

STATE OF NEW YORK

6688

2019-2020 Regular Sessions

IN SENATE

September 6, 2019

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the banking law and the administrative code of the city of New York, in relation to regulating commercial finance licensing and making conforming technical changes relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 9-A of the banking law is renumbered article 9-B
2 and a new article 9-A is added to read as follows:

3 ARTICLE IX-A
4 COMMERCIAL FINANCE LICENSING

5 Section 363. Doing business without license prohibited.

6 363-a. Definitions.

7 363-b. Exemptions.

8 363-c. Application for license.

9 363-d. Conditions for issuance of a license.

10 363-e. Locations; change of address.

11 363-f. Changes in control.

12 363-g. Grounds for suspension or revocation.

13 363-h. Examinations.

14 363-i. Books and records.

15 363-j. Advertising.

16 363-k. Prohibited practices of licensees.

17 363-l. Penalties.

18 363-m. Regulations.

19 363-n. Severability.

20 § 363. Doing business without license prohibited. 1. No person or
21 other entity shall engage in the business of making or soliciting
22 commercial financing products to businesses located in New York state

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

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1 except as authorized by this article and without first obtaining a
2 license from the superintendent.

3 2. For the purposes of this article, a person or entity shall be
4 considered as engaging in the business of making commercial financing
5 products to businesses located in New York state if it solicits or
6 consummates commercial financing products to any business or commercial
7 enterprise located in New York state.

8 § 363-a. Definitions. For purposes of this article:

9 1. "commercial financing product" means any advance of funds to a
10 commercial or business enterprise made for the purpose of assisting the
11 business with its capital needs, including but not limited to:

12 (a) loans or lines of credit made to a business or commercial enter-
13 prise in a principal amount of five hundred thousand dollars or less,
14 whether secured or unsecured;

15 (b) purchase transactions where an entity purchases accounts, receiv-
16 ables, intangibles, revenue or other actual or perceived assets of the
17 business if any single payment or advance of the purchase price for the
18 purchased accounts, receivables, intangibles, revenue or other actual or
19 perceived assets of the business is in the amount of five hundred thou-
20 sand dollars or less; or

21 (c) any leasing transaction where any funds are provided to the busi-
22 ness or commercial enterprise by the leasing business or any affiliate
23 of the leasing business in the amount of five hundred thousand dollars
24 or less; and

25 2. "making or soliciting" means (a) providing commercial financing
26 products to small businesses; (b) marketing commercial financing
27 products for providers of commercial financing products; (c) receiving
28 any compensation from a provider of commercial financing products based
29 on the value of the commercial financing product provided in exchange
30 for a referral of small business or its owner; and (d) any entity that
31 partners with federal or state banking organization in which the federal
32 or state banking organization originates the commercial financing prod-
33 uct and the entity acquires a participation or syndication interest, in
34 part or whole, of the commercial financing product and the (i) entity
35 receives compensation for marketing or servicing the transaction from
36 the federal or state banking organization, or collects any payments due
37 under the commercial financing product; or (ii) provides any indemnity
38 or loss protection to the federal or state banking organization for
39 losses the federal or state banking organization may incur as a result
40 of performance of the commercial financing product.

41 § 363-b. Exemptions. The following shall be exempt from the provisions
42 of this article:

43 1. any person who makes or solicits five or fewer commercial financing
44 products within any twelve month period;

45 2. any banking organization, as defined in subdivision eleven of
46 section two of this chapter;

47 3. any federal credit union;

48 4. any insurance company;

49 5. any person if and to the extent that such person is lending money
50 and licensed in accordance with, and as authorized by, any other appli-
51 cable law of the state of New York; provided, however, such exemption
52 shall apply only to those transactions subject to requirements under
53 article nine-B of this chapter and such exemption shall not apply to
54 transactions subject to the provisions of this article that are not
55 expressly regulated by article nine-B of this chapter; or

1 6. any transaction that is intended to be a purchase of the ownership,
2 in whole or part, of a business or commercial enterprise.

3 § 363-c. Application for license. 1. An application for a license
4 shall be in writing, under oath, and in the form prescribed by the
5 superintendent and shall contain such information as the superintendent
6 may require by regulation. The application shall set forth all of the
7 locations at which the applicant seeks to conduct business pursuant to
8 this article. At the time of making the application for a license, the
9 applicant shall pay to the superintendent a fee as prescribed by regu-
10 lation for each proposed location for investigating the application.

11 2. In connection with an application for a license, the applicant
12 shall submit an affidavit of financial solvency noting such capitaliza-
13 tion requirements and access to such credit as may be prescribed by the
14 regulations promulgated by the superintendent.

15 3. The applicant shall also prove, in form satisfactory to the super-
16 intendent, that the applicant has available for the operation of such
17 business at the location or locations specified in the application
18 liquid assets of at least fifty thousand dollars. This amount shall be
19 maintained for the period within which the licensee is licensed.

20 4. If a person or entity holding a license seeks to open another
21 location for the conduct of activities licensable under this article,
22 the licensee shall first submit written notification of this fact to the
23 superintendent. The notification shall contain the address of the new
24 location and the license number. An investigation fee as prescribed in
25 regulations shall be paid for each additional location. The additional
26 location shall be authorized upon written approval by the superintendent
27 or after ninety days have passed since the notification was provided and
28 investigation fee was paid unless the superintendent denies the request
29 for an additional location prior to the expiration of the ninety days.
30 The superintendent may deny a request for an additional location if the
31 new location by the licensee is not in the public interest, in which
32 case, the superintendent shall send a written denial to the licensee.

33 § 363-d. Conditions for issuance of a license. Upon the filing of such
34 application and the payment of such fees, if the superintendent shall
35 find that the financial responsibility, experience, character, and
36 general fitness of the applicant, and of the members thereof if the
37 applicant be a partnership or association, and of the officers and
38 directors thereof if the applicant be a corporation, are such as to
39 command the confidence of the community and to warrant belief that the
40 business will be operated honestly, fairly, and efficiently within the
41 purposes of this article, and if the superintendent shall find that the
42 applicant has available for the operation of such business at each spec-
43 ified location liquid assets of at least fifty thousand dollars, the
44 superintendent shall thereupon execute a license at the location or
45 locations specified in the said application. The superintendent shall
46 transmit one copy of such license or licenses to the applicant and file
47 the same in the office of the department. Each such license shall remain
48 in full force and effect until it is surrendered by the licensee or
49 revoked or suspended as hereinafter provided; if the superintendent
50 shall not so find, a license shall not be issued and the superintendent
51 shall notify the applicant of the denial. If an application is denied or
52 withdrawn the superintendent shall return to the applicant the sum paid
53 by the applicant as a license fee, retaining the investigation fee to
54 cover the costs of investigating such application. The superintendent
55 shall approve or deny every application for a master license under this

1 article within ninety days from the filing thereof with the applicable
2 fees.

3 § 363-e. Locations; change of address. 1. A license shall state the
4 address at which the business is to be conducted and shall state fully
5 the name of the licensee, and if the licensee is a partnership or asso-
6 ciation, the names of the members thereof, and if a corporation, the
7 date and place of its incorporation. No license shall be transferable or
8 assignable.

9 2. Every location used by the licensee to conduct business must be
10 identified in the application and approved by the superintendent. After
11 a license has been issued, any application for a change in address or
12 new location must be submitted within forty-five days of such proposed
13 change or addition. The licensee shall pay to the superintendent a fee
14 as prescribed by regulation for each change or addition and shall
15 provide any information which may be required regarding such new
16 location. If the superintendent is not satisfied that such change or
17 addition is in accordance with the purposes of this article, the super-
18 intendent shall refuse such change of location or additional location
19 and notify the licensee of such determination.

20 § 363-f. Changes in control. 1. It shall be unlawful except with the
21 prior approval of the superintendent for any action to be taken which
22 results in a change of control of the business of a licensee. Prior to
23 any change of control, the person desirous of acquiring control of the
24 business of a licensee shall make written application to the superinten-
25 dent and pay an investigation fee as prescribed by regulation. The
26 application shall contain such information as the superintendent, by
27 rule or regulation, may prescribe as necessary or appropriate for the
28 purpose of making the determination required by subdivision two of this
29 section.

30 2. The superintendent shall approve or disapprove the proposed change
31 of control of a licensee in accordance with the provisions of sections
32 three hundred sixty-three-c and three hundred sixty-three-d of this
33 article. The superintendent shall approve or disapprove the application
34 in writing within ninety days after the date the application is filed
35 with the superintendent.

36 3. For a period of six months from the date of qualification thereof
37 and for such additional period of time as the superintendent may
38 prescribe, in writing, the provisions of subdivisions one and two of
39 this section shall not apply to a transfer of control by operation of
40 law to the legal representative, as defined in subdivision four of this
41 section, of one who has control of a licensee. Thereafter, such legal
42 representative shall comply with the provisions of subdivisions one and
43 two of this section.

44 4. The term "legal representative", for the purposes of this section,
45 shall mean one duly appointed by a court of competent jurisdiction to
46 act as executor, administrator, trustee, committee, conservator or
47 receiver, including one who succeeds a legal representative and one
48 acting in an ancillary capacity thereto in accordance with the
49 provisions of such court appointment.

50 5. As used in this section: (a) the term "person" includes an individ-
51 ual, partnership, corporation, association or any other organization;
52 and (b) the term "control" means the possession, directly or indirectly,
53 of the power to direct or cause the direction of the management and
54 policies of a licensee, whether through the ownership of voting stock of
55 such licensee, the ownership of voting stock of any person which
56 possesses such power or otherwise. Control shall be presumed to exist if

1 any person, directly or indirectly, owns, controls or holds with power
2 to vote ten per centum or more of the voting stock of any licensee or of
3 any person which owns, controls or holds with power to vote ten per
4 centum or more of the voting stock of any licensee, but no person shall
5 be deemed to control a licensee solely by reason of being an officer or
6 director of such licensee or person. The superintendent may in his
7 discretion, upon the application of a licensee or any person who,
8 directly or indirectly, owns, controls or holds with power to vote or
9 seeks to own, control or hold with power to vote any voting stock of
10 such licensee, determine whether or not the ownership, control or hold-
11 ing of such voting stock constitutes or would constitute control of such
12 licensee for purposes of this section.

13 § 363-g. Grounds for suspension or revocation. 1. The superintendent
14 may suspend or revoke any license issued under this article if the
15 superintendent shall find that:

16 (a) the licensee has failed to pay any sum of money lawfully demanded
17 by the superintendent or to comply with any demand, ruling, or require-
18 ment of the superintendent within a reasonable period of time;

19 (b) the licensee has violated any provisions of this article; or

20 (c) any fact or condition exists which, if it had existed at the time
21 of the original application for such license, clearly would have
22 warranted the superintendent in refusing originally to issue such
23 license.

24 2. The superintendent may on good cause shown, without notice or hear-
25 ing, suspend any license for a period not exceeding thirty days, pending
26 investigation.

27 3. Any licensee may surrender any license by delivering to the super-
28 intendent written notice that the licensee thereby surrenders such
29 license, but such surrender shall not affect such licensee's civil or
30 criminal liability for acts committed prior to such surrender.

31 4. No revocation or suspension or surrender of any license shall
32 impair or affect the obligation of any pre-existing lawful contract
33 between the licensee and any borrower.

34 5. Every license issued pursuant to this article shall remain in force
35 and effect until it shall have been surrendered, revoked, or suspended
36 in accordance with the provisions of this article, but the superinten-
37 dent shall have authority to reinstate suspended licenses or to issue
38 new licenses to a licensee whose license or licenses shall have been
39 revoked if no fact or condition then exists which clearly would have
40 warranted the superintendent in refusing originally to issue such
41 license under this article.

42 6. Whenever the superintendent shall revoke or suspend a license
43 issued pursuant to this article, the superintendent shall execute a
44 written order to that effect. The superintendent shall file one copy of
45 such order in the office of the department and serve a copy upon the
46 licensee, such order may be reviewed in the manner provided by article
47 seventy-eight of the civil practice law and rules. Such special proceed-
48 ing for review as authorized by this section must be commenced within
49 thirty days from the date of such order of suspension or revocation.

50 § 363-h. Examinations. For the purpose of discovering violations of
51 this article or securing information lawfully required under this arti-
52 cle, the superintendent may at any time, and as often as may be deter-
53 mined, either personally or by a person duly designated by the super-
54 intendent, investigate the business and examine the books, accounts,
55 records, and files used therein of every licensee in connection with the
56 activity covered under this article. For that purpose the superintendent

1 and duly designated representatives shall have free access to the
2 offices and place of business, books, accounts, papers, records, files,
3 safes and vaults of all such licensees. The superintendent shall have
4 authority to require the attendance of and to examine under oath all
5 persons whose testimony may be required relative to such business.

6 § 363-i. Books and records. 1. The licensee shall keep and use in its
7 business such books, accounts, and records as will enable the super-
8 intendent to determine whether such licensee is complying with the
9 provisions of this article and with the rules and regulations lawfully
10 made by the superintendent pursuant to this article. Every licensee
11 shall preserve such books, accounts, and records for at least two years
12 after the last payment on any account was made or two years after an
13 account is written off as a loss. Preservation of photographic repro-
14 duction thereof or records in photographic form, including an optical
15 disk storage system and the use of electronic data processing equipment
16 that provides comparable records to those otherwise required and which
17 are available for examination upon request shall constitute compliance
18 with the requirements of this section.

19 2. Each licensee shall annually on or before the first day of April
20 file a report with the superintendent giving such information as the
21 superintendent may require concerning the business and operations during
22 the preceding calendar year of each licensed place of business conducted
23 by such licensee within the state under authority of this article. Such
24 report shall be subscribed and affirmed as true by the licensee under
25 the penalties of perjury and shall be in the form prescribed by the
26 superintendent who shall make and publish annually a consolidated state-
27 ment of condition showing the combined assets and liabilities of all
28 licensed lenders. Such consolidated statement of condition shall be
29 based upon the information contained in such reports. In addition to
30 annual reports, the superintendent may require such additional regular
31 or special reports as may be deemed necessary to the proper supervision
32 of licensees under this article. Such additional reports shall be in the
33 form prescribed by the superintendent and shall be subscribed and
34 affirmed as true under the penalties of perjury.

35 § 363-j. Advertising. 1. No licensee shall advertise, print, display,
36 publish, distribute, or broadcast or cause or permit to be advertised,
37 printed, displayed, published, distributed, or broadcasted, in any
38 manner whatsoever any statement or representation with regard to the
39 rates, terms, costs or conditions for a commercial financing product
40 which is false, misleading or deceptive.

41 2. No licensee shall make, directly or indirectly, orally or in writ-
42 ing, by any method, practice or device, any representation that it is
43 licensed under this article, except a representation that such licensee
44 is licensed as a licensed commercial financing provider by the depart-
45 ment.

46 3. No licensee shall transact any business subject to this article
47 under any other name or at any other place of business than that named
48 in the license, except as may be authorized by the superintendent.

49 § 363-k. Prohibited practices of licensees. 1. No licensee shall take
50 any confession of judgment or any power of attorney running to himself
51 or to any third person to confess judgment or to appear for the borrower
52 in a judicial proceeding.

53 2. No licensee shall take any instrument in which blanks are left to
54 be filled in after execution.

55 § 363-l. Penalties. 1. Any commercial financing product made by a
56 person not licensed under this article, and not exempt, to a business or

1 commercial enterprise located in this state shall be void, and the
2 provider shall have no right to collect or receive any principal, inter-
3 est, fees or charges whatsoever. No action to enforce a transaction made
4 in violation of this subdivision may be maintained.

5 2. Any person or other entity including the officers, directors,
6 agents, and employees thereof, which shall violate or participate in the
7 violation of any of the provisions of section three hundred sixty-three
8 of this article shall be guilty of a misdemeanor.

9 § 363-m. Regulations. The superintendent is hereby authorized and
10 empowered to make such general rules and regulations, and such specific
11 rulings, demands, and findings as may be necessary for the proper
12 conduct of the business authorized and licensed under and for the
13 enforcement of this article, in addition hereto and not inconsistent
14 herewith.

15 § 363-n. Severability. If any provision of this article or the appli-
16 cation thereof to any person or circumstances is held to be invalid,
17 such invalidity shall not affect other provisions or applications of
18 this article which can be given effect without the invalid provision or
19 application, and to this end the provisions of this article are severa-
20 ble.

21 § 2. Paragraph 5 of subdivision a of section 10-136 of the administra-
22 tive code of the city of New York, as added by local law number 80 of
23 the city of New York for the year 1996, is amended to read as follows:

24 (5) "Check cashing business" shall mean any person duly licensed by
25 the superintendent of banks to engage in the business of cashing checks,
26 drafts or money orders for consideration pursuant to the provisions of
27 article [~~9-A~~] 9-B of the banking law.

28 § 3. Subdivision (a) of section 22 of the banking law, as amended by
29 chapter 553 of the laws of 2007, is amended to read as follows:

30 (a) Notwithstanding any other provision of law, every applicant for a
31 license, authorization or registration under articles nine, nine-A,
32 nine-B, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E and thirteen-B
33 of this chapter and every applicant filing an application to acquire
34 control of any licensee or registrant, as the case may be, under such
35 articles shall submit simultaneously with an application, his or her
36 fingerprints in such form and in such manner as specified by the divi-
37 sion of criminal justice services, but in any event, no less than two
38 digit imprints. The superintendent shall submit such fingerprints to the
39 division of criminal justice services for the purpose of conducting a
40 criminal history search and returning a report thereon in accordance
41 with the procedures and requirements established by the division pursu-
42 ant to the provisions of article thirty-five of the executive law, which
43 shall include the payment of the prescribed processing fees. The super-
44 intendent shall request that the division submit such fingerprints to
45 the federal bureau of investigation, together with the processing fees
46 prescribed by such bureau, for the purpose of conducting a criminal
47 history search and returning a report thereon. An applicant shall not be
48 required to submit his or her fingerprints as required by this subdivi-
49 sion if such applicant (i) is already subject to regulation by the
50 department and the applicant has submitted such fingerprints to the
51 department, such fingerprints have been submitted to the division of
52 criminal justice services for the purpose of conducting a criminal
53 history search, and a report of such search has been received by the
54 department from such division; or (ii) is subject to regulation by a
55 federal bank regulatory agency and has submitted such fingerprints to
56 such agency which has had a criminal history search conducted of such

1 individual and has shared such information or its determination result-
2 ing from such search with the department; or (iii) is an officer or
3 stockholder of a corporation whose common or preferred stock is regis-
4 tered on a national securities exchange, as provided in an act of
5 congress of the United States entitled the "Securities Exchange Act of
6 1934", approved June sixth, nineteen hundred thirty-four, as amended, or
7 such other exchange or market system as the superintendent shall approve
8 by regulation, and has submitted such fingerprints to such exchange or
9 market system which has had a criminal history search conducted of such
10 individual and has shared such information or its determination result-
11 ing from such search with the department; provided, however, that the
12 superintendent may subsequently require such applicant to submit his or
13 her fingerprints if the superintendent has a reasonable basis for updat-
14 ing the information or determination resulting from the report of the
15 criminal history search conducted at the request of such federal banking
16 agency, exchange or market system.

17 § 4. Subdivision 2 of section 635 of the banking law, as amended by
18 chapter 146 of the laws of 2003, is amended to read as follows:

19 2. "License" when used in this article means any license duly issued
20 by the superintendent pursuant to the provisions of article nine,
21 nine-A, ~~nine-B~~, eleven-B, twelve-B, twelve-C, twelve-D or thirteen-B of
22 this chapter or any registration certificate issued by the superinten-
23 dent pursuant to the provisions of article twelve-D of this chapter.

24 § 5. Subdivision 1 of section 652-b of the banking law, as added by
25 chapter 374 of the laws of 1979, is amended to read as follows:

26 1. It shall be unlawful for any transmitter of money or its officers,
27 affiliates or subsidiaries to enter into an agreement with a check cash-
28 er, licensed pursuant to the provisions of article ~~[nine-A]~~ ~~nine-B~~ of
29 this chapter, whereby credit is extended to the check casher at the same
30 time as, and on the condition that, the transmitter of money enters into
31 an agreement with the check casher whereby the check casher will (1)
32 sell only the New York instruments or New York traveler's checks of the
33 transmitter of money or (2) agree to the exclusive use of any of the
34 other services of the transmitter of money. This section shall not
35 apply to the issuance by a transmitter of money of a guarantee of any
36 indebtedness of a check casher licensed pursuant to the provisions of
37 article ~~[nine-A]~~ ~~nine-B~~ of this chapter.

38 § 6. This act shall take effect on the one hundred eightieth day after
39 it shall have become a law. Effective immediately, any rules and regu-
40 lations necessary to implement the provisions of this act on its effec-
41 tive date are authorized to be amended, promulgated and/or repealed on
42 or before such date.