



Ohio Legislative Service Commission

Bill Analysis

Daniel M. DeSantis

H.B. 342

128th General Assembly
(As Introduced)

Rep. Yates

BILL SUMMARY

- Limits overdraft fees that may be charged by a bank, savings and loan, savings bank, or credit union.
- Establishes certain requirements for overdraft protection services provided by banks, savings and loans, savings banks, and credit unions.

CONTENT AND OPERATION

Overdraft fee

(R.C. 1109.051, 1151.232, 1161.291, and 1733.245)

Neither federal nor Ohio law have established restrictions on the amount of the fee that a financial institution can charge for an overdraft to a demand deposit account (an account from which money can be drawn at any time, such as a checking or savings account). The bill authorizes banks, savings and loans, savings banks, and credit unions (see "**Definitions**," below) to charge an account holder a fee, not to exceed \$5 per transaction, for any check or other debit transaction authorized by the account holder, for which there are insufficient funds in the specified account. The phrase "other debit transaction" is not defined in the bill, but may include the use of a debit card at a point of sale terminal, or the use of an automated teller machine to make a withdrawal.

While the bill expressly limits overdraft fees chargeable by the financial institutions described above, federal law may limit the bill's application (see **COMMENT**).

Overdraft protection services

(R.C. 1109.052, 1151.23, 1151.233, 1161.29, 1161.292, and 1733.246)

Overview

Financial institutions typically offer overdraft protection services for their customers with demand deposit accounts. The overdraft protection service might involve an automatic extension of credit to cover the amount of an overdraft. Under current law, banks, savings and loans, savings banks, and credit unions may extend credit in the form of overdraft privileges.¹ These loans currently must comply with the regulations that generally govern lending by the entity. The bill expressly authorizes banks, savings and loans, savings banks, and credit unions to extend secured and unsecured credit under these overdraft loans and establishes mandatory requirements for such loans (see **COMMENT**).

Program requirements

The bill prohibits a bank, savings and loan, savings bank, or credit union from imposing a fee for an extension of credit to cover insufficient funds in the consumer's account unless the following conditions are met:

(1) The consumer has provided specific written consent to any program or service that provides for charging of such fees in connection with any such extension of funds.

(2) The fee is imposed pursuant to the terms of a written agreement with the consumer which discloses, in a clear and conspicuous manner (a) the amount of any fee imposed in connection with paying an overdraft, (b) any applicable disclosure required by the federal "Truth in Lending Act," (c) the categories of transactions 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, (d) the time period by which the consumer must repay or cover any extension of credit in the form of payment of an overdraft, (e) the circumstances under which the institution in which an account is held will not pay an overdraft, and (f) any other information that the Superintendent of Financial Institutions may require by rule to be disclosed.

(3) The fee is separately and conspicuously disclosed, each time the fee is imposed, in any periodic statement provided to the consumer with respect to such

¹ R.C. 1109.15 (not in the bill), 1151.23, 1161.29, and 1733.25 (not in the bill).

account and is included in the calculation of the annual percentage rate as required by the Truth in Lending Act.

The written agreement described above must also include clear and conspicuous disclosure of any specific circumstances under which the institution will not extend funds to cover an overdraft in any transaction account of a customer or under which the institution reserves the right to extend funds to pay any such overdraft on a discretionary basis. Financial institutions are prohibited from representing that they will extend credit to cover all account overdrafts.

Definitions

The following definitions under current law apply to the bill.

"Bank" means a corporation that solicits, receives, or accepts money or its equivalent for deposit as a business, whether the deposit is made by check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger card, or otherwise. "Bank" also includes a state bank or a corporation doing business as a bank or savings bank under authority granted by the bank regulatory authority of another state of the United States or another country, but does not include a savings association, savings bank, or credit union. (R.C. 1101.01, not in the bill.)

"Savings and loan association" means a corporation organized for the purpose of raising money to be loaned to its members or to others (R.C. 1151.01, not in the bill).

"Savings bank" means a corporation that has its home office located in this state, that is organized for the purposes of receiving deposits and raising money to be loaned to its members or to others, and that maintains at least 60% of its total assets in the housing-related and other investments set forth in the Internal Revenue Code. "Savings bank" does not include banks, savings and loan associations, or credit unions. (R.C. 1161.01, not in the bill.)

"Credit union" means a corporation organized and qualified as such under Chapter 1733. of the Revised Code. In addition to the powers enumerated in Chapter 1733. and unless restricted there, every credit union has the general powers conferred upon corporations by Chapter 1701. of the Revised Code. A credit union is a nonprofit cooperative financial institution and as such is organized and operates for the mutual benefit and general welfare of its members with the earnings, savings, benefits, or services of the credit union being distributed to its members as patron savers and borrowers and not to its members as individuals. (R.C. 1733.01, not in the bill.)

COMMENT

Federal law grants broad regulatory authority over the credit-related transactions of the financial institutions under the jurisdiction of the various federal regulators. Those regulators include the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. Those agencies, in certain cases, exercise jurisdiction over Ohio-chartered financial institutions. Indeed, for example, the Federal Reserve Board has already adopted regulations (1) prohibiting all banks, savings and loans, savings banks, and credit unions from assessing a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to overdraft services unless the institution provides the customer with a reasonable opportunity to opt-in, or affirmatively assent, to the services (12 C.F.R. 205.17), and (2) governing disclosures about overdraft services, including fee amounts, offered by the same institutions (except credit unions) (12 C.F.R. 230.11). As a result, issues regarding federal law and the requirements of this bill may arise, including issues regarding preemption.

HISTORY

ACTION	DATE
Introduced	10-29-09

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