

MEMORANDUM IN OPPOSITION

RE: S. 4291-C (Parker)/A. 6312-C (Kavanagh) AN ACT to amend the state finance law, in relation to funds of the state

The New York Bankers Association **opposes** this legislation that would prohibit the State Comptroller from establishing an account in a banking institution with a federal Community Reinvestment Act (CRA) rating of less than satisfactory. This legislation would discriminate against State-chartered institutions, would be impossible to implement, is inconsistent with CRA, and would violate the State Constitution. We urge that it be **held**. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members hold more than \$9 trillion in assets and employ approximately 250,000 New Yorkers.

This legislation would amend the State Finance Law to prohibit the State Comptroller from designating for the deposit of State funds and the funds of any charitable or benevolent institution any depository institution which is subject to the federal CRA and that receives a rating of less than “satisfactory” as determined under the federal CRA in accordance with section 28-b of the Banking Law. Section 28-b of the Banking Law applies only to State-chartered depository institutions, precluding these institutions from competing on equal terms with federally chartered banks and trust companies. New York State should provide an equal opportunity for all of its banks and thrifts to compete for State deposits and should not discriminate against State-chartered institutions.

In addition, the drafting of this legislation would literally make compliance impossible. Section 28-b of the Banking Law requires the Banking Superintendent to make an independent determination, under quite different criteria than contained in the federal CRA, of State-chartered bank and trust company performance under the State CRA. But this legislation would limit the authority of the State Comptroller to open deposit accounts in depository institutions that receive a less than satisfactory rating under the federal CRA as determined under the State CRA. However, the State has no hand in making determinations under the federal CRA.

In addition, this legislation is inconsistent with the purposes for which CRA was enacted. As its name indicates, the purpose of CRA is to assess the extent to which a depository institution serves the credit needs of the community in which it is located and from which it draws its deposits. Attempting to apply CRA assessments to State deposits without doing a comparable assessment of how well a depository serves the needs of the entire State would be an attempt to convert the statute into something it is not.

Finally, Article III, section 16 of the Constitution of the State of New York provides that: “No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.” There are two exceptions in the Constitution (one for tax bills and the other for bills recommended by

State agencies), neither applicable to this legislation. By failing to include the entire text of the State and federal CRA in the bill, this legislation violates the State Constitution.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be **held**.