

Group Says Bank Overdraft Fees Rival Payday Loans

LAST UPDATED SATURDAY, JULY 19, 2008 6:05 PM CDT IN BUSINESS

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LITTLE ROCK - As co-founder of Arkansas Against Abusive Payday Lending, Hank Klein was one of the first in the state to cry foul about the industry's use of the term "fee" to describe its charges for short-term loans.

What those lenders were charging was actually interest that when calculated as such grossly exceeded Arkansas' 17 percent usury limit, the group said. After years of legal battles, the state Supreme Court and the attorney general made the same interpretation, and the industry is now being ushered out of the state.

A similar debate is taking place nationally about the use of the word "fee" by financial institutions regarding charges they assess for paying a check that normally would bounce, commonly marketed as "bounce protection."

Klein is not advocating for either side in Arkansas like he did for the payday lending discussion, but when asked, the former credit union executive said he interpreted the bank policy differently from that of payday lenders.

"I think it is a fee. That's what the Federal Reserve calls it today," said Klein, a former CEO of Arkansas Federal Credit Union. "Now, if the Federal Reserve changes that and calls it interest, then it will be interest."

A national consumer advocates group is lobbying the Fed to do just that.

"Some of our largest financial institutions are hiding behind a smokescreen of misleading terms and murky practices that encourage costly overdrafts," said Eric Halperin, director of the Center for Responsible Lending's Washington, D.C., office.

Consumers nationwide pay \$17.5 billion in overdraft fees every year, according to a study the center conducted - more than the amount of money banks "loan" - a term the center considers key - consumers for the transactions.

A number of scenarios can set up such a situation, but at its simplest, a bank covers a check or debit card transaction even when there is not enough money in a customer's account to cover the transaction. Doing so allows the consumer to avoid fees from the merchant for a returned check. However, the bank charges the consumer for the service.

Banks recoup the amount of the transaction plus a charge averaging \$34 from the account holder's next deposit, a practice Halperin's group considers as predatory as payday loans.

Such a parallel is not even considered in banking circles, according to Luther Guinn, deputy commissioner at the Arkansas State Bank Department.

"We consider it a fee that a bank can legally charge," Guinn said.

His statement mirrors assertions by payday lending officials that they, too, charge fees, not interest, and therefore are not subject to the state's usury law.

However, the state Supreme Court has ruled that payday lenders charge interest on short-term loans, often running into triple digits when converted into an annual percentage rate, well above the state's usury limit.

One difference in the practices is that consumers seek out payday loans, said Kathleen Day, spokeswoman for the Center for Responsible Lending.

"We think banks ought to, before automatically doing this for people, at least ask them if they want this service, which amounts to a higher-interest, short-term loan," she said.

Among the center's other complaints are that banks bolster the charges using practices like clearing high-dollar debits before subtracting smaller debit amounts, holding deposits longer than necessary and failing to decline overdrafts or warn customers at the checkout or ATM if they have insufficient funds.

Banks gave those warnings in the past, and most customers would decline transactions they didn't have money for given proper warning, according to a survey the center conducted.

Several bank officials did not immediately return calls seeking comment last week, including a spokesman for Regions Financial Corp. in Little Rock, and state Sen. Ed Wilkinson, D-Greenwood, president of Farmers Bank in his hometown.

Others declined comment, including Robert Stevens, a senior vice president at Metropolitan National Bank in Little Rock and Bank of the Ozarks Vice President Gary Miller.

Arkansas Attorney General Dustin McDaniel, whose crackdown on payday lending has whittled the number of operations in the state from 237 in March to 136 this month, has acknowledged similarities in the way payday lenders and banks operate.

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"I don't like overdraft fees the way that they are often used, and I've even spoken with some bankers who tell me that banking consultants encourage them to structure overdraft fees in such a way to essentially constitute short-term loans with high interest on them," McDaniel said Friday.

However, he said he has no jurisdiction to challenge practices that are governed by federal law.

Federal lawmakers have proposed legislation that would amend the Truth in Lending Act to clarify that overdraft fees are finance charges, so that annual interest rates are reported, allowing consumers to compare the cost of overdraft charges with the cost of other options.

House Resolution 946 also would require written consent before enrollment in such programs, require financial institutions to warn the customer when an ATM withdrawal will trigger a fee and allow the customer to cancel the transaction at that time, and prohibit financial institutions from manipulating the order of check clearing to increase customers' overdraft fees.

Rep. Carolyn B. Maloney, D-N.Y., chairwoman of the Financial Institutions Subcommittee, is a sponsor of the legislation.

"I've always said that banks have the right to make money for what can be a valuable service, but consumers also have a right to information they need to make an informed decision," she said.

Banks also should not allow consumers to abuse the costly service, McDaniel said.

"It really should be simply a fee to both deter people from overdrafting their checking accounts and to compensate the bank for any cost or inconvenience for returned checks," he said. "It should not be used as a consistent tool by which people write checks they know they can't cover."

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