

ASSEMBLY, No. 1486

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

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SYNOPSIS

Concerns bank services and fees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/17/2000)

1 AN ACT concerning certain banking services and charges and
2 amending and supplementing various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. (New section) As used in sections 1 through 8 of this act:

8 "Account" means a demand deposit account, a negotiable order of
9 withdrawal account, a share draft account, an automatic transfer
10 account or any other transaction account described in 12
11 C.F.R. §204.2(e).

12 "Depository institution" means a State chartered bank, savings bank
13 or savings and loan association.

14 "Funds" means the dollar amount in a customer account with a
15 depository institution that is available for withdrawal as collected
16 funds.

17 "Insufficient funds" means that an account of a customer with a
18 depository institution does not contain funds sufficient to cover an
19 amount presented to the depository institution for collection.

20 "Uncollected balances" means those amounts deposited in a
21 customer's account by check or other written instrument which have
22 not been collected.

23

24 2. (New section) The maximum fee which may be imposed by a
25 depository institution in connection with a check or other written
26 instrument drawn upon insufficient funds or uncollected balances with
27 respect to a customer's account, irrespective of whether the
28 instrument is paid, accepted or returned by the depository institution,
29 shall be established by the Commissioner of Banking by regulation
30 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.).

32

33 3. (New section) If the payee is other than the person into whose
34 account a deposit is made, no depository institution shall impose any
35 fee in connection with a check or other written instrument received by
36 it for deposit or collection and which is subsequently dishonored and
37 returned for any reason by the drawee.

38

39 4. (New section) No depository institution shall, in connection
40 with the payment, acceptance or return of a check or order, impose
41 any fee, fine, commission or other charge, however, designated, in
42 addition to the maximum charge established by section 2 of this act,
43 except that nothing in this act shall prohibit a depository institution

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 from taking, receiving, reserving or charging interest, as authorized by
2 law in connection with the payment of the check or order, or from
3 imposing any charge in accordance with a written agreement as
4 provided pursuant to "The Advance Loan Law of 1968," P.L.1968,
5 c.64 (C.17:9A-59.1 et seq.) and subsection L. of section 155 of
6 P.L.1963, c.144 (C.17:12B-155).

7
8 5. (New section) A depository institution may as an
9 accommodation to its customers, pay, accept or return a check or
10 other written instrument without charge or at a lesser charge than the
11 maximum charge permitted under section 2 of this act.

12
13 6. (New section) a. Each depository institution shall disclose its
14 fees in a manner and content that is uniform as to form and meaning.
15 The form and terms to be used shall be established by regulation
16 adopted pursuant to the the "Administrative Procedure Act,"
17 P.L.1968, c.410 (C.52:14B-1 et seq.), by the Commissioner of
18 Banking after consultation with the banking advisory board and the
19 Division of Consumer Affairs in the Department of Law and Public
20 Safety.

21 b. If a depository institution charges a fee for a customer
22 transaction, however made, including, but not limited to, withdrawals,
23 deposits, transfers or inquiries, the depository institution shall clearly
24 and conspicuously inform the customer of the charge and the amount
25 of the charge at the time of the transaction and provide the customer
26 the alternative of ending the transaction without a charge being
27 imposed or continuing the transaction with a charge imposed.

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29 7. (New section) No depository institution shall charge a fee for
30 a customer inquiry made in person to an employee of the depository
31 institution about the balance in a customer's account with the
32 depository institution.

33
34 8. (New section) a. No depository institution shall increase the
35 fees it charges for use of an automated teller machine (ATM) until
36 such time as the Commissioner of Banking has conducted an
37 investigation into fees charged with respect to the use of an ATM and
38 determined what constitutes reasonable fees.

39 b. The Commissioner of Banking shall investigate the use of ATMs
40 and the fees associated with their use, including, but not limited to, the
41 cost to and savings for depository institutions. Upon completion of
42 this investigation, the commissioner, by regulation adopted pursuant
43 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
44 et seq.), shall establish reasonable fees for the use of an ATM by a
45 depository institution customer.

1 9. N.J.S.12A:3-406 is amended to read as follows:

2 12A:3-406. Negligence Contributing to Forged Signature or
3 Alteration of Instrument.

4 a. A person whose failure to exercise ordinary care substantially
5 contributes to an alteration of an instrument or to the making of a
6 forged signature on an instrument is precluded from asserting the
7 alteration or the forgery against a person who, in good faith, pays the
8 instrument or takes it for value or for collection. A bank which pays
9 a check on a forged signature without an examination of the signature
10 which would have revealed the forgery may not assert this preclusion
11 against a person who complies with 12A:4-406.

12 b. Under subsection a. of this section, if the person asserting the
13 preclusion fails to exercise ordinary care in paying or taking the
14 instrument and that failure substantially contributes to loss, the loss is
15 allocated between the person precluded and the person asserting the
16 preclusion according to the extent to which the failure of each to
17 exercise ordinary care contributed to the loss.

18 c. Under subsection a. of this section, the burden of proving failure
19 to exercise ordinary care is on the person asserting the preclusion.
20 The burden of proving that an examination of the check would have
21 revealed a forged signature is on the person claiming that the
22 preclusion does not apply. Under subsection b. of this section, the
23 burden of proving failure to exercise ordinary care is on the person
24 precluded.

25 (cf: N.J.S.12A:3-406)

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27 10. N.J.S.12A:4-402 is amended to read as follows:

28 12A:4-402. Bank's Liability to Customer for Wrongful Dishonor;
29 Time of Determining Insufficiency of Account.

30 a. Except as otherwise provided in this chapter, a payor bank
31 wrongfully dishonors an item if it dishonors an item that is properly
32 payable, but a bank may dishonor an item that would create an
33 overdraft unless it has agreed to pay the overdraft.

34 b. A payor bank is liable to its customer for damages proximately
35 caused by the wrongful dishonor of an item. Liability is limited to
36 actual damages proved and may include damages for an arrest or
37 prosecution of the customer or other consequential damages. Whether
38 any consequential damages are proximately caused by the wrongful
39 dishonor is a question of fact to be determined in each case.

40 c. A payor bank's determination of the customer's account balance
41 on which a decision to dishonor for insufficiency of available funds is
42 based [may be made at any time between the time the item is received
43 by the payor bank and the time that the payor bank returns the item or
44 gives notice in lieu of return, and no more than one determination need
45 be made] shall be made after crediting the customer's account for
46 deposits made on the day of presentment which represent funds

1 available for withdrawal as of right. If, at the election of the payor
2 bank, a subsequent balance determination is made for the purpose of
3 reevaluating the bank's decision to dishonor the item, the account
4 balance at that time is determinative of whether a dishonor for
5 insufficiency of available funds is wrongful.

6 (cf: N.J.S.12A:4-402)

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8 11. N.J.S.12A:4-406 is amended to read as follows:

9 12A:4-406. Customer's Duty to Discover and Report Unauthorized
10 Signature or Alteration.

11 a. A bank that sends or makes available to a customer a statement
12 of account showing payment of items for the account shall either
13 return or make available to the customer the items paid or provide
14 information in the statement of account sufficient to allow the
15 customer reasonably to identify the items paid. If a bank does not
16 return the items, it shall provide in the statement of account the
17 telephone number that the customer may call to request an item or a
18 legible copy thereof pursuant to subsection b. of this section.

19 The statement of account provides sufficient information if the item
20 is described by item number, amount, and date of payment.

21 b. If the items are not returned to the customer, the person
22 retaining the items shall either retain the items or, if the items are
23 destroyed, maintain the capacity to furnish legible copies of the items
24 until the expiration of seven years after receipt of the items. A
25 customer may request an item from the bank that paid the item, and
26 that bank must provide in a reasonable time either the item or, if the
27 item has been destroyed or is not otherwise obtainable, a legible copy
28 of the item. A bank shall provide, upon request and without charge to
29 the customer, at least two items or legible copies thereof with respect
30 to each statement of account sent to the customer. A bank shall not
31 charge a fee in excess of \$.10 per item or legible copy thereof for each
32 item requested by and provided to a customer beyond the two
33 provided without charge. "Reasonable time" means within five
34 business days of receipt of a request from a customer.

35 c. If a bank sends or makes available a statement of account or
36 items pursuant to subsection a. of this section, the customer must
37 exercise reasonable promptness in examining the statement or the
38 items to determine whether any payment was not authorized because
39 of an alteration of an item or because a purported signature by or on
40 behalf of the customer was not authorized. If, based on the statement
41 or items provided, the customer should reasonably have discovered the
42 unauthorized payment, the customer must promptly notify the bank of
43 the relevant facts.

44 d. If the bank proves that the customer failed, with respect to an
45 item, to comply with the duties imposed on the customer by subsection
46 c. of this section, the customer is precluded from asserting against the

1 bank:

2 (1) the customer's unauthorized signature or any alteration on the
3 item, if the bank also proves that it suffered a loss by reason of the
4 failure; and

5 (2) the customer's unauthorized signature or alteration by the same
6 wrongdoer on any other item paid in good faith by the bank if the
7 payment was made before the bank received notice from the customer
8 of the unauthorized signature or alteration and after the customer had
9 been afforded a reasonable period of time, not exceeding 30 days, in
10 which to examine the item or statement of account and notify the
11 bank.

12 e. If subsection d. of this section applies and the customer proves
13 that the bank failed to exercise ordinary care in paying the item and
14 that the failure [substantially] contributed to loss, the loss is allocated
15 between the customer precluded and the bank asserting the preclusion
16 according to the extent to which the failure of the customer to comply
17 with subsection c. of this section and the failure of the bank to exercise
18 ordinary care contributed to the loss. If the customer proves that the
19 bank did not pay the item in good faith, the preclusion under
20 subsection d. of this section does not apply.

21 f. Without regard to care or lack of care of either the customer or
22 the bank, a customer who does not within one year after the statement
23 or items are made available to the customer (subsection a. of this
24 section) discover and report the customer's unauthorized signature on
25 or any alteration on the item is precluded from asserting against the
26 bank the unauthorized signature or alteration. If there is a preclusion
27 under this subsection, the payor bank may not recover for breach of
28 warranty under 12A:4-208 with respect to the unauthorized signature
29 or alteration to which the preclusion applies.

30 (cf: N.J.S.12A:4-406)

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32 12. (New section) a. An unconscionable provision in any contract
33 between a bank and a consumer shall be unenforceable. If an
34 unconscionable provision is found in such a contract, a court of
35 competent jurisdiction may refuse to enforce the contract, may enforce
36 the remainder of the contract without the unconscionable provision,
37 may limit the application of the unconscionable provision so as to
38 avoid an unconscionable result, or may award damages or such other
39 relief to the parties as it may deem appropriate.

40 b. A bank shall perform and enforce its contracts with consumers
41 in good faith.

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43 13. This act shall take effect on the 180th day following enactment,
44 except that the provisions of subsection a. of section 8 shall take effect
45 immediately.

STATEMENT

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This bill places certain restrictions on State chartered banks, savings banks and savings and loan associations with respect to fees they may charge for overdrafts, returned deposited items and in person inquiries made to employees of depository institutions. In addition, the bill requires these depository institutions to disclose their fees in a uniform manner as to terms used and format. The bill requires the Commissioner of Banking to develop the terms and format in consultation with the Banking Advisory Board and the Division of Consumer Affairs and promulgate these as regulations. The bill further imposes a moratorium on any increase in the fees these institutions may charge for the use of an ATM, requires the Commissioner of Banking to study the fees charged for use of an ATM and upon completion of the study, to promulgate regulations that establish reasonable fees.

The bill amends certain sections of the Uniform Commercial Code to:

- (1) require banks which do not return items with the periodic statement to list on the statement a telephone number which can be called by the customer to receive either up to two items or legible copies thereof, free of charge, with a maximum of \$.10 per item as a charge for any item requested in excess of the two provided free of charge. A depository institution is to provide a customer the item or a copy of it within five business days of receiving the request.
- (2) prohibit a bank which pays a check on a forged signature without an examination of the signature which would have revealed the forgery from asserting the preclusion provided in subsection a. of 12A:3-406 against a person who complies with 12A:4-406.
- (3) require a payor bank which makes a determination of a customer's account on which it makes its decision to dishonor for insufficiency of available funds, to make that determination after crediting a customer's account for deposits made on the day of presentment, which deposits represent funds available for withdrawal as of right.
- (4) make unenforceable an unconscionable provision in any contract between a bank and a consumer and to require that a bank perform and enforce its contracts with consumers in good faith.