CHAPTER 18-A OF THE CONSOLIDATED LAWS
FINANCIAL SERVICES LAW

ARTICLE 1
GENERAL PROVISIONS

Section 101. Short title.
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103. Explanation of order of provisions.
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§ 101. Short title. This chapter shall be known and may be cited as the "financial services law".

§ 101-a. Legislative findings and determinations. The legislature finds and determines that the banking, insurance and financial services industries constitute a critical sector of New York state's economy.

The legislature also finds and determines that responsive, effective, innovative, state banking and insurance regulation is necessary to operate in a global, evolving and competitive market place.

The legislature additionally finds and determines that this legislation is necessary to modernize and transform the present state banking department and state insurance department into a new integrated department of financial services.

§ 102. Department of financial services. The legislature hereby declares that the purpose of this chapter is to consolidate the departments of insurance and banking, and provide for the enforcement of the insurance, banking and financial services laws, under the auspices of a single state agency to be known as the "department of financial services" and to accomplish goals including the following:

(a) To encourage, promote and assist banking, insurance and other financial services institutions to effectively and productively locate, operate, employ, grow, remain, and expand in New York state;

(b) To establish a modern system of regulation, rule making and adjudication that is responsive to the needs of the banking and insurance industries and to the needs of the state's consumers and residents;

(c) To provide for the effective and efficient enforcement of the banking and insurance laws;

(d) To expand the attractiveness and competitiveness of the state charter for banking institutions and to promote the conversion of banks to such status;

(e) To promote and provide for the continued, effective state regulation of the insurance industry;

(f) To provide for the regulation of new financial services products;

(g) To promote the prudent and continued availability of credit, insurance and financial products and services at affordable costs to New York citizens, businesses and consumers;

(h) To promote, advance and spur economic development and job creation in New York;

(i) To ensure the continued safety and soundness of New York's banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision;

(j) To protect the public interest and the interests of depositors, creditors, policyholders, underwriters, shareholders and stockholders;

(k) To promote the reduction and elimination of fraud, criminal abuse and unethical conduct by, and with respect to, banking, insurance and other financial services institutions and their customers; and

(l) To educate and protect users of banking, insurance, and financial services products and services through the provision of timely and understandable information.

§ 103. Explanation of order of provisions. In this financial services law, the provisions have been divided in descending order of application, with illustrations, as follows:

Article 1

Section 101
Subsection (a)
Paragraph (1)
Subparagraph (A)
Item (i)
Clause (I)
Subitem (aa)
Subclause (aaa)

§ 104. Definitions. (a) In this chapter, unless the context otherwise requires:

(1) "Department" shall mean the department of financial services.

(2) "Financial product or service" shall mean: (A) any financial product or financial service offered or provided by any person regulated or required to be regulated by the superintendent pursuant to the banking law or the insurance law or any financial product or service offered or sold to consumers except financial products or services: (i) regulated under the exclusive jurisdiction of a federal agency or authority, (ii) regulated for the purpose of consumer or investor protection by any other state agency, state department or state public authority, or (iii) where rules or regulations promulgated by the superintendent on such financial product or service would be preempted by federal law; and

(B) "Financial product or service" shall also not include the following, when offered or provided by a provider of consumer goods or services: (i) the extension of credit directly to a consumer exclusively for the purpose of enabling that consumer to purchase such consumer good or service directly from the seller, (ii) the collection of debt arising from such credit, or (iii) the sale or conveyance of such debt that is delinquent or otherwise in default.

(2-a) A "financial product or service regulated for the purpose of consumer or investor protection": (A) shall include (i) any product or service for which registration or licensing is required or for which the offeror or provider is required to be registered or licensed by state

law, (ii) any product or service as to which provisions for consumer or investor protection are specifically set forth for such product or service by state statute or regulation and (iii) securities, commodities and real property subject to the provisions of article twenty-three-a of the general business law, and (B) shall not include products or services solely subject to other general laws or regulations for the protection of consumers or investors.

(3) "Person" shall mean any individual, partnership, corporation, association or any other entity.

(4) "Regulated person" or "person regulated" shall mean any person (A) operating under or required to operate under a license, registration, certificate or authorization under the insurance law or the banking law, (B) authorized, accredited, chartered or incorporated or possessing or required to possess other similar status under the insurance law or the banking law, or (C) regulated by the superintendent pursuant to this chapter.

(5) "Superintendent" shall mean the superintendent of financial services of this state.

(b) Whenever the terms "include", "including" or terms of similar import appear in this chapter, unless the context requires otherwise, such terms shall not be construed to imply the exclusion of any person, class or thing not specifically included.

(c) A reference in this chapter to any other law or statute of this state, or of any other jurisdiction, means such law or statute as amended to the effective date of this chapter, and unless the context otherwise requires, as amended thereafter.

ARTICLE 2

ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES

Section 201. Declaration of policy.
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203. Deputies; employees.
204. Offices of the department.
205. Bureaus.
205-a. Report.
205-b. State charter advisory board.

206. Assessments to defray operating expenses of the department.
207. Annual report of the superintendent.

§ 201. Declaration of policy. (a) It is the intent of the legislature that the superintendent shall supervise the business of, and the persons providing, financial products and services, including any persons subject to the provisions of the insurance law and the banking law.

(b) The superintendent shall take such actions as the superintendent believes necessary to:

(1) foster the growth of the financial industry in New York and spur state economic development through judicious regulation and vigilant supervision;

(2) ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services;

(3) ensure fair, timely and equitable fulfillment of the financial obligations of such providers;

(4) protect users of financial products and services from financially impaired or insolvent providers of such services;

(5) encourage high standards of honesty, transparency, fair business practices and public responsibility;

(6) eliminate financial fraud, other criminal abuse and unethical conduct in the industry; and

(7) educate and protect users of financial products and services and ensure that users are provided with timely and understandable information to make responsible decisions about financial products and services.

§ 202. Superintendent. (a) The head of the department shall be the superintendent of financial services, who shall be appointed by the governor, by and with the advice and consent of the senate, and who shall hold office at the pleasure of the governor. The superintendent shall possess the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by this chapter or any other applicable law of this state.

(b) The superintendent may, in the superintendent's discretion, designate one of the superintendent's deputies to act as superintendent during the superintendent's absence or inability to act. If the office of superintendent is vacant, or if the superintendent's absence or inability to act continues for a period of more than thirty successive days, the governor may designate a deputy to act as superintendent until the filling of the vacancy or the return or recovery of the superintendent.

(c) Whenever in this chapter, the banking law, the insurance law or any other law the superintendent is authorized but not required to take any action or the superintendent's approval is required as a condition precedent to the doing of any act, the taking of such action and the giving of such approval shall be within the superintendent's sound discretion. In taking any action with respect to any banking organization, and in approving or disapproving any application made by a banking organization, the superintendent shall give due consideration to the policy of the state of New York as set forth in section ten of the banking law.

§ 203. Deputies; employees. (a) The superintendent shall appoint a deputy for insurance who shall be the head of the insurance division and a deputy for banking who shall be the head of the banking division. The superintendent may appoint such other deputies as the superintendent deems necessary to fulfill the responsibilities of the department. The superintendent may remove at will any deputy appointed by the superintendent, except as may be otherwise provided by the civil service law.

(b) The superintendent may appoint and remove from time to time, in accordance with law and any applicable rules of the state civil service commission, such employees, under such titles as the superintendent may assign, as the superintendent may deem necessary for the efficient administration of the department. They shall perform such duties as the superintendent shall assign to them. The compensation of such employees shall be determined by the superintendent in accordance with law.

(c) Any action that the superintendent is required or authorized hereinafter by this chapter, the banking law, the insurance law or other

laws to take may be taken by a deputy or authorized employee to whom the duty of taking such action has been delegated or assigned by the superintendent.

§ 204. Offices of the department. Suitable offices for conducting the business of the department shall be located in the cities of Albany and New York, and such other cities as the superintendent deems necessary. Necessary additional office, filing and storage space that cannot be supplied by the state commissioner of general services may be leased by the superintendent, and rent or expenses incurred pursuant to any such lease shall, unless otherwise provided for, be paid on the certificate of the superintendent and the audit and warrant of the comptroller.

§ 205. Bureaus. The superintendent shall establish an insurance division and a banking division. The superintendent may establish such other bureaus, divisions, and other units within the department as may be necessary for the administration and operation of the department and the proper exercise of its powers and the performance of its duties, under this chapter, and may, from time to time, consolidate or abolish such divisions, bureaus or other units within the department. Notwithstanding any inconsistent provision of law, the superintendent may determine the official functions of each division, bureau, or other unit within the department. There shall be a head of each bureau, division or other unit to be appointed by the superintendent, who shall serve at the pleasure of the superintendent, except as may be otherwise provided by the civil service law. The heads of bureaus, divisions or units in the banking and insurance departments who are in office when this chapter takes effect shall continue in office at the pleasure of the superintendent, except as may be otherwise provided by the civil service law.

§ 205-a. Report. The governor shall by June thirtieth, two thousand eleven, create a working group to examine ways to improve the efficiency and effectiveness of banking regulation and insurance regulation,

including opportunities to integrate certain regulatory activities prescribed by the banking law and the insurance law. Such working group shall consult, in making its examination, with representatives of the banking, insurance and financial services industries. On or before January first, two thousand twelve, the superintendent shall issue a report on the results of this review to the governor, the speaker of the assembly and the temporary president of the senate.

*** § 205-b. State charter advisory board.** There shall be within the department a state charter advisory board to work with the superintendent in retaining state chartered banking institutions, encouraging federally chartered institutions to convert to a state charter and promoting the state banking system. There shall be nine members of the advisory board who shall be appointed by the superintendent. The membership shall consist of: (a) one representative of credit unions, (b) one representative of consumers, (c) one representative of foreign banks; and (d) representatives of banks which, to the extent practicable, reflect a range of size and geographical location, provided, however, that at least one shall represent institutions of more than three billion dollars in assets; at least two shall represent institutions of less than five hundred million dollars in assets. The superintendent shall make rules to govern the method by which state chartered institutions may nominate persons to the board and the process for selecting such members, provided that the representative of consumers shall be selected by the superintendent. The term of each member of such advisory board shall be three years, or until a successor is appointed and vacancies shall be filled for the unexpired term only. The board shall meet at least three times annually pursuant to the call of the superintendent. Such meetings may be held by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. The members of the advisory board shall receive no compensation nor reimbursement for expenses. The advisory board may:

(1) consider and recommend ways to maintain the state charter as a viable and attractive option, including bringing to the superintendent's attention issues of concern to state chartered banking institutions;

(2) consider and recommend ways to encourage banking institutions to offer a diversity of financial products and services throughout the state;

(3) recommend to the superintendent the establishment of such laws as may be deemed necessary, and the amendment or repeal thereof;

(4) recommend to the superintendent the promulgation of rules and regulations not inconsistent with the law, as may be deemed necessary, and the amendment or repeal thereof; and

(5) report within thirty days after receipt, on any proposed regulations, amendments thereto, or repeal thereof, prior to final action thereon by the superintendent.

The advisory board shall have no executive, administrative or appointive powers or duties.

The superintendent shall make an annual report no later than thirty days after the end of each year to the temporary president of the senate and the speaker of the assembly, which shall include a summary of the topics discussed at state charter advisory board meetings during such year, and any legislative recommendations related to the topics raised at such meetings or made by any member of the state charter advisory board.

* NB Repealed October 3, 2031

§ 206. Assessments to defray operating expenses of the department. (a) For each fiscal year commencing on or after April first, two thousand twelve, assessments to defray operating expenses, including all direct and indirect costs, of the department, except expenses incurred in the liquidation of banking organizations, shall be assessed by the superintendent in accordance with this subsection. Persons regulated under the insurance law shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating persons under the insurance law, which shall include any expenses that were permissible to be assessed in fiscal year two thousand nine-two thousand ten, with the assessments allocated pro rata upon all domestic insurers and all licensed United States branches of

alien insurers domiciled in this state within the meaning of paragraph four of subsection (b) of section seven thousand four hundred eight of the insurance law, in proportion to the gross direct premiums and other considerations, written or received by them in this state during the calendar year ending December thirty-first immediately preceding the end of the fiscal year for which the assessment is made (less return premiums and considerations thereon) for policies or contracts of insurance covering property or risks resident or located in this state the issuance of which policies or contracts requires a license from the superintendent. Persons regulated under the banking law shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating persons under the banking law in such proportions as the superintendent shall deem just and reasonable. Persons regulated under this chapter that engage in "virtual currency business activity," as that term is defined by the department, shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating such persons in such proportions as the superintendent shall deem just and reasonable. Operating expenses of the department not covered by the assessments set forth above shall be assessed by the superintendent in such proportions as the superintendent shall deem just and reasonable upon all domestic insurers and all licensed United States branches of alien insurers domiciled in this state within the meaning of paragraph four of subsection (b) of section seven thousand four hundred eight of the insurance law, and upon any regulated person under the banking law, other than mortgage loan originators, and upon persons regulated under this chapter that engage in virtual currency business activity, except as otherwise provided by sections one hundred fifty-one and two hundred twenty-eight of the workers' compensation law and by section sixty of the volunteer firefighters' benefit law. The provisions of this subsection shall not be applicable to a bank holding company, as that term is defined in article three-A of the banking law. Persons regulated under the banking law will not be assessed for expenses that the superintendent deems to benefit solely persons regulated under the insurance law or under this chapter that engage in virtual currency business activity, and persons regulated under the insurance law will not be assessed for expenses that the superintendent deems to benefit

solely persons regulated under the banking law or under this chapter that engage in virtual currency business activity. Persons regulated under this chapter that engage in virtual currency business activity will not be assessed for expenses that the superintendent deems to benefit solely persons regulated under the insurance law or under the banking law.

(b) For each fiscal year commencing on or after April first, two thousand twelve, a partial payment shall be made by each entity subject to this section in a sum equal to twenty-five per centum, or such other per centum or per centums as the superintendent may prescribe, of the annual expenses assessed upon it for the fiscal year as estimated by the superintendent. Such payment shall be made on March tenth of the preceding fiscal year and on June tenth, September tenth and December tenth of each year, or at such other dates as the superintendent may prescribe. The balance of assessments for the fiscal year shall be paid upon determination of the actual amount due in accordance with the provisions of this section. Any overpayment of annual assessment resulting from complying with the requirements of this subsection shall be applied against the next estimated quarterly assessment, if less than or equal to such amount, with any excess refunded to the assessed. As an alternative, if the estimated annual assessment for the fiscal year is equal to or less than the annual minimum assessment set by the superintendent, the superintendent may require full payment to be made on or before September thirtieth or such other date of the fiscal year as the superintendent may determine.

(c) The expenses incurred in making examinations of, or for special services performed on account of, any bank holding company, as that term is defined in the banking law, or any regulated person under the banking law, shall be assessed provided, however, that the superintendent, in the superintendent's sole discretion, may determine, with respect to expenses incurred in the making of any specific examination or investigation, or the performing of any special services, that any such expense shall be assessed against and paid by the bank holding company or any other regulated person under the banking law for which they were incurred or performed.

(d) The expenses incurred in making an examination of any affiliate of a banking organization pursuant to the banking law, and the expenses

incurred in making an examination, pursuant to the banking law, of a non-banking subsidiary of a corporation or any other entity that is an affiliate of a banking organization, shall be assessed against and paid by such banking organization if the affiliate cannot be assessed pursuant to the provisions of the banking law.

(d-1) The expenses of every examination of the affairs of any person regulated pursuant to this chapter that engages in virtual currency business activity shall be borne and paid by the regulated person so examined, but the superintendent, with the approval of the comptroller, may in the superintendent's discretion for good cause shown remit such charges.

(e) The superintendent may, in the superintendent's sole discretion, upon notice, suspend the license, registration, certificate or authority (for purposes of this section, a license) granted to any person pursuant to this chapter, the banking law or insurance law, upon the failure of such person to make any payment required by this section within thirty days after the due date. If the superintendent has suspended any such license, such license may be reinstated if the superintendent determines that such person has made any such payments within ninety days after the date of such notice of suspension. Otherwise, unless the superintendent, in the superintendent's sole discretion, has extended such suspension, the license of such person shall be deemed to be automatically terminated by operation of law at the close of business on such ninetieth day.

(f) (1) The expenses of every examination of the affairs of any regulated person subject to the insurance law, including an appraisal of such regulated person's real property or of any real property on which such regulated person holds a mortgage, made pursuant to the authority conferred by any provision of this chapter, the insurance law or the banking law, shall be borne and paid by the regulated person so examined, but the superintendent, with the approval of the comptroller, may in the superintendent's discretion for good cause shown remit such charges.

(2) (A) For any such examination by the superintendent or a deputy superintendent personally, the charge made shall be only for necessary traveling expenses and other actual expenses. In all other cases, the expenses of examination shall also include reimbursement for the

compensation paid for the services of persons employed by the superintendent or by the superintendent's authority to make such examination or appraisal.

(B) Notwithstanding any provisions of this section to the contrary, in case of an examination or appraisal of a domestic insurer made within this state, the traveling and living expense of the person or persons making the examination shall be considered a cost of operation, as referred to in section three hundred thirty-two of the insurance law and not an expense of examination.

(3) All charges, including necessary traveling and other actual expenses, except as hereinabove provided, as audited by the comptroller and paid on the comptroller's warrant in the usual manner by the comptroller to the person or persons making the examination or appraisal, shall be presented to the insurer, or other person whose duty it is to pay the same, in the form of a copy of the itemized bill therefor as certified and approved by the superintendent or by any deputy superintendent or authorized employee of the department. Upon receiving such certified copy the insurer or other person whose duty it is to pay such charges shall pay the amount thereof to the superintendent, to be paid by the superintendent into the state treasury.

§ 207. Annual report of the superintendent. (a) The superintendent shall submit a report annually to the governor and to the legislature on or before the fifteenth day of June. The report shall contain the following items, with respect to the preceding calendar year:

(1) a general review of the insurance business, banking business, and financial product or service business utilizing the most current information available;

(2) a consolidated statement of condition showing the combined assets and liabilities of all banking organizations comprising each of the following classes: (A) banks and trust companies; and (B) private bankers. Each such consolidated statement shall combine the information contained in the last periodical reports of condition received from such banking organizations as of a date during the year for which such report of the superintendent is rendered;

(3) a consolidated statement of condition showing the combined assets and liabilities of all banking organizations comprising each of the following classes: (A) savings banks; (B) safe deposit companies; (C) savings and loan associations; (D) credit unions; and (E) investment companies. Each such consolidated statement shall combine the information contained in the last periodical reports of condition made to the superintendent as of a date during the year for which the report of the superintendent is rendered, except that with respect to those classes making reports to the superintendent as of the first day of the following year, such consolidated statements shall combine the information contained in such reports;

(4) a consolidated statement of condition showing the combined assets and liabilities of all licensed lenders. Each such consolidated statement shall combine the information contained in the reports to be made on or before the first day of April of the year following the year for which the report of the superintendent is rendered;

(5) a statement of condition of each banking organization required by the banking law to make periodical reports of condition to the superintendent. Such statement shall include the information contained in the last periodical report of condition made to the superintendent as of a date during the year for which such report of the superintendent is rendered, except that in the case of banking organizations making reports to the superintendent as of the first day of the following year, each such statement shall include the information contained in such reports. Notwithstanding any other provision of this subsection, in lieu of making a statement of the condition of each covered banking organization, the superintendent may make such information available by any other means that provides for direct public access or availability to such required reports of condition;

(6) a statement of all banking organizations, foreign banking corporations and licensed lenders authorized or licensed by the superintendent to do business during the year for which the report is rendered, with their names and locations and the dates on which their certificates were approved by the superintendent, and such other information as the superintendent deems appropriate;

(7) a statement of the banking organizations, foreign banking corporations whose business has been closed either voluntarily or

involuntarily during the year for which the report is rendered, with the amount of their resources and of their deposits and other liabilities as last reported by them;

(8) a statement of any unclaimed amounts held by the superintendent pursuant to the requirements of the banking law as trustee for the creditors, depositors, stockholders or shareholders of each banking organization the business and affairs of which shall have been finally liquidated; the amount of interest received during the preceding fiscal year upon all such unclaimed amounts held by the superintendent; and the amount of abandoned funds paid over by the superintendent to the state comptroller pursuant to the requirements of the banking law;

(9) a table showing the number and kinds of authorized insurers according to classes of business, and their total assets, liabilities, premiums written, and insurance in force, as shown by the annual statements filed with the superintendent by such insurers;

(10) lists of: (A) insurers organized, admitted, merged, withdrawn, or placed in liquidation, conservation, or rehabilitation, (B) domestic insurers that have amended their charters or have increased or decreased their capital stock, together with a statement of the extent thereof; and (C) domestic insurers that have changed their corporate names;

(11) a list of department reports filed on examination of authorized insurers;

(12) a statement of the expenses of administering the property/casualty insurance security fund and the public motor vehicle liability security fund pursuant to article seventy-six of the insurance law;

(13) tables relative to insurer liquidation, conservation or rehabilitation proceedings by the department for prior years, including the preceding calendar year;

(14) any amendments to the banking law, the insurance law, and this chapter, and any amendments to regulations promulgated thereunder, during the year for which such report is rendered; a summary of insurance circular letters and banking interpretations issued during the year for which such report is rendered; and such other matters relating to the banking organizations, corporations, partnerships, insurers, insurance producers, or other entities or persons licensed, authorized to do business, certified, or registered under the banking law, the

insurance law, or this chapter, including public statements, recommendations and decisions of the superintendent, occurring during the year for which such report is rendered, which, in the judgment of the superintendent, may be of historical or regulatory significance;

(15) legislative recommendations that the superintendent deems necessary or desirable; and

(16) a summary of the department's receipts and expenses during the preceding fiscal year, including any expenses of liquidation paid out of amounts appropriated by the legislature, the amounts appropriated by the legislature for the expenses of the department during such year, and the amount, if any, for which the treasury of the state shall not have been reimbursed at the date of such report.

(b) The superintendent may, in addition to the above requirements, include in such report any other matter or data concerning insurance, banking, financial products or services or the superintendent's duties under the insurance law, the banking law, or this chapter, which in the superintendent's judgment, is of general interest or import.

ARTICLE 3

ADMINISTRATIVE AND PROCEDURAL PROVISIONS

Section 301. Powers of the superintendent.
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306. Attendance of witnesses; production of documents and records.
307. Intentionally omitted.
308. Judicial review of orders, regulations and decisions of superintendent.
309. Injunction to restrain violation of this chapter.
310. Certificates as evidence; affirmation of documents and testimony.
311. Financial literacy education.

§ 301. Powers of the superintendent. (a) The superintendent shall have such powers as are conferred upon the superintendent by this chapter, the banking law, the insurance law or any other law of this state.

(b) The superintendent shall have the power to conduct investigations, research, studies and analyses of matters affecting the interests of consumers of financial products and services, including tracking and monitoring complaints.

(c) The superintendent shall have the power to protect users of financial products and services, including:

(1) taking such actions as the superintendent deems necessary to educate and protect users of financial products and services;

(2) receiving complaints of consumers of financial products and services, and where appropriate (A) providing assistance to consumers; (B) mediating the resolution of such complaints with providers of financial products and services; or (C) referring such complaints to the appropriate federal, state or local agency authorized by law for appropriate action on such complaints;

(3) studying the operation of laws and advising and making recommendations to the governor on matters affecting consumers of and investors in financial products and services and promoting and encouraging the protection of the legitimate interests of users of such financial products and services;

(4) cooperating with, assisting and, when appropriate, referring matters to the attorney general in the carrying out of the attorney general's legal enforcement responsibilities for the protection of consumers of and investors in financial products and services;

(5) initiating and encouraging consumer financial education programs, and disseminating materials to educate users of financial products and services;

(6) providing technical assistance to local governments and not-for-profits in the development of consumer protection measures with respect to financial products and services; and

(7) continuing and expanding the detection, investigation and prevention of insurance fraud.

§ 302. Regulations by superintendent. (a) The superintendent shall have the power to prescribe and from time to time withdraw or amend, in writing, rules and regulations and issue orders and guidance involving financial products and services, not inconsistent with the provisions of this chapter, the banking law, the insurance law and any other law in which the superintendent is given authority:

(1) effectuating any power given to the superintendent under the provisions of this chapter, the insurance law, the banking law, or any other law to prescribe forms or make regulations;

(2) interpreting the provisions of this chapter, the insurance law, the banking law, or any other applicable law; and

(3) governing the procedures to be followed in the practice of the department.

(b) The superintendent may promulgate a list of financial products and services excluded from regulation by the superintendent, provided that such exclusion shall not limit in any way the ability of the superintendent to take any actions with respect to fraud provided for in this chapter, the insurance law, the banking law or any other applicable law.

§ 303. Orders of superintendent; when writing required. Whenever by any provision of this chapter, the insurance law, the banking law or any other applicable law the superintendent is authorized to grant any approval, authorization or permission or to make any other order or determination affecting any person subject to the provisions of this chapter, the insurance law, the banking law or any other law, such order or determination shall not be effective unless made in writing and signed by the superintendent or by the superintendent's authority.

§ 304. Notice; how given. (a) (1) Except when other notice is required by law, whenever the provisions of this chapter, the insurance law, the banking law or any other applicable law require the superintendent to give notice to any person of any authorized action or proposed action, it shall be sufficient to give such notice in writing either by

delivering it to such person or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of such person or if no such address is known to the superintendent, then to the residence address of such person.

(2) Such notice shall refer to the provisions of this chapter, the insurance law, the banking law or any other applicable law pursuant to which the authorized action was taken or is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the person to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) If the person being notified is entitled to a hearing by the provisions of this chapter, the banking law, the insurance law or any other law, the notice of proposed action may specify that such proposed action may be considered, or when authorized, taken on a date specified in the notice unless such person shall notify the superintendent in writing that a hearing is demanded; in such case the superintendent shall give such person a further notice of the time and place of such hearing in the manner stated in this paragraph, and to the address specified by such person if provided.

(b) Whenever the provisions of this chapter, the insurance law, the banking law, or any other law require the superintendent to give to any person a hearing on any proposed action, it shall be sufficient compliance with such requirement if the superintendent gives to such person:

(1) notice of the time and the place at which an opportunity for hearing will be afforded, and

(2) an opportunity for hearing, if the person appears at the time and place specified in the notice or any adjourned date.

(c) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(d) Whenever any person is entitled to a hearing by the provisions of this chapter, the insurance law, the banking law, or any other law before any proposed action is taken, the notice of such proposed action may, if the superintendent deems it expedient, be in the form of a notice to show cause stating that such proposed action may be taken

unless such person shows cause at a hearing to be held at a time and place specified in such notice, why such proposed action should not be taken.

(e) The statement of any regular salaried employee of the department of financial services, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts which show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

§ 304-a. Actions of the department subject to the state administrative procedure act. Unless otherwise specifically exempted in this chapter, all rule making and adjudicatory proceedings shall be made in accordance and consistent with the provisions of the state administrative procedure act.

§ 305. Hearings; conduct; findings and report. (a) Unless otherwise provided in this chapter, the banking law, the insurance law or any other law, any hearing pursuant to any such law may be held before the superintendent, any deputy superintendent, or any designated salaried employee of the department authorized by the superintendent for such purpose. Any adjudicatory proceeding, including any hearings to assess civil penalties under section four hundred eight or four hundred eight-a of this chapter, held pursuant to the provisions of this chapter, the insurance law or the banking law shall be noticed, conducted and administered in compliance with the state administrative procedure act.

(b) The person conducting such hearing shall have power to administer oaths, examine and cross-examine witnesses and receive documentary evidence, and shall report such person's findings, orally or in writing, to the superintendent with or without recommendation. Such report, if adopted by the superintendent may be the basis of any determination made by the superintendent. One hundred twenty days after the effective date of a determination of liability for a civil penalty pursuant to section four hundred eight or four hundred eight-a of this chapter or four hundred three, one thousand one hundred two, two thousand one hundred

two, two thousand one hundred seventeen, two thousand one hundred thirty-three or seven thousand eight hundred sixteen of the insurance law, such determination of liability for a civil penalty may be entered as a judgment and enforced, without court proceedings, in the same manner as the enforcement of a money judgment in civil actions in any court of competent jurisdiction or any other place provided for the entry of civil judgment within this state.

(c) Every such hearing, except for hearings under the banking law, shall be open to the public unless the superintendent or the person authorized by the superintendent to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private. Hearings under the banking law shall be as provided for in the banking law.

(d) Every person affected shall be allowed to be present during the giving of all the testimony, and shall be allowed a reasonable opportunity to inspect all adverse documentary proof, to examine and cross-examine witnesses, and to present proof in support of the person's interest.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

§ 306. Attendance of witnesses; production of documents and records. (a) The superintendent or the person authorized by the superintendent to conduct a hearing or investigation shall have power to subpoena witnesses, compel the attendance of witnesses, administer oaths, examine any person under oath, and to compel any person to subscribe to his or her testimony after it has been correctly reduced to writing, and in connection therewith to require the production of any books, papers, records, correspondence or other documents which the superintendent deems relevant to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(b) No person subject to the provisions of this chapter, the insurance law or the banking law whose conduct, condition or practices are being investigated, and no officer, director or employee of any such person, shall be entitled to witness or mileage fees.

(c) In addition to the liabilities and punishment prescribed by the

civil practice law and rules, any person who, without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce any books, papers or records in obedience to a subpoena issued by the superintendent shall be guilty of a misdemeanor.

(d) Every regulated person under this chapter, the insurance law or the banking law who is given a notice of hearing pursuant to this chapter shall upon the service of a notice to produce books and records, when attached to the notice of hearing or mailed subsequently thereto in the same manner as the notice of hearing, pursuant to such notice, produce at the hearing the books, records and documents enumerated therein.

§ 308. Judicial review of orders, regulations and decisions of superintendent. (a) Notwithstanding the specific enumerations of the right to judicial review in this chapter, the insurance law or the banking law, any order, regulation or decision of the superintendent is declared to be subject to judicial review in a proceeding under article seventy-eight of the civil practice law and rules, provided that nothing in this section or article seventy-eight of the civil practice law and rules shall affect the time period provided in the banking law or the insurance law for commencing such proceeding.

(b) Except as provided in section two thousand one hundred twenty-four of the insurance law, the commencement of such proceeding shall not affect the enforcement or validity of the superintendent's order, regulation or decision under review unless the court shall determine, after a preliminary hearing of which the superintendent is notified at least forty-eight hours in advance, that a stay of enforcement pending the proceeding or until further direction of the court will not unduly injure the interests of the people of the state, in which case a stay of execution may be granted.

§ 309. Injunction to restrain violation of this chapter. (a) In addition to such other remedies as are provided under this chapter, the superintendent may maintain and prosecute an action against any person subject to this chapter, the insurance law or the banking law, or the

person's officers, directors, trustees or agents, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of the provisions of this chapter, the insurance law or the banking law.

(b) In such action if the court finds that a defendant is threatening or is likely to do any act in violation of this chapter, the insurance law or the banking law and that such violation will cause irreparable injury to the interests of the people of this state, the court may grant an injunction restraining such violation. The court may on motion and affidavits grant a preliminary injunction and interlocutory injunction, upon such terms as may be just; but the superintendent shall not be required to give security before the issuance of any such injunction.

§ 310. Certificates as evidence; affirmation of documents and testimony. (a) Every certificate, assignment, conveyance or other paper executed by the superintendent or one of the superintendent's deputies pursuant to law and sealed with the official seal of the department shall be received as evidence in any judicial or other proceeding and may be recorded in the proper recording offices.

(b) Any charter, or any certificate or other instrument supplemental to or amendatory of the charter, of any regulated person filed in the office of the superintendent and containing statements of fact required or permitted by law to be contained therein, shall be received in all courts, public offices and official bodies as prima facie evidence of such facts and of the execution of such instrument.

(c) Whenever by the laws of any jurisdiction other than this state, any certificate by any officer in such jurisdiction or a copy of any instruments certified or exemplified by any such officer, may be received as prima facie evidence of the incorporation, existence or capacity of any corporation incorporated in such jurisdiction, or claiming so to be, such certificate when exemplified, or such copy of such instrument when exemplified shall be received in all courts, public offices and official bodies of this state, as prima facie evidence with the same force as in such jurisdiction. Such certificate or certified copy of such instrument shall be so received, without being exemplified, if it is certified by the secretary of state, or official performing the

equivalent function as to corporate records of such jurisdiction.

(d) Notwithstanding any provision of this chapter, the insurance law or the banking law requiring an oath as to the proof of a document or the truth of testimony, the affiant may, if the affiant's religious beliefs cause the affiant to object to giving an oath, affirm the document or the affiant's testimony.

§ 311. Financial literacy education. (a) Any youth participating in the summer youth employment program, as defined in subdivision (c) of this section, shall be provided with financial literacy education.

(b) The financial literacy education shall be developed and provided in accordance with the standards and best practices of currently operating summer youth employment programs or other similar models used by local government in coordination with nonprofit organizations and/or financial institutions for any summer youth employment programs that do not already have a workshop as of the effective date of this subdivision.

(c) For the purposes of this section, "summer youth employment program" shall mean any such program funded through the office of temporary and disability assistance.

ARTICLE 4

FINANCIAL FRAUDS PREVENTION

Section 401. Intentionally omitted.
402. Legislative declaration.
403. Financial frauds and consumer protection unit.
404. Powers of the financial frauds and consumer protection unit.
405. Immunity.
406. Other law enforcement authority, powers and duties not affected or impaired.
407. Intentionally omitted.
408. Civil penalty.
408-a. Unlicensed activities prohibited.
409. Reports.

§ 402. Legislative declaration. The legislature hereby finds and declares that financial frauds take many forms across multiple industries. The legislature further finds that financial fraud is detrimental to the social and economic well-being of the citizens of this state. In order to more thoroughly uncover, investigate and eliminate the myriad financial frauds that may be perpetrated in, and may involve the people of, New York state, the legislature finds that it is appropriate that the responsibilities of the insurance frauds bureau and the criminal investigations bureau that were administered by the department of insurance and the department of banking, respectively, prior to the enactment of this article, be consolidated into a new financial frauds and consumer protection unit under the supervision of the superintendent.

§ 403. Financial frauds and consumer protection unit. (a) The superintendent shall establish a financial frauds and consumer protection unit in the department of financial services.

(b) The financial frauds and consumer protection unit shall be a qualified agency, as defined in section eight hundred thirty-five of the executive law, to enforce the provisions of this article and article four of the insurance law and article II-B of the banking law.

(c) The superintendent shall have the power to designate employees of the unit as peace officers as defined in section 2.10 of the criminal procedure law. Any such designations made by the superintendent of insurance or the superintendent of banks, as they relate to peace officers within the insurance frauds bureau and the criminal investigations bureau, made prior to the effective date of this chapter, shall be deemed continued and will remain effective subject to the discretion of the superintendent.

(d) The superintendent is authorized to establish within the financial frauds and consumer protection unit one or more units designated for the purpose of investigating and preventing fraud and other criminal activity in certain specified areas of the banking, finance and insurance industries, as authorized by this chapter.

§ 404. Powers of the financial frauds and consumer protection unit. (a) The superintendent has authority under this article, the banking law, the insurance law and other applicable laws to investigate activities that may constitute violations subject to section four hundred eight or four hundred eight-a of this article or violations of the insurance law or banking law and to develop evidence thereon.

(b) If the financial frauds and consumer protection unit has a reasonable suspicion that a person or entity has engaged, or is engaging, in fraud or misconduct with respect to the banking law, the insurance law, the provisions of this chapter or other laws pursuant to which the superintendent has investigatory or enforcement powers, then the superintendent, in the enforcement of relevant statutes and regulations, may undertake an investigation thereon, provided, however, that the scope of authority set forth in this section shall not be deemed to otherwise limit or impair the ability of the superintendent to assist any other entity in an investigation involving a violation of law, and provided further that the responsibility and power to investigate any specific frauds or misconduct enumerated in this chapter, the banking law, the insurance law and other laws pursuant to which the superintendent has investigatory or enforcement powers shall be included under the jurisdiction of the financial frauds and consumer protection unit.

(c) Nothing in this chapter shall be construed to grant or authorize the financial frauds and consumer protection unit the specific powers or responsibilities of the consumer protection division of the department of state.

§ 405. Immunity. In the absence of fraud or bad faith, no person subject to the provisions of this chapter, the banking law or the insurance law shall be subject to civil liability, and no civil cause of action of any nature shall arise against such person for any: (a) information relating to suspected violations of the banking law or the insurance law furnished to law enforcement officials, their agents and employees; (b) information relating to suspected violations of the

banking law or the insurance law furnished to other persons subject to the provisions of this chapter; (c) information furnished in reports to the financial frauds and consumer protection unit, its agents or employees or any state agency investigating fraud or misconduct relating to financial fraud, its agents or employees; and (d) information relating to insurance fraud as defined in section 176.05 of the penal law furnished to the National Insurance Crime Bureau. For the purposes of this section the National Insurance Crime Bureau is a nonprofit dedicated to the prosecution of insurance fraud and vehicle crime. The superintendent or any employee of the financial frauds and consumer protection unit, in the absence of fraud or bad faith, shall not be subject to civil liability and no civil cause of action of any nature shall arise against the superintendent or any such employee by virtue of the publication of any report or bulletin related to the official activities of the financial frauds and consumer protection unit. Nothing herein is intended to abrogate or modify in any way any common law privilege or immunity heretofore enjoyed by any person.

§ 406. Other law enforcement authority, powers and duties not affected or impaired. This article shall not:

(a) Preempt the authority or relieve the duty of other law enforcement agencies to investigate and prosecute suspected violations of law;

(b) Prevent or prohibit a person from voluntarily disclosing any information concerning violations of this article, the banking law or the insurance law to any law enforcement agency; or

(c) Limit any of the powers granted elsewhere in the banking law or insurance law or other laws to the superintendent or the department to investigate possible violations of law and take appropriate action.

§ 408. Civil penalty. (a) In addition to any civil or criminal liability provided by law, the superintendent may, after notice and hearing, levy a civil penalty:

(1) not to exceed five thousand dollars per offense, for:

(A) any intentional fraud or intentional misrepresentation of a material fact with respect to a financial product or service or

involving any person offering to provide or providing financial products or services; or

(B) any violation of state or federal fair debt collection practices or federal or state fair lending laws; and

(2) not to exceed one thousand dollars for any other violation of this chapter or the regulations issued thereunder, provided that there shall be no civil penalty under this section for violations of article five of this chapter or the regulations issued thereunder; and

(3) provided, however, that:

(A) penalties for regulated persons under the banking law shall be as provided for in the banking law and penalties for regulated persons under the insurance law shall be as provided for in the insurance law; and

(B) the superintendent shall not impose or collect any penalty under this section in addition to any penalty or fine for the same act or omission that is imposed under the insurance law or banking law; and

(C) nothing in this section shall affect the construction or interpretation of the term "fraud" as it is used in any other provision of the consolidated or unconsolidated law.

(b) Civil penalties received by the superintendent pursuant to this section shall be applied on an annual basis as follows: funds shall be applied first to reduce the assessments charged on persons regulated under the insurance law and the banking law pursuant to section two hundred six of this chapter up to the full amount paid by persons regulated under the insurance law and banking law for the operating expenses of the financial frauds and consumer protection unit not attributable to regulation under the insurance or banking law for the fiscal year in which such penalties are received, such amount shall be applied to any assessment in the following year, and any remaining funds shall be paid to the general fund. The superintendent shall have discretion to determine how operating expenses which are not solely attributable to regulating persons under either the insurance law or the banking law shall be allocated.

§ 408-a. Unlicensed activities prohibited. (a) For the purposes of this section, a "prohibited unlicensed act" shall mean:

(1) engaging in an activity in this state for which a license, certification, registration, authorization, charter, accreditation or incorporation is required by this chapter or the banking law, or the regulations promulgated thereunder, without such license, certification, registration, authorization, charter, accreditation or incorporation or an exemption from such requirement; or

(2) any act or omission by a person who is required by this chapter or the banking law, or the regulations promulgated thereunder, to be licensed, certified, registered, authorized, chartered, accredited or incorporated and is not so licensed, certified, registered, authorized, chartered, accredited or incorporated, or exempted from such requirement, if such act or omission would constitute a violation of this chapter or the banking law, or the regulations promulgated thereunder, subject to monetary penalty if such person were so licensed, certified, registered, authorized, chartered, accredited or incorporated.

(b) In addition to any civil or criminal liability provided by law, the superintendent may, after notice and a hearing, levy a civil penalty for any prohibited unlicensed act as follows:

(1) The penalty for a prohibited unlicensed act that relates to the requirements of the banking law or the regulations promulgated thereunder shall be the same as the penalty provided in section forty-four of the banking law for any violation of the banking law.

(2) The penalty for a prohibited unlicensed act that relates to the requirements of this chapter or the regulations promulgated thereunder shall be the same as the penalty provided for in section four hundred eight of this article for violations of this chapter or the regulations promulgated thereunder. However, the superintendent shall not impose or collect any penalty for a prohibited unlicensed act pursuant to this paragraph if the superintendent imposes or collects any penalty pursuant to paragraph one of this subsection or paragraphs two or three of subsection (a) of section four hundred eight of this article for the same act or omission.

(3) If a prohibited unlicensed act results in consumer harm, the penalty shall be not more than double the penalty amount applicable to such violation set forth in paragraphs one and two of this subsection.

(c) Civil penalties received by the superintendent pursuant to this

section shall be applied in the same manner as civil penalties received by the superintendent pursuant to section four hundred eight of this chapter.

(d) In addition to any other penalty or sanction imposed upon a person by law for a prohibited unlicensed act, after notice and a hearing, the superintendent may issue an order directing such person to pay restitution for such unlicensed act.

§ 409. Reports. (a) Whenever the superintendent is satisfied that a violation subject to section four hundred eight or four hundred eight-a of this article or fraud or other criminal activity under the insurance law or banking law has been committed or attempted, the superintendent shall report any such violation of law, as the superintendent deems appropriate, to the appropriate licensing agency, the district attorney of the county in which such acts were committed, to the attorney general, and where appropriate, to the person who submitted the report of fraudulent activity, as provided by the provisions of this article. Within one hundred twenty days of receipt of the superintendent's report, the attorney general or the district attorney concerned shall inform the superintendent as to the status of the reported violations.

(b) No later than March fifteenth of each year, beginning in two thousand twelve, the superintendent shall furnish to the governor, the speaker of the assembly and the temporary president of the senate a report describing the activities of the financial frauds and consumer protection unit. Such report shall describe (1) the unit's efforts with respect to (A) frauds against entities regulated under the banking and insurance laws; and (B) frauds against consumers; (2) the unit's activities to address consumer complaints; and (3) any recommendations of the superintendent with respect to changes of law that are desirable to address gaps in protection. The report may address such other matters relating to the activities of the financial frauds and consumer protection unit as the superintendent believes will be useful to the governor or the legislature.

(c) No later than March fifteenth of each year beginning in the year two thousand twelve, the superintendent shall submit to the governor, the state comptroller, the attorney general, the temporary president of

the senate, the speaker of the assembly, the chairpersons of the senate finance and health committees, and the assembly ways and means and health committees, a report summarizing the department's activities to investigate and combat health insurance fraud including information regarding referrals received, investigations initiated, investigations completed, and any other material necessary or desirable to evaluate the department's efforts.

ARTICLE 5

RESTRICTIONS ON OFFICERS AND EMPLOYEES OF THE DEPARTMENT

Section 501. Restrictions on officers and employees of the department; penalty.

§ 501. Restrictions on officers and employees of the department; penalty. (a) No officer or employee of the department shall obtain a loan or extension of credit from any regulated person or be interested in any such regulated person as a director, partner, owner, officer, attorney, agent, trustee or employee, or own or deal in, either directly or indirectly, the stocks or obligations of any such regulated person. A violation of the provisions of this section by any officer or employee shall constitute sufficient grounds for his or her removal by the superintendent.

(b) Nothing in this section shall be construed to prohibit any officer or employee from obtaining financing from a regulated person upon his or her primary or secondary residence, provided that the premises securing such loan are occupied by such employee, and further provided that such loan is reported to the department, which shall keep a record thereof. The term "residence," for the purposes of this section, shall mean a single family or two family residence, condominium apartment or cooperative apartment, occupied in whole or in part, by the officer or employee. The term "cooperative apartment" means a residence where ownership is evidenced by certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate.

(c) Nothing in this section shall be construed to prohibit any officer or employee from: (1) obtaining a loan secured by an assignment of his or her deposit in a banking organization, or an assignment or pledge of his or her shares in a savings and loan association or credit union; (2) accepting financing of an automobile, truck or other personal property from a banking organization or a sales finance company; (3) entering into a premium finance agreement with a premium finance agency; or (4) owning shares of an investment company (mutual fund) that may incidentally invest in the securities of any regulated person, provided that the purpose of the investment portfolio of such investment company may not be to invest primarily or exclusively in the securities of banking or insurance entities. For purposes of this section, investment companies include open-end and closed-end investment companies and unit investment trusts as those terms are defined in an Act of Congress entitled "The Investment Company Act of 1940," as amended.

(d) Nothing in this section shall be construed to prevent any officer or employee from becoming a policyholder of any insurer or from taking out a loan under the officer's or employee's insurance policy, or prevent or impair the ability of the superintendent to act as a liquidator, rehabilitator, or conservator pursuant to article seventy-four of the insurance law or article thirteen of the banking law.

(e) The superintendent may promulgate policies and procedures for exempting particular employees, or classes of employees, from investment restrictions in subsection (a) of this section as to regulated persons with which such employee or class of employees has no authority or involvement.

(f) This section shall not apply to investments held in a blind trust approved by the superintendent or the superintendent's designee.

ARTICLE 6

EMERGENCY MEDICAL SERVICES AND SURPRISE BILLS

Section 601. Dispute resolution process established.
602. Applicability.
603. Definitions.
604. Criteria for determining a reasonable fee.

605. Dispute resolution for emergency services.
606. Hold harmless for insureds from bills for emergency services and surprise bills.
607. Dispute resolution for surprise bills.
608. Payment for independent dispute resolution entity.
609. Reporting on new criteria for determining a reasonable fee.

§ 601. Dispute resolution process established. The superintendent shall establish a dispute resolution process by which a dispute for a bill for emergency services or a surprise bill may be resolved. The superintendent shall have the power to grant and revoke certifications of independent dispute resolution entities to conduct the dispute resolution process. The superintendent shall promulgate regulations establishing standards for the dispute resolution process, including a process for certifying and selecting independent dispute resolution entities. An independent dispute resolution entity shall use licensed physicians in active practice in the same or similar specialty as the physician providing the service that is subject to the dispute resolution process of this article for disputes that involve physician services. To the extent practicable, the physician shall be licensed in this state. Disputes shall be submitted to an independent dispute resolution entity within three years of the date the health care plan made the original payment on the claim that is the subject of the dispute.

§ 602. Applicability. This article shall not apply to health care services, including emergency services, where physician fees are subject to schedules or other monetary limitations under any other law, including the workers' compensation law and article fifty-one of the insurance law, and shall not preempt any such law. This article also shall not apply to health care services, including emergency services, subject to medical assistance program coverage provided pursuant to section three hundred sixty-four-j of the social services law.

§ 603. Definitions. For the purposes of this article:

(a) "Emergency condition" means a medical or behavioral condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in : (1) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such person or others in serious jeopardy; (2) serious impairment to such person's bodily functions; (3) serious dysfunction of any bodily organ or part of such person; (4) serious disfigurement of such person; or (5) a condition described in clause (i), (ii) or (iii) of section 1867(e)(1)(A) of the social security act 42 U.S.C. § 1395dd.

(b) "Emergency services" means, with respect to an emergency condition: (1) a medical screening examination as required under section 1867 of the social security act, 42 U.S.C. § 1395dd, which is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition; and (2) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of the social security act, 42 U.S.C. § 1395dd, to stabilize the patient.

* (c) "Health care plan" means an insurer licensed to write accident and health insurance pursuant to article thirty-two of the insurance law; a corporation organized pursuant to article forty-three of the insurance law; a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law; a health maintenance organization certified pursuant to article forty-four of the public health law; or a student health plan established or maintained pursuant to section one thousand one hundred twenty-four of the insurance law.

* NB Effective until August 26, 2026

* (c) "Health care plan" means an insurer licensed to write accident and health insurance pursuant to article thirty-two of the insurance law; a corporation organized pursuant to article forty-three of the insurance law; a municipal cooperative health benefit plan certified

pursuant to article forty-seven of the insurance law; a health maintenance organization certified pursuant to article forty-four of the public health law; a student health plan established or maintained pursuant to section one thousand one hundred twenty-four of the insurance law; or a health benefit plan operated pursuant to article eleven of the civil service law.

* NB Effective August 26, 2026 until August 26, 2031

* (c) "Health care plan" means an insurer licensed to write accident and health insurance pursuant to article thirty-two of the insurance law; a corporation organized pursuant to article forty-three of the insurance law; a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law; a health maintenance organization certified pursuant to article forty-four of the public health law; or a student health plan established or maintained pursuant to section one thousand one hundred twenty-four of the insurance law.

* NB Effective August 26, 2031

(d) "Insured" means a patient covered under a health care plan's policy or contract.

(e) "Non-participating" means not having a contract with a health care plan to provide health care services to an insured.

(f) "Participating" means having a contract with a health care plan to provide health care services to an insured.

(g) "Patient" means a person who receives health care services, including emergency services, in this state.

(h) "Surprise bill" means a bill for health care services, other than emergency services, with respect to:

(1) an insured for services rendered by a non-participating provider at a participating hospital or ambulatory surgical center, where a participating provider is unavailable or a non-participating provider renders services without the insured's knowledge, or unforeseen medical services arise at the time the health care services are rendered; provided, however, that a surprise bill shall not mean a bill received for health care services when a participating provider is available and the insured has elected to obtain services from a non-participating provider;

(2) an insured for services rendered by a non-participating provider,

where the services were referred by a participating physician to a non-participating provider without explicit written consent of the insured acknowledging that the participating physician is referring the insured to a non-participating provider and that the referral may result in costs not covered by the health care plan; or

(3) a patient who is not an insured for services rendered by a physician at a hospital or ambulatory surgical center, where the patient has not timely received all of the disclosures required pursuant to section twenty-four of the public health law.

(i) "Usual and customary cost" means the eightieth percentile of all charges for the particular health care service performed by a provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent. The nonprofit organization shall not be affiliated with an insurer, a corporation subject to article forty-three of the insurance law, a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law, or a health maintenance organization certified pursuant to article forty-four of the public health law.

* (j) "Allowed benchmark" means the fiftieth percentile of all allowed amounts for the particular health care service performed by a participating provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent. The nonprofit organization shall not be affiliated with an insurer, a corporation subject to article forty-three of the insurance law, a municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law, or a health maintenance organization certified pursuant to article forty-four of the public health law.

* NB Effective August 26, 2026

* (k) "Maximum fee" means the eightieth percentile of all allowed amounts for the particular health care service performed by a participating provider in the same or similar specialty and provided in the same geographical area as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent. The nonprofit organization shall not be affiliated with an insurer, a corporation subject to article forty-three of the insurance law, a

municipal cooperative health benefit plan certified pursuant to article forty-seven of the insurance law, or a health maintenance organization certified pursuant to article forty-four of the public health law.

* NB Effective August 26, 2026

*** § 604. Criteria for determining a reasonable fee.** In determining the appropriate amount to pay for a health care service, an independent dispute resolution entity shall consider all relevant factors, including:

(a) whether there is a gross disparity between the fee charged by the provider for services rendered as compared to:

(1) fees paid to the involved provider for the same services rendered by the provider to other patients in health care plans in which the provider is not participating, and

(2) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified providers for the same services in the same region who are not participating with the health care plan;

(b) the level of training, education and experience of the health care professional, and in the case of a hospital, the teaching staff, scope of services and case mix;

(c) the provider's usual charge for comparable services with regard to patients in health care plans in which the provider is not participating;

(d) the circumstances and complexity of the particular case, including time and place of the service;

(e) individual patient characteristics;

(f) the median of the rate recognized by the health care plan to reimburse similarly qualified providers for the same or similar services in the same region that are participating with the health care plan; and

(g) with regard to physician services, the usual and customary cost of the service.

* NB Effective until August 26, 2026

* § 604. Criteria for determining a reasonable fee. (a) In determining the appropriate amount for a health care plan other than a health benefit plan operated pursuant to article eleven of the civil service

law to pay for a health care service, an independent dispute resolution entity shall consider all relevant factors, including:

(1) whether there is a gross disparity between the fee charged by the provider for services rendered as compared to:

(A) fees paid to the involved provider for the same services rendered by the provider to other patients in health care plans in which the provider is not participating, and

(B) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified providers for the same services in the same region who are not participating with the health care plan;

(2) the level of training, education and experience of the health care professional, and in the case of a hospital, the teaching staff, scope of services and case mix;

(3) the provider's usual charge for comparable services with regard to patients in health care plans in which the provider is not participating;

(4) the circumstances and complexity of the particular case, including time and place of the service;

(5) individual patient characteristics;

(6) the median of the rate recognized by the health care plan to reimburse similarly qualified providers for the same or similar services in the same region that are participating with the health care plan; and

(7) with regard to physician services, the usual and customary cost of the service.

(b) (1) In determining the appropriate amount for a health benefit plan operated pursuant to article eleven of the civil service law to pay for a health care service, an independent dispute resolution entity shall select either the health care plan's payment or the non-participating provider's fee depending on which one is closest to the allowed benchmark, provided, however, that the independent dispute resolution entity may choose the health care plan's payment or the non-participating provider's fee if it is not closest to the allowed benchmark if:

(A) the health care plan's payment or the non-participating provider's fee are equally distant from the allowed benchmark; or

(B) the independent dispute resolution entity determines that any of

the following information submitted by either party clearly demonstrates that the allowed benchmark is not appropriate:

(i) the level of training, education and experience of the health care professional, and in the case of a hospital, the teaching staff, scope of services and case mix;

(ii) the circumstances and complexity of the particular case, including time and place of the service; or

(iii) individual patient characteristics.

(2) If the independent dispute resolution entity selects the health care plan's payment or the non-participating provider's fee that is not closest to the allowed benchmark, such decision shall not be on the basis of:

(A) whether there is a gross disparity between the fee charged by the provider for services rendered as compared to:

(i) fees paid to the involved provider for the same services rendered by the provider to other patients in health care plans in which the provider is not participating; or

(ii) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified providers for the same services in the same region who are not participating with the health care plan;

(B) the provider's usual charge for comparable services with regard to patients in health care plans in which the provider is not participating; or

(C) with regard to physician services, the usual and customary cost of the service.

(3) If an independent dispute resolution entity makes a determination pursuant to subparagraph (B) of paragraph one of subsection (b) of this section, its written decision shall include an explanation of the factors in subparagraph (B) of paragraph one of subsection (b) of this section that demonstrated the health care plan's payment or non-participating provider's fee closest to the allowed benchmark was materially different from the appropriate payment for the health care service.

(4) If the independent dispute resolution entity determines the non-participating provider's fee is a reasonable fee for the services rendered, in no circumstances shall the amount owed by a health care

plan exceed the maximum fee.

(5) Notwithstanding the foregoing, disputes involving health care services provided by a physician employed by a general hospital licensed under article twenty-eight of the public health law or such hospital's affiliated medical school, or is part of a group practice that is established as a captive professional services corporation whose shareholders are employees of such hospital, shall be subject to subsection (a) of this section even if paid for by a health benefit plan operated pursuant to article eleven of the civil service law.

(c) No fee for services rendered shall be awarded pursuant to this article:

(1) if the health care plan can demonstrate that it has a contract with the provider or a subsidiary or other entity owned or operated by the provider that is in effect at the time the disputed service or services were provided to provide the same service or services at the same location; or

(2) if the health care plan can demonstrate that a notice of determination for prior authorization has been issued to the patient's health care provider pursuant to section forty-nine hundred three of the insurance law and section forty-nine hundred three of the public health law identifying the health care service or services in dispute as out-of-network, or, for patients covered by a health care plan not subject to section forty-nine hundred three of the insurance law or section forty-nine hundred three of the public health law, if a notice of determination for prior authorization has been issued to the patient's health care provider that includes all of the disclosures set forth in such laws and that clearly identifies the health care service or services in dispute as out-of-network.

* NB Effective August 26, 2026 until August 26, 2031

* § 604. Criteria for determining a reasonable fee. In determining the appropriate amount to pay for a health care service, an independent dispute resolution entity shall consider all relevant factors, including:

(a) whether there is a gross disparity between the fee charged by the provider for services rendered as compared to:

(1) fees paid to the involved provider for the same services rendered by the provider to other patients in health care plans in which the

provider is not participating, and

(2) in the case of a dispute involving a health care plan, fees paid by the health care plan to reimburse similarly qualified providers for the same services in the same region who are not participating with the health care plan;

(b) the level of training, education and experience of the health care professional, and in the case of a hospital, the teaching staff, scope of services and case mix;

(c) the provider's usual charge for comparable services with regard to patients in health care plans in which the provider is not participating;

(d) the circumstances and complexity of the particular case, including time and place of the service;

(e) individual patient characteristics;

(f) the median of the rate recognized by the health care plan to reimburse similarly qualified providers for the same or similar services in the same region that are participating with the health care plan; and

(g) with regard to physician services, the usual and customary cost of the service.

* NB Effective August 26, 2031

§ 605. Dispute resolution for emergency services. (a) Emergency services for an insured. * (1) When a health care plan receives a bill for emergency services from a non-participating provider, including a bill for inpatient services which follow an emergency room visit, the health care plan shall pay an amount that it determines is reasonable for the emergency services, including inpatient services which follow an emergency room visit, rendered by the non-participating provider, in accordance with section three thousand two hundred twenty-four-a of the insurance law, except for the insured's co-payment, coinsurance or deductible, if any, and shall ensure that the insured shall incur no greater out-of-pocket costs for the emergency services, including inpatient services which follow an emergency room visit, than the insured would have incurred with a participating provider. The non-participating provider may bill the health care plan for the services rendered. Upon receipt of the bill, the health care plan shall

pay the non-participating provider the amount prescribed by this section and any subsequent amount determined to be owed to the provider in relation to the emergency services provided, including inpatient services which follow an emergency room visit.

* NB Effective until after the superintendent of financial services and the commissioner of health have promulgated regulations

* (1) When a health care plan receives a bill for emergency services from a non-participating provider, including a bill for inpatient services which follow an emergency room visit, or a bill for services from a mobile crisis intervention services provider licensed, certified, or designated by the office of mental health or the office of addiction services and supports, the health care plan shall pay an amount that it determines is reasonable for the emergency services, including inpatient services which follow an emergency room visit or for the mobile crisis intervention services, rendered by the non-participating provider, in accordance with section three thousand two hundred twenty-four-a of the insurance law, except for the insured's co-payment, coinsurance or deductible, if any, and shall ensure that the insured shall incur no greater out-of-pocket costs for the emergency services, including inpatient services which follow an emergency room visit or for the mobile crisis intervention services, than the insured would have incurred with a participating provider. The non-participating provider may bill the health care plan for the services rendered. Upon receipt of the bill, the health care plan shall pay the non-participating provider the amount prescribed by this section and any subsequent amount determined to be owed to the provider in relation to the emergency services provided, including inpatient services which follow an emergency room visit or for the mobile crisis intervention services.

* NB Effective after the superintendent of financial services and the commissioner of health have promulgated regulations

* (2) A non-participating provider or a health care plan may submit a dispute regarding a fee or payment for emergency services, including inpatient services which follow an emergency room visit, for review to an independent dispute resolution entity.

* NB Effective until after the superintendent of financial services and the commissioner of health have promulgated regulations

* (2) A non-participating provider or a health care plan may submit a

dispute regarding a fee or payment for emergency services, including inpatient services which follow an emergency room visit, or for services rendered by a mobile crisis intervention services provider licensed, certified, or designated by the office of mental health or the office of addiction services and supports, for review to an independent dispute resolution entity.

* NB Effective after the superintendent of financial services and the commissioner of health have promulgated regulations

* (3) The independent dispute resolution entity shall make a determination within thirty business days of receipt of the dispute for review.

* NB Effective until August 26, 2026

* (3) The independent dispute resolution entity shall make a determination within forty-five business days of receipt of all information the independent dispute resolution entity determines that it needs to review the dispute.

* NB Effective August 26, 2026

(4) In determining a reasonable fee for the services rendered, an independent dispute resolution entity shall select either the health care plan's payment or the non-participating provider's fee. The independent dispute resolution entity shall determine which amount to select based upon the conditions and factors set forth in section six hundred four of this article. If an independent dispute resolution entity determines, based on the health care plan's payment and the non-participating provider's fee, that a settlement between the health care plan and non-participating provider is reasonably likely, or that both the health care plan's payment and the non-participating provider's fee represent unreasonable extremes, then the independent dispute resolution entity may direct both parties to attempt a good faith negotiation for settlement. The health care plan and non-participating provider may be granted up to ten business days for this negotiation, which shall run concurrently with the thirty business day period for dispute resolution.

(b) Emergency services for a patient that is not an insured. (1) A patient that is not an insured or the patient's physician may submit a dispute regarding a fee for emergency services, including inpatient services which follow an emergency room visit, for review to an

independent dispute resolution entity upon approval of the superintendent.

(2) An independent dispute resolution entity shall determine a reasonable fee for the services based upon the same conditions and factors set forth in section six hundred four of this article.

(3) A patient that is not an insured shall not be required to pay the physician's or hospital's fee in order to be eligible to submit the dispute for review to an independent dispute resolution entity.

(c) The determination of an independent dispute resolution entity shall be binding on the health care plan, provider and patient, and shall be admissible in any court proceeding between the health care plan, provider or patient, or in any administrative proceeding between this state and the provider.

(d) For purposes of the hospital payment pursuant to subsection (a) of this section, the amount the health care plan shall pay to the hospital shall be at least twenty-five percent greater than the amount the health care plan would have paid for the claim had the hospital been in network, based on the most recent contract between the health care plan and the hospital. Provided however, the amount paid by the health care plan pursuant to this subsection shall not prejudice either party or preclude either party from submitting a dispute to the dispute resolution entity relating to the payment to the hospital or preclude the hospital from seeking additional payment from the health care plan prior to a decision by the dispute resolution entity. To the extent the prior contract between the hospital and health care plan expired greater than twelve months prior to the payment of the disputed claim, the payment amount shall be adjusted based upon the medical consumer price index. The provisions of this subsection shall only apply to the extent the health care plan and hospital had previously entered into a participating provider agreement.

§ 606. Hold harmless for insureds from bills for emergency services and surprise bills. (a) A non-participating provider shall not bill an insured for a surprise bill except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating provider.

* (b) A non-participating provider shall not bill an insured for emergency services, including inpatient services which follow an emergency room visit, except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating provider.

* NB Effective until after the superintendent of financial services and the commissioner of health have promulgated regulations

* (b) A non-participating provider shall not bill an insured for emergency services, including inpatient services which follow an emergency room visit, or for services rendered by a mobile crisis intervention services provider licensed, certified, or designated by the office of mental health or the office of addiction services and supports, except for any applicable copayment, coinsurance or deductible that would be owed if the insured utilized a participating provider.

* NB Effective after the superintendent of financial services and the commissioner of health have promulgated regulations

§ 607. Dispute resolution for surprise bills. (a) Surprise bill involving an insured. (1) For a surprise bill involving an insured, the health care plan shall pay the non-participating provider in accordance with paragraphs two and three of this subsection.

(2) The non-participating provider may bill the health care plan for the health care services rendered, and the health care plan shall pay the non-participating provider the billed amount or attempt to negotiate reimbursement with the non-participating provider.

(3) If the health care plan's attempts to negotiate reimbursement for health care services provided by a non-participating provider does not result in a resolution of the payment dispute between the non-participating provider and the health care plan, the health care plan shall pay the non-participating provider an amount the health care plan determines is reasonable for the health care services rendered, except for the insured's copayment, coinsurance or deductible, in accordance with section three thousand two hundred twenty-four-a of the insurance law, and shall ensure that the insured shall incur no greater out-of-pocket costs for the surprise bill than the insured would have incurred with a participating provider.

(4) Either the health care plan or the non-participating provider may submit the dispute regarding the surprise bill for review to an independent dispute resolution entity, provided however, the health care plan may not submit the dispute unless it has complied with the requirements of paragraphs one, two and three of this subsection.

* (5) The independent dispute resolution entity shall make a determination within thirty business days of receipt of the dispute for review.

* NB Effective until August 26, 2026

* (5) The independent dispute resolution entity shall make a determination within forty-five business days of receipt of all information the independent dispute resolution entity determines that it needs to review the dispute.

* NB Effective August 26, 2026

(6) When determining a reasonable fee for the services rendered, the independent dispute resolution entity shall select either the health care plan's payment or the non-participating provider's fee. An independent dispute resolution entity shall determine which amount to select based upon the conditions and factors set forth in section six hundred four of this article. If an independent dispute resolution entity determines, based on the health care plan's payment and the non-participating provider's fee, that a settlement between the health care plan and non-participating provider is reasonably likely, or that both the health care plan's payment and the non-participating provider's fee represent unreasonable extremes, then the independent dispute resolution entity may direct both parties to attempt a good faith negotiation for settlement. The health care plan and non-participating provider may be granted up to ten business days for this negotiation, which shall run concurrently with the thirty business day period for dispute resolution.

(b) Surprise bill received by a patient who is not an insured.

(1) A patient who is not an insured and who receives a surprise bill may submit a dispute regarding the surprise bill for review to an independent dispute resolution entity.

(2) The independent dispute resolution entity shall determine a reasonable fee for the services rendered based upon the conditions and factors set forth in section six hundred four of this article.

(3) A patient shall not be required to pay the physician's fee to be eligible to submit the dispute for review to the independent dispute resolution entity.

(c) The determination of an independent dispute resolution entity shall be binding on the patient, provider and health care plan, and shall be admissible in any court proceeding between the patient or insured, provider or health care plan, or in any administrative proceeding between this state and the provider.

§ 608. Payment for independent dispute resolution entity. (a) For disputes involving an insured, when the independent dispute resolution entity determines the health care plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the non-participating provider. When the independent dispute resolution entity determines the non-participating provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the health care plan. When a good faith negotiation directed by the independent dispute resolution entity pursuant to paragraph four of subsection (a) of section six hundred five of this article, or paragraph six of subsection (a) of section six hundred seven of this article results in a settlement between the health care plan and non-participating provider, the health care plan and the non-participating provider shall evenly divide and share the prorated cost for dispute resolution.

* (b) For disputes involving a patient that is not an insured, when the independent dispute resolution entity determines the physician's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the patient unless payment for the dispute resolution process would pose a hardship to the patient. The superintendent shall promulgate a regulation to determine payment for the dispute resolution process in cases of hardship. When the independent dispute resolution entity determines the physician's fee is unreasonable, payment for the dispute resolution process shall be the responsibility of the physician.

* NB Effective until August 26, 2026

* (b) (1) A non-participating provider and a health care plan shall submit full payment for the dispute resolution process upon submission

of the dispute resolution application or, if the responding party, when responding to the independent dispute resolution entity's request for eligibility information and supporting documents.

(2) An independent dispute resolution entity shall not comingle the payments for the dispute resolution process with any other funds held by the entity and shall hold all payments in a separate account.

(3) An independent dispute resolution entity shall issue a refund of the dispute resolution process payment to the prevailing party within thirty days of rendering a determination on the dispute or rejecting the dispute as ineligible.

* NB Effective August 26, 2026

* (c) For disputes involving a patient that is not an insured, when the independent dispute resolution entity determines the physician's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the patient unless payment for the dispute resolution process would pose a hardship to the patient. The superintendent shall promulgate a regulation to determine payment for the dispute resolution process in cases of hardship. When the independent dispute resolution entity determines the physician's fee is unreasonable, payment for the dispute resolution process shall be the responsibility of the physician.

* NB Effective August 26, 2026

*** § 609. Reporting on new criteria for determining a reasonable fee.** Four years after the effective date of this section the superintendent of the department of financial services shall submit a report to the governor, the speaker of the assembly, the temporary president of the senate, the chair of the assembly insurance committee, and the chair of the senate insurance committee that provides information about disputes involving a health benefit plan operated pursuant to article eleven of the civil service law since the effective date of the chapter of the laws of two thousand twenty-six that added this section and that includes the outcomes of all such disputes in the aggregate and broken down by region and provider specialty.

* NB Repealed May 28, 2031

ARTICLE 7

STUDENT DEBT CONSULTANTS

Section 701. Definitions.
702. Prohibitions.
703. Disclosure requirements.
704. Student debt consulting contracts.
705. Penalties and other provisions.
706. Rules and regulations.

§ 701. Definitions. (a) The term "advertisement" shall include, but is not limited to, all forms of marketing, solicitation, or dissemination of information related, directly or indirectly, to securing or obtaining a student debt consulting contract or services. Further, it shall include all commonly recognized forms of media marketing via television, radio, print media, all forms of electronic communication via the internet, and all prepared sales presentations given in person or over the internet to the general public.

(b) "Borrower" means any resident of this state who has received a student loan or agreed in writing to pay a student loan or any person who shares a legal obligation with such resident for repaying a student loan.

(c) "FSA ID" means a username and password allocated to an individual by the federal government to enable the individual to log in to certain United States department of education websites, and may be used to sign certain documents electronically.

(d) "Student loan" means any loan to a borrower to finance post-secondary education or expenses related to post-secondary education.

(e) "Student debt consulting contract" or "contract" means an agreement between a borrower and a consultant under which the consultant agrees to provide student debt consulting services.

(f) "Student debt consultant" or "consultant" means an individual or a corporation, partnership, limited liability company or other business entity that, directly or indirectly, solicits or undertakes employment to provide student debt consulting services. A consultant does not include the following:

(1) a person or entity who holds or is owed an obligation on the student loan while the person or entity performs services in connection with the student loan;

(2) a bank, trust company, private banker, bank holding company, savings bank, savings and loan association, thrift holding company, credit union or insurance company organized under the laws of this state, another state or the United States, or a subsidiary or affiliate of such entity or a foreign banking corporation licensed by the superintendent of financial services or the comptroller of the currency;

(3) a bona fide not-for-profit organization that offers counseling or advice to borrowers;

(4) an attorney admitted to practice in the state of New York when the attorney is providing student debt consulting services to a borrower free of charge;

(5) a public post-secondary educational institution or private nonprofit post-secondary educational institution; or

(6) such other persons as the superintendent prescribes by rule.

(g) "Student debt consulting services" means services that a student debt consultant provides to a borrower that the consultant represents will help to achieve any of the following:

(1) stop, enjoin, delay, void, set aside, annul, stay or postpone a default, bankruptcy, tax offset, or garnishment proceeding;

(2) obtain a forbearance, deferment, or other relief that temporarily halts repayment of a student loan;

(3) assist the borrower with preparing or filing documents related to student loan repayment;

(4) advise the borrower which student loan repayment plan or forgiveness program to consider;

(5) enroll the borrower in any student loan repayment, forgiveness, discharge, or consolidation program;

(6) assist the borrower in re-establishing eligibility for federal student financial assistance;

(7) assist the borrower in removing a student loan from default; or

(8) educate the borrower about student loan repayment.

§ 702. Prohibitions. A student debt consultant is prohibited from

doing the following:

(a) performing student debt consulting services without a legal written, fully-executed contract with a borrower that comports with the provisions of this article;

(b) charging for or accepting any payment for student debt consulting services before the full completion of all such services, including a payment to be placed in escrow or any other account pending the completion of such services;

(c) taking a power of attorney from a borrower;

(d) retaining any original loan document or other original document related to a borrower's student loan;

(e) requesting that a borrower provide his or her FSA ID to the consultant, or accepting a borrower's FSA ID;

(f) stating or implying that a borrower will not be able to obtain relief on their own;

(g) misrepresenting, expressly or by implication, that:

(1) the consultant is a part of, affiliated with, or endorsed or sponsored by the government, government loan programs, the United States department of education, or borrowers' student loan servicers; or

(2) some or all of a borrower's payments to the consultant will be applied towards the borrower's student loans.

(h) inducing or attempting to induce a student debtor to enter a contract that does not fully comply with the provisions of this article; or

(i) engaging in any unfair, deceptive, or abusive act or practice.

§ 703. Disclosure requirements. (a) A student debt consultant shall clearly and conspicuously disclose in all advertisements:

(1) the actual services the consultant provides to borrowers;

(2) that borrowers may apply for consolidation loans from the United States department of education at no cost, including providing a direct link in all online advertising and contact information in all print advertising to the application materials for a Direct Consolidation Loan from the United States department of education;

(3) that consolidation or other services offered by the consultant may not be the best or only option for borrowers;

(4) that alternative federal student loan repayment plans, including income-based programs, that do not require consolidating existing federal student loans may be available; and

(5) that borrowers should consider consulting their student loan servicer before signing any legal document concerning a student loan.

(b) The disclosures required by subsection (a) of this section, if disseminated through print media or the internet, shall be clearly and legibly printed or displayed in not less than twelve-point bold type, or, if the advertisement is printed to be displayed in print that is smaller than twelve point, in bold type print that is no smaller than the print in which the text of the advertisement is printed or displayed.

(c) The provisions of this section shall apply to all consultants who disseminate advertisements in the state of New York or who intend to directly or indirectly contact a borrower who has a student loan and is a resident of or a student in New York state. Consultants shall establish and at all times maintain control over the content, form and method of dissemination of all advertisements of their services. Further, all advertisements shall be sufficiently complete and clear to avoid the possibility to mislead or deceive.

§ 704. Student debt consulting contracts. (a) A student debt consulting contract shall:

(1) contain the entire agreement of the parties;

(2) be provided in writing to the borrower for review before signing;

(3) be printed in at least twelve-point type and written in the same language that is used by the borrower and was used in discussions between the consultant and the borrower to describe the borrower's services or to negotiate the contract;

(4) fully disclose the exact nature of the services to be provided by the consultant or anyone working in association with the consultant;

(5) fully disclose the total amount and terms of compensation for such services;

(6) contain the name, business address and telephone number of the consultant and the street address, if different, and facsimile number or email address of the consultant where communications from the debtor may

be delivered;

(7) be dated and personally signed by the borrower and the consultant and be witnessed and acknowledged by a New York notary public; and

(8) contain the following notice, which shall be printed in at least fourteen-point boldface type, completed with the name of the Provider, and located in immediate proximity to the space reserved for the debtor's signature:

"NOTICE REQUIRED BY NEW YORK LAW

You may cancel this contract, without any penalty or obligation, at any time before midnight of

..... (fifth business day after execution).

..... (Name of consultant) (the "Consultant") or anyone working for the Consultant may not take any money from you or ask you for money until the consultant has completely finished doing everything this Contract says the Consultant will do.

You should consider contacting your student loan servicer before signing any legal document concerning your student loan. In addition, you may want to visit the New York State Department of Financial Services' student lending resource center at www.dfs.ny.gov/studentprotection. The law requires that this contract contain the entire agreement between you and the Provider. You should not rely upon any other written or oral agreement or promise."

The Provider shall accurately enter the date on which the right to cancel ends.

(b) (1) The borrower has the right to cancel, without any penalty or obligation, any contract with a consultant until midnight of the fifth business day following the day on which the consultant and the borrower sign a consulting contract. Cancellation occurs when the borrower, or a representative of the borrower, either delivers written notice of cancellation in person to the address specified in the consulting contract or sends a written communication by facsimile, by United States mail or by an established commercial letter delivery service. A dated proof of facsimile delivery or proof of mailing creates a presumption that the notice of cancellation has been delivered on the date the facsimile is sent or the notice is deposited in the mail or with the delivery service. Cancellation of the contract shall release the borrower from all obligations to pay fees or any other compensation to

the consultant.

(2) The contract shall be accompanied by two copies of a form, captioned "notice of cancellation" in at least twelve-point bold type. This form shall be attached to the contract, shall be easily detachable, and shall contain the following statement written in the same language as used in the contract, and the contractor shall insert accurate information as to the date on which the right to cancel ends and the contractor's contact information:

"NOTICE OF CANCELLATION

Note: You may cancel this contract, without any penalty or obligation, at any time before midnight of (Enter date)

To cancel this contract, sign and date both copies of this cancellation notice and personally deliver one copy or send it by facsimile, United States mail, or an established commercial letter delivery service, indicating cancellation to the Consultant at one of the following:

Name of Consultant

Street Address

City, State, Zip

Facsimile:

I hereby cancel this transaction.

Name of Borrower:

Signature of Borrower:

Date: "

(3) Within ten days following receipt of a notice of cancellation given in accordance with this subsection, the consultant shall return any original contract and any other documents signed by or provided by the borrower. Cancellation shall release the borrower of all obligations to pay any fees or compensation to the consultant.

§ 705. Penalties and other provisions. (a) If the superintendent finds, after notice and hearing, that a consultant has knowingly violated any provision of this article and the violation was material, the superintendent may: (1) make null and void any agreement between the borrower and the consultant; and (2) impose a civil penalty of not more than ten thousand dollars for each violation.

(b) If the consultant violates any provision of this article and the

borrower suffers damage because of the violation, the borrower may recover actual and consequential damages and costs from the consultant in an action based on this article. If the consultant recklessly violates any provision of this article, the court may award attorneys' fees and costs. If the consultant intentionally violates any provision of this article, the court may award treble damages, attorneys' fees and costs.

(c) Any provision of a student debt consulting contract that attempts or purports to limit the liability of the consultant under this article shall be null and void. Inclusion of such provision shall at the option of the borrower render the contract void. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this article shall be void at the option of the borrower. Any waiver of the provisions of this article shall be void and unenforceable as contrary to public policy.

(d) The provisions of this article are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

§ 706. Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgment of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article.

ARTICLE 8

COMMERCIAL FINANCING

Section 801. Definitions.
802. Exemptions.
803. Sales-based financing disclosure requirements.
804. Closed-end commercial financing disclosure requirements.
805. Open-end commercial financing disclosure requirements.
806. Factoring transaction disclosure requirements.
807. Other forms of financing disclosure requirements.

808. Disclosure requirements for renewal financing.
809. Required signature.
810. Additional information.
811. Rules and regulations.
812. Penalties.

§ 801. Definitions. For the purposes of this article:

(a) "Factoring transaction" means an accounts receivable purchase transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not yet been made.

(b) "Commercial financing" means open-end financing, closed-end financing, sales-based financing, factoring transaction, or other form of financing, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. For purposes of determining whether a financing is a commercial financing, the provider may rely on any statement of intended purposes by the recipient. The statement may be a separate statement signed by the recipient; may be contained in the financing application, financing agreement, or other document signed or consented to by the recipient; or may be provided orally by the recipient so long as it is documented in the recipient's application file by the provider. Electronic signatures and consents are valid for purposes of the foregoing sentence. The provider shall not be required to ascertain that the proceeds of a commercial financing are used in accordance with the recipient's statement of intended purposes.

(c) "Open-end financing" means an agreement for one or more extensions of open-end credit, secured or unsecured, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. "Open-end financing" includes credit extended by a provider under a plan in which: (i) the provider reasonably contemplates repeated transactions; (ii) the provider may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the recipient during the term of the plan (up to any limit set by the provider) is generally made available to the extent that any outstanding balance is repaid.

(d) "Closed-end financing" means a closed-end extension of credit, secured or unsecured, including equipment financing that does not meet the definition of a lease under section 2-A-103 of the uniform commercial code, the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes. "Closed-end financing" includes financing with an established principal amount and duration.

(e) "Finance charge" means the cost of financing as a dollar amount. It includes any charge payable directly or indirectly by the recipient and imposed directly or indirectly by the provider as an incident to or a condition of the extension of financing. It includes all charges that would be included under 12 C.F.R. part 1026.4 as if the transaction were subject to 12 C.F.R. part 1026.4. In addition, the finance charge shall include any charges as determined by the superintendent. For the purposes of an open-end financing, the finance charge shall assume the maximum amount of credit available to the recipient, in each case, is drawn and held for the duration of the term or draw period. For the purposes of a factoring transaction, the finance charge includes the discount taken on the face value of the accounts receivable.

(f) "Financial institution" means any of the following: (i) a bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate or charter issued by the United States, this state or any other state, district, territory, or commonwealth of the United States that is authorized to transact business in this state; (ii) a federally chartered savings and loan association, federal savings bank or federal credit union that is authorized to transact business in this state; or (iii) a savings and loan association, savings bank or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(g) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust or unincorporated organization including, but not limited to, a sole proprietorship.

(h) "Provider" means a person who extends a specific offer of commercial financing to a recipient. Unless otherwise exempt, "provider" also includes a person who solicits and presents specific offers of

commercial financing on behalf of a third party. For the avoidance of doubt, the extension of a specific offer or provision of disclosures for a commercial financing, in and of itself, shall not be construed to mean that a provider is originating, making, funding or providing commercial financing.

(i) "Recipient" means a person who applies for commercial financing and is made a specific offer of commercial financing by a provider. A recipient may also be an authorized representative of such person. A person acting as a broker cannot be a recipient.

(j) "Sales-based financing" means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.

(k) "Specific offer" means the specific terms of commercial financing, including price or amount, that is quoted to a recipient, based on information obtained from, or about the recipient, which, if accepted by a recipient, shall be binding on the provider, as applicable, subject to any specific requirements stated in such terms.

§ 802. Exemptions. This article shall not apply to, and shall not place any additional requirements or obligations upon, any of the following:

(a) a financial institution;

(b) a person acting in its capacity as a technology services provider, such as licensing software and providing support services, to an entity exempt under this section for use as part of the exempt entity's commercial financing program, provided such person has no interest, or arrangement or agreement to purchase any interest in the commercial financing extended by the exempt entity in connection with such program;

(c) a lender regulated under the federal Farm Credit Act (12 U.S.C. Sec. 2001 et seq.);

(d) a commercial financing transaction secured by real property;

(e) a lease as defined in section 2-A-103 of the uniform commercial code;

(f) any person or provider who makes no more than five commercial financing transactions in this state in a twelve-month period;

(g) an individual commercial financing transaction in an amount over two million five hundred thousand dollars; or

(h) a commercial financing transaction in which the recipient is a dealer as defined in section four hundred fifteen of the vehicle and traffic law, or an affiliate of such a dealer, or a rental vehicle company as defined in section three hundred ninety-six-z of the general business law, or an affiliate of such a company pursuant to a commercial financing agreement or commercial open-end credit plan of at least fifty thousand dollars, including any commercial loan made pursuant to such a commercial financing transaction.

§ 803. Sales-based financing disclosure requirements. A provider subject to this article shall provide the following disclosures to a recipient at the time of extending a specific offer of sales-based financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The estimated annual percentage rate, using the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, based on the estimated term of repayment and the projected periodic payment amounts, regardless of whether such act or such regulation would require such a calculation. The estimated term of repayment and the projected periodic payment amounts shall be calculated based on the projection of the recipient's sales, called the projected sales volume. The projected sales volume may be calculated using the historical method or the opt-in method. The provider shall provide notice to the superintendent on which method they intend to use across all instances of sales-based financing offered in calculating estimated

annual percentage rate pursuant to this section.

(i) The provider using the historical method shall use an average historical volume of sales or revenue by which the financing's payment amounts are based and the estimated annual percentage rate is calculated. The provider shall fix the historical time period used to calculate the average historical volume and use such period for all disclosure purposes for all sales-based financing products offered. The fixed historical time period shall either be the preceding time period from the specific offer or, alternatively, the provider may use average sales for the same number of months with the highest sales volume within the past twelve months. The fixed historical time period shall be no less than one month and not exceed twelve months.

(ii) The provider using the opt-in method shall determine the estimated annual percentage rate, the estimated term, and the projected payments, using a projected sales volume that the provider elects for each disclosure, provided, that they participate in a review process prescribed by the superintendent. A provider shall, on an annual basis, report data to the superintendent of estimated annual percentage rates disclosed to the recipient and actual retrospective annual percentage rates of completed transactions. The report shall contain such information as the superintendent, by rule or regulation, may prescribe as necessary or appropriate for the purpose of making a determination of whether the deviation between the estimated annual percentage rate and actual retrospective annual percentage rates of completed transactions was reasonable. The superintendent shall establish the method of reporting and may, upon a finding that the use of projected sales volume by the provider has resulted in an unacceptable deviation between estimated and actual annual percentage rate, require the provider to use the historical method. The superintendent may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual annual percentage rate in the determination of such finding.

(d) The total repayment amount, which is the disbursement amount plus the finance charge.

(e) The estimated term is the period of time required for the periodic payments, based on the projected sales volume, to equal the total amount required to be repaid.

(f) The payment amounts, based on the projected sales volume:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and, if the payment frequency is other than monthly, the amount of the average projected payments per month; or

(ii) for payment amounts that are variable, a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the amount of the average projected payments per month.

(g) A description of all other potential fees and charges not included in the finance charge, including, but not limited to, draw fees, late payment fees, and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 804. Closed-end commercial financing disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of extending a specific offer for closed-end financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, regardless of whether such act or

such regulation would require such a calculation.

(d) The total repayment amount, which is the disbursement amount plus the finance charge.

(e) The term of the financing.

(f) The payment amounts:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and, if the term is longer than one month, the average monthly payment amount; or

(ii) for payment amounts that are variable, a full payment schedule or a description of the method used to calculate the amounts and frequency of payments, and, if the term is longer than one month, the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payment fees and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 805. Open-end commercial financing disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of extending a specific offer for open-end financing according to formatting prescribed by the superintendent:

(a) The maximum amount of credit available to the recipient (e.g., the credit line amount), and the amount scheduled to be drawn by the recipient at the time the offer is extended, if any, less any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a nominal yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient, and calculated in accordance with the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22 and based on the maximum amount of credit available to the recipient and the term resulting from making the minimum required payments term as disclosed, regardless of whether such act or such regulation would require such a calculation.

(d) The total repayment amount, which is the draw amount, less any fees deducted or withheld at disbursement, plus the finance charge. The total repayment amount shall assume a draw amount equal to the maximum amount of credit available to the recipient if drawn and held for the duration of the term or draw period.

(e) The term of the plan, if applicable, or the period over which a draw is amortized.

(f) The payment frequency and amounts, based on the assumptions used in the calculation of the annual percentage rate, including a description of payment amount requirements such as a minimum payment amount, and if the payment frequency is other than monthly, the amount of the average projected payments per month. For payment amounts that are variable, the provider should include a payment schedule, or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, draw fees, late payment fees, and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 806. Factoring transaction disclosure requirements. A provider, subject to this article, shall provide the following disclosures to a recipient at the time of extending a specific offer for a factoring transaction according to formatting prescribed by the superintendent:

(a) The amount of the receivables purchase price paid to the recipient and, if different from the purchase price, the amount disbursed to the recipient after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The estimated annual percentage rate, using that term, calculated according to the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026 Appendix J, as a "single advance, single payment transaction", regardless of whether such act or such regulation would require such a calculation. To calculate the estimated annual percentage rate, the purchase amount is considered the financing amount, the purchase amount minus the finance charge is considered the payment amount, and the term is established by the payment due date of the receivables. As an alternate method of establishing the term, the provider may estimate the term for a factoring transaction as the average payment period, its historical data over a period not to exceed the previous twelve months, concerning payment invoices paid by the party owing the accounts receivable in question.

(d) The total payment amount, which is the purchase amount plus the finance charge.

(e) A description of all other potential fees and charges that can be avoided by the recipient.

(f) A description of the receivables purchased and any additional collateral requirements or security interests.

§ 807. Other forms of financing disclosure requirements. The superintendent may require disclosure by a provider extending a specific offer of commercial financing which is not open-end financing, closed-end financing, sales-based financing, or factoring transaction but otherwise meets the definition of commercial financing as provided in this article. Subject to such rules and regulations by the superintendent, a provider subject to this article shall provide the

following disclosures to a recipient at the time of extending a specific offer of other forms of financing according to formatting prescribed by the superintendent:

(a) The total amount of the commercial financing, and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursement.

(b) The finance charge.

(c) The annual percentage rate, using only the words annual percentage rate or the abbreviation "APR", expressed as a yearly rate, inclusive of any fees and finance charges, and calculated in accordance with the relevant sections of the federal Truth in Lending Act, Regulation Z or this article, regardless of whether such act or such regulation would require such a calculation.

(d) The total repayment amount which is the disbursement amount plus the finance charge.

(e) The term of the financing.

(f) The payment amounts:

(i) for payment amounts that are fixed, the payment amounts and frequency (e.g., daily, weekly, monthly), and the average monthly payment amount; or

(ii) for payment amounts that are variable, a payment schedule or a description of the method used to calculate the amounts and frequency of payments, and the estimated average monthly payment amount.

(g) A description of all other potential fees and charges that can be avoided by the recipient, including, but not limited to, late payment fees and returned payment fees.

(h) Were the recipient to elect to pay off or refinance the commercial financing prior to full repayment, the provider must disclose:

(i) whether the recipient would be required to pay any finance charges other than interest accrued since their last payment. If so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and

(ii) whether the recipient would be required to pay any additional fees not already included in the finance charge.

(i) A description of collateral requirements or security interests, if any.

§ 808. Disclosure requirements for renewal financing. If, as a condition of obtaining the commercial financing, the provider requires the recipient to pay off the balance of an existing commercial financing from the same provider, the provider must disclose:

(a) The amount of the new commercial financing that is used to pay off the portion of the existing commercial financing that consists of prepayment charges required to be paid and any unpaid interest expense that was not forgiven at the time of renewal. For financing for which the total repayment amount is calculated as a fixed amount, the prepayment charge is equal to the original finance charge multiplied by the amount of the renewal used to pay off existing financing as a percentage of the total repayment amount, minus any portion of the total repayment amount forgiven by the provider at the time of prepayment. If the amount is more than zero, such amount shall be the answer to the following question:

"Does the renewal financing include any amount that is used to pay unpaid finance charge or fees, also known as double dipping? Yes, {enter amount}. If the amount is zero, the answer would be No."

(b) If the disbursement amount will be reduced to pay down any unpaid portion of the outstanding balance, the actual dollar amount by which such disbursement amount will be reduced.

§ 809. Required signature. The provider shall obtain the recipient's signature, which may be fulfilled by an electronic signature, on all disclosures required to be presented to the recipient by this article before authorizing the recipient to proceed further with the commercial financing transaction application.

§ 810. Additional information. Nothing in this article shall prevent a provider from providing or disclosing additional information on a commercial financing being offered to a recipient, provided however, that such additional information shall not be disclosed as part of the disclosure required by this article. If other metrics of financing cost are disclosed or used in the application process of a commercial

financing, these metrics shall not be presented as a "rate" if they are not the annual interest rate or the annual percentage rate. The term "interest", when used to describe a percentage rate, shall only be used to describe annualized percentage rates, such as the annual interest rate. When a provider states a rate of finance charge or a financing amount to a recipient during an application process for commercial financing, the provider shall also state the rate as an "annual percentage rate", using that term or the abbreviation "APR".

§ 811. Rules and regulations. The superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgment of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article, including, but not limited to:

(a) Such rules and regulations in connection with the calculation or determination of any metric required to be disclosed to a recipient.

(b) Such rules and regulations as necessary to develop and prescribe disclosure formatting to be used by providers that allows for recipients to easily compare financing options in a clear and conspicuous manner. Such rules and regulations shall include the designation and method for disclosing the information required in this article, or approving adequate forms and methods already used by providers.

(c) Such rules and regulations as may define the terms used in this article and as may be necessary and appropriate to interpret and implement the provisions of this article.

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

§ 812. Penalties. (a) Upon a finding by the superintendent that a provider has violated the provisions of this article or the rules or regulations promulgated hereunder, the provider shall be ordered to pay to the people of this state a civil penalty for each violation of this article or any regulation or policy promulgated hereunder a sum not to exceed two thousand dollars for each violation or where such violation is willful ten thousand dollars for each violation.

(b) In addition to any penalty imposed pursuant to subdivision (a) of this section, upon a finding by the superintendent that a provider has knowingly violated this article, the superintendent may order additional relief, including, but not limited to, restitution or a permanent or preliminary injunction on behalf of any recipient affected by the violation.

ARTICLE 9

PRIVATE EDUCATION DEBT REPORTING

Section 901. Definitions.
902. Private education debt reporting.
903. Rules and regulations.
904. Violations.
905. Severability.

§ 901. Definitions. As used in this article:

1. "Higher education" means higher education or career education, as those terms are defined in section two of the education law, via correspondence, online, or in person, regardless of whether the provider of such higher education is located within New York state.

2. "Higher education expense" means any expense that is incurred by a consumer arising from higher education.

3. "Student loan servicer" has the same meaning as such term is defined in subdivision six of section seven hundred ten of the banking law.

4. "Private education creditor" means any person engaged in the business of extending a private education debt.

5. "Private education debt" means an extension of credit to or debt or obligation owed or incurred by a consumer, contractual or otherwise, that:

(a) is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. s.1070 et seq.);

(b) is extended to a consumer expressly, in whole or in part, for, or accrues from nonpayment of, higher education expenses, regardless of whether the credit or debt or obligation is owed to a provider of higher education; and

(c) is not a loan that is secured by real property or a dwelling.

"Private education debt" shall include extensions of credit or debt or obligations owed or incurred to refinance a private education debt.

6. "Provider of higher education" means a person engaged in providing or offering to provide higher education.

§ 902. Private education debt reporting. 1. Each student loan servicer shall, by the first of April of each year, submit an annual report which complies with any instructions published by the superintendent, in the manner set forth in such instructions, certifying as accurate the following information for the private education debt such student loan servicer serviced during the prior calendar year:

(a) a list of all private education creditors associated with the private education debts serviced by the student loan servicer that are owed by persons who resided in New York during the prior calendar year; and

(b) for each private education creditor reported pursuant to paragraph (a) of this subdivision, the following information:

(i) a list of the providers of higher education associated with the private education debts serviced by the student loan servicer;

(ii) the total outstanding dollar amount and number of private education debts and the number of consumers who owe such private education debts;

(iii) the total dollar amount and number of private education debts created in the prior calendar year;

(iv) the number of private education debts that experienced a default and the percentage of such private education debts associated with each private education creditor;

(v) the total dollar amount and number of private education debts that

defaulted for reasons other than non-payment in the prior calendar year;

(vi) the total dollar amount and number of private education debts with a cosigner or guarantor;

(vii) the total dollar amount and number of private education debts with a cosigner or guarantor created in the prior calendar year;

(viii) the total dollar amount and number of private education debts created to refinance other private education debts or federal student loans, respectively;

(ix) the total dollar amount and number of private education debts created to refinance other private education debts or federal student loans, respectively, in the prior calendar year;

(x) the total dollar amount and number of defaulted private education debts for which the student loan servicer commenced, maintained, or settled a lawsuit for collection in the prior calendar year; and

(xi) information as may in the judgment of the superintendent be necessary and appropriate in order to assess the total size and status of the private education debt market and to assess borrower well-being

4. Not later than two years following the effective date of this section, the superintendent shall create a publicly accessible website that includes at least the following information:

(a) The name, address, telephone number and website for all student loan servicers; and

(b) A summary of the information required by subdivision one of this section.

§ 903. Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgment of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article.

§ 904. Violations. 1. If the superintendent finds, after notice and hearing, that a student loan servicer has knowingly violated this

article by failing to comply with any reporting requirement or by knowingly furnishing materially inaccurate information to the superintendent, the superintendent may impose a civil penalty of not more than ten thousand dollars for each violation.

2. The superintendent may order that any person who has been found to have knowingly violated any provision of this article, or of the rules and regulations issued pursuant thereto, and has thereby caused financial harm to consumers, be barred for a term not exceeding ten years from acting as a student loan servicer, or a stockholder, or an officer, director, partner or other owner, or an employee of a student loan servicer.

§ 905. Severability. If any provision of this article or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, that judgment shall not affect or impair the validity of the other provisions of this article or the application thereof to other persons and circumstances.

ARTICLE 10

LITIGATION FUNDING

Section 1001. Definitions.
1002. Contract requirements; right of rescission.
1003. Prohibitions and charge limitations.
1004. Payment of charges.
1005. Disclosures.
1006. Violations.
1007. Assignability; liens.
1008. Effect of communication on privileges.
1009. Registration.
1010. Reporting.
1011. Severability.

§ 1001. Definitions. As used in this article, the following terms

shall have the following meanings:

(a) "Advertise" means publishing or disseminating any written, oral, electronic or printed communication or any communication by means of recorded telephone messages or transmitted or broadcast on radio, television, the internet or similar communications media, including audio recordings, film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a litigation funding contract.

(b) "Charges" means anything to be paid to a litigation funding company by or on behalf of a consumer pursuant to a litigation funding contract. Charges includes all administrative, origination, underwriting or other fees, including interest and payment of the funded amount, no matter how denominated.

(c) "Funding litigation" or "to fund litigation" means providing no more than five hundred thousand dollars to a consumer in exchange for the consumer's agreement to pay the litigation funding company from the potential proceeds of any settlement, judgment, award or verdict that may be paid to resolve that consumer's legal claim.

(d) "Litigation funding contract" or "contract" means an agreement between a litigation funding company and a consumer to fund litigation.

(e) "Litigation funding company" or "company" means a person or entity that is engaged in the business of funding litigation. This term shall not include an immediate family member of the consumer or an attorney representing a consumer on a contingency basis that is not a litigation funding company on the basis of such representation.

(f) "Consumer" means a natural person who has a legal claim and who resides or is domiciled in New York state and the claim is or will be filed in a New York state or federal court.

(g) "Funded amount" means the amount of monies provided to, or on behalf of, a consumer pursuant to a litigation funding contract.

(h) "Funding date" means the date on which the funded amount is transferred to the consumer by the litigation funding company.

(i) "Immediate family member" means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.

(j) "Legal claim" means a civil claim or cause of action.

§ 1002. Contract requirements; right of rescission. (a) All litigation funding contracts shall meet the following requirements:

(i) a contract shall be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the contract without having to obtain the assistance of a professional;

(ii) the contract shall be completely filled in when presented to the consumer for signature;

(iii) the contract shall contain, in twelve point bold type font, a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within ten business days after the funding date, the consumer returns to the litigation funding company the full amount of the funded amount;

(iv) the contract shall contain a space for the consumer to initial each page;

(v) a statement that there is nothing to be paid by the consumer other than the charges that are disclosed in the contract;

(vi) in the event the consumer seeks more than one litigation funding contract from the same company, a disclosure providing the cumulative amount due from the consumer for all transactions under all contracts, provided that a litigation funding company may not obtain an interest that, in aggregate, would result in charges that exceed the funded amount plus twenty-five percent of the gross proceeds of the consumer's legal claim;

(vii) a statement of the maximum charges the consumer may be obligated to pay under the contract;

(viii) a statement that a consumer may be liable for a breach of contract claim if they materially breach a contract or engage in fraud or material misrepresentation relating to a contract; and

(ix) a clear explanation of how and when the consumer is obligated to pay the charges to the litigation funding company, including an explanation of the consumer's payment obligations if the proceeds of the legal claim will be paid to the consumer over time.

(b) The contract shall contain a written acknowledgement by the attorney retained by the consumer in the legal claim that attests to the

following:

(i) the attorney has reviewed the mandatory disclosures in section one thousand five of this article with the consumer;

(ii) the attorney is being paid on a contingency basis pursuant to a written fee agreement;

(iii) all proceeds of the legal claim will be disbursed via either the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer;

(iv) the attorney is obligated to take all reasonable steps to disburse funds from the legal claim and to ensure that the terms of the litigation funding contract are fulfilled;

(v) the attorney has not received a referral fee or other consideration from the litigation funding company in connection with the litigation funding, nor will the attorney receive such fee or other consideration in the future; and

(vi) the attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.

(c) In the event that the acknowledgement required pursuant to paragraph (iii) of subsection (b) of this section is not completed by the attorney or firm retained by the consumer in the legal claim, the contract shall be null and void. The contract shall remain valid and enforceable in the event the consumer terminates the initial attorney and/or retains a new attorney with respect to the legal claim.

(d) Notwithstanding paragraph b of subdivision three of section 5-501 of the general obligations law, no prepayment penalties or fees shall be charged or collected on consumer litigation funding. A prepayment penalty on a litigation funding contract shall be unenforceable.

§ 1003. Prohibitions and charge limitations. Litigation funding companies shall be prohibited from:

(a) paying or offering to pay commissions, referral fees, or any other form of consideration to any attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees for referring a consumer to the company;

(b) accepting any commissions, referral fees, rebates or any other

form of consideration from an attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees;

(c) advertising materially false or misleading information regarding its products or services;

(d) referring a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor or physical therapist or any of their employees; provided, however, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service;

(e) knowingly providing funding to a consumer who has previously signed a litigation funding contract with a another litigation funding company for the same claim without first acquiring or extinguishing the consumer's obligations pursuant to the prior litigation funding contract, provided that nothing herein shall prohibit multiple companies from agreeing to contemporaneously provide funding to a consumer provided that the consumer and the consumer's attorney consent to the arrangement in writing as long as the interest held by those litigation funding companies, in aggregate, does not exceed the funded amount plus twenty-five percent of the proceeds of the consumer's legal claim;

(f) influencing or attempting to influence any decisions with respect to the conduct of the consumer's legal claim or any settlement or resolution thereof. The right to make such decisions shall remain solely with the consumer and the consumer's attorney in the legal claim;

(g) obtaining a waiver of any remedy or right by the consumer, including but not limited to the right to trial by jury;

(h) knowingly paying or offering to pay for court costs, filing fees or attorney's fees either during or after the resolution of the legal claim, using funds from the litigation funding transaction;

(i) entering into a litigation funding contract with a consumer who the litigation funding company knows is represented by an attorney or law firm in the legal claim that has a financial interest in the litigation funding company offering litigation funding to that consumer;

(j) requiring an attorney who represents a consumer to disclose privileged information to the litigation funding company without the written consent of the consumer. The attorney who represents the consumer shall disclose to the litigation funding company the amount of the proceeds of the settlement, judgment, award or verdict;

(k) requiring a consumer to pay charges that exceed twenty-five percent of the gross proceeds from the applicable legal claim plus the funded amount;

(l) requiring a consumer to pay anything that exceeds the available proceeds from a resolution of the consumer's claim;

(m) providing more than five hundred thousand dollars to a consumer to fund litigation; and

(n) entering into a litigation funding contract with a consumer if the litigation funding company has any reasonable basis to believe that the consumer's legal claim is frivolous, based on a false statement of facts or otherwise that it is not meritorious.

§ 1004. Payment of charges. A consumer may only be required to pay charges to a litigation funding company when the resolution of any of the consumer's legal claims subject to a contract is final, related appeals, if any, have been resolved, and proceeds of the settlement, judgment, award or verdict have been received by the consumer's counsel.

§ 1005. Disclosures. All litigation funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, such disclosures shall be typed in at least twelve point bold type font and be placed clearly and conspicuously within the contract, as follows:

(a) On the front page under appropriate headings, language specifying:

(i) the funded amount;

(ii) an itemization of all charges;

(iii) a payment schedule to help consumers understand how much they will have to pay in charges based on different hypothetical resolutions of the consumer's legal claim; and

(iv) the following statement in at least twelve point type font: "The maximum amount you may be required to pay cannot exceed 25% of the gross recovered amount received for your claim plus the amount paid to you by the litigation funding company, but only to the extent that there are proceeds available from your legal claim."

(b) Within the body of the contract in at least twelve point type

font: "Consumer's right to cancellation: you may cancel this contract without penalty or further obligation within ten business days after the date you receive the payment from the litigation funding company if you return to the litigation funding company the full amount of the disbursed funds."

(c) Within the body of the contract, an explanation that the litigation funding company shall have no role in deciding whether, when and how much the legal claim is settled for, however, the consumer and consumer's attorney must notify the company of the outcome of the legal claim by settlement or adjudication prior to paying the company from the proceeds of any settlement, judgment, award or verdict that may be paid to resolve that consumer's legal claim. The company may seek updated information about the status of the legal claim but in no event shall the company interfere with the independent professional judgment of the attorney in the handling of the legal claim or any settlement thereof.

(d) Within the body of the contract, in all capital letters in at least twelve point bold type font contained within a box: "THE AGREED UPON CHARGES SHALL BE PAID ONLY FROM ANY PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF LITIGATION FUNDING COMPANY)."

(e) Located immediately above the place on the contract where the consumer's signature is required, in twelve point bold type font: "Do not sign this contract before you read it completely. Do not sign this contract if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract before you sign this contract. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this contract. You further acknowledge that your attorney has explained the terms and conditions of the litigation funding contract."

(f) A copy of the executed contract shall promptly be delivered to the attorney for the consumer.

(g) The following shall be printed within the body of the contract in all capital letters in at least twelve point bold type font: "PURSUANT TO THE LAWS OF THE STATE OF NEW YORK, THE MAXIMUM AMOUNT YOU MAY BE REQUIRED TO PAY CANNOT EXCEED 25% OF THE GROSS RECOVERED AMOUNT RECEIVED FOR YOUR CLAIM PLUS THE AMOUNT PAID TO YOU BY THE LITIGATION FUNDING COMPANY."

§ 1006. Violations. (a) Any litigation funding company found in willful violation of any provision of this article in a specific funding case: (i) waives its right to recover the charges, as defined in subsection (b) of section one thousand one of this article, in that particular case; and (ii) shall be liable for a civil penalty of not more than five thousand dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general.

(b) Nothing in this article shall be construed to restrict the exercise of powers or the performance of the duties of the New York state attorney general, which such attorney general is authorized to exercise or perform by law.

§ 1007. Assignability; liens. (a) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer and/or litigation funding company.

(b) Only attorney's liens related to the legal claim which is the subject of the litigation funding contract or Medicare or other statutory liens related to the legal claim shall take priority over any lien of the litigation funding company. All other liens shall take priority by normal operation of law.

§ 1008. Effect of communication on privileges. All communications between the consumer's attorney in the legal claim and the litigation funding company as it pertains to the legal claim that is subject to the litigation funding contract shall not constitute a waiver of any privilege or protection, including but not limited to the attorney

client privilege and the work-product doctrine.

§ 1009. Registration. (a) Except as provided in this section, no person may engage in litigation funding in this state without being registered with the department. The registration requirement shall not apply to a banking organization as defined in subdivision eleven of section two of the banking law or a licensed lender licensed pursuant to article nine of the banking law.

(b) An application for registration shall be filed in the manner prescribed by the superintendent and must contain all the information required by the department. The application shall be accompanied by a five hundred dollar fee. The superintendent shall have the power to approve or deny a registration application, based on whether such application is complete, accurate and otherwise in compliance with applicable laws or regulations.

(c) The superintendent may revoke or suspend the registration of any litigation funding company if, upon notice and a hearing, the superintendent determines that the litigation funding company or any member, principal, officer, director or controlling person of the litigation funding company has:

(i) committed a violation of the insurance law, banking law or this chapter or any regulation promulgated thereunder, an order or subpoena of the superintendent or the head of another state's insurance, banking or financial services regulatory agency or federal agency with authority to regulate litigation funding companies, or has violated any other law in the course of engaging in the business of a litigation funding company;

(ii) provided materially incorrect, materially misleading, materially incomplete or materially untrue information in the registration application;

(iii) failed to comply with the requirements of this article or any other applicable provision of the banking law or the insurance law;

(iv) used fraudulent, coercive or dishonest practices in the conduct of litigation funding company business;

(v) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or

elsewhere;

(vi) admitted or been found to have committed any unfair trade practice or fraud; or

(vii) had its registration, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

(d) Upon the revocation or suspension by the superintendent of the registration of a litigation funding company, the superintendent shall forthwith notify such litigation funding company. The revocation or suspension of any registration pursuant to this section shall terminate or suspend, respectively, such registration immediately upon the issuance of such notice.

(e) All litigation funding contracts entered into prior to the effective date of this article are not subject to the terms of this article.

(f) A litigation funding company that has filed an application for registration with the department, within one hundred eighty days of when the department first makes such applications available, may enter into litigation funding contracts, while their application remains pending with the department.

(g) The superintendent is hereby authorized to adopt rules and regulations to implement the provisions of this article as needed.

§ 1010. Reporting. (a) Beginning in two thousand twenty-seven, each litigation funding company that engages in business in this state shall submit an annual report to the department in a form and manner determined by the department no later than the thirty-first day of January of each year specifying for the preceding calendar year:

(i) the number of litigation funding contracts for which the charges were paid and for each such contract:

(A) the funded amount;

(B) the amount paid by the consumer to the litigation funding company; and

(C) the total number of days that elapsed between the funding date and the date the last payment of the charges was made to the litigation funding company by the consumer.

(ii) the number of litigation contracts that the company has written

off as being uncollectible and for each contract:

(A) the funded amount; and

(B) the total number of days that elapsed between the funding date and the date the litigation funding company wrote off the contract as being uncollectible.

(iii) the number of cases initiated by the litigation funding against a consumer.

(b) The department shall make such information available to the public, in a manner which maintains the confidentiality of the name of each company and consumer and other personally identifiable information of the consumer, no later than ninety days after the reports are submitted.

§ 1011. Severability. If any provision of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.