

[DISCUSSION DRAFT]

119TH CONGRESS
2D 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. EARNED WAGE ACCESS SERVICES.**

7 (a) PROVISION OF EARNED WAGE ACCESS SERV-
8 ICES.—

1 (1) NO-COST OPTION REQUIRED.—If an earned
2 wage access provider offers a consumer the option to
3 receive earned wages in exchange for a fee, such
4 earned wage access provider shall also offer such
5 consumer the option to obtain the same amount of
6 earned wages at no cost to the consumer.

7 (2) REQUIRED DISCLOSURES.—

8 (A) DISCLOSURES PRECEDING AGREE-
9 MENT.—Each earned wage access provider shall
10 disclose the following before entering into an
11 agreement with a consumer:

12 (i) Any limits on the amount of
13 earned wages a customer may request from
14 such provider, including—

15 (I) any limits on the amount of
16 earned wages a consumer may request
17 from the provider each day;

18 (II) any limits on the amount of
19 earned wages a consumer may request
20 from the provider each pay period;

21 (III) any limits on the amount of
22 earned wages a consumer may request
23 from the provider that are based on a
24 determination by the provider of the
25 ratio between the amount of earned

1 wages requested by the consumer and
2 the total wages earned by the con-
3 sumer, and how such determination is
4 made.

5 (ii) Any fees that such provider may
6 apply, and the amount of such fees, includ-
7 ing fees relating to expedited disbursement
8 and subscriptions.

9 (iii) A description of how the con-
10 sumer may obtain earned wages without
11 paying a fee.

12 (iv) An overview of such provider's
13 use of tips that describes—

14 (I) whether such provider will ac-
15 cept tips from the consumer and in
16 what amounts; and

17 (II) whether such provider will
18 suggest the consumer provide tips and
19 in what amounts.

20 (B) DISCLOSURES PRECEDING DISBURSE-
21 MENT OF EARNED WAGES.—Each earned wage
22 access provider shall disclose the following after
23 approving any request from a consumer for ac-
24 cess to earned wages but before disbursing such
25 earned wages to such consumer:

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

3 (ii) The amount of earned wages that
4 will be provided to the consumer by such
5 provider.

6 (iii) The total amount of any fees ap-
7 plied by such provider.

8 (iv) A list of any tips the consumer
9 has chosen to provide.

10 (v) The amount that such provider in-
11 tends to collect as repayment after dis-
12 bursing the earned wages, the date on
13 which such provider intends to collect such
14 amount or a description of when such pro-
15 vider intends to collect such amount, and
16 the manner in which such provider intends
17 to collect such amount.

18 (C) ADDITIONAL DISCLOSURES RELATING
19 TO TIPS.—If an earned wage access provider so-
20 licits, charges, or receives a tip from a con-
21 sumer, such provider—

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

1 (I) is voluntary;

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

5 (III) will not impact the fre-
6 quency with which such earned wages
7 are disbursed to such consumer; and

8 (ii) may not state that such tip will
9 benefit any specific individual.

10 (D) CHANGES TO TERMS.—Each earned
11 wage access provider shall notify each consumer
12 with which such earned wage access provider
13 has entered an agreement to offer earned wage
14 access services of any material changes to the
15 terms and conditions of service used by such
16 provider not less than 30 days before such ma-
17 terial changes take effect.

18 (E) REGULATIONS.—The Bureau shall,
19 not less than 180 days after the date of the en-
20 actment of this section, issue rules that govern
21 the form and manner in which the disclosures
22 described in this section are provided to con-
23 sumers.

24 (3) CANCELLATION OF SERVICES.—If an
25 earned wage access provider makes earned wage ac-

1 cess services available to a consumer on a recurring
2 basis, such earned wage access provider—

3 (A) shall allow such consumer to dis-
4 continue such services if such consumer pro-
5 vides reasonable notice to such earned wage ac-
6 cess provider that such consumer desires to dis-
7 continue such services; and

8 (B) may not impose any financial penalty
9 on such consumer as a result of any discontinu-
10 ation of services.

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

15 (A) unauthorized disbursement of earned
16 wages;

17 (B) disbursement of earned wages in an
18 incorrect amount;

19 (C) disbursed earned wages that were not
20 received;

21 (D) repayment of disbursed earned wages
22 that was not received or was made in an incor-
23 rect amount; and

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

1 (5) COMPELLING REPAYMENT OF DISBURSED
2 WAGES.—

3 (A) IN GENERAL.—An earned wage access
4 provider may not seek repayment of earned
5 wages disbursed to a consumer by such provider
6 by—

7 (i) filing a civil suit;

8 (ii) initiating arbitration proceedings;

9 (iii) using the services of a debt col-
10 lector (as such term is defined in section
11 803 of the Fair Debt Collection Practices
12 Act); or

13 (iv) selling the rights to the repay-
14 ment of the disbursed earned wages to a
15 third-party debt buyer.

16 (B) EXCEPTIONS.—Subparagraph (A)
17 shall not apply if an earned wage access pro-
18 vider is—

19 (i) seeking repayment of earned wages
20 disbursed to a consumer based on informa-
21 tion provided by the consumer that the
22 consumer knew was false; or

23 (ii) pursuing the employer of the con-
24 sumer to which such provider disbursed

1 earned wages for breach of its contractual
2 obligations to the provider.

3 (6) REIMBURSEMENT REQUIRED.—If an earned
4 wage access provider seeks repayment of disbursed
5 earned wages, payment of a fee, or a tip directly
6 from a deposit account of a consumer, on an incor-
7 rect date or in an incorrect amount, and such at-
8 tempt triggers an overdraft fee or non-sufficient
9 funds fee from the financial institution of the con-
10 sumer, the earned wage access provider shall reim-
11 burse such consumer for such fee.

12 (7) ADDITIONAL LIMITATIONS.—An earned
13 wage access provider may not—

14 (A) share any fees or tips that were re-
15 ceived from or charged to a consumer for
16 earned wage access services with the employer
17 of such consumer;

18 (B) accept payment of fees or tips from a
19 consumer through a credit card of the con-
20 sumer, unless such credit card is provided to
21 the consumer as a part of the earned wage ac-
22 cess service; or

23 (C) require a consumer to pay a late fee,
24 deferral fee, interest, or any other penalty or
25 charge as a result of a failure by the consumer

1 to pay a fee or tip requested or applied by such
2 provider.

3 (8) DISCLOSURE TO EMPLOYER.—An earned
4 wage access provider may disclose to an employer
5 with which such provider has a contract relating to
6 earned wage access services only such information
7 about earned wage access services used by con-
8 sumers who are employees of such employer as is
9 necessary for such earned wage access provider to
10 recover disbursed wages.

11 (9) 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 (b) RULEMAKING.—The Bureau may issue such rules
9 as the Bureau determines appropriate to carry out this
10 section.

11 (c) RULE OF CONSTRUCTION.—Fees or tips paid by
12 a consumer to an earned wage access provider may not
13 be construed to be a “finance charge” as such term is
14 defined in the Truth in Lending Act.

15 (d) PREEMPTION OF CERTAIN STATE LAWS.—

16 (1) PREEMPTION.—No State or political sub-
17 division thereof may impose, maintain, or enforce
18 any law, regulation, or requirement related to earned
19 wage access services that—

20 (A) establishes licensing, registration, qual-
21 ification, or conduct requirements for earned
22 wage access providers that are in addition to, or
23 inconsistent with, the requirements under this
24 section or any regulations issued under this sec-
25 tion;

1 (B) establishes disclosure or reporting re-
2 quirements that conflict with the provisions of
3 this section or any regulations issued under this
4 section; or

5 (C) treats—

6 (i) earned wage access services as
7 credit, loans, or similar products or serv-
8 ices; or

9 (ii) earned wage access providers as
10 creditors, lenders, or similar product or
11 service providers.

12 (2) SAVINGS CLAUSE.—Except as specifically
13 provided in paragraph (1), nothing in this section
14 may be construed to preempt, displace, or limit the
15 authority of a State or political subdivision thereof
16 to enforce laws of general applicability, including
17 laws relating to fraud, deceit, unfair or deceptive
18 acts or practices, contracts, property, or taxation.

19 (e) DEFINITIONS.—In this section:

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

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

24 (3) EARNED WAGES.—

1 (A) IN GENERAL.—The term “earned
2 wages” means salary, wages, compensation, or
3 other income that a consumer or an employer
4 has represented and that an earned wage access
5 provider has reasonably determined have been
6 earned or have accrued to the benefit of the
7 consumer in exchange for the services provided
8 by the consumer, but that have not yet been
9 paid to the consumer by an employer.

10 (B) SERVICES PROVIDED.— Services pro-
11 vided by the consumer to the employer include
12 any services provided—

13 (i) on an hourly, project-based, piece-
14 work, or other basis; or

15 (ii) when the consumer is acting as a
16 contractor of the employer.

17 (4) EARNED WAGE ACCESS PROVIDER.—

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

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

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

1 (ii) an employer that offers a portion
2 of salary, wages, or compensation earned
3 by a consumer directly to such consumer
4 prior to a normally scheduled pay date;

5 (iii) a financial institution that per-
6 mits a consumer to access amounts associ-
7 ated with an electronic fund transfer from
8 the employer of the consumer for which
9 the financial institution has received infor-
10 mation but which has not yet settled; or

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

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

19 (A) employment, income, or attendance
20 data provided by the employer of such con-
21 sumer or a payroll service vendor contracted by
22 the employer of such consumer; or

23 (B) representations made by the consumer
24 and the reasonable determination of the earned

1 wages of such consumer by an earned wage ac-
2 cess provider.

3 (6) FEE.—The term “fee” means any payment
4 made by a consumer to an earned wage access pro-
5 vider in exchange for a product or service.

6 (7) PAYROLL SERVICE VENDOR.—The term
7 “payroll service vendor” means a vendor contracted
8 by an employer to facilitate payment of employee
9 wages in accordance with Federal, State, and local
10 law, including the Fair Labor Standards Act of
11 1938.

12 (8) 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) determined by the consumer.

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

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

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

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

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

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

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

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

14 (1) in subsection (f), by striking “defer its pay-
15 ment” and inserting “defer its payment, but does
16 not include earned wage access services as defined in
17 the Earned Wage Access Consumer Protection
18 Act.”; and

19 (2) in subsection (g), by adding at the end the
20 following: “The term creditor does not include
21 earned wage access providers as such term is defined
22 in the Earned Wage Access Consumer Protection
23 Act.”.