

may be used to initiate an electronic fund transfer.

(Pub. L. 90-321, title IX, §911, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3736; amended Pub. L. 111-203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

#### **Editorial Notes**

##### AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111-203 substituted “Bureau” for “Board”.

#### **Statutory Notes and Related Subsidiaries**

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

#### **§ 1693j. Suspension of obligations**

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

(Pub. L. 90-321, title IX, §912, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

#### **§ 1693k. Compulsory use of electronic fund transfers**

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

(Pub. L. 90-321, title IX, §913, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

#### **§ 1693l. Waiver of rights**

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

(Pub. L. 90-321, title IX, §914, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3737.)

#### **§ 1693l-1. General-use prepaid cards, gift certificates, and store gift cards**

##### **(a) Definitions**

In this section, the following definitions shall apply:

###### **(1) Dormancy fee; inactivity charge or fee**

The terms “dormancy fee” and “inactivity charge or fee” mean a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card.

###### **(2) General use<sup>1</sup> prepaid card, gift certificate, and store gift card**

###### **(A) General-use prepaid card**

The term “general-use prepaid card” means a card or other payment code or device issued by any person that is—

- (i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;
- (ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder;
- (iii) purchased or loaded on a prepaid basis; and
- (iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

###### **(B) Gift certificate**

The term “gift certificate” means an electronic promise that is—

- (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;
- (ii) issued in a specified amount that may not be increased or reloaded;
- (iii) purchased on a prepaid basis in exchange for payment; and
- (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

###### **(C) Store gift card**

The term “store gift card” means an electronic promise, plastic card, or other payment code or device that is—

- (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;
- (ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;
- (iii) purchased on a prepaid basis in exchange for payment; and
- (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

###### **(D) Exclusions**

The terms “general-use prepaid card”, “gift certificate”, and “store gift card” do not include an electronic promise, plastic card, or payment code or device that is—

- (i) used solely for telephone services;
- (ii) reloadable and not marketed or labeled as a gift card or gift certificate;

<sup>1</sup> So in original. Probably should be “General-use”.

- (iii) a loyalty, award, or promotional gift card, as defined by the Bureau;
- (iv) not marketed to the general public;
- (v) issued in paper form only (including for tickets and events); or
- (vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable—
  - (I) at the event or venue after admission; or
  - (II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

**(3) Service fee**

**(A) In general**

The term “service fee” means a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card.

**(B) Exclusion**

With respect to a general-use prepaid card, the term “service fee” does not include a one-time initial issuance fee.

**(b) Prohibition on imposition of fees or charges**

**(1) In general**

Except as provided under paragraphs (2) through (4), it shall be unlawful for any person to impose a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

**(2) Exceptions**

A dormancy fee, inactivity charge or fee, or service fee may be charged with respect to a gift certificate, store gift card, or general-use prepaid card, if—

(A) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed;

(B) the disclosure requirements of paragraph (3) have been met;

(C) not more than one fee may be charged in any given month; and

(D) any additional requirements that the Bureau may establish through rulemaking under subsection (d) have been met.

**(3) Disclosure requirements**

The disclosure requirements of this paragraph are met if—

(A) the gift certificate, store gift card, or general-use prepaid card clearly and conspicuously states—

(i) that a dormancy fee, inactivity charge or fee, or service fee may be charged;

(ii) the amount of such fee or charge;

(iii) how often such fee or charge may be assessed; and

(iv) that such fee or charge may be assessed for inactivity; and

(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate

or card is purchased in person, over the Internet, or by telephone.

**(4) Exclusion**

The prohibition under paragraph (1) shall not apply to any gift certificate—

(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Bureau; and

(B) with respect to which, there is no money or other value exchanged.

**(c) Prohibition on sale of gift cards with expiration dates**

**(1) In general**

Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

**(2) Exceptions**

A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

(B) the terms of expiration are clearly and conspicuously stated.

**(d) Additional rulemaking**

**(1) In general**

The Bureau shall—

(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this subchapter, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

(B) shall<sup>2</sup> determine the extent to which the individual definitions and provisions of this subchapter or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

**(2) Consultation**

In prescribing regulations under this subsection, the Bureau shall consult with the Federal Trade Commission.

**(3) Timing; effective date**

The regulations required by this subsection shall be issued in final form not later than 9 months after May 22, 2009.

(Pub. L. 90-321, title IX, §915, as added Pub. L. 111-24, title IV, §401(2), May 22, 2009, 123 Stat. 1751; amended Pub. L. 111-203, title X, §1084(1), July 21, 2010, 124 Stat. 2081.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 915 of Pub. L. 90-321 was renumbered section 916 and is classified to section 1693m of this title.

<sup>2</sup>So in original. The word “shall” probably should not appear.

## AMENDMENTS

2010—Pub. L. 111-203 substituted “Bureau” for “Board” wherever appearing.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

## EFFECTIVE DATE

Pub. L. 111-24, title IV, §403, as added by Pub. L. 111-209, §1, July 27, 2010, 124 Stat. 2254, provided that:

“(a) IN GENERAL.—Except as provided under subsection (b) of this section, this title [enacting this section and amending sections 1693m to 1693r of this title and provisions set out as a note under section 1693 of this title] and the amendments made by this title shall become effective 15 months after the date of enactment of this Act [May 22, 2009].

## “(b) EXCEPTION.—

“(1) IN GENERAL.—In the case of a gift certificate, store gift card, or general-use prepaid card that was produced prior to April 1, 2010, the effective date of the disclosure requirements described in sections 915(b)(3) and (c)(2)(B) of the Electronic Funds [probably should be “Fund”] Transfer Act [15 U.S.C. 1693-1(b)(3), (c)(2)(B)] shall be January 31, 2011, provided that an issuer of such a certificate or card shall—

“(A) comply with paragraphs (1) and (2) of section 915(b) of such Act [15 U.S.C. 1693-1(b)(1), (2)];

“(B) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds;

“(C) at a consumer’s request, replace such certificate or card that has funds remaining at no cost to the consumer; and

“(D) comply with the disclosure requirements of paragraph (2) of this subsection.

“(2) DISCLOSURE REQUIREMENTS.—The disclosure requirements of this subsection are met by providing notice to consumers, via in-store signage, messages during customer service calls, Web sites, and general advertising, that—

“(A) any such certificate or card for which funds expire shall be deemed to have no expiration date with respect to the underlying funds;

“(B) consumers holding such certificate or card shall have a right to a free replacement certificate or card that includes the packaging and materials, typically associated with such a certificate or card; and

“(C) any dormancy fee, inactivity fee, or service fee for such certificates or cards that might otherwise be charged shall not be charged if such fees do not comply with section 915 of the Electronic Funds [probably should be “Fund”] Transfer Act [15 U.S.C. 1693-1].

“(3) PERIOD FOR DISCLOSURE REQUIREMENTS.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013.”

Pub. L. 111-24, title IV, §403, May 22, 2009, 123 Stat. 1754, which provided that title IV of Pub. L. 111-24 was to become effective 15 months after May 22, 2009, was repealed by Pub. L. 111-209, §1, July 27, 2010, 124 Stat. 2254.

## § 1693m. Civil liability

## (a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who fails to comply with any provision of this subchapter with respect to any consumer, except

for an error resolved in accordance with section 1693f of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney’s fee as determined by the court.

## (b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of non-compliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of non-compliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

## (c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

## (d) Good faith compliance with rule, regulation, or interpretation

No provision of this section or section 1693n<sup>1</sup> of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board,

<sup>1</sup> See References in Text note below.