

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3978

To provide consumer protections for lost or stolen check cards and debit cards similar to those provided with respect to credit cards, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2006

Mrs. CLINTON 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 provide consumer protections for lost or stolen check cards and debit cards similar to those provided with respect to credit cards, 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 “Debit and Check Card  
5 Consumer Protection Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) debit and check card use has experienced  
9 double digit growth for longer than a decade, and

1 more than 80 percent of American consumer house-  
2 holds now possess a debit or check card;

3 (2) between 2001 and 2003, consumers made  
4 42,500,000,000 transactions with debit cards, eclips-  
5 ing credit card transactions by 2,300,000,000;

6 (3) as of 2003, debit cards accounted for  $\frac{1}{3}$  of  
7 all purchases in stores;

8 (4) in addition to the rise in debit and check  
9 card use, debit and check card fraud increasingly  
10 challenges American consumers;

11 (5) in 2005, debit card and ATM fraud ac-  
12 counted for losses of \$2,750,000,000;

13 (6) despite that growth, statutory debit and  
14 check card consumer liability protections remain  
15 substandard, as compared to credit cards;

16 (7) the debit and check card industry has, in  
17 some instances, instituted liability protections that  
18 often exceed the requirements set forth under the  
19 provisions of law; and

20 (8) the law should be changed to ensure a con-  
21 tinued level of liability protection.

22 **SEC. 3. CAP ON DEBIT CARD LIABILITY.**

23 Section 909(a) of the Electronic Funds Transfer Act  
24 (15 U.S.C. 1693g(a)) is amended—

1           (1) by striking “Notwithstanding the foregoing”  
2           and all that follows through “whichever is less.”;  
3           and

4           (2) by striking “meana” and inserting  
5           “means”.

6 **SEC. 4. DEBIT CARD ERROR RESOLUTION.**

7           Section 908(f) of the Electronic Funds Transfer Act  
8 (15 U.S.C. 1693f(f)) is amended—

9           (1) by redesignating paragraphs (6) and (7) as  
10          paragraphs (7) and (8), respectively; and

11          (2) by inserting after paragraph (5) the fol-  
12          lowing:

13               “(6) a charge for goods or services not accepted  
14               by the consumer or the designee thereof, or not de-  
15               livered to the consumer or the designee thereof, in  
16               accordance with the agreement made at the time of  
17               a transaction;”.

18 **SEC. 5. CONSUMER RIGHTS.**

19           Section 908 of the Electronic Funds Transfer Act  
20 (15 U.S.C. 1693f) is amended by adding at the end the  
21 following:

22               “(g) RIGHTS OF CONSUMERS WITH RESPECT TO AC-  
23               CEPTED CARDS.—

24                       “(1) IN GENERAL.—Subject to the limitation  
25                       contained in paragraph (2), the issuer of an accept-

1 ed card to a consumer shall be subject to all claims  
2 (other than tort claims) and defenses arising out of  
3 any transaction in which the accepted card is used  
4 as a method of payment, if—

5 “(A) the consumer has made a good faith  
6 attempt to obtain satisfactory resolution of a  
7 disagreement or problem relative to the trans-  
8 action from the person honoring the accepted  
9 card;

10 “(B) the amount of the initial transaction  
11 exceeds \$50; and

12 “(C) the transaction was initiated by the  
13 consumer in the same State as the mailing ad-  
14 dress previously provided by the consumer, or  
15 within 100 miles from such address, except that  
16 the limitations set forth in subparagraphs (A)  
17 and (B) with respect to the right of a consumer  
18 to assert claims and defenses against the issuer  
19 of the card shall not be applicable to any trans-  
20 action in which the person honoring the accept-  
21 ed card—

22 “(i) is the same person as the card  
23 issuer;

24 “(ii) is controlled by the card issuer;

1                   “(iii) is under direct or indirect com-  
2                   mon control with the card issuer;

3                   “(iv) is a franchised dealer in the  
4                   products or services of the card issuer; or

5                   “(v) has obtained the order for such  
6                   transaction through a mail solicitation  
7                   made by or participated in by the card  
8                   issuer in which the cardholder is solicited  
9                   to enter into such transaction by using the  
10                  accepted card issued by the card issuer.

11                 “(2) LIMITATION.—The amount of claims or  
12                 defenses asserted by the cardholder under this sub-  
13                 section may not exceed the amount paid by the card-  
14                 holder with respect to the subject transaction at the  
15                 time at which the cardholder first notifies the card  
16                 issuer or the person honoring the accepted card of  
17                 such claim or defense.”.

18 **SEC. 6. REGULATIONS.**

19                 Not later than 90 days after the date of enactment  
20                 of this Act, the Board of Governors of the Federal Reserve  
21                 System shall issue final regulations to carry out the  
22                 amendments made by this Act, which regulations shall be  
23                 consistent, to the extent practicable, with regulations

- 1 issued to carry out similar provisions under the Truth in
- 2 Lending Act.

