

Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 1415 (Limón) – As Amended June 1, 2022

SENATE VOTE: 29-7

SUBJECT: Financial Institutions Law: annual report: overdraft

SUMMARY: Requires a bank or credit union to annually report to the Department of Financial Protection (DFPI) information related to overdraft fees and nonsufficient fund fees.

Specifically, **this bill:**

- 1) Requires a bank or credit union subject to the examination authority of the DFPI commissioner to report annually, on or before March 1, the amount of revenue earned from overdraft fees and nonsufficient funds fees collected in the most recently completed calendar year and the percentage of that revenue as a proportion of the net income of the bank or credit union.
- 2) Requires DFPI to publish in a report the data for each bank or credit union and make this report available on DFPI's website. The first report must be published by March 31, 2023, for the 2022 calendar year.
- 3) Defines the following terms:
 - a) "Nonsufficient funds fees" means fees resulting from the initiation of a transaction that exceeds the customer's account balance if the customer's bank or credit union declines to make the payment.
 - b) "Overdraft fees" means fees resulting from the processing of a debit transaction that exceeds a customer's account balance.

EXISTING LAW:

- 1) Includes the following, among others, in the definition of "licensee" under the Financial Institutions Law (Financial Code Section 185):
 - a) A bank authorized by the commissioner to conduct business, as specified.
 - b) A credit union authorized by the commissioner to conduct business, as specified.
- 2) Requires that a licensee under the Financial Institutions Law make and file with the commissioner a report in any form as the commissioner may prescribe and verified in any manner the commissioner prescribes, showing its financial condition and any other information as the commissioner may require. (Financial Code Section 453)
- 3) Provides for the examination of banks by the commissioner, as specified. (Article 1 of Chapter 5 of Division 1 of the Financial Code, commencing with Section 500 et seq.)

- 4) Authorizes the commissioner to examine a bank organized under the laws of this state, a bank organized under the laws of another state that maintains an office in this state, and a bank organized under the laws of another country that maintains an office in this state. (Financial Code Section 500)
- 5) Provides for the examination of credit unions by the commissioner, as specified. (Article 2 of Chapter 3 of Division 5 of the Financial Code, commencing with Section 14250 et seq.; Article 7 of Chapter 11 of Division 5 of the Financial Code, commencing with Section 16150 et seq.; and Article 7 of Chapter 12 of Division 5 of the Financial Code, commencing with Section 16700 et seq.)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) **Purpose**

According to the author:

Overdraft fees are disproportionately borne by consumers who are least able to afford these oppressive charges: workers with volatile incomes, parents of young children, and Millennials and Gen Z adults. These fees are also highly concentrated with less than 9% of consumer accounts paying 10 or more overdrafts per year, accounting for nearly 80% of all overdraft revenue generated by financial institutions.

California policymakers and the public deserve more transparency about the overdraft practices at financial institutions under the state's oversight. This bill will provide better information about overdraft practices that will inform future policy efforts to reduce the burden of high fees on vulnerable consumers.

2) **A brief history of overdraft programs**

Overdraft occurs when a bank or credit union allows a transaction to go through even though the customer does not have enough money in the account to cover that transaction. In essence, overdraft acts as a short-term extension of credit for the customer, with the financial institution covering the transaction rather than halting it altogether.

While overdraft is common today, it hasn't always been the case. Prior to the widespread adoption of electronic transactions such as ATM withdrawals and debit card purchases, banks and credit unions often decided on whether to clear a transaction on behalf of a customer on a case-by-case basis or through ad hoc programs. However, the changing nature of how customers can access their checking account, such as through the use of debit cards, has introduced additional complexity to managing and tracking funds. Financial institutions responded to these trends by embracing overdraft programs. As the Consumer Financial Protection Bureau (CFPB) notes in a 2013 report:

...with the advent of electronic transactions (i.e., ATM withdrawals and debit card purchases) that require real-time authorization decisions, financial institutions faced the question of whether to refuse to authorize any electronic

transaction for which there were insufficient funds or create an automated system of authorizing such transactions into overdraft.¹

Today, many banks and credit unions have some type of overdraft program for their customers, though these programs may be structured differently. For example, some banks and credit unions may establish overdraft limits (the amount by which the institution would allow payments to overdraw a consumer's account) at different or varying amounts or have different fee amounts based on the number of overdraft clearances that occur in a specified time period.

3) **Overdraft and nonsufficient fund (NSF) fees.**

As banks and credit unions have embraced overdraft as a feature of their customers' banking experience, they have also increasingly relied on fee revenues connected to that service. Generally, a consumer is charged an overdraft fee when they attempt a debit transaction that exceeds their account balance. These fees typically run around \$35 per transaction for accounts held at larger banks. For banks and credit unions that do not offer overdraft clearing, the institution may reject a payment and charge the customer a NSF. An NSF is also typically around \$35.

The importance of these fees as a source of revenue for financial institutions has grown over time. In 2011, changes in federal law limited debit card swipe fees (the fees that can be charged merchants when a debit card is used to make a purchase), thereby making overdraft fees and NSF fees even more vital. In 2019, overall revenue from overdraft and NSF was approximately \$15.47 billion, and these fees make up roughly two-thirds of fee revenue earned on transaction accounts (with other sources being ATM fees and monthly maintenance fees).

Overdraft fees and NSF fees can have a significant and harmful financial impact on customers, especially those with uneven or volatile incomes. According to the Consumer Financial Protection Bureau (CFPB), overdraft fees are paid by a relatively small group of customers, with roughly 8% of customers incurring 75% of all overdraft fees across the industry.² This particular group paid an average of \$380 in fees each year. Moreover, overdraft fees have a greater impact on those with uneven incomes, with volatility being a stronger predictor of whether someone will overdraft than their income level.³

4) **Changing approach to overdraft and NSF**

There are some hopeful indications that financial institutions are moving away from overdraft fees. Earlier this year, many of the largest commercial banks announced efforts to either reduce overdraft fees or improve overdraft protections and give consumers more flexibility. For example, Bank of America announced in January 2022 that it would reduce its overdraft fee from \$35 to \$10 and Wells Fargo announced additional policies to give account holders more time and ability to cover an overdraft before a fee is charged. And, in addition to these larger financial institutions, banks participating in the BankOn Program

¹ [201306_cfpb_whitepaper_overdraft-practices.pdf](https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf) (consumerfinance.gov)

² https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf

³ <https://morningconsult.com/2022/01/11/overdrafted-underbanked-and-looking-for-new-providers/>

provide accounts without any overdraft fees.⁴ Thus, while overdraft fees remain common, consumers now have a number of options to open a low-cost bank account.

5) **How good is the data on overdraft fees?**

Much of the publicly available data on overdraft fees reflect the practices of larger financial institutions. This is because each bank with assets over \$1 billion included in their Consolidated Reports of Conditions and Income (“Call Reports”) information related to certain fees, including overdraft fees and NSF fees, on consumer deposit accounts. However, similar fee breakouts are not provided by smaller institutions. As a Brookings Report study says:

The smallest banks (those with assets totaling less than \$1 billion) and most credit unions are not required to report their overdraft fee revenue at all. Researchers and consumer advocates have no idea how reliant they are on overdrafts. Unless bank regulators are asking these questions, the regulators may not know themselves. Regulators need to collect and publicize overdraft data for all banks and credit unions regardless of size.⁵

6) **Prior legislation.**

AB 365 (Ammiano, 2009) proposed the Consumer Overdraft Protection Fair Practices Act, which would have required specified disclosures related to overdraft services, limited the number of overdraft fees charged in a day, and capped the amount of overdraft fees at \$25 or the amount of the overdraft of the customer’s account if \$10 or less. AB 365 bill died in this committee.

7) **Arguments in support**

The Consumer Federation of California, the Center for Responsible Lending, the California Low-Income Consumer Coalition, and Californians for Economic Justice write in support of SB 1415, noting the following:

Overdraft and NSF fees make up a large source of revenue for banks and credit unions. It is estimated that in 2019 the market value of these kinds of fees was \$15.47 billion (CFPB). This is all wealth being extracted from the lowest-income individuals. Currently, some small banks and credit unions are not required to disclose overdraft fee revenue, meaning that State regulators are in the dark about how much these institutions rely on this revenue. SB 1415 will ensure that state leaders and the public are fully aware of the prevalence and size of these fees at these particular institutions.

This bill will require banks and credit unions, which are subject to the state’s examination authority, to annually report the revenue earned from these overdraft and NSF fees to the Department of Financial Protection and Innovation. This information will then be published in a publically available report. State

⁴ See <https://joinbankon.org/> to see a list of participating institutions.

⁵ <https://www.brookings.edu/opinions/a-few-small-banks-have-become-overdraft-giants/>

regulators can then use this information to help inform future policies in this area, helping ensure that consumers are not unjustly burdened by these fees for the sake of increased profits.

8) **Letter of concern**

The California Bankers Association and the California Community Banking Network write a letter of concern about how the data required under this bill could be used to misrepresent the facts about overdraft protection. The letter states:

While we are not opposed to the measure at this time, we do believe that enactment of SB 1415 and the subsequent public report this measure requires, will ultimately lead to a misrepresentation of facts around overdraft protection and allow critics of bank fees to draw erroneous conclusions about this service. While we support transparency, we wish to make clear that overdraft protection is a valuable banking service that is strongly preferred by our customers, particularly when compared to having payments declined at the point of sale.

The current financial services marketplace has never been more competitive. Banks, credit unions, and FinTech are all competing for deposit accounts, and many are offering incentives and rewards to attract new customers. While the rise of non-bank entities entering the financial services marketplace poses regulatory and consumer protection risks, it has also broadened consumer choice, and commercial banks continue to develop innovative products and services to maintain market share. As a result of this competition, consumers have an array of options when choosing between bank products and services, including overdraft protection. This consumer choice is informed by federally mandated disclosure of fees and costs associated with overdraft services. These prescriptive regulations require banks to disclose overdraft fees, including the amount of the fee, and any additional fees associated with an account that remains in an overdraft condition. In addition, banks may not assess an overdraft fee unless a customer affirmatively opts-in to overdraft protection services, and this choice must be memorialized in a written notice to each customer, affirming their consent.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California
Center for Responsible Lending
Californians for Economic Justice
California Low-Income Consumer Coalition

Opposition

None on file.

Concern.

California Community Banking Network

California Bankers Association

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