

7732

I N S E N A T E

May 5, 2010

Introduced by Sen. PERALTA -- 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 money services businesses

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

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

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

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

30 S 9-V. NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE  
31 LICENSED CHECK CASHER ACCOUNTS. 1. (A) A STATE CHARTERED DEPOSITORY

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

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1 INSTITUTION SHALL HAVE NO OBLIGATION TO CONDUCT ANY DUE DILIGENCE OR  
2 REVIEW OF THE COMPLIANCE BY A NEW YORK STATE LICENSED MONEY TRANSMITTER  
3 OR NEW YORK STATE LICENSED CHECK CASHER WITH SUCH BUSINESS'S OBLIGATIONS  
4 UNDER CHAPTER 53 OF TITLE 31 OF THE UNITED STATES CODE, PROVIDED:

5 (I) THE NEW YORK STATE LICENSED MONEY TRANSMITTER OR NEW YORK STATE  
6 LICENSED CHECK CASHER IS LICENSED OR APPROVED TO ENGAGE IN MONEY TRANS-  
7 MISSION OR CHECK CASHING UNDER THIS CHAPTER BY THE SUPERINTENDENT OF  
8 BANKS; AND

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

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

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

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

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

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

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

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

46 (B) THE BANKING INSTITUTION MEETS THE REQUIREMENTS OUTLINED IN THE  
47 "INTERAGENCY INTERPRETATIVE GUIDANCE ON PROVIDING BANKING SERVICES TO  
48 MONEY SERVICES BUSINESSES OPERATING IN THE UNITED STATES" BY THE FINAN-  
49 CIAL CRIMES ENFORCEMENT NETWORK (FINCEN) OF THE UNITED STATES TREASURY  
50 DEPARTMENT; AND

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

53 S 3. This act shall take effect immediately.