SENATE RULES COMMITTEE AB 2017
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2017
Author: Grayson (D)
Amended: 3/18/24 in Assembly
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 6-0, 6/19/24
AYES: Limón, Niello, Caballero, Min, Nguyen, Portantino
NO VOTE RECORDED: Bradford

SENATE JUDICIARY COMMITTEE: 11-0, 6/25/24
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Niello, Roth, Stern, Wahab

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 62-1, 5/16/24 - See last page for vote

SUBJECT: Banks and credit unions: nonsufficient funds fees

SOURCE: Author

DIGEST: This bill prohibits state-chartered banks and credit unions from charging a fee when a consumer's attempt to initiate a transaction is declined instantaneously or near instantaneously by the bank or credit union due to nonsufficient funds.

ANALYSIS:

Existing law:

1) Provides the Banking Law, administered by the Department of Financial Protection and Innovation (DFPI), which specifies authorizations, requirements, and restrictions that govern how a corporation may engage in commercial banking activity in the state. (Financial Code Section 1000 et seq.)

2) Provides the California Credit Union Law, administered by DFPI, which prescribes the rules applicable to any person, other than a federal credit union, which engages in business as a credit union in this state. (Financial Code Section 14000 et. seq.)

3) Requires banks and credit unions subject to the examination authority of DFPI to report annually the revenue earned from overdraft fees, as specified, and requires the commissioner to publish that information in a publicly available report. (Financial Code Section 521)

This bill prohibits a bank or credit union subject to the examination authority of DFPI from charging a consumer a nonsufficient funds fee, as specified, when the consumer's attempt to initiate a transaction is declined instantaneously or near instantaneously by the bank or credit union due to nonsufficient funds.

Background

In January 2024, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule related to nonsufficient funds fees for instantaneously declined transactions.[1] This bill seeks to establish a similar policy as the CFPB rule, which would apply to banks and credit unions with a state charter from California.

In its proposed rule, the CFPB articulates the following rulemaking goals:

> When a consumer's attempted withdrawal, debit, payment, or transfer transaction amount exceeds the available funds in their account, currently, a financial institution might decline the transaction and charge the consumer a fee, often called a nonsufficient funds (NSF) fee. NSF fees might be charged on transactions that the financial institution declines within seconds after the payment request is initiated, as well as on transactions that are rejected hours or days after the initial request to pay is made. … [M]any financial institutions in recent years have stopped charging NSF fees. To the extent they continue to be charged currently, however, NSF fees are almost always charged only on check or Automated Clearing House (ACH) transaction declinations, which do not occur instantaneously. In contrast, NSF fees are rarely charged on Automated Teller Machine (ATM) or point-of-sale (POS) debit transaction declinations, which do occur instantaneously. The CFPB is aware of limited instances where such fees might be charged on the latter set of transactions (for example, in connection with prepaid accounts and

[1] https://www.consumerfinance.gov/rules-policy/rules-under-development/nonsufficient-funds-nsf-fees/

> transactions declined at ATMs that are outside the depository institution's ATM network). To a similarly limited extent, the CFPB has also observed such fees being charged in connection with other types of transactions (such as online transfer and in-person bank teller transactions).
>
> The CFPB is proposing to prohibit covered financial institutions from charging NSF fees on transactions that are declined instantaneously or near-instantaneously. As technological advancements may eventually make instantaneous payments ubiquitous, the CFPB believes that is important to proactively set regulations to protect consumers from abusive practices.

As intimated in the CFPB's rationale for the proposed rule, charging an NSF fee for a transaction that is declined instantaneously is not a common practice. But industry practices are seldom static. The CFPB has also proposed a separate rule that would significantly restrict the charging of overdraft fees, which many depository institutions charge for debit card transactions that exceed the balance in the customer's account. The CFPB rule described in the preceding two paragraphs appears designed to prevent depository institutions from changing their practices with regards to NSF fees on debit card transactions, in an effort to cushion the revenue decline that will likely accompany the overdraft rule. By codifying the rule in state law, the author of this bill seeks to backstop the CFPB rule, as it applies to depository institutions chartered by DFPI.

Comments

1) *Purpose.* According to the author:

> In January, the Consumer Financial Protection Bureau (CFPB) proposed a new rule that would prohibit nonsufficient fund (NSF) fees on transactions that are declined instantaneously or near-instantaneously in order to "proactively set regulations to protect consumers from abusive practices." It has been shown that these fees are most likely to be assessed on financially vulnerable consumers, increasing financial strain while also negatively affecting a consumer's overall perceptions of the banking system being fair and transparent. AB 2017 will codify CFPB's proposed rule in order to protect consumers and prevent fee creep in California.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/12/24)

California Low-income Consumer Coalition
Cameo Network
Consumer Federation of California
Consumers for Auto Reliability & Safety
East Bay Community Law Center
Housing and Economic Rights Advocates
National Consumer Law Center
Office of Kat Taylor
Rise Economy

OPPOSITION: (Verified 8/12/24)

None received

ARGUMENTS IN SUPPORT: The California Low-Income Consumer Coalition and East Bay Community Law Center write:

> NSF and overdraft fees are extremely high and bear no resemblance whatsoever to the actual costs to the financial institution of processing NSF and overdraft fees. In other words, NSF fees are not proportional to their actual cost to the financial institution whatsoever. In the case of the NSF fees proposed to be prohibited by AB 2017, the transactions in question weren't even approved, they were denied. AB 2017 is simple, straightforward, and seems so obvious that it shouldn't even have to be enshrined in law. This bill will rein in junk fees and protect financially vulnerable consumers from charges that they cannot afford by prohibiting a financial institution from charging a consumer a NSF fee when the consumer's attempt to initiate a transaction is declined instantaneously or near-instantaneously due to nonsufficient funds.

ASSEMBLY FLOOR: 62-1, 5/16/24
AYES: Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Chen, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Grayson, Haney, Hart, Holden, Hoover, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting,

Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Gallagher

NO VOTE RECORDED: Addis, Cervantes, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gipson, Irwin, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta, Valencia

Prepared by: Michael Burdick / B. & F.I. /
8/13/24 12:59:35

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