

STATE OF NEW YORK

6631

2021-2022 Regular Sessions

IN SENATE

May 10, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to on-demand pay providers

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

1 Section 1. The banking law is amended by adding a new article 9-B to
2 read as follows:

ARTICLE 9-B

ON-DEMAND PAY PROVIDERS

Section 374-aa. Definitions.

374-bb. Employer-integrated on-demand pay providers.

374-cc. Non-verified on-demand pay providers.

374-dd. Certain on-demand pay services to be considered loans.

374-ee. Penalties.

10 § 374-aa. Definitions. For the purposes of this article, the following
11 terms shall have the following meanings:

12 1. "Earned but unpaid income" means earned income that has not yet
13 been paid to a user by an employer.

14 2. "Earned income" means moneys that have accrued to the benefit of a
15 user for services rendered to an employer.

16 3. "Employer" means any person, corporation, limited liability compa-
17 ny, or association employing a user in any occupation, industry, trade,
18 business or service, or any other person who is contractually obligated
19 to pay a user any sum of money on an hourly, project-based, piecework,
20 or other basis for labor or services provided by such user. "Employer"
21 shall not include a customer of an employer or other third party whose
22 obligation to make any payment to a user is based solely on such user's
23 agency relationship with the employer.

24 4. "Employer-integrated on-demand pay provider" means an on-demand pay
25 provider that offers on-demand pay services through a contractual
26 arrangement with (i) an employer, or (ii) a service provider to an

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

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1 employer, in which provider verifies a user's earned income through data
2 or information provided by or through such employer or service provider.

3 5. "Non-verified on-demand pay provider" means an on-demand pay
4 provider that is not an employer-integrated on-demand pay provider.

5 6. "On-demand pay provider" or "provider" means any person that is
6 engaged in the business of delivering on-demand pay services to a user
7 in New York state.

8 7. "On-demand pay services" means the delivery of funds to a user that
9 represent earned but unpaid income.

10 8. "User" means any natural person.

11 § 374-bb. Employer-integrated on-demand pay providers. 1. No employ-
12 er-integrated on-demand pay provider shall operate without first regis-
13 tering with the superintendent. An employer-integrated on-demand pay
14 provider shall be deemed registered if it provides, on a confidential
15 basis, the following information to the superintendent:

16 (a) the provider's name and address;

17 (b) audited financial statements for the prior year;

18 (c) a statement or summary of fees charged to users or obligors for
19 on-demand pay services by the provider in normal course; and

20 (d) copies of the provider's end user terms and conditions and/or
21 terms of use, and privacy policies.

22 2. Each employer-integrated on-demand pay provider shall:

23 (a) deliver to the superintendent on a confidential basis no later
24 than June thirtieth of each calendar year the following items for the
25 prior calendar year:

26 (i) the provider's audited financial statements, provided, that if
27 audited financial statements are unavailable by the date such annual
28 report is due, such provider shall provide unaudited financial state-
29 ments at such time, provided that provider shall file such audited
30 financial statements to the superintendent promptly upon receipt of such
31 financial statements; and

32 (ii) copies of user complaints filed with the Better Business Bureau
33 or the Consumer Financial Protection Bureau, with the recorded resol-
34 ution of such complaints;

35 (b) develop and implement policies and procedures to quickly respond
36 to questions raised by users and to quickly address complaints from
37 users;

38 (c) fully and clearly state all fees for on-demand pay services to
39 best prevent misunderstanding by prospective users;

40 (d) inform users, prior to entering into an on-demand pay services
41 contract, of such user's rights under the program;

42 (e) afford users the right to cancel, at any time and without incur-
43 ring a charge, participation in an on-demand pay services program;

44 (f) absent evidence of fraud by a user, be restricted from initiating
45 a collection action, suing such user, or reporting such user to a credit
46 reporting agency if such employer-integrated on-demand pay provider is
47 unable to be repaid for funds delivered to such user;

48 (g) comply with all applicable laws, rules, regulations, and orders
49 regarding the duty to safeguard a user's personal information; and

50 (h) not share any fees with an employer or pay any other compensation
51 to an employer that is directly related to fees received from or charged
52 to users.

53 3. Employer-integrated on-demand pay providers shall not be required
54 to be registered as a money transmitter under article thirteen-B of this
55 chapter to engage in the activities of an on-demand pay provider,

1 provided that such provider complies with the requirements of this arti-
2 cle.

3 § 374-cc. Non-verified on-demand pay providers. Each non-verified
4 on-demand pay provider shall be subject to:

5 1. section 190.40 of the penal law;

6 2. the licensure requirements of article nine of this chapter, and any
7 other provisions of this chapter would otherwise apply to a loan or
8 credit transaction; and

9 3. the federal Truth in Lending Act, and the regulations implementing
10 such act, to provide any disclosures required for closed-end loans.

11 § 374-dd. Certain on-demand pay services to be considered loans. 1.
12 Non-verified on-demand pay services shall be considered a loan, and any
13 fees or other required or optional contributions of such services shall
14 be considered as interest when determining the rate of interest for
15 purposes of compliance with this chapter. Any such interest rates shall
16 not exceed ten percent per year.

17 2. Employer-integrated on-demand pay services shall not be considered
18 a loan.

19 § 374-ee. Penalties. Any corporations, limited liability company, or
20 other entity that violates any provision of this article shall be liable
21 for a penalty, in addition to any other penalty imposed by law, of not
22 more than one thousand dollars for each violation.

23 § 2. This act shall take effect on the ninetieth day after it shall
24 have become a law. Effective immediately, the addition, amendment
25 and/or repeal of any rule or regulation necessary for the implementation
26 of this act on its effective date are authorized to be made and
27 completed on or before such effective date.