

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1499
Economic Matters

(Delegate Gutierrez, *et al.*)

Consumer Protection - Bank Overdraft Plans - Requirements

This bill requires a State-chartered banking institution to make an overdraft protection plan available to customers only on an optional basis. If a customer opts into an overdraft protection plan, the bank must fully disclose all fees and penalties associated with the handling and processing of overdrafts by customers as well as the method of applying debits and credits to a customer's account on a single business day and on consecutive business days. In addition, the bank must allow a customer to address an overdraft on the same business day that the bank notes the overdraft, in a manner designed to minimize the assessment of and the potential for multiplication of overdraft fees and penalties.

Violation of the bill is an anticompetitive, unfair, or deceptive practice, subject to specified criminal penalties under the Financial Institutions Article. Violation is also an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law/Background: State law does not specifically regulate overdraft plans that may be offered by State-chartered banks.

However, under § 3-606 of the Financial Institutions Article, an officer, employee, or agent of a commercial bank may not certify any draft that is drawn on the bank unless the drawer has on deposit an amount at least equal to the amount of the draft. Furthermore, under § 4-401 of the Commercial Law Article, a bank is authorized to charge an item that is properly payable against the account of the customer, even if that charge creates an overdraft. Under § 15-802 of the Commercial Law Article, when a check has been dishonored by nonacceptance or nonpayment and has not been paid within 10 days, the holder of the check may send a notice of dishonor to the maker or drawer. If a check has not been paid within 30 days after the holder has sent the notice of dishonor to the maker or drawer, the maker or drawer of the check is liable for the amount of the check, a collection fee of up to \$35, and an amount up to two times the amount of the check, up to a maximum of \$1,000.

Scrutiny of Overdraft Fees

As noted above, a check that is not paid due to insufficient funds can subject the payor of the check to significant financial penalties. Many banks offer “overdraft plans” as a service to their customers through which, in the event a customer has insufficient funds to pay a check presented against his or her account, the bank pays the check on behalf of the customer. The customer then avoids the problems and embarrassment of having checks marked as “dishonored” or “not payable due to insufficient funds.”

Generally, if an individual overdraws an account, the financial institution’s overdraft program pays for the transaction and charges the person a fee. The bank also requires the person to repay the overdraft amount out of the next deposit. (Banks and credit unions cannot charge fees for ATM and most debit card overdrafts unless the account holder has opted in to consent to fees on these types of transactions.)

For most banks, the overdraft fee is a fixed amount regardless of the amount of the transaction, and the account holder may incur several fees in a single day. In addition, most institutions charge fees for attempted check and online payments returned for nonsufficient funds (NSF fees).

Banking customers often take advantage of overdraft plans, if offered by their banks, as they create a layer of protection against the accidental issuance of a check when the checking account has insufficient funds, or perhaps, if a deposit that the customer thought

was already credited to his or her account was not credited until after the check was presented and the overdraft was noted.

Banks have received increased scrutiny in recent years regarding overdraft fees and how those fees contribute to their overall profits. The Consumer Financial Protection Bureau notes that fees from overdrafts on consumer checking accounts have become an important source of revenue for many banks. Prior to 2015, banks did not specifically identify consumer overdraft and NSF fee revenues; rather, they combined these fees with other fees into “deposit service charges.” However, as of 2015, banks with over \$1 billion in assets and banks that offer consumer deposit accounts are required to report certain categories of fees – including overdraft and NSF fees – earned on consumer accounts separately from other deposit service charges.

In 2015, revenue from consumer overdraft and NSF fees totaled approximately \$11.2 billion, accounting for 8.0% of the reporting banks’ total net income and 5.5% of the reporting banks’ pre-tax profits. In addition, the fees represented 65.3% (or almost two-thirds) of all reported consumer deposit account fee revenues.

Unfair or Deceptive Trade Practices

The Commissioner of Financial Regulation may define specific acts or practices that are anticompetitive, unfair, deceptive, or injurious to the public interest. A banking institution and any director, officer, trustee, manager, agent, or employee of a banking institution who violates specified prohibitions (including the new prohibition in the bill) is guilty of a misdemeanor and subject to maximum penalties of a \$3,000 fine and/or five years imprisonment.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each

subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Consumer Financial Protection Bureau; Department of Legislative Services

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Analysis by: Eric Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510