Legislation Details (With Text)

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Title: Resolution deploring banks and other financial institutions that encourage economically vulnerable consumers to overdraw on their checking accounts by promoting short-term, high-cost “bounce protection” that increases bank profits by generating excessive fees, and calling upon the Federal Reserve Board to issue guidelines requiring such services to be subject to the Truth in Lending Act, amongst other consumer protections.

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8/12/2004	*	City Council	Introduced by Council	
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12/31/2005	*	City Council	Filed (End of Session)	

Res. No. 511

Resolution deploring banks and other financial institutions that encourage economically vulnerable consumers to overdraw on their checking accounts by promoting short-term, high-cost “bounce protection” that increases bank profits by generating excessive fees, and calling upon the Federal Reserve Board to issue guidelines requiring such services to be subject to the Truth in Lending Act, amongst other consumer protections.

By Council Members Comrie, Clarke, Gentile, Gerson, James, Jennings, Koppell, Liu, Nelson, Palma, Sanders, Seabrook, Stewart and Jackson

Whereas, Overdrawing from one’s bank account by writing checks that exceed the available balance, also known as “bouncing” a check, is technically a crime and traditionally results in a bank fee as well as a returned check fee from the merchant to which the check was made; and

Whereas, Most banks offer overdraft protection programs, which according to Consumer Action’s Overdraft Protection Survey (Summer 2003), can be a cost efficient way to avoid the high fees of bouncing checks; and

Whereas, Traditional overdraft protection programs are linked to either a savings account, a credit card or a line of credit, the latter of which is treated as a loan and thus subject to the Truth in Lending Act, which requires all fees to be listed as an Annual Percentage Rate; and

Whereas, Banks have undergone a fundamental shift in reaping profits from fees instead of the interest on loans, a point supported by 2002 data from the Federal Deposit Insurance Corporation, which projected that in 2003, banks would charge $30 billion in ATM, bounced-check and overdraft fees, up 14% from the previous

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year, and make up 30% of banks' operating profits; and

Whereas, Overdraft fees have become a major source of banks' profits, according to a 2002 Federal Reserve Bank study that reported that from 1997 to 2001, banks increased their overdraft fees 24% to an average of $20.42 per bounced check; and

Whereas, As one compelling example of this trend, industry analysts estimate Washington Mutual charged over $1 billion in overdraft fees in 2002; and

Whereas, Banks' "profits through fees" strategy has resulted in the emergence of a non-traditional overdraft protection program called "bounce protection," which according to the Consumer Federation of America and the National Consumer Law Center, is being marketed to banks by consultants to the banking industry as a high -profit making service; and

Whereas, Studies by consumer groups and the Federal Financial Institutions Examination Council -- whose members include the Board of the Directors of the Federal Reserve System, the Federal Deposit Insurance Corporation, National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of the Thrift -- found that in order to maximize profits, banks have marketed and implemented bounce protection in ways to encourage customers to overdraw on their accounts, thereby promoting criminal behavior and irresponsible banking habits; and

Whereas, Unlike traditional overdraft protection programs, which one must register for and be qualified to receive, banks are automatically providing bounce protection to checking accounts, with an overdraft limit of several hundred dollars; and

Whereas, When an account with bounce protection becomes overdrawn, the bank will cover the amount, but in return for this so called "courtesy," the account holder will be assessed not only the traditional overdraft fee, of around $30 but also a possible daily fee, ranging between $2-$10, until the overdraft is repaid; and

Whereas, Bounce protection is not technically a loan and thus is not subject to the consumer-protection requirements of the federal Truth in Lending Act; and

Whereas, The overdraft fee of bounce protection programs, if calculated in terms of an Annual Percentage Rate, can reach at least 240% and as much as 2000%, far exceeding rates permitted under state usury laws and mimicking "payday loans," according to many consumer groups; and

Whereas, Consumer Action's Overdraft Protection Survey found that many banks add the amount of the overdraft limit to account holders' available balances at the Automatic Teller Machine, encouraging and perhaps even tricking people into believing they have more money than their actual balance and increasing the chance that overdraft fees will be assessed unknowingly against them; and

Whereas, Consultants for the banking industry agree that low- and middle-income account holders are more likely to utilize bounce protection than wealthier people, and therefore those that can least afford these fees are being encouraged by banks to accrue them; and

Whereas, Concerns regarding bounce protection prompted the Federal Financial Institutions Examination Council to issue proposed guidelines in May 2004, which "1) seek to ensure that financial institutions adopt adequate policies and procedures to address the credit, operational, and other risks associated with overdraft protection services; 2) alert institutions offering these services to the need to comply with all applicable federal

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and state laws; and 3) set forth examples of best practices that are currently observed in, or recommended by, the industry;" and

Whereas, During the sixty day period for public comment prior to the finalized guidelines' release in late July 2004, the Council of the City of New York applauds and agrees with the Consumer Federation of America, the National Consumer Law Center, Consumers Union, the National Association of Consumer Advocates, and the Public Interest Research Group recommendations that the guidelines require bounce protection be subject to the Truth in Lending Act, require notification at ATMs if the available balance includes the overdraft limit, prohibit advertising from encouraging people to overdraw on their accounts, prohibit bounce protection from being added to accounts without customers' consent, and prevent banks from seizing Social Security, welfare and other exempt funds to pay the overdraft and related fees; now, therefore, be it

Resolved, That the Council of the City of New York deplores banks and other financial institutions that encourage economically vulnerable consumers to overdraw on their checking accounts by promoting short-term, high-cost "bounce protection" that increases bank profits by generating excessive fees, and calling upon the Federal Reserve Board to issue guidelines requiring such services to be subject to the Truth in Lending Act, amongst other consumer protections.

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