§ 296-a. Unlawful discriminatory practices in relation to credit. 1. It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

a. In the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space to discriminate against any such applicant because of the race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, marital status, status as a victim of domestic violence, disability, or familial status of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit;

b. To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, marital status, status as a victim of domestic violence, disability, or familial status;

c. To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, marital status, status as a victim of domestic violence, disability, or familial status;

d. To make any inquiry of an applicant concerning his or her capacity to reproduce, or his or her use or advocacy of any form of birth control or family planning;

e. To refuse to consider sources of an applicant's income or to

subject an applicant's income to discounting, in whole or in part, because of an applicant's race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, marital status, status as a victim of domestic violence, childbearing potential, disability, or familial status;

f. To discriminate against a married person because such person neither uses nor is known by the surname of his or her spouse.

This paragraph shall not apply to any situation where the use of a surname would constitute or result in a criminal act.

2. Without limiting the generality of subdivision one of this section, it shall be considered discriminatory if, because of an applicant's or class of applicants' race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, marital status, status as a victim of domestic violence, disability, or familial status, (i) an applicant or class of applicants is denied credit in circumstances where other applicants of like overall credit worthiness are granted credit, or (ii) special requirements or conditions, such as requiring co-obligors or reapplication upon marriage, are imposed upon an applicant or class of applicants in circumstances where similar requirements or conditions are not imposed upon other applicants of like overall credit worthiness.

3. It shall not be considered discriminatory if credit differentiations or decisions are based upon factually supportable, objective differences in applicants' overall credit worthiness, which may include reference to such factors as current income, assets and prior credit history of such applicants, as well as reference to any other relevant factually supportable data; provided, however, that no creditor shall consider, in evaluating the credit worthiness of an applicant, aggregate statistics or assumptions relating to race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, marital status, status as a victim of domestic violence or disability,

or to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

3-a. It shall not be an unlawful discriminatory practice to consider age in determining credit worthiness when age has a demonstrable and statistically sound relationship to a determination of credit worthiness.

4. a. If so requested by an applicant for credit, a creditor shall furnish such applicant with a statement of the specific reasons for rejection of the applicant's application for credit.

b. If so requested in writing by an individual who is or was married, a creditor or credit reporting bureau shall maintain in its records a separate credit history for any such individual. Such separate history shall include all obligations as to which such bureau has notice with respect to which any such person is or was individually or jointly liable.

5. No provision of this section providing spouses the right to separately apply for credit, borrow money, or have separate credit histories maintained shall limit or foreclose the right of creditors, under any other provision of law, to hold one spouse legally liable for debts incurred by the other.

6. Any person claiming to be aggrieved by an unlawful discriminatory practice engaged in by a regulated creditor, in lieu of the procedure set forth in section two hundred ninety-seven of this article, may file a verified complaint with the superintendent, as provided hereinafter; provided, however, that the filing of a complaint with either the superintendent or the division shall bar subsequent recourse to the other agency, as well as to any local commission on human rights, with respect to the grievance complained of.

7. In the case of a verified complaint filed with the superintendent the following procedures shall be followed:

a. After receipt of the complaint, the superintendent shall make a determination within thirty days of whether there is probable cause to believe that the person named in the complaint has engaged in or is engaging in an unlawful discriminatory practice. If the superintendent determines there is no such probable cause, the complaint shall be dismissed. If the superintendent determines that there is such probable cause, he or she shall attempt to resolve such complaint by conference and conciliation. If conciliation is achieved, the terms shall be recorded in a written agreement signed by the creditor and complainant, a copy of which shall be forwarded to the commissioner.

b. If conciliation is not achieved, the superintendent or his or her designated representative shall conduct a hearing with respect to the alleged violation of this section. All interested parties shall be entitled to adequate and timely notice of the hearing. Such parties shall have the right to be represented by counsel or by other representatives of their own choosing; to offer evidence and witnesses in their own behalf and to cross-examine other parties and witnesses; to have the power of subpoena exercised in their behalf; and to have access to a written record of such hearing. The superintendent or his or her representative shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken shall be under oath and a record shall be made of the proceedings. A written decision shall be made by the superintendent or his or her designated representative separately setting forth findings of fact and conclusions of law. A copy of such decision shall be forwarded to the commissioner.

c. If the superintendent finds that a violation of this section has occurred, the superintendent shall issue an order which shall do one or more of the following:

(1) impose a fine in an amount not to exceed ten thousand dollars for each violation, to be paid to the people of the state of New York;

(2) award compensatory damages to the person aggrieved by such violation;

(3) for a claim of sex discrimination only, award reasonable attorney's fees attributable to such claim to any prevailing party;

provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous. In no case shall attorney's fees be awarded to the department, nor shall the department be liable to a prevailing party for attorney's fees. In order to find the action or proceeding to be frivolous, the superintendent must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

(4) require the regulated creditor to cease and desist from such unlawful discriminatory practices;

(5) require the regulated creditor to take such further affirmative action as will effectuate the purposes of this section, including, but not limited to, granting the credit which was the subject of the complaint.

d. Any complainant, respondent or other person aggrieved by any order or final determination of the superintendent may obtain judicial review thereof.

8. Where the superintendent makes a determination that a regulated creditor has engaged in or is engaging in discriminatory practices, the superintendent is empowered to issue appropriate orders to such creditor pursuant to the banking law. Such orders may be issued without the necessity of a complaint being filed by an aggrieved person.

9. Whenever any creditor makes application to the superintendent of financial services to take any action requiring consideration by the superintendent of the public interest and the needs and convenience

thereof, or requiring a finding that the financial responsibility, experience, charter, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently, such creditor shall certify to the superintendent compliance with the provisions of this section. In the event that the records of the department of financial services show that such creditor has been found to be in violation of this section, such creditor shall describe what action has been taken with respect to its credit policies and procedures to remedy such violation or violations. The superintendent shall, in approving the foregoing applications and making the foregoing findings, give appropriate weight to compliance with this section.

10. Any complaint filed with the superintendent pursuant to this section shall be so filed within one year after the occurrence of the alleged unlawful discriminatory practice.

11. The superintendent is hereby empowered to promulgate rules and regulations hereunder to effectuate the purposes of this section.

12. The provisions of this section, as they relate to age, shall not apply to persons under the age of eighteen years.