

STATE OF NEW YORK

1420--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. JEAN-PIERRE -- read once and referred to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the administrative code of the city of New York, in relation to regulating commercial finance licensing, establishing the minority- and women-owned business protection program

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. Minority- and women-owned business protection program.

363-n. Regulations.

363-o. Severability.

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

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§ 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 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

1 transactions subject to the provisions of this article that are not
2 expressly regulated by article nine-B of this chapter; or

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

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

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

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

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

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

1 shall approve or deny every application for a master license under this
2 article within ninety days from the filing thereof with the applicable
3 fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 363-l. Penalties. 1. Any commercial financing product made by a
2 person not licensed under this article, and not exempt, to a business or
3 commercial enterprise located in this state shall be void, and the
4 provider shall have no right to collect or receive any principal, inter-
5 est, fees or charges whatsoever. No action to enforce a transaction made
6 in violation of this subdivision may be maintained.

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

11 § 363-m. Minority- and women-owned business protection program. 1.
12 Legislative findings. (a) Many local small businesses including minori-
13 ty- and women-owned businesses (MWBE's) in our state did not receive any
14 federal funding under the federal paycheck protection program (PPP).

15 (b) As New York state is reopening regionally post COVID-19, many of
16 our MWBE's who did not receive PPP funding are in desperate need of
17 funding to employ and/or pay staff, purchase inventory and pay rent and
18 utilities.

19 (c) MWBE's have historically had difficulty accessing credit on
20 reasonable terms and have been denied access to credit.

21 2. Establishment and initial funding. (a) Notwithstanding any
22 provision of law to the contrary, the legislature and the empire state
23 development corporation shall establish the minority- and women-owned
24 business (MWBE) development and lending program.

25 (b) Funding for such program shall come from at least fifty percent of
26 the fees collected from licensees or entities that are required to be
27 licensed under this article. Such funds may be used to fund ongoing
28 grants to MWBE's that are unable to access credit at reasonable costs.

29 (c) Any licensee offering a commercial financing product through a
30 contract or arrangement with any banking organization or federal credit
31 union organized under the laws of another state, under which such bank-
32 ing organization or federal credit union originates the commercial
33 financing product, shall report the total volume of such commercial
34 financing transactions in each year in New York state to the superinten-
35 dent who shall then set a fee per transaction to fund MWBE development
36 and lending.

37 3. Eligibility. Entities shall be eligible for funding provided such
38 entity:

39 (a) employs less than one hundred employees per workplace;

40 (b) existed in New York state on the first day of the state disaster
41 emergency declared pursuant to executive order two hundred two and any
42 further amendments or modifications thereto;

43 (c) can document actual economic harm, including, but not limited to,
44 a revenue shortfall, as a direct result of the state disaster emergency
45 declared pursuant to executive order two hundred two and any further
46 amendments or modifications thereto; and

47 (d) filed tax returns for calendar year two thousand eighteen, two
48 thousand nineteen, or two thousand twenty.

49 4. Grants. The MWBE protection program shall provide the following
50 grants in an amount equal to sixty percent of the prior year eligible
51 expenses, not to exceed one hundred thousand dollars:

52 (a) a rent reimbursement grant to reimburse qualifying entities for
53 rent paid during the COVID-19 pandemic, provided such entity has docu-
54 mentary proof of such paid rent. Rent reimbursement shall be capped at
55 three months of paid rent during the state of emergency;

(b) a perishable inventory grant to reimburse qualifying entities for perishable inventory purchased prior to the state disaster emergency declared pursuant to executive order two hundred two and any further amendments or modifications thereto and discarded due to such executive order;

(c) a payroll grant for the compensation of independent contractors who complete the federal tax form 1099; and

(d) a utilities grant.

5. Oversight. The state comptroller shall monitor the MWBE protection program to ensure the provisions of this section are properly executed. The state comptroller shall submit a report on such program to the governor, the temporary president of the senate and the speaker of the assembly and shall post such report on the comptroller's website on a quarterly basis describing any grants awarded under such program.

§ 363-n. 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-o. 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

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

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

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

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

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

44 § 6. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law. Effective immediately, the addition, amend-
46 ment and/or repeal of any rule or regulation necessary for the implemen-
47 tation of this act on its effective date are authorized to be made and
48 completed on or before such effective date.