

111TH CONGRESS  
2D SESSION

# H. R. 4552

To amend the Electronic Fund Transfer Act to provide protection for consumers who have government benefit cards.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2010

Mr. LEVIN (for himself and Mr. McDERMOTT) introduced the following bill;  
which was referred to the Committee on Financial Services

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## A BILL

To amend the Electronic Fund Transfer Act to provide protection for consumers who have government benefit 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 “Benefit Card Fairness  
5 Act of 2010”.

6 **SEC. 2. PROTECTION FOR CONSUMERS WHO HAVE GOV-**  
7 **ERNMENT BENEFIT CARDS.**

8 (a) GOVERNMENT PAYMENT ACCOUNTS INCLUDED  
9 IN DEFINITION OF ACCOUNT.—Section 903 of the Elec-

1 tronic Fund Transfer Act (15 U.S.C. 1693a) is amend-  
2 ed—

3 (1) in paragraph (2), by inserting “and includes  
4 a government payment account,” before “but”;

5 (2) by redesignating paragraphs (9) and (10)  
6 as paragraphs (10) and (11), respectively; and

7 (3) by inserting after paragraph (8) the fol-  
8 lowing:

9 “(9) the term ‘government payment account’  
10 means an account that is directly or indirectly estab-  
11 lished through a government agency and to which  
12 electronic fund transfers are made by or on behalf  
13 of a government agency on a recurring basis;”.

14 (b) ELIMINATION OF EXEMPTION FOR GOVERNMENT  
15 ELECTRONIC BENEFIT TRANSFER SYSTEMS.—

16 (1) IN GENERAL.—Section 904(d) of such Act  
17 (15 U.S.C. 1693b(d)) is amended by striking para-  
18 graph (2) and redesignating paragraph (3) as para-  
19 graph (2).

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 905(a)(10)(A) of such Act (15  
22 U.S.C. 1693c(a)(10)(A)) is amended by striking  
23 “903(d)(3)(D)(i)” and inserting  
24 “903(d)(2)(D)(i)”.

1                   (B) Section 910(d) of such Act (15 U.S.C.  
2                   1693h(d)) is amended by striking  
3                   “903(d)(3)(B)(i)” each place it appears and in-  
4                   serting “903(d)(2)(B)(i)”.

5                   (c) CONSUMER PROTECTION.—The Electronic Fund  
6                   Transfer Act (15 U.S.C. 1693–1693r) is amended by add-  
7                   ing at the end the following:

8                   **“SEC. 922. GOVERNMENT PAYMENT ACCOUNTS.**

9                   “(a) IN GENERAL.—A financial institution shall not  
10                  offer a government payment account except in compliance  
11                  with this section.

12                  “(b) CONSUMER CHOICE.—An electronic fund trans-  
13                  fer on behalf of a consumer may not be made automati-  
14                  cally to a government payment account, unless—

15                         “(1) the consumer has first been offered and  
16                         has declined the choice of direct deposit to an exist-  
17                         ing account chosen by the consumer;

18                         “(2) the consumer has, when offered the choice  
19                         of direct deposit to an existing account, been pro-  
20                         vided a clear and conspicuous list of the types and  
21                         amounts of all fees and charges associated with the  
22                         government payment account; and

23                         “(3) the consumer has the opportunity, in case  
24                         of hardship, to opt out of electronic transfer of pay-

1       ments to the consumer and elect to receive payments  
2       in the form of a check.

3       “(c) ACCESS TO ACCOUNT BALANCE AND TRANS-  
4 ACTION HISTORY.—

5               “(1) A financial institution shall provide the  
6       means for the consumer to access the balance of a  
7       government payment account through a telephone  
8       line, online, and at a terminal (such as by providing  
9       balance information, routinely or on request, on a  
10      screen or on a receipt from an automated teller ma-  
11      chine).

12              “(2) A financial institution shall either provide  
13      periodic statements pursuant to section 906(c), or  
14      make available to a consumer at a consumer’s option  
15      all of the following without a fee, except for the fee  
16      permitted in subparagraph (E):

17                   “(A) A written history of the consumer’s  
18      account transactions that is provided promptly  
19      in response to an oral or written request and  
20      that is available for transactions at least 24-  
21      months preceding the date of the request by the  
22      consumer.

23                   “(B) An electronic history of the con-  
24      sumer’s account transactions, such as through  
25      an Internet Web site, that covers at least 60

1 days preceding the date the consumer electroni-  
2 cally accesses the account.

3 “(C) An electronic periodic statement.

4 “(D) Electronic mail notification of the  
5 availability of an electronic history or an elec-  
6 tronic periodic statement at least once each pe-  
7 riod, unless the consumer has declined to pro-  
8 vide an electronic mail address.

9 “(E) The choice of receiving a written  
10 periodic statement upon payment of a nominal  
11 fee, not to exceed \$1 per statement.

12 “(3) A history of account transactions provided  
13 under subparagraphs (A) and (B) of paragraph (1)  
14 of this subsection shall include the information re-  
15 quired by section 906(c).

16 “(d) FEES.—

17 “(1) IN GENERAL.—A fee or charge may not be  
18 assessed on a government payment account except  
19 as authorized by this section.

20 “(2) PROHIBITED FEES.—A fee or charge may  
21 not be charged on a government payment account  
22 for any of the following:

23 “(A) The first withdrawal from an in-net-  
24 work automated teller machine and the first

1 withdrawal from a bank teller, after each de-  
2 posit.

3 “(B) An application.

4 “(C) Participation, whether on a one-time  
5 or periodic basis.

6 “(D) An overdraft, including a shortage of  
7 funds or a transaction processed for an amount  
8 exceeding the account balance.

9 “(E) A purchase.

10 “(F) A declined transaction.

11 “(G) Inactivity.

12 “(H) An inquiry, or balance or transaction  
13 information, at an automated teller machine or  
14 through the Internet or an automated system.

15 “(I) Customer service.

16 “(J) An ad hoc request for a statement.

17 “(K) An extension of credit.

18 “(L) 1 replacement card each year.

19 “(M) Anything for which a fee is not per-  
20 mitted by or under paragraph (3).

21 “(3) PERMITTED FEES.—

22 “(A) NOMINAL FEE FOR WRITTEN PERI-  
23 ODIC STATEMENTS.—The consumer may be  
24 charged a nominal fee not to exceed \$1 for  
25 written periodic statements if the fee is de-

1 signed solely to cover the costs of printing and  
2 mailing the statements, and if other account in-  
3 formation is made available in accordance with  
4 this section.

5 “(B) TRANSACTION FEES.—Subject to  
6 subparagraph (C), a consumer may be charged  
7 a fee for only the following transactions in con-  
8 nection with a government payment account:

9 “(i) The second or any subsequent  
10 withdrawal from an in-network automated  
11 teller machine and the second or any sub-  
12 sequent withdrawal from a bank teller,  
13 after each deposit.

14 “(ii) A surcharge imposed by a non-  
15 network automated teller machine in com-  
16 pliance with section 904(d)(3).

17 “(iii) A transfer to another account.

18 “(iv) Bill payment.

19 “(v) A replacement card after the first  
20 one each year.

21 “(vi) Expedited delivery of a replace-  
22 ment card.

23 “(vii) International automated teller  
24 machine withdrawal.

1                   “(viii) A purchase or withdrawal in an  
2                   international currency.

3                   “(C) AUTHORITY TO PERMIT OTHER  
4                   FEES.—The Board may by regulation authorize  
5                   other permissible fees for specific services be-  
6                   yond ordinary use of the account.

7                   “(e) DISCLOSURES.—

8                   “(1) IN GENERAL.—A financial institution shall  
9                   disclose the following:

10                   “(A) MEANS TO OBTAIN ACCOUNT BAL-  
11                   ANCE.—The means by which the consumer may  
12                   obtain information without a fee concerning the  
13                   account balance, including a telephone number  
14                   and Web site.

15                   “(B) WRITTEN ACCOUNT HISTORY.—A  
16                   summary of the consumer’s right to receive a  
17                   written account history on request and other  
18                   means to obtain transaction information.

19                   “(C) FEE INFORMATION.—

20                   “(i) Any fee or charge associated with  
21                   the account shall be disclosed in a promi-  
22                   nent location on or in conjunction with any  
23                   application or solicitation, or other applica-  
24                   ble document, and in the form of a table  
25                   with headings, content, and format sub-



1           stantially similar to the tables required  
2           pursuant to section 127(c)(1)(A) of the  
3           Truth in Lending Act and regulations  
4           under that section.

5           “(ii) The card or device used to access  
6           the account shall display a toll-free number  
7           and Web site at which a clear and con-  
8           spicuous list of fees and charges may be  
9           obtained.

10          “(iii) The initial disclosure of fees and  
11          charges shall include a wallet-sized sum-  
12          mary of the fees and charges, the Web site  
13          where fee information can be found, and  
14          the telephone number for customer service.

15          “(2) MODIFIED REQUIREMENTS.—The fol-  
16          lowing requirements shall apply to financial institu-  
17          tions that do not furnish periodic statements for the  
18          transfers referred to in subsection (c):

19               “(A) ERROR RESOLUTION.—The financial  
20               institution shall provide a notice to consumers  
21               concerning error resolution as prescribed in reg-  
22               ulations of the Board.

23               “(B) LIMITATIONS ON LIABILITY.—For  
24               purposes of section 909(a), the 60-day period  
25               for reporting an unauthorized transfer that ap-

1           pears on a periodic statement shall begin with  
2           transmittal of a written account history or  
3           other account information, provided to or  
4           accessed by the consumer under subsection (c)  
5           of this section, in which the unauthorized trans-  
6           fer is first reflected.

7           “(C) ERROR RESOLUTION.—If a financial  
8           institution receives oral or written notice of an  
9           error from the consumer within 60 days after  
10          the consumer, under subsection (c) of this sec-  
11          tion, obtains a written account history or other  
12          account information in which the error is first  
13          reflected, the financial institution shall comply  
14          with section 908.

15          “(f) FDIC INSURANCE.—A financial institution shall  
16          not offer electronic fund transfer services in connection  
17          with a government payment account unless the account  
18          complies with requirements of the Federal Deposit Insur-  
19          ance Corporation for the provision of insurance by the  
20          Federal Deposit Insurance Corporation to the consumer  
21          on either a direct or pass-through basis.

22          “(g) STANDARD STATE CONTRACTS.—The Secretary  
23          of the Treasury, in consultation with the Secretary of  
24          Labor and the Secretary of Health and Human Services,  
25          shall promulgate a request for proposals from financial in-

1 stitutions for a standard contract into which a State or  
2 local government agency may enter for government pay-  
3 ment account services in compliance with this section.

4 “(h) DEFINITION OF FINANCIAL INSTITUTION.—In  
5 this section, the term ‘financial institution’ means any  
6 provider of a government payment account.”.

7 (d) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the amendments made by this section  
10 shall take effect 1 year after the date of the enact-  
11 ment of this Act.

12 (2) INAPPLICABILITY TO SERVICES PROVIDED  
13 UNDER CONTRACTS ENTERED INTO BEFORE ENACT-  
14 MENT.—The amendments made by this section shall  
15 not apply with respect to the provision of goods or  
16 services under a contract entered into before the  
17 date of the enactment of this Act.

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