

3999

2013-2014 Regular Sessions

I N S E N A T E

March 4, 2013

Introduced by Sens. FARLEY, DILAN, 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 4 of section 18-a of the banking law, as amended by
4 chapter 155 of the laws of 2012, is amended to read as follows:
5 4. The fee which shall be imposed for any application for an initial
6 license, registration, incorporation or for the formation of any other
7 entity pursuant to this chapter, or for a merger, acquisition, purchase
8 or sale of assets, change of control, or for any other application
9 requiring the approval of the superintendent that may necessitate, as
10 determined by the superintendent, a determination regarding the charac-
11 ter or fitness and/or the safety and soundness of such applicant or a
12 similar investigative undertaking by the department, shall be:
13 (a) twelve thousand five hundred dollars when such application relates
14 to a banking organization, bank holding company or, except as provided
15 in paragraph (b) of this subdivision, a foreign banking corporation;
16 (b) seven thousand five hundred dollars when such application relates
17 to licensing a branch, agency or representative office of a foreign
18 banking corporation;
19 (c) one thousand five hundred dollars when the application relates to
20 a mortgage broker; [or]
21 (d) *THREE THOUSAND FIVE HUNDRED DOLLARS WHEN THE APPLICATION RELATES*
22 *TO LICENSING A CASHIER OF CHECKS WHEN THE APPLICANT INTENDS TO ENGAGE IN*
23 *SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. FIVE HUNDRED DOLLARS OF*
24 *SUCH FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR THE*

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

LBD04943-04-3

PURPOSE OF OPERATING THE BORROWER DATABASE ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS CHAPTER; OR

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

S 3. Paragraph (b) of subdivision 5 of section 18-a of the banking law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

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

S 4. The third undesignated paragraph of section 340 of the banking law, as added by chapter 22 of the laws of 1990, is amended to read as follows:

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

S 5. Subdivision 1 of section 373 of the banking law, as amended by chapter 432 of the laws of 2004, is amended to read as follows:

1. [No] EXCEPT AS OTHERWISE AUTHORIZED BY THE PROVISIONS OF THIS ARTICLE, NO licensee shall engage in the business of making loans of money, credit, goods or things or discounting of notes, bills of exchange, checks, or other evidences of debt pursuant to the provisions of article nine of this chapter, nor shall a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks or other evidences of debt be conducted on the same premises where the licensee is conducting business pursuant to the provisions of this article, UNLESS SUCH ACTIVITY IS SPECIFICALLY AUTHORIZED BY THE PROVISIONS OF THIS ARTICLE. Except as otherwise provided by regulation of the superintendent, all checks, drafts and money orders shall be deposited in the licensee's bank account not later than the first business day following the day on which they were cashed. No licensee shall at any time cash or advance any moneys on a post-dated check or draft or engage in the business of transmitting money or receiving money for transmission; provided, however, that a licensee may cash a check payable on the first banking business day following the date of cashing (a) if such check is drawn by the United States, the state of New York, or any political subdivision of the state of New York, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States or of the state of New York or of any political subdivision of the state of New York, or (b) if such check is a payroll check drawn by an employer to the order of its employee in payment for services performed by such employee. No licensee shall cash any check, draft or money order if the face amount for which it is drawn is in excess of fifteen thousand dollars; provided, however, that this restriction shall not apply to the cashing of checks, drafts or money orders drawn by the United States, any state thereof or any political subdivision of any such state, or by any department, bureau, agency, authority, instrumentality or officer, acting in his official capacity, of the United States, any state thereof or any political subdivision of any such state, or any banking institution, or to any check or draft drawn by any insurance company, any broker or dealer registered with the securities and exchange commission, or any attorney for the settlement of claims, or to any check which has been certified by the banking

1 institution on which it has been drawn; provided further, however, that
2 any such restriction upon the maximum face amount that may be cashed by
3 a licensee shall not apply to the cashing of checks, drafts or money
4 orders by licensees for payees of such checks, drafts or money orders
5 that are other than natural persons. For purposes of this subdivision,
6 "banking institution" means any bank, trust company, savings bank,
7 savings and loan association or credit union which is incorporated,
8 chartered or organized under the laws of this state or any other state
9 or the United States.

10 S 6. The banking law is amended by adding eight new sections 373-a,
11 373-b, 373-c, 373-d, 373-e, 373-f, 373-g and 373-h to read as follows:

12 S 373-A. SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. NOTWITH-
13 STANDING ANY PROVISION OF SECTION THREE HUNDRED SEVENTY-THREE OF THIS
14 ARTICLE TO THE CONTRARY, A LICENSEE MAY ENGAGE IN SHORT-TERM FINANCIAL
15 SERVICES LOAN TRANSACTIONS AT THE LICENSEE'S PLACE OF BUSINESS, PROVIDED
16 THAT SUCH TRANSACTIONS ARE CONDUCTED PURSUANT TO THE PROVISIONS OF THIS
17 ARTICLE.

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

27 2. THE TERM OF A SHORT-TERM FINANCIAL SERVICES LOAN SHALL BE NOT LESS
28 THAN NINETY DAYS NOR MORE THAN ONE HUNDRED EIGHTY DAYS. A LICENSEE WHICH
29 MAKES A SHORT-TERM FINANCIAL SERVICES LOAN SHALL OFFER THE BORROWER THE
30 OPPORTUNITY TO PAY THE PRINCIPAL, FEES AND INTEREST AUTHORIZED BY THIS
31 ARTICLE IN SUBSTANTIALLY EQUAL INSTALLMENTS OVER THE TERM OF THE LOAN
32 WITH THE EXCEPTION OF THE FIRST PAYMENT. SUCH INSTALLMENTS SHALL BE DUE
33 NOT MORE THAN TWO DAYS AFTER THE DATE ON WHICH THE BORROWER RECEIVES A
34 REGULARLY SCHEDULED INCOME PAYMENT; PROVIDED, HOWEVER, THAT THERE SHALL
35 BE AT LEAST A THIRTEEN DAY PERIOD BETWEEN EACH INSTALLMENT. FURTHER-
36 MORE, THE FIRST INSTALLMENT SHALL NOT BE DUE BEFORE THE BORROWER'S NEXT
37 PAY DATE THAT IS AT LEAST THIRTEEN DAYS AFTER THE SHORT-TERM FINANCIAL
38 SERVICES LOAN TRANSACTION IS CONSUMMATED. EVERY SHORT-TERM FINANCIAL
39 SERVICES LOAN SHALL HAVE NOT LESS THAN TWO SCHEDULED INSTALLMENTS. NO
40 SCHEDULED INSTALLMENT PAYMENT SHALL EXCEED TEN PERCENT OF THE BORROWER'S
41 GROSS MONTHLY INCOME.

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

47 4. SHORT-TERM FINANCIAL SERVICES LOANS, WHETHER IN SCHEDULED INSTALL-
48 MENTS OR IN WHOLE, MAY BE REPAYED BY THE BORROWER IN CASH, ELECTRONIC
49 FUNDS TRANSFER FROM THE BORROWER'S BANK ACCOUNT OR ANY OTHER REASONABLE
50 PAYMENT MECHANISM. IF AN ELECTRONIC FUNDS TRANSFER OR OTHER REASONABLE
51 PAYMENT MECHANISM IS ELECTED AS THE METHOD FOR REPAYING A SHORT-TERM
52 FINANCIAL SERVICES LOAN, THE BORROWER MAY MAKE ANY SCHEDULED PAYMENT TO
53 THE LICENSEE AT ANY TIME, IN WHOLE OR IN PART, OF ANY PAYMENT INSTALL-
54 MENT. EVERY LICENSEE SHALL PROVIDE A BORROWER WITH A DATED RECEIPT
55 SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN AFTER EACH
56 PAYMENT.

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

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

6 (B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LICENSEE, AND THE
7 NAME AND TITLE OF THE AGENT OF THE LICENSEE WHO SIGNS THE AGREEMENT ON
8 BEHALF OF THE LICENSEE;

9 (C) THE DATE OF THE AGREEMENT;

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

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

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

18 (G) NOTICE THAT THE BORROWER MAY NOT TAKE OUT MORE THAN ONE SHORT-TERM
19 FINANCIAL SERVICES LOAN AT A TIME; AND

20 (H) THE FOLLOWING STATEMENT IN AT LEAST FOURTEEN POINT BOLD FACE TYPE:

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

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

28 THE SUPERINTENDENT MAY, BY RULE AND REGULATION, PROMULGATE THE CONTACT
29 INFORMATION AND OTHER DISCLOSURES TO BE PROVIDED IN THE NOTICES REQUIRED
30 UNDER THIS PARAGRAPH.

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

34 7. A BORROWER MAY RESCIND A SHORT-TERM FINANCIAL SERVICES LOAN TRANS-
35 ACTION FOR ANY REASON, NOT LATER THAN THE CLOSE OF BUSINESS ON THE BUSI-
36 NESS DAY NEXT SUCCEEDING THE DAY ON WHICH SUCH TRANSACTION WAS ENTERED
37 INTO, BY INFORMING THE LICENSEE IN WRITING THAT SUCH BORROWER WANTS TO
38 RESCIND THE TRANSACTION AND DELIVERING THE FULL AMOUNT OF THE PROCEEDS
39 OF SUCH TRANSACTION TO THE LICENSEE. UPON THE DELIVERY OF THE PROCEEDS
40 OF A LOAN TO THE BORROWER PURSUANT TO THIS SUBDIVISION, ALL FEES AND
41 CHARGES IMPOSED BY THE LICENSEE UPON THE BORROWER SHALL BE REFUNDED. THE
42 LICENSEE SHALL PROVIDE THE BORROWER WITH A RECEIPT AS PROOF THAT THE
43 TRANSACTION HAS BEEN RESCINDED.

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

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

53 S 373-C. FEES AND CHARGES. 1. THE SUPERINTENDENT SHALL BY RULE ESTAB-
54 LISH, AFTER CONDUCTING PUBLIC HEARINGS THEREON, A CAP UPON THE MAXIMUM
55 RATE OF INTEREST AND FEES THAT MAY BE IMPOSED UPON SHORT-TERM FINANCIAL

SERVICES LOANS, INCLUDING, BUT NOT LIMITED TO, LOAN ORIGINATION, MONTHLY MAINTENANCE AND LATE FEES.

2. THE SUPERINTENDENT MAY ANNUALLY AMEND THE MAXIMUM RATES AND FEES ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION. IF THE SUPERINTENDENT RECEIVES A PETITION FOR AN AMENDMENT FROM NOT LESS THAN TWENTY-FIVE PERCENT OF THE LICENSEES IN THE STATE OR FROM AN ASSOCIATION REPRESENTING NOT LESS THAN TWENTY-FIVE PERCENT OF THE LICENSEES IN THE STATE, THE SUPERINTENDENT SHALL MAKE A DETERMINATION THEREON WITHIN ONE HUNDRED TWENTY DAYS. THE PETITION MAY BE ACCEPTED OR DENIED, OR THE SUPERINTENDENT MAY OTHERWISE MODIFY THE MAXIMUM RATES AND FEES, AFTER CONDUCTING PUBLIC HEARINGS THEREON.

3. IN THE EVENT THERE ARE INSUFFICIENT FUNDS TO HONOR ANY NEGOTIABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELECTRONIC PAYMENT MECHANISM PROVIDED TO A LICENSEE FOR A SCHEDULED PAYMENT ON BEHALF OF A BORROWER, SUCH LICENSEE MAY IMPOSE A PROCESSING FEE UPON THE BORROWER PURSUANT TO SECTION 5-328 OF THE GENERAL OBLIGATIONS LAW. ONLY ONE SUCH FEE MAY BE IMPOSED WITH RESPECT TO EACH DISHONORED NEGOTIABLE INSTRUMENT, ELECTRONIC FUNDS TRANSFER DEBIT OR OTHER REASONABLE ELECTRONIC PAYMENT MECHANISM.

4. IN THE ESTABLISHMENT OF THE MAXIMUM RATE OF INTEREST AND FEES PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE SUPERINTENDENT SHALL CONSIDER THE COSTS INCURRED IN MAKING THESE SMALL LOANS AVAILABLE TO CONSUMERS, INCLUDING, AMONG OTHER THINGS:

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

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

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

(D) THE RATE OF RETURN ON INVESTMENT OR SUCH OTHER RISK ADJUSTED PROFITABILITY STANDARD AS THE SUPERINTENDENT MAY DETERMINE TO BE NECESSARY TO INDUCE THE PROVISION OF SHORT-TERM FINANCIAL SERVICES LOANS.

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

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

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

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

S 373-D. BORROWER DATABASE. 1. THE SUPERINTENDENT SHALL ESTABLISH AND MAINTAIN A DATABASE WHICH SHALL BE ACCESSIBLE BY LICENSEES BY TELEPHONE AND THE INTERNET. THE PURPOSE OF SUCH DATABASE SHALL BE TO ENABLE LICENSEES TO VERIFY WHETHER ANY PERSON HAS AN OUTSTANDING SHORT-TERM FINANCIAL SERVICES LOAN. EACH LICENSEE SHALL SUBMIT TO THE SUPERINTENDENT, PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION, DATA RELATING TO SUCH TRANSACTION, IN SUCH FORMAT AS THE SUPERINTENDENT SHALL DETERMINE, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE BORROWER'S NAME, EMPLOYMENT AUTHORIZATION ALIEN NUMBER, ADDRESS, DRIVER'S LICENSE NUMBER, AMOUNT OF LOAN, DATE OF LOAN TRANSACTION, THE SCHEDULE OF INSTALLMENT PAYMENTS AND THE DATE THAT THE TRANSACTION WILL BE CLOSED. EVERY LICENSEE MAY RELY ON THE INFORMATION IN THE BORROWER DATABASE AS ACCURATE AND NOT BE SUBJECT TO ANY ADMINISTRATIVE PENALTY OR

1 CIVIL LIABILITY AS THE RESULT OF RELYING UPON INACCURATE INFORMATION
2 CONTAINED IN SUCH DATABASE.

3 2. PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRAN-
4 SACTION, A LICENSEE SHALL QUERY THE BORROWER DATABASE AND SHALL RETAIN
5 EVIDENCE OF SUCH QUERY FOR REVIEW BY THE SUPERINTENDENT FOR A PERIOD OF
6 FIVE YEARS. SUCH DATABASE SHALL ONLY AUTHORIZE A LICENSEE TO ENTER INTO
7 A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IF THE TRANSACTION IS
8 AUTHORIZED PURSUANT TO THIS ARTICLE. DURING ANY PERIOD OF TIME THAT THE
9 INFORMATION ON THE BORROWER DATABASE IS UNAVAILABLE FOR ANY REASON, A
10 LICENSEE MAY RELY ON THE APPLICANT'S WRITTEN REPRESENTATIONS TO VERIFY
11 THAT ENTERING INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH
12 THE APPLICANT IS PERMISSIBLE.

13 3. THE SUPERINTENDENT AND DEPARTMENT SHALL MAINTAIN THE BORROWER DATA-
14 BASE AND TAKE ALL ACTIONS NECESSARY TO PROTECT THE CONFIDENTIALITY AND
15 SECURITY OF THE INFORMATION AND DATA CONTAINED THEREIN. SUCH DATABASE
16 MAY BE UTILIZED BY THE DEPARTMENT FOR THE PURPOSE OF ENFORCING THE
17 PROVISIONS OF THIS ARTICLE. INFORMATION AND DATA IN THE BORROWERS DATA-
18 BASE SHALL NOT BE DISTRIBUTED TO ANY PERSON OR ENTITY FOR PROFIT NOR
19 SOLD TO ANY PARTY OR ENTITY.

20 4. UPON A LICENSEE'S QUERY OF THE BORROWERS DATABASE, SUCH DATABASE
21 SHALL INDICATE WHETHER AN APPLICANT FOR A SHORT-TERM FINANCIAL SERVICES
22 LOAN IS ELIGIBLE FOR SUCH A LOAN AND, IF THE APPLICANT IS INELIGIBLE,
23 THE REASON FOR SUCH INELIGIBILITY. THE BORROWER DATABASE SHALL BE
24 DEEMED CONFIDENTIAL AND NOT SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF
25 THE PUBLIC OFFICERS LAW.

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

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

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

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

38 5. A SHORT-TERM FINANCIAL SERVICES LOAN AGREEMENT SHALL ONLY BE
39 ENFORCEABLE, WITH REGARD TO A DEFAULT BY THE BORROWER, TO THE EXTENT
40 THAT THE BORROWER FAILS TO MAKE A SCHEDULED PAYMENT PURSUANT TO SUCH
41 AGREEMENT.

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

44 7. NO LICENSEE SHALL REQUIRE THE BORROWER TO AGREE TO OR EXECUTE ANY
45 CONFESSION OF JUDGMENT OR POWER OF ATTORNEY IN FAVOR OF ANY LICENSEE OR
46 IN FAVOR OF ANY OTHER PERSON, AND SUCH CONFESSION SHALL BE VOID AND
47 UNENFORCEABLE.

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

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

55 S 373-F. FINANCIAL EDUCATION FUND. A FINANCIAL EDUCATION FUND IS
56 HEREBY CREATED IN THE STATE TREASURY, WHICH SHALL BE FUNDED BY LICENSED

1 CHECK CASHERS OFFERING FINANCIAL SERVICES LOANS. FUNDING OF THE FINAN-
2 CIAL EDUCATION FUND WILL CONSIST OF LICENSEES CONTRIBUTING TEN CENTS
3 FROM THE UNDERWRITING FEE PRESCRIBED IN SUBDIVISION ONE OF SECTION THREE
4 HUNDRED SEVENTY-THREE-C OF THIS ARTICLE UPON FULL RE-PAYMENT OF A FINAN-
5 CIAL SERVICES LOAN. THE SUPERINTENDENT SHALL COLLECT THE FINANCIAL
6 EDUCATION ASSESSMENT FROM LICENSEES AS PART OF THE ANNUAL ASSESSMENT OF
7 THE INDUSTRY AND SAID FUNDS SHALL BE DEPOSITED BY THE SUPERINTENDENT IN
8 THE STATE TREASURY. BEGINNING WITHIN NINETY DAYS AFTER THE FIRST ANNUAL
9 ASSESSMENT, THE FINANCIAL EDUCATION FUND SHALL BE USED TO SUPPORT VARI-
10 OUS FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED BY THE SUPER-
11 INTENDENT AFTER CONSULTING WITH THE LICENSED CHECK CASHING INDUSTRY. THE
12 FUND SHALL BE ADMINISTERED BY THE SUPERINTENDENT WHO SHALL ADOPT REGU-
13 LATIONS FOR THE DISTRIBUTION OF THE FUNDS. THE SUPERINTENDENT SHALL
14 ADOPT REGULATIONS TO REQUIRE THAT AT LEAST ONE-HALF OF THE FINANCIAL
15 EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED PURSUANT TO THIS SECTION,
16 AND OFFERED TO THE PUBLIC, BE PRESENTED BY OR AVAILABLE AT PUBLIC COMMU-
17 NITY COLLEGES OR STATE INSTITUTIONS THROUGHOUT THE STATE. THE SUPER-
18 INTENDENT SHALL DELIVER TO THE GOVERNOR AN ANNUAL REPORT THAT INCLUDES
19 AN OUTLINE OF EACH FINANCIAL EDUCATION PROGRAM DEVELOPED OR IMPLEMENTED,
20 THE NUMBER OF INDIVIDUALS WHO WERE EDUCATED BY EACH PROGRAM, AND AN
21 ACCOUNTING FOR ALL FUNDS DISTRIBUTED.

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

25 S 373-H. EXAMINATION OF SHORT-TERM FINANCIAL SERVICES TRANSACTIONS.
26 THE SUPERINTENDENT, OR HIS OR HER DESIGNEE, MAY FROM TIME TO TIME INVES-
27 TIGATE THE SHORT-TERM FINANCIAL SERVICES TRANSACTIONS AND BUSINESS, AND
28 EXAMINE THE BOOKS, ACCOUNTS AND RECORDS RELATING THERETO OF EVERY LICEN-
29 SEE.

30 S 7. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law; provided, however, that effective immediate-
32 ly, any rules and regulations necessary to implement the provisions of
33 this act on its effective date shall be added, amended and/or repealed
34 on or before such date.