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

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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 the penalties imposed on individuals for violating or causing a violation of laws or regulations by banking entities; and to repeal section 41 of such law relating thereto

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

Section 1. Section 41 of the banking law is REPEALED and a new section 41 is added to read as follows:

S 41. REMOVAL, PROHIBITION AND CIVIL MONETARY PENALTIES FOR CERTAIN VIOLATIONS. 1. GROUNDS FOR ENFORCEMENT ACTION. FOR PURPOSES OF THIS SECTION, GROUNDS FOR COMMENCEMENT OF AN ENFORCEMENT ACTION SHALL EXIST WHERE THE SUPERINTENDENT HAS REASON TO BELIEVE THAT ANY DIRECTOR, TRUSTEE, OFFICER, MEMBER OR PARTNER, OR, IN THE CASE OF A FOREIGN BANKING CORPORATION, THE PERSON IN CHARGE, OR AN OFFICER, OF A BRANCH OR AGENCY (FOR PURPOSES OF THIS SECTION, EACH A "COVERED INDIVIDUAL"), OF ANY BANKING ORGANIZATION, ANY BANK HOLDING COMPANY (AS SUCH TERM IS DEFINED IN ARTICLE THREE-A OF THIS CHAPTER), OR ANY FOREIGN BANKING CORPORATION (FOR PURPOSES OF THIS SECTION, EACH A "COVERED ENTITY");

(A) HAS VIOLATED OR CAUSED OR PERMITTED SUCH COVERED ENTITY TO VIOLATE:

(I) ANY LAW OR ANY REGULATION DULY ENACTED UNDER THIS CHAPTER RELATING TO SUCH COVERED ENTITY,

(II) ANY ORDER ISSUED BY THE SUPERINTENDENT TO SUCH COVERED ENTITY TO CEASE CONDUCTING BUSINESS IN AN UNAUTHORIZED OR UNSAFE AND UNSOUND MANNER, OR

(III) ANY WRITTEN AGREEMENT BETWEEN SUCH COVERED ENTITY AND THE SUPERINTENDENT; OR

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

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(B) HAS CONTINUED TO ENGAGE OR PARTICIPATE IN ANY UNAUTHORIZED OR UNSAFE PRACTICE IN CONDUCTING THE BUSINESS OF SUCH COVERED ENTITY AFTER HAVING BEEN ORDERED OR WARNED BY THE SUPERINTENDENT TO DISCONTINUE SUCH PRACTICE.

2. NOTICE OF HEARING. WHERE THE SUPERINTENDENT BELIEVES THERE ARE GROUNDS FOR AN ENFORCEMENT ACTION AGAINST A COVERED INDIVIDUAL, AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION, THE SUPERINTENDENT MAY, IN HIS OR HER DISCRETION, CAUSE TO BE SERVED UPON SUCH COVERED INDIVIDUAL, EITHER PERSONALLY OR, UPON A FINDING THAT SUCH INDIVIDUAL CANNOT BE SERVED PERSONALLY WITHIN THE STATE, BY REGISTERED MAIL AT HIS OR HER ADDRESS LAST KNOWN TO THE SUPERINTENDENT, A STATEMENT OF THE CHARGES AGAINST SUCH COVERED INDIVIDUAL AND NOTICE OF AN OPPORTUNITY TO APPEAR BEFORE THE SUPERINTENDENT TO SHOW CAUSE WHY HE OR SHE SHOULD NOT BE SUBJECT TO ONE OR MORE OF THE FOLLOWING PENALTIES (INDIVIDUALLY AND JOINTLY REFERRED TO IN THIS SECTION AS AN "AVAILABLE PENALTY"):

(A) REMOVAL FROM OFFICE, EMPLOYMENT OR THE PERFORMANCE OF ANY FURTHER CONTRACTUAL SERVICES WITH THE COVERED ENTITY;

(B) PROHIBITION FROM PARTICIPATION, IN ANY MANNER, IN THE CONDUCT OF THE AFFAIRS OF ANY COVERED ENTITY; OR

(C) FORFEITURE AND PAYMENT FOR EACH DAY SUCH VIOLATION OR VIOLATIONS HAVE CONTINUED OF A CIVIL MONETARY PENALTY DETERMINED IN ACCORDANCE WITH SUBDIVISION SIX OF THIS SECTION.

3. HEARING. SUCH NOTICE OF OPPORTUNITY FOR A HEARING SHALL FIX A TIME AND PLACE AT WHICH THE HEARING MAY BE HELD. ANY SUCH HEARING SHALL BE NOTICED, CONDUCTED AND ADMINISTERED BEFORE AN INDEPENDENT HEARING OFFICER IN COMPLIANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT AND THE RULES AND PROCEDURES OF THE DEPARTMENT. IF SUCH COVERED INDIVIDUAL SHALL WAIVE A HEARING OR SHALL FAIL TO APPEAR IN PERSON OR BY A DULY AUTHORIZED REPRESENTATIVE WITHOUT GOOD CAUSE SHOWN, SUCH INDIVIDUAL SHALL BE DEEMED TO HAVE CONSENTED TO THE ISSUANCE OF AN ORDER IMPOSING ONE OR MORE OF THE AVAILABLE PENALTIES.

4. SUSPENSION PENDING DETERMINATION OF CHARGES. UPON OR AT ANY TIME AFTER SERVICE OF WRITTEN NOTICE PURSUANT TO SUBDIVISION TWO OF THIS SECTION TO ANY COVERED INDIVIDUAL, THE SUPERINTENDENT MAY SUSPEND SUCH INDIVIDUAL FROM OFFICE OR PROHIBIT SUCH INDIVIDUAL FROM PARTICIPATING IN ANY MANNER IN THE CONDUCT OF THE AFFAIRS OF ANY COVERED ENTITY. ANY SUSPENSION ORDER SO ISSUED SHALL BECOME EFFECTIVE UPON SERVICE AND, UNLESS AMENDED OR RESCINDED BY THE SUPERINTENDENT, SHALL REMAIN IN EFFECT AND ENFORCEABLE UNTIL LIFTED BY THE SUPERINTENDENT OR REPLACED BY AN ORDER ISSUED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

5. DETERMINATION BY SUPERINTENDENT. FOLLOWING RECEIPT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM THE INDEPENDENT HEARING OFFICER CONDUCTING A HEARING HELD IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION, OR A WAIVER OF, OR FAILURE WITHOUT GOOD CAUSE TO APPEAR AT, SUCH HEARING, THE SUPERINTENDENT SHALL DETERMINE WHETHER TO DISMISS ONE OR MORE OF THE CHARGES OR TO ISSUE AN ORDER IMPOSING ONE OR MORE OF THE AVAILABLE PENALTIES.

6. CIVIL MONETARY PENALTY. THE SUPERINTENDENT MAY, PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, REQUIRE ANY COVERED INDIVIDUAL TO PAY TO THE PEOPLE OF THIS STATE A PENALTY DETERMINED AS FOLLOWS:

(A) FIRST TIER. IF THE COVERED INDIVIDUAL COMMITS ANY VIOLATION DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, A CIVIL PENALTY OF NOT MORE THAN $5,000 FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES.

(B) SECOND TIER. IF THE COVERED INDIVIDUAL COMMITS ANY VIOLATION DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, AND SUCH

VIOLATION (I) IS PART OF A PATTERN OF MISCONDUCT, (II) CAUSES OR IS LIKELY TO CAUSE MORE THAN A MINIMAL LOSS TO HIS OR HER COVERED ENTITY; OR (III) RESULTS, DIRECTLY OR INDIRECTLY, IN PECUNIARY GAIN OR OTHER BENEFIT TO SUCH COVERED INDIVIDUAL, A CIVIL PENALTY OF NOT MORE THAN $25,000 FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES.

(C) THIRD TIER. IF THE COVERED INDIVIDUAL KNOWINGLY OR RECKLESSLY COMMITS ANY VIOLATION DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, AND SUCH VIOLATION CAUSES OR IS LIKELY TO CAUSE A SIGNIFICANT LOSS TO HIS OR HER COVERED ENTITY OR RESULTS, DIRECTLY OR INDIRECTLY, IN A SUBSTANTIAL PECUNIARY GAIN OR OTHER BENEFIT TO SUCH COVERED INDIVIDUAL, A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED $1,000,000 FOR EACH DAY DURING WHICH SUCH VIOLATION, PRACTICE, OR BREACH CONTINUES.

7. EFFECT OF ORDER FOR REMOVAL, PROHIBITION OR MONETARY PENALTIES. SERVICE OF A COPY OF AN ORDER OF REMOVAL OR PROHIBITION OR ORDER IMPOSING MONETARY PENALTIES UPON A COVERED INDIVIDUAL SHALL BE MADE EITHER PERSONALLY OR BY REGISTERED MAIL AT THE ADDRESS OF SUCH PERSON LAST KNOWN TO THE SUPERINTENDENT, AND, IN THE CASE OF AN ORDER OF REMOVAL OR PROHIBITION, UPON THE COVERED ENTITY OF WHICH HE OR SHE IS A DIRECTOR, TRUSTEE, OFFICER, MEMBER OR PARTNER OR, IN THE CASE OF A PERSON IN CHARGE OR AN OFFICER OF A BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION, UPON SUCH FOREIGN BANKING CORPORATION. UPON SUCH SERVICE, IN THE CASE OF AN ORDER OF REMOVAL OR PROHIBITION, SUCH COVERED INDIVIDUAL SHALL CEASE TO BE A DIRECTOR, TRUSTEE, OFFICER, MEMBER OR PARTNER OF THE RELEVANT BANKING ENTITY OR THE PERSON IN CHARGE OF, OR OFFICER OF, A BRANCH OR AGENCY OF A FOREIGN BANKING CORPORATION, AND, IN THE CASE OF AN ORDER IMPOSING MONETARY PENALTIES, SUCH INDIVIDUAL SHALL CAUSE TO BE PAID ANY AMOUNTS OWED TO THE DEPARTMENT UNDER SUCH ORDER WITHIN SIXTY DAYS OF THE DATE OF SUCH SERVICE. ANY COVERED INDIVIDUAL SO REMOVED FROM OFFICE, EMPLOYMENT, OR SUCH CONTRACTUAL ARRANGEMENT WITH A COVERED ENTITY WHO THEREAFTER WITHOUT PERMISSION OF THE SUPERINTENDENT PARTICIPATES IN ANY MANNER IN THE MANAGEMENT OF, EMPLOYMENT IN OR ANY CONTRACTUAL ARRANGEMENT WITH SUCH ENTITY SHALL BE GUILTY OF A MISDEMEANOR.

8. MANNER OF REVIEW. THE SUPERINTENDENT SHALL FILE ONE COPY OF ANY ORDER ISSUED UNDER THIS SECTION IN THE OFFICE OF THE DEPARTMENT. SUCH ORDER MAY BE REVIEWED IN THE MANNER PROVIDED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. SUCH SPECIAL PROCEEDING FOR REVIEW MUST BE COMMENCED WITHIN THIRTY DAYS FROM THE DATE OF SUCH ORDER.

S 2. This act shall take effect immediately.