

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.

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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

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## 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)”;

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. 1666e) 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           “(1) 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.

○