STATE OF NEW YORK

7770--A

2023-2024 Regular Sessions

IN ASSEMBLY

June 9, 2023

Introduced by M. of A. BORES, ROZIC, BURDICK -- 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, in relation to allowing the department of financial services to impose penalties on unlawfully unlicensed entities

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

Section 1. Subdivisions 1, 2, 3 and 4 of section 44 of the banking law, subdivisions 1, 3, 4, and paragraph (b) of subdivision 2 as amended by section 9 of part O of chapter 59 of the laws of 2006, paragraph (a) of subdivision 1 as amended by section 4 of part L of chapter 58 of the laws of 2019, subdivision 2 as amended by chapter 356 of the laws of 2004, paragraph (a) of subdivision 2 as amended by chapter 155 of the laws of 2012, are amended and a new subdivision 10 is added to read as follows:

1. (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any safe deposit company, licensed lender, licensed casher of checks, licensed sales finance company, licensed insurance premium finance agency, licensed transmitter of money, licensed mortgage banker, licensed student loan servicer, registered mortgage broker, licensed mortgage loan originator, registered mortgage loan servicer [~~or~~], licensed budget planner **or unlawfully unlicensed entity** to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in

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

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connection with the grant of any application or request, or any written agreement entered into with the superintendent.

(b) The penalty for each violation prescribed in paragraph (a) of this subdivision shall not exceed two thousand five hundred dollars for each day during which such violation continues.

(c) Notwithstanding paragraph (b) of this subdivision, if the superintendent determines (i) that any such licensee, registrant [~~or~~], safe deposit company **or unlawfully unlicensed entity** has committed a violation as described in paragraph (a) of this subdivision, or has recklessly engaged in any unsafe and unsound practice and (ii) that such violation or practice is part of a pattern of misconduct, results or is likely to result in more than minimal loss to such licensee, registrant [~~or~~], safe deposit company, **or unlawfully unlicensed entity** or results in pecuniary gain or other benefit to such licensee, registrant [~~or~~], safe deposit company, **or unlawfully unlicensed entity,** then the penalty shall not exceed fifteen thousand dollars for each day during which such violation or practice continues.

(d) Notwithstanding paragraphs (b) or (c) of this subdivision, if the superintendent determines (i) that any such licensee, registrant [~~or~~], safe deposit company**, or unlawfully unlicensed entity** has knowingly and willfully committed any violation as described in paragraph (a) of this subdivision, or has knowingly and willfully engaged in any unsafe and unsound practice, or (ii) that any licensee, registrant [~~or~~], safe deposit company**, or unlawfully unlicensed entity** that has knowingly committed any violation described in paragraph (a) of this subdivision which substantially undermines public confidence in any such licensee, registrant [~~or~~], safe deposit company **or unlawfully unlicensed entity** or in such licensees, registrants or safe deposit companies generally, and, in either case, (iii) that such licensee, registrant [~~or~~], safe deposit company **or unlawfully unlicensed entity** has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten the safety and soundness of such licensee, registrant [~~or~~], safe deposit company, **or unlawfully unlicensed entity,** then the penalty shall not exceed seventy-five thousand dollars for each day during which such violation continues.

(e) The superintendent, in determining the amount of any penalty assessed pursuant to this subdivision, shall take into consideration the net worth and annual business volume of such licensees, registrants [~~or~~], safe deposit companies **or unlawfully unlicensed entities**.

2. (a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and hearing, require any banking organization, bank holding company, out-of-state state bank that maintains a branch or branches or representative or other offices in this state, or foreign banking corporation licensed by the superintendent to maintain a branch, agency or representative office in this state**, or unlawfully unlicensed entity** to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated thereunder, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent in connection with the grant of any application or request, or any written agreement entered into with the superintendent. For purposes of this section, any reference to a "banking organization" shall be deemed to exclude a safe deposit company and any reference to a "foreign bank licensee" shall be deemed to include an out-of-state state bank that maintains a branch or branches or representative or other offices in this state and a foreign

banking corporation licensed to maintain a branch, agency or representative office in this state.

(b) The penalty for each violation prescribed in paragraph (a) of this subdivision shall not exceed five thousand dollars for each day during which such violation continues.

3. Notwithstanding paragraph (b) of subdivision two of this section, if the superintendent determines: (a) that any banking organization, bank holding company, [~~or~~] foreign bank licensee **or unlawfully unlicensed entity** has committed any violation described in subdivision two of this section or has recklessly engaged in any unsafe and unsound practice, and

(b) that such violation or practice is part of a pattern of misconduct, results or is likely to result in more than minimal loss to the banking organization, bank holding company, [~~or~~] foreign bank licensee, **or unlawfully unlicensed entity** or results in pecuniary gain or other benefit to the banking organization, bank holding company, [~~or~~] foreign bank licensee, **or unlawfully unlicensed entity** then the penalty shall not exceed twenty-five thousand dollars for each day during which such violation or practice continues.

4. Notwithstanding paragraph (b) of subdivision two and subdivision three of this section, if the superintendent determines: (a) (i) that any banking organization, bank holding company, [~~or~~] foreign bank licensee **or unlawfully unlicensed entity** has knowingly and willfully committed any violation described in subdivision two of this section or has knowingly and willfully engaged in any unsafe and unsound practice, or (ii) that any banking organization, bank holding company, [~~or~~] foreign bank licensee **or unlawfully unlicensed entity** has knowingly committed any violation described in subdivision two of this section which substantially undermines public confidence in any such banking organization, bank holding company, [~~or~~] foreign bank licensee **or unlawfully unlicensed entity** or in banking organizations, bank holding companies, or foreign bank licensees generally, and, in either case, (b) that the banking organization, bank holding company, [~~or~~] foreign bank licensee **or unlawfully unlicensed entity** has knowingly or recklessly incurred so substantial a loss as a result of such violation or practice as to threaten the safety and soundness of such banking organization, bank holding company, or foreign bank licensee, **or unlawfully unlicensed entity** then the penalty shall not exceed the lesser of (i) two hundred fifty thousand dollars or (ii) one percent of the total assets of such banking organization **or unlawfully unlicensed entity**, or one percent of the total assets of the banking subsidiaries, as such term is defined pursuant to section one hundred forty-one of this chapter, of such bank holding company **or unlawfully unlicensed entity**, or one percent of the total assets in this state of such foreign bank licensee, as applicable, for each day during which such violation or practice continues.

10. As used in this section, "unlawfully unlicensed entity" shall mean any entity 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 or the regulations promulgated thereunder, without such license, certification, registration, authorization, charter, accreditation, incorporation or approval.

§ 2. This act shall take effect immediately.