STATE OF NEW YORK

7770

2023-2024 Regular Sessions

IN ASSEMBLY

June 9, 2023

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

AN ACT to amend the financial services law, in relation to allowing the department of financial services to have additional oversight of banks and insurance companies that are not currently licensed

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

Section 1. The legislature finds that it is essential to the protection of users of financial products and services from imprudent conduct and harmful business practices in the financial services marketplace that all persons offering financial products and services in New York State be sufficiently deterred from disregarding the laws and regulations governing the offering of financial products or services, regardless of whether they are properly licensed. Furthermore, to ensure that the business of, and the persons providing, financial products and services are appropriately supervised, the law should not advantage persons who disregard licensing requirements. Currently, as to engagement in many activities for which a license from the superintendent of financial services is required, an unlicensed person not exempt from licensing is not subject to civil penalty for acts that would constitute violations subject to penalty if the person were licensed; such an unlicensed person may be subject to only a limited civil penalty for engaging in activity without a required license. This act remediates this fault in the law by providing that any person engaged in activity for which such person must be licensed by the superintendent of financial services will be subject to a civil penalty for conducting such activity in a manner inconsistent with the law, regardless of such person's licensure status.

§ 2. Subdivisions (a) and (b) of section 305 of the financial services law are amended to read as follows:

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

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(a) Unless otherwise provided in this chapter, the banking law, the insurance law or any other law, any hearing pursuant to any such law may be held before the superintendent, any deputy superintendent, or any designated salaried employee of the department authorized by the superintendent for such purpose. Any adjudicatory proceeding, including any hearings to assess civil penalties under section four hundred eight **or four hundred eight-a** of this chapter, held pursuant to the provisions of this chapter, the insurance law or the banking law shall be noticed, conducted and administered in compliance with the state administrative procedure act.

(b) The person conducting such hearing shall have power to administer oaths, examine and cross-examine witnesses and receive documentary evidence, and shall report his or her findings, orally or in writing, to the superintendent with or without recommendation. Such report, if adopted by the superintendent may be the basis of any determination made by the superintendent. One hundred twenty days after the effective date of a determination of liability for a civil penalty pursuant to section four hundred eight **or four hundred eight-a** of this chapter or four hundred three, one thousand one hundred two, two thousand one hundred two, two thousand one hundred seventeen, two thousand one hundred thirty-three or seven thousand eight hundred sixteen of the insurance law, such determination of liability for a civil penalty may be entered as a judgment and enforced, without court proceedings, in the same manner as the enforcement of a money judgment in civil actions in any court of competent jurisdiction or any other place provided for the entry of civil judgment within this state.

§ 3. Subdivision (a) of section 404 of the financial services law is amended to read as follows:

(a) The superintendent has authority under this article, the banking law, the insurance law and other applicable laws to investigate activities that may constitute violations subject to section four hundred eight **or four hundred eight-a** of this article or violations of the insurance law or banking law and to develop evidence thereon.

§ 4. The financial services law is amended by adding a new section 408-a to read as follows:

§ 408-a. Unlicensed activities prohibited. (a) For the purposes of this section, a "prohibited unlicensed act" shall mean:

(1) engaging in an activity in this state for which a license, certification, registration, authorization, charter, accreditation, incorporation, or approval by the superintendent is required by this chapter, the banking law, the insurance law, or the regulations promulgated thereunder, without such license, certification, registration, authorization, charter, accreditation, incorporation or approval or an exemption from such requirement; or

(2) any act or omission by a person who is required by this chapter, the banking law, the insurance law or the regulations promulgated thereunder, to be licensed, certified, registered, authorized, chartered, accredited, incorporated or otherwise approved by the superintendent and is not so licensed, certified, registered, authorized, chartered, accredited, incorporated, approved or exempted from such requirement, if such act or omission would constitute a violation of this chapter, the banking law, the insurance law or the regulations promulgated thereunder if such person were so licensed, certified, registered, authorized, chartered, accredited, incorporated or approved.

(b) In addition to any civil or criminal liability provided by law, the superintendent may, after notice and a hearing, levy a civil penalty for any prohibited unlicensed act as follows:

(1) The penalty for a prohibited unlicensed act that relates to the requirements of the banking law or the regulations promulgated thereunder shall be the same as the penalty provided in section forty-four of the banking law for any violation of the banking law.

(2) The penalty for a prohibited unlicensed act described in paragraph one of subdivision (a) of this section that relates to the requirements of the insurance law or the regulations promulgated thereunder shall be the same as the penalty for violations set forth in section one thousand one hundred two of the insurance law.

(3) The penalty for a prohibited unlicensed act described in paragraph two of subdivision (a) of this section that relates to the requirements of the insurance law or the regulations promulgated thereunder shall be the same as the penalty for violations set forth in section one hundred nine of the insurance law or any other applicable provision of the insurance law, whichever is higher.

(4) The penalty for a prohibited unlicensed act that relates to the requirements of this chapter or the regulations promulgated thereunder shall be the same as the penalty provided for in section four hundred eight of this article for violations of this chapter or the regulations promulgated thereunder.

(5) If a prohibited unlicensed act results in consumer harm, the penalty shall be not more than double the penalty amount applicable to such violation set forth in paragraph one, two, three or four of this subdivision, as applicable.

(c) The superintendent shall not impose or collect any penalty for a prohibited unlicensed act pursuant to paragraph four of subdivision (b) of this section if the superintendent imposes or collects any penalty pursuant to paragraph one, two or three of subdivision (b) of this section for the same act or omission.

(d) Civil penalties received by the superintendent pursuant to this section shall be applied in the same manner as civil penalties received by the superintendent pursuant to section four hundred eight of this chapter.

(e) In addition to any other penalty or sanction imposed upon a person by law for an unlicensed act, after notice and a hearing, the superintendent may issue an order directing such person to pay restitution for such unlicensed act.

§ 5. Subdivision (a) of section 409 of the financial services law is amended to read as follows:

(a) Whenever the superintendent is satisfied that a violation subject to section four hundred eight or four hundred eight-a of this article or fraud or other criminal activity under the insurance law or banking law has been committed or attempted, the superintendent shall report any such violation of law, as the superintendent deems appropriate, to the appropriate licensing agency, the district attorney of the county in which such acts were committed, to the attorney general, and where appropriate, to the person who submitted the report of fraudulent activity, as provided by the provisions of this article. Within one hundred twenty days of receipt of the superintendent's report, the attorney general or the district attorney concerned shall inform the superintendent as to the status of the reported violations.

§ 6. This act shall take effect immediately.