

To: Members of the Banks Committee  
Fr: Rheo Brouillard, President and CEO  
Savings Institute Bank & Trust Company  
Re: House Bills 5046, 5047, 5051 Overdraft Privilege Programs

Position: Oppose

Chairman Duff, Chairman Barry, members of the Committee - Good morning! My name is Rheo Brouillard. I am the President and CEO of the Savings Institute Bank & Trust Company, headquartered in Willimantic. Thank you for giving me the opportunity to testify before the Banks Committee today. I'm here today on behalf of the bank and the Connecticut Bankers Association. I'll be talking about overdraft protection programs, the new Federal Reserve Board consumer protections on them, and how they relate to three of the bills before the Committee today.

By way of background I have spent many hours over the course of the past couple of months meeting with staff attorneys for both the Senate and House Banking Committees in Washington, as part of a task force of community bankers. We have been working to craft legislation that incorporates the banking industries "best practices" associated with overdraft privilege programs.

The community banks in Connecticut and across the country realize that there have been abuses in overdraft programs, primarily by a small number of bad actors. We also realize that improvements are needed in the overdraft privilege programs offered at many banks. We strongly disagree however, with the consumer advocates, and in some cases legislators, who feel that bank provided overdraft programs should be substantially curtailed or even eliminated.

That's because survey after survey have shown that over 90% of consumers want and appreciate the service. They prefer that

their transactions are paid - rather than denied or returned unpaid.

It wasn't long ago, that the common practice was to not allow an account to be overdrawn. Checks were returned to the merchant or individual who deposited the check, and the customer was charged a return check fee by the bank. And in most cases, also faced a charge by the merchant for having "bounced" the check. Often the customer found the merchant no longer willing to accept his checks as a result. On top of this the customer faced the embarrassment of having "bounced the check", and of having to make a return trip to the merchant to retrieve the bad check and "make it good", usually by giving that merchant cash.

Those who criticize overdraft programs often overlook the fact that the consumer is spending less under a bank program, than they did without it. For example, currently, the industry charges an average of \$25.00 to pay the customer's overdraft. Whereas in the past, we would have charged \$20.00 as a "non-sufficient funds charge" and returned the check unpaid to the merchant. That merchant would have also charged \$20.00 for getting the check returned to them. Thus the customer would have paid a total of \$40.00 versus \$20. Basically, the overdraft program saves the customer almost 40% over what they would have paid, along with eliminating the embarrassment of a bounced check with the local merchant.

While it's true that bank revenues for overdraft fees have increased, (because consumers want and use the programs), the loser in terms of fees in this scenario is the *merchant*, who no longer collects the "returned item" fee. However, the upside for merchants who accept checks is that they no longer have to bear the burden of potential losses from checks never made good or which were fraudulent in the first place. That risk and those

losses are now borne by the bank, and the overdraft fees collected help to partially cover these risks.

In addition to Congress working on the proposed legislation I mentioned, the Federal Reserve has recently issued changes to Regulation E, the federal rule that governs overdraft privilege activity. I bring up this regulation because its recent changes will address the concerns brought up in the bills that are up for a public hearing today.

For example, customers will be required, starting July 1st, to "opt in" to the service. Banks will not be able to place customers into the service without their *expressed permission to participate*. In addition, consumers will be required to further "opt in" if they want to have their ATM withdrawals and "one time debit card transactions" to also be included in the program. These changes will give customers more control over how the overdraft program will affect them, and are excellent examples of the "best practices" that community banks have been supporting.

Several other consumer friendly practices that Connecticut community banks have been following include: not charging for very small dollar overdrafts, capping the number of charges they will assess on any given day on an account; and paying smaller checks first in order to maximize the number of checks that are paid by the actual funds in a customer's account - *thereby reducing the potential fees that could be assessed*. Many banks routinely provide financial counseling to those customers who may be habitual users of the overdraft service.

The practices of Connecticut community banks, the recent rule making by the Federal Reserve and the new Federal regulations surrounding the overdraft privilege services offered by banks, suggests strongly that the State of Connecticut need not seek to

impose additional statutes that could negatively impact both consumers and banks alike.

Looking at the three bills before the Committee today, they all ignore the fact that when a customer bounces a check - it costs time and money to track it, notify the customer of it, if necessary return it, and any other issues needed to resolve it. Overdrafts and the check clearing process are carefully controlled by Federal Regulation CC, the Uniform Commercial Code, and a mountain of case law.

One very important point in the discussion of the three overdraft bills is the matter of Federal Bank Preemption. Under the current regulatory framework, Federal Savings Banks and National Banks are not subject to fee regulation by States and that includes overdraft privilege programs. Thus if any of the three bills before the committee were passed, they would only affect state chartered banks.

As I mentioned, community banks have put together responsible and fair overdraft programs and are not the bad actors in this arena. I ask that you not consider unnecessary mandates that will only penalize your local state chartered banks, while leaving out the over 60% of the Connecticut marketplace which is controlled by federal banks.

Here are some brief comments about each of the three bills:

House Bill 5046 proposes to allow *customers* to waive an overdraft fee if the fee is greater than the dollar balance in the account. This will most likely encourage customers to minimize their account balance so they don't get charged a fee, resulting in more bounced checks.

The second "overdraft" bill, House Bill 5047, gives the customer a one day grace period to cure the negative account balance - before an overdraft fee can be charged. Notifying a customer of an overdraft is usually done by mail, which arrives in 1 to 3 days. Banks would have to staff up just to handle the "notification phone calls" to the customers. And once again, a grace period only encourages less responsible customer behavior.

The third bill, House Bill 5051, limits a bank to charging one overdraft fee per day. This bill once again ignores the cost of handling each overdraft. They can't be bunched together to save time. They have to be individually handled. If this bill were passed, overdraft fees would have to be increased, to cover the time and cost of handling them.

Thank you for your time and consideration of our request that you allow the new and consumer friendly federal rules governing this product to take affect. This would allow Connecticut banks to compete on an even basis with all federal banks both in Connecticut and in our neighboring states.