

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 ACCESSON-DEMAND PAY SERVICES~~

9 § 2301. DEFINITIONS

10 As used in this chapter:

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

12 (2) “*Earned but unpaid income*” means an amount of wages,
13 *compensation, or other income reasonably determined by a provider, based on*
14 *information submitted by a consumer or obligor, which at the time of the*
15 *payment of proceeds the obligor owes but has not yet paid to the consumer.*

16
17 (3) “Earned wage access service providers”
18 means the business of delivering access to earned but unpaid income to
19 consumers that is based on employment, income, and time attendance data
20 received from an Obligor or the Obligor’s designated provider.

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1 proceeds to consumers prior to the next date on which an obligor is
2 obligated to pay wages, compensation, or other income to a consumer.

3 (5) “Direct-to-consumer advance provider” means a person who is in the
4 business of offering and providing access to earned but unpaid income directly
5 to consumers that is not based on employment, income, and time and
6 attendance data received from an Obligor or the Obligor’s designated provider.

7 (6) “On-demand pay services” means the business of delivering proceeds
8 to consumers prior to the date on which an obligor is obligated to pay such
9 salary, wages, compensation, or other income to a consumer through an earned
10 wage access service provider or a direct-to-consumer advance provider.

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

13 (5) “Mandatory payment” means an amount that a consumer must pay to
14 a provider as a condition of receiving proceeds.

15 (6) “Nonmandatory payment” means an amount that a consumer or
16 an obligor may, but is not required to, pay a provider for ~~on-demand pay~~
17 ~~earned wage access~~ services. For purposes of this section, examples of
18 “nonmandatory payments” include the following:

19 (A) A fee imposed by a provider for delivery or expedited
20 delivery of proceeds to a consumer, as long as the provider offers the

1 consumer at least one reasonable option to receive proceeds ~~within two~~
2 ~~business days~~ at no cost to the consumer.

3 (B) An amount paid by an obligor to a provider on a consumer’s
4 behalf that entitles the consumer to receive proceeds at no cost to the
5 consumer.

6 (C) A subscription or membership fee imposed by a provider for
7 a group of services that include ~~on-demand pay earned wage access~~
8 services, as long as the provider offers the consumer at least one
9 reasonable option of receiving proceeds ~~within two business days~~ at no
10 cost to the consumer.

11 (D) A tip or gratuity paid by a consumer to a provider, as long as
12 the provider offers the consumer at least one reasonable option of
13 receiving proceeds ~~within two business days~~ at no cost to the consumer.

14 1 For purposes of this definition, an option to receive a no-cost
15 automated clearing house transfer of proceeds to the account of
16 a consumer’s choice shall satisfy the requirement to provide a
17 reasonable option of receiving proceeds ~~within [] business~~
18 ~~days~~ at no cost to the consumer ~~if such automated clearing~~
19 ~~house transfer is initiated by the provider no later than [3:00~~
20 ~~p.m. on the next succeeding business day.~~

21 S
22 2 For purposes of this definition, an option to receive a no-cost
23 transfer to a prepaid account as defined under 12 CFR Part
24 1005 that is managed, issued, or otherwise facilitated by the
25 provider or its affiliates, shall ~~not~~ be deemed to be a reasonable
26 no-cost option unless the provider ~~does not charge~~ fees for
27 opening such prepaid account ~~and such prepaid account~~
28 ~~allows the consumer reasonable use of such prepaid account at~~
29 ~~no charge to the consumer. In this context, “reasonable use”~~

Commented [User1]: As written, the bill doesn’t account for processing errors and account failures.

~~means, inter alia, that any prepaid card associated with such prepaid account must be issued on a major network brand that permits use at multiple, unaffiliated merchants; the prepaid account must not charge fees for use of an associated card to buy goods or services at merchants that accept the associated card; the prepaid account must not impose any periodic fees; and the employee must have some free and reasonably accessible means to obtain cash from the prepaid account.~~

Commented [User2]: Fee schedules are generally dictated by licensed banks that are issuing the cards.

(7)(A) “Nonrecourse” means that, unless permitted under subdivision 2304(3) of this title, a provider cannot compel or attempt to compel a consumer to repay outstanding proceeds or nonmandatory payments through any of the following means:

(i) a lawsuit, action, or legal proceeding in any court;

(ii) an arbitration or alternative dispute resolution process or proceeding;

(iii) use of a third party to pursue collection of outstanding proceeds or non-mandatory payments;

(iv) sale to a third-party collector or debt buyer of outstanding amounts or obligations of a consumer or any rights against or with respect to a consumer or the consumer’s property, assets, or accounts; or

(v) other means, including actions with respect to a consumer’s property, assets, or accounts [question necessity of this; may use “including” construct].

1 (B) The term “nonrecourse” does not preclude the use by a provider
2 of any of the foregoing methods to compel or attempt to compel repayment of
3 outstanding proceeds, non-mandatory fees, or other amounts or obligations
4 incurred by a consumer with the intent to defraud the provider. [This is more a
5 substantive provision than definition – move below?]

6 (8)(A) “Obligor” means an employer or another person, including an
7 independent contractor, who is contractually or legally obligated to pay a
8 consumer a sum of money on an hourly, project-based, piecework, or other
9 basis.

10 (B) “Obligor” does not include a service provider of an obligor or
11 another third party that has an obligation to make a payment to a consumer
12 based solely on the consumer’s agency relationship with the obligor.

Commented [User3]: We are interested to learn the objective of including this provision.

13 (9) “Outstanding proceeds” means proceeds remitted to a consumer by a
14 provider that has not yet been repaid to that provider. [Definition does not
15 appear to be used in the draft?]

16 (10) “Proceeds” means a payment of funds to a consumer by a provider
17 that is based on earned but unpaid income.

18 (11) “Provider” means a person who is in the business of offering and
19 providing earned wage access services, direct-to-consumer advance services,
20 or both to consumers.

1 (12) “Unique identifier” means a number or other identifier assigned by
2 protocols established by the NMLS. [Definition of NMLS removed; this term is
3 only used once, and seems self-explanatory in that context]

4 **§ 2302. LICENSE REQUIRED**

5 (a) On and after January 1, 2024 *[necessary to have date in statute? Can*
6 *move to implementation]* a person shall not provide ~~on-demand pay earned~~
7 ~~wage access~~ services in this State without first obtaining a license pursuant to
8 this chapter.

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

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

20 **§ 2303. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION**

21 A applicant shall include in its application for a license under this chapter:

Commented [User4]: This would ostensibly prevent consumers from being able to access their funds held by the provider's financial institution.

1 ~~(1) (4)~~ a description of the on-demand pay ~~earned wage access services~~ and
2 related services that the applicant seeks to provide in this State;

3 (2) A description of whether the provider is an earned wage access services
4 provider, direct-to-consumer advance provider, or both.

5 (2) a list of other states in which the applicant is licensed or registered to
6 provide on-demand pay ~~earned wage access services~~;

7 (3) a description of the nature and amount of nonmandatory payments
8 that a licensee may impose in connection with the provision of on-demand pay
9 ~~earned wage access services~~;

10 (4) information concerning any bankruptcy or receivership proceedings
11 affecting the licensee or any person in control of the licensee;

12 (5) the name and address of any financial institution through which the
13 applicant plans to provide ~~earned wage access on-demand pay services~~;

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

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

19 § 2304. LICENSEE REQUIREMENTS

20 A licensee is subject to the following requirements:

21 (1) A licensee shall provide proceeds on a nonrecourse basis and shall
22 treat nonmandatory payments as nonrecourse payment obligations.

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

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6 (B) The notice shall:

7 (i) use language intended to be easily understood by a layperson:

8 (B) state that the Commissioner has jurisdiction over the ~~on-~~
9 ~~demand pay earned wage access~~ services performed by the licensee;

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10 (C) provide both a phone number and a website through which the
11 consumer can submit complaints about the licensee's ~~on-demand pay earned~~
12 ~~wage access~~ services to the Commissioner; and

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13 (D) state the type and amount of nonmandatory payments the
14 licensee may impose in connection with the provision of ~~on-demand pay~~
15 ~~earned wage access~~ services, and disclose the reasonable no-cost options
16 available.

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17 (3) A licensee shall not collect, compel, or attempt to collect or compel
18 repayment of outstanding proceeds or nonmandatory payments from a
19 consumer except as follows:

20 (A)(i) A provider may recover the amount of outstanding proceeds
21 and any nonmandatory payment through an employer-facilitated payroll

1 deduction from the consumer's next paycheck after the date of payment of
2 proceeds pursuant to a written agreement with the consumer and the obligor.

3 (ii) A provider may attempt one additional payroll deduction in
4 the event of a failed or partial payroll deduction due to an administrative or
5 technical error.

6 (iii) As used in this subdivision (3)(A):

7 (I) An administrative or technical error includes an application
8 programming interface malfunction or a mistake in the employer's payroll
9 process, including a miscalculation of an employee's base pay or overtime
10 award.

11 (II) An administrative or technical error does not include a
12 situation in which the employer has garnished an employee's wages following
13 a payment of proceeds.

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

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

Commented [User6]: Aaron — should we increase the number of attempts to three?

Commented [User7R6]: Overly restrictive and sets a bad precedent. Taken from the CFPB advisory opinion. We would likely have to pull out of VA if we couldn't represent transactions more than once.

Commented [User8R6]: Also there are times where an employer fails to perform deduction due to human (not technical) error etc., which wouldn't qualify under this definition.

Commented [User9]: As written, a D2C provider would get three attempts to debit a consumer's bank account, but an employer-integrated provider would only get one.

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

4 (C) A provider may submit a periodic written invoice to the consumer
5 for payment of the outstanding proceeds and nonmandatory payments,
6 provided that the obligor shall cease invoicing the consumer after sending
7 [three] such invoices. [?]

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

10 (4) A licensee that collects proceeds directly from a consumer shall
11 inform a consumer of the date it will first attempt to collect repayment of
12 proceeds.

13 (5) A licensee that seeks repayment of proceeds from a consumer's
14 depository institution account shall comply with applicable National
15 Automated Clearinghouse Association rules [Necessary or redundant with
16 (3)(B)?].

17 (6) A licensee shall permit a consumer to cancel participation in an on-
18 demand pay~~earned wage access~~ service at any time without charge.

19 (7) A licensee shall clearly show the unique identifier issued to it by the
20 NMLS on its Internet website, on all solicitations and advertisements directed

1 to Vermont consumers, and on any other documents as the Commissioner
2 requires by rule or order.

3 ~~(8)(A) Any time a provider provides a consumer with an option to~~
4 ~~provide or otherwise solicits a nonmandatory payment, the provider shall~~
5 ~~prominently disclose that the earned wage access service is available free of~~
6 ~~charge and any payment to the provider for earned wage access is optional.~~

7 ~~(B) The disclosure shall describe how customers may access such no~~
8 ~~cost options.~~

9 ~~(C) [Such no cost options shall not be substantially more difficult or~~
10 ~~burdensome for a consumer to access than options involving or requiring~~
11 ~~nonmandatory payments.]~~

12 § 2305. PROHIBITED ACTS AND PRACTICES

13 *A provider shall not:*

14 (1) Impose a mandatory payment on a consumer that directly relates to
15 the provision of ~~on-demand pay earned wage access~~ services. [*Require a*
16 *mandatory payment for ~~on-demand pay earned wage access~~ services]*

17 (2) Charge a late fee, interest, or any other penalty or charge for failure
18 to repay outstanding proceeds.

19 (3) Make the offering of ~~on-demand pay earned wage access~~ services,
20 either in the amount of proceeds a consumer is eligible to request or the
21 frequency with which proceeds are provided to a consumer, contingent on

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1 whether the consumer makes any nonmandatory payments to the provider or
2 on the size of any nonmandatory payments that consumer may make to that
3 provider in connection with the provision of ~~on-demand pay earned wage~~
4 ~~access~~ services. This prohibition shall not be construed to prohibit a
5 nonmandatory payment equal to a percentage of proceeds provided. [*Needs*
6 *rewrite*]

7 (4) Impose a deferral fee or any other charge in connection with
8 deferring the collection of any outstanding proceeds beyond the original
9 scheduled repayment date.

10 (5) Solicit a consumer to delay repayment of outstanding proceeds for
11 the purpose of increasing the total nonmandatory payments a provider may
12 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 ~~on-demand pay earned wage access~~ services.

17 ~~(8) Provide, sell, or otherwise disclose to any third party, including an~~
18 ~~obligor, any nonpublic personal information collected from or about a~~
19 ~~consumer, except as necessary to provide earned wage access services to the~~
20 ~~consumer or in accordance with a consumer's written consent.~~

1 (9) Directly or indirectly employ any scheme, device, or artifice to
2 defraud or mislead consumers.

3 (10) Engage in any unfair or deceptive practice toward any consumer.

4 (11) Fail to comply with this chapter or rules adopted under this chapter,
5 with any orders or directives from the Commissioner, or with any other State
6 or federal law, including the rules thereunder, applicable to any business
7 authorized or conducted under this chapter. [use active construct?]

8 (12) Make, in any manner, any false or deceptive statement or
9 representation. [9, 10, and 12 – distinct?]

10 (13) Make any false statement, or fail to state a material fact necessary
11 in order to make the statements made, in light of the circumstances under
12 which they were made, not misleading, or knowingly and willfully make any
13 other omission of material fact to the Commissioner or any other government
14 agency or in connection with any information or reports filed with or provided
15 to any governmental agency or the NMLS or in connection with any
16 investigation conducted by the Commissioner or another governmental agency.

17 (14) Collect, charge, attempt to collect or charge, or use or propose any
18 agreement purporting to collect or charge any fee or payment prohibited by
19 this chapter.

20 (15) Discriminate against any consumer on the basis of the sex, marital
21 status, race, color, religion, national origin, age, sexual orientation, gender

1 identity, or disability of the consumer, provided that the foregoing shall not
2 require a provider to do business with a consumer that lacks the legal capacity
3 to contract due to the consumer’s disability or minor age. [necessary?]

4 ~~(16) Pay, advance, or otherwise disburse aggregate outstanding proceeds~~
5 ~~to any consumer exceeding the lesser of [eighty percent] of such consumer’s~~
6 ~~earned but unpaid income or such other maximum amount of proceeds as the~~
7 ~~Commissioner may establish by rule or order.~~ |

Commented [User12]: Should be left to the employer

8 (17) Create, require, accept, or perfect any security interest in, or any
9 pledge or hypothecation of, any collateral, property, or assets of any consumer,
10 or otherwise hold, possess or control any collateral, property or assets of any
11 consumer in connection with providing a on-demand pay earned wage access
12 services or paying proceeds to any consumer.

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

18 § 2306. APPLICABILITY OF OTHER STATE LAWS

19 (a) Proceeds provided to a consumer by a registrant in accordance with this
20 section shall not be considered credit, the provider of those proceeds shall not
21 be considered a creditor, and nonmandatory payments paid to that registrant

1 ~~shall not be considered finance charges for purposes of the federal Truth in~~
2 ~~Lending Act.~~

3 ~~(b) Proceeds provided to a consumer by a licensee in accordance with this~~
4 ~~chapter shall not be subject to chapter 73 of this title and shall not be~~
5 ~~considered a wage assignment pursuant to section 2234 or 2235 of this title.~~

6 ~~(b) Proceeds provided to a consumer by a provider without a license~~
7 ~~granted under this chapter shall be deemed to be a loan and shall be subject to~~
8 ~~chapter 73 of this title and to Title 9 of the Vermont Statutes Annotated, and~~
9 ~~may be considered a wage assignment pursuant to section 2234 or 2235 of this~~
10 ~~title.~~

11 ~~(c) A provider who registers with the Commissioner pursuant to this~~
12 ~~chapter shall not be required to be licensed under any other chapter of this title.~~

13 ~~(c) Proceeds provided to a consumer by a provider shall be deemed to be~~
14 ~~debt for purposes of 9 V.S.A. § 2453 and all rules adopted by the Attorney~~
15 ~~General thereunder.~~

16 § 2307. RULES

17 The Commissioner may adopt rules and orders and specific rulings,
18 demands, and findings as may be necessary for the administration and the
19 enforcement of this chapter and for the protection of consumers who obtain on-
20 demand pay ~~earned wage access~~ services in this State, ~~including imposing~~

Commented [User13]: How can one say that something that doesn't comply necessarily is a loan without knowing what "it" is?

Commented [User14]: Suggest removing

1 ~~limits and requirements on the amount, type, and disclosure of nonmandatory~~
2 ~~payments.~~

3 § 2308. PRIVATE RIGHT OF ACTION; CONSUMER PROTECTION ACT

4 (a) A consumer may bring a private right of action against a licensee or any
5 person that should have been licensed under this chapter for restitution because
6 of a violation of this chapter.

7 (b) The powers vested in the Commissioner by this chapter shall be in
8 addition to any other powers or rights of consumers or the Attorney General or
9 others under any other applicable law or rule, including the Vermont
10 Consumer Protection Act and any applicable rules issued in connection
11 therewith, provided that the Commissioner's determinations concerning the
12 interpretation and administration of the provisions of this chapter and any rules
13 adopted thereunder shall carry a presumption of validity.

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

15 § 2102. APPLICATION FOR LICENSE

16 (a) Application for a license or registration shall be in writing, under oath,
17 and in the form prescribed by the Commissioner, and shall contain the legal
18 name, any fictitious name or trade name, and the address of the residence and
19 place of business of the applicant, and if the applicant is a partnership or an
20 association, of every member thereof, and if a corporation, of each officer and
21 director thereof; also the county and municipality with street and number, if

1 any, where the business is to be conducted and such further information as the
2 Commissioner may require.

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

7 * * *

8 (15) For an application for an on-demand pay earned wage access
9 services provider license under chapter 75 of this title, \$1,000.00 as a license
10 fee and \$1,000.00 as an application and investigation fee.

11 * * *

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

13 § 2109. ANNUAL RENEWAL OF LICENSE

14 (a) On or before December 1 of each year, every licensee shall renew its
15 license or registration for the next succeeding calendar year and shall pay to
16 the Commissioner the applicable renewal of license or registration fee. At a
17 minimum, the licensee or registree shall continue to meet the applicable
18 standards for licensure or registration. At the same time, the licensee or
19 registree shall maintain with the Commissioner any required bond in the
20 amount and of the character as required by the applicable chapter. The annual
21 license or registration renewal fee shall be:

* * *

(15) For an ~~on-demand pay earned wage access~~ services provider license under chapter 75 of this title, \$1,200.00.

* * *

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

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

Sec. 5. IMPLEMENTATION; GRACE PERIOD

Notwithstanding the license requirement imposed in 8 V.S.A. § 2302, a person providing ~~on-demand pay earned wage access~~ services in this State as of January 1, 2023 may continue providing services through December 31, 2024, or until its application for a license is denied, if:

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

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

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE