

STATE OF NEW YORK

6982

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to authorizing New York chartered banking institutions to exercise powers authorized to banking institutions chartered in other states, subject to the approval of the superintendent of financial services

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

Section 1. Section 12-a of the banking law, as added by chapter 322 of the laws of 2007, subdivision 3 as amended by chapter 448 of the laws of 2011 and subdivisions 4, 5, 7, 8 and 9 as amended by section 88 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 12-a. Power of state chartered banking institutions to exercise the rights of counterpart federally or out-of-state chartered banking institutions.

1. Definitions. (a) As used in this section, "state chartered banking institution" shall mean any bank, trust company, private banker, savings bank, savings and loan association, foreign banking corporation, or credit union that is chartered or licensed under this chapter.

(b) As used in this section and as is applicable, "federally or out-of-state chartered banking institution" shall mean collectively: (i) any national banking association organized pursuant to the National Bank Act of 1864, as amended, (12 USC 21 et seq.); (ii) any [~~federal~~] savings association as such term is defined by the Federal Deposit Insurance Act, as amended, (12 USC 1813(b)(~~2~~ 1)), whether federally chartered or chartered by a state other than New York ("federal or out-of-state savings bank or savings and loan association"); (iii) a [~~federal~~] branch [~~and~~] or agency of a foreign [~~bank~~] banking corporation, as such terms are defined by the International Banking Act of 1978, as amended, (~~122~~ 12 USC 3101), whether federally licensed or licensed by a state other than New York ("federal or out-of-state branch or agency of a foreign

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

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1 banking organization"); ~~[or]~~ (iv) a ~~[federal]~~ credit union, as such term
2 is defined by the Federal Credit Union Act, as amended, (12 USC 1752(1)
3 and (6)), whether federally chartered or chartered by a state other than
4 New York ("federal or out-of-state credit union"); or (v) any state bank
5 as that term is defined by the Federal Deposit Insurance Act, as
6 amended, (12 USC 1813(a)(2)) chartered in a state other than New York
7 ("out-of-state bank").

8 (c) As used in this section, "charter" shall mean the organization
9 certificate or comparable document of a ~~[state]~~ banking institution, or
10 the license for a state branch or agency of a foreign banking corpo-
11 ration, or a similar organizational document for ~~[a federal]~~ any feder-
12 ally or out-of-state chartered banking institution ~~[or a federal branch~~
13 ~~or agency]~~, and "chartered" shall mean the formal act of the state or
14 appropriate federal regulatory agency in approving and conveying such
15 charter of a banking institution.

16 (d) As used in this section, "federally or out-of-state chartered
17 banking institution permitted power" shall mean any right, power, privi-
18 lege or benefit, any activity, or any loan, investment or transaction
19 which a federally or out-of-state chartered banking institution directly
20 or through a subsidiary or subsidiaries, may lawfully exercise or into
21 which it may lawfully engage or enter.

22 (e) As used in this section "foreign banking corporation" shall mean a
23 banking corporation organized under the laws of a foreign country and
24 acting through a branch or agency licensed pursuant to section twenty-
25 six of this article.

26 (f) As used in this section, unless the context requires otherwise,
27 the term "subsidiary" shall have the same meaning as set forth in subdi-
28 vision five of section one hundred forty-one of this chapter, except
29 that (i) any reference therein to "bank holding company" shall be deemed
30 to refer to a "state chartered banking institution" as defined in this
31 section, and (ii) with respect to a credit union, the term "subsidiary"
32 as used in this section shall mean a "credit union organization".

33 2. Pursuant to this section and notwithstanding any other provision of
34 law, except as otherwise provided in its charter, a state-chartered
35 banking institution may exercise any federally permitted power of its
36 counterpart federally or out-of-state chartered banking institution as
37 herein set forth:

38 (a) a bank, private banker, or trust company may exercise any ~~[feder-~~
39 ~~ally]~~ permitted power of a national banking association or out-of-state
40 bank;

41 (b) a savings bank or savings and loan association may exercise any
42 ~~[federally]~~ permitted power of a federal or out-of-state savings bank or
43 savings and loan association;

44 (c) a foreign banking corporation acting through a branch may exercise
45 any ~~[federally]~~ permitted power of a foreign bank acting through a
46 federal or out-of-state branch of a foreign banking corporation;

47 (d) a foreign banking corporation acting through an agency may exer-
48 cise any ~~[federally]~~ permitted power of a foreign bank acting through a
49 federal or out-of-state agency of a foreign banking corporation;

50 (e) a credit union may exercise any ~~[federally]~~ permitted power of a
51 federal or out-of-state credit union.

52 Nothing contained in this section shall be deemed to permit a state
53 chartered banking institution to exercise any ~~[federally]~~ power permit-
54 ted ~~[power]~~ to federally or out-of-state chartered banking institutions
55 except in a manner consistent with the following provisions of law, in

1 each case, as the terms contained in such provisions may be amended from
2 time to time:

- 3 (i) chapter one of the laws of nineteen hundred ninety-four;
- 4 (ii) chapter nine of the laws of nineteen hundred ninety-six; and
- 5 (iii) sections fourteen-c, twenty-eight-b, thirty-nine and forty-four
6 of this article, and sections six hundred five through six hundred thir-
7 ty-four of this chapter, and with respect to savings banks and savings
8 and loan associations, respectively, section two hundred forty and
9 section three hundred ninety-six of this chapter.

10 3. Except with respect to a federally or out-of-state chartered bank-
11 ing institution permitted power approved pursuant to subdivision four of
12 this section, prior to any state chartered banking institution initially
13 exercising any federally or out-of-state chartered banking institution
14 permitted power pursuant to this section, such banking institution shall
15 make an application individually or with one or more state chartered
16 banking institutions to the superintendent indicating that such institu-
17 tion or institutions intend to exercise such federally or out-of-state
18 chartered banking institution permitted power and the basis on which
19 such institution or institutions believe such power is [~~a federally~~]
20 permitted [~~power~~]. The superintendent shall have one hundred twenty days
21 from receipt of the application to determine whether it meets the
22 requirements of this section, provided that such period may be extended
23 for an additional period of time [~~with the written consent of the appli-~~
24 ~~cant or applicants~~]. If such application meets the requirements of this
25 section, the superintendent shall post such application upon the bulle-
26 tin board of the department pursuant to section forty-two of this arti-
27 cle. If such application does not meet the requirements of this section,
28 the superintendent shall, within ten days of such determination, notify
29 the applicant or applicants of the reasons why the application fails to
30 meet the requirements. The superintendent shall determine, consistent
31 with the standards set forth in subdivision five of this section, wheth-
32 er to approve such application subject to such terms and conditions as
33 the superintendent may deem appropriate, in the superintendent's sole
34 discretion. Such determination[~~7~~] shall be made by the superintendent
35 within forty-five days after the posting of such application, provided,
36 however, that the superintendent may notify the applicant or applicants
37 that the review of the application shall be extended for an additional
38 period of time not exceeding sixty days after the posting of such appli-
39 cation, and provided further that such period of time may be extended
40 for an additional period of time [~~with the written consent of the appli-~~
41 ~~cant or applicants~~]. The superintendent shall not act upon the applica-
42 tion prior to thirty days after such application has been posted. If the
43 superintendent approves such application, the superintendent shall,
44 within ten days of approving the application, notify the applicant or
45 applicants in writing thereof, and the applicant or applicants may exer-
46 cise such federally or out-of-state chartered banking institution
47 permitted power subject to such terms and conditions as the superinten-
48 dent may have approved. If the superintendent declines such application,
49 the superintendent shall, within ten days of making such determination,
50 notify the applicant or applicants in writing thereof. An applicant or
51 applicants may, upon the superintendent's failure to comply with this
52 section, petition the superintendent to act upon the application. The
53 failure of the superintendent to act upon the application or notify the
54 applicant or applicants, in writing, as to the reasons why action cannot
55 be taken within thirty days of receipt of such petition shall be deemed
56 a denial of the application, which shall be subject to judicial review.

1 Notwithstanding any other law, the superintendent may make the approval
2 of an application under this section applicable to one or more addi-
3 tional state chartered banking institutions that are qualified to exer-
4 cise the same federally or out-of-state chartered banking institution
5 permitted powers as the applicant or applicants pursuant to subdivision
6 two of this section, subject to such terms and conditions as the super-
7 intendent shall find necessary and appropriate.

8 4. Notwithstanding any other law, the superintendent, in the super-
9 intendent's discretion, may, when the superintendent deems it necessary
10 and appropriate after considering the standards set forth in subdivision
11 five of this section, by order, authorize one or more state chartered
12 banking institutions to exercise a federally or out-of-state chartered
13 banking institution permitted power, subject to such terms and condi-
14 tions as the superintendent shall find necessary and appropriate. Prior
15 to issuing such order, the superintendent shall post notice of the
16 superintendent's intention to issue such order upon the bulletin board
17 of the department pursuant to section forty-two of this article, and
18 shall not act upon such intention prior to thirty days after such notice
19 has been posted.

20 5. Prior to approving any application or proposal pursuant to subdivi-
21 sion three or four of this section, the superintendent shall make a
22 finding that the approval of such application or proposal is:

23 ~~[(i)]~~ (a) consistent with the policy of the state of New York as
24 declared in section ten of this article and thereby protects the public
25 interest, including the interests of depositors, creditors, sharehold-
26 ers, stockholders and consumers; and

27 ~~[(ii)]~~ (b) necessary to achieve or maintain parity between state char-
28 tered banking institutions and their counterpart federally or out-of-
29 state chartered banking institutions with respect to rights, powers,
30 privileges, benefits, activities, loans, investments or transactions.

31 6. A federally or out-of-state chartered banking institution permitted
32 power authorized for a state chartered banking institution pursuant to
33 this section shall not exceed and shall be limited by any conditions,
34 qualifications or restrictions on the same when exercised by ~~[a]~~ the
35 counterpart federally or out-of-state chartered banking institution ~~[of~~
36 ~~a state chartered banking institution]~~ unless the state chartered bank-
37 ing institution is so authorized by other New York state law, or a rule,
38 regulation or policy adopted pursuant to such other New York state law,
39 or by a judicial decision. Notwithstanding any other law, the super-
40 intendent may, at any time, impose by order any other terms and condi-
41 tions as he or she finds necessary and proper including, but not limited
42 to, a requirement that any federally or out-of-state chartered banking
43 institution permitted power authorized by this section be exercised,
44 conducted or held in a subsidiary of a state chartered banking institu-
45 tion. In the event that federally or out-of-state chartered banking
46 institutions ~~[located in the state of New York]~~ lose the authority to
47 exercise a federally or out-of-state chartered banking institution
48 permitted power, based upon which comparable authority was granted to
49 the counterpart state chartered banking institutions pursuant to this
50 section, then unless such authority is authorized by other New York
51 state law, or a rule, regulation or policy adopted pursuant to such
52 other New York state law, or by a judicial decision, the authorization
53 for such state chartered banking institutions pursuant to this section
54 shall be deemed revoked, provided, however, that any such revocation
55 shall be subject to such terms and conditions as may be imposed upon the

1 counterpart federally or out-of-state chartered banking institutions or
2 by the superintendent.

3 7. (a) In those instances where state chartered banking institutions
4 are permitted to engage in the business of insurance pursuant to this
5 section, they shall do so subject to all insurance laws, rules, and
6 regulations; provided, however, that the superintendent may exempt state
7 chartered banking institutions from any insurance law, rule or regu-
8 lation which has been preempted under federal law, rule or regulation
9 for federally chartered banking institutions if such law, rule or regu-
10 lation has been preempted because it applies to insurance activities of
11 federally chartered banking institutions and not to those of other enti-
12 ties.

13 (b) In those instances where a federally permitted power authorized
14 pursuant to this section is subject to regulation by an agency, as
15 defined in subdivision one of section one hundred two of the state
16 administrative procedure act, other than the superintendent, then when a
17 state chartered banking institution exercises such federally permitted
18 power, unless it is so authorized by other New York state law, or a
19 rule, regulation or policy adopted pursuant to such other New York state
20 law, or by a judicial decision, it shall do so subject to such regu-
21 lation to the same extent and in the same manner as such agency regu-
22 lates entities other than state chartered banking institutions, except
23 to the extent that federally chartered banking institutions are not
24 subject to such regulation.

25 (c) Any state chartered banking institution or federally chartered
26 banking institution and any subsidiary or affiliate thereof which is
27 licensed to sell insurance in this state shall maintain separate and
28 distinct books and records relating to its insurance transactions,
29 including all files relating to and reflecting consumer complaints, and
30 such insurance books and records shall be made available to the super-
31 intendent for inspection upon reasonable notice.

32 8. On or before June first of each year, the superintendent shall
33 submit a report to the governor, the speaker of the assembly, the tempo-
34 rary president of the senate, the minority leaders of the senate and
35 assembly, and the chairs and ranking minority members of the senate and
36 assembly banks committees, which shall include, with respect to the
37 authority provided for in this section, with respect to the preceding
38 calendar year, (1) a listing of state chartered banking institutions
39 that were established, (2) a listing of institutions that have converted
40 to a federal charter or have been acquired by, or merged with, another
41 banking institution, (3) the number of New York banking institutions
42 exercising the insurance activities authorized by this section, (4) the
43 total number of New York chartered banking institutions located in this
44 state, and (5) the total amount of assets of such chartered banking
45 institutions by type.

46 9. Any rules or regulations promulgated by the banking board pursuant
47 to former sections fourteen-g and fourteen-h of this chapter prior to
48 September first, two thousand seven, and any resolutions adopted by the
49 banking board pursuant to this section after September first, two thou-
50 sand seven and before the effective date of the chapter of the laws of
51 two thousand eleven which amended this subdivision, including any such
52 rules, regulations and resolutions which in whole or in part impose
53 conditions, qualifications or restrictions on any federally permitted
54 powers authorized thereby which exceed the conditions, qualifications or
55 restrictions imposed on the same when exercised by a federally chartered
56 banking institution, shall remain in full force and effect on or after

1 such date, unless any such rule, regulation or resolution is thereafter
2 superseded, modified, or revoked by the superintendent pursuant to the
3 provisions of subdivisions three and four of this section.
4 § 2. This act shall take effect immediately; provided, however, that
5 the amendments to section 12-a of the banking law made by section one of
6 this act shall not affect the repeal of such section and shall be deemed
7 repealed therewith.