

111TH CONGRESS
1ST SESSION

S. 392

To protect consumers, and especially young consumers, from skyrocketing credit card debt, unfair credit card practices, and deceptive credit offers.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2009

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To protect consumers, and especially young consumers, from skyrocketing credit card debt, unfair credit card practices, and deceptive credit offers.

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; TABLE OF CONTENTS.**

4 This Act may be cited as the “Credit Card Reform
5 Act of 2009”.

6 **SEC. 2. PROTECTION OF YOUNG CONSUMERS FROM**
7 **PRESCREENED CREDIT OFFERS.**

8 (a) IN GENERAL.—Section 604(c)(1)(B) of the Fair
9 Credit Reporting Act (15 U.S.C. 1681b(c)(1)(B)) is
10 amended—

1 (1) in clause (ii), by striking “and” at the end;
 2 and

3 (2) in clause (iii), by striking the period at the
 4 end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(vi) the consumer report indicates that
 7 the consumer is age 21 or older, except that a
 8 consumer who is at least 18 years of age may
 9 elect, in accordance with subsection (e)(7), to
 10 authorize the consumer reporting agency to in-
 11 clude the name and address of the consumer in
 12 any list of names provided by the agency pursu-
 13 ant to this paragraph.”.

14 (b) OPT-IN FOR YOUNG CONSUMERS.—Section
 15 604(e) of the Fair Credit Reporting Act (15 U.S.C.
 16 1681b(e)) is amended—

17 (1) by striking the subsection heading and in-
 18 serting the following:

19 “(e) ELECTION OF CONSUMERS REGARDING
 20 LISTS.—”; and

21 (2) by adding at the end the following:

22 “(7) OPT-IN FOR UNDERAGE CONSUMERS.—

23 “(A) IN GENERAL.—A consumer who is at
 24 least 18 years of age, but has not attained his
 25 or her 21st birthday may elect to have the

1 name and address of the consumer included in
 2 any list provided by a consumer reporting agen-
 3 cy under subsection (c)(1)(B) in connection
 4 with a credit or insurance transaction that is
 5 not initiated by the consumer by notifying the
 6 agency in accordance with subparagraph (B)
 7 that the consumer consents to the use of a con-
 8 sumer report relating to the consumer in con-
 9 nection with any credit or insurance transaction
 10 that is not initiated by the consumer.

11 “(B) MANNER OF NOTIFICATION.—An
 12 election by a consumer described in subpara-
 13 graph (A) shall be in writing, using a signed
 14 notice of election form issued or made available
 15 electronically by the agency at the request of
 16 the consumer for purposes of this paragraph.

17 “(C) EFFECTIVENESS OF ELECTION.—An
 18 election by a consumer under subparagraph (A)
 19 to be included in a list provided by a consumer
 20 reporting agency shall be effective—

21 “(i) until the earlier of—

22 “(I) the 21st birthday of the con-
 23 sumer; or

24 “(II) the date on which the con-
 25 sumer notifies the agency, through the

1 notification system established by the
 2 agency under paragraph (5), that the
 3 election is no longer effective; and
 4 “(ii) with respect to each affiliate of
 5 the agency.

6 “(D) RULE OF CONSTRUCTION.—An elec-
 7 tion by a consumer under subparagraph (A) to
 8 be included in a list provided by a consumer re-
 9 porting agency may not be construed to limit
 10 the applicability of this subsection to any per-
 11 son age 21 or older, and such person may elect
 12 to be excluded from any such list after the at-
 13 tainment of his or her 21st birthday in the
 14 manner otherwise provided under this sub-
 15 section.”.

16 **SEC. 3. PROHIBITION ON UNILATERAL CHANGES IN CREDIT**
 17 **CARD AGREEMENTS.**

18 (a) IN GENERAL.—Chapter 4 of the Truth in Lend-
 19 ing Act (15 U.S.C. 1666 et seq.) is amended—

20 (1) by redesignating section 171 as section 172;

21 and

22 (2) by inserting after section 170 the following:

1 **“§ 171. Prohibition on unilateral changes in credit**
2 **card agreements**

3 “(a) IN GENERAL.—Except as permitted under sec-
4 tion 163(b), a credit card issuer may not amend or change
5 the terms of a credit card contract or agreement under
6 an open end consumer credit plan—

7 “(1) prior to the scheduled—

8 “(A) expiration of such contract or agree-
9 ment; or

10 “(B) renewal date of such contract or
11 agreement; and

12 “(2) until such time as the issuer has disclosed
13 all the amendments and changes to the terms of
14 such contract or agreement to the cardholder in any
15 disclosure or statement required under section
16 127(d).

17 “(b) AUTHORITY TO PAYOFF BALANCES.—A card-
18 holder shall have the right to repay all existing balances
19 on a credit card account that is terminated or expires
20 under the terms of such account in effect prior to such
21 termination or expiration.

22 “(c) CONSTRUCTION.—Termination of an account
23 due refusal to renew the account or to failure to agree
24 to a change in terms shall not constitute a default under
25 an existing credit card contract or agreement under an
26 open end consumer credit plan, and shall not trigger an

1 obligation of the cardholder to immediately repay the obli-
 2 gation in full.”.

3 (b) CONFORMING CHANGE IN DISCLOSURES PRIOR
 4 TO RENEWAL.—Section 127(d) of the Truth in Lending
 5 Act (15 U.S.C. 1637(d)) is amended—

6 (1) in paragraph (1)—

7 (A) by inserting “, or that has made any
 8 change in the terms of the consumer’s credit or
 9 charge card contract or agreement since the
 10 previous scheduled renewal date,” after “or
 11 (c)(4)(A)(i)”;

12 (B) in subparagraph (B), by striking “;
 13 and” and inserting a semicolon;

14 (C) in subparagraph (C), by striking the
 15 period and inserting “; and”; and

16 (D) by adding at the end the following:

17 “(D) any changes or amendments in the
 18 terms of the consumer’s credit or charge card
 19 contract or agreement since the previous sched-
 20 uled renewal date.”; and

21 (2) in paragraph (2)(A), by striking “The dis-
 22 closures required” and inserting “If no changes have
 23 been made to the contract or agreement since the
 24 previously scheduled renewal date, the disclosures re-
 25 quired”.

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for chapter 4 of the Truth in Lending Act (15 U.S.C.
 3 1666 et seq.) is amended by inserting after the item relat-
 4 ing to section 170 the following new item:

“171.Prohibition on unilateral changes in credit card agreements.”.

5 **SEC. 4. STOPPING UNFAIR INTEREST RATES AND FEES.**

6 Section 163 of the Truth in Lending Act (15 U.S.C.
 7 1666b) is amended—

8 (1) by striking the section title and all that fol-
 9 lows through “If an open” and inserting the fol-
 10 lowing:

11 **“§ 163. Billing period and finance charges**

12 “(a) BILLING PERIOD.—

13 “(1) FOURTEEN-DAY MINIMUM.—If an open”;

14 (2) by striking “(b) EXCUSABLE CAUSE.—Sub-
 15 section (a)” and inserting the following:

16 “(2) EXCUSABLE CAUSE.—Subsection (a)”; and

17 (3) by adding at the end the following:

18 “(b) LIMITS ON INTEREST RATE INCREASES.—

19 “(1) IN GENERAL.—With respect to a credit
 20 card account under an open end consumer credit
 21 plan, the creditor shall not increase any annual per-
 22 centage rate, fee, or finance charge prior to the
 23 scheduled renewal date of the plan, unless—

24 “(A) such increase is pursuant to the expi-
 25 ration of an introductory rate, fee, or finance

1 charge which was disclosed under section
2 127(c)(6);

3 “(B) such increase is pursuant to the ap-
4 plication of a variable rate which was disclosed
5 under section 127(c)(1)(A)(i)(II); or

6 “(C) such increase is pursuant to the ap-
7 plication of a penalty rate which was disclosed
8 under subsections (a)(4) and (c)(1)(A)(i) of sec-
9 tion 127.

10 “(2) REASONS FOR PENALTY INTEREST RATE
11 INCREASE.—A creditor may impose an increase in
12 the annual percentage rate as a penalty only for spe-
13 cific, material actions or omissions of a consumer in
14 violation of the credit card account contract or
15 agreement that are directly related to such account
16 and that are specified in the contract or agreement
17 as grounds for an increase. Information not directly
18 related to the credit card account of the consumer,
19 including adverse information concerning the con-
20 sumer, information in any consumer report (as that
21 term is defined in section 603 of the Fair Credit Re-
22 porting Act), or changes in the credit score of the
23 consumer do not for purposes of this paragraph con-
24 stitute a specific, material reason.

1 “(3) LIMIT ON PENALTY INTEREST RATE.—A
 2 creditor may not apply as a penalty, in accordance
 3 with the provisions of paragraph (2), an increase in
 4 the annual percentage rate in excess of 7 percentage
 5 points above the interest rate that was in effect with
 6 respect to a consumer’s credit card account on the
 7 date immediately preceding the first such penalty in-
 8 crease for such account.

9 “(c) BAN ON RETROACTIVE RATE INCREASES.—
 10 With respect to a credit card account under an open end
 11 consumer credit plan, if the creditor increases the periodic
 12 interest rate applicable to an extension of credit under the
 13 account, other than the expiration of an introductory rate
 14 or an increase in a variable rate, such increased rate shall
 15 apply only to extensions of credit made on and after the
 16 date of such increase under the account, and any extension
 17 of credit under such account made before the date of such
 18 increase shall continue to incur interest at the rate that
 19 was in effect on the date prior to the date of the in-
 20 crease.”.

21 **SEC. 5. CAP ON FEES CHARGED BY CREDITORS.**

22 (a) IN GENERAL.—Section 164 of the Truth in Lend-
 23 ing Act (15 U.S.C. 1666c) is amended—

24 (1) by striking “Payments received” and insert-
 25 ing “(a) IN GENERAL.—Payments received”; and

1 (2) by adding at the end the following:

2 “(b) LIMITATIONS ON LATE PAYMENT FEES AND
3 OTHER ADVERSE CONSEQUENCES.—

4 “(1) IN GENERAL.—If a late payment fee is to
5 be imposed with respect to a credit card account
6 under an open end consumer credit plan due to the
7 failure of the consumer to make payment on or be-
8 fore a required payment due date, the credit card
9 issuer shall state clearly and conspicuously on the
10 billing statement—

11 “(A) the date on which the payment must
12 be postmarked, if paid by mail, or the date on
13 which a consumer must initiate a payment
14 using an electronic fund transfer (as defined
15 under section 903 of the Electronic Fund
16 Transfers Act), in order to avoid the imposition
17 of a late fee with respect to the payment; and

18 “(B) the amount of the late payment fee
19 to be imposed if payment is late.

20 “(2) LIMITATION.—No card issuer may, with
21 respect to a credit card account under an open end
22 consumer credit plan, impose a late payment fee,
23 raise the annual percentage rate on the credit card
24 account for late payment, or impose other adverse
25 consequences for late payment if the cardholder’s

1 payment is postmarked, received, or initiated elec-
 2 tronically, on or before the required date stated in
 3 accordance with paragraph (1)(A).

4 “(3) CAP ON FEES.—

5 “(A) IN GENERAL.—The amount of any
 6 fee or charge that a credit card issuer may im-
 7 pose in connection with any default, omission,
 8 or violation of the cardholder agreement, includ-
 9 ing any late payment fee, over the limit fee, in-
 10 crease in the applicable annual percentage rate,
 11 or any similar fee or charge, may not exceed an
 12 amount that is reasonably related to the cost to
 13 the card issuer of such default, omission, viola-
 14 tion, or similar event.

15 “(B) RULEMAKING.—The Board shall pro-
 16 mulgate regulations to carry out the limitation
 17 described in subparagraph (A).”.

18 (b) CONFORMING AMENDMENT.—Section 127(b) of
 19 the Truth in Lending Act (15 U.S.C. 1637(b)) is amended
 20 by striking paragraph (12).

21 **SEC. 6. VERIFICATION OF ABILITY TO PAY CREDIT OBLIGA-**
 22 **TIONS.**

23 Section 127 of the Truth in Lending Act (15 U.S.C.
 24 1637) is amended by adding at the end the following:

25 “(i) VERIFICATION OF ABILITY TO PAY.—

1 “(1) IN GENERAL.—A credit card issuer may
2 not open any credit card account for any person
3 under an open end consumer credit plan, or increase
4 any credit limit applicable to such an account, unless
5 the credit card issuer has determined, at the time at
6 which the account is opened or the credit limit in-
7 creased, that the consumer will be able to make the
8 scheduled payments under the terms of the trans-
9 action, based on a consideration of their current and
10 expected income, current obligations, and employ-
11 ment status.

12 “(2) REGULATIONS.—The Board shall pre-
13 scribe, by regulation, the appropriate formula for de-
14 termining the ability of a consumer to pay and the
15 criteria to be considered in making any such deter-
16 mination for purposes of this subsection.

17 “(3) PROHIBITIONS.—The Board, by regulation
18 or order, shall prohibit acts or practices in connec-
19 tion with any credit card account under an open end
20 consumer credit plan—

21 “(A) that the Board finds to be unfair, de-
22 ceptive, or designed to evade the provisions of
23 this title; and

1 “(B) that the Board finds to be associated
2 with abusive lending practices, or that are oth-
3 erwise not in the interest of the consumer.”.

4 **SEC. 7. CURBING DECEPTIVE CREDIT CARD OFFERS.**

5 Section 603(l) of the Fair Credit Reporting Act (15
6 U.S.C. 1681a(l)) is amended to read as follows:

7 “(l) FIRM OFFER OF CREDIT OR INSURANCE.—

8 “(1) IN GENERAL.—The term ‘firm offer of
9 credit or insurance’ means any offer of credit or in-
10 surance to a consumer that specifies all material
11 terms and will be honored if the consumer is deter-
12 mined, based on information in a consumer report
13 on the consumer, to meet the specific criteria used
14 to select the consumer for the offer.

15 “(2) REQUIRED DISCLOSURES IN OFFERS OF
16 CREDIT.—In the case of a firm offer of credit, the
17 offer shall set forth the specific annual percentage
18 rate, fees, and amount of credit or credit limit appli-
19 cable to the offer.

20 “(3) ACCEPTABLE CONDITIONS.—A firm offer
21 of credit or insurance to a consumer may be further
22 conditioned on 1 or more of the following:

23 “(A) Verification that the consumer con-
24 tinues to meet the specific criteria used to se-
25 lect the consumer for the offer, by using infor-

1 mation in a consumer report on the consumer,
 2 information in the consumer’s application for
 3 the credit or insurance, or other information
 4 bearing on the credit worthiness or insurability
 5 of the consumer.

6 “(B) The consumer furnishing any collat-
 7 eral that is a requirement for the extension of
 8 the credit or insurance that was—

9 “(i) established before selection of the
 10 consumer for the offer of credit or insur-
 11 ance; and

12 “(ii) disclosed to the consumer in the
 13 offer of credit or insurance.”.

14 **SEC. 8. EFFECTIVE DATES.**

15 The amendments made by sections 3, 4, 5, 6, and
 16 7 of this Act shall take effect 6 months after the date
 17 of enactment of this Act, except that the Board of Gov-
 18 ernors for the Federal Reserve System shall begin to pro-
 19 pose such regulations as may be appropriate to implement
 20 such amendments on or after the date of enactment of
 21 this Act.

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