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

4366--A

2013-2014 Regular Sessions

I N S E N A T E

March 22, 2013

Introduced by Sen. GRIFFO -- (at request of the Department of Financial Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the general business law, in relation to enhancing regulatory efficiency and efficacy; to repeal certain provisions of the banking law relating thereto

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

Section 1. Section 24 of the banking law, as amended by chapter 684 of the laws of 1938, subdivision 1 as amended by chapter 453 of the laws of 1960, subdivision 2 as amended by chapter 419 of the laws of 1996, subdivision 3 as amended by chapter 52 of the laws of 1944, subdivisions 1, 2 and 3 as further amended by section 104 of part A of chapter 62 of the laws of 2011 and subdivision 4 as amended by chapter 608 of the laws of 1996, is amended to read as follows:

S 24. Investigation by superintendent; refusal or approval; filing certificate. 1. Within ninety days after the date when any organization certificate or private banker's certificate shall have been filed for examination, the superintendent, if [he] THE SUPERINTENDENT shall find after investigation and examination of what [he] THE SUPERINTENDENT deems to be the best sources of information [at his command] AVAILABLE that the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed corporation or private banker will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter, and that the public convenience and advantage will be promoted by allowing such proposed corporation or private banker to engage in business, shall [submit] APPROVE such

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

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certificate [to the superintendent of financial services together with all papers, correspondence and other information in his possession relating thereto, including the results of his investigation and his recommendation in the matter]. [Such] AN EXTENSION OF SUCH NINETY DAY period [of ninety days] may be [extended] REQUESTED, by a written [consent] REQUEST executed by a majority of the persons from whom the superintendent received such organization certificate or private banker's certificate, for such additional reasonable period of time as may be required for applicants to comply with conditions precedent stipulated by the superintendent as being a prerequisite to his [recommendation to the superintendent of financial services] OR HER APPROVAL. THE SUPERINTENDENT, IN THE SUPERINTENDENT'S SOLE DISCRETION, SHALL DETERMINE WHETHER TO GRANT SUCH AN EXTENSION.

2. [If three-fifths of the members of the board, after consideration of all relevant information available to them, shall vote for approval, the] THE superintendent[, if he is still satisfied, upon the considerations set forth in subdivision one of this section, that such proposed corporation or private banker should be permitted to engage in business,] shall [approve such certificate and] ALSO endorse upon each of the duplicates the date of such approval. [He] THE SUPERINTENDENT shall forthwith cause notice of such approval to be given to the proposed incorporators or private banker and one of the duplicate certificates [to] SHALL be filed in the office of the department and the other in the office of the clerk of the county in which the principal office of such proposed corporation or private banker is to be located. In a case in which a private banker certificate is submitted to the superintendent for the purpose of continuing the business in connection with a change in its partnership, the superintendent shall approve the private banker certificate [without any action by the superintendent of financial services] upon making a determination that the private banker should be permitted to continue its business based upon the considerations set forth in subdivision one of this section.

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

4. The provisions of this section shall not apply to any organization certificate required to be filed in the office of the superintendent by SECTION ONE HUNDRED THIRTY-SIX, BY section two hundred sixty-b, by section four hundred ten, by section four hundred eleven or by section four hundred eighty-six of this chapter.

S 2. Subdivisions 1 and 3 of section 25 of the banking law, subdivision 1 as amended by chapter 512 of the laws of 1977 and subdivision 3 as amended by chapter 561 of the laws of 1946, are amended to read as follows:

1. If the superintendent shall find that a corporation or private banker, the certificate of which has been approved and filed as provided in section twenty-four of this article, has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this chapter, [he] THE SUPERINTENDENT shall, within ninety days after the date of such approval, [or within

such longer period thereafter as he may permit pursuant to the second sentence of this subdivision, but in no case after the expiration of that period,] issue [under his hand] and EXECUTE UNDER the official seal of the department, in triplicate, an authorization certificate to the person or persons named in such organization certificate or private banker's certificate. [The] NOTWITHSTANDING THE PRECEDING SENTENCE, IF THE SUPERINTENDENT DETERMINES IT IS CONSISTENT WITH THE DECLARATION OF POLICY CONTAINED IN SECTION TEN OF THIS ARTICLE, THE superintendent may extend the period within which [he] THE SUPERINTENDENT may issue the authorization certificate by (I) an additional [sixty] NINETY days, provided, however, that he OR SHE shall have determined that such extension of time is needed for raising capital, for fulfilling any other condition precedent to the commencement of business or for satisfying any other requirement of organization, whether imposed by statute or regulation[, and that such extension is consistent with the declaration of policy contained in section ten of this chapter] OR OTHERWISE, OR (II) SUCH LONGER PERIOD OF TIME AS HE OR SHE SHALL DEEM APPROPRIATE, PROVIDED, HOWEVER, THAT HE OR SHE SHALL HAVE DETERMINED THAT EXTRAORDINARY CIRCUMSTANCES EXIST. Such authorization certificate shall state that the corporation or private banker named therein has complied with the provisions of this chapter and that it is authorized to transact the business specified therein. Such authorization certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the superintendent or the attorney general. The superintendent shall cause one of the triplicate authorization certificates to be transmitted to the corporation or private banker thereby authorized to commence business, another to be filed in the office of the department, and the third to be filed in the county clerk's office in which the organization certificate or the private banker's certificate has been filed. The copies of the authorization certificate filed in the offices of the superintendent and the county clerk shall be attached to the copies of the organization certificate or private banker's certificate previously filed and such certificates shall be recorded in the records of incorporation therein.

3. Any corporation which shall not commence business within six months after the date on which its authorization certificate is issued by the superintendent shall forfeit its rights and privileges as a corporation and its corporate powers shall cease and determine unless the time within which such business may be commenced has been extended by the superintendent. Upon satisfactory cause being shown, the superintendent may grant [an extension for a period of not more than one year] ONE OR MORE EXTENSIONS. Such extension shall be granted by order executed, transmitted and filed in the manner provided for an authorization certificate in subdivision one of this section.

S 3. Subdivision 2 of section 28-b of the banking law is REPEALED.

S 4. The opening paragraph and subparagraph 12 of paragraph (a) of subdivision 3 of section 28-b of the banking law, as amended by chapter 315 of the laws of 2008, and as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

When taking any action on an application OR NOTICE made by a banking institution under (I) section one hundred five, two hundred twenty-four, two hundred forty, or three hundred ninety-six of this chapter for a branch office [or under], (II) section one hundred ninety-one of this chapter for a public accommodation office [or under], (III) section six hundred one-b of this chapter for approval [or disapproval] of a merger

or purchase of assets, or [taking any action on a notice submitted by a banking institution] (IV) under section one hundred five-a, two hundred forty-a or three hundred ninety-six-a of this chapter for the use or installation of an automated teller machine, point-of-sale terminal or similar electronic facility or on any other application OR NOTICE to which the superintendent of financial services shall by rule or regulation make applicable the provisions of this section, the superintendent shall take into account, among other factors, an assessment, in writing, of the record of performance of the banking institution in helping to meet the credit needs of its entire community, including low and moderate-income neighborhoods, consistent with safe and sound operation of the banking institution. Such assessment and any written communications from the department of financial services to a banking institution relating to such assessment shall be made available to the public upon request, provided that nothing contained in this subdivision shall be deemed to alter, amend or affect the provisions of subdivision ten of section thirty-six of this chapter. In making such assessment the superintendent shall review all reports and documents filed pursuant to subdivision one of this section and any signed, written comments received by the superintendent which specifically relate to the banking institution's performance in helping to meet the credit needs of its community. In addition, the superintendent shall consider the following factors in assessing a banking institution's record of performance:

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

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

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

S 6. Subdivision 1 of section 75-g of the banking law, as added by chapter 9 of the laws of 1996 and as designated by section 4-a of part A of chapter 57 of the laws of 1998, is amended and a new subdivision 2 is added to read as follows:

1. [Within one year after the effective date of this article, and each year thereafter,] BY THE FIFTEENTH DAY OF JANUARY AND JULY OF EACH YEAR (OR THE FOLLOWING BUSINESS DAY IF SUCH DAY IS NOT A BUSINESS DAY), every banking institution which [has] HAD an automated teller machine facility which [is] WAS in operation on [such date and such date every year thereafter] THE FIFTEENTH DAY OF THE PRECEDING MONTH shall submit a written COMPLIANCE report to the department on a form prescribed by the superintendent, certifying that such automated teller machine facility is in compliance with the provisions of this article or any variance or exemption that has been granted, or if such facility is not in compliance with such provisions, [such report shall state] STATING the manner in which such facility fails to meet such requirements[, the reasons for such non-compliance and a plan to remedy any such non-compliance]. NOTWITHSTANDING ARTICLE THREE OF THE STATE TECHNOLOGY LAW OR ANY OTHER LAW TO THE CONTRARY, THE SUPERINTENDENT MAY REQUIRE THAT SUCH REPORTS

AND ANY OTHER REPORTS REQUIRED BY THIS SECTION SHALL BE MADE BY ELECTRONIC MEANS, UNLESS THE SUPERINTENDENT, IN HIS OR HER SOLE DISCRETION, GRANTS A WAIVER OF SUCH ELECTRONIC FILING REQUIREMENTS, UPON GOOD CAUSE SHOWN.

2. IF ANY COMPLIANCE REPORT REQUIRED BY SUBDIVISION ONE OF THIS SECTION INDICATES ANY FAILURE TO MEET THE REQUIREMENTS OF THIS ARTICLE, SUCH BANKING INSTITUTION SHALL SUBMIT A WRITTEN REPORT TO THE DEPARTMENT, ON A FORM PRESCRIBED BY THE SUPERINTENDENT, NO LATER THAN THE ELEVENTH BUSINESS DAY FOLLOWING SUCH COMPLIANCE REPORT, INDICATING WHETHER EACH SUCH FAILURE HAS BEEN CORRECTED AND, FOR ANY FAILURE THAT HAS NOT BEEN CORRECTED, THE REASON FOR SUCH FAILURE AND THE EXPECTED CORRECTION DATE. IF ANY SUCH FAILURE SHALL NOT HAVE BEEN CORRECTED WITHIN TEN BUSINESS DAYS OF THE FILING DATE OF THE APPLICABLE COMPLIANCE REPORT, SUCH BANKING INSTITUTION SHALL, PROMPTLY AFTER CORRECTING SUCH FAILURE, SUBMIT A WRITTEN REPORT TO THE DEPARTMENT WITH THE DATE OR DATES OF EACH SUCH CORRECTION.

S 7. Subdivision 1 of section 75-j of the banking law, as amended by section 11 of part O of chapter 59 of the laws of 2006, is amended to read as follows:

1. Any banking institution found to be in violation of any provision of section seventy-five-c of this article IN A COMPLIANCE REPORT UNDER SECTION SEVENTY-FIVE-G OF THIS ARTICLE OR OTHERWISE FOUND BY THE DEPARTMENT TO BE IN VIOLATION OF ANY PROVISION OF SECTION SEVENTY-FIVE-C OF THIS ARTICLE shall correct the violation within ten business days after such finding. Where a banking institution fails to correct [said violation within such period of time] ANY VIOLATION OF A PROVISION OF SECTION SEVENTY-FIVE-C OF THIS ARTICLE WITHIN TEN BUSINESS DAYS AFTER THE FILING OF SUCH REPORT OR A FINDING OF VIOLATION BY THE DEPARTMENT, the superintendent may in a proceeding after notice and a hearing, require [any] SUCH banking institution to pay a civil penalty in an amount as determined pursuant to section forty-four of this chapter, provided, however, that the aggregate penalty for all offenses with respect to any one automated teller machine facility in any one proceeding shall not exceed an amount as determined pursuant to section forty-four of this chapter. For the purposes of this article, each violation of section seventy-five-c of this article shall be considered a separate and distinct violation.

S 8. Paragraphs (a) and (c) of subdivision 1 of section 103 of the banking law, as amended by chapter 1 of the laws of 1983 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

(a) The limitations in this subdivision shall not apply to (1) any loan to the extent that the United States, this state or any city, county, town, village or school district of this state, [any federal intermediate credit bank, Federal National Mortgage Association, any federal land bank, any bank for cooperatives organized under the laws of the United States, any national mortgage association, any federal home loan bank, the Small Business Administration] or any [other] department, agency or instrumentality of the United States or this state designated by the superintendent [of financial services] by general or specific regulation [upon a three-fifths vote of all its members], has agreed to pay the principal and interest thereof, or has guaranteed payment (by guaranty or commitment to purchase or otherwise) of such principal and interest, or is committed to supply, by loan, subsidy or otherwise, funds sufficient to pay such principal and interest, or has otherwise pledged its faith and credit for the payment of such principal and

interest; or (2) any loan secured by not less than a like amount (BASED ON THEIR PRINCIPAL AMOUNT OR MARKET VALUE, WHICHEVER IS LOWER, AT THE TIME THE LOAN IS MADE) of direct obligations [(based on their principal amount or market value, whichever is lower, at the time the loan is made)] of the United States or of this state or of any city, county, town, village or school district of this state or of any such department, agency or instrumentality of the United States or this state[; or (3) when authorized by the superintendent, any loan to a savings bank of this state or a corporation all of the capital stock of which is owned by not less than twenty savings banks of this state] OR BY OBLIGATIONS OTHERWISE FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY THE UNITED STATES.

(c) Loans (exclusive of any loan described in paragraph (a) of this subdivision) to any state other than the state of New York, or to any foreign nation, the New York State thruway authority, the Triborough bridge and tunnel authority, The Port of New York Authority, a railroad corporation, a municipal corporation of this state, a corporation subject to the jurisdiction of a public service commission of this state, or any international lending facility or public benefit corporation designated by the superintendent [of financial services] by [general or specific] regulation [upon a three-fifths vote of all its members], may equal but not exceed twenty-five per centum of the capital stock, surplus fund and undivided profits of such bank or trust company.

S 9. Subdivision 1 of section 591 of the banking law, as added by chapter 571 of the laws of 1986, paragraph (b) as amended by chapter 164 of the laws of 2003, is amended to read as follows:

1. The application for a license to be a mortgage banker shall be in writing, under oath, and in the form prescribed by the superintendent. NOTWITHSTANDING ARTICLE THREE OF THE STATE TECHNOLOGY LAW OR ANY OTHER LAW TO THE CONTRARY, THE SUPERINTENDENT MAY REQUIRE THAT AN APPLICATION FOR, OR RENEWAL OF, A LICENSE OR ANY OTHER SUBMISSION OR APPLICATION FOR APPROVAL AS MAY BE REQUIRED BY THIS ARTICLE, BE MADE OR EXECUTED BY ELECTRONIC MEANS, INCLUDING THROUGH THE NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER ENTITIES DESIGNATED BY THE NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY IF HE OR SHE DEEMS IT NECESSARY TO ENSURE THE EFFICIENT AND EFFECTIVE ADMINISTRATION OF THIS ARTICLE. The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation or other form of business organization, the application shall contain the names and complete business and residential addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods, as the superintendent may require; including:

(a) An affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and access to such credit as may be required by the superintendent;

(b) The fingerprints of the applicant, which may be submitted to the division of criminal justice services and the federal bureau of investigation for state and national criminal history record checks;

(c) An affirmation that the applicant, or its members, directors or principals as may be appropriate, are at least twenty-one years of age;

(d) Information as to the character, fitness, financial and business responsibility, background and experiences of the applicant.

S 10. Subdivision 1 of section 591-a of the banking law, as amended by section 53 of part O of chapter 59 of the laws of 2006, is amended to read as follows:

1. An application to become registered as a mortgage broker shall be in writing, under oath, in such form as shall be prescribed by the superintendent, and shall be accompanied by the fingerprints of the applicant. NOTWITHSTANDING ARTICLE THREE OF THE STATE TECHNOLOGY LAW OR ANY OTHER LAW TO THE CONTRARY, THE SUPERINTENDENT MAY REQUIRE THAT AN APPLICATION FOR, OR RENEWAL OF, A LICENSE OR ANY OTHER SUBMISSION OR APPLICATION FOR APPROVAL AS MAY BE REQUIRED BY THIS ARTICLE, BE MADE OR EXECUTED BY ELECTRONIC MEANS, INCLUDING THROUGH THE NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY OR OTHER ENTITIES DESIGNATED BY THE NATIONAL MORTGAGE LICENSING SYSTEM AND REGISTRY IF HE OR SHE DEEMS IT NECESSARY TO ENSURE THE EFFICIENT AND EFFECTIVE ADMINISTRATION OF THIS ARTICLE. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. Such application shall contain the name and complete business and residential address or addresses of the applicant, or if the applicant is a partnership, association, corporation or other form of business organization, the names and complete business and residential addresses of each member, director and principal officer thereof. Such application shall also include an affirmation of financial solvency noting such capitalization requirements as may be required by the superintendent, and such descriptions of the business activities, financial responsibility, educational background and general character and fitness of the applicant as may be required by the superintendent. Such application shall be accompanied by an investigation fee payable to the superintendent as prescribed pursuant to section eighteen-a of this chapter.

S 11. Section 520-c of the general business law, as added by chapter 1 of the laws of 1994, subdivisions 1, 2, 3 and 5 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 520-c. Credit information. 1. The department of financial services shall establish A TELEPHONE NUMBER AND AN AREA ON ITS WEBSITE, OR PROVIDE A LINK ON SUCH SITE TO OTHER WEBSITES WITH a toll-free telephone number service at which CUSTOMERS MAY OBTAIN information on annual percentage rates, annual fees, per-transaction charges, late payment fees, overlimit fees and grace periods for credit cards [can be obtained] TO THE EXTENT READILY AVAILABLE TO THE DEPARTMENT. Every issuer of credit cards to natural persons residing in this state shall set forth on each solicitation, application and monthly billing statement mailed or otherwise presented to such persons, a notice stating "New York residents may contact the New York state department of financial services [to obtain a] BY TELEPHONE OR VISIT ITS WEBSITE FOR FREE INFORMATION ON comparative [listing of] credit card rates, fees and grace periods." Such notice shall be printed on the same side as the disclosure of rates, fees and charges, in case of the solicitations and applications, and on the same side as the notice of the balance of the account and the amount due are printed, in the case of the monthly billing statement. The superintendent of financial services shall prescribe the WEB address and telephone number to be printed next to the notice. The notice shall be in type no smaller than eight points. THE TELEPHONE NUMBER OF THE CREDIT CARD ISSUER SHALL APPEAR HIGHER UP ON THE PAGE AND

IN THE TYPE AT LEAST AS LARGE AS THAT PROVIDED FOR THE TELEPHONE NUMBER OF THE DEPARTMENT OF FINANCIAL SERVICES. Issuers shall include such notice in materials sent to residents of this state as required under this section commencing October first, nineteen hundred ninety-four.

2. [The superintendent of financial services shall develop and distribute to all issuers of credit cards, no more than thirty days after the effective date of this section, a form which shall be used for the purpose of collecting information on annual percentage rates, annual fees, per-transaction charges, late payment fees, overlimit fees and grace periods governed by the terms of each type of credit card offered by such issuer to natural persons residing in this state. Issuers shall return the forms to the department of financial services no later than one hundred fifty days after the effective date of this section, and annually thereafter, but no later than April first of each year, commencing in nineteen hundred ninety-five. The superintendent of financial services shall publish the information obtained from such forms and make it available to New York residents upon request, commencing not later than October first, nineteen hundred ninety-four, and annually thereafter but not later than July first of each year.

3.] The superintendent of financial services is authorized to adopt such rules and regulations as consistent with the provisions of this section.

[4.] 3. For the purposes of this section:

(a) "Credit card" means any card issued pursuant to an agreement which allows the holder of the card to obtain goods and services on the credit of the issuer; and

(b) "Issuer" means any bank, trust company, savings bank, savings and loan association, or branch of a foreign banking corporation the deposits of which are insured by the federal deposit insurance corporation, which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States, which issues credit cards to natural persons residing in this state.

[5.] 4. The authority of the superintendent of financial services pursuant to sections thirty-nine and forty-four of the banking law shall extend to violations of this section by any issuer.

S 12. This act shall take effect immediately; provided, however that section eleven of this act shall take effect on the ninetieth day after it shall have become a law.