

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:

1 Section 1. The legislature finds that it is essential to the
2 protection of users of financial products and services from imprudent
3 conduct and harmful business practices in the financial services market-
4 place that all persons offering financial products and services in New
5 York State be sufficiently deterred from disregarding the laws and regu-
6 lations governing the offering of financial products or services,
7 regardless of whether they are properly licensed. Furthermore, to ensure
8 that the business of, and the persons providing, financial products and
9 services are appropriately supervised, the law should not advantage
10 persons who disregard licensing requirements. Currently, as to engage-
11 ment in many activities for which a license from the superintendent of
12 financial services is required, an unlicensed person not exempt from
13 licensing is not subject to civil penalty for acts that would constitute
14 violations subject to penalty if the person were licensed; such an unli-
15 censed person may be subject to only a limited civil penalty for engag-
16 ing in activity without a required license. This act remediates this
17 fault in the law by providing that any person engaged in activity for
18 which such person must be licensed by the superintendent of financial
19 services will be subject to a civil penalty for conducting such activity
20 in a manner inconsistent with the law, regardless of such person's
21 licensure status.

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

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

LBD11198-01-3

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

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

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

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

34 § 4. The financial services law is amended by adding a new section
35 408-a to read as follows:

36 § 408-a. Unlicensed activities prohibited. (a) For the purposes of
37 this section, a "prohibited unlicensed act" shall mean:

38 (1) engaging in an activity in this state for which a license, certif-
39 ication, registration, authorization, charter, accreditation, incorpo-
40 ration, or approval by the superintendent is required by this chapter,
41 the banking law, the insurance law, or the regulations promulgated ther-
42 eunder, without such license, certification, registration, authori-
43 zation, charter, accreditation, incorporation or approval or an
44 exemption from such requirement; or

45 (2) any act or omission by a person who is required by this chapter,
46 the banking law, the insurance law or the regulations promulgated there-
47 under, to be licensed, certified, registered, authorized, chartered,
48 accredited, incorporated or otherwise approved by the superintendent and
49 is not so licensed, certified, registered, authorized, chartered,
50 accredited, incorporated, approved or exempted from such requirement, if
51 such act or omission would constitute a violation of this chapter, the
52 banking law, the insurance law or the regulations promulgated thereunder
53 if such person were so licensed, certified, registered, authorized,
54 chartered, accredited, incorporated or approved.

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

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

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

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

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

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

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

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

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

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

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

55 § 6. This act shall take effect immediately.