

3841--A

2011-2012 Regular Sessions

I N   S E N A T E

March 7, 2011

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Introduced by Sens. FARLEY, DILAN, GRIFFO, KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to enacting the "short-term financial services loan act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "short-term financial services loan act".

3     S 2. Subdivision 2 of section 17 of the banking law, as amended by  
4     section 2 of part 0 of chapter 59 of the laws of 2006, is amended to  
5     read as follows:

6     2. All general expenses, including in addition to the direct costs of  
7     personal service, the cost of maintenance and operation, the cost of  
8     retirement contributions made and workers' compensation premiums paid by  
9     the state for or on account of personnel, rentals for space occupied in  
10    state owned or state leased buildings and all other direct or indirect  
11    costs, incurred in connection with the supervision of any person or  
12    entity licensed, registered, or incorporated or otherwise formed pursu-  
13    ant to this chapter shall be charged to and paid by them in such  
14    proportions as the superintendent shall deem just and reasonable. The  
15    provisions of this subdivision shall not be applicable to a bank holding  
16    company, as that term is defined in article three-A of this chapter.

17    ALL EXPENSES OF THE DEPARTMENT FOR THE ESTABLISHMENT AND OPERATION OF  
18    THE BORROWER DATABASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED  
19    SEVENTY-THREE-D OF THIS CHAPTER SHALL BE CHARGED AND ALLOCATED AMONG ALL  
20    LICENSED CASHERS OF CHECKS WHICH ENGAGE IN SHORT-TERM FINANCIAL SERVICES  
21    LOAN TRANSACTIONS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD08825-05-1

1 The superintendent shall require that partial payments of the charges  
2 for expenses of each fiscal year commencing on or after April first,  
3 nineteen hundred eighty-three shall be paid on March tenth of the  
4 preceding fiscal year and on June tenth, September tenth and December  
5 tenth of the fiscal year, or on such other dates as the superintendent  
6 may prescribe. Each such payment shall be equal to twenty-five per  
7 centum of the charges, or such other per centum or per centums as the  
8 superintendent may prescribe, for the fiscal year as estimated by the  
9 superintendent. The balance of the expenses shall be charged and paid  
10 upon the determination of the actual amount due. An overpayment of  
11 charges resulting from the requirements of this subdivision shall be  
12 refunded or at the option of the assessed shall be applied as a credit  
13 against the charges for the succeeding fiscal year. As an alternative,  
14 if the estimated annual charge for the fiscal year is equal to or less  
15 than the annual minimum assessment set by the superintendent, the super-  
16 intendent may require full payment to be made on or before September  
17 thirtieth or such other date of the fiscal year as the superintendent  
18 may determine.

19 S 3. Subdivision 4 of section 18-a of the banking law, as added by  
20 section 1 of part D-1 of chapter 109 of the laws of 2006, is amended to  
21 read as follows:

22 4. The fee which shall be imposed for any application for an initial  
23 license, registration, incorporation or for the formation of any other  
24 entity pursuant to this chapter, or for a merger, acquisition, purchase  
25 or sale of assets, change of control, or for any other application  
26 requiring the approval of the superintendent or the banking board that  
27 may necessitate, as determined by the superintendent, a determination  
28 regarding the character or fitness and/or the safety and soundness of  
29 such applicant or a similar investigative undertaking by the department,  
30 shall be:

31 (a) twelve thousand five hundred dollars when such application relates  
32 to a banking organization, bank holding company or, except as provided  
33 in paragraph (b) of this subdivision, a foreign banking corporation;

34 (b) seven thousand five hundred dollars when such application relates  
35 to licensing a branch, agency or representative office of a foreign  
36 banking corporation;

37 (c) one thousand five hundred dollars when the application relates to  
38 a mortgage broker; [or]

39 (d) THREE THOUSAND FIVE HUNDRED DOLLARS WHEN THE APPLICATION RELATES  
40 TO LICENSING A CASHIER OF CHECKS WHEN THE APPLICANT INTENDS TO ENGAGE IN  
41 SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. FIVE HUNDRED DOLLARS  
42 OF SUCH FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR  
43 THE PURPOSE OF OPERATING THE BORROWER DATABASE ESTABLISHED PURSUANT TO  
44 SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER; OR

45 (E) three thousand dollars for all other such applications.

46 S 4. Paragraph (b) of subdivision 5 of section 18-a of the banking  
47 law, as added by section 1 of part D-1 of chapter 109 of the laws of  
48 2006, is amended to read as follows:

49 (b) two thousand dollars when the application relates to the licensing  
50 of an additional location or change of location or the licensing of a  
51 mobile unit of a licensed cashier of checks. AN ADDITIONAL FEE OF TWO  
52 HUNDRED FIFTY DOLLARS SHALL BE IMPOSED UPON A LICENSED CASHIER OF CHECKS  
53 IF IT ENGAGES IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. SUCH  
54 ADDITIONAL FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR  
55 THE PURPOSE OF OPERATING THE BORROWER DATABASE ESTABLISHED PURSUANT TO  
56 SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER; or

1 S 5. The third undesignated paragraph of section 340 of the banking  
2 law, as added by chapter 22 of the laws of 1990, is amended to read as  
3 follows:

4 Nothing in this article shall apply to licensed collateral loan  
5 brokers OR LICENSED CASHERS OF CHECKS.

6 S 6. Subdivision 1 of section 373 of the banking law, as amended by  
7 chapter 432 of the laws of 2004, is amended to read as follows:

8 1. [No] EXCEPT AS OTHERWISE AUTHORIZED BY THE PROVISIONS OF THIS ARTI-  
9 CLE, NO licensee shall engage in the business of making loans of money,  
10 credit, goods or things or discounting of notes, bills of exchange,  
11 checks, or other evidences of debt pursuant to the provisions of article  
12 nine of this chapter, nor shall a loan business or the negotiation of  
13 loans or the discounting of notes, bills of exchange, checks or other  
14 evidences of debt be conducted on the same premises where the licensee  
15 is conducting business pursuant to the provisions of this article,  
16 UNLESS SUCH ACTIVITY IS SPECIFICALLY AUTHORIZED BY THE PROVISIONS OF  
17 THIS ARTICLE. Except as otherwise provided by regulation of the super-  
18 intendent, all checks, drafts and money orders shall be deposited in the  
19 licensee's bank account not later than the first business day following  
20 the day on which they were cashed. No licensee shall at any time cash or  
21 advance any moneys on a post-dated check or draft or engage in the busi-  
22 ness of transmitting money or receiving money for transmission;  
23 provided, however, that a licensee may cash a check payable on the first  
24 banking business day following the date of cashing (a) if such check is  
25 drawn by the United States, the state of New York, or any political  
26 subdivision of the state of New York, or by any department, bureau,  
27 agency, authority, instrumentality or officer, acting in his official  
28 capacity, of the United States or of the state of New York or of any  
29 political subdivision of the state of New York, or (b) if such check is  
30 a payroll check drawn by an employer to the order of its employee in  
31 payment for services performed by such employee. No licensee shall cash  
32 any check, draft or money order if the face amount for which it is drawn  
33 is in excess of fifteen thousand dollars; provided, however, that this  
34 restriction shall not apply to the cashing of checks, drafts or money  
35 orders drawn by the United States, any state thereof or any political  
36 subdivision of any such state, or by any department, bureau, agency,  
37 authority, instrumentality or officer, acting in his official capacity,  
38 of the United States, any state thereof or any political subdivision of  
39 any such state, or any banking institution, or to any check or draft  
40 drawn by any insurance company, any broker or dealer registered with the  
41 securities and exchange commission, or any attorney for the settlement  
42 of claims, or to any check which has been certified by the banking  
43 institution on which it has been drawn; provided further, however, that  
44 any such restriction upon the maximum face amount that may be cashed by  
45 a licensee shall not apply to the cashing of checks, drafts or money  
46 orders by licensees for payees of such checks, drafts or money orders  
47 that are other than natural persons. For purposes of this subdivision,  
48 "banking institution" means any bank, trust company, savings bank,  
49 savings and loan association or credit union which is incorporated,  
50 chartered or organized under the laws of this state or any other state  
51 or the United States.

52 S 7. The banking law is amended by adding eight new sections 373-a,  
53 373-b, 373-c, 373-d, 373-e, 373-f, 373-g and 373-h to read as follows:

54 S 373-A. SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. NOTWITH-  
55 STANDING ANY PROVISION OF SECTION THREE HUNDRED SEVENTY-THREE OF THIS  
56 ARTICLE TO THE CONTRARY, A LICENSEE MAY ENGAGE IN SHORT-TERM FINANCIAL

SERVICES LOAN TRANSACTIONS AT THE LICENSEE'S PLACE OF BUSINESS, PROVIDED THAT SUCH TRANSACTIONS ARE CONDUCTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

S 373-B. TERMS OF SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. 1. NO LICENSEE SHALL ENGAGE IN THE BUSINESS OF OFFERING SHORT-TERM FINANCIAL SERVICES LOANS IN AMOUNTS OF LESS THAN THREE HUNDRED DOLLARS NOR MORE THAN TWO THOUSAND DOLLARS, OR MORE THAN TWENTY-FIVE PERCENT OF THE BORROWER'S GROSS MONTHLY INCOME, WHICHEVER SHALL BE LESS. A LICENSED CASHIER OF CHECKS SHALL NOT CONTRACT FOR, EXACT OR RECEIVE, DIRECTLY OR INDIRECTLY, ON OR IN CONNECTION WITH ANY LOAN, ANY CHARGES WHETHER FOR INTEREST, COMPENSATION, CONSIDERATION, EXPENSE OR ANY OTHER PURPOSE, WHICH IN THE AGGREGATE ARE GREATER THAN AUTHORIZED IN THIS ARTICLE.

2. THE TERM OF A SHORT-TERM FINANCIAL SERVICES LOAN SHALL BE NOT LESS THAN NINETY DAYS NOR MORE THAN ONE HUNDRED EIGHTY DAYS. A LICENSEE WHICH MAKES A SHORT-TERM FINANCIAL SERVICES LOAN SHALL OFFER THE BORROWER THE OPPORTUNITY TO PAY THE PRINCIPAL, FEES AND INTEREST AUTHORIZED BY THIS ARTICLE IN SUBSTANTIALLY EQUAL INSTALLMENTS OVER THE TERM OF THE LOAN WITH THE EXCEPTION OF THE FIRST PAYMENT. SUCH INSTALLMENTS SHALL BE DUE NOT MORE THAN TWO DAYS AFTER THE DATE ON WHICH THE BORROWER RECEIVES A REGULARLY SCHEDULED INCOME PAYMENT; PROVIDED, HOWEVER, THAT THERE SHALL BE AT LEAST A THIRTEEN DAY PERIOD BETWEEN EACH INSTALLMENT. FURTHERMORE, THE FIRST INSTALLMENT SHALL NOT BE DUE BEFORE THE BORROWER'S NEXT PAY DATE THAT IS AT LEAST THIRTEEN DAYS AFTER THE SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IS CONSUMMATED. EVERY SHORT-TERM FINANCIAL SERVICES LOAN SHALL HAVE NOT LESS THAN TWO SCHEDULED INSTALLMENTS. NO SCHEDULED INSTALLMENT PAYMENT SHALL EXCEED TEN PERCENT OF THE BORROWER'S GROSS MONTHLY INCOME.

3. A LICENSEE MAY PROVIDE THE PROCEEDS OF A SHORT-TERM FINANCIAL SERVICES LOAN TO THE BORROWER IN THE FORM OF A NEGOTIABLE INSTRUMENT, MONEY ORDER, CASH OR REASONABLE ELECTRONIC PAYMENT METHOD. NO ADDITIONAL FEE MAY BE CHARGED TO A BORROWER BY THE LICENSEE MAKING THE LOAN IN ORDER FOR THE BORROWER TO GAIN ACCESS TO THE PROCEEDS OF SUCH A LOAN.

4. SHORT-TERM FINANCIAL SERVICES LOANS, WHETHER IN SCHEDULED INSTALLMENTS OR IN WHOLE, MAY BE REPAYED BY THE BORROWER IN CASH, ELECTRONIC FUNDS TRANSFER FROM THE BORROWER'S BANK ACCOUNT OR ANY OTHER REASONABLE PAYMENT MECHANISM. IF AN ELECTRONIC FUNDS TRANSFER OR OTHER REASONABLE PAYMENT MECHANISM IS ELECTED AS THE METHOD FOR REPAYING A SHORT-TERM FINANCIAL SERVICES LOAN, THE BORROWER MAY MAKE ANY SCHEDULED PAYMENT TO THE LICENSEE AT ANY TIME, IN WHOLE OR IN PART, OF ANY PAYMENT INSTALLMENT. EVERY LICENSEE SHALL PROVIDE A BORROWER WITH A DATED RECEIPT SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN AFTER EACH PAYMENT.

5. NO SHORT-TERM FINANCIAL SERVICES LOAN SHALL BE PROVIDED TO ANY PERSON, UNTIL THE LICENSEE SHALL HAVE PROVIDED SUCH PERSON WITH A COPY OF A WRITTEN AGREEMENT RELATING TO SUCH LOAN, WHICH SHALL BE SIGNED BY THE LICENSEE AND THE BORROWER, AND WHICH SHALL INCLUDE:

- (A) THE NAME AND ADDRESS OF THE BORROWER;
- (B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LICENSEE, AND THE NAME AND TITLE OF THE AGENT OF THE LICENSEE WHO SIGNS THE AGREEMENT ON BEHALF OF THE LICENSEE;
- (C) THE DATE OF THE AGREEMENT;
- (D) A SCHEDULE OR DESCRIPTION OF REQUIRED INSTALLMENT PAYMENTS, INCLUDING THE PRINCIPAL AMOUNT OF THE LOAN, APPLICABLE INTEREST RATES, FEES CHARGED AND METHOD OF PAYMENT;

1 (E) NOTICE THAT THE BORROWER SHALL HAVE THE RIGHT TO PREPAY THE LOAN  
2 PRIOR TO MATURITY BY PAYING THE LICENSEE THE PRINCIPAL AMOUNT AND ALL  
3 ACCRUED AND UNPAID INTEREST, FEES AND CHARGES;

4 (F) NOTICE THAT THE BORROWER HAS THE RIGHT TO RESCIND THE SHORT-TERM  
5 FINANCIAL SERVICES LOAN PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION;

6 (G) NOTICE THAT THE BORROWER MAY NOT TAKE OUT MORE THAN ONE SHORT-TERM  
7 FINANCIAL SERVICES LOAN AT A TIME; AND

8 (H) THE FOLLOWING STATEMENT IN AT LEAST FOURTEEN POINT BOLD FACE TYPE:

9 (I) CREDIT COUNSELING AVAILABILITY. YOU, THE BORROWER, SHOULD CONSIDER  
10 CONTACTING AN INDEPENDENT, NOT-FOR-PROFIT CREDIT COUNSELING AGENCY  
11 APPROVED BY THE SUPERINTENDENT OF BANKS.

12 (II) NO CRIMINAL PROSECUTION OR SECURITY INTEREST. YOU CANNOT BE PROS-  
13 ECUTED IN CRIMINAL COURT TO COLLECT ANY OUTSTANDING DEBT ON THIS LOAN,  
14 AND THE LENDER MAY NOT TAKE OR ATTEMPT TO TAKE AN INTEREST IN ANY OF  
15 YOUR REAL OR PERSONAL PROPERTY TO SECURE THIS LOAN.

16 THE SUPERINTENDENT MAY, BY RULE AND REGULATION, PROMULGATE THE CONTACT  
17 INFORMATION AND OTHER DISCLOSURES TO BE PROVIDED IN THE NOTICES REQUIRED  
18 UNDER THIS PARAGRAPH.

19 6. EVERY LICENSEE SHALL MAKE READILY AVAILABLE TO EACH BORROWER, IN A  
20 FORM PRESCRIBED BY THE SUPERINTENDENT, A FULL AND ACCURATE SCHEDULE OF  
21 CHARGES ON ALL SHORT-TERM FINANCIAL SERVICES LOANS.

22 7. A BORROWER MAY RESCIND A SHORT-TERM FINANCIAL SERVICES LOAN TRANS-  
23 ACTION FOR ANY REASON, NOT LATER THAN THE CLOSE OF BUSINESS ON THE BUSI-  
24 NESS DAY NEXT SUCCEEDING THE DAY ON WHICH SUCH TRANSACTION WAS ENTERED  
25 INTO, BY INFORMING THE LICENSEE IN WRITING THAT SUCH BORROWER WANTS TO  
26 RESCIND THE TRANSACTION AND DELIVERING THE FULL AMOUNT OF THE PROCEEDS  
27 OF SUCH TRANSACTION TO THE LICENSEE. UPON THE DELIVERY OF THE PROCEEDS  
28 OF A LOAN TO THE BORROWER PURSUANT TO THIS SUBDIVISION, ALL FEES AND  
29 CHARGES IMPOSED BY THE LICENSEE UPON THE BORROWER SHALL BE REFUNDED. THE  
30 LICENSEE SHALL PROVIDE THE BORROWER WITH A RECEIPT AS PROOF THAT THE  
31 TRANSACTION HAS BEEN RESCINDED.

32 8. UPON THE COMPLETION OF ALL PAYMENTS ON A SHORT-TERM FINANCIAL  
33 SERVICES LOAN BY A BORROWER, ANY LICENSEE MAY ENTER INTO A NEW  
34 SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH SUCH BORROWER.

35 9. A BORROWER MAY REFINANCE A SHORT-TERM FINANCIAL SERVICES LOAN A  
36 SINGLE TIME PRIOR TO THE MATURITY OF SUCH LOAN IF THE BORROWER HAS MADE  
37 NOT LESS THAN THREE CONSECUTIVE INSTALLMENT PAYMENTS THEREON IN A TIMELY  
38 MANNER. A BORROWER WHO HAS REFINANCED A SHORT-TERM FINANCIAL SERVICES  
39 LOAN SHALL NOT BE ELIGIBLE FOR A NEW OR ADDITIONAL CREDIT ADVANCE FROM  
40 ANY LICENSEE UNTIL SUCH LOAN IS PAID IN FULL.

41 S 373-C. FEES AND CHARGES. 1. THE SUPERINTENDENT SHALL BY RULE ESTAB-  
42 LISH, AFTER CONDUCTING PUBLIC HEARINGS THEREON, A CAP UPON THE MAXIMUM  
43 RATE OF INTEREST AND FEES THAT MAY BE IMPOSED UPON SHORT-TERM FINANCIAL  
44 SERVICES LOANS, INCLUDING, BUT NOT LIMITED TO, LOAN ORIGINATION, MONTHLY  
45 MAINTENANCE AND LATE FEES.

46 2. THE SUPERINTENDENT MAY ANNUALLY AMEND THE MAXIMUM RATES AND FEES  
47 ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. IF THE SUPER-  
48 INTENDENT RECEIVES A PETITION FOR AN AMENDMENT FROM NOT LESS THAN TWEN-  
49 TY-FIVE PERCENT OF THE LICENSEES IN THE STATE OR FROM AN ASSOCIATION  
50 REPRESENTING NOT LESS THAN TWENTY-FIVE PERCENT OF THE LICENSEES IN THE  
51 STATE, THE SUPERINTENDENT SHALL MAKE A DETERMINATION THEREON WITHIN ONE  
52 HUNDRED TWENTY DAYS. THE PETITION MAY BE ACCEPTED OR DENIED, OR THE  
53 SUPERINTENDENT MAY OTHERWISE MODIFY THE MAXIMUM RATES AND FEES, AFTER  
54 CONDUCTING PUBLIC HEARINGS THEREON.

55 3. IN THE EVENT THERE ARE INSUFFICIENT FUNDS TO HONOR ANY NEGOTIABLE  
56 INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELEC-

1 TRONIC PAYMENT MECHANISM PROVIDED TO A LICENSEE FOR A SCHEDULED PAYMENT  
2 ON BEHALF OF A BORROWER, SUCH LICENSEE MAY IMPOSE A PROCESSING FEE UPON  
3 THE BORROWER PURSUANT TO SECTION 5-328 OF THE GENERAL OBLIGATIONS LAW.  
4 ONLY ONE SUCH FEE MAY BE IMPOSED WITH RESPECT TO EACH DISHONORED NEGOTI-  
5 ABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE  
6 ELECTRONIC PAYMENT MECHANISM.

7 4. IN THE ESTABLISHMENT OF THE MAXIMUM RATE OF INTEREST AND FEES  
8 PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE SUPERINTENDENT  
9 SHALL CONSIDER THE COSTS INCURRED IN MAKING THESE SMALL LOANS AVAILABLE  
10 TO CONSUMERS, INCLUDING, AMONG OTHER THINGS:

11 (A) THE INCOME, COSTS AND EXPENSES OF THE OPERATION OF LICENSEES'  
12 BUSINESSES, INCLUDING LOSS AND DEFAULT RATES;

13 (B) FOR THE PURPOSES OF SUBDIVISION TWO OF THIS SECTION, THE RATES AND  
14 FEES AUTHORIZED TO BE IMPOSED IN PREVIOUS YEARS;

15 (C) THE REASONABLE PROFIT FOR LICENSEES FROM THE OFFERING AND  
16 PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS; AND

17 (D) THE RATE OF RETURN ON INVESTMENT OR SUCH OTHER RISK ADJUSTED PROF-  
18 ITABILITY STANDARD AS THE SUPERINTENDENT MAY DETERMINE TO BE NECESSARY  
19 TO INDUCE THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS.

20 5. THE PROVISIONS OF SECTION 5-501 OF THE GENERAL OBLIGATIONS LAW AND  
21 SECTIONS 190.40, 190.42 AND 190.45 OF THE PENAL LAW SHALL NOT APPLY TO  
22 THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS PURSUANT TO THIS  
23 ARTICLE.

24 6. INTEREST ON SHORT-TERM FINANCIAL SERVICES LOANS SHALL NOT BE PAID,  
25 DEDUCTED OR RECEIVED IN ADVANCE. NOR SHALL INTEREST THEREON BE  
26 COMPOUNDED, HOWEVER INTEREST ON AN EXTENSION OF CREDIT SHALL:

27 (A) BE COMPUTED AND PAID ONLY AS A PERCENTAGE OF THE UNPAID PRINCIPAL  
28 BALANCE OR PORTION OF THE UNPAID PRINCIPAL BALANCE; AND

29 (B) BE COMPUTED ON THE BASIS OF THE NUMBER OF DAYS ACTUALLY ELAPSED.  
30 ALL SUCH INTEREST SHALL BE PAID BEFORE SUCH A LOAN MAY BE PAID IN FULL.

31 S 373-D. BORROWER DATABASE. 1. THE SUPERINTENDENT SHALL ESTABLISH AND  
32 MAINTAIN A DATABASE WHICH SHALL BE ACCESSIBLE BY LICENSEES BY TELEPHONE  
33 AND THE INTERNET. THE PURPOSE OF SUCH DATABASE SHALL BE TO ENABLE LICEN-  
34 SEES TO VERIFY WHETHER ANY PERSON HAS AN OUTSTANDING SHORT-TERM FINAN-  
35 CIAL SERVICES LOAN. EACH LICENSEE SHALL SUBMIT TO THE SUPERINTENDENT,  
36 PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRAN-  
37 ACTION, DATA RELATING TO SUCH TRANSACTION, IN SUCH FORMAT AS THE SUPER-  
38 INTENDENT SHALL DETERMINE, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO,  
39 THE BORROWER'S NAME, EMPLOYMENT AUTHORIZATION ALIEN NUMBER, ADDRESS,  
40 DRIVER'S LICENSE NUMBER, AMOUNT OF LOAN, DATE OF LOAN TRANSACTION, THE  
41 SCHEDULE OF INSTALLMENT PAYMENTS AND THE DATE THAT THE TRANSACTION WILL  
42 BE CLOSED. EVERY LICENSEE MAY RELY ON THE INFORMATION IN THE BORROWER  
43 DATABASE AS ACCURATE AND NOT BE SUBJECT TO ANY ADMINISTRATIVE PENALTY OR  
44 CIVIL LIABILITY AS THE RESULT OF RELYING UPON INACCURATE INFORMATION  
45 CONTAINED IN SUCH DATABASE.

46 2. PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRAN-  
47 SATION, A LICENSEE SHALL QUERY THE BORROWER DATABASE AND SHALL RETAIN  
48 EVIDENCE OF SUCH QUERY FOR REVIEW BY THE SUPERINTENDENT FOR A PERIOD OF  
49 FIVE YEARS. SUCH DATABASE SHALL ONLY AUTHORIZE A LICENSEE TO ENTER INTO  
50 A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IF THE TRANSACTION IS  
51 AUTHORIZED PURSUANT TO THIS ARTICLE. DURING ANY PERIOD OF TIME THAT THE  
52 INFORMATION ON THE BORROWER DATABASE IS UNAVAILABLE FOR ANY REASON, A  
53 LICENSEE MAY RELY ON THE APPLICANT'S WRITTEN REPRESENTATIONS TO VERIFY  
54 THAT ENTERING INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH  
55 THE APPLICANT IS PERMISSIBLE.

1 3. THE SUPERINTENDENT AND DEPARTMENT SHALL MAINTAIN THE BORROWER DATA-  
2 BASE AND TAKE ALL ACTIONS NECESSARY TO PROTECT THE CONFIDENTIALITY AND  
3 SECURITY OF THE INFORMATION AND DATA CONTAINED THEREIN. SUCH DATABASE  
4 MAY BE UTILIZED BY THE DEPARTMENT FOR THE PURPOSE OF ENFORCING THE  
5 PROVISIONS OF THIS ARTICLE. INFORMATION AND DATA IN THE BORROWERS DATA-  
6 BASE SHALL NOT BE DISTRIBUTED TO ANY PERSON OR ENTITY FOR PROFIT NOR  
7 SOLD TO ANY PARTY OR ENTITY.

8 4. UPON A LICENSEE'S QUERY OF THE BORROWERS DATABASE, SUCH DATABASE  
9 SHALL INDICATE WHETHER AN APPLICANT FOR A SHORT-TERM FINANCIAL SERVICES  
10 LOAN IS ELIGIBLE FOR SUCH A LOAN AND, IF THE APPLICANT IS INELIGIBLE,  
11 THE REASON FOR SUCH INELIGIBILITY. THE BORROWER DATABASE SHALL BE  
12 DEEMED CONFIDENTIAL AND NOT SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF  
13 THE PUBLIC OFFICERS LAW.

14 S 373-E. PROHIBITED ACTS. 1. NO LICENSEE SHALL CAUSE A BORROWER TO BE  
15 OBLIGATED ON MORE THAN ONE SHORT-TERM FINANCIAL SERVICES LOAN AT ANY  
16 SINGLE TIME.

17 2. NO LICENSEE SHALL TAKE AN ASSIGNMENT OF THE EARNINGS OF A BORROWER  
18 FOR THE PAYMENT OR AS SECURITY FOR THE PAYMENT OF ANY SHORT-TERM FINAN-  
19 CIAL SERVICES LOAN. EVERY ASSIGNMENT OF EARNINGS IN VIOLATION OF THIS  
20 SUBDIVISION SHALL BE VOID AND UNENFORCEABLE BY THE ASSIGNEE.

21 3. NO LICENSEE SHALL RENEW OR EXTEND ANY SHORT-TERM FINANCIAL SERVICES  
22 LOAN FOR A FEE, EXCEPT AS PROVIDED IN SUBDIVISION NINE OF SECTION THREE  
23 HUNDRED SEVENTY-THREE-B OF THIS ARTICLE.

24 4. NO LICENSEE SHALL THREATEN OR CAUSE TO BE FILED ANY CRIMINAL  
25 COMPLAINT AGAINST A BORROWER WHO FAILS TO MAKE ANY SCHEDULED PAYMENT.

26 5. A SHORT-TERM FINANCIAL SERVICES LOAN AGREEMENT SHALL ONLY BE  
27 ENFORCEABLE, WITH REGARD TO A DEFAULT BY THE BORROWER, TO THE EXTENT  
28 THAT THE BORROWER FAILS TO MAKE A SCHEDULED PAYMENT PURSUANT TO SUCH  
29 AGREEMENT.

30 6. NO SHORT-TERM FINANCIAL SERVICES LOAN AGREEMENT SHALL PROVIDE FOR  
31 THE PAYMENT BY THE BORROWER OF THE LICENSEE'S ATTORNEYS FEES.

32 7. NO LICENSEE SHALL REQUIRE THE BORROWER TO AGREE TO OR EXECUTE ANY  
33 CONFESSION OF JUDGMENT OR POWER OF ATTORNEY IN FAVOR OF ANY LICENSEE OR  
34 IN FAVOR OF ANY OTHER PERSON, AND SUCH CONFESSION SHALL BE VOID AND  
35 UNENFORCEABLE.

36 8. NO SHORT-TERM FINANCIAL SERVICES LOAN SHALL IN ANY MANNER BE  
37 SECURED BY PERSONAL OR REAL PROPERTY.

38 9. NO LICENSEE SHALL ADVERTISE, DISPLAY, DISTRIBUTE, TELECAST OR  
39 BROADCAST, OR CAUSE OR PERMIT TO BE ADVERTISED, DISPLAYED, DISTRIBUTED,  
40 TELECAST OR BROADCAST, IN ANY MANNER WHATSOEVER, ANY FALSE, MISLEADING  
41 OR DECEPTIVE STATEMENT WITH REGARD TO THE RATES, TERMS, FEES OR CONDI-  
42 TIONS FOR SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS.

43 S 373-F. FINANCIAL EDUCATION FUND. A FINANCIAL EDUCATION FUND IS  
44 HEREBY CREATED IN THE STATE TREASURY, WHICH SHALL BE FUNDED BY LICENSED  
45 CHECK CASHERS OFFERING FINANCIAL SERVICES LOANS. FUNDING OF THE FINAN-  
46 CIAL EDUCATION FUND WILL CONSIST OF LICENSEES CONTRIBUTING TEN CENTS  
47 FROM THE UNDERWRITING FEE PRESCRIBED IN SUBDIVISION ONE OF SECTION THREE  
48 HUNDRED SEVENTY-THREE-C OF THIS ARTICLE UPON FULL RE-PAYMENT OF A FINAN-  
49 CIAL SERVICES LOAN. THE SUPERINTENDENT SHALL COLLECT THE FINANCIAL  
50 EDUCATION ASSESSMENT FROM LICENSEES AS PART OF THE ANNUAL ASSESSMENT OF  
51 THE INDUSTRY AND SAID FUNDS SHALL BE DEPOSITED BY THE SUPERINTENDENT IN  
52 THE STATE TREASURY. BEGINNING WITHIN NINETY DAYS AFTER THE FIRST ANNUAL  
53 ASSESSMENT, THE FINANCIAL EDUCATION FUND SHALL BE USED TO SUPPORT VARI-  
54 OUS FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED BY THE SUPER-  
55 INTENDENT AFTER CONSULTING WITH THE LICENSED CHECK CASHING INDUSTRY. THE  
56 FUND SHALL BE ADMINISTERED BY THE SUPERINTENDENT WHO SHALL ADOPT REGU-

1 LATIONS FOR THE DISTRIBUTION OF THE FUNDS. THE SUPERINTENDENT SHALL  
2 ADOPT REGULATIONS TO REQUIRE THAT AT LEAST ONE-HALF OF THE FINANCIAL  
3 EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED PURSUANT TO THIS SECTION,  
4 AND OFFERED TO THE PUBLIC, BE PRESENTED BY OR AVAILABLE AT PUBLIC COMMU-  
5 NITY COLLEGES OR STATE INSTITUTIONS THROUGHOUT THE STATE. THE SUPER-  
6 INTENDENT SHALL DELIVER TO THE GOVERNOR AN ANNUAL REPORT THAT INCLUDES  
7 AN OUTLINE OF EACH FINANCIAL EDUCATION PROGRAM DEVELOPED OR IMPLEMENTED,  
8 THE NUMBER OF INDIVIDUALS WHO WERE EDUCATED BY EACH PROGRAM, AND AN  
9 ACCOUNTING FOR ALL FUNDS DISTRIBUTED.

10 S 373-G. LICENSEE BOOKS AND RECORDS. EVERY LICENSEE SHALL MAINTAIN  
11 ALL SUCH BOOKS, ACCOUNTS AND RECORDS AS WILL ENABLE THE SUPERINTENDENT  
12 TO ENFORCE THE PROVISIONS OF THIS ARTICLE.

13 S 373-H. EXAMINATION OF SHORT-TERM FINANCIAL SERVICES TRANSACTIONS.  
14 THE SUPERINTENDENT, OR HIS OR HER DESIGNEE, MAY FROM TIME TO TIME INVES-  
15 TIGATE THE SHORT-TERM FINANCIAL SERVICES TRANSACTIONS AND BUSINESS, AND  
16 EXAMINE THE BOOKS, ACCOUNTS AND RECORDS RELATING THERETO OF EVERY LICEN-  
17 SEE.

18 S 8. This act shall take effect on the one hundred eightieth day after  
19 it shall have become a law; provided, however, that the amendments to  
20 section 17 of the banking law made by section two of this act shall not  
21 affect the repeal of such section and shall expire and be deemed  
22 repealed therewith; provided further that, effective immediately, any  
23 rules and regulations necessary to implement the provisions of this act  
24 on its effective date shall be added, amended and/or repealed on or  
25 before such date.