

4350--A

2013-2014 Regular Sessions

I N   S E N A T E

March 21, 2013

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Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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1 3. For the purposes of this section, the term (a) "prudent loan" means  
2 a loan upon the security of real property which is prudent by acceptable  
3 banking standards and is in compliance with all of the provisions of  
4 this chapter[,] AND RULES AND regulations of the superintendent of  
5 financial services [and rules of the superintendent]; and (b) notwith-  
6 standing any other provision of this chapter or law to the contrary, the  
7 term banking institution when used in this section shall mean and  
8 include all banks, trust companies, savings banks, savings and loan  
9 associations, credit unions, mortgage bankers, exempt organizations as  
10 defined in article twelve-D of this chapter and foreign banking corpo-  
11 rations whether incorporated, chartered, organized or licensed under the  
12 laws of this state or any other state or the United States.

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

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

20 S 5. Subdivision 10 of section 100-c of the banking law, as added by  
21 chapter 239 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 10. The superintendent of financial services shall promulgate such  
24 regulations and rules as [it] HE OR SHE considers appropriate to govern  
25 the administration of common trust funds and short term investment  
26 common trust funds.

27 S 6. Subdivision 4 of section 103 of the banking law, as amended by  
28 chapter 313 of the laws of 2001, the opening paragraph and the fifth  
29 undesignated paragraph as further amended by section 104 of part A of  
30 chapter 62 of the laws of 2011, is amended to read as follows:

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

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

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

41 Where the collateral for any loan consists partly of real estate secu-  
42 rity and partly of other security, including a guarantee or endorsement  
43 by or an obligation or commitment of a person other than the borrower,  
44 only the amount by which the loan exceeds the value as collateral of  
45 such other security, as found in good faith by a duly authorized officer  
46 of such bank or trust company, at the time of the making of the loan or  
47 commitment therefor, shall be considered a loan upon the security of  
48 real estate, provided, that in no event shall a loan be considered a  
49 loan upon the security of real estate (i) where the principal amount of  
50 any real estate security taken therefor is less than fifteen per centum  
51 of the amount of such loan or (ii) where the loan is payable in monthly  
52 or quarterly installments over a period not to exceed one hundred twen-  
53 ty-one months and does not exceed twenty thousand dollars and is for the  
54 purpose of paying the cost of any repairs, alterations or improvements  
55 upon, or in connection with, or, as the superintendent may authorize,  
56 the equipping of existing structures or the building of new structures

1 by the owners thereof or by the lessees under a lease expiring not less  
2 than six months after the maturity of the loan or (iii) where the loan  
3 is fully guaranteed or insured by the United States or a state, or any  
4 department, agency or instrumentality thereof, and for the payment of  
5 which loan the full faith and credit of the United States or of such  
6 state is pledged and if under the terms of the guaranty or insurance  
7 agreement the bank or trust company will be assured of repayment in  
8 accordance with the terms of the loan or (iv) where there is a binding  
9 and valid commitment or agreement by a financially responsible lender,  
10 purchaser or other financially responsible party either directly with  
11 the lending bank or trust company or which is for the benefit of, or has  
12 been assigned to, the lending bank or trust company and pursuant to  
13 which commitment, agreement or assignment, the lender, purchaser or  
14 other party is required to advance to the lending bank or trust company  
15 within thirty months from the date of such commitment or agreement the  
16 full amount of the loan to be made by the lending bank or trust company  
17 upon the security of real estate improved by a building or buildings, or  
18 to be improved by a building or buildings in the process of  
19 construction, the major portion of which building is used, or in the  
20 case of a building under construction is to be used, for residential,  
21 business, manufacturing or agricultural purposes, and where pursuant to  
22 the terms and provisions of such commitment or agreement such advance  
23 shall be made prior to or upon the maturity of the loan by the lending  
24 bank or trust company.

25 Real estate security for purposes of this section shall not include  
26 (a) an assignment of rents under a lease, (b) a mortgage or other lien  
27 upon a leasehold, (c) a mortgage or other lien upon leasehold, royalty  
28 or other rights in oil, gas, minerals, standing timber, or other  
29 products of land, (d) a mortgage or other lien made or given upon real  
30 estate and taken as collateral security for loans to a borrower,  
31 provided, that at the time of the making of the loan or commitment  
32 therefor, repayment thereof is reasonably expected to be made out of the  
33 operations of such borrower or of the mortgagor, or (e) such mortgages  
34 or other liens on property as may be specifically exempted from the  
35 limitations and restrictions of this subdivision by the superintendent  
36 of financial services by general or specific regulations [adopted by a  
37 three-fifths vote of all its members]. Nothing in this paragraph shall  
38 be construed to imply that security of a kind not mentioned herein is to  
39 be deemed real estate security.

40 The limitations and restrictions contained in this subdivision shall  
41 not prevent the acceptance of any real estate security to secure the  
42 payment of a debt previously contracted in good faith. Every mortgage  
43 and every assignment of a mortgage taken or held by such bank or trust  
44 company shall immediately be recorded or registered in its name in the  
45 office of the clerk or the proper recording officer of the county in  
46 which the real estate described in the mortgage is located, except that  
47 where the underlying real estate is located outside the state of New  
48 York such mortgage or assignment may be recorded or registered in the  
49 name of a duly authorized nominee, and except that if such mortgage or  
50 assignment of mortgage or of an interest therein shall be taken from a  
51 corporation organized under the banking law or all of the capital stock  
52 of which is owned by not less than twenty savings banks of this state,  
53 the bank or trust company may hold such mortgage or assignment unre-  
54 corded unless the superintendent shall direct the bank or trust company  
55 to record the same. The recording or registering of assignments of mort-  
56 gages shall not be required when not less than ten mortgages are

1 assigned as security for a loan, the term of which does not exceed  
2 twelve months.

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

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

9 S 7. Paragraph (d) of subdivision 8 of section 108 of the banking law,  
10 as added by chapter 344 of the laws of 1974, such subdivision as renum-  
11 bered by chapter 512 of the laws of 1977, and as further amended by  
12 section 104 of part A of chapter 62 of the laws of 2011, is amended to  
13 read as follows:

14 (d) The superintendent of financial services may promulgate such regu-  
15 lations as [it] HE OR SHE deems necessary and proper to implement and  
16 define the provisions of this subdivision. The superintendent of finan-  
17 cial services may prescribe maximum charges from time to time, but not  
18 more often than once in any six month period, and shall provide reason-  
19 able notice to the public of any change in such maximum charges, of the  
20 effective date of such change, which shall not be less than seven days  
21 following the adoption of such change by the superintendent of financial  
22 services, and of any rule or regulation adopted pursuant to this subdivi-  
23 sion.

24 S 8. Section 111 of the banking law, as amended by chapter 360 of the  
25 laws of 1984 and as further amended by section 104 of part A of chapter  
26 62 of the laws of 2011, is amended to read as follows:

27 S 111. Profits; credits to surplus fund and to undivided profits. In  
28 any case where the combined capital stock, surplus fund and undivided  
29 profits of a bank or trust company do not equal ten per centum of its  
30 net deposit liabilities, the superintendent of financial services may in  
31 [its] HIS OR HER discretion require such bank or trust company at the  
32 close of each accounting period to credit its surplus fund with a  
33 portion of its net profits for such period, not to exceed ten per centum  
34 thereof, until its combined capital stock, surplus fund and undivided  
35 profits equal ten per centum of its net deposit liabilities. For the  
36 purposes of this section, the term "net deposit liabilities" shall mean  
37 total deposits including all amounts due to national banks, banks, bank-  
38 ers, trust companies and savings banks, the amounts due on certified and  
39 cashier's checks, and for unpaid dividends less the amounts of balances  
40 due from national banks, banks, bankers, and trust companies and cash  
41 items in process of collection payable immediately upon presentation in  
42 the United States.

43 S 9. Paragraph (b) of subdivision 3 of section 130 of the banking  
44 law, as amended by chapter 217 of the laws of 2010 and as further  
45 amended by section 104 of part A of chapter 62 of the laws of 2011, is  
46 amended to read as follows:

47 (b) The superintendent of financial services shall have the power to  
48 determine by regulation who shall be considered, under the provisions of  
49 this subdivision, to be an executive officer, and by a general or  
50 specific regulation[, upon a three-fifths vote of all its members,] to  
51 grant permission to an executive officer of a bank or trust company to  
52 be an executive officer, director or trustee or both an executive offi-  
53 cer and director or a trustee of another bank or trust company, savings  
54 bank, or savings and loan association, national bank, federal savings  
55 bank or federal savings association, the principal office of which is  
56 located in this state, bank holding company, or foreign banking corpo-

ration maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent of financial services such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent of financial services shall have the power to revoke such permission [by a like vote] whenever [it] HE OR SHE finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

S 10. Subdivision 4 of section 234-b of the banking law, as added by chapter 883 of the laws of 1980 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

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

S 11. Section 380-h of the banking law, as added by chapter 883 of the laws of 1980, subdivisions 1 and 4 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 380-h. Trust powers. 1. The superintendent of financial services is authorized and empowered to grant permission to a savings and loan association to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of surplus of the applying association, whether or not such surplus is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem [to it] proper, and may grant or refuse it permission accordingly.

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

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

S 12. Section 455 of the banking law, as added by chapter 608 of the laws of 1996, subdivisions 1 and 3 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

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

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

3. The superintendent of financial services is authorized to promulgate such regulations as [it] HE OR SHE may deem necessary or proper to

1 implement the provisions of this section and the proper exercise of the  
2 powers granted by this section.

3 S 13. Paragraph (a) of subdivision 1 of section 595 of the banking  
4 law, as amended by chapter 571 of the laws of 1986 and as further  
5 amended by section 104 of part A of chapter 62 of the laws of 2011, is  
6 amended to read as follows:

7 (a) Through a course of conduct, the licensee or registrant has  
8 violated any provisions of this article, or any rule or regulation  
9 promulgated by the superintendent of financial services[, or any rule or  
10 regulation prescribed by the superintendent] under and within the  
11 authority of this article or of any other law, rule or regulation of  
12 this state or the federal government;

13 S 14. Subdivision 7 of section 600 of the banking law, as amended by  
14 chapter 315 of the laws of 2008 and as further amended by section 104 of  
15 part A of chapter 62 of the laws of 2011, is amended to read as follows:

16 (7) One or more subsidiaries or affiliates of a bank, trust company,  
17 savings bank or savings and loan association, which are not a bank,  
18 trust company, savings bank or savings and loan association, as those  
19 terms are defined in section two of this chapter, with the bank, trust  
20 company, savings bank or savings and loan association of which it is a  
21 subsidiary or affiliate, as the superintendent of financial services  
22 shall approve and enter on its records; provided, however, that nothing  
23 in this subdivision shall be deemed to authorize a bank, trust company,  
24 savings bank or savings and loan association to exercise any power or  
25 engage in any activity that it may not exercise or engage in pursuant to  
26 this chapter. The superintendent of financial services may promulgate  
27 such regulations as [it] HE OR SHE deems necessary and proper to imple-  
28 ment and define the provisions of this subdivision. Nothing in this  
29 subdivision shall alter, affect or impair any regulation or resolution  
30 adopted, or that may be adopted, by the superintendent of financial  
31 services, pursuant to section twelve-a or former sections fourteen-g or  
32 fourteen-h of this chapter.

33 S 15. This act shall take effect immediately.