

4350

2013-2014 Regular Sessions

I N S E N A T E

March 21, 2013

Introduced by Sen. FARLEY -- 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 making certain technical corrections thereto

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

1 Section 1. Section 6-i of the banking law, as added by chapter 571 of
2 the laws of 1986 and as further amended by section 104 of part A of
3 chapter 62 of the laws of 2011, is amended to read as follows:

4 S 6-i. Mortgage loans. No person, partnership, corporation, banking
5 organization, exempt organization as defined in section five hundred
6 ninety of this chapter or other entity shall make a mortgage loan as
7 defined in section five hundred ninety of this chapter except in
8 conformity with the requirements of article twelve-D and in compliance
9 with such rules and regulations as may be promulgated by the superinten-
10 dent of financial services [or prescribed by the superintendent] under
11 this section. Nothing in this section shall be construed to limit or
12 otherwise modify any otherwise applicable requirement of state or feder-
13 al law.

14 S 2. Subdivision 3 of section 7 of the banking law, as added by chap-
15 ter 184 of the laws of 1978 and as further amended by section 104 of
16 part A of chapter 62 of the laws of 2011, is amended to read as follows:

17 3. The superintendent of financial services may promulgate such regu-
18 lations as [it] HE OR SHE deems necessary and proper to implement and
19 define the provisions of this section.

20 S 3. Subdivision 3 of section 9-f of the banking law, as amended by
21 chapter 571 of the laws of 1986 and as further amended by section 104 of
22 part A of chapter 62 of the laws of 2011, is amended to read as follows:

23 3. For the purposes of this section, the term (a) "prudent loan" means
24 a loan upon the security of real property which is prudent by acceptable
25 banking standards and is in compliance with all of the provisions of

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

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1 this chapter[,] AND RULES AND regulations of the superintendent of
2 financial services [and rules of the superintendent]; and (b) notwith-
3 standing any other provision of this chapter or law to the contrary, the
4 term banking institution when used in this section shall mean and
5 include all banks, trust companies, savings banks, savings and loan
6 associations, credit unions, mortgage bankers, exempt organizations as
7 defined in article twelve-D of this chapter and foreign banking corpo-
8 rations whether incorporated, chartered, organized or licensed under the
9 laws of this state or any other state or the United States.

10 S 4. Subdivision 2 of section 14-c of the banking law, as added by
11 chapter 19 of the laws of 1978 and as further amended by section 104 of
12 part A of chapter 62 of the laws of 2011, is amended to read as follows:

13 2. The superintendent of financial services may alter or amend rules
14 and regulations or promulgate additional rules and regulations as [it]
15 HE OR SHE deems necessary and proper to effectuate the provisions of
16 subdivision one.

17 S 5. Subdivisions 1, 2 and 3 of section 24 of the banking law, subdi-
18 vision 1 as amended by chapter 453 of the laws of 1960, subdivision 2 as
19 amended by chapter 419 of the laws of 1996, subdivision 3 as amended by
20 chapter 52 of the laws of 1944 and subdivisions 1, 2 and 3 as further
21 amended by section 104 of part A of chapter 62 of the laws of 2011, are
22 amended to read as follows:

23 1. Within ninety days after the date when any organization certificate
24 or private banker's certificate shall have been filed for examination,
25 the superintendent, if he OR SHE shall find after investigation and
26 examination of what [he] THE SUPERINTENDENT deems to be the best sources
27 of information at his OR HER command that the character, responsibility
28 and general fitness of the person or persons named in such certificate
29 are such as to command confidence and warrant belief that the business
30 of the proposed corporation or private banker will be honestly and effi-
31 ciently conducted in accordance with the intent and purpose of this
32 chapter, and that the public convenience and advantage will be promoted
33 by allowing such proposed corporation or private banker to engage in
34 business, shall [submit] APPROVE such certificate [to the superintendent
35 of financial services together with all papers, correspondence and other
36 information in his possession relating thereto, including the results of
37 his investigation and his recommendation in the matter] AND ENDORSE UPON
38 EACH OF THE DUPLICATES THE DATE OF SUCH APPROVAL. Such period of ninety
39 days may be extended, by a written consent executed by a majority of the
40 persons from whom the superintendent received such organization certif-
41 icate or private banker's certificate, for such additional reasonable
42 period of time as may be required for applicants to comply with condi-
43 tions precedent stipulated by the superintendent as being a prerequisite
44 to his [recommendation to the superintendent of financial services] OR
45 HER DETERMINATION.

46 2. If [three-fifths of the members of the board, after consideration
47 of all relevant information available to them, shall vote for approval,
48 the superintendent, if he is still satisfied, upon the considerations
49 set forth in subdivision one of this section, that such proposed corpo-
50 ration or private banker should be permitted to engage in business,
51 shall approve such certificate and endorse upon each of the duplicates
52 the date of such approval. He] APPROVED, THE SUPERINTENDENT shall forth-
53 with cause notice of such approval to be given to the proposed incorpo-
54 rators or private banker and one of the duplicate certificates to be
55 filed in the office of the department and the other in the office of the
56 clerk of the county in which the principal office of such proposed

1 corporation or private banker is to be located. [In a case in which a
2 private banker certificate is submitted to the superintendent for the
3 purpose of continuing the business in connection with a change in its
4 partnership, the superintendent shall approve the private banker certif-
5 icate without any action by the superintendent of financial services
6 upon making a determination that the private banker should be permitted
7 to continue its business based upon the considerations set forth in
8 subdivision one of this section.]

9 3. If [three-fifths of the members of the superintendent of financial
10 services shall not vote for approval, or if the superintendent, either
11 prior or subsequent to the submission of such certificate to the board,]
12 THE SUPERINTENDENT is not satisfied, upon the considerations set forth
13 in subdivision one of this section, that such proposed corporation or
14 private banker should be permitted to engage in business, the super-
15 intendent shall refuse such certificate and shall endorse thereon the
16 date of such refusal and return one of the duplicates to the proposed
17 incorporators or private banker from whom such certificate was received.

18 S 6. Subparagraph 12 of paragraph (a) of subdivision 3 of section 28-b
19 of the banking law, as amended by chapter 315 of the laws of 2008 and as
20 further amended by section 104 of part A of chapter 62 of the laws of
21 2011, is amended to read as follows:

22 (12) Other factors that, in the judgment of the [superintendent and]
23 superintendent of financial services, reasonably bear upon the extent to
24 which a banking institution is helping to meet the credit needs of its
25 entire community, including, without limitation, the banking insti-
26 tution's participation in credit counseling services.

27 S 7. Subdivision 5 of section 28-b of the banking law, as added by
28 section 361 of the laws of 1984 and as further amended by section 104 of
29 part A of chapter 62 of the laws of 2011, is amended to read as follows:

30 5. The superintendent of financial services is hereby authorized and
31 empowered[, by a three-fifths vote of all its members,] to promulgate
32 rules and regulations effectuating the provisions of this section,
33 including any rules and regulations providing that the assessment of
34 banking institutions referred to in subdivision three of this section
35 shall be made on a graduated numerical basis.

36 S 8. Subdivision 10 of section 100-c of the banking law, as added by
37 chapter 239 of the laws of 1986 and as further amended by section 104 of
38 part A of chapter 62 of the laws of 2011, is amended to read as follows:

39 10. The superintendent of financial services shall promulgate such
40 regulations and rules as [it] HE OR SHE considers appropriate to govern
41 the administration of common trust funds and short term investment
42 common trust funds.

43 S 9. Paragraph (c) of subdivision 1 of section 103 of the banking law,
44 as amended by chapter 1 of the laws of 1983 and as further amended by
45 section 104 of part A of chapter 62 of the laws of 2011, is amended to
46 read as follows:

47 (c) Loans (exclusive of any loan described in paragraph (a) of this
48 subdivision) to any state other than the state of New York, or to any
49 foreign nation, the New York State thruway authority, the Triborough
50 bridge and tunnel authority, The Port of New York Authority, a railroad
51 corporation, a municipal corporation of this state, a corporation
52 subject to the jurisdiction of a public service commission of this
53 state, or any international lending facility or public benefit corpo-
54 ration designated by the superintendent of financial services by general
55 or specific regulation [upon a three-fifths vote of all its members,]

1 may equal but not exceed twenty-five per centum of the capital stock,
2 surplus fund and undivided profits of such bank or trust company.

3 S 10. Subdivision 4 of section 103 of the banking law, as amended by
4 chapter 313 of the laws of 2001, and as further amended by section 104
5 of part A of chapter 62 of the laws of 2011, is amended to read as
6 follows:

7 4. Make a loan upon the security of real estate within or without this
8 state which does not comply with any such rules or regulations as the
9 superintendent of financial services may prescribe.

10 No loan shall be made under the provisions of this subdivision except
11 upon the written and signed certificate of an appraiser appointed pursu-
12 ant to policies established by the board of directors, certifying to the
13 value of the premises according to his judgment.

14 The provisions of this subdivision shall not constitute the authority
15 to make a loan to a natural person upon the security of a mortgage which
16 is not a first lien.

17 Where the collateral for any loan consists partly of real estate secu-
18 rity and partly of other security, including a guarantee or endorsement
19 by or an obligation or commitment of a person other than the borrower,
20 only the amount by which the loan exceeds the value as collateral of
21 such other security, as found in good faith by a duly authorized officer
22 of such bank or trust company, at the time of the making of the loan or
23 commitment therefor, shall be considered a loan upon the security of
24 real estate, provided, that in no event shall a loan be considered a
25 loan upon the security of real estate (i) where the principal amount of
26 any real estate security taken therefor is less than fifteen per centum
27 of the amount of such loan or (ii) where the loan is payable in monthly
28 or quarterly installments over a period not to exceed one hundred twen-
29 ty-one months and does not exceed twenty thousand dollars and is for the
30 purpose of paying the cost of any repairs, alterations or improvements
31 upon, or in connection with, or, as the superintendent may authorize,
32 the equipping of existing structures or the building of new structures
33 by the owners thereof or by the lessees under a lease expiring not less
34 than six months after the maturity of the loan or (iii) where the loan
35 is fully guaranteed or insured by the United States or a state, or any
36 department, agency or instrumentality thereof, and for the payment of
37 which loan the full faith and credit of the United States or of such
38 state is pledged and if under the terms of the guaranty or insurance
39 agreement the bank or trust company will be assured of repayment in
40 accordance with the terms of the loan or (iv) where there is a binding
41 and valid commitment or agreement by a financially responsible lender,
42 purchaser or other financially responsible party either directly with
43 the lending bank or trust company or which is for the benefit of, or has
44 been assigned to, the lending bank or trust company and pursuant to
45 which commitment, agreement or assignment, the lender, purchaser or
46 other party is required to advance to the lending bank or trust company
47 within thirty months from the date of such commitment or agreement the
48 full amount of the loan to be made by the lending bank or trust company
49 upon the security of real estate improved by a building or buildings, or
50 to be improved by a building or buildings in the process of
51 construction, the major portion of which building is used, or in the
52 case of a building under construction is to be used, for residential,
53 business, manufacturing or agricultural purposes, and where pursuant to
54 the terms and provisions of such commitment or agreement such advance
55 shall be made prior to or upon the maturity of the loan by the lending
56 bank or trust company.

1 Real estate security for purposes of this section shall not include
2 (a) an assignment of rents under a lease, (b) a mortgage or other lien
3 upon a leasehold, (c) a mortgage or other lien upon leasehold, royalty
4 or other rights in oil, gas, minerals, standing timber, or other
5 products of land, (d) a mortgage or other lien made or given upon real
6 estate and taken as collateral security for loans to a borrower,
7 provided, that at the time of the making of the loan or commitment
8 therefor, repayment thereof is reasonably expected to be made out of the
9 operations of such borrower or of the mortgagor, or (e) such mortgages
10 or other liens on property as may be specifically exempted from the
11 limitations and restrictions of this subdivision by the superintendent
12 of financial services by general or specific regulations [adopted by a
13 three-fifths vote of all its members]. Nothing in this paragraph shall
14 be construed to imply that security of a kind not mentioned herein is to
15 be deemed real estate security.

16 The limitations and restrictions contained in this subdivision shall
17 not prevent the acceptance of any real estate security to secure the
18 payment of a debt previously contracted in good faith. Every mortgage
19 and every assignment of a mortgage taken or held by such bank or trust
20 company shall immediately be recorded or registered in its name in the
21 office of the clerk or the proper recording officer of the county in
22 which the real estate described in the mortgage is located, except that
23 where the underlying real estate is located outside the state of New
24 York such mortgage or assignment may be recorded or registered in the
25 name of a duly authorized nominee, and except that if such mortgage or
26 assignment of mortgage or of an interest therein shall be taken from a
27 corporation organized under the banking law or all of the capital stock
28 of which is owned by not less than twenty savings banks of this state,
29 the bank or trust company may hold such mortgage or assignment unre-
30 corded unless the superintendent shall direct the bank or trust company
31 to record the same. The recording or registering of assignments of mort-
32 gages shall not be required when not less than ten mortgages are
33 assigned as security for a loan, the term of which does not exceed
34 twelve months.

35 Any bank or trust company may renew from time to time any loan upon
36 the security of real estate lawfully made by it prior to June thirtieth,
37 nineteen hundred thirty-seven.

38 None of the prohibitions and restrictions contained in this subdivi-
39 sion shall apply to any corporation all of the capital stock of which is
40 owned by not less than twenty savings banks of this state.

41 S 11. Paragraph (d) of subdivision 8 of section 108 of the banking
42 law, as added by chapter 344 of the laws of 1974, such subdivision as
43 renumbered by chapter 512 of the laws of 1977, and as further amended by
44 section 104 of part A of chapter 62 of the laws of 2011, is amended to
45 read as follows:

46 (d) The superintendent of financial services may promulgate such regu-
47 lations as [it] HE OR SHE deems necessary and proper to implement and
48 define the provisions of this subdivision. The superintendent of finan-
49 cial services may prescribe maximum charges from time to time, but not
50 more often than once in any six month period, and shall provide reason-
51 able notice to the public of any change in such maximum charges, of the
52 effective date of such change, which shall not be less than seven days
53 following the adoption of such change by the superintendent of financial
54 services, and of any rule or regulation adopted pursuant to this subdi-
55 vision.

1 S 12. Section 111 of the banking law, as amended by chapter 360 of
2 the laws of 1984 and as further amended by section 104 of part A of
3 chapter 62 of the laws of 2011, is amended to read as follows:

4 S 111. Profits; credits to surplus fund and to undivided profits. In
5 any case where the combined capital stock, surplus fund and undivided
6 profits of a bank or trust company do not equal ten per centum of its
7 net deposit liabilities, the superintendent of financial services may in
8 [its] HIS OR HER discretion require such bank or trust company at the
9 close of each accounting period to credit its surplus fund with a
10 portion of its net profits for such period, not to exceed ten per centum
11 thereof, until its combined capital stock, surplus fund and undivided
12 profits equal ten per centum of its net deposit liabilities. For the
13 purposes of this section, the term "net deposit liabilities" shall mean
14 total deposits including all amounts due to national banks, banks, bank-
15 ers, trust companies and savings banks, the amounts due on certified and
16 cashier's checks, and for unpaid dividends less the amounts of balances
17 due from national banks, banks, bankers, and trust companies and cash
18 items in process of collection payable immediately upon presentation in
19 the United States.

20 S 13. Paragraph (b) of subdivision 3 of section 130 of the banking
21 law, as amended by chapter 217 of the laws of 2010 and as further
22 amended by section 104 of part A of chapter 62 of the laws of 2011, is
23 amended to read as follows:

24 (b) The superintendent of financial services shall have the power to
25 determine by regulation who shall be considered, under the provisions of
26 this subdivision, to be an executive officer, and by a general or
27 specific regulation[, upon a three-fifths vote of all its members,] to
28 grant permission to an executive officer of a bank or trust company to
29 be an executive officer, director or trustee or both an executive offi-
30 cer and director or a trustee of another bank or trust company, savings
31 bank, or savings and loan association, national bank, federal savings
32 bank or federal savings association, the principal office of which is
33 located in this state, bank holding company, or foreign banking corpo-
34 ration maintaining a branch in this state. Such permission may be grant-
35 ed only if in the judgment of the superintendent of financial services
36 such service by the executive officer will be consistent with the policy
37 of the state of New York as declared in section ten of this chapter. The
38 superintendent of financial services shall have the power to revoke such
39 permission [by a like vote] whenever [it] HE OR SHE finds, after reason-
40 able notice and an opportunity to be heard, that the public interest
41 requires such revocation.

42 S 14. Subdivision 4 of section 234-b of the banking law, as added by
43 chapter 883 of the laws of 1980 and as further amended by section 104 of
44 part A of chapter 62 of the laws of 2011, is amended to read as follows:

45 4. The superintendent of financial services is authorized to promul-
46 gate such regulations as [it] HE OR SHE may deem necessary or proper to
47 implement the provisions of this section and the proper exercise of the
48 powers granted by this section.

49 S 15. Section 380-h of the banking law, as added by chapter 883 of
50 the laws of 1980, subdivisions 1 and 4 as further amended by section 104
51 of part A of chapter 62 of the laws of 2011, is amended to read as
52 follows:

53 S 380-h. Trust powers. 1. The superintendent of financial services is
54 authorized and empowered to grant permission to a savings and loan asso-
55 ciation to exercise any or all of the powers specified in sections one
56 hundred, one hundred-a, one hundred-b and one hundred-c of this chapter.

1 In passing upon applications for permission to exercise any such powers,
2 the superintendent of financial services may take into consideration the
3 amount of surplus of the applying association, whether or not such
4 surplus is sufficient under the circumstances of the case, the needs of
5 the community to be served and any other facts and circumstances that
6 seem [to it] proper, and may grant or refuse it permission accordingly.

7 2. Whenever the laws of this state require a trust company acting in a
8 fiduciary capacity to deposit securities with the state authorities for
9 the protection of private or court trusts, a savings and loan associ-
10 ation, so acting, is empowered to make similar deposits of securities.

11 4. The superintendent of financial services is authorized to promul-
12 gate such regulations as [it] HE OR SHE may deem necessary or proper to
13 implement the provisions of this section and the proper exercise of the
14 powers granted by this section.

15 S 16. Section 455 of the banking law, as added by chapter 608 of the
16 laws of 1996 and subdivisions 1 and 3 as further amended by section 104
17 of part A of chapter 62 of the laws of 2011, is amended to read as
18 follows:

19 S 455. Trust powers. 1. The superintendent of financial services is
20 authorized and empowered to grant permission to a credit union to exer-
21 cise any or all of the powers specified in sections one hundred, one
22 hundred-a, one hundred-b and one hundred-c of this chapter. In passing
23 upon applications for permission to exercise any such powers, the super-
24 intendent of financial services may take into consideration the amount
25 of net worth of the applying credit union, whether or not such net worth
26 is sufficient under the circumstances of the case, the needs of the
27 community to be served and any other facts and circumstances that seem
28 [to it] proper, and may grant or refuse it permission accordingly.

29 2. Whenever the laws of this state require a trust company acting in a
30 fiduciary capacity to deposit securities with the state authorities for
31 the protection of private or court trusts, a credit union, so acting, is
32 required and empowered to make similar deposits of securities.

33 3. The superintendent of financial services is authorized to promul-
34 gate such regulations as [it] HE OR SHE may deem necessary or proper to
35 implement the provisions of this section and the proper exercise of the
36 powers granted by this section.

37 S 17. Paragraph (a) of subdivision 1 of section 595 of the banking
38 law, as amended by chapter 571 of the laws of 1986 and as further
39 amended by section 104 of part A of chapter 62 of the laws of 2011, is
40 amended to read as follows:

41 (a) Through a course of conduct, the licensee or registrant has
42 violated any provisions of this article, or any rule or regulation
43 promulgated by the superintendent of financial services[, or any rule or
44 regulation prescribed by the superintendent] under and within the
45 authority of this article or of any other law, rule or regulation of
46 this state or the federal government;

47 S 18. Subdivision 7 of section 600 of the banking law, as amended by
48 chapter 315 of the laws of 2008 and as further amended by section 104 of
49 part A of chapter 62 of the laws of 2011, is amended to read as follows:

50 (7) One or more subsidiaries or affiliates of a bank, trust company,
51 savings bank or savings and loan association, which are not a bank,
52 trust company, savings bank or savings and loan association, as those
53 terms are defined in section two of this chapter, with the bank, trust
54 company, savings bank or savings and loan association of which it is a
55 subsidiary or affiliate, as the superintendent of financial services
56 shall approve and enter on its records; provided, however, that nothing

1 in this subdivision shall be deemed to authorize a bank, trust company,
2 savings bank or savings and loan association to exercise any power or
3 engage in any activity that it may not exercise or engage in pursuant to
4 this chapter. The superintendent of financial services may promulgate
5 such regulations as [it] HE OR SHE deems necessary and proper to imple-
6 ment and define the provisions of this subdivision. Nothing in this
7 subdivision shall alter, affect or impair any regulation or resolution
8 adopted, or that may be adopted, by the superintendent of financial
9 services, pursuant to section twelve-a or former sections fourteen-g or
10 fourteen-h of this chapter.
11 S 19. This act shall take effect immediately.