

South Carolina General Assembly
124th Session, 2021-2022

S. 532

STATUS INFORMATION

General Bill

Sponsors: Senator Davis

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Introduced in the Senate on February 9, 2021

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Consumer protection code

HISTORY OF LEGISLATIVE ACTIONS

| <u>Date</u> | <u>Body</u> | <u>Action Description with journal page number</u> |
|-------------|-------------|---|
| 2/9/2021 | Senate | Introduced and read first time (Senate Journal-page 4) |
| 2/9/2021 | Senate | Referred to Committee on Banking and Insurance (Senate Journal-page 4) |

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VERSIONS OF THIS BILL

[2/9/2021](#)

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A BILL

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

23
24 Be it enacted by the General Assembly of the State of South
25 Carolina:

26
27 SECTION 1. Title 37 of the 1976 Code is amended by adding:

28
29 “CHAPTER 31

30
31 Earned Income Access

- 32
33 Section 37-31-10. For the purposes of this chapter:
34 (1) ‘Consumer’ means a natural person.
35 (2) ‘Department’ means the Department of Consumer Affairs.
36 (3) ‘Earned but unpaid wages or income’ means earned wages
37 or income that has been earned by a consumer but not yet paid to
38 the consumer by an earned wage obligor.
39 (4) ‘Earned income access service provider’ or ‘provider’
40 means any person, including any incorporated entity or business,
41 that is engaged in the business of delivering earned but unpaid
42 wages or income to a consumer in this State.

1 (5) 'Earned income access services' means the delivery of
2 funds to a consumer that represents earned but unpaid wages or
3 income.

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

9 (7) 'Obligor' means an employer or another person who is
10 contractually obligated to pay a consumer any sum of money on an
11 hourly, project-based, piecework, or other basis for labor or services
12 provided by the consumer. 'Obligor' does not include the customer
13 of an obligor or another third party that has an obligation to make
14 any payment to a consumer based solely on the consumer's agency
15 relationship with the obligor.

16
17 Section 37-31-20. (A) An earned income access service
18 provider shall offer earned income access services through a
19 contractual arrangement with an obligor or a service provider to an
20 obligor, in which the provider:

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

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

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

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

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

40 (C) The imposition of a fee on a consumer who opts to use the
41 services of a provider, and the reduction or withholding from a
42 consumer's next regularly scheduled wage payment by an obligor
43 of the amount of the earned income access payment during that pay

1 period and applicable fees imposed in connection with those earned
2 income access payments, are permitted if:

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

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

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

12

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

20

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

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

36

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

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

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

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

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

11

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

14

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

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

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