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

256--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PERALTA, ESPAILLAT, PERRY -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, PHEFFER, ROBINSON -- read once and referred 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 money services businesses

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

Section 1. Legislative intent. The legislature hereby finds and declares that money services businesses play a vital role in the economy of New York state and that access by the public to efficient, economical and safe money services businesses is a public good. Money services businesses recognize that protection of the financial system from abuse from money launderers and terrorist financiers is a paramount and compelling state interest and therefore comply with standards established by federal and state statutes and regulations, including the Bank Secrecy Act (Public Law 91-508 and 31 U.S.C. 5311 subchapter II) and the "Interagency Interpretative Guidance on Providing Banking Services to Money Services Businesses Operating in the United States" issued by the Financial Crimes Enforcement Network (FinCEN) of the U.S. treasury department. Furthermore, in ensuring that money services businesses are partners in our state's fight against money laundering and terrorist financing, money services businesses are subject to strict licensing and background verification requirements and, in many cases, bonding requirements by the superintendent of banks. Moreover, money services businesses are subject to constant supervision and examination by the superintendent of banks for safety and soundness, as well as compliance with the bank secrecy act and other anti-money laundering and anti-terrorist financing laws and regulations. Nevertheless, the legislature

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

LBD00088-03-9

finds that banks in the state have closed accounts and refused to open accounts for money services businesses citing requirements of the bank secrecy act.

Therefore, the legislature finds and declares that the systematic and unchecked closing of money services businesses runs counter to the goals of protecting the state and its financial system.

S 2. The banking law is amended by adding a new section 9-v to read as follows:

S 9-V. NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER ACCOUNTS. 1. (A) A STATE CHARTERED DEPOSITORY INSTITUTION SHALL HAVE NO OBLIGATION TO CONDUCT ANY DUE DILIGENCE OR REVIEW OF THE COMPLIANCE BY A NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER WITH SUCH BUSINESS'S OBLIGATIONS UNDER CHAPTER 53 OF TITLE 31 OF THE UNITED STATES CODE, PROVIDED:

(I) THE NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER IS LICENSED OR APPROVED TO ENGAGE IN MONEY TRANSMISSION OR CHECK CASHING UNDER THIS CHAPTER BY THE SUPERINTENDENT OF BANKS; AND

(II) THE NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER CERTIFIES TO THE STATE CHARTERED DEPOSITORY INSTITUTION THAT IT HAS A PROGRAM THAT FULFILLS THE REQUIREMENTS OF SUBSECTION (H)(1) OF 31 U.S.C. SECTION 5318 AND ITS IMPLEMENTING REGULATIONS.

(B) A NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER MAKING A MATERIAL MISREPRESENTATION IN A CERTIFICATION REQUIRED BY THIS SECTION SHALL BE SUBJECT TO THE CIVIL PENALTIES PRESCRIBED UNDER LAW. A PERSON WHO KNOWINGLY MAKES ANY SUCH MATERIAL MISREPRESENTATION OR OMISSION SHALL BE SUBJECT TO CRIMINAL PROSECUTION AND ALL PENALTIES AS OTHERWISE PROVIDED BY LAW.

(C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A STATE-CHARTERED DEPOSITORY INSTITUTION TO ESTABLISH, MAINTAIN, ADMINISTER OR MANAGE AN ACCOUNT FOR A NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER.

(D) A STATE CHARTERED DEPOSITORY INSTITUTION SHALL HAVE NO LIABILITY FOR THE FAILURE OF ANY NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE LICENSED CHECK CASHER TO FULFILL ITS OBLIGATIONS UNDER CHAPTER 53 OF TITLE 31 OF THE UNITED STATES CODE.

2. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO BANKING INSTITUTION IN THE STATE SHALL DENY BANKING SERVICES TO ANY MONEY SERVICES BUSINESS ON THE BASIS OF COMPLIANCE WITH THE BANKING SECRECY ACT (PL 91-508 AND 31 USC 5311 SUBCHAPTER II) WITHOUT THE APPROVAL OF THE SUPERINTENDENT.

3. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO BANKING INSTITUTION SHALL DENY BANKING SERVICES TO ANY MONEY SERVICES BUSINESS WITHOUT PROVIDING SUCH MONEY SERVICES BUSINESS AN OPPORTUNITY TO MEET ANY REASONABLE REQUIREMENTS SET BY THE BANKING INSTITUTION FOR OPENING AND MAINTAINING SUCH SERVICES.

4. THE BANKING INSTITUTION SHALL PROVIDE TO THE SUPERINTENDENT A WRITTEN STATEMENT SETTING FORTH IN REASONABLE DETAIL THE REASON FOR THE DENIAL OF SUCH BANKING SERVICES TO ANY MONEY SERVICE BUSINESS. SUCH WRITTEN STATEMENT SHALL BE REVIEWED BY THE SUPERINTENDENT WHO, AFTER SUCH REVIEW, MAY DIRECT THE BANKING INSTITUTION TO OFFER SERVICES IF THE SUPERINTENDENT FINDS:

(A) THE MONEY SERVICES BUSINESS POSSESSES ADEQUATE COMPLIANCE SAFEGUARDS AS DETERMINED BY ITS MOST RECENT STATE AUDIT;

(B) THE BANKING INSTITUTION MEETS THE REQUIREMENTS OUTLINED IN THE "INTERAGENCY INTERPRETATIVE GUIDANCE ON PROVIDING BANKING SERVICES TO MONEY SERVICES BUSINESSES OPERATING IN THE UNITED STATES" BY THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) OF THE UNITED STATES TREASURY DEPARTMENT; AND

(C) THE BANKING INSTITUTION, AT THE TIME OF THE REVIEW, DID NOT HOLD A DISPROPORTIONATE AMOUNT OF MONEY SERVICES BUSINESS ACCOUNTS.

S 3. This act shall take effect immediately.