

109TH CONGRESS
1ST SESSION

H. R. 4414

To amend the Electronic Fund Transfer Act to require notice to the consumer before any fee may be imposed by a financial institution in connection with any transaction for any overdraft protection service provided with respect to such transaction, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2005

Mr. MEEK of Florida (for himself and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Electronic Fund Transfer Act to require notice to the consumer before any fee may be imposed by a financial institution in connection with any transaction for any overdraft protection service provided with respect to such transaction, 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 “Overdraft Fee Notifi-
5 cation Act”.

1 **SEC. 2. NOTIFICATION OF OVERDRAFT FEE.**

2 (a) IN GENERAL.—Section 905 of the Electronic
3 Fund Transfer Act (15 U.S.C. 1693c) is amended by add-
4 ing at the end the following new subsection:

5 “(d) NOTIFICATION OF OVERDRAFT FEE FOR IN-
6 PERSON, AUTOMATED, TELEPHONIC, AND INTERNET-
7 BASED TRANSACTIONS.—

8 “(1) IN GENERAL.—In the case of any financial
9 institution that provides any overdraft protection
10 service to any consumer on a flat, per-transaction
11 basis in connection with a withdrawal from or debit
12 of the consumer’s account at the financial institution
13 in a transaction described in paragraph (2) that
14 would result in an overdraft of such consumer ac-
15 count, no fee or charge may be imposed for such
16 overdraft protection service unless the notice re-
17 quired by this subsection has been provided to the
18 consumer, in the manner required under this sub-
19 section, before the completion of the transaction that
20 would result in an overdraft.

21 “(2) SCOPE OF APPLICATION.—Paragraph (1)
22 shall apply to any withdrawal from or debit of a con-
23 sumer’s account at a financial institution in a trans-
24 action initiated by the consumer as an electronic
25 fund transfer or in person at a branch of the finan-

1 cial institution staffed by employees of the financial
2 institution.

3 “(3) AUTOMATED TELLER MACHINE TRANS-
4 ACTIONS.—In the case of any electronic fund trans-
5 fer initiated by a consumer at any automated teller
6 machine, whether or not such machine is maintained
7 by the financial institution that holds the account of
8 the consumer initiating the transaction, the fol-
9 lowing disclosure rules shall apply:

10 “(A) BALANCE REQUESTS.—

11 “(i) IN GENERAL.—In the case of a
12 request by the consumer at the automated
13 teller machine for balance information, the
14 display provided on the machine shall pro-
15 vide such information in a manner that
16 differentiates between—

17 “(I) the funds available in the ac-
18 count that are attributable to deposits
19 by or on behalf of the consumer; and

20 “(II) funds available to the cus-
21 tomer from the institution in connec-
22 tion with an overdraft protection serv-
23 ice.

24 “(ii) OVERDRAFT PROTECTION SERV-
25 ICE FEE AMOUNT.—On the same screen of

1 the automated teller machine referred to in
2 clause (i), the display shall provide infor-
3 mation on any fee that would be imposed
4 for the provision of any overdraft protec-
5 tion service provided in connection with the
6 transaction.

7 “(B) WITHDRAWAL OR TRANSFER.—In the
8 case of a request by the consumer at the auto-
9 mated teller machine to initiate an electronic
10 fund transfer that can be completed only if an
11 overdraft protection service is provided to the
12 consumer, the display provided on the machine
13 shall provide the following notice, with the
14 blanks filled in appropriately, and the option for
15 the consumer to accept or decline the service:

16 ‘This request exceeds your funds available and
17 will result in an overdraft of \$____ and the im-
18 position of a fee from your financial institution
19 of \$____. To accept this fee and continue with
20 your transaction, press “ACCEPT”. To termi-
21 nate this transaction, press “DECLINE”.’.

22 “(4) AUTOMATED POINT OF SALE TRANS-
23 ACTION.—In the case of any electronic fund transfer
24 initiated by a consumer at any automated point-of-
25 sale machine that can be completed only if an over-

1 draft protection service is provided to the consumer
2 for a fee, the following disclosure rules shall apply
3 to the extent a screen operated in conjunction with
4 the machine is available to the consumer for effec-
5 tuating the transaction:

6 “(A) NOTICE OF OVERDRAFT.—The dis-
7 play provided on the machine shall provide the
8 following notice and the option for the con-
9 sumer to continue or discontinue the trans-
10 action:

11 ‘Transaction will result in an overdraft of
12 \$____. To continue with your transaction, press
13 “CONTINUE”. To terminate this transaction,
14 press “NO”.’.

15 “(B) NOTICE OF FEE.—If the consumer
16 referred to in subparagraph (A) continues with
17 the transaction, the display provided on the ma-
18 chine shall provide the following notice and the
19 option for the consumer to accept or decline the
20 fee:

21 ‘A fee of \$____ will be imposed for the over-
22 draft. To accept this fee and continue with your
23 transaction, press “ACCEPT”. To terminate
24 this transaction, press “DECLINE”.’.

1 “(5) IN-PERSON AND TELEPHONIC TRANS-
2 ACTIONS.—In the case of any fund transfer or with-
3 drawal initiated by a consumer in person at a
4 branch of the financial institution staffed by employ-
5 ees of the financial institution or verbally over the
6 telephone, the following disclosure requirements shall
7 apply:

8 “(A) BALANCE REQUESTS.—If, in the
9 course of the transaction, the amount of the
10 balance in the consumer’s account is mentioned
11 or requested, the customer shall be made aware
12 verbally of any distinction between—

13 “(i) the funds available in the account
14 that are attributable to deposits by or on
15 behalf of the consumer; and

16 “(ii) funds available to the customer
17 from the institution in connection with an
18 overdraft protection service.

19 “(B) OVERDRAFT PROTECTION SERVICE
20 FEE AMOUNT.—If the consummation of the
21 withdrawal or fund transfer transaction would
22 result in the imposition of an overdraft protec-
23 tion service fee on the account of the consumer,
24 the consumer shall promptly be informed of

1 such fact and the amount of the fee before the
2 transaction is final.

3 “(6) INTERNET AND OTHER ELECTRONIC TER-
4 MINAL TRANSACTIONS.—In the case of any elec-
5 tronic fund transfer initiated by the consumer at any
6 electronic terminal or computer, other than an auto-
7 mated teller machine or automated point-of-sale ma-
8 chine meeting the requirements of paragraph (3) or
9 (4), that can be completed only if an overdraft pro-
10 tection service is provided to the consumer for a fee,
11 the display provided on the terminal or computer
12 shall provide the following notice and the option for
13 the consumer to accept or decline the fee:

14 ‘This request exceeds your funds available and will
15 result in an overdraft of \$_____ and the imposition
16 of a fee from your financial institution of \$_____. To
17 accept this fee and continue with your transaction,
18 press “ACCEPT”. To terminate this transaction,
19 press “DECLINE”.’.

20 “(7) DEFINITIONS.—For purposes of this sub-
21 section and section 906(c)(5), the following defini-
22 tions shall apply:

23 “(A) ANNUAL PERCENTAGE RATE.—The
24 term ‘annual percentage rate’ means the rate of
25 interest determined in the manner provided in

1 section 108 and regulations prescribed by the
2 Board under such section.

3 “(B) OVERDRAFT PROTECTION SERVICE.—

4 The term ‘overdraft protection service’ means
5 any service provided by a financial institution
6 holding the account of any consumer pursuant
7 to which any debit against the account is paid
8 by the financial institution even though there
9 are insufficient funds in the account to cover
10 the amount of the debit, however such payment
11 is accomplished, including through the use of
12 overdraft lines of credit, linked accounts, or any
13 overdraft protection program for which the fi-
14 nancial institution has not complied with the
15 disclosure requirements under the Truth in
16 Lending Act and regulations prescribed under
17 such Act.”.

18 (b) INFORMATION REQUIRED IN PERIODIC STATE-
19 MENT.—Section 906(c) of the Electronic Fund Transfer
20 Act (15 U.S.C. 1693d(c)) is amended—

21 (1) by striking “and” at the end of paragraph

22 (3);

23 (2) by striking the period at the end of para-
24 graph (4) and inserting “; and”; and

1 (3) by inserting after paragraph (4) the fol-
2 lowing new paragraph:

3 “(5) with respect to each case in which the fi-
4 nancial institution was required to provide notice to
5 a customer under any paragraph of section 905(d)
6 of the imposition of an overdraft fee and the amount
7 of the fee during the period covered by the periodic
8 statement, a written statement of the annual per-
9 centage rate which the fee represents with respect to
10 the amount of the overdraft in type no smaller than
11 other required disclosures under this subsection, but
12 not less than 8-point type, and in the following form:
13 ‘Overdraft Fee Annual Percentage Rate Notice: The
14 overdraft fee resulting from your transaction dated
15 _____ is equal to an Annual Percentage Rate of
16 _____ % on your overdraft balance of \$_____.’.”.

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