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# MEMORANDUM IN OPPOSITION

**June 11, 2010**

**S. 8066 Squadron (ON SENATE BANKS COMMITTEE AGENDA)**
**A. 10918 Silver (Passed Assembly)**

***AN ACT to amend the banking law, in relation to requiring notice to renters of safe deposit boxes regarding fees and charges***

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.

The New York Bankers Association opposes this legislation that would provide the New York State Banking Superintendent authority to determine whether fees and charges for the rental of safety deposit boxes are reasonable. The bill also contains disclosure and annual reporting requirements and prohibits the imposition of a charge for access to a safety deposit box after an Act of God, common disaster or emergency situation precluded the box's lessee from gaining access. Our Association opposes fee restrictions because they can dramatically restrict access to goods and services. This legislation would also apply only to State-chartered institutions, placing the commercial banks and thrift institutions chartered by New York State at a severe competitive disadvantage to national banks and federal thrift institutions. We urge that this bill 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 aggregate assets in excess of $9 trillion and employ approximately 250,000 New Yorkers.

This legislation would require that banking institutions that lease safety deposit boxes provide to lessees a copy of all fees and charges as part of the lease agreement and include their list of fees and charges in their annual report to the Banking Superintendent. In addition, it would require that the Banking Superintendent determine that all such fees and charges are reasonable, and prohibit the charging of a fee for access to a safety deposit box when an Act of God, common disaster or emergency situation prevents access by the lessee. The Banking Superintendent is given authority to promulgate regulations to implement the provisions of this legislation.

Our Association believes that all bank customers are entitled to appropriate disclosure of the fees and charges for banking services. We also understand that the vast majority of banks in

our membership do not charge for access to a safe deposit box as a matter of policy when a common or natural disaster, such as a fire, earthquake or similar catastrophe makes it impossible for their customers to access their safe deposit boxes. We understand the concern of the authors of this legislation with regard to these victims of disasters, but we believe that the legislation goes too far. We are concerned that this legislation would provide the New York State Banking Superintendent unfettered discretion to determine whether fees charged by State-chartered institutions are “reasonable.” There are no standards in the bill to guide such decision-making and no definition of “reasonable.”

Fee restrictions virtually always cause restrictions in the supply of goods and services. They also reduce competition. When the federal government imposed restrictions on savings account interest rates, the amount deposited in savings accounts dropped dramatically as consumers sought alternative investments, and the availability of lendable funds provided by deposits in such accounts also diminished. We therefore oppose providing the Banking Superintendent with authority to determine whether particular fees are “reasonable.”

In addition, fee restrictions such as those proposed would apply only to State-chartered institutions. Title 12 of the Code of Federal Regulations section 7.4002 sets forth the authority of national banks to charge their customers for non-interest services and includes a range of factors that banks may take into account in determining the level of these charges. New York State has no ability to impose limitations on the fees and charges adopted by national banks for their safe deposit service business. Similarly, federal thrift institution charges for non-interest services are governed by 12 CFR section 545.2, which asserts federal preemption of all state laws restricting the operations of federal thrifts. This legislation would therefore impose fee restrictions on State-chartered commercial banks and thrift institutions that would not be applicable to national banks and federal thrifts, creating a significant competitive disadvantage for State-chartered institutions.

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**