

STATE OF NEW YORK

2071--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. ZEBROWSKI, SEAWRIGHT, WALKER, ORTIZ, ENGLEBRIGHT, SIMON, JAFFEE, GOTTFRIED, COLTON, D'URSO, BLAKE, WRIGHT, DE LA ROSA, VANEL, FAHY, PEOPLES-STOKES, CUSICK, L. ROSENTHAL, GALEF, MOSLEY, DINOWITZ, TAYLOR, SOLAGES, HYNDMAN, KIM, MONTESANO, DiPIETRO -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, M. L. MILLER, THIELE -- read once and referred 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 requiring the licensure of student loan servicers

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

Section 1. The banking law is amended by adding a new article 14-A to read as follows:

ARTICLE XIV-A

STUDENT LOAN SERVICERS

Section 710. Definitions.

711. Licensing.

712. Application for a student loan servicer license; fees.

713. Application process to receive license to engage in the business of student loan servicing.

714. Changes in officers and directors.

715. Changes in control.

716. Grounds for suspension or revocation of license.

717. Books and records; reports and electronic filing.

718. Rules and regulations.

719. Prohibited practices.

720. Servicing student loans without a license.

721. Responsibilities.

722. Examinations.

723. Penalties for violation of this article.

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

LBD01465-03-9

1 724. Severability of provisions.

2 725. Compliance with other laws.

3 § 710. Definitions. 1. "Applicant" shall mean any person applying for
4 a license to be a student loan servicer.

5 2. "Borrower" shall mean any resident of this state who has received a
6 student loan or agreed in writing to pay a student loan or any person
7 who shares a legal obligation with such resident for repaying a student
8 loan.

9 3. "Borrower benefit" shall mean an incentive offered to a borrower in
10 connection with the origination of a student loan, including but not
11 limited to an interest rate reduction, principal rebate, fee waiver or
12 rebate, loan cancellation, or cosigner release.

13 4. "Exempt organization" shall mean any banking organization, foreign
14 banking corporation, national bank, federal savings association, federal
15 credit union, or any bank, trust company, savings bank, savings and loan
16 association, or credit union organized under the laws of any other
17 state.

18 5. "Person" shall mean any individual, association, corporation,
19 limited liability company, partnership, trust, unincorporated organiza-
20 tion, or any other entity.

21 6. "Servicer" or "student loan servicer" shall mean a person licensed
22 pursuant to section seven hundred eleven of this article to engage in
23 the business of servicing any student loan of a borrower.

24 7. "Servicing" shall mean:

25 (a) receiving any payment from a borrower pursuant to the terms of any
26 student loan;

27 (b) applying any payment to a borrower's account pursuant to the terms
28 of a student loan or the contract governing the servicing of any such
29 loan;

30 (c) providing any notification of amounts owed on a student loan by or
31 on account of any borrower;

32 (d) during a period when a borrower is not required to make a payment
33 on a student loan, maintaining account records for the student loan and
34 communicating with the borrower regarding the student loan on behalf of
35 the owner of the student loan promissory note;

36 (e) interacting with a borrower with respect to or regarding any
37 attempt to avoid default on the borrower's student loan, or facilitating
38 the activities described in paragraph (a) or (b) of this subdivision; or

39 (f) performing other administrative services with respect to a borrow-
40 er's student loan.

41 8. "Student loan" shall mean any loan to a borrower to finance postse-
42 condary education or expenses related to postsecondary education.

43 § 711. Licensing. 1. No person shall engage in the business of servic-
44 ing student loans owed by one or more borrowers residing in this state
45 without first being licensed by the superintendent as a student loan
46 servicer in accordance with this article and such regulations as may be
47 prescribed by the superintendent.

48 2. The licensing provisions of this subdivision shall not apply to any
49 exempt organization.

50 § 712. Application for a student loan servicer license; fees. 1. The
51 application for a license to be a student loan servicer shall be in
52 writing, under oath, and in the form prescribed by the superintendent.
53 Notwithstanding article three of the state technology law or any other
54 law to the contrary, the superintendent may require that an application
55 for a license or any other submission or application for approval as may
56 be required by this article be made or executed by electronic means if

1 he or she deems it necessary to ensure the efficient and effective
2 administration of this article. The application shall include a
3 description of the activities of the applicant, in such detail and for
4 such periods as the superintendent may require, including:

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

8 (b) a financial statement prepared by a certified public accountant,
9 the accuracy of which is sworn to under oath before a notary public by
10 an officer or other representative of the applicant who is authorized to
11 execute such documents;

12 (c) an affirmation that the applicant, or its members, officers, part-
13 ners, directors and principals as may be appropriate, are at least twen-
14 ty-one years of age;

15 (d) information as to the character, fitness, financial and business
16 responsibility, background and experiences of the applicant, or its
17 members, officers, partners, directors and principals as may be appro-
18 priate; and

19 (e) any additional detail or information required by the superinten-
20 dent.

21 2. An application to become a student loan servicer or any application
22 with respect to a student loan servicer shall be accompanied by a fee as
23 prescribed pursuant to section eighteen-a of this chapter.

24 § 713. Application process to receive license to engage in the busi-
25 ness of student loan servicing. 1. Upon the filing of an application for
26 a license, if the superintendent shall find that the financial responsi-
27 bility, experience, character, and general fitness of the applicant and,
28 if applicable, the members, officers, partners, directors and principals
29 of the applicant are such as to command the confidence of the community
30 and to warrant belief that the business will be operated honestly, fair-
31 ly, and efficiently within the purpose of this article, the superinten-
32 dent shall thereupon issue a license in duplicate to engage in the busi-
33 ness of servicing student loans described in section seven hundred ten
34 of this article in accordance with the provisions of this article. If
35 the superintendent shall not so find, the superintendent shall not issue
36 a license, and the superintendent shall so notify the applicant. The
37 superintendent shall transmit one copy of a license to the applicant and
38 file another copy in the office of the department of financial services.
39 Upon receipt of such license, a student loan servicer shall be author-
40 ized to engage in the business of servicing student loans in accordance
41 with the provisions of this article. Such license shall remain in full
42 force and effect until it is surrendered by the servicer or revoked or
43 suspended as hereinafter provided.

44 2. The superintendent may refuse to issue a license pursuant to this
45 article if he or she shall find that the applicant, or any person who is
46 a director, officer, partner, agent, employee, member or substantial
47 stockholder of the applicant:

48 (a) lacks the good moral character and general fitness such as to
49 warrant belief that the licensed entity would be operated honestly,
50 fairly and efficiently within the purposes of this article;

51 (b) has had a license or registration revoked by the superintendent or
52 any other regulator or jurisdiction;

53 (c) has been an officer, director, partner, member or substantial
54 stockholder of an entity which has had a license or registration revoked
55 by the superintendent or any other regulator or jurisdiction; or

1 (d) has been an agent, employee, officer, director, partner or member
2 of an entity which has had a license or registration revoked by the
3 superintendent where such person shall have been found by the super-
4 intendent to bear responsibility in connection with the revocation.

5 3. The term "substantial stockholder", as used in this section, shall
6 be deemed to refer to a person owning or controlling directly or indi-
7 rectly ten per centum or more of the total outstanding stock of a corpo-
8 ration.

9 § 714. Changes in officers and directors. Upon any change of any of
10 the executive officers, directors, partners or members of any student
11 loan servicer, the student loan servicer shall submit to the superinten-
12 dent the name, address, and occupation of each new officer, director,
13 partner or member, and provide such other information as the superinten-
14 dent may require.

15 § 715. Changes in control. 1. It shall be unlawful, except with the
16 prior approval of the superintendent, for any action to be taken which
17 results in a change of control of the business of a student loan servi-
18 cer. Prior to any change of control, the person desirous of acquiring
19 control of the business of a student loan servicer shall make written
20 application to the superintendent and pay an investigation fee as
21 prescribed pursuant to section eighteen-a of this chapter to the super-
22 intendent. The application shall contain such information as the super-
23 intendent, by rule or regulation, may prescribe as necessary or appro-
24 priate for the purpose of making the determination required by
25 subdivision two of this section. Such information shall include, but not
26 be limited to, the information and other material required for a student
27 loan servicer by subdivision one of section seven hundred twelve of this
28 article.

29 2. The superintendent shall approve or disapprove the proposed change
30 of control of a student loan servicer in accordance with the provisions
31 of section seven hundred thirteen of this article.

32 3. For a period of six months from the date of qualification thereof
33 and for such additional period of time as the superintendent may
34 prescribe, in writing, the provisions of subdivisions one and two of
35 this section shall not apply to a transfer of control by operation of
36 law to the legal representative, as hereinafter defined, of one who has
37 control of a student loan servicer. Thereafter, such legal represen-
38 tative shall comply with the provisions of subdivisions one and two of
39 this section. The provisions of subdivisions one and two of this section
40 shall be applicable to an application made under this section by a legal
41 representative. The term "legal representative", for the purposes of
42 this subdivision, shall mean a person duly appointed by a court of
43 competent jurisdiction to act as executor, administrator, trustee,
44 committee, conservator or receiver, including a person who succeeds a
45 legal representative and a person acting in an ancillary capacity there-
46 to in accordance with the provisions of such court appointment.

47 4. As used in this section the term "control" means the possession,
48 directly or indirectly, of the power to direct or cause the direction of
49 the management and policies of a student loan servicer, whether through
50 the ownership of voting stock of such student loan servicer, the owner-
51 ship of voting stock of any person which possesses such power or other-
52 wise. Control shall be presumed to exist if any person, directly or
53 indirectly, owns, controls or holds with power to vote ten per centum or
54 more of the voting stock of any student loan servicer or of any person
55 which owns, controls or holds with power to vote ten per centum or more
56 of the voting stock of any student loan servicer, but no person shall be

1 deemed to control a student loan servicer solely by reason of being an
2 officer or director of such student loan servicer. The superintendent
3 may in his discretion, upon the application of a student loan servicer
4 or any person who, directly or indirectly, owns, controls or holds with
5 power to vote or seeks to own, control or hold with power to vote any
6 voting stock of such student loan servicer, determine whether or not the
7 ownership, control or holding of such voting stock constitutes or would
8 constitute control of such student loan servicer for purposes of this
9 section.

10 § 716. Grounds for suspension or revocation of license. 1. The super-
11 intendent may revoke any license to engage in the business of a student
12 loan servicer issued pursuant to this article if a determination has
13 been made, after notice and a hearing, that:

14 (a) a servicer has violated any provision of this article, any rule or
15 regulation promulgated by the superintendent under and within the
16 authority of this article, or any other applicable law;

17 (b) a servicer engages in fraud, intentional misrepresentation, or
18 gross negligence in servicing a student loan;

19 (c) the competence, experience, character, or general fitness of the
20 servicer, an individual controlling, directly or indirectly, ten percent
21 or more of the outstanding interests, or any person responsible for
22 servicing a student loan for the servicer indicates that it is not in
23 the public interest to permit the servicer to continue servicing student
24 loans;

25 (d) the servicer is insolvent, suspends payment of its obligations, or
26 makes a general assignment for the benefit of its creditors; or

27 (e) the servicer has violated the laws of this state, any other state
28 law or any federal law involving fraudulent or dishonest dealing, or a
29 final judgment has been entered against a student loan servicer in a
30 civil action upon grounds of fraud, misrepresentation or deceit.

31 2. The superintendent may, on good cause shown, or where there is a
32 substantial risk of public harm, suspend any license for a period not
33 exceeding thirty days, pending investigation. "Good cause", as used in
34 this subdivision, shall exist when a student loan servicer has defaulted
35 in performing its financial engagements or engages in dishonest or ineq-
36 uitable practices which may cause substantial harm to the persons
37 afforded the protection of this article.

38 3. No license shall be revoked or suspended except after notice and a
39 hearing thereon. Any order of suspension issued after notice and a
40 hearing may include as a condition of reinstatement that the student
41 loan servicer make restitution to consumers of fees or other charges
42 which have been improperly charged or collected, including but not
43 limited to by allocating payments contrary to a borrower's direction or
44 in a manner that fails to help a borrower avoid default, as determined
45 by the superintendent. Any hearing held pursuant to the provisions of
46 this section shall be noticed, conducted and administered in compliance
47 with the state administrative procedure act.

48 4. Any student loan servicer may surrender any license by delivering
49 to the superintendent written notice that the student loan servicer
50 thereby surrenders such license, but such surrender shall not affect the
51 servicer's civil or criminal liability for acts committed prior to the
52 surrender. If such surrender is made after the issuance by the super-
53 intendent of a statement of charges and notice of hearing, the super-
54 intendent may proceed against the servicer as if the surrender had not
55 taken place.

1 5. No revocation, suspension, or surrender of any license shall impair
2 or affect the obligation of any pre-existing lawful contract between the
3 student loan servicer and any person, including the department of finan-
4 cial services.

5 6. Every license issued pursuant to this article shall remain in full
6 force and effect until the same shall have been surrendered, revoked or
7 suspended in accordance with any other provisions of this article.

8 7. Whenever the superintendent shall revoke or suspend a license
9 issued pursuant to this article, he or she shall forthwith execute in
10 duplicate a written order to that effect. The superintendent shall file
11 one copy of the order in the office of the department of financial
12 services and shall forthwith serve the other copy upon the student loan
13 servicer. Any such order may be reviewed in the manner provided by arti-
14 cle seventy-eight of the civil practice law and rules.

15 § 717. Books and records; reports and electronic filing. 1. Each
16 student loan servicer shall keep and use in its business such books,
17 accounts and records as will enable the superintendent to determine
18 whether the servicer is complying with the provisions of this article
19 and with the rules and regulations lawfully made by the superintendent.
20 Every servicer shall preserve such books, accounts, and records, for at
21 least three years.

22 2. (a) Each student loan servicer shall annually, on or before a date
23 to be determined by the superintendent, file a report with the super-
24 intendent giving such information as the superintendent may require
25 concerning the business and operations during the preceding calendar
26 year of such servicer under authority of this article. Such report shall
27 be subscribed and affirmed as true by the servicer under the penalties
28 of perjury and shall be in the form prescribed by the superintendent.

29 (b) In addition to annual reports, the superintendent may require such
30 additional regular or special reports as he or she may deem necessary to
31 the proper supervision of student loan servicers under this article.
32 Such additional reports shall be subscribed and affirmed as true by the
33 servicer under the penalties of perjury and shall be in the form
34 prescribed by the superintendent.

35 3. Notwithstanding article three of the state technology law or any
36 other law to the contrary, the superintendent may require that any
37 submission or approval as may be required by the superintendent be made
38 or executed by electronic means if he or she deems it necessary to
39 ensure the efficient administration of this article.

40 § 718. Rules and regulations. 1. In addition to such powers as may
41 otherwise be prescribed by this chapter, the superintendent is hereby
42 authorized and empowered to promulgate such rules and regulations as may
43 in the judgment of the superintendent be consistent with the purposes of
44 this article, or appropriate for the effective administration of this
45 article, including, but not limited to:

46 (a) such rules and regulations in connection with the activities of
47 student loan servicers as may be necessary and appropriate for the
48 protection of borrowers in this state;

49 (b) such rules and regulations as may be necessary and appropriate to
50 define unfair, deceptive or abusive acts or practices in connection with
51 the activities of student loan servicers in servicing student loans;

52 (c) such rules and regulations as may define the terms used in this
53 article and as may be necessary and appropriate to interpret and imple-
54 ment the provisions of this article; and

55 (d) such rules and regulations as may be necessary for the enforcement
56 of this article.

2. The superintendent is hereby authorized and empowered to make such specific rulings, demands and findings as the superintendent may deem necessary for the proper conduct of the student loan servicing industry.

§ 719. Prohibited practices. No student loan servicer shall:

1. Directly employ any scheme, device or artifice to defraud or mislead a borrower.

2. Intentionally engage in any unfair, deceptive or predatory act or practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the loan agreement or the borrower's obligations under the loan.

3. Intentionally misapply payments to the outstanding balance of any student loan or to any related interest or fees.

4. Intentionally provide misleading information to a consumer reporting agency.

5. Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.

6. Knowingly make any false statement or make any omission of a material fact in connection with any information or reports filed with a governmental agency or in connection with any investigation conducted by the superintendent or another governmental agency.

§ 720. Servicing student loans without a license. Whenever, in the opinion of the superintendent, a person is engaged in the business of servicing student loans, either actually or through subterfuge, without a license from the superintendent, the superintendent may order that person to desist and refrain from engaging in the business of servicing student loans in the state. If, within thirty days after an order is served, a request for a hearing is filed in writing and the hearing is not held within sixty days of the filing, the order shall be rescinded.

§ 721. Responsibilities. 1. If a student loan servicer regularly reports information to a consumer reporting agency, the servicer shall accurately report a borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)), upon acceptance as a data furnisher by that consumer reporting agency.

2. (a) Except as provided in federal law or required by a student loan agreement, a student loan servicer shall inquire of a borrower how to apply a borrower's nonconforming payment. A borrower's direction on how to apply a nonconforming payment shall remain in effect for any future nonconforming payment during the term of a student loan until the borrower provides different directions.

(b) For purposes of this subdivision, "nonconforming payment" shall mean a payment that is either more or less than the borrower's required student loan payment.

3. (a) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the person to whom the borrower is required to send subsequent payments or direct any communications concerning the student loan, a student loan servicer shall transfer all information regarding a borrower, a borrower's account, and a borrower's student loan, including but not limited to the

1 borrower's repayment status and any borrower benefits associated with
2 the borrower's student loan, to the new student loan servicer servicing
3 the borrower's student loan within forty-five days.

4 (b) A student loan servicer shall adopt policies and procedures to
5 verify that it has received all information regarding a borrower, a
6 borrower's account, and a borrower's student loan, including but not
7 limited to the borrower's repayment status and any borrower benefits
8 associated with the borrower's student loan, when the servicer obtains
9 the right to service a student loan.

10 4. If a student loan servicer sells, assigns, or otherwise transfers
11 the servicing of a student loan to a new servicer, the sale, assignment
12 or other transfer shall be completed at least seven days before the
13 borrower's next payment is due.

14 5. (a) A student loan servicer that sells, assigns, or otherwise
15 transfers the servicing of a student loan shall require as a condition
16 of such sale, assignment or other transfer that the new student loan
17 servicer shall honor all borrower benefits originally represented as
18 being available to a borrower during the repayment of the student loan
19 and the possibility of such benefits, including any benefits that were
20 represented as being available but for which the borrower had not yet
21 qualified.

22 (b) A student loan servicer that obtains the right to service a
23 student loan shall honor all borrower benefits originally represented as
24 being available to a borrower during the repayment of the student loan
25 and the possibility of such benefits, including any benefits that were
26 represented as being available but for which the borrower had not yet
27 qualified.

28 6. A student loan servicer shall respond within thirty days after
29 receipt to a written inquiry from a borrower or a borrower's authorized
30 representative.

31 7. A student loan servicer shall preserve records of each student loan
32 and all communications with borrowers for not less than two years
33 following the final payment on a student loan or the sale, assignment or
34 other transfer of the servicing of a student loan, whichever occurs
35 first, or such longer period as may be required by any other provision
36 of law.

37 § 722. Examinations. 1. The superintendent may at any time, and as
38 often as he or she may determine, either personally or by a person duly
39 designated by the superintendent, investigate the business and examine
40 the books, accounts, records, and files used therein of every student
41 loan servicer. For that purpose the superintendent and his or her duly
42 designated representative shall have free access to the offices and
43 places of business, books, accounts, papers, records, files, safes and
44 vaults of all student loan servicers. The superintendent and any person
45 duly designated by him or her shall have the authority to require the
46 attendance of and to examine under oath all persons whose testimony he
47 or she may require relative to such business.

48 2. No person subject to investigation or examination under this
49 section may knowingly withhold, abstract, remove, mutilate, destroy or
50 secrete any books, records, computer records or other information.

51 3. The expenses incurred in making any examination pursuant to this
52 section shall be assessed against and paid by the student loan servicer
53 so examined, except that traveling and subsistence expenses so incurred
54 shall be charged against and paid by servicers in such proportions as
55 the superintendent shall deem just and reasonable, and such propor-
56 tionate charges shall be added to the assessment of the other expenses

1 incurred upon each examination. Upon written notice by the superinten-
2 dent of the total amount of such assessment, the servicer shall become
3 liable for and shall pay such assessment to the superintendent.

4 4. In any hearing in which a department employee acting under authori-
5 ty of this chapter is available for cross-examination, any official
6 written report, worksheet, other related papers, or duly certified copy
7 thereof, compiled, prepared, drafted, or otherwise made by such depart-
8 ment employee, after being duly authenticated by the employee, may be
9 admitted as competent evidence upon the oath of the employee that such
10 worksheet, investigative report, or other related documents were
11 prepared as a result of an examination of the books and records of a
12 servicer or other person, conducted pursuant to the authority of this
13 chapter.

14 5. Unless otherwise exempt pursuant to subdivision two of section
15 seven hundred eleven of this article, affiliates of a student loan
16 servicer shall be subject to examination by the superintendent on the
17 same terms as the servicer, but only when reports from, or examination
18 of, a servicer provides evidence of unlawful activity between a servicer
19 and affiliate benefitting, affecting, or arising from the activities
20 regulated by this article.

21 § 723. Penalties for violation of this article. 1. In addition to such
22 penalties as may otherwise be applicable by law, the superintendent may,
23 after notice and hearing, require any person found violating the
24 provisions of this article or the rules or regulations promulgated here-
25 under to pay to the people of this state a penalty for each violation of
26 this article or any regulation or policy promulgated hereunder a sum not
27 to exceed an amount as determined pursuant to section forty-four of this
28 chapter for each such violation.

29 2. Nothing in this article shall limit any statutory or common-law
30 right of any person to bring any action in any court for any act, or the
31 right of the state to punish any person for any violation of any law.

32 § 724. Severability of provisions. If any provision of this article,
33 or the application of such provision to any person or circumstance,
34 shall be held invalid, illegal or unenforceable, the remainder of the
35 article, and the application of such provision to persons or circum-
36 stances other than those as to which it is held invalid, illegal or
37 unenforceable, shall not be affected thereby.

38 § 725. Compliance with other laws. 1. Student loan servicers shall
39 engage in the business of servicing student loans in conformity with the
40 provisions of this chapter, such rules and regulations as may be promul-
41 gated by the superintendent thereunder and all applicable federal laws
42 and the rules and regulations promulgated thereunder.

43 2. Nothing in this section shall be construed to limit any otherwise
44 applicable state or federal law or regulations.

45 § 2. Subdivision 10 of section 36 of the banking law, as amended by
46 chapter 182 of the laws of 2011, is amended to read as follows:

47 10. All reports of examinations and investigations, correspondence and
48 memoranda concerning or arising out of such examination and investi-
49 gations, including any duly authenticated copy or copies thereof in the
50 possession of any banking organization, bank holding company or any
51 subsidiary thereof (as such terms "bank holding company" and "subsidi-
52 ary" are defined in article three-A of this chapter), any corporation
53 or any other entity affiliated with a banking organization within the
54 meaning of subdivision six of this section and any non-banking subsid-
55 iary of a corporation or any other entity which is an affiliate of a
56 banking organization within the meaning of subdivision six-a of this

1 section, foreign banking corporation, licensed lender, licensed casher
2 of checks, licensed mortgage banker, registered mortgage broker,
3 licensed mortgage loan originator, licensed sales finance company,
4 registered mortgage loan servicer, licensed student loan servicer,
5 licensed insurance premium finance agency, licensed transmitter of
6 money, licensed budget planner, any other person or entity subject to
7 supervision under this chapter, or the department, shall be confidential
8 communications, shall not be subject to subpoena and shall not be made
9 public unless, in the judgment of the superintendent, the ends of
10 justice and the public advantage will be subserved by the publication
11 thereof, in which event the superintendent may publish or authorize the
12 publication of a copy of any such report or any part thereof in such
13 manner as may be deemed proper or unless such laws specifically author-
14 ize such disclosure. For the purposes of this subdivision, "reports of
15 examinations and investigations, and any correspondence and memoranda
16 concerning or arising out of such examinations and investigations",
17 includes any such materials of a bank, insurance or securities regulato-
18 ry agency or any unit of the federal government or that of this state
19 any other state or that of any foreign government which are considered
20 confidential by such agency or unit and which are in the possession of
21 the department or which are otherwise confidential materials that have
22 been shared by the department with any such agency or unit and are in
23 the possession of such agency or unit.

24 § 3. Subdivisions 1, 2, 3 and 5 of section 39 of the banking law,
25 subdivisions 1, 2 and 5 as amended by chapter 123 of the laws of 2009
26 and subdivision 3 as amended by chapter 155 of the laws of 2012, are
27 amended to read as follows:

28 1. To appear and explain an apparent violation. Whenever it shall
29 appear to the superintendent that any banking organization, bank holding
30 company, registered mortgage broker, licensed mortgage banker, licensed
31 student loan servicer, registered mortgage loan servicer, licensed mort-
32 gage loan originator, licensed lender, licensed casher of checks,
33 licensed sales finance company, licensed insurance premium finance agen-
34 cy, licensed transmitter of money, licensed budget planner, out-of-state
35 state bank that maintains a branch or branches or representative or
36 other offices in this state, or foreign banking corporation licensed by
37 the superintendent to do business or maintain a representative office in
38 this state has violated any law or regulation, he or she may, in his or
39 her discretion, issue an order describing such apparent violation and
40 requiring such banking organization, bank holding company, registered
41 mortgage broker, licensed mortgage banker, licensed student loan servi-
42 cer, licensed mortgage loan originator, licensed lender, licensed casher
43 of checks, licensed sales finance company, licensed insurance premium
44 finance agency, licensed transmitter of money, licensed budget planner,
45 out-of-state state bank that maintains a branch or branches or represen-
46 tative or other offices in this state, or foreign banking corporation to
47 appear before him or her, at a time and place fixed in said order, to
48 present an explanation of such apparent violation.

49 2. To discontinue unauthorized or unsafe and unsound practices. When-
50 ever it shall appear to the superintendent that any banking organiza-
51 tion, bank holding company, registered mortgage broker, licensed mort-
52 gage banker, licensed student loan servicer, registered mortgage loan
53 servicer, licensed mortgage loan originator, licensed lender, licensed
54 casher of checks, licensed sales finance company, licensed insurance
55 premium finance agency, licensed transmitter of money, licensed budget
56 planner, out-of-state state bank that maintains a branch or branches or

1 representative or other offices in this state, or foreign banking corpo-
2 ration licensed by the superintendent to do business in this state is
3 conducting business in an unauthorized or unsafe and unsound manner, he
4 or she may, in his or her discretion, issue an order directing the
5 discontinuance of such unauthorized or unsafe and unsound practices, and
6 fixing a time and place at which such banking organization, bank holding
7 company, registered mortgage broker, licensed mortgage banker, licensed
8 student loan servicer, registered mortgage loan servicer, licensed mort-
9 gage loan originator, licensed lender, licensed casher of checks,
10 licensed sales finance company, licensed insurance premium finance agen-
11 cy, licensed transmitter of money, licensed budget planner, out-of-state
12 state bank that maintains a branch or branches or representative or
13 other offices in this state, or foreign banking corporation may volun-
14 tarily appear before him or her to present any explanation in defense of
15 the practices directed in said order to be discontinued.

16 3. To make good impairment of capital or to ensure compliance with
17 financial requirements. Whenever it shall appear to the superintendent
18 that the capital or capital stock of any banking organization, bank
19 holding company or any subsidiary thereof which is organized, licensed
20 or registered pursuant to this chapter, is impaired, or the financial
21 requirements imposed by subdivision one of section two hundred two-b of
22 this chapter or any regulation of the superintendent on any branch or
23 agency of a foreign banking corporation or the financial requirements
24 imposed by this chapter or any regulation of the superintendent on any
25 licensed lender, registered mortgage broker, licensed mortgage banker,
26 licensed student loan servicer, licensed casher of checks, licensed
27 sales finance company, licensed insurance premium finance agency,
28 licensed transmitter of money, licensed budget planner or private banker
29 are not satisfied, the superintendent may, in the superintendent's
30 discretion, issue an order directing that such banking organization,
31 bank holding company, branch or agency of a foreign banking corporation,
32 registered mortgage broker, licensed mortgage banker, licensed student
33 loan servicer, licensed lender, licensed casher of checks, licensed
34 sales finance company, licensed insurance premium finance agency,
35 licensed transmitter of money, licensed budget planner, or private bank-
36 er make good such deficiency forthwith or within a time specified in
37 such order.

38 5. To keep books and accounts as prescribed. Whenever it shall appear
39 to the superintendent that any banking organization, bank holding compa-
40 ny, registered mortgage broker, licensed mortgage banker, licensed
41 student loan servicer, registered mortgage loan servicer, licensed mort-
42 gage loan originator, licensed lender, licensed casher of checks,
43 licensed sales finance company, licensed insurance premium finance agen-
44 cy, licensed transmitter of money, licensed budget planner, agency or
45 branch of a foreign banking corporation licensed by the superintendent
46 to do business in this state, does not keep its books and accounts in
47 such manner as to enable him or her to readily ascertain its true condi-
48 tion, he or she may, in his or her discretion, issue an order requiring
49 such banking organization, bank holding company, registered mortgage
50 broker, licensed mortgage banker, licensed student loan servicer, regis-
51 tered mortgage loan servicer, licensed mortgage loan originator,
52 licensed lender, licensed casher of checks, licensed sales finance
53 company, licensed insurance premium finance agency, licensed transmitter
54 of money, licensed budget planner, or foreign banking corporation, or
55 the officers or agents thereof, or any of them, to open and keep such
56 books or accounts as he or she may, in his or her discretion, determine

1 and prescribe for the purpose of keeping accurate and convenient records
2 of its transactions and accounts.

3 § 4. Paragraph (a) of subdivision 1 of section 44 of the banking law,
4 as amended by chapter 155 of the laws of 2012, is amended to read as
5 follows:

6 (a) Without limiting any power granted to the superintendent under any
7 other provision of this chapter, the superintendent may, in a proceeding
8 after notice and a hearing, require any safe deposit company, licensed
9 lender, licensed casher of checks, licensed sales finance company,
10 licensed insurance premium finance agency, licensed transmitter of
11 money, licensed mortgage banker, licensed student loan servicer, regis-
12 tered mortgage broker, licensed mortgage loan originator, registered
13 mortgage loan servicer or licensed budget planner to pay to the people
14 of this state a penalty for any violation of this chapter, any regu-
15 lation promulgated thereunder, any final or temporary order issued
16 pursuant to section thirty-nine of this article, any condition imposed
17 in writing by the superintendent in connection with the grant of any
18 application or request, or any written agreement entered into with the
19 superintendent.

20 § 5. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.