

# California Prohibits Overdraft Fees on Fake Bank Accounts Receiving Government Payments

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*New law addresses evasions of CFPB prepaid card rule*

WASHINGTON — California Governor Gavin Newsom late yesterday signed into law a bill by Senator Monique Limón (D-CA-9) that closes a loophole that prepaid card companies have been using to evade California and federal laws that limit overdraft fees. SB 497, which was sponsored by the National Consumer Law Center, passed both the California Assembly and Senate unanimously.

“Prepaid card companies like NetSpend should not be evading California and federal laws against overdraft fees by shifting their prepaid cards to fake bank accounts,” **said Lauren Saunders, associate director of the National Consumer Law Center.** “This new law will ensure that California funds used to support needy families are not drained off by overdraft fees on fake bank accounts. I applaud Senator Limón for her leadership on this bill and thank the entire legislature and Governor Newsom for supporting it.”

“This bill closes an important loophole to protect vulnerable families by making it clear that public assistance, including unemployment and disability benefits, are not subject to overdraft fees on deposit accounts offered by non-bank companies,” **said Senator Limón.** “I am proud to author SB 497, to protect Californians from overdraft fees that place low-income consumers in a vulnerable position.”

The new law extends California’s rules governing direct deposit of California government payments to so-called bank accounts offered through non-bank companies like NetSpend as well as to newer “fintech” accounts offered by non-banks like Chime. The law prohibits accounts from charging fees for overdrafts, including purportedly voluntary fees like “tips”, unless the account complies with the federal Consumer Financial Protection Bureau’s (CFPB) prepaid account rules. Those rules generally prohibit overdrafts except through separate credit accounts that comply with the federal rules governing credit cards. The new law does not impact overdraft fees on traditional bank accounts.

The new law applies to accounts used to receive direct deposit of California unemployment compensation, state-collected child support and public assistance. (The law does not cover debit cards sponsored and used by the State of California to make payments, which have never had overdraft fees.) Under existing California law, prepaid cards, to be eligible to receive certain California government payments, must carry deposit insurance and cannot have overdraft or credit features. Similarly, the CFPB enacted rules that went into effect in 2019 that effectively prohibit overdraft fees on prepaid cards.

While most prepaid cards have never had overdraft fees, many prepaid cards sold at payday loan stores did have overdraft fees prior to the CFPB rule. Some of those prepaid card companies, notably NetSpend, began to evade both California and federal law by launching so-called “bank accounts” that did not comply with the CFPB prepaid rules and the California overdraft fee prohibition. For example, the payday lender ACE Cash Express offers the NetSpend “ACE Flare Account by MetaBank,” which can incur up to \$100/month in overdraft fees. The payday lender

CURO (Speedy Cash, Rapid Cash) also offers “banking” through Revolve Finance debit cards that can have overdraft fees and do not comply with the CFPB’s prepaid card rules.

“This new law will protect California residents who receive government payments on non-bank debit cards, but the CFPB still needs to address the evasion of its rules prohibiting overdraft fees on all prepaid cards,” **Saunders added.**

Companies have been evading the law by using a bank identification number (BIN) associated with bank accounts and calling the accounts “bank accounts,” “debit cards” or similar names, rather than using a BIN number associated with prepaid cards.

“Simply changing the name on a card from ‘prepaid card’ to ‘bank account’ or changing the technical back-end way the account is set up does not convert these accounts offered by non-bank companies into bank accounts or give them permission to charge overdraft fees that are prohibited by the CFPB’s prepaid card rules,” **Saunders explained.**

For more information:

- Press Release: CFPB Quietly Launches Web Database of Prepaid and Payroll Card Fees and Disclosures but Some Cards with Overdraft Fees are Missing (Oct. 16, 2019)
- Issue Brief: New Protections for Prepaid Cards and Accounts (Mar. 28, 2019)
- Press Release: NetSpend Plans Evasions of CFPB Prepaid Rules to Preserve \$80 Million in Overdraft Fees (Oct. 28, 2016)
- Report: Payday Lender Prepaid Cards: Overdraft and Junk Fees Hit Cash-strapped Families Coming and Going (July 2015)