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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MALONEY (for herself, Mr. SANDERS, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on

A BILL

To extend the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to require customer consent before a depository institution may initiate overdraft protection services and fees, to enhance the information made available to consumers relating to overdraft protection services and fees, to prohibit systematic manipulation in the posting of checks and other debits to a



depository account for the purpose of generating overdraft protection fees, 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 “Consumer Overdraft
5 Protection Fair Practices Act”.

6 **SEC. 2. RESTRICTIONS ON OVERDRAFT PROTECTION PRO-**
7 **GRAMS OR SERVICES.**

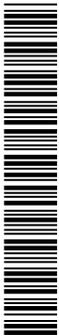
8 (a) TRUTH IN LENDING ACT AMENDMENTS.—

9 (1) DEFINITION.—Section 103 of the Truth in
10 Lending Act (15 U.S.C. 1602) is amended by add-
11 ing at the end the following new subsection:

12 “(cc) TERMS RELATING TO SHORT-TERM EXTEN-
13 SIONS OF CREDIT UNDER OVERDRAFT PROTECTION PRO-
14 GRAMS.—

15 “(1) OVERDRAFT PROTECTION FEE.—The term
16 ‘overdraft protection fee’ means any fee or charge
17 imposed in connection with any account on which
18 checks or other debits are paid by the institution in
19 which such account is held even though there are in-
20 sufficient funds in the account to cover such checks
21 or other debits, unless such fee or charge—

22 “(A) is imposed on an incidental basis as
23 a customer accommodation and no more than 3



1 such overdraft fees are imposed during any cal-
2 endar year;

3 “(B) is imposed in connection with an ex-
4 tension of credit to a transaction account of a
5 consumer under a written open end consumer
6 credit plan the purpose of which is to cover any
7 check presented against, electronic fund trans-
8 fer from, or other debit of the account for the
9 payment of which there are insufficient funds in
10 the account; or

11 “(C) has been disclosed in connection with
12 a program under which the overdraft is covered
13 by funds transferred from another deposit,
14 share, or other asset account.

15 “(2) OTHER TERMS.—

16 “(A) CHECK.—The term ‘check’ has the
17 same meaning as in section 3(6) of the Check
18 Clearing for the 21st Century Act.

19 “(B) OTHER DEBITS.—The term ‘other
20 debits’ includes withdrawals from an account by
21 the consumer through an automated teller ma-
22 chine and electronic fund transfers from an ac-
23 count that are initiated or authorized by the
24 consumer.



1 “(C) ELECTRONIC FUND TRANSFER.—The
2 term ‘electronic fund transfer’ has the same
3 meaning as in section 903.

4 “(D) ACCOUNT.—The term ‘account’
5 means any account intended for use by and
6 generally used by a consumer primarily for per-
7 sonal, family, or household purposes into which
8 the consumer deposits funds.

9 “(E) TRANSACTION ACCOUNT.—The term
10 ‘transaction account’ has the same meaning as
11 in section 19(b)(1)(C) of the Federal Reserve
12 Act. ”.

13 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
14 PROGRAMS OR SERVICES.—

15 (A) IN GENERAL.—Chapter 2 of the Truth
16 in Lending Act (15 U.S.C. 1631 et seq.) is
17 amended by adding at the end the following
18 new section:

19 **“§ 140. Restrictions on overdraft protection programs**
20 **or services**

21 “(a) IN GENERAL.—In the case of any transaction
22 account of a consumer at any institution, no overdraft pro-
23 tection fee may be imposed on such account for any exten-
24 sion of funds by the institution to cover any check or other



1 debit for which there are insufficient funds in the con-
2 sumer's account to pay such check or other debit, unless—

3 “(1) the consumer has provided specific written
4 consent to any program or service that provides for
5 charging of such fees in connection with any such
6 extension of funds;

7 “(2) such fee is imposed pursuant to the terms
8 of a written agreement with the consumer which dis-
9 closes, in a clear and conspicuous manner—

10 “(A) the amount of any fee imposed in
11 connection with paying an overdraft;

12 “(B) any applicable disclosure required by
13 this title in connection with such extension of
14 credit, including the amount of the finance
15 charge in connection with such fee or fees, as
16 required by section 106;

17 “(C) the categories of transactions for
18 which a fee for payment of an overdraft may be
19 imposed, including whether an overdraft created
20 by withdrawals at automated teller machines or
21 other electronic fund transfers will be covered
22 and a fee imposed;

23 “(D) the time period by which the con-
24 sumer must repay or cover any extension of



1 credit in the form of payment of an overdraft;
2 and

3 “(E) the circumstances under which the
4 institution in which an account is held will not
5 pay an overdraft; and

6 “(F) other information required to be dis-
7 closed by regulation;

8 “(3) such fee is separately and conspicuously
9 disclosed, each time the fee is imposed, in any peri-
10 odic statement provided to the consumer with re-
11 spect to such account.

12 “(b) CLARIFICATION RELATING TO OVERDRAFT
13 FEES.—In the case of any transaction account of a con-
14 sumer at any institution, the prohibition against an over-
15 draft protection fee under subsection (a) shall apply re-
16 gardless of whether the amount of such fee is the same
17 as, or less than, any fee imposed by the institution with
18 respect to such account for a check or other debit that
19 is returned unpaid.

20 “(c) PROHIBITION ON MISREPRESENTATIONS.—If
21 any institution—

22 “(1) will not extend funds under specific cir-
23 cumstances to cover an overdraft in any transaction
24 account of a consumer at the institution; or



1 “(2) reserves the right to extend funds to pay
2 any such overdraft on a discretionary basis,
3 any representation by such institution that the institution
4 will extend credit to cover all overdrafts on such account
5 shall be a violation of this title.”.

6 (B) CLERICAL AMENDMENT.—The table of
7 sections for chapter 2 of the Truth in Lending
8 Act is amended by inserting after the item re-
9 lating to section 139 the following new item:

“140. Restrictions on overdraft protection programs or services.”.

10 (3) RESTRICTIONS ON ADVERTISING OF OVER-
11 DRAFT PROTECTION PROGRAMS OR SERVICES.—

12 (A) IN GENERAL.—Chapter 3 of the Truth
13 in Lending Act (15 U.S.C. 1661 et seq.) is
14 amended by adding at the end the following
15 new section:

16 **“§ 148. Restrictions on advertising of overdraft pro-
17 tection programs or services**

18 “(a) IN GENERAL.—In the case of an institution that
19 maintains transaction accounts for consumers and offers
20 a program or service under which the institution pays any
21 overdraft on the account in exchange for payment of an
22 overdraft protection fee, the institution may not make any
23 of the following representations or statements with respect
24 to such program or service in any advertisement or pro-
25 motion:



1 “(1) Any representation or statement describing
2 a transaction account as free or no cost if the ac-
3 count includes, or is promoted as including, over-
4 draft protection services that involve the payment of
5 overdraft protection fees.

6 “(2) Any representation or statement encour-
7 aging use of the account as a service to meet short-
8 term credit needs or to obtain advances on a con-
9 sumer’s next payment of salary or wages.

10 “(3) Any representation or statement that the
11 financial institution will honor all checks or other
12 debits presented against the account, if the institu-
13 tion retains discretion at any time not to honor any
14 check or other debit presented.

15 “(4) Any representation or statement that con-
16 sumers may overdraw their accounts and maintain a
17 negative balance, if the terms of the account require
18 the consumer to promptly repay or cover any over-
19 draft.

20 “(b) REGULATIONS.—The Board shall prescribe reg-
21 ulations implementing the restrictions set forth in sub-
22 section (a) pursuant to the authority of the Board under
23 section 18(f) of the Federal Trade Commission Act, and
24 may, by regulation or order, restrict such additional acts
25 or practices that the Board finds to be unfair or deceptive



1 in connection with the offering, operation, and advertising
2 of overdraft protection programs and services.”.

3 (B) CLERICAL AMENDMENT.—The table of
4 sections for chapter 3 of the Truth in Lending
5 Act is amended by inserting after the item re-
6 lating to section 147 the following new item:

“148. Restrictions on advertising of overdraft protection programs or services.”.

7 (4) CLARIFICATION OF FINANCE CHARGE.—
8 Section 106(a) of the Truth in Lending Act (15
9 U.S.C. 1605(a)) is amended by adding at the end
10 the following new paragraph:

11 “(7) Overdraft protection fee.”.

12 (b) ELECTRONIC FUND TRANSFER ACT AMEND-
13 MENTS.—Section 904 of the Electronic Fund Transfer
14 Act (15 U.S.C. 1693b) is amended by adding at the end
15 the following new subsection:

16 “(e) RESTRICTIONS ON OVERDRAFT PROTECTION
17 SERVICES AND FEES.—

18 “(1) IN GENERAL.—A financial institution that
19 holds a consumer’s account may not impose an over-
20 draft protection fee on the account in connection
21 with any payment of an electronic fund transfer ini-
22 tiated by the consumer at an automated teller ma-
23 chine operated by the financial institution in spite of
24 a lack of sufficient funds in the consumer’s account
25 to pay such electronic fund transfer, unless—



1 “(A) the consumer has affirmatively re-
2 requested such service pursuant to section
3 140(a)(1);

4 “(B) the financial has provided a notice to
5 the consumer, on the screen of the automated
6 teller machine, or on a paper notice issued from
7 such machine, after the transaction is initiated
8 and before the consumer is irrevocably com-
9 mitted to completing the transaction, that the
10 electronic fund transfer the consumer has re-
11 quested may initiate an overdraft protection fee,
12 together with the amount of any such fee;

13 “(C) the consumer elects to continue in the
14 manner necessary to effect the requested elec-
15 tronic fund transfer after receiving such notice;
16 and

17 “(D) the overdraft protection fee imposed
18 in connection with such transaction is clearly
19 disclosed in the written documentation of the
20 electronic fund transfer required by section
21 906(a).

22 “(2) DISCLOSURE OF ACCOUNT BALANCES.—In
23 the case of any financial institution that offers a
24 program or service under which the institution pays
25 any overdraft on a consumer’s account in exchange



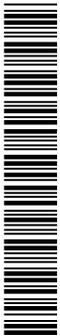
1 for the imposition of an overdraft protection fee in
2 accordance with paragraph (1), the financial institu-
3 tion shall, in response to a balance inquiry initiated
4 by the consumer at an automated teller machine op-
5 erated by the financial institution, disclose only the
6 actual dollar balance in the consumer's account at
7 the time of the request, which shall not include any
8 additional amount of credit or overdraft protection
9 the financial institution will pay under any agree-
10 ment with the consumer that permits the imposition
11 of the overdraft protection fee.

12 “(3) OVERDRAFT PROTECTION FEE DE-
13 FINED.—For purposes of this subsection, the term
14 ‘overdraft protection fee’ has the same meaning as
15 in section 103(cc)(1).”.

16 (c) EXPEDITED FUNDS AVAILABILITY ACT AMEND-
17 MENTS.—

18 (1) DEFINITION.—Section 602 of the Expedited
19 Funds Availability Act (12 U.S.C. 4001) is amended
20 by adding at the end the following new paragraph:

21 “(26) OVERDRAFT PROTECTION FEE.—The
22 term ‘overdraft protection fee’ has the same meaning
23 as in section 103(cc)(1) of the Truth in Lending
24 Act.”.



1 (2) RESTRICTIONS ON OVERDRAFT PROTECTION
2 FEES.—Section 607 of the Expedited Funds Avail-
3 ability Act (12 U.S.C. 4006) is amended by adding
4 at the end the following new subsection:

5 “(f) RESTRICTIONS ON OVERDRAFT PROTECTION
6 FEES.—A depository institution may not—

7 “(1) impose an overdraft protection fee on an
8 account at such institution for paying any check
9 drawn on the account in spite of a lack of sufficient
10 funds in the account to pay such check or any simi-
11 larly activity unless the accountholder has affirma-
12 tively requested such service pursuant to section
13 140(a)(1) of the Truth in Lending Act; or

14 “(2) engage in a pattern or practice of delaying
15 the posting of any deposit in an account, or manipu-
16 lating the process of posting any check or other
17 debit against an account, for the purpose of initi-
18 ating 1 or more overdrafts that trigger payment by
19 the accountholder of an overdraft protection fee. ”.

20 (d) FEDERAL RESERVE BOARD STUDY OF OVER-
21 DRAFT PROTECTION PROGRAMS OFFERED BY FINANCIAL
22 INSTITUTIONS.—

23 (1) STUDY REQUIRED.—

24 (A) IN GENERAL.—The Board of Gov-
25 ernors of the Federal Reserve System shall con-



1 duct a study of overdraft protection or avoid-
2 ance programs and services offered by financial
3 institutions to determine the extent to which
4 such programs or services are available to con-
5 sumers, the differences in operation and cost of
6 such programs or services, and the benefits and
7 risks of such programs or services for con-
8 sumers.

9 (B) AREAS FOR STUDY.—In conducting
10 the study under subparagraph (A), the Board
11 shall consider, among other issues—

12 (i) the criteria used by financial insti-
13 tutions in designing or selecting overdraft
14 protection programs and services;

15 (ii) the extent to which financial insti-
16 tutions exercise discretion on whether to
17 not to cover an overdraft and criteria used
18 in exercising such discretion;

19 (iii) the adequacy of information pro-
20 vided to customers regarding alternative
21 overdraft protection programs or services
22 and the cost and terms of such programs
23 and services;



1 (iv) the adequacy of disclosures in
2 promotions and advertising relating to
3 overdraft protection services;

4 (v) the extent to which overdraft pro-
5 tection programs and services are con-
6 ducted by third-party vendors, the basis
7 for structuring vendor compensation ar-
8 rangements for these programs and serv-
9 ices, and the impact, if any, of linking ven-
10 dor compensation to increases in fee rev-
11 enue on the quality and cost of overdraft
12 protection services; and

13 (vi) the feasibility of providing notice
14 in connection with point of sale debit
15 transactions that a transaction initiated by
16 the consumer will result in an overdraft
17 protection fee if completed by the con-
18 sumer and the potential benefit of such
19 disclosure to consumers.

20 (C) CONSULTATION REQUIRED.—The
21 Board of Governors of the Federal Reserve Sys-
22 tem shall—

23 (i) consult with the other Federal
24 banking agencies (as defined in section 3
25 of the Federal Deposit Insurance Act) and



1 the National Credit Union Administration
2 Board in formulating and conducting the
3 study required under subparagraph (A);
4 and

5 (ii) employ research methods and pro-
6 cedures, including consumer survey and
7 market tester programs, necessary to ad-
8 dress the issues required by subparagraph
9 (B).

10 (2) REPORT REQUIRED.—Before the end of the
11 1-year period beginning on the date of the enact-
12 ment of this Act, the Board of Governors of the
13 Federal Reserve System shall submit a report to the
14 Committee on Banking, Housing and Urban Affairs
15 of the Senate and the Committee on Financial Serv-
16 ices of the House of Representatives containing a
17 detailed summary of the finding and conclusions of
18 the study under this subsection, together with such
19 recommendations for legislative or administrative ac-
20 tions as the Board may determine to be appropriate.

