

109TH CONGRESS  
1ST SESSION

# H. R. 799

To amend the Expedited Funds Availability Act to redress imbalances between the faster withdrawals permitted under the Check 21 Act and the slower rates for crediting deposits, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2005

Mrs. MALONEY (for herself, Mr. SANDERS, Ms. WATSON, Ms. WATERS, Mr. GEORGE MILLER of California, Mr. ENGEL, Mr. McDERMOTT, Mr. WEINER, Mr. GUTIERREZ, Mr. JACKSON of Illinois, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Expedited Funds Availability Act to redress imbalances between the faster withdrawals permitted under the Check 21 Act and the slower rates for crediting 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Consumer Checking  
5       Account Fairness Act”.

1 **SEC. 2. ADJUSTMENT OF CHECK HOLD PERIODS RE-**  
2 **QUIRED.**

3 (a) IN GENERAL.—Section 603(d) of the Expedited  
4 Funds Availability Act (12 U.S.C. 4002(d)) is amended  
5 by adding at the end the following new paragraph:

6 “(3) COORDINATION WITH CHECK CLEARING  
7 FOR THE 21ST CENTURY ACT.—

8 “(A) IN GENERAL.—The Board shall pre-  
9 scribe regulations under paragraph (1)—

10 “(i) to reduce the time periods under  
11 subsections (a), (b), or (e), in accordance  
12 with the requirements of paragraph (1), to  
13 take into account the time within which  
14 any receiving institution can reasonably ex-  
15 pect to learn of the nonpayment of most  
16 items for each category of checks under  
17 the Checking Clearing for the 21st Cen-  
18 tury Act or the regulations implementing  
19 such Act; and

20 “(ii) to eliminate distinctions between  
21 the schedules established under subsections  
22 (a), (b), or (e) if the Board finds that such  
23 distinctions no longer have any significance  
24 for any category of checks under the  
25 Checking Clearing for the 21st Century

1 Act or the regulations implementing such  
2 Act.

3 “(B) PARAGRAPH (2) ADJUSTMENTS.—The  
4 Board shall, by regulation, eliminate the exten-  
5 sion provided under paragraph (2) for deposits  
6 of any category of checks if the Board finds  
7 that the extension has no substantial usefulness  
8 under the Checking Clearing for the 21st Cen-  
9 tury Act or the regulations implementing such  
10 Act.”.

11 (b) REGULATIONS.—The Board shall prescribe the  
12 regulations required under the amendment made by sub-  
13 section (a) in final form before the end of the 6-month  
14 period beginning on the date of the enactment of this Act.

15 **SEC. 3. AMENDMENTS RELATING TO CHECKING ACCOUNT**  
16 **CONSUMERS.**

17 (a) DEPOSITS AT PROPRIETARY ATMS.—Section  
18 603(a)(2) of the Expedited Funds Availability Act (12  
19 U.S.C. 4002(a)(2)) is amended—

20 (1) in subparagraphs (B)(ii) and (C)(ii), by in-  
21 serting “or is deposited at a proprietary ATM” be-  
22 fore the semicolon at the end of each such subpara-  
23 graph; and

1           (2) in subparagraph (E), by inserting “, or a  
 2           check deposited at a proprietary ATM,” after “de-  
 3           posited in a branch of a depository institution”.

4           (b) LIMITATION ON CERTAIN FEES DURING CHECK  
 5 HOLD PERIOD.—Section 607 of the Expedited Funds  
 6 Availability Act (12 U.S.C. 4006) is amended by adding  
 7 at the end the following new subsection:

8           “(f) LIMITATION ON CERTAIN FEES DURING CHECK  
 9 HOLD PERIOD.—If a receiving depository institution has  
 10 received a provisional or final settlement with respect to  
 11 a check deposited in an account at the depository institu-  
 12 tion and such depository institution has not yet made the  
 13 proceeds of the deposit available to the accountholder, the  
 14 receiving depository institution may not assess any fee for  
 15 an overdraft, or any fee associated with the payment of  
 16 an overdraft, that would not have occurred if such funds  
 17 so deposited were available.”.

18           (c) CREDITS REQUIRED TO BE POSTED BEFORE  
 19 DEBITS.—Section 607 of the Expedited Funds Avail-  
 20 ability Act (12 U.S.C. 4006) is amended by inserting after  
 21 subsection (f) (as added by subsection (b) of this section)  
 22 the following new subsection:

23           “(g) ORDER OF POSTING.—In the process of posting  
 24 credits and debits against a checking account used pri-  
 25 marily for personal, family, or household purposes after

1 the close of any business day, the receiving depository in-  
2 stitution shall credit all deposits to the account before deb-  
3 iting any check drawn on the account and presented to  
4 the depository institution for payment.”.

5 (d) SATURDAYS MAY BE TREATED AS BUSINESS  
6 DAYS.—Section 602(3) of the Expedited Funds Avail-  
7 ability Act (12 U.S.C. 4001(3)) is amended by adding at  
8 the end the following new sentence: “For purposes of this  
9 title, however, Saturday shall be treated as a business day  
10 in the calculation of any period within which funds depos-  
11 ited in an account at a receiving depository institution are  
12 required be made available under this title, if with respect  
13 to checks received by the depository institution for which  
14 it is the originating institution, the depository institution  
15 debits accounts on Saturdays for such checks.”.

16 (e) REDUCTION IN CHECK HOLDS FOR NONLOCAL  
17 CHECK DEPOSITS.—Section 603(b)(2) of the Expedited  
18 Funds Availability Act (12 U.S.C. 4002(b)(2)) is amended  
19 by striking “not more than 4 business days shall intervene  
20 between” and inserting “funds shall be made available on  
21 the 2nd business day after”.

22 (f) ADJUSTMENT FOR INFLATION FOR LARGE CHECK  
23 LIMITATION.—

24 (1) IN GENERAL.—Section 604(a)(3) of the Ex-  
25 pedited Funds Availability Act (12 U.S.C.

1       4003(a)(3)) is amended by striking “\$5,000” each  
 2       place such term appears and inserting “\$7,500”.

3           (2) CLERICAL AMENDMENT.—The paragraph  
 4       heading for section 604(a)(3) of the Expedited  
 5       Funds Availability Act is amended by striking  
 6       “\$5,000” and inserting “\$7,500”.

7       (g) ADJUSTMENT FOR SMALL DEPOSIT AVAIL-  
 8       ABILITY.—

9           (1) IN GENERAL.—Section 603(a)(2)(D) of of  
 10      the Expedited Funds Availability Act (12 U.S.C.  
 11      4002(a)(2)(D)) is amended by striking “\$100” and  
 12      inserting “\$500”.

13          (2) TECHNICAL AND CONFORMING AMEND-  
 14      MENT.—The heading for subparagraph (C) of sec-  
 15      tion 603(b)(3) of the Expedited Funds Availability  
 16      Act (12 U.S.C. 4002(b)(3)(C)) is amended by strik-  
 17      ing “\$100 AVAILABILITY” and inserting “COORDINA-  
 18      TION WITH OTHER AMOUNT AVAILABLE”.

19      (h) FEES FOR SERVICES NOT REQUESTED.—Section  
 20      607 of the Expedited Funds Availability Act (12 U.S.C.  
 21      4006) is amended by inserting after subsection (g) (as  
 22      added by subsection (c) of this section) the following new  
 23      subsection:

24          “(h) FEES FOR SERVICES NOT REQUESTED.—No de-  
 25      pository institution may impose any fee for paying any

1 check drawn on an account in spite of a lack of sufficient  
2 funds in the account to pay such check or any similar ac-  
3 tivity (commonly referred to as ‘bounce protection’) unless  
4 the accountholder has affirmatively requested such serv-  
5 ice.”.

6 (i) CLARIFICATION OF PREEMPTION.—Section 608 of  
7 the Expedited Funds Availability Act (12 U.S.C. 4007)  
8 is amended—

9 (1) in subsection (b)—

10 (A) by inserting “or (c)” after “subsection  
11 (a)”; and

12 (B) by inserting “, but only to the extent  
13 of any such inconsistency” before the period at  
14 the end; and

15 (2) by adding at the end the following new sub-  
16 section:

17 “(c) CLARIFICATION OF INCONSISTENCY.—A State  
18 law shall not be construed as inconsistent with this title,  
19 or any regulation prescribed under this title, if the protec-  
20 tion such law affords the consumer by such law is greater  
21 than the protection afforded by this title. For purposes  
22 of determining congressional intent with respect to pre-  
23 emption, the purpose of this title shall be construed to be  
24 the establishment of a minimum basis of protection for

1 the consumer and not the creation of a uniform national  
2 rule.”.

3 **SEC. 4. RECREDIT FOR ALL CONSUMERS UNLESS SUB-**  
4 **STITUTE CHECKS ARE PROVIDED WITHOUT**  
5 **COST UPON REQUEST.**

6 Section 7(b) of the Checking for the 21st Century  
7 Act (12 U.S.C. 5006(b)) is amended by adding at the end  
8 the following new paragraph:

9 “(3) FEES FOR SUBSTITUTE CHECKS.—If any  
10 bank that holds the account of a consumer imposes  
11 any fee for producing a copy of a substitute check  
12 for such consumer with respect to such account, the  
13 expedited recredit process established under this sec-  
14 tion shall be available for all charges initiated by  
15 check against any such account regardless of wheth-  
16 er a substitute check was involved or was provided  
17 to the consumer.”.

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