

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 regulating earned wage
4 access services” 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) “Direct-to-consumer provider” means a provider that offers or
13 provides earned wage access services directly to consumers based on the
14 consumer’s representations and the provider’s reasonable determination of the
15 consumer’s earned but unpaid income.

16 (3) “Earned but unpaid income” means salary, wages, compensation, or
17 other income that an obligor owes but has not yet paid to a consumer, as
18 reasonably determined by a provider based on information provided by or on
19 behalf of a consumer or obligor.

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

4 (5) “Employer-integrated provider” means a provider that offers or
5 provides earned wage access services to a consumer using time and attendance
6 or earnings data for the relevant pay period that is provided directly or
7 indirectly by an obligor or a service provider of the obligor.

8 (6) “Licensee” means a provider who has been issued a license pursuant
9 to this chapter.

10 (7) “Obligor” means a person who is legally obligated to pay salary,
11 wages, compensation, or other income for work a consumer performs on an
12 hourly, project-based, piecework, or other basis.

13 (8) “Outstanding proceeds” means proceeds transferred to a consumer
14 by a provider and not yet repaid to the provider.

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

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

19 § 2302. LICENSE REQUIRED

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

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

9 (c) Subsection (a) of this section does not apply to a financial institution, as
10 defined in subdivision 10202(5) of this title, if it is authorized by law to accept
11 deposits and the deposits are federally insured.

12 § 2303. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

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

14 (1) a description of the earned wage access services that the applicant
15 seeks to provide in this State;

16 (2) a statement or indication whether the provider is an employer-
17 integrated provider or a direct-to-consumer provider, or both;

18 (3) a list of other states in which the applicant is licensed or registered to
19 provide earned wage access services;

20 (4) a description of the nature and amount of charges or fees that the
21 applicant may impose for earned wage access services;

1 (5) information concerning any bankruptcy or receivership proceedings
2 affecting the applicant or any person in control of the applicant; and

3 (6) any other information required by the Commissioner, including
4 through the Nationwide Multistate Licensing System and Registry.

5 § 2304. LICENSEE REQUIREMENTS; TERMS OF SERVICE

6 (a) Basic services. A licensee shall make available to each consumer to
7 whom it offers earned wage access services a basic level of service that
8 provides a reasonable option to receive proceeds at no cost to the consumer,
9 consistent with any minimum requirements and standards the Commissioner
10 adopts by rule or order.

11 (b) Employer services; additional services.

12 (1) An employer-integrated provider may impose a charge or fee on an
13 obligor who contracts with the provider:

14 (A) to offer basic earned wage access services under subsection (a) of
15 this section; or

16 (B) to provide additional services to consumers who are employees
17 or contractors of the obligor.

18 (2) A licensee may offer additional services that may be subject to the
19 following charges or fees:

20 (A) a charge or fee for the optional expedited delivery of proceeds;

1 (B) a subscription or membership fee for a bona fide group of
2 services that includes earned wage access services; or

3 (C) other charges or fees that the Commissioner allows by rule or
4 order.

5 (c) Optional gratuity. A licensee may solicit an optional gratuity before
6 finalizing the payment of proceeds, provided that:

7 (1) the licensee provides clear notice that a gratuity is optional;

8 (2) if the default setting for the amount of a gratuity is not zero dollars,
9 the licensee provides the consumer a clear and accessible option to change the
10 amount and to leave no gratuity; and

11 (3) to approve a gratuity, the consumer must:

12 (A) affirmatively consent to contributing the gratuity after entering a
13 dollar amount or percentage value; or

14 (B) confirm a prominently disclosed default amount.

15 (d) Required disclosures; notice of terms and conditions.

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

20 (2) The notice shall:

21 (A) use language intended to be easily understood by a layperson;

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

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

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

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

10 (3) Any time a licensee offers or provides additional earned wage access
11 service for which it imposes a charge or fee, the licensee shall comply with any
12 disclosure requirements and standards the Commissioner adopts by rule or
13 order.

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

18 (e) Cancellation of service. A licensee that offers or provides earned wage
19 access services on a recurring basis or as part of a subscription service shall
20 allow a consumer to cancel participation in the service at any time without
21 charge.

1 (f) Termination of service. If authorized by the licensee and consumer in
2 their service contract, a licensee may terminate service to a consumer who does
3 not repay outstanding proceeds or pay a charge or fee permitted by law.

4 § 2305. NONRECOURSE OBLIGATIONS; PERMISSIBLE COLLECTION

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

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

13 (1) Payroll deduction.

14 (A) Pursuant to a written agreement with the consumer and the
15 obligor, a licensee that is an employer-integrated provider may initiate an
16 obligor-facilitated payroll deduction, direct payment to the provider by or on
17 behalf of an obligor, or obligor-facilitated assignment of the outstanding
18 proceeds from the consumer's next paycheck following the date proceeds were
19 paid.

1 (B) A licensee may make not more than four total attempts at a
2 payroll deduction, direct payment, or assignment pursuant to subdivision (A)
3 of this subdivision (b)(1).

4 (2) Electronic transfer.

5 (A) A licensee may make not more than four attempts at an electronic
6 transfer of funds from a consumer's depository account at a financial
7 institution if:

8 (i) the consumer consents to the repayment of outstanding
9 proceeds, charges, or fees through an electronic transfer;

10 (ii) the licensee provides prior notice of the date and the amount of
11 a transfer;

12 (iii) the licensee attempts a transfer only on the date and in the
13 amount specified in the notice;

14 (iv) the licensee complies with all requirements applicable to the
15 payment system it uses to make an electronic transfer, including any applicable
16 National Automated Clearinghouse Association rules; and

17 (v) the licensee uses reasonable care to avoid causing a consumer
18 to incur a fee or penalty for insufficient funds.

19 (B) A licensee who violates subdivision (A) of this subdivision (b)(2)
20 shall reimburse a consumer for any fee or penalty the consumer incurs due to
21 the violation.

1 (3) Periodic invoice. A licensee may submit not more than three
2 periodic written invoices to a consumer for payment.

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

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

9 § 2306. PROHIBITED ACTS AND PRACTICES

10 A licensee shall not:

11 (1) impose or attempt to collect a charge, fee, penalty, or interest:

12 (A) for basic earned wage access services under subsection 2304(a)
13 of this title;

14 (B) for employer services or additional services if not otherwise
15 authorized under subsection 2304(b) of this title;

16 (C) for failure to repay outstanding proceeds or to pay any fee or
17 charge; or

18 (D) to defer the collection of outstanding proceeds beyond the
19 original schedule for collection;

20 (2) condition the availability or terms of earned wage access services,
21 including the amount of proceeds and the frequency of payments, on:

1 (A) whether the consumer chooses optional additional services;

2 (B) the amount or type of charges or fees the consumer **agrees to pay**;

3 **(C) a requirement that the consumer transfer ownership or control of,**

4 **or create a security interest in, the consumer's property as security for the**

5 **repayment of outstanding proceeds or fees; or**

6 **(D) a consumer's credit report or credit score;**

7 **(3) commit an unfair or deceptive act in commerce, including:**

8 (A) making a false or deceptive statement or representation, or a

9 fraudulent misrepresentation, to a consumer, the Commissioner, or a

10 government agency;

11 (B) soliciting a consumer to delay repayment of outstanding proceeds

12 for the purpose of increasing the total charges or fees the **licensee** may collect;

13 and

14 **(C) any act, practice, or conduct prohibited in connection with the**

15 **collection of, or attempt to collect, a debt arising out of a consumer transaction**

16 **under 9 V.S.A. § 2453(a) or any rule adopted by the Attorney General under**

17 **that subsection;**

18 **(4) report a consumer's payment or failed repayment of proceeds or**

19 **payment of any fee or charge to a **consumer reporting agency** or debt collector;**

20 **(5) discriminate against a 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 a licensee is not required
2 to do business with a consumer that lacks the legal capacity to contract due to
3 the consumer’s disability or minor age; or

4 (6) transfer proceeds to a consumer in virtual currency or in an
5 instrument denominated in virtual currency without the prior approval of the
6 Commissioner in a writing expressly referencing this subdivision, other than a
7 virtual currency issued or insured by the United States of America or its
8 agency or instrumentality.

9 § 2307. APPLICABILITY OF OTHER STATE LAWS

10 The provision of earned wage access services by a licensee in accordance
11 with this chapter is not a loan subject to chapter 73 of this title, is not a wage
12 assignment under section 2234 or 2235 of this title, and is not subject to 9
13 V.S.A. chapter 4.

14 § 2308. RULES

15 The Commissioner may adopt rules and orders and issue specific rulings,
16 demands, and findings as are necessary for the administration and the
17 enforcement of this chapter and for the protection of consumers who obtain
18 earned wage access services in this State, including imposing limits and
19 requirements on the amount, type, and disclosure regarding earned wage
20 access services and charges or fees for services.

21 § 2309. PRIVATE RIGHT OF ACTION; CONSUMER PROTECTION ACT

1 (a) A consumer may bring a private right of action for damages caused by a
2 violation of this chapter against a provider that was required to be licensed
3 under this chapter, but was not, at the time the provider offered or provided
4 earned wage access services to the consumer.

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

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

13 § 2102. APPLICATION FOR LICENSE

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

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

5 * * *

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

9 * * *

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

11 § 2109. ANNUAL RENEWAL OF LICENSE

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

20 * * *

1 (c) Solely for purposes of 8 V.S.A. § 2309(a), a provider that has complied
2 with subsection (b) of this section shall be deemed to be a licensee during the
3 grace period provided by subsection (b) of this section.

4 Sec. 6. EFFECTIVE DATE

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

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10 (Committee vote: _____)

11

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Representative _____

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FOR THE COMMITTEE