

106TH CONGRESS  
1ST SESSION

# H. R. 445

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1999

Mr. BARRETT of Wisconsin (for himself and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking and Financial Services

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## 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Debit Card  
5 Protection Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds the following:

8 (1) There has been a recent trend toward  
9 issuing debit cards which can be used like credit

1 cards, largely as replacements for debit cards which  
2 could be used only with a personal identification  
3 number at automated teller machines and a limited  
4 number of retail establishments.

5 (2) According to industry analysts, as many as  
6 1,300,000 new debit cards which can be used like  
7 credit cards are issued each month.

8 (3) If current trends continue, debit cards that  
9 can be used like credit cards will soon rival the pop-  
10 ularity of credit cards and some banking experts  
11 predict that more than  $\frac{2}{3}$  of the households in the  
12 United States will have such a card by the year  
13 2000.

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

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

21 (B) even though the card may carry a logo  
22 associated with credit cards, the card is not a  
23 credit card and the consumer may bear a sig-  
24 nificantly larger liability for an unauthorized  
25 transaction involving such debit card than

1 would be the case for a similar unauthorized  
2 transaction involving a credit card.

3 (5) Thus, millions of Americans are—

4 (A) receiving cards in a form they didn't  
5 request; and

6 (B) are carrying such cards around with  
7 them—

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

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

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

21 **SEC. 3. DEFINITIONS.**

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

24 (1) by striking “and” at the end of paragraph  
25 (10);

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

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

5           “(12) ATM CARD.—The term ‘ATM card’  
6           means any card issued by a financial institution for  
7           use in initiating electronic fund transfers at auto-  
8           mated teller machines and other electronic terminals  
9           which requires a code or other unique form of identi-  
10          fication (other than a signature) in order to access  
11          the account of the consumer; and

12          “(13) CHECK CARD.—The term ‘check card’  
13          means any card issued by a financial institution for  
14          use in initiating electronic fund transfers from the  
15          account of a consumer which does not require the  
16          protection of a code or other means of access that  
17          uniquely identifies the consumer (and for purposes  
18          of this paragraph, a signature shall not be treated  
19          as a means of access which uniquely identifies the  
20          consumer).”.

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

22          Section 911 of the Electronic Fund Transfer Act (15  
23          U.S.C. 1693i) is amended by adding at the end the follow-  
24          ing new subsection:

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

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

6       (a) CONSUMER LIABILITY.—

7           (1) IN GENERAL.—Section 909 of the Elec-  
 8 tronic Fund Transfer Act (15 U.S.C. 1693g) is  
 9 amended—

10           (A) by redesignating subsections (b)  
 11 through (e) as subsections (d) through (g), re-  
 12 spectively;

13           (B) in subsection (a)—

14           (i) by redesignating paragraphs (1)  
 15 and (2) as subparagraphs (A) and (B), re-  
 16 spectively, and indenting appropriately;

17           (ii) by inserting “CARDS NECESSITAT-  
 18 ING UNIQUE IDENTIFIER.—

19           “(1) IN GENERAL.—” after “(a)”;

20           (iii) by striking “other means of ac-  
 21 cess can be identified as the person author-  
 22 ized to use it, such as by signature, photo-  
 23 graph,” and inserting “other means of ac-  
 24 cess can be identified as the person author-

1                    ized to use it by a unique identifier, such  
2                    as a photograph, retina scan,”; and

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

5                    “(2) NOTIFICATION.—Notwithstanding para-  
6                    graph (1),”; and

7                    (C) by inserting before subsection (d), as  
8                    so designated by this section, the following new  
9                    subsections:

10                  “(b) CARDS NOT NECESSITATING UNIQUE IDENTI-  
11 FIER.—A consumer shall be liable for an unauthorized  
12 electronic fund transfer only if—

13                  “(1) the liability is not in excess of \$50;

14                  “(2) the unauthorized electronic fund transfer  
15 is initiated by the use of a card that has been prop-  
16 erly issued to a consumer other than the person  
17 making the unauthorized transfer as a means of ac-  
18 cess to the account of that consumer for the purpose  
19 of initiating an electronic fund transfer;

20                  “(3) the unauthorized electronic fund transfer  
21 occurs before the card issuer has been notified that  
22 an unauthorized use of the card has occurred or may  
23 occur as the result of loss, theft, or otherwise; and

24                  “(4) such unauthorized electronic fund transfer  
25 did not require the use of a code or other unique

1 identifier (other than a signature), such as a photo-  
 2 graph, fingerprint, or retina scan.

3 “(c) NOTICE OF LIABILITY AND RESPONSIBILITY TO  
 4 REPORT LOSS OF CARD, CODE, OR OTHER MEANS OF AC-  
 5 CESS.—No consumer shall be liable under this title for any  
 6 unauthorized electronic fund transfer unless the consumer  
 7 has received in a timely manner the notice required under  
 8 section 905(a)(1), and any subsequent notice required  
 9 under section 905(b) with regard to any change in the  
 10 information which is the subject of the notice required  
 11 under section 905(a)(1).”.

12 (2) CONFORMING AMENDMENT.—Section  
 13 905(a)(1) of the Electronic Fund Transfer Act (15  
 14 U.S.C. 1693c(a)(1)) is amended to read as follows:

15 “(1) the liability of the consumer for any unau-  
 16 thorized electronic fund transfer and the require-  
 17 ment for promptly reporting any loss, theft, or unau-  
 18 thorized use of a card, code, or other means of ac-  
 19 cess in order to limit the liability of the consumer  
 20 for any such unauthorized transfer;”.

21 (b) VALIDATION REQUIREMENT FOR DUAL-USE  
 22 DEBIT CARDS.—

23 (1) IN GENERAL.—Section 911 of the Elec-  
 24 tronic Fund Transfer Act (15 U.S.C. 1693i) is  
 25 amended—

1 (A) by redesignating subsection (c) as sub-  
 2 section (d); and

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

5 “(c) VALIDATION REQUIREMENT.—No person may  
 6 issue a card described in subsection (a), the use of which  
 7 to initiate an electronic fund transfer does not require the  
 8 use of a code or other unique identifier other than a signa-  
 9 ture (such as a fingerprint or retina scan), unless—

10 “(1) the requirements of paragraphs (1)  
 11 through (4) of subsection (b) are met; and

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

16 (2) TECHNICAL AND CONFORMING AMEND-  
 17 MENT.—Section 911(d) of the Electronic Fund  
 18 Transfer Act (15 U.S.C. 1693i(d)) (as redesignated  
 19 by subsection (a)(1) of this section) is amended by  
 20 striking “For the purpose of subsection (b)” and in-  
 21 serting “For purposes of subsections (b) and (c)”.

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

24 Section 911 of the Electronic Fund Transfer Act (15  
 25 U.S.C. 1693i) is amended by inserting after subsection (e)



1 (as added by section 4 of this Act) the following new sub-  
 2 section:

3 “(f) PREFERENCE OF CONSUMER.—

4 “(1) IN GENERAL.—If—

5 “(A) in response to a request or applica-  
 6 tion by a consumer for an ATM card, a finan-  
 7 cial institution issues a check card; and

8 “(B) the consumer refuses to accept a  
 9 check card,

10 the issuer shall promptly issue such consumer an  
 11 ATM card.

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

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

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

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

1 of the check card or any unauthorized use or suspected  
 2 unauthorized use of the card.”.

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

17 **SEC. 8. PROHIBITION ON FEES FOR INSUFFICIENT FUNDS**  
 18 **IN CASE OF CERTAIN UNAUTHORIZED TRANS-**  
 19 **FEES.**

20 Section 909 of the Electronic Fund Transfer Act (15  
 21 U.S.C. 1693g) is amended by adding at the end the follow-  
 22 ing new subsection:

23 “(h) PROHIBITION ON CERTAIN FEES.—

24 “(1) IN GENERAL.—A consumer shall not be  
 25 liable for any fee imposed by a financial institution

1 for insufficient funds in the account of the consumer  
2 if the lack of sufficient funds in such account is due  
3 to an unauthorized electronic fund transfer (from  
4 such account) initiated by the use of a card without  
5 the protection of a code or other means of access  
6 which uniquely identifies the consumer.

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

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

15 Section 908(c) of the Electronic Fund Transfer Act  
16 (15 U.S.C. 1693f(c)) is amended by striking “ten business  
17 days” and inserting “5 business days”.

18 **SEC. 10. EFFECTIVE DATE.**

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

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