

ASSEMBLY, No. 4965

STATE OF NEW JERSEY 217th LEGISLATURE

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Sponsored by:
Assemblyman TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Requires access to certain prepaid account information; limits fees and liability associated with use of prepaid accounts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning prepaid accounts and supplementing Title 17 of
2 the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Access device” means a card, code, or other means to access a
9 prepaid account.

10 “Consumer” means a natural person.

11 “Electronic fund transfer” means any transfer of funds that is
12 initiated through an electronic terminal, telephone, computer, or
13 magnetic tape for the purpose of ordering, instructing, or
14 authorizing a financial institution to debit or credit a consumer’s
15 account; the term includes, but is not limited to:

16 (1) point-of-sale transfers;

17 (2) automated teller machine transfers;

18 (3) direct deposits or withdrawals of funds;

19 (4) transfers initiated by telephone; and

20 (5) transfers resulting from debit card transactions, whether or
21 not initiated through an electronic terminal.

22 “Financial institution” means a bank, a savings and loan
23 association, a mutual savings bank, a credit union, or any other
24 person who, directly or indirectly, holds a prepaid account
25 belonging to a consumer.

26 “Government benefit account” means an account established by
27 a State agency for distributing government benefits to a consumer
28 electronically, such as through automated teller machines or point-
29 of-sale terminals

30 “Payroll card account” means an account that is directly or
31 indirectly established through an employer and to which electronic
32 fund transfers of the consumer’s wages, salary, or other employee
33 compensation, such as commissions, are made on a recurring basis,
34 whether the account is operated or managed by the employer, a
35 third-party payroll processor, a depository institution, or any other
36 person.

37 “Prepaid account” means:

38 (1) a payroll card account;

39 (2) a government benefit account, other than a government
40 benefit account established for distributing needs-tested benefits in
41 a program established under State or local law or administered by a
42 State or local agency;

43 (3) an account that is marketed or labeled as “prepaid” and that
44 is redeemable upon presentation at multiple, unaffiliated merchants
45 for goods or services or usable at automated teller machines;
46 opened by or for the benefit of a consumer and owned by a
47 consumer that contains account owner funds, to which the account
48 owner or any other person may add funds and from which funds

1 may be withdrawn by the account owner, and from which payments
2 may be made by the account owner through use of an access device
3 sold to a consumer in New Jersey; or

4 (4) an account:

5 (a) that is issued on a prepaid basis in a specified amount or is
6 not issued on a prepaid basis but is capable of being loaded with
7 funds thereafter;

8 (b) whose primary function is to conduct transactions with
9 multiple, unaffiliated merchants for goods or services, or at
10 automated teller machines, or to conduct person-to-person transfers;
11 and

12 (c) that is not a checking account, share draft account, or
13 negotiable order of withdrawal account.

14 (5) A prepaid account shall not include:

15 (a) a demand deposit, savings deposit, or other asset account
16 other than as described above;

17 (b) an account that is loaded only with funds from a health
18 savings account, medical savings account, health reimbursement
19 arrangement, dependent care assistance program, or transit or
20 parking reimbursement arrangement;

21 (c) an account held pursuant to a bona fide trust agreement;

22 (d) an account that is directly or indirectly established through a
23 third party and loaded only with qualified disaster relief payments;

24 (e) the person-to-person function of an account established by
25 or through the United States government whose primary function is
26 to conduct closed-loop transactions on United States military
27 installations or vessels, or similar government facilities;

28 (f) a prepaid telecommunications or technology card, rewards
29 card, gift card, or gift certificate, as those terms are defined in
30 section 1 of P.L.2002, c.14 (C.56:8-110); or

31 (g) an account established for distributing needs-tested benefits
32 in a program established under State or local law or administered by
33 a State or local agency.

34

35 2. a. A financial institution shall provide a consumer who
36 owns a prepaid account with access to a monthly account statement
37 that clearly sets forth for each electronic fund transfer during the
38 month:

39 (1) the amount involved and the date of the transfer;

40 (2) the type of the transfer;

41 (3) the identity of the owner's account with the financial
42 institution from which or to which funds are transferred; and

43 (4) the identity of any third party to whom or from whom funds
44 were transferred.

45 b. A financial institution shall not be subject to the
46 requirements of subsection a. of this section if the financial
47 institution makes available to the consumer:

48 (1) the account balance through a readily available phone line;

A4965 SINGLETON

1 (2) 90 days worth of electronic history that covers the past 90
2 days worth of account transactions; and

3 (3) if the account owner requests orally or in writing, the
4 financial institution provides 90 days worth of account transactions.

5 c. A financial institution may not charge a fee for any service
6 provided under subsection b. of this section, except that a financial
7 institution may charge a fee of not more than \$1 for each monthly
8 written statement provided pursuant to paragraphs (2) or (3) of
9 subsection b. of this section.

10

11 3. a. In connection with a prepaid account, a financial
12 institution shall not charge:

13 (1) an annual fee;

14 (2) an overdraft fee, including a fee for shortage or nonsufficient
15 funds, or any other fee for a transaction processed for amounts
16 exceeding the account balance;

17 (3) a usage fee for use at point of sale;

18 (4) a fee for a declined transaction;

19 (5) a fee for the use of an automated teller machine owned or
20 operated by the issuer of the access device;

21 (6) a fee for a balance inquiry or access to transaction
22 information through an automated teller machine owned or operated
23 by the issuer of the access device;

24 (7) a fee for an inquiry to customer service, provided a fee may
25 be charged after two inquiries during a monthly statement cycle;

26 (8) an account closing fee or a fee to obtain the remaining
27 balance in the prepaid account, provided a fee may be charged for
28 issuing a check for the account's remaining balance;

29 (9) an activation, initiation, or enrollment fee; or

30 (10) a fee for any activity not described in subsection b. of this
31 section or subsection c. of section 2 of P.L. , c. (C.)
32 (pending before the Legislature as this bill).

33 b. A financial institution may charge:

34 (1) a fee for a replacement access device, not to exceed \$5 for
35 each replacement access device;

36 (2) a fee for expedited delivery of a replacement access device;

37 (3) a periodic fee, not more frequently than monthly;

38 (4) a reload fee, or any other similar fee for depositing funds to
39 the prepaid account, if the financial institution provides an alternate
40 method for depositing funds to the prepaid account without a fee;

41 (5) a fee for a transfer from the prepaid account to another
42 account;

43 (6) a fee for bill payment by check;

44 (7) a fee for a withdrawal by the account owner from an
45 automated teller machine that is:

46 (a) located outside the United States; and

47 (b) not owned or operated by the issuer of the access device,
48 including a fee to cover the costs of any charge to the financial

- 1 institution by the owner or operator of the automated teller machine
2 relating to the use of the automated teller machine by the account
3 owner;
- 4 (8) a fee for a purchase or a withdrawal of funds in a foreign
5 currency;
- 6 (9) an inactivity or dormancy fee, provided that the fee is
7 imposed only after one year of inactivity;
- 8 (10) a fee to obtain the remaining balance in the prepaid account
9 by check;
- 10 (11) a fee for a returned deposit item or other similar fee in
11 connection with depositing funds to a prepaid account;
- 12 (12) a fee for adding an additional access device to a prepaid
13 account; or
- 14 (13) a fee for a withdrawal of funds from a prepaid account at a
15 financial institution in a face-to-face transaction.
- 16
- 17 4. a. A financial institution shall provide to a consumer the
18 following initial disclosures, at the time the consumer contracts for
19 a prepaid account or before the first electronic fund transfer is made
20 involving the consumer's prepaid account:
- 21 (1) together with any application, offer, or solicitation for a
22 prepaid account, a table of any fees, in writing, that may be
23 imposed by the financial institution associated with using the
24 prepaid account, for electronic fund transfers, or for the right to
25 make transfers, which shall:
- 26 (a) be conspicuously displayed to the consumer before
27 purchase;
- 28 (b) be easily understood by the consumer; and
- 29 (c) include the amount and a description of each fee that may be
30 charged by the financial institution;
- 31 (2) the telephone number and address of the person or office to
32 be notified when the consumer believes that an unauthorized
33 electronic fund transfer has been or may be made;
- 34 (3) on the access device, a toll-free telephone number and
35 website at which the consumer may access a clear and easily
36 understandable disclosure of the fees that may be charged in
37 connection with the prepaid account;
- 38 (4) a summary of the consumer's liability, under section 5 of
39 this act or under any other State or federal law or agreement, for
40 unauthorized electronic fund transactions;
- 41 (5) the financial institution's business days;
- 42 (6) the type of electronic fund transfers that the consumer may
43 make and any limitations on the frequency and dollar amount of
44 transfers, except that details of the limitations need not be disclosed
45 if confidentiality is essential for security purposes;
- 46 (7) a summary of the consumer's right to receipts and periodic
47 statements, as provided in section 2 of this act;

1 (8) the circumstances under which, in the ordinary course of
2 business, the financial institution may provide information
3 concerning the consumer's account to third parties; and

4 (9) a notice that a fee may be imposed by an automated teller
5 machine operator, when the consumer initiates an electronic fund
6 transfer or makes a balance inquiry, and by any network used to
7 complete the transaction.

8 b. If a consumer's prepaid account becomes subject to terms
9 and conditions different from those described in the initial
10 disclosures required pursuant to subsection a. of this section,
11 disclosures for the new terms and conditions shall be provided to
12 the consumer by the financial institution.

13

14 5. a. A consumer may be held liable, within the limitations
15 described in subsection b. of this section, for an unauthorized
16 electronic fund transfer involving the consumer's prepaid account
17 only if the financial institution has provided the disclosures required
18 by subsection a. of section 4 of this act. If the unauthorized transfer
19 involved an access device, it must be an accepted access device the
20 financial institution provided as a means to identify the consumer to
21 whom it was issued.

22 b. A consumer's liability for an unauthorized electronic fund
23 transfer or a series of related unauthorized transfers shall be
24 determined as follows:

25 (1) If the consumer notifies the financial institution within two
26 business days after learning of the loss or theft of the access device,
27 the consumer's liability shall not exceed the lesser of \$50 or the
28 amount of unauthorized transfers that occur before notice to the
29 financial institution.

30 (2) If the consumer fails to notify the financial institution within
31 two business days after learning of the loss or theft of the access
32 device, the consumer's liability shall not exceed the lesser of \$500
33 or the sum of:

34 (a) \$50 or the amount of unauthorized transfers that occur
35 within the two business days, whichever is less; and

36 (b) the amount of unauthorized transfers that occur after the
37 close of two business days and before notice to the institution,
38 provided the institution establishes that these transfers would not
39 have occurred had the consumer notified the institution within that
40 two-day period.

41 (3) A consumer shall report an unauthorized electronic fund
42 transfer that appears on a periodic statement within 60 days of the
43 financial institution's transmittal of the statement to avoid liability
44 for subsequent transfers. If the consumer fails to do so, the
45 consumer's liability shall not exceed the amount of the unauthorized
46 transfers that occur after the close of the 60 days and before notice
47 to the institution, and that the institution establishes would not have
48 occurred had the consumer notified the institution within the 60-day

1 period. When an access device is involved in the unauthorized
2 transfer, the consumer may be liable for other amounts set forth in
3 subparagraphs (a) or (b) of paragraph (2) of this subsection, as
4 applicable.

5 (4) If the consumer's delay in notifying the financial institution
6 was due to extenuating circumstances, the institution shall extend
7 the times specified in this subsection.

8 (5) Notice to a financial institution is given when a consumer
9 takes steps reasonably necessary to provide the institution with the
10 pertinent information, whether or not a particular employee or agent
11 of the institution actually receives the information. The consumer
12 shall notify the institution in person, by telephone, or in writing.
13 Written notice is considered given at the time the consumer mails
14 the notice or delivers it for transmission to the institution by any
15 other usual means. Notice shall be considered constructively given
16 when the institution becomes aware of circumstances leading to the
17 reasonable belief that an unauthorized transfer to or from the
18 consumer's account has been or may be made.

19 c. If any State law or any agreement between the consumer and
20 the financial institution imposes less liability than is provided by
21 this section, the consumer's liability shall not exceed the amount
22 imposed under the State law or agreement.

23

24 6. Any person found to be in violation of this act shall be
25 subject to a civil penalty of not more than \$1,000 per day for each
26 day that the person is in violation of this act, which penalty may be
27 collected by summary proceedings instituted by the Commissioner
28 of Banking and Insurance in accordance with the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

30

31 7. The Commissioner of Banking and Insurance may
32 promulgate, pursuant to the "Administrative Procedure Act,"
33 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
34 necessary to effectuate the purposes of this act.

35

36 8. This act shall take effect on the 120th day next following
37 enactment.

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STATEMENT

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42 This bill regulates prepaid accounts by limiting the fees that may
43 be charged in connection with the accounts, limiting a consumer's
44 liability for an unauthorized electronic fund transfer involving the
45 consumer's prepaid account, and requiring financial institutions
46 holding prepaid accounts to disclose certain information to
47 consumers. Under the bill, a prepaid account is defined to include:
48 an account that is marketed or labeled as "prepaid" and that is

1 redeemable upon presentation at multiple, unaffiliated merchants
2 for goods or services or usable at automated teller machines; a
3 payroll card account; and a government benefit account, other than
4 a government benefit account established for distributing needs-
5 tested benefits in a program established under State or local law or
6 administered by a State or local agency.

7 The bill requires financial institutions to provide a consumer
8 whose funds are contained in a prepaid account with a monthly
9 account statement that sets forth certain details for each electronic
10 fund transfer during that month. A financial institution is exempted
11 from this requirement if it makes available to prepaid account
12 owners the account balance through a readily available phone line,
13 and 90 days worth of account transactions.

14 The bill permits financial institutions to charge certain fees in
15 connection with a prepaid debit account, which include:

- 16 (1) a fee for a replacement access device;
- 17 (2) a fee for expedited delivery of a replacement access device;
- 18 (3) a periodic fee, not more frequently than monthly;
- 19 (4) a reload fee, or any other similar fee for depositing funds to
20 the prepaid account, if the financial institution provides an alternate
21 method for depositing funds to the prepaid account without a fee;
- 22 (5) a fee for a transfer from the prepaid account to another
23 account;
- 24 (6) a fee for bill payment by check;
- 25 (7) a fee for a withdrawal by the account owner from an
26 automated teller machine that is located outside the United States,
27 and not owned or operated by the issuer of the access device,
28 including a fee to cover the costs of any charge to the financial
29 institution by the owner or operator of the automated teller machine
30 relating to the use of automated teller machine by the account
31 owner;
- 32 (8) a fee for a purchase or a withdrawal of funds in a foreign
33 currency;
- 34 (9) an inactivity or dormancy fee, provided that the fee is
35 imposed only after one year of inactivity;
- 36 (10) a fee to obtain the remaining balance in the prepaid account
37 by check;
- 38 (11) a fee for a returned deposit item or other similar fee in
39 connection with depositing funds to a prepaid account;
- 40 (12) a fee for adding an additional access device to a prepaid
41 account; or
- 42 (13) a fee for a withdrawal of funds from a prepaid account at a
43 financial institution in a face-to-face transaction.

44 The bill prohibits a financial institution from charging any fee in
45 connection with a prepaid account except those fees expressly
46 permitted by the bill.

47 The bill also requires financial institutions to provide the
48 following initial disclosures, at the time the consumer contracts for

1 a prepaid account or before the first electronic fund transfer is made
2 involving the consumer's prepaid account:

3 (1) a table of any fees that may be charged in connection with
4 the prepaid account together with any application, offer, or
5 solicitation for a prepaid account;

6 (2) the telephone number and address of the person or office to
7 be notified when the consumer believes that an unauthorized
8 electronic fund transfer has been or may be made;

9 (3) a toll-free telephone number for customer service relating to
10 the prepaid account, and, on the access device, a toll-free telephone
11 number and website at which the consumer may access a clear and
12 easily understandable disclosure of the fees that may be charged in
13 connection with the prepaid account;

14 (4) a summary of the consumer's liability, under the provisions
15 of this bill or under any other State or federal law or agreement, for
16 unauthorized electronic fund transactions;

17 (5) the financial institution's business days;

18 (6) the type of electronic fund transfers that the consumer may
19 make and any limitations on the frequency and dollar amount of
20 transfers, except that details of the limitations need not be disclosed
21 if confidentiality is essential for security purposes;

22 (7) a summary of the consumer's right to receipts and periodic
23 statements;

24 (8) the circumstances under which, in the ordinary course of
25 business, the financial institution may provide information
26 concerning the consumer's account to third parties; and

27 (9) a notice that a fee may be imposed by an automated teller
28 machine operator, when the consumer initiates an electronic fund
29 transfer or makes a balance inquiry, and by any network used to
30 complete the transaction.

31 The bill provides that a consumer may be held liable, within
32 certain limitations, for an unauthorized electronic fund transfer
33 involving the consumer's prepaid account only if the financial
34 institution has provided the disclosures required by the bill. If the
35 unauthorized transfer involved an access device, it must be an
36 accepted access device the financial institution provided as a means
37 to identify the consumer to whom it was issued. If any State law or
38 any agreement between the consumer and the financial institution
39 imposes less liability than is provided by the bill, the consumer's
40 liability will not exceed the amount imposed under the State law or
41 agreement.

42 Finally, any person found to be in violation of the bill would be
43 subject to a civil penalty of not more than \$1,000 per day for each
44 day that the person is in violation, which penalty may be collected
45 by summary proceedings instituted by the Commissioner of
46 Banking and Insurance.