STATE OF NEW YORK

2796--A

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. SEPULVEDA, BENJAMIN, COMRIE, PARKER, SAVINO, SERRANO -- read twice and ordered printed, and when printed to be committed 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 enacting the "community financial services access and modernization act of 2021"; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Short title. This act shall be known as and may be cited as the "community financial services access and modernization act of 2021".

§ 2. Paragraph (b) of subdivision 5 of section 18-a of the banking law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

(b) two thousand dollars when the application relates to the licensing of an additional location or change of location or the licensing of a [~~mobile unit~~] limited station of a licensed casher of checks; or

§ 3. Section 366 of the banking law, as amended by chapter 49 of the laws of 1961, subdivision 1 as amended by chapter 849 of the laws of 1964 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, and subdivisions 2 and 3 as renumbered by chapter 132 of the laws of 1969, is amended and a new subdivision 4 is added to read as follows:

§ 366. Definitions. When used in this article. 1. The term "licensed casher of checks" means any [~~individual, partnership, unincorporated association or corporation~~] person duly licensed by the superintendent of financial services to engage in business pursuant to the provisions of this article.

2. The term "licensee" means a licensed casher of checks, drafts and/or money orders.

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

LBD04514-04-1

3. The term [~~"mobile unit"~~] **"limited station"** means any vehicle or other movable means from which the business of cashing checks, drafts or money orders is to be conducted.

4. The term "person" means any individual or other legal entity, including any corporation, partnership, association or limited liability company.

§ 4. Section 367 of the banking law, as amended by chapter 151 of the laws of 1945, subdivision 3 as amended by section 7 of part D-1 of chapter 109 of the laws of 2006, and subdivision 4 as amended by chapter 96 of the laws of 1981, is amended to read as follows:

§ 367. License requirements; fees; capital requirements. 1. No person[~~, partnership, association or corporation~~] shall engage in the business of cashing checks, drafts or money orders for a consideration without first obtaining a license from the superintendent.

2. Application for such license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the name, and the address both of the residence and place of business, of the applicant, and if the applicant is a co-partnership [~~or~~]**,** association **or limited liability company**, of every member thereof, and if a corporation, of each officer and director thereof; also, if the business is to be conducted at a specific address, the address at which the business is to be conducted, and if the business is to be conducted from a [~~mobile unit~~] **limited station**, the New York state registration number or other identification of such [~~mobile unit~~] **limited station** and the area in which the applicant proposes to operate such [~~mobile unit~~] **limited station**; and also such further information as the superintendent may require.

3. Such applicant at the time of making such application shall pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for investigating the application. Any licensee requesting a change of address, shall at the time of making such request, pay to the superintendent a fee as prescribed pursuant to section eighteen-a of this chapter for investigating the new address; provided, however, that the superintendent may, in his or her discretion, waive such investigation fee if warranted, and provided further, that no fee shall be payable for the relocation of a limited station.

4. Every applicant shall prove, in form satisfactory to the superintendent that he or it has available for the operation of such business, for each location and for each [~~mobile unit~~] **limited station** specified in the application, liquid assets of at least ten thousand dollars, and every licensee shall continuously maintain for the operation of such business for each location and for each [~~mobile unit~~] **limited station** liquid assets of at least ten thousand dollars. Notwithstanding the foregoing provisions of this subdivision, the superintendent, upon application by an applicant and for good cause shown, may permit a reduction from ten thousand dollars to not less than five thousand dollars of minimum liquid assets required for each location.

§ 5. Section 369 of the banking law, as amended by chapter 151 of the laws of 1945, subdivision 1 as amended by chapter 233 of the laws of 2005, subdivisions 4 and 5 as amended by chapter 132 of the laws of 1969, subdivision 6 as amended by section 1 of subpart A of part II of chapter 55 of the laws of 2019, and subdivision 7 as added by chapter 485 of the laws of 1947, is amended to read as follows:

§ 369. Conditions precedent to issuing license; issuance and filing of license; posting license. 1. 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 co-partnership [~~or~~], association **or limited liability company**, 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 granting of such application will promote the convenience and advantage of the area in which such business is to be conducted, and if the superintendent shall find that the applicant has available for the operation of such business for each location and for each [~~mobile unit~~] **limited station** specified in the application liquid assets of at least ten thousand dollars, the superintendent shall thereupon execute a license in duplicate to permit the cashing of checks, drafts and money orders in accordance with the provisions of this article at the location or in the area specified in such application. In finding whether the application will promote the convenience and advantage to the public, the superintendent shall determine whether there is a community need for a new licensee in the proposed area to be served. No license shall be issued to an applicant for a license, at a location to be licensed which is closer than one thousand five hundred eighty-four feet (three-tenths of a mile) from an existing licensee, except with the written consent of such existing licensee or pursuant to subdivision three of section three hundred seventy of this article, subject to any restriction or condition as the superintendent may promulgate by regulation; provided, however, the superintendent may permit a location to be licensed that is closer than three-tenths of a mile from an existing licensee provided such applicant engages in the cashing of checks, drafts or money orders only for payees of such checks, drafts or money orders that are other than natural persons at the location to be licensed and such applicant was engaged in the cashing of such checks, drafts or money orders for payees that are other than natural persons at such location on or before the fourteenth day of July, two thousand four, and provided further that upon licensing any such location by the superintendent, such license as it pertains solely to such location shall not be affected thereafter by any change of control of such license pursuant to section three hundred seventy-a of this article, provided that the licensee continues thereafter to engage at that location in the cashing of checks, drafts or money orders only for payees that are other than natural persons and provided further that such license shall bear a legend stating that such location is restricted to the cashing of checks, drafts or money orders only for payees that are other than natural persons. The three-tenths of a mile distance requirement as set forth in this section shall not apply in cases where the existing licensee is a restricted location as authorized in the preceding sentence, or is any other licensed location that engages solely in the cashing of checks, drafts or money orders only for payees that are other than natural persons. For purposes of this section, such distance shall be measured on a straight line along the street between the nearest point of the store fronts of the check cashing facilities. The primary business of the licensee, at the location to be licensed, shall be financial services. The superintendent shall transmit one copy of such license to the applicant and file another in the office of the department. Notwithstanding the foregoing provisions of this subdivision, the superintendent, upon application by an applicant and for good cause shown, may permit a reduction from ten thousand dollars to not less than five thousand dollars of minimum liquid assets required for each location.

2. Such license shall state the name of the licensee; and if the licensee is a co-partnership [~~or~~], association **or limited liability company**, the names of the members thereof; and if the licensee is a corporation, the date of its incorporation; and if the business is to be conducted at a specific address, the address at which such business is to be conducted; and if the business is to be conducted through the use of a [~~mobile unit~~] **limited station**, the New York state registration number or other identification of such [~~mobile unit~~] **limited station** and the area in which such [~~mobile unit~~] **limited station** is authorized to do business.

3. Such license shall be kept conspicuously posted in the place of business of the licensee or, in the case of a [~~mobile unit~~] **limited station**, upon such [~~mobile unit~~] **limited station**. Such license shall not be transferable or assignable.

4. Such license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this article.

5. If the superintendent shall find that the applicant fails to meet any of the conditions set forth in subdivision one of this section, he **or she** shall not issue such license, and he **or she** shall notify the applicant of the denial. If an application is denied or withdrawn, the superintendent shall retain the investigation fee to cover the costs of investigating the application and return the license fee to the applicant.

6. The superintendent may, consistent with article twenty-three-A of the correction law, refuse to issue a license pursuant to this article if he **or she** shall find that the applicant, or any person who is a director, officer, partner, agent, employee or substantial stockholder of the applicant, (a) has been convicted of a crime in any jurisdiction or (b) is associating or consorting with any person who has, or persons who have, been convicted of a crime or crimes in any jurisdiction or jurisdictions. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or magistrate, or shall have been found guilty thereof by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof. The term "substantial stockholder," as used in this subdivision, shall be deemed to refer to a person owning or controlling ten per centum or more of the total outstanding stock of the corporation in which such person is a stockholder. In making a determination pursuant to this subdivision, the superintendent shall require fingerprinting of the applicant. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

7. No license pursuant to this article shall be issued to any applicant to do business at the place specified in the application as the place where the business is to be conducted if, within the twelve months preceding such application, a license to engage in business pursuant to this article at such place shall have been revoked.

§ 6. Section 370 of the banking law, as amended by chapter 151 of the laws of 1945, subdivision 2 as amended by section 38 of part O of chapter 59 of the laws of 2006 and subdivision 3 as amended by chapter 703 of the laws of 2006, is amended to read as follows:

§ 370. Restrictions as to place or area of doing business; establishment of stations; change of location. 1. No more than one place of business or one [~~mobile unit~~] limited station shall be maintained under the same license; provided, however, that more than one license may be issued to the same licensee upon compliance with the provisions of this article for each new license.

2. Any licensed casher of checks may open and maintain, within this state, one or more limited stations for the purpose of cashing checks, drafts or money orders for the particular group or groups specified in the license authorizing each such station. Such stations shall be licensed pursuant to and be subject to all the provisions of this chapter applicable to licensed cashers of checks, except that (a) such station shall not be subject to the distance limitation set forth in subdivision one of section three hundred sixty-nine of this article, (b) the fee for investigating the application for a station shall be as prescribed pursuant to section eighteen-a of this chapter, and (c) where such a station is at the premises of a specified employer for the purpose of cashing checks, drafts and money orders for the employees of such employer, the fees and charges for cashing such checks, drafts or money orders shall not be subject to the limitations of subdivision one of section three hundred seventy-two of this article if such fees and charges are paid by such employer.

3. A licensee may make a written application to the superintendent for leave to change his or her place of business, or in the case of a [~~mobile unit~~] limited station, the area in which such unit is authorized to be operated, stating the reasons for such proposed change. Such application may be approved for relocation from a site within three-tenths of a mile of another licensee to another site within three-tenths of a mile of such other licensee provided that such new site is farther from such existing licensee than the site from which permission to relocate is sought. Only in situations in which a licensee seeks to change its place of business due to extraordinary circumstances, as may be determined by the superintendent pursuant to regulations, may the superintendent, in his or her discretion, determine that an application may be approved for relocation from a site within three-tenths of a mile of another licensee to a new site which is closer to such existing licensee than the site from which permission to relocate is sought. Notwithstanding any other provision of this subdivision, a licensee may relocate from any location to a location that is within three-tenths of a mile from another licensee with the written consent of the other licensee. If the superintendent approves such application he or she shall issue a new license in duplicate in accordance with the provisions of section three hundred sixty-nine of this article, stating the new location of such licensee or, in the case of a [~~mobile unit~~] limited station, the new area in which such [~~mobile unit~~] limited station may be operated.

§ 7. Subdivision 4 of section 370-a of the banking law, as added by chapter 142 of the laws of 1992, is amended to read as follows:

4. 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 **or her** 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.

§ 8. Section 371 of the banking law, as added by chapter 151 of the laws of 1945, is amended to read as follows:

§ 371. Regulations. The superintendent is hereby authorized and empowered to make such rules and regulations, and such specific rulings, demands, and findings as he **or she** may deem 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.

§ 9. Section 372 of the banking law, as amended by chapter 151 of the laws of 1945, the section heading and subdivision 1 as amended and subdivision 7 as added by chapter 432 of the laws of 2004, subdivisions 2, 3 and 4 as added and subdivisions 5 and 6 as renumbered by chapter 263 of the laws of 1983, and subdivision 6 as added by chapter 485 of the laws of 1947, is amended to read as follows:

§ 372. Fees and charges; posting schedule; records and reports. 1. The superintendent shall, by regulation, establish the maximum fees which may be charged by licensees for cashing a check, draft, or money order. No licensee shall charge or collect any sum for cashing a check, draft, or money order in excess of that established by the superintendent's regulations; provided, however, that no maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

2. The schedule of fees and charges permitted under this section shall be conspicuously and continuously posted in every location and [**~~mobil unit~~**] **limited station** licensed under this article.

3. **Only in the case of an internet, digital or other electronic advertisement or solicitation, a licensee shall be deemed to have fulfilled the disclosure requirements required by law with respect to such internet, digital or other electronic advertisement or solicitation only by displaying the disclosures on its website, so long as the advertisement or solicitation includes a link directly to such website, and provided this does not modify in-store disclosure requirements.**

4. No change in fees shall become effective earlier than thirty days after the superintendent shall notify the majority leader of the senate, the speaker of the assembly, and the chairmen of both the senate and assembly committees on banks of his **or her** intention to change fees.

[**~~4.~~**] **5.** The fees in effect immediately prior to the effective date of this subdivision shall continue to be the maximum allowable fees until revised by the superintendent's regulations.

[**~~5.~~**] **6.** Each licensee shall keep and use in its business such books, accounts, and records as the superintendent may require to carry into effect the provisions of this article and the rules and regulations made by the superintendent hereunder. Every licensee shall preserve such books, accounts and records for at least two years.

[~~6.~~] 7. Before a licensee shall deposit with any banking organization, or with any organization engaged in the business of banking, a check, draft or money order cashed by such licensee, the same must be endorsed with the actual name under which such licensee is doing business and must have the words "licensed casher of checks" legibly written or stamped immediately after or below such name.

[~~7.~~] 8. Every licensee shall submit to the superintendent, or such person as the superintendent may designate, such suspicious activity reports or currency transaction reports as are required to be submitted to federal authorities pursuant to provisions of the Bank Secrecy Act (subchapter 11, chapter 53, title 31, United States code) and regulations and administrative orders related thereto, as amended, within the periods of time as required by such act and regulations. A licensee may submit a copy of any such report to the superintendent, or such person as the superintendent may designate, that is filed with such federal authorities. The superintendent may adopt such regulations or require such additional reports as he or she deems necessary to insure the effective enforcement of this subdivision.

§ 10. Section 372-a of the banking law, as added by chapter 432 of the laws of 2004, is amended to read as follows:

§ 372-a. Superintendent authorized to examine. 1. For the purpose of discovering violations of this article or securing information lawfully required in this section, 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 [~~cashing of checks by~~] licensees and their business practices as authorized by this article and examine the books, accounts, records, and files used therein of every licensee.

2. For the purpose established in subdivision one of this section, the superintendent and his or her duly designated representatives shall have free access to the offices and places 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 cashing of checks or such business.

§ 11. Subdivisions 1 and 2 of section 373 of the banking law, subdivision 1 as amended by chapter 432 of the laws of 2004 and subdivision 2 as amended by chapter 132 of the laws of 1969, are amended to read as follows:

1. No licensee shall engage in the business of making loans of money, credit, goods or things or discounting of notes, bills of exchange, checks, or other evidences of debt pursuant to the provisions of article nine of this chapter, nor shall a loan business or the negotiation of loans or the discounting of notes, bills of exchange, checks or other evidences of debt be conducted on the same premises where the licensee is conducting business pursuant to the provisions of this article. Except as otherwise provided by regulation of the superintendent, all checks, drafts and money orders shall be deposited in the licensee's bank account not later than the first business day following the day on which they were cashed. No licensee shall at any time cash or advance any moneys on a post-dated check or draft or engage in the business of transmitting money or receiving money for transmission; provided, however, that a licensee may cash a check [~~payable on the first banking business day following the date of cashing (a) if such check is drawn by the United States, the state of New York, or any political subdivision of the state of New York, or by any department, bureau, agency, authority,~~

~~instrumentality or officer, acting in his official capacity, of the United States or of the state of New York or of any political subdivision of the state of New York, or (b) if such check is a payroll check drawn by an employer to the order of its employee in payment for services performed by such employee~~] without regard to the date imprinted on the check as long as the check is dated not more than five business days after the date of presentment and as long as the check is deposited in the licensee's bank account not later than the first business day following the day on which it was cashed that is: (a) payable no more than five banking business days following the date of cashing if such check is drawn by the United States, the state of New York, or any political subdivision of the state of New York, or by any department, bureau, agency, authority, instrumentality or officer, acting in his or her official capacity, of the United States or of the state of New York or of any political subdivision of the state of New York; (b) payable no more than five banking business days following the date of cashing if such check is payable to a natural person and is in an amount not exceeding one thousand dollars; or (c) payable on the first banking business day following the date of cashing if such check is a payroll check drawn by an employer to the order of its employee in payment for services performed by such employee. Any licensee who cashes post-dated checks pursuant to paragraph (a) or (b) of this subdivision shall do so subject to the safety and soundness requirements of this article, including establishment of policies and procedures to implement robust due diligence, risk management, liquidity management, structured transactions and fraud prevention. No licensee shall cash any check, draft or money order if the face amount for which it is drawn is in excess of [~~fifteen~~] twenty thousand dollars; provided, however, that this restriction shall not apply to the cashing of checks, drafts or money orders drawn by the United States, any state thereof or any political subdivision of any such state, or by any department, bureau, agency, authority, instrumentality or officer, acting in his or her official capacity, of the United States, any state thereof or any political subdivision of any such state, or any [~~banking~~] financial institution, or to any check or draft drawn by or on account of any insurance company, attorney for the settlement of claims, or to any check which has been certified or guaranteed by the [~~banking~~] financial institution on which it has been drawn, or if such check is drawn on a bona fide workers' compensation fund issued by a third-party payor, or if such check is drawn by an employer from a pension or profit sharing fund, or if such check is drawn by a union from a pension or benefit fund or if such check is drawn by a union; provided further, however, that any such restriction upon the maximum face amount that may be cashed by a licensee shall not apply to the cashing of checks, drafts or money orders by licensees for payees of such checks, drafts or money orders that are other than natural persons. For purposes of this subdivision, "[~~banking~~] financial institution" means any bank, trust company, savings bank, savings and loan association [~~or~~], credit union or other financial institution which is incorporated, chartered [~~or~~], organized or licensed under the laws of this state or any other state or the United States.

2. The superintendent may suspend or revoke any license or licenses issued pursuant to this article if, after notice and a hearing, he or she shall find that the licensee (a) has committed any fraud, engaged in any dishonest activities or made any misrepresentation; or (b) has violated any provisions of the banking law or any regulation issued pursuant thereto, or has violated any other law in the course of its or

his **or her** dealings as a licensed casher of checks; or (c) has made a false statement in the application for such license or failed to give a true reply to a question in such application; or (d) has demonstrated his or its incompetency or untrustworthiness to act as a licensed casher of checks; or (e) is not doing sufficient business pursuant to this article to justify the continuance of the license, or if he **or she** shall find that any ground or grounds exist which would require or warrant the refusal of an application for the issuance of the license if such an application were then before him **or her**. Such a hearing shall be held in the manner and upon such notice as may be prescribed by the superintendent. Pending an investigation or a hearing for the suspension or revocation of any license or licenses issued pursuant to this article, the superintendent may temporarily suspend such license or licenses for a period not to exceed ninety days, provided the superintendent shall find that such a temporary suspension is in the public interest.

§ 12. Subdivision 3 of section 37 of the banking law, as amended by chapter 360 of the laws of 1984, is amended to read as follows:

3. In addition to any reports expressly required by this chapter to be made, the superintendent may require any banking organization, licensed lender, licensed casher of checks, licensed mortgage banker, foreign banking corporation licensed by the superintendent to do business in this state, bank holding company and any non-banking subsidiary thereof, corporate affiliate of a corporate banking organization within the meaning of subdivision six of section thirty-six of this article and any non-banking subsidiary of a corporation which is an affiliate of a corporate banking organization within the meaning of subdivision six-a of section thirty-six of this article to make special reports to him **or her** at such times as he **or she** may prescribe.

§ 13. Within ninety days of the effective date of this act, the superintendent of financial services shall commence a review of its current system of issuing licenses for check cashing licensees, the establishment of new check cashing locations, for the relocation of check cashing locations, and for changes of control of existing check cashing licensees, and will issue a report to the governor, the chairman of the assembly banks committee, and the chairman of the senate banks committee, regarding the costs (including application fees, preparation fees, and other costs) incurred by applicants to prepare and submit applications, the costs incurred by the department of financial services to review and process applications, the length of time required for the review and processing of applications by such department, and recommendations to improve the efficiency and lessen the costs, burdens, and length of such department's licensing processes. The superintendent of financial services shall report to the governor and to the respective committee chairs within one hundred eighty days of the date of commencement of his or her review. The superintendent of financial services shall consult with and receive input from check cashing licensees in the preparation of its analysis and report.

§ 14. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that:

(a) the amendments to section 373 of the banking law made by section eleven of this act shall expire and be deemed repealed June 30, 2026; and

(b) any contract, instrument, argument or other written obligation entered into by a financial service provider authorized under section 373 of the banking law prior to June 30, 2026 shall be deemed valid and enforceable after such date.

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.