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

3999--A

2013-2014 Regular Sessions

I N S E N A T E

March 4, 2013

Introduced by Sens. FARLEY, DILAN, GRIFFO, KLEIN, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

S 2. Subdivision 4 of section 18-a of the banking law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

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

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

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

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

(d) THREE THOUSAND FIVE HUNDRED DOLLARS WHEN THE APPLICATION RELATES TO LICENSING A CASHER OF CHECKS WHEN THE APPLICANT INTENDS TO ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. FIVE HUNDRED DOLLARS OF

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

LBD04943-06-3

SUCH FEE SHALL BE RETAINED BY THE DEPARTMENT TO BE USED SOLELY FOR THE PURPOSE OF OPERATING THE LOAN ELIGIBILITY REGISTRY 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 LOAN ELIGIBILITY REGISTRY 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 institution on which it has been drawn; provided further, however, that any such restriction upon the maximum face amount that may be cashed by a licensee shall not apply to the cashing of checks, drafts or money orders by licensees for payees of such checks, drafts or money orders that are other than natural persons. For purposes of this subdivision, "banking institution" means any bank, trust company, savings bank, savings and loan association or credit union which is incorporated, chartered or organized under the laws of this state or any other state or the United States.

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

S 373-A. 1. SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS. NOTWITHSTANDING ANY PROVISION OF SECTION THREE HUNDRED SEVENTY-THREE OF THIS ARTICLE TO THE CONTRARY, A LICENSEE MAY ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS AT THE LICENSEE'S PLACE OF BUSINESS, PROVIDED THAT SUCH TRANSACTIONS ARE CONDUCTED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

2. ANY PERSON NOT LICENSED IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER SHALL BE PROHIBITED FROM ADVERTISING OR MAKING A SHORT-TERM FINANCIAL SERVICES LOAN VIA THE INTERNET.

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

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

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

4. SHORT-TERM FINANCIAL SERVICES LOANS, WHETHER IN SCHEDULED INSTALLMENTS OR IN WHOLE, MAY BE REPAID BY THE BORROWER IN CASH, ELECTRONIC FUNDS TRANSFER FROM THE BORROWER'S BANK ACCOUNT OR ANY OTHER REASONABLE PAYMENT MECHANISM. IF AN ELECTRONIC FUNDS TRANSFER OR OTHER REASONABLE PAYMENT MECHANISM IS ELECTED AS THE METHOD FOR REPAYING A SHORT-TERM FINANCIAL SERVICES LOAN, THE BORROWER MAY MAKE ANY SCHEDULED PAYMENT TO

THE LICENSEE AT ANY TIME, IN WHOLE OR IN PART, OF ANY PAYMENT INSTALLMENT. EVERY LICENSEE SHALL PROVIDE A BORROWER WITH A DATED RECEIPT SHOWING THE AMOUNT PAID AND THE BALANCE DUE ON THE LOAN AFTER EACH PAYMENT.

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

(A) THE NAME AND ADDRESS OF THE BORROWER;

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

(C) THE DATE OF THE AGREEMENT;

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

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

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

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

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

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

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

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

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

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

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

9. A BORROWER MAY REFINANCE A SHORT-TERM FINANCIAL SERVICES LOAN A SINGLE TIME PRIOR TO THE MATURITY OF SUCH LOAN IF THE BORROWER HAS MADE NOT LESS THAN THREE CONSECUTIVE INSTALLMENT PAYMENTS THEREON IN A TIMELY MANNER. NO ADDITIONAL APPLICATION FEE SHALL BE CHARGED FOR SUCH REFINANCE OF THE SHORT-TERM FINANCIAL SERVICES LOAN. A BORROWER WHO HAS REFINANCED A SHORT-TERM FINANCIAL SERVICES LOAN SHALL NOT BE ELIGIBLE

FOR A NEW OR ADDITIONAL CREDIT ADVANCE FROM ANY LICENSEE UNTIL SUCH LOAN IS PAID IN FULL.

S 373-C. FEES AND CHARGES. 1. A LICENSEE MAY CHARGE, CONTRACT FOR AND RECEIVE THE FOLLOWING INTEREST AND FEES IN CONNECTION WITH A SHORT-TERM FINANCIAL SERVICES LOAN:

(A) INTEREST AT AN ANNUAL PERCENTAGE RATE OF NO MORE THAN TWENTY-FIVE PERCENT;

(B) AN APPLICATION FEE NOT TO EXCEED TWENTY-FIVE DOLLARS. SUCH FEE IS DEEMED TO BE EARNED AT THE TIME THE LOAN IS MADE AND SHALL NOT BE SUBJECT TO REFUND, EXCEPT FOR THE FULL REFUND OF ALL FEES AND CHARGES AFTER RECISSION AS PROVIDED IN SUBDIVISION SEVEN OF SECTION THREE HUNDRED SEVENTY-THREE-B OF THIS ARTICLE; AND

(C) A MONTHLY MAINTENANCE FEE NOT TO EXCEED FIFTEEN DOLLARS PER MONTH, FOR THE DURATION OF THE LOAN TERM.

2. 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 SCHEDULE 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.

3. 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.

4. 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. LOAN ELIGIBILITY REGISTRY. 1. THE SUPERINTENDENT SHALL ESTABLISH AND MAINTAIN A REGISTRY WHICH SHALL BE ACCESSIBLE BY LICENSEES BY TELEPHONE AND THE INTERNET. THE PURPOSE OF SUCH REGISTRY 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 LOAN ELIGIBILITY REGISTRY AS ACCURATE AND NOT BE SUBJECT TO ANY ADMINISTRATIVE PENALTY OR CIVIL LIABILITY AS THE RESULT OF RELYING UPON INACCURATE INFORMATION CONTAINED IN SUCH REGISTRY.

2. PRIOR TO ENTERING INTO ANY SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION, A LICENSEE SHALL QUERY THE LOAN ELIGIBILITY REGISTRY AND SHALL RETAIN EVIDENCE OF SUCH QUERY FOR REVIEW BY THE SUPERINTENDENT FOR A PERIOD OF FIVE YEARS. SUCH REGISTRY SHALL ONLY AUTHORIZE A LICENSEE TO ENTER INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION IF THE TRANSACTION IS AUTHORIZED PURSUANT TO THIS ARTICLE. DURING ANY PERIOD OF TIME THAT THE INFORMATION ON THE LOAN ELIGIBILITY REGISTRY IS UNAVAILABLE FOR ANY REASON, A LICENSEE MAY RELY ON THE APPLICANT'S WRITTEN

REPRESENTATIONS TO VERIFY THAT ENTERING INTO A SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTION WITH THE APPLICANT IS PERMISSIBLE.

3. THE SUPERINTENDENT AND DEPARTMENT SHALL MAINTAIN THE LOAN ELIGIBILITY REGISTRY AND TAKE ALL ACTIONS NECESSARY TO PROTECT THE CONFIDENTIALITY AND SECURITY OF THE INFORMATION AND DATA CONTAINED THEREIN. SUCH REGISTRY MAY BE UTILIZED BY THE DEPARTMENT FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS ARTICLE. INFORMATION AND DATA IN THE REGISTRY SHALL NOT BE DISTRIBUTED TO ANY PERSON OR ENTITY FOR PROFIT NOR SOLD TO ANY PARTY OR ENTITY.

4. UPON A LICENSEE'S QUERY OF THE REGISTRY, SUCH REGISTRY SHALL INDICATE WHETHER AN APPLICANT FOR A SHORT-TERM FINANCIAL SERVICES LOAN IS ELIGIBLE FOR SUCH A LOAN AND, IF THE APPLICANT IS INELIGIBLE, THE REASON FOR SUCH INELIGIBILITY. THE LOAN ELIGIBILITY REGISTRY SHALL BE DEEMED CONFIDENTIAL AND NOT SUBJECT TO THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

5. ALL EXPENSES OF THE DEPARTMENT FOR THE ESTABLISHMENT AND OPERATION OF THE LOAN ELIGIBILITY REGISTRY ESTABLISHED PURSUANT TO SECTION THREE HUNDRED SEVENTY-THREE-D OF THIS ARTICLE SHALL BE CHARGED AND ALLOCATED AMONG ALL LICENSED CASHERS OF CHECKS WHICH ENGAGE IN SHORT-TERM FINANCIAL SERVICES LOAN TRANSACTIONS.

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

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

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

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

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

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

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

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

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

S 373-F. FINANCIAL EDUCATION FUND. A FINANCIAL EDUCATION FUND IS HEREBY CREATED IN THE STATE TREASURY, WHICH SHALL BE FUNDED BY LICENSED CHECK CASHERS OFFERING FINANCIAL SERVICES LOANS. FUNDING OF THE FINANCIAL EDUCATION FUND WILL CONSIST OF LICENSEES CONTRIBUTING FIFTY CENTS FROM THE APPLICATION FEE PRESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED SEVENTY-THREE-C OF THIS ARTICLE UPON FULL RE-PAYMENT OF A FINANCIAL SERVICES LOAN. THE SUPERINTENDENT SHALL COLLECT THE FINANCIAL

EDUCATION ASSESSMENT FROM LICENSEES AS PART OF THE ANNUAL ASSESSMENT OF THE INDUSTRY AND SAID FUNDS SHALL BE DEPOSITED BY THE SUPERINTENDENT IN THE STATE TREASURY. BEGINNING WITHIN NINETY DAYS AFTER THE FIRST ANNUAL ASSESSMENT, THE FINANCIAL EDUCATION FUND SHALL BE USED TO SUPPORT VARIOUS FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED BY THE SUPERINTENDENT AFTER CONSULTING WITH THE LICENSED CHECK CASHING INDUSTRY. THE FUND SHALL BE ADMINISTERED BY THE SUPERINTENDENT WHO SHALL ADOPT REGULATIONS FOR THE DISTRIBUTION OF THE FUNDS. THE SUPERINTENDENT SHALL ADOPT REGULATIONS TO REQUIRE THAT AT LEAST ONE-HALF OF THE FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED PURSUANT TO THIS SECTION, AND OFFERED TO THE PUBLIC, BE PRESENTED BY OR AVAILABLE AT PUBLIC COMMUNITY COLLEGES OR STATE INSTITUTIONS THROUGHOUT THE STATE. THE SUPERINTENDENT SHALL ALSO ADOPT REGULATIONS TO REQUIRE THAT A PORTION OF THE FINANCIAL EDUCATION PROGRAMS DEVELOPED OR IMPLEMENTED BE USED TO SUPPORT FINANCIAL EDUCATION PROGRAMS FOR PUBLIC EMPLOYEES OR OTHER DIRECTED GROUPS. THE SUPERINTENDENT SHALL DELIVER TO THE GOVERNOR AN ANNUAL REPORT THAT INCLUDES AN OUTLINE OF EACH FINANCIAL EDUCATION PROGRAM DEVELOPED OR IMPLEMENTED, THE NUMBER OF INDIVIDUALS WHO WERE EDUCATED BY EACH PROGRAM, AND AN ACCOUNTING FOR ALL FUNDS DISTRIBUTED.

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

S 373-H. EXAMINATION OF SHORT-TERM FINANCIAL SERVICES TRANSACTIONS. THE SUPERINTENDENT, OR HIS OR HER DESIGNEE, MAY FROM TIME TO TIME INVESTIGATE THE SHORT-TERM FINANCIAL SERVICES TRANSACTIONS AND BUSINESS, AND EXAMINE THE BOOKS, ACCOUNTS, AND RECORDS RELATING THERETO OF EVERY LICENSEE.

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