

SUBJECT: Regulating earned wage access services and providers

COMMITTEE: Pensions, Investments & Financial Services — committee substitute recommended

VOTE: 8 ayes — Capriglione, Lambert, Bhojani, Bryant, Frazier, Plesa, VanDeaver, Vo

0 nays

1 absent — Leo-Wilson

WITNESSES: For — Kouri Marshall, Chamber of Progress; Ryan Naples, DailyPay, Inc.; Ben LaRocco, EarnIn

Against — Carla Sanchez-Adams, National Consumer Law Center; Briana Gordley, Texas Appleseed; Jenny Andrews, Texas Catholic Conference of Bishops (*Registered, but did not testify*: Joe Sanchez, AARP; Stephen Reeves, Fellowship Southwest; John Litzler, Texas Baptists Christian Life Commission; Ashley Harris, United Way of Central Texas)

On — (*Registered, but did not testify*: Matthew Nance, Office of Consumer Credit Commissioner; Shawn Hall Lecuona, The Voice of Justice and of Consanguinity)

BACKGROUND: Some have suggested that with a rise in earned wage access companies, regulations for earned wage access services could provide protections for consumers.

DIGEST: CSHB 3827 would establish provisions related to earned wage access services.

Definitions. "Consumer-directed wage access services" would mean offering or providing services directly to a consumer based on the consumer's earned but unpaid income.

"Employer-integrated wage access services" would mean delivering to consumers access to earned but unpaid income that was based on employment, income, and attendance data obtained directly or indirectly from an employer.

"Earned wage access services" would mean the business of providing consumer-directed wage access services, employer-integrated wage access services, or both.

Application. A person would be required to hold a license to offer or provide earned wage access services.

A license application would have to be under oath, give the approximate location from which the business will be conducted, identify the business's principal parties of interest, and provide certain information about the business required by the consumer credit commissioner. The bill would establish certain investigation fees and application fees for applicants.

If the consumer credit commissioner required, a license applicant would be required to file with the application a bond that met certain conditions.

Issuance. On the filing of an application, the consumer credit commissioner would conduct an investigation to determine whether to issue a license. The commissioner would issue a license if the financial responsibility, experience, character, and general fitness of the applicant were sufficient to command confidence of the public and warrant the belief that the business would be operated lawfully and fairly, and if the applicant had net assets of at least \$25,000 available for the operation of the business. If the commissioner did not find that the eligibility requirements were met, the commissioner would be required to notify the applicant, and the applicant would be entitled to a hearing under certain conditions.

The commissioner would be required to approve or deny the application within 60 days of the date of the filing of the application or, if a hearing was held, after the completion of the hearing. The commissioner and the applicant could agree to a later date in writing. If the commissioner denied the application, the license fee would be returned to the applicant.

If the fee for a license was not paid before the 16th day after a written notice of delinquency of payment was given to the license holder, the license would expire on that day.

On application by any person and on payment of any associated cost, the commissioner would be required to furnish signed and under the commissioner's seal a certificate of good standing or a certified copy of a license, rule, or order.

License. A license would be required to state the name of the license holder and the address of the office from which the business would be conducted or the address of the license holder's headquarters. A license holder could not conduct business under a name or at a location other than those specified on the license.

A license holder would have to give written notice to the commissioner that a business location was being moved at least 30 days before the move. The commissioner would have to amend the license accordingly.

A license holder would be required to display a license at the place of business provided on the license or include the license number on its website if it conducted business online.

A license could be transferred or assigned only with the approval of the commissioner.

License renewal refusal, suspension, and revocation. The consumer credit commissioner could refuse to renew the license of a person who failed to comply with an order issued by the commissioner to enforce

these provisions.

After providing notice and opportunity for a hearing, the commissioner could suspend or revoke a license if the commissioner found that:

- the license holder failed to pay a fee or another charge imposed by the commissioner under the bill;
- the license holder violated these provisions or a rule adopted or order issued under these provisions; or
- a fact or condition existed that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the denial of the application.

A license holder who violated these provisions would be subject to revocation of the holder's license and, if the license holder was a corporation, forfeiture of the corporation's charter. Upon notification of these violations, the attorney general would be required to file suit in a district court in Travis County, if the license holder was a corporation, for forfeiture of the license holder's charter.

A license holder could surrender a license by complying with the commissioner's instructions.

The suspension, revocation, or surrender of a license would not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender. Surrender of a license would not affect the license holder's civil or criminal liability for an act committed before surrender.

Reinstatement. The commissioner could reinstate a suspended license or issue a new license on application to a person whose license was revoked, if, at the time of the reinstatement or issuance, no fact or condition existed that would have justified the commissioner's denial of an original application for the license.

Limiting liability. A person who obtained or renewed a license after the

date on which the person was required to obtain or renew the license could limit the person's liability by paying all prior license fees that the person should have paid under this chapter, as well as a late filing fee, to the commissioner.

The late filing fee for renewing an expired license would be \$1,000 if the license was in good standing when it expired and was renewed not later than 180 days after its expiration date. The late filing fee would be \$5,000 for obtaining a license after the time it was required or for renewing an expired license that was not in good standing when it expired or was renewed later than 180 days after its expiration date.

A person who renewed an expired license and paid applicable license fees and, if required, a late filing fee, would be considered to have held the required license as if it had not expired. A person who was considered to have held a license would not be subject to any liability, forfeiture, or penalty, with certain exceptions.

Contract for services. Before executing a contract with a consumer for the provision of earned wage access services, an earned wage access services provider would be required to provide the consumer with a disclosure that met certain requirements.

Each contract for the provision of earned wage access services to a consumer by a provider could be in writing or electronic form and would have to meet certain requirements, including disclosure that:

- the provider was required to offer 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;
- fee obligations would be subject to certain limitations on compelling or attempting to compel repayment;
- proceeds would be provided to the consumer using a method agreed to by the consumer and the provider;
- the consumer could cancel at any time the consumer's participation in the provider's earned wage access services without incurring a

- cancellation fee;
- the provider was required to develop and implement policies and procedures to respond to questions asked and concerns raised by consumers and to address complaints from consumers in an expedient manner;
- if a provider sought repayment of certain outstanding payments from a consumer's account at a depository institution, including through an electronic funds transfer, the provider would have to follow certain provisions;
- the provider was required to comply with all local, state, and federal privacy and information security laws; and
- if the provider solicited, charged, or received a tip, gratuity, or donation from the consumer, the provider would have to follow certain disclosure provisions.

An earned wage access services provider would be required to make available to the consumer a copy of the completed contract when receipt of the document was acknowledged by the consumer.

Prohibitions. An earned wage access services provider could not, in connection with providing earned wage access services to consumers:

- share with an employer any fees, tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services;
- accept payment of outstanding proceeds, a fee, or a tip, gratuity, or other donation from a consumer through use of a credit card or charge card;
- charge a penalty or charge for failure to pay outstanding proceeds, a fee, or a tip, gratuity, or other donation;
- report any information regarding the provider's inability to receive repayment of outstanding proceeds, or receive a fee or a tip, gratuity, or other donation, from a consumer to a consumer credit reporting agency or a debt collector;
- require a consumer's credit report or credit score to determine the consumer's eligibility for earned wage access services;

- compel or attempt to compel payment by a consumer of outstanding proceeds, a fee, or a tip, gratuity, or other donation to the provider through certain means;
- make or use a false or misleading representation or statement to a consumer;
- engage in a fraudulent or deceptive act, practice, or course of business relating to the provision of earned wage access services;
- advertise its services if the provider had not obtained a license under the bill; or
- attempt to cause a consumer to waive a right.

Annual Report. Each year, by May 1 or a later date set by the commissioner, a licensed provider would be required to file a report with the commissioner that contained certain information on the provider's business and operations during the preceding calendar year.

Implementation. A person licensed under these provisions would not be subject to provisions regarding money services businesses. Provisions established in the bill would control over any other provision.

The consumer credit commissioner would be required to make recommendations to the Finance Commission of Texas, who would adopt rules to enforce the bill.

The consumer credit commissioner or the commissioner's representative would examine licensed providers' records and places of businesses. Information collected from these processes would be confidential. A licensed provider would be required to pay an amount assessed by the commissioner to cover the direct and indirect cost of an examination and a proportionate share of general administrative expenses.

A person engaging in business as an earned wage access services provider on the effective date of the bill would have to obtain a license by January 1, 2024. Provisions regarding disclosure statements and terms of contract would apply only to a contract for earned wage access services entered into on or after the effective date of the bill.

The bill would take effect September 1, 2023.

NOTES: According to the Legislative Budget Board, the fiscal implications of CSHB 3827 could not be determined as amounts and timing of any registration filing revenue are unknown.