

2009 CHAPTER LAW SUMMARY

(NYBA Position in Parentheses)

During the 2009 232nd Regular Session of the New York State Legislature, 556 bills passed both Houses, of which 24 related to banking. By contrast, in 2008, 811 bills passed both Houses. As of August 31, 2009, Governor Paterson had signed 415 chapter laws and issued 58 veto messages. The banking-related bills that were signed as chapters are listed below in the order of their chapter law number, followed by bills that passed both Houses that were vetoed by the Governor. NYBA's position, the date of signature or veto and the effective dates of the chapters are also listed.

PART I – BILLS SIGNED INTO LAW

Chapter Law 4 – Power of Attorney Law Effective Date Deferment

A. 4392 (Weinstein)/S. 1728 (Sampson), a bill requested by NYBA in a letter to Governor Paterson asking that he sign the revised power of attorney law, Chapter 644 of 2008. Chapter 644 was scheduled to take effect on March 1, 2009, but was not signed until January, leaving what NYBA and many others felt was insufficient time for banks to prepare for the revised power of attorney. (SUPPORT) The bill delayed the effective date until September 1, 2009, was signed by Governor Paterson on February 25 as Chapter Law 4, and was effective immediately.

Chapter Law 11 – Multiple Branches in Banking Development Districts

A. 259 (Peralta)/S. 1936 (Parker), a bill on which NYBA took no position that permits banks and thrifts to establish more than one branch in a Banking Development District. The bill had certain technical flaws which were corrected in Chapter Law 330. The Governor signed the bill as Chapter 11 of the Laws of 2009 on April 7, effective immediately.

Chapter Law 12 – Technical Corrections for Certain Guardianships

A. 2003 (Weinstein)/S. 2225 (Huntley), a bill which makes technical corrections to provisions of the SCPA designating surrogate decision-making committees as guardians of mentally retarded persons when making health care decisions. (SUPPORT) It was signed as Chapter Law 12 on April 7 and became effective immediately.

Chapter Law 24 – Governmental Exception to Exempt Funds Law

S. 1755-A (Schneiderman)/A. 4460-A (Weinstein), a bill that provided to New York State and its political subdivisions, as well as for debts for alimony and support, an exception from the new \$2,500 exempt funds law passed last year. The bill was amended to respond to two of NYBA's concerns by eliminating the retroactive effective date and providing clear notice of which restraining notices were exempt. However, NYBA remained strongly opposed, filing a strong memorandum pointing out the unfairness of requiring banks to operate two, parallel and different systems of responding to restraining notices, the impossibility of compliance by the date of enactment and the difficulty and cost of compliance. However, because the State argued that failure to pass the bill would cost the State at least \$45 million, Governor Paterson signed it on May 4 as Chapter 24 of the Laws of 2009. (OPPOSE) The law was effective immediately. NYBA began urging banks to prepare to comply several weeks in advance as it became clear that the bill would be signed.

Chapter Law 57 – State Budget and Taxes

A. 157-B (Budget)/S. 57-B (Budget), enacting the revenue raising provisions of the 2009-2010 New York State Budget. NYBA was pleased that, for the first time in several years, the Executive Budget did not contain provisions increasing the Bank Tax. However, included in a title that established a new and extensive tax enforcement and compliance program were two potentially costly and objectionable provisions. The finally enacted budget dropped both provisions, one that would have required every bank and thrift doing business in New York to report annually on the total transactions in all accounts (including brokerage and demand, time and savings accounts) for every business customer, and a second that would have repealed favorable tax treatment for the bad debt of private label credit card providers. Other enacted budget provisions affecting banks included:

- a provision increasing fees for bounced checks and failed electronic transfer transactions payable to the Tax Department to \$50;
- a registration program for tax preparers, and regulation of refund anticipation loans;
- a major New York Higher Education Loan Program designed to provide more than \$350 million in student loans to 45,000 borrowers a year. The program will rely on borrowing by SONYMA to subsidize interest rates and State funding for a loan loss reserve. Banks and thrifts throughout the State should be legible to participate.
- an increase from thirty to forty percent of the previous year's tax the amount most corporations, including banks, must pay with their first estimated income tax and MTA surcharge payments of the year;
- revisions to the Empire Zone program;
- an acceleration from February 28 to January 31 in the last employee withholding filing by each employer in the State; and
- an increase in tax rates and reduction in allowable itemized deductions under the personal income tax for individuals, couples, and trusts and estates.

Governor Paterson signed the bill on April 7 as Chapter Law 57, with many of the revenue provisions retroactive to January 1, 2009.

Chapter Law 92 – Simultaneous Death Defined

A. 2762-A (Weinstein)/S. 4030 (Sampson), a bill that clarifies, for the purpose of passing on property, that a person who dies within 120 hours of a decedent will be considered as having predeceased the decedent. (NO POSITION) The bill was signed as Chapter 92 of the Laws of 2009 on July 11, effective ten days after enactment, on July 21, 2009.

Chapter Law 122 – Wild Card Extended

A. 6923-A (Towns)/S. 3724-A (Foley), a bill that extends the effectiveness of the State "wild card" law, which authorizes State-chartered banks and thrifts to engage in the same activities as national banks and federal thrifts respectively, for two years, until September 10, 2011. (SUPPORT) Governor Paterson signed the bill as Chapter 122 of the Laws of 2009 on July 11. It was effective immediately.

Chapter Law 123 – Mortgage Loan Originator Registration

A. 6924-B (Towns)/S. 3725-A (Foley), a bill that conforms the standards of New York's mortgage loan originator statute to the federal law passed last summer. (SUPPORT) If not enacted by August, New York mortgage loan originator system would have been supplanted by a federal registration process implemented by the Department of Housing and Urban Development. The bill was signed on July 11 as Chapter Law 123, effective immediately.

Chapter Law 166 – Extending Provisions Governing Certain Open End Loans

A. 8382 (Castro)/S. 5534 (Foley), a bill that extends for two years, until June 30, 2011, authorization for the imposition of certain fees in open end loans under the Banking Law. (SUPPORT) Governor Paterson signed the bill on July 11 as Chapter 166 of the Laws of 2009 and it was effective immediately.

Chapter Law 177 – SONY MA Authority Extended

A. 8529 (Lopez)/S. 3694-A (Perkins), a bill that extends for a year the authorization for the State of New York Mortgage Agency (SONY MA) and increases its bonding authority. (SUPPORT) It was signed on July 11 as Chapter Law 177, effective immediately.

Chapter Law 201 – New York City Tax Conformity

A. 8867 (Farrell)/S. 5898 (Krueger), legislation designed to conform a number of provisions of the New York City bank and general corporation tax law to the State General Corporation Tax (Article 9-A of the Tax Law) and Bank Tax (Article 32). The bill, as enacted, conforms directly to the State REIT provision, phasing in the new City REIT tax over two years with 75% of the tax in place in 2009 and 2010 and the tax fully effective on January 1, 2011. In addition, the credit card bank nexus provision was delayed two years, until January 1, 2011. Importantly, as a result of a NYBA initiative, the bill also conformed to the State net operating loss carryover provision, effective January 1, 2009. The original legislative draft proposed by New York City would have provided for immediate conformity on the credit card bank nexus provision, accelerated the effective date of the REIT provision and had no NOL language at all. NYBA worked hard to improve the original legislation with both the City and the State.

The bill also adopted the State singles sales factor for apportionment by banks that provide certain services to investment companies; applied State limitations to grandfathered 9-A corporations; applied certain alternative minimum tax rules to foreign banks; and established a new tax enforcement program similar to the State's. Among the provisions of that program is a City data matching program for delinquent taxpayers modeled on the State program enacted last year.

The bill was signed as Chapter 201 of the Laws of 2009 on July 11, effective, with certain exceptions, for tax years beginning January 1, 2009.

Chapter Law 217 – Power for Jobs Extension

A. 9039 (Cahill)/S. 6031 (Aubertine), a bill to extend the expiring provisions of the Power for Jobs program, providing lower cost energy for certain employers. (SUPPORT) Governor Paterson signed the bill on July 11 as Chapter 217 of the Laws of 2009. It was effective immediately.

Chapter 247 – Penalties for Credit Billing Errors

S. 1376-A (Stavisky)/A. 8122 (Jeffries), increasing the penalty for credit billing errors from \$100 to \$400. (OPPOSE) Signed on July 28 as Chapter Law 247, it became effective on September 1, 2009.

Chapter 275 – Tax Lien Foreclosure Commencement

S. 3639 (Squadron)/A. 7966 (Galef), a bill to provide an alternative means of providing notice of the commencement of a foreclosure of a tax lien when the Tax Commissioner is a party to the

proceeding. (DID NOT OPPOSE) The bill was signed on July 28 as Chapter 275 of the Laws of 2009, effective immediately.

Chapter 281 – Foreclosure Proceeding Description

S. 3847-A (Krueger)/A. 6017-A (Gottfried), a bill which requires the court to explain fully to a party not represented by an attorney in a summary proceeding to foreclose real property the effect of a stipulation. (DID NOT OPPOSE) Governor Paterson signed the bill on July 28 as Chapter Law 281. It becomes effective sixty days later, on September 26.

Chapter 330 – Chapter Amendment on Banking Development District Branches

A. 7921 (Peralta)/S. 4583 (Parker), a chapter law amendment which makes a technical correction to Chapter Law 11. (NO POSITION) The bill was signed on August 11 as Chapter 330 of the Laws of 2009, becoming effective immediately.

The Governor has not yet taken action on at least one additional banking bill, A. 3409 Perry/S. 2460 (Sampson), which has been delivered to the Governor. The bill redefines over-the-limit charges under retail installment credit agreements and other installment obligations to exclude interest charges and other fees in the determination of when an over-the-limit fee can be imposed. NYBA has filed a letter urging the Governor to veto the bill, pointing out that it is superseded by the federal CREDIT CARD Act and would apply only to State-chartered banks and thrifts.