**A** **BILL**

TO AMEND TITLE 37 OF THE 1976 CODE, RELATING TO THE CONSUMER PROTECTION CODE, BY ADDING CHAPTER 31, TO PROVIDE FOR EARNED INCOME ACCESS, TO PROVIDE PROCEDURES FOR EARNED INCOME ACCESS SERVICES, TO PROVIDE THAT EARNED INCOME ACCESS SERVICES, PAYMENTS, OR FEES FOR SERVICES SHALL NOT BE CONSTRUED AS LENDING ACTIVITY OR LOANS; TO PROVIDE A REGISTRATION PROCESS, TO PROVIDE A COMPLAINT AND APPEALS PROCESS, TO PROVIDE THAT THE DEPARTMENT OF CONSUMER AFFAIRS MAY PROMULGATE REGULATIONS, AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. Title 37 of the 1976 Code is amended by adding:

“CHAPTER 31

Earned Income Access

Section 37-31-10. For the purposes of this chapter:

(1) ‘Consumer’ means a natural person.

(2) ‘Department’ means the Department of Consumer Affairs.

(3) ‘Earned but unpaid wages or income’ means earned wages or income that has been earned by a consumer but not yet paid to the consumer by an earned wage obligor.

(4) ‘Earned income access service provider’ or ‘provider’ means any person, including any incorporated entity or business, that is engaged in the business of delivering earned but unpaid wages or income to a consumer in this State.

(5) ‘Earned income access services’ means the delivery of funds to a consumer that represents earned but unpaid wages or income.

(6) ‘Earned wages’ or ‘earned income’ means moneys that have accrued to the benefit of a consumer for services rendered to an obligor, according to representation by the consumer or obligor and reasonable determination by an earned wage access service provider.

(7) ‘Obligor’ means an employer or another person who is contractually obligated to pay a consumer any sum of money on an hourly, project‑based, piecework, or other basis for labor or services provided by the consumer. ‘Obligor’ does not include the customer 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.

Section 37-31-20. (A) An earned income access service provider shall offer earned income access services through a contractual arrangement with an obligor or a service provider to an obligor, in which the provider:

(1) verifies a consumer’s earned wages or income based on data from the obligor relating directly to the consumer’s earnings in that pay period; and

(2) delivers earned wages or income to the consumer prior to the next regularly scheduled date on which the obligor is scheduled to pay the consumer, and the amount of the earned income access payment delivered by the provider to the consumer is deducted, reduced, or withheld from the consumer’s next wage payment from that obligor.

(B) An obligor shall not share non-anonymized, personally identifying information with an earned income access service provider pertaining to the obligor’s accrued or expected payment obligations to that consumer, unless:

(1) the obligor has entered into a contractual arrangement for earned income access services with the earned income access service provider; and

(2) the consumer provides advance consent to sharing that information with the provider providing the earned income access services to the consumer.

(C) The imposition of a fee on a consumer who opts to use the services of a provider, and the reduction or withholding from a consumer’s next regularly scheduled wage payment by an obligor of the amount of the earned income access payment during that pay period and applicable fees imposed in connection with those earned income access payments, are permitted if:

(1) such fees are disclosed in writing to the consumer prior to and at the time of the earned income access transaction;

(2) authorization for any deduction, reduction, or withholding is provided by the consumer in writing at the time of the applicable earned income access transaction; and

(3) the consumer is informed in writing of the right to receive the full amount of the consumer’s pay, without discount, in the normal course, if the consumer waits until the regular next obligor payment date.

Section 37-31-30. No earned income access services, payments, or fees for services that comply with this chapter are considered lending activity or loans. No fee for earned income access services may be considered as interest on earned income access payments and shall not be included in determining a rate of interest for the purposes of compliance with any law with which a provider may otherwise be required to comply.

Section 37-31-40. (A) Before commencing business pursuant to this chapter, a provider must register with the department on a form prescribed by the department. The form must be accompanied by a bond or letter of credit acceptable to the department in the amount of fifty thousand dollars, which must remain in force as long as the provider does business in this State. The amount of the bond or letter of credit may only be increased by regulation.

(B) No later than March first of each year, beginning immediately after registration as required by subsection (A), a provider registered with the department must file on a form prescribed by the department an updated registration statement, to include a sworn affirmation as to continuation of the bond or letter of credit required by subsection (A). With each annual registration, the provider must pay a registration fee of eight hundred dollars that the department may use for the administration of this chapter.

Section 37-31-50. (A) A consumer may file a complaint against a provider with the department. The department shall review and investigate the complaint. The department may file a request for a contested case hearing with the Administrative Law Court if the department determines that a provider has violated a provision of this chapter and is subject to any of the following:

(1) an administrative order to cease and desist from committing violations of this chapter;

(2) administrative fines up to five thousand dollars; or

(3) the revocation or denial of the provider’s registration.

(B) Upon satisfactory evidence that a provider has violated or failed to comply with a provision of this chapter or a department regulation, the Administrative Law Court may issue an order requiring the provider to cease and desist from engaging in the violation, or revoke or suspend the provider’s authority. A provider may appeal the Administrative Law Court’s decision.

Section 37-31-60. The department is authorized to promulgate regulations for the implementation of this chapter.”

SECTION 2. Prior to the promulgation of registration procedures and initial registration pursuant to this act, an earned income access service provider that complies with Section 37-31-20, as added by this act, may continue to operate in South Carolina.

SECTION 3. This act takes effect upon approval by the Governor.

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