

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 9330
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. EARNED WAGE ACCESS SERVICES.

5 (a) PROVISION OF EARNED WAGE ACCESS SERV-
6 ICES.—

7 (1) NO-COST OPTION REQUIRED.—

8 (A) IN GENERAL.—If an earned wage ac-
9 cess provider offers a consumer the option to
10 receive earned wages in exchange for a fee, such
11 earned wage access provider shall also offer
12 such consumer the option to obtain the same
13 amount of earned wages at no cost to the con-
14 sumer.

15 (B) TRANSFER TIME PERIOD.—If a con-
16 sumer elects the no-cost option described in
17 subparagraph (A), the earned wage access pro-
18 vider shall initiate the transfer of earned wages

1 to the consumer within one business day of
2 such election.

3 (C) NO EFFECT ON EARNED WAGES.—A
4 consumer’s election of the no-cost option de-
5 scribed in subparagraph (A) may not impact—

6 (i) the amount of earned wages dis-
7 bursed to such consumer;

8 (ii) the frequency with which such
9 earned wages are disbursed to such con-
10 sumer; or

11 (iii) the consumer’s eligibility to use
12 the provider’s earned wage access services.

13 (2) REQUIRED DISCLOSURES.—

14 (A) DISCLOSURES PRECEDING AGREE-
15 MENT.—Each earned wage access provider shall
16 disclose the following before entering into an
17 agreement with a consumer:

18 (i) Any limits on access to the earned
19 wages a consumer may request from such
20 provider, including—

21 (I) any limits on the amount of
22 earned wages a consumer may request
23 from the provider each day, pay pe-
24 riod, or other time period;

1 (II) any limits on the frequency
2 or number of disbursements of earned
3 wages a consumer may request from
4 the provider each day, pay period, or
5 other time period; and

6 (III) any limits on the amount of
7 earned wages a consumer may request
8 from the provider that are based on a
9 determination by the provider of the
10 ratio between the amount of earned
11 wages requested by the consumer and
12 the total wages earned by the con-
13 sumer, and how such determination is
14 made.

15 (ii) Any fees that such provider may
16 apply, and the amount of such fees.

17 (iii) A clear and conspicuous descrip-
18 tion of how the consumer may obtain
19 earned wages without paying a fee or tip.

20 (iv) An overview of such provider's
21 use of tips that describes—

22 (I) whether such provider will ac-
23 cept tips from the consumer and in
24 what amounts; and

1 (II) whether such provider will
2 suggest the consumer provide tips and
3 in what amounts.

4 (B) DISCLOSURES PRECEDING DISBURSE-
5 MENT OF EARNED WAGES.—Each earned wage
6 access provider shall disclose the following in a
7 clear and conspicuous manner after approving
8 any request from a consumer for access to
9 earned wages but before disbursing such earned
10 wages to such consumer:

11 (i) The account number such provider
12 has assigned to the consumer, if applicable.

13 (ii) The amount of earned wages that
14 will be provided to the consumer by such
15 provider.

16 (iii) The total amount of any fees ap-
17 plied by such provider for such transaction.

18 (iv) A list of any tips the consumer
19 has chosen to provide for such transaction.

20 (v) The amount that such provider ex-
21 pects to receive as payment after dis-
22 burring the earned wages, the date on
23 which such provider expects to receive such
24 amount or a description of when such pro-
25 vider expects to receive such amount, and

1 the manner in which such provider expects
2 to receive such amount.

3 (C) ADDITIONAL DISCLOSURES RELATING
4 TO FEES AND TIPS.—Each earned wage access
5 provider who, during a calendar year, has dis-
6 bursed earned wages and received a fee or tip
7 from a consumer shall provide the consumer on-
8 going access to the following disclosures:

9 (i) The total amount of fees and tips
10 that the consumer has already paid in the
11 then-current pay period.

12 (ii) The total amount of fees and tips
13 that the consumer has already paid in the
14 calendar year-to-date.

15 (D) ADDITIONAL DISCLOSURES RELATING
16 TO TIPS.—If an earned wage access provider so-
17 licits, charges, or receives a tip from a con-
18 sumer, such provider—

19 (i) shall clearly and conspicuously dis-
20 close to the consumer, before the provider
21 commences the transaction to which the tip
22 is related, that such tip—

23 (I) is voluntary;

1 (II) is not a requirement for re-
2 ceiving earned wage access services;
3 and

4 (III) will not impact—

5 (aa) the amount of such
6 earned wages;

7 (bb) the frequency with
8 which such earned wages are dis-
9 bursed to such consumer; or

10 (cc) the consumer's eligi-
11 bility to use the provider's earned
12 wage access services;

13 (ii) may not state that such tip will
14 benefit—

15 (I) any specific individual; or

16 (II) any group of individuals
17 other than the provider itself; and

18 (iii) may describe, in general terms,
19 the benefits or services offered by such
20 provider to consumers.

21 (E) CHANGES TO TERMS.—Each earned
22 wage access provider shall notify each consumer
23 with which such earned wage access provider
24 has entered an agreement to offer earned wage
25 access services of any material changes to the

1 terms and conditions of service used by such
2 provider not less than—

3 (i) 30 days before such material
4 changes take effect; or

5 (ii) a shorter amount of time before
6 such material changes take effect, if the
7 consumer has consented to such shorter
8 amount of time.

9 (3) CONSUMER ATTESTATION BEFORE RECEIV-
10 ING EARNED WAGES.—Each earned wage access pro-
11 vider shall require a consumer, prior to the first dis-
12 bursement of earned wages during each applicable
13 pay period, to attest that the consumer has not re-
14 quested disbursement of the same earned wages
15 from another earned wage access provider during
16 that pay period.

17 (4) CANCELLATION OF SERVICES.—If an
18 earned wage access provider makes earned wage ac-
19 cess services available to a consumer on a recurring
20 basis, such earned wage access provider—

21 (A) shall allow such consumer to dis-
22 continue such services if such consumer pro-
23 vides notice to such earned wage access pro-
24 vider that such consumer desires to discontinue
25 such services; and

1 (B) may not impose any financial penalty
2 or cancellation charge on such consumer as a
3 result of any discontinuation of services.

4 (5) DISPUTE PROCESS REQUIRED.—Each
5 earned wage access provider shall develop and imple-
6 ment policies and procedures to respond to questions
7 and complaints from consumers relating to—

8 (A) unauthorized disbursement of earned
9 wages;

10 (B) disbursement of earned wages in an
11 incorrect amount;

12 (C) disbursed earned wages that were not
13 received;

14 (D) payment of disbursed earned wages
15 that was not received or was made in an incor-
16 rect amount; and

17 (E) fees or tips that were not authorized
18 or were made in an incorrect amount.

19 (6) COMPELLING PAYMENT FOR DISBURSED
20 EARNED WAGES.—

21 (A) IN GENERAL.—An earned wage access
22 provider may not seek payment for earned
23 wages disbursed by such provider to a con-
24 sumer, including such disbursed earned wages,
25 or any related fees or tips, by—

1 (i) filing a civil suit against the con-
2 sumer;

3 (ii) initiating arbitration proceedings
4 against the consumer;

5 (iii) using the services of a debt col-
6 lector (as such term is defined in section
7 803 of the Fair Debt Collection Practices
8 Act) to collect amounts from the consumer;

9 or

10 (iv) selling expected payment to a
11 third-party debt buyer for purposes of debt
12 collection from the consumer.

13 (B) EXCEPTION.—Subparagraph (A) shall
14 not apply if an earned wage access provider is
15 seeking payment for earned wages disbursed to
16 a consumer based on information provided by
17 the consumer that the consumer knew was
18 false.

19 (7) REIMBURSEMENT REQUIRED.—If an earned
20 wage access provider seeks payment of disbursed
21 earned wages, a fee, or a tip directly from a deposit
22 account of a consumer, on a date earlier than, or in
23 an amount different from, what was disclosed at the
24 time of authorization and such attempt triggers an
25 overdraft fee or non-sufficient funds fee from the

1 consumer's financial institution (as defined in sec-
2 tion 509 of the Gramm-Leach-Bliley Act), the
3 earned wage access provider shall reimburse such
4 consumer for such fee.

5 (8) ADDITIONAL LIMITATIONS.—An earned
6 wage access provider may not—

7 (A) share any fees or tips that were re-
8 ceived from or charged to a consumer for
9 earned wage access services with the employer
10 of such consumer;

11 (B) accept payment of disbursed earned
12 wages, fees, or tips from a consumer through a
13 credit card of the consumer, unless such credit
14 card is provided to the consumer as a part of
15 the earned wage access service;

16 (C) require a consumer to pay a late fee,
17 deferral fee, interest, or any other penalty or
18 charge as a result of a failure by the consumer
19 to pay disbursed earned wages, fees, or tips re-
20 quested or applied by such provider; or

21 (D) furnish information to a consumer re-
22 porting agency (as defined in section 603 of the
23 Fair Credit Reporting Act (15 U.S.C. 1681a))
24 about a consumer's earned wage access services
25 activities.

1 (9) DISCLOSURE TO EMPLOYER.—An earned
2 wage access provider may disclose to an employer
3 with which such provider has a contract relating to
4 earned wage access services the date and amount of
5 a consumer’s earned wage access transactions asso-
6 ciated with the earned wage access services. Subject
7 to applicable privacy laws, a provider may disclose
8 information necessary to perform under a contract
9 with an employer relating to additional products or
10 services.

11 (10) NON-DISCRIMINATION.—

12 (A) IN GENERAL.—It shall be unlawful for
13 any earned wage access provider to discriminate
14 against any consumer on the basis of race,
15 color, religion, national origin, sex (including on
16 the basis of pregnancy, childbirth, or related
17 medical conditions), marital status, or age when
18 offering earned wage access services.

19 (B) DEFINITIONS.—In this paragraph—

20 (i) the terms “race”, “color”, “reli-
21 gion”, “national origin”, “sex”, “marital
22 status”, and “age” have the same mean-
23 ing, respectively, as used in section 701 of
24 the Equal Credit Opportunity Act (15

1 U.S.C. 1691) and rules issued thereunder;
2 and

3 (ii) the terms “pregnancy”, “child-
4 birth”, and “related medical conditions”
5 have the same meaning, respectively, as
6 used in section 701(k) of the Civil Rights
7 Act of 1964 (42 U.S.C. 2000e(k)).

8 (11) CONSUMER DATA PROTECTIONS.—Each
9 earned wage access provider shall be deemed a “fi-
10 nancial institution” for purposes of subtitle A of title
11 V of the Gramm-Leach-Bliley Act.

12 (12) DEFAULT TIP AMOUNT.—

13 (A) IN GENERAL.—An earned wage access
14 provider may not set any default tip amount
15 greater than \$0 in connection with earned wage
16 access services.

17 (B) SELECTION OF \$0 TIP.—If a consumer
18 selects a tip amount of \$0, the earned wage ac-
19 cess provider may not require the consumer to
20 confirm, reconfirm, or otherwise take any addi-
21 tional action with respect to such tip selection
22 as a condition of completing the transaction.

23 (C) RULE OF CONSTRUCTION.—Nothing in
24 this paragraph may be construed to prohibit the
25 provider from requiring the consumer to con-

1 firm the final transaction on a completion
2 screen.

3 (b) RELATION TO STATE LAWS.—

4 (1) PRESERVATION OF STATE LAW.—Except as
5 provided in paragraph (2), nothing in this Act may
6 be construed as annulling, altering, affecting, or ex-
7 emptioning any person from complying with any State
8 law, except to the extent that a State law is incon-
9 sistent with the provisions of this Act, and then only
10 to the extent of the inconsistency.

11 (2) PREEMPTION.—No State or political sub-
12 division thereof may impose, maintain, or enforce
13 any laws, constitutions, statutes, regulations, orders,
14 or interpretations with respect to earned wage access
15 services that comply with this Act that—

16 (A) treat such services as credit, a loan,
17 debt, or a substantially similar product or serv-
18 ice;

19 (B) treat a provider of such services as a
20 creditor, lender, or provider of a substantially
21 similar product or service; or

22 (C) prevent or significantly interfere with
23 the offering or provision of earned wage access
24 services that comply with this Act.

1 (3) SAVINGS CLAUSE.—Nothing in this Act may
2 be construed to preempt, displace, or limit the au-
3 thority of a State or political subdivision thereof to
4 enforce laws of general applicability, including laws
5 relating to fraud, deceit, unfair or deceptive acts or
6 practices, contracts, property, or taxation.

7 (c) RULEMAKING.—Not later than 180 days after the
8 date of enactment of this Act, the Bureau shall issue such
9 rules as are necessary to carry out this Act.

10 (d) RULE OF CONSTRUCTION.—Earned wage access
11 services provided in compliance with this Act, and any fees
12 or tips received in connection with such services, may not
13 be considered credit, a loan, debt, an obligation, liability,
14 or consumer credit, and a person providing such services
15 shall not be considered a creditor or lender, and such fees
16 or tips shall not be considered interest or a finance charge,
17 under Federal law.

18 (e) DEFINITIONS.—In this section:

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

21 (2) CONSUMER.—The term “consumer” means
22 a natural person.

23 (3) EARNED WAGES.—

24 (A) IN GENERAL.—The term “earned
25 wages” means salary, wages, compensation, or

1 other income that a consumer or an employer
2 has represented and that an earned wage access
3 provider has reasonably determined have been
4 earned or have accrued to the benefit of the
5 consumer in exchange for the services provided
6 by the consumer, but that have not yet been
7 paid to the consumer by an employer.

8 (B) SERVICES PROVIDED.— Services pro-
9 vided by the consumer include any services pro-
10 vided—

11 (i) on an hourly, project-based, piece-
12 work, salaried, or other basis; or

13 (ii) when the consumer is acting as a
14 contractor of the employer.

15 (4) EARNED WAGE ACCESS PROVIDER.—

16 (A) IN GENERAL.—The term “earned wage
17 access provider” means a person who provides
18 earned wage access services to consumers.

19 (B) EXCLUSIONS.—The term “earned
20 wage access provider” does not include—

21 (i) a person who is not obligated to
22 provide access to earned wages as part of
23 an earned wage access service;

24 (ii) an employer that offers a portion
25 of salary, wages, or compensation earned

1 by a consumer directly to such consumer
2 prior to a normally scheduled pay date or
3 as such wages are accrued, irrespective of
4 any scheduled periodic pay cycle;

5 (iii) a financial institution (as defined
6 in section 509 of the Gramm-Leach-Bliley
7 Act) that permits a consumer to access
8 amounts associated with an electronic fund
9 transfer from the consumer's employer or
10 a payroll services vendor of the employer
11 for which the financial institution has re-
12 ceived information but which has not yet
13 settled; or

14 (iv) a payroll service vendor in its ca-
15 pacity as a facilitator of wage payments to
16 a consumer by an employer, exclusive of
17 any earned wage access services that such
18 vendor may provide.

19 (5) EARNED WAGE ACCESS SERVICES.—The
20 term “earned wage access services” means the deliv-
21 ery of earned wages to a consumer based on—

22 (A) employment, income, or attendance
23 data obtained directly or indirectly from the
24 employer of such consumer or a payroll service

1 vendor, or other vendors, contracted by the em-
2 ployer of such consumer; or

3 (B) representations made by the consumer
4 and the reasonable determination of the earned
5 wages of such consumer by an earned wage ac-
6 cess provider, based on information made avail-
7 able or accessible to the provider by the con-
8 sumer.

9 (6) EMPLOYER.—The term “employer”—

10 (A) means a person who employs a con-
11 sumer, or any other person who is contractually
12 obligated to pay a consumer salary, wages, com-
13 pensation, or other income in exchange for serv-
14 ices provided to the person or on the person’s
15 behalf; and

16 (B) does not include—

17 (i) a customer of a person; or

18 (ii) a person whose obligation to pay
19 salary, wages, compensation, or other in-
20 come to a consumer is not based on the
21 services provided for or on behalf of that
22 person.

23 (7) FEE.—The term “fee” means—

24 (A) a fee for delivery, or expedited delivery,
25 of proceeds to a consumer; or

1 (B) a subscription, participation, or mem-
2 bership fee for earned wage access services or
3 a group of services that includes earned wage
4 access services.

5 (8) PAYROLL SERVICE VENDOR.—The term
6 “payroll service vendor” means a vendor contracted
7 directly or indirectly by an employer to facilitate
8 payment of employee wages in accordance with Fed-
9 eral, State, and local law, including the Fair Labor
10 Standards Act of 1938, or to provide or verify em-
11 ployment, income, or attendance data.

12 (9) TIP.—The term “tip” means any gratuity,
13 donation, or other voluntary payment that is—

14 (A) made by a consumer to an earned
15 wage access provider;

16 (B) provided gratuitously and without any
17 consequence for nonpayment;

18 (C) not subject to negotiation, and

19 (D) in an amount determined by the con-
20 sumer.

21 (10) STATE.—The term “State” means each of
22 the several States, the District of Columbia, and any
23 territory of the United States.

1 **SEC. 3. CONFORMING AMENDMENTS.**

2 (a) CONSUMER FINANCIAL PROTECTION ACT OF
3 2010.—Section 1002 of the Consumer Financial Protec-
4 tion Act of 2010 (12 U.S.C. 5481) is amended—

5 (1) in paragraph (12)—

6 (A) in subparagraph (Q), by striking
7 “and” at the end;

8 (B) in subparagraph (R), by striking the
9 period at the end and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(S) the Earned Wage Access Consumer
12 Protection Act.”; and

13 (2) in paragraph (15)(A)—

14 (A) by redesignating clauses (x) and (xi)
15 as clauses (xi) and (xii), respectively; and

16 (B) by inserting after clause (ix) the fol-
17 lowing:

18 “(x) providing earned wage access
19 services, as defined in section 2 of the
20 Earned Wage Access Consumer Protection
21 Act;”.

22 (b) TRUTH IN LENDING ACT.—Section 103 of the
23 Truth in Lending Act (15 U.S.C. 1602) is amended—

24 (1) in subsection (f), by striking “defer its pay-
25 ment” and inserting “defer its payment, but does
26 not include earned wage access services as defined in

1 the Earned Wage Access Consumer Protection
2 Act.”; and

3 (2) in subsection (g), by adding at the end the
4 following: “The term creditor does not include
5 earned wage access providers as such term is defined
6 in the Earned Wage Access Consumer Protection
7 Act.”.

