§ 44-a. Violations and penalties; failure to make reports. 1. Notwithstanding any other provision of this chapter to the contrary:

a. any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter, or an out-of-state state bank, that inadvertently or unintentionally: (i) fails to make any report required by the superintendent pursuant to this chapter, on or before the day designated for the making thereof; (ii) fails to include within such report any prescribed matter; or (iii) submits false or misleading information therein, shall, after notice and hearing, forfeit to the people of the state not more than two thousand dollars for each day during which such report or omitted matter is delayed or withheld or such false or misleading information is not corrected, unless the time therefor shall have been extended by the superintendent, for good cause shown, in his or her sole discretion;

b. notwithstanding the provisions of paragraph a of this subdivision any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter, or an out-of-state state bank, that demonstrates by any pattern of behavior or other action that any of its failures as described in paragraph a of this subdivision were not inadvertent or unintentional shall, after notice and hearing, forfeit to the people of the state not more than twenty thousand dollars for each day during which such failures continue;

c. notwithstanding the provisions of paragraph a or b of this subdivision, any person or entity licensed, registered, or incorporated or otherwise formed pursuant to this chapter that demonstrates that any of its failures as described in paragraph a of this subdivision constitutes a pattern of behavior or other action performed knowingly and with reckless disregard shall, after notice and hearing, forfeit to the people of the state not more than two hundred fifty thousand dollars or in the case of a banking organization, foreign bank licensee or an out-of-state state bank, the lesser of two hundred fifty thousand dollars or one percent of the total assets of such banking organization or one percent of the total assets in this state of such foreign bank licensee, as applicable for each day that its failures continue.

With respect to any amount assessed pursuant to this section against any person or entity licensed or registered pursuant to this chapter, but not with respect to a banking organization, foreign bank licensee or out-of-state state bank, the superintendent in determining such amount, shall take into consideration the net worth and annual business volume of such licensed or registered person or entity.

2. In assessing any penalty pursuant to this section, the superintendent shall take into account, without limitation, factors including:

a. the extent, if any, to which senior management or board directors or trustees participated therein,

b. the extent to which the entity has cooperated with the superintendent in the investigation of such conduct,

c. any sanction imposed by any other regulatory agency,

d. the financial resources and good faith of the entity,

e. the gravity of the violation,

f. any history of prior violations, and

g. such other matters as justice and the public interest may require.

3. Whenever the superintendent shall require the payment of such penalty by any such entity, he or she shall forthwith execute in duplicate a written order to that effect. On the date such order is executed, the superintendent shall file one copy of such order in the office of the department and serve the second copy upon such entity either personally or by registered or certified mail, return receipt requested, directed to the entity's principal place of business or, in the case of a licensee or registrant, its last known address of record. Such order may be reviewed in the manner provided by article

seventy-eight of the civil practice law and rules. Such special proceeding for review as authorized by this section must be commenced within thirty days from the service of such order.

4. The superintendent may compromise, modify, or remit any penalty which he or she may assess or had already assessed under this section.

5. The superintendent may prescribe regulations to carry out the provisions and purposes of this section.