# STATE OF NEW YORK

8319

2025-2026 Regular Sessions

# IN ASSEMBLY

May 13, 2025

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to limits on overdraft fees charged by certain state chartered banking institutions

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subparagraph ii of paragraph (a) of subdivision 2 and subdivision 3 of section 9-y of the banking law, subparagraph ii of paragraph (a) of subdivision 2 as added and subdivision 3 as amended by chapter 556 of the laws of 2023, are amended to read as follows:

ii. the charges that may be imposed in connection with a check drawn or other written order upon, or electronic transfer sought to be effectuated against, insufficient funds or uncollected balances in a consumer account, whether or not the banking organization pays such check, written order, or electronic transfer**; provided, however, that for a banking organization that is a state chartered banking institution subject to section nine-q of this article, such charges shall not exceed the greater of five dollars or the pro rata share of such banking organization's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, calculated in accordance with section nine-q of this article**;

3. [~~Definition~~] **Definitions**. As used in this section[~~,~~]**: (a)** "[~~consumer~~] **Consumer** accounts" means accounts at banking organizations established by natural persons primarily for personal, family or household purposes.

**(b) "Non-covered overdraft credit" means overdraft credit that is not subject to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22.**

**(c) "Overdraft credit" means any consumer credit extended by a banking organization to pay a transaction from a checking or other transaction account, other than a prepaid account as such term is defined in 12**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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C.F.R. § 1026.61, held at the banking organization where the customer has insufficient or unavailable funds in such account. The term "overdraft credit" includes, but is not limited to, any such customer credit extended through a transfer from a credit card account or overdraft.

§ 2. Paragraph (a) of subdivision 8 of section 108 of the banking law, as amended by chapter 155 of the laws of 2012, is amended and a new paragraph (e) is added to read as follows:

(a) The superintendent shall have the power to prescribe by regulation (i) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted, or returned by the bank, provided, however, that such maximum charge shall not exceed the greater of five dollars or the pro rata share of such bank's or trust company's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, calculated in accordance section nine-q of this chapter, and (ii) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

(e) For purposes of this subdivision (i) "non-covered overdraft credit" means overdraft credit that is not subject to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, and (ii) "overdraft credit" means any consumer credit extended by a banking organization to pay a transaction from a checking or other transaction account, other than a prepaid account as such term is defined in 12 C.F.R. § 1026.61, held at the banking organization where the customer has insufficient or unavailable funds in such account. The term "overdraft credit" includes, but is not limited to, any such customer credit extended through a transfer from a credit card account or overdraft.

§ 3. Section 235-c of the banking law, as added by chapter 361 of the laws of 1984 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 235-c. Regulation of certain charges. 1. The superintendent of financial services shall have the power to prescribe by regulation (i) the maximum charge which may be imposed in this state by a savings bank in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted or returned by the bank, provided, however, that such maximum charge shall not exceed the greater of five dollars or the pro rata share of such savings bank's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, calculated in accordance with section nine-q of this chapter, and (ii) the maximum charge which may be imposed in this state by a savings bank in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

2. For purposes of this section (i) the term "non-covered overdraft credit" means overdraft credit that is not subject to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, and (ii) the term "overdraft credit" means any consumer credit extended by a banking organization to pay a transaction from a checking or other transaction account, other than a prepaid account as such term is defined in 12 C.F.R. § 1026.61, held at the banking organization where the customer has insufficient or unavailable funds in such account. The term "over-

draft credit" includes, but is not limited to, any such customer credit extended through a transfer from a credit card account or overdraft.

§ 4. Subdivision 13 of section 383 of the banking law, as amended by chapter 63 of the laws of 1992 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

13. a. To receive and repay demand deposits subject to those provisions applicable to such deposits, in the case of savings banks under section two hundred thirty-seven of this chapter, including, subject to regulation by the superintendent of financial services, the power to charge for maintaining a demand deposit account or for honoring checks drawn on or accepting deposits made to such an account.

b. The superintendent of financial services shall have the power to prescribe by regulation [~~(a)~~] (i) the maximum charge which may be imposed in this state by a savings and loan association in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted or returned by the bank, provided, however, that such maximum charge shall not exceed the greater of five dollars or the pro rata share of such savings and loan association's direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, calculated in accordance with section nine-q of this chapter, and [~~(b)~~] (ii) the maximum charge which may be imposed in this state by a savings and loan association in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

c. For purposes of this subdivision (i) the term "non-covered overdraft credit" means overdraft credit that is not subject to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, and (ii) the term "overdraft credit" means any consumer credit extended by a banking organization to pay a transaction from a checking or other transaction account, other than a prepaid account as such term is defined in 12 C.F.R. § 1026.61, held at the banking organization where the customer has insufficient or unavailable funds in such account. The term "overdraft credit" includes, but is not limited to, any such customer credit extended through a transfer from a credit card account or overdraft.

§ 5. The banking law is amended by adding a new section 9-q to read as follows:

§ 9-q. Overdraft credit cost and loss calculation. 1. For purposes of this section:

(a) "State chartered banking institution" shall mean any bank, trust company, private banker, savings bank, savings and loan association, foreign banking corporation, or credit union.

(b) "Previous year" shall mean a period that encompasses, at the state-chartered banking institution's option, any of the following periods:

(i) The prior calendar year;

(ii) Any three hundred sixty-five-day period that begins within the prior calendar year;

(iii) The prior four financial quarters; or

(iv) The state chartered banking institution's prior accounting year.

2. When calculating the pro rata share of a state chartered banking institution's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, such state chartered banking institution shall consider only those costs and charge-off losses specifically traceable to its provision of non-covered overdraft credit in the previous year. Such costs and charge-off losses include,

but are not limited to, its cost of funds, its net charge-off losses, and operating expenses for its non-covered overdraft credit program. Such costs and charge-off losses shall not include general overhead costs or charge-off losses due to unauthorized use, electronic fund transfer errors, billing errors, returned deposit items, or rescinded provisional credit.

3. A cost or charge-off loss is specifically traceable if it has a direct relationship to the provision of non-covered overdraft services and the state chartered banking institution can provide evidence to demonstrate such direct relationship.

4. A charge or combination of charges includes all revenue received in connection with an overdraft transaction, including, but not limited to, any extended or sustained overdraft fees, any interest charges on outstanding overdraft balances, and any other payments the state chartered banking institution receives in connection with an overdraft transaction.

5. When calculating the pro rata share of its total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, a state chartered banking institution shall include all non-covered overdraft transactions from the previous year in its calculation.

§ 6. This act shall take effect immediately.