

113TH CONGRESS
1ST SESSION

S. 1867

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2013

Mr. MENENDEZ (for himself and Mr. BLUMENTHAL) 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 2013”.

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(j)), 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) DEFINITIONS.—For purposes of this section—

3 “(1) the term ‘insured credit union’ has the
4 same meaning as in section 101 of the Federal
5 Credit Union Act (12 U.S.C. 1752);

6 “(2) the term ‘insured depository institution’
7 has the same meaning as in section 3 of the Federal
8 Deposit Insurance Act (12 U.S.C. 1813); and

9 “(3) the term ‘spending account’—

10 “(A) means a deposit account—

11 “(i) that is established by a consumer
12 or on behalf of a consumer at an insured
13 depository institution or an insured credit
14 union;

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

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

20 “(iv) to which recurring electronic
21 fund transfers may be made, at the direc-
22 tion of a consumer; or

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

1 “(B) includes a deposit account described
2 in subparagraph (A)—

3 “(i) that is operated or managed by a
4 financial institution, or any other person;
5 and

6 “(ii) the funds of which are—

7 “(I) pooled with the funds of a
8 person other than the person who es-
9 tablished the account; or

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

13 “(C) does not include—

14 “(i) an account described in section
15 903(2)(A)(i);

16 “(ii) an account held by a financial in-
17 stitution pursuant to a bona fide trust
18 agreement;

19 “(iii) a nonreloadable, general-use pre-
20 paid card, as defined in section
21 915(a)(2)(A), in an amount that does not
22 exceed \$250;

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

1 “(I) a health plan to which sec-
2 tion 105 of the Internal Revenue Code
3 of 1986 applies;

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

7 “(III) a health savings account,
8 as defined in section 223(d) of the In-
9 ternal Revenue Code of 1986; or

10 “(IV) any other healthcare ben-
11 efit account, including a healthcare
12 account relating to Medicare or Med-
13 icaid benefits;

14 “(v) a gift certificate, as defined in
15 section 915(a)(2)(B);

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

18 “(vii) an electronic promise, plastic
19 card, or payment code or device described
20 in clause (i), (v), or (vi) of section
21 915(a)(2)(D);

22 “(viii) a nonreloadable card labeled as
23 a gift card and marketed solely as a gift
24 card; or

1 “(ix) a nonreloadable loyalty, rebate,
2 or promotional card.

3 “(b) FDIC OR NCUA INSURANCE.—

4 “(1) INSURANCE REQUIRED.—Spending ac-
5 counts shall be structured to provide and maintain
6 separate deposit insurance coverage for the funds of
7 each consumer under the applicable regulations of
8 the Federal Deposit Insurance Corporation or the
9 National Credit Union Administration.

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

15 “(A) transfer such funds to an account at
16 an insured depository institution or an insured
17 credit union, as applicable; and

18 “(B) credit the spending account in an
19 amount equal to the amount of such funds.

20 “(c) ALTERNATIVE TO PERIODIC STATEMENT.—

21 “(1) PERIODIC STATEMENT NOT REQUIRED.—

22 In the case of an electronic fund transfer from a
23 spending account, a financial institution shall not be
24 subject to the requirement under section 906(c) to

1 provide a periodic statement to a consumer, if the fi-
2 nancial institution provides to the consumer—

3 “(A) access to the account balance of the
4 consumer—

5 “(i) through a readily available tele-
6 phone line;

7 “(ii) through the Internet;

8 “(iii) at an electronic terminal or
9 other device that allows the consumer to
10 make a balance inquiry, by providing bal-
11 ance information or, routinely or upon re-
12 quest, on a receipt provided at the elec-
13 tronic terminal at the time of an electronic
14 fund transfer; and

15 “(iv) through text messaging;

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

19 “(C) in response to an oral or written re-
20 quest of the consumer, a written record of the
21 account transactions of the consumer during
22 the 2-year period ending on the date of the re-
23 quest that includes the information required to
24 be provided to the consumer under section
25 906(c);

1 “(D) an electronic record, such as a record
2 available on the Internet, of the account trans-
3 actions of the consumer during the 2-year pe-
4 riod ending on the date on which the consumer
5 accesses the electronic record that includes the
6 information required to be provided to the con-
7 sumer under section 906(c);

8 “(E) with at least the same frequency as
9 a written periodic statement that would other-
10 wise be required under section 906, notification
11 by email of the availability of an electronic his-
12 tory or an electronic periodic statement, unless
13 the consumer has declined to provide an email
14 address;

15 “(F) the option to receive a written state-
16 ment, either a one-time paper statement or con-
17 tinuous regular monthly paper statements with
18 a single request, and clear and conspicuous no-
19 tice of such option at the time of enrollment
20 and on the website of the financial institution;

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

24 “(H) any other transaction information
25 that the financial institution elects to make

1 available and that the consumer elects to re-
2 ceive, such as messages or alerts concerning
3 other balance or transaction information.

4 “(2) FEES PROHIBITED.—

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

9 “(B) FEE FOR WRITTEN STATEMENT.—A
10 financial institution may charge a fee of not
11 more than \$1 for each written statement pro-
12 vided under paragraph (1)(F).

13 “(3) NO ELECTION BY CONSUMER.—If the con-
14 sumer has not elected to receive written periodic or
15 annual statements, has not elected to receive another
16 regular form of transaction information that the Bu-
17 reau has determined, by rule, to be equivalent to
18 periodic statements, and has not accessed the ac-
19 count online in the preceding 12-month period, the
20 financial institution shall provide notice to the con-
21 sumer at least annually of the means by which the
22 consumer may access transaction information and
23 the option to enroll in written periodic or annual
24 statements.

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

7 “(1) not later than 60 days after the date on
8 which account information that includes the unau-
9 thorized electronic fund transfer or account error is
10 provided to or accessed by the consumer under sub-
11 section (c); 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 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) any fee during periods of inactivity or
5 dormancy, including a periodic fee charged
6 after more than 6 months of inactivity;

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

9 “(H) a fee for an inquiry to customer serv-
10 ice;

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

13 “(J) an account closing fee or a fee to ob-
14 tain the remaining balance in the spending ac-
15 count;

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

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

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

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

24 “(A) a fee for a replacement card—

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

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

6 “(B) a fee for expedited delivery of a re-
7 placement card;

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

13 “(D) a reload fee, or any other fee for add-
14 ing value to the spending account, if the finan-
15 cial institution provides a reasonable alternate
16 method for adding value to the spending ac-
17 count without a fee;

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

20 “(F) a fee for bill payment;

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

23 “(i) located outside the United States;

24 or

1 “(ii) not in the network of the finan-
2 cial institution, including a fee to cover the
3 costs of any charge to the financial institu-
4 tion by the owner of the electronic terminal
5 relating to the use of the electronic ter-
6 minal by the consumer;

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

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

11 “(3) DISCLOSURE OF FEE INFORMATION.—

12 “(A) DISCLOSURE REQUIRED.—Each fi-
13 nancial institution that offers a spending ac-
14 count shall provide to a consumer—

15 “(i) together with any application,
16 offer, or solicitation for a spending ac-
17 count—

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

21 “(aa) can be easily under-
22 stood by the consumer;

23 “(bb) is clearly and con-
24 spicuously displayed to the con-
25 sumer before purchase; and

1 “(cc) includes, at a min-
2 imum, the amount and a descrip-
3 tion of each fee that may be
4 charged by the financial institu-
5 tion under paragraph (2); and

6 “(II) an estimate of the average
7 total monthly cost to a typical con-
8 sumer for using the spending account,
9 based on a profile of the typical con-
10 sumer established by the Bureau;

11 “(ii) on the card or other means of ac-
12 cess, a toll-free telephone number and
13 website at which the consumer may access
14 a clear and conspicuous disclosure of the
15 fees that may be charged in connection
16 with the spending account; and

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

22 “(B) RULES.—Not later than 1 year after
23 the date of enactment of the Prepaid Card Con-
24 sumer Protection Act of 2013, the Bureau shall
25 establish, by rule, the headings, content, and

1 format of the fee table, estimate, and wallet-
2 sized fee summary required under subpara-
3 graph (A).

4 “(f) CREDIT FEATURES.—

5 “(1) IN GENERAL.—No person may offer or
6 provide a spending account that has a credit feature
7 or that can be linked to a credit account that is
8 automatically repaid from the spending account.

9 “(2) EXCEPTIONS.—Nothing in this subsection
10 prohibits—

11 “(A) a consumer from making an elec-
12 tronic fund transfer from a spending account to
13 pay a credit account or from setting up
14 preauthorized electronic fund transfers to pay a
15 credit account; or

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

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

1 “(1) if the account has been inactive for 12
2 months, or such other period as the Bureau shall es-
3 tablish, by regulation; and

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

7 (b) CONSUMER CHOICE.—Section 913 of the Elec-
8 tronic Fund Transfer Act (15 U.S.C. 1693k) is amend-
9 ed—

10 (1) by striking “No person may—” and insert-
11 ing the following:

12 “(a) IN GENERAL.—No person may—”;

13 (2) in paragraph (1), by striking “or” at the
14 end;

15 (3) in paragraph (2), by striking the period and
16 inserting “; or”;

17 (4) by inserting after paragraph (2) the fol-
18 lowing:

19 “(3) issue a card or other means of access for
20 receipt of electronic fund transfers of wages or gov-
21 ernment benefits unless the recipient has first been
22 offered the option of receiving the funds in a form
23 selected by the recipient from among a set of options
24 specified by the Bureau.”; and

25 (5) by adding at the end the following:

1 “(b) FORMS OF RECEIPT.—The options for forms of
2 receipt of electronic fund transfers of wages or govern-
3 ment benefits under subsection (a)(3) specified by the Bu-
4 reau shall include at least 1 of the following forms:

5 “(1) direct deposit into an account designated
6 by the recipient;

7 “(2) in cash; and

8 “(3) by check.”.

9 (c) STUDY.—The Bureau shall establish an imple-
10 mentation plan and timeline for a prepaid card research
11 study to be completed not later than 1 year after the date
12 of enactment of this Act, to determine what, if any, dif-
13 ferences there are for both the short- and long-term eco-
14 nomic well being of consumers at different income levels
15 who use spending accounts versus those who use tradi-
16 tional bank accounts for their primary means of making
17 financial transactions.

18 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

19 (1) WRITTEN PERIODIC STATEMENTS.—Section
20 906(c) of the Electronic Fund Transfer Act (15
21 U.S.C. 1693d(c)) is amended in the first sentence of
22 the matter preceding paragraph (1), by striking “A
23 financial” and inserting “Except as provided in sec-
24 tion 924(c), a financial”.

1 (2) **ERROR RESOLUTION.**—Section 908(a) of
2 the Electronic Fund Transfer Act (15 U.S.C.
3 1693f(a)) is amended by striking “or notification
4 pursuant to section 906(b)” and inserting “, notifi-
5 cation pursuant to section 906(b), or written or elec-
6 tronic documentation pursuant to section 924(c)”.

7 **SEC. 4. SEVERABILITY.**

8 If any provision of this Act or an amendment made
9 by this Act, or the application of the provision or amend-
10 ment to any person or circumstance, is held to be uncon-
11 stitutional, the remainder of this Act and the amendments
12 made by this Act, and the application of the provisions
13 of this Act and the amendments made by this Act to any
14 other person or circumstance, shall not be affected.

15 **SEC. 5. EFFECTIVE DATE.**

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

○