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SENATE BILL NO. 1217

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend the Code of Virginia by adding in Title 6.2 a chapter numbered 22.2, consisting of sections numbered 6.2-2239 through 6.2-2260, relating to financial institutions; earned wage access services; licensure requirements; penalties.

Patron—Mason

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.2 a chapter numbered 22.2, consisting of sections numbered 6.2-2239 through 6.2-2260, as follows:

CHAPTER 22.2.

EARNED WAGE ACCESS SERVICES.

§ 6.2-2239. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Consumer" means an individual residing in the Commonwealth.

"Earned but unpaid income" means salary, wages, compensation, or other income that a consumer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer but have not, at the time of the payment of proceeds, been paid to the consumer by an obligor.

"Earned wage access services" means the business of delivering proceeds to consumers prior to the date on which an obligor is obligated to pay such salary, wages, compensation, or other income to a consumer.

"Licensee" means a provider licensed under this chapter.

"Obligor" means an employer or other person who is contractually or legally obligated to pay a consumer income on an hourly, project-based, piecework, or other basis, including where the consumer is acting as an independent contractor. "Obligor" 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.

"Outstanding proceeds" means a payment of proceeds to a consumer by a provider that has not yet been repaid to that provider.

"Mandatory payment" means an amount determined by a provider that a consumer is required to pay to the provider as a condition of receiving or repaying proceeds.

"Non-mandatory payment" means an amount paid by a consumer or an obligor to a provider that does not meet the definition of a mandatory payment. "Non-mandatory payment" includes the following:

1. 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.

2. 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.

3. 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.

4. 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.

"Proceeds" means a payment of funds to a consumer by a provider that is based on earned but unpaid income.

"Provider" means a person who is in the business of offering and providing earned wage access services to a consumer.

§ 6.2-2240. License requirement.

No person shall offer or provide earned wage access services, whether or not the person has an office, facility, agent, or other physical presence in the Commonwealth, without having first obtained a license under this chapter from the Commission.

§ 6.2-2241. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall set forth:

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SB1217

- 59 1. The name and address of the applicant;
60 2. If the applicant is a firm or partnership, the name and address of each member of the firm or
61 partnership;
62 3. If the applicant is a corporation or a limited liability company, the name and address of each
63 officer, director, registered agent, and principal;
64 4. The addresses of the locations of the offices to be approved or a statement that the applicant will
65 offer earned wage access services entirely online; and
66 5. Such other information concerning the financial responsibility, background, experience, and
67 activities of the applicant and its members, officers, directors, and principals as the Commissioner may
68 require.

69 C. The application shall be accompanied by payment of an application fee of \$500 or other
70 reasonable amount that the Commission prescribes by regulation.

71 D. The application fee shall not be refundable in any event. The fee shall not be abated by
72 surrender, suspension, or revocation of the license.

73 **§ 6.2-2242. Bond required.**

74 The application for a license shall be accompanied by a bond filed with the Commissioner with
75 corporate surety authorized to execute such bond in the Commonwealth, in the sum of at least \$10,000,
76 or such greater sum as the Commission may require, but not to exceed a total of \$100,000. The form of
77 such bond shall be approved by the Commission. The bond shall be continuously maintained thereafter
78 in full force. The bond shall be conditioned upon the applicant or licensee performing all written
79 agreements with consumers relating to earned wage access services and conducting its licensed business
80 in conformity with this chapter and all other applicable law. Any person who may be damaged by
81 noncompliance of the licensee with any condition of such bond may proceed on such bond against the
82 principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall
83 not exceed the penal sum of the bond.

84 **§ 6.2-2243. Investigation of applications.**

85 The Commissioner may make such investigations as he deems necessary to determine if the applicant
86 has complied with all applicable provisions of law and regulations adopted thereunder.

87 **§ 6.2-2244. Qualifications.**

88 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
89 with the provisions of §§ 6.2-2241 and 6.2-2242, the Commission shall issue and deliver to the applicant
90 the license applied for to engage in business under this chapter if it finds that the financial
91 responsibility, character, reputation, experience, and general fitness of the applicant and its members,
92 senior officers, directors, and principals are such as to warrant belief that the business will be operated
93 efficiently and fairly, in the public interest, and in accordance with law.

94 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner
95 shall notify the applicant of the denial and the reasons for such denial.

96 **§ 6.2-2245. Acquisition of control; application.**

97 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or
98 more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,
99 licensed to conduct business under this chapter unless such person first:

100 1. Files an application with the Commission in such form as the Commissioner may prescribe from
101 time to time;

102 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
103 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
104 officers, principals, and members, and any proposed new directors, senior officers, principals, or
105 members of the licensee; and

106 3. Pays such application fee as the Commission may prescribe.

107 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
108 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
109 senior officers, and principals, and any proposed new directors, members, senior officers, and principals
110 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief
111 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
112 law. The Commission shall grant or deny the application within 60 days from the date a completed
113 application accompanied by the required fee is filed unless the period is extended by order of the
114 Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall
115 notify the applicant of the denial and the reasons for the denial.

116 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
117 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed
118 by this chapter; (ii) the acquisition of an interest in a licensee, directly or indirectly, including an
119 acquisition by merger or consolidation, by or with a person affiliated through common ownership with
120 the licensee; or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,

survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

§ 6.2-2246. Retention of books, accounts, and records; responding to Commission.

A. Every licensee shall maintain such books, accounts, and records as the Commission may reasonably require in order to determine whether the licensee is complying with the provisions of this chapter and regulations adopted thereunder. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved for a period of at least three years. To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for the shredding, incineration, or other disposal of the records from a business record destruction vendor.

B. When the Commission requests a written response, books, records, documentation, or other information from a licensee in connection with the Commission's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Commission's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Commission not later than 30 days from the date of such request. In determining the specified time period for responding to the Commission and when considering a request for an extension of time to respond, the Commission shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Commission determines to be relevant under the circumstances.

§ 6.2-2247. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information on earned wage access services as the Commissioner may require concerning the licensee's business and operations during the preceding calendar year. Reports shall be made under oath and shall be in the form prescribed by the Commissioner. Reports shall include:

1. The total number of transactions in which a payment of proceeds was made to consumers.
2. The total number of unique consumers to whom a payment of proceeds was made.
3. The total dollar amount of proceeds associated with transaction in subdivision 2.
4. The total dollar amount of non-mandatory payments to the provider received from consumers.
5. The total number of transactions in which a payment of proceeds was made to a consumer for which the provider did not receive payment of any outstanding proceeds.
6. The total dollar amount of transactions reported pursuant to subdivision 5.
7. The total number of transactions in which a payment of proceeds was made to a consumer for which the provider received partial repayment of outstanding proceeds.
8. The total dollar amount of transactions reported pursuant to subdivision 7 and the total dollar amount of unpaid, outstanding proceeds attributable to those transactions.
9. The total number of transactions in which outstanding proceeds were repaid after the original, scheduled repayment date.
10. The total dollar amount of transactions reported pursuant to subdivision 9.
11. The total number of consumer complaints received by the licensee in connection with the provision of earned wage access services and a list of the reason for each complaint, listed by frequency of reason for the complaint.

§ 6.2-2248. Other reporting requirements.

Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the Commission describing such event and its expected impact upon the business of the licensee:

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;
2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;
3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;
5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
6. Such other event as the Commission may prescribe by regulation.

§ 6.2-2249. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary,

investigate and examine the affairs, business, premises, and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licensees shall be conducted once in a five-year period or when the Commission has reason to believe that the licensee may be engaged in a violation of this chapter. In the course of such investigations and examinations, the owners, members, officers, directors, partners, trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds. Nothing in this section shall require the Commission to examine a licensee outside the Commonwealth, if a licensee provides requested books, records, and information to the Commission electronically.

§ 6.2-2250. Cease and desist orders.

A. If the Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

B. When, in the opinion of the Commission, immediate action is required to protect the public interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission shall make a hearing available to the person on an expedited basis.

C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any person, regardless of whether such person is present in the Commonwealth, who violates any provision of this chapter or regulation thereunder.

§ 6.2-2251. Applicability of chapter.

A. The provisions of this chapter shall not apply to and shall not place any additional requirements or obligations upon a financial institution.

B. Proceeds provided to a consumer by a licensee in accordance with this chapter shall not be considered credit, nor shall the provider of those proceeds be considered a creditor. Non-mandatory payments paid to that provider shall not be considered finance charges.

§ 6.2-2252. Annual fees.

A. To defray the costs of examination, supervision, and regulation, every licensee shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of licensees, the actual costs of their examinations, and other factors relating to their supervision and regulation. All such fees shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before October 15 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission, within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation or shall pay a reasonable per diem at a rate approved by the Commission. However, nothing in this subsection shall require the Commission to examine a licensee at a location outside the Commonwealth if a licensee provides requested books, records, and information to the Commission electronically.

§ 6.2-2253. Regulations.

The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules.

§ 6.2-2254. Licensee requirements.

A. Any person required to be licensed under this chapter in connection with any provision of earned wage access services to a consumer shall:

1. Inform the consumer of the terms and conditions of the earned wage access services;
2. Include a statement that the Commission has jurisdiction over the earned wage access services

performed by the licensee and provide both a phone number and a website through which consumers can submit complaints about the licensee's earned wage access services to the Commission; and

3. Disclose any non-mandatory payments that may be directly imposed by the licensee in connection with the provision of earned wage access services.

B. The information and disclosures provided pursuant to subsection A shall be made in advance of providing a consumer with earned wage access services or proceeds and shall be written in a font and using language intended to be easily understood by a layperson. Such disclosures may be delivered in hard copy or electronically and may be included as part of the contract to provide earned wage access services.

C. A licensee shall provide proceeds to a consumer via any means mutually agreed upon by the consumer and the licensee.

D. In any case in which a licensee will seek repayment of proceeds from the consumer, the licensee shall inform the consumer when the licensee will make its first attempt to seek repayment of the proceeds from the consumer.

E. A licensee that seeks repayment of proceeds from a consumer's depository institution account shall comply with applicable National Automated Clearing House Association rules.

F. A licensee shall permit a consumer to cancel participation in an earned wage access service at any amount without incurring a charge for doing so.

§ 6.2-2255. Prohibited practices.

A. No person required to be licensed under this chapter shall:

1. Compel or attempt to compel repayment by a consumer of outstanding proceeds or non-mandatory payments owed by the that consumer to the provider through (i) a civil action against the consumer in a court of competent jurisdiction, (ii) use of a third party to pursue collection of outstanding proceeds or non-mandatory payments on the provider's behalf. or (iii) sale of outstanding amounts to a third-party collector or debt purchaser.

2. Impose a mandatory payment or fee on a consumer that directly relates to the provision of earned wage access services.

3. Impose a late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds.

4. Make the offering of earned wage access services, either in the amount of proceeds a consumer is eligible to request or the frequency with which proceeds are provided to a consumer, contingent on whether the consumer may make to that licensee in connection with the provision of earned wage access services. However, this prohibition shall not be construed to prohibit a non-mandatory payment equal to a percentage of proceeds provided.

5. Charge a deferral fee or any other fee in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date.

6. Solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the total non-mandatory payments that may be collected.

7. Report a consumer's payment or failed repayment of outstanding proceeds to an individual credit reporting agency or debt collector.

8. Require a credit score to determine a consumer's eligibility for earned wage access services.

9. Provide, sell, or otherwise disclose to a 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 that consumer, pursuant to a legal process, or in accordance with a consumer's written request.

B. Nothing in this section shall preclude a provider from compelling repayment of outstanding amounts obtained through fraudulent means.

§ 6.2-2256. Advertising.

No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

§ 6.2-2257. Civil penalties.

The Commission may impose a civil penalty not exceeding \$1,000 upon any person required to be licensed by this chapter who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any of the provisions of this chapter or regulations adopted thereunder. For the purposes of this section, each separate violation shall be subject to the civil penalty prescribed.

§ 6.2-2258. Criminal penalties.

Any person violating § 6.2-2240 is guilty of a Class 1 misdemeanor. For the purposes of this section, each violation shall constitute a separate offense.

305 § 6.2-2259. Suspension or revocation of license.

306 A. *The Commission may suspend or revoke any license issued under this chapter upon any of the*
307 *following grounds:*

308 1. *Any ground for denial of a license under this chapter;*

309 2. *Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant*
310 *thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's*
311 *business;*

312 3. *A course of conduct consisting of the failure to perform written agreements with consumers;*

313 4. *Conviction of a felony or misdemeanor involving fraud, misrepresentation, deceit, false swearing,*
314 *or theft;*

315 5. *Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;*

316 6. *Entry of a federal or state administrative order against such licensee for violation of any law or*
317 *any regulation applicable to the conduct of his business;*

318 7. *Refusal to permit an investigation or examination by the Commission;*

319 8. *Failure to pay any fee or assessment imposed by this chapter; or*

320 9. *Failure to comply with any order of the Commission.*

321 B. *For the purposes of this section, acts of any officer, director, member, partner, or principal shall*
322 *be deemed acts of the licensee.*

323 § 6.2-2260. Notice of proposed suspension or revocation.

324 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set
325 *forth in § 6.2-2259 until it has given the licensee 21 days' notice in writing of the reasons for the*
326 *proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice*
327 *shall be sent by certified mail to the principal place of business of the licensee or other address*
328 *authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action.*
329 *Within 14 days of mailing the notice, the person named therein may file with the clerk of the*
330 *Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend*
331 *or revoke the license except based upon findings made at such hearing. The hearing shall be conducted*
332 *in accordance with the Commission's Rules.*

333 2. *That any person required to be licensed by the State Corporation Commission to engage in*
334 *earned wage access services on the effective date of the first enactment of this act shall submit an*
335 *application for licensure no later than October 1, 2024.*

336 3. *That the provisions of the first enactment of this act shall become effective on January 1, 2025.*