

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 87 entitled “An act relating to earned wage access  
4 service providers” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 8 V.S.A. chapter 75 is added to read:

8 CHAPTER 75. EARNED WAGE ACCESS SERVICES

9 § 2301. DEFINITIONS

10 As used in this chapter:

11 (1) “Consumer” means an individual residing in this State.

12 (2) “Earned but unpaid income” means wages, compensation, or other  
13 income that an obligor owes but has not yet paid to a consumer, as determined  
14 by a provider based on information submitted by a consumer or obligor.

15 (3) “Earned wage access services” means the business of delivering  
16 proceeds to a consumer prior to the next date on which an obligor is obligated  
17 to pay wages, compensation, or other income to the consumer.

18 (4) “Licensee” means a provider who has been issued a license pursuant  
19 to this chapter.

1           (5) “Obligor” means a person who is legally obligated to pay wages,  
2           compensation, or other income for work a consumer performs on an hourly,  
3           project-based, piecework, or other basis.

4           (6) “Outstanding proceeds” means proceeds transferred to a consumer  
5           by a provider and not yet repaid to the provider.

6           (7) “Proceeds” means an amount of funds a provider transfers to a  
7           consumer that is based on earned but unpaid income.

8           (8) “Provider” means a person who is in the business of offering and  
9           providing earned wage access services to consumers.

10           § 2302. LICENSE REQUIRED

11           (a) A person shall not provide earned wage access services in this State  
12           without first obtaining a license pursuant to this chapter.

13           (b) A person, including a provider’s financial institution as defined in  
14           subdivision 10202(5) of this title, but not including a consumer’s financial  
15           institution as defined in subdivision 10202(5) of this title or an interbank  
16           clearinghouse as defined in 9 V.S.A. § 2481w(a), shall not provide substantial  
17           assistance to a provider if the person or the person’s authorized agent receives  
18           notice from a regulatory, law enforcement, or similar governmental authority;  
19           knows from its normal monitoring and compliance systems; or consciously  
20           avoids knowing, that the provider is in violation of subsection (a) of this section.

1        (c) Subsection (a) of this section does not apply to a financial institution, as  
2        defined in subdivision 10202(5) of this title, if its deposits are federally  
3        insured.

4        § 2303. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

5        An applicant shall include in its application for a license under this chapter:

6            (1) a description of the earned wage access services and related services  
7        that the applicant seeks to provide in this State;

8            (2) a list of other states in which the applicant is licensed or registered to  
9        provide earned wage access services;

10          (3) a description of the nature and amount of charges or fees that the  
11        applicant may impose for earned wage access services;

12          (4) information concerning any bankruptcy or receivership proceedings  
13        affecting the applicant or any person in control of the applicant;

14          (5) the name and address of any financial institution through which the  
15        applicant plans to provide earned wage access services;

16          (6) a list of all other persons, other than consumers and obligors, that the  
17        applicant has or plans to contract with to provide earned wage access services  
18        and a description of their role; and

19          (7) any other information required by the Nationwide Multistate  
20        Licensing System and Registry or by the Commissioner.

21        § 2304. LICENSEE REQUIREMENTS; TERMS OF SERVICE

1        (a) Basic services.

2                (1) A licensee shall offer a basic level of earned wage access services to  
3        a consumer consistent with the following minimum requirements:

4                        (A) The consumer may enroll directly for services and receive  
5        proceeds at no cost.

6                        (B) The licensee shall deliver proceeds to the consumer by initiating  
7        an automated clearing house transfer not later than 3 p.m. of the third business  
8        day following the consumer's request.

9                        (C) The licensee shall transfer proceeds to an account specified by  
10       the consumer or to a prepaid account, as defined in 12 CFR Part 1005, that is  
11       managed, issued, or otherwise facilitated by the licensee or its affiliates and  
12       meets the following requirements:

13                        (i) the consumer may open and use the prepaid account at no cost;

14                        (ii) the prepaid account is issued on a major network brand that  
15       permits use at multiple, unaffiliated merchants;

16                        (iii) the prepaid account does not charge fees for use of an  
17       associated card to buy goods or services at merchants that accept the associated  
18       card; and

19                        (iv) the consumer has some free and reasonably accessible means  
20       to obtain cash from the prepaid account.

1           (D) A licensee shall ensure that basic level services are not  
2           substantially more difficult or burdensome for a consumer to access than  
3           additional services for which the provider imposes a charge or fee.

4           (b) Employer services; additional services.

5           (1) A licensee may impose a charge or fee on an obligor who contracts  
6           for basic earned wage access services or additional services on behalf of a  
7           consumer.

8           (2) A licensee may offer additional earned wage access services that are  
9           subject to a charge or fee, including:

10           (A) expedited delivery of proceeds; and

11           (B) a subscription or membership fee for a group of services that  
12           includes earned wage access services.

13           (3) A licensee may solicit a tip or gratuity, provided that:

14           (i) the licensee provides clear notice that a tip or gratuity is  
15           optional;

16           (ii) the default setting for the amount of any tip or gratuity is zero  
17           dollars; and

18           (iii) the default setting requires the consumer to affirmatively  
19           consent to contributing a tip or gratuity after entering a dollar amount or  
20           percentage value.

21           (c) Required disclosures; notice of terms and conditions.

1           (1) Before providing a consumer with earned wage access services, a  
2           licensee shall provide the consumer with written or electronic notice of the  
3           terms and conditions governing its earned wage access services, which the  
4           licensee may include as part of its service contract.

5           (2) The notice shall:

6                   (A) use language intended to be easily understood by a layperson:

7                   (B) state that the Commissioner has jurisdiction over the earned wage  
8           access services performed by the licensee;

9                   (C) provide both a phone number and a website through which the  
10           consumer can submit complaints about the licensee’s earned wage access  
11           services to the Commissioner;

12                   (D) state that basic earned wage access services are available at no  
13           cost to the consumer; and

14                   (E) specify the type and amount of charges and fees the licensee may  
15           impose for additional earned wage access services.

16           (3) Any time a licensee advertises or offers an earned wage access  
17           service for which it imposes a charge or fee, the licensee shall:

18                   (i) prominently disclose that basic earned wage access services are  
19           available at no cost to a consumer and that payment for the additional service  
20           is optional; and

1                   (ii) describe how the consumer may access basic earned wage  
2                   access services at no cost.

3                   (4) A licensee shall clearly show the unique identifier issued to it by the  
4                   Nationwide Multistate Licensing System and Registry on its Internet website,  
5                   on all solicitations and advertisements directed to consumers, and on any other  
6                   documents as the Commissioner requires by rule or order.

7                   (d) Cancellation of service. A consumer may cancel earned wage access  
8                   services at any time without charge.

9                   § 2305. NONRECOURSE OBLIGATIONS; PERMISSIBLE COLLECTION

10                  (a) Nonrecourse. Except as otherwise provided in subsection (b) of this  
11                  section, a licensee shall provide earned wage access services on a nonrecourse  
12                  basis and shall not attempt to collect payment of outstanding proceeds,  
13                  charges, or fees through any means, including in a civil action or proceeding in  
14                  any court, through arbitration or other alternative dispute resolution process, or  
15                  through any third party actor.

16                  (b) Permissible collection. A licensee may collect repayment of  
17                  outstanding proceeds, charges, or fees as follows:

18                   (1) Payroll deduction.

19                   (A) Pursuant to a written agreement with the consumer and the  
20                   obligor, a licensee may initiate an employer-facilitated payroll deduction from  
21                   the consumer's next paycheck following the date proceeds were paid.

1           (B) A licensee may attempt one additional payroll deduction in the  
2           event of a failed or partial payroll deduction caused by an administrative or  
3           technical error.

4           (C) As used in subdivision (1)(C) of this subsection:

5           (i) An administrative or technical error includes an application  
6           programming interface malfunction or a mistake in the obligor’s payroll  
7           process, including a miscalculation of a consumer’s base pay or overtime  
8           award.

9           (ii) An administrative or technical error does not include a  
10          situation in which the obligor has garnished a consumer’s wages following a  
11          payment of proceeds.

12          (2) ACH withdrawal.

13          (A) A licensee may initiate an authorized direct withdrawal from a  
14          consumer’s depository account at a financial institution using the Automated  
15          Clearinghouse Network if the consumer has authorized the provider to initiate  
16          the withdrawal in accordance with applicable National Automated  
17          Clearinghouse rules.

18          (B) A licensee may attempt a withdrawal only on the dates to which  
19          the consumer agrees, provided that a licensee shall make no more than three  
20          attempts at such a withdrawal.



1           (C) A licensee shall use reasonable care to avoid directly causing a  
2           consumer to incur overdraft fees charged by the consumer’s financial  
3           institution.

4           (3) Periodic invoice. A licensee may submit a periodic written invoice  
5           to the consumer for payment, provided that the licensee shall cease invoicing  
6           the consumer after submitting three such invoices.

7           (4) Other means. A provider may use other means of collection that the  
8           Commissioner approves by rule or order.

9           (5) Misrepresentation; fraud. A licensee may collect outstanding  
10          proceeds, charges, fees and any other amounts available by law if a consumer  
11          provided false information in the course of procuring earned wage access  
12          services or received such amounts with the intent to defraud the provider.

13          (c) Notice; process.

14          (1) A licensee shall provide a consumer with adequate notice of the date  
15          it will attempt to collect a repayment of outstanding proceeds.

16          (2) A licensee that seeks repayment of outstanding proceeds from a  
17          consumer’s depository institution account shall comply with applicable  
18          National Automated Clearinghouse Association rules.

19          § 2306. PROHIBITED ACTS AND PRACTICES

20          A provider shall not:

21          (1) Impose a charge or fee for basic earned wage access services.

- 1           (2) Charge a late fee, interest, or any other penalty or charge for failure  
2           to repay outstanding proceeds.
- 3           (3) Make the offering of earned wage access services, either in the  
4           amount of proceeds a consumer is eligible to request or the frequency with  
5           which proceeds are provided to a consumer, contingent on whether the  
6           consumer chooses optional services or on the amount or type of charges or fees  
7           that a consumer pays for earned wage access services.
- 8           (4) Impose a deferral fee or any other charge in connection with  
9           deferring the collection of outstanding proceeds beyond the original scheduled  
10           repayment date.
- 11           (5) Solicit a consumer to delay repayment of outstanding proceeds for  
12           the purpose of increasing the total charges or fees a provider may collect.
- 13           (6) Report a consumer’s payment or failed repayment of proceeds to a  
14           consumer credit reporting agency or a debt collector.
- 15           (7) Require a credit report or credit score to determine a consumer’s  
16           eligibility for earned wage access services.
- 17           (8) Directly or indirectly employ any scheme, device, or artifice to  
18           defraud or mislead consumers.
- 19           (9) Engage in any unfair or deceptive practice toward any consumer.
- 20           (10) Fail to comply with this chapter or rules adopted under this chapter,  
21           with any orders or directives from the Commissioner, or with any other State

1 or federal law, including the rules thereunder, applicable to any business  
2 authorized or conducted under this chapter.

3 (11) Make any false or deceptive statement or representation.

4 (12) Make any false statement, or fail to state a material fact necessary  
5 in order to make the statements made, in light of the circumstances under  
6 which they were made, not misleading, or knowingly and willfully make any  
7 other omission of material fact to the Commissioner or any other government  
8 agency or in connection with any information or reports filed with or provided  
9 to any governmental agency or the Nationwide Multistate Licensing System  
10 and Registry.

11 (13) Collect, charge, attempt to collect or charge, or use or propose any  
12 agreement purporting to collect or charge any fee or payment prohibited by  
13 this chapter.

14 (14) Discriminate against any consumer on the basis of the sex, marital  
15 status, race, color, religion, national origin, age, sexual orientation, gender  
16 identity, or disability of the consumer, provided that a provider is not required  
17 to do business with a consumer that lacks the legal capacity to contract due to  
18 the consumer's disability or minor age.

19 (15) Pay, advance, or otherwise disburse aggregate outstanding proceeds  
20 to any consumer exceeding the lesser of eighty percent of the consumer's

1 earned but unpaid income or another maximum amount of proceeds as the  
2 Commissioner may establish by rule or order.

3 (16) Create, require, accept, or perfect any security interest in, or any  
4 pledge or hypothecation of, any collateral, property, or assets of any consumer,  
5 or otherwise hold, possess or control any collateral, property or assets of any  
6 consumer in connection with providing earned wage access services or paying  
7 proceeds to any consumer.

8 (17) Pay, advance, or otherwise disburse proceeds to a consumer in  
9 virtual currency or in an instrument denominated in virtual currency without  
10 the prior approval of the Commissioner in a writing expressly referencing this  
11 subdivision, other than a virtual currency issued or insured by the United States  
12 of America, its agency, or its instrumentality.

13 § 2307. APPLICABILITY OF OTHER STATE LAWS

14 (a) The transfer of proceeds by a licensee pursuant to this chapter is not  
15 subject to chapter 73 of this title and is not a wage assignment under section  
16 2234 or 2235 of this title.

17 (b) The transfer of proceeds by a provider that is not licensed pursuant to  
18 this chapter:

19 (1) is deemed to be a loan subject to chapter 73 of this title and to Title 9  
20 of the Vermont Statutes Annotated;

1           (2) may be considered a wage assignment pursuant to section 2234 or  
2           2235 of this title; and

3           (3) is deemed to be debt for purposes of 9 V.S.A. § 2453 and the rules  
4           the Attorney General adopts under that section.

5           § 2308. RULES

6           The Commissioner may adopt rules and orders and specific rulings,  
7           demands, and findings as are necessary for the administration and the  
8           enforcement of this chapter and for the protection of consumers who obtain  
9           earned wage access services in this State, including imposing limits and  
10           requirements on the amount, type, and disclosure of charges or fees for  
11           services.

12           § 2309. PRIVATE RIGHT OF ACTION; CONSUMER PROTECTION ACT

13           (a) A consumer may bring a private right of action against a licensee, or a  
14           provider required to be licensed under this chapter, for restitution of damages  
15           caused by a violation of this chapter.

16           (b) The powers vested in the Commissioner by this chapter shall be in  
17           addition to any other powers or rights of consumers or the Attorney General or  
18           others under any other applicable law or rule, including the Vermont  
19           Consumer Protection Act and any applicable rules adopted under that Act,  
20           provided that the Commissioner’s determinations concerning the interpretation

1 and administration of the provisions of this chapter and any rules adopted  
2 under the chapter shall carry a presumption of validity.

3 Sec. 2. 8 V.S.A. § 2102 is amended to read:

4 § 2102. APPLICATION FOR LICENSE

5 (a) Application for a license or registration shall be in writing, under oath,  
6 and in the form prescribed by the Commissioner, and shall contain the legal  
7 name, any fictitious name or trade name, and the address of the residence and  
8 place of business of the applicant, and if the applicant is a partnership or an  
9 association, of every member thereof, and if a corporation, of each officer and  
10 director thereof; also the county and municipality with street and number, if  
11 any, where the business is to be conducted and such further information as the  
12 Commissioner may require.

13 (b) At the time of making an application, the applicant shall pay to the  
14 Commissioner a fee for investigating the application and a license or  
15 registration fee for a period terminating on the last day of the current calendar  
16 year. The following fees are imposed on applicants:

17 \* \* \*

18 (15) For an application for an earned wage access services provider  
19 license under chapter 75 of this title, \$1,000.00 as a license fee and \$1,000.00  
20 as an application and investigation fee.

21 \* \* \*

1 Sec. 3. 8 V.S.A. § 2109 is amended to read:

2 § 2109. ANNUAL RENEWAL OF LICENSE

3 (a) On or before December 1 of each year, every licensee shall renew its  
4 license or registration for the next succeeding calendar year and shall pay to  
5 the Commissioner the applicable renewal of license or registration fee. At a  
6 minimum, the licensee or registree shall continue to meet the applicable  
7 standards for licensure or registration. At the same time, the licensee or  
8 registree shall maintain with the Commissioner any required bond in the  
9 amount and of the character as required by the applicable chapter. The annual  
10 license or registration renewal fee shall be:

11 \* \* \*

12 (15) For an earned wage access services provider license under chapter  
13 75 of this title, \$1,200.00.

14 \* \* \*

15 Sec. 4. 8 V.S.A. § 10202(5) is amended to read:

16 (5) “Financial institution” means a financial institution as defined in  
17 subdivision 11101(32) of this title, and a credit union, financial institution  
18 subsidiary, licensed lender, mortgage broker, earned wage access services  
19 provider, or sales finance company organized or regulated under the laws of  
20 this State, the United States, or any other state or territory.

21 Sec. 5. IMPLEMENTATION; GRACE PERIOD

1        (a) The license requirement imposed in 8 V.S.A. § 2302 applies on and  
2        after January 1, 2024.

3        (b) Notwithstanding subsection (a) of this section, a person providing  
4        earned wage access services in this State as of January 1, 2023 may continue  
5        providing services through December 31, 2024, or until its application for a  
6        license is denied, if:

7                (1) the provider submits an application for a license before January 1,  
8                2024; and

9                (2) the provider otherwise complies with 8 V.S.A. chapter 75.

10        Sec. 6. EFFECTIVE DATE

11        This act shall take effect on July 1, 2023.

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16        (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Representative \_\_\_\_\_

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FOR THE COMMITTEE