

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:

1 Section 1. Subdivisions 1, 2, 3 and 4 of section 44 of the banking
2 law, subdivisions 1, 3, 4, and paragraph (b) of subdivision 2 as amended
3 by section 9 of part 0 of chapter 59 of the laws of 2006, paragraph (a)
4 of subdivision 1 as amended by section 4 of part L of chapter 58 of the
5 laws of 2019, subdivision 2 as amended by chapter 356 of the laws of
6 2004, paragraph (a) of subdivision 2 as amended by chapter 155 of the
7 laws of 2012, are amended and a new subdivision 10 is added to read as
8 follows:

9 1. (a) Without limiting any power granted to the superintendent under
10 any other provision of this chapter, the superintendent may, in a
11 proceeding after notice and a hearing, require any safe deposit company,
12 licensed lender, licensed cashier of checks, licensed sales finance
13 company, licensed insurance premium finance agency, licensed transmitter
14 of money, licensed mortgage banker, licensed student loan servicer,
15 registered mortgage broker, licensed mortgage loan originator, regis-
16 tered mortgage loan servicer [~~or~~], licensed budget planner or unlawfully
17 unlicensed entity to pay to the people of this state a penalty for any
18 violation of this chapter, any regulation promulgated thereunder, any
19 final or temporary order issued pursuant to section thirty-nine of this
20 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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1 connection with the grant of any application or request, or any written
2 agreement entered into with the superintendent.

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

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

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

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

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

1 banking corporation licensed to maintain a branch, agency or represen-
2 tative office in this state.

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

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

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

20 4. Notwithstanding paragraph (b) of subdivision two and subdivision
21 three of this section, if the superintendent determines: (a) (i) that
22 any banking organization, bank holding company, [~~or~~] foreign bank licen-
23 see or unlawfully unlicensed entity has knowingly and willfully commit-
24 ted any violation described in subdivision two of this section or has
25 knowingly and willfully engaged in any unsafe and unsound practice, or
26 (ii) that any banking organization, bank holding company, [~~or~~] foreign
27 bank licensee or unlawfully unlicensed entity has knowingly committed
28 any violation described in subdivision two of this section which
29 substantially undermines public confidence in any such banking organiza-
30 tion, bank holding company, [~~or~~] foreign bank licensee or unlawfully
31 unlicensed entity or in banking organizations, bank holding companies,
32 or foreign bank licensees generally, and, in either case, (b) that the
33 banking organization, bank holding company, [~~or~~] foreign bank licensee
34 or unlawfully unlicensed entity has knowingly or recklessly incurred so
35 substantial a loss as a result of such violation or practice as to
36 threaten the safety and soundness of such banking organization, bank
37 holding company, or foreign bank licensee, or unlawfully unlicensed
38 entity then the penalty shall not exceed the lesser of (i) two hundred
39 fifty thousand dollars or (ii) one percent of the total assets of such
40 banking organization or unlawfully unlicensed entity, or one percent of
41 the total assets of the banking subsidiaries, as such term is defined
42 pursuant to section one hundred forty-one of this chapter, of such bank
43 holding company or unlawfully unlicensed entity, or one percent of the
44 total assets in this state of such foreign bank licensee, as applicable,
45 for each day during which such violation or practice continues.

46 10. As used in this section, "unlawfully unlicensed entity" shall mean
47 any entity engaging in an activity in this state for which a license,
48 certification, registration, authorization, charter, accreditation,
49 incorporation, or approval by the superintendent is required by this
50 chapter or the regulations promulgated thereunder, without such license,
51 certification, registration, authorization, charter, accreditation,
52 incorporation or approval.

53 § 2. This act shall take effect immediately.