Committee Report

May 01, 2024

S. 700

Introduced by Senator Davis

S. Printed 05/01/24--H.

Read the first time March 30, 2023

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The committee on House Labor, Commerce and Industry

To whom was referred a Bill (S. 700) to amend the South Carolina Code of Laws by adding Article 8 to Chapter 5, Title 39 to establish the “South Carolina Earned Wage Access Services Act” so as to provide, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, by striking Section 39-5-820(1) and inserting:

(1) “Consumer” means a natural person who works and resides in the State of South Carolina. A provider may use the work address and mailing address provided by a consumer to determine such consumer’s state of employment and residence for purposes of this article.

Amend the bill further, SECTION 1, Section 39-5-820, by striking the first undesignated paragraph immediately after item (7) and inserting:

A voluntary tip or gratuity shall not be deemed to be a fee.

Amend the bill further, SECTION 1, by striking Section 39-5-840(7) and (8) and inserting:

(7) If the provider solicits or receives a tip or gratuity from a consumer, the provider shall:

(a) clearly and conspicuously disclose to the consumer immediately prior to each transaction that a tip or gratuity amount may be zero and is voluntary;

(b) clearly and conspicuously disclose in its service contract with the consumer and elsewhere that tips or gratuities are voluntary and that the offering of earned wage access services, including the amount of proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip or gratuitiy or on the size of the tip or gratuity;

(c) not mislead or deceive consumers about the voluntary nature of such tips or gratuities; and

(d) make no representations that tips or gratuities will benefit any specific individuals.

(8) In any case in which a provider will seek repayment of outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips or gratuities from a consumer’s account at a depository institution including via electronic transfer, the provider shall:

(a) comply with applicable provisions of the federal Electronic Fund Transfer Act and its implementing regulations;

(b) reimburse the consumer for the full amount of any overdraft or non‑sufficient funds fees imposed on a consumer by the consumer’s depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips or gratuities, on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer; and

(c) not be subject to the requirements in subitem (b) with respect to payments of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means.

Amend the bill further, SECTION 1, by striking Section 39-5-850(1) and inserting:

(1) share with an employer any fees, voluntary tips or gratuities that were received from or charged to a consumer for earned wage access services;

Amend the bill further, SECTION 1, by striking Section 39-5-850(3) and inserting:

(3) accept payment of outstanding proceeds, fees, voluntary tips, or gratuities from a consumer via credit card or charge card;

Amend the bill further, SECTION 1, by striking Section 39-5-850(9) and inserting:

(9) compel or attempt to compel payment by a consumer of outstanding proceeds, fees, voluntary tips, or gratuities to the provider through any of the following means:

(a) a suit against the consumer in a court of competent jurisdiction;

(b) use of a third party to pursue collection from the consumer on the provider’s behalf; or

(c) sale of outstanding amounts to a third‑party collector or debt buyer for collection from the consumer.

However, the limitations in this item shall not preclude the use by a provider of any of these methods to compel payment of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means, nor shall they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

Amend the bill further, SECTION 1, by striking Section 39-5-860(C) and inserting:

(C) Fees, voluntary tips, or gratuities paid by a consumer to a provider shall not be considered a loan finance charge for purposes of Section 37‑3‑109.

Renumber sections to conform.

Amend title to conform.

W.E. “BILL” SANDIFER for Committee.

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING Article 8 to chapter 5, title 39 to establish the “south carolina earned wage access services act” so as to provide for requirements for earned wage access services providers, and to provide for CERTAIN exemptions and limitations.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 39 of the S.C. Code is amended by adding:

Article 8

South Carolina Earned Wage Access Services Act

Section 39-5-810. This article may be cited as the “South Carolina Earned Wage Access Services Act”.

Section 39-5-820. As used in this article, unless the context clearly requires otherwise, the term:

(1) “Consumer” means a natural person residing in the State of South Carolina. A provider may use the mailing address provided by a consumer to determine such consumer’s state of residence for purposes of this article.

(2) “Consumer‑directed wage access services” means offering or providing earned wage access services directly to consumers based on the consumer’s representations and the provider’s reasonable determination of the consumer’s earned but unpaid income.

(3) “Earned but unpaid income” means salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer in exchange for the consumer’s provision of services to the employer or on behalf of the employer, including on an hourly, project‑based, piecework, or other basis and including where the consumer is acting as an independent contractor of the employer, but have not, at the time of the payment of proceeds, been paid to the consumer by the employer.

(4) “Earned wage access services” means the business of providing consumer‑directed wage access services or employer‑integrated wage access services, or both.

(5)(a) “Employer” means:

(i) a person who employs a consumer; or

(ii) any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for consumer’s provision of services to the employer or on behalf of the employer including on an hourly, project‑based, piecework, or other basis and including where the consumer is acting as an independent contractor with respect to the employer.

(b) The term “employer” does not include:

(i) a customer of the employer; or

(ii) any other person whose obligation to make a payment of salary, wages, compensation, or other income to a consumer is not based on the provision of services by that consumer for or on behalf of such person.

(6) “Employer‑integrated wage access services” means the business of delivering to consumers access to earned but unpaid income that is based on employment, income, and attendance data obtained directly or indirectly from an employer.

(7) “Fee” shall include a:

(a) fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer; or

(b) subscription or membership fee imposed by a provider for a bona fide group of services that include earned wage access services.

A voluntary tip, gratuity, or other donation shall not be deemed to be a fee.

(8) “Outstanding proceeds” means proceeds remitted to a consumer by a provider that have not yet been repaid to that provider.

(9) “Person” means a partnership, association, corporation, or other business unit.

(10) “Proceeds” means a payment to a consumer by a provider that is based on earned but unpaid income.

(11) “Provider” means a person who is in the business of providing earned wage access services to consumers.

Section 39-5-830. This article does not apply to any person doing business under authority of and as permitted by any law of this State or the United States relating to banks, credit unions, savings and loan associations, savings banks, or trust companies.

Section 39-5-840. A provider shall comply with all of the following requirements:

(1) The provider shall develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner.

(2) The provider shall offer to the consumer at least one reasonable option to obtain proceeds at no cost to the consumer and clearly explain how to elect that no‑cost option.

(3) Before providing a consumer with earned wage access services, the provider shall provide a consumer with a written paper or electronic document, which can be included as part of the contract to provide earned wage access services, and which meets all of the following requirements:

(a) informs the consumer of the terms and conditions of the earned wage access services;

(b) clearly and conspicuously describes how the consumer may obtain proceeds at no cost to that consumer;

(c) provides a phone number or a website through which consumers can submit complaints about the provider’s earned wage access services to the provider;

(d) is written in a font and using language intended to be easily understood by a layperson;

(e) discloses any fees that may be directly imposed by the provider in connection with the provision of earned wage access services.

(4) The provider must inform the consumer of the fact of any material changes to the terms and conditions of the earned wage access services before implementing those changes for that consumer, using a font and language intended to be easily understood by a layperson.

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

(6) The provider shall comply with all local, state, and federal privacy and information security laws.

(7) If the provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, the provider shall:

(a) clearly and conspicuously disclose to the consumer immediately prior to each transaction that a tip, gratuity, or other donation amount may be zero and is voluntary;

(b) clearly and conspicuously disclose in its service contract with the consumer and elsewhere that tips, gratuities, or donations are voluntary and that the offering of earned wage access services, including the amount of proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip, gratuity, or other donation or on the size of the tip, gratuity, or other donation;

(c) not mislead or deceive consumers about the voluntary nature of such tips, gratuities, or other donations; and

(d) make no representations that tips, gratuities, or other donations will benefit any specific individuals.

(8) In any case in which a provider will seek repayment of outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips, gratuities, or other donations from a consumer’s account at a depository institution including via electronic transfer, the provider shall:

(a) comply with applicable provisions of the federal Electronic Fund Transfer Act and its implementing regulations;

(b) reimburse the consumer for the full amount of any overdraft or non‑sufficient funds fees imposed on a consumer by the consumer’s depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips, gratuities, or other donations, on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer; and

(c) not be subject to the requirements in subitem (b) with respect to payments of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means.

(9) A provider that makes earned wage access services available to a consumer on a recurring basis shall allow a consumer to discontinue receiving those services at any time, without imposing a financial penalty on that consumer.

Section 39-5-850. No person subject to this article shall do any of the following:

(1) share with an employer any fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services;

(2) charge a late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds;

(3) accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer via credit card or charge card;

(4) charge a deferral 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 nonmandatory payments that 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) require a credit score to determine a consumer’s eligibility for earned wage access services;

(8) advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised in any manner whatsoever any false, misleading, or deceptive statement or representation regarding the conditions of the earned wage access services offered and provided by the provider;

(9) compel or attempt to compel payment by a consumer of outstanding proceeds, fees, voluntary tips, gratuities, or other donations to the provider through any of the following means:

(a) a suit against the consumer in a court of competent jurisdiction;

(b) use of a third party to pursue collection from the consumer on the provider’s behalf; or

(c) sale of outstanding amounts to a third‑party collector or debt buyer for collection from the consumer.

However, the limitations in this item shall not preclude the use by a provider of any of these methods to compel payment of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means, nor shall they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

Section 39-5-860. The following shall apply in connection with the earned wage access services offered and provided by a provider in compliance with the provisions of this article:

(A) Proceeds provided to a consumer by the provider shall not be considered a consumer loan for purposes of Section 37‑3‑104 or a loan for purposes of Section 37‑3‑106.

(B) The provider shall not be considered a lender for purposes of Section 37‑3‑107(1).

(C) Fees, voluntary tips, gratuities, or other donations paid by a consumer to a provider shall not be considered a loan finance charge for purposes of Section 37‑3‑109.

(D) The provider shall not be considered to be engaged in the business of money transmission for purposes of Section 35‑11‑200.

(E) Earned wage access services shall not be considered wage assignment for the purposes of Section 37‑3‑403.

SECTION 2. This act takes effect upon approval by the Governor.

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