S T A T E O F N E W Y O R K

7690

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

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

AN ACT to amend the banking law, in relation to creating the consumer overdraft protection act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The banking law is amended by adding a new article 2-A to read as follows:

ARTICLE 2-A

CONSUMER OVERDRAFT PROTECTION ACT

SECTION 60. LEGISLATIVE INTENT.
61. DEFINITIONS.
62. RESTRICTIONS ON OVERDRAFT PROTECTION PROGRAMS OR SERVICES.
63. RESTRICTIONS ON ADVERTISING OF OVERDRAFT PROTECTION PROGRAMS OR SERVICES.

S 60. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS THAT MANY NEW YORK STATE CONSUMERS ARE NOT INFORMED OF OVERDRAFT PROTECTION AND/OR FEES UNTIL AFTER SUCH EVENT HAS TAKEN PLACE. IT IS THE LEGISLATURE'S INTENT TO ENSURE THAT CONSUMERS ARE INFORMED OF THEIR OPTIONS IN REGARD TO OVERDRAFT PROTECTION PRIOR TO INCURRING FEES BY ESTABLISHING APPROPRIATE PROTECTIONS FOR SUCH CONSUMERS.

S 61. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "OVERDRAFT PROTECTION FEE" MEANS ANY FEE OR CHARGE IMPOSED IN CONNECTION WITH ANY ACCOUNT ON WHICH CHECKS OR OTHER DEBITS ARE PAID BY THE INSTITUTION IN WHICH SUCH ACCOUNT IS HELD EVEN THOUGH THERE ARE INSUFFICIENT FUNDS IN THE ACCOUNT TO COVER SUCH CHECKS OR OTHER DEBITS, UNLESS SUCH FEE OR CHARGE:

(A) IS IMPOSED ON AN INCIDENTAL BASIS AS A CUSTOMER ACCOMMODATION AND NOT MORE THAN THREE SUCH OVERDRAFT FEES ARE IMPOSED DURING ANY CALENDAR YEAR;

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

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(B) IS IMPOSED IN CONNECTION WITH AN EXTENSION OF CREDIT THROUGH AN OVERDRAFT LINE OF CREDIT THROUGH AN OVERDRAFT LINE OR CREDIT PROGRAM WHERE SUCH FEE OR CHARGE WAS CONSIDERED A FINANCE CHARGE UNDER THIS ARTICLE, AS IN EFFECT PRIOR TO THE ENACTMENT OF THIS ARTICLE; OR

(C) HAS BEEN DISCLOSED IN CONNECTION WITH A PROGRAM UNDER WHICH THE OVERDRAFT IS COVERED BY FUNDS TRANSFERRED FROM ANOTHER DEPOSIT, SHARE, OR OTHER ASSET ACCOUNT.

2. "CHECK" MEANS A DRAFT, PAYABLE ON DEMAND AND DRAWN ON OR PAYABLE THROUGH OR AT AN OFFICE OF A BANK, WHETHER OR NOT NEGOTIABLE, THAT IS HANDLED FOR FORWARD COLLECTION OR RETURN, INCLUDING A SUBSTITUTE CHECK AND A TRAVELER'S CHECK AND DOES NOT INCLUDE A NONCASH ITEM OR AN ITEM PAYABLE IN A MEDIUM OTHER THAN UNITED STATES DOLLARS.

3. "OTHER DEBITS" MEANS WITHDRAWALS FROM AN ACCOUNT BY THE CONSUMER THROUGH AN AUTOMATED TELLER MACHINE AND ELECTRONIC FUND TRANSFERS FROM AN ACCOUNT THAT ARE INITIATED OR AUTHORIZED BY THE CONSUMER.

4. "ELECTRONIC FUND TRANSFER" MEANS ANY TRANSFER OF FUNDS, OTHER THAN A TRANSACTION ORIGINATED BY CHECK, DRAFT, OR SIMILAR PAPER INSTRUMENT, WHICH IS INITIATED THROUGH AN ELECTRONIC TERMINAL, TELEPHONIC INSTRUMENT, OR COMPUTER OR MAGNETIC TAPE SO AS TO ORDER, INSTRUCT, OR AUTHORIZE A FINANCIAL INSTITUTION TO DEBIT OR CREDIT AN ACCOUNT. SUCH TERM INCLUDES, BUT IS NOT LIMITED TO, POINT-OF-SALE TRANSFERS, AUTOMATED TELLER MACHINE TRANSACTIONS, DIRECT DEPOSITS OR WITHDRAWALS OF FUNDS, AND TRANSFERS INITIATED BY TELEPHONE. SUCH TERM DOES NOT INCLUDE:

(A) ANY CHECK GUARANTEE OR AUTHORIZATION SERVICE WHICH DOES NOT DIRECTLY RESULT IN A DEBIT OR CREDIT TO A CUSTOMER'S ACCOUNT;

(B) ANY TRANSFER OF FUNDS, OTHER THAN THOSE PROCESSED BY AUTOMATED CLEARINGHOUSE, MADE BY A FINANCIAL INSTITUTION ON BEHALF OF A CONSUMER BY MEANS OF A SERVICE THAT TRANSFERS FUNDS AT EITHER FEDERAL RESERVE BANKS OR OTHER DEPOSITORY INSTITUTIONS WHICH ARE NOT DESIGNATED PRIMARILY TO TRANSFER FUNDS ON BEHALF OF A CONSUMER;

(C) ANY TRANSACTION THE PRIMARY PURPOSE OF WHICH IS THE PURCHASE OR SALE OF SECURITIES OR COMMODITIES THROUGH A BROKER-DEALER REGISTERED WITH OR REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION;

(D) ANY AUTOMATIC TRANSFER FROM A SAVINGS ACCOUNT TO A DEMAND DEPOSIT ACCOUNT PURSUANT TO AN AGREEMENT BETWEEN A CONSUMER AND A FINANCIAL INSTITUTION FOR THE PURPOSE OF COVERING AN OVERDRAFT OR MAINTAINING AN AGREED UPON MINIMUM BALANCE IN THE CONSUMER'S DEMAND DEPOSIT ACCOUNT; OR

(E) ANY TRANSFER OF FUNDS WHICH IS INITIATED BY A TELEPHONE CONVERSATION BETWEEN A CONSUMER AND AN OFFICER OR EMPLOYEE OF A FINANCIAL INSTITUTION WHICH IS NOT PURSUANT TO A PREARRANGED PLAN AND UNDER WHICH PERIODIC OR RECURRING TRANSFERS ARE NOT CONTEMPLATED; AS DETERMINED UNDER REGULATION OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

5. "ACCOUNT" MEANS ANY ACCOUNT INTENDED FOR USE BY AND GENERALLY USED BY A CONSUMER PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES INTO WHICH THE CONSUMER DEPOSITS FUNDS.

6. "TRANSACTION ACCOUNT" MEANS A DEPOSIT OR ACCOUNT ON WHICH THE DEPOSITOR OR ACCOUNT HOLDER IS PERMITTED TO MAKE WITHDRAWALS BY NEGOTIABLE OR TRANSFERABLE INSTRUMENT, PAYMENT ORDERS OF WITHDRAWAL, TELEPHONE TRANSFERS, OR OTHER SIMILAR ITEMS FOR THE PURPOSE OF MAKING PAYMENTS OR TRANSFERS TO THIRD PERSONS OR OTHERS. SUCH TERM INCLUDES DEMAND DEPOSITS, NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNTS, SAVING DEPOSITS SUBJECT TO AUTOMATIC TRANSFERS, AND SHARE DRAFT ACCOUNTS.

S 62. RESTRICTIONS ON OVERDRAFT PROTECTION PROGRAMS OR SERVICES. 1. GENERAL PROVISIONS. IN THE CASE OF ANY TRANSACTION ACCOUNT OF A CONSUMER AT ANY INSTITUTION, NO OVERDRAFT PROTECTION FEE MAY BE IMPOSED ON SUCH ACCOUNT FOR ANY EXTENSION OF FUNDS BY THE INSTITUTION TO COVER ANY CHECK

OR OTHER DEBIT FOR WHICH THERE ARE INSUFFICIENT FUNDS IN THE CONSUMER'S ACCOUNT TO PAY SUCH CHECK OR OTHER DEBIT, UNLESS:

(A) THE CONSUMER HAS PROVIDED SPECIFIC WRITTEN CONSENT TO ANY PROGRAM OR SERVICE THAT PROVIDES FOR CHARGING SUCH FEES IN CONNECTION WITH ANY SUCH EXTENSION OF FUNDS;

(B) SUCH FEE IS IMPOSED PURSUANT TO THE TERMS OF A WRITTEN AGREEMENT WITH THE CONSUMER WHICH DISCLOSES, IN A CLEAR AND CONSPICUOUS MANNER:

(I) THE AMOUNT OF ANY FEE IMPOSED IN CONNECTION WITH PAYING AN OVERDRAFT;

(II) ANY APPLICABLE DISCLOSURE REQUIRED BY THIS ARTICLE IN CONNECTION WITH SUCH EXTENSION OF CREDIT;

(III) THE CATEGORIES OF TRANSACTION FOR WHICH A FEE FOR PAYMENT OF AN OVERDRAFT MAY BE IMPOSED, INCLUDING WHETHER AN OVERDRAFT CREATED BY WITHDRAWALS AT AUTOMATED TELLER MACHINES OR OTHER ELECTRONIC FUND TRANSFERS WILL BE COVERED AND A FEE IMPOSED;

(IV) THE TIME PERIOD BY WHICH THE CONSUMER MUST REPAY OR COVER ANY EXTENSION OF CREDIT IN THE FORM OF PAYMENT OF AN OVERDRAFT;

(V) THE CIRCUMSTANCES UNDER WHICH THE INSTITUTION IN WHICH AN ACCOUNT IS HELD WILL NOT PAY AN OVERDRAFT; AND

(VI) OTHER INFORMATION REQUIRED TO BE DISCLOSED BY LAW;

(C) SUCH FEE IS SEPARATELY AND CONSPICUOUSLY DISCLOSED, EACH TIME THE FEE IS IMPOSED, IN ANY PERIODIC STATEMENT PROVIDED TO THE CONSUMER WITH RESPECT TO SUCH ACCOUNT AND IS INCLUDED IN THE CALCULATION OF THE ANNUAL PERCENTAGE RATE AS REQUIRED BY STATE AND FEDERAL LAW;

(D) IN NO CASE SHALL OVERDRAFT FEES OVER THE COURSE OF ONE YEAR EXCEED ONE HUNDRED DOLLARS, INCLUDING ANY ADDITIONAL CHARGES AND/OR FEES IMPOSED PURSUANT TO THIS SECTION;

(E) EVERY INSTITUTION SHALL ESTABLISH AN AUTOMATIC BOUNCE SYSTEM FOR ANY AMOUNT EXCEEDING THE LIMIT PRESCRIBED BY PARAGRAPH (D) OF THIS SUBDIVISION.

2. MONTHLY FEE. ANY INSTITUTION MAY REQUIRE A FEE OF ONE DOLLAR FOR ANY CHECKING ACCOUNT FOR THE MAINTENANCE OF AN AUTOMATIC BOUNCE SYSTEM. SUCH FEE MUST BE DISCLOSED PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

3. CLARIFICATION RELATING TO OVERDRAFT FEES. IN CASE OF ANY TRANSACTION ACCOUNT OF A CONSUMER AT ANY INSTITUTION, THE PROHIBITION AGAINST AN OVERDRAFT PROTECTION FEE UNDER SUBSECTION ONE OF THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE AMOUNT OF SUCH FEE IS THE SAME AS, OR LESS THAN, ANY FEE IMPOSED BY THE INSTITUTION WITH RESPECT TO SUCH ACCOUNT FOR A CHECK OR OTHER DEBIT THAT IS RETURNED UNPAID.

4. PROHIBITION ON MISREPRESENTATION. IT SHALL BE A VIOLATION OF THIS ARTICLE IF ANY INSTITUTION:

(A) WILL NOT EXTEND FUNDS UNDER SPECIFIC CIRCUMSTANCE TO COVER AN OVERDRAFT IN ANY TRANSACTION ACCOUNT OF A CONSUMER AT THE INSTITUTION; OR

(B) RESERVES THE RIGHT TO EXTEND FUNDS TO PAY ANY SUCH OVERDRAFT ON A DISCRETIONARY BASIS, ANY REPRESENTATION BY SUCH INSTITUTION THAT THE INSTITUTION WILL EXTEND CREDIT TO COVER ALL OVERDRAFTS ON SUCH ACCOUNT.

S 63. RESTRICTIONS OF ADVERTISING OF OVERDRAFT PROTECTION PROGRAMS OR SERVICES. 1. GENERAL PROVISIONS. IN THE CASE OF AN INSTITUTION THAT MAINTAINS TRANSACTION ACCOUNTS FOR CONSUMERS AND OFFERS A PROGRAM OR SERVICE UNDER WHICH THE INSTITUTION PAYS ANY OVERDRAFT ON THE ACCOUNT IN EXCHANGE FOR PAYMENT OF AN OVERDRAFT PROTECTION FEE, THE INSTITUTION MAY NOT MAKE ANY OF THE FOLLOWING REPRESENTATIONS OR STATEMENTS WITH RESPECT TO SUCH PROGRAM OR SERVICE IN ANY ADVERTISEMENT OR PROMOTION:

(A) ANY REPRESENTATION OR STATEMENT DESCRIBING A TRANSACTION ACCOUNT AS FREE OR NO COST IF THE ACCOUNT INCLUDES, OR IS PROMOTED AS INCLUDING,

OVERDRAFT PROTECTION SERVICES THAT INVOLVE THE PAYMENT OF OVERDRAFT PROTECTION FEES.

(B) ANY REPRESENTATION OR STATEMENT ENCOURAGING THE USE OF THE ACCOUNT AS A SERVICE TO MEET SHORT-TERM CREDIT NEEDS OR TO OBTAIN ADVANTAGES ON A CONSUMER'S NEXT PAYMENT OF SALARY, WAGES, BENEFITS, OR OTHER INCOME.

(C) ANY REPRESENTATION OR STATEMENT THAT THE FINANCIAL INSTITUTION WILL HONOR ALL CHECKS OR OTHER DEBITS PRESENTED AGAINST THE ACCOUNT, IF THE INSTITUTION RETAINS DISCRETION AT ANY TIME NOT TO HONOR ANY CHECK OR OTHER DEBIT PRESENTED.

2. REGULATIONS. THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM SHALL PRESCRIBE REGULATIONS IMPLEMENTING THE RESTRICTION SET FORTH IN SUBDIVISION ONE OF THIS SECTION PURSUANT TO THE AUTHORITY OF THE BOARD UNDER SECTION 18(F) OF THE FEDERAL TRADE COMMISSION ACT, AND MAY, BY REGULATION OR ORDER, RESTRICT SUCH ADDITIONAL ACTS OR PRACTICES THAT THE BOARD FINDS TO BE UNFAIR OR DECEPTIVE IN CONNECTION WITH THE OFFERING, OPERATION, AND ADVERTISING OF OVERDRAFT PROTECTION PROGRAMS AND SERVICES.

S 2. This act shall take effect on the one hundred eightieth day after it is shall have become a law.