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H.87

Introduced by Representatives Marcotte of Coventry, Carroll of Bennington,  
Jerome of Brandon, Mulvaney-Stanak of Burlington, Nicoll of  
Ludlow, Priestley of Bradford, and White of Bethel

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to regulate  
earned wage access services.

An act relating to regulating earned wage access services

It is hereby enacted by the General Assembly of the State of Vermont:

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

CHAPTER 75. EARNED WAGE ACCESS SERVICES

§ 2301. DEFINITIONS

As used in this chapter:

(1) “Commissioner” means the Commissioner of Financial Regulation.

(2) “Consumer” means a natural person residing in the State of

Vermont.

1           (3) “Earned but unpaid income” means wages, compensation, or income  
2           that a consumer has represented, and that a provider has reasonably  
3           determined, have been earned or accrued to the benefit of the consumer but has  
4           not, at the time of the payment of proceeds, been paid to the consumer by an  
5           obligor.

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

9           (5) “Mandatory payment” means an amount determined by a provider  
10          that must be paid by a consumer to that provider as a condition of receiving  
11          proceeds.

12          (6) “Nationwide Multistate Licensing System and Registry” or “NMLS”  
13          means a system developed and maintained by the Conference of State Bank  
14          Supervisors and the American Association of Residential Mortgage Regulators  
15          for the licensing and registration of financial service providers.

16          (7) “Nonmandatory payment” means an amount paid by a consumer or  
17          an obligor to a provider for earned wage access services, that does not meet the  
18          definition of a mandatory payment. For purposes of this section, examples of  
19          “nonmandatory payments” include the following:

1           (A) A fee imposed by a provider for delivery or expedited delivery of  
2           proceeds to a consumer, as long as the provider offers the consumer at least  
3           one option to receive proceeds at no cost to the consumer.

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

7           (C) A subscription or membership fee imposed by a provider for a  
8           group of services that include earned wage access services, as long as the  
9           provider offers the consumer at least one option of receiving proceeds at no  
10          cost to the consumer.

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

14          (8)(A) "Nonrecourse" means that a provider cannot compel or attempt  
15          to compel repayment by a consumer of outstanding proceeds or nonmandatory  
16          payments owed by that consumer to that provider through any of the following  
17          means:

18                 (i) a civil suit against the consumer in a court of competent  
19                 jurisdiction;

20                 (ii) use of a third party to pursue collection of outstanding  
21                 proceeds or non-mandatory payments on the provider's behalf; and

1                   (iii) sale of outstanding amounts to a third-party collector or debt  
2 buyer.

3                   (B) The term “nonrecourse” does not preclude the use by a provider  
4 of any of the foregoing methods to compel or attempt to compel repayment of  
5 outstanding amounts incurred by a consumer through fraudulent means.

6                   (9)(A) “Obligor” means an employer or another person, including an  
7 independent contractor, who is contractually or legally obligated to pay a  
8 consumer any 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 any payment to a consumer  
12 based solely on the consumer’s agency relationship with the obligor.

13                  (10) “Outstanding proceeds” means proceeds remitted to a consumer by  
14 a provider that has not yet been repaid to that provider.

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

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

19                  (13) “Registrant” means a provider who has been issued a registration  
20 by the Commissioner pursuant to this chapter.

1           (14) “Unique identifier” means a number or other identifier assigned by  
2           protocols established by the NMLS.

3           § 2302. REGISTRATION REQUIRED

4           On and after January 1, 2024, no person, including a person who is not  
5           physically located in this State, shall provide earned wage access services in  
6           this State without first registering as an earned wage access services provider  
7           with the Commissioner.

8           § 2303. REGISTRANT REQUIREMENTS

9           A registrant shall be subject to all of the following requirements:

10           (1) A registrant shall provide all proceeds on a nonrecourse basis and  
11           shall treat nonmandatory payments as nonrecourse payment obligations.

12           (2) Before providing a consumer with earned wage access services, a  
13           registrant shall provide the consumer with a written paper or electronic  
14           document, which can be included as part of the contract to provide earned  
15           wage access services, that:

16           (A) informs the consumer of the terms and conditions of the earned  
17           wage access services;

18           (B) includes a statement that the Commissioner has jurisdiction over  
19           the earned wage access services performed by the registrant and provides both  
20           a phone number and a website through which the consumer can submit

1 complaints about the registrant's earned wage access services to the

2 Commissioner;

3 (C) is written in language intended to be easily understood by a  
4 layperson; and

5 (D) discloses any nonmandatory payments that may be imposed by  
6 the registrant in connection with the provision of earned wage access services  
7 by that registrant.

8 (3) A registrant shall provide proceeds to a consumer via any means  
9 mutually agreed upon by the consumer and registrant.

10 (4) In any case in which a registrant will seek repayment of proceeds  
11 from a consumer, the registrant shall inform the consumer when the registrant  
12 will make its first attempt to seek repayment of those proceeds from the  
13 consumer.

14 (5) A registrant that seeks repayment of proceeds from a consumer's  
15 depository institution account shall comply with applicable National  
16 Automated Clearinghouse Association rules.

17 (6) A registrant shall permit a consumer to cancel participation in an  
18 earned wage access service at any time without incurring a charge for doing so.

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

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

3 § 2304. REGISTRANT PROHIBITED ACTS AND PRACTICES

4 It is a violation of this chapter for a registrant to do any of the following:

5 (1) Impose a mandatory payment on a consumer that directly relates to  
6 the provision of earned wage access services.

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

9 (3) Make the offering of earned wage access services, either in the  
10 amount of proceeds a consumer is eligible to request or the frequency with  
11 which proceeds are provided to a consumer, contingent on whether the  
12 consumer makes any nonmandatory payments to the registrant or on the size of  
13 any nonmandatory payments that consumer may make to that registrant in  
14 connection with the provision of earned wage access services. This prohibition  
15 shall not be construed to prohibit a nonmandatory payment equal to a  
16 percentage of proceeds provided.

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

1           (5) Solicit a consumer to delay repayment of outstanding proceeds for  
2           the purpose of increasing the total nonmandatory payments a registrant may  
3           collect.

4           (6) Report a consumer's payment or failed repayment of proceeds to a  
5           consumer credit reporting agency or a debt collector.

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

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

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

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

15          (11) Conduct any business covered by this chapter without holding a  
16          valid registration as required under this chapter or assist or aid and abet any  
17          person in the conduct of business under this chapter without a valid registration  
18          as required under this chapter.

19          (12) Fail to comply with this chapter or rules adopted under this chapter,  
20          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 (13) Make, in any manner, any false or deceptive statement or  
4 representation.

5 (14) Negligently make any false statement or knowingly and willfully  
6 make any omission of material fact in connection with any information or  
7 reports filed with a governmental agency or the NMLS or in connection with  
8 any investigation conducted by the Commissioner or another governmental  
9 agency.

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

12 (16) Discriminate against any consumer on the basis of the sex, marital  
13 status, race, color, religion, national origin, age, sexual orientation, gender  
14 identity, or disability of the consumer, provided the consumer has the legal  
15 capacity to contract.

16 § 2305. APPLICABILITY OF SPECIFIED STATE AND FEDERAL LAWS

17 (a) Proceeds provided to a consumer by a registrant in accordance with this  
18 section shall not be considered credit, the provider of those proceeds shall not  
19 be considered a creditor, and nonmandatory payments paid to that registrant  
20 shall not be considered finance charges for purposes of the federal Truth in  
21 Lending Act.

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

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

6        § 2306. RULES

7        The Commissioner may adopt rules and orders and specific rulings,  
8        demands, and findings as may be necessary for the administration and the  
9        enforcement of this chapter and for the protection of consumers who obtain  
10       earned wage access services in this State.

11       Sec. 2. EFFECTIVE DATE

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