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

7445

I N S E N A T E

April 12, 2010

Introduced by Sen. FOLEY -- (at request of the Banking Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law and the general business law, in relation to reporting by banking organizations, conforming criminal provisions of the mortgage banking article to those in the mortgage loan originator article, permitting remote deposit capture machines, clarifying the definition of capital impairment for banking institutions, reducing operating expenses of the banking department and making other technical changes

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

Section 1. Section 2 of the banking law is amended by adding a new subdivision 28 to read as follows:

28. SUPERINTENDENT. THE TERM, "SUPERINTENDENT," WHEN USED IN THIS CHAPTER, SHALL MEAN THE SUPERINTENDENT OF BANKS AS PROVIDED FOR IN SECTION TWELVE OF THIS CHAPTER.

S 2. Section 2 of the banking law is amended by adding a new subdivision 29 to read as follows:

29. REMOTE DEPOSIT CAPTURE MACHINE. THE TERM, "REMOTE DEPOSIT CAPTURE MACHINE," WHEN USED IN THIS CHAPTER, SHALL MEAN AN AUTOMATED MACHINE, LOCATED AT A CUSTOMER'S PLACE OF BUSINESS AND OPERATED BY PERSONNEL OF THE BUSINESS CUSTOMER, THAT REMOTELY TRANSMITS THE DATA LOCATED ON CHECKS TO A BANKING INSTITUTION FOR PROCESSING AND DEPOSIT.

S 3. Paragraph (a) of subdivision 3 of section 28-b of the banking law, as amended by chapter 315 of the laws of 2008, is amended to read as follows:

(a) When taking any action on an application OR NOTICE made by a banking institution under (I) section one hundred five, two hundred twenty-four, two hundred forty, or three hundred ninety-six of this chapter for a branch office [or under], (II) section one hundred ninety-one of this chapter for a public accommodation office [or under], (III) section six hundred one-b of this chapter for approval or disapproval of a merger or purchase of assets, or [taking any action on a notice submitted by a

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

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banking institution under] (IV) section one hundred five-a, two hundred forty-a or three hundred ninety-six-a of this chapter for the use or installation of an automated teller machine, [point-of-sale terminal or similar electronic facility] or on any other application OR NOTICE to which the banking board shall by rule or regulation make applicable the provisions of this section, the superintendent shall take into account, among other factors, an assessment, in writing, of the record of performance of the banking institution in helping to meet the credit needs of its entire community, including low and moderate-income neighborhoods, consistent with safe and sound operation of the banking institution. Such assessment and any written communications from the banking department to a banking institution relating to such assessment shall be made available to the public upon request, provided that nothing contained in this subdivision shall be deemed to alter, amend or affect the provisions of subdivision ten of section thirty-six of this chapter. In making such assessment the superintendent shall review all reports and documents filed pursuant to subdivision one of this section and any signed, written comments received by the superintendent which specifically relate to the banking institution's performance in helping to meet the credit needs of its community. In addition, the superintendent shall consider the following factors in assessing a banking institution's record of performance:

(1) Activities conducted by the banking institution to ascertain credit needs of its community, including the extent of the banking institution's efforts to communicate with members of its community regarding the credit services being provided by the banking institution;

(2) The extent of the banking institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the banking institution;

(3) The extent of participation by the banking institution's board of directors or board of trustees in formulating the banking institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(4) Any practices intended to discourage application for types of credit set forth in the banking institution's Community Reinvestment Act Statement(s);

(5) The geographic distribution of the banking institution's credit extensions, credit applications and credit denials;

(6) Evidence of prohibited discriminatory or other illegal credit practices;

(7) The banking institution's record of opening and closing offices and providing services at offices;

(8) The banking institution's participation, including investments, in local community development and redevelopment projects or programs;

(9) The banking institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community or the purchase of such loans originated in its community;

(10) The banking institution's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses or small farms;

(11) The banking institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition and other factors;

(11-a) The geographic distribution, availability and use of automated teller machines, point-of-sale terminals, personal computer banking,

debit cards or similar electronic facilities or services; and any training of customers thereon among every branch of the banking institution, if the institution offers such services to any of its customers; and

(12) Other factors that, in the judgment of the superintendent and banking board, reasonably bear upon the extent to which a banking institution is helping to meet the credit needs of its entire community, including, without limitation, the banking institution's participation in credit counseling services.

S 4. Subdivision 1 of section 37 of the banking law, as amended by chapter 116 of the laws of 1973, is amended to read as follows:

1. The superintendent shall at least two times in each year designate a past day as of which every bank, trust company, private banker and, in the discretion of the superintendent, a bank holding company and any non-banking subsidiary thereof shall render a [periodical report of condition to him. He shall deliver or mail a notice designating such day to such bank, trust company, private banker, bank holding company or any non-banking subsidiary thereof at its principal office] PERIODIC REPORT OF CONDITION TO THE SUPERINTENDENT GIVING SUCH INFORMATION AS THE SUPERINTENDENT MAY REQUIRE CONCERNING THE BUSINESS AND OPERATIONS OF SUCH ENTITY DURING SUCH PRECEDING PERIOD. THE REPORT OF CONDITION SHALL BE IN THE FORM AND SHALL BE FILED AS PRESCRIBED BY THE SUPERINTENDENT.

S 5. Subdivision 3 of section 39 of the banking law, as amended by section 1 of part FF of chapter 59 of the laws of 2004, is amended to read as follows:

3. To make good AN impairment of capital OR DEFICIENT CAPITAL CONDITION or to ensure compliance with financial requirements. [Whenever] THE SUPERINTENDENT MAY, IN HIS OR HER DISCRETION, ISSUE AN ORDER DIRECTING THAT A BANKING ORGANIZATION, BANK HOLDING COMPANY, BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION, REGISTERED MORTGAGE BROKER, LICENSED MORTGAGE BANKER, LICENSED LENDER, LICENSED CASHER OF CHECKS, LICENSED SALES FINANCE COMPANY, LICENSED INSURANCE PREMIUM FINANCE AGENCY, LICENSED TRANSMITTER OF MONEY, LICENSED BUDGET PLANNER, OR PRIVATE BANKER MAKE GOOD A DEFICIENCY FORTHWITH OR WITHIN A TIME SPECIFIED IN SUCH ORDER, WHENEVER it shall appear to [the superintendent] HIM OR HER that:

(A) the capital or capital stock of any banking organization, bank holding company or any subsidiary thereof which is organized, licensed or registered pursuant to this chapter, is impaired[, or];

(B) THE CAPITAL OF ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION IS, IN THE SOLE DISCRETION OF THE SUPERINTENDENT, DEFICIENT GIVEN THE EXTENT AND NATURE OF ITS OPERATIONS;

(C) the financial requirements imposed by subdivision one of section two hundred two-b of this chapter or any regulation of the superintendent or the banking board on any branch or agency of a foreign banking corporation ARE NOT SATISFIED, or

(D) the financial requirements imposed by this chapter or any regulation of the superintendent or THE banking board on any licensed lender, registered mortgage broker, licensed mortgage banker, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner or private banker are not satisfied[, he or she may, in his or her discretion, issue an order directing that such banking organization, bank holding company, branch or agency of a foreign banking corporation, registered mortgage broker, licensed mortgage banker, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money,

licensed budget planner, or private banker make good such deficiency forthwith or within a time specified in such order].

S 6. The opening paragraph of section 42 of the banking law, as amended by chapter 547 of the laws of 2008, is amended to read as follows:

The superintendent shall [publish and] make available to the general public at the offices of the department and also post on the department's internet website a bulletin [at noon] on Friday of each week AND ON SUCH OTHER DAYS AS THE SUPERINTENDENT SHALL DEEM APPROPRIATE AND IN THE PUBLIC INTEREST stating the following items of general information with regard to the work of the department since the preceding statement:

S 7. Section 75-g of the banking law, as added by chapter 9 of the laws of 1996, subdivision 1 as designated by section 4-a of part A of chapter 57 of the laws of 1998 and subdivision 2 as amended by chapter 650 of the laws of 2008, is amended to read as follows:

S 75-g. Report of compliance. [1.] Within one year after the effective date of this article, and each year thereafter, every banking institution which has an automated teller machine facility which is in operation on such date and such date every year thereafter shall submit a written report to the department on a form prescribed by the superintendent, certifying that such automated teller machine facility is in compliance with the provisions of this article or any variance or exemption that has been granted, or if such facility is not in compliance with such provisions, such report shall state the manner in which such facility fails to meet such requirements, the reasons for such non-compliance and a plan to remedy any such non-compliance.

[2. The superintendent shall report to the legislature on or before the fifteenth day of January and annually thereafter, with respect to compliance with this article. Such report shall include, but not be limited to:

(a) the number of inspections undertaken by the department in the previous year pursuant to this section;

(b) the number and types of violations or other instances of non-compliance identified through such inspections and measures undertaken by the department and banking institutions to address such instances;

(c) expenses of the department incurred exclusively for the purpose of the implementation of this section, including the number of department personnel assigned to such purpose; and

(d) during the year for which the report is rendered, a listing of the number of variance or exemption applications received and granted related to the automated teller machine security measures; the name of any banking institution which received a variance or exemption; the geographic location of the automated teller machines subject to the variance or exemption; and, the general conditions or terms of the variance or exemption.]

S 8. Section 105-a of the banking law, as amended by chapter 613 of the laws of 1995, is amended to read as follows:

S 105-a. Electronic facilities. A bank or trust company may conduct a banking business, at automated teller machines, point-of-sale terminals, REMOTE DEPOSIT CAPTURE MACHINES, and similar facilities subject to regulations which may be promulgated by the banking board. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, AUTOMATED TELLER MACHINES AND SUCH OTHER ELECTRONIC FACILITIES AS SPECIFICALLY DESIGNATED BY REGULATION OF THE BANKING BOARD SHALL BE DEEMED TO BE BRANCHES for purposes of clause

(ii) of PARAGRAPH (A) OF subdivision one of section one hundred five [of this chapter, such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section one hundred five, and for purposes of] AND section twenty-eight-b of this chapter[, such facilities shall be deemed to be branches].

S 9. Section 240-a of the banking law, as amended by chapter 613 of the laws of 1995, is amended to read as follows:

S 240-a. Electronic facilities. A savings bank may conduct a banking business, at automated teller machines, point-of-sale terminals, REMOTE DEPOSIT CAPTURE MACHINES, and similar facilities, subject to regulations which may be promulgated by the banking board. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, AUTOMATED TELLER MACHINES AND SUCH OTHER ELECTRONIC DEVICES AS SPECIFICALLY DESIGNATED BY THE BANKING BOARD SHALL BE DEEMED TO BE BRANCHES for purposes of paragraph (b) of subdivision two of section two hundred forty [of this chapter, such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section two hundred forty,] and [for purposes of] section twenty-eight-b of this chapter[, such facilities shall be deemed to be branches].

S 10. Section 396-a of the banking law, as amended by chapter 613 of the laws of 1995, is amended to read as follows:

S 396-a. Electronic facilities. A savings and loan association may conduct a banking business, at automated teller machines, point-of-sale terminals, REMOTE DEPOSIT CAPTURE MACHINES, and similar facilities, subject to regulations which may be promulgated by the banking board. Such facilities shall not be deemed to be branches and shall not be subject to any of the provisions of this chapter applicable to branches; provided however that notwithstanding the foregoing, AUTOMATED TELLER MACHINES AND SUCH OTHER ELECTRONIC FACILITIES AS SPECIFICALLY DESIGNATED BY REGULATION BY THE BANKING BOARD SHALL BE DEEMED TO BE BRANCHES for purposes of paragraph (b) of subdivision two of section three hundred ninety-six [of this chapter, such facilities shall be deemed to be branches, and such facilities shall be subject to the terms and conditions of section three hundred ninety-six,] and [for purposes of] section twenty-eight-b of this chapter[, such facilities shall be deemed to be branches].

S 11. The article heading of article 12-D of the banking law, as added by chapter 864 of the laws of 1981, is amended to read as follows:

[LICENSED] MORTGAGE BANKERS, MORTGAGE BROKERS AND MORTGAGE LOAN SERVICERS

S 12. Paragraph (c) of subdivision 2 of section 590 of the banking law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

(c) A licensee, registrant or mortgage loan servicer may apply for authority to open and maintain one or more branch offices.

S 13. Subdivision 2 of section 592 of the banking law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

2. [The] NOTWITHSTANDING ANY OTHER LAW, THE superintendent [may refuse to] SHALL NOT issue a license pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of [a crime involving an activity which is a felony under this chapter or under article one hundred

fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state] OR PLED NOLO CONTENDERE TO, A FELONY IN A DOMESTIC, FOREIGN, OR MILITARY COURT DURING THE SEVEN-YEAR PERIOD PRECEDING THE DATE OF THE APPLICATION FOR LICENSING OR AT ANY TIME PRECEDING SUCH DATE OF APPLICATION, IF SUCH FELONY INVOLVED AN ACT OF FRAUD, DISHONESTY, OR A BREACH OF TRUST, OR MONEY LAUNDERING or (b) has had a MORTGAGE BANKER license [or], MORTGAGE BROKER registration OR MORTGAGE LOAN ORIGINATOR AUTHORIZATION, LICENSE OR LICENSE EQUIVALENT revoked [by the superintendent] IN ANY GOVERNMENTAL JURISDICTION, EXCEPT THAT A SUBSEQUENT FORMAL VACATION OF SUCH REVOCATION SHALL NOT BE DEEMED TO BE A REVOCATION or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockholder", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten [per centum] PERCENT or more of the total outstanding stock of a corporation.

S 14. Subdivision 2 of section 592-a of the banking law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

2. [The] NOTWITHSTANDING ANY OTHER LAW, THE superintendent [may refuse to] SHALL NOT issue a certificate pursuant to this article if he or she shall find that the applicant, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant, consultant or person having a relationship with the applicant similar to a consultant, (a) has been convicted of [a crime involving an activity which is a felony under this chapter or under article one hundred fifty-five, one hundred seventy, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five, one hundred eighty-seven, one hundred ninety, two hundred, two hundred ten or four hundred seventy of the penal law or any comparable felony under the laws of any other state or the United States, provided that such crime would be a felony if committed and prosecuted under the laws of this state] IN A DOMESTIC, FOREIGN, OR MILITARY COURT OR PLED NOLO CONTENDERE TO, A FELONY DURING THE SEVEN-YEAR PERIOD PRECEDING THE DATE OF THE APPLICATION FOR LICENSING OR AT ANY TIME PRECEDING SUCH DATE OF APPLICATION, IF SUCH FELONY INVOLVED AN ACT OF FRAUD, DISHONESTY, OR A BREACH OF TRUST, OR MONEY LAUNDERING or (b) has had a MORTGAGE BANKER license [or], MORTGAGE BROKER registration OR MORTGAGE LOAN ORIGINATOR AUTHORIZATION, LICENSE OR LICENSE EQUIVALENT revoked [by the superintendent] IN ANY GOVERNMENTAL JURISDICTION, EXCEPT THAT A SUBSEQUENT FORMAL VACATION OF SUCH REVOCATION SHALL NOT BE DEEMED TO BE A REVOCATION or (c) has been a director, partner, or substantial stockholder of an entity which has had a license or registration revoked by the superintendent or (d) has been an agent, employee or officer of an entity, or a consultant to, or person having had a similar relationship with, any entity which has had a license or registration revoked by the superintendent where such person shall have been found by the superintendent to bear responsibility in connection with the revocation. The term "substantial stockhold-

er", as used in this subdivision, shall be deemed to refer to a person owning or controlling directly or indirectly ten [per centum] PERCENT or more of the total outstanding stock of a corporation.

S 15. Subdivision 1 of section 601-a of the banking law, as amended by chapter 152 of the laws of 1993, is amended to read as follows:

1. The following acquisitions are hereby authorized whether by purchase or otherwise, other than by merger, of all or a substantial part of the assets of:

(a) One or more corporations organized under the laws of this state and subject to the provisions of article three, article eight or article twelve of this chapter by another corporation subject to the provisions of the same article.

(b) One or more safe deposit companies by a bank or trust company.

(c) One or more mutual savings banks by another mutual savings bank.

(d) One or more mutual savings and loan associations by another mutual savings and loan association.

(e) One or more stock-form savings banks by another stock-form savings bank.

(f) One or more stock-form savings and loan associations by another stock-form savings and loan association.

(g) One or more banking institutions by another banking institution to the extent permitted under regulations of the banking board. FOR PURPOSES OF THIS SUBDIVISION, A BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION LICENSED UNDER ARTICLE FIVE OF THIS CHAPTER SHALL BE CONSIDERED A BANKING INSTITUTION.

S 16. 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, BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION, 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.

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 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, 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 17. Paragraph (e) of subdivision 1 of section 606 of the banking law, as amended by chapter 1 of the laws of 1984, is amended to read as follows:

(e) Has, AS DETERMINED BY THE SUPERINTENDENT IN HIS OR HER SOLE DISCRETION, (I) an impairment of its capital; or[, in the case of a mutual savings and loan association or credit union, has assets insufficient to pay its debts and the amount due members upon their shares] (II) A DEFICIENT CAPITAL CONDITION GIVEN THE EXTENT AND NATURE OF ITS OPERATIONS; PROVIDED THAT, FOR PURPOSES OF THIS SUBPARAGRAPH, A DEFICIENT CAPITAL CONDITION SHALL INCLUDE, WITHOUT LIMITATION, A FINDING BY THE SUPERINTENDENT THAT THE INSTITUTION IS SIGNIFICANTLY UNDERCAPITALIZED, AS SUCH TERM IS USED IN THE REGULATIONS OF SUCH INSTITUTION'S PRIMARY FEDERAL REGULATOR;

S 18. Section 609 of the banking law, as amended by chapter 684 of the laws of 1938, the section heading and subdivision 1 as amended by chapter 1 of the laws of 1984, subdivision 6 and paragraph (k) of subdivision 8 as amended and subdivision 9 as added by chapter 849 of the laws of 1964 and paragraph (g) of subdivision 8 as amended by chapter 115 of the laws of 1981, is amended to read as follows:

S 609. Resumption of business by bank[,] OR trust company [or industrial bank]; retirement of certificates; applicability to stock-form savings banks and stock-form savings and loan associations. 1. Any bank, trust company, stock-form savings bank or stock-form savings and loan association of which the superintendent has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted by the superintendent, in his OR HER discretion and subject to such conditions as may be approved by him OR HER, to resume business in accordance with the provisions of this section.

2. No bank[,] OR trust company [or industrial bank] permitted by the superintendent to resume business in accordance with the provisions of this section shall, without previously obtaining the written permission of the superintendent, pay, on account of any deposit made or debt

incurred before such restrictions were imposed or before the superintendent took possession of such bank[,] OR trust company [or industrial bank], more than that proportion of eighty [per centum] PERCENT of the total value of its sound assets, as determined by the superintendent, which such deposit or debt bears to the total of the deposits and debts of such bank[,] OR trust company [or industrial bank] at the time of resuming business[:]; provided that nothing contained in this section shall affect any preference created by any law of this state for the benefit of any depositor or creditor or impair the rights of any secured depositor or creditor in any assets lawfully pledged or assigned as such security. For the purposes of this section, the holder of a judgment against any such bank[,] OR trust company [or industrial bank] for the payment of money arising out of a cause of action arising prior to such resumption of business, whether such judgment was recovered prior or subsequent to such resumption of business, shall have the same rights as if he OR SHE were a depositor having a balance equal to the amount of such judgment at the time such restrictions were imposed or at the time the superintendent took possession of such bank[,] OR trust company [or industrial bank]. The superintendent shall prepare for each such bank[,] OR trust company [or industrial bank] a list of the assets which, in his OR HER judgment, are sound and the value thereof as determined by him OR HER.

3. Such bank[,] OR trust company [or industrial bank] shall, immediately upon resuming business, issue to its depositors and creditors non-negotiable transferable certificates, in a form approved by the superintendent, representing the part of its deposits and debts which it is not authorized to pay at that time under the provisions of subdivision two of this section. Such certificates shall bear interest, if any, at a rate not in excess of three [per centum] PERCENT per annum.

4. The superintendent shall from time to time determine the excess of the value of the sound assets of such bank[,] OR trust company [or industrial bank] over the total of the principal amount of such certificates outstanding and of the deposits and debts of such bank[,] OR trust company [or industrial bank] not represented by such certificates, including deposits made and debts incurred after resuming business. The amount by which such excess is greater than the excess of the value of the sound assets of such bank[,] OR trust company [or industrial bank], determined as provided in subdivision two of this section, over its total deposits and debts at the time of resuming business may, unless the superintendent disapproves, be paid pro rata on account of the principal due on such certificates or, if the principal has been paid in full, on account of the interest, if any, due thereon. No such bank[,] OR trust company [or industrial bank] shall, without previously obtaining the written permission of the superintendent, make any other payment on account of the principal or interest of such certificates.

5. No dividends shall be paid on the stock of such bank[,] OR trust company [or industrial bank] while any such certificates are outstanding, unless, having previously secured the written permission of the superintendent to pay such certificates, it shall set aside and maintain a sum sufficient for the payment of all such outstanding certificates and the interest, if any, accrued thereon and shall publish once a week for two calendar weeks in a newspaper published in the county in which its principal office is located, notice to the effect that it will pay all such certificates and the interest, if any, accrued thereon upon due presentation for payment. If, thereafter, any such certificate together with all interest, if any, accrued thereon, shall not be paid when so

presented, the authority of such bank[,] OR trust company [or industrial bank] to pay such dividends shall cease.

6. So long as any of such certificates are outstanding, every holder of such a certificate shall have the same right to notice of all regular or special meetings of the stockholders of such bank[,] OR trust company [or industrial bank] and to attend and to vote in person or by proxy at such meetings as would a holder of stock of the par value of the unpaid principal amount of such certificate, except that no holder of a certificate or certificates shall be entitled to vote upon any change in respect to shares or capital stock pursuant to title eight of article fifteen OF THIS CHAPTER or to receive notice of or attend a meeting of stockholders specially called for that purpose. Within sixty days after such bank[,] OR trust company [or industrial bank] has resumed business a meeting of its stockholders and holders of such certificates shall be called upon notice prescribed by the superintendent. At such meeting directors shall be elected who shall succeed the former directors, and the directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves.

7. If the superintendent shall retake possession of the business and property of such bank[,] OR trust company [or industrial bank] while any such certificates are still outstanding and liquidate its business as elsewhere provided in this chapter, deposits and debts not represented by such certificates, including deposits made and debts incurred after resuming business, shall be entitled to payment of principal and interest in priority to the payment of the principal and interest of such certificates.

8. (a) A plan for the retirement of certificates issued or made available by a bank[,] OR trust company [or industrial bank] pursuant to the provisions of this section may be promulgated in accordance with this subdivision [eight] in any case where the value of all the assets of such bank[,] OR trust company [or industrial bank] as determined by the superintendent is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates so issued or made available by such bank[,] OR trust company [or industrial bank]. Such plan may be promulgated by such bank[,] OR trust company [or industrial bank] or by the holders of ten [per centum] PERCENT or more in principal amount of all such outstanding certificates or the representative or representatives of such holders.

(b) Such plan may provide for any one or more of the following:

(1) The retirement of certificates by the issuance in exchange therefor of shares of capital stock or debentures or both of such bank[,] OR trust company [or industrial bank];

(2) The issuance of preferred stock of such bank[,] OR trust company [or industrial bank] and the sale of such preferred stock for cash or its exchange for real or personal property or for outstanding capital notes, debentures or other obligations of such bank[,] OR trust company [or industrial bank];

(3) The issuance of fractional shares of capital stock of such bank[,] OR trust company [or industrial bank] in exchange for certificates or portions thereof in unpaid amount insufficient to permit the exchange thereof for a full share of capital stock. Such fractional shares of capital stock shall have no voting rights, but, when combined with other fractional shares in sufficient amount, shall be convertible into a full share or shares of capital stock;

(4) The transfer into a separate account upon the books of such bank[,] OR trust company [or industrial bank] or to a separate corporation, of any assets to be liquidated for the pro rata benefit of certificate holders and the issuance to certificate holders of evidences of participation in such assets if transferred into a separate account upon the books of such bank[,] OR trust company [or industrial bank], or of stock or obligations or both of such separate corporation, if such assets are transferred to a separate corporation;

(5) The organization of a corporation to issue its stock or obligations or both in exchange for certificates and for the exchange of certificates so acquired by such corporation for shares of the capital stock or debentures or both of such bank[,] OR trust company [or industrial bank];

(6) The amount of capital stock which such bank[,] OR trust company [or industrial bank] shall have upon the plan becoming effective, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each share.

In addition to provisions herein specifically authorized to be contained in a plan promulgated pursuant to this subdivision, such plan may also contain any other provisions deemed necessary or convenient to effectuate the general purpose or purposes of the plan.

(c) The person or persons promulgating such plan shall first submit it to the superintendent for his OR HER approval. If the plan is approved by the superintendent, such person shall within sixty days of such approval submit it to the supreme court in and for the county in which the principal office of such bank[,] OR trust company [or industrial bank] is located, together with an application for its approval. Such application shall set forth such facts as may be necessary to enable the court to determine the fairness of such plan and shall be made upon an order to show cause which shall provide that notice thereof of a kind which the court deems to be adequate shall be given by such bank[,] OR trust company [or industrial bank] to all holders of such certificates and all other persons whose interests, in the opinion of the court, may be affected by such plan. If the issue is raised in any proceeding involving a plan promulgated pursuant to this subdivision, a certificate executed by the superintendent and filed with the court shall be presumptive evidence of the fact that the value of all of the assets of such bank[,] OR trust company [or industrial bank] is less than the aggregate of the amounts owing to depositors and other creditors plus the unpaid amount of all such certificates issued or made available by such bank[,] OR trust company [or industrial bank].

(d) The superintendent or the bank[,] OR trust company [or industrial bank] or any person or persons authorized to promulgate a plan hereunder may propose and submit to the court an alternative plan or a modification or modifications of any plan before the court. The court may modify any such plan or may propose a new or alternative plan, provided, however, that a modification or modifications, whether proposed by the court or by any other person or persons, may be made only after a hearing upon notice to all holders of certificates and all other persons whose interests, in the opinion of the court, may be affected thereby, and subject to the right of any person who shall previously have consented to such plan to withdraw such consent within a period to be prescribed by the court and after such notice as the court may direct. If any person having such right of withdrawal shall not withdraw within the period so prescribed he OR SHE shall be deemed to have approved such plan as so modified.

(e) After the hearing or hearings above provided the court shall by order approve a plan, with or without modifications, or shall reject all such plans, provided, however, that no order made pursuant to this paragraph approving such plan shall be made or entered unless such plan, in final form, shall first have been approved in writing by the superintendent and such written approval shall have been filed in the proceeding. If at the time of making the order approving such plan, the court is satisfied that the holders of two-thirds in amount of such certificates have approved such plan, the order of the court shall recite such fact and shall declare that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank[,] OR trust company [or industrial bank] of the certificate required to be filed pursuant to paragraph (k) of this subdivision. If at the time of making such order, such plan shall not have been approved by the holders of two-thirds in amount of such certificates, such order shall provide that upon satisfactory proof of the fact that the holders of two-thirds in amount of such certificates shall have approved the same, a further order may be entered ex parte declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank[,] OR trust company [or industrial bank] of the certificate required to be filed pursuant to paragraph (k) of this subdivision.

(f) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such plan shall become binding upon the holders of all certificates of such bank[,] OR trust company [or industrial bank] and all such holders shall be conclusively deemed to have consented to all the terms and conditions of such plan whether or not all of such holders shall actually have consented thereto and whether or not all of them shall have received notice thereof or of the hearing thereon hereinbefore provided.

(g) Every executor, administrator, trustee, guardian, committee, conservator, receiver, or other fiduciary, and every public and private corporation or association, and every political and public instrumentality or body, including, but not by way of limitation of the generality of the foregoing, boards of education and school districts and other special districts, is hereby authorized and empowered to approve and accept a plan promulgated pursuant to this subdivision and to execute and deliver such papers and documents as may be necessary or proper to evidence such approval and acceptance, and shall not be subject to any liability whatsoever for any such approval or acceptance or any exchange of certificates for stock or other securities or both made pursuant thereto.

(h) A plan promulgated pursuant to this subdivision may be effectuated even though it has not been expressly approved by the holders of two-thirds in amount of all outstanding certificates, provided, as an alternative to such express approval, the provisions of this paragraph have been complied with. After the plan is approved by the superintendent as provided by paragraph (c) of this subdivision, the person or persons promulgating such plan shall file a copy thereof with the clerk of the court and shall prepare and mail to each of the holders of such certificates and to each of the holders of stock of the bank[,] OR trust company [or industrial bank], addressed by registered mail to him OR HER, postage prepaid, to his OR HER last known address as the same

appears on the records of the bank[,] OR trust company [or industrial bank], a summary of such plan together with a notice stating in substance that such plan will be presented to the supreme court in and for the county in which the principal office of the bank[,] OR trust company [or industrial bank] is located, and designating a date, which date shall not be less than thirty days after the mailing of such notice, when such court will consider such plan and hear any objection thereto on the part of any holder of a certificate or of stock. Such notice shall also be published by the person or persons promulgating such plan once, at least twenty days before said date, in a daily newspaper of general circulation published in the county where such hearing is to be had and if no such daily newspaper is published in such county, then such notice shall be published in a newspaper of general circulation in said county. Upon the return of such notice or any adjourned date or dates thereof, the court shall hear the parties interested therein and may accept proof in affidavit form or otherwise as to any facts and circumstances material thereto. The court upon proof by affidavit that the provisions hereof with respect to mailing and publication have been fully complied with shall thereupon approve, modify or disapprove such plan, but in no event shall any such plan, with or without modifications, be approved by the court unless the court deems such plan fair and equitable to the holders of certificates and unless such plan, in final form, shall first have been approved in writing by the superintendent, and such written approval shall have been filed in the proceeding; or if written dissent therefrom, duly executed and acknowledged, shall be filed with the clerk of the court prior to such return date, or prior to such other date as may be fixed by the court, by the holders in the aggregate of more than thirty-three and one-third [per centum] PERCENT of the face amount of the certificates affected by such plan. All holders of certificates who have not dissented from the plan in the manner provided by this paragraph and prior to the return date or such other date as may be fixed by the court shall be conclusively deemed to have assented thereto. Such plan shall contain a provision in respect of certificate holders dissenting thereto, to the effect that adequate protection will be provided for the realization by them of the value of their certificates by such method as will in the opinion of the court, under and consistent with the circumstances of the particular case, be equitable and fair to them. When such plan, with or without modifications, shall be approved by the court, the court shall make an order reciting such approval and declaring that such plan shall be effective upon the filing by the superintendent in the office of the clerk of the county in which is located the principal office of such bank[,] OR trust company [or industrial bank] of the certificate required to be filed pursuant to paragraph (k) of this subdivision. The appellate court to which an appeal is taken by any dissenting certificate holder or by any stockholder from any action by the court pursuant to this section shall have the right to impose upon the appellant as part of the costs of the appeal, reasonable fees of counsel for the respondent, and such appellate court may also, in its discretion, require bond therefor before entertaining any such appeal.

(i) Upon the entering of an order declaring that such plan shall be effective upon the filing by the superintendent in the office of the county clerk of the certificate required to be filed pursuant to paragraph (k) of this subdivision, such steps shall be taken by the superintendent and all other persons, and all acts shall be done as may be required by such plan and as may be necessary or desirable to make such

plan operative. Within ten days after the entering of such order, the superintendent shall issue an order pursuant to article two of this chapter directing that such bank[,] OR trust company [or industrial bank] shall forthwith make good the impairment of its capital OR CAPITAL DEFICIENCY. Upon receipt of such order, the directors of the bank[,] OR trust company [or industrial bank] shall give notice to each stockholder of such requisition and of the amount of the assessment he OR SHE must pay, which amount shall be the aggregate par value of his OR HER shares. Such notice shall be mailed to each stockholder at his OR HER address appearing on the records of the bank[,] OR trust company [or industrial bank] or shall be served personally upon him OR HER. Notwithstanding any provision of section one hundred fourteen [or section three hundred six] of this chapter, all outstanding stock certificates of the bank[,] OR trust company [or industrial bank] shall be canceled of record not less than thirty days after notice of assessment is given to stockholders as herein provided, and thereupon such stock certificates shall be null and void for all purposes and the rights of the holders thereunder shall cease and determine; provided, however, that each stockholder who pays the full amount of such assessment within thirty days after notice of assessment is given as herein provided shall receive, in lieu of the stock on account of which such assessment was paid, new stock in the amount to which he OR SHE would be entitled if he OR SHE held certificates issued by such bank[,] OR trust company [or industrial bank] pursuant to the provisions of this section in an aggregate unpaid principal and interest amount equal to the assessment so paid.

(j) Not less than thirty nor more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall, if the plan so provides, cause any assets of such bank[,] OR trust company [or industrial bank] which are to be liquidated for the pro rata benefit of certificate holders, to be set aside in a special account upon the books of such bank[,] OR trust company [or industrial bank] or transferred to a separate corporation.

(k) Upon the completion of the acts required to be done pursuant to paragraph (i) and paragraph (j) of this subdivision and not more than sixty days after notice of assessment is given to stockholders as provided in paragraph (i) of this subdivision, the superintendent shall execute in triplicate a certificate declaring such plan to be effective and stating the amount of capital stock which such bank[,] OR trust company [or industrial bank] shall thereafter have, the classes, if any, into which such capital stock shall be divided, the number of shares in each class and the par value of each such share. The amount of capital stock stated in such certificate shall be not less than the amount of capital stock required to be issued to certificate holders pursuant to such plan, plus the amount of capital stock required, pursuant to paragraph (i) of this subdivision, to be issued to stockholders who shall have paid the full amount of the assessments levied pursuant to such paragraph (i). The amount of capital stock, the number of shares and the par value of each such share as stated in such certificate shall be the amount of capital stock, the number of shares and the par value thereof which such bank[,] OR trust company [or industrial bank] shall thereafter be authorized to have, provided that nothing herein contained shall be deemed to limit the power of any such bank[,] OR trust company [or industrial bank] subsequently to change the amount of its capital stock, the number of its shares or the par value of its shares pursuant to subdivision two of section eight thousand one. One of such triplicate

certificates shall be transmitted forthwith by the superintendent to such bank[,] OR trust company [or industrial bank], another shall be filed in the office of the superintendent and the third shall be filed by the superintendent in the office of the clerk of the county in which is located the principal office of such bank[,] OR trust company [or industrial bank]. Upon such filing in the office of the county clerk, the plan shall become effective and all certificates theretofore issued by such bank[,] OR trust company [or industrial bank] pursuant to the provisions of this section shall be null and void and shall not be deemed to be outstanding for any purpose. Thereupon such bank[,] OR trust company [or industrial bank] shall issue and make available to the holders of such certificates shares of stock or debentures or both of such bank[,] OR trust company [or industrial bank], and if the plan so provides, evidences of participation in the assets aside in a special account or stock or other securities or both of a separate corporation, in the proportions and amounts specified in such plan.

(l) Within sixty days after a plan pursuant to this subdivision has become effective with respect to any bank[,] OR trust company [or industrial bank], there shall be called in accordance with its by-laws a meeting of its stockholders who shall elect directors who shall succeed the former directors. The directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves. [Notwithstanding the requirements as to ownership of capital stock contained in section one hundred sixteen or section three hundred three of this chapter, the] THE directors of such bank[,] OR trust company [or industrial bank] holding office at the time that such plan becomes effective may continue to hold office as directors, until their successors are elected and shall have qualified.

(m) The supreme court in and for the county in which is located the principal office of such bank[,] OR trust company [or industrial bank] is hereby vested with jurisdiction and authority to determine the fairness of, and to approve or disapprove, any plan, or modification or modifications thereof, which may be promulgated hereunder and to determine the fairness of, and to approve or disapprove, the terms and conditions of the issuance and exchange of stock or other securities, or both, of any corporation for certificates issued pursuant to the provisions of this section and to make such orders and do such other things as may be required by this subdivision or as may be necessary or convenient to carry out the purposes hereof.

9. If there be in article fifteen of this chapter a provision which conflicts with any provision of this section six hundred nine, the provision of this section six hundred nine shall prevail, and the conflicting provision of article fifteen shall not apply in such case. If there be in article fifteen a provision relating to a matter embraced in this section six hundred nine, but not in conflict therewith, both provisions shall apply.

S 19. Section 520-c of the general business law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

S 520-c. Credit information. 1. The banking department shall establish AND MAKE AVAILABLE ON ITS WEBSITE, OR PROVIDE A LINK OR LINKS ON SUCH SITE TO OTHER WEBSITES WITH, a toll-free telephone number service at which CONSUMERS MAY OBTAIN information on annual percentage rates, annual fees, per-transaction charges, late payment fees, overlimit fees and grace periods for credit cards [can be obtained], TO THE EXTENT READILY

AVAILABLE TO THE BANKING DEPARTMENT. Every issuer of credit cards to natural persons residing in this state shall set forth on each solicitation, application and monthly billing statement mailed or otherwise presented to such persons, a notice stating "New York residents may contact the New York state banking department [to obtain a] BY TELEPHONE OR VISIT ITS WEBSITE FOR FREE INFORMATION ON comparative [listing of] credit card rates, fees and grace periods." Such notice shall be printed on the same side as the disclosure of rates, fees and charges, in case of the solicitations and applications, and on the same side as the notice of the balance of the account and the amount due are printed, in the case of the monthly billing statement. The superintendent of banks shall prescribe the [address and] telephone number AND WEBSITE to be printed next to the notice. The notice shall be in type no smaller than eight points. [Issuers shall include such notice in materials sent to residents of this state as required under this section commencing October first, nineteen hundred ninety-four.]

2. [The superintendent of banks shall develop and distribute to all issuers of credit cards, no more than thirty days after the effective date of this section, a form which shall be used for the purpose of collecting information on annual percentage rates, annual fees, per-transaction charges, late payment fees, overlimit fees and grace periods governed by the terms of each type of credit card offered by such issuer to natural persons residing in this state. Issuers shall return the forms to the banking department no later than one hundred fifty days after the effective date of this section, and annually thereafter, but no later than April first of each year, commencing in nineteen hundred ninety-five. The superintendent of banks shall publish the information obtained from such forms and make it available to New York residents upon request, commencing not later than October first, nineteen hundred ninety-four, and annually thereafter but not later than July first of each year.

3.] The superintendent of banks is authorized to adopt such rules and regulations as consistent with the provisions of this section.

[4] 3. For the purposes of this section:

(a) "Credit card" means any card issued pursuant to an agreement which allows the holder of the card to obtain goods and services on the credit of the issuer; and

(b) "Issuer" 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 or the United States, which issues credit cards to natural persons residing in this state.

[5] 4. The authority of the superintendent of banks pursuant to sections thirty-nine and forty-four of the banking law shall extend to violations of this section by any issuer.

S 20. This act shall take effect immediately; provided that section nineteen of this act shall take effect on the thirtieth day after it shall have become a law.