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By:  Johnson S.B. No. 2245

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of earned wage access services; creating a criminal offense; providing an administrative penalty; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 14.251, Finance Code, is amended by adding Subsection (a-2) to read as follows:

(a-2)  The commissioner shall assess an administrative penalty against an earned wage access services provider who knowingly and wilfully violates or causes a violation of Chapter 398, or a rule adopted under Chapter 398.

SECTION 2.  Title 5, Finance Code, is amended by adding Chapter 398 to read as follows:

CHAPTER 398. EARNED WAGE ACCESS SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 398.001.  DEFINITIONS. In this chapter:

(1)  "Commissioner" means the consumer credit commissioner.

(2)  "Consumer" means an individual who resides in this state.

(3)  "Earned but unpaid income" means wages, compensation, or income that a consumer represents, and an earned wage access services provider reasonably determines, has been earned or has accrued to the benefit of the consumer but has not, at the time of the payment of proceeds, been paid to the consumer by an obligor.

(4)  "Earned wage access services" means the business of delivering proceeds to a consumer before the next date on which an obligor is obligated to pay salary, wages, compensation, or other income to the consumer.

(5)  "Earned wage access services provider" or "provider" means a person who is in the business of offering and providing earned wage access services to consumers.

(6)  "Mandatory payment" means an amount determined by a provider that must be paid by a consumer to the provider as a condition of receiving or repaying proceeds.

(7)  "Non-mandatory payment" means an amount other than a mandatory payment that is paid by a consumer or an obligor to a provider. The term includes:

(A)  a fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer;

(B)  an amount paid by an obligor to a provider on a consumer's behalf that entitles the consumer to receive proceeds at no cost to the consumer;

(C)  a subscription or membership fee imposed by a provider for a group of services that include earned wage access services, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer; and

(D)  a tip or gratuity paid by a consumer to a provider, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

(8)  "Nonrecourse," with respect to a repayment of proceeds or other amounts owed, means that a provider cannot compel or attempt to compel repayment by a consumer of outstanding proceeds or non-mandatory payments owed by the consumer to the provider through:

(A)  a civil suit filed against the consumer;

(B)  use of a third-party to pursue collection of outstanding proceeds or non-mandatory payments on the provider's behalf; or

(C)  sale of outstanding amounts owed to a third-party collector or debt buyer.

(9)  "Obligor" means an employer or other person who is contractually or legally obligated to pay a consumer earned but unpaid income on an hourly, project-based, piecework, or other basis, including to a consumer who is acting as an independent contractor. The term does not include a service provider of an obligor or another third party that has an obligation to make any payment to a consumer based solely on the consumer's agency relationship with the obligor.

(10)  "Outstanding proceeds" means proceeds paid by an earned wage access services provider to a consumer that have not been repaid to the provider.

(11)  "Person" means a corporation, partnership, cooperative, association, or other business entity.

(12)  "Proceeds" means a payment of funds by an earned wage access services provider to a consumer that is based on earned but unpaid income.

Sec. 398.002.  PERSONS NOT COVERED. (a) This chapter does not apply to:

(1)  a person:

(A)  authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and

(B)  subject to regulation and supervision by this state or the United States;

(2)  a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;

(3)  a credit union doing business in this state;

(4)  a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986; or

(5)  a consumer reporting agency.

(b)  In an action under this chapter, a person claiming an exemption under this section has the burden of proving the exemption.

Sec. 398.003.  APPLICABILITY OF OTHER LAW. A person registered under this chapter is not subject to the provisions of Title 4 of this code with respect to its earned wage access services.

Sec. 398.004.  WAIVER VOID. A waiver of a provision of this chapter by a consumer is void.

SUBCHAPTER B. REGISTRATION AND DISCLOSURE STATEMENTS

Sec. 398.051.  REGISTRATION STATEMENT. (a) Before conducting business in this state, an earned wage access services provider shall register with the secretary of state by filing a statement that:

(1)  contains the name and address of:

(A)  the provider; and

(B)  each person who directly or indirectly owns or controls at least 10 percent of the outstanding shares of stock in the provider; and

(2)  fully discloses any litigation or unresolved complaint relating to the operation of the provider filed with a governmental authority of this state or contains a notarized statement that there has been no litigation or unresolved complaint of that type.

(b)  The provider shall keep a copy of the registration statement in its files.

(c)  The secretary of state may not require a provider to provide information other than information contained in the registration statement.

(d)  A registration statement expires on the first anniversary of its date of issuance. A registered provider may renew a registration statement by filing a renewal application, in the form prescribed by the secretary of state, and paying the renewal fee.

Sec. 398.052.  UPDATE OF REGISTRATION STATEMENT. An earned wage access services provider shall update information contained in the registration statement not later than the 90th day after the date on which the information changes.

Sec. 398.053.  INSPECTION OF REGISTRATION STATEMENT. An earned wage access services provider shall allow a consumer to inspect the registration statement on request.

Sec. 398.054.  FILING FEE. The secretary of state may charge an earned wage access services provider a reasonable fee to cover the cost of filing a registration statement or renewal application in an amount not to exceed $100.

Sec. 398.055.  DISCLOSURE STATEMENT. Before executing a contract with a consumer for the provision of earned wage access services, an earned wage access services provider shall provide the consumer with a disclosure that:

(1)  may be in written or electronic form;

(2)  may be included as part of the contract to provide earned wage access services; and

(3)  contains:

(A)  the terms of the earned wage access services offered by the provider, including a description of any non-mandatory payments that may be directly imposed by the provider in connection with the provision of earned wage access services;

(B)  a statement that the commissioner has oversight authority over the earned wage access services performed by the provider and includes a telephone number and an Internet website for submission of consumer complaints to the commissioner regarding the provider's earned wage access services;

(C)  an explanation of the consumer's right to proceed against the surety bond or account obtained under Subchapter E; and

(D)  the name and address of the surety company that issued the surety bond or the name and address of the depository and the trustee and the account number of the surety account, as appropriate.

Sec. 398.056.  COPY OF DISCLOSURE STATEMENT. An earned wage access services provider shall keep in its files a copy of the disclosure statement required under Section 398.055 that includes consumer's written or digital signatures acknowledging receipt of the disclosure statement until the second anniversary of the date on which the provider provides the disclosure.

SUBCHAPTER C. CONTRACT FOR SERVICES

Sec. 398.101.  FORM AND TERMS OF CONTRACT. (a) Each contract for the provision of earned wage access services to a consumer by a provider may be in writing or electronic form and must:

(1)  be dated;

(2)  include the written or digital signature of the consumer; and

(3)  be written in language intended to be easily understood by a layperson.

(b)  Each contract must disclose that:

(1)  proceeds will be provided to the consumer on a nonrecourse basis;

(2)  non-mandatory payment obligations will be treated as nonrecourse payment obligations;

(3)  proceeds will be provided to the consumer using a method agreed to by the consumer and the provider;

(4)  in any case in which a provider seeks repayment of proceeds from the consumer, the provider will inform the consumer when the provider will first attempt to seek the repayment of proceeds from the consumer;

(5)  the provider will comply with any applicable rules for use of an automated clearinghouse transaction if the provider attempts to seek repayment of proceeds from a consumer's depository institution; and

(6)  the consumer may cancel the contract at any time without financial penalty.

Sec. 398.102.  ISSUANCE OF CONTRACT. An earned wage access services provider shall make available to the consumer a copy of the completed contract, when receipt of the document is acknowledged by the consumer.

SUBCHAPTER D. PROHIBITIONS

Sec. 398.151.  PROHIBITED ACTS. (a) An earned wage access services provider may not, in connection with providing earned wage access services to consumers:

(1)  impose a mandatory payment on a consumer that directly relates to the provision of earned wage access services;

(2)  make the amount of proceeds a consumer is eligible to request or the frequency with which the provider will provide proceeds to the consumer contingent on:

(A)  whether the consumer makes any non-mandatory payments to the provider; or

(B)  the size of any non-mandatory payments a consumer may make to the provider in connection with the provision of earned wage access services;

(3)  charge a late fee, interest, or other penalty or charge for failure to pay outstanding proceeds;

(4)  charge a fee or any other charge in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date;

(5)  solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the total non-mandatory payments the provider may collect;

(6)  report a consumer's payment or failed repayment of outstanding proceeds to a consumer credit reporting agency or a debt collector;

(7)  base eligibility for earned wage access services on a consumer's credit score; or

(8)  provide, sell, or otherwise disclose to any third-party, including an obligor, any nonpublic personal information collected from or about a consumer, except as necessary to provide earned wage access services to the consumer or with the consumer's written consent.

(b)  The prohibition described by Subsection (a)(2) may not be construed to prohibit a non-mandatory payment equal to a percentage of proceeds provided.

(c)  An earned wage access services provider is not precluded from using any of the methods described by Section 398.001(8) to compel or attempt to compel repayment of outstanding amounts incurred by a consumer through fraudulent means.

Sec. 398.152.  FALSE OR MISLEADING REPRESENTATION OR STATEMENT. An earned wage access services provider may not make or use a false or misleading representation or statement to a consumer during the offer or provision of earned wage access services.

Sec. 398.153.  FRAUDULENT OR DECEPTIVE CONDUCT. An earned wage access services provider may not directly or indirectly engage in a fraudulent or deceptive act, practice, or course of business relating to the offer or provision of earned wage access services.

Sec. 398.154.  ADVERTISING SERVICES WITHOUT FILING REGISTRATION STATEMENT PROHIBITED. An earned wage access services provider may not advertise its services if the provider has not filed the registration statement required by Subchapter B.

Sec. 398.155.  WAIVER OF CONSUMER RIGHT PROHIBITED. An earned wage access services provider may not attempt to cause a consumer to waive a right under this chapter.

SUBCHAPTER E. SURETY BOND OR ACCOUNT

Sec. 398.201.  SURETY BOND. (a) The surety bond of an earned wage access services provider must be issued by a surety company authorized to do business in this state.

(b)  A copy of the bond shall be filed with the secretary of state.

Sec. 398.202.  SURETY ACCOUNT. (a) The surety account of an earned wage access services provider must be held in trust at a federally insured bank or savings association located in this state.

(b)  The name of the depository and the trustee and the account number of the surety account must be filed with the secretary of state.

Sec. 398.203.  AMOUNT OF SURETY BOND OR ACCOUNT. The surety bond or account of an earned wage access services provider must be in the amount of $10,000.

Sec. 398.204.  BENEFICIARY OF SURETY BOND OR ACCOUNT. The surety bond or account of an earned wage access services provider must be in favor of:

(1)  this state for the benefit of a person damaged by a violation of this chapter; and

(2)  a person damaged by a violation of this chapter.

Sec. 398.205.  CLAIM AGAINST SURETY BOND OR ACCOUNT. (a) A person making a claim against a surety bond or account of an earned wage access services provider for a violation of this chapter may file suit against:

(1)  the provider; and

(2)  the surety or trustee.

(b)  A surety or trustee is liable only for actual damages, reasonable attorney's fees, and court costs awarded under Section 398.253(a).

(c)  The aggregate liability of a surety or trustee for a provider's violation of this chapter may not exceed the amount of the surety bond or account.

Sec. 398.206.  TERM OF SURETY BOND OR ACCOUNT. The surety bond or account of an earned wage access services provider must be maintained until the second anniversary of the date on which the provider ceases operations in this state.

Sec. 398.207.  PAYMENT OF MONEY IN SURETY ACCOUNT TO CREDIT SERVICES ORGANIZATION. (a) A depository may not pay money in a surety account to an earned wage access services provider that established the account or a representative of the provider unless the provider or the provider's representative presents a statement issued by the secretary of state indicating that the requirement of Section 398.206 has been satisfied in relation to the account.

(b)  The secretary of state may conduct an investigation and require information to be submitted as necessary to enforce this section.

SUBCHAPTER F. CRIMINAL PENALTIES AND CIVIL REMEDIES

Sec. 398.251.  CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b)  An offense under this chapter is a Class B misdemeanor.

Sec. 398.252.  INJUNCTIVE RELIEF. A district court, on application of the attorney general or a consumer, may enjoin a violation of this chapter.

Sec. 398.253.  DAMAGES. (a) A consumer injured by a violation of this chapter is entitled to recover:

(1)  actual damages in an amount not less than the amount the consumer paid the earned wage access services provider;

(2)  reasonable attorney's fees; and

(3)  court costs.

(b)  A consumer who prevails in an action brought under this section may also be awarded punitive damages.

Sec. 398.254.  DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 398.255.  STATUTE OF LIMITATIONS. An action under Section 398.253 or 398.254 must be brought not later than the fourth anniversary of the date on which the contract to which the action relates is executed.

SECTION 3.  A person engaging in business as an earned wage access services provider on the effective date of this Act must register with the secretary of state under Section 398.051, Finance Code, as added by this Act, not later than January 1, 2024.

SECTION 4.  Sections 398.055 and 398.101, Finance Code, as added by this Act, apply only to a contract for earned wage access services entered into on or after the effective date of this Act.

SECTION 5.  This Act takes effect September 1, 2023.