

# STATE OF NEW YORK

8291

2021-2022 Regular Sessions

## IN ASSEMBLY

October 6, 2021

Introduced by M. of A. FAHY -- read once and referred to the Committee on Banks

AN ACT to amend the financial services law, in relation to civil penalties for financial fraud

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

1 Section 1. Section 408 of the financial services law is amended to  
2 read as follows:  
3 § 408. Civil penalty. [~~(a)~~] In addition to any civil or criminal  
4 liability provided by law, the superintendent may, after notice and  
5 hearing, levy a civil penalty:  
6 [~~(1)~~] (a) not to exceed five thousand dollars per offense, for:  
7 [~~(A)~~] (1) any [~~intentional~~] fraud [~~or intentional~~], misrepresentation  
8 [~~of a material fact~~], or unfair, deceptive, or abusive act or practice  
9 with respect to a financial product or service or involving any person  
10 offering to provide or providing financial products or services or  
11 involving any service provider utilized by any person offering to  
12 provide or providing financial products or services; or  
13 [~~(B)~~] (2) any violation of state or federal fair debt collection prac-  
14 tices or federal or state fair lending laws; and  
15 [~~(2)~~] (b) not to exceed one thousand dollars for any other violation  
16 of this chapter or the regulations issued thereunder, provided that  
17 there shall be no civil penalty under this section for violations of  
18 article five of this chapter or the regulations issued thereunder; and  
19 [~~(3)~~] (c) provided, however, that:  
20 [~~(A)~~] (1) penalties for regulated persons under the banking law shall  
21 be as provided for in the banking law and penalties for regulated  
22 persons under the insurance law shall be as provided for in the insur-  
23 ance law; and

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

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1    ~~[(B)]~~ (2) the superintendent shall not impose or collect any penalty  
2 under this section in addition to any penalty or fine for the same act  
3 or omission that is imposed under the insurance law or banking law; and  
4    ~~[(C)]~~ (3) nothing in this section shall affect the construction or  
5 interpretation of the term "fraud" as it is used in any other provision  
6 of the consolidated or unconsolidated law.

7    ~~[(b) Civil penalties received by the superintendent pursuant to this~~  
8 ~~section shall be applied on an annual basis as follows: funds shall be~~  
9 ~~applied first to reduce the assessments charged on persons regulated~~  
10 ~~under the insurance law and the banking law pursuant to section two~~  
11 ~~hundred six of this chapter up to the full amount paid by persons regu-~~  
12 ~~lated under the insurance law and banking law for the operating expenses~~  
13 ~~of the financial frauds and consumer protection unit not attributable to~~  
14 ~~regulation under the insurance or banking law for the fiscal year in~~  
15 ~~which such penalties are received, such amount shall be applied to any~~  
16 ~~assessment in the following year, and any remaining funds shall be paid~~  
17 ~~to the general fund. The superintendent shall have discretion to deter-~~  
18 ~~mine how operating expenses which are not solely attributable to regu-~~  
19 ~~lating persons under either the insurance law or the banking law shall~~  
20 ~~be allocated.]~~

21    § 2. Paragraph 2 of subsection (a) of section 104 of the financial  
22 services law is amended to read as follows:

23    (2) "Financial product or service" shall mean: (A) any financial prod-  
24 uct or financial service offered or provided by any person regulated or  
25 required to be regulated by the superintendent pursuant to the banking  
26 law or the insurance law or any other financial product or service  
27 offered or sold to consumers except financial products or services: (i)  
28 regulated under the exclusive jurisdiction of a federal agency or  
29 authority, (ii) regulated for the purpose of consumer or investor  
30 protection by any other state agency, state department or state public  
31 authority, or (iii) where rules or regulations promulgated by the super-  
32 intendent on such financial product or service would be preempted by  
33 federal law; ~~[and]~~ or

34    (B) ~~["Financial product or service" shall also not include the follow-~~  
35 ~~ing, when offered or provided by a provider of consumer goods or~~  
36 ~~services: (i) the extension of credit directly to a consumer exclusive-~~  
37 ~~ly for the purpose of enabling that consumer to purchase such consumer~~  
38 ~~good or service directly from the seller, (ii) the collection of debt~~  
39 ~~arising from such credit, or (iii) the sale or conveyance of such debt~~  
40 ~~that is delinquent or otherwise in default]~~ any warranty sold or  
41 provided to a consumer or small business or any guaranty or suretyship  
42 provided by a consumer.

43    § 3. This act shall take effect immediately.