

# STATE OF NEW YORK

2656

2019-2020 Regular Sessions

## IN ASSEMBLY

January 24, 2019

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.

LBD04676-01-9

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

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

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

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

16 (2) advertising the nonfinancial goods or services of the seller on  
17 the stored value card or device is not in itself an exercise of substan-  
18 tial control over the terms or conditions;

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

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

29 (1) is a merchant, retailer, or seller of any nonfinancial good or  
30 service who engages in financial data processing by transmitting or  
31 storing payments data about a consumer exclusively for purpose of initi-  
32 ating payments instructions by the consumer to pay such person for the  
33 purchase of, or to complete a commercial transaction for, such nonfinan-  
34 cial good or service sold directly by such person to the consumer; or

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

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

47 (1) providing credit counseling to any consumer; and

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

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

56 (1) a person:

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

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

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

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

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

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

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

26 d. The term "mandatory arbitration clause" shall mean a term or  
27 provision contained in a written contract for any financial product or  
28 service, as defined in paragraph c of this subdivision, which requires  
29 the parties to such contract to submit any controversy thereafter aris-  
30 ing under such contract to arbitration prior to the commencement of any  
31 legal action to enforce the provisions of such contract and which also  
32 further provides language to the effect that the decision of the arbi-  
33 trator or panel of arbitrators in its application to the consumer party  
34 shall be final and not subject to court review.

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

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

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

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