

117TH CONGRESS
1ST SESSION

S. 2677

To amend the Truth in Lending Act to limit overdraft fees and establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 9, 2021

Mr. BOOKER (for himself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to limit overdraft fees and establish fair and transparent practices related to the marketing and provision of overdraft coverage programs at depository institutions, 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 Act of 2021”.

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

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

1 (1) Overdraft coverage is a form of short-term
2 credit that depository institutions market for con-
3 sumer transaction accounts. Historically, depository
4 institutions covered overdrafts for a fee on an ad hoc
5 basis.

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

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

15 (4) Many depository institutions collect a high
16 flat fee, including for small dollar transactions, each
17 time the institution covers an overdraft, impose mul-
18 tiple overdraft coverage fees within a single day, and
19 charge additional fees for each day during which the
20 account remains overdrawn.

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

1 (b) PURPOSE.—It is the purpose of this Act to pro-
2 tect consumers by limiting abusive overdraft coverage fees
3 and practices and by providing meaningful disclosures and
4 consumer choice in connection with overdraft coverage
5 fees.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) CFPB.—The term “CFPB” means the Bu-
9 reau of Consumer Financial Protection.

10 (2) DEPOSITORY INSTITUTION; OVERDRAFT;
11 OVERDRAFT COVERAGE FEE; TRANSACTION AC-
12 COUNT; NONSUFFICIENT FUND FEE.—The terms
13 “depository institution”, “overdraft”, “overdraft cov-
14 erage fee”, “transaction account”, and “nonsuffi-
15 cient fund fee” have the meanings given the terms
16 in 140B(p) of the Truth in Lending Act, as added
17 by section 4 of this Act.

18 **SEC. 4. FAIR MARKETING AND PROVISION OF OVERDRAFT**
19 **COVERAGE PROGRAMS.**

20 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
21 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
22 at the end the following:

1 **“§ 140B. Overdraft coverage program disclosures and**
2 **consumer protection**

3 “(a) PROHIBITIONS.—No depository institution may
4 engage in acts or practices in connection with the mar-
5 keting of or the provision of overdraft coverage that are
6 designed to evade the provisions of this section.

7 “(b) MARKETING DISCLOSURES.—Each depository
8 institution that provides or offers to provide overdraft cov-
9 erage with respect to transaction accounts held at that de-
10 pository institution shall clearly and conspicuously disclose
11 in all marketing materials for such overdraft coverage any
12 overdraft coverage fees with respect to such overdraft cov-
13 erage.

14 “(c) OVERDRAFT COVERAGE FEES.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), no depository institution may charge an
17 overdraft coverage fee for any transaction—

18 “(A) at an automated teller machine; or

19 “(B) involving a one-time debit card trans-
20 action.

21 “(2) OVERDRAFT FEES PERMITTED FOR
22 CHECKS AND AUTOMATIC RECURRING PAYMENTS.—

23 A depository institution may charge an overdraft
24 coverage fee for a check or an automatic recurring
25 payment as part of an overdraft coverage program

1 that incorporates the requirements identified in sub-
2 sections (d) through (l).

3 “(d) CONSUMER CONSENT OPT-IN.—A depository in-
4 stitution may charge overdraft coverage fees with respect
5 to the use of checks or automatic recurring payments only
6 if—

7 “(1) the depository institution has waited at
8 least 3 days after opening an account to offer the
9 overdraft coverage program; and

10 “(2) the consumer has consented in writing, in
11 electronic form, or in such other form as is per-
12 mitted under regulations of the Bureau.

13 “(e) CONSUMER DISCLOSURES.—Each depository in-
14 stitution shall clearly disclose to each consumer covered
15 by an overdraft protection program of that depository in-
16 stitution—

17 “(1) that the consumer may be charged for not
18 more than 1 overdraft coverage fee in any single cal-
19 endar month and not more than 6 overdraft cov-
20 erage fees in any single calendar year, per trans-
21 action account;

22 “(2) information about any alternative over-
23 draft products that are available (such as linked ac-
24 counts, lines of credit, and alerts), including a clear

1 explanation of how the terms and fees for such alter-
2 native services and products differ; and

3 “(3) such other information as the Bureau may
4 require, by rule.

5 “(f) PERIODIC STATEMENTS.—Each depository insti-
6 tution that offers an overdraft coverage program shall, in
7 each periodic statement for any transaction account that
8 has an overdraft coverage program feature, clearly disclose
9 to the consumer the dollar amount of all overdraft cov-
10 erage fees and nonsufficient fund fees charged to the con-
11 sumer for the relevant period and year to date.

12 “(g) EXCLUSION FROM ACCOUNT BALANCE INFOR-
13 MATION.—No depository institution may include the
14 amount available under the overdraft coverage program of
15 a consumer as part of the transaction account balance of
16 that consumer and the transaction account balance shall
17 be more prominently displayed than any amount available
18 under the overdraft coverage program.

19 “(h) PROMPT NOTIFICATION.—Each depository insti-
20 tution shall promptly notify consumers, through a reason-
21 able means selected by the consumer, when overdraft cov-
22 erage has been accessed with respect to the account of
23 the consumer, not later than on the day on which such
24 access occurs, including—

25 “(1) the date of the transaction;

1 “(2) the type of transaction;

2 “(3) the overdraft amount;

3 “(4) the overdraft coverage fee;

4 “(5) the amount necessary to return the ac-
5 count to a positive balance;

6 “(6) whether the participation of a consumer in
7 an overdraft coverage program will be terminated if
8 the account is not returned to a positive balance
9 within a given time period; and

10 “(7) information about any alternative over-
11 draft products as described in this section.

12 “(i) TERMINATED OR SUSPENDED COVERAGE.—
13 Each depository institution shall provide prompt notice to
14 the consumer, using a reasonable means selected by the
15 consumer, if the institution terminates or suspends access
16 to an overdraft coverage program with respect to an ac-
17 count of the consumer, including a clear rationale for the
18 action.

19 “(j) OVERDRAFT COVERAGE RESTRICTIONS AND FEE
20 LIMITS FOR CHECKS AND AUTOMATIC RECURRING PAY-
21 MENTS.—

22 “(1) FREQUENCY.—A depository institution
23 may charge not more than 1 overdraft coverage fee
24 in any single calendar month, and not more than 6

1 overdraft coverage fees in any single calendar year,
2 per transaction account.

3 “(2) REASONABLE AND PROPORTIONAL OVER-
4 DRAFT COVERAGE FEES.—

5 “(A) IN GENERAL.—The amount of any
6 overdraft coverage fee shall be reasonable and
7 proportional to the cost to the financial institu-
8 tion in providing the overdraft coverage for that
9 transaction, including the cost to the financial
10 institution of funds and other costs directly as-
11 sociated with the transaction.

12 “(B) SAFE HARBOR RULE AUTHORIZED.—
13 The Bureau, in consultation with the Board of
14 Governors of the Federal Reserve System, the
15 Comptroller of the Currency, the Board of Di-
16 rectors of the Federal Deposit Insurance Cor-
17 poration, and the National Credit Union Ad-
18 ministration Board, may issue rules to provide
19 an amount for any overdraft coverage fee that
20 is presumed to be reasonable and proportional
21 to the costs to the financial institution in pro-
22 viding the overdraft coverage for the trans-
23 action.

24 “(3) POSTING ORDER.—Each depository insti-
25 tution shall post transactions with respect to trans-

1 action accounts in such a manner that minimizes
2 overdraft coverage fees and nonsufficient fund fees.

3 “(k) DEBIT HOLDS.—No depository institution may
4 charge an overdraft coverage fee on any category of trans-
5 action, if the overdraft results solely from a debit hold
6 amount placed on a transaction account that exceeds the
7 actual dollar amount of the transaction.

8 “(l) NONDISCRIMINATION FOR NOT OPTING IN.—In
9 implementing the requirements of this section, each depos-
10 itory institution shall provide to consumers who have not
11 consented to participate in an overdraft coverage program
12 transaction accounts having the same terms, conditions,
13 or other features as those that are provided to consumers
14 who have consented to participate in such overdraft cov-
15 erage program, except for features of such overdraft cov-
16 erage.

17 “(m) NONSUFFICIENT FUND FEE LIMITS.—

18 “(1) IN GENERAL.—No depository institution
19 may charge any nonsufficient fund fee with respect
20 to—

21 “(A) any transaction at an automated tell-
22 er machine; or

23 “(B) any debit card transaction.

24 “(2) REASONABLE AND PROPORTIONAL.—Rea-
25 sonable and proportional nonsufficient fund fees.

1 “(A) IN GENERAL.—The amount of any
2 nonsufficient fund fee shall be reasonable and
3 proportional to the cost to the financial institu-
4 tion directly associated with returning the
5 transaction.

6 “(B) SAFE HARBOR RULE AUTHORIZED.—
7 The Bureau, in consultation with the Board of
8 Governors of the Federal Reserve System, the
9 Comptroller of the Currency, the Board of Di-
10 rectors of the Federal Deposit Insurance Cor-
11 poration, and the National Credit Union Ad-
12 ministration Board, may issue rules to provide
13 an amount for any non-sufficient fund fee that
14 is presumed to be reasonable and proportional
15 to the costs to the financial institution of re-
16 turning the transaction.

17 “(n) REPORTS TO CONSUMER REPORTING AGEN-
18 CIES.—

19 “(1) IN GENERAL.—No depository institution
20 may report negative information regarding the use
21 of overdraft coverage by a consumer to any con-
22 sumer reporting agency, as defined in section 603 of
23 the Fair Credit Reporting Act (15 U.S.C. 1681a),
24 when the amounts of the overdraft are repaid under
25 the terms of an overdraft coverage program.

1 “(2) DELETION.—A depository institution shall
2 request that the consumer reporting agency de-
3 scribed in paragraph (1) delete any previously re-
4 ported negative information, including closure of an
5 account due to unpaid overdrafts, if the consumer
6 repays the overdrafts or tenders payment for the
7 overdrafts to the depository institution or its suc-
8 cessor.

9 “(o) RULE OF CONSTRUCTION.—No provision of this
10 section may be construed as prohibiting a depository insti-
11 tution from retaining the discretion to pay, without assess-
12 ing an overdraft coverage fee or charge, an overdraft in-
13 curred by a consumer.

14 “(p) DEFINITIONS RELATING TO OVERDRAFT COV-
15 ERAGE.—For purposes of this section:

16 “(1) CHECK.—The term ‘check’—

17 “(A) has the meaning given the term in
18 section 3 of the Check Clearing for the 21st
19 Century Act (12 U.S.C. 5002); and

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

21 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
22 pository institution’ means any entity described in
23 clauses (i) through (vi) of section 19(b)(1)(A) of the
24 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

1 “(3) NONSUFFICIENT FUND FEE.—The term
2 ‘nonsufficient fund fee’ means a fee or charge as-
3 sessed in connection with an overdraft for which a
4 depository institution declines payment.

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

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

19 “(6) OVERDRAFT COVERAGE FEE.—The term
20 ‘overdraft coverage fee’—

21 “(A) means any fee or charge assessed in
22 connection with overdraft coverage, or in con-
23 nection with any negative account balance that
24 results from overdraft coverage; and

25 “(B) does not include—

1 “(i) a periodic rate in connection with
2 an extension of credit through an overdraft
3 line of credit program; and

4 “(ii) a fee or charge imposed in con-
5 nection with any transfer from an account
6 linked to another transaction account.

7 “(7) OVERDRAFT COVERAGE PROGRAM.—The
8 term ‘overdraft coverage program’ means a service
9 under which a depository institution assesses an
10 overdraft coverage fee for overdraft coverage.

11 “(8) TRANSACTION ACCOUNT.—The term
12 ‘transaction account’ has the meaning given the
13 term in section 19(b)(1) of the Federal Reserve Act
14 (12 U.S.C. 461(b)(1)).”.

15 (b) TECHNICAL AMENDMENT.—The table of contents
16 for chapter 2 of the Truth in Lending Act is amended
17 by inserting after the item relating to section 140A the
18 following:

 “140B. Overdraft coverage program disclosures and consumer protection.”.

19 **SEC. 5. REGULATORY AUTHORITY OF THE CFPB.**

20 Not later than 2 years after the date of the enact-
21 ment of this Act, the CFPB shall issue such final rules
22 and publish such model forms as necessary to carry out
23 section 140B of the Truth in Lending Act, as added by
24 section 4 of this Act.

1 **SEC. 6. EFFECTIVE DATE.**

2 (a) IN GENERAL.—This Act and the amendments
3 made by this Act shall take effect 1 year after the date
4 of the enactment of this Act, whether or not the rules of
5 the CFPB under this Act or such amendments are pre-
6 scribed in final form.

7 (b) MORATORIUM ON FEE INCREASES.—During the
8 1-year period beginning on the date of the enactment of
9 this Act, no depository institution may increase the over-
10 draft coverage fees or charges assessed on transaction ac-
11 counts for paying a transaction (including a check or other
12 debit) in connection with an overdraft or for nonsufficient
13 funds.

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