

105TH CONGRESS  
1ST SESSION

# H. R. 2319

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

JULY 31, 1997

Mr. BARRETT of Wisconsin (for himself, Mr. FRANK of Massachusetts, Mr. VENTO, Mr. LAFALCE, Mr. GUTIERREZ, Mr. HINCHEY, Ms. CARSON, Mr. KIND of Wisconsin, Mr. KLECZKA, Mr. MCHUGH, Mr. TRAFICANT, and Mr. MCHALE) 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:

1           (1) There has been a recent trend toward issu-  
2           ing debit cards which can be used like credit cards,  
3           largely as replacements for debit cards which could  
4           be used only with a personal identification number  
5           at automated teller machines and a limited number  
6           of retail establishments.

7           (2) According to industry analysts, as many as  
8           1,300,000 new debit cards which can be used like  
9           credit cards are issued each month.

10          (3) If current trends continue, debit cards that  
11          can be used like credit cards will soon rival the pop-  
12          ularity of credit cards and some banking experts  
13          predict that more than  $\frac{2}{3}$  of the households in the  
14          United States will have such a card by the year  
15          2000.

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

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

23                 (B) even though the card may carry a logo  
24                 associated with credit cards, the card is not a  
25                 credit card and the consumer may bear a sig-

1 significantly larger liability for an unauthorized  
2 transaction involving such debit card than  
3 would be the case for a similar unauthorized  
4 transaction involving a credit card.

5 (5) Thus, millions of Americans are—

6 (A) receiving cards in a form they didn't  
7 request; and

8 (B) are carrying such cards around with  
9 them—

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

16 (ii) without fully appreciating the  
17 risks associated with such cards.

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

23 **SEC. 3. DEBIT CARD CONSUMER PROTECTION.**

24 (a) ISSUANCE OF DEBIT CARDS.—Section 911 of the  
25 Electronic Fund Transfer Act (15 U.S.C. 1693i) is

1 amended by adding at the end the following new sub-  
2 sections:

3 “(d) WARNING TO CONSUMER.—

4 “(1) IN GENERAL.—If, in response to a request  
5 or application by a consumer for a card for use in  
6 initiating electronic fund transfers at automated tell-  
7 er machines and other electronic terminals which re-  
8 quire a code or other unique form of identification  
9 in order to access the account of the consumer, a fi-  
10 nancial institution issues a card which can be used  
11 to initiate electronic fund transfers from the account  
12 of the consumer without the protection of a code or  
13 other means of access which uniquely identifies the  
14 consumer, the issuer of such card shall include a  
15 statement in bold type in a prominent and conspicu-  
16 ous location on such card, or on a notice accompany-  
17 ing the card, which warns the consumer that such  
18 card can be used without a code or means of access  
19 which uniquely identifies the consumer and protects  
20 the consumer from unauthorized transfers.

21 “(2) REPLACEMENT CARDS.—Paragraph (1)  
22 shall not apply with respect to a card issued as a re-  
23 placement for, or in renewal of, a card previously is-  
24 sued to the consumer which can be used to initiate  
25 electronic fund transfers from the account of the

1 consumer without the protection of a code or other  
2 means of access which uniquely identifies the  
3 consumer.

4 “(3) SIGNATURE NOT TREATED AS MEANS OF  
5 ACCESS WHICH UNIQUELY IDENTIFIES CONSUMER.—

6 A signature shall not be treated as a means of ac-  
7 cess which uniquely identifies the consumer for pur-  
8 poses of this section.

9 “(e) PREFERENCE OF CONSUMER.—If—

10 “(1) in response to a request or application by  
11 a consumer for a card for use in initiating electronic  
12 fund transfers at automated teller machines and  
13 other electronic terminals which requires a code or  
14 other unique form of identification in order to access  
15 the account of the consumer, a financial institution  
16 issues a card which can be used to initiate electronic  
17 fund transfers from the account of the consumer  
18 without the protection of a code or other means of  
19 access which uniquely identifies the consumer; and

20 “(2) the consumer refuses to accept the card as  
21 issued,

22 the issuer shall promptly issue such consumer a card  
23 which requires a code or other unique form of identifica-  
24 tion in order to access the account of the consumer.”.

1 (b) LIABILITY OF CONSUMER FOR UNAUTHORIZED  
2 TRANSFERS.—

3 (1) CONSUMER LIABILITY LIMITED TO \$50.—

4 Section 909(a) of the Electronic Fund Transfer Act  
5 (15 U.S.C. 1693g(a)) is amended by striking the pe-  
6 nultimate sentence and the last sentence.

7 (2) CONSUMER NOT LIABLE IF THE ONLY FORM  
8 OF IDENTIFICATION REQUIRED IS A SIGNATURE.—

9 The 1st sentence of section 909(a) of the Electronic  
10 Fund Transfer Act (15 U.S.C. 1693g(a)) is amend-  
11 ed by striking “signature, photograph,” and insert-  
12 ing “photograph”.

13 (c) PROVISIONAL RECREDIT PROVISIONS.—

14 (1) PROVISIONAL RECREDIT AFTER 3 DAYS.—

15 Section 908(c) of the Electronic Fund Transfer Act  
16 (15 U.S.C. 1693f(c)) is amended by striking “ten  
17 business days” and inserting “3 business days”.

18 (2) PROVISIONAL RECREDIT REQUIRED UPON  
19 NOTICE OF ERROR INVOLVING TRANSACTIONS INITI-  
20 ATED WITHOUT CODE OR UNIQUE ACCESS.—

21 (A) IN GENERAL.—Section 908(c) of the  
22 Electronic Fund Transfer Act (as amended by  
23 paragraph (1) of this subsection) is amended—

1 (i) by striking “(c) If a financial insti-  
2 tution” and inserting “(c) PROVISIONAL  
3 RECREDIT IN CASE OF ERROR.—

4 “(1) IN GENERAL.—If a financial institution”;  
5 and

6 (ii) by adding at the end the following  
7 new paragraph:

8 “(2) PROVISIONAL RECREDIT REQUIRED UPON  
9 NOTICE OF ERROR INVOLVING TRANSACTIONS INITI-  
10 ATED WITHOUT CODE OR UNIQUE ACCESS.—Not-  
11 withstanding any other provision of this section, if a  
12 financial institution receives notice of an error in-  
13 volving an electronic fund transfer initiated by the  
14 use of a card without a code or means of access  
15 which uniquely identifies the consumer—

16 “(A) the financial institution shall provi-  
17 sionally recredit the consumer’s account for the  
18 amount alleged to be in error, subject to section  
19 909, including interest where applicable, before  
20 the end of the 3-business-day period beginning  
21 on the date the institution receives such notice;

22 “(B) the institution shall complete an in-  
23 vestigation and make a determination of wheth-  
24 er an error has occurred before the end of the  
25 45-day period beginning on such date; and

1           “(C) the consumer shall have full use of  
2           the funds provisionally recredited until such de-  
3           termination is made.”.

4           (B) TECHNICAL AND CONFORMING AMEND-  
5           MENT.—The last sentence of section 908(a) is  
6           amended by striking “subsection (c), nor shall  
7           the financial institution be” and inserting “sub-  
8           section (c) until such written confirmation is re-  
9           ceived, and the financial institution shall not  
10          be”.

11          (d) REQUIREMENT RELATING TO CONSUMER IN-  
12          QUIRIES AND NOTICES.—Section 906(c)(4) of the Elec-  
13          tronic Fund Transfer Act (15 U.S.C. 1693d(c)(4)) is  
14          amended by striking “the address and telephone number”  
15          and all that follows through the 1st period and inserting  
16          “the address and telephone number at which the financial  
17          institution can be contacted directly by the consumer for  
18          purposes of notifying the institution of an error (including  
19          an unauthorized transaction) with regard to the consum-  
20          er’s account, for purposes of notifying the institution of  
21          the loss or theft of a card, code, or other means of access  
22          to such account, or for purposes of making any inquiry  
23          with regard to the statement or the account. The informa-  
24          tion provided under this paragraph shall include a detailed  
25          description of the procedures required to be followed by

1 the consumer in providing any such notice, any require-  
2 ment that any such notice be in writing, any applicable  
3 time limits for providing any such notice and the con-  
4 sequences of any failure by the consumer to meet any such  
5 time limit, and any other information the Board may re-  
6 quire, by regulation, in order to ensure that the rights of  
7 the consumer under this title are fully protected.”.

8 (e) DISCLOSURES REQUIRED AS PRECONDITION FOR  
9 CONSUMER LIABILITY FOR UNAUTHORIZED TRANS-  
10 FERS.—The 1st sentence of section 909(a) of the Elec-  
11 tronic Fund Transfer Act (15 U.S.C. 1693g(a)) (as  
12 amended by subsection (b)(2) of this section) is amend-  
13 ed—

14 (1) by striking “means of access and if the is-  
15 suer” and inserting “means of access, if the issuer”;  
16 and

17 (2) by inserting “, if, in the most recent state-  
18 ment of account, such issuer has provided the  
19 consumer with the information required under sec-  
20 tion 906(c)(4), and if, in the case of an unauthor-  
21 ized transfer initiated by the use of a card without  
22 the protection of a code or other means of access  
23 which uniquely identifies the consumer, the issuer  
24 complied with the requirements of section 911(d)(1)  
25 at the time such card (or any card for which such

1 card is a replacement) was issued to the consumer”  
2 before the period at the end of such sentence.

3 (f) PROHIBITION ON FEES FOR INSUFFICIENT  
4 FUNDS IN CASE OF CERTAIN UNAUTHORIZED TRANS-  
5 FERS.—Section 909 of the Electronic Fund Transfer Act  
6 (15 U.S.C. 1693g) is amended by adding at the end the  
7 following new subsection:

8 “(f) PROHIBITION ON CERTAIN FEES.—

9 “(1) IN GENERAL.—A consumer shall not be  
10 liable for any fee imposed by a financial institution  
11 for insufficient funds in the account of the consumer  
12 if the lack of sufficient funds in such account is due  
13 to an unauthorized electronic fund transfer (from  
14 such account) initiated by the use of a card without  
15 the protection of a code or other means of access  
16 which uniquely identifies the consumer.

17 “(2) PROMPT RECREDIT OF PRIOR FEES.—

18 Upon receiving notice from a consumer of an alleged  
19 unauthorized transaction, a financial institution  
20 shall promptly credit the account of a consumer for  
21 any fee described in paragraph (1) which was im-  
22 posed before such notice was received.”.

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