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:

Section 1. Section 408 of the financial services law is amended to read as follows:

§ 408. Civil penalty. [~~(a)~~] In addition to any civil or criminal liability provided by law, the superintendent may, after notice and hearing, levy a civil penalty:

[~~(1)~~] **(a)** not to exceed five thousand dollars per offense, for:

[~~(A)~~] **(1)** any [~~intentional~~] fraud [~~or intentional~~]**,** misrepresentation [~~of a material fact~~]**, or unfair, deceptive, or abusive act or practice** with respect to a financial product or service or involving any person offering to provide or providing financial products or services **or involving any service provider utilized by any person offering to provide or providing financial products or services**; or

[~~(B)~~] **(2)** any violation of state or federal fair debt collection practices or federal or state fair lending laws; and

[~~(2)~~] **(b)** not to exceed one thousand dollars for any other violation of this chapter or the regulations issued thereunder, provided that there shall be no civil penalty under this section for violations of article five of this chapter or the regulations issued thereunder; and

[~~(3)~~] **(c)** provided, however, that:

[~~(A)~~] **(1)** penalties for regulated persons under the banking law shall be as provided for in the banking law and penalties for regulated persons under the insurance law shall be as provided for in the insurance law; and

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

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[~~(B)~~] **(2)** the superintendent shall not impose or collect any penalty under this section in addition to any penalty or fine for the same act or omission that is imposed under the insurance law or banking law; and

[~~(C)~~] **(3)** nothing in this section shall affect the construction or interpretation of the term "fraud" as it is used in any other provision of the consolidated or unconsolidated law.

[~~(b) Civil penalties received by the superintendent pursuant to this section shall be applied on an annual basis as follows: funds shall be applied first to reduce the assessments charged on persons regulated under the insurance law and the banking law pursuant to section two hundred six of this chapter up to the full amount paid by persons regulated under the insurance law and banking law for the operating expenses of the financial frauds and consumer protection unit not attributable to regulation under the insurance or banking law for the fiscal year in which such penalties are received, such amount shall be applied to any assessment in the following year, and any remaining funds shall be paid to the general fund. The superintendent shall have discretion to determine how operating expenses which are not solely attributable to regulating persons under either the insurance law or the banking law shall be allocated.~~]

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

(2) "Financial product or service" shall mean: (A) any financial product or financial service offered or provided by any person regulated or required to be regulated by the superintendent pursuant to the banking law or the insurance law or any **other** financial product or service offered or sold to consumers except financial products or services: (i) regulated under the exclusive jurisdiction of a federal agency or authority, (ii) regulated for the purpose of consumer or investor protection by any other state agency, state department or state public authority, or (iii) where rules or regulations promulgated by the superintendent on such financial product or service would be preempted by federal law; [~~and~~] **or**

(B) [~~"Financial product or service" shall also not include the following, when offered or provided by a provider of consumer goods or services: (i) the extension of credit directly to a consumer exclusively for the purpose of enabling that consumer to purchase such consumer good or service directly from the seller, (ii) the collection of debt arising from such credit, or (iii) the sale or conveyance of such debt that is delinquent or otherwise in default~~] **any warranty sold or provided to a consumer or small business or any guaranty or suretyship provided by a consumer**.

§ 3. This act shall take effect immediately.