H. R. 7428

To regulate the business of offering and providing earned wage access services to consumers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 20, 2024

Mr. STEIL (for himself and Mr. HILL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To regulate the business of offering and providing earned wage access services to consumers, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Earned Wage Access Consumer Protection Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.
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(2) CONSUMER.—The term “consumer” means a natural person.

(3) CONSUMER-DIRECTED WAGE ACCESS SERVICES.—The term “consumer-directed wage access services” means offering or providing earned wage access services directly to consumers based on the consumer’s representations and the provider’s reasonable determination of the consumer’s earned but unpaid income.

(4) DEBT COLLECTOR.—The term “debt collector” has the meaning given that term under section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a).

(5) EARNED BUT UNPAID INCOME.—The term “earned but unpaid income” means salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer in exchange for the consumer’s provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework, or other basis and including where the consumer is acting as an independent contractor of the employer, but have
not, at the time of the payment of proceeds, been paid to the consumer by an employer.

(6) **Earned Wage Access Services.**—The term “earned wage access services” means the business of providing consumer-directed wage access services or employer-integrated wage access services, or both at the request of an employee.

(7) **Employer.**—

(A) **In General.**—The term “employer” means a person who—

(i) employs a consumer; or

(ii) any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for the consumer’s provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework, or other basis and including where the consumer is acting as an independent contractor with respect to the employer.

(B) **Exclusion.**—The term “employer” does not include—

(i) a customer of an employer or any other person whose obligation to make a payment of salary, wages, compensation, or
other income to a consumer is not based
on the provision of services by that con-
sumer for or on behalf of such person; or

(ii) a third-party service provider con-
tracted by the employer to distribute in-
come to consumers, including on demand
pay for earned but unpaid income re-
quested by the consumer, on behalf of the
employer at no fee to the consumer.

(8) Employer-integrated wage access
services.—The term “employer-integrated wage ac-
cess services” means the business of delivering to
consumers access to earned but unpaid income that
is based on employment, income, or attendance data
obtained directly or indirectly from an employer.

(9) Fee.—The term “fee” means—

(A) a fee imposed by a provider for deliv-
ery or expedited delivery of proceeds to a con-
sumer;

(B) a subscription or membership fee im-
posed by a provider for a bona fide group of
services that include earned wage access serv-
ices; and
(C) does not include a voluntary tip, gratuity, or other donation paid by a consumer to a provider.

(10) OUTSTANDING PROCEEDS.—The term “outstanding proceeds” means a payment of proceeds to a consumer by a provider, which has not yet been repaid to that provider.

(11) PROCEEDS.—The term “proceeds” means a payment to a consumer by a provider, which is based on earned but unpaid income.

(12) PROVIDER.—The term “provider”—

(A) means a person who is in the business of providing earned wage access services to consumers; and

(B) does not include—

(i) a service provider (such as a payroll service provider) whose role may include verifying a consumer’s available earnings but that is not contractually obligated to fund proceeds delivered as part of an earned wage access service;

(ii) an employer that offers a portion of salary, wages, or compensation directly to its employees or independent contractors prior to the normally scheduled pay date;
(iii) a financial institution (as such term is defined in section 20 of title 18, United States Code) when it permits customers to access amounts associated with an electronic funds transaction for which the financial institution has received information but which has not yet settled; and

(iv) a payroll service provider that facilitates payments to workers of earned, available wage balances in accordance with Federal, State, and local law, including the Fair Labor Standards Act of 1938.

SEC. 3. NON-DISCRIMINATION.

It shall be unlawful for any provider to discriminate against any consumer, with respect to any aspect of a transaction on the basis of race, color, religion, national origin, sex, pregnancy, marital status, or age (provided the consumer has the capacity to contract).

SEC. 4. REQUIREMENTS APPLICABLE TO PROVIDERS.

(a) Dispute Policy.—Each provider shall develop and implement policies and procedures to respond to consumer disputes and questions raised by consumers.

(b) Non-Recourse Payments.—

(1) In general.—A provider may not compel or attempt to compel repayment by a consumer of
outstanding proceeds, fees, voluntary tips, gratuities, or other donations to that provider through—

(A) a civil suit or arbitration proceeding against the consumer;

(B) use of a third party to pursue collection of outstanding proceeds, fees, voluntary tips, gratuities, or other donations on the provider’s behalf; or

(C) the sale of outstanding amounts to a third-party collector or debt buyer for collection from the consumer.

(2) Fraud Exception.—Paragraph (1) shall not apply to repayment of outstanding amounts obtained by a consumer through fraudulent means or preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

(c) Disclosures to Consumers.—Each provider shall—

(1) before entering into an agreement with a consumer for the provision of earned wage access services—

(A) inform the consumer of his or her rights under the agreement; and

(B) fully and clearly disclose all fees associated with the earned wage access services; and
(2) inform a consumer of the fact of any material changes to the terms and conditions of the earned wage access services before implementing those changes for that consumer.

(d) FORM OF PROCEEDS.—A provider shall provide proceeds to a consumer through a process mutually agreed upon between the consumer and provider.

(e) RULES FOR ACCESSING DEPOSIT ACCOUNTS.—

(1) IN GENERAL.—A provider that seeks repayment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer’s deposit account, including via electronic transfer, shall—

(A) comply with applicable provisions of the Electronic Fund Transfer Act and its implementing regulations; and

(B) reimburse the consumer for the full amount of any overdraft or non-sufficient funds fees imposed on a consumer by the consumer’s depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, or other payments in connection with the activities covered by this Act, including voluntary tips, gratuities, or other donations, on a date before, or in an in-
correct amount from, the date or amount disclosed to the consumer.

(2) **Fraud Exception.**—Paragraph (1) shall not apply to payments of outstanding proceeds, fees, or other amounts obtained by a consumer through fraudulent or other unlawful means.

(f) **Canceling Participation in an Earned Wage Access Service.**—A provider that makes earned wage access services available to a consumer on a recurring basis shall allow that consumer to discontinue receiving future services upon reasonable notice without imposing a financial penalty on that consumer.

(g) **Limitations Related to Fees and Other Payments.**—

(1) A provider may not—

(A) share with an employer any proceeds fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services;

(B) accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer via credit card or charge card, unless such credit card or charge card is provided to the consumer as a part of the earned wage access service; or
(C) charge a late fee, deferral fee, interest, or any other penalty or charge for failure to pay outstanding proceeds, fees, voluntary tips, gratuities, or other donations.

(2) A provider may, when contractually required, disclose to an employer the date of a transaction associated with earned wage access services.

(h) VOLUNTARY NATURE OF TIPS, GRATUITIES, AND OTHER DONATIONS.—If a provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, the provider shall—

(1) clearly and conspicuously disclose to the consumer immediately prior to each transaction that a tip, gratuity, or other donation amount may be zero and is voluntary;

(2) clearly and conspicuously disclose in its agreement with the consumer that tips, gratuities, or donations are voluntary and that the offering of earned wage access services, including the amount of proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip, gratuity, or other donation or on the size of the tip, gratuity, or other donation;
(3) refrain from misleading or deceiving consumers about the voluntary nature of such tips, gratuities, or other donations; and

(4) refrain from representing that tips, gratuities, or other donations will benefit any specific individuals.

(i) CONSUMER DISPUTE DEFINED.—In this section, the term “consumer dispute” means an allegation by a consumer that—

(1) a payment of proceeds was—

(A) not authorized;

(B) in the incorrect amount; or

(C) not received;

(2) a repayment of proceeds was—

(A) in the incorrect amount; or

(B) not received; or

(3) a fee, tip, gratuity, or other donation was—

(A) not authorized; or

(B) in the incorrect amount.

SEC. 5. BUREAU AUTHORITY TO PROMULGATE REGULATIONS APPLICABLE TO PROVIDERS.

(a) IN GENERAL.—The Director of the Bureau shall have authority to regulate the provision of earned wage access services by providers.
(b) Definition of Enumerated Consumer Laws.—Section 1002(12) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481(12)) is amended—

1. in subparagraph (Q), by striking “and” at the end;
2. (2) in subparagraph (R), by striking the period at the end and inserting “; and”;
3. (3) by adding at the end the following:

“(S) the Earned Wage Access Consumer Protection Act.”.

SEC. 6. APPLICATION OF TRUTH IN LENDING ACT.

Proceeds provided to a consumer in compliance with this Act shall not be considered consumer credit, for purposes of section 1602(f) of title 15, United States Code, and the provider of those proceeds shall not be considered a creditor for purposes of section 1602(g) of such title. Fees, tips, gratuities, and donations paid by a consumer to a provider shall not be considered finance charges for purposes of section 1605(a) of such title.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, may be construed to supersede any other requirement on a financial institution or employer found in Federal law.