

By: Representative Aguirre

To: Banking and Financial Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1123

1 AN ACT TO REGULATE THE DELIVERY OF PAYMENT SERVICES; TO
2 DEFINE CERTAIN TERMS; TO PROVIDE THAT THE PROVISIONS OF THIS ACT
3 SHALL NOT APPLY TO ANY BANK, TRUST COMPANY, SAVINGS ASSOCIATION,
4 SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK OR CREDIT UNION THAT IS
5 CHARTERED UNDER THE LAWS OF THIS STATE OR UNDER FEDERAL LAW AND
6 DOMICILED OR DOING BUSINESS IN THIS STATE; TO REQUIRE A PROVIDER
7 WHO IS IN THE BUSINESS OF OFFERING AND PROVIDING EARNED WAGE
8 ACCESS SERVICES TO CONSUMERS TO COMPLY WITH CERTAIN REQUIREMENTS;
9 TO PROVIDE CERTAIN PROHIBITIONS FOR SUCH PROVIDER OPERATING IN THE
10 STATE; TO AUTHORIZE THE ATTORNEY GENERAL TO CONDUCT CIVIL
11 INVESTIGATIONS AND BRING CIVIL ACTIONS UNDER THE PROVISIONS OF
12 THIS ACT; TO AUTHORIZE MUNICIPALITIES TO ENACT ORDINANCES THAT ARE
13 IN COMPLIANCE WITH, BUT NOT MORE RESTRICTIVE THAN, THE PROVISIONS
14 OF THIS ACT; AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** As used in this act, the following words shall
17 have the meanings as defined in this section, unless the context
18 clearly indicates otherwise:

19 (a) "Attorney General" means the Attorney General of
20 the State of Mississippi.

21 (b) "Consumer" means a natural person residing in the
22 State of Mississippi.

23 (c) "Earned but unpaid income" means wages,
24 compensation, or income that a consumer has represented, and that



25 a provider has reasonably determined, have been earned or have
26 accrued to the benefit of the consumer but have not, at the time
27 of the payment of proceeds, been paid to the consumer by an
28 obligor.

29 (d) "Earned wage access services" means the business of
30 delivering proceeds to consumers prior to the next date on which
31 an obligor is obligated to pay salary, wages, compensation, or
32 other income to a consumer.

33 (e) "Mandatory payment" means an amount determined by a
34 provider, which must be paid by a consumer to that provider as a
35 condition of receiving or repaying proceeds.

36 (f) "Nonmandatory payment" means an amount paid by a
37 consumer or an obligor to a provider, which does not meet the
38 definition of a mandatory payment. For purposes of this section,
39 examples of permitted nonmandatory payments include, but are not
40 limited to, the following:

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

45 (ii) An amount paid by an obligor to a provider on
46 a consumer's behalf, which entitles the consumer to receive
47 proceeds at no cost to the consumer.

48 (iii) A subscription or membership fee imposed by
49 a provider for a group of services that include earned wage access



50 services, as long as the provider offers the consumer at least one
51 option to receive proceeds at no cost to the consumer.

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

55 (g) "Nonrecourse" means that a provider cannot compel
56 or attempt to compel repayment by a consumer of outstanding
57 proceeds or nonmandatory payments owed by that consumer to that
58 provider through any of the following means:

59 (i) A civil suit against the consumer in a court
60 of competent jurisdiction.

61 (ii) Use of a third-party to pursue collection of
62 outstanding proceeds or nonmandatory payments on the provider's
63 behalf.

64 (iii) Sale of outstanding amounts to a third-party
65 collector or debt buyer.

66 The term nonrecourse does not preclude the use by a provider
67 of any of the foregoing methods to compel or attempt to compel
68 repayment of outstanding amounts incurred by a consumer through
69 fraudulent means.

70 (h) "Obligor" means an employer or another person, who
71 is contractually or legally obligated to pay a consumer earned but
72 unpaid income on an hourly, project-based, piecework, or other
73 basis, including where the consumer is acting as an independent
74 contractor. Obligor does not include a service provider of an



75 obligor or another third party that has an obligation to make any
76 payment to a consumer based solely on the consumer's agency
77 relationship with the obligor.

78 (i) "Outstanding proceeds" means a payment of proceeds
79 to a consumer by a provider, which has not yet been repaid to that
80 provider.

81 (j) "Person" means a partnership, corporation, joint
82 venture, trust, association or any legal entity other than an
83 individual, however organized.

84 (k) "Proceeds" means a payment of funds to a consumer
85 by a provider, which is based on earned but unpaid income.

86 (l) "Provider" means a person who is in the business of
87 offering and providing earned wage access services to consumers."

88 (m) "Written" and "writing" includes communication of
89 information in an electronic record consistent with the federal
90 Electronic Signatures in Global and National Commerce (E-SIGN)
91 Act, 15 USC Section 7001 et seq.

92 **SECTION 2.** The provisions of this act shall not apply to any
93 bank, trust company, savings association, savings and loan
94 association, savings bank or credit union that is chartered under
95 the laws of this state or under federal law and domiciled or doing
96 business in this state.

97 **SECTION 3.** A provider operating in the State of Mississippi
98 shall comply with all of the following requirements:



99 (a) The provider shall provide all proceeds on a
100 nonrecourse basis and shall treat nonmandatory payments as
101 nonrecourse payment obligations.

102 (b) Before providing a consumer with earned wage access
103 services, the provider shall provide a consumer with a written
104 document, which can be included as part of the contract to provide
105 earned wage access services, and which meets all of the following
106 requirements:

107 (i) Informs the consumer of the terms and
108 conditions of the earned wage access services.

109 (ii) Includes a statement that the Attorney
110 General has jurisdiction over the earned wage access services
111 performed by the provider and provides both a phone number and a
112 website through which consumers can submit complaints about the
113 provider's earned wage access services to the Division of Consumer
114 Protection within the Attorney General's office.

115 (iii) Is written in a font and using language
116 intended to be easily understood by a layperson.

117 (iv) Discloses any nonmandatory payments that may
118 be directly imposed by the provider in connection with the
119 provision of earned wage access services.

120 (c) The provider shall provide proceeds to a consumer
121 via any means mutually agreed upon by the consumer and the
122 provider.



123 (d) In any case in which a provider will seek repayment
124 of proceeds from a consumer, the provider shall inform the
125 consumer when the provider will make its first attempt to see
126 repayment of those proceeds from the consumer.

127 (e) A provider that seeks repayment of proceeds from a
128 consumer's depository institution account shall comply with
129 applicable NACHA rules.

130 (f) The provider shall permit a consumer to cancel
131 participation in an earned wage access services contract at any
132 time without incurring a charge for doing so.

133 **SECTION 4.** A provider operating in the State of Mississippi
134 shall not do any of the following:

135 (a) Impose a mandatory payment on a consumer that
136 directly relates to the provision of earned wage access services.

137 (b) Charge a late fee, interest, or any other penalty
138 or charge for failure to repay outstanding proceeds.

139 (c) Make the offering of earned wage access services,
140 either in the amount of proceeds a consumer is eligible to
141 request, or the frequency with which proceeds are provided to a
142 consumer, contingent on whether the consumer makes any
143 nonmandatory payments or on the size of any nonmandatory payments
144 that consumer may make to that provider in connection with the
145 provision of earned wage access services, provided, however, that
146 this prohibition shall not be construed to prohibit a nonmandatory
147 payment equal to a percentage of proceeds provided.



148 (d) Charge a deferral fee or any other charge in
149 connection with deferring the collection of outstanding proceeds
150 beyond the original scheduled repayment date.

151 (e) Solicit a consumer to delay repayment of
152 outstanding proceeds for the purpose of increasing the total
153 nonmandatory payments that provider may collect.

154 (f) Report a consumer's payment or failed repayment of
155 outstanding proceeds to a consumer credit reporting agency or a
156 debt collector.

157 (g) Require a credit score to determine a consumer's
158 eligibility for earned wage access services.

159 (h) Provide, sell, or otherwise disclose to any third
160 party, including an obligor, any nonpublic personal information
161 collected from or about a consumer, except as necessary to provide
162 earned wage access services to that consumer or in accordance with
163 a consumer's written consent.

164 (i) Advertise, display or publish, or permit to be
165 advertised, displayed or published, in any manner whatsoever, any
166 statement or representation that is false, misleading or
167 deceptive.

168 **SECTION 5.** (1) Proceeds provided to a consumer by a
169 provider in accordance with the provisions of this act shall not
170 be considered credit or a loan and the provider of those proceeds
171 shall not be considered a creditor or a lender for purposes of
172 Mississippi law.



173 (2) Nonmandatory payments paid by a consumer to a provider
174 that is operating in accordance with the provisions of this act
175 shall not be considered finance charges for purposes of applying
176 the federal Truth in Lending Act to an earned wage access
177 transaction.

178 **SECTION 6.** (1) The Attorney General shall have the
179 authority under this act to conduct civil investigations and bring
180 civil actions.

181 (2) In an action brought by the Attorney General under this
182 act, the court may award or impose any relief available under
183 state law.

184 (3) Upon a motion by the Attorney General and a finding by
185 the court that there is a reasonable likelihood that a person
186 violated the provisions of this act, the court may require the
187 person to post a bond in an amount equal to a good faith estimate
188 of the costs to litigate a claim. A hearing shall be held if
189 either party requests a hearing.

190 **SECTION 7.** Municipalities of this state may enact ordinances
191 that are in compliance with, but not more restrictive than, the
192 provisions of this act. Any existing or future order, ordinance or
193 regulation that conflicts with this provision shall be null and
194 void.

195 **SECTION 8.** This act shall take effect and be in force from
196 and after July 1, 2023.

