STATE OF NEW YORK

8784

2017-2018 Regular Sessions

IN ASSEMBLY

November 27, 2017

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting mandatory arbitration clauses in financial product or service contracts

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

Section 1. The general business law is amended by adding a new section 399-c-1 to read as follows:

§ 399-c-1. Mandatory arbitration clause in financial product or service contracts prohibited. 1. Definitions.

a. The term "consumer" shall mean a natural person residing in this state or an agent, trustee, or representative acting on behalf of a natural person residing in this state.

b. The term "covered person" shall mean:

(i) any person that engages in offering or providing a consumer financial product or service; and

(ii) any affiliate of a person described in subparagraph (i) of this paragraph if such affiliate acts as a service provider to such person.

c. The term "financial product or service" shall mean:

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if:

(1) the lease is on a non-operating basis;

(2) the initial term of the lease is at least ninety days; and

(3) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee;

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

LBD13717-01-7

(iii) providing real estate settlement services, except insurance or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this subparagraph:

(1) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(2) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person:

(1) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(2) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated under article twenty-three-a of this chapter, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including:

(1) providing credit counseling to any consumer; and

(2) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that:

(1) a person:

(a) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(b) provides the information described in item (a) of this clause to an affiliate of such person; or

(c) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(2) the information described in item (a) of clause one of this subparagraph is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer;

(x) collecting debt related to any consumer financial product or service;

(xi) such other financial product or service as may be defined by the attorney general, by regulation, for purposes of this section, if the attorney general finds that such financial product or service is entered into or conducted as a subterfuge or with a purpose to evade any state consumer financial law; and

(xii) the term "financial product or service" shall not include any such financial product or service regulated under the exclusive jurisdiction of a federal agency or authority, or where rules or regulations promulgated by the attorney general on such financial product or service would be preempted by federal law.

d. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract for any financial product or service, as defined in paragraph c of subdivision one of this section, which requires the parties to such contract to submit any controversy thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the decision of the arbitrator or panel of arbitrators in its application to the consumer party shall be final and not subject to court review.

e. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

2. a. Prohibition. No written contract for any financial product or service, entered into on or after the effective date of this section, to which a consumer is a party, shall contain a mandatory arbitration clause. Nothing contained herein shall be construed to prohibit a covered person from incorporating a provision within such contract that such covered person agrees that the decision of the arbitrator or panel of arbitrators shall be final in its application to such covered person and not subject to court review.

b. Mandatory arbitration clause null and void. The provisions of a mandatory arbitration clause shall be null and void. The inclusion of such clause in a written contract for any financial product or service shall not serve to impair the enforceability of any other provision of such contract.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.