

5463

2011-2012 Regular Sessions

I N S E N A T E

May 24, 2011

Introduced by Sen. GRIFFO -- (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, in relation to restrictions on employees of the banking department, collecting assessments and fees, suspending mortgage bankers and brokers for cause and eliminating outdated language and provisions; to amend the real property law, in relation to interest rate increases on mortgage loans after default and to repeal certain provisions of the banking law relating thereto

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

1 Section 1. Subdivision 7 of section 14-d of the banking law, as added
2 by chapter 234 of the laws of 1983, is amended to read as follows:
3 7. In this section "banking institution" has the same meaning ascribed
4 to it by section [nine-f] NINE-K of this chapter and "item" has the same
5 meaning ascribed to it by the uniform commercial code.
6 S 2. Section 22 of the banking law, as amended by chapter 553 of the
7 laws of 2007, is amended to read as follows:
8 S 22. Fingerprints. [(a)] 1. Notwithstanding any other provision of
9 law, every applicant for a license, authorization or registration under
10 articles nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E
11 and thirteen-B of this chapter and every applicant filing an application
12 to acquire control of any licensee or registrant, as the case may be,
13 under such articles shall submit [simultaneously with an application,]
14 his or her fingerprints in such form and in such manner as specified by
15 the division of criminal justice services OR THE SUPERINTENDENT, AS
16 APPROPRIATE, but in any event, no less than two digit imprints. The
17 superintendent shall submit such fingerprints to the division of criminal
18 justice services for the purpose of conducting a criminal history
19 search and returning a report thereon in accordance with the procedures
20 and requirements established by the division pursuant to the provisions

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

LBD09183-03-1

1 of article thirty-five of the executive law, which shall include the
2 payment of the prescribed processing fees. The superintendent shall
3 request that the division submit such fingerprints to the federal bureau
4 of investigation, together with the processing fees prescribed by such
5 bureau, for the purpose of conducting a criminal history search and
6 returning a report thereon UNLESS THE SUPERINTENDENT HAS MADE OTHER
7 ARRANGEMENTS FOR SUCH SUBMISSION. An applicant shall not be required to
8 submit his or her fingerprints as required by this subdivision if such
9 applicant (i) is already subject to regulation by the department and the
10 applicant has submitted such fingerprints to the department, such fing-
11 erprints have been submitted to the division of criminal justice
12 services for the purpose of conducting a criminal history search, and a
13 report of such search has been received by the department from such
14 division WITHIN THE PAST FIVE YEARS; or (ii) is subject to regulation by
15 a federal bank regulatory agency and has submitted such fingerprints to
16 such agency which has had a criminal history search conducted of such
17 individual and has shared such information or its determination result-
18 ing from such search with the department WITHIN THE PAST FIVE YEARS; or
19 (iii) is an officer or stockholder of a corporation whose common or
20 preferred stock is registered on a national securities exchange, as
21 provided in an act of congress of the United States entitled the "Secu-
22 rities Exchange Act of 1934", [approved June sixth, nineteen hundred
23 thirty-four, as amended,] or such other exchange or market system as the
24 superintendent shall approve by regulation, and has submitted such fing-
25 erprints to such exchange or market system which has had a criminal
26 history search conducted of such individual and has shared such informa-
27 tion or its determination resulting from such search with the department
28 WITHIN THE PAST FIVE YEARS; provided, however, that the superintendent
29 may subsequently require such applicant to submit his or her finger-
30 prints if the superintendent has a reasonable basis for updating the
31 information or determination resulting from the report of the criminal
32 history search conducted at the request of such federal banking agency,
33 exchange or market system.

34 [(b)] 2. The superintendent [shall] MAY also, concurrent with an
35 investigation of a licensee or registrant, or an authorized individual,
36 pertaining to a violation of this chapter, submit such fingerprints to
37 the division of criminal justice services for the purpose of conducting
38 a criminal history search and returning a report thereon and through the
39 division to the federal bureau of investigation for the purpose of a
40 fingerprint check of such licensee, registrant or authorized individual.

41 [(c)] 3. For purposes of this section, "applicant" shall include a
42 natural person or such principal, officer, director, trustee or stock-
43 holder of any other entity as may be designated by the superintendent.
44 Notwithstanding any other provision of this article, the superintendent
45 shall not access criminal history data or information, unless any agency
46 from which the superintendent receives directly criminal history data or
47 information has entered into a use and dissemination agreement with the
48 superintendent consistent with the provisions of this section.

49 S 3. The second undesignated paragraph of section 23 of the banking
50 law, as amended by section 5 of part 0 of chapter 59 of the laws of
51 2006, is amended to read as follows:

52 At the time of submission of the certificate and accompanying docu-
53 ments an investigation fee as prescribed pursuant to section eighteen-a
54 of this article shall be paid to the superintendent[, to be retained by
55 him or her if the certificate and accompanying documents are filed. If
56 the certificate and accompanying documents are not filed because of

1 defects therein, the investigation fee is to be returned with such
2 papers to the persons from whom they were received].

3 S 4. Section 24 of the banking law, as amended by chapter 684 of the
4 laws of 1938, subdivision 1 as amended by chapter 453 of the laws of
5 1960, subdivision 2 as amended by chapter 419 of the laws of 1996,
6 subdivision 3 as amended by chapter 52 of the laws of 1944 and subdivi-
7 sion 4 as amended by chapter 608 of the laws of 1996, is amended to read
8 as follows:

9 S 24. Investigation by superintendent; refusal or approval; filing
10 certificate. 1. Within ninety days after the date when any organization
11 certificate or private banker's certificate shall have been filed for
12 examination, the superintendent, if he OR SHE shall find after investi-
13 gation and examination of what he OR SHE deems to be the best sources of
14 information [at his command] AVAILABLE that the character, responsibil-
15 ity and general fitness of the person or persons named in such certif-
16 icate are such as to command confidence and warrant belief that the
17 business of the proposed corporation or private banker will be honestly
18 and efficiently conducted in accordance with the intent and purpose of
19 this chapter, and that the public convenience and advantage will be
20 promoted by allowing such proposed corporation or private banker to
21 engage in business, shall [submit] APPROVE such certificate [to the
22 banking board together with all papers, correspondence and other infor-
23 mation in his possession relating thereto, including the results of his
24 investigation and his recommendation in the matter]. [Such] AN EXTENSION
25 OF SUCH NINETY DAY period [of ninety days] may be [extended] REQUESTED,
26 by a written [consent] REQUEST executed by a majority of the persons
27 from whom the superintendent received such organization certificate or
28 private banker's certificate, for such additional reasonable period of
29 time as may be required for applicants to comply with conditions prece-
30 dent stipulated by the superintendent as being a prerequisite to his
31 [recommendation to the banking board] OR HER APPROVAL. THE SUPERINTEN-
32 DENT, IN HIS OR HER SOLE DISCRETION, SHALL DETERMINE WHETHER TO GRANT
33 SUCH AN EXTENSION.

34 2. [If three-fifths of the members of the board, after consideration
35 of all relevant information available to them, shall vote for approval,
36 the] THE superintendent[, if he is still satisfied, upon the consider-
37 ations set forth in subdivision one of this section, that such proposed
38 corporation or private banker should be permitted to engage in busi-
39 ness,] shall [approve such certificate and] ALSO endorse upon each of
40 the duplicates the date of such approval. [He] THE SUPERINTENDENT shall
41 forthwith cause notice of such approval to be given to the proposed
42 incorporators or private banker and one of the duplicate certificates
43 [to] SHALL be filed in the office of the department and the other in the
44 office of the clerk of the county in which the principal office of such
45 proposed corporation or private banker is to be located. In a case in
46 which a private banker certificate is submitted to the superintendent
47 for the purpose of continuing the business in connection with a change
48 in its partnership, the superintendent shall approve the private banker
49 certificate [without any action by the banking board] upon making a
50 determination that the private banker should be permitted to continue
51 its business based upon the considerations set forth in subdivision one
52 of this section.

53 3. If [three-fifths of the members of the banking board shall not vote
54 for approval, or if] the superintendent[, either prior or subsequent to
55 the submission of such certificate to the board,] is not satisfied, upon
56 the considerations set forth in subdivision one of this section, that

1 such proposed corporation or private banker should be permitted to
2 engage in business, the superintendent shall refuse such certificate and
3 shall endorse thereon the date of such refusal and return one of the
4 duplicates to the proposed incorporators or private banker from whom
5 such certificate was received.

6 4. The provisions of this section shall not apply to any organization
7 certificate required to be filed in the office of the superintendent by
8 SECTION ONE HUNDRED THIRTY-SIX, BY section two hundred sixty-b, by
9 section four hundred ten, by section four hundred eleven or by section
10 four hundred eighty-six of this chapter.

11 S 5. Subdivisions 1 and 3 of section 25 of the banking law, subdivi-
12 sion 1 as amended by chapter 512 of the laws of 1977 and subdivision 3
13 as amended by chapter 561 of the laws of 1946, are amended to read as
14 follows:

15 1. If the superintendent shall find that a corporation or private
16 banker, the certificate of which has been approved and filed as provided
17 in section twenty-four of this article, has in good faith complied with
18 all the requirements of law and fulfilled all the conditions precedent
19 to commencing business imposed by this chapter, [he] THE SUPERINTENDENT
20 shall, within ninety days after the date of such approval, [or within
21 such longer period thereafter as he may permit pursuant to the second
22 sentence of this subdivision,] but in no case after the expiration of
23 that period, issue [under his hand] and EXECUTE UNDER the official seal
24 of the department, in triplicate, an authorization certificate to the
25 person or persons named in such organization certificate or private
26 banker's certificate. [The] NOTWITHSTANDING THE PRECEDING SENTENCE, IF
27 THE SUPERINTENDENT DETERMINES IT IS CONSISTENT WITH THE DECLARATION OF
28 POLICY CONTAINED IN SECTION TEN OF THIS ARTICLE, THE superintendent may
29 extend the period within which he OR SHE may issue the authorization
30 certificate by (I) an additional [sixty] NINETY days, provided, however,
31 that he OR SHE shall have determined that such extension of time is
32 needed for raising capital, for fulfilling any other condition precedent
33 to the commencement of business or for satisfying any other requirement
34 of organization, whether imposed by statute or regulation[, and that
35 such extension is consistent with the declaration of policy contained in
36 section ten of this chapter] OR OTHERWISE, OR (II) SUCH LONGER PERIOD OF
37 TIME HE OR SHE SHALL DEEM APPROPRIATE, PROVIDED, HOWEVER, THAT HE OR SHE
38 SHALL HAVE DETERMINED THAT EXTRAORDINARY CIRCUMSTANCES EXIST. Such
39 authorization certificate shall state that the corporation or private
40 banker named therein has complied with the provisions of this chapter
41 and that it is authorized to transact the business specified therein.
42 Such authorization certificate shall be conclusive evidence that all
43 conditions precedent have been fulfilled and that the corporation has
44 been formed under this chapter, except in an action or special proceed-
45 ing brought by the superintendent or the attorney general. The super-
46 intendent shall cause one of the triplicate authorization certificates
47 to be transmitted to the corporation or private banker thereby author-
48 ized to commence business, another to be filed in the office of the
49 department, and the third to be filed in the county clerk's office in
50 which the organization certificate or the private banker's certificate
51 has been filed. The copies of the authorization certificate filed in the
52 offices of the superintendent and the county clerk shall be attached to
53 the copies of the organization certificate or private banker's certif-
54 icate previously filed and such certificates shall be recorded in the
55 records of incorporation therein.

1 3. Any corporation which shall not commence business within six months
2 after the date on which its authorization certificate is issued by the
3 superintendent shall forfeit its rights and privileges as a corporation
4 and its corporate powers shall cease and determine unless the time with-
5 in which such business may be commenced has been extended by the super-
6 intendent. Upon satisfactory cause being shown, the superintendent may
7 grant [an extension for a period of not more than one year] ONE OR MORE
8 EXTENSIONS. Such extension shall be granted by order executed, transmit-
9 ted and filed in the manner provided for an authorization certificate in
10 subdivision one of this section.

11 S 6. Section 28 of the banking law, as amended by chapter 315 of the
12 laws of 2008, is amended to read as follows:

13 S 28. Change of location; change of designation of principal office;
14 approval or refusal; certificate. Upon receipt by the superintendent of
15 a written application in proper form from any banking organization or
16 foreign corporation for leave to change its place or one of its places
17 of business to another place or from any banking organization for leave
18 to change the designation of its principal office to a branch office and
19 to change the designation of one of its branch offices to its principal
20 office, the superintendent shall, if he or she shall be satisfied that
21 such change may be permitted under the terms of this chapter and that
22 there is no reasonable objection to such change, execute and issue a
23 certificate under the official seal of the department authorizing such
24 change and specifying the date on or after which such change may be
25 made, and shall cause the original of such certificate to be transmitted
26 to the applicant, a copy to be filed in the office of the department and
27 a copy to be filed in the office of the clerk of the county in which the
28 principal office of the applicant is located, provided that if the
29 proposed principal office is in a different county than the county in
30 which the principal office is located at the time of the filing of the
31 application, the superintendent shall cause copies to be filed in the
32 offices of the clerks of both counties. If the superintendent shall [be
33 satisfied in any case that such change is undesirable or inexpedient, he
34 or she shall] refuse such application [and], HE OR SHE SHALL notify the
35 applicant of such determination.

36 S 7. Section 28-a of the banking law, as amended by section 6 of part
37 O of chapter 59 of the laws of 2006, is amended to read as follows:

38 S 28-a. Temporary change of location; approval or refusal; certif-
39 icate. Notwithstanding any provisions of law limiting the number of
40 offices which may be maintained thereby, any banking organization or
41 foreign banking corporation may make a written application to the super-
42 intendent for a temporary change of location of its authorized place or
43 one of its authorized places of business or a portion thereof to another
44 place within the state which shall be as near as practicable to such
45 authorized place of business. At the time of making the application an
46 investigation fee as prescribed pursuant to section eighteen-a of this
47 article shall be paid to the superintendent for each temporary location
48 for which leave to open is sought, except where (1) the applicant would
49 not be required to pay an investigation fee upon the filing of an appli-
50 cation for a change of location under provisions of this chapter other
51 than this section, or (2) said application is necessitated by damage or
52 destruction caused by flood, tidal wave, earthquake, conflagration,
53 tornado, hurricane, cyclone, windstorm or other storm or such other
54 event as shall have been declared a catastrophe by the superintendent.
55 If there is no reasonable objection to such change, and if the super-
56 intendent finds that such change is necessary or desirable during a

1 period of construction, repair, alteration, improvement, or recon-
2 struction of the previously authorized place of business, he or she
3 shall issue AND EXECUTE a certificate under [his or her hand and] the
4 official seal of the department authorizing each such change and speci-
5 fying (a) the period during which such temporary location may be main-
6 tained, (b) the date on or after which such change may be made, and (c)
7 the powers which may be exercised thereat. The superintendent shall
8 cause the original of such certificate to be transmitted to the appli-
9 cant, a copy to be filed in the office of the department and a copy to
10 be filed in the office of the clerk of the county in which the principal
11 office of the applicant is located. If the superintendent shall [be
12 satisfied in any case that a change is undesirable or inexpedient, he or
13 she shall] refuse such application [and], HE OR SHE SHALL notify the
14 applicant of [his or her] SUCH determination. A temporary place of busi-
15 ness occupied pursuant to the provisions of this section shall be closed
16 as soon as practicable, and in no event later than the date specified in
17 its authorization certificate, unless the superintendent shall have
18 extended such time. The banking organization or corporation shall notify
19 the superintendent in writing prior to such closing as to the date it
20 intends to close the temporary place of business.

21 S 8. Subdivision 2 of section 28-b of the banking law is REPEALED.

22 S 9. Subdivision 5 of section 28-b of the banking law, as added by
23 chapter 361 of the laws of 1984, is amended to read as follows:

24 5. The [banking board] SUPERINTENDENT is hereby authorized and
25 empowered[, by a three-fifths vote of all its members,] to promulgate
26 rules and regulations effectuating the provisions of this section,
27 including any rules and regulations providing that the assessment of
28 banking institutions referred to in subdivision three of this section
29 shall be made on a graduated numerical basis.

30 S 10. The banking law is amended by adding a new section 36-b to read
31 as follows:

32 S 36-B. PRESERVATION OF BOOKS AND RECORDS. WHEN ANY PROVISION OF THIS
33 CHAPTER OR ANY RULE OR REGULATION ADOPTED PURSUANT THERETO REQUIRES THAT
34 BOOKS AND RECORDS BE PRESERVED, SUCH REQUIREMENT MAY BE SATISFIED BY
35 MAINTENANCE OF ORIGINAL PAPERS OR OTHER RECORDS, PHOTOGRAPHIC REPROD-
36 UCTIONS, OR RECORDS STORED IN ELECTRONIC STORAGE MEDIA. AS USED IN THIS
37 CHAPTER, "ELECTRONIC STORAGE MEDIA" MEANS ANY DIGITAL STORAGE MEDIUM OR
38 SYSTEM THAT MEETS THE FOLLOWING CONDITIONS:

39 1. IT MUST PRESERVE THE RECORDS EXCLUSIVELY IN NON-REWRITABLE,
40 NON-ERASABLE FORMAT;

41 2. IT MUST VERIFY AUTOMATICALLY THE QUALITY AND ACCURACY OF THE STOR-
42 AGE MEDIA RECORDING PROCESS;

43 3. IT MUST HAVE THE CAPACITY TO READILY DOWNLOAD INDEXES AND RECORDS
44 PRESERVED ON THE ELECTRONIC STORAGE MEDIA TO ANY MEDIUM ACCEPTABLE TO
45 THE SUPERINTENDENT; AND

46 4. IT MUST BE IMMEDIATELY READABLE ON EQUIPMENT AT ALL TIMES AVAIL-
47 ABLE TO THE SUPERINTENDENT FOR EXAMINATION OF SUCH RECORDS.

48 S 11. The closing paragraph of section 42 of the banking law, as
49 amended by chapter 684 of the laws of 1938, is amended to read as
50 follows:

51 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, THE SUPER-
52 INTENDENT MAY VARY OR WAIVE ANY SUCH PUBLICATION REQUIREMENTS, IF HE OR
53 SHE SHALL DETERMINE THAT SUCH VARIATION OR WAIVER IS NECESSARY BECAUSE
54 OF UNUSUAL AND EXTRAORDINARY CIRCUMSTANCES AND CONSIDERATION OF THE
55 MATTER IS IN THE PUBLIC INTEREST. Every such statement after having been
56 so posted for one week shall be placed on file and kept in the office of

1 the department. All such statements shall be public documents and at all
2 reasonable times shall be open to public inspection.

3 S 12. Subdivision 1 of section 229 of the banking law, as amended by
4 chapter 1 of the laws of 1984, is amended to read as follows:

5 1. This article applies to every savings bank and shall not apply to
6 any other banking organization except to such extent, if any, as may be
7 specified in any article of this chapter governing such banking organ-
8 ization; provided, however, that in the case of stock-form savings
9 banks, this article applies to every such organization except that the
10 [banking board] SUPERINTENDENT, consistent with the declaration of poli-
11 cy described in section fourteen-e of this chapter, shall be empowered
12 to deem inapplicable to stock-form savings banks, sections two hundred
13 thirty, [two hundred thirty-one,] two hundred thirty-two, two hundred
14 thirty-three, subdivisions one and two of section two hundred thirty-
15 four, two hundred forty-three, two hundred forty-four, two hundred
16 forty-five, two hundred forty-six, two hundred forty-six-a, two hundred
17 forty-seven, two hundred forty-eight, two hundred forty-nine, two
18 hundred fifty, two hundred fifty-one and two hundred fifty-two of this
19 chapter.

20 S 13. Subdivision 1 of section 413 of the banking law, as amended by
21 chapter 300 of the laws of 1994, is amended to read as follows:

22 1. With the prior approval of the superintendent, a New York savings
23 and loan holding company or a subsidiary thereof or a New York savings
24 association may acquire control of an out-of-state savings and loan
25 holding company or an out-of-state savings association, and an out-of-
26 state savings and loan holding company or a subsidiary thereof or an
27 out-of-state savings association may acquire control of a New York
28 savings and loan holding company or a New York savings association
29 subject to regulations to be adopted by the [banking board] SUPERINTEN-
30 DENT. [The terms and conditions prescribed by such regulations shall be
31 substantially similar to those contained in section one hundred forty-
32 two-b of this chapter governing reciprocal interstate acquisitions by
33 bank holding companies.]

34 S 14. Subdivision 2 of section 460 of the banking law, as added by
35 chapter 608 of the laws of 1996, is amended to read as follows:

36 2. Earnings from all sources for the period for which a dividend is to
37 be paid[, except as provided in section four hundred fifty-eight of this
38 article,] may be credited to the profit and loss account of the credit
39 union and the following items shall be charged against such account in
40 the determination of the amount available for dividends to shareholders:

41 (a) All expenses paid or incurred by the credit union in the manage-
42 ment of its affairs, the collection of its debts or the transaction of
43 its business.

44 (b) The interest paid or accrued on debts owed by the credit union.

45 (c) All losses incurred on loans in excess of the allowance for loan
46 loss account.

47 (d) Any interest collected in advance shall be considered unearned at
48 the end of the fiscal period, and shall be set aside in an account
49 called "unearned interest".

50 The credit balance of the profit and loss account as thus determined
51 shall constitute the undivided profits of the credit union at the close
52 of such period, and shall be applicable to the payment of dividends
53 except as provided in subdivision three of this section.

54 S 15. Section 4002 of the banking law, as added by chapter 321 of the
55 laws of 1992, subdivision (a) as amended by chapter 217 of the laws of

2010, subdivision (b) as amended and subdivision (d) as added by chapter 302 of the laws of 2003, is amended to read as follows:

S 4002. Fingerprints. [(a)] 1. Notwithstanding any other provisions of law, every incorporator of a corporation shall, in addition to any other requirements which may be imposed by the superintendent, 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. Every applicant filing an application to acquire control of any banking institution under sections one hundred forty-three-a and one hundred forty-three-b of this chapter shall, in addition to any other requirements which may be imposed by the superintendent, 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 the 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.

[(b)] 2. The superintendent [shall] MAY also, concurrent with an investigation of an incorporator of a corporation 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 incorporator.

[(c)] 3. For purposes of this section, ["incorporator"] "APPLICANT" SHALL INCLUDE AN INCORPORATOR AND 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.

[(d)] 4. An applicant shall not be required to submit his or her fingerprints as required by subdivision [(a)] ONE of this section if such applicant (i) is already subject to regulation by the department and the applicant 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 WITHIN THE PAST FIVE YEARS; 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 WITHIN THE PAST FIVE YEARS; 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, nineteen hundred

1 thirty-four, as amended,] or such other exchange or market system as the
2 superintendent shall approve by regulation, and has submitted such fing-
3 erprints to such exchange or market system which has had a criminal
4 history search conducted of such individual and has shared such informa-
5 tion or its determination resulting from such search with the department
6 WITHIN THE PAST FIVE YEARS; provided, however, that the superintendent
7 may subsequently require such applicant to submit sets of fingerprints
8 if the superintendent has a reasonable basis for updating the informa-
9 tion or determination resulting from the report of the criminal history
10 search conducted at the request of such federal banking agency, exchange
11 or market system.

12 5. WHENEVER AN INCORPORATOR HAS TIMELY FILED HIS OR HER FINGERPRINTS
13 AS REQUIRED BY THIS SECTION, BUT: (I) THE SUPERINTENDENT HAS NOT
14 RECEIVED A REPORT OF THE RESULTS OF A RELATED CRIMINAL HISTORY SEARCH;
15 (II) THE CIRCUMSTANCES WARRANT AN EXPEDITIOUS DETERMINATION; AND (III)
16 THE SUPERINTENDENT DETERMINES, AFTER CONSIDERING ALL AVAILABLE INFORMA-
17 TION, THAT THE REMAINING INCORPORATORS ARE ADEQUATE IN NUMBER AND HAVE
18 THE CHARACTER, RESPONSIBILITY AND GENERAL FITNESS SO AS TO WARRANT
19 BELIEF THAT, EVEN IF SUCH PERSON WERE NOT TO SERVE AS AN INCORPORATOR,
20 SUCH BUSINESS WILL BE HONESTLY AND EFFICIENTLY OPERATED, THE SUPERINTEN-
21 DENT MAY WAIVE THE REQUIREMENT FOR RECEIPT OF SUCH REPORT PRIOR TO
22 APPROVAL, SUBJECT TO RECEIPT FROM SUCH INCORPORATOR OF HIS OR HER WRIT-
23 TEN AGREEMENT TO RESIGN IMMEDIATELY FROM ALL POSITIONS HELD WITH SUCH
24 ENTITY IF SUCH REPORT DEMONSTRATES, IN THE SOLE DISCRETION OF THE SUPER-
25 INTENDENT, THAT THE INCORPORATOR LACKS THE NECESSARY CHARACTER, RESPON-
26 SIBILITY AND FITNESS.

27 S 16. Subdivision 8 of section 5004 of the banking law, as added by
28 chapter 849 of the laws of 1964, is amended to read as follows:

29 8. When the consideration for shares has been paid in full, the
30 subscriber shall be entitled to all the rights and privileges of a hold-
31 er of such shares and to a certificate representing his shares, and such
32 shares shall be fully paid and, subject to sections [one hundred thir-
33 teen-a, one hundred thirteen-b,] one hundred fourteen[, three hundred
34 five, three hundred five-a, three hundred six, three hundred twenty-two,
35 three hundred twenty-two-a] and three hundred twenty-three of this chap-
36 ter, shall be nonassessable.

37 S 17. Paragraph (b) of subdivision 1 of section 591 of the banking
38 law, as amended by chapter 164 of the laws of 2003, is amended to read
39 as follows:

40 (b) [The] AS PROVIDED IN SECTION TWENTY-TWO OF THIS CHAPTER, THE fing-
41 erprints of the applicant[, which may be submitted to the division of
42 criminal justice services and the federal bureau of investigation for
43 state and national criminal history record checks];

44 S 18. Subdivision 1 of section 592 of the banking law, as amended by
45 chapter 400 of the laws of 1993, is amended to read as follows:

46 1. Upon the filing of an application for a license, if the superinten-
47 dent shall find that the financial responsibility, experience, charac-
48 ter, and general fitness of the applicant and of the members thereof if
49 the applicant is a co-partnership or association, and of the officers
50 and directors thereof if the applicant is a corporation are such as to
51 command the confidence of the community and to warrant belief that the
52 business will be operated honestly, fairly, and efficiently within the
53 purpose of this article, the superintendent shall thereupon issue a
54 license in duplicate to engage in the business of making mortgage loans
55 described in section five hundred ninety of this article in accordance
56 with provisions of this article. If the superintendent shall not so

1 find, the superintendent shall not issue such license, and the super-
2 intendent shall notify the applicant of the denial. The superintendent
3 shall transmit one copy of such license to the applicant and file another
4 in the office of the banking department. Upon receipt of such
5 license, a mortgage banker shall be authorized to engage in the business
6 of making mortgage loans in accordance with the provisions of this article.
7 [Such license shall remain in full force and effect until it is
8 surrendered by the licensee or revoked or suspended as hereinafter
9 provided.] The superintendent shall approve or deny every application
10 for license hereunder within ninety days from the filing of a completed
11 application provided, however, that failure to act within the prescribed
12 period shall not be deemed approval of any such application.

13 S 19. Subdivision 1 of section 592-a of the banking law, as amended by
14 section 18 of part D-1 of chapter 109 of the laws of 2006, is amended to
15 read as follows:

16 1. Upon the filing of an application for registration, if the super-
17 intendent shall find that the financial responsibility, experience,
18 character, and general fitness of the applicant, and of the members
19 thereof if the applicant is a co-partnership or association, and of the
20 officers and directors thereof if the applicant is a corporation, are
21 such as to command the confidence of the community and to warrant belief
22 that the business will be operated honestly, fairly, and efficiently
23 within the purpose of this article, the superintendent shall thereupon
24 register the applicant as a mortgage broker on a roll maintained for
25 that purpose at the banking department, and issue a certificate attest-
26 ing to such registration in duplicate. If the superintendent shall not
27 so find, the superintendent shall not register such applicant, and shall
28 notify the applicant of the denial. The superintendent shall transmit
29 one copy of such certificate to the applicant and file another in the
30 office of the banking department. Upon receipt of such certificate a
31 mortgage broker shall be authorized to engage in the business of [plac-
32 ing] SOLICITING, processing [and], PLACING, OR negotiating mortgage
33 loans. [Such registration shall remain in full force and effect until it
34 is surrendered by the licensee or revoked or suspended as hereinafter
35 provided, except that such registration, notwithstanding any provisions
36 of subdivision five of section seventeen of this chapter to the contra-
37 ry, shall expire upon the registrant's failure to pay the required
38 assessment charged pursuant to such section seventeen thirty days after
39 the date or dates such payment or payments are due. If the registrant
40 fails to pay such charged assessment by the date or dates such payment
41 or payments are due, then the registrant shall be required to pay, in
42 addition, a late fee in the amount of one hundred dollars. Such regis-
43 tration shall be reinstated if the registrant pays such assessment
44 charged and any applicable late fees and/or interest within sixty days
45 of such expiration.] The superintendent shall approve or deny every
46 application for registration hereunder within ninety days from the
47 filing of a complete application provided, however, that failure to act
48 within the prescribed period shall not be deemed approval of any such
49 application.

50 S 20. Section 595 of the banking law, as amended by chapter 571 of
51 the laws of 1986, paragraph (c) of subdivision 1 as amended and para-
52 graph (d) of subdivision 1 as added by chapter 164 of the laws of 2003,
53 subdivision 2 as amended by chapter 121 of the laws of 1993, subdivision
54 3 as amended by chapter 516 of the laws of 1996, subdivisions 4, 5 and 6
55 as amended and subdivisions 4-a and 7-a as added by chapter 400 of the
56 laws of 1993, is amended to read as follows:

1 S 595. Grounds for suspension or revocation of license, or suspension
2 or deletion of name from mortgage broker roll. 1. [The] IN ADDITION TO
3 THE AUTHORITY SET FORTH IN SUBDIVISION TWO OF THIS SECTION, THE super-
4 intendent may SUSPEND OR revoke any license to engage in the business of
5 a mortgage banker issued pursuant to this article or SUSPEND OR delete
6 the name of a mortgage broker [from the roll of mortgage brokers] OR A
7 MORTGAGE LOAN SERVICER registered pursuant to this article (EACH
8 REFERRED TO IN THIS SECTION AS A REGISTRANT) if he OR SHE shall find
9 AFTER NOTICE AND A HEARING, that:

10 (a) Through a course of conduct, the licensee or registrant has
11 violated any provisions of this article, or any rule or regulation
12 promulgated by the [banking board, or any rule or regulation prescribed
13 by the] superintendent under and within the authority of this article or
14 of any other law, rule or regulation of this state or the federal
15 government;

16 (b) Any fact or condition exists which, if it had existed at the time
17 of the original application for such license or registration, would have
18 warranted the superintendent in refusing originally to issue such
19 license;

20 (c) The commission by a licensee or registrant of a crime against the
21 laws of this state or any other state or of the United States involving
22 moral turpitude or fraudulent or dishonest dealing, or the entry of a
23 final judgment against a licensee or registrant in a civil action upon
24 grounds of fraud, misrepresentation or deceit;

25 (d) As a part of such determination regarding suspension or revoca-
26 tion, the superintendent is authorized to require the fingerprinting of
27 any licensee or registrant. Such fingerprints shall be submitted to the
28 division of criminal justice services for a state criminal history
29 record check, as defined in subdivision one of section three thousand
30 thirty-five of the education law, and may be submitted to the federal
31 bureau of investigation for a national criminal history record check.

32 2. (A) The superintendent may, [on] FOR good cause [shown], WITHOUT
33 NOTICE OR A HEARING, or where there is a substantial risk of public
34 harm, [suspend] ISSUE AN ORDER SUSPENDING any license or [delete the
35 name of any registrant] REGISTRATION ISSUED PURSUANT TO THIS ARTICLE for
36 a period not exceeding [thirty] NINETY days, pending investigation.
37 "Good cause", as used in this subdivision, shall exist only when the
38 licensee or registrant has defaulted or is likely to default in perform-
39 ing its financial engagements or engages in dishonest or inequitable
40 practices which may cause substantial harm to the persons afforded the
41 protection of this article.

42 (B) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT A
43 HEARING, ISSUE A NOTICE SUSPENDING THE LICENSE OR REGISTRATION OF ANY
44 MORTGAGE BANKER OR MORTGAGE LOAN SERVICER THIRTY DAYS AFTER THE DATE OR
45 DATES IT FAILS TO MAKE ANY PAYMENTS REQUIRED BY THIS CHAPTER.

46 (C) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT
47 NOTICE OR A HEARING, ISSUE AN ORDER SUSPENDING ANY LICENSE OR REGISTRA-
48 TION ISSUED PURSUANT TO THIS ARTICLE: (I) THIRTY DAYS AFTER THE DATE THE
49 LICENSEE OR REGISTRANT FAILS TO FILE ANY REPORT REQUIRED TO BE FILED BY
50 IT WITH THE SUPERINTENDENT PURSUANT TO THE AUTHORITY PROVIDED BY SECTION
51 FIVE HUNDRED NINETY-SEVEN OF THIS ARTICLE; (II) IMMEDIATELY UPON NOTICE
52 TO THE SUPERINTENDENT THAT ANY REQUIRED SURETY BOND OR LINE OF CREDIT IS
53 BEING CANCELED OR IS EXPIRING, IF THE LICENSEE OR REGISTRANT HAS NOT
54 PROVIDED THE SUPERINTENDENT WITH PROOF OF A REPLACEMENT BOND OR LINE OF
55 CREDIT SATISFACTORY TO THE SUPERINTENDENT; (III) IMMEDIATELY UPON NOTICE
56 TO THE SUPERINTENDENT THAT THE LICENSEE OR REGISTRANT HAS FILED A PETI-

1 TION IN BANKRUPTCY; OR (IV) AT LEAST THIRTY DAYS AFTER THE LICENSEE OR
2 REGISTRANT HAS HAD FILED AGAINST IT A PETITION IN BANKRUPTCY.

3 3. IF THE SUPERINTENDENT HAS ISSUED AN ORDER SUSPENDING A LICENSE OR
4 REGISTRATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS
5 SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED IF THE SUPER-
6 INTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION AFTER INVESTIGATION,
7 THAT GOOD CAUSE THEREFOR DID NOT EXIST OR NO LONGER EXISTS. IF THE
8 SUPERINTENDENT HAS ISSUED AN ORDER OR NOTICE SUSPENDING A LICENSE OR
9 REGISTRATION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION
10 TWO OF THIS SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED, IF
11 THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION, THAT THE
12 LICENSEE OR REGISTRANT HAS CURED ALL DEFICIENCIES SET FORTH IN SUCH
13 SUSPENSION ORDER OR THE NOTICE BY THE CLOSE OF BUSINESS NINETY DAYS
14 AFTER THE DATE OF SUCH SUSPENSION ORDER OR NOTICE, INCLUDING, WITHOUT
15 LIMITATION, MAKING ANY OVERDUE PAYMENT, HAVING ANY SUCH BANKRUPTCY PETI-
16 TION DISMISSED OR HAVING SUCH BOND REINSTATED OR REPLACED. OTHERWISE,
17 UNLESS THE SUPERINTENDENT HAS, IN HIS OR HER SOLE DISCRETION, EXTENDED A
18 SUSPENSION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION TWO
19 OF THIS SECTION, SUCH LICENSE OR REGISTRATION SHALL BE DEEMED TO BE
20 AUTOMATICALLY TERMINATED BY OPERATION OF LAW AT THE CLOSE OF BUSINESS ON
21 SUCH NINETIETH DAY.

22 4. Except as provided in subdivision two of this section, no license
23 or registration shall be revoked or suspended except after notice and a
24 hearing thereon. Any order of suspension issued after notice and a hear-
25 ing may include as a condition of reinstatement that the licensee or
26 registrant make restitution to consumers of fees or other charges which
27 have been improperly charged or collected as determined by the super-
28 intendent.

29 [4. Any] 5. WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT, ANY licen-
30 see or registrant UNDER THIS ARTICLE may surrender any license or
31 [certificate] REGISTRATION by delivering to the superintendent written
32 notice that it thereby surrenders such license or [certificate] REGIS-
33 TRATION, but such surrender shall not affect such licensee's or regis-
34 trant's civil or criminal liability for acts committed prior to such
35 surrender. [If such surrender is made after the issuance by the super-
36 intendent of a statement of charges and notice of hearing, the super-
37 intendent may proceed against the licensee or registrant as if such
38 surrender had not taken place.

39 4-a. An expiration] 6. A TERMINATION of registration OR LICENSE in
40 accordance with THIS section [five hundred ninety-two-a of this article]
41 shall not affect such registrant's OR LICENSEE'S civil or criminal
42 liability for acts committed prior to such [expirations] TERMINATION.
43 If such [expiration] TERMINATION occurs after the issuance by the super-
44 intendent of a statement of charges and notice of hearing, the super-
45 intendent may proceed against the registrant OR LICENSEE as if such
46 [expiration] TERMINATION had not taken place.

47 [5] 7. No revocation, suspension, surrender or [expiration] TERMI-
48 NATION of any license or [certificate] REGISTRATION shall impair or
49 affect the obligation of any preexisting lawful contract between the
50 licensee or registrant and any person.

51 [6] 8. Every license or registration issued pursuant to this article
52 shall remain in force and effect until the same shall have [expired]
53 TERMINATED in accordance with [section five hundred ninety-two-a of this
54 article] SUBDIVISION TWO OR THREE OF THIS SECTION or shall have been
55 surrendered, revoked or suspended in accordance with any other
56 provisions of this article, but the superintendent shall have authority

1 to reinstate a suspended license or [certificate] REGISTRATION or to
2 issue a new license or [certificate] REGISTRATION to a licensee or
3 registrant whose license or registration shall have been TERMINATED OR
4 revoked if no fact or condition then exists which would have warranted
5 the superintendent in refusing originally to issue such license or
6 registration under this article.

7 [7] 9. Whenever the superintendent shall revoke or suspend a license
8 or registration issued pursuant to this article OTHER THAN PURSUANT TO
9 PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, he OR SHE shall forth-
10 with execute in duplicate a written order to that effect. The super-
11 intendent shall file one copy of such order in the office of the depart-
12 ment of banking and shall forthwith serve the other copy upon the
13 licensee or registrant. Any such order may be reviewed in the manner
14 provided by article seventy-eight of the civil practice law and rules.
15 Such application for review as authorized by this section must be made
16 within thirty days from the date of such order of suspension or revoca-
17 tion.

18 [7-a] 10. Whenever a registration OR LICENSE shall have [expired]
19 TERMINATED in accordance with [section five hundred ninety-two-a of]
20 this article, the superintendent shall notify the registrant OR LICENSEE
21 that the registration OR LICENSE has [expired] TERMINATED and that the
22 registrant OR LICENSEE may not engage in [the business of soliciting,
23 processing, placing or negotiating a mortgage loan or offering to solici-
24 it, process, place or negotiate a mortgage loan] ANY ACTIVITY REQUIRING
25 REGISTRATION OR A LICENSE in this state.

26 [8] 11. Any hearing held pursuant to the provisions of this section
27 shall be noticed, conducted and administered in compliance with the
28 state administrative procedure act.

29 S 21. Section 254-b of the real property law, as added by chapter 119
30 of the laws of 1974, is amended to read as follows:

31 S 254-b. Limitation on late charges AND INCREASED INTEREST RATE. 1.
32 If a bond or note, or the mortgage on real property, heretofore or here-
33 after made, improved by a one to six family residence occupied by the
34 owner, securing the payment of [same] SUCH BOND OR NOTE, or a note
35 representing a loan for the purpose of financing the purchase of an
36 ownership interest in, and proprietary lease from, a corporation or
37 partnership formed for the purpose of the cooperative ownership of resi-
38 dential real estate, contains a provision whereby the mortgagee or lend-
39 er retains the right to collect a late charge on any instalment which
40 has become due and remains unpaid, such charge on any such delinquent
41 instalment, regardless of the period it remains in default, shall not
42 exceed and shall only be enforced to the extent of two percent of such
43 delinquent instalment; provided, however, that no charge shall be
44 imposed on any instalment paid within fifteen days after the due date.
45 No such late charge shall be deducted from any regular instalment
46 payment by the mortgagor or borrower, but shall be separately charged
47 and collected by the mortgagee or lender. In the absence of a specific
48 provision in a bond, note or mortgage no late charge on any delinquent
49 instalment shall be assessed or collected. The term "instalment" shall
50 include amounts representing interest, amortization of principal and
51 payments in respect of insurance premiums, taxes and utility charges if
52 the bond, note or mortgage provides for collection thereof by the mort-
53 gagee.

54 2. NO BOND OR NOTE, OR THE MORTGAGE ON REAL PROPERTY IMPROVED BY A
55 ONE TO SIX FAMILY RESIDENCE OCCUPIED BY THE OWNER, SECURING THE PAYMENT
56 OF SUCH BOND OR NOTE, OR A NOTE REPRESENTING A LOAN FOR THE PURPOSE OF

1 FINANCING THE PURCHASE OF AN OWNERSHIP INTEREST IN, AND PROPRIETARY
2 LEASE FROM, A CORPORATION OR PARTNERSHIP FORMED FOR THE PURPOSE OF THE
3 COOPERATIVE OWNERSHIP OF RESIDENTIAL REAL ESTATE MAY CONTAIN A PROVISION
4 WHICH INCREASES THE INTEREST RATE AFTER DEFAULT. THIS PROVISION DOES NOT
5 APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN OTHERWISE
6 CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS; PROVIDED THAT THE
7 CHANGE IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR
8 THE ACCELERATION OF THE INDEBTEDNESS.

9 3. The provisions in this section shall not apply to any loan or
10 forbearance insured by the federal housing commissioner or for which a
11 commitment to insure has been made by the federal housing commissioner
12 or to any loan or forbearance insured or guaranteed pursuant to the
13 provisions of an act of congress entitled "Servicemen's Readjustment Act
14 of 1944", or to the extent the provisions of this section are inconsis-
15 ent with any other federal law or regulation.

16 [3] 4. If any provision of this section, or the application of such
17 provision to any individual, company, corporation, or circumstance,
18 shall be held invalid, the remainder of this section, and the applica-
19 tion of such section to individuals, companies, corporations, or circum-
20 stances other than those to which it is held invalid, shall not be
21 affected thereby.

22 S 22. Section 9001-a of the banking law, as added by chapter 321 of
23 the laws of 1992, subdivisions (a) and (b) as amended and subdivision
24 (d) as added by chapter 302 of the laws of 2003, is amended to read as
25 follows:

26 S 9001-a. Fingerprints. [(a)] 1. Notwithstanding any other provision
27 of law, every incorporator of a corporation shall, in addition to any
28 other requirements which may be imposed by the superintendent, submit
29 simultaneously with an application, his or her fingerprints in such form
30 and in such manner as specified by the division of criminal justice
31 services, but in any event, no less than two digit imprints. The super-
32 intendent shall submit the fingerprints to the division of criminal
33 justice services for the purpose of conducting a criminal history search
34 and returning a report thereon in accordance with the procedures and
35 requirements established by the division pursuant to the provisions of
36 article thirty-five of the executive law, which shall include the
37 payment of the prescribed processing fees. The superintendent shall
38 request that the division submit such fingerprints to the federal bureau
39 of investigation, together with the processing fees prescribed by such
40 bureau, for the purpose of conducting a criminal history search and
41 returning a report thereon.

42 [(b)] 2. The superintendent [shall] MAY also, concurrent with an
43 investigation of an incorporator of a corporation pertaining to a
44 violation of this chapter, submit such fingerprints to the division of
45 criminal justice services for the purpose of conducting a criminal
46 history search and returning a report thereon and through the division
47 to the federal bureau of investigation for the purpose of a fingerprint
48 check of such incorporator.

49 [(c)] 3. For purposes of this section, ["incorporator"] "APPLICANT"
50 SHALL INCLUDE AN INCORPORATOR AND shall include a natural person or such
51 principal, officer, director, trustee or stockholder of any other entity
52 as may be designated by the superintendent. Notwithstanding any other
53 provision of this article, the superintendent shall not access criminal
54 history data or information, unless any agency from which the super-
55 intendent receives directly criminal history data or information has

1 entered into a use and dissemination agreement with the superintendent
2 consistent with the provisions of this section.

3 [(d)] 4. An applicant shall not be required to submit his or her fing-
4 erprints as required by subdivision [(a)] ONE of this section if such
5 applicant (i) is already subject to regulation by the department and the
6 applicant has submitted such fingerprints to the department, such fing-
7 erprints have been submitted to the division of criminal justice
8 services for the purpose of conducting a criminal history search, and a
9 report of such search has been received by the department from such
10 division WITHIN THE PAST FIVE YEARS; or (ii) is subject to regulation by
11 a federal bank regulatory agency and has submitted such fingerprints to
12 such agency which has had a criminal history search conducted of such
13 individual and has shared such information or its determination result-
14 ing from such search with the department WITHIN THE PAST FIVE YEARS; or
15 (iii) is an officer or stockholder of a corporation whose common or
16 preferred stock is registered on a national securities exchange, as
17 provided in an act of congress of the United States entitled the "Secu-
18 rities Exchange Act of 1934", [approved June sixth, nineteen hundred
19 thirty-four, as amended,] or such other exchange or market system as the
20 superintendent shall approve by regulation, and has submitted such fing-
21 erprints to such exchange or market system which has had a criminal
22 history search conducted of such individual and has shared such informa-
23 tion or its determination resulting from such search with the department
24 WITHIN THE PAST FIVE YEARS; provided, however, that the superintendent
25 may subsequently require such applicant to submit such fingerprints if
26 the superintendent has a reasonable basis for updating the information
27 or determination resulting from the report of the criminal history
28 search conducted at the request of such federal banking agency, exchange
29 or market system.

30 5. WHENEVER AN INCORPORATOR HAS TIMELY FILED HIS OR HER FINGERPRINTS
31 AS REQUIRED BY THIS SECTION, BUT: (I) THE SUPERINTENDENT HAS NOT
32 RECEIVED A REPORT OF THE RESULTS OF A RELATED CRIMINAL HISTORY SEARCH;
33 (II) THE CIRCUMSTANCES WARRANT AN EXPEDITIOUS DETERMINATION; AND (III)
34 THE SUPERINTENDENT DETERMINES, AFTER CONSIDERING ALL AVAILABLE INFORMA-
35 TION, THAT THE REMAINING INCORPORATORS HAVE THE CHARACTER, RESPONSIBIL-
36 ITY AND GENERAL FITNESS SO AS TO WARRANT BELIEF THAT, EVEN IF SUCH
37 PERSON WERE NOT TO SERVE AS AN INCORPORATOR, SUCH BUSINESS WILL BE
38 HONESTLY AND EFFICIENTLY OPERATED, THE SUPERINTENDENT MAY WAIVE THE
39 REQUIREMENT FOR RECEIPT OF SUCH REPORT PRIOR TO APPROVAL, SUBJECT TO
40 THERE BEING AN ADEQUATE NUMBER OF OTHER INCORPORATORS TO SATISFY THE
41 REQUIREMENTS OF THIS CHAPTER AND RECEIPT FROM SUCH INCORPORATOR OF HIS
42 OR HER WRITTEN AGREEMENT TO RESIGN IMMEDIATELY FROM ALL POSITIONS HELD
43 WITH SUCH ENTITY IF SUCH REPORT DEMONSTRATES, IN THE SOLE DISCRETION OF
44 THE SUPERINTENDENT, THAT THE INCORPORATOR LACKS THE NECESSARY CHARACTER,
45 RESPONSIBILITY AND FITNESS.

46 S 23. Section 128 of the banking law, as amended by chapter 24 of the
47 laws of 1958, is amended to read as follows:

48 S 128. Preservation of books and records. Every bank and every trust
49 company shall preserve all its records of final entry[, including cards
50 used under the card system and deposit tickets,] for a period of at
51 least six years from the date of making the same or from the date of the
52 last entry thereon[; provided, however, that preservation of photograph-
53 ic reproductions thereof or records in photographic form shall consti-
54 tute compliance with the requirements of this section] BY ANY MANNER
55 PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER. Notwithstanding the
56 foregoing, the [banking board] SUPERINTENDENT may prescribe by regu-

lation such period of time longer or shorter than six years during which all records kept by banks and trust companies as fiduciary shall be preserved in original form.

S 24. Subdivision 3 of section 175 of the banking law, as amended by chapter 369 of the laws of 1955, is amended to read as follows:

3. Every private banker shall preserve all [his] records of final entry[, including cards used under the card system and deposit tickets,] for a period of at least six years from the date of making the same or from the date of the last entry thereon[; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 25. Section 200-c of the banking law, as added by chapter 496 of the laws of 1993, is amended to read as follows:

S 200-c. Maintenance of books, accounts and records. Every foreign banking corporation licensed pursuant to this chapter to maintain one or more branches, agencies or representative offices in this state shall maintain or make available at any such branch, agency or representative office appropriate books, accounts and records reflecting (i) all transactions effected by or on behalf of the branch, agency or representative office and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of such foreign banking corporation located outside this state. SUCH RECORDS SHALL BE PRESERVED FOR A PERIOD OF AT LEAST SIX YEARS AND SHALL BE PRESERVED BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 26. Section 221-h of the banking law, as added by chapter 493 of the laws of 1979, is amended to read as follows:

S 221-h. Licensee's books and records; reports. A foreign banking corporation licensed pursuant to this article shall [keep] CREATE or cause each of its representatives to [keep] CREATE and use such books, accounts and records as will enable the superintendent to determine whether the representative is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent. Such books, accounts and records shall be preserved for at least three years[; provided however, that preservation by photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

The superintendent may require such regular or special reports as may be deemed necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

S 27. Section 239-a of the banking law, as added by chapter 164 of the laws of 2002, is amended to read as follows:

S 239-a. Preservation of books and records. Every savings bank shall preserve all its records of final entry[, including cards used under the card system and deposit tickets,] for a period of at least six years from the date of making the same or from the date of the last entry thereon[; provided, however, that preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with the requirements of this section] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER. Notwithstanding the foregoing, the [banking board] SUPERINTENDENT may prescribe by regulation such

1 period of time longer or shorter than six years during which all records
2 kept by saving banks as fiduciary shall be preserved in original form.

3 S 28. Section 320 of the banking law, as amended by section 29 of part
4 O of chapter 59 of the laws of 2006, is amended to read as follows:

5 S 320. Books and records. EVERY SAFE DEPOSIT COMPANY SHALL CREATE
6 SUCH BOOKS, ACCOUNTS AND RECORDS AS WILL ENABLE THE SUPERINTENDENT TO
7 DETERMINE WHETHER SUCH COMPANY IS COMPLYING WITH THE PROVISIONS OF THIS
8 ARTICLE AND WITH THE RULES AND REGULATIONS ADOPTED BY THE SUPERINTENDENT
9 APPLICABLE TO SAFE DEPOSIT COMPANIES, AND SHALL PRESERVE SUCH BOOKS,
10 ACCOUNTS AND RECORDS FOR A PERIOD OF AT LEAST TWO YEARS FROM THE DATE OF
11 CREATING THE SAME OR SUCH OTHER PERIOD AS MAY BE ESTABLISHED BY THE
12 SUPERINTENDENT, INCLUDING PRESERVATION IN ANY MANNER PERMITTED BY
13 SECTION THIRTY-SIX-B OF THIS CHAPTER. Every safe deposit company shall
14 conform its methods of keeping its books and records to such orders in
15 respect thereto as shall have been made and promulgated by the super-
16 intendent pursuant to the provisions of article two of this chapter. Any
17 safe deposit company that refuses or neglects to obey such order shall
18 be subject to a penalty of an amount as determined pursuant to section
19 forty-four of this chapter for each day it so refuses or neglects.

20 S 29. The opening paragraph of section 349 of the banking law, as
21 amended by chapter 499 of the laws of 1995, is amended to read as
22 follows:

23 The licensee shall [keep] CREATE and use in its business such books,
24 accounts, and records as will enable the superintendent to determine
25 whether such licensee is complying with the provisions of this article
26 and with the rules and regulations lawfully made by the superintendent
27 hereunder. Every licensee shall preserve such books, accounts, and
28 records[, including cards used in the card system, if any,] for at least
29 two years after making the final entry on any loan recorded therein.
30 [Preservation of photographic reproduction thereof or records in photo-
31 graphic form, including an optical disk storage system and the use of
32 electronic data processing equipment that provides comparable records to
33 those otherwise required and which are available for examination upon
34 request shall constitute compliance with the requirements of this
35 section] SUCH RECORDS SHALL BE PRESERVED BY ANY MANNER PERMITTED BY
36 SECTION THIRTY-SIX-B OF THIS CHAPTER.

37 S 30. Subdivision 5 of section 372 of the banking law, as amended by
38 chapter 151 of the laws of 1945 and as renumbered by chapter 263 of the
39 laws of 1983, is amended to read as follows:

40 5. Each licensee shall [keep] CREATE and use in its business such
41 books, accounts, and records as [the superintendent may require to carry
42 into effect] WILL ENABLE THE SUPERINTENDENT TO DETERMINE WHETHER SUCH
43 LICENSEE IS COMPLYING WITH the provisions of this article and the rules
44 and regulations made by the superintendent hereunder. Every licensee
45 shall preserve such books, accounts and records for at least two years
46 BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

47 S 31. Section 378-d of the banking law, as added by chapter 164 of the
48 laws of 2002, is amended to read as follows:

49 S 378-d. Preservation of books and records. Every savings and loan
50 association shall preserve all its records of final entry[, including
51 cards used under the card system and deposit tickets,] for a period of
52 at least six years from the date of making the same or from the date of
53 the last entry thereon[; provided, however, that preservation of photo-
54 graphic reproductions thereof or records in photographic form shall
55 constitute compliance with the requirements of this section] BY ANY
56 MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER. Notwithstand-

ing the foregoing, the [banking board] SUPERINTENDENT may prescribe by regulation such period of time longer or shorter than six years during which all records kept by savings and loan associations as fiduciary shall be preserved in original form.

S 32. Subdivision 2 of section 485 of the banking law, as added by chapter 608 of the laws of 1996, is amended to read as follows:

2. Every credit union shall preserve all of its records of [original and] final entry[, including cancelled checks, withdrawal slips and deposit tickets,] for a period of at least six years from the date of making same or from the date of the last entry thereon[; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 33. The banking law is amended by adding a new section 498-c to read as follows:

S 498-C. BOOKS AND RECORDS. EVERY LICENSEE SHALL CREATE SUCH BOOKS, ACCOUNTS AND RECORDS AS WILL ENABLE THE SUPERINTENDENT TO DETERMINE WHETHER SUCH LICENSEE IS COMPLYING WITH THE PROVISIONS OF THIS ARTICLE AND WITH THE RULES AND REGULATIONS ADOPTED BY THE SUPERINTENDENT APPLICABLE TO LICENSEES, AND SHALL PRESERVE SUCH BOOKS, ACCOUNTS AND RECORDS FOR A PERIOD OF AT LEAST TWO YEARS FROM THE DATE OF CREATING THE SAME OR SUCH OTHER PERIOD AS MAY BE ESTABLISHED BY THE SUPERINTENDENT, INCLUDING PRESERVATION IN ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 34. Section 515 of the banking law, as amended by chapter 369 of the laws of 1955, is amended to read as follows:

S 515. Preservation of records of investment company. Every investment company shall preserve all its records of final entry[, including cards used under the card system and deposit tickets,] for a period of at least six years from the date of making the same or from the date of the last entry thereon[; provided, however, that preservation of photographic reproduction thereof or records in photographic form shall constitute compliance with the requirements of this section] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 35. Subdivision 1 of section 565 of the banking law, as added by chapter 488 of the laws of 1960, is amended to read as follows:

1. The licensee shall [keep] CREATE and use in his OR HER business such books, accounts and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts and records[, including cards used in a card system, if any,] for at least six years after making the final entry in respect to any premium finance agreement recorded therein[; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement] BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

S 36. Subdivision 1 of section 586 of the banking law, as added by chapter 448 of the laws of 1975, is amended to read as follows:

1. The licensee shall [keep] CREATE and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records, for at least three years[; provided, however, that preser-

1 vation by photographic reproduction thereof or records in photographic
2 form shall constitute compliance with the requirements of this section]
3 BY ANY MANNER PERMITTED BY SECTION THIRTY-SIX-B OF THIS CHAPTER.

4 S 37. The opening paragraph of section 597 of the banking law, as
5 separately amended by chapters 315 and 472 of the laws of 2008, is
6 amended to read as follows:

7 Each licensee, servicer, registrant and exempt organization shall
8 [keep] CREATE and use in its business such books, accounts and records
9 as will enable the superintendent to determine whether such licensee,
10 servicer, registrant or exempt organization is complying with the
11 provisions of this article and with the rules and regulations lawfully
12 made by the superintendent [and the banking board]. Every licensee,
13 servicer, registrant and exempt organization shall preserve such books,
14 accounts, and records, for at least [three] SIX years[; provided, howev-
15 er, that preservation by photographic reproduction thereof or records in
16 photographic form, including an optical disk storage system and the use
17 of electronic data processing equipment that provides comparable records
18 to those otherwise required] BY ANY MANNER PERMITTED BY SECTION THIRTY-
19 SIX-B OF THIS CHAPTER and which are available for examination upon
20 request shall constitute compliance with the requirements of this
21 section.

22 S 38. Section 651-b of the banking law, as added by chapter 374 of the
23 laws of 1979, is amended to read as follows:

24 S 651-b. Maintenance of books and records by MONEY TRANSMITTERS AND
25 agents. Each licensee shall MAKE AND KEEP, AND SHALL require of each of
26 its agents to make and keep, IN ANY MANNER PERMITTED BY SECTION THIRTY-
27 SIX-B OF THIS CHAPTER, such accounts, correspondence, memoranda, papers,
28 books and other records as the superintendent by regulation or order
29 requires. All records so required shall be preserved for the time speci-
30 fied by the regulation or order of the superintendent.

31 S 39. This act shall take effect immediately; provided that section
32 twenty-one of this act shall only apply to loans made after the effec-
33 tive date of this act; provided further that sections twenty-eight and
34 thirty-three of this act shall take effect on the sixtieth day after
35 this act shall have become a law.