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

10919

I N A S S E M B L Y

April 30, 2010

Introduced by M. of A. TOWNS, BENJAMIN -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to enacting the "short-term financial services loan act"

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

Section 1. Short title. This act shall be known and may be cited as the "short-term financial services loan act".

S 2. Subdivision 2 of section 17 of the banking law, as amended by section 2 of part O of chapter 59 of the laws of 2006, is amended to read as follows:

2. All general expenses, including in addition to the direct costs of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the state for or on account of personnel, rentals for space occupied in state owned or state leased buildings and all other direct or indirect costs, incurred in connection with the supervision of any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter shall be charged to and paid by them in such proportions as the superintendent shall deem just and reasonable. The provisions of this subdivision shall not be applicable to a bank holding company, as that term is defined in article three-A of this chapter.

ALL EXPENSES OF THE DEPARTMENT FOR THE OPERATION OF THE BORROWER DATABASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER SHALL BE CHARGED AND ALLOCATED AMONG ALL LICENSED CASHERS OF CHECKS WHICH ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS.

The superintendent shall require that partial payments of the charges for expenses of each fiscal year commencing on or after April first, nineteen hundred eighty-three shall be paid on March tenth of the preceding fiscal year and on June tenth, September tenth and December tenth of the fiscal year, or on such other dates as the superintendent may prescribe. Each such payment shall be equal to twenty-five per centum of the charges, or such other per centum or per centums as the

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

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superintendent may prescribe, for the fiscal year as estimated by the superintendent. The balance of the expenses shall be charged and paid upon the determination of the actual amount due. An overpayment of charges resulting from the requirements of this subdivision shall be refunded or at the option of the assessed shall be applied as a credit against the charges for the succeeding fiscal year. As an alternative, if the estimated annual charge for the fiscal year is equal to or less than the annual minimum assessment set by the superintendent, the superintendent may require full payment to be made on or before September thirtieth or such other date of the fiscal year as the superintendent may determine.

S 3. Subdivision 4 of section 18-a of the banking law, as added by section 1 of part D-1 of chapter 109 of the laws of 2006, is amended to read as follows:

4. The fee which shall be imposed for any application for an initial license, registration, incorporation or for the formation of any other entity pursuant to this chapter, or for a merger, acquisition, purchase or sale of assets, change of control, or for any other application requiring the approval of the superintendent or the banking board that may necessitate, as determined by the superintendent, a determination regarding the character or fitness and/or the safety and soundness of such applicant or a similar investigative undertaking by the department, shall be:

(a) twelve thousand five hundred dollars when such application relates to a banking organization, bank holding company or, except as provided in paragraph (b) of this subdivision, a foreign banking corporation;

(b) seven thousand five hundred dollars when such application relates to licensing a branch, agency or representative office of a foreign banking corporation;

(c) one thousand five hundred dollars when the application relates to a mortgage broker; [or]

(d) THREE THOUSAND FIVE HUNDRED DOLLARS WHEN THE APPLICATION RELATES TO LICENSING A CASHER OF CHECKS WHEN THE APPLICANT INTENDS TO ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. FIVE HUNDRED DOLLARS OF SUCH FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR THE PURPOSE OF OPERATING THE BORROWER DATABASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER; OR

(E) three thousand dollars for all other such applications.

S 4. Paragraph (b) of subdivision 5 of section 18-a of the banking law, as added by section 1 of part D-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(b) two thousand dollars when the application relates to the licensing of an additional location or change of location or the licensing of a mobile unit of a licensed casher of checks. AN ADDITIONAL FEE OF TWO HUNDRED FIFTY DOLLARS SHALL BE IMPOSED UPON A LICENSED CASHER OF CHECKS IF IT ENGAGES IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. SUCH ADDITIONAL FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR THE PURPOSE OF OPERATING THE BORROWER DATABASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER; or

S 5. The closing paragraph of section 340 of the banking law, as added by chapter 22 of the laws of 1990, is amended to read as follows:

Nothing in this article shall apply to licensed collateral loan brokers OR LICENSED CASHERS OF CHECKS.

S 6. Subdivision 1 of section 373 of the banking law, as amended by chapter 432 of the laws of 2004, is amended to read as follows:

1. [No] EXCEPT AS OTHERWISE AUTHORIZED BY THE PROVISIONS OF THIS ARTICLE, NO licensee shall engage in the business of making loans of money, credit, goods or things or discounting of notes, bills of exchange, checks, or other evidences of debt pursuant to the provisions of article nine of this chapter, nor shall a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks or other evidences of debt be conducted on the same premises where the licensee is conducting business pursuant to the provisions of this article, UNLESS SUCH ACTIVITY IS SPECIFICALLY AUTHORIZED BY THE PROVISIONS OF THIS ARTICLE. Except as otherwise provided by regulation of the superintendent, all checks, drafts and money orders shall be deposited in the licensee's bank account not later than the first business day following the day on which they were cashed. No licensee shall at any time cash or advance any moneys on a post-dated check or draft or engage in the business of transmitting money or receiving money for transmission; provided, however, that a licensee may cash a check payable on the first banking business day following the date of cashing (a) if such check is drawn by the United States, the state of New York, or any political subdivision of the state of New York, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States or of the state of New York or of any political subdivision of the state of New York, or (b) if such check is a payroll check drawn by an employer to the order of its employee in payment for services performed by such employee. No licensee shall cash any check, draft or money order if the face amount for which it is drawn is in excess of fifteen thousand dollars; provided, however, that this restriction shall not apply to the cashing of checks, drafts or money orders drawn by the United States, any state thereof or any political subdivision of any such state, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States, any state thereof or any political subdivision of any such state, or any banking institution, or to any check or draft drawn by any insurance company, any broker or dealer registered with the securities and exchange commission, or any attorney for the settlement of claims, or to any check which has been certified by the banking institution on which it has been drawn; provided further, however, that any such restriction upon the maximum face amount that may be cashed by a licensee shall not apply to the cashing of checks, drafts or money orders by licensees for payees of such checks, drafts or money orders that are other than natural persons. For purposes of this subdivision, "banking institution" means any bank, trust company, savings bank, savings and loan association or credit union which is incorporated, chartered or organized under the laws of this state or any other state or the United States.

S 7. The banking law is amended by adding seven new sections 373-a, 373-b, 373-c, 373-d, 373-e, 373-f and 373-g to read as follows:

S 373-A. SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. NOTWITHSTANDING ANY PROVISION OF SECTION THREE HUNDRED SEVENTY-THREE OF THIS ARTICLE TO THE CONTRARY, A LICENSEE MAY ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS AT THE LICENSEE'S PLACE OF BUSINESS, PROVIDED THAT SUCH TRANSACTIONS ARE CONDUCTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

S 373-B. TERMS OF SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. 1. NO LICENSEE SHALL ENGAGE IN THE BUSINESS OF OFFERING SHORT-TERM FINANCIAL SERVICES LOANS IN AMOUNTS OF LESS THAN THREE HUNDRED DOLLARS NOR MORE THAN TWO THOUSAND DOLLARS, OR MORE THAN TWENTY-FIVE PERCENT OF THE

BORROWER'S GROSS MONTHLY INCOME, WHICHEVER SHALL BE LESS. A LICENSED CASHER OF CHECKS SHALL NOT CONTRACT FOR, EXACT OR RECEIVE, DIRECTLY OR INDIRECTLY, ON OR IN CONNECTION WITH ANY LOAN, ANY CHARGES WHETHER FOR INTEREST, COMPENSATION, CONSIDERATION, EXPENSE OR ANY OTHER PURPOSE, WHICH IN THE AGGREGATE ARE GREATER THAN AUTHORIZED IN THIS ARTICLE.

2. THE TERM OF A SHORT-TERM FINANCIAL SERVICES LOAN SHALL BE NOT LESS THAN NINETY DAYS NOR MORE THAN ONE HUNDRED EIGHTY DAYS. A LICENSEE WHICH MAKES A SHORT-TERM FINANCIAL SERVICES LOAN SHALL OFFER THE BORROWER THE OPPORTUNITY TO PAY THE PRINCIPAL, FEES AND INTEREST AUTHORIZED BY THIS ARTICLE IN SUBSTANTIALLY EQUAL INSTALLMENTS OVER THE TERM OF THE LOAN WITH THE EXCEPTION OF THE FIRST PAYMENT. SUCH INSTALLMENTS SHALL BE DUE NOT MORE THAN TWO DAYS AFTER THE DATE ON WHICH THE BORROWER RECEIVES A REGULARLY SCHEDULED INCOME PAYMENT; PROVIDED, HOWEVER, THAT THERE SHALL BE AT LEAST A THIRTEEN DAY PERIOD BETWEEN EACH INSTALLMENT. FURTHERMORE, THE FIRST INSTALLMENT SHALL NOT BE DUE BEFORE THE BORROWER'S NEXT PAY DATE THAT IS AT LEAST THIRTEEN DAYS AFTER THE SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IS CONSUMMATED. EVERY SHORT-TERM FINANCIAL SERVICES LOAN SHALL HAVE NOT LESS THAN TWO SCHEDULED INSTALLMENTS. NO SCHEDULED INSTALLMENT PAYMENT SHALL EXCEED TEN PERCENT OF THE BORROWER'S GROSS MONTHLY INCOME.

3. A LICENSEE MAY PROVIDE THE PROCEEDS OF A SHORT-TERM FINANCIAL SERVICES LOAN TO THE BORROWER IN THE FORM OF A NEGOTIABLE INSTRUMENT, MONEY ORDER, CASH OR REASONABLE ELECTRONIC PAYMENT METHOD. NO ADDITIONAL FEE MAY BE CHARGED TO A BORROWER BY THE LICENSEE MAKING THE LOAN IN ORDER FOR THE BORROWER TO GAIN ACCESS TO THE PROCEEDS OF SUCH A LOAN.

4. SHORT-TERM FINANCIAL SERVICES LOANS, WHETHER IN SCHEDULED INSTALLMENTS OR IN WHOLE, MAY BE REPAID BY THE BORROWER IN CASH, ELECTRONIC FUNDS TRANSFER FROM THE BORROWER'S BANK ACCOUNT OR ANY OTHER REASONABLE PAYMENT MECHANISM. IF AN ELECTRONIC FUNDS TRANSFER OR OTHER REASONABLE PAYMENT MECHANISM IS ELECTED AS THE METHOD FOR REPAYING A SHORT-TERM FINANCIAL SERVICES LOAN, THE BORROWER MAY MAKE ANY SCHEDULED PAYMENT TO THE LICENSEE AT ANY TIME, IN WHOLE OR IN PART, OF ANY PAYMENT INSTALLMENT. EVERY LICENSEE SHALL PROVIDE A BORROWER WITH A DATED RECEIPT SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN AFTER EACH PAYMENT.

5. NO SHORT-TERM FINANCIAL SERVICES LOAN SHALL BE PROVIDED TO ANY PERSON, UNTIL THE LICENSEE SHALL HAVE PROVIDED SUCH PERSON WITH A COPY OF A WRITTEN AGREEMENT RELATING TO SUCH LOAN, WHICH SHALL BE SIGNED BY THE LICENSEE AND THE BORROWER, AND WHICH SHALL INCLUDE:

(A) THE NAME AND ADDRESS OF THE BORROWER;

(B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LICENSEE, AND THE NAME AND TITLE OF THE AGENT OF THE LICENSEE WHO SIGNS THE AGREEMENT ON BEHALF OF THE LICENSEE;

(C) THE DATE OF THE AGREEMENT;

(D) A SCHEDULE OR DESCRIPTION OF REQUIRED INSTALLMENT PAYMENTS, INCLUDING THE PRINCIPAL AMOUNT OF THE LOAN, APPLICABLE INTEREST RATES, FEES CHARGED AND METHOD OF PAYMENT;

(E) NOTICE THAT THE BORROWER SHALL HAVE THE RIGHT TO PREPAY THE LOAN PRIOR TO MATURITY BY PAYING THE LICENSEE THE PRINCIPAL AMOUNT AND ALL ACCRUED AND UNPAID INTEREST, FEES AND CHARGES;

(F) NOTICE THAT THE BORROWER HAS THE RIGHT TO RESCIND THE SHORT-TERM FINANCIAL SERVICES LOAN PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION; AND

(G) THE FOLLOWING STATEMENT IN AT LEAST FOURTEEN POINT BOLD FACE TYPE:

"(I) CREDIT COUNSELING AVAILABILITY. YOU, THE BORROWER, SHOULD CONSIDER CONTACTING AN INDEPENDENT, NOT-FOR-PROFIT CREDIT COUNSELING AGENCY

APPROVED BY THE SUPERINTENDENT OF BANKS. THE STATE BANKING DEPARTMENT MAY, BY RULE AND REGULATION, PROMULGATE THE CONTACT INFORMATION AND OTHER DISCLOSURES TO BE PROVIDED IN SUCH NOTICE.

(II) NO CRIMINAL PROSECUTION OR SECURITY INTEREST. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT TO COLLECT ANY OUTSTANDING DEBT ON THIS LOAN, AND THE LENDER MAY NOT TAKE OR ATTEMPT TO TAKE AN INTEREST IN ANY OF YOUR REAL OR PERSONAL PROPERTY TO SECURE THIS LOAN."

6. EVERY LICENSEE SHALL MAKE READILY AVAILABLE TO EACH BORROWER, IN A FORM PRESCRIBED BY THE SUPERINTENDENT, A FULL AND ACCURATE SCHEDULE OF CHARGES ON ALL SHORT-TERM FINANCIAL SERVICES LOANS.

7. A BORROWER MAY RESCIND A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION FOR ANY REASON, NOT LATER THAN THE CLOSE OF BUSINESS ON THE BUSINESS DAY NEXT SUCCEEDING THE DAY ON WHICH SUCH TRANSACTION WAS ENTERED INTO, BY INFORMING THE LICENSEE IN WRITING THAT SUCH BORROWER WANTS TO RESCIND THE TRANSACTION AND DELIVERING THE FULL AMOUNT OF THE PROCEEDS OF SUCH TRANSACTION TO THE LICENSEE. UPON THE DELIVERY OF THE PROCEEDS OF A LOAN TO THE BORROWER PURSUANT TO THIS SUBDIVISION, ALL FEES AND CHARGES IMPOSED BY THE LICENSEE UPON THE BORROWER SHALL BE REFUNDED. THE LICENSEE SHALL PROVIDE THE BORROWER WITH A RECEIPT AS PROOF THAT THE TRANSACTION HAS BEEN RESCINDED.

8. UPON THE COMPLETION OF ALL SCHEDULED PAYMENTS ON A SHORT-TERM FINANCIAL SERVICES LOAN BY A BORROWER, ANY LICENSEE MAY ENTER INTO A NEW SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH SUCH BORROWER.

9. A BORROWER MAY REFINANCE A SHORT-TERM FINANCIAL SERVICES LOAN A SINGLE TIME PRIOR TO THE MATURITY OF SUCH LOAN IF THE BORROWER HAS MADE NOT LESS THAN THREE CONSECUTIVE INSTALLMENT PAYMENTS THEREON IN A TIMELY MANNER. A BORROWER WHO HAS REFINANCED A SHORT-TERM FINANCIAL SERVICES LOAN SHALL NOT BE ELIGIBLE FOR A NEW OR ADDITIONAL CREDIT ADVANCE FROM ANY LICENSEE UNTIL SUCH LOAN IS PAID IN FULL.

S 373-C. FEES AND CHARGES. 1. THE SUPERINTENDENT SHALL BY RULE ESTABLISH, AFTER CONDUCTING PUBLIC HEARINGS THEREON, THE MAXIMUM RATE OF INTEREST AND FEES THAT MAY BE IMPOSED UPON SHORT-TERM FINANCIAL SERVICES LOANS, INCLUDING, BUT NOT LIMITED TO, LOAN ORIGINATION, MONTHLY MAINTENANCE AND LATE FEES.

2. THE SUPERINTENDENT MAY ANNUALLY AMEND THE MAXIMUM RATES AND FEES ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION; PROVIDED, HOWEVER, THAT NO SUCH AMENDMENT SHALL OCCUR UNTIL THE SUPERINTENDENT RECEIVES A PETITION FOR THE AMENDMENT FROM NOT LESS THAN TWENTY-FIVE PERCENT OF THE LICENSEES IN THE STATE OR FROM AN ASSOCIATION REPRESENTING NOT LESS THAN TWENTY-FIVE PERCENT OF THE LICENSEES IN THE STATE. UPON THE RECEIPT OF ANY SUCH PETITION, THE SUPERINTENDENT SHALL MAKE A DETERMINATION THEREON WITHIN ONE HUNDRED TWENTY DAYS. THE PETITION MAY BE ACCEPTED OR DENIED, OR THE SUPERINTENDENT MAY OTHERWISE MODIFY THE MAXIMUM RATES AND FEES, AFTER CONDUCTING PUBLIC HEARINGS THEREON.

3. IN THE EVENT THERE ARE INSUFFICIENT FUNDS TO HONOR ANY NEGOTIABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELECTRONIC PAYMENT MECHANISM PROVIDED TO A LICENSEE FOR A SCHEDULED PAYMENT ON BEHALF OF A BORROWER, SUCH LICENSEE MAY IMPOSE A PROCESSING FEE UPON THE BORROWER PURSUANT TO SECTION 5-328 OF THE GENERAL OBLIGATIONS LAW. ONLY ONE SUCH FEE MAY BE IMPOSED WITH RESPECT TO EACH DISHONORED NEGOTIABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELECTRONIC PAYMENT MECHANISM.

4. IN THE ESTABLISHMENT OF THE MAXIMUM RATE OF INTEREST AND FEES PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE SUPERINTENDENT SHALL CONSIDER, AMONG OTHER THINGS:

(A) THE INCOME, COSTS AND EXPENSES OF THE OPERATION OF LICENSEES' BUSINESSES, INCLUDING LOSS AND DEFAULT RATES;

(B) THE INTEREST RATES AND FEES IMPOSED BY LENDERS IN OTHER STATES FOR THE SAME OR SIMILAR SERVICES, AND THE FACTORS UPON WHICH SUCH RATES ARE BASED;

(C) FOR THE PURPOSES OF SUBDIVISION TWO OF THIS SECTION, THE RATES AND FEES AUTHORIZED TO BE IMPOSED IN PREVIOUS YEARS;

(D) THE REASONABLE PROFIT FOR LICENSEES FROM THE OFFERING AND PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS; AND

(E) THE RATE OF RETURN ON INVESTMENT OR SUCH OTHER RISK ADJUSTED PROFITABILITY STANDARD AS THE SUPERINTENDENT MAY DETERMINE TO BE NECESSARY TO INDUCE THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS THROUGHOUT THE STATE.

5. THE PROVISIONS OF SECTION 5-501 OF THE GENERAL OBLIGATIONS LAW AND SECTIONS 190.40, 190.42 AND 190.45 OF THE PENAL LAW SHALL NOT APPLY TO THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS PURSUANT TO THIS ARTICLE.

6. INTEREST ON SHORT-TERM FINANCIAL SERVICES LOANS SHALL NOT BE PAID, DEDUCTED OR RECEIVED IN ADVANCE. NOR SHALL INTEREST THEREON BE COMPOUNDED, HOWEVER INTEREST ON AN EXTENSION OF CREDIT SHALL:

(A) BE COMPUTED AND PAID ONLY AS A PERCENTAGE OF THE UNPAID PRINCIPAL BALANCE OR PORTION OF THE UNPAID PRINCIPAL BALANCE; AND

(B) BE COMPUTED ON THE BASIS OF THE NUMBER OF DAYS ACTUALLY ELAPSED. ALL SUCH INTEREST SHALL BE PAID BEFORE SUCH A LOAN MAY BE PAID IN FULL.

S 373-D. BORROWER DATABASE. 1. THE SUPERINTENDENT SHALL ESTABLISH AND MAINTAIN A DATABASE WHICH SHALL BE ACCESSIBLE BY LICENSEES BY TELEPHONE AND THE INTERNET. THE PURPOSE OF SUCH DATABASE SHALL BE TO ENABLE LICENSEES TO VERIFY WHETHER ANY PERSON HAS AN OUTSTANDING SHORT-TERM FINANCIAL SERVICES LOAN. EACH LICENSEE SHALL SUBMIT TO THE SUPERINTENDENT, PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION, DATA RELATING TO SUCH TRANSACTION, IN SUCH FORMAT AS THE SUPERINTENDENT SHALL DETERMINE, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE BORROWER'S NAME, EMPLOYMENT AUTHORIZATION ALIEN NUMBER, ADDRESS, DRIVER'S LICENSE NUMBER, AMOUNT OF LOAN, DATE OF LOAN TRANSACTION, THE SCHEDULE OF INSTALLMENT PAYMENTS AND THE DATE THAT THE TRANSACTION WILL BE CLOSED. EVERY LICENSEE MAY RELY ON THE INFORMATION IN THE BORROWER DATABASE AS ACCURATE AND NOT SUBJECT TO ANY ADMINISTRATIVE PENALTY OR CIVIL LIABILITY AS THE RESULT OF RELYING UPON INACCURATE INFORMATION CONTAINED IN SUCH DATABASE.

2. PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION, A LICENSEE SHALL QUERY THE BORROWER DATABASE AND SHALL RETAIN EVIDENCE OF SUCH QUERY FOR REVIEW BY THE SUPERINTENDENT FOR A PERIOD OF FIVE YEARS. SUCH DATABASE SHALL ONLY AUTHORIZE A LICENSEE TO ENTER INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IF THE TRANSACTION IS AUTHORIZED PURSUANT TO THIS ARTICLE. DURING ANY PERIOD OF TIME THAT THE INFORMATION ON THE BORROWER DATABASE IS UNAVAILABLE FOR ANY REASON, A LICENSEE MAY RELY ON THE APPLICANT'S WRITTEN REPRESENTATIONS TO VERIFY THAT ENTERING INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH THE APPLICANT IS PERMISSIBLE.

3. THE SUPERINTENDENT AND DEPARTMENT SHALL MAINTAIN THE BORROWER DATABASE AND TAKE ALL ACTIONS NECESSARY TO PROTECT THE CONFIDENTIALITY AND SECURITY OF THE INFORMATION AND DATA CONTAINED THEREIN. SUCH DATABASE MAY BE UTILIZED BY THE DEPARTMENT FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS ARTICLE. INFORMATION AND DATA IN THE BORROWERS DATABASE SHALL NOT BE DISTRIBUTED TO ANY PERSON OR ENTITY FOR PROFIT NOR SOLD TO ANY PARTY OR ENTITY.

4. UPON A LICENSEE'S QUERY OF THE BORROWERS DATABASE, SUCH DATABASE SHALL INDICATE WHETHER AN APPLICANT FOR A SHORT-TERM FINANCIAL SERVICES LOAN IS ELIGIBLE FOR SUCH A LOAN AND, IF THE APPLICANT IS INELIGIBLE, THE REASON FOR SUCH INELIGIBILITY. IF SUCH DATABASE INDICATES THAT AN APPLICANT IS INELIGIBLE, THEN THE APPLICANT SHALL DIRECT ANY FURTHER INQUIRY RELATING THERETO TO THE DEPARTMENT AND NOT TO THE LICENSEE. THE BORROWER DATABASE SHALL BE DEEMED CONFIDENTIAL AND NOT SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 373-E. PROHIBITED ACTS. 1. NO LICENSEE SHALL CAUSE A BORROWER TO BE OBLIGATED ON MORE THAN ONE SHORT-TERM FINANCIAL SERVICES LOAN AT ANY SINGLE TIME.

2. NO LICENSEE SHALL TAKE AN ASSIGNMENT OF THE EARNINGS OF A BORROWER FOR THE PAYMENT OR AS SECURITY FOR THE PAYMENT OF ANY SHORT-TERM FINANCIAL SERVICES LOAN. EVERY ASSIGNMENT OF EARNINGS IN VIOLATION OF THIS SUBDIVISION SHALL BE VOID AND UNENFORCEABLE BY THE ASSIGNEE.

3. NO LICENSEE SHALL RENEW OR EXTEND ANY SHORT-TERM FINANCIAL SERVICES LOAN FOR A FEE, EXCEPT AS PROVIDED IN SUBDIVISION NINE OF SECTION THREE HUNDRED SEVENTY-THREE-B OF THIS ARTICLE.

4. NO LICENSEE SHALL THREATEN OR CAUSE TO BE FILED ANY CRIMINAL COMPLAINT AGAINST A BORROWER WHO FAILS TO MAKE ANY SCHEDULED PAYMENT.

5. A SHORT-TERM FINANCIAL SERVICES LOAN AGREEMENT SHALL ONLY BE ENFORCEABLE, WITH REGARD TO A DEFAULT BY THE BORROWER, TO THE EXTENT THAT THE BORROWER FAILS TO MAKE A SCHEDULED PAYMENT PURSUANT TO SUCH AGREEMENT.

6. NO SHORT-TERM FINANCIAL SERVICES LOAN AGREEMENT SHALL PROVIDE FOR THE PAYMENT BY THE BORROWER OF THE LICENSEE'S ATTORNEYS FEES.

7. NO LICENSEE SHALL REQUIRE THE BORROWER TO AGREE TO OR EXECUTE ANY CONFESSION OF JUDGMENT OR POWER OF ATTORNEY IN FAVOR OF ANY LICENSEE OR IN FAVOR OF ANY OTHER PERSON, AND SUCH CONFESSION SHALL BE VOID AND UNENFORCEABLE.

8. NO SHORT-TERM FINANCIAL SERVICES LOAN SHALL IN ANY MANNER BE SECURED BY PERSONAL OR REAL PROPERTY.

9. NO LICENSEE SHALL ADVERTISE, DISPLAY, DISTRIBUTE, TELECAST OR BROADCAST, OR CAUSE OR PERMIT TO BE ADVERTISED, DISPLAYED, DISTRIBUTED, TELECAST OR BROADCAST, IN ANY MANNER WHATSOEVER, ANY FALSE, MISLEADING OR DECEPTIVE STATEMENT WITH REGARD TO THE RATES, TERMS, FEES OR CONDITIONS FOR SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS.

S 373-F. LICENSEE BOOKS AND RECORDS. EVERY LICENSEE SHALL MAINTAIN ALL SUCH BOOKS, ACCOUNTS AND RECORDS AS WILL ENABLE THE SUPERINTENDENT TO ENFORCE THE PROVISIONS OF THIS ARTICLE.

S 373-G. EXAMINATION OF SHORT-TERM FINANCIAL SERVICES TRANSACTIONS. THE SUPERINTENDENT, OR HIS OR HER DESIGNEE, MAY FROM TIME TO TIME INVESTIGATE THE SHORT-TERM FINANCIAL SERVICES TRANSACTIONS AND BUSINESS, AND EXAMINE THE BOOKS, ACCOUNTS AND RECORDS RELATING THERETO OF EVERY LICENSEE.

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that, effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date shall be added, amended and/or repealed on or before such date.