

3841

2011-2012 Regular Sessions

I N S E N A T E

March 7, 2011

Introduced by Sens. FARLEY, GRIFFO, KLEIN -- 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 enacting the "short-term financial services loan act"

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

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

3 S 2. Subdivision 2 of section 17 of the banking law, as amended by
4 section 2 of part 0 of chapter 59 of the laws of 2006, is amended to
5 read as follows:

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

17 ALL EXPENSES OF THE DEPARTMENT FOR THE OPERATION OF THE BORROWER DATA-
18 BASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF
19 THIS CHAPTER SHALL BE CHARGED AND ALLOCATED AMONG ALL LICENSED CASHERS
20 OF CHECKS WHICH ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANS-
21 ACTIONS.

22 The superintendent shall require that partial payments of the charges
23 for expenses of each fiscal year commencing on or after April first,
24 nineteen hundred eighty-three shall be paid on March tenth of the
25 preceding fiscal year and on June tenth, September tenth and December

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

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1 tenth of the fiscal year, or on such other dates as the superintendent
2 may prescribe. Each such payment shall be equal to twenty-five per
3 centum of the charges, or such other per centum or per centums as the
4 superintendent may prescribe, for the fiscal year as estimated by the
5 superintendent. The balance of the expenses shall be charged and paid
6 upon the determination of the actual amount due. An overpayment of
7 charges resulting from the requirements of this subdivision shall be
8 refunded or at the option of the assessed shall be applied as a credit
9 against the charges for the succeeding fiscal year. As an alternative,
10 if the estimated annual charge for the fiscal year is equal to or less
11 than the annual minimum assessment set by the superintendent, the super-
12 intendent may require full payment to be made on or before September
13 thirtieth or such other date of the fiscal year as the superintendent
14 may determine.

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

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

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

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

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

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

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

42 S 4. Paragraph (b) of subdivision 5 of section 18-a of the banking
43 law, as added by section 1 of part D-1 of chapter 109 of the laws of
44 2006, is amended to read as follows:

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

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

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

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

5 1. [No] EXCEPT AS OTHERWISE AUTHORIZED BY THE PROVISIONS OF THIS ARTI-
6 CLE, NO licensee shall engage in the business of making loans of money,
7 credit, goods or things or discounting of notes, bills of exchange,
8 checks, or other evidences of debt pursuant to the provisions of article
9 nine of this chapter, nor shall a loan business or the negotiation of
10 loans or the discounting of notes, bills of exchange, checks or other
11 evidences of debt be conducted on the same premises where the licensee
12 is conducting business pursuant to the provisions of this article,
13 UNLESS SUCH ACTIVITY IS SPECIFICALLY AUTHORIZED BY THE PROVISIONS OF
14 THIS ARTICLE. Except as otherwise provided by regulation of the super-
15 intendent, all checks, drafts and money orders shall be deposited in the
16 licensee's bank account not later than the first business day following
17 the day on which they were cashed. No licensee shall at any time cash or
18 advance any moneys on a post-dated check or draft or engage in the busi-
19 ness of transmitting money or receiving money for transmission;
20 provided, however, that a licensee may cash a check payable on the first
21 banking business day following the date of cashing (a) if such check is
22 drawn by the United States, the state of New York, or any political
23 subdivision of the state of New York, or by any department, bureau,
24 agency, authority, instrumentality or officer, acting in his official
25 capacity, of the United States or of the state of New York or of any
26 political subdivision of the state of New York, or (b) if such check is
27 a payroll check drawn by an employer to the order of its employee in
28 payment for services performed by such employee. No licensee shall cash
29 any check, draft or money order if the face amount for which it is drawn
30 is in excess of fifteen thousand dollars; provided, however, that this
31 restriction shall not apply to the cashing of checks, drafts or money
32 orders drawn by the United States, any state thereof or any political
33 subdivision of any such state, or by any department, bureau, agency,
34 authority, instrumentality or officer, acting in his official capacity,
35 of the United States, any state thereof or any political subdivision of
36 any such state, or any banking institution, or to any check or draft
37 drawn by any insurance company, any broker or dealer registered with the
38 securities and exchange commission, or any attorney for the settlement
39 of claims, or to any check which has been certified by the banking
40 institution on which it has been drawn; provided further, however, that
41 any such restriction upon the maximum face amount that may be cashed by
42 a licensee shall not apply to the cashing of checks, drafts or money
43 orders by licensees for payees of such checks, drafts or money orders
44 that are other than natural persons. For purposes of this subdivision,
45 "banking institution" means any bank, trust company, savings bank,
46 savings and loan association or credit union which is incorporated,
47 chartered or organized under the laws of this state or any other state
48 or the United States.

49 S 7. The banking law is amended by adding eight new sections 373-a,
50 373-b, 373-c, 373-d, 373-e, 373-f, 373-g and 373-h to read as follows:

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

1 S 373-B. TERMS OF SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. 1.
2 NO LICENSEE SHALL ENGAGE IN THE BUSINESS OF OFFERING SHORT-TERM FINAN-
3 CIAL SERVICES LOANS IN AMOUNTS OF LESS THAN THREE HUNDRED DOLLARS NOR
4 MORE THAN TWO THOUSAND DOLLARS, OR MORE THAN TWENTY-FIVE PERCENT OF THE
5 BORROWER'S GROSS MONTHLY INCOME, WHICHEVER SHALL BE LESS. A LICENSED
6 CASHIER OF CHECKS SHALL NOT CONTRACT FOR, EXACT OR RECEIVE, DIRECTLY OR
7 INDIRECTLY, ON OR IN CONNECTION WITH ANY LOAN, ANY CHARGES WHETHER FOR
8 INTEREST, COMPENSATION, CONSIDERATION, EXPENSE OR ANY OTHER PURPOSE,
9 WHICH IN THE AGGREGATE ARE GREATER THAN AUTHORIZED IN THIS ARTICLE.

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

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

30 4. SHORT-TERM FINANCIAL SERVICES LOANS, WHETHER IN SCHEDULED INSTALL-
31 MENTS OR IN WHOLE, MAY BE REPAYED BY THE BORROWER IN CASH, ELECTRONIC
32 FUNDS TRANSFER FROM THE BORROWER'S BANK ACCOUNT OR ANY OTHER REASONABLE
33 PAYMENT MECHANISM. IF AN ELECTRONIC FUNDS TRANSFER OR OTHER REASONABLE
34 PAYMENT MECHANISM IS ELECTED AS THE METHOD FOR REPAYING A SHORT-TERM
35 FINANCIAL SERVICES LOAN, THE BORROWER MAY MAKE ANY SCHEDULED PAYMENT TO
36 THE LICENSEE AT ANY TIME, IN WHOLE OR IN PART, OF ANY PAYMENT INSTALL-
37 MENT. EVERY LICENSEE SHALL PROVIDE A BORROWER WITH A DATED RECEIPT
38 SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN AFTER EACH
39 PAYMENT.

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

44 (A) THE NAME AND ADDRESS OF THE BORROWER;

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

48 (C) THE DATE OF THE AGREEMENT;

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

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

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

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

5 (I) CREDIT COUNSELING AVAILABILITY. YOU, THE BORROWER, SHOULD CONSIDER
6 CONTACTING AN INDEPENDENT, NOT-FOR-PROFIT CREDIT COUNSELING AGENCY
7 APPROVED BY THE SUPERINTENDENT OF BANKS.

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

12 THE SUPERINTENDENT MAY, BY RULE AND REGULATION, PROMULGATE THE CONTACT
13 INFORMATION AND OTHER DISCLOSURES TO BE PROVIDED IN THE NOTICES REQUIRED
14 UNDER THIS PARAGRAPH.

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

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

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

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

37 S 373-C. FEES AND CHARGES. 1. THE SUPERINTENDENT SHALL BY RULE ESTAB-
38 LISH, AFTER CONDUCTING PUBLIC HEARINGS THEREON, THE MAXIMUM RATE OF
39 INTEREST AND FEES THAT MAY BE IMPOSED UPON SHORT-TERM FINANCIAL SERVICES
40 LOANS, INCLUDING, BUT NOT LIMITED TO, LOAN ORIGINATION, MONTHLY MAINTE-
41 NANCE AND LATE FEES.

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

52 3. IN THE EVENT THERE ARE INSUFFICIENT FUNDS TO HONOR ANY NEGOTIABLE
53 INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELEC-
54 TRONIC PAYMENT MECHANISM PROVIDED TO A LICENSEE FOR A SCHEDULED PAYMENT
55 ON BEHALF OF A BORROWER, SUCH LICENSEE MAY IMPOSE A PROCESSING FEE UPON
56 THE BORROWER PURSUANT TO SECTION 5-328 OF THE GENERAL OBLIGATIONS LAW.

1 ONLY ONE SUCH FEE MAY BE IMPOSED WITH RESPECT TO EACH DISHONORED NEGOTI-
2 ABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE
3 ELECTRONIC PAYMENT MECHANISM.

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

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

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

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

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

16 (E) THE RATE OF RETURN ON INVESTMENT OR SUCH OTHER RISK ADJUSTED PROF-
17 ITABILITY STANDARD AS THE SUPERINTENDENT MAY DETERMINE TO BE NECESSARY
18 TO INDUCE THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS THROUGH-
19 OUT THE STATE.

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

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

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

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

31 S 373-D. BORROWER DATABASE. 1. THE SUPERINTENDENT SHALL ESTABLISH AND
32 MAINTAIN A DATABASE WHICH SHALL BE ACCESSIBLE BY LICENSEES BY TELEPHONE
33 AND THE INTERNET. THE PURPOSE OF SUCH DATABASE SHALL BE TO ENABLE LICEN-
34 SEES TO VERIFY WHETHER ANY PERSON HAS AN OUTSTANDING SHORT-TERM FINAN-
35 CIAL SERVICES LOAN. EACH LICENSEE SHALL SUBMIT TO THE SUPERINTENDENT,
36 PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRAN-
37 ACTION, DATA RELATING TO SUCH TRANSACTION, IN SUCH FORMAT AS THE SUPER-
38 INTENDENT SHALL DETERMINE, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO,
39 THE BORROWER'S NAME, EMPLOYMENT AUTHORIZATION ALIEN NUMBER, ADDRESS,
40 DRIVER'S LICENSE NUMBER, AMOUNT OF LOAN, DATE OF LOAN TRANSACTION, THE
41 SCHEDULE OF INSTALLMENT PAYMENTS AND THE DATE THAT THE TRANSACTION WILL
42 BE CLOSED. EVERY LICENSEE MAY RELY ON THE INFORMATION IN THE BORROWER
43 DATABASE AS ACCURATE AND NOT SUBJECT TO ANY ADMINISTRATIVE PENALTY OR
44 CIVIL LIABILITY AS THE RESULT OF RELYING UPON INACCURATE INFORMATION
45 CONTAINED IN SUCH DATABASE.

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

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

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

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

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

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

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

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

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

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

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

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

45 S 373-F. FINANCIAL EDUCATION FUND. A FINANCIAL EDUCATION FUND IS
46 HEREBY CREATED IN THE STATE TREASURY, WHICH SHALL BE FUNDED BY LICENSED
47 CHECK CASHERS OFFERING FINANCIAL SERVICES LOANS. FUNDING OF THE FINAN-
48 CIAL EDUCATION FUND WILL CONSIST OF LICENSEES CONTRIBUTING TEN CENTS
49 FROM THE UNDERWRITING FEE PRESCRIBED IN SUBDIVISION ONE OF SECTION THREE
50 HUNDRED SEVENTY-THREE-C OF THIS ARTICLE UPON FULL RE-PAYMENT OF A FINAN-
51 CIAL SERVICES LOAN. THE SUPERINTENDENT SHALL COLLECT THE FINANCIAL
52 EDUCATION ASSESSMENT FROM LICENSEES AS PART OF THE ANNUAL ASSESSMENT OF
53 THE INDUSTRY AND SAID FUNDS SHALL BE DEPOSITED BY THE SUPERINTENDENT IN
54 THE STATE TREASURY. BEGINNING WITHIN NINETY DAYS AFTER THE FIRST ANNUAL
55 ASSESSMENT, THE FINANCIAL EDUCATION FUND SHALL BE USED TO SUPPORT VARI-
56 OUS FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED BY THE SUPER-

1 INTENDENT AFTER CONSULTING WITH THE LICENSED CHECK CASHING INDUSTRY. THE
2 FUND SHALL BE ADMINISTERED BY THE SUPERINTENDENT WHO SHALL ADOPT REGU-
3 LATIONS FOR THE DISTRIBUTION OF THE FUNDS. THE SUPERINTENDENT SHALL
4 ADOPT REGULATIONS TO REQUIRE THAT AT LEAST ONE-HALF OF THE FINANCIAL
5 EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED PURSUANT TO THIS SECTION,
6 AND OFFERED TO THE PUBLIC, BE PRESENTED BY OR AVAILABLE AT PUBLIC COMMU-
7 NITY COLLEGES OR STATE INSTITUTIONS THROUGHOUT THE STATE. THE SUPER-
8 INTENDENT SHALL DELIVER TO THE GOVERNOR AN ANNUAL REPORT THAT INCLUDES
9 AN OUTLINE OF EACH FINANCIAL EDUCATION PROGRAM DEVELOPED OR IMPLEMENTED,
10 THE NUMBER OF INDIVIDUALS WHO WERE EDUCATED BY EACH PROGRAM, AND AN
11 ACCOUNTING FOR ALL FUNDS DISTRIBUTED.

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

15 S 373-H. EXAMINATION OF SHORT-TERM FINANCIAL SERVICES TRANSACTIONS.
16 THE SUPERINTENDENT, OR HIS OR HER DESIGNEE, MAY FROM TIME TO TIME INVES-
17 TIGATE THE SHORT-TERM FINANCIAL SERVICES TRANSACTIONS AND BUSINESS, AND
18 EXAMINE THE BOOKS, ACCOUNTS AND RECORDS RELATING THERETO OF EVERY LICEN-
19 SEE.

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