S T A T E O F N E W Y O R K

6777--B

Cal. No. 898

I N S E N A T E

March 21, 2012

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the banking law, in relation to branches, trust offices and interstate branching transactions, and to repeal certain provisions of such law relating thereto

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

Section 1. Subdivision 4 of section 28-b of the banking law, as amended by chapter 883 of the laws of 1980, is amended to read as follows:

4. Notwithstanding any other provision of this chapter or OTHER law to the contrary, the term banking institution when used in this section shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions and foreign banking corporations incorporated, chartered, organized or licensed under the laws of this state. IN THE CASE OF A FOREIGN BANKING CORPORATION LICENSED PURSUANT TO THIS ARTICLE AND MAINTAINING A BRANCH IN THIS STATE, THE MANAGEMENT OF THE BRANCH SHALL ESTABLISH A COMMITTEE OF NOT FEWER THAN THREE OFFICERS TO FUNCTION IN THE ROLE OF A BOARD OF DIRECTORS FOR PURPOSES OF THIS SECTION.

S 2. Subdivisions 1, 2, and 3 of section 28-c of the banking law, as added by chapter 362 of the laws of 1984, are amended to read as follows:

1. This section is intended to provide the superintendent with detailed information concerning the planned closing of branch offices by state-chartered banking organizations, the availability of alternative financial services within the general area served by such branch and the economic impact upon the community resulting from such closing, and to provide the superintendent with authority to conduct meetings with banking organizations and community groups in areas where a branch closing

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

LBD14431-07-2

is planned. THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO THE FOLLOWING:

(A) BRANCH OFFICES LOCATED OUTSIDE THE STATE OF NEW YORK;

(B) A SALE OR OTHER TRANSFER OF A BRANCH OFFICE WHICH DOES NOT RESULT IN ANY MATERIAL REDUCTION IN THE FINANCIAL SERVICES OFFERED AT SUCH LOCATION;

(C) THE CLOSING OF A BRANCH OFFICE ACQUIRED FROM A FAILING OR FAILED INSTITUTION, PROVIDED THAT SUCH CLOSING OCCURS WITHIN ONE HUNDRED EIGHTY DAYS FROM THE DATE OF THE ACQUISITION; OR

(D) THE CLOSING OF A BRANCH OFFICE WHEN UNEXPECTED CIRCUMSTANCES MAKE STRICT COMPLIANCE IMPOSSIBLE, PROVIDED THAT SUCH DETERMINATION SHALL BE SOLELY WITHIN THE DISCRETION OF THE SUPERINTENDENT AND PROVIDED FURTHER THAT THE SUPERINTENDENT MAY REQUIRE THE BANKING ORGANIZATION TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION TO THE EXTENT POSSIBLE.

2. Every banking organization shall submit to the superintendent a report of its planned or intended closing of a branch office, and shall give written notice to any person who maintains a banking account relationship with such branch office which is the subject of such planned or intended closing, no less than ninety days nor more than one hundred [twenty] EIGHTY days prior to the date of actual closing. The banking organization shall post and keep posted in a conspicuous place notice of such planned closing at such branch office, commencing on the date the banking organization submits its report pursuant to the foregoing provision and until the proposed closing is effected or withdrawn.

3. Such report shall be in writing and shall contain a statement of the reasons leading to the decision to close the branch and any statistical or other information in support thereof. Such report shall be and remain at all times subject to the provisions of subdivision ten of section thirty-six of this chapter. Such report shall also contain THE FOLLOWING INFORMATION, PROVIDED THAT THE SUPERINTENDENT MAY WAIVE OR MODIFY THESE REQUIREMENTS FOR GOOD CAUSE:

(a) a past (at least three years), present and projected financial analysis of deposits at such branch (giving number of accounts and dollar amount, profits and losses);

(b) a past (at least three years), present and projected financial analysis of profits and losses relating to the loan activity at such branch;

(c) a detailed map of the general area served by such branch showing the distance and direction of all remaining state or federally chartered institutions within such area and any licensee of the department which provides financial services of any kind; and

(d) a description of any planned limited or full service banking facility to be opened within such area by either the reporting banking organization or, if known, to the reporting banking organization, by any other banking institution.

S 3. Paragraph (a) of subdivision 5 of section 105 of the banking law, as amended by chapter 547 of the laws of 2008, is amended to read as follows:

(a) A bank or trust company may, if the merger or asset acquisition is permitted by law, and if the merger or asset acquisition agreement so provides, maintain as a branch office or branch offices OR TRUST OFFICE OR TRUST OFFICES, the place or places of business of any bank, trust company, safe deposit company, national banking association, out-of-state state bank OR OUT-OF-STATE TRUST COMPANY (as such [term is] TERMS ARE defined in section two hundred twenty-two of this chapter), savings bank, or savings and loan association, federal savings bank or federal

savings and loan association which it has received into itself by merger or by acquisition of assets thereof pursuant to the provisions of this chapter and, if the merger or acquisition agreement so provides, may maintain, as its principal office rather than as a branch OR TRUST office, the principal office of such banking institution with which it has merged or from which it has acquired assets (so long as such principal office is located in this state), in which event the former principal office of the receiving or acquiring bank or trust company may be maintained as a branch office. A state bank or trust company resulting from the conversion of a national banking association may, if the conversion agreement so provides, maintain as a branch office or branch offices OR TRUST OFFICE OR TRUST OFFICES the place or places of business of the national banking association. As used in this subdivision, the term "place or places of business" shall include any branch office OR TRUST OFFICE of the banking institution that was converted, merged or the assets of which were acquired which has been approved pursuant to this chapter or federal law or the law of another state, as the case may be, even if such branch office OR TRUST OFFICE is not in operation at the time said merger, asset acquisition or conversion becomes effective.

S 4. Subdivision 1 of section 105-b of the banking law, as added by chapter 209 of the laws of 2008, is amended to read as follows:

1. A trust company may establish or acquire and maintain one or more trust offices anywhere in this state, or[, if and to the extent authorized by another state, in a state other than this state] OUTSIDE THE STATE OF NEW YORK, EITHER IN THE UNITED STATES OR IN FOREIGN COUNTRIES.

S 5. Subdivision 2 of section 202-a of the banking law, as amended by chapter 288 of the laws of 1987, is amended to read as follows:

2. A foreign banking corporation organized under the laws of a foreign country [or of Puerto Rico] may be licensed pursuant to article two of this chapter to maintain a branch or branches in this state and may engage in the business of receiving deposits in this state.

S 6. Section 222 of the banking law, as amended by chapter 9 of the laws of 1996 and subdivision 10 as added by chapter 217 of the laws of 2010, is amended to read as follows:

S 222. Definitions. In this article, the following definitions shall apply:

1. The term "out-of-state bank" means an out-of-state state bank [or], an out-of-state national bank, OR AN OUT-OF-STATE FEDERAL SAVINGS ASSOCIATION.

2. The term "out-of-state state bank" means a state bank, as such term is defined in section 3(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)), OR AN OUT-OF-STATE STATE-CHARTERED TRUST COMPANY, but such term shall not include a banking organization.

3. The term "out-of-state national bank" means a national banking association the main office of which is located outside this state.

4. THE TERM "OUT-OF-STATE FEDERAL SAVINGS ASSOCIATION" MEANS ANY FEDERAL SAVINGS ASSOCIATION OR FEDERAL SAVINGS BANK WHICH IS CHARTERED UNDER SECTION 5 OF THE HOME OWNERS LOAN ACT (12 U.S.C. 1464) THE HOME OFFICE OF WHICH IS LOCATED OUTSIDE THIS STATE.

5. THE TERM "OUT-OF-STATE TRUST COMPANY" MEANS EITHER A NATIONALLY CHARTERED TRUST COMPANY OR AN OUT-OF-STATE STATE-CHARTERED TRUST COMPANY THAT HAS THE POWER TO EXERCISE FIDUCIARY POWERS, BUT IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

[4.] 6. The term "New York bank" means a bank, trust company [or] savings bank, OR SAVINGS AND LOAN ASSOCIATION as such terms are defined

in subdivisions one, two [and], four AND EIGHT of section two of this chapter.

[5.] 7. The term "state" means any state of the United States (other than this state), the District of Columbia, any territory of the United States, PUERTO RICO, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands.

[6.] 8. The term "home state" means with respect to an out-of-state state bank OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANY, the state under the laws of which such out-of-state state bank OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANY is incorporated or otherwise organized, and with respect to an out-of-state national bank OR TRUST COMPANY, the state in which such out-of-state national bank's OR TRUST COMPANY'S main office is located.

[7.] 9. The term "acquisition transaction" means any merger, consolidation or purchase of assets and assumption of liabilities of all or part of a banking institution.

[8.] 10. The term "like-type banking organization" means, with respect to an out-of-state bank, a banking organization with the type of charter that most nearly corresponds to the charter of such out-of-state bank, as determined by the superintendent.

[9.] 11. The term "appropriate state supervisor" means the home state supervisor with supervisory and regulatory jurisdiction over an out-of-state state bank OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANY in its home state.

[10.] 12. The term "banking institution" means any bank, trust company, savings bank, savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the federal deposit insurance corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state of the United States, OR UNDER THE LAWS OF THE UNITED STATES.

13. THE TERM "BRANCH" MEANS ANY OFFICE OF A BANKING INSTITUTION AT WHICH DEPOSITS ARE RECEIVED, CHECKS PAID OR MONEY LENT. EXCEPT FOR PURPOSES OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY-FOUR OF THIS ARTICLE, THE TERM SHALL NOT INCLUDE AN AUTOMATED TELLER MACHINE OR OTHER ELECTRONIC FACILITY. FOR PURPOSES OF THIS ARTICLE, THE TERM "BRANCH" SHALL ALSO REFER TO THE PRINCIPAL OR MAIN OFFICE OF A BANKING INSTITUTION.

14. THE TERM "TRUST OFFICE" MEANS AN OFFICE OF A BANKING INSTITUTION OTHER THAN A BRANCH AT WHICH SUCH INSTITUTION MAY CONDUCT ONE OR MORE FIDUCIARY ACTIVITIES PERMITTED FOR A TRUST COMPANY.

S 7. Section 223 of the banking law, as added by chapter 9 of the laws of 1996, is amended to read as follows:

S 223. [Initial entry by out-of-state banks] ESTABLISHMENT OF BRANCHES OR TRUST OFFICES BY MEANS OF AN ACQUISITION TRANSACTION. An out-of-state bank [that does not operate a branch in this state] may maintain one or more branches OR ONE OR MORE TRUST OFFICES located in this state THAT HAVE BEEN acquired by means of an acquisition transaction.

S 8. Section 223-a of the banking law is REPEALED.

S 9. Section 223-b of the banking law, as added by chapter 316 of the laws of 2008, is amended to read as follows:

S [223-b. Initial entry] 223-A. ESTABLISHMENT OF BRANCHES by out-of-state banks by de novo branching. In addition to the authority of an out-of-state bank to maintain a branch or branches by means of an acquisition transaction, an out-of-state bank may [enter New York by establishing] ESTABLISH one or more de novo branches in this state; provided,

however, that [in each instance the laws of the jurisdiction where the out-of-state bank has its principal office expressly authorize a New York bank to establish one or more de novo branches under conditions no more restrictive than those imposed by this section as so determined by the superintendent] AN OUT-OF-STATE STATE BANK SHALL OBTAIN THE SUPERINTENDENT'S PRIOR APPROVAL IN ACCORDANCE WITH THE REQUIREMENTS IN SECTION TWO HUNDRED TWENTY-FOUR OF THIS CHAPTER.

S 10. Section 223-c of the banking law is REPEALED.

S 11. Section 224 of the banking law, as amended by chapter 9 of the laws of 1996 and subdivision 1 as amended by section 26 of part O of chapter 59 of the laws of 2006, is amended to read as follows:

S 224. [Establishment of additional branches by out-of-state state banks] APPLICATION FOR THE ESTABLISHMENT OF BRANCHES OR TRUST OFFICES NOT RESULTING FROM AN ACQUISITION TRANSACTION; RETENTION OF BRANCHES OR TRUST OFFICES RESULTING FROM MERGER OR ACQUISITION. 1. [Subject to the provisions of this article, an out-of-state state bank which maintains one or more branches in this state may open and occupy one or more additional de novo branches in this state with prior approval of the superintendent. An application for approval submitted pursuant to this section shall contain such information as the superintendent deems necessary.] AN APPLICATION FOR APPROVAL TO THE SUPERINTENDENT CONTAINING SUCH INFORMATION AS HE OR SHE DEEMS NECESSARY SHALL BE SUBMITTED BY AN OUT-OF-STATE STATE BANK PRIOR TO THE ESTABLISHMENT OF EACH BRANCH. At the time of making such application, an investigation fee as prescribed pursuant to section eighteen-a of this chapter shall be paid to the superintendent for each branch [office] for which approval is sought. If the superintendent finds that the opening of the branch [office] is not consistent with the declaration of policy set forth in section ten of this chapter, he or she shall notify the applicant that the application has been denied. AN OUT-OF-STATE STATE BANK OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANY SEEKING TO ESTABLISH ONE OR MORE TRUST OFFICES IN THIS STATE SHALL COMPLY WITH THE NOTICE PROCEDURES SET FORTH IN SUBDIVISION FOUR OF SECTION ONE HUNDRED THIRTY-ONE OF THIS CHAPTER.

2. Subject to the provisions of this article, if the merger or acquisition agreement so provides, an out-of-state state bank may maintain as a branch or branches OR TRUST OFFICE OR TRUST OFFICES the place or places of business of any banking institution which it has received into itself as a result of an acquisition transaction authorized by this article.

3. No out-of-state state bank shall open, occupy or maintain a branch in this state at a location not permitted to a like-type banking organization.

S 12. The banking law is amended by adding a new section 224-a to read as follows:

S 224-A. CHANGE OF LOCATION OF BRANCHES OR TRUST OFFICES BY OUT-OF-STATE STATE BANKS OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANIES. AN APPLICATION FOR APPROVAL CONTAINING SUCH INFORMATION AS THE SUPERINTENDENT DEEMS NECESSARY SHALL BE SUBMITTED BY AN OUT-OF-STATE STATE BANK OR AN OUT-OF-STATE STATE-CHARTERED TRUST COMPANY PRIOR TO THE RELOCATION OF A BRANCH OR TRUST OFFICE IN THIS STATE. AT THE TIME OF MAKING SUCH APPLICATION, AN INVESTIGATION FEE AS PRESCRIBED PURSUANT TO SECTION EIGHTEEN-A OF THIS CHAPTER SHALL BE PAID TO THE SUPERINTENDENT FOR EACH BRANCH OR TRUST OFFICE FOR WHICH APPROVAL IS SOUGHT. IF THE SUPERINTENDENT SHALL BE SATISFIED THAT SUCH RELOCATION MAY BE PERMITTED UNDER THE TERMS OF THIS CHAPTER AND THAT THERE IS NO REASONABLE OBJECTION TO SUCH CHANGE, HE OR SHE SHALL APPROVE SUCH APPLICATION.

S 13. Section 225 of the banking law, as amended by chapter 9 of the laws of 1996 and subdivisions 1 and 2 as amended by chapter 547 of the laws of 2008, is amended to read as follows:

S 225. Interstate acquisition transactions. 1. [Without limiting the transactions permissible under section two hundred twenty-three of this article, an] AN out-of-state bank may engage in an acquisition transaction with a New York bank OR WITH A BANKING INSTITUTION LOCATED IN NEW YORK and may maintain as a branch or branches OR TRUST OFFICE OR TRUST OFFICES, THE BRANCHES OR TRUST OFFICES, RESPECTIVELY, [the place or places of business] of any such New York bank OR BANKING INSTITUTION which it has received into itself as a result of such transaction, subject to the requirements of this article.

2. Except when section twenty-nine of this chapter applies, section six hundred one or six hundred one-a of this chapter, as the case may be, and section six hundred one-b of this chapter shall apply to any acquisition transaction [authorized by this article] in which the receiving corporation is a New York bank. In the case of [any other] AN acquisition transaction authorized by this article IN WHICH AN OUT-OF-STATE BANK OR OUT-OF-STATE TRUST COMPANY IS THE RECEIVING CORPORATION, the out-of-state bank OR OUT-OF-STATE TRUST COMPANY shall file with the superintendent a copy of any application filed with the appropriate state supervisor and appropriate federal banking agency.

3. At the time when a merger or consolidation authorized by this article OR BY SECTION SIX HUNDRED OF THIS CHAPTER becomes effective:

(a) the resulting or consolidated corporation shall be considered the same business and corporate entity as each of the constituent corporations;

(b) all the property, rights, powers and franchises of each of the constituent corporations shall vest in the resulting or consolidated corporation and the resulting or consolidated corporation shall be subject to and shall be deemed to have assumed all of the debts, liabilities, obligations and duties of each constituent corporation and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties and relationships had been originally acquired, incurred or entered into by the resulting or consolidated corporation;

(c) any reference to a constituent corporation in any contract, will or document, whether executed or taking effect before or after the merger or consolidation, shall be considered a reference to the resulting or consolidated corporation if not inconsistent with the other provisions of the contract, will or document; [and]

(d) a pending action or other judicial proceeding to which any constituent corporation is a party, shall not be deemed to have abated or to have discontinued by reason of the merger or consolidation, but may be prosecuted to final judgment, order or decree in the same manner as if the merger or consolidation had not been made, or the resulting or consolidated corporation may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such constituent corporation if the merger or consolidation had not occurred[.]; AND

(E) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO AUTHORIZE A BANKING INSTITUTION TO EXERCISE ANY POWER OR ENGAGE IN ANY ACTIVITY NOT OTHERWISE PERMITTED UNDER ITS CHARTER.

4. In the case of a merger or consolidation authorized by this article in which an out-of-state bank OR OUT-OF-STATE TRUST COMPANY is the

resulting or consolidated corporation, the franchise of any constituent New York bank shall automatically terminate when the merger or consolidation is consummated.

S 14. Section 225-a of the banking law, as amended by chapter 454 of the laws of 2006, is amended to read as follows:

S 225-a. Power of superintendent to examine branches or trust offices of out-of-state state banks OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANIES. The superintendent shall have the power at any time in his or her discretion to examine every branch or trust office located in this state of an out-of-state state bank OR OUT-OF-STATE STATE-CHARTERED TRUST COMPANY for the same purposes and to the same extent as is provided in the case of banking organizations pursuant to the provisions of this chapter.

S 15. Section 225-b of the banking law, as amended by chapter 217 of the laws of 2010, is amended to read as follows:

S 225-b. Applicability of certain sections to out-of-state banks. 1. Except as otherwise provided in this section, nothing in article five or article five-B of this chapter shall apply to an out-of-state bank OR OUT-OF-STATE TRUST COMPANY authorized to open, occupy and maintain a branch pursuant to the provisions of this article OR A TRUST OFFICE PURSUANT TO THIS ARTICLE OR TO SUBDIVISION FOUR OF SECTION ONE HUNDRED THIRTY-ONE OF THIS CHAPTER. Any reference in this chapter (other than in article five or article five-B) to a foreign bank, foreign corporation or foreign banking corporation shall be deemed to be a reference to an out-of-state bank OR OUT-OF-STATE TRUST COMPANY authorized to open, occupy and maintain a branch pursuant to the provisions of this article OR A TRUST OFFICE PURSUANT TO THIS ARTICLE OR TO SUBDIVISION FOUR OF SECTION ONE HUNDRED THIRTY-ONE OF THIS CHAPTER. Notwithstanding the foregoing, [(a)] the provisions of [sections] SECTION two hundred two-h (Repayment of deposits standing in the names of minors, trustees, joint depositors or custodians; interpleader in certain actions), [two hundred three (Change of location, name or business) and two hundred four (Reports of foreign banking corporations; penalties)] of this chapter shall apply with equal force and effect to out-of-state banks OR OUT-OF-STATE TRUST COMPANIES authorized to open, occupy or maintain branches pursuant to the provisions of this article[; and (b) the].

2. THE provisions of section three hundred ninety-nine-a, subdivision three of section one hundred thirty, subdivision two of section one hundred forty-three, subdivision five of section two hundred forty-seven and subdivision five of section three hundred ninety-nine of this chapter with respect to restrictions on executive officers or directors of foreign banking corporations and the provisions of sections twenty, twenty-six, thirty, thirty-one and six hundred thirty-four, [subdivision two of section thirteen,] subdivisions eleven and twelve of section six hundred five, subdivision four of section six hundred six and paragraph (a) of subdivision one of section fourteen of this chapter, shall not apply to out-of-state banks authorized to open, occupy or maintain branches pursuant to the provisions of this article.

S 16. Subdivisions 6 and 8 of section 600 of the banking law, subdivision 6 as amended by chapter 9 of the laws of 1996, subdivision 8 as amended by chapter 152 of the laws of 1993, as renumbered by chapter 455 of the laws of 2006 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

(6) One or more banks, trust companies, stock-form savings banks or stock-form savings and loan associations, with one or more out-of-state banks OR OUT-OF-STATE TRUST COMPANIES as such [term is] TERMS ARE

defined in [subdivision one of] section two hundred twenty-two of this chapter.

(8) Such other mergers between and among banking institutions as the superintendent of financial services may authorize. THE SUPERINTENDENT MAY PROMULGATE SUCH REGULATIONS AS HE OR SHE DEEMS NECESSARY AND PROPER TO IMPLEMENT AND DEFINE THE PROVISIONS OF THIS PARAGRAPH.

S 17. Paragraph (g) of subdivision 1 of section 601-a of the banking law, as amended by chapter 152 of the laws of 1993 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(g) ONE OR MORE BANKS, TRUST COMPANIES, STOCK-FORM SAVINGS BANKS OR STOCK-FORM SAVINGS AND LOAN ASSOCIATIONS, WITH ONE OR MORE OUT-OF-STATE BANKS OR OUT-OF-STATE TRUST COMPANIES AS SUCH TERMS ARE DEFINED IN SECTION TWO HUNDRED TWENTY-TWO OF THIS CHAPTER.

(H) One or more banking institutions by another banking institution [to the extent permitted under regulations of the superintendent of financial services] AS THE SUPERINTENDENT MAY AUTHORIZE. FOR PURPOSES OF THIS PARAGRAPH, A BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION LICENSED PURSUANT TO ARTICLE TWO OF THIS CHAPTER AND SEEKING APPROVAL FOR A TRANSFER OF FIDUCIARY RELATIONSHIPS PURSUANT TO SECTION SIX HUNDRED FOUR-A OF THIS CHAPTER SHALL BE CONSIDERED A BANKING INSTITUTION. THE SUPERINTENDENT MAY PROMULGATE SUCH REGULATIONS AS HE OR SHE DEEMS NECESSARY AND PROPER TO IMPLEMENT AND DEFINE THE PROVISIONS OF THIS PARAGRAPH.

S 18. Section 604-a of the banking law, as added by chapter 743 of the laws of 1958, the section heading and subdivision 1 as amended by chapter 297 of the laws of 1993, subdivision 2 as amended by chapter 489 of the laws of 1963 and subdivision 3 as amended by chapter 115 of the laws of 1981, is amended to read as follows:

S 604-a. Transfer of fiduciary relationships [of a banking institution]. 1. If any banking institution, including a bank or trust company, national banking association, savings bank, savings and loan association, federally chartered savings bank, federally chartered savings [and loan] association, OR A BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION LICENSED PURSUANT TO ARTICLE TWO OF THIS CHAPTER, located in this state, shall have transferred all or substantially all of its assets to another banking institution in a transaction subject to this chapter pursuant to a written agreement between the transferor and transferee [corporations] whereby the transferee [corporation] has assumed the deposit liabilities, if any, of the transferor [corporation] and has agreed to assume all fiduciary relationships of the transferor [corporation], the transferee [corporation] may file in the office of the superintendent a certificate in its name and under its [corporate] seal, signed by its president, secretary or cashier, setting forth a copy of such agreement and stating that the transferee [corporation] assumes all of the fiduciary relationships of the transferor [corporation] pursuant to the provisions of this section; provided, however, that such certificate shall not be filed unless the approval of the superintendent shall have been endorsed thereon or annexed thereto before filing. IN THE CASE OF A BRANCH OR AGENCY LICENSED PURSUANT TO ARTICLE TWO OF THIS CHAPTER THAT SEEKS TO PARTICIPATE IN A TRANSACTION DESCRIBED IN THIS SECTION, SUCH BRANCH OR AGENCY SHALL BE SUBJECT TO THE APPLICATION AND APPROVAL REQUIREMENTS GOVERNING ACQUISITION TRANSACTIONS SET FORTH IN SECTIONS SIX HUNDRED ONE-A AND SIX HUNDRED ONE-B OF THIS ARTICLE.

2. Upon the filing of such certificate in the office of the superintendent, all of the property, rights, powers and franchises of the transferor [corporation] as fiduciary shall vest in the transferee [corporation] and the transferee [corporation] shall be deemed to have assumed all of the debts, liabilities, obligations and duties of the transferor [corporation] as fiduciary, and to have succeeded to all the fiduciary relationships of the transferor [corporation], as fully and with the same effect as is provided in sections one hundred thirty-six-c and six hundred two OF THIS CHAPTER in the case of a merger, and any reference to the transferor [corporation] as fiduciary in any capacity, contained in any contract, will or document, whether executed or taking effect before or after the filing of such certificate in the office of the superintendent, shall be considered a reference to the transferee [corporation] if not inconsistent with the other provisions of the contract, will or document.

3. For [the] purposes of this section, the fiduciary relationships of the transferor shall include all relationships as agent, trustee, guardian, receiver, committee, conservator, executor, administrator, or other fiduciary in any capacity or for any purpose mentioned in section one hundred OF THIS CHAPTER, and all relationships of the transferor as bailee or depositary of personal property.

4. This section shall not be deemed to authorize a transferee [corporation] to assume any fiduciary relationship of a kind which it would not otherwise have power to undertake and perform. Nothing in this section shall be deemed to authorize any such transferee [corporation] to maintain as its own office any office previously maintained by the transferor [corporation], and authority, if any, to maintain any such office shall be governed by the applicable provisions of law other than this section. This section shall not be deemed to apply to contracts of the transferor for the leasing of safe deposit boxes or vaults.

S 19. This act shall take effect immediately.