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:

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

ARTICLE 9-B

INCOME ACCESS SERVICES

Section 374-aa. Definitions.

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

374-cc. Enforcement.

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

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

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

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

4. "Earned income access services" refers to the business of delivering proceeds to consumers that:

(a) Requires no mandatory fees to access proceeds;

(b) Is non-recourse; and

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

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

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

LBD09775-03-1

(a) A person who contracts with an obligor to offer and provide earned income access services to the obligor's employees; or

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

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

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

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

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

10. "Proceeds" means the amount of earned but unpaid income that has been remitted to the consumer by a provider. Proceeds shall not be considered a loan.

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

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

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

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

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

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

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

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

(e) The provider shall conduct a reconciliation on an average basis across all earned income access service consumers at the end of each quarter, and refund any excess fees or voluntary payments received during the quarter within thirty days of the end of the quarter. A provider is not prohibited from conducting reconciliations and issuing refunds more frequently, or instituting alternative processes to comply, provided those processes result in full compliance.

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

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

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

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

6. If a provider takes custody of a consumer's earned but unpaid income before remitting proceeds to the consumer, the provider shall ensure that the proceeds are fully insured by the Federal Deposit Insurance Corporation at the consumer's individual account level.

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

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

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

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

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

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

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

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

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

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

(b) The total number of proceeds transactions;

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

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

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

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

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

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

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

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

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

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

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

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