

STATE OF NEW YORK

6778

2021-2022 Regular Sessions

IN SENATE

May 17, 2021

Introduced by Sen. COONEY -- 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 earned income access services

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

INCOME ACCESS SERVICES

Section 374-aa. Definitions.

3 374-bb. Requirements for earned income access services offered
4 in this state.

374-cc. Enforcement.

5 § 374-aa. Definitions. As used in this article, the following terms
6 shall have the following meanings:

7 1. "Annual percentage rate" means as calculated pursuant to the Truth
8 In Lending Act (TILA), 15 U.S.C. Sec. 1601-1667f methodology.

9 2. "Consumer" means a natural person residing in the state of New
10 York.

11 3. "Earned but unpaid income" means funds that are based on wages or
12 compensation the worker has represented, and that the provider has
13 reasonably determined have been earned but have not, at the time of the
14 remittance, been paid to the worker for work performed for or on behalf
15 of an obligor.

16 4. "Earned income access services" refers to the business of deliver-
17 ing proceeds to consumers that:

18 (a) Requires no mandatory fees to access proceeds;

19 (b) Is non-recourse; and

20 (c) The proceeds accessed are based on earned but unpaid income.

21 5. "Income access provider" or "provider" means:

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

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1 (a) A person who contracts with an obligor to offer and provide earned
2 income access services to the consumer; and/or

3 (b) A person who contracts with a consumer to offer and provide earned
4 income access services to that consumer.

5 6. "Non-recourse" means that a provider cannot legally compel repay-
6 ment by a consumer of outstanding proceeds.

7 7. "Notice" means digital communication from the provider to the
8 consumer in a conspicuous manner.

9 8. "Obligor" means an employer or a person, including an independent
10 contractor, who is contractually obligated to pay a consumer any sum of
11 money on an hourly, project-based, piecework, or other basis for labor
12 or services provided by the consumer. Obligor does not include the
13 customer of an obligor or another third-party that has an obligation to
14 make any payment to a consumer based solely on the consumer's agency
15 relationship with the obligor.

16 9. "Payments" or "fees" means a cost to the consumer for earned income
17 access services required by the provider.

18 10. "Proceeds" means the amount of earned but unpaid income that has
19 been remitted to the consumer by a provider.

20 11. "Superintendent" means the superintendent of financial services.

21 12. "Voluntary payments" means a remittance amount of the consumer's
22 choosing paid by the consumer to the provider, that may or may not be
23 considered revenue by the provider, and which shall not be subject to
24 any annual percentage rate calculation.

25 § 374-bb. Requirements for earned income access services offered in
26 this state. Any earned income access provider that offers earned income
27 access services to a consumer in this state shall comply with the
28 following:

29 1. The imposition of a fee on a consumer who opts to use the earned
30 income services of a provider, and/or the reduction or withholding from
31 a consumer's next regularly scheduled wage payment by an obligor of the
32 amount of the proceeds during that pay period and applicable fees
33 imposed in connection with those proceeds, is permitted if:

34 (a) Fees are disclosed in writing to the consumer prior to and at the
35 time of the earned income access transaction;

36 (b) The fee is not mandatory. If a fee is automatically charged, a
37 consumer can have it refunded on request. The refund process must be
38 clearly and conspicuously disclosed in advance to the consumer;

39 (c) The consumer is informed in writing of the right to receive the
40 full amount of such consumer's wage payment, without discount, in the
41 normal course, if such consumer waits until the next regular wage
42 payment date;

43 (d) Fees and voluntary payments for earned income access services
44 cannot exceed 7.5% per transaction per provider on an average basis. The
45 average shall be calculated by totaling all of the revenue for fees and
46 voluntary payments for earned income access services across all consum-
47 ers per quarter per provider, divided by the total amount of proceeds
48 accessed per quarter per provider in New York; and

49 (e) The provider shall conduct a reconciliation on an average basis
50 across all earned income access service consumer accounts at the end of
51 each quarter, and refund any excess fees or voluntary payments received
52 within the most recent quarter within thirty days of the end of the
53 quarter. A provider is not prohibited from conducting reconciliations
54 and issuing refunds more frequently, or instituting alternative proc-
55 esses to comply, provided those processes result in full compliance.

1 2. The provider shall not rely on a credit report or score in order to
2 determine the consumer's eligibility for proceeds.

3 3. Providers are not exempt from state wage garnishment laws.

4 4. The provider shall not report a consumer's repayment or failed
5 repayment of proceeds to any person other than the consumer, including
6 but not limited to a consumer credit reporting agency or a debt collec-
7 tor.

8 5. No portion of the proceeds may be used to settle or pay down prior
9 proceeds, and no proceeds may roll over or be structured in any way to
10 create any continuing obligation on the part of a consumer.

11 6. If a provider takes custody of a consumer's paycheck to provide
12 earned income access services before remitting proceeds to the consumer,
13 the provider shall ensure that the paycheck is held in an account which
14 is fully insured by the Federal Deposit Insurance Corporation at the
15 consumer's individual account level.

16 7. Providers shall comply with National Automated Clearing House Asso-
17 ciation - ACH rules. When a debit is initiated to a consumer's account
18 for a payment, and the debit is returned for insufficient or uncollected
19 funds, the debit can be reinitiated up to two times within one hundred
20 eighty days after the original entry.

21 8. The provider shall not provide to any third-party, including obli-
22 gors, any non-public personal information except in compliance with
23 applicable federal and state law.

24 9. The provider shall not sell, share, or otherwise disclose personal
25 information, that is solicited or collected from a consumer for the
26 purpose of providing proceeds.

27 10. The provider shall not charge any interest or late fees on
28 proceeds.

29 11. The provider delivers earned but unpaid income to the consumer
30 prior to the next regularly scheduled date on which the obligor is sche-
31 duled to pay earned wages or income to the consumer.

32 12. Any provider offering income access shall obtain a license from
33 the department.

34 13. The superintendent shall prepare and enforce such additional
35 rules, guidelines and requirements applicable to providers licensed
36 under this article that are not inconsistent with the provisions of this
37 article.

38 14. A license granted pursuant to this section shall be issued upon
39 submission of the application and payment of the fee, and shall be valid
40 for three years with two allowable extensions. A license granted pursu-
41 ant to this section shall not be renewed if a licensee has not complied
42 with reporting requirements.

43 15. A provider shall file an annual report with the superintendent
44 that includes:

45 (a) Gross revenue received for the earned income access service. The
46 provider shall distinguish between revenue received from consumers and
47 revenue received from third-parties providing services to consumers;

48 (b) The total number of proceeds transactions;

49 (c) The total dollar amount of proceeds the provider remitted;

50 (d) The total dollar amount of fees and/or voluntary payments the
51 provider received from consumers for earned income access services;

52 (e) The total number of proceeds for which the provider has not
53 received any repayment;

54 (f) The total dollar amount of proceeds for which the provider has not
55 received any repayment;

1 (g) The total number of proceeds wholly uncollected from consumers,
2 and total dollar amount of those proceeds;

3 (h) The total number of proceeds partially uncollected from consumers,
4 and total dollar amount of those proceeds; and

5 (i) The total number of unique consumers to whom the provider remitted
6 proceeds to as part of an earned income access service.

7 16. Income access services that comply with the provisions of subdivi-
8 sion one of this section shall not be considered a lending activity, and
9 such earned income access proceeds shall not be considered loans.

10 § 374-cc. Enforcement. 1. If, upon inspection, examination, or inves-
11 tigation, the superintendent has cause to believe that a provider is
12 violating any provision of this article or any rule or order hereunder,
13 the superintendent or his or her designee, may issue a notice to the
14 provider in writing, describing with particularity the basis of the
15 alleged violation.

16 2. A provider shall have sixty days to respond to such notice, to
17 provide further information and/or an explanation.

18 3. If the superintendent determines there is a violation, the super-
19 intendent or his or her designee can issue a correction notice to be
20 remedied in an agreed upon timeframe.

21 § 2. This act shall take effect on the one hundred twentieth day after
22 it shall have become a law. Effective immediately, the addition, amend-
23 ment and/or repeal of any rule or regulation necessary for the implemen-
24 tation of this act on its effective date are authorized to be made and
25 completed on or before such effective date.