

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2017 (Grayson)  
Version: March 18, 2024  
Hearing Date: June 25, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Banks and credit unions: nonsufficient funds fees

**DIGEST**

This bill prohibits state-chartered banks and credit unions from charging a nonsufficient funds fee for a transaction that the institution declines instantaneously or near-instantaneously because the consumer has insufficient funds in their account.

**EXECUTIVE SUMMARY**

In 2022, the Legislature enacted SB 1415 (Limón, Ch. 847, Stats. 2022), which required state-chartered banks and credit unions to report annually the revenue earned from nonsufficient funds fees and overdraft fees, and for the Commissioner of the Department of Financial Protection and Innovation (DFPI) to publish that information. A “nonsufficient funds fee” is a fee charged when a consumer initiates a transaction that exceeds the balance of the customer’s bank account and the bank or credit union declines payment. The DFPI’s 2023 report revealed that a significant number of these state financial institutions derive a substantial portion of their revenues from nonsufficient funds fees, even though such fees – when applied to transactions declined at the time of the attempted purchase – bear no relation to the institution’s cost of declining the transaction. The Consumer Financial Protection Bureau has issued a notice of rulemaking to prohibit nonsufficient funds fees declined instantaneously or nearly instantaneously, but the final rule has yet to be issued.

This bill codifies the CFPB’s proposed nonsufficient funds fee regulations for state-chartered banks and credit unions, prohibiting those institutions from charging a nonsufficient funds fee for a transaction that the institution declines instantaneously or near-instantaneously because the consumer has insufficient funds in their account.

This bill is sponsored by the Consumer Federation of California and is supported by the California Low-Income Consumer Coalition, CAMEO, Consumers for Auto Reliability

& Safety, the East Bay Community Law Center , Housing and Economic Rights Advocates, the National Consumer Law Center, the Office of Kat Taylor, and Rise Economy. This bill is opposed by the California Credit Union League. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 6-0.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the DFPI, which has the charge of execution of laws of this state relating to matters including banks, trust companies, or the banking or trust business, and credit unions or the credit union business. (Fin. Code, § 300.)
- 2) Provides that the chief officer of the DFPI is the Commissioner of Financial Protection and Innovation (Commissioner), who is responsible for overseeing the DFPI and administering the state's laws relating to banking and finance. (Fin. Code, §§ 320., 326)
- 3) Establishes the Banking Law, which governs all corporations engaging in commercial banking, industrial banking, or the trust business, and all national banking associations authorized to transact business in this state to the extent the Banking Law is not inconsistent with, and does not infringe upon, paramount federal laws governing national banking associations. (Fin. Code, Div. 1.1, §§ 1000 et seq.)
- 4) Establishes the Credit Union Law, which governs credit unions operating in the state, except for federally chartered credit unions. (Fin. Code, div. 5, §§ 14000.)
- 5) Provides that the Commissioner has examination authority over California state banks and credit unions chartered under the Credit Union Law. (Fin, Code, §§ 500, 14250.)
- 6) 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. (Fin. Code, § 521(c).)
- 7) Requires a bank or credit union subject to the examination of the Commissioner shall report annually, on or before March 1, to the Commissioner on 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, and requires the

Commissioner to publish this information and make it available on the DFPI's website. (Fin. Code, § 521(a), (b).)

This bill prohibits a bank or credit union subject to the examination authority of the Commissioner from charging a consumer nonsufficient funds fee 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.

### COMMENTS

#### 1. Author's comment

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.

#### 2. Background on income derived from nonsufficient funds fees charged by state banks and credit unions

In 2022, the Legislature enacted SB 1415 (Limón, Ch. 847, Stats. 2022), which required state-chartered banks and credit unions to report annually the revenue earned from nonsufficient funds fees and overdraft fees, and for the Commissioner to publish that information. A “nonsufficient funds fee” is a fee charged when a consumer initiates a transaction that exceeds the balance of the customer's bank account and the bank or credit union declines payment.<sup>1</sup> An “overdraft fee” is a fee charged when the bank or credit union processes a transaction that exceeds the customer's account balance.<sup>2</sup>

The DFPI's 2023 report indicates that, although a majority of California's banks and credit unions collect minimal revenue from nonsufficient funds and overdraft fees, a healthy minority of banks and credit unions earn a significant portion of their income from these fees – upwards of 10 percent, and even 20 percent, of the institutions' net

---

<sup>1</sup> Fin. Code, § 521(c)(1).

<sup>2</sup> *Id.*, § 521(c)(2).

income.<sup>3</sup> Nonsufficient funds fees generally comprised a higher percentage than overdraft fees; only 23 reporting institutions reported zero income from nonsufficient funds fees.<sup>4</sup>

At the federal level, the Consumer Financial Protection Bureau (CFPB) has proposed regulations to prohibit nonsufficient funds fees for transactions that are declined instantaneously or near-instantaneously<sup>5</sup> and to prohibit “very large” financial institutions – those with more than \$10 billion in assets – from charging overdraft fees.<sup>6</sup> The comment periods for both rulemakings has closed, but the CFPB has yet to implement final regulations.<sup>7</sup>

The CFPB explained, in support of its proposed prohibition on nonsufficient funds fees charged on transactions that are declined instantaneously or nearly instantaneously, that “covered financial institutions would have no reason for imposing such fees other than reaping a windfall, because they could simply refuse to authorize the transaction instantaneously” at a negligible cost.<sup>8</sup> The CFPB found that declining a transaction costs around one-half of one cent, while nonsufficient funds fees are generally around \$32<sup>9</sup> – a profit margin of around 6400 percent. While nonsufficient funds fees arguably serve a purpose on transactions that cannot be declined on the spot – such as a payment by check – the CFPB concluded that nonsufficient funds fees charged for instantaneously or nearly instantaneously declined transactions “constitute unreasonable advantage-taking because covered financial institutions are profiting directly from consumer hardship rather than from providing useful services to avoid or alleviate it.”<sup>10</sup>

3. This bill prohibits a bank or credit union regulated by the Commissioner from charging a nonsufficient funds fee when the transaction is declined instantaneously or nearly instantaneously

This bill codifies the CFPB’s proposed nonsufficient funds fee regulations for state-chartered banks and credit unions, prohibiting those institutions from charging a nonsufficient funds fee for a transaction that the institution declines instantaneously or near-instantaneously because the consumer has insufficient funds in their account. According to the author, these guardrails will help prevent “fee creep,” which occurs

---

<sup>3</sup> DFPI, Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges (2023), available at <https://dfpi.ca.gov/income-from-fees-on-nonsufficient-funds-and-overdraft-charges/> (link current as of Jun. 20, 2024).

<sup>4</sup> *Ibid.*

<sup>5</sup> CFPB Proposed Rules, Fees for Instantaneously Declined Transactions, 89 Fed. Reg. 6031-01 (Jan. 31, 2024).

<sup>6</sup> CFPB Proposed Rules, Overdraft Lending: Very Large Financial Institutions, 89 F.R. 13852-01 (Feb. 23, 2024).

<sup>7</sup> See 89 FR at pp. 6031, 13852.

<sup>8</sup> *Id.* at p. 6044.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Id.* at p. 6045.

when companies gradually incorporate new fees into their services even if those fees do not cover legitimate services. Moreover, the author argues that DFPI's report shows how smaller institutions, like the ones subject to DFPI's supervision, tend to rely more on this fee revenue, and so a state law is necessary and appropriate.

As noted above, the CFPB has yet to issue final regulations based on comments it received on its proposed nonsufficient funds fee ban. If the CFPB issues final regulations that vary significantly from its proposed regulations, the author and sponsor may wish to examine, at that time, whether the bill should be amended to match the federal regulations. At this time, however, it appears that the bill would likely codify in state law a requirement that will be imposed nationally.

#### 4. Arguments in support

According to the bill's sponsor, the Consumer Federation of California:

Data from our Department of Financial Protection and Innovation (DFPI) in their Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges, released last year, showed that state-chartered credit unions, in particular, are very aggressively charging consumers massive NSF and overdraft fees, with 35 of 114 state-chartered credit unions receiving more than 5% of their 2022 net income from NSF and overdraft fees. That's almost 1/3 of all state-chartered credit unions. Another 12 state-chartered credit unions received between 4-5% of their net income from NSF and overdraft fees. This means that a whopping 41% of state-chartered credit unions are getting at least 4% of their 2022 net income from NSF and overdraft fees.

In contrast, the corresponding number for state-chartered banks was only one out of 101 state-chartered banks received more than 5% of their 2022 net income from NSF and overdraft fees. Even when one accounts for the fact that more state-chartered banks are focused on business accounts the difference is truly staggering. This is why the federal CFPB has proposed some curbs in the area of overdraft fees, though much of that pending rule wouldn't apply to state-chartered banks and credit unions.

It is also important to point out that 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. If your transaction is declined you should have to

additionally pay upwards of \$30 (the common amount of NSF charges) for a transaction that didn't even happen.

5. Arguments in opposition

According to the California Credit Union League:

The practice of charging an NSF fee on an instantaneously declined transaction is not a prevalent business practice among California credit unions. As not-for-profit member owned cooperative credit unions were started over 100 years ago to provide banking services to those cast out by the traditional lenders at that time. It is with this ethos that credit unions serve members of modest means by providing services that they require. Charging these types of fees is not in the best interest of the member or the institution, however CCUL is still concerned with AB 2017.

On January 24th, 2024, the CFPB issued a proposed rule (Docket No. CFPB-2024-0003) similar to AB 2017, applicable to financial institutions of all sizes. This proposed rule would also affect both state and federally chartered institutions, raising questions about the need for AB 2017. Given that the CFPB has not yet finalized its proposed rule, there is a possibility of further changes to it. If AB 2017 is enacted before the Bureau's final rule, state-chartered credit unions could face a disadvantage, being compelled to comply with AB 2017 under less favorable conditions. This could significantly affect credit unions in their operations and their ability to provide key services to members effectively.

The League is also concerned with the lack of definitions in AB 2017, which does not provide a clear path to compliance. The bill does not define near instantaneous nor instantaneous, which might seem like basic terms but in a compliance-based industry our member credit unions need clarity on how to comply. The CFPB proposal also exempts specific transactions which this bill does not.

**SUPPORT**

Consumer Federation of California (sponsor)  
California Low-Income Consumer Coalition  
CAMEO  
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**

California Credit Union League

**RELATED LEGISLATION**

Pending Legislation: SB 1075 (Bradford, 2024) requires state-chartered credit unions to provide a three-day grace period before charging an overdraft and limits the amount of overdraft and nonsufficient funds fees to \$14 or the amount set by a federal regulator, whichever is less. SB 1075 is pending before the Assembly Banking and Financial Institutions Committee.

Prior Legislation :SB 1415 (Limón, Ch. 847, Stats. 2022) required banks and credit unions subject to the examination authority of the Commissioner of the DFPI to report annually the revenue earned from overdraft fees, as specified, and required the Commissioner to publish that information in a publicly available report.

**PRIOR VOTES:**

Senate Banking and Financial Institutions Committee (Ayes 6, Noes 0)  
Assembly Floor (Ayes 62, Noes 1)  
Assembly Appropriations Committee (Ayes 11, Noes 0)  
Assembly Banking and Finance Committee (Ayes 8, Noes 0)

\*\*\*\*\*