

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 866

Short Title: Earned Wage Access Services. (Public)

Sponsors: Representative Wray.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

April 26, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE PROVISION OF EARNED WAGE ACCESS SERVICES.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article
5 to read:

6 "Article 26.

7 "Earned Wage Access Services.

8 **"§ 53-440. Definitions.**

9 The following definitions apply in this Article:

10 (1) Commissioner. – The Commissioner of Banks.

11 (2) Consumer. – An individual residing in this State.

12 (3) Earned but unpaid income. – Funds that are based on wages, compensation,
13 or income that a consumer has represented, and that a provider has reasonably
14 determined, have been earned or have accrued to the benefit of the consumer
15 but have not, at the time of the remittance of proceeds, been paid to the
16 consumer by an obligor.

17 (4) Earned wage access services. – The business of delivering proceeds to
18 consumers prior to the next date on which an obligor is obligated to pay salary,
19 wages, or other monetary benefits to the consumer.

20 (5) Mandatory payment. – An amount determined by a provider that shall be paid
21 by a consumer to the provider as a condition of receiving the proceeds.

22 (6) Non-mandatory payment. – An amount paid by a consumer or an obligor to a
23 provider for earned wage access services. The term includes the following:

24 a. A fee imposed by a provider for a certain type of delivery of the
25 proceeds to a consumer as long as the provider offers the consumer at
26 least one option of receiving the proceeds at no cost.

27 b. An amount paid by an obligor to a provider on a consumer's behalf
28 that entitles the consumer to receive the proceeds at no cost to the
29 consumer.

30 c. A subscription or membership fee imposed by a provider for a group
31 of services that include earned wage access services as long as the
32 provider offers the consumer at least one option of receiving the
33 proceeds at no cost.



1 d. A tip or gratuity paid by a consumer to a provider as long as the
2 provider offers the consumer at least one option of receiving the
3 proceeds at no cost.

4 (7) Non-recourse. – Having as a condition that the provider shall not compel or
5 attempt to compel repayment by a consumer of outstanding proceeds or
6 non-mandatory payments owed by that consumer to the provider through any
7 of the following means:

8 a. A civil suit against the consumer in a court of competent jurisdiction.

9 b. Use of a third party to pursue collection on the provider's behalf.

10 c. Sale of any owed amounts to a third-party collector or debt buyer.

11 The term, however, does not preclude a provider from using any of these
12 means to compel or attempt to compel repayment of owed amounts incurred
13 by a consumer who has committed fraud against the provider.

14 (8) Obligor. – An employer or another person, including an independent
15 contractor, that is contractually or legally obligated to pay a consumer any
16 sum of money on an hourly, project-based, piecework, or other basis. The term
17 does not include the customer of an obligor or another third party that has an
18 obligation to make a payment to a consumer based solely on the consumer's
19 agency relationship with the obligor.

20 (9) Outstanding proceeds. – Proceeds remitted to a consumer by a provider but
21 not yet repaid to the provider.

22 (10) Proceeds. – The amount of earned but unpaid income that has been remitted
23 to a consumer by a provider.

24 (11) Provider. – A person that is in the business of offering and providing earned
25 wage access services to consumers.

26 **§ 53-441. Registration requirement.**

27 (a) Any person, including a person that is not physically located in this State, shall not
28 provide earned wage access services in this State without first registering with the Commissioner.

29 (b) The Commissioner shall adopt rules regarding all of the following:

30 (1) Minimum requirements to be met by applicants for registration.

31 (2) Initial registration fees.

32 (3) Annual renewal fees.

33 **§ 53-442. Provider operations.**

34 (a) A registered provider is subject to all of the following requirements:

35 (1) A provider shall provide all proceeds on a non-recourse basis and shall treat
36 non-mandatory payments as non-recourse payment obligations.

37 (2) Before providing proceeds to a consumer, a provider shall inform the
38 consumer, in writing, of any non-mandatory payments that may be associated
39 with the provision of earned wage access services by the provider.

40 (3) Every time a provider provides proceeds to a consumer, the provider shall
41 inform the consumer when the provider will make its first attempt to seek
42 repayment of those proceeds from the consumer.

43 (4) A provider that seeks repayment of proceeds from a consumer's depository
44 institution account shall comply with applicable Nacha Operating Rules.

45 (b) A registered provider shall not do any of the following:

46 (1) Require a consumer to make a non-mandatory payment.

47 (2) Charge a late payment fee or any other charge for failure to repay outstanding
48 proceeds.

49 (3) Condition the amount of proceeds provided, or the frequency with which
50 proceeds are provided, to a consumer on the size of a non-mandatory payment
51 made by the consumer to the provider. This subdivision, however, does not

1 prohibit a non-mandatory payment equal to a percentage of proceeds provided
2 as long as the percentage applied does not vary based on the amount of
3 proceeds provided.

4 (4) Report a consumer's payment or failed repayment of proceeds to a consumer
5 credit reporting agency or a debt collector.

6 (5) Require a credit report or credit score to determine a consumer's eligibility for
7 earned wage access services.

8 (6) Provide, sell, or otherwise disclose to any third party, including an obligor,
9 any non-public personal information collected from or about a consumer,
10 except as necessary to provide earned wage access services to the consumer
11 and as allowed by applicable federal and State law.

12 (c) For purposes of the federal Truth in Lending Act, Subchapter I of Chapter 41 of Title
13 15 of the United States Code, proceeds provided to a consumer in accordance with this section
14 are not deemed credit, the provider of these proceeds is not deemed a creditor, and
15 non-mandatory payments paid to the provider are not deemed finance charges.

16 (d) Proceeds provided to a consumer in accordance with this section are not subject to
17 Article 15 (North Carolina Consumer Finance Act) of Chapter 53 of the General Statutes.

18 **"§ 53-443. Annual reporting.**

19 On or before July 1 of each year, a provider shall submit an annual report to the Commissioner
20 that includes all of the following information for earned wage access services provided by the
21 provider in this State during the prior year:

22 (1) Gross revenue attributable to earned wage access services.

23 (2) The total number of transactions in which proceeds were remitted to
24 consumers.

25 (3) The total number of unique consumers to whom proceeds were remitted.

26 (4) The total dollar amount of proceeds the provider remitted to consumers.

27 (5) The total dollar amount of non-mandatory payments the provider received
28 from consumers.

29 (6) The total number of transactions in which proceeds were remitted to
30 consumers for which the provider did not receive repayment of any
31 outstanding proceeds.

32 (7) The total dollar amount of transactions described in subdivision (6) of this
33 section.

34 (8) The total number of transactions in which proceeds were remitted to
35 consumers for which the provider received partial repayment of outstanding
36 proceeds.

37 (9) The total dollar amount of transactions described in subdivision (8) of this
38 section and the total dollar amount of unpaid outstanding proceeds attributable
39 to those transactions.

40 (10) The total number of transactions in which outstanding proceeds were repaid
41 after the originally scheduled repayment date.

42 (11) The total dollar amount of transactions described in subdivision (10) of this
43 section.

44 **"§ 53-444. Examinations; charges.**

45 (a) For the purpose of protecting consumer interests and determining a provider's
46 compliance with the requirements of this Article, the Commissioner may conduct an examination
47 of a provider.

48 (b) A provider shall reimburse the Office of the Commissioner of Banks all reasonable
49 costs and expenses of an examination. In unusual circumstances and in the interest of justice, the
50 Commissioner may waive reimbursement for the costs and expenses of an examination under
51 this section.

"§ 53-445. Confidentiality.

(a) All information obtained by the Commissioner under this Article is subject to confidential treatment as provided in G.S. 53C-2-7.

(b) The Commissioner may enter into written agreements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies and may share otherwise confidential information pursuant to these agreements.

(c) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any information provided under this section and any privilege arising under any other federal or State law with respect to the information continue to apply to the information after it has been disclosed to an entity described in subsection (b) of this section. Information held by the entity is not subject to disclosure under any State law governing the public disclosure of information held by an officer or agency of the State. The entities described in subsection (b) of this section may share information with all State and federal regulatory officials with oversight authority without the loss of privilege or the loss of confidentiality protections provided by State and federal law.

(d) Nothing in this section prohibits the Commissioner from releasing to the public a list of persons registered under this Article or aggregated financial data on these registrants.

"§ 53-446. Rules; appeal by aggrieved person.

(a) The Commissioner may adopt rules to enforce this Article.

(b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule adopted or order issued by the Commissioner may appeal to the State Banking Commission for review upon providing a written notice of appeal within 20 days after the rule was adopted or order was issued. The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal from a contested case proceeding before the Commissioner, shall set forth in numbered order the assignments of error for review by the State Banking Commission. Failure to specify the assignments of error or failure to comply with the briefing schedule provided by the State Banking Commission constitutes grounds to dismiss the appeal. Any party aggrieved by a decision of the State Banking Commission may petition for judicial review pursuant to G.S. 53C-2-6(b).

"§ 53-447. Penalties; enforcement.

(a) After notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes, if the Commissioner finds that a provider has violated any provision of this Article or any rule adopted under it, the Commissioner may do any of the following:

(1) Revoke, suspend, or refuse to renew a provider's registration.

(2) Order a provider to cease and desist from providing earned wage access services.

(3) Assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation or ten thousand dollars (\$10,000) for each violation that the Commissioner finds to be willful. The clear proceeds of civil penalties imposed pursuant to this subdivision shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(4) Order the provider to make restitution to the injured consumer.

(b) The powers vested in the Commissioner by this Article are in addition to any other enforcement powers of the Commissioner.

(c) A provider's failure to comply with the requirements of this Article is an unfair or deceptive trade practice under Chapter 75 of the General Statutes.

"§ 53-448. Service of process.

(a) A registered provider under this Article is deemed to have done both of the following:

(1) Consented to the jurisdiction of the courts of this State for an action arising under this Article.

1 (2) Appointed the Secretary of State as the registered provider's agent for the
2 purpose of accepting service of process in an action arising under this Article.
3 (b) The Commissioner is deemed to have complied with the requirement of law
4 concerning service of process upon mailing by certified mail notice to a registered provider,
5 postage prepaid and addressed to the last known address on file with the Commissioner."

6 **SECTION 2.** This act becomes effective October 1, 2024.