

# STATE OF NEW YORK

8401

2021-2022 Regular Sessions

## IN ASSEMBLY

October 20, 2021

Introduced by M. of A. VANEL -- read once and referred 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.

6 374-bb. Requirements for earned income access services offered  
7 in this state.

8 374-cc. Enforcement.

9 § 374-aa. Definitions. As used in this article, the following terms  
10 shall have the following meanings:

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

13 2. "Consumer" means a natural person residing in the state of New  
14 York.

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

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

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

23 (b) Is non-recourse; and

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

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

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] 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 obligor's employees; 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. Proceeds shall not be  
20 considered a loan.

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

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

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

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

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

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

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

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

50 (e) The provider shall conduct a reconciliation on an average basis  
51 across all earned income access service consumers at the end of each  
52 quarter, and refund any excess fees or voluntary payments received  
53 during the quarter within thirty days of the end of the quarter. A  
54 provider is not prohibited from conducting reconciliations and issuing  
55 refunds more frequently, or instituting alternative processes to comply,  
56 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 earned but unpaid  
12    income before remitting proceeds to the consumer, the provider shall  
13    ensure that the proceeds are fully insured by the Federal Deposit Insur-  
14    ance Corporation at the consumer's individual account level.

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

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

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

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

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

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

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

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

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

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

47    (b) The total number of proceeds transactions;

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

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

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

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

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

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

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

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

8 § 374-cc. Enforcement. 1. If, upon inspection, examination, or inves-  
9 tigation, the superintendent has cause to believe that a provider is  
10 violating any provision of this article or any rule or order hereunder,  
11 the superintendent or his or her designee, may issue a notice to the  
12 provider in writing, describing with particularity the basis of the  
13 alleged violation.

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

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

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