

STATE OF NEW YORK

916--A

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to providing for income access services in the state

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

Section 1. The banking law is amended by adding a new article 9-B to read as follows:

IX-B

INCOME ACCESS SERVICES

Section 374-aa. Definitions.

374-bb. License.

374-cc. Action by superintendent on application.

374-dd. License provisions and posting.

374-ee. Grounds for suspension or revocation of license; procedure.

374-ff. Investigations and examinations.

374-gg. Compliance.

374-hh. Advertising.

374-ii. Regulations and rulings.

374-jj. Changes in control.

374-kk. Violation and penalties.

374-ll. Books and records; reports.

374-mm. Severability.

§ 374-aa. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Consumer" means an individual who is a resident of the state of New York.

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

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1 2. "Debt collection activity" means the business of collection of any
2 debts, directly or indirectly, owed or due or asserted to be owed or due
3 another and the business of a buyer of debts who seeks to collect such
4 debts either directly or indirectly, as well as the business of any
5 creditor collecting its own debts if such creditor uses any name other
6 than its own that would suggest or indicate that someone other than such
7 creditor is collecting or attempting to collect such debts.

8 3. "Earned but unpaid income" means wages or compensation that have
9 been earned or have accrued to the benefit of a consumer but have not
10 been paid by an obligor to that consumer for labor or services performed
11 for or on behalf of an obligor.

12 4. "Earned income access rate cap" means the limit on the amount that
13 may be charged for an earned income access transaction that is estab-
14 lished by the superintendent by regulation.

15 5. "Earned income access transaction" means the payment of earned but
16 unpaid income to a consumer at a time other than the consumer's regular
17 payday or other regularly scheduled time on which the obligor pays to
18 the consumer wages or compensation earned or that have accrued to the
19 benefit of such consumer.

20 6. "Earned income access provider" or "provider" means a person or
21 entity that:

22 (a) provides, or offers to provide, on behalf of an obligor earned
23 income access transactions to consumers earning wages or compensation
24 from the obligor; or

25 (b) offers earned income access transactions to, or enters into earned
26 income transactions with, consumers.

27 7. "Exempt organization" shall mean any banking organization, foreign
28 banking corporation licensed by the superintendent or the comptroller of
29 the currency to transact business in this state, national bank, federal
30 savings bank, federal savings and loan association, federal credit
31 union, or any bank, trust company, savings bank, savings and loan asso-
32 ciation, or credit union organized under the laws of any other state or
33 any instrumentality created by the United States or any state with the
34 power to make mortgage loans. Subject to such regulations as may be
35 promulgated by the superintendent, "exempt organization" may also
36 include any subsidiary of such entities.

37 8. "Non-recourse" means the unavailability of any legal cause of
38 action or remedy against a consumer relating to an earned income access
39 transaction.

40 9. "Notice" means communication from the provider to the consumer in a
41 clear and conspicuous manner.

42 10. "Obligor" means a person or entity who is obligated to pay a
43 consumer any sum of money on an hourly, project-based, piecework, or
44 other basis for labor or services performed by the consumer for or on
45 behalf of that person or entity. Obligor does not include the customer
46 of an obligor or another third party that has an obligation to make any
47 payment to a consumer based solely on the consumer's agency relationship
48 with the obligor.

49 11. "Fees" means any amount charged by a provider to a consumer for an
50 earned income access transaction, including amounts to be paid as
51 described in paragraph (i) of subdivision two of section three hundred
52 seventy-four-gg of this article.

53 12. "Proceeds" means funds received by a consumer pursuant to an
54 earned income access transaction.

55 § 374-bb. License. 1. No person or entity, except for an exempt organ-
56 ization as defined in this article, shall engage in the business of

1 providing or offering earned income access transactions to consumers, or
2 enter into an earned income access transaction with a consumer, without
3 first obtaining a license.

4 2. An application for a license under this article shall be in writ-
5 ing, under oath and in the form prescribed by the superintendent.

6 3. At the time of filing an application for a license, the applicant
7 shall pay to the superintendent an application fee. The application fee
8 shall be as prescribed pursuant to section eighteen-a of this chapter.

9 4. A license granted pursuant to this article shall be valid unless
10 revoked or suspended by the superintendent or surrendered by the licen-
11 see.

12 § 374-cc. Action by superintendent on application. 1. After the filing
13 of an application for a license accompanied by payment of the fees for
14 license and investigation, it shall be substantively reviewed. After the
15 application is deemed sufficient and complete, the superintendent shall
16 issue the license, or the superintendent may refuse to issue the license
17 if the superintendent shall find that the financial responsibility,
18 experience, character and general fitness of the applicant or any person
19 associated with the applicant are not such as to command the confidence
20 of the community and to warrant the belief that the business will be
21 conducted honestly, fairly and efficiently within the purposes and
22 intent of this article. For the purpose of this subdivision, the appli-
23 cant shall be deemed to include all the members of the applicant if it
24 is a partnership or unincorporated association, and all the stockhold-
25 ers, officers and directors of the applicant if it is a corporation.
26 Such license to engage in business in accordance with the provisions of
27 this article at the location specified in the application shall be
28 executed in triplicate by the superintendent and the superintendent
29 shall transmit one copy thereof to the applicant, file a copy in the
30 office of the department of financial services, and file a copy in the
31 office of the clerk of the county in which is located the place desig-
32 nated in such license.

33 2. If the superintendent refuses to issue a license, the superinten-
34 dent shall notify the applicant of the denial, return to the applicant
35 the sum paid as a license fee, but retain the investigation fee to cover
36 the costs of investigating the applicant.

37 3. Each license issued pursuant to this article shall remain in full
38 force unless it is surrendered by the licensee, revoked or suspended.

39 § 374-dd. License provisions and posting. 1. A license issued under
40 this article shall state the name and address of the licensee, and if
41 the licensee be a co-partnership or association, the names of the
42 members thereof, and if a corporation the date and place of its incorpo-
43 ration.

44 2. Such license shall be kept conspicuously posted in the office of
45 the licensee and on the mobile application or website of the licensee
46 and shall not be transferable or assignable.

47 § 374-ee. Grounds for suspension or revocation of license; procedure.
48 1. A license granted pursuant to this section shall not be renewed, and
49 shall be revoked or suspended by the superintendent upon a finding that:

50 (a) the licensee has not complied with reporting requirements;
51 (b) the licensee has violated any provision of this article, the act
52 of congress entitled "Truth in Lending Act" and the regulations there-
53 under, as such act and regulations may from time to time be amended or
54 any rule or regulation lawfully made by the superintendent under and
55 within the authority of this article;

1 (c) any fact of condition exists which, if it had existed at the time
2 of the original application for such license, clearly would have
3 warranted the superintendent's refusal to issue such license; or

4 (d) the licensee has failed to pay any sum of money lawfully demanded
5 by the superintendent or to comply with any demand, ruling or require-
6 ment of the superintendent.

7 2. Any licensee may surrender any license by delivering to the super-
8 intendent written notice that the licensee thereby surrenders such
9 license, but such surrender shall not affect such licensee's civil or
10 criminal liability for acts committed prior to such surrender.

11 3. Every license issued hereunder shall remain in force and effect
12 until the same shall have been surrendered, revoked, suspended, or shall
13 have expired, in accordance with the provisions of this article, but the
14 superintendent shall have authority to reinstate suspended licenses or
15 to issue new licenses to a licensee whose license or licenses shall have
16 been revoked if no fact or condition then exists which clearly would
17 have warranted the superintendent's refusal to issue such license.

18 4. Whenever the superintendent shall revoke or suspend a license
19 issued pursuant to this article, the superintendent shall forthwith
20 execute in triplicate a written order to that effect. The superintendent
21 shall file one copy of such order in the office of the department, file
22 another in the office of the clerk of the county in which is located the
23 place designated in such license and forthwith serve the third copy upon
24 the licensee, which order may be reviewed in the manner provided by
25 article seventy-eight of the civil practice law and rules. Such special
26 proceeding for review as authorized by this section must be commenced
27 within thirty days from the date of such order of suspension or revoca-
28 tion.

29 5. The superintendent may, on good cause shown, or where there is a
30 substantial risk of public harm, without notice and a hearing, suspend
31 any license issued pursuant to this article for a period not exceeding
32 thirty days, pending investigation. "Good cause", as used in this subdi-
33 vision, shall exist only when the licensee has engaged in or is likely
34 to engage in a practice prohibited by this article or engages in dishon-
35 est or inequitable practices which may cause substantial harm to the
36 persons afforded the protection of this article.

37 § 374-ff. Investigations and examinations. 1. The superintendent shall
38 have the power to make such investigations as the superintendent shall
39 deem necessary to determine whether any provider or any other person has
40 violated any of the provisions of this article, or whether any licensee
41 has conducted itself in such manner as would justify the revocation of
42 its license, and to the extent necessary therefor, the superintendent
43 may require the attendance of and examine any person under oath, and
44 shall have the power to compel the production of all relevant books,
45 records, accounts, and documents.

46 2. The superintendent shall have the power to make such examinations
47 of the books, records, accounts and documents used in the business of
48 any licensee as the superintendent shall deem necessary to determine
49 whether any such licensee has violated any of the provisions of this
50 article.

51 3. The expenses incurred in making any examination pursuant to subdi-
52 vision two of this section shall be assessed against and paid by the
53 licensee so examined, except that traveling and subsistence expenses so
54 incurred shall be charged against and paid by licensees in such
55 proportions as the superintendent shall deem just and reasonable, and
56 such proportionate charges shall be added to the assessment of the other

1 expenses incurred upon each examination. Upon written notice by the
2 superintendent of the total amount of such assessment, the licensee
3 shall become liable for and shall pay such assessment to the superinten-
4 dent.

5 4. All reports of examinations and investigations, and all correspond-
6 ence and memoranda concerning or arising out of such examinations or
7 investigations, including any duly authenticated copy or copies thereof
8 in the possession of any licensee or the department, shall be confiden-
9 tial communications, shall not be subject to subpoena and shall not be
10 made public unless, in the judgment of the superintendent, the ends of
11 justice and the public advantage will be subserved by the publication
12 thereof, in which event the superintendent may publish or authorize the
13 publication of a copy of any such report or other material referred to
14 in this subdivision, or any part thereof, in such manner as the super-
15 intendent may deem proper.

16 § 374-gg. Compliance. 1. An earned income access provider shall not
17 operate in this state unless:

18 (a) the provider is licensed pursuant to this article, unless the
19 provider is an exempt organization pursuant to this article;

20 (b) in the event a provider takes custody of a consumer's earned but
21 unpaid income before paying proceeds to the consumer, the provider
22 ensures that the proceeds are fully insured by the Federal Deposit
23 Insurance Corporation at the consumer's individual account level;

24 (c) the provider complies with National Automated Clearing House Asso-
25 ciation rules, and when a debit is initiated to a consumer's account for
26 a payment, and the debit is returned for insufficient or uncollected
27 funds, the debit can be reinitiated only in accordance with paragraph
28 (d) of subdivision two of this section;

29 (d) the provider does not provide to any third party, including obli-
30 gors, any non-public personal information about consumers except in
31 compliance with applicable federal and state law, and the provider does
32 not sell, share, or otherwise disclose personal information that the
33 provider solicits or collects from consumers in connection with offering
34 earned income access transactions or related services;

35 (e) the provider gives notice to the consumer of the costs of earned
36 income transactions in accordance with rules established by the super-
37 intendent; and

38 (f) the provider, no less frequently than quarterly, delivers notice
39 in writing to each consumer to whom it has paid proceeds in that quarter
40 containing information to be prescribed by the superintendent, including
41 but not limited to an itemization of transactions and costs, the total
42 amount the consumer has paid in fees, information on how to report
43 complaints to the provider and to the department of financial services,
44 definitions of terms used in the notice, and an explanation of the costs
45 of the services provided;

46 2. It is a violation of this article to conduct an earned income
47 access transaction unless:

48 (a) the transaction is non-recourse;

49 (b) the provider has a reasonable basis to believe that the total
50 amount of the proceeds and fees associated with the transaction does not
51 exceed a percentage, to be set by the superintendent, of the consumer's
52 earned but unpaid income;

53 (c) the provider does not engage in debt collection activity or retain
54 the services of another to engage in debt collection activity in
55 connection with the earned income access transaction and does not convey
56 the debt itself;

1 (d) if repayment is to be made through a debit of a consumer's
2 account, the debit is made in accordance with rules established by the
3 superintendent;

4 (e) the provider charges a fee for the earned income access trans-
5 action that does not exceed the earned income access rate cap or charges
6 no fee for the earned income access transaction;

7 (f) no portion of the earned but unpaid income to be paid as part of
8 the earned income access transaction is used before receipt by the
9 consumer to settle or pay down an obligation arising from a prior earned
10 income access transaction, and no proceeds roll over or are structured
11 in any way to create any continuing obligation to the provider on the
12 part of a consumer;

13 (g) the consumer receives the proceeds no less than one business day
14 prior to the next regularly scheduled date on which the obligor is sche-
15 duled to pay earned wages or income to such consumer;

16 (h) before a consumer enters into the earned income access trans-
17 action, the provider gives the consumer notice, in writing, of all fees
18 associated with the earned income access transaction and the cost of the
19 transaction, including the cost expressed as an annual percentage rate;

20 (i) if the provider offers consumers the opportunity to pay an addi-
21 tional amount for an earned income access transaction voluntarily, such
22 as a tip, (i) the provider gives notice to the consumer in writing that
23 paying such additional amount is not required for the consumer to
24 receive the proceeds, (ii) the provider does not suggest an amount to
25 the consumer by, for example, offering amount options from which the
26 consumer may select or pre-filling an amount in any form used in the
27 transaction process, or otherwise using a transaction process designed
28 to require the consumer to take affirmative action to avoid or opt out
29 of paying such additional amount, and (iii) such voluntary payment
30 amounts do not, when added to the total cost of the transaction, cause
31 the total fees for the earned income access transaction to exceed the
32 earned income access rate cap;

33 (j) the provider does not charge a late fee or prepayment penalty on
34 the earned income access transaction;

35 (k) the provider does not pull a credit report or otherwise assess
36 credit risk of the consumer prior to, during, or after the earned income
37 access transaction except that the provider may verify the consumer's
38 source of income as part of determining the amount of the proceeds;

39 (l) the provider does not report on the earned income access trans-
40 action to a consumer reporting agency prior to, during, or after the
41 transaction;

42 (m) the provider does not require a consumer to waive the right to
43 class action to engage in an earned income access transaction;

44 (n) the provider gives a consumer written notice of any amendment to
45 the contract or terms of service for earned income access transactions,
46 and the consumer agrees to such amendments before proceeding with an
47 earned income access transaction to which such amendments would apply;
48 and

49 (o) the consumer is eighteen years of age or older.

50 3. Transactions made in accordance with this section shall not be
51 subject to usury laws.

52 4. If a provider charges indirect transaction fees, such fees shall
53 not exceed the maximum allowable amount as set by the superintendent.

54 § 374-hh. Advertising. 1. No advertisement for an earned income access
55 transaction service shall be misleading or otherwise deceptive.

1 2. An advertisement for earned income access transaction service shall
2 clearly and accurately disclose the costs of the service to consumers.

3 3. The superintendent shall adopt rules governing advertising of
4 earned income transaction services consistent with the purposes of this
5 section.

6 § 374-ii. Regulations and rulings. The superintendent is hereby
7 authorized and empowered to make such rules and regulations, conduct
8 hearings and make such specific rulings, orders, demands and findings as
9 may be necessary for the proper conduct of the business authorized and
10 licensed under and for the enforcement of this article.

11 § 374-jj. Changes in control. 1. It shall be unlawful except with the
12 prior approval of the superintendent for any action to be taken which
13 results in a change of control of the business of a licensee. Prior to
14 any change of control, the person desirous of acquiring control of the
15 business of a licensee shall make written application to the superinten-
16 dent and pay an investigation fee as prescribed pursuant to section
17 eighteen-a of this chapter to the superintendent. The application shall
18 contain such information as the superintendent, by rule or regulation,
19 may prescribe as necessary or appropriate for the purpose of making the
20 determination required by subdivision two of this section.

21 2. The superintendent shall approve or disapprove the proposed change
22 of control of a licensee in accordance with the provisions of subdivi-
23 sion one of this section.

24 3. For a period of six months from the date of qualification thereof
25 and for such additional period of time as the superintendent may
26 prescribe, in writing, the provisions of subdivisions one and two of
27 this section shall not apply to a transfer of control by operation of
28 law to the legal representative, as hereinafter defined, of one who has
29 control of a licensee. Thereafter, such legal representative shall
30 comply with the provisions of subdivisions one and two of this section.
31 The provisions of subdivisions one and two of this section shall be
32 applicable to an application made under such section by a legal repre-
33 sentative.

34 4. The term "legal representative", for the purposes of this section,
35 shall mean one duly appointed by a court of competent jurisdiction to
36 act as executor, administrator, trustee, committee, conservator or
37 receiver, including one who succeeds a legal representative and one
38 acting in an ancillary capacity thereto in accordance with the
39 provisions of such court appointment.

40 5. As used in this section: (a) the term "person" includes an individ-
41 ual, partnership, corporation, association or any other organization,
42 and (b) the term "control" means the possession, directly or indirectly,
43 of the power to direct or cause the direction of the management and
44 policies of a licensee, whether through the ownership of voting stock of
45 such licensee, the ownership of voting stock of any person which
46 possesses such power or otherwise. Control shall be presumed to exist if
47 any person, directly or indirectly, owns, controls or holds with power
48 to vote ten per centum or more of the voting stock of any licensee or of
49 any person which owns, controls or holds with power to vote ten per
50 centum or more of the voting stock of any licensee, but no person shall
51 be deemed to control a licensee solely by reason of being an officer or
52 director of such licensee or person. The superintendent may in the
53 superintendent's discretion, upon the application of a licensee or any
54 person who, directly or indirectly, owns, controls or holds with power
55 to vote or seeks to own, control or hold with power to vote any voting
56 stock of such licensee, determine whether or not the ownership, control

1 or holding of such voting stock constitutes or would constitute control
2 of such licensee for purposes of this section.

3 § 374-kk. Violation and penalties. 1. Any person, including any
4 member, officer, director or employee of a provider, who violates or
5 participates in the violation of any provision of this article, or who
6 knowingly makes any incorrect statement of a material fact in any appli-
7 cation, report or statement filed pursuant to this article, or who know-
8 ingly omits to state any material fact necessary to give the superinten-
9 dent any information lawfully required by the superintendent or refuses
10 to permit any lawful investigation or examination, shall be guilty of a
11 misdemeanor and, upon conviction, shall be fined not more than five
12 hundred dollars or imprisoned for not more than six months or both, in
13 the discretion of the court.

14 2. No provider shall make, directly or indirectly, orally or in writ-
15 ing, or by any method, practice or device, a representation that such
16 provider is licensed under the banking law except that a licensee under
17 this chapter may make a representation that the licensee is licensed as
18 an earned income access provider under this chapter.

19 § 374-ll. Books and records; reports. 1. The provider shall keep and
20 use in its business such books, accounts and records as will enable the
21 superintendent to determine whether such provider is complying with the
22 provisions of this article and with the rules and regulations lawfully
23 made by the superintendent hereunder. Every provider shall preserve such
24 books, accounts and records for at least six years after making the
25 final entry in respect to any earned wage access transaction recorded
26 therein; provided, however, the preservation of photographic reprodu-
27 ctions thereof or records in photographic form shall constitute compli-
28 ance with this requirement.

29 2. By a date to be set by the superintendent, each provider shall
30 annually file a report with the superintendent giving such information
31 as the superintendent may require concerning the business and operations
32 during the preceding calendar year of the provider within the state
33 under the authority of this article. Such report shall be subscribed and
34 affirmed as true by the provider under the penalties of perjury and be
35 in the form prescribed by the superintendent. In addition to such annual
36 reports, the superintendent may require of providers such additional
37 regular or special reports as the superintendent may deem necessary to
38 the proper supervision of providers under this article. Such additional
39 reports shall be in the form prescribed by the superintendent and shall
40 be subscribed and affirmed as true under the penalties of perjury.

41 § 374-mm. Severability. If any provision of this article or the appli-
42 cation thereof to any person or circumstances is held invalid, the inva-
43 lidity thereof shall not affect other provisions or applications of the
44 article which can be given effect without the invalid provision or
45 application, and to this end the provisions of this article are severa-
46 ble.

47 § 2. Subdivision 1 of section 36 of the banking law, as amended by
48 chapter 146 of the laws of 1961, is amended to read as follows:

49 1. The superintendent shall have the power to examine every banking
50 organization, every bank holding company and any non-banking subsidiary
51 thereof (as such terms "bank holding company" and "non-banking subsid-
52 iary" are defined in article three-A of this chapter) and every licensed
53 lender and licensed earned income access provider at any time prior to
54 its dissolution whenever in his judgment such examination is necessary
55 or advisable.

§ 3. Subdivisions 3 and 5 of section 37 of the banking law, as amended by chapter 360 of the laws of 1984, are amended to read as follows:

3. In addition to any reports expressly required by this chapter to be made, the superintendent may require any banking organization, licensed lender, licensed earned income access provider, licensed casher of checks, licensed mortgage banker, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company and any non-banking subsidiary thereof, corporate affiliate of a corporate banking organization within the meaning of subdivision six of section thirty-six of this article and any non-banking subsidiary of a corporation which is an affiliate of a corporate banking organization within the meaning of subdivision six-a of section thirty-six of this article to make special reports to him at such times as he may prescribe.

5. The superintendent may extend at his discretion the time within which a banking organization, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company or any non-banking subsidiary thereof, licensed casher of checks, licensed mortgage banker, private banker, licensed earned income access provider or licensed lender is required to make and file any report to the superintendent.

§ 4. Section 39 of the banking law, as amended by section 3 of part L of chapter 58 of the laws of 2019, is amended to read as follows:

§ 39. Orders of superintendent. 1. To appear and explain an apparent violation. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed earned income access provider, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business or maintain a representative office in this state has violated any law or regulation, he or she may, in his or her discretion, issue an order describing such apparent violation and requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, licensed mortgage loan originator, licensed lender, licensed earned income access provider, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation to appear before him or her, at a time and place fixed in said order, to present an explanation of such apparent violation.

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, licensed student loan servicer, registered mortgage loan servicer, licensed mortgage loan originator, licensed lender, licensed earned income access provider, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the super-

1 intendent to do business in this state is conducting business in an
2 unauthorized or unsafe and unsound manner, he or she may, in his or her
3 discretion, issue an order directing the discontinuance of such unau-
4 thorized or unsafe and unsound practices, and fixing a time and place at
5 which such banking organization, bank holding company, registered mort-
6 gage broker, licensed mortgage banker, licensed student loan servicer,
7 registered mortgage loan servicer, licensed mortgage loan originator,
8 licensed lender, licensed earned income access provider, licensed casher
9 of checks, licensed sales finance company, licensed insurance premium
10 finance agency, licensed transmitter of money, licensed budget planner,
11 out-of-state state bank that maintains a branch or branches or represen-
12 tative or other offices in this state, or foreign banking corporation
13 may voluntarily appear before him or her to present any explanation in
14 defense of the practices directed in said order to be discontinued.

15 3. To make good impairment of capital or to ensure compliance with
16 financial requirements. Whenever it shall appear to the superintendent
17 that the capital or capital stock of any banking organization, bank
18 holding company or any subsidiary thereof which is organized, licensed
19 or registered pursuant to this chapter, is impaired, or the financial
20 requirements imposed by subdivision one of section two hundred two-b of
21 this chapter or any regulation of the superintendent on any branch or
22 agency of a foreign banking corporation or the financial requirements
23 imposed by this chapter or any regulation of the superintendent on any
24 licensed lender, licensed earned income access provider, registered
25 mortgage broker, licensed mortgage banker, licensed student loan servi-
26 cer, licensed casher of checks, licensed sales finance company, licensed
27 insurance premium finance agency, licensed transmitter of money,
28 licensed budget planner or private banker are not satisfied, the super-
29 intendent may, in the superintendent's discretion, issue an order
30 directing that such banking organization, bank holding company, branch
31 or agency of a foreign banking corporation, registered mortgage broker,
32 licensed mortgage banker, licensed student loan servicer, licensed lend-
33 er, licensed earned income access provider, licensed casher of checks,
34 licensed sales finance company, licensed insurance premium finance agen-
35 cy, licensed transmitter of money, licensed budget planner, or private
36 banker make good such deficiency forthwith or within a time specified in
37 such order.

38 4. To make good encroachments on reserves. Whenever it shall appear to
39 the superintendent that either the total reserves or reserves on hand of
40 any banking organization, branch or agency of a foreign banking corpo-
41 ration are below the amount required by or pursuant to this chapter or
42 any other applicable provision of law or regulation to be maintained, or
43 that such banking organization, branch or agency of a foreign banking
44 corporation is not keeping its reserves on hand as required by this
45 chapter or any other applicable provision of law or regulation, he or
46 she may, in his or her discretion, issue an order directing that such
47 banking organization, branch or agency of a foreign banking corporation
48 make good such reserves forthwith or within a time specified in such
49 order, or that it keep its reserves on hand as required by this chapter.

50 5. To keep books and accounts as prescribed. Whenever it shall appear
51 to the superintendent that any banking organization, bank holding compa-
52 ny, registered mortgage broker, licensed mortgage banker, licensed
53 student loan servicer, registered mortgage loan servicer, licensed mort-
54 gage loan originator, licensed lender, licensed earned income access
55 provider, licensed casher of checks, licensed sales finance company,
56 licensed insurance premium finance agency, licensed transmitter of

1 money, licensed budget planner, agency or branch of a foreign banking
2 corporation licensed by the superintendent to do business in this state,
3 does not keep its books and accounts in such manner as to enable him or
4 her to readily ascertain its true condition, he or she may, in his or
5 her discretion, issue an order requiring such banking organization, bank
6 holding company, registered mortgage broker, licensed mortgage banker,
7 licensed student loan servicer, registered mortgage loan servicer,
8 licensed mortgage loan originator, licensed lender, licensed earned
9 income access provider, licensed casher of checks, licensed sales
10 finance company, licensed insurance premium finance agency, licensed
11 transmitter of money, licensed budget planner, or foreign banking corpo-
12 ration, or the officers or agents thereof, or any of them, to open and
13 keep such books or accounts as he or she may, in his or her discretion,
14 determine and prescribe for the purpose of keeping accurate and conven-
15 ient records of its transactions and accounts.

16 6. As used in this section, "bank holding company" shall have the same
17 meaning as that term is defined in section one hundred forty-one of this
18 chapter.

19 § 5. Paragraph (a) of subdivision 1 of section 44 of the banking law,
20 as amended by section 4 of part L of chapter 58 of the laws of 2019, is
21 amended to read as follows:

22 (a) Without limiting any power granted to the superintendent under any
23 other provision of this chapter, the superintendent may, in a proceeding
24 after notice and a hearing, require any safe deposit company, licensed
25 lender, licensed earned income access provider, licensed casher of
26 checks, licensed sales finance company, licensed insurance premium
27 finance agency, licensed transmitter of money, licensed mortgage banker,
28 licensed student loan servicer, registered mortgage broker, licensed
29 mortgage loan originator, registered mortgage loan servicer or licensed
30 budget planner to pay to the people of this state a penalty for any
31 violation of this chapter, any regulation promulgated thereunder, any
32 final or temporary order issued pursuant to section thirty-nine of this
33 article, any condition imposed in writing by the superintendent in
34 connection with the grant of any application or request, or any written
35 agreement entered into with the superintendent.

36 § 6. This act shall take effect on the one hundred eightieth day after
37 it shall have become a law. Effective immediately, the addition, amend-
38 ment and/or repeal of any rule or regulation necessary for the implemen-
39 tation of this act on its effective date are authorized to be made and
40 completed on or before such effective date.