

STATE OF NEW YORK

916--B

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sen. COONEY -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to providing for income access services in the state

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

Section 1. The banking law is amended by adding a new article 9-B to read as follows:

IX-B

INCOME ACCESS SERVICES

Section 374-aa. Definitions.

374-bb. License.

374-cc. Action by superintendent on application.

374-dd. License provisions and posting.

374-ee. Grounds for suspension or revocation of license; procedure.

374-ff. Investigations and examinations.

374-gg. Compliance.

374-hh. Advertising.

374-ii. Regulations and rulings.

374-jj. Changes in control.

374-kk. Violation and penalties.

374-ll. Books and records; reports.

374-mm. Annual report.

374-nn. Severability.

§ 374-aa. Definitions. As used in this article, the following terms shall have the following meanings:

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

LBD02550-04-3

1 1. "Consumer" means an individual who is a resident of the state of
2 New York.

3 2. "Debt collection activity" means the business of collection of any
4 debts, directly or indirectly, owed or due or asserted to be owed or due
5 another and the business of a buyer of debts who seeks to collect such
6 debts either directly or indirectly, as well as the business of any
7 creditor collecting its own debts if such creditor uses any name other
8 than its own that would suggest or indicate that someone other than such
9 creditor is collecting or attempting to collect such debts.

10 3. "Earned but unpaid income" means wages or compensation that have
11 been earned or have accrued to the benefit of a consumer but have not
12 been paid by an obligor to that consumer for labor or services performed
13 for or on behalf of an obligor.

14 4. "Earned income access rate cap" means the limit on the amount that
15 may be charged for an earned income access transaction that is estab-
16 lished by the superintendent by regulation.

17 5. "Earned income access transaction" means the payment of earned but
18 unpaid income to a consumer at a time other than the consumer's regular
19 payday or other regularly scheduled time on which the obligor pays to
20 the consumer wages or compensation earned or that have accrued to the
21 benefit of such consumer.

22 6. "Earned income access provider" or "provider" means a person or
23 entity that:

24 (a) provides, or offers to provide, on behalf of an obligor earned
25 income access transactions to consumers earning wages or compensation
26 from the obligor; or

27 (b) offers earned income access transactions to, or enters into earned
28 income transactions with, consumers.

29 7. "Exempt organization" shall mean any banking organization, foreign
30 banking corporation licensed by the superintendent or the comptroller of
31 the currency to transact business in this state, national bank, federal
32 savings bank, federal savings and loan association, federal credit
33 union, or any bank, trust company, savings bank, savings and loan asso-
34 ciation, or credit union organized under the laws of any other state or
35 any instrumentality created by the United States or any state with the
36 power to make mortgage loans. Subject to such regulations as may be
37 promulgated by the superintendent, "exempt organization" may also
38 include any subsidiary of such entities.

39 8. "Non-recourse" means the unavailability of any legal cause of
40 action or remedy against a consumer relating to an earned income access
41 transaction.

42 9. "Notice" means communication from the provider to the consumer in a
43 clear and conspicuous manner.

44 10. "Obligor" means a person or entity who is obligated to pay a
45 consumer any sum of money on an hourly, project-based, piecework, or
46 other basis for labor or services performed by the consumer for or on
47 behalf of that person or entity. Obligor does not include the customer
48 of an obligor or another third party that has an obligation to make any
49 payment to a consumer based solely on the consumer's agency relationship
50 with the obligor.

51 11. "Fees" means any amount charged by a provider to a consumer for an
52 earned income access transaction, including amounts to be paid as
53 described in paragraph (h) of subdivision two of section three hundred
54 seventy-four-gg of this article.

55 12. "Proceeds" means funds received by a consumer pursuant to an
56 earned income access transaction.

1 § 374-bb. License. 1. No person or entity, except for an exempt organ-
2 ization as defined in this article, shall engage in the business of
3 providing or offering earned income access transactions to consumers, or
4 enter into an earned income access transaction with a consumer, without
5 first obtaining a license.

6 2. An application for a license under this article shall be in writ-
7 ing, under oath and in the form prescribed by the superintendent.

8 3. At the time of filing an application for a license, the applicant
9 shall pay to the superintendent an application fee. The application fee
10 shall be as prescribed pursuant to section eighteen-a of this chapter.

11 4. A license granted pursuant to this article shall be valid unless
12 revoked or suspended by the superintendent or surrendered by the licen-
13 see.

14 § 374-cc. Action by superintendent on application. 1. After the filing
15 of an application for a license accompanied by payment of the fees for
16 license and investigation, it shall be substantively reviewed. After the
17 application is deemed sufficient and complete, the superintendent shall
18 issue the license, or the superintendent may refuse to issue the license
19 if the superintendent shall find that the financial responsibility,
20 experience, character and general fitness of the applicant or any person
21 associated with the applicant are not such as to command the confidence
22 of the community and to warrant the belief that the business will be
23 conducted honestly, fairly and efficiently within the purposes and
24 intent of this article. For the purpose of this subdivision, the appli-
25 cant shall be deemed to include all the members of the applicant if it
26 is a partnership or unincorporated association, and all the stockhold-
27 ers, officers and directors of the applicant if it is a corporation.
28 Such license to engage in business in accordance with the provisions of
29 this article at the location specified in the application shall be
30 executed in triplicate by the superintendent and the superintendent
31 shall transmit one copy thereof to the applicant, file a copy in the
32 office of the department of financial services, and file a copy in the
33 office of the clerk of the county in which is located the place desig-
34 nated in such license.

35 2. If the superintendent refuses to issue a license, the superinten-
36 dent shall notify the applicant of the denial, return to the applicant
37 the sum paid as a license fee, but retain the investigation fee to cover
38 the costs of investigating the applicant.

39 3. Each license issued pursuant to this article shall remain in full
40 force unless it is surrendered by the licensee, revoked or suspended.

41 § 374-dd. License provisions and posting. 1. A license issued under
42 this article shall state the name and address of the licensee, and if
43 the licensee be a co-partnership or association, the names of the
44 members thereof, and if a corporation the date and place of its incorpo-
45 ration.

46 2. Such license shall be kept conspicuously posted in the office of
47 the licensee and on the mobile application or website of the licensee
48 and shall not be transferable or assignable.

49 § 374-ee. Grounds for suspension or revocation of license; procedure.
50 1. A license granted pursuant to this section shall not be renewed, and
51 shall be revoked or suspended by the superintendent upon a finding that:

52 (a) the licensee has not complied with reporting requirements;

53 (b) the licensee has violated any provision of this article, the act
54 of congress entitled "Truth in Lending Act" and the regulations there-
55 under, as such act and regulations may from time to time be amended or

1 any rule or regulation lawfully made by the superintendent under and
2 within the authority of this article;

3 (c) any fact of condition exists which, if it had existed at the time
4 of the original application for such license, clearly would have
5 warranted the superintendent's refusal to issue such license; or

6 (d) the licensee has failed to pay any sum of money lawfully demanded
7 by the superintendent or to comply with any demand, ruling or require-
8 ment of the superintendent.

9 2. Any licensee may surrender any license by delivering to the super-
10 intendent written notice that the licensee thereby surrenders such
11 license, but such surrender shall not affect such licensee's civil or
12 criminal liability for acts committed prior to such surrender.

13 3. Every license issued hereunder shall remain in force and effect
14 until the same shall have been surrendered, revoked, suspended, or shall
15 have expired, in accordance with the provisions of this article, but the
16 superintendent shall have authority to reinstate suspended licenses or
17 to issue new licenses to a licensee whose license or licenses shall have
18 been revoked if no fact or condition then exists which clearly would
19 have warranted the superintendent's refusal to issue such license.

20 4. Whenever the superintendent shall revoke or suspend a license
21 issued pursuant to this article, the superintendent shall forthwith
22 execute in triplicate a written order to that effect. The superintendent
23 shall file one copy of such order in the office of the department, file
24 another in the office of the clerk of the county in which is located the
25 place designated in such license and forthwith serve the third copy upon
26 the licensee, which order may be reviewed in the manner provided by
27 article seventy-eight of the civil practice law and rules. Such special
28 proceeding for review as authorized by this section must be commenced
29 within thirty days from the date of such order of suspension or revoca-
30 tion.

31 5. The superintendent may, on good cause shown, or where there is a
32 substantial risk of public harm, without notice and a hearing, suspend
33 any license issued pursuant to this article for a period not exceeding
34 thirty days, pending investigation. "Good cause", as used in this subdi-
35 vision, shall exist only when the licensee has engaged in or is likely
36 to engage in a practice prohibited by this article or engages in dishon-
37 est or inequitable practices which may cause substantial harm to the
38 persons afforded the protection of this article.

39 § 374-ff. Investigations and examinations. 1. The superintendent shall
40 have the power to make such investigations as the superintendent shall
41 deem necessary to determine whether any provider or any other person has
42 violated any of the provisions of this article, or whether any licensee
43 has conducted itself in such manner as would justify the revocation of
44 its license, and to the extent necessary therefor, the superintendent
45 may require the attendance of and examine any person under oath, and
46 shall have the power to compel the production of all relevant books,
47 records, accounts, and documents.

48 2. The superintendent shall have the power to make such examinations
49 of the books, records, accounts and documents used in the business of
50 any licensee as the superintendent shall deem necessary to determine
51 whether any such licensee has violated any of the provisions of this
52 article.

53 3. The expenses incurred in making any examination pursuant to subdi-
54 vision two of this section shall be assessed against and paid by the
55 licensee so examined, except that traveling and subsistence expenses so
56 incurred shall be charged against and paid by licensees in such

1 proportions as the superintendent shall deem just and reasonable, and
2 such proportionate charges shall be added to the assessment of the other
3 expenses incurred upon each examination. Upon written notice by the
4 superintendent of the total amount of such assessment, the licensee
5 shall become liable for and shall pay such assessment to the superinten-
6 dent.

7 4. All reports of examinations and investigations, and all correspond-
8 ence and memoranda concerning or arising out of such examinations or
9 investigations, including any duly authenticated copy or copies thereof
10 in the possession of any licensee or the department, shall be confiden-
11 tial communications, shall not be subject to subpoena and shall not be
12 made public unless, in the judgment of the superintendent, the ends of
13 justice and the public advantage will be subserved by the publication
14 thereof, in which event the superintendent may publish or authorize the
15 publication of a copy of any such report or other material referred to
16 in this subdivision, or any part thereof, in such manner as the super-
17 intendent may deem proper.

18 § 374-gg. Compliance. 1. An earned income access provider shall not
19 operate in this state unless:

20 (a) the provider is licensed pursuant to this article, unless the
21 provider is an exempt organization pursuant to this article;

22 (b) in the event a provider takes custody of a consumer's earned but
23 unpaid income before paying proceeds to the consumer, the provider
24 ensures that the proceeds are fully insured by the Federal Deposit
25 Insurance Corporation at the consumer's individual account level;

26 (c) the provider complies with National Automated Clearing House Asso-
27 ciation rules, and when a debit is initiated to a consumer's account for
28 a payment, and the debit is returned for insufficient or uncollected
29 funds, the debit can be reinitiated only in accordance with paragraph
30 (d) of subdivision two of this section;

31 (d) the provider does not provide to any third party, including obli-
32 gors, any non-public personal information about consumers except in
33 compliance with applicable federal and state law, and the provider does
34 not sell, share, or otherwise disclose personal information that the
35 provider solicits or collects from consumers in connection with offering
36 earned income access transactions or related services;

37 (e) the provider gives notice to the consumer of the costs of earned
38 income transactions in accordance with rules established by the super-
39 intendent; and

40 (f) the provider, no less frequently than quarterly, delivers notice
41 in writing to each consumer to whom it has paid proceeds in that quarter
42 containing information to be prescribed by the superintendent, including
43 but not limited to an itemization of transactions and costs, the total
44 amount the consumer has paid in fees, information on how to report
45 complaints to the provider and to the department of financial services,
46 definitions of terms used in the notice, and an explanation of the costs
47 of the services provided;

48 2. It is a violation of this article to conduct an earned income
49 access transaction unless:

50 (a) the transaction is non-recourse;

51 (b) the provider has a reasonable basis to believe that the total
52 amount of the proceeds and fees associated with the transaction does not
53 exceed a percentage, to be set by the superintendent, of the consumer's
54 earned but unpaid income;

55 (c) the provider does not engage in debt collection activity or retain
56 the services of another to engage in debt collection activity in

1 connection with the earned income access transaction and does not convey
2 the debt itself;

3 (d) if repayment is to be made through a debit of a consumer's
4 account, the debit is made in accordance with rules established by the
5 superintendent;

6 (e) the provider charges a fee for the earned income access trans-
7 action that does not exceed the earned income access rate cap or charges
8 no fee for the earned income access transaction;

9 (f) no portion of the earned but unpaid income to be paid as part of
10 the earned income access transaction is used before receipt by the
11 consumer to settle or pay down an obligation arising from a prior earned
12 income access transaction, and no proceeds roll over or are structured
13 in any way to create any continuing obligation to the provider on the
14 part of a consumer;

15 (g) before a consumer enters into the earned income access trans-
16 action, the provider gives the consumer notice, in writing, of all fees
17 associated with the earned income access transaction and the cost of the
18 transaction, including the cost expressed as an annual percentage rate;

19 (h) if the provider offers consumers the opportunity to pay an addi-
20 tional amount for an earned income access transaction voluntarily, such
21 as a tip, (i) the provider gives notice to the consumer in writing that
22 paying such additional amount is not required for the consumer to
23 receive the proceeds, and (ii) the provider does not suggest an amount
24 to the consumer by, for example, offering amount options from which the
25 consumer may select or pre-filling an amount in any form used in the
26 transaction process, or otherwise using a transaction process designed
27 to require the consumer to take affirmative action to avoid or opt out
28 of paying such additional amount;

29 (i) the provider does not charge a late fee or prepayment penalty on
30 the earned income access transaction;

31 (j) the provider does not pull a credit report or otherwise assess
32 credit risk of the consumer prior to, during, or after the earned income
33 access transaction except that the provider may verify the consumer's
34 source of income as part of determining the amount of the proceeds;

35 (k) the provider does not report on the earned income access trans-
36 action to a consumer reporting agency prior to, during, or after the
37 transaction;

38 (l) the provider does not require a consumer to waive the right to
39 class action to engage in an earned income access transaction;

40 (m) the provider gives a consumer written notice of any amendment to
41 the contract or terms of service for earned income access transactions,
42 and the consumer agrees to such amendments before proceeding with an
43 earned income access transaction to which such amendments would apply;
44 and

45 (n) the consumer is eighteen years of age or older.

46 3. Transactions made in accordance with this section shall not be
47 subject to usury laws.

48 4. If a provider charges indirect transaction fees, such fees shall
49 not exceed the maximum allowable amount as set by the superintendent.

50 § 374-hh. Advertising. 1. No advertisement for an earned income access
51 transaction service shall be misleading or otherwise deceptive.

52 2. An advertisement for earned income access transaction service shall
53 clearly and accurately disclose the costs of the service to consumers.

54 3. The superintendent shall adopt rules governing advertising of
55 earned income transaction services consistent with the purposes of this
56 section.

1 § 374-ii. Regulations and rulings. The superintendent is hereby
2 authorized and empowered to make such rules and regulations, conduct
3 hearings and make such specific rulings, orders, demands and findings as
4 may be necessary for the proper conduct of the business authorized and
5 licensed under and for the enforcement of this article.

6 § 374-jj. Changes in control. 1. It shall be unlawful except with the
7 prior approval of the superintendent for any action to be taken which
8 results in a change of control of the business of a licensee. Prior to
9 any change of control, the person desirous of acquiring control of the
10 business of a licensee shall make written application to the superinten-
11 dent and pay an investigation fee as prescribed pursuant to section
12 eighteen-a of this chapter to the superintendent. The application shall
13 contain such information as the superintendent, by rule or regulation,
14 may prescribe as necessary or appropriate for the purpose of making the
15 determination required by subdivision two of this section.

16 2. The superintendent shall approve or disapprove the proposed change
17 of control of a licensee in accordance with the provisions of subdivi-
18 sion one of this section.

19 3. For a period of six months from the date of qualification thereof
20 and for such additional period of time as the superintendent may
21 prescribe, in writing, the provisions of subdivisions one and two of
22 this section shall not apply to a transfer of control by operation of
23 law to the legal representative, as hereinafter defined, of one who has
24 control of a licensee. Thereafter, such legal representative shall
25 comply with the provisions of subdivisions one and two of this section.
26 The provisions of subdivisions one and two of this section shall be
27 applicable to an application made under such section by a legal repre-
28 sentative.

29 4. The term "legal representative", for the purposes of this section,
30 shall mean one duly appointed by a court of competent jurisdiction to
31 act as executor, administrator, trustee, committee, conservator or
32 receiver, including one who succeeds a legal representative and one
33 acting in an ancillary capacity thereto in accordance with the
34 provisions of such court appointment.

35 5. As used in this section: (a) the term "person" includes an individ-
36 ual, partnership, corporation, association or any other organization,
37 and (b) the term "control" means the possession, directly or indirectly,
38 of the power to direct or cause the direction of the management and
39 policies of a licensee, whether through the ownership of voting stock of
40 such licensee, the ownership of voting stock of any person which
41 possesses such power or otherwise. Control shall be presumed to exist if
42 any person, directly or indirectly, owns, controls or holds with power
43 to vote ten per centum or more of the voting stock of any licensee or of
44 any person which owns, controls or holds with power to vote ten per
45 centum or more of the voting stock of any licensee, but no person shall
46 be deemed to control a licensee solely by reason of being an officer or
47 director of such licensee or person. The superintendent may in the
48 superintendent's discretion, upon the application of a licensee or any
49 person who, directly or indirectly, owns, controls or holds with power
50 to vote or seeks to own, control or hold with power to vote any voting
51 stock of such licensee, determine whether or not the ownership, control
52 or holding of such voting stock constitutes or would constitute control
53 of such licensee for purposes of this section.

54 § 374-kk. Violation and penalties. 1. Any person, including any
55 member, officer, director or employee of a provider, who violates or
56 participates in the violation of any provision of this article, or who

1 knowingly makes any incorrect statement of a material fact in any appli-
2 cation, report or statement filed pursuant to this article, or who know-
3 ingly omits to state any material fact necessary to give the superinten-
4 dent any information lawfully required by the superintendent or refuses
5 to permit any lawful investigation or examination, shall be guilty of a
6 misdemeanor and, upon conviction, shall be fined not more than five
7 hundred dollars or imprisoned for not more than six months or both, in
8 the discretion of the court.

9 2. No provider shall make, directly or indirectly, orally or in writ-
10 ing, or by any method, practice or device, a representation that such
11 provider is licensed under the banking law except that a licensee under
12 this chapter may make a representation that the licensee is licensed as
13 an earned income access provider under this chapter.

14 § 374-11. Books and records; reports. 1. The provider shall keep and
15 use in its business such books, accounts and records as will enable the
16 superintendent to determine whether such provider is complying with the
17 provisions of this article and with the rules and regulations lawfully
18 made by the superintendent hereunder. Every provider shall preserve such
19 books, accounts and records for at least six years after making the
20 final entry in respect to any earned wage access transaction recorded
21 therein; provided, however, the preservation of photographic repro-
22 ductions thereof or records in photographic form shall constitute compli-
23 ance with this requirement.

24 2. By a date to be set by the superintendent, each provider shall
25 annually file a report with the superintendent giving such information
26 as the superintendent may require concerning the business and operations
27 during the preceding calendar year of the provider within the state
28 under the authority of this article. Such report shall be subscribed and
29 affirmed as true by the provider under the penalties of perjury and be
30 in the form prescribed by the superintendent. In addition to such annual
31 reports, the superintendent may require of providers such additional
32 regular or special reports as the superintendent may deem necessary to
33 the proper supervision of providers under this article. Such additional
34 reports shall be in the form prescribed by the superintendent and shall
35 be subscribed and affirmed as true under the penalties of perjury.

36 § 374-mm. Annual report. 1. On or before the first day of April of
37 each year, a provider shall submit an annual report to the superinten-
38 dent that includes all of the following information for earned wage
39 access services provided by such provider during the prior calendar
40 year:

41 (a) gross revenue attributable to earned wage access providers;

42 (b) the total number of transactions in which proceeds were remitted
43 to consumers;

44 (c) the total number of unique consumers to whom proceeds were remit-
45 ted;

46 (d) the total dollar amount of proceeds the provider remitted to
47 consumers;

48 (e) the total dollar amount of payments other than proceeds the
49 provider received from consumers;

50 (f) the total number of transactions in which proceeds were remitted
51 to consumers for which the provider did not receive repayment of any
52 outstanding proceeds, and the total dollar amount of such transactions;

53 (g) the total number of transactions in which proceeds were remitted
54 to consumers, for which the provider received partial repayment of
55 outstanding proceeds, the total dollar amount of such transactions, and

1 the total dollar amount of outstanding proceeds attributable to such
2 transactions; and

3 (h) the total number of transactions in which outstanding proceeds
4 were repaid after the original, scheduled repayment date, and the total
5 dollar amount of such transactions.

6 2. Failure of a provider to submit a report on a timely basis in
7 accordance with this article may constitute grounds for disciplinary
8 action by the superintendent.

9 § 374-nn. Severability. If any provision of this article or the appli-
10 cation thereof to any person or circumstances is held invalid, the inva-
11 lidity thereof shall not affect other provisions or applications of the
12 article which can be given effect without the invalid provision or
13 application, and to this end the provisions of this article are severa-
14 ble.

15 § 2. Subdivision 1 of section 36 of the banking law, as amended by
16 chapter 146 of the laws of 1961, is amended to read as follows:

17 1. The superintendent shall have the power to examine every banking
18 organization, every bank holding company and any non-banking subsidiary
19 thereof (as such terms "bank holding company" and "non-banking subsid-
20 iary" are defined in article three-A of this chapter) and every licensed
21 lender and licensed earned income access provider at any time prior to
22 its dissolution whenever in his or her judgment such examination is
23 necessary or advisable.

24 § 3. Subdivisions 3 and 5 of section 37 of the banking law, as amended
25 by chapter 360 of the laws of 1984, are amended to read as follows:

26 3. In addition to any reports expressly required by this chapter to be
27 made, the superintendent may require any banking organization, licensed
28 lender, licensed earned income access provider, licensed casher of
29 checks, licensed mortgage banker, foreign banking corporation licensed
30 by the superintendent to do business in this state, bank holding company
31 and any non-banking subsidiary thereof, corporate affiliate of a corpo-
32 rate banking organization within the meaning of subdivision six of
33 section thirty-six of this article and any non-banking subsidiary of a
34 corporation which is an affiliate of a corporate banking organization
35 within the meaning of subdivision six-a of section thirty-six of this
36 article to make special reports to him or her at such times as he or she
37 may prescribe.

38 5. The superintendent may extend at his or her discretion the time
39 within which a banking organization, foreign banking corporation
40 licensed by the superintendent to do business in this state, bank hold-
41 ing company or any non-banking subsidiary thereof, licensed casher of
42 checks, licensed mortgage banker, private banker, licensed earned income
43 access provider or licensed lender is required to make and file any
44 report to the superintendent.

45 § 4. Section 39 of the banking law, as amended by section 3 of part L
46 of chapter 58 of the laws of 2019, is amended to read as follows:

47 § 39. Orders of superintendent. 1. To appear and explain an apparent
48 violation. Whenever it shall appear to the superintendent that any bank-
49 ing organization, bank holding company, registered mortgage broker,
50 licensed mortgage banker, licensed student loan servicer, registered
51 mortgage loan servicer, licensed mortgage loan originator, licensed
52 lender, licensed earned income access provider, licensed casher of
53 checks, licensed sales finance company, licensed insurance premium
54 finance agency, licensed transmitter of money, licensed budget planner,
55 out-of-state state bank that maintains a branch or branches or represen-
56 tative or other offices in this state, or foreign banking corporation

1 licensed by the superintendent to do business or maintain a represen-
2 tative office in this state has violated any law or regulation, he or
3 she may, in his or her discretion, issue an order describing such appar-
4 ent violation and requiring such banking organization, bank holding
5 company, registered mortgage broker, licensed mortgage banker, licensed
6 student loan servicer, licensed mortgage loan originator, licensed lend-
7 er, licensed earned income access provider, licensed casher of checks,
8 licensed sales finance company, licensed insurance premium finance agen-
9 cy, licensed transmitter of money, licensed budget planner, out-of-state
10 state bank that maintains a branch or branches or representative or
11 other offices in this state, or foreign banking corporation to appear
12 before him or her, at a time and place fixed in said order, to present
13 an explanation of such apparent violation.

14 2. To discontinue unauthorized or unsafe and unsound practices. When-
15 ever it shall appear to the superintendent that any banking organiza-
16 tion, bank holding company, registered mortgage broker, licensed mort-
17 gage banker, licensed student loan servicer, registered mortgage loan
18 servicer, licensed mortgage loan originator, licensed lender, licensed
19 earned income access provider, licensed casher of checks, licensed sales
20 finance company, licensed insurance premium finance agency, licensed
21 transmitter of money, licensed budget planner, out-of-state state bank
22 that maintains a branch or branches or representative or other offices
23 in this state, or foreign banking corporation licensed by the super-
24 intendent to do business in this state is conducting business in an
25 unauthorized or unsafe and unsound manner, he or she may, in his or her
26 discretion, issue an order directing the discontinuance of such unau-
27 thorized or unsafe and unsound practices, and fixing a time and place at
28 which such banking organization, bank holding company, registered mort-
29 gage broker, licensed mortgage banker, licensed student loan servicer,
30 registered mortgage loan servicer, licensed mortgage loan originator,
31 licensed lender, licensed earned income access provider, licensed casher
32 of checks, licensed sales finance company, licensed insurance premium
33 finance agency, licensed transmitter of money, licensed budget planner,
34 out-of-state state bank that maintains a branch or branches or represen-
35 tative or other offices in this state, or foreign banking corporation
36 may voluntarily appear before him or her to present any explanation in
37 defense of the practices directed in said order to be discontinued.

38 3. To make good impairment of capital or to ensure compliance with
39 financial requirements. Whenever it shall appear to the superintendent
40 that the capital or capital stock of any banking organization, bank
41 holding company or any subsidiary thereof which is organized, licensed
42 or registered pursuant to this chapter, is impaired, or the financial
43 requirements imposed by subdivision one of section two hundred two-b of
44 this chapter or any regulation of the superintendent on any branch or
45 agency of a foreign banking corporation or the financial requirements
46 imposed by this chapter or any regulation of the superintendent on any
47 licensed lender, licensed earned income access provider, registered
48 mortgage broker, licensed mortgage banker, licensed student loan servi-
49 cer, licensed casher of checks, licensed sales finance company, licensed
50 insurance premium finance agency, licensed transmitter of money,
51 licensed budget planner or private banker are not satisfied, the super-
52 intendent may, in the superintendent's discretion, issue an order
53 directing that such banking organization, bank holding company, branch
54 or agency of a foreign banking corporation, registered mortgage broker,
55 licensed mortgage banker, licensed student loan servicer, licensed lend-
56 er, licensed earned income access provider, licensed casher of checks,

1 licensed sales finance company, licensed insurance premium finance agency,
2 cy, licensed transmitter of money, licensed budget planner, or private
3 banker make good such deficiency forthwith or within a time specified in
4 such order.

5 4. To make good encroachments on reserves. Whenever it shall appear to
6 the superintendent that either the total reserves or reserves on hand of
7 any banking organization, branch or agency of a foreign banking corporation
8 are below the amount required by or pursuant to this chapter or
9 any other applicable provision of law or regulation to be maintained, or
10 that such banking organization, branch or agency of a foreign banking
11 corporation is not keeping its reserves on hand as required by this
12 chapter or any other applicable provision of law or regulation, he or
13 she may, in his or her discretion, issue an order directing that such
14 banking organization, branch or agency of a foreign banking corporation
15 make good such reserves forthwith or within a time specified in such
16 order, or that it keep its reserves on hand as required by this chapter.

17 5. To keep books and accounts as prescribed. Whenever it shall appear
18 to the superintendent that any banking organization, bank holding company,
19 registered mortgage broker, licensed mortgage banker, licensed
20 student loan servicer, registered mortgage loan servicer, licensed mortgage
21 loan originator, licensed lender, licensed earned income access
22 provider, licensed casher of checks, licensed sales finance company,
23 licensed insurance premium finance agency, licensed transmitter of
24 money, licensed budget planner, agency or branch of a foreign banking
25 corporation licensed by the superintendent to do business in this state,
26 does not keep its books and accounts in such manner as to enable him or
27 her to readily ascertain its true condition, he or she may, in his or
28 her discretion, issue an order requiring such banking organization, bank
29 holding company, registered mortgage broker, licensed mortgage banker,
30 licensed student loan servicer, registered mortgage loan servicer,
31 licensed mortgage loan originator, licensed lender, licensed earned
32 income access provider, licensed casher of checks, licensed sales
33 finance company, licensed insurance premium finance agency, licensed
34 transmitter of money, licensed budget planner, or foreign banking corporation,
35 or the officers or agents thereof, or any of them, to open and
36 keep such books or accounts as he or she may, in his or her discretion,
37 determine and prescribe for the purpose of keeping accurate and convenient
38 records of its transactions and accounts.

39 6. As used in this section, "bank holding company" shall have the same
40 meaning as that term is defined in section one hundred forty-one of this
41 chapter.

42 § 5. Paragraph (a) of subdivision 1 of section 44 of the banking law,
43 as amended by section 4 of part L of chapter 58 of the laws of 2019, is
44 amended to read as follows:

45 (a) Without limiting any power granted to the superintendent under any
46 other provision of this chapter, the superintendent may, in a proceeding
47 after notice and a hearing, require any safe deposit company, licensed
48 lender, licensed earned income access provider, licensed casher of
49 checks, licensed sales finance company, licensed insurance premium
50 finance agency, licensed transmitter of money, licensed mortgage banker,
51 licensed student loan servicer, registered mortgage broker, licensed
52 mortgage loan originator, registered mortgage loan servicer or licensed
53 budget planner to pay to the people of this state a penalty for any
54 violation of this chapter, any regulation promulgated thereunder, any
55 final or temporary order issued pursuant to section thirty-nine of this
56 article, any condition imposed in writing by the superintendent in

1 connection with the grant of any application or request, or any written
2 agreement entered into with the superintendent.
3 § 6. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law. Effective immediately, the addition, amend-
5 ment and/or repeal of any rule or regulation necessary for the implemen-
6 tation of this act on its effective date are authorized to be made and
7 completed on or before such effective date.