

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

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

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

3 (6) “Nonmandatory payment” means an amount that a consumer or
4 an obligor may, but is not required to, pay a provider for earned wage
5 access services. For purposes of this section, examples of “nonmandatory
6 payments” include the following:

7 (A) A fee imposed by a provider for delivery or expedited
8 delivery of proceeds to a consumer, as long as the provider offers the
9 consumer at least one option to receive proceeds [within two business
10 days] at no cost to the consumer.

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

14 (C) A subscription or membership fee imposed by a provider for
15 a group of services that include earned wage access services, as long as the
16 provider offers the consumer at least one option of receiving proceeds
17 [within two business days] at no cost to the consumer.

18 (D) A tip or gratuity paid by a consumer to a provider, as long as
19 the provider offers the consumer at least one option of receiving
20 proceeds [within two business days] at no cost to the consumer.

21 1 For purposes of this definition, an option to receive a no-cost
22 automated clearing house transfer of proceeds to the account of

1 a consumer’s choice shall satisfy the requirement to provide an
2 option of receiving proceeds [within [] business days] at no
3 cost to the consumer if such automated clearing house transfer
4 is initiated by the provider no later than [3:00 p.m. on the next
5 succeeding business day.

6
7 2 For purposes of this definition, an option to receive a no-cost
8 transfer to a prepaid account as defined under 12 CFR Part
9 1005 that is managed, issued, or otherwise facilitated by the
10 provider or its affiliates, shall not be deemed to be a no-cost
11 option unless the provider does not charge fees for opening such
12 prepaid account and such prepaid account allows the consumer
13 reasonable use of such prepaid account at no charge to the
14 consumer. In this context, “reasonable use” means, inter alia,
15 that any prepaid card associated with such prepaid account
16 must be issued on a major network brand that permits use at
17 multiple, unaffiliated merchants; the prepaid account must not
18 charge fees for use of an associated card to buy goods or
19 services at merchants that accept the associated card; the
20 prepaid account must not impose any periodic fees; and the
21 employee must have some free and reasonably accessible means
22 to obtain cash from the prepaid account.
23

24 (7)(A) “Nonrecourse” means that, unless permitted under subdivision
25 2304(3) of this title, a provider cannot compel or attempt to compel a consumer
26 to repay outstanding proceeds or nonmandatory payments through any of the
27 following means:

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

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

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

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

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

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

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

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

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

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

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

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

8 § 2302. **LICENSE REQUIRED**

9 (a) On and after January 1, 2024 [necessary to have date in statute? Can
10 move to implementation] a person shall not provide earned wage access
11 services in this State without first obtaining a license pursuant to this chapter.

12 (b) A person, including a provider’s financial institution as defined in
13 subdivision 10202(5) of this title, but not including a consumer’s financial
14 institution as defined in subdivision 10202(5) of this title or an interbank
15 clearinghouse as defined in 9 V.S.A. § 2481w(a), shall not provide substantial
16 assistance to a provider if the person or the person’s authorized agent receives
17 notice from a regulatory, law enforcement, or similar governmental authority;
18 knows from its normal monitoring and compliance systems; or consciously
19 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 *A 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 nonmandatory payments
11 that a licensee may impose in connection with the provision of earned wage
12 access services;

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

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

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

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

1 § 2304. LICENSEE REQUIREMENTS

2 A licensee is subject to the following requirements:

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

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

9 (B) The notice shall:

10 (i) use language intended to be easily understood by a layperson;

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

13 (C) provide both a phone number and a website through which the
14 consumer can submit complaints about the licensee's earned wage access
15 services to the Commissioner; and

16 (D) state the type and amount of nonmandatory payments the
17 licensee may impose in connection with the provision of earned wage access
18 services.

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

1 (A)(i) A provider may recover the amount of outstanding proceeds
2 and any nonmandatory payment through an employer-facilitated payroll
3 deduction from the consumer’s next paycheck after the date of payment of
4 proceeds pursuant to a written agreement with the consumer and the obligor.

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

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

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

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

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

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

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

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

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

13 (4) A licensee shall inform a consumer of the date it will first attempt to
14 collect repayment of proceeds.

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

19 (6) A licensee shall permit a consumer to cancel participation in an
20 earned wage access service at any time without charge.

1 (7) A licensee shall clearly show the unique identifier issued to it by the
2 NMLS on its Internet website, on all solicitations and advertisements directed
3 to Vermont consumers, and on any other documents as the Commissioner
4 requires by rule or order.

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

9 (B) The disclosure shall describe how customers may access such no-
10 cost options.

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

14 § 2305. PROHIBITED ACTS AND PRACTICES

15 *A provider shall not:*

16 (1) Impose a mandatory payment on a consumer that directly relates to
17 the provision of earned wage access services. [*Require a mandatory payment*
18 *for earned wage access services*]

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

1 (3) Make the offering of earned wage access services, either in the
2 amount of proceeds a consumer is eligible to request or the frequency with
3 which proceeds are provided to a consumer, contingent on whether the
4 consumer makes any nonmandatory payments to the provider or on the size of
5 any nonmandatory payments that consumer may make to that provider in
6 connection with the provision of earned wage access services. This prohibition
7 shall not be construed to prohibit a nonmandatory payment equal to a
8 percentage of proceeds provided. [Needs rewrite]

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

12 (5) Solicit a consumer to delay repayment of outstanding proceeds for
13 the purpose of increasing the total nonmandatory payments a provider may
14 collect.

15 (6) Report a consumer’s payment or failed repayment of proceeds to a
16 consumer credit reporting agency or a debt collector.

17 (7) Require a credit report or credit score to determine a consumer’s
18 eligibility for earned wage access services.

19 ~~(8) Provide, sell, or otherwise disclose to any third party, including an~~
20 ~~obligor, any nonpublic personal information collected from or about a~~

1 ~~consumer, except as necessary to provide earned wage access services to the~~
2 ~~consumer or in accordance with a consumer's written consent.~~

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

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

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

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

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

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

1 (15) Discriminate against any consumer on the basis of the sex, marital
2 status, race, color, religion, national origin, age, sexual orientation, gender
3 identity, or disability of the consumer, provided that the foregoing shall not
4 require a provider to do business with a consumer that lacks the legal capacity
5 to contract due to the consumer’s disability or minor age. [necessary?]

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

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

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

20 § 2306. APPLICABILITY OF OTHER STATE LAWS

1 (a) Proceeds provided to a consumer ~~by a registrant in accordance with this~~
2 ~~section shall not be considered credit, the provider of those proceeds shall not~~
3 ~~be considered a creditor, and nonmandatory payments paid to that registrant~~
4 ~~shall not be considered finance charges for purposes of the federal Truth in~~
5 ~~Lending Act.~~

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

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

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

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

19 § 2307. RULES

20 The Commissioner may adopt rules and orders and specific rulings,
21 demands, and findings as may be necessary for the administration and the

1 enforcement of this chapter and for the protection of consumers who obtain
2 earned wage access services in this State, including imposing limits and
3 requirements on the amount, type, and disclosure of nonmandatory payments.

4 § 2308. PRIVATE RIGHT OF ACTION; CONSUMER PROTECTION ACT

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

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

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

16 § 2102. APPLICATION FOR LICENSE

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

1 director thereof; also the county and municipality with street and number, if
2 any, where the business is to be conducted and such further information as the
3 Commissioner may require.

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

8 * * *

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

12 * * *

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

14 § 2109. ANNUAL RENEWAL OF LICENSE

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

1 amount and of the character as required by the applicable chapter. The annual
2 license or registration renewal fee shall be:

3 * * *

4 (15) For an earned wage access services provider license under chapter
5 75 of this title, \$1,200.00.

6 * * *

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

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

13 **Sec. 5. IMPLEMENTATION; GRACE PERIOD**

14 Notwithstanding the license requirement imposed in 8 V.S.A. § 2302, a
15 person providing earned wage access services in this State as of January 1,
16 2023 may continue providing services through December 31, 2024, or until its
17 application for a license is denied, if:

18 (1) the provider submits an application for a license before January 1,
19 2024; and

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

21 Sec. 6. EFFECTIVE DATE

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

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5

6 (Committee vote: _____)

7

8

Representative _____

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FOR THE COMMITTEE