

[First Reprint]

ASSEMBLY, No. 4653

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED OCTOBER 22, 2018

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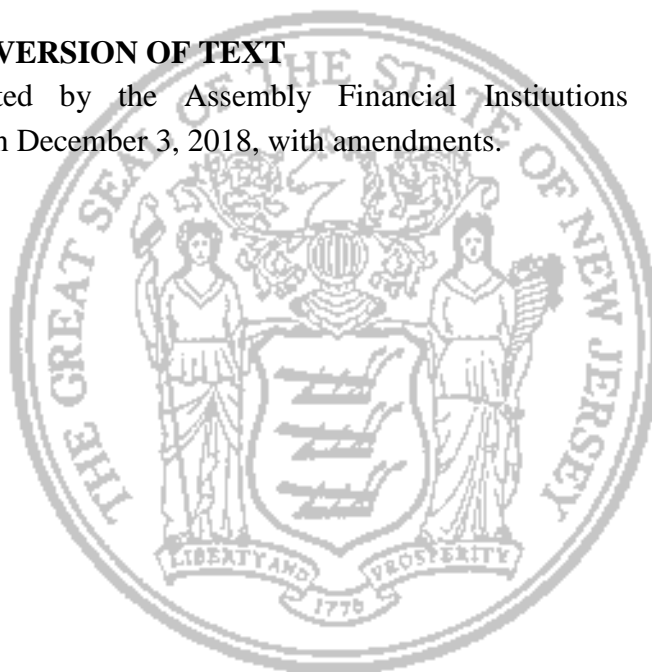
**Assemblymen Armato, Benson, Assemblywomen Murphy, Lampitt and
Assemblyman Verrelli**

SYNOPSIS

Requires State-chartered financial institutions to adhere to certain disclosure and consumer protection practices regarding automatic overdraft protection services.

CURRENT VERSION OF TEXT

As reported by the Assembly Financial Institutions and Insurance Committee on December 3, 2018, with amendments.



(Sponsorship Updated As Of: 1/16/2019)

1 AN ACT concerning overdraft protection services offered by certain
2 financial institutions and supplementing Title 17 of the Revised
3 Statutes.

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

7
8 1. As used in this act:

9 "Account" means a checking account, savings account or other
10 deposit account, held either directly or indirectly by a financial
11 institution and established for personal, family or household
12 purposes.

13 "Automated teller machine" means any electronic information
14 processing device located in the State of New Jersey which accepts
15 or dispenses cash in connection with a credit or deposit account.
16 The term does not include tellers' stations staffed by a person or
17 other manned facilities.

18 "Automatic overdraft protection service" means a service
19 provided by a financial institution in which the institution
20 automatically covers a financial transaction such as a check, point-
21 of-sale transaction, debit card purchase, automatic payment,
22 electronic transfer fund or automated teller machine withdrawal for
23 which a consumer lacks sufficient funds in a credit or deposit
24 account to cover that transaction.

25 "Check" means any check as defined in N.J.S.12A:3-104, share
26 draft, negotiable order of withdrawal, or similar means of making
27 payment or transfers to third parties or others which is drawn on an
28 account in a financial institution and is payable on demand.

29 "Consumer" or "account holder" means a natural person who is a
30 resident of this State.

31 "Debit card" means any instrument or device, whether known as
32 a debit card, automated teller machine card, or by any other name,
33 issued with or without fee by a financial institution, for the use of
34 the debit card holder in obtaining money, goods, services or
35 anything else of value through the electronic authorization of a
36 financial institution to debit the debit card holder's account.

37 "Electronic fund transfer" means any transfer of funds, other than
38 a transaction originated by check, draft, or similar paper instrument,
39 that is initiated through an electronic terminal, telephone, or
40 computer or magnetic tape for the purpose of ordering, instructing
41 or authorizing a financial institution to debit or credit an account.

42 "Financial institution" or "institution" means any bank, savings
43 bank, savings and loan association, building and loan association or
44 credit union organized or doing business under the laws of this

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted December 3, 2018.

1 State and supervised by the Commissioner of Banking and
2 Insurance.

3 "Overdraft protection fee" or "fee" means any fee or charge
4 imposed in connection with any account on which checks or other
5 debits are paid by the institution in which an account is held even
6 though there are insufficient funds in the account to cover checks or
7 other debits.

8 "Periodic account statement" means any written statement
9 provided on a regular basis at the end of a periodic cycle by a
10 financial institution to an account holder summarizing all debits and
11 credits to an account held by the account holder during a periodic
12 cycle.

13

14 2. In the case of an account of a consumer at a financial
15 institution, an automatic overdraft protection service shall not be
16 provided and an overdraft protection fee shall not be imposed on the
17 account for any extension of funds by the institution to cover a
18 check or other debit for which there are insufficient funds in the
19 account to pay that check or other debit, unless:

20 a. The financial institution:

21 (1) provides prospective account holders with information
22 regarding the institution's automatic overdraft protection service in
23 all marketing materials and at the time of establishing the account,
24 and notifies and discloses the terms and conditions associated with
25 these services to existing account holders; and

26 (2) has waited at least three business days after opening of an
27 account to offer the overdraft protection service;

28 b. The financial institution provides prospective and existing
29 account holders with the opportunity to enroll in the overdraft
30 protection services and also to discontinue that enrollment and
31 provides information about any alternative overdraft products that
32 are available, including a clear explanation of how the terms and
33 fees for those alternative services and products differ;

34 c. The consumer provides written consent to be enrolled in an
35 automatic overdraft protection service offered by the financial
36 institution and to have those services performed on the account in
37 the event of an overdraft;

38 d. The overdraft protection fee is imposed pursuant to the terms
39 of a written agreement with the consumer which discloses, in a
40 clear and conspicuous manner:

41 (1) the amount of any fee imposed in connection with paying an
42 overdraft through an automatic overdraft protection service, which
43 service shall not provide in excess of one overdraft protection fee in
44 any single calendar month nor more than six overdraft protection
45 fees in any single calendar year, per transaction account;

46 (2) the categories of transactions for which a fee for payment of
47 an overdraft may be imposed, including whether an overdraft may
48 be created by withdrawals at automated teller machines, electronic

- 1 fund transfers, point-of-sale transactions, debit card purchases,
2 automatic payments, checks and other means that will be covered
3 and a fee imposed;
- 4 (3) the total number of overdrafts that will be covered on a
5 monthly basis, or within a time period specified within the terms
6 and conditions of the documents issued to prospective and existing
7 account holders;
- 8 (4) the time period by which the consumer shall repay or cover
9 any extension of credit in the form of payment of an overdraft;
- 10 (5) the circumstances under which the institution in which an
11 account is held will or will not pay an overdraft;
- 12 (6) the factors used by the institution to determine whether an
13 automatic overdraft protection service is activated as to the account;
14 and
- 15 (7) any other information required to be disclosed, as may be
16 prescribed by regulation adopted by the Commissioner of Banking
17 and Insurance.
- 18
- 19 3. a. A financial institution shall promptly notify a consumer,
20 through a reasonable means selected by the consumer, when
21 overdraft protection has been accessed with respect to the
22 consumer's account, which notification shall be no later than the
23 day on which the access occurs. The notification shall include:
- 24 (1) the date of the transaction;
25 (2) the type of transaction;
26 (3) the overdraft amount;
27 (4) the overdraft protection fee, if any;
28 (5) the amount necessary to return the account to a positive
29 balance; and
- 30 (6) whether the participation of a consumer in an overdraft
31 protection program will be terminated if the account is not returned
32 to a positive balance within a given time period.
- 33 b. A financial institution shall separately and conspicuously
34 disclose information about the fee, including the transaction type
35 associated with the fee each time the fee is imposed, in any periodic
36 account statement provided to the consumer with respect to the
37 account.
- 38
- 39 4. a. A financial institution shall not charge more than one
40 overdraft protection fee in any single calendar month, and not more
41 than six overdraft protection fees in any single calendar year, per
42 transaction amount.
- 43 b. The amount of any overdraft protection fee shall be
44 reasonable and proportional to the financial institution's costs in
45 providing the overdraft protection for that transaction, including the
46 financial institution's cost of funds and other costs directly
47 associated with the transaction.

1 c. A financial institution shall post transactions with respect to
2 transaction accounts in a manner so that overdraft protection fees
3 and nonsufficient fund fees are kept to a minimum.

4 d. A financial institution shall not charge an overdraft
5 protection fee on any category of transaction, if the overdraft results
6 solely from a debit hold amount placed on a transaction account that
7 exceeds the actual dollar amount of the transaction.

8 e. A financial institution shall provide to consumers who have
9 not consented to participate in an overdraft protection program,
10 transaction accounts having the same terms, conditions, or other
11 features as those that are provided to consumers who have
12 consented to participate in overdraft protection programs, except for
13 features of the overdraft protection service.

14

15 5. It shall be a violation of this act if a financial institution:

16 a. Does not extend funds under the circumstances set forth in
17 any disclosure documents issued to prospective and existing
18 account holders to cover an overdraft incurred on an account of a
19 consumer at the institution if the account holder enrolls in those
20 services and provides written consent to have those services
21 performed on the account;

22 b. Reserves the right to extend funds to pay any overdraft on a
23 discretionary basis in situations in which the institution sets forth in
24 its terms and conditions that the institution will extend credit to
25 cover all overdrafts on such account; or

26 c. Provides automatic overdraft protection services on an
27 account without first obtaining the express written consent of a
28 prospective or existing account holder.

29

30 6. A financial institution which violates this act shall be subject
31 to a fine of not more than ¹["\$5,000"] \$1,000¹ for each violation.
32 The fine shall be collected by the Commissioner of Banking and
33 Insurance in a summary manner pursuant to the "Penalty
34 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

35

36 7. The Commissioner of Banking and Insurance shall adopt
37 rules to implement the provisions of this act pursuant to the
38 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.), including rules establishing requirements for financial
40 institutions to provide adequate disclosure of the terms and
41 conditions associated with automatic overdraft protection services
42 to prospective and existing account holders, through advertising,
43 account information pamphlets, fee schedules and other appropriate
44 means.

45

46 8. Failure to fulfill any obligation under this act shall not be
47 considered to be the exercise of a power, right, benefit, or privilege
48 under the parity provisions of P.L.1981, c.163 (C.17:9A-24b1),

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1 section 48 of P.L.1963, c.144 (C.17:12B-48), or section 12 of
2 P.L.1984, c.171 (C.17:13-90), and it shall not be a defense to a
3 violation of this act that the failure to fulfill any provision of the act
4 is an exercise of such power, right, benefit, or privilege.

5

6 9. This act shall take effect on the **'[90th]** 365th¹ day next
7 following enactment.