

# STATE OF NEW YORK

258--A

2025-2026 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. VANEL, WEPRIN -- read once and referred to the Committee on Banks -- 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:

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

### ARTICLE 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. Earned income access data collection and review.

374-kk. Changes in control.

374-ll. Violation and penalties.

374-mm. Books and records; reports.

374-nn. Severability.

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

1. "Consumer" means an individual who is a resident of the state of New York. A provider may use the mailing address provided by a consumer

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

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1 to determine the consumer's state of residence for purposes of this  
2 chapter.

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 cap" means the limit on the amount that may  
15 be charged for an earned income access transaction which shall not  
16 exceed:

17 (a) five dollars for a transaction of seventy-five dollars or less; or

18 (b) seven dollars for a transaction that is more than seventy-five  
19 dollars.

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

25 6. "Earned income access provider" or "provider" means a person or  
26 entity that:

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

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

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

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

45 9. "Notice" means communication from the provider to the consumer in a  
46 clear and conspicuous manner in writing or electronically.

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

54 11. "Fees" means any amount charged by a provider to a consumer for an  
55 earned income access transaction.

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

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

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

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

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

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

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

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

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

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

51 § 374-ee. Grounds for suspension or revocation of license; procedure.

52 1. A license granted pursuant to this section may not be renewed, and  
53 shall be revoked or suspended by the superintendent upon a finding that:

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

55 (b) the licensee, knowingly or without the exercise of due care to  
56 prevent such violation, has violated any provision of this article, the

1 act of congress entitled "Truth in Lending Act" and the regulations  
2 thereunder to the extent deemed applicable to the earned income trans-  
3 action under federal law by a court of competent jurisdiction, as such  
4 act and regulations may from time to time be amended or any rule or  
5 regulation lawfully made by the superintendent under and within the  
6 authority of this article;

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

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

13 2. Any licensee may surrender any license by delivering to the super-  
14 intendent notice that the licensee thereby surrenders such license, but  
15 such surrender shall not affect such licensee's civil or criminal  
16 liability for acts committed prior to such surrender.

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

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

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

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

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

1 3. The expenses incurred in making any examination pursuant to subdivi-  
2 vision two of this section shall be assessed against and paid by the  
3 licensee so examined, except that traveling and subsistence expenses so  
4 incurred shall be charged against and paid by licensees in such  
5 proportions as the superintendent shall deem just and reasonable, and  
6 such proportionate charges shall be added to the assessment of the other  
7 expenses incurred upon each examination. Upon written notice by the  
8 superintendent of the total amount of such assessment, the licensee  
9 shall become liable for and shall pay such assessment to the superinten-  
10 dent.

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

22 § 374-gg. Compliance. 1. An earned income access provider shall not  
23 operate in this state unless:

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

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

30 (c) the provider complies with applicable provisions of the Electronic  
31 Fund Transfer Act, 15 U.S.C. § 1693 et seq. and the regulations there-  
32 under when a debit is initiated to a consumer's account for a payment,  
33 and if the debit is returned for insufficient or uncollected funds, the  
34 debit is reinitiated only in accordance with paragraph (d) of subdivi-  
35 sion two of this section;

36 (d) the provider complies with all applicable local, state, and feder-  
37 al privacy and information security laws;

38 (e) the provider offers the consumer at least one reasonable option to  
39 obtain proceeds at no cost to such consumer and clearly explains how to  
40 elect such no-cost option;

41 (f) the provider gives notice to the consumer of the costs of earned  
42 income transactions in accordance with any rules that the superintendent  
43 may promulgate; and

44 (g) upon request by the consumer, the provider delivers notice to each  
45 consumer to whom it has paid proceeds in the quarter when the request is  
46 made. Notice shall contain information from that quarter to be  
47 prescribed by the superintendent, including but not limited to an itemi-  
48 zation of transactions and costs, the total amount the consumer has paid  
49 in fees, information on how to report complaints to the provider and to  
50 the department of financial services, definitions of terms used in the  
51 notice, and an explanation of the costs of the services provided;

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

54 (a) the transaction is non-recourse;

55 (b) 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 (c) if repayment is to be made through a debit of a consumer's  
4 account, the debit is made in accordance with paragraph (c) of subdivi-  
5 sion one of this section;

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

9 (e) 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, provided however that a provider may accept an  
15 unpaid amount as a precondition to allow the consumer to continue  
16 utilizing the service;

17 (f) before a consumer enters into the earned income access trans-  
18 action, the provider gives the consumer notice of all fees associated  
19 with the earned income access transaction and the cost of the trans-  
20 action;

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

31 (h) the provider does not charge a late fee or prepayment penalty on  
32 the earned income access transaction;

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

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

40 (k) the provider does not require a consumer to waive the right to  
41 class action to engage in an earned income access transaction;

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

47 (m) the consumer is eighteen years of age or older.

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

50 4. If a provider charges indirect transaction fees, such fees shall  
51 not exceed the earned income access cap.

52 5. (a) An amount charged to a consumer for a subscription or member-  
53 ship to a product that provides a bona fide group of services that  
54 includes earned income access transactions, or an amount paid as  
55 described in paragraph (g) of subdivision two of this section, shall not  
56 be considered a fee, as such term is defined in subdivision eleven of

1 section three hundred seventy-four-aa of this article, for purposes of  
2 subdivision four of section three hundred seventy-four-aa of this arti-  
3 cle. For purposes of this article, a "bona fide group of services" that  
4 includes earned income access transactions shall mean a group of  
5 services in which each of the individual services included is not of  
6 nominal value.

7 (b) The requirements of paragraph (e) of subdivision one of this  
8 section shall apply to a provider that offers earned income access tran-  
9 sactions as part of a subscription or membership to a product that  
10 provides a bona fide group of services.

11 6. Notwithstanding any provisions of this article or any other law to  
12 the contrary, a provider may avail itself of any lawful remedies avail-  
13 able to such provider by contract or at law to seek and collect payment  
14 of outstanding proceeds, charges, fees, or any other amounts available  
15 by contract or law if a consumer provides false information in the  
16 course of procuring an earned income access transaction, or received  
17 such amounts or proceeds through fraud or other unlawful means. For  
18 purposes of this article, "fraud" shall mean a knowing or reckless  
19 misrepresentation of the truth to a provider or a third party, or  
20 concealment of a material fact either by statement of conduct, by a  
21 consumer to induce such provider to enter into an earned income access  
22 transaction.

23 § 374-hh. Advertising. 1. No advertisement for an earned income access  
24 transaction service shall be misleading or otherwise deceptive.

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

27 3. The superintendent shall adopt rules governing advertising of  
28 earned income transaction services consistent with the purposes of this  
29 section.

30 § 374-ii. Regulations and rulings. The superintendent is hereby  
31 authorized and empowered to make such rules and regulations, conduct  
32 hearings and make such specific rulings, orders, demands and findings as  
33 may be necessary for the proper conduct of the business authorized and  
34 licensed under and for the enforcement of this article.

35 § 374-jj. Earned income access data collection and review. 1. The  
36 superintendent shall collect and analyze data from earned income access  
37 providers as set forth below.

38 2. On or before April fifteenth of each year, a licensee shall submit  
39 to the superintendent a report containing, as applicable to the licen-  
40 see:

41 (a) except as otherwise provided in subdivision four of this section,  
42 financial statements for the immediately preceding year that have been  
43 audited by an independent certified public accountant;

44 (b) information about each complaint that has been filed by a user who  
45 received earned wage access services in this state in the immediately  
46 preceding year against the licensee and a description of the resolution,  
47 if any, of each such complaint;

48 (c) the total amount of charges paid by users for earned wage access  
49 services in the preceding year in this state;

50 (d) the total number of users in this state who did not received  
51 earned wage access services in the immediately preceding year but who  
52 paid a subscription fee or membership fee imposed by a provider for a  
53 bona fide group of services that include earned wage access services,  
54 including the total amount of subscription fees and membership fees paid  
55 by those users in the immediately preceding year;

1 (e) the total number of users in this state who participated in twelve  
2 or more paid earned wage access transfers provided by the licensee in  
3 the immediately preceding year; and

4 (f) any other information required by the superintendent pursuant to  
5 regulations adopted pursuant to this article.

6 3. If audited financial statements are not available to a licensee on  
7 or before April fifteenth in any given year, the licensee may satisfy  
8 the requirements of subdivision two of this section by submitting to the  
9 superintendent:

10 (a) unaudited financial statements on or before April fifteenth; and

11 (b) audited financial statements when such statements become available  
12 to the licensee.

13 4. Except as otherwise provided in this section, all documents and  
14 other information filed with the superintendent are confidential and may  
15 be disclosed only as the superintendent and the licensee mutually deem  
16 necessary to administer the provisions of this section.

17 5. The superintendent shall annually publish and make available to the  
18 public an aggregated and anonymized analysis of the information submit-  
19 ted as required pursuant to this section.

20 6. (a) Beginning four years from the effective date of this article,  
21 the superintendent may set by regulation the earned income access cap,  
22 as such term is defined in subdivision four of section three hundred  
23 seventy-four-aa of this article, at a level intended to continue to  
24 allow consumers in this state access to earned income access services.  
25 Before determining such cap, the superintendent shall review all data  
26 submitted by licensees, including user tip amounts, and the following  
27 publicly available data and submit a written report to the speaker of  
28 the assembly, the temporary president of the senate, and the governor  
29 detailing such publicly available data, including:

30 (i) the average cost of a pawn loan;

31 (ii) the average fees for check cashing;

32 (iii) the average credit card late fee;

33 (iv) the average dollar amounts for credit card interest;

34 (v) the average late fee for a utility bill; and

35 (vi) the average out-of-network ATM fee.

36 (b) In addition, the report required in paragraph (a) of this section  
37 shall contain:

38 (i) a recommendation to the legislature on the utility of prohibiting  
39 earned income access transactions requested by a consumer within a twen-  
40 ty-four hour period immediately preceding payday. In preparing such  
41 recommendation, the superintendent shall receive from licensees and then  
42 review the following data from the previous four years:

43 (A) the number of consumers per year that request an earned income  
44 access transaction within twenty-four hours of payday;

45 (B) the percentage of consumers per year that request an earned income  
46 access transaction within twenty-four hours of payday;

47 (C) the percentage of consumers that report requesting an earned  
48 income access transaction within twenty-four hours of payday for the  
49 purpose of purchasing food;

50 (D) the percentage of consumers that report requesting an earned  
51 income access transaction within twenty-four hours of payday to pay  
52 bills that have come due; and

53 (E) the percentage of consumers that report requesting an earned  
54 income access transaction within twenty-four hours of payday to meet  
55 family expenses; and

1 (ii) a recommendation to the legislature on the appropriateness of  
2 continuing to exclude tips and other voluntary payments from the earned  
3 income access cap.

4 § 374-kk. Changes in control. 1. It shall be unlawful except with the  
5 prior approval of the superintendent for any action to be taken which  
6 results in a change of control of the business of a licensee. Prior to  
7 any change of control, the person desirous of acquiring control of the  
8 business of a licensee shall make written application to the superinten-  
9 dent and pay an investigation fee as prescribed pursuant to section  
10 eighteen-a of this chapter to the superintendent. The application shall  
11 contain such information as the superintendent, by rule or regulation,  
12 may prescribe as necessary or appropriate for the purpose of making the  
13 determination required by subdivision two of this section.

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

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

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

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

52 § 374-ll. Violation and penalties. 1. Any person, including any  
53 member, officer, director or employee of a provider, who violates or  
54 participates in the violation of any provision of this article, or who  
55 knowingly makes any incorrect statement of a material fact in any appli-  
56 cation, report or statement filed pursuant to this article, or who know-

1 ingly omits to state any material fact necessary to give the superinten-  
2 dent any information lawfully required by the superintendent or refuses  
3 to permit any lawful investigation or examination, shall be guilty of a  
4 misdemeanor and, upon conviction, shall be fined not more than five  
5 hundred dollars or imprisoned for not more than six months or both, in  
6 the discretion of the court.

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

12 § 374-mm. Books and records; reports. 1. The provider shall keep and  
13 use in its business such books, accounts and records as will enable the  
14 superintendent to determine whether such provider is complying with the  
15 provisions of this article and with the rules and regulations lawfully  
16 made by the superintendent hereunder. Every provider shall preserve such  
17 books, accounts and records for at least six years after making the  
18 final entry in respect to any earned income access transaction recorded  
19 therein; provided, however, the preservation of photographic reproduc-  
20 tions thereof or records in photographic form shall constitute compli-  
21 ance with this requirement.

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

34 § 374-nn. Severability. If any provision of this article or the appli-  
35 cation thereof to any person or circumstances is held invalid, the inva-  
36 lidity thereof shall not affect other provisions or applications of the  
37 article which can be given effect without the invalid provision or  
38 application, and to this end the provisions of this article are severa-  
39 ble.

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

42 1. The superintendent shall have the power to examine every banking  
43 organization, every bank holding company and any non-banking subsidiary  
44 thereof (as such terms "bank holding company" and "non-banking subsid-  
45 iary" are defined in article three-A of this chapter) and every licensed  
46 lender and licensed earned income access provider at any time prior to  
47 its dissolution whenever in [~~his~~] the judgment of such superintendent  
48 such examination is necessary or advisable.

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

51 3. In addition to any reports expressly required by this chapter to be  
52 made, the superintendent may require any banking organization, licensed  
53 lender, licensed earned income access provider, licensed cashier of  
54 checks, licensed mortgage banker, foreign banking corporation licensed  
55 by the superintendent to do business in this state, bank holding company  
56 and any non-banking subsidiary thereof, corporate affiliate of a corpo-

1 rate banking organization within the meaning of subdivision six of  
2 section thirty-six of this article and any non-banking subsidiary of a  
3 corporation which is an affiliate of a corporate banking organization  
4 within the meaning of subdivision six-a of section thirty-six of this  
5 article to make special reports to [~~him~~] the superintendent at such  
6 times as [~~he~~] such superintendent may prescribe.

7 5. The superintendent may extend at [~~his~~] their discretion the time  
8 within which a banking organization, foreign banking corporation  
9 licensed by the superintendent to do business in this state, bank hold-  
10 ing company or any non-banking subsidiary thereof, licensed casher of  
11 checks, licensed mortgage banker, private banker, licensed earned income  
12 access provider or licensed lender is required to make and file any  
13 report to the superintendent.

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

16 § 39. Orders of superintendent. 1. To appear and explain an apparent  
17 violation. Whenever it shall appear to the superintendent that any bank-  
18 ing organization, bank holding company, registered mortgage broker,  
19 licensed mortgage banker, licensed student loan servicer, registered  
20 mortgage loan servicer, licensed mortgage loan originator, licensed  
21 lender, licensed earned income access provider, licensed casher of  
22 checks, licensed sales finance company, licensed insurance premium  
23 finance agency, licensed transmitter of money, licensed budget planner,  
24 out-of-state state bank that maintains a branch or branches or represen-  
25 tative or other offices in this state, or foreign banking corporation  
26 licensed by the superintendent to do business or maintain a represen-  
27 tative office in this state has violated any law or regulation, [~~he or~~  
28 ~~she~~] the superintendent may, in [~~his or her~~] their discretion, issue an  
29 order describing such apparent violation and requiring such banking  
30 organization, bank holding company, registered mortgage broker, licensed  
31 mortgage banker, licensed student loan servicer, licensed mortgage loan  
32 originator, licensed lender, licensed earned income access provider,  
33 licensed casher of checks, licensed sales finance company, licensed  
34 insurance premium finance agency, licensed transmitter of money,  
35 licensed budget planner, out-of-state state bank that maintains a branch  
36 or branches or representative or other offices in this state, or foreign  
37 banking corporation to appear before [~~him or her~~] such superintendent,  
38 at a time and place fixed in said order, to present an explanation of  
39 such apparent violation.

40 2. To discontinue unauthorized or unsafe and unsound practices. When-  
41 ever it shall appear to the superintendent that any banking organiza-  
42 tion, bank holding company, registered mortgage broker, licensed mort-  
43 gage banker, licensed student loan servicer, registered mortgage loan  
44 servicer, licensed mortgage loan originator, licensed lender, licensed  
45 earned income access provider, licensed casher of checks, licensed sales  
46 finance company, licensed insurance premium finance agency, licensed  
47 transmitter of money, licensed budget planner, out-of-state state bank  
48 that maintains a branch or branches or representative or other offices  
49 in this state, or foreign banking corporation licensed by the super-  
50 intendent to do business in this state is conducting business in an  
51 unauthorized or unsafe and unsound manner, [~~he or she~~] the superinten-  
52 dent may, in [~~his or her~~] their discretion, issue an order directing the  
53 discontinuance of such unauthorized or unsafe and unsound practices, and  
54 fixing a time and place at which such banking organization, bank holding  
55 company, registered mortgage broker, licensed mortgage banker, licensed  
56 student loan servicer, registered mortgage loan servicer, licensed mort-

1 gage loan originator, licensed lender, licensed earned income access  
2 provider, licensed casher of checks, licensed sales finance company,  
3 licensed insurance premium finance agency, licensed transmitter of  
4 money, licensed budget planner, out-of-state state bank that maintains a  
5 branch or branches or representative or other offices in this state, or  
6 foreign banking corporation may voluntarily appear before [~~him or her~~]  
7 such superintendent to present any explanation in defense of the prac-  
8 tices directed in said order to be discontinued.

9 3. To make good impairment of capital or to ensure compliance with  
10 financial requirements. Whenever it shall appear to the superintendent  
11 that the capital or capital stock of any banking organization, bank  
12 holding company or any subsidiary thereof which is organized, licensed  
13 or registered pursuant to this chapter, is impaired, or the financial  
14 requirements imposed by subdivision one of section two hundred two-b of  
15 this chapter or any regulation of the superintendent on any branch or  
16 agency of a foreign banking corporation or the financial requirements  
17 imposed by this chapter or any regulation of the superintendent on any  
18 licensed lender, licensed earned income access provider, registered  
19 mortgage broker, licensed mortgage banker, licensed student loan servi-  
20 cer, licensed casher of checks, licensed sales finance company, licensed  
21 insurance premium finance agency, licensed transmitter of money,  
22 licensed budget planner or private banker are not satisfied, the super-  
23 intendent may, in the superintendent's discretion, issue an order  
24 directing that such banking organization, bank holding company, branch  
25 or agency of a foreign banking corporation, registered mortgage broker,  
26 licensed mortgage banker, licensed student loan servicer, licensed lend-  
27 er, licensed earned income access provider, licensed casher of checks,  
28 licensed sales finance company, licensed insurance premium finance agen-  
29 cy, licensed transmitter of money, licensed budget planner, or private  
30 banker make good such deficiency forthwith or within a time specified in  
31 such order.

32 4. To make good encroachments on reserves. Whenever it shall appear to  
33 the superintendent that either the total reserves or reserves on hand of  
34 any banking organization, branch or agency of a foreign banking corpo-  
35 ration are below the amount required by or pursuant to this chapter or  
36 any other applicable provision of law or regulation to be maintained, or  
37 that such banking organization, branch or agency of a foreign banking  
38 corporation is not keeping its reserves on hand as required by this  
39 chapter or any other applicable provision of law or regulation, [~~he or~~  
40 ~~she~~] the superintendent may, in [~~his or her~~] their discretion, issue an  
41 order directing that such banking organization, branch or agency of a  
42 foreign banking corporation make good such reserves forthwith or within  
43 a time specified in such order, or that it keep its reserves on hand as  
44 required by this chapter.

45 5. To keep books and accounts as prescribed. Whenever it shall appear  
46 to the superintendent that any banking organization, bank holding compa-  
47 ny, registered mortgage broker, licensed mortgage banker, licensed  
48 student loan servicer, registered mortgage loan servicer, licensed mort-  
49 gage loan originator, licensed lender, licensed earned income access  
50 provider, licensed casher of checks, licensed sales finance company,  
51 licensed insurance premium finance agency, licensed transmitter of  
52 money, licensed budget planner, agency or branch of a foreign banking  
53 corporation licensed by the superintendent to do business in this state,  
54 does not keep its books and accounts in such manner as to enable [~~him or~~  
55 ~~her~~] the superintendent to readily ascertain its true condition, [~~he or~~  
56 ~~she~~] such superintendent may, in [~~his or her~~] their discretion, issue an

1 order requiring such banking organization, bank holding company, regis-  
2 tered mortgage broker, licensed mortgage banker, licensed student loan  
3 servicer, registered mortgage loan servicer, licensed mortgage loan  
4 originator, licensed lender, licensed earned income access provider,  
5 licensed cashier of checks, licensed sales finance company, licensed  
6 insurance premium finance agency, licensed transmitter of money,  
7 licensed budget planner, or foreign banking corporation, or the officers  
8 or agents thereof, or any of them, to open and keep such books or  
9 accounts as [~~he or she~~] the superintendent may, in [~~his or her~~] their  
10 discretion, determine and prescribe for the purpose of keeping accurate  
11 and convenient records of its transactions and accounts.

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

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

18 (a) Without limiting any power granted to the superintendent under any  
19 other provision of this chapter, the superintendent may, in a proceeding  
20 after notice and a hearing, require any safe deposit company, licensed  
21 lender, licensed earned income access provider, licensed cashier of  
22 checks, licensed sales finance company, licensed insurance premium  
23 finance agency, licensed transmitter of money, licensed mortgage banker,  
24 licensed student loan servicer, registered mortgage broker, licensed  
25 mortgage loan originator, registered mortgage loan servicer or licensed  
26 budget planner to pay to the people of this state a penalty for any  
27 violation of this chapter, any regulation promulgated thereunder, any  
28 final or temporary order issued pursuant to section thirty-nine of this  
29 article, any condition imposed in writing by the superintendent in  
30 connection with the grant of any application or request, or any written  
31 agreement entered into with the superintendent.

32 § 6. This act shall take effect on the one hundred eightieth day after  
33 it shall have become a law. Effective immediately, the addition, amend-  
34 ment and/or repeal of any rule or regulation necessary for the implemen-  
35 tation of this act on its effective date are authorized to be made and  
36 completed on or before such effective date.