

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7428
OFFERED BY MR. STEIL OF WISCONSIN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. DEFINITIONS.

5 In this Act:

6 (1) BUREAU.—The term “Bureau” means the
7 Bureau of Consumer Financial Protection.

8 (2) CONSUMER.—The term “consumer” means
9 a natural person.

10 (3) CONSUMER-DIRECTED WAGE ACCESS SERV-
11 ICES.—The term “consumer-directed wage access
12 services” means offering or providing earned wage
13 access services directly to consumers based on the
14 consumer’s representations and the provider’s rea-
15 sonable determination of the consumer’s earned but
16 unpaid income.

17 (4) DEBT COLLECTOR.—The term “debt col-
18 lector” has the meaning given that term under sec-

1 tion 803 of the Fair Debt Collection Practices Act
2 (15 U.S.C. 1692a).

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

16 (6) EARNED WAGE ACCESS SERVICES.—The
17 term “earned wage access services” means the busi-
18 ness of providing consumer-directed wage access
19 services or employer-integrated wage access services,
20 or both at the request of an employee.

21 (7) EMPLOYER.—

22 (A) IN GENERAL.—The term “employer”
23 means a person who—

24 (i) employs a consumer; or

1 (ii) any other person who is contrac-
2 tually obligated to pay a consumer earned
3 but unpaid income in exchange for the con-
4 sumer's provision of services to the em-
5 ployer or on behalf of the employer, includ-
6 ing on an hourly, project-based, piecework,
7 or other basis and including where the con-
8 sumer is acting as an independent con-
9 tractor with respect to the employer.

10 (B) EXCLUSION.—The term “employer”
11 does not include—

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

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

24 (8) EMPLOYER-INTEGRATED WAGE ACCESS
25 SERVICES.—The term “employer-integrated wage ac-

1 cess services” means the business of delivering to
2 consumers access to earned but unpaid income that
3 is based on employment, income, or attendance data
4 obtained directly or indirectly from an employer.

5 (9) FEE.—The term “fee” means—

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

9 (B) a subscription or membership fee im-
10 posed by a provider for a bona fide group of
11 services that include earned wage access serv-
12 ices; and

13 (C) does not include a voluntary tip, gra-
14 tuity, or other donation paid by a consumer to
15 a provider.

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

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

23 (12) PROVIDER.—The term “provider”—

1 (A) means a person who is in the business
2 of providing earned wage access services to con-
3 sumers; and

4 (B) does not include—

5 (i) a service provider (such as a pay-
6 roll service provider) whose role may in-
7 clude verifying a consumer's available
8 earnings but that is not contractually obli-
9 gated to fund proceeds delivered as part of
10 an earned wage access service;

11 (ii) an employer that offers a portion
12 of salary, wages, or compensation directly
13 to its employees or independent contractors
14 prior to the normally scheduled pay date;

15 (iii) a financial institution (as such
16 term is defined in section 20 of title 18,
17 United States Code) when it permits cus-
18 tomers to access amounts associated with
19 an electronic funds transaction for which
20 the financial institution has received infor-
21 mation but which has not yet settled; and

22 (iv) a payroll service provider that fa-
23 cilitates payments to workers of earned,
24 available wage balances in accordance with

1 Federal, State, and local law, including the
2 Fair Labor Standards Act of 1938.

3 **SEC. 3. NON-DISCRIMINATION.**

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

9 **SEC. 4. REQUIREMENTS APPLICABLE TO PROVIDERS.**

10 (a) DISPUTE POLICY.—Each provider shall develop
11 and implement policies and procedures to respond to dis-
12 putes and questions raised by consumers.

13 (b) NON-RECOURSE PAYMENTS.—

14 (1) IN GENERAL.—A provider may not compel
15 or attempt to compel repayment by a consumer of
16 outstanding proceeds, fees, voluntary tips, gratuities,
17 or other donations to that provider through—

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

20 (B) use of a third party to pursue collec-
21 tion of outstanding proceeds, fees, voluntary
22 tips, gratuities, or other donations on the pro-
23 vider's behalf; or

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

4 (2) FRAUD EXCEPTION.—Paragraph (1) shall
5 not apply to repayment of outstanding amounts ob-
6 tained by a consumer through fraudulent means or
7 preclude a provider from pursuing an employer for
8 breach of its contractual obligations to the provider.

9 (c) DISCLOSURES TO CONSUMERS.—Each provider
10 shall—

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

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

16 (B) fully and clearly disclose all fees asso-
17 ciated with the earned wage access services; and

18 (2) inform a consumer of the fact of any mate-
19 rial changes to the terms and conditions of the
20 earned wage access services before implementing
21 those changes for that consumer.

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

25 (e) RULES FOR ACCESSING DEPOSIT ACCOUNTS.—

1 (1) IN GENERAL.—A provider that seeks repay-
2 ment of outstanding proceeds, fees, voluntary tips,
3 gratuities, or other donations from a consumer’s de-
4 posit account, including via electronic transfer,
5 shall—

6 (A) comply with applicable provisions of
7 the Electronic Fund Transfer Act and its im-
8 plementing regulations; and

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

20 (2) FRAUD EXCEPTION.—Paragraph (1) shall
21 not apply to payments of outstanding proceeds, fees,
22 or other amounts obtained by a consumer through
23 fraudulent or other unlawful means.

24 (f) CANCELING PARTICIPATION IN AN EARNED WAGE
25 ACCESS SERVICE.—A provider that makes earned wage

1 access services available to a consumer on a recurring
2 basis shall allow that consumer to discontinue receiving
3 future services upon reasonable notice without imposing
4 a financial penalty on that consumer.

5 (g) LIMITATIONS RELATED TO FEES AND OTHER
6 PAYMENTS.—

7 (1) A provider may not—

8 (A) share with an employer any proceeds
9 fees, voluntary tips, gratuities, or other dona-
10 tions that were received from or charged to a
11 consumer for earned wage access services;

12 (B) accept payment of outstanding pro-
13 ceeds, fees, voluntary tips, gratuities, or other
14 donations from a consumer via credit card or
15 charge card, unless such credit card or charge
16 card is provided to the consumer as a part of
17 the earned wage access service; or

18 (C) charge a late fee, deferral fee, interest,
19 or any other penalty or charge for failure to
20 pay outstanding proceeds, fees, voluntary tips,
21 gratuities, or other donations.

22 (2) A provider may, when contractually re-
23 quired, disclose to an employer the date of a trans-
24 action associated with earned wage access services.

1 (h) VOLUNTARY NATURE OF TIPS, GRATUITIES, AND
2 OTHER DONATIONS.—If a provider solicits, charges, or re-
3 ceives a tip, gratuity, or other donation from a consumer,
4 the provider shall—

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

9 (2) clearly and conspicuously disclose in its
10 agreement with the consumer that tips, gratuities, or
11 donations are voluntary and that the offering of
12 earned wage access services, including the amount of
13 proceeds a consumer is eligible to request and the
14 frequency with which proceeds are provided to a con-
15 sumer, is not contingent on whether the consumer
16 pays any tip, gratuity, or other donation or on the
17 size of the tip, gratuity, or other donation;

18 (3) refrain from misleading or deceiving con-
19 sumers about the voluntary nature of such tips, gra-
20 tuities, or other donations; and

21 (4) refrain from representing that tips, gratu-
22 ities, or other donations will benefit any specific in-
23 dividuals.

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

4 (1) a payment of proceeds was—

5 (A) not authorized;

6 (B) in the incorrect amount;

7 (C) not received; or

8 (2) a repayment of proceeds was—

9 (A) in the incorrect amount; or

10 (B) not received;

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

12 (A) not authorized; or

13 (B) in the incorrect amount.

14 (j) NO-COST OPTION REQUIRED.—If an earned wage
15 access provider offers a consumer the option to receive
16 earned wages in exchange for a fee, such earned wage ac-
17 cess provider shall also offer such consumer the option to
18 obtain the same amount of earned wages at no cost to
19 the consumer.

20 **SEC. 5. BUREAU AUTHORITY TO PROMULGATE REGULA-**
21 **TIONS APPLICABLE TO PROVIDERS.**

22 (a) IN GENERAL.—The Director of the Bureau shall
23 have authority to regulate the provision of earned wage
24 access services by providers.

1 (b) DEFINITION OF ENUMERATED CONSUMER
2 LAWS.—Section 1002(12) of the Consumer Financial Pro-
3 tection Act of 2010 (12 U.S.C. 5481(12)) is amended—

4 (1) in subparagraph (Q), by striking “and” at
5 the end;

6 (2) in subparagraph (R), by striking the period
7 at the end and inserting “; and”; and

8 (3) by adding at the end the following:

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

11 **SEC. 6. APPLICATION OF TRUTH IN LENDING ACT.**

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

20 **SEC. 7. RULE OF CONSTRUCTION.**

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

