be made to a con-  
22          sumer for a loss relating to a spending card account that  
23          a financial institution establishes would not have occurred  
24          but for the failure of the consumer to report any unau-  
25          thorized electronic fund transfer or account error—

1           “(1) not later than 60 days after the earlier  
2 of—

3           “(A) the receipt by the consumer of a writ-  
4 ten account record under subsection (c)(1) that  
5 includes the unauthorized electronic fund trans-  
6 fer or account error; or

7           “(B) the date on which account informa-  
8 tion that includes the unauthorized electronic  
9 fund transfer or account error is provided to or  
10 accessed by the consumer under subsection (c);  
11 or

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

15           “(e) FEES.—

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

19           “(A) an annual fee;

20           “(B) an overdraft fee, including a fee for  
21 shortage or nonsufficient funds, or any other  
22 fee for a transaction processed for amounts ex-  
23 ceeding the account balance;

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

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

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

4           “(F) an inactivity or dormancy fee;

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

7           “(H) a fee for an inquiry to customer serv-  
8           ice;

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

11          “(J) an account closing fee or a fee to ob-  
12          tain the remaining balance in the spending card  
13          account; or

14          “(K) a fee for any activity not described in  
15          paragraph (2).

16          “(2) FEES PERMITTED.—A financial institution  
17          may charge in connection with a spending card ac-  
18          count—

19                 “(A) a fee for a replacement card—

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

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

1           “(B) a fee for expedited delivery of a re-  
2 placement card;

3           “(C) a periodic fee, not more frequently  
4 than monthly;

5           “(D) a reload fee, or any other fee for add-  
6 ing value to the spending card account, if the  
7 financial institution provides an alternate meth-  
8 od for adding value to the spending card ac-  
9 count without a fee;

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

12           “(F) a fee for bill payment by check;

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

15               “(i) located outside the United States;

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

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

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

1 “(3) DISCLOSURE OF FEE INFORMATION.—

2 “(A) DISCLOSURE REQUIRED.—Each fi-  
3 nancial institution that offers a spending card  
4 account shall provide to a consumer—

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

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

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

13 “(bb) is conspicuously dis-  
14 played to the consumer before  
15 purchase; and

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

21 “(II) an estimate of the average  
22 total monthly cost to a typical con-  
23 sumer for using the spending card ac-  
24 count;

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 card account; and

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

12 “(B) REGULATIONS.—Not later than 9  
13 months after the date of enactment of the Pre-  
14 paid Card Consumer Protection Act of 2010,  
15 the Bureau shall establish, by regulation—

16 “(i) the headings, content, and format  
17 of the fee table, estimate, and wallet-sized  
18 fee summary required under subparagraph  
19 (A); and

20 “(ii) a profile of the typical consumer  
21 for purposes of subparagraph (A)(i)(II).”.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

23 (1) WRITTEN PERIODIC STATEMENTS.—Section  
24 906(c) of the Electronic Fund Transfer Act (15  
25 U.S.C. 1693d(c)) is amended, in the first sentence

1 of the matter preceding paragraph (1), by striking  
2 “A financial” and inserting “Except as provided in  
3 section 923(c), a financial”.

4 (2) ERROR RESOLUTION.—Section 908(a) of  
5 the Electronic Fund Transfer Act (15 U.S.C.  
6 1693f(a)) is amended by striking “or notification  
7 pursuant to section 906(b)” and inserting “, notifi-  
8 cation pursuant to section 906(b), or written or elec-  
9 tronic documentation pursuant to section 923(c)”.

10 **SEC. 4. EFFECTIVE DATE.**

11 This Act, and the amendments made by this Act,  
12 shall take effect on the date that is 6 months after the  
13 date of enactment of this Act.

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