

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1224

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IN THE SENATE OF THE UNITED STATES

MAY 25, 2005

Received

MAY 26, 2005

Read twice and referred to the Committee on Banking, Housing, and Urban  
Affairs

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## AN ACT

To repeal the prohibition on the payment of interest on  
demand deposits, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Business Checking  
3 Freedom Act of 2005”.

4 **SEC. 2. INTEREST-BEARING TRANSACTION ACCOUNTS AU-**  
5 **THORIZED FOR ALL BUSINESSES.**

6 (a) DAILY TRANSFERS ALLOWED INTO DEMAND DE-  
7 POSIT ACCOUNTS.—Section 2 of Public Law 93–100 (12  
8 U.S.C. 1832) is amended—

9 (1) by redesignating subsections (b) and (c) as  
10 subsections (c) and (d), respectively;

11 (2) by inserting after subsection (a) the fol-  
12 lowing:

13 “(b) TRANSFERS.—Notwithstanding any other provi-  
14 sion of law, any depository institution, other than a non-  
15 qualified industrial loan company, may permit the owner  
16 of any deposit or account which is a deposit or account  
17 on which interest or dividends are paid and is not a de-  
18 posit or account described in subsection (a)(2) to make  
19 up to 24 transfers per month (or such greater number  
20 as the Board of Governors of the Federal Reserve System  
21 may determine by rule or order), for any purpose, to an-  
22 other account of the owner in the same institution. An  
23 account offered pursuant to this subsection shall be con-  
24 sidered a transaction account for purposes of section 19  
25 of the Federal Reserve Act unless the Board of Governors

1 of the Federal Reserve System determines otherwise.”;  
2 and

3 (3) by adding at the end of subsection (a) the  
4 following new paragraph:

5 “(3) NONQUALIFIED INDUSTRIAL LOAN COMPA-  
6 NIES.—

7 “(A) DEFINITION.—For purposes of this  
8 section, the term ‘nonqualified industrial loan  
9 company’ means any industrial loan company,  
10 industrial bank, or other institution described in  
11 section 2(c)(2)(H) of the Bank Holding Com-  
12 pany Act of 1956 that is determined by an ap-  
13 propriate State bank supervisor (as defined in  
14 section 3 of the Federal Deposit Insurance Act)  
15 to be controlled, directly or indirectly, by a com-  
16 mercial firm.

17 “(B) COMMERCIAL FIRM DEFINED.—For  
18 purposes of this paragraph, the term ‘commer-  
19 cial firm’ means any entity at least 15 percent  
20 of the annual gross revenues of which on a con-  
21 solidated basis, including all affiliates of the en-  
22 tity, were derived from engaging, on an on-  
23 going basis, in activities that are not financial  
24 in nature or incidental to a financial activity

1 during at least 3 of the prior 4 calendar quar-  
2 ters.

3 “(C) GRANDFATHERED INSTITUTIONS.—  
4 The term ‘nonqualified industrial loan company’  
5 does not include any industrial loan company,  
6 industrial bank, or other institution described in  
7 section 2(c)(2)(H) of the Bank Holding Com-  
8 pany Act of 1956—

9 “(i) which became an insured deposi-  
10 tory institution before October 1, 2003, or  
11 pursuant to an application for deposit in-  
12 surance which was approved by the Fed-  
13 eral Deposit Insurance Corporation before  
14 such date; and

15 “(ii) with respect to which there is no  
16 change in control, directly or indirectly, of  
17 the company, bank, or institution after  
18 September 30, 2003, that requires an ap-  
19 plication under section 7(j) or 18(c) of the  
20 Federal Deposit Insurance Act, section 3  
21 of the Bank Holding Company Act of  
22 1956, or section 10 of the Home Owners’  
23 Loan Act.”.

24 (b) INTEREST ON BUSINESS NOW ACCOUNTS.—

1           (1) IN GENERAL.—Section 2(a) of Public Law  
2           93–100 (12 U.S.C. 1832(a)) is amended—

3                   (A) by striking paragraph (2) and insert-  
4           ing the following new paragraph:

5           “(2) PAYMENT OF INTEREST ON CERTAIN NOW  
6           ACCOUNTS.—An industrial loan company, industrial  
7           bank, or other institution described in section  
8           2(c)(2)(H) of the Bank Holding Company Act of  
9           1956 may not pay interest on any deposit or account  
10          of a corporation, business partnership, or other busi-  
11          ness entity from which funds may be withdrawn by  
12          negotiable instrument for payment to third parties,  
13          unless the appropriate State bank supervisor (as de-  
14          fined in section 3 of the Federal Deposit Insurance  
15          Act) of such company, bank, or institution deter-  
16          mines that such company, bank, or institution is not  
17          a nonqualified industrial loan company.”; and

18                   (B) by adding at the end the following new  
19          paragraph:

20          “(4) RULE OF CONSTRUCTION RELATING TO  
21          DEMAND DEPOSITS.—No provision of this section  
22          may be construed as conferring the authority to  
23          offer demand deposit accounts to any institution  
24          that is prohibited by law from offering demand de-  
25          posit accounts.”.

1           (2) TECHNICAL AND CONFORMING AMEND-  
2           MENT.—Section 2(b) of Public Law 93–100 (12  
3           U.S.C. 1832(b)) (as added by subsection (a)(2) of  
4           this section) is amended by striking “and is not a  
5           deposit or account described in subsection (a)(2)”.

6           (3) EFFECTIVE DATE.—The amendments made  
7           by this subsection shall take effect at the end of the  
8           2-year period beginning on the date of the enact-  
9           ment of this Act.

10 **SEC. 3. INTEREST-BEARING TRANSACTION ACCOUNTS AU-**  
11 **THORIZED.**

12           (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-  
13           TEREST ON DEMAND DEPOSITS.—

14           (1) FEDERAL RESERVE ACT.—Section 19(i) of  
15           the Federal Reserve Act (12 U.S.C. 371a) is amend-  
16           ed to read as follows:

17           “(i) [Repealed]”.

18           (2) HOME OWNERS’ LOAN ACT.—The first sen-  
19           tence of section 5(b)(1)(B) of the Home Owners’  
20           Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by  
21           striking “savings association may not—” and all  
22           that follows through “(ii) permit any” and inserting  
23           “savings association may not permit any”.



1           “(ii) the distribution of such earnings  
2           to the depository institutions which main-  
3           tain balances at such banks or on whose  
4           behalf such balances are maintained; and

5           “(iii) the responsibilities of depository  
6           institutions, Federal home loan banks, and  
7           the National Credit Union Administration  
8           Central Liquidity Facility with respect to  
9           the crediting and distribution of earnings  
10          attributable to balances maintained, in ac-  
11          cordance with subsection (c)(1)(A), in a  
12          Federal reserve bank by any such entity on  
13          behalf of depository institutions.

14          “(C) DEPOSITORY INSTITUTIONS DE-  
15          FINED.—For purposes of this paragraph, the  
16          term ‘depository institution’, in addition to the  
17          institutions described in paragraph (1)(A), in-  
18          cludes any trust company, corporation orga-  
19          nized under section 25A or having an agree-  
20          ment with the Board under section 25, or any  
21          branch or agency of a foreign bank (as defined  
22          in section 1(b) of the International Banking Act  
23          of 1978).”.

24          (b) AUTHORIZATION FOR PASS THROUGH RESERVES  
25          FOR MEMBER BANKS.—Section 19(c)(1)(B) of the Fed-

1 eral Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by  
2 striking “which is not a member bank”.

3 (c) CONSUMER BANKING COSTS ASSESSMENT.—

4 (1) IN GENERAL.—The Federal Reserve Act  
5 (12 U.S.C. 221 et seq.) is amended—

6 (A) by redesignating sections 30 and 31 as  
7 sections 31 and 32, respectively; and

8 (B) by inserting after section 29 the fol-  
9 lowing new section:

10 **“SEC. 30. SURVEY OF BANK FEES AND SERVICES.**

11 “(a) ANNUAL SURVEY REQUIRED.—The Board of  
12 Governors of the Federal Reserve System shall obtain an-  
13 nually a sample, which is representative by type and size  
14 of the institution (including small institutions) and geo-  
15 graphic location, of the following retail banking services  
16 and products provided by insured depository institutions  
17 and insured credit unions (along with related fees and  
18 minimum balances):

19 “(1) Checking and other transaction accounts.

20 “(2) Negotiable order of withdrawal and sav-  
21 ings accounts.

22 “(3) Automated teller machine transactions.

23 “(4) Other electronic transactions.

1       “(b) MINIMUM SURVEY REQUIREMENT.—The annual  
2 survey described in subsection (a) shall meet the following  
3 minimum requirements:

4               “(1) CHECKING AND OTHER TRANSACTION AC-  
5 COUNTS.—Data on checking and transaction ac-  
6 counts shall include, at a minimum, the following:

7                       “(A) Monthly and annual fees and min-  
8 imum balances to avoid such fees.

9                       “(B) Minimum opening balances.

10                      “(C) Check processing fees.

11                      “(D) Check printing fees.

12                      “(E) Balance inquiry fees.

13                      “(F) Fees imposed for using a teller or  
14 other institution employee.

15                      “(G) Stop payment order fees.

16                      “(H) Nonsufficient fund fees.

17                      “(I) Overdraft fees.

18                      “(J) Fees imposed in connection with  
19 bounced-check protection and overdraft protec-  
20 tion programs.

21                      “(K) Deposit items returned fees.

22                      “(L) Availability of no-cost or low-cost ac-  
23 counts for consumers who maintain low bal-  
24 ances.

1           “(2) NEGOTIABLE ORDER OF WITHDRAWAL AC-  
2           COUNTS AND SAVINGS ACCOUNTS.—Data on nego-  
3           tiable order of withdrawal accounts and savings ac-  
4           counts shall include, at a minimum, the following:

5                   “(A) Monthly and annual fees and min-  
6                   imum balances to avoid such fees.

7                   “(B) Minimum opening balances.

8                   “(C) Rate at which interest is paid to con-  
9                   sumers.

10                  “(D) Check processing fees for negotiable  
11                  order of withdrawal accounts.

12                  “(E) Fees imposed for using a teller or  
13                  other institution employee.

14                  “(F) Availability of no-cost or low-cost ac-  
15                  counts for consumers who maintain low bal-  
16                  ances.

17           “(3) AUTOMATED TELLER TRANSACTIONS.—  
18           Data on automated teller machine transactions shall  
19           include, at a minimum, the following:

20                   “(A) Monthly and annual fees.

21                   “(B) Card fees.

22                   “(C) Fees charged to customers for with-  
23                   drawals, deposits, and balance inquiries through  
24                   institution-owned machines.

1           “(D) Fees charged to customers for with-  
2           drawals, deposits, and balance inquiries through  
3           machines owned by others.

4           “(E) Fees charged to noncustomers for  
5           withdrawals, deposits, and balance inquiries  
6           through institution-owned machines.

7           “(F) Point-of-sale transaction fees.

8           “(4) OTHER ELECTRONIC TRANSACTIONS.—  
9           Data on other electronic transactions shall include,  
10          at a minimum, the following:

11          “(A) Wire transfer fees.

12          “(B) Fees related to payments made over  
13          the Internet or through other electronic means.

14          “(5) OTHER FEES AND CHARGES.—Data on  
15          any other fees and charges that the Board of Gov-  
16          ernors of the Federal Reserve System determines to  
17          be appropriate to meet the purposes of this section.

18          “(6) FEDERAL RESERVE BOARD AUTHORITY.—  
19          The Board of Governors of the Federal Reserve Sys-  
20          tem may cease the collection of information with re-  
21          gard to any particular fee or charge specified in this  
22          subsection if the Board makes a determination that,  
23          on the basis of changing practices in the financial  
24          services industry, the collection of such information

1 is no longer necessary to accomplish the purposes of  
2 this section.

3 “(c) ANNUAL REPORT TO CONGRESS REQUIRED.—

4 “(1) PREPARATION.—The Board of Governors  
5 of the Federal Reserve System shall prepare a report  
6 of the results of each survey conducted pursuant to  
7 subsections (a) and (b) of this section and section  
8 136(b)(1) of the Consumer Credit Protection Act.

9 “(2) CONTENTS OF THE REPORT.—In addition  
10 to the data required to be collected pursuant to sub-  
11 sections (a) and (b), each report prepared pursuant  
12 to paragraph (1) shall include a description of any  
13 discernible trend, in the Nation as a whole, in a rep-  
14 resentative sample of the 50 States (selected with  
15 due regard for regional differences), and in each  
16 consolidated metropolitan statistical area (as defined  
17 by the Director of the Office of Management and  
18 Budget), in the cost and availability of the retail  
19 banking services, including those described in sub-  
20 sections (a) and (b) (including related fees and min-  
21 imum balances), that delineates differences between  
22 institutions on the basis of the type of institution  
23 and the size of the institution, between large and  
24 small institutions of the same type, and any engage-  
25 ment of the institution in multistate activity.

1           “(3) SUBMISSION TO CONGRESS.—The Board  
2 of Governors of the Federal Reserve System shall  
3 submit an annual report to the Congress not later  
4 than June 1, 2007, and not later than June 1 of  
5 each subsequent year.

6           “(d) DEFINITIONS.—For purposes of this section, the  
7 term ‘insured depository institution’ has the meaning  
8 given such term in section 3 of the Federal Deposit Insur-  
9 ance Act, and the term ‘insured credit union’ has the  
10 meaning given such term in section 101 of the Federal  
11 Credit Union Act.”.

12           (2) CONFORMING AMENDMENT.—

13           (A) IN GENERAL.—Paragraph (1) of sec-  
14 tion 136(b) of the Truth in Lending Act (15  
15 U.S.C. 1646(b)(1)) is amended to read as fol-  
16 lows:

17           “(1) COLLECTION REQUIRED.—The Board shall  
18 collect, on a semiannual basis, from a broad sample  
19 of financial institutions which offer credit card serv-  
20 ices, credit card price and availability information  
21 including—

22           “(A) the information required to be dis-  
23 closed under section 127(c) of this chapter;

24           “(B) the average total amount of finance  
25 charges paid by consumers; and

1           “(C) the following credit card rates and  
2 fees:

3                   “(i) Application fees.

4                   “(ii) Annual percentage rates for cash  
5 advances and balance transfers.

6                   “(iii) Maximum annual percentage  
7 rate that may be charged when an account  
8 is in default.

9                   “(iv) Fees for the use of convenience  
10 checks.

11                   “(v) Fees for balance transfers.

12                   “(vi) Fees for foreign currency con-  
13 versions.”.

14           (B) EFFECTIVE DATE.—The amendment  
15 made by subparagraph (A) shall take effect on  
16 January 1, 2006.

17           (3) REPEAL OF OTHER REPORT PROVISIONS.—  
18 Section 1002 of Financial Institutions Reform, Re-  
19 covery, and Enforcement Act of 1989 and section  
20 108 of the Riegle-Neal Interstate Banking and  
21 Branching Efficiency Act of 1994 are hereby re-  
22 pealed.

23           (d) TECHNICAL AND CONFORMING AMENDMENTS.—  
24 Section 19 of the Federal Reserve Act (12 U.S.C. 461)  
25 is amended—

1 (1) in subsection (b)(4) (12 U.S.C. 461(b)(4)),  
2 by striking subparagraph (C) and redesignating sub-  
3 paragraphs (D) and (E) as subparagraphs (C) and  
4 (D), respectively; and

5 (2) in subsection (c)(1)(A) (12 U.S.C.  
6 461(c)(1)(A)), by striking “subsection (b)(4)(C)”  
7 and inserting “subsection (b)”.

8 **SEC. 5. INCREASED FEDERAL RESERVE BOARD FLEXI-**  
9 **BILITY IN SETTING RESERVE REQUIRE-**  
10 **MENTS.**

11 Section 19(b)(2)(A) of the Federal Reserve Act (12  
12 U.S.C. 461(b)(2)(A)) is amended—

13 (1) in clause (i), by striking “the ratio of 3 per  
14 centum” and inserting “a ratio not greater than 3  
15 percent (and which may be zero)”; and

16 (2) in clause (ii), by striking “and not less than  
17 8 per centum,” and inserting “(and which may be  
18 zero),”.

19 **SEC. 6. TRANSFER OF FEDERAL RESERVE SURPLUSES.**

20 (a) IN GENERAL.—Section 7(b) of the Federal Re-  
21 serve Act (12 U.S.C. 289(b)) is amended by adding at  
22 the end the following new paragraph:

23 “(4) ADDITIONAL TRANSFERS TO COVER IN-  
24 TEREST PAYMENTS FOR FISCAL YEARS 2005  
25 THROUGH 2009.—

1           “(A) IN GENERAL.—In addition to the  
2 amounts required to be transferred from the  
3 surplus funds of the Federal reserve banks pur-  
4 suant to subsection (a)(3), the Federal reserve  
5 banks shall transfer from such surplus funds to  
6 the Board of Governors of the Federal Reserve  
7 System for transfer to the Secretary of the  
8 Treasury for deposit in the general fund of the  
9 Treasury, such sums as are necessary to equal  
10 the net cost of section 19(b)(12) in each of the  
11 fiscal years 2005 through 2009.

12           “(B) ALLOCATION BY FEDERAL RESERVE  
13 BOARD.—Of the total amount required to be  
14 paid by the Federal reserve banks under sub-  
15 paragraph (A) for fiscal years 2005 through  
16 2009, the Board of Governors of the Federal  
17 Reserve System shall determine the amount  
18 each such bank shall pay in such fiscal year.

19           “(C) REPLENISHMENT OF SURPLUS FUND  
20 PROHIBITED.—During fiscal years 2005  
21 through 2009, no Federal reserve bank may re-  
22 plenish such bank’s surplus fund by the amount  
23 of any transfer by such bank under subpara-  
24 graph (A).”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
2 Section 7(a) of the Federal Reserve Act (12 U.S.C.  
3 289(a)) is amended by adding at the end the following  
4 new paragraph:

5 “(3) PAYMENT TO TREASURY.—During fiscal  
6 years 2005 through 2009, any amount in the sur-  
7 plus fund of any Federal reserve bank in excess of  
8 the amount equal to 3 percent of the paid-in capital  
9 and surplus of the member banks of such bank shall  
10 be transferred to the Secretary of the Treasury for  
11 deposit in the general fund of the Treasury.”.

12 **SEC. 7. RULES OF CONSTRUCTION.**

13 In the case of an escrow account maintained at a de-  
14 pository institution for the purpose of completing the set-  
15 tlement of a real estate transaction—

16 (1) the absorption, by the depository institution,  
17 of expenses incidental to providing a normal banking  
18 service with respect to such escrow account;

19 (2) the forbearance, by the depository institu-  
20 tion, from charging a fee for providing any such  
21 banking function; and

22 (3) any benefit which may accrue to the holder  
23 or the beneficiary of such escrow account as a result  
24 of an action of the depository institution described  
25 in subparagraph (1) or (2) or similar in nature to

1       such action, including any benefits which have been  
2       so determined by the appropriate Federal regulator,  
3 shall not be treated as the payment or receipt of interest  
4 for purposes of this Act and any provision of Public Law  
5 93–100, the Federal Reserve Act, the Home Owners’ Loan  
6 Act, or the Federal Deposit Insurance Act relating to the  
7 payment of interest on accounts or deposits at depository  
8 institutions. No provision of this Act shall be construed  
9 so as to require a depository institution that maintains  
10 an escrow account in connection with a real estate trans-  
11 action to pay interest on such escrow account or to pro-  
12 hibit such institution from paying interest on such escrow  
13 account. No provision of this Act shall be construed as  
14 preempting the provisions of law of any State dealing with  
15 the payment of interest on escrow accounts maintained in  
16 connection with real estate transactions.

Passed the House of Representatives May 24, 2005.

Attest:

JEFF TRANDAHL,

*Clerk.*