

STATE OF NEW YORK

5462--A

2011-2012 Regular Sessions

IN SENATE

May 24, 2011

Introduced by Sen. GRIFFO -- (at request of the Department of Financial Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to licensed lenders, licensed cashers of checks, sales finance companies, premium finance companies, budget planners and transmitters of money; and to repeal certain provisions of such law relating thereto

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

- 1 Section 1. Section 340 of the banking law, as amended by chapter 22 of
 2 the laws of 1990, is amended to read as follows:
 3 § 340. Doing business without license prohibited. No person [~~or other~~
 4 ~~entity~~] shall engage in the business of making loans in New York in the
 5 principal amount of [~~twenty-five~~] fifty thousand dollars or less for any
 6 loan to an individual for personal, family, household, or investment
 7 purposes and in a principal amount of [~~fifty~~] one hundred thousand
 8 dollars or less for business and commercial [~~loans, and charge, contract~~
 9 ~~for, or receive a greater rate of interest than the lender would be~~
 10 ~~permitted by law to charge if he were not a licensee hereunder except as~~
 11 ~~authorized by this article and~~] purposes without first obtaining a
 12 license from the superintendent.
 13 For the purposes of this section, a person [~~or entity~~] shall be
 14 considered as engaging in the business of making loans in New York, and
 15 subject to the licensing and other requirements of this article, if it
 16 solicits loans in [~~the amounts prescribed by this section within~~] this
 17 state by any means, including but not limited to, mail, electronic mail,
 18 telephone, radio, television, the internet or any other electronic
 19 means, and, in connection with such solicitation, makes loans to indi-

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

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1 viduals then resident or located in this state or, in the case of loans
2 for business or commercial purposes, having a place of business within
3 this state, except that no person [~~or entity~~] shall be considered as
4 engaging in the business of making loans in this state on the basis of
5 [~~isolated, incidental or occasional~~] transactions which otherwise meet
6 the requirements of this section if the number of loans made in any one
7 year by any such person is not more than five loans and the aggregate
8 amount of loans outstanding at any one time does not exceed one hundred
9 thousand dollars. The superintendent may exempt from the licensing and
10 other requirements of this article, on such terms as he or she shall
11 deem consistent with the purposes of section ten and this article, any
12 person the superintendent determines is not engaged in the business of
13 making loans in this state, other than as an incident to another legal
14 business activity.

15 Nothing in this article shall apply to licensed collateral loan
16 brokers.

17 § 2. The banking law is amended by adding a new section 340-a to read
18 as follows:

19 § 340-a. Definitions. When used in this article: 1. The term "person"
20 means any individual or legal entity, including any corporation, part-
21 nership, association or limited liability company.

22 2. The term "control" means the possession, directly or indirectly, of
23 the power to direct or cause the direction of the management and poli-
24 cies of a person, whether by means of the ownership of the voting stock
25 or equity interests of such person or of one or more persons controlling
26 such person, by means of a contractual arrangement, or otherwise.
27 Control shall be presumed to exist if any person directly or indirectly
28 owns, controls or holds with the power to vote ten percent or more of
29 the voting stock or equity interests of a licensee or of any other enti-
30 ty that directly or indirectly controls such person.

31 § 3. Subdivisions 3 and 5 of section 341 of the banking law, as
32 amended by chapter 494 of the laws of 1998, are amended to read as
33 follows:

34 3. In addition to the investigation fee [~~and annual license fee~~] every
35 licensee hereunder shall pay to the superintendent the sums provided to
36 be paid under the provisions of [~~section seventeen of the banking law~~]
37 applicable law.

38 5. The applicant shall also prove, in form satisfactory to the super-
39 intendent, that the applicant has available for the operation of such
40 business [~~at the location or locations specified in the application~~]
41 liquid assets [~~of at least fifty thousand dollars~~], net worth and such
42 other liquidity facilities, each as defined by the superintendent, and
43 in such amounts as may be determined by the superintendent. This amount
44 shall be maintained for the period within which the licensee makes loans
45 in the amounts prescribed in section three hundred forty of this article
46 [~~at such location~~].

47 § 4. Section 342 of the banking law, as amended by chapter 494 of the
48 laws of 1998, is amended to read as follows:

49 § 342. Conditions precedent to issuing license; procedure where appli-
50 cation denied. Upon the filing of such application and the payment of
51 such fees, if the superintendent shall find that the financial responsi-
52 bility, experience, character, and general fitness of the applicant, and
53 of the members thereof if the applicant be a partnership [~~or~~], associ-
54 ation or limited liability company, and of the officers and directors
55 thereof if the applicant be a corporation, are such as to command the
56 confidence of the community and to warrant belief that the business will