

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

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

3 (3) CONSUMER-DIRECTED WAGE ACCESS SERV-
4 ICES.—The term “consumer-directed wage access
5 services” means offering or providing earned wage
6 access services directly to consumers based on the
7 consumer’s representations and the provider’s rea-
8 sonable determination of the consumer’s earned but
9 unpaid income.

10 (4) DEBT COLLECTOR.—The term “debt col-
11 lector” has the meaning given that term under sec-
12 tion 803 of the Fair Debt Collection Practices Act
13 (15 U.S.C. 1692a).

14 (5) EARNED BUT UNPAID INCOME.—The term
15 “earned but unpaid income” means salary, wages,
16 compensation, or other income that a consumer or
17 an employer has represented, and that a provider
18 has reasonably determined, have been earned or
19 have accrued to the benefit of the consumer in ex-
20 change for the consumer’s provision of services to
21 the employer or on behalf of the employer, including
22 on an hourly, project-based, piecework, or other
23 basis and including where the consumer is acting as
24 an independent contractor of the employer, but have

1 not, at the time of the payment of proceeds, been
2 paid to the consumer by an employer.

3 (6) EARNED WAGE ACCESS SERVICES.—The
4 term “earned wage access services” means the busi-
5 ness of providing consumer-directed wage access
6 services or employer-integrated wage access services,
7 or both at the request of an employee.

8 (7) EMPLOYER.—

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

11 (i) employs a consumer; or

12 (ii) any other person who is contrac-
13 tually obligated to pay a consumer earned
14 but unpaid income in exchange for the con-
15 sumer’s provision of services to the em-
16 ployer or on behalf of the employer, includ-
17 ing on an hourly, project-based, piecework,
18 or other basis and including where the con-
19 sumer is acting as an independent con-
20 tractor with respect to the employer.

21 (B) EXCLUSION.—The term “employer”
22 does not include—

23 (i) a customer of an employer or any
24 other person whose obligation to make a
25 payment of salary, wages, compensation, or

1 other income to a consumer is not based
2 on the provision of services by that con-
3 sumer for or on behalf of such person; or

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

10 (8) EMPLOYER-INTEGRATED WAGE ACCESS
11 SERVICES.—The term “employer-integrated wage ac-
12 cess services” means the business of delivering to
13 consumers access to earned but unpaid income that
14 is based on employment, income, or attendance data
15 obtained directly or indirectly from an employer.

16 (9) FEE.—The term “fee” means—

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

20 (B) a subscription or membership fee im-
21 posed by a provider for a bona fide group of
22 services that include earned wage access serv-
23 ices; and

1 (C) does not include a voluntary tip, gra-
2 tuity, or other donation paid by a consumer to
3 a provider.

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

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

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

12 (A) means a person who is in the business
13 of providing earned wage access services to con-
14 sumers; and

15 (B) does not include—

16 (i) a service provider (such as a pay-
17 roll service provider) whose role may in-
18 clude verifying a consumer’s available
19 earnings but that is not contractually obli-
20 gated to fund proceeds delivered as part of
21 an earned wage access service;

22 (ii) an employer that offers a portion
23 of salary, wages, or compensation directly
24 to its employees or independent contractors
25 prior to the normally scheduled pay date;

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

8 (iv) a payroll service provider that fa-
9 cilitates payments to workers of earned,
10 available wage balances in accordance with
11 Federal, State, and local law, including the
12 Fair Labor Standards Act of 1938.

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

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

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

20 (a) DISPUTE POLICY.—Each provider shall develop
21 and implement policies and procedures to respond to con-
22 sumer disputes and questions raised by consumers.

23 (b) NON-RECOURSE PAYMENTS.—

24 (1) IN GENERAL.—A provider may not compel
25 or attempt to compel repayment by a consumer of

1 outstanding proceeds, fees, voluntary tips, gratuities,
2 or other donations to that provider through—

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

5 (B) use of a third party to pursue collec-
6 tion of outstanding proceeds, fees, voluntary
7 tips, gratuities, or other donations on the pro-
8 vider's behalf; or

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

12 (2) FRAUD EXCEPTION.—Paragraph (1) shall
13 not apply to repayment of outstanding amounts ob-
14 tained by a consumer through fraudulent means or
15 preclude a provider from pursuing an employer for
16 breach of its contractual obligations to the provider.

17 (c) DISCLOSURES TO CONSUMERS.—Each provider
18 shall—

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

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

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

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

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

8 (e) RULES FOR ACCESSING DEPOSIT ACCOUNTS.—

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

14 (A) comply with applicable provisions of
15 the Electronic Fund Transfer Act and its im-
16 plementing regulations; and

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

1 correct amount from, the date or amount dis-
2 closed to the consumer.

3 (2) FRAUD EXCEPTION.—Paragraph (1) shall
4 not apply to payments of outstanding proceeds, fees,
5 or other amounts obtained by a consumer through
6 fraudulent or other unlawful means.

7 (f) CANCELING PARTICIPATION IN AN EARNED WAGE
8 ACCESS SERVICE.—A provider that makes earned wage
9 access services available to a consumer on a recurring
10 basis shall allow that consumer to discontinue receiving
11 future services upon reasonable notice without imposing
12 a financial penalty on that consumer.

13 (g) LIMITATIONS RELATED TO FEES AND OTHER
14 PAYMENTS.—

15 (1) A provider may not—

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

20 (B) accept payment of outstanding pro-
21 ceeds, fees, voluntary tips, gratuities, or other
22 donations from a consumer via credit card or
23 charge card, unless such credit card or charge
24 card is provided to the consumer as a part of
25 the earned wage access service; or

1 (C) charge a late fee, deferral fee, interest,
2 or any other penalty or charge for failure to
3 pay outstanding proceeds, fees, voluntary tips,
4 gratuities, or other donations.

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

8 (h) VOLUNTARY NATURE OF TIPS, GRATUITIES, AND
9 OTHER DONATIONS.—If a provider solicits, charges, or re-
10 ceives a tip, gratuity, or other donation from a consumer,
11 the provider shall—

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

16 (2) clearly and conspicuously disclose in its
17 agreement with the consumer that tips, gratuities, or
18 donations are voluntary and that the offering of
19 earned wage access services, including the amount of
20 proceeds a consumer is eligible to request and the
21 frequency with which proceeds are provided to a con-
22 sumer, is not contingent on whether the consumer
23 pays any tip, gratuity, or other donation or on the
24 size of the tip, gratuity, or other donation;

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.