STATE OF NEW YORK

6631

2021-2022 Regular Sessions

IN SENATE

May 10, 2021

Introduced by Sen. BENJAMIN -- 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 on-demand pay providers

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
ON-DEMAND PAY PROVIDERS

Section 374-aa. Definitions.
374-bb. Employer-integrated on-demand pay providers.
374-cc. Non-verified on-demand pay providers.
374-dd. Certain on-demand pay services to be considered loans.
374-ee. Penalties.

§ 374-aa. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Earned but unpaid income" means earned income that has not yet been paid to a user by an employer.

2. "Earned income" means moneys that have accrued to the benefit of a user for services rendered to an employer.

3. "Employer" means any person, corporation, limited liability company, or association employing a user in any occupation, industry, trade, business or service, or any other person who is contractually obligated to pay a user any sum of money on an hourly, project-based, piecework, or other basis for labor or services provided by such user. "Employer" shall not include a customer of an employer or other third party whose obligation to make any payment to a user is based solely on such user's agency relationship with the employer.

4. "Employer-integrated on-demand pay provider" means an on-demand pay provider that offers on-demand pay services through a contractual arrangement with (i) an employer, or (ii) a service provider to an

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

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employer, in which provider verifies a user's earned income through data or information provided by or through such employer or service provider.

5. "Non-verified on-demand pay provider" means an on-demand pay provider that is not an employer-integrated on-demand pay provider.

6. "On-demand pay provider" or "provider" means any person that is engaged in the business of delivering on-demand pay services to a user in New York state.

7. "On-demand pay services" means the delivery of funds to a user that represent earned but unpaid income.

8. "User" means any natural person.

§ 374-bb. Employer-integrated on-demand pay providers. 1. No employer-integrated on-demand pay provider shall operate without first registering with the superintendent. An employer-integrated on-demand pay provider shall be deemed registered if it provides, on a confidential basis, the following information to the superintendent:

(a) the provider's name and address;

(b) audited financial statements for the prior year;

(c) a statement or summary of fees charged to users or obligors for on-demand pay services by the provider in normal course; and

(d) copies of the provider's end user terms and conditions and/or terms of use, and privacy policies.

2. Each employer-integrated on-demand pay provider shall:

(a) deliver to the superintendent on a confidential basis no later than June thirtieth of each calendar year the following items for the prior calendar year:

(i) the provider's audited financial statements, provided, that if audited financial statements are unavailable by the date such annual report is due, such provider shall provide unaudited financial statements at such time, provided that provider shall file such audited financial statements to the superintendent promptly upon receipt of such financial statements; and

(ii) copies of user complaints filed with the Better Business Bureau or the Consumer Financial Protection Bureau, with the recorded resolution of such complaints;

(b) develop and implement policies and procedures to quickly respond to questions raised by users and to quickly address complaints from users;

(c) fully and clearly state all fees for on-demand pay services to best prevent misunderstanding by prospective users;

(d) inform users, prior to entering into an on-demand pay services contract, of such user's rights under the program;

(e) afford users the right to cancel, at any time and without incurring a charge, participation in an on-demand pay services program;

(f) absent evidence of fraud by a user, be restricted from initiating a collection action, suing such user, or reporting such user to a credit reporting agency if such employer-integrated on-demand pay provider is unable to be repaid for funds delivered to such user;

(g) comply with all applicable laws, rules, regulations, and orders regarding the duty to safeguard a user's personal information; and

(h) not share any fees with an employer or pay any other compensation to an employer that is directly related to fees received from or charged to users.

3. Employer-integrated on-demand pay providers shall not be required to be registered as a money transmitter under article thirteen-B of this chapter to engage in the activities of an on-demand pay provider,

provided that such provider complies with the requirements of this article.

§ 374-cc. Non-verified on-demand pay providers. Each non-verified on-demand pay provider shall be subject to:

1. section 190.40 of the penal law;

2. the licensure requirements of article nine of this chapter, and any other provisions of this chapter would otherwise apply to a loan or credit transaction; and

3. the federal Truth in Lending Act, and the regulations implementing such act, to provide any disclosures required for closed-end loans.

§ 374-dd. Certain on-demand pay services to be considered loans. 1. Non-verified on-demand pay services shall be considered a loan, and any fees or other required or optional contributions of such services shall be considered as interest when determining the rate of interest for purposes of compliance with this chapter. Any such interest rates shall not exceed ten percent per year.

2. Employer-integrated on-demand pay services shall not be considered a loan.

§ 374-ee. Penalties. Any corporations, limited liability company, or other entity that violates any provision of this article shall be liable for a penalty, in addition to any other penalty imposed by law, of not more than one thousand dollars for each violation.

§ 2. This act shall take effect on the ninetieth 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.