

STATE OF NEW YORK

7428--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Banks -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the banking law, in relation to removal and prohibition of directors, trustees, officers, members or partners of certain entities; and to repeal certain provisions of such law related thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 41 of the banking law is REPEALED and a new section 41 is added to read as follows:

§ 41. Removal and prohibition. 1. Grounds for enforcement action. Whenever the superintendent has reason to believe that any director, trustee, officer, member or partner, or, in the case of a foreign banking corporation, the person in charge, or an officer, of a branch or agency (for purposes of this section, each a "covered individual"), of any bank, trust company, limited purpose trust company, private bank, savings bank, safe deposit company, savings and loan association, credit union, investment company, bank holding company (as such term is defined in article three-A of this chapter), foreign banking corporation, licensed lender, licensed casher of checks, budget planner, mortgage banker, mortgage loan servicer, mortgage broker, licensed transmitter of money or student loan servicer (for purposes of this section, each a "covered entity") has, directly or indirectly: (a) caused, facilitated, permitted or participated in any violation by a covered entity of a law or regulation, order issued by the superintendent or any written agreement between such covered entity or covered individual and the superintendent; (b) engaged or participated in any unsafe or unsound practice in connection with any covered entity; or (c) engaged or participated in any willful material act or omitted to take any material act that

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

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1 directly contributed to the failure of a covered entity; the superinten-
2 dent may bring an action to remove such covered individual from office.

3 2. Notice and hearing. (a) Whenever the superintendent has reason to
4 believe that any grounds exist to remove a covered individual, the
5 superintendent may serve a statement of the charges against such covered
6 individual, either personally or, upon a finding that such individual
7 cannot be served personally within this state, by registered mail at the
8 last address of such individual shown on the department's records, and a
9 notice of an opportunity to appear before the superintendent to show
10 cause why such covered individual should not be removed from office. A
11 copy of such notice shall also be sent to any affected covered entity.

12 (b) If after notice and a hearing, the superintendent finds that the
13 covered individual has engaged in conduct described in subdivision one
14 of this section, or if such covered individual waives a hearing, or
15 fails to appear in person or by a duly authorized representative without
16 good cause shown at the time and place set for the hearing, the super-
17 intendent may issue an order removing the covered individual from office
18 and prohibiting the covered individual's employment or the performance
19 of any contractual agreements with any covered entity.

20 (c) Such order and the findings of fact upon which it is based shall
21 be effective upon service on such covered individual personally or, upon
22 a finding that such individual cannot be served personally within this
23 state, by registered mail, and may not be made public or disclosed to
24 anyone, except as provided in subdivision ten of section thirty-six of
25 this article or in connection with proceedings relating to a violation
26 of this section. Such order shall also be served upon any affected
27 covered entity served with the statement of charges in the proceeding
28 resulting in the order. Any such order shall remain in effect, unless it
29 is amended or rescinded by the superintendent or a court of competent
30 jurisdiction, or replaced by an order issued pursuant to subdivision
31 three of this section.

32 (d) To the extent consistent with the requirements in this section, a
33 proceeding to remove a covered individual pursuant to this section shall
34 be conducted in accordance with the requirements of article three of the
35 financial services law and regulations promulgated pursuant thereto.

36 3. Suspension pending determination of charges. Upon, or at any time
37 after service of written notice pursuant to subdivision two of this
38 section, the superintendent may suspend, pending the determination of
39 the charges, a covered individual from office or prohibit such individ-
40 ual from participating in any manner in the conduct of the affairs of
41 any covered entity for a period of up to one hundred eighty days if the
42 superintendent has reason to believe that by reason of the conduct
43 described in subdivision one of this section: (a) a covered entity has
44 suffered or will probably suffer financial loss that impacts its ability
45 to operate in a safe and sound manner; (b) the interests of the depos-
46 itors at a covered entity have been or could be prejudiced; or (c) the
47 covered individual demonstrates willful disregard for the safety and
48 soundness of a covered entity. The superintendent may extend the suspen-
49 sion for additional periods of up to one hundred eighty days if the
50 hearing is not completed within the prior suspension period due to the
51 request of the covered individual.

52 4. Effect of order for removal or suspension. Any covered individual
53 subject to an order issued pursuant to this section shall be prohibited
54 from participating, in any manner, in the conduct of the affairs of any
55 covered entity unless permitted to, in writing, by the superintendent.
56 Any covered individual who thereafter, without permission of the super-

1 intendent, participates in any manner in the management of a covered
2 entity shall be guilty of a misdemeanor.

3 5. Manner of review. Any order issued pursuant to this section may be
4 reviewed in the manner provided by article seventy-eight of the civil
5 practice law and rules.

6 § 2. This act shall take effect immediately.