

105TH CONGRESS
1ST SESSION

S. 1203

To amend the Electronic Fund Transfer Act to limit consumer liability for the unauthorized use of a debit card, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23, 1997

Mr. D'AMATO (for himself, Mr. BENNETT, Mr. DODD, and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Electronic Fund Transfer Act to limit consumer liability for the unauthorized use of a debit card, 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 “Debit Card Consumer
5 Protection Act of 1997”.

1 **SEC. 2. CONSUMER LIABILITY FOR UNAUTHORIZED DEBIT**
 2 **CARD TRANSACTIONS.**

3 Section 909 of the Electronic Fund Transfer Act (15
 4 U.S.C. 1693g) is amended by striking subsection (a) and
 5 inserting the following:

6 “(a) LIMITATION ON LIABILITY.—

7 “(1) IN GENERAL.—A consumer shall be liable
 8 for an unauthorized electronic fund transfer only
 9 if—

10 “(A) the card or other means of access
 11 used to make the unauthorized electronic fund
 12 transfer was an accepted card or other means
 13 of access;

14 “(B) the liability, including any overdraft
 15 or other fee imposed by the financial institution
 16 in connection with or as a result of the unau-
 17 thorized electronic fund transfer, is not in ex-
 18 cess of the lesser of—

19 “(i) \$50; or

20 “(ii) the amount of money or value of
 21 property or services obtained in such unau-
 22 thorized electronic fund transfer prior to
 23 the time at which the financial institution
 24 is notified of, or otherwise becomes aware
 25 of, circumstances which lead to the reason-
 26 able belief that an unauthorized electronic

1 fund transfer involving the consumer's ac-
2 count has been or may be effected;

3 “(C) the financial institution that issued
4 the card or other means of access gave ade-
5 quate notice to the cardholder of the potential
6 liability;

7 “(D) such financial institution provided
8 the consumer with a description of a means by
9 which the institution may be notified of loss or
10 theft of the card or other means of access,
11 which description may be provided on the face
12 or reverse side of the statement required by sec-
13 tion 906(c) or on a separate notice accompany-
14 ing such statement;

15 “(E) the unauthorized electronic fund
16 transfer occurred before the financial institution
17 was notified of such unauthorized transfer, or
18 that such unauthorized transfer may occur as
19 the result of loss, theft, or otherwise; and

20 “(F) the financial institution has provided
21 a method whereby the consumer to whom the
22 card or other means of access was issued can
23 be identified as the person authorized to use it.

24 “(2) SUFFICIENCY OF NOTICE.—For purposes
25 of paragraph (1), the financial institution has been

1 notified when such steps have been taken as may be
 2 reasonably required in the ordinary course of busi-
 3 ness to provide the financial institution with the per-
 4 tinent information, whether or not any particular of-
 5 ficer, employee, or agent of the financial institution
 6 does in fact receive such information.”.

7 **SEC. 3. AMENDMENTS TO DEFINITIONS.**

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

10 (1) in paragraph (1), by striking “and received”
 11 and all that follows through “services” and inserting
 12 “or renewed and received such card or other means
 13 of access (including a non-protected access card and
 14 a protected access card)”;

15 (2) by redesignating paragraphs (9) through
 16 (11) as paragraphs (11) through (13), respectively;
 17 and

18 (3) by inserting after paragraph (8) the follow-
 19 ing new paragraphs:

20 “(9) the term ‘protected access card’ means an
 21 accepted card or other means of access that requires
 22 use of a personalized code or other unique identifier
 23 (other than a signature) to initiate access to the ac-
 24 count of a consumer;

1 “(10) the term ‘non-protected access card’
 2 means an accepted card or other means of access
 3 that does not require the use of a unique identifier
 4 to initiate access to the account of a consumer, ex-
 5 cept that for purposes of this paragraph, a signature
 6 shall not be considered to be a personalized code or
 7 other unique identifier;”.

8 **SEC. 4. TIMING OF ERROR RESOLUTION.**

9 Section 908 of the Electronic Fund Transfer Act (15
 10 U.S.C. 1693f) is amended—

11 (1) in subsection (a)—

12 (A) by redesignating paragraphs (1)
 13 through (3) as subparagraphs (A) through (C),
 14 respectively, and indenting accordingly;

15 (B) by striking “(a) If a financial” and in-
 16 serting the following:

17 “(a) IN GENERAL.—

18 “(1) NOTICE TO INSTITUTION.—If a financial”;

19 (C) in the first sentence, by striking “ten
 20 business” and inserting “5 business”; and

21 (D) in the second sentence, by striking
 22 “The financial” and inserting the following:

23 “(2) WRITTEN CONFIRMATION OF ORAL NOTI-
 24 FICATION.—The financial”; and

1 (E) by striking “the previous sentence”
 2 each place it appears and inserting “this para-
 3 graph”;

4 (2) in subsection (c), by striking “ten business”
 5 and inserting “5 business”; and

6 (3) in subsection (f)(1), by inserting before the
 7 semicolon “, including such unauthorized transfer by
 8 use of a protected access card or a non-protected ac-
 9 cess card”.

10 **SEC. 5. ISSUANCE OF CARDS.**

11 (a) LIMITATIONS ON ISSUANCE.—Section 911 of the
 12 Electronic Fund Transfer Act (15 U.S.C. 1693i) is
 13 amended—

14 (1) in subsection (a)—

15 (A) by redesignating paragraphs (1) and
 16 (2) as subparagraphs (A) and (B), respectively,
 17 and indenting accordingly;

18 (B) by striking “(a) No” and inserting the
 19 following:

20 “(a) LIMITATIONS ON ISSUANCE.—

21 “(1) IN GENERAL.—No”; and

22 (C) by adding at the end the following:

23 “(2) RENEWALS; SUBSTITUTIONS.—For pur-
 24 poses of paragraph (1), a non-protected access card
 25 may only be issued in response to a request or appli-

1 cation for, or as a renewal of or substitution for, a
 2 non-protected access card.”;

3 (2) in subsection (b)—

4 (A) by striking “(b) Notwithstanding” and
 5 all that follows through “basis” and inserting
 6 the following:

7 “(b) CRITERIA FOR ISSUANCE.—A person may only
 8 issue to a consumer”;

9 (B) by striking “distribution” each place it
 10 appears and inserting “issuance”; and

11 (C) by striking “distribute” and inserting
 12 “issue”.

13 (3) in subsection (c), by striking “(c) For” and
 14 inserting the following:

15 “(d) DEFINITION.—For”; and

16 (4) by inserting after subsection (b) the follow-
 17 ing new subsection:

18 “(e) DISCLOSURE OF NON-PROTECTED ACCESS CA-
 19 PABILITY.—In any case in which a non-protected access
 20 card is issued to a consumer, such issuance shall be ac-
 21 companied by a clear and conspicuous printed disclosure
 22 designated as a warning that—

23 “(1) the card does not require a personalized
 24 code or other unique identifier (other than a signa-

1 ture) to initiate access to the consumer’s account;
 2 and

3 “(2) loss or theft of the card could result in un-
 4 authorized access to the consumer’s account.”.

5 (b) FORM OF DISCLOSURE.—Section 904(b) of the
 6 Electronic Fund Transfer Act (15 U.S.C. 1693b(b)) is
 7 amended by striking “section 905” and inserting “sections
 8 905 and 911”.

9 **SEC. 6. NOTIFICATION TO CONSUMERS OF RESTITUTION**
 10 **POLICY.**

11 Section 905 of the Electronic Fund Transfer Act (15
 12 U.S.C. 1693c) is amended—

13 (1) in paragraph (2), by striking “than an” and
 14 inserting “that an”;

15 (2) in paragraph (7), by striking “. The finan-
 16 cial institution” and all that follows through “year”
 17 and inserting “, which summary shall be transmitted
 18 to the consumer thereafter not less frequently than
 19 annually”;

20 (3) by redesignating paragraphs (8) and (9) as
 21 paragraphs (9) and (10), respectively; and

22 (4) by inserting after paragraph (7) the follow-
 23 ing new paragraph:

24 “(8) the policy of the financial institution re-
 25 garding restitution to the consumer of any fees im-

1 posed by a person other than the financial institu-
2 tion as a result of an unauthorized electronic fund
3 transfer, including returned check fees, late charges,
4 and other fees;”.

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