

112TH CONGRESS  
1ST SESSION

# S. 2030

To provide protection for consumers who have prepaid cards, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2011

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 provide protection for consumers who have prepaid 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 “Prepaid Card Con-  
5 sumer Protection Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 (a) DEFINITION OF “ACCOUNT”.—Section 903 of the  
8 Electronic Fund Transfer Act (15 U.S.C. 1693a) is  
9 amended by striking paragraph (2) and inserting the fol-  
10 lowing:

1 “(2) the term ‘account’—

2 “(A) means—

3 “(i) a demand deposit, savings de-  
 4 posit, or other asset account (other than  
 5 an occasional or incidental credit balance  
 6 in an open end credit plan, as defined in  
 7 section 103(i)), as described in regulations  
 8 of the Bureau, established primarily for  
 9 personal, family, or household purposes, as  
 10 defined by the Bureau, by rule; and

11 “(ii) a spending account, as defined in  
 12 section 924(a); and

13 “(B) does not include an account held by  
 14 a financial institution pursuant to a bona fide  
 15 trust agreement;”.

16 (b) DEFINITION OF “FINANCIAL INSTITUTION”.—  
 17 Section 903(9) of the Electronic Fund Transfer Act (15  
 18 U.S.C. 1693a(9)) is amended by striking “holds an ac-  
 19 count” and inserting “manages, provides, or holds an ac-  
 20 count containing funds”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
 22 Section 903 of the Electronic Fund Transfer Act (15  
 23 U.S.C. 1693a) is amended—

24 (1) by redesignating paragraph (4) (relating to  
 25 the Board of Governors of the Federal Reserve Sys-

1 tem), as so designated by section 1084(2)(A) of the  
2 Dodd-Frank Wall Street Reform and Consumer Pro-  
3 tection Act (Public Law 111–203; 124 Stat. 2081),  
4 as paragraph (3); and

5 (2) in paragraph (3), as so redesignated, by  
6 striking “term ‘Bureau’ means the Bureau of Gov-  
7 ernors” and inserting “term ‘Board’ means the  
8 Board of Governors”.

9 **SEC. 3. SPENDING ACCOUNTS.**

10 (a) SPENDING ACCOUNTS.—The Electronic Fund  
11 Transfer Act (15 U.S.C. 1693 et seq.) is amended—

12 (1) by redesignating section 923 (15 U.S.C.  
13 1693 note), relating to the effective date of the Elec-  
14 tronic Fund Transfer Act, as so designated by sec-  
15 tion 1073 of the Dodd-Frank Wall Street Reform  
16 and Consumer Protection Act (Public Law 111–203;  
17 124 Stat. 2060), as section 925;

18 (2) by redesignating section 922 (15 U.S.C.  
19 1693r), relating to exemptions for State regulation,  
20 as so designated by section 1073 of the Dodd-Frank  
21 Wall Street Reform and Consumer Protection Act  
22 (Public Law 111–203; 124 Stat. 2060), as section  
23 923; and

24 (3) by inserting after section 923, as so redesi-  
25 gnated, the following:

1 **“§ 924. Spending accounts**

2 “(a) DEFINITION.—For purposes of this section, the  
3 term ‘spending account’—

4 “(1) means a deposit account, other than as de-  
5 fined in subparagraph (A)(i) or (B) of section  
6 903(2)—

7 “(A) that is established by a consumer or  
8 on behalf of a consumer at an insured deposi-  
9 tory institution (as defined in section 3(c) of  
10 the Federal Deposit Insurance Act (12 U.S.C.  
11 1813(c));

12 “(B) that contains the funds of a con-  
13 sumer;

14 “(C) to which payments are to be made by  
15 a consumer, or at the direction of a consumer;

16 “(D) to which recurring electronic fund  
17 transfers may be made, at the direction of a  
18 consumer; or

19 “(E) from which payments may be made  
20 at the direction of a consumer through the use  
21 of a card, code, or device;

22 “(2) includes a deposit account described in  
23 paragraph (1)—

24 “(A) that is operated or managed by a fi-  
25 nancial institution, or any other person; and

26 “(B) the funds of which are—

1 “(i) pooled with the funds of a person  
2 other than the person who established the  
3 account; or

4 “(ii) held in a name other than that  
5 of the person who established the account;  
6 and

7 “(3) does not include—

8 “(A) a nonreloadable general-use prepaid  
9 card, as defined in section 915(a)(2)(A), in an  
10 amount that does not exceed \$250;

11 “(B) a general-use prepaid card, as defined  
12 in section 915(a)(2)(A), that is solely associated  
13 with—

14 “(i) a health plan to which section  
15 105 of the Internal Revenue Code of 1986  
16 applies;

17 “(ii) a qualified transportation fringe,  
18 as defined in section 132(f) of the Internal  
19 Revenue Code of 1986;

20 “(iii) a health savings account, as de-  
21 fined in section 223(d) of the Internal Rev-  
22 enue Code of 1986; or

23 “(iv) any other healthcare benefit ac-  
24 count, including a healthcare account relat-  
25 ing to Medicare or Medicaid benefits;

1           “(C) a gift certificate, as defined in section  
2           915(a)(2)(B);

3           “(D) a store gift card, as defined in sec-  
4           tion 915(a)(2)(C);

5           “(E) an electronic promise, plastic card, or  
6           payment code or device described in clause (i),  
7           (v), or (vi) of section 915(a)(2)(D);

8           “(F) a nonreloadable card labeled as a gift  
9           card and marketed solely as a gift card; or

10          “(G) a nonreloadable loyalty, rebate, or  
11          promotional card.

12          “(b) FDIC INSURANCE.—

13           “(1) INSURANCE REQUIRED.—Spending ac-  
14           counts shall be structured to provide and maintain  
15           separate deposit insurance coverage for the funds of  
16           each consumer under the applicable regulations of  
17           the Federal Deposit Insurance Corporation.

18           “(2) TRANSFER OF FUNDS.—Any person that  
19           receives funds in connection with an electronic fund  
20           transfer to a spending account shall promptly, and  
21           in no event later than 1 business day after the funds  
22           are activated—

23           “(A) transfer such funds to an account at  
24           an insured depository institution (as defined in

1 section 3(c) of the Federal Deposit Insurance  
2 Act (12 U.S.C. 1813(c)); or

3 “(B) credit the spending account an  
4 amount equal to the amount of such funds.

5 “(c) ALTERNATIVE TO PERIODIC STATEMENT.—

6 “(1) PERIODIC STATEMENT NOT REQUIRED.—

7 In the case of an electronic fund transfer from a  
8 spending account, a financial institution shall not be  
9 subject to the requirement under section 906(c) to  
10 provide a periodic statement to a consumer, if the fi-  
11 nancial institution provides to the consumer—

12 “(A) access to the account balance of the  
13 consumer—

14 “(i) through a readily available tele-  
15 phone line;

16 “(ii) through the Internet;

17 “(iii) at an electronic terminal or  
18 other device that allows the consumer to  
19 make a balance inquiry, by providing bal-  
20 ance information or, routinely or upon re-  
21 quest, on a receipt provided at the elec-  
22 tronic terminal at the time of an electronic  
23 fund transfer; and

24 “(iv) through text messaging;

1           “(B) notice of the means by which the con-  
2           sumer may access the account balance of the  
3           consumer, including any telephone number;

4           “(C) in response to an oral or written re-  
5           quest of the consumer, a written record of the  
6           account transactions of the consumer during  
7           the 2-year period ending on the date of the re-  
8           quest that includes the information required to  
9           be provided to the consumer under section  
10          906(c);

11          “(D) an electronic record, such as a record  
12          available on the Internet, of the account trans-  
13          actions of the consumer during the 2-year pe-  
14          riod ending on the date on which the consumer  
15          accesses the electronic record that includes the  
16          information required to be provided to the con-  
17          sumer under section 906(c);

18          “(E) with at least the same frequency as  
19          a written periodic statement that would other-  
20          wise be required under section 906, notification  
21          by email of the availability of an electronic his-  
22          tory or an electronic periodic statement, unless  
23          the consumer has declined to provide an email  
24          address;



1           “(F) the option to receive a written peri-  
2           odic statement, either a one-time paper state-  
3           ment or continuous regular monthly paper  
4           statements with a single request, and clear and  
5           conspicuous notice of such option at the time of  
6           enrollment and on the website of the financial  
7           institution;

8           “(G) annual notice of the error resolution  
9           procedure for the spending account, as pre-  
10          scribed in regulations of the Bureau; and

11          “(H) any other transaction information  
12          that the financial institution elects to make  
13          available and that the consumer elects to re-  
14          ceive, such as messages or alerts concerning  
15          other balance or transaction information.

16          “(2) FEES PROHIBITED.—

17          “(A) IN GENERAL.—Except as provided in  
18          subparagraph (B), a financial institution may  
19          not charge a fee for any service provided under  
20          paragraph (1).

21          “(B) FEE FOR WRITTEN PERIODIC STATE-  
22          MENT.—A financial institution may charge a  
23          fee of not more than \$1 for each written peri-  
24          odic statement provided under paragraph  
25          (1)(A)(vi).

1           “(3) NO ELECTION BY CONSUMER.—If the con-  
2           sumer has not elected to receive written periodic or  
3           annual statements, has not elected to receive another  
4           regular form of transaction information that the Bu-  
5           reau has determined, by rule, to be equivalent to  
6           periodic statements, and has not accessed the ac-  
7           count online in the preceding 12-month period, the  
8           financial institution shall provide an annual notice to  
9           the consumer at least annually of the means by  
10          which the consumer may access transaction informa-  
11          tion and the option to enroll in written periodic or  
12          annual statements.

13          “(d) LIMITATIONS ON LIABILITY.—For purposes of  
14          section 909(a), reimbursement need not be made to a con-  
15          sumer for a loss relating to a spending account that a fi-  
16          nancial institution establishes would not have occurred,  
17          but for the failure of the consumer to report any unau-  
18          thorized electronic fund transfer or account error—

19                 “(1) not later than 60 days after the date on  
20                 which account information that includes the unau-  
21                 thorized electronic fund transfer or account error is  
22                 provided to or accessed by the consumer under sub-  
23                 section (c); or

1           “(2) in extenuating circumstances, such as ex-  
2           tended travel or hospitalization, within a longer time  
3           that is reasonable under the circumstances.

4           “(e) FEES.—

5           “(1) FEES PROHIBITED.—Except as provided  
6           in paragraph (2), a financial institution may not  
7           charge in connection with a spending account—

8                   “(A) an annual fee;

9                   “(B) an overdraft fee, including a fee for  
10                  shortage or nonsufficient funds, or any other  
11                  fee for a transaction processed for amounts ex-  
12                  ceeding the account balance;

13                  “(C) a usage fee for use at the point of  
14                  sale;

15                  “(D) a fee for a declined transaction;

16                  “(E) a fee for the use of an electronic ter-  
17                  minal that is in the network of the issuer;

18                  “(F) any fee during periods of inactivity or  
19                  dormancy, including a periodic fee charged  
20                  after more than 6 months of inactivity;

21                  “(G) a fee for a balance inquiry or access  
22                  to transaction information;

23                  “(H) a fee for an inquiry to customer serv-  
24                  ice;

1           “(I) a finance charge or other fee imposed  
2           in connection with an extension of credit;

3           “(J) an account closing fee or a fee to ob-  
4           tain the remaining balance in the spending ac-  
5           count;

6           “(K) a fee for any activity not described in  
7           paragraph (2);

8           “(L) any fee prohibited by applicable State  
9           law; or

10          “(M) any fee of any kind that would cause  
11          the balance to become negative.

12          “(2) FEES PERMITTED.—A financial institution  
13          may charge in connection with a spending account—

14               “(A) a fee for a replacement card—

15                   “(i) of not more than \$5 for the first  
16                   replacement card requested by a consumer  
17                   during any 12-month period; and

18                   “(ii) that is in addition to the replace-  
19                   ment card described in clause (i);

20               “(B) a fee for expedited delivery of a re-  
21               placement card;

22               “(C) a periodic fee, not more frequently  
23               than monthly, provided that no periodic fee may  
24               be assessed if there has been no deposit or

1 transaction activity in the account during the  
2 preceding 3 months;

3 “(D) a reload fee, or any other fee for add-  
4 ing value to the spending account, if the finan-  
5 cial institution provides a reasonable alternate  
6 method for adding value to the spending ac-  
7 count without a fee;

8 “(E) a fee for a transfer from the spending  
9 account to another account;

10 “(F) a fee for bill payment;

11 “(G) a fee for a withdrawal by the con-  
12 sumer from an electronic terminal that is—

13 “(i) located outside the United States;

14 or

15 “(ii) not in the network of the finan-  
16 cial institution, including a fee to cover the  
17 costs of any charge to the financial institu-  
18 tion by the owner of the electronic terminal  
19 relating to the use of the electronic ter-  
20 minal by the consumer;

21 “(H) a fee for a purchase or a withdrawal  
22 in a foreign currency; and

23 “(I) an activation, initiation, or enrollment  
24 fee.

25 “(3) DISCLOSURE OF FEE INFORMATION.—

1           “(A) DISCLOSURE REQUIRED.—Each fi-  
2 nancial institution that offers a spending ac-  
3 count shall provide to a consumer—

4                   “(i) together with any application,  
5 offer, or solicitation for a spending ac-  
6 count—

7                           “(I) a table of any fees that may  
8 be charged in connection with the  
9 spending account that—

10                                   “(aa) can be easily under-  
11 stood by the consumer;

12                                   “(bb) is clearly and con-  
13 spicuously displayed to the con-  
14 sumer before purchase; and

15                                   “(cc) includes, at a min-  
16 imum, the amount and a descrip-  
17 tion of each fee that may be  
18 charged by the financial institu-  
19 tion under paragraph (2); and

20                                   “(II) an estimate of the average  
21 total monthly cost to a typical con-  
22 sumer for using the spending account,  
23 based on a profile of the typical con-  
24 sumer established by the Bureau;

1           “(ii) on the card or other means of ac-  
2           cess, a toll-free telephone number and  
3           website at which the consumer may access  
4           a clear and conspicuous disclosure of the  
5           fees that may be charged in connection  
6           with the spending account; and

7           “(iii) a wallet-sized summary of any  
8           fees that may be charged in connection  
9           with the spending account and a toll-free  
10          telephone number for customer service re-  
11          lating to the spending account.

12          “(B) RULES.—Not later than 9 months  
13          after the date of enactment of the Prepaid Card  
14          Consumer Protection Act of 2011, the Bureau  
15          shall establish, by rule, the headings, content,  
16          and format of the fee table, estimate, and wal-  
17          let-sized fee summary required under subpara-  
18          graph (A).

19          “(f) CREDIT FEATURES.—

20                 “(1) IN GENERAL.—No person may offer or  
21                 provide a spending account that has a credit feature  
22                 or that can be linked to a credit account that is  
23                 automatically repaid from the spending account.

24                 “(2) EXCEPTIONS.—Nothing in this subsection  
25                 prohibits—

1           “(A) a consumer from making an elec-  
2           tronic fund transfer from a spending account to  
3           pay a credit account or from setting up  
4           preauthorized electronic fund transfers to pay a  
5           credit account; or

6           “(B) a financial institution from offsetting  
7           an inadvertent negative balance in a spending  
8           account against the next deposit to that ac-  
9           count, provided that the consumer is not  
10          charged a fee or finance charge.

11          “(g) CLOSURE OF DORMANT ACCOUNTS.—A finan-  
12          cial institution or other person that provides, holds, or  
13          manages a spending account shall close the account and  
14          refund any remaining funds to the consumer—

15                 “(1) once the account has been inactive for 12  
16                 months, or such other period as the Bureau shall es-  
17                 tablish, by regulation; and

18                 “(2) upon request of the consumer to the finan-  
19                 cial institution or other person using an easily acces-  
20                 sible method of contact, that the account be closed.”.

21          (b) STUDY.—The Bureau shall establish an imple-  
22          mentation plan and timeline for a prepaid card research  
23          study to be completed not later than 1 year after the date  
24          of enactment of this Act, to determine what, if any, dif-  
25          ferences there are for both the short- and long-term eco-



1 nomic well being of consumers at different income levels  
2 who use spending accounts versus those who use tradi-  
3 tional bank accounts for their primary means of making  
4 financial transactions.

5 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) WRITTEN PERIODIC STATEMENTS.—Section  
7 906(c) of the Electronic Fund Transfer Act (15  
8 U.S.C. 1693d(c)) is amended in the first sentence of  
9 the matter preceding paragraph (1), by striking “A  
10 financial” and inserting “Except as provided in sec-  
11 tion 924(c), a financial”.

12 (2) ERROR RESOLUTION.—Section 908(a) of  
13 the Electronic Fund Transfer Act (15 U.S.C.  
14 1693f(a)) is amended by striking “or notification  
15 pursuant to section 906(b)” and inserting “, notifi-  
16 cation pursuant to section 906(b), or written or elec-  
17 tronic documentation pursuant to section 924(c)”.

18 **SEC. 4. EFFECTIVE DATE.**

19 This Act and the amendments made by this Act shall  
20 become effective 9 months after the date of enactment of  
21 this Act.

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