

ASSEMBLY, No. 2000

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1996

By Assemblywoman HECK

1 AN ACT concerning certain banking services and charges and
2 amending and supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) As used in sections 1 through 8 of this act:

8 "Account" means a demand deposit account, a negotiable order of
9 withdrawal account, a share draft account, an automatic transfer
10 account or any other transaction account described in 12
11 C.F.R. §204.2(e).

12 "Depository institution" means a State chartered bank, savings bank
13 or savings and loan association.

14 "Funds" means the dollar amount in a customer account with a
15 depository institution that is available for withdrawal as collected
16 funds.

17 "Insufficient funds" means that an account of a customer with a
18 depository institution does not contain funds sufficient to cover an
19 amount presented to the depository institution for collection.

20 "Uncollected balances" means those amounts deposited in a
21 customer's account by check or other written instrument which have
22 not been collected.

23

24 2. (New section) The maximum fee which may be imposed by a
25 depository institution in connection with a check or other written
26 instrument drawn upon insufficient funds or uncollected balances with
27 respect to a customer's account, irrespective of whether the
28 instrument is paid, accepted or returned by the depository institution,
29 shall be established by the Commissioner of Banking by regulation
30 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.).

32

33 3. (New section) If the payee is other than the person into whose
34 account a deposit is made, no depository institution shall impose any

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 fee in connection with a check or other written instrument received by
2 it for deposit or collection and which is subsequently dishonored and
3 returned for any reason by the drawee.

4
5 4. (New section) No depository institution shall, in connection
6 with the payment, acceptance or return of a check or order, impose
7 any fee, fine, commission or other charge, however, designated, in
8 addition to the maximum charge established by section 2 of this act,
9 except that nothing in this act shall prohibit a depository institution
10 from taking, receiving, reserving or charging interest, as authorized by
11 law in connection with the payment of the check or order, or from
12 imposing any charge in accordance with a written agreement as
13 provided pursuant to "The Advance Loan Law of 1968," P.L.1968,
14 c.64 (C.17:9A-59.1 et seq.) and subsection L. of section 155 of
15 P.L.1963, c.144 (C.17:12B-155).

16
17 5. (New section) A depository institution may as an
18 accommodation to its customers, pay, accept or return a check or
19 other written instrument without charge or at a lesser charge than the
20 maximum charge permitted under section 2 of this act.

21
22 6. (New section) a. Each depository institution shall disclose its
23 fees in a manner and content that is uniform as to form and meaning.
24 The form and terms to be used shall be established by regulation
25 adopted pursuant to the the "Administrative Procedure Act,"
26 P.L.1968, c.410 (C.52:14B-1 et seq.), by the Commissioner of
27 Banking after consultation with the banking advisory board and the
28 Division of Consumer Affairs in the Department of Law and Public
29 Safety.

30 b. If a depository institution charges a fee for a customer
31 transaction, however made, including, but not limited to, withdrawals,
32 deposits, transfers or inquiries, the depository institution shall clearly
33 and conspicuously inform the customer of the charge and the amount
34 of the charge at the time of the transaction and provide the customer
35 the alternative of ending the transaction without a charge being
36 imposed or continuing the transaction with a charge imposed.

37
38 7. (New section) No depository institution shall charge a fee for
39 a customer inquiry made in person to an employee of the depository
40 institution about the balance in a customer's account with the
41 depository institution

42
43 8. (New section) a. No depository institution shall increase the
44 fees it charges for use of an automated teller machine (ATM) until
45 such time as the Commissioner of Banking has conducted an
46 investigation into fees charged with respect to the use of an ATM and

1 determined what constitutes reasonable fees.

2 b. The Commissioner of Banking shall investigate the use of ATMs
3 and the fees associated with their use, including, but not limited to, the
4 cost to and savings for depository institutions. Upon completion of
5 this investigation, the commissioner, by regulation adopted pursuant
6 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
7 et seq.), shall establish reasonable fees for the use of an ATM by a
8 depository institution customer.

9

10 9. N.J.S.12A:3-406 is amended to read as follows:

11 12A:3-406. Negligence Contributing to Forged Signature or
12 Alteration of Instrument.

13 a. A person whose failure to exercise ordinary care substantially
14 contributes to an alteration of an instrument or to the making of a
15 forged signature on an instrument is precluded from asserting the
16 alteration or the forgery against a person who, in good faith, pays the
17 instrument or takes it for value or for collection. A bank which pays
18 a check on a forged signature without an examination of the signature
19 which would have revealed the forgery may not assert this preclusion
20 against a person who complies with 12A:4-406.

21 b. Under subsection a. of this section, if the person asserting the
22 preclusion fails to exercise ordinary care in paying or taking the
23 instrument and that failure substantially contributes to loss, the loss is
24 allocated between the person precluded and the person asserting the
25 preclusion according to the extent to which the failure of each to
26 exercise ordinary care contributed to the loss.

27 c. Under subsection a. of this section, the burden of proving failure
28 to exercise ordinary care is on the person asserting the preclusion.
29 The burden of proving that an examination of the check would have
30 revealed a forged signature is on the person claiming that the
31 preclusion does not apply. Under subsection b. of this section, the
32 burden of proving failure to exercise ordinary care is on the person
33 precluded.

34 (cf: N.J.S.12A:3-406)

35

36 10. N.J.S.12A:4-402 is amended to read as follows:

37 12A:4-402. Bank's Liability to Customer for Wrongful Dishonor;
38 Time of Determining Insufficiency of Account.

39 a. Except as otherwise provided in this chapter, a payor bank
40 wrongfully dishonors an item if it dishonors an item that is properly
41 payable, but a bank may dishonor an item that would create an
42 overdraft unless it has agreed to pay the overdraft.

43 b. A payor bank is liable to its customer for damages proximately
44 caused by the wrongful dishonor of an item. Liability is limited to
45 actual damages proved and may include damages for an arrest or
46 prosecution of the customer or other consequential damages. Whether

1 any consequential damages are proximately caused by the wrongful
2 dishonor is a question of fact to be determined in each case.

3 c. A payor bank's determination of the customer's account balance
4 on which a decision to dishonor for insufficiency of available funds is
5 based [may be made at any time between the time the item is received
6 by the payor bank and the time that the payor bank returns the item or
7 gives notice in lieu of return, and no more than one determination need
8 be made] shall be made after crediting the customer's account for
9 deposits made on the day of presentment which represent funds
10 available for withdrawal as of right. If, at the election of the payor
11 bank, a subsequent balance determination is made for the purpose of
12 reevaluating the bank's decision to dishonor the item, the account
13 balance at that time is determinative of whether a dishonor for
14 insufficiency of available funds is wrongful.

15 (cf: N.J.S.12A:4-402)

16

17 11. N.J.S.12A:4-406 is amended to read as follows:

18 12A:4-406. Customer's Duty to Discover and Report Unauthorized
19 Signature or Alteration.

20 a. A bank that sends or makes available to a customer a statement
21 of account showing payment of items for the account shall either
22 return or make available to the customer the items paid or provide
23 information in the statement of account sufficient to allow the
24 customer reasonably to identify the items paid. If a bank does not
25 return the items, it shall provide in the statement of account the
26 telephone number that the customer may call to request an item or a
27 legible copy thereof pursuant to subsection b. of this section.

28 The statement of account provides sufficient information if the item
29 is described by item number, amount, and date of payment.

30 b. If the items are not returned to the customer, the person
31 retaining the items shall either retain the items or, if the items are
32 destroyed, maintain the capacity to furnish legible copies of the items
33 until the expiration of seven years after receipt of the items. A
34 customer may request an item from the bank that paid the item, and
35 that bank must provide in a reasonable time either the item or, if the
36 item has been destroyed or is not otherwise obtainable, a legible copy
37 of the item. A bank shall provide, upon request and without charge to
38 the customer, at least two items or legible copies thereof with respect
39 to each statement of account sent to the customer. A bank shall not
40 charge a fee in excess of \$.10 per item or legible copy thereof for each
41 item requested by and provided to a customer beyond the two
42 provided without charge. "Reasonable time" means within five
43 business days of receipt of a request from a customer.

44 c. If a bank sends or makes available a statement of account or
45 items pursuant to subsection a. of this section, the customer must
46 exercise reasonable promptness in examining the statement or the

1 items to determine whether any payment was not authorized because
2 of an alteration of an item or because a purported signature by or on
3 behalf of the customer was not authorized. If, based on the statement
4 or items provided, the customer should reasonably have discovered the
5 unauthorized payment, the customer must promptly notify the bank of
6 the relevant facts.

7 d. If the bank proves that the customer failed, with respect to an
8 item, to comply with the duties imposed on the customer by subsection
9 c. of this section, the customer is precluded from asserting against the
10 bank:

11 (1) the customer's unauthorized signature or any alteration on the
12 item, if the bank also proves that it suffered a loss by reason of the
13 failure; and

14 (2) the customer's unauthorized signature or alteration by the same
15 wrongdoer on any other item paid in good faith by the bank if the
16 payment was made before the bank received notice from the customer
17 of the unauthorized signature or alteration and after the customer had
18 been afforded a reasonable period of time, not exceeding 30 days, in
19 which to examine the item or statement of account and notify the
20 bank.

21 e. If subsection d. of this section applies and the customer proves
22 that the bank failed to exercise ordinary care in paying the item and
23 that the failure [substantially] contributed to loss, the loss is allocated
24 between the customer precluded and the bank asserting the preclusion
25 according to the extent to which the failure of the customer to comply
26 with subsection c. of this section and the failure of the bank to exercise
27 ordinary care contributed to the loss. If the customer proves that the
28 bank did not pay the item in good faith, the preclusion under
29 subsection d. of this section does not apply.

30 f. Without regard to care or lack of care of either the customer or
31 the bank, a customer who does not within one year after the statement
32 or items are made available to the customer (subsection a. of this
33 section) discover and report the customer's unauthorized signature on
34 or any alteration on the item is precluded from asserting against the
35 bank the unauthorized signature or alteration. If there is a preclusion
36 under this subsection, the payor bank may not recover for breach of
37 warranty under 12A:4-208 with respect to the unauthorized signature
38 or alteration to which the preclusion applies.

39 (cf: N.J.S.12A:4-406)

40

41 12. (New section) a. An unconscionable provision in any contract
42 between a bank and a consumer shall be unenforceable. If an
43 unconscionable provision is found in such a contract, a court of
44 competent jurisdiction may refuse to enforce the contract, may enforce
45 the remainder of the contract without the unconscionable provision,
46 may limit the application of the unconscionable provision so as to

1 avoid an unconscionable result, or may award damages or such other
2 relief to the parties as it may deem appropriate.

3 b. A bank shall perform and enforce its contracts with consumers
4 in good faith.

5
6 13. This act shall take effect on the 180th day following enactment,
7 except that the provisions of subsection a. of section 8 shall take effect
8 immediately.

9
10
11 STATEMENT

12
13 This bill places certain restrictions on State chartered banks, savings
14 banks and savings and loan associations with respect to fees they may
15 charge for overdrafts, returned deposited items and in person inquiries
16 made to employees of depository institutions. In addition, the bill
17 requires these depository institutions to disclose their fees in a uniform
18 manner as to terms used and format. The bill requires the
19 Commissioner of Banking to develop the terms and format in
20 consultation with the Banking Advisory Board and the Division of
21 Consumer Affairs and promulgate these as regulations. The bill
22 further imposes a moratorium on any increase in the fees these
23 institutions may charge for the use of an ATM, requires the
24 Commissioner of Banking to study the fees charged for use of an ATM
25 and upon completion of the study, to promulgate regulations that
26 establish reasonable fees.

27 The bill amends certain sections of the Uniform Commercial Code
28 to:

29 (1) require banks which do not return items with the periodic
30 statement to list on the statement a telephone number which can be
31 called by the customer to receive either up to two items or legible
32 copies thereof, free of charge, with a maximum of \$.10 per item as a
33 charge for any item requested in excess of the two provided free of
34 charge. A depository institution is to provide a customer the item or
35 a copy of it within five business days of receiving the request.

36 (2) prohibit a bank which pays a check on a forged signature
37 without an examination of the signature which would have revealed
38 the forgery from asserting the preclusion provided in subsection a. of
39 12A:3-406 against a person who complies with 12A:4-406.

40 (3) require a payor bank which makes a determination of a
41 customer's account on which it makes its decision to dishonor for
42 insufficiency of available funds, to make that determination after
43 crediting a customer's account for deposits made on the day of
44 presentment, which deposits represent funds available for withdrawal
45 as of right.

46 (4) make unenforceable an unconscionable provision in any

1 contract between a bank and a consumer and to require that a bank
2 perform and enforce its contracts with consumers in good faith.

3

4

5

6

7 Concerns bank services and fees.