STATE OF NEW YORK

1061

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

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

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:

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

ARTICLE IX-A
COMMERCIAL FINANCE LICENSING

Section 363. Doing business without license prohibited.
363-a. Definitions.
363-b. Exemptions.
363-c. Application for license.
363-d. Conditions for issuance of a license.
363-e. Locations; change of address.
363-f. Changes in control.
363-g. Grounds for suspension or revocation.
363-h. Examinations.
363-i. Books and records.
363-j. Advertising.
363-k. Prohibited practices of licensees.
363-l. Penalties.
363-m. Regulations.
363-n. Severability.

§ 363. Doing business without license prohibited. 1. No person or other entity shall engage in the business of making or soliciting 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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except as authorized by this article and without first obtaining a license from the superintendent.

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

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

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

(a) loans or lines of credit made to a business or commercial enterprise in a principal amount of five hundred thousand dollars or less, whether secured or unsecured;

(b) purchase transactions where an entity purchases accounts, receivables, intangibles, revenue or other actual or perceived assets of the business if any single payment or advance of the purchase price for the purchased accounts, receivables, intangibles, revenue or other actual or perceived assets of the business is in the amount of five hundred thousand dollars or less; or

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

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

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

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

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

3. any federal credit union;

4. any insurance company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The superintendent may on good cause shown, without notice or hearing, suspend any license for a period not exceeding thirty days, pending investigation.

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

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

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

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

§ 363-h. Examinations. For the purpose of discovering violations of this article or securing information lawfully required under this article, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, investigate the business and examine the books, accounts, records, and files used therein of every licensee in connection with the activity covered under this article. For that purpose the superintendent

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

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

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

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

2. No licensee shall make, directly or indirectly, orally or in writing, by any method, practice or device, any representation that it is licensed under this article, except a representation that such licensee is licensed as a licensed commercial financing provider by the department.

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

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

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

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

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

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

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

§ 363-n. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

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

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

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

(a) Notwithstanding any other provision of law, every applicant for a license, authorization or registration under articles nine, nine-A, nine-B, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E and thirteen-B of this chapter and every applicant filing an application to acquire control of any licensee or registrant, as the case may be, under such articles shall submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon. An applicant shall not be required to submit his or her fingerprints as required by this subdivision if such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such

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

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

2. "License" when used in this article means any license duly issued by the superintendent pursuant to the provisions of article nine, nine-A, **nine-B,** eleven-B, twelve-B, twelve-C, twelve-D or thirteen-B of this chapter or any registration certificate issued by the superintendent pursuant to the provisions of article twelve-D of this chapter.

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

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

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.