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I N S E N A T E

January 13, 2016

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed 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:

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

3 ARTICLE 2-A

4 CONSUMER OVERDRAFT PROTECTION ACT

5 SECTION 60. LEGISLATIVE INTENT.

6 61. DEFINITIONS.

7 62. RESTRICTIONS ON OVERDRAFT PROTECTION PROGRAMS OR SERVICES.

8 63. RESTRICTIONS ON ADVERTISING OF OVERDRAFT PROTECTION PROGRAMS  
9 OR SERVICES.

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

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

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

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

26 (B) IS IMPOSED IN CONNECTION WITH AN EXTENSION OF CREDIT THROUGH AN  
27 OVERDRAFT LINE OF CREDIT THROUGH AN OVERDRAFT LINE OR CREDIT PROGRAM

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

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1 WHERE SUCH FEE OR CHARGE WAS CONSIDERED A FINANCE CHARGE UNDER THIS  
2 ARTICLE, AS IN EFFECT PRIOR TO THE ENACTMENT OF THIS ARTICLE; OR

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

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

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

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

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

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

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

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

36 (E) ANY TRANSFER OF FUNDS WHICH IS INITIATED BY A TELEPHONE CONVERSA-  
37 TION BETWEEN A CONSUMER AND AN OFFICER OR EMPLOYEE OF A FINANCIAL INSTI-  
38 TUTION WHICH IS NOT PURSUANT TO A PREARRANGED PLAN AND UNDER WHICH PERI-  
39 ODIC OR RECURRING TRANSFERS ARE NOT CONTEMPLATED; AS DETERMINED UNDER  
40 REGULATION OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

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

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

51 S 62. RESTRICTIONS ON OVERDRAFT PROTECTION PROGRAMS OR SERVICES. 1.  
52 GENERAL PROVISIONS. IN THE CASE OF ANY TRANSACTION ACCOUNT OF A CONSUMER  
53 AT ANY INSTITUTION, NO OVERDRAFT PROTECTION FEE MAY BE IMPOSED ON SUCH  
54 ACCOUNT FOR ANY EXTENSION OF FUNDS BY THE INSTITUTION TO COVER ANY CHECK  
55 OR OTHER DEBIT FOR WHICH THERE ARE INSUFFICIENT FUNDS IN THE CONSUMER'S  
56 ACCOUNT TO PAY SUCH CHECK OR OTHER DEBIT, UNLESS:

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

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

6 (I) THE AMOUNT OF ANY FEE IMPOSED IN CONNECTION WITH PAYING AN OVER-  
7 DRAFT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (A) ANY REPRESENTATION OR STATEMENT DESCRIBING A TRANSACTION ACCOUNT  
54 AS FREE OR NO COST IF THE ACCOUNT INCLUDES, OR IS PROMOTED AS INCLUDING,  
55 OVERDRAFT PROTECTION SERVICES THAT INVOLVE THE PAYMENT OF OVERDRAFT  
56 PROTECTION FEES.

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

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

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

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