

SENATE BILL REPORT

SB 5611

As of February 13, 2015

Title: An act relating to excessive overdraft fees.

Brief Description: Addressing excessive overdraft fees.

Sponsors: Senators Benton and Keiser.

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/12/15.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Shani Bauer (786-7468)

Background: Under the dual system of banking, a commercial bank, savings bank, or savings and loan association (association) chooses whether to be chartered by the state in which it is located or by the federal government. The Department of Financial Institutions (Department), through its Division of Banks, regulates state-chartered commercial and savings banks and associations. The Office of the Comptroller of the Currency (OCC) regulates national banks and associations. Similarly, credit unions may be state or federally chartered.

Under both state and federal laws, the various types of financial institutions are subject to different regulations regarding organization, governance, and business activities. The regulations governing financial institutions include grants of powers and authorities that may be exercised by an institution with respect to corporate governance and operational matters. Generally the types of powers and authorities held by banks and trust companies chartered in Washington are defined by reference to regulations adopted by OCC and the Board of Governors of the Federal Reserve System.

Generally, an overdraft occurs when a withdrawal from an account exceeds the available balance. The financial institution will charge its customer a fee when this occurs. Overdraft fees vary widely by institution, generally ranging from \$30 to \$34. Some banks also charge a continuous or sustained overdraft fee when the overdraft continues for a certain number of days after the account is overdrawn. Sustained overdraft fees also vary widely. Some banks charge a flat fee after a given number of days – e.g. \$35 after five days – while others charge

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a per-day fee – e.g. \$7 per day after four days). A 2010 survey showed 9 out of 14 large banks charge some form of sustained overdraft fee.

The issue of overdraft fees has been addressed by various federal groups over the past few years. A 2009 Federal Reserve Board rule prohibited banks from assessing overdraft fees on ATM and one-time debit card transactions where the consumer has not opted into overdraft protection. In 2013 the Consumer Financial Protection Bureau released an extensive white paper raising concerns about the impact of overdraft practices on consumers. In 2014 the Federal Deposit Insurance Corporation issued guidance cautioning financial institutions that its method of disclosure and calculation of continuous overdraft fees could result in violations of the Federal Trade Commission Act which prohibits unfair or deceptive acts or practices.

Summary of Bill: It is unlawful for any financial institution to charge a continuous overdraft fee beyond the initial overdraft fee charged when the depositor exceeded the available balance of the account.

Overdraft fee is defined as a fee charged by a financial institution when a withdrawal from an account exceeds the available balance. Continuous overdraft fee means a fee charged by a financial institution when an account remains overdrawn for a predetermined consecutive number of days.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A constituent was horrified because her son disclosed to her that he miscalculated balance and overdrew his account. The bank charged a fee of \$34 and then an \$8 per day overdraft fee. This resulted in a fee of \$114 for a \$19 check that overdrew the account. This seems overly excessive. This committee talks extensively about lending rates. This rate far exceeds the rate charged on any of those other products.

CON: There is a wide variety of practices in the industry. Overdraft protection is offered by banks and credit unions of all sizes. A fee is offered for that protection, but the bank will honor the debit charge or check, so the credit rating of a person is unaffected. Many customers therefore choose the product for this reason. Some institutions choose to charge a base fee and charge a sustained overdraft fee. Some banks will limit the number of overdraft fees in a day in order to limit a person's exposure. A bank charges continuous fees in order to incentivize a person to bring an account current. All institutions aggressively notify customer. The majority of merchants who place a hold on an account will clear the hold immediately after the transaction is complete – e.g. gas stations.

OTHER: Account holds or freezes also play into this. If you use a card at a gas station, the station will put a hold on the account. This freeze may cause a check to bounce when you actually had the money in your account.

Persons Testifying: PRO: Senator Benton, prime sponsor.

CON: Denny Eliason, WA Bankers Assn., United Financial Lobby.

OTHER: Steve Lindstrom, citizen.