

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

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2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sens. DIAZ, THOMPSON -- 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 money services businesses

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

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

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

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1 accounts for money services businesses citing requirements of the bank
2 secrecy act.

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

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

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

14 (I) THE NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE
15 LICENSED CHECK CASHER IS LICENSED OR APPROVED TO ENGAGE IN MONEY TRANS-
16 MISSION OR CHECK CASHING UNDER THIS CHAPTER BY THE SUPERINTENDENT OF
17 BANKS; AND

18 (II) THE NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE
19 LICENSED CHECK CASHER CERTIFIES TO THE STATE CHARTERED DEPOSITORY INSTI-
20 TUTION THAT IT HAS A PROGRAM THAT FULFILLS THE REQUIREMENTS OF
21 SUBSECTION (H)(1) OF 31 U.S.C. SECTION 5318 AND ITS IMPLEMENTING REGU-
22 LATIONS.

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

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

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

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

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

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

53 (A) THE MONEY SERVICES BUSINESS POSSESSES ADEQUATE COMPLIANCE SAFE-
54 GUARDS AS DETERMINED BY ITS MOST RECENT STATE AUDIT;

55 (B) THE BANKING INSTITUTION MEETS THE REQUIREMENTS OUTLINED IN THE
56 "INTERAGENCY INTERPRETATIVE GUIDANCE ON PROVIDING BANKING SERVICES TO

1 MONEY SERVICES BUSINESSES OPERATING IN THE UNITED STATES" BY THE FINAN-
2 CIAL CRIMES ENFORCEMENT NETWORK (FINCEN) OF THE UNITED STATES TREASURY
3 DEPARTMENT; AND
4 (C) THE BANKING INSTITUTION, AT THE TIME OF THE REVIEW, DID NOT HOLD A
5 DISPROPORTIONATE AMOUNT OF MONEY SERVICES BUSINESS ACCOUNTS.
6 S 3. This act shall take effect immediately.