

# STATE OF NEW YORK

9689

## IN SENATE

May 21, 2024

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 the regulation of buy-now-pay-later lenders

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

1 Section 1. The banking law is amended by adding a new article 14-B to  
2 read as follows:

3 ARTICLE XIV-B  
4 BUY-NOW-PAY-LATER LENDERS

5 Section 735. Short title.

6 736. Definitions.

7 737. License.

8 738. Conditions precedent to issuing a license; procedure where  
9 application is denied.

10 739. License provisions and posting.

11 740. Application for acquisition of control of buy-now-pay-later  
12 lender by purchase of stock.

13 741. Grounds for revocation or suspension of license; procedure.

14 742. Superintendent authorized to examine.

15 743. Licensee's books and records; reports.

16 744. Acts prohibited.

17 745. Limitation on charges on buy-now-pay-later loans.

18 746. Consumer protections.

19 747. Authority of superintendent.

20 748. Penalties.

21 749. Severability.

22 § 735. Short title. This article shall be known and may be cited as  
23 the "Buy Now Pay Later act".

24 § 736. Definitions. As used in this article, the following terms shall  
25 have the following meanings:

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

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

3 2. "Buy-now-pay-later loan" means credit provided to a consumer at the  
4 time of purchase in connection with such consumer's particular purchase  
5 of goods or services, other than a motor vehicle as defined under  
6 section one hundred twenty-five of the vehicle and traffic law, that  
7 requires repayment of the principal in a fixed number of substantially  
8 equal installments with no interest.

9 3. "Buy-now-pay-later lender" means a person who offers buy-now-pay-  
10 later loans in this state. For purposes of the preceding sentence,  
11 "offer" means offering to extend credit through a buy-now-pay-later loan  
12 directly to a consumer at the time of purchase or operating a platform,  
13 software, or to operate a system with which a consumer interacts and the  
14 primary purpose of which is to allow third parties to offer buy-now-pay-  
15 later loans, or both. A person who sells goods or services to a consumer  
16 and extends credit to such consumer in connection with such consumer's  
17 particular purchase of such goods or services shall not be considered a  
18 buy-now-pay-later lender with respect to such transactions. A person  
19 shall not be considered a buy-now-pay-later lender on the basis of  
20 isolated, incidental or occasional transactions which otherwise meet the  
21 definitions of this section.

22 4. "Exempt organization" means any banking organization or foreign  
23 banking corporation licensed by the superintendent or the comptroller of  
24 the currency to transact business in this state, national bank, federal  
25 savings bank, federal savings and loan association, or federal credit  
26 union organized under the laws of any other state. Subject to such  
27 regulations as may be promulgated by the superintendent, "exempt organ-  
28 ization" may also include any subsidiary of such entities.

29 5. "Licensee" means a person who has been issued a license pursuant to  
30 this article.

31 6. "Person" means an individual, partnership, corporation, association  
32 or any other business organization.

33 § 737. License. 1. No person or other entity, except an exempt organ-  
34 ization as defined in this article, shall engage in the business of  
35 making buy-now-pay-later loans without first obtaining a buy-now-pay-la-  
36 ter lender license from the superintendent.

37 2. An application for a license shall be in writing, under oath, and  
38 in the form and containing such information as the superintendent may  
39 require.

40 3. At the time of filing an application for a license, the applicant  
41 shall pay to the superintendent a fee as prescribed pursuant to section  
42 eighteen-a of this chapter.

43 4. A license granted pursuant to this article shall be valid unless  
44 revoked or suspended by the superintendent or unless surrendered by the  
45 licensee and accepted by the superintendent.

46 5. In connection with an application for a license, the applicant  
47 shall submit an affidavit of financial solvency, including financial  
48 statements, noting such capitalization requirements and access to such  
49 credit or such other affirmation or information as may be prescribed by  
50 the regulations of the superintendent.

51 § 738. Conditions precedent to issuing a license; procedure where  
52 application is denied. 1. After the filing of an application for a  
53 license accompanied by payment of the fee pursuant to subdivision three  
54 of section seven hundred thirty-seven of this article, it shall be  
55 substantively reviewed. After the application is deemed sufficient and  
56 complete, if the superintendent finds that the financial responsibility,

1 including meeting any capital requirements as established pursuant to  
2 subdivision three of this section, experience, character and general  
3 fitness of the applicant or any person associated with the applicant are  
4 such as to command the confidence of the community and to warrant the  
5 belief that the business will be conducted honestly, fairly and effi-  
6 ciently within the purposes and intent of this article, the superinten-  
7 dent shall issue the license. For the purpose of this subdivision, the  
8 applicant shall be deemed to include all the members of the applicant if  
9 it is a partnership or unincorporated association or organization, and  
10 all the stockholders, officers and directors of the applicant if it is a  
11 corporation.

12 2. If the superintendent refuses to issue a license, the superinten-  
13 dent shall notify the applicant of the denial and retain the fee paid  
14 pursuant to subdivision three of section seven hundred thirty-seven of  
15 this article.

16 3. The superintendent may issue regulations setting capital require-  
17 ments to ensure the solvency and financial integrity of licensees and  
18 their ongoing operations, taking into account the risks, volume of busi-  
19 ness, complexity, and other relevant factors regarding such licensees.  
20 Further, the superintendent may issue rules and regulations prescribing  
21 a methodology to calculate capital requirements with respect to licen-  
22 sees or categories thereof.

23 § 739. License provisions and posting. 1. A license issued under this  
24 article shall state the name and address of the licensee, and if the  
25 licensee be a co-partnership or association, the names of the members  
26 thereof, and if a corporation the date and place of its incorporation.

27 2. Such license shall be kept conspicuously posted on the mobile  
28 application, website, or other consumer interface of the licensee, as  
29 well as listed in the terms and conditions of any buy-now-pay-later loan  
30 offered or entered into by the licensee. The superintendent may provide  
31 by regulation an alternative form of notice of licensure.

32 3. A license issued under this article shall not be transferable or  
33 assignable.

34 § 740. Application for acquisition of control of buy-now-pay-later  
35 lender by purchase of stock. 1. It shall be unlawful except with the  
36 prior approval of the superintendent for any action to be taken which  
37 results in a change of control of the business of a licensee. Prior to  
38 any change of control, the person desirous of acquiring control of the  
39 business of a licensee shall make written application to the superinten-  
40 dent and pay an investigation fee as prescribed pursuant to section  
41 eighteen-a of this chapter to the superintendent. The application shall  
42 contain such information as the superintendent, by regulation, may  
43 prescribe as necessary or appropriate for the purpose of making the  
44 determination required by subdivision two of this section.

45 2. The superintendent shall approve or disapprove the proposed change  
46 of control of a licensee in accordance with the provisions of section  
47 seven hundred thirty-eight of this article.

48 3. For a period of six months from the date of qualification thereof  
49 and for such additional period of time as the superintendent may  
50 prescribe, in writing, the provisions of subdivisions one and two of  
51 this section shall not apply to a transfer of control by operation of  
52 law to the legal representative, as hereinafter defined, of one who has  
53 control of a licensee. Thereafter, such legal representative shall  
54 comply with the provisions of subdivisions one and two of this section.  
55 The provisions of subdivisions one and two of this section shall be

1 applicable to an application made under such section by a legal repre-  
2 sentative.

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

9 5. As used in this section, the term "control" means the possession,  
10 directly or indirectly, of the power to direct or cause the direction of  
11 the management and policies of a licensee, whether through the ownership  
12 of voting stock of such licensee, the ownership of voting stock of any  
13 person which possesses such power or otherwise. Control shall be  
14 presumed to exist if any person, directly or indirectly, owns, controls  
15 or holds with power to vote ten per centum or more of the voting stock  
16 of any licensee or of any person which owns, controls or holds with  
17 power to vote ten per centum or more of the voting stock of any licen-  
18 see, but no person shall be deemed to control a licensee solely by  
19 reason of being an officer or director of such licensee or person. The  
20 superintendent may in the superintendent's discretion, upon the applica-  
21 tion of a licensee or any person who, directly or indirectly, owns,  
22 controls or holds with power to vote or seeks to own, control or hold  
23 with power to vote any voting stock of such licensee, determine whether  
24 or not the ownership, control or holding of such voting stock consti-  
25 tutes or would constitute control of such licensee for purposes of this  
26 section.

27 § 741. Grounds for revocation or suspension of license; procedure. 1.  
28 A license granted pursuant to this section may be revoked or suspended  
29 by the superintendent upon a finding that:

30 (a) The licensee has violated any applicable law or regulation;

31 (b) Any fact or condition exists which, if it had existed at the time  
32 of the original application for such license, clearly would have  
33 warranted the superintendent's refusal to issue such license; or

34 (c) The licensee has failed to pay any sum of money lawfully demanded  
35 by the superintendent or to comply with any demand, ruling or require-  
36 ment of the superintendent.

37 2. Any licensee may surrender any license by delivering to the super-  
38 intendent written notice that the licensee thereby surrenders such  
39 license. Such surrender shall be effective upon its acceptance by the  
40 superintendent, and shall not affect such licensee's civil or criminal  
41 liability for acts committed prior to such surrender.

42 3. Every license issued hereunder shall remain in force and effect  
43 until the same shall have been surrendered, revoked or suspended, in  
44 accordance with the provisions of this article, but the superintendent  
45 shall have authority to reinstate suspended licenses or to issue a new  
46 license to a licensee whose license has been revoked if no fact or  
47 condition then exists which clearly would have warranted the superinten-  
48 dent's refusal to issue such license.

49 4. Whenever the superintendent shall revoke or suspend a license  
50 issued pursuant to this article, the superintendent shall forthwith  
51 execute a written order to that effect, which order may be reviewed in  
52 the manner provided by article seventy-eight of the civil practice law  
53 and rules. Such special proceeding for review as authorized by this  
54 section must be commenced within thirty days from the date of such order  
55 of suspension or revocation.

1 5. The superintendent may, for good cause, without notice and a hear-  
2 ing, suspend any license issued pursuant to this article for a period  
3 not exceeding thirty days, pending investigation. "Good cause," as used  
4 in this subdivision, shall exist only when the licensee has engaged in  
5 or is likely to engage in a practice prohibited by this article or the  
6 regulations promulgated thereunder or engages in dishonest or inequita-  
7 ble practices which may cause substantial harm to the public.

8 6. No revocation, suspension or surrender of any license shall impair  
9 or affect the obligation of any pre-existing lawful contracts between  
10 the licensee and any borrower.

11 § 742. Superintendent authorized to examine. 1. The superintendent  
12 shall have the power to make such investigations as the superintendent  
13 shall deem necessary to determine whether any buy-now-pay-later lender  
14 or any other person has violated any of the provisions of this article  
15 or any other applicable law, or whether any licensee has conducted  
16 itself in such manner as would justify the revocation of its license,  
17 and to the extent necessary therefor, the superintendent may require the  
18 attendance of and examine any person under oath, and shall have the  
19 power to compel the production of all relevant books, records, accounts,  
20 and documents.

21 2. The superintendent shall have the power to make such examinations  
22 of the books, records, accounts and documents used in the business of  
23 any licensee as the superintendent shall deem necessary to determine  
24 whether any such licensee has violated any of the provisions of this  
25 chapter or any other applicable law or to secure information lawfully  
26 required by the superintendent.

27 § 743. Licensee's books and records; reports. 1. A buy-now-pay-later  
28 lender shall keep and use in its business such books, accounts and  
29 records as will enable the superintendent to determine whether such  
30 buy-now-pay-later lender is complying with the provisions of this arti-  
31 cle and with the rules and regulations lawfully made by the superinten-  
32 dent hereunder. Every buy-now-pay-later lender shall preserve such  
33 books, accounts and records for at least six years after making the  
34 final entry in respect to any buy-now-pay-later loan recorded therein;  
35 provided, however, the preservation of photographic or digital reproduc-  
36 tions thereof or records in photographic or digital form shall consti-  
37 tute compliance with this requirement.

38 2. By a date to be set by the superintendent, each licensee shall  
39 annually file a report with the superintendent giving such information  
40 as the superintendent may require concerning the licensee's business and  
41 operations during the preceding calendar year within the state under the  
42 authority of this article. Such report shall be subscribed and affirmed  
43 as true by the licensee under the penalties of perjury and be in the  
44 form prescribed by the superintendent. In addition to such annual  
45 reports, the superintendent may require of licensees such additional  
46 regular or special reports as the superintendent may deem necessary to  
47 the proper supervision of licensees under this article. Such additional  
48 reports shall be in the form prescribed by the superintendent and shall  
49 be subscribed and affirmed as true under the penalties of perjury.

50 § 744. Acts prohibited. 1. No buy-now-pay-later lender shall take or  
51 cause to be taken any confession of judgment or any power of attorney to  
52 confess judgment or to appear for the consumer in a judicial proceeding.

53 2. No buy-now-pay-later lender shall:

54 (a) Employ any scheme, device, or artifice to defraud or mislead a  
55 borrower;

1 (b) Engage in any unfair, deceptive or predatory act or practice  
2 toward any person or misrepresent or omit any material information in  
3 connection with the buy-now-pay-later loans, including, but not limited  
4 to, misrepresenting the amount, nature or terms of any fee or payment  
5 due or claimed to be due on the loan, the terms and conditions of the  
6 loan agreement or the borrower's obligations under the loan;

7 (c) Misapply payments to the outstanding balance of any buy-now-pay-  
8 later loan or to any related fees;

9 (d) Provide inaccurate information to a consumer reporting agency; or

10 (e) Make any false statement or make any omission of a material fact  
11 in connection with any information or reports filed with a governmental  
12 agency or in connection with any investigation conducted by the super-  
13 intendent or another governmental agency.

14 § 745. Limitation on charges on buy-now-pay-later loans. 1. Notwith-  
15 standing any other provision of law to the contrary, no buy-now-pay-la-  
16 ter lender shall charge, contract for, or otherwise receive from a  
17 consumer any interest, penalty, late fee, discount or other consider-  
18 ation in connection to a buy-now-pay-later loan, whether directly or  
19 indirectly, except as provided in this section.

20 2. The superintendent shall establish a standard amount or percentage  
21 for total maximum charge or fee in connection with late payment, default  
22 or any other violation of the buy-now-pay-later loan agreement that a  
23 buy-now-pay-later lender can charge a consumer. Such fee or charge shall  
24 not be collected more than once for the same violation.

25 3. Any transaction fee charged to the consumer by or on behalf of a  
26 buy-now-pay-later lender shall be limited to reasonable and actual costs  
27 of processing and executing the transaction.

28 § 746. Consumer protections. 1. Disclosures. A buy-now-pay-later lend-  
29 er shall disclose or cause to be disclosed to consumers the terms of  
30 buy-now-pay-later loans, including the cost, repayment schedule, whether  
31 the transaction will or will not be reported to a credit reporting agen-  
32 cy, and other material conditions, in a clear and conspicuous manner.  
33 Disclosures shall comply with applicable federal regulations, including  
34 but not limited to regulation Z of title I of the Consumer Credit  
35 Protection Act.

36 2. Ability to repay. Subject to regulations to be promulgated by the  
37 superintendent, a buy-now-pay-later lender shall, before providing or  
38 causing to be provided a buy-now-pay-later loan to a consumer, make, or  
39 cause to be made, a reasonable determination that such consumer has the  
40 ability to repay the buy-now-pay-later loan.

41 3. Credit reporting. A buy-now-pay-later lender shall not report any  
42 consumer data obtained through a buy-now-pay-later loan to any credit  
43 reporting agency except as authorized in regulations promulgated by the  
44 superintendent and in the form and manner prescribed therein. The super-  
45 intendent, in consultation with the director of the division of consumer  
46 protection, shall establish provisions regarding the use of such data by  
47 the credit reporting agencies. No licensee shall collect, evaluate,  
48 report, or maintain in the file on a borrower the credit worthiness,  
49 credit standing, or credit capacity of members of the borrower's social  
50 network for purposes of determining the credit worthiness of the borrow-  
51 er; the average credit worthiness, credit standing, or credit capacity  
52 of members of the borrower's social network; or any group score that is  
53 not the borrower's own credit worthiness, credit standing, or credit  
54 capacity.

55 4. Refunds and credits. A buy-now-pay-later lender shall provide or  
56 cause to be provided refunds or credits for goods or services purchased

1 in connection with a buy-now-pay-later loan, upon consumer request, as  
2 necessary. A buy-now-pay-later lender shall maintain or cause to be  
3 maintained policies and procedures to provide such refunds or credits.  
4 Such policies and procedures shall be fair, transparent, and not unduly  
5 burdensome to the consumer. A buy-now-pay-later lender shall disclose  
6 or cause to be disclosed, in a clear and conspicuous manner, such poli-  
7 cies and procedures.

8 5. Consumer disputes. A buy-now-pay-later lender shall resolve or  
9 cause to be resolved disputes in a manner that is fair and transparent  
10 to consumers. A buy-now-pay-later lender shall create or cause to be  
11 created a readily available and prominently disclosed method for consum-  
12 ers to bring a dispute to the buy-now-pay-later lender. A buy-now-pay-  
13 later lender shall maintain policies and procedures for handling consum-  
14 er disputes.

15 6. Use of consumer data. A buy-now-pay-later lender shall clearly and  
16 conspicuously disclose or cause to be disclosed to a consumer to which  
17 it provides a loan how such consumer's data may be used, shared or sold  
18 by the buy-now-pay-later lender. In addition to any other consent or  
19 privacy requirements in law, the buy-now-pay-later lender shall provide  
20 the consumer the opportunity to provide affirmative consent to such  
21 collection, sale, sharing, and use of consumer data, provided that with-  
22 out such consent the buy-now-pay-later lender shall not collect, sell,  
23 share, or use such consumer data. The superintendent, in their  
24 discretion, may by regulation prohibit certain uses of consumer data.

25 7. Unauthorized use. The superintendent may issue rules and regu-  
26 lations regarding treatment of unauthorized use, so that consumers are  
27 liable for use of buy-now-pay-later loans in their name only under  
28 circumstances where such liability would be fair and reasonable.

29 8. Void buy-now-pay-later loans. Any buy-now-pay-later loan made by a  
30 person not licensed under this article, other than an exempt organiza-  
31 tion, shall be void, and such person shall have no right to collect or  
32 receive any principal, interest or charge whatsoever.

33 § 747. Authority of superintendent. 1. The superintendent is author-  
34 ized to promulgate such general rules and regulations as may be appro-  
35 priate to implement the provisions of this article, protect consumers,  
36 and ensure the solvency and financial integrity of buy-now-pay-later  
37 lenders. The superintendent is further authorized to make such specific  
38 rulings, demands, and findings as may be necessary for the proper  
39 conduct of the business authorized and licensed under and for the  
40 enforcement of this article, in addition hereto and not inconsistent  
41 herewith.

42 2. In addition to such powers as may otherwise be prescribed by law,  
43 the superintendent is hereby authorized and empowered to promulgate such  
44 rules and regulations as may in the judgment of the superintendent be  
45 consistent with the purposes of this article, or appropriate for the  
46 effective administration of this article, including, but not limited to:

47 (a) Such rules and regulations in connection with the activities of  
48 buy-now-pay-later lenders as may be necessary and appropriate for the  
49 protection of borrowers in this state;

50 (b) Such rules and regulations as may be necessary and appropriate to  
51 define unfair, deceptive, or abusive acts or practices in connection  
52 with the activities of buy-now-pay-later lenders;

53 (c) Such rules and regulations as may define the terms used in this  
54 article and as may be necessary and appropriate to interpret and imple-  
55 ment the provisions of this article; and

1 (d) Such rules and regulations as may be necessary for the enforcement  
2 of this article.

3 § 748. Penalties. 1. Any person, including any member, officer, direc-  
4 tor or employee of a buy-now-pay-later lender, who violates or partic-  
5 ipates in the violation of section seven hundred thirty-seven of this  
6 article, or who knowingly makes any incorrect statement of a material  
7 fact in any application, report or statement filed pursuant to this  
8 article, or who knowingly omits to state any material fact necessary to  
9 give the superintendent any information lawfully required by the super-  
10 intendent or refuses to permit any lawful investigation or examination,  
11 shall be guilty of a misdemeanor and, upon conviction, shall be fined  
12 not more than five hundred dollars or imprisoned for not more than six  
13 months or both, in the discretion of the court.

14 2. Without limiting any power granted to the superintendent under any  
15 other provision of this chapter, the superintendent may, in a proceeding  
16 after notice and a hearing require a buy-now-pay-later lender, whether  
17 or not a licensee, 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 chapter, any condition imposed in writing by the superintendent in  
21 connection with the grant of any application or request, or any written  
22 agreement entered into with the superintendent, and for knowingly making  
23 any incorrect statement of a material fact in any application, report or  
24 statement filed pursuant to this article, or knowingly omitting to state  
25 any material fact necessary to give the superintendent any information  
26 lawfully required by the superintendent or refusing to permit any lawful  
27 investigation or examination. As to any buy-now-pay-later lender that is  
28 not a licensee or an exempt organization, the superintendent is author-  
29 ized to impose a penalty in the same amount authorized in section  
30 forty-four of this chapter for a violation of this chapter by any person  
31 licensed, certified, registered, authorized, chartered, accredited,  
32 incorporated or otherwise approved by the superintendent pursuant to  
33 this chapter.

34 3. No person shall make, directly or indirectly, orally or in writing,  
35 or by any method, practice or device, a representation that such person  
36 is licensed under the banking law except that a licensee under this  
37 chapter may make a representation that the licensee is licensed as a  
38 buy-now-pay-later lender under this chapter.

39 § 749. Severability. If any provision of this article or the applica-  
40 tion thereof to any person or circumstances is held to be invalid, such  
41 invalidity shall not affect other provisions or applications of this  
42 article which can be given effect without the invalid provision or  
43 application, and to this end the provisions of this article are severa-  
44 ble.

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

47 1. The superintendent shall have the power to examine every banking  
48 organization, every bank holding company and any non-banking subsidiary  
49 thereof (as such terms "bank holding company" and "non-banking subsid-  
50 iary" are defined in article three-A of this chapter) and every licensed  
51 lender and licensed buy-now-pay-later lender at any time prior to its  
52 dissolution whenever in his judgment such examination is necessary or  
53 advisable.

54 § 3. Subdivision 10 of section 36 of the banking law, as amended by  
55 section 2 of part L of chapter 58 of the laws of 2019, is amended to  
56 read as follows:

1 10. All reports of examinations and investigations, correspondence and  
2 memoranda concerning or arising out of such examination and investi-  
3 gations, including any duly authenticated copy or copies thereof in the  
4 possession of any banking organization, bank holding company or any  
5 subsidiary thereof (as such terms "bank holding company" and "subsidi-  
6 ary" are defined in article three-A of this chapter), any corporation  
7 or any other entity affiliated with a banking organization within the  
8 meaning of subdivision six of this section and any non-banking subsidi-  
9 ary of a corporation or any other entity which is an affiliate of a  
10 banking organization within the meaning of subdivision six-a of this  
11 section, foreign banking corporation, licensed lender, licensed buy-now-  
12 pay-later lender, licensed casher of checks, licensed mortgage banker,  
13 registered mortgage broker, licensed mortgage loan originator, licensed  
14 sales finance company, registered mortgage loan servicer, licensed  
15 student loan servicer, licensed insurance premium finance agency,  
16 licensed transmitter of money, licensed budget planner, any other person  
17 or entity subject to supervision under this chapter, or the department,  
18 shall be confidential communications, shall not be subject to subpoena  
19 and shall not be made public unless, in the judgment of the superinten-  
20 dent, the ends of justice and the public advantage will be subserved by  
21 the publication thereof, in which event the superintendent may publish  
22 or authorize the publication of a copy of any such report or any part  
23 thereof in such manner as may be deemed proper or unless such laws  
24 specifically authorize such disclosure. For the purposes of this subdivi-  
25 sion, "reports of examinations and investigations, and any correspond-  
26 ence and memoranda concerning or arising out of such examinations and  
27 investigations", includes any such materials of a bank, insurance or  
28 securities regulatory agency or any unit of the federal government or  
29 that of this state any other state or that of any foreign government  
30 which are considered confidential by such agency or unit and which are  
31 in the possession of the department or which are otherwise confidential  
32 materials that have been shared by the department with any such agency  
33 or unit and are in the possession of such agency or unit.

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

36 3. In addition to any reports expressly required by this chapter to be  
37 made, the superintendent may require any banking organization, licensed  
38 lender, licensed buy-now-pay-later lender, licensed casher of checks,  
39 licensed mortgage banker, foreign banking corporation licensed by the  
40 superintendent to do business in this state, bank holding company and  
41 any non-banking subsidiary thereof, corporate affiliate of a corporate  
42 banking organization within the meaning of subdivision six of section  
43 thirty-six of this article and any non-banking subsidiary of a corpo-  
44 ration which is an affiliate of a corporate banking organization within  
45 the meaning of subdivision six-a of section thirty-six of this article  
46 to make special reports to [~~him~~] the superintendent at such times as  
47 [~~he~~] the superintendent may prescribe.

48 5. The superintendent may extend at [~~his~~] the superintendent's  
49 discretion the time within which a banking organization, foreign banking  
50 corporation licensed by the superintendent to do business in this state,  
51 bank holding company or any non-banking subsidiary thereof, licensed  
52 casher of checks, licensed mortgage banker, private banker, licensed  
53 buy-now-pay-later lender or licensed lender is required to make and file  
54 any report to the superintendent.

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

1 § 39. Orders of superintendent. 1. To appear and explain an apparent  
2 violation. Whenever it shall appear to the superintendent that any bank-  
3 ing organization, bank holding company, registered mortgage broker,  
4 licensed mortgage banker, licensed student loan servicer, registered  
5 mortgage loan servicer, licensed mortgage loan originator, licensed  
6 lender, licensed buy-now-pay-later lender, licensed cashier of checks,  
7 licensed sales finance company, licensed insurance premium finance agen-  
8 cy, licensed transmitter of money, licensed budget planner, out-of-state  
9 state bank that maintains a branch or branches or representative or  
10 other offices in this state, or foreign banking corporation licensed by  
11 the superintendent to do business or maintain a representative office in  
12 this state has violated any law or regulation, [~~he or she~~] the super-  
13 intendent may, in [~~his or her~~] the superintendent's discretion, issue an  
14 order describing such apparent violation and requiring such banking  
15 organization, bank holding company, registered mortgage broker, licensed  
16 mortgage banker, licensed student loan servicer, licensed mortgage loan  
17 originator, licensed lender, licensed buy-now-pay-later lender, licensed  
18 cashier of checks, licensed sales finance company, licensed insurance  
19 premium finance agency, licensed transmitter of money, licensed budget  
20 planner, out-of-state state bank that maintains a branch or branches or  
21 representative or other offices in this state, or foreign banking corpo-  
22 ration to appear before [~~him or her~~] the superintendent, at a time and  
23 place fixed in said order, to present an explanation of such apparent  
24 violation.

25 2. To discontinue unauthorized or unsafe and unsound practices. When-  
26 ever it shall appear to the superintendent that any banking organiza-  
27 tion, bank holding company, registered mortgage broker, licensed mort-  
28 gage banker, licensed student loan servicer, registered mortgage loan  
29 servicer, licensed mortgage loan originator, licensed lender, licensed  
30 buy-now-pay-later lender, licensed cashier of checks, licensed sales  
31 finance company, licensed insurance premium finance agency, licensed  
32 transmitter of money, licensed budget planner, out-of-state state bank  
33 that maintains a branch or branches or representative or other offices  
34 in this state, or foreign banking corporation licensed by the super-  
35 intendent to do business in this state is conducting business in an  
36 unauthorized or unsafe and unsound manner, [~~he or she~~] the superinten-  
37 dent may, in [~~his or her~~] the superintendent's discretion, issue an  
38 order directing the discontinuance of such unauthorized or unsafe and  
39 unsound practices, and fixing a time and place at which such banking  
40 organization, bank holding company, registered mortgage broker, licensed  
41 mortgage banker, licensed student loan servicer, registered mortgage  
42 loan servicer, licensed mortgage loan originator, licensed lender,  
43 licensed buy-now-pay-later lender, licensed cashier of checks, licensed  
44 sales finance company, licensed insurance premium finance agency,  
45 licensed transmitter of money, licensed budget planner, out-of-state  
46 state bank that maintains a branch or branches or representative or  
47 other offices in this state, or foreign banking corporation may volun-  
48 tarily appear before [~~him or her~~] the superintendent to present any  
49 explanation in defense of the practices directed in said order to be  
50 discontinued.

51 3. To make good impairment of capital or to ensure compliance with  
52 financial requirements. Whenever it shall appear to the superintendent  
53 that the capital or capital stock of any banking organization, bank  
54 holding company or any subsidiary thereof which is organized, licensed  
55 or registered pursuant to this chapter, is impaired, or the financial  
56 requirements imposed by subdivision one of section two hundred two-b of

1 this chapter or any regulation of the superintendent on any branch or  
2 agency of a foreign banking corporation or the financial requirements  
3 imposed by this chapter or any regulation of the superintendent on any  
4 licensed lender, licensed buy-now-pay-later lender, registered mortgage  
5 broker, licensed mortgage banker, licensed student loan servicer,  
6 licensed casher of checks, licensed sales finance company, licensed  
7 insurance premium finance agency, licensed transmitter of money,  
8 licensed budget planner or private banker are not satisfied, the super-  
9 intendent may, in the superintendent's discretion, issue an order  
10 directing that such banking organization, bank holding company, branch  
11 or agency of a foreign banking corporation, registered mortgage broker,  
12 licensed mortgage banker, licensed student loan servicer, licensed lend-  
13 er, licensed buy-now-pay-later lender, licensed casher of checks,  
14 licensed sales finance company, licensed insurance premium finance agen-  
15 cy, licensed transmitter of money, licensed budget planner, or private  
16 banker make good such deficiency forthwith or within a time specified in  
17 such order.

18 4. To make good encroachments on reserves. Whenever it shall appear to  
19 the superintendent that either the total reserves or reserves on hand of  
20 any banking organization, branch or agency of a foreign banking corpo-  
21 ration are below the amount required by or pursuant to this chapter or  
22 any other applicable provision of law or regulation to be maintained, or  
23 that such banking organization, branch or agency of a foreign banking  
24 corporation is not keeping its reserves on hand as required by this  
25 chapter or any other applicable provision of law or regulation, [~~he or~~  
26 ~~she~~] the superintendent may, in [~~his or her~~] the superintendent's  
27 discretion, issue an order directing that such banking organization,  
28 branch or agency of a foreign banking corporation make good such  
29 reserves forthwith or within a time specified in such order, or that it  
30 keep its reserves on hand as required by this chapter.

31 5. To keep books and accounts as prescribed. Whenever it shall appear  
32 to the superintendent that any banking organization, bank holding compa-  
33 ny, registered mortgage broker, licensed mortgage banker, licensed  
34 student loan servicer, registered mortgage loan servicer, licensed mort-  
35 gage loan originator, licensed lender, licensed buy-now-pay-later lend-  
36 er, licensed casher of checks, licensed sales finance company, licensed  
37 insurance premium finance agency, licensed transmitter of money,  
38 licensed budget planner, agency or branch of a foreign banking corpo-  
39 ration licensed by the superintendent to do business in this state, does  
40 not keep its books and accounts in such manner as to enable [~~him or her~~]  
41 the superintendent to readily ascertain its true condition, [~~he or she~~]  
42 the superintendent may, in [~~his or her~~] the superintendent's discretion,  
43 issue an order requiring such banking organization, bank holding compa-  
44 ny, registered mortgage broker, licensed mortgage banker, licensed  
45 student loan servicer, registered mortgage loan servicer, licensed mort-  
46 gage loan originator, licensed lender, licensed buy-now-pay-later lend-  
47 er, licensed casher of checks, licensed sales finance company, licensed  
48 insurance premium finance agency, licensed transmitter of money,  
49 licensed budget planner, or foreign banking corporation, or the officers  
50 or agents thereof, or any of them, to open and keep such books or  
51 accounts as [~~he or she~~] the superintendent may, in [~~his or her~~] the  
52 superintendent's discretion, determine and prescribe for the purpose of  
53 keeping accurate and convenient records of its transactions and  
54 accounts.

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

4 § 6. Subdivision 1 of section 42 of the banking law, as amended by  
5 chapter 65 of the laws of 1948, is amended to read as follows:

6 1. The name and the location of the principal office of every proposed  
7 corporation, private banker, licensed lender, licensed buy-now-pay-later  
8 lender and licensed casher of checks, the organization certificate,  
9 private banker's certificate or application for license of which has  
10 been filed for examination, and the date of such filing.

11 § 7. Subdivision 2 of section 42 of the banking law, as amended by  
12 chapter 553 of the laws of 1960, is amended to read as follows:

13 2. The name and location of every licensed lender, licensed buy-now-  
14 pay-later lender and licensed casher of checks, and the name, location,  
15 amount of capital stock or permanent capital and amount of surplus of  
16 every corporation and private banker and the minimum assets required of  
17 every branch of a foreign banking corporation authorized to commence  
18 business, and the date of authorization or licensing.

19 § 8. Subdivision 3 of section 42 of the banking law, as amended by  
20 chapter 553 of the laws of 1960, is amended to read as follows:

21 3. The name of every proposed corporation, private banker, branch of a  
22 foreign banking corporation, licensed lender, licensed buy-now-pay-later  
23 lender and licensed casher of checks to which a certificate of authori-  
24 zation or a license has been refused and the date of notice of refusal.

25 § 9. Subdivision 4 of section 42 of the banking law, as amended by  
26 chapter 60 of the laws of 1957, is amended to read as follows:

27 4. The name and location of every private banker, licensed lender,  
28 licensed casher of checks, sales finance company, licensed buy-now-pay-  
29 later lender and foreign corporation the authorization certificate or  
30 license of which has been revoked, and the date of such revocation.

31 § 10. Subdivision 5 of section 42 of the banking law, as amended by  
32 chapter 249 of the laws of 1968, is amended to read as follows:

33 5. The name of every banking organization, licensed lender, licensed  
34 casher of checks, licensed buy-now-pay-later lender and foreign corpo-  
35 ration which has applied for leave to change its place or one of its  
36 places of business and the places from and to which the change is  
37 proposed to be made; the name of every banking organization which has  
38 applied to change the designation of its principal office to a branch  
39 office and to change the designation of one of its branch offices to its  
40 principal office, and the location of the principal office which is  
41 proposed to be redesignated as a branch office and of the branch office  
42 which is proposed to be redesignated as the principal office.

43 § 11. Subdivision 6 of section 42 of the banking law, as amended by  
44 chapter 249 of the laws of 1968, is amended to read as follows:

45 6. The name of every banking organization, licensed lender, licensed  
46 casher of checks, licensed buy-now-pay-later lender and foreign corpo-  
47 ration authorized to change its place or one of its places of business  
48 and the date when and the places from and to which the change is author-  
49 ized to be made; the name of every banking organization authorized to  
50 change the designation of its principal office to a branch office and to  
51 change the designation of a branch office to its principal office, the  
52 location of the redesignated principal office and of the redesignated  
53 branch office, and the date of such change.

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

1 (a) Without limiting any power granted to the superintendent under any  
2 other provision of this chapter, the superintendent may, in a proceeding  
3 after notice and a hearing, require any safe deposit company, licensed  
4 lender, licensed buy-now-pay-later lender, licensed cashier of checks,  
5 licensed sales finance company, licensed insurance premium finance agen-  
6 cy, licensed transmitter of money, licensed mortgage banker, licensed  
7 student loan servicer, registered mortgage broker, licensed mortgage  
8 loan originator, registered mortgage loan servicer or licensed budget  
9 planner to pay to the people of this state a penalty for any violation  
10 of this chapter, any regulation promulgated thereunder, any final or  
11 temporary order issued pursuant to section thirty-nine of this article,  
12 any condition imposed in writing by the superintendent in connection  
13 with the grant of any application or request, or any written agreement  
14 entered into with the superintendent.

15 § 13. This act shall take effect on the one hundred eightieth day  
16 after the department of financial services shall have promulgated rules  
17 and/or regulations necessary to effectuate the provisions of this act;  
18 provided that the department of financial services shall notify the  
19 legislative bill drafting commission upon the occurrence of the promul-  
20 gation of the rules and regulations necessary to effectuate and enforce  
21 the provisions of section two of this act, in order that the commission  
22 may maintain an accurate and timely effective record of the official  
23 text of the laws of the state of New York in furtherance of effectuating  
24 the provisions of section 44 of the legislative law and section 70-b of  
25 the public officers law. Effective immediately, the addition, amendment  
26 and/or repeal of any rule or regulation authorized to be made by the  
27 superintendent pursuant to this act is authorized to be made and  
28 completed on or before such effective date.