

116TH CONGRESS
2D SESSION

S. 3566

To prohibit depository institutions from assessing overdraft and non-sufficient fund fees during the novel coronavirus crisis and other disasters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2020

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 prohibit depository institutions from assessing overdraft and non-sufficient fund fees during the novel coronavirus crisis and other disasters, 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 during COVID–19 Emergency Act of 2020”.

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

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

8 (1) Overdraft coverage is a form of short-term
9 credit that depository institutions market for con-

1 sumer transaction accounts. Historically, depository
2 institutions covered overdrafts for a fee on an ad hoc
3 basis.

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

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

13 (4) Many depository institutions—

14 (A) collect a high flat fee, including for
15 small dollar transactions, each time the institu-
16 tion covers an overdraft, impose multiple over-
17 draft coverage fees within a single day, and
18 charge additional fees for each day during
19 which the account remains overdrawn; and

20 (B) charge unreasonable nonsufficient fees.

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

1 (6) During the public health and financial crisis
 2 caused by the novel coronavirus, consumers need re-
 3 lief from such abusive practices more than ever be-
 4 fore.

5 (b) PURPOSE.—It is the purpose of this Act to pro-
 6 tect consumers by eliminating abusive overdraft coverage
 7 fees, nonsufficient fund fees, and practices relating to the
 8 assessment of those fees during covered periods.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) CHECK.—The term “check”—

12 (A) has the meaning given the term in sec-
 13 tion 3(6) of the Check Clearing for the 21st
 14 Century Act (12 U.S.C. 5002(6)); and

15 (B) does not include a traveler’s check.

16 (2) CHECKING ACCOUNT PENALTY FEE.—The
 17 term “checking account penalty fee” means a non-
 18 sufficient fund fee or an overdraft coverage fee.

19 (3) CONSUMER.—The term “consumer” has the
 20 meaning given the term in section 103(i) of the
 21 Truth in Lending Act (15 U.S.C. 1602(i)).

22 (4) CONSUMER REPORTING AGENCY.—The term
 23 “consumer reporting agency” has the meaning given
 24 the term in section 603 of the Fair Credit Reporting
 25 Act (15 U.S.C. 1681a).

1 (5) COVERED PERIOD.—The term “covered pe-
2 riod” means—

3 (A) the period that begins 1 day after the
4 date on which a major disaster is declared by
5 the President under section 401 of the Robert
6 T. Stafford Disaster Relief and Emergency As-
7 sistance Act (42 U.S.C. 5170), where assistance
8 is authorized under section 408 of that Act (42
9 U.S.C. 5174), and ending 120 days after the
10 end of the incident period for that disaster; or

11 (B) the period that begins 1 day after the
12 date on which the President determines an
13 emergency exists under section 501(b) of the
14 Robert T. Stafford Disaster Relief and Emer-
15 gency Assistance Act (42 U.S.C. 5191(b)) and
16 simultaneously covers all States for a single in-
17 cident, event, or emergency and ending 120
18 days after the end of the incident period for
19 that emergency.

20 (6) DEPOSITORY INSTITUTION.—The term “de-
21 pository institution” has the same meaning as in
22 clauses (i) through (vi) of section 19(b)(1)(A) of the
23 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

24 (7) NONSUFFICIENT FUND FEE.—The term
25 “nonsufficient fund fee” means a fee or charge as-

1 sessed in connection with an overdraft for which a
2 depository institution declines payment.

3 (8) OVERDRAFT.—The term “overdraft”
4 means, in a withdrawal by check or other debit from
5 a consumer transaction account in which there are
6 insufficient or unavailable funds in the account to
7 cover such check or debit, the amount of such with-
8 drawal that exceeds the available funds in the ac-
9 count.

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

17 (10) OVERDRAFT COVERAGE FEE.—The term
18 “overdraft coverage fee” means any fee or charge
19 assessed in connection with overdraft coverage, or in
20 connection with any negative account balance that
21 results from overdraft coverage, excluding—

22 (A) a periodic rate in connection with an
23 extension of credit through an overdraft line of
24 credit program; or

1 (B) a fee or charge imposed in connection
 2 with any transfer from an account linked to an-
 3 other transaction account.

4 (11) OVERDRAFT COVERAGE PROGRAM.—The
 5 term “overdraft coverage program” means a service
 6 under which a depository institution assesses an
 7 overdraft coverage fee for overdraft coverage.

8 (12) TRANSACTION ACCOUNT.—The term
 9 “transaction account” has the meaning given the
 10 term in section 19(b)(1)(C) of the Federal Reserve
 11 Act (12 U.S.C. 461(b)(1)(C)).

12 **SEC. 4. CHECKING ACCOUNT PENALTY FEES.**

13 (a) PROHIBITION.—

14 (1) IN GENERAL.—During a covered period, no
 15 depository institution may assess a checking account
 16 penalty fee for any transaction, including a trans-
 17 action at an automated teller machine, a 1-time
 18 debit card transaction, a transaction that involves
 19 the use of a check, or an automatic recurring pay-
 20 ment.

21 (2) CORRECTION.—If a depository institution
 22 assesses a checking account penalty fee during a
 23 covered period in violation of paragraph (1), the de-
 24 pository institution shall be considered to be in com-

1 pliance with that paragraph if the depository institu-
2 tion promptly reverses that assessment.

3 (b) REPORTS TO CONSUMER REPORTING AGEN-
4 CIES.—During a covered period, no depository institution
5 may report negative information regarding the use of over-
6 draft coverage by a consumer to any consumer reporting
7 agency.

8 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion may be construed as prohibiting a depository institu-
10 tion, during a covered period, from retaining the discretion
11 to pay, without assessing a checking account penalty fee,
12 an overdraft incurred by a consumer.

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