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## MEMORANDUM IN OPPOSITION

February 5, 2010

**S6698 Foley (On Senate Banks Committee Agenda)  
A9872 Towns (Assembly Banks Committee)**

*AN ACT to amend chapter 591 of the laws of 2001 amending the banking law relating to limiting the check cashing exemption for national banks and other regulated entities, in relation to the effectiveness of such chapter*

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

This legislation would make permanent the elimination of the exemption previously contained in Article 9-A (governing geographic separation requirements for check cashers) of the Banking Law for commercial banks and other parties licensed under provisions of the Banking Law other than Article 9-A, to the extent that the non-Article 9-A licensees establish separate offices used primarily for the cashing of checks. Article 9-A prohibits check cashing offices from being established within three-tenths of a mile (approximately six city blocks) from another check cashing office. Thus, this legislation would permanently subject banks to the geographic restrictions of the check cashing law. As Governor Spitzer stated in Veto Message Number 4, disapproving a predecessor of this legislation, this legislation “is clearly anticompetitive,” and denies consumers the opportunity for better services and lower costs.

Beginning in the early 1990s, several New York banks began establishing separate check cashing offices, or began opening extensions of existing bank branches or other offices dedicated to check cashing. Typically, these offices were designed to meet the needs of specific groups of bank customers - business customers seeking a safe, convenient and reasonably priced outlet for their employees' check cashing needs, groups of employees wanting to cash payroll checks without standing in teller lines, or neighborhoods with otherwise limited banking services who needed check cashing facilities when paychecks were issued. One of the major restrictions contained in Section 369 of the Banking Law prohibits the Banking Department from licensing a check cashing office within three-tenths of a mile of an existing office. This limit did not apply to commercial bank branches or other offices, many of which can be seen on the same street corners as their competitors, until Chapter Law 591 in 2001. However, in 2007, Governor

Spitzer vetoed legislation with language in part identical to this bill that would have made Chapter Law 591 permanent.

The Governor's veto message (Number 4 of 2007) could not have been clearer: "This geographical limitation is clearly anti-competitive, and benefits those companies that were already operating check cashing facilities when the ban was put in place. Other financial institutions that wish to open similar facilities nearby -- and perhaps offer better service or lower fees -- are prohibited from doing so."

Check cashing is central to the function of commercial banking. The United States Supreme Court has, in fact, defined banks as places "at which deposits are received, or checks paid, or money lent." Dickinson v. First Nat'l. Bank in Plant City, 396 U.S. 122 (1969). See also the definition of branch in 12 U.S.C. Sec. 36. Because this function is so central to the definition of banking, it is likely that this bill will be interpreted by the Office of the Comptroller of the Currency as not applying to national banks, with the result that only State-chartered banks would be subject to its geographic restrictions.

In addition, commercial banks are regulated comprehensively by New York State and the Federal government. Every aspect of their operations, from capital requirements to personnel decisions, from lending disclosures to check payment standards, is subject to examination and supervision by banking regulators. By contrast, the regulation of check cashers by the State of New York is less stringent. Therefore, this legislation would impose on commercial banks that establish separate offices used primarily for check cashing wholly unnecessary additional restrictions. Therefore, Chapter 591 should be allowed to expire as scheduled.

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

**Respectfully Submitted,**

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**