

115TH CONGRESS
2D SESSION

S. 3343

To amend the Truth in Lending Act to limit overdraft fees and establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2018

Mr. BOOKER (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to limit overdraft fees and establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, 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 “Stop Overdraft Profit-
5 eering Act of 2018”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Overdraft coverage is a form of short-term
2 credit that depository institutions market for con-
3 sumer transaction accounts. Historically, depository
4 institutions covered overdrafts for a fee on an ad hoc
5 basis.

6 (2) With the growth in specially designed soft-
7 ware programs and in consumer use of debit cards,
8 overdraft coverage for a fee has become more preva-
9 lent.

10 (3) Many depository institutions market a
11 range of overdraft options but aggressively encour-
12 age consumers to consent to the most expensive op-
13 tion, where a high flat fee is collected for every indi-
14 vidual overdraft transaction.

15 (4) Many depository institutions collect a high
16 flat fee, including for small dollar transactions, each
17 time the institution covers an overdraft, impose mul-
18 tiple overdraft coverage fees within a single day, and
19 charge additional fees for each day during which the
20 account remains overdrawn.

21 (5) Such abusive practices in connection with
22 overdraft coverage fees have deprived consumers of
23 meaningful options and placed significant financial
24 burdens on low- and moderate-income consumers.

1 (b) PURPOSE.—It is the purpose of this Act to pro-
2 tect consumers by limiting abusive overdraft coverage fees
3 and practices, and by providing meaningful disclosures
4 and consumer choice in connection with overdraft coverage
5 fees.

6 **SEC. 3. DEFINITIONS.**

7 (a) ADDITIONAL DEFINITIONS.—Section 140B of the
8 Truth in Lending Act, as added by section 4, is amended
9 by adding at the end the following:

10 “(o) DEFINITIONS RELATING TO OVERDRAFT COV-
11 ERAGE.—For purposes of this section:

12 “(1) CHECK.—The term ‘check’ has the same
13 meaning as in section 3(6) of the Check Clearing for
14 the 21st Century Act (12 U.S.C. 5002(6)), other
15 than a traveler’s check.

16 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
17 pository institution’ has the same meaning as in
18 clauses (i) through (vi) of section 19(b)(1)(A) of the
19 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

20 “(3) NONSUFFICIENT FUND FEE.—The term
21 ‘nonsufficient fund fee’ means a fee or charge as-
22 sessed in connection with an overdraft for which a
23 depository institution declines payment.

24 “(4) OVERDRAFT.—The term ‘overdraft’
25 means, in a withdrawal by check or other debit from

1 a consumer transaction account in which there are
2 insufficient or unavailable funds in the account to
3 cover such check or debit, the amount of such with-
4 drawal that exceeds the available funds in the ac-
5 count.

6 “(5) OVERDRAFT COVERAGE.—The term ‘over-
7 draft coverage’ means the payment of a check pre-
8 sented or other debit posted against a consumer
9 transaction account by the depository institution in
10 which such account is held, even though there are
11 insufficient or unavailable funds in the account to
12 cover such checks or other debits.

13 “(6) OVERDRAFT COVERAGE FEE.—The term
14 ‘overdraft coverage fee’ means any fee or charge as-
15 sessed in connection with overdraft coverage, or in
16 connection with any negative account balance that
17 results from overdraft coverage, excluding—

18 “(A) a periodic rate in connection with an
19 extension of credit through an overdraft line of
20 credit program; or

21 “(B) a fee or charge imposed in connection
22 with any transfer from an account linked to an-
23 other transaction account.

24 “(7) OVERDRAFT COVERAGE PROGRAM.—The
25 term ‘overdraft coverage program’ means a service

1 under which a depository institution assesses an
2 overdraft coverage fee for overdraft coverage.

3 “(8) TRANSACTION ACCOUNT.—The term
4 ‘transaction account’ has the same meaning as in
5 section 19(b)(1)(C) of the Federal Reserve Act (12
6 U.S.C. 461(b)(1)(C)).”.

7 **SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT**
8 **COVERAGE PROGRAMS.**

9 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
10 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
11 at the end the following new section:

12 **“§ 140B. Overdraft coverage program disclosures and**
13 **consumer protection**

14 “(a) PROHIBITIONS.—No depository institution may
15 engage in acts or practices in connection with the mar-
16 keting of or the provision of overdraft coverage that are
17 designed to evade the provisions of this section.

18 “(b) MARKETING DISCLOSURES.—Each depository
19 institution that provides or offers to provide overdraft cov-
20 erage with respect to transaction accounts held at that de-
21 pository institution shall clearly and conspicuously disclose
22 in all marketing materials for such overdraft coverage any
23 overdraft coverage fees with respect to such overdraft cov-
24 erage.

25 “(c) OVERDRAFT COVERAGE FEES.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), no depository institution may charge an
 3 overdraft coverage fee for any transaction—

4 “(A) at an automated teller machine; or

5 “(B) involving a one-time debit card trans-
 6 action.

7 “(2) OVERDRAFT FEES PERMITTED FOR
 8 CHECKS AND AUTOMATIC RECURRING PAYMENTS.—
 9 A depository institution may charge an overdraft
 10 coverage fee for a check or an automatic recurring
 11 payment as part of an overdraft coverage program
 12 that incorporates the requirements identified in sub-
 13 sections (d) through (l).

14 “(d) CONSUMER CONSENT OPT-IN.—A depository in-
 15 stitution may charge overdraft coverage fees with respect
 16 to the use of checks or automatic recurring payments only
 17 if—

18 “(1) the depository institution has waited at
 19 least 3 days after opening an account to offer the
 20 overdraft coverage program; and

21 “(2) the consumer has consented in writing, in
 22 electronic form, or in such other form as is per-
 23 mitted under regulations of the Bureau.

24 “(e) CONSUMER DISCLOSURES.—Each depository in-
 25 stitution shall clearly disclose to each consumer covered

1 by an overdraft protection program of that depository in-
2 stitution—

3 “(1) that the consumer may be charged for not
4 more than one overdraft coverage fee in any single
5 calendar month and not more than 6 overdraft cov-
6 erage fees in any single calendar year, per trans-
7 action account;

8 “(2) information about any alternative over-
9 draft products that are available (such as linked ac-
10 counts, lines of credit, and alerts), including a clear
11 explanation of how the terms and fees for such alter-
12 native services and products differ; and

13 “(3) such other information as the Bureau may
14 require, by rule.

15 “(f) PERIODIC STATEMENTS.—Each depository insti-
16 tution that offers an overdraft coverage program shall, in
17 each periodic statement for any transaction account that
18 has an overdraft coverage program feature, clearly disclose
19 to the consumer the dollar amount of all overdraft cov-
20 erage fees and nonsufficient fund fees charged to the con-
21 sumer for the relevant period and year to date.

22 “(g) EXCLUSION FROM ACCOUNT BALANCE INFOR-
23 MATION.—No depository institution may include the
24 amount available under the overdraft coverage program of
25 a consumer as part of the transaction account balance of

1 that consumer and the transaction account balance shall
2 be more prominently displayed than any amount available
3 under the overdraft coverage program.

4 “(h) PROMPT NOTIFICATION.—Each depository insti-
5 tution shall promptly notify consumers, through a reason-
6 able means selected by the consumer, when overdraft cov-
7 erage has been accessed with respect to the account of
8 the consumer, not later than on the day on which such
9 access occurs, including—

10 “(1) the date of the transaction;

11 “(2) the type of transaction;

12 “(3) the overdraft amount;

13 “(4) the overdraft coverage fee;

14 “(5) the amount necessary to return the ac-
15 count to a positive balance; and

16 “(6) whether the participation of a consumer in
17 an overdraft coverage program will be terminated if
18 the account is not returned to a positive balance
19 within a given time period.

20 “(i) TERMINATED OR SUSPENDED COVERAGE.—

21 Each depository institution shall provide prompt notice to
22 the consumer, using a reasonable means selected by the
23 consumer, if the institution terminates or suspends access
24 to an overdraft coverage program with respect to an ac-

1 count of the consumer, including a clear rationale for the
2 action.

3 “(j) OVERDRAFT COVERAGE RESTRICTIONS AND FEE
4 LIMITS FOR CHECKS AND AUTOMATIC RECURRING PAY-
5 MENTS.—

6 “(1) FREQUENCY.—A depository institution
7 may charge not more than 1 overdraft coverage fee
8 in any single calendar month, and not more than 6
9 overdraft coverage fees in any single calendar year,
10 per transaction account.

11 “(2) REASONABLE AND PROPORTIONAL OVER-
12 DRAFT COVERAGE FEES.—

13 “(A) IN GENERAL.—The amount of any
14 overdraft coverage fee shall be reasonable and
15 proportional to the financial institution’s costs
16 in providing the overdraft coverage for that
17 transaction, including the financial institution’s
18 cost of funds and other costs directly associated
19 with the transaction.

20 “(B) SAFE HARBOR RULE AUTHORIZED.—
21 The Bureau, in consultation with the Board of
22 Governors of the Federal Reserve System, the
23 Comptroller of the Currency, the Board of Di-
24 rectors of the Federal Deposit Insurance Cor-
25 poration, and the National Credit Union Ad-

1 ministration Board, may issue rules to provide
2 an amount for any overdraft coverage fee that
3 is presumed to be reasonable and proportional
4 to the financial institution’s costs in providing
5 the overdraft coverage for the transaction.

6 “(3) POSTING ORDER.—Each depository insti-
7 tution shall post transactions with respect to trans-
8 action accounts in such a manner that minimizes
9 overdraft coverage fees and nonsufficient fund fees.

10 “(k) DEBIT HOLDS.—No depository institution may
11 charge an overdraft coverage fee on any category of trans-
12 action, if the overdraft results solely from a debit hold
13 amount placed on a transaction account that exceeds the
14 actual dollar amount of the transaction.

15 “(l) NONDISCRIMINATION FOR NOT OPTING IN.—In
16 implementing the requirements of this section, each depos-
17 itory institution shall provide to consumers who have not
18 consented to participate in an overdraft coverage program,
19 transaction accounts having the same terms, conditions,
20 or other features as those that are provided to consumers
21 who have consented to participate in such overdraft cov-
22 erage program, except for features of such overdraft cov-
23 erage.

1 “(m) NONSUFFICIENT FUND FEE LIMITS.—No de-
2 pository institution may charge any nonsufficient fund fee
3 with respect to—

4 “(1) any transaction at an automated teller ma-
5 chine; or

6 “(2) any debit card transaction.

7 “(n) REPORTS TO CONSUMER REPORTING AGEN-
8 CIES.—

9 “(1) IN GENERAL.—No depository institution
10 may report negative information regarding the use
11 of overdraft coverage by a consumer to any con-
12 sumer reporting agency (as that term is defined in
13 section 603 of the Fair Credit Reporting Act (15
14 U.S.C. 1681a)) when the amounts of the overdraft
15 are repaid under the terms of an overdraft coverage
16 program.

17 “(2) DELETION.—A depository institution shall
18 request that the consumer reporting agency delete
19 any previously reported negative information, includ-
20 ing closure of an account due to unpaid overdrafts,
21 if the consumer repays the overdrafts or tenders
22 payment for the overdrafts to the depository institu-
23 tion or its successor.

24 “(o) RULE OF CONSTRUCTION.—No provision of this
25 section may be construed as prohibiting a depository insti-

1 tution from retaining the discretion to pay, without assess-
 2 ing an overdraft coverage fee or charge, an overdraft in-
 3 curred by a consumer.”.

4 (b) TECHNICAL AMENDMENT.—The table of contents
 5 for chapter 2 of the Truth in Lending Act is amended
 6 by inserting after the item relating to section 140A the
 7 following new item:

“140B. Overdraft coverage program disclosures and consumer protection.”.

8 **SEC. 5. REGULATORY AUTHORITY OF THE CFPB.**

9 Not later than 24 months after the date of the enact-
 10 ment of this Act, the Bureau of Consumer Financial Pro-
 11 tection (hereafter in this Act referred to as the “CFPB”)
 12 shall issue such final rules and publish such model forms
 13 as necessary to carry out section 140B of the Truth in
 14 Lending Act, as added by this Act.

15 **SEC. 6. EFFECTIVE DATE.**

16 (a) IN GENERAL.—This Act and the amendments
 17 made by this Act shall take effect 1 year after the date
 18 of the enactment of this Act, whether or not the rules of
 19 the CFPB under this Act or such amendments are pre-
 20 scribed in final form.

21 (b) MORATORIUM ON FEE INCREASES.—

22 (1) IN GENERAL.—During the 1-year period be-
 23 ginning on the date of the enactment of this Act, no
 24 depository institution may increase the overdraft
 25 coverage fees or charges assessed on transaction ac-

1 counts for paying a transaction (including a check or
2 other debit) in connection with an overdraft or for
3 nonsufficient funds.

4 (2) DEFINITIONS.—As used in this section, the
5 terms “depository institution”, “overdraft”, “over-
6 draft coverage fee”, “transaction account”, and
7 “nonsufficient fund fee” have the same meanings as
8 in section 140B(o) of the Truth in Lending Act, as
9 added by this Act.

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