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

4979

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to the operation of automated teller machines by entities other than banking institutions

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

Section 1. The banking law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

REGISTERED AUTOMATED TELLER MACHINE OPERATORS AND NETWORKS

SECTION 800. DEFINITIONS.
801. REGISTRATION REQUIRED.
802. REGISTRATION OF NETWORKS.
803. APPLICATION TO REGISTER AS AN OPERATOR OF AUTOMATED TELLER MACHINES.
804. CHANGES OF CONTROL.
805. EXAMINATION OF BOOKS, ACCOUNTS, AND RECORDS; INVESTIGATIONS.
806. VIOLATIONS AND PENALTIES.
807. SUSPENSION OR REVOCATION OF REGISTRATION
808. REQUIRED DISCLOSURES TO CUSTOMERS.
809. RULES AND REGULATIONS.
810. SEVERABILITY.

S 800. DEFINITIONS. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE INDICATES, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

1. "BANKING INSTITUTION" SHALL MEAN ANY BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS ASSOCIATION, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR FOREIGN BANKING CORPORATION LICENSED, CHARTERED, OR INCORPORATED OR OTHERWISE FORMED PURSUANT TO FEDERAL OR ANY STATE LAW.

2. "AUTOMATED TELLER MACHINE" SHALL MEAN AN ELECTRONIC DEVICE OPERATED BY A PERSON WHICH, IN CONJUNCTION WITH A PROCESSOR AND NETWORK, ALLOWS A

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

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CUSTOMER TO DEBIT AN ACCOUNT IN EXCHANGE FOR DISPENSING CASH AND THAT MAY ALLOW A CUSTOMER TO EFFECTUATE OTHER ACCOUNT TRANSACTIONS; PROVIDED HOWEVER SUCH TERM SHALL NOT BE DEEMED TO INCLUDE ANY AUTOMATED TELLER MACHINE OR SIMILAR ELECTRONIC DEVICE OPERATED BY A BANKING INSTITUTION OR A SUBSIDIARY OR SERVICE CORPORATION OF A BANKING INSTITUTION, A POINT-OF-SALE TERMINAL, OR A COMPUTER TERMINAL OWNED OR OPERATED BY A CUSTOMER TO ACCESS HIS OR HER DEPOSIT ACCOUNT WITHIN A BANKING INSTITUTION.

3. "OPERATE" SHALL MEAN TO CONNECT AN AUTOMATED TELLER MACHINE TO ONE OR MORE NETWORKS.

4. "NETWORK" SHALL MEAN AN ELECTRONIC SYSTEM FOR TRANSMITTING ITEMS AND MESSAGES BETWEEN BANKING INSTITUTIONS, PROCESSORS, AND AUTOMATED TELLER MACHINES OR SIMILAR ELECTRONIC DEVICES.

5. "OPERATOR" SHALL MEAN A PERSON THAT OPERATES AN AUTOMATED TELLER MACHINE AND WHO, BY VIRTUE OF THE SPONSORSHIP OF A BANKING INSTITUTION, IS ADMITTED AS A PARTICIPANT INTO ONE OR MORE NETWORKS.

6. "PERSON" SHALL MEAN AN INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY OR LIMITED LIABILITY PARTNERSHIP, ASSOCIATION OR ANY OTHER ENTITY, OTHER THAN A BANKING INSTITUTION.

7. "PROCESSOR" SHALL MEAN ANY PERSON WHO OR WHICH ELECTRONICALLY ACQUIRES FINANCIAL DATA EMANATING FROM AN AUTOMATED TELLER MACHINE AND RELAYS THAT DATA TO A NETWORK.

8. "SERVICING AGENT" SHALL MEAN A PERSON WHO CONTRACTS WITH A REGISTERED OPERATOR TO PROVIDE CUSTOMER RELATIONS, FINANCIAL RECORDKEEPING, OR ANY OTHER SERVICE IN REGARD TO AN AUTOMATED TELLER MACHINE.

9. "ELECTRONIC" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SECTION THREE HUNDRED TWO OF THE STATE TECHNOLOGY LAW AS RENUMBERED BY CHAPTER FOUR HUNDRED THIRTY-SEVEN OF THE LAWS OF TWO THOUSAND FOUR.

10. "CUSTOMER" SHALL MEAN AN INDIVIDUAL WHO CONDUCTS, OR ATTEMPTS TO CONDUCT, THROUGH USE OF AN AUTOMATED TELLER MACHINE, A DEBIT OR OTHER FINANCIAL TRANSACTION PERTAINING TO HIS OR HER ACCOUNT OR ACCOUNTS AT A BANKING INSTITUTION OR PERTAINING TO THE USE OF ANY OTHER TYPE OF CARD WHICH MAY BE USED TO OBTAIN CASH FROM SUCH MACHINE.

S 801. REGISTRATION REQUIRED. NO PERSON THAT IS SPONSORED BY A BANKING INSTITUTION AND UPON SUCH SPONSORSHIP IS ADMITTED INTO A NETWORK AS A BANKING INSTITUTION-SPONSORED PARTICIPANT SHALL, ON OR AFTER JUNE FIRST, TWO THOUSAND TEN, OPERATE AN AUTOMATED TELLER MACHINE, IF SUCH MACHINE IS LOCATED WITHIN THIS STATE, WITHOUT FIRST BEING REGISTERED BY THE SUPERINTENDENT AS AN OPERATOR OF AUTOMATED TELLER MACHINES PURSUANT TO THIS ARTICLE; PROVIDED HOWEVER THAT THE REGISTRATION PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A SUBSIDIARY OF A BANKING INSTITUTION.

S 802. REGISTRATION OF NETWORKS. ANY NETWORK TRANSMITTING ITEMS OR MESSAGES BETWEEN BANKING INSTITUTIONS, PROCESSORS AND AUTOMATED TELLER MACHINES OF REGISTERED OPERATORS SHALL REGISTER WITH THE SUPERINTENDENT. THE SUPERINTENDENT SHALL PRESCRIBE BY REGULATION THE METHOD OF SUCH REGISTRATION AND ANY REQUIREMENTS RELATING THERETO. ANY SUCH NETWORKS SHALL NOT BE SUBJECT TO ANY OTHER PROVISIONS OF THIS CHAPTER, EXCEPT SECTIONS THIRTY-NINE AND FORTY-FOUR OF THIS CHAPTER AND AS OTHERWISE MAY BE REQUIRED BY THIS ARTICLE. NO REGISTERED OPERATOR SHALL TRANSMIT MESSAGES OR ITEMS UPON OR THROUGH NETWORKS THAT ARE NOT REGISTERED BY THE SUPERINTENDENT AND DO NOT MAINTAIN OPERATIONAL AND PERFORMANCE STANDARDS ACCEPTABLE TO THE SUPERINTENDENT.

S 803. APPLICATION TO REGISTER AS AN OPERATOR OF AUTOMATED TELLER MACHINES. 1. UPON THE FILING OF AN APPLICATION FOR REGISTRATION, IF THE SUPERINTENDENT SHALL FIND THE FINANCIAL RESPONSIBILITY, EXPERIENCE, CHARACTER, AND GENERAL FITNESS OF THE APPLICANT, AND OF THE OFFICERS AND

DIRECTORS THEREOF IF THE APPLICANT IS A CORPORATION, ARE SUCH AS TO COMMAND THE CONFIDENCE OF THE COMMUNITY AND TO WARRANT BELIEF THAT THE BUSINESS WILL BE OPERATED HONESTLY, FAIRLY, AND EFFICIENTLY WITHIN THE PURPOSE OF THIS ARTICLE, THE SUPERINTENDENT SHALL THEREUPON REGISTER THE APPLICANT AS AN OPERATOR OF AUTOMATED TELLER MACHINES AND ISSUE A CERTIFICATE ATTESTING TO SUCH REGISTRATION IN DUPLICATE. THE SUPERINTENDENT SHALL TRANSMIT ONE COPY OF SUCH CERTIFICATE TO THE APPLICANT AND FILE ANOTHER IN HIS OR HER OFFICE. IF THE SUPERINTENDENT SHALL NOT SO FIND, THE SUPERINTENDENT SHALL NOT REGISTER SUCH APPLICANT AND SHALL NOTIFY THE APPLICANT OF SUCH DENIAL IN WRITING. SUCH REGISTRATION SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL IT IS SURRENDERED BY THE REGISTERED OPERATOR OR REVOKED OR SUSPENDED PURSUANT TO THIS CHAPTER, PROVIDED THAT SUCH REGISTRATION SHALL BE SUSPENDED UPON NOTICE BY THE SUPERINTENDENT FOR FAILURE TO PAY ANY ASSESSMENT CHARGED TO SUCH REGISTERED OPERATOR PURSUANT TO SECTION SEVENTEEN OF THIS CHAPTER UPON THE DATE ANY SUCH PAYMENT IS DUE. UPON SUCH SUSPENSION, NO REGISTERED OPERATOR SHALL OPERATE OR ESTABLISH ANY AUTOMATED TELLER MACHINE.

2. THE SUPERINTENDENT MAY REFUSE TO 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, EMPLOYEE OR SUBSTANTIAL STOCKHOLDER OF OR CONSULTANT TO SUCH APPLICANT (I) HAS BEEN CONVICTED OF A CRIME INVOLVING AN ACTIVITY WHICH IS A FELONY UNDER THIS CHAPTER OR UNDER ARTICLES ONE HUNDRED FIFTY-FIVE, ONE HUNDRED SEVENTY, ONE HUNDRED SEVENTY-FIVE, ONE HUNDRED SEVENTY-SIX, ONE HUNDRED EIGHTY, ONE HUNDRED EIGHTY-FIVE, ONE HUNDRED NINETY, 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 (II) HAS HAD A REGISTRATION REVOKED BY THE SUPERINTENDENT, OR (III) HAS BEEN A DIRECTOR, PARTNER, OR SUBSTANTIAL STOCKHOLDER OF AN ENTITY WHICH HAS HAD A REGISTRATION REVOKED BY THE SUPERINTENDENT, OR (IV) HAS BEEN AN EMPLOYEE OR OFFICER OF, OR A CONSULTANT TO, AN ENTITY WHICH HAS HAD A REGISTRATION REVOKED BY THE SUPERINTENDENT WHERE SUCH PERSON SHALL HAVE BEEN FOUND BY THE SUPERINTENDENT TO BEAR RESPONSIBILITY IN CONNECTION WITH SUCH REVOCATION. THE TERM "SUBSTANTIAL STOCKHOLDER" AS USED IN THIS ARTICLE SHALL BE DEEMED TO REFER TO A PERSON WHO POSSESSES, DIRECTLY OR INDIRECTLY, THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A CORPORATION OR ANY OTHER ENTITY, WHETHER THROUGH THE OWNERSHIP OF VOTING STOCK OF ANY CORPORATION OR THROUGH THE OWNERSHIP OF VOTING STOCK OF ANY PERSON WHICH POSSESSES SUCH POWER OR OTHERWISE. THE POWER TO SO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A CORPORATION SHALL BE PRESUMED TO EXIST IF ANY PERSON, DIRECTLY OR INDIRECTLY, OWNS, CONTROLS OR HOLDS WITH POWER TO VOTE TEN PER CENTUM OR MORE OF THE VOTING STOCK OF ANY CORPORATION.

3. APPLICATION FOR A REGISTRATION REQUIRED UNDER THIS ARTICLE SHALL BE IN WRITING, UNDER OATH, AND IN THE FORM PRESCRIBED BY THE SUPERINTENDENT, AND SHALL CONTAIN THE FOLLOWING INFORMATION:

(A) THE EXACT NAME OF THE APPLICANT AND, IF INCORPORATED OR OTHERWISE FORMED, THE DATE AND THE STATE OF SUCH INCORPORATION OR FORMATION;

(B) THE COMPLETE BUSINESS ADDRESS OF THE PRINCIPAL OFFICE FROM WHICH BUSINESS IS TO BE CONDUCTED, AND WHERE THE BOOKS AND RECORDS OF THE APPLICANT ARE MAINTAINED AND TO BE MAINTAINED, SHOWING THE STREET, NUMBER IF ANY, THE ZIP CODE, AND THE MUNICIPALITY OR COUNTY;

(C) THE NAME AND RESIDENCE ADDRESS OF THE APPLICANT, IF AN INDIVIDUAL OR, IF A PARTNERSHIP, OF ITS PARTNERS OR, IF A CORPORATION OR ASSOCI-

ATION, OF THE DIRECTORS, AND PRINCIPAL OFFICERS THEREOF, AND OF ANY STOCKHOLDER OWNING TEN PER CENTUM OR MORE OF AND CLASS OF ITS STOCK; AND

(D) SUCH OTHER PERTINENT INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

4. EACH REGISTRATION ISSUED PURSUANT TO THIS ARTICLE SHALL STATE THE PRINCIPAL BUSINESS ADDRESS OF SUCH REGISTERED OPERATOR AND SHALL FULLY STATE THE NAME OF SUCH REGISTERED OPERATOR AND THE DATE AND PLACE OF ITS INCORPORATION OR FORMATION IF APPLICABLE. SUCH REGISTRATION SHALL NOT BE TRANSFERABLE OR ASSIGNABLE. IN THE EVENT THE LOCATION AT WHICH THE PRINCIPAL PLACE OF BUSINESS IS TO BE CONDUCTED SHALL BE CHANGED, THE REGISTERED OPERATOR SHALL FORTHWITH NOTIFY THE SUPERINTENDENT WHO SHALL THEREUPON ATTACH TO THE REGISTRATION SETTING FORTH SUCH CHANGED LOCATION.

5. UPON ANY CHANGE OF THE OFFICERS, PARTNERS OR DIRECTORS OF ANY REGISTERED OPERATOR, SUCH REGISTERED OPERATOR SHALL SUBMIT TO THE SUPERINTENDENT THE NAME, ADDRESS AND OCCUPATION OF EACH NEW OFFICER, PARTNER OR DIRECTOR, AND PROVIDE SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

S 804. CHANGES OF CONTROL. 1. IT SHALL BE UNLAWFUL EXCEPT WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT FOR ANY ACTION TO BE TAKEN WHICH RESULTS IN A CHANGE OF CONTROL OF THE BUSINESS OF A REGISTERED OPERATOR. PRIOR TO ANY CHANGE OF CONTROL, THE PERSON DESIROUS OF ACQUIRING CONTROL OF THE BUSINESS OF A REGISTERED OPERATOR SHALL MAKE WRITTEN APPLICATION TO THE SUPERINTENDENT. THE APPLICATION SHALL CONTAIN SUCH INFORMATION AS THE SUPERINTENDENT MAY PRESCRIBE AS NECESSARY OR APPROPRIATE FOR THE PURPOSE OF MAKING THE DETERMINATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

2. THE SUPERINTENDENT SHALL APPROVE OR DISAPPROVE THE PROPOSED CHANGE OF CONTROL OF A REGISTERED OPERATOR IN ACCORDANCE WITH THE PROVISIONS OF SECTION EIGHT HUNDRED THREE OF THIS ARTICLE RELATING TO REGISTRATION OF OPERATORS. IF THE SUPERINTENDENT DISAPPROVES SUCH APPLICATION, OR IF NO SUCH APPLICATION HAS BEEN MADE, UPON CONSUMMATION OF THE ACQUISITION OF CONTROL, THE CERTIFICATE OF THE REGISTERED OPERATOR SHALL BECOME NULL AND VOID AND THE APPLICANT OR SUCH REGISTERED OPERATOR, WHICHEVER HAS POSSESSION OF SUCH CERTIFICATE, SHALL FORTHWITH SURRENDER TO THE SUPERINTENDENT THE REGISTRATION THERETOFORE IN EFFECT.

3. FOR A PERIOD OF SIX MONTHS FROM THE DATE OF APPOINTMENT OR QUALIFICATION THEREOF AND FOR SUCH ADDITIONAL PERIOD OF TIME AS THE SUPERINTENDENT MAY PRESCRIBE, IN WRITING, THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL NOT APPLY TO THE TRANSFER OF CONTROL BY OPERATION OF LAW TO THE LEGAL REPRESENTATIVE, AS HEREINAFTER DEFINED, OF ONE WHO HAS CONTROL OF A REGISTERED OPERATOR. THEREAFTER, SUCH LEGAL REPRESENTATIVE SHALL COMPLY WITH THE PROVISIONS OF SUBDIVISIONS ONE AND TWO OF THIS SECTION. THE PROVISIONS OF SUCH SUBDIVISIONS SHALL BE APPLICABLE TO AN APPLICATION MADE UNDER SUCH SECTION BY A LEGAL REPRESENTATIVE. THE TERM "LEGAL REPRESENTATIVE", FOR PURPOSES OF THIS SECTION, SHALL MEAN ONE DULY APPOINTED BY A COURT OF COMPETENT JURISDICTION TO ACT AS EXECUTOR, ADMINISTRATOR, TRUSTEE, COMMITTEE, CONSERVATOR OR RECEIVER, INCLUDING ONE WHO SUCCEEDS A LEGAL REPRESENTATIVE AND ONE ACTING IN AN ANCILLARY CAPACITY THERETO IN ACCORDANCE WITH THE PROVISIONS OF SUCH COURT APPOINTMENT.

4. AS USED IN THIS SECTION, THE TERM "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF A REGISTERED OPERATOR, WHETHER THROUGH THE OWNERSHIP OF VOTING STOCK OF SUCH REGISTERED OPERATOR OR THROUGH THE OWNERSHIP OF VOTING STOCK OF ANY PERSON WHICH POSSESSES SUCH POWER OR OTHERWISE. CONTROL SHALL BE PRESUMED TO EXIST IF ANY PERSON, DIRECTLY OR

INDIRECTLY, OWNS, CONTROLS OR HOLDS WITH POWER TO VOTE TEN PER CENTUM OR MORE OF THE VOTING STOCK OF ANY REGISTERED OPERATOR, BUT NO PERSON SHALL BE DEEMED TO CONTROL A REGISTERED OPERATOR SOLELY BY REASON OF BEING AN OFFICER OR DIRECTOR OF SUCH REGISTERED OPERATOR OR PERSON. THE SUPERINTENDENT MAY IN HIS OR HER DISCRETION, UPON APPLICATION OF A REGISTERED OPERATOR OR ANY PERSON WHO, DIRECTLY OR INDIRECTLY, OWNS, CONTROLS OR HOLDS WITH POWER TO VOTE OR SEEKS TO OWN, CONTROL OR HOLD WITH POWER TO VOTE ANY VOTING STOCK OF SUCH REGISTERED OPERATOR, DETERMINE WHETHER OR NOT THE OWNERSHIP, CONTROL OR HOLDING OF SUCH VOTING STOCK CONSTITUTES OR WOULD CONSTITUTE CONTROL OF SUCH REGISTERED OPERATOR FOR PURPOSES OF THIS SECTION.

S 805. EXAMINATION OF BOOKS, ACCOUNTS, AND RECORDS; INVESTIGATIONS. 1. (A) FOR THE PURPOSE OF DISCOVERING VIOLATIONS OF THIS ARTICLE OR SECURING INFORMATION LAWFULLY REQUIRED HEREUNDER, THE SUPERINTENDENT MAY AT ANY TIME, AS OFTEN AS MAY BE DETERMINED, EITHER PERSONALLY OR BY A PERSON DULY DESIGNATED BY THE SUPERINTENDENT, INVESTIGATE THE BUSINESS AND EXAMINE THE BOOKS, ACCOUNTS, RECORDS, AND FILES USED THEREIN OF EVERY REGISTERED OPERATOR AND ANY SERVICING AGENT OR PROCESSOR WITH RESPECT TO ANY CONTRACTS OR AGREEMENTS THAT SUCH AGENT OR PROCESSOR MAY HAVE WITH ANY SUCH REGISTERED OPERATOR. FOR THAT PURPOSE, THE SUPERINTENDENT AND DULY DESIGNATED REPRESENTATIVES SHALL HAVE FREE ACCESS TO THE OFFICES AND PLACE OF BUSINESS, BOOKS, ACCOUNTS, PAPERS, RECORDS, FILES, SAFES AND VAULTS, AND LOCATIONS OF ALL AUTOMATED TELLER MACHINES OF SUCH REGISTERED OPERATOR, SERVICING AGENT OR PROCESSOR.

(B) WHENEVER A REGISTERED OPERATOR, OR ANY SUBSIDIARY OR AFFILIATE OF SUCH REGISTERED OPERATOR, CAUSES TO BE PERFORMED FOR SUCH REGISTERED OPERATOR, BY CONTRACT OR OTHERWISE, ANY SERVICES RELATED TO, DIRECTLY OR INDIRECTLY, THE AUTOMATED TELLER MACHINES WHICH SUCH REGISTERED OPERATOR OPERATES, SUCH PERFORMANCE SHALL BE SUBJECT TO REGULATION AND EXAMINATION BY THE SUPERINTENDENT TO THE SAME EXTENT AS IF SUCH SERVICES WERE BEING PERFORMED BY THE REGISTERED OPERATOR ITSELF AND SUCH REGISTERED OPERATOR SHALL NOTIFY THE SUPERINTENDENT OF THE EXISTENCE OF THE SERVICE RELATIONSHIP WITHIN THIRTY DAYS AFTER THE MAKING OF SUCH SERVICE CONTRACT OR THE PERFORMANCE OF THE SERVICE, WHICHEVER OCCURS FIRST.

(C) FOR PURPOSES OF EVALUATING THE OPERATIONS AND PERFORMANCE OF ANY REGISTERED NETWORK, THE SUPERINTENDENT SHALL INVESTIGATE THE BUSINESS AND EXAMINE THE BOOKS, ACCOUNTS, RECORDS, AND FILES USED THEREIN OF EVERY REGISTERED NETWORK. THE EXPENSES INCURRED IN MAKING ANY INVESTIGATIONS AND EXAMINATIONS OF, OR FOR SPECIAL SERVICES PERFORMED ON ACCOUNT OF, ANY REGISTERED NETWORK SHALL BE ASSESSED AGAINST AND PAID BY THE REGISTERED NETWORK FOR WHICH THEY WERE INCURRED OR PERFORMED.

2. ALL REPORTS OF INVESTIGATIONS AND OTHER REPORTS RENDERED PURSUANT TO THIS SECTION, AND ALL CORRESPONDENCE AND MEMORANDA CONCERNING OR ARISING OUT OF SUCH INVESTIGATIONS OR REPORTS, INCLUDING ANY DULY AUTHENTICATED COPY OR COPIES THEREOF IN POSSESSION OF ANY REGISTERED OPERATOR, SERVICING AGENT, PROCESSOR OR REGISTERED NETWORK SHALL BE CONFIDENTIAL COMMUNICATIONS AND SUBJECT TO THE PROVISIONS OF SUBDIVISION TEN OF SECTION THIRTY-SIX OF THIS CHAPTER.

3. ANY REGISTERED OPERATOR OR REGISTERED NETWORK THAT FAILS TO MAKE ANY REPORT REQUIRED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE, ON OR BEFORE THE DAY DESIGNATED FOR THE MAKING THEREOF, FAILS TO INCLUDE THEREIN ANY PRESCRIBED MATERIAL, OR INCLUDES ANY FALSE OR MISLEADING INFORMATION THEREIN, SHALL BE SUBJECT TO SUCH ENFORCEMENT AND PENALTIES AS MAY BE PRESCRIBED BY THIS CHAPTER.

S 806. VIOLATIONS AND PENALTIES. 1. A REGISTERED OPERATOR THAT VIOLATES ANY PROVISION OF THIS ARTICLE OR OTHER APPLICABLE PROVISIONS OF

THIS CHAPTER, OR ANY RULE OR REGULATION PRESCRIBED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE OR OF ANY OTHER LAW, RULE OR REGULATION OF THIS STATE OR THE FEDERAL GOVERNMENT OR THAT THROUGH ANY UNFAIR, UNCONSCIONABLE, OR DECEPTIVE PRACTICE CAUSES ACTUAL DAMAGE TO A CUSTOMER, SHALL BE SUBJECT TO SECTIONS THIRTY-NINE AND FORTY-FOUR OF THIS CHAPTER, AND SUSPENSION OR REVOCATION OF THE OPERATOR'S REGISTRATION PURSUANT TO SECTION EIGHT HUNDRED SEVEN OF THIS ARTICLE.

2. A PERSON THAT OPERATES AN AUTOMATED TELLER MACHINE PURSUANT TO THIS ARTICLE WITHOUT BEING REGISTERED BY THE SUPERINTENDENT SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

3. A PERSON THAT OPERATES A MACHINE THAT WOULD OTHERWISE BE CONSIDERED AN AUTOMATED TELLER MACHINE PURSUANT TO THIS ARTICLE, EXCEPT THAT SUCH MACHINE IS NOT OPERATED IN CONJUNCTION WITH A NETWORK, SHALL BE GUILTY OF A CLASS C FELONY.

4. NOTHING IN THIS ARTICLE SHALL LIMIT ANY STATUTORY OR COMMON-LAW RIGHT OF ANY PERSON, REGISTERED OPERATOR OR REGISTERED NETWORK TO BRING ANY ACTION IN ANY COURT FOR ANY ACT, OR THE RIGHT OF THE STATE TO PUNISH ANY PERSON, OPERATOR OR NETWORK FOR VIOLATION OF ANY LAW.

5. IF ANY UNREGISTERED PERSON OPERATES AN AUTOMATED TELLER MACHINE, OR A MACHINE THAT WOULD OTHERWISE BE CONSIDERED AN AUTOMATED TELLER MACHINE PURSUANT TO THIS ARTICLE, EXCEPT THAT SUCH MACHINE IS NOT OPERATED IN CONJUNCTION WITH A NETWORK, HE OR SHE SHALL BE LIABLE TO ANY PERSON FOR A SUM OF MONEY NOT LESS THAN AN AMOUNT EQUAL TO ANY MONETARY LOSS AND ANY OTHER DAMAGES AND EXPENSES INCURRED BY SUCH PERSON AS A RESULT OF THE THEFT OF SUCH PERSON'S PERSONAL IDENTIFICATION AND ACCOUNT INFORMATION THAT RESULTS FROM THE USE, OR ATTEMPTED USE, OF SUCH AUTOMATED TELLER MACHINE, NOR MORE THAN FOUR TIMES SUCH SUM. SUCH SUM MAY BE SUED FOR AND RECOVERED BY ANY PERSON FOR HIS OR HER BENEFIT USE AND BENEFIT IN ANY COURT OF COMPETENT JURISDICTION.

S 807. SUSPENSION OR REVOCATION OF REGISTRATION. 1. AFTER NOTICE AND HEARING, THE SUPERINTENDENT MAY FINE SUCH REGISTERED OPERATOR AND SUSPEND OR REVOKE AN OPERATOR'S REGISTRATION IF HE OR SHE FINDS THAT:

(A) THROUGH A COURSE OF CONDUCT, THE REGISTERED OPERATOR HAS VIOLATED ANY PROVISIONS OF THIS ARTICLE OR ANY OTHER APPLICABLE PROVISIONS OF THIS CHAPTER, OR ANY RULE OR REGULATION PRESCRIBED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE OR OF ANY OTHER LAW, RULE OR REGULATION OF THIS STATE OR THE FEDERAL GOVERNMENT;

(B) ANY FACT OR CONDITION EXISTS, WHICH IF IT HAD EXISTED AT THE TIME OF THE ORIGINAL APPLICATION FOR SUCH REGISTRATION, WOULD HAVE WARRANTED THE SUPERINTENDENT IN REFUSING ORIGINALLY TO ISSUE SUCH REGISTRATION; OR

(C) THE COMMISSION BY A REGISTERED OPERATOR OF A CRIME AGAINST THE LAWS OF THIS STATE OR ANY OTHER STATE OR OF THE UNITED STATES INVOLVING MORAL TURPITUDE OR FRAUDULENT OR DISHONEST DEALING, OR THE ENTRY OF A FINAL JUDGMENT AGAINST A REGISTERED OPERATOR IN A CIVIL ACTION UPON GROUNDS OF FRAUD, MISREPRESENTATION OR DECEIT.

2. PENDING AN INVESTIGATION OR A HEARING FOR THE SUSPENSION OR REVOCATION OF A REGISTRATION ISSUED TO AN OPERATOR PURSUANT TO THIS ARTICLE, THE SUPERINTENDENT MAY TEMPORARILY SUSPEND SUCH REGISTRATION FOR A PERIOD NOT TO EXCEED NINETY DAYS, PROVIDED THE SUPERINTENDENT SHALL FIND THAT SUCH A TEMPORARY SUSPENSION IS IN THE PUBLIC INTEREST.

3. ANY REGISTERED OPERATOR MAY SURRENDER ITS REGISTRATION CERTIFICATE BY DELIVERING TO THE SUPERINTENDENT WRITTEN NOTICE THAT IT HEREBY SURRENDERS SUCH CERTIFICATE, BUT SUCH SURRENDER SHALL NOT AFFECT SUCH REGISTERED OPERATOR'S CIVIL OR CRIMINAL LIABILITY FOR ACTS COMMITTED PRIOR TO SUCH SURRENDER. IF SUCH SURRENDER IS MADE AFTER THE ISSUANCE BY THE SUPERINTENDENT OF A STATEMENT OF CHARGES AND NOTICE OF HEARING, THE

SUPERINTENDENT MAY PROCEED AGAINST THE REGISTERED OPERATOR AS IF SUCH SURRENDER HAD NOT TAKEN PLACE.

4. EVERY REGISTRATION ISSUED PURSUANT TO THIS ARTICLE SHALL REMAIN IN FORCE AND EFFECT UNTIL THE SAME SHALL HAVE BEEN SURRENDERED, REVOKED OR SUSPENDED IN ACCORDANCE WITH ANY OTHER PROVISIONS OF THIS ARTICLE, BUT THE SUPERINTENDENT SHALL HAVE AUTHORITY TO REINSTATE A SUSPENDED REGISTRATION CERTIFICATE OR TO ISSUE A NEW CERTIFICATE TO A REGISTERED OPERATOR WHOSE REGISTRATION SHALL HAVE BEEN REVOKED IF NO FACT OR CONDITION THEN EXISTS WHICH WOULD HAVE WARRANTED THE SUPERINTENDENT IN REFUSING ORIGINALLY TO ISSUE SUCH REGISTRATION UNDER THIS ARTICLE.

5. WHENEVER THE SUPERINTENDENT SHALL REVOKE OR SUSPEND A REGISTRATION ISSUED PURSUANT TO THIS ARTICLE, HE OR SHE SHALL FORTHWITH EXECUTE IN DUPLICATE A WRITTEN ORDER TO THAT EFFECT. THE SUPERINTENDENT SHALL FILE ONE COPY OF SUCH ORDER IN HIS OR HER OFFICE AND SHALL FORTHWITH SERVE THE OTHER COPY UPON THE REGISTERED OPERATOR. ANY SUCH ORDER MAY BE REVIEWED IN THE MANNER PROVIDED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. SUCH APPLICATION FOR REVIEW AS AUTHORIZED PURSUANT TO THIS SECTION MUST BE MADE WITHIN THIRTY DAYS FROM THE DATE OF SUCH ORDER OF SUSPENSION OR REVOCATION.

S 808. REQUIRED DISCLOSURES TO CUSTOMERS. 1. DISCLOSURE OF PERTINENT INFORMATION. A REGISTERED OPERATOR SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE ON A SIGN POSTED ON THE AUTOMATED TELLER MACHINE OR IN CLEAR VIEW OF A CUSTOMER VIEWING SUCH MACHINE:

(A) THE NAME OF THE REGISTERED OPERATOR;

(B) A DISCLAIMER INDICATING THAT THE REGISTERED OPERATOR IS NOT A BANKING INSTITUTION;

(C) THE NAME, ADDRESS, AND TWENTY-FOUR-HOUR TOLL-FREE TELEPHONE NUMBER WHERE A CUSTOMER MAY DIRECT INQUIRIES OR COMPLAINTS;

(D) A STATEMENT THAT THE OPERATOR IS REGISTERED BY THE BANKING DEPARTMENT, AND THE ADDRESS AND A TOLL-FREE TELEPHONE NUMBER OF THE DEPARTMENT WHERE INQUIRIES OR COMPLAINTS MAY BE DIRECTED.

2. FEE DISCLOSURE. A REGISTERED OPERATOR SHALL NOT CHARGE A FEE FOR USE OF AN AUTOMATED TELLER MACHINE UNLESS SUCH OPERATOR COMPLIES WITH THE FEE DISCLOSURE REQUIREMENTS OF SECTION THREE HUNDRED NINETY-NINE-Y OF THE GENERAL BUSINESS LAW, AS ADDED BY CHAPTER FOUR HUNDRED NINETY-FIVE OF THE LAWS OF NINETEEN HUNDRED NINETY-NINE.

3. RECEIPT FOR TRANSACTION. AN AUTOMATED TELLER MACHINE SHALL PROVIDE A RECEIPT FOR THE TRANSACTION THAT SHALL INCLUDE THE FOLLOWING INFORMATION IN A CLEAR AND CONSPICUOUS MANNER:

(A) THE AMOUNT OF THE TRANSACTION;

(B) THE AMOUNT OF ANY FEE IMPOSED BY THE REGISTERED OPERATOR;

(C) THE TOTAL AMOUNT DEBITED TO THE CUSTOMER'S ACCOUNT, INCLUDING ANY FEE IMPOSED BY THE REGISTERED OPERATOR;

(D) THE DATE AND TIME OF THE TRANSACTION;

(E) A NUMBER OR CODE THAT IDENTIFIES THE CUSTOMER AND THE ACCOUNT ACCESSED IN A MANNER THAT ENSURES THE CUSTOMER'S PRIVACY; AND

(F) THE LOCATION, OR A NUMBER OR CODE THAT IDENTIFIES THE LOCATION, OF THE AUTOMATED TELLER MACHINE.

S 809. RULES AND REGULATIONS. IN ADDITION TO SUCH POWERS AS MAY OTHERWISE BE PRESCRIBED BY THIS CHAPTER, THE SUPERINTENDENT IS HEREBY AUTHORIZED AND EMPOWERED TO PROMULGATE REGULATIONS CONSISTENT WITH THE PURPOSES OF THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO:

1. SUCH RULES AND REGULATIONS, IN CONNECTION WITH THE OPERATION OF AUTOMATED TELLER MACHINES, AS MAY BE NECESSARY OR APPROPRIATE TO QUALIFY THE TERMS AND CONDITIONS OF AGREEMENTS WITH OR CONTRACTS BETWEEN REGIS-

TERED OPERATORS AND SERVICE AGENTS OR PROCESSORS IN ORDER TO ENSURE THE PROTECTION OF CUSTOMERS USING AUTOMATED TELLER MACHINES IN THIS STATE;

2. SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR APPROPRIATE TO DEFINE IMPROPER OR FRAUDULENT PRACTICES AND OPERATIONAL AND PERFORMANCE STANDARDS APPLICABLE TO THE ACTIVITIES OF REGISTERED OPERATORS AND REGISTERED NETWORKS FOR THE PURPOSE OF PREVENTING, AMONG OTHER CRIMINAL ACTS, THE OCCURRENCE OF MONEY LAUNDERING AND CUSTOMER IDENTITY AND ACCOUNT INFORMATION THEFT;

3. SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR APPROPRIATE TO REQUIRE REGISTERED OPERATORS AND REGISTERED NETWORKS TO MAKE REPORTS OF INFORMATION IN SUCH FORM AND UPON SUCH DATES AS PRESCRIBED BY THE SUPERINTENDENT; AND

4. SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR APPROPRIATE TO INTERPRET, IMPLEMENT OR ENFORCE THE PROVISIONS OF THIS ARTICLE.

S 810. SEVERABILITY. IF ANY WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH JUDGMENT SHALL HAVE BEEN RENDERED.

S 2. Section 22 of the banking law, as amended by chapter 553 of the laws of 2007, is amended to read as follows:

S 22. Fingerprints. (a) Notwithstanding any other provision of law, every applicant for a license, authorization or registration under articles nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E [and], thirteen-B AND FOURTEEN-A of this chapter and every applicant filing an application to acquire control of any licensee or registrant, as the case may be, under such articles shall submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon. An applicant OR REGISTRANT shall not be required to submit his or her fingerprints as required by this subdivision if such applicant OR REGISTRANT (i) is already subject to regulation by the department and the applicant OR REGISTRANT has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nine-

teen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve by regulation, and has submitted such fingerprints to such exchange or market system which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant OR REGISTRANT to submit his or her fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system.

(b) The superintendent shall also, concurrent with an investigation of a licensee or registrant, or an authorized individual, pertaining to a violation of this chapter, submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon and through the division to the federal bureau of investigation for the purpose of a fingerprint check of such licensee, registrant or authorized individual.

(c) For purposes of this section, "applicant" OR "REGISTRANT" shall include a natural person or such principal, officer, director, trustee or stockholder of any other entity as may be designated by the superintendent. Notwithstanding any other provision of this article, the superintendent shall not access criminal history data or information, unless any agency from which the superintendent receives directly criminal history data or information has entered into a use and dissemination agreement with the superintendent consistent with the provisions of this section.

S 3. Subdivisions 1, 2 and 5 of section 39 of the banking law, as amended by chapter 472 of the laws of 2008, are amended to read as follows:

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

2. To discontinue unauthorized or unsafe and unsound practices. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mort-

gage banker, registered mortgage loan servicer, authorized mortgage loan originator, licensed lender, licensed casher of checks, REGISTERED OPERATOR OF AUTOMATED TELLER MACHINES, REGISTERED NETWORK, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to do business in this state is conducting business in an unauthorized or unsafe and unsound manner, he or she may, in his or her discretion, issue an order directing the discontinuance of such unauthorized or unsafe and unsound practices, and fixing a time and place at which such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, authorized mortgage loan originator, licensed lender, licensed casher of checks, REGISTERED OPERATOR OF AUTOMATED TELLER MACHINES, REGISTERED NETWORK, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation may voluntarily appear before him or her to present any explanation in defense of the practices directed in said order to be discontinued.

5. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, authorized mortgage loan originator, licensed lender, licensed casher of checks, REGISTERED OPERATOR OF AUTOMATED TELLER MACHINES, REGISTERED NETWORK, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, agency or branch of a foreign banking corporation licensed by the superintendent to do business in this state, does not keep its books and accounts in such manner as to enable him or her to readily ascertain its true condition, he or she may, in his or her discretion, issue an order requiring such banking organization, bank holding company, registered mortgage broker, licensed mortgage banker, registered mortgage loan servicer, authorized mortgage loan originator, licensed lender, licensed casher of checks, REGISTERED OPERATOR OF AUTOMATED TELLER MACHINES, REGISTERED NETWORK, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed budget planner, or foreign banking corporation, or the officers or agents thereof, or any of them, to open and keep such books or accounts as he or she may, in his or her discretion, determine and prescribe for the purpose of keeping accurate and convenient records of its transactions and accounts.

S 4. Paragraph (a) of subdivision 1 of section 44 of the banking law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

(a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, registered mortgage broker, REGISTERED OPERATOR OF AUTOMATED TELLER MACHINES, REGISTERED NETWORK, authorized mortgage loan originator, registered mortgage loan servicer or licensed budget planner to pay to the people of this state a penalty for any

violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent or banking board in connection with the grant of any application or request, or any written agreement entered into with the superintendent.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that sections three and four of this act shall take effect on the same date and in the same manner as section 25 of chapter 472 of the laws of 2008, takes effect; provided that the superintendent of banks is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date, including providing for the registration of current operators of automated teller machines and networks as defined pursuant to this act on or before June 1, 2010.