

.....
(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

To amend the Electronic Fund Transfer Act to treat fraudulently induced electronic fund transfers in the same manner as unauthorized electronic fund transfers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. WATERS introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Electronic Fund Transfer Act to treat fraudulently induced electronic fund transfers in the same manner as unauthorized electronic fund transfers, and for other purposes.

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 “Protecting Consumers
5 From Payment Scams Act”.

1 **SEC. 2. TREATMENT OF FRAUDULENTLY INDUCED ELEC-**
2 **TRONIC FUND TRANSFERS.**

3 (a) DEFINITIONS.—Section 903 of the Electronic
4 Fund Transfer Act (15 U.S.C. 1693a) is amended—

5 (1) in paragraph (7)—

6 (A) by striking subparagraphs (B) and
7 (E);

8 (B) by redesignating subparagraphs (C)
9 and (D) as subparagraphs (B) and (C), respec-
10 tively;

11 (C) in subparagraph (B), as so redesign-
12 ated, by adding “or” at the end; and

13 (D) in subparagraph (C), as so redesign-
14 ated, by striking “or” at the end;

15 (2) by striking paragraph (9) and inserting the
16 following:

17 “(9) the term ‘financial institution’ means—

18 “(A) a State or National bank, a State or
19 Federal savings and loan association, a mutual
20 savings bank, a State or Federal credit union,
21 or any other person who, directly or indirectly,
22 holds an account belonging to a consumer; or

23 “(B) any person that—

24 “(i) issues an accepted card or other
25 means of access or provides other means to
26 facilitate an electronic fund transfer; and

1 “(ii) agrees, directly or indirectly,
2 with a consumer to provide electronic fund
3 transfer services;” and

4 (3) by striking paragraph (12) and inserting
5 the following:

6 “(12) the term ‘unauthorized or fraudulently
7 induced electronic fund transfer’—

8 “(A) means an electronic fund transfer
9 from a consumer’s account initiated by—

10 “(i) a person other than the consumer
11 without actual authority to initiate such
12 transfer; or

13 “(ii) the consumer, if the consumer’s
14 authorization or initiation of the electronic
15 fund transfer was fraudulently induced;
16 and

17 “(B) does not include any electronic fund
18 transfer—

19 “(i) initiated by a natural person
20 other than the consumer who was fur-
21 nished with the card, code, or other means
22 of access to such consumer’s account by
23 such consumer, unless—

24 “(I) the consumer has notified
25 the financial institution involved that

1 transfers by such other person are no
2 longer authorized; or

3 “(II) the consumer was fraudu-
4 lently or coercively induced to furnish
5 the card, code, or other means of ac-
6 cess;

7 “(ii) initiated by a consumer who has
8 fraudulent intent, or anyone acting in con-
9 cert with such a consumer; or

10 “(iii) which constitutes an error com-
11 mitted by a financial institution.”.

12 (b) DEFINITION OF ERROR.—Section 908(f) of the
13 Electronic Fund Transfer Act (15 U.S.C. 1693f(f)) is
14 amended—

15 (1) in paragraph (2), by inserting “, including
16 a mistake or other error made by a consumer” be-
17 fore the semicolon;

18 (2) by redesignating paragraphs (6) and (7) as
19 paragraphs (8) and (9), respectively; and

20 (3) by inserting after paragraph (5) the fol-
21 lowing:

22 “(6) the consumer’s inability to access funds in
23 a frozen, closed, or otherwise inaccessible account,
24 except as required by a court order or law enforce-
25 ment or unless the financial institution determines

1 that the consumer obtained the funds through un-
2 lawful or fraudulent means;

3 “(7) a reflection on a periodic statement of
4 goods or services not accepted by the consumer or
5 the designee of the consumer or not delivered to the
6 consumer or the designee of the consumer;”.

7 (c) CONSUMER LIABILITY FOR UNAUTHORIZED OR
8 FRAUDULENTLY INDUCED TRANSFERS.—Section 909 of
9 the Electronic Fund Transfer Act (15 U.S.C. 1693g) is
10 amended—

11 (1) in the heading, by striking “**unauthor-**
12 **ized transfers**” and inserting “**unauthorized**
13 **or fraudulently induced electronic fund**
14 **transfers**”;

15 (2) by striking “unauthorized electronic fund
16 transfer” each place such term appears and insert-
17 ing “unauthorized or fraudulently induced electronic
18 fund transfer”;

19 (3) by striking “unauthorized electronic fund
20 transfers” each place such term appears and insert-
21 ing “unauthorized or fraudulently induced electronic
22 fund transfers”; and

23 (4) in subsection (a)—

1 (A) by striking “unauthorized transfer”
2 and inserting “unauthorized or fraudulently in-
3 duced electronic fund transfer”; and

4 (B) by inserting “fraudulently induced
5 transfer or” before “loss or theft” each place
6 such term appears;

7 (5) in subsection (b)—

8 (A) by striking “financial institution to
9 show that” and inserting “financial institu-
10 tion—

11 “(1) to show that”;

12 (B) by striking “was authorized or, if the
13 electronic fund transfer was unauthorized, then
14 the burden of proof is upon the financial insti-
15 tution” and inserting “was authorized or was
16 not fraudulently induced, as applicable; or

17 “(2) if the showing under paragraph (1) is not
18 made,”; and

19 (C) by striking “, if the transfer was initi-
20 ated after the effective date of section 905,”;

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

22 “(f) SHARED LIABILITY OF INSTITUTIONS INVOLVED
23 IN AN UNAUTHORIZED OR FRAUDULENTLY INDUCED
24 ELECTRONIC FUND TRANSFER.—

1 “(1) CREDITING OF CONSUMER ACCOUNT.—A
2 financial institution shall reimburse a consumer for
3 the amount of an electronic fund transfer that was
4 unauthorized or fraudulently induced, subject to any
5 liability of the consumer described under subsection
6 (a).

7 “(2) LIABILITY SHARING.—Subject to para-
8 graph (3) and with respect to a loss suffered by a
9 financial institution in connection with crediting a
10 consumer’s account for an electronic fund transfer
11 that was unauthorized or fraudulently induced, the
12 liability for such loss shall be evenly shared between
13 the financial institution holding the consumer’s ac-
14 count and the financial institution that received the
15 transfer.

16 “(3) LIABILITY OF CERTAIN INSTITUTIONS
17 THAT MATERIALLY SUPPORT OTHER FINANCIAL IN-
18 STITUTIONS.—

19 “(A) RULEMAKING.—The Bureau may
20 issue—

21 “(i) a rule to identify certain financial
22 institutions or classes of financial institu-
23 tions described under section 903(9)(B)
24 that materially support other financial in-

1 stitutions in carrying out electronic fund
2 transfers; and

3 “(ii) such other rules as the Bureau
4 determines are necessary or appropriate to
5 implement the shared liability provisions
6 under this subsection.

7 “(B) LIABILITY.—With respect to a loss
8 described under paragraph (2) in connection
9 with an electronic fund transfer, if any financial
10 institution identified under subparagraph (A) is
11 described under section 903(9)(B) with respect
12 to such transfer, each financial institution and
13 the two financial institutions described under
14 paragraph (2) shall evenly share the liability for
15 such loss.”.

16 (d) RULE OF CONSTRUCTION.—Nothing in this Act
17 or the amendments made by this Act may be construed
18 to limit the authority of the Bureau of Consumer Finan-
19 cial Protection or the applicability of relevant consumer
20 financial protection laws that may otherwise impose re-
21 quirements that are being amended by this Act.