

HOUSE No. 4456

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to financial technology services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>2/5/2024</i>

HOUSE No. 4456

By Representative Cusack of Braintree, a petition (subject to Joint Rule 12) of Mark J. Cusack relative to licensing of earned wage access services providers by the Division of Banks. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to financial technology services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Massachusetts General Laws, as so appearing in the 2022 Official
2 Edition, are hereby amended by inserting after Chapter 140E, the following chapter:-

3 CHAPTER 140F: Licensing of Earned Wage Access Services Providers

4 Section 1. Definitions. For the purpose of this chapter, the following terms shall, unless
5 the context indicates otherwise, have the following meanings:

6 "Commissioner", the commissioner of banks.

7 "Consumer", any individual. who resides in the commonwealth. A provider may use the
8 mailing address or state of residence provided by a consumer to determine the consumer's state
9 of residence for purposes of this part.

“Consumer-directed wage access services”, the business of offering or providing earned wage access services directly to a consumer based on the consumer’s representation and the provider’s reasonable determination of the consumer’s earned but unpaid income.

“Earned but unpaid income”, salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, has been earned or has 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 has not, at the time of the payment of proceeds, been paid to the consumer by the employer.

“Earned wage access services”, the business of providing consumer-directed wage access services, employer-integrated wage access services, or both.

“Employer”, (1) a person who employs a consumer; or (2) any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for a 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. “Employer” does not mean a customer of an employer or 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.

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

“Fee”, (1) a fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer; (2) a subscription or membership fee imposed by a provider for a bona fide group of services that includes earned wage access services; or (3) an amount paid by an employer to a provider on a consumer’s behalf, which entitles the consumer to receive proceeds at reduced or no cost to the consumer.

"Multi-state licensing system", a system involving 1 or more states, the District of Columbia, or the Commonwealth of Puerto Rico for the sharing of regulatory information and the licensing and application processes, by electronic or other means, for mortgage lenders, mortgage brokers, and other financial services providers.

“Outstanding proceeds”, a payment of proceeds to a consumer by a provider that has not yet been repaid to that provider.

“Person”, a business entity other than an individual.

“Provider”, a person who is in the business of offering and providing earned wage access services to consumers.

Section 2. License requirement; exempted entities. No person shall act as an earned wage access services provider without first obtaining a license from the commissioner.

The provisions of this chapter shall not apply to a bank as defined in section one of chapter one hundred and sixty-seven, a national banking association, a federally chartered credit

union, a federal savings and loan association, a federal savings bank, or any subsidiary or affiliate of the above, or to any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state.

The commissioner may adopt, amend or repeal rules and regulations, which may include an adequate capitalization requirement for earned wage access services providers, to aid in the administration and enforcement of this chapter.

Section 3. License application; multi-state licensing system. The application for a license shall be in a form prescribed by the commissioner and shall contain the name and address or addresses where the headquarters of the applicant is located and if the applicant is a partnership, association, corporation, or other form of business organization, the names and addresses of each member, director, principal officer thereof, and, if applicable, any individual acting as a manager of an office location. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the commissioner may require, as well as such further information as the commissioner may require. The commissioner may require a background investigation of each applicant for a license by means of fingerprint checks by the department of criminal justice information services pursuant to section 172 of chapter 6, and the Federal Bureau of Investigation for state and national criminal history record checks. If the applicant is a partnership, association, corporation or other form of business organization, the commissioner may require such background investigation by means of fingerprint checks on each member, director, principal officer of such applicant, and, if applicable, any individual acting as a manager of an office location. Receipt of criminal history record information by a private entity shall be prohibited. Each application for a license shall be accompanied by an

investigation fee. Investigation and license fees shall be determined annually by the commissioner of administration under section 3B of chapter 7.

The commissioner may participate in a multi-state licensing system for the sharing of regulatory information and for the licensing and application, by electronic or other means, of entities engaged in the business of offering or providing earned wage access services. The commissioner may establish requirements for participation by an applicant in a multi-state licensing system which may vary from the provisions of this section and section 5. The applicant shall pay directly to the multi-state licensing system any additional fees relating to participation in the multi-state licensing system.

Section 4. Issuance of license by commissioner; notice of license denial; appeal. Upon the filing of an application for a license, if the commissioner finds that the financial responsibility, character, reputation, integrity and general fitness of the applicant, and of the partners or members thereof if the applicant is a partnership or association, and of the officers, directors and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, soundly and efficiently in the public interest consistent with the purposes of this chapter, he shall thereupon issue the applicant a license to engage in the business of an earned wage access services provider. If the commissioner shall not so find, he shall not issue a license and he shall notify the applicant of the denial. Within twenty days thereafter, he shall enter upon his records a written decision and findings containing the reasons supporting the denial and shall forthwith give written notice thereof by registered mail to the applicant. Within thirty days after the date of such notice, the applicant may appeal from such denial to the superior court for Suffolk county, sitting in equity. The court shall hear all pertinent evidence and determine the facts and upon the facts as so determined, review said denial and, as

justice and equity may require, affirm the same or order the commissioner to issue such license. The commissioner shall approve or deny every application for a license within ninety days after the filing thereof, but any failure of the commissioner to act within such period shall not be deemed to be an approval of any such application.

Section 5. Information on license; changes; notice requirements. Each license shall state the name of the licensee and shall state the address at which the business is to be conducted or shall state that the licensee's business will be conducted entirely online. If a licensee intends to carry on such business at any place in addition to the address on the license, he shall so notify the commissioner, in writing, at least 30 days prior thereto, and he shall pay a fee for such additional location at a reasonable cost as determined by the commissioner. Such notice shall contain the address of any such additional location and such other information as the commissioner may require; provided, however, that any such business shall at all times be conducted in the name of the licensee as it appears on the license. A copy of such license shall be prominently posted in each place of business of the licensee or, if the licensee conducts business online, shall be posted on the licensee's internet web site. Such copies for places of business at addresses other than that appearing on the license may be obtained at a reasonable cost, as determined by the commissioner. Such license shall not be transferable or assignable and shall expire annually on a date determined by the commissioner. Any change of location or closing of a place of business of the licensee, either at the address stated on the license or at a place other than said address stated on the license, shall require prior written notice thereof to the commissioner. Such notice shall be in writing setting forth the reason therefor and shall be filed with the commissioner at least thirty days prior to any such relocation or closing. If there shall be any change among the members, officers, partners or directors of any licensee, the licensee shall notify the

119 commissioner in a timely manner of the name, address and occupation of each new member,
120 officer, partner or director, and provide such other information as the commissioner may require.

121 Section 6. Requirements applicable to persons required to be licensed. A person required
122 to be licensed under this part shall comply with the following requirements:

123 Develop and implement policies and procedures to respond to questions raised by
124 consumers and address complaints from consumers in an expedient manner.

125 Whenever it offers a consumer the option to receive proceeds for a fee, offer that
126 consumer at least one reasonable option to obtain proceeds at no cost and clearly explain how to
127 elect that no-cost option.

128 Before entering into an agreement with a consumer for the provision of earned wage
129 access services, do both of the following: (1) Inform the consumer of his or her rights under the
130 agreement; (2) Inform the consumer that the agreement is not intended to create a legal
131 obligation for the consumer to repay advances; and (3) Fully and clearly disclose all fees
132 associated with the earned wage access services.

133 Inform the consumer of the fact of any material changes to the terms and conditions of
134 the earned wage access services before implementing those changes for that consumer.

135 Allow the consumer to cancel use of the provider's earned wage access services at any
136 time, without incurring a cancellation fee imposed by the provider.

137 Comply with all applicable local, state, and federal privacy and information security
138 laws.

139 If a provider solicits, charges, or receives a tip, gratuity, or other donation from a
140 consumer, do both of the following: (1) Clearly and conspicuously disclose to the consumer
141 immediately prior to each transaction that a tip, gratuity, or other donation amount may be zero
142 and is voluntary; (2) Clearly and conspicuously disclose in its service contract with the consumer
143 and elsewhere that tips, gratuities, or donations are voluntary and that the offering of earned
144 wage access services, including the amount of proceeds a consumer is eligible to request and the
145 frequency with which proceeds are provided to a consumer, is not contingent on whether the
146 consumer pays any tip, gratuity, or other donation or on the size of the tip, gratuity, or other
147 donation.

148 Provide proceeds to a consumer by any means mutually agreed upon by the consumer
149 and the provider.

150 If the provider will seek repayment of outstanding proceeds or payment of fees or other
151 amounts owed, including voluntary tips, gratuities, or other donations, in connection with the
152 activities covered by this chapter, from a consumer's depository institution, including by means
153 of electronic funds transfer, do both of the following: (1) Comply with applicable provisions of
154 the federal Electronic Funds Transfer Act, 15 USC 1693 et. seq., and regulations adopted under
155 that Act; and (2) Reimburse the consumer for the full amount of any overdraft or non-sufficient
156 funds fees imposed on a consumer by the consumer's depository institution that were caused by
157 the provider attempting to seek payment of any outstanding proceeds, fees, or other payments, in
158 connection with the activities covered by this chapter, including voluntary tips, gratuities, or
159 other donations, on a date before, or in an incorrect amount from, the date or amount disclosed to
160 the consumer. However, the provider is not subject to the requirements of this subdivision with

respect to payments of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means.

Section 7. Prohibitions applicable to persons required to be licensed. A person required to be licensed under this part shall not do any of the following:

(a) Share with an employer a portion of any fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services.

(b) Require a consumer's credit report or a credit score provided or issued by a consumer reporting agency to determine a consumer's eligibility for earned wage access services.

(c) Accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer by means of a credit card or charge card.

(d) Charge a late fee, deferral fee, interest, or any other charge for failure to pay outstanding proceeds, fees, voluntary tips, gratuities, or other donations.

(e) Report to a consumer reporting agency or debt collector any information about the consumer regarding the inability of the provider to be repaid outstanding proceeds, fees, voluntary tips, gratuities, or other donations.

(f) 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:

(1) Use of unsolicited outbound telephone calls; (2) A suit against the consumer in a court of competent jurisdiction; (3) Use of a third party to pursue collection from the consumer on the provider's behalf; or (4) Sale of outstanding amounts to a third party collector or debt buyer for collection from the consumer. However, this subdivision does not preclude the use by a provider

of any of the foregoing methods to compel payment of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means, nor do they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

(g) If the provider solicits, charges, or receives tips, gratuities, or other donations from a consumer, mislead or deceive consumers about the voluntary nature of the tips, gratuities, or donations or make representations that tips, gratuities, or other donations will benefit any specific individuals.

Section 8: License suspension or revocation; notice and hearing. The commissioner may suspend or revoke any license issued pursuant to this chapter if said commissioner finds that:

(i) the licensee has violated any provision of this chapter or any rule or regulation adopted hereunder, or any other law applicable to the conduct of its business; or

(ii) any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license.

Except as provided in section nine, no license shall be revoked or suspended except after notice and a hearing thereon pursuant to chapter thirty A.

A licensee may surrender a license by delivering to the commissioner written notice that it thereby surrenders such license, but such surrender shall not affect the civil or criminal liability of the licensee for acts committed before such surrender.

No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any person.

Section 9: Commissioner's order to cease and desist from unlawful act or practice; prior notice and opportunity for hearing; temporary order. (a) If the commissioner determines, after giving notice of and opportunity for a hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule, regulation or order hereunder, he may order such licensee to cease and desist from such unlawful act or practice and take such affirmative action as in his judgment will effect the purposes of this chapter.

(b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a) he may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly notify, in writing, the licensee affected thereby that such order has been so entered, the reasons therefor, and that within twenty days after the receipt of a written request from such licensee, the matter will be scheduled for hearing to determine whether or not such temporary order shall become permanent and final. If no such hearing is requested and none is ordered by the commissioner, the order shall remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving notice of and opportunity for a hearing to the licensee subject to said order, shall, by written finding of facts and conclusions of law, vacate, modify or make permanent the order.

(c) No order under this section, except an order issued pursuant to subsection (b), may be entered without prior notice of and opportunity for a hearing. The commissioner may vacate or modify an order under this section upon finding that the conditions which required such an order have changed and that it is in the public interest to so vacate or modify.

Any order issued pursuant to this section shall be subject to review as provided in chapter thirty A.

Section 10: Annual report; examination of business records. Each licensee shall annually, on or before a date determined by the commissioner, file a report with the commissioner containing such information as said commissioner may require concerning the business and operations conducted by the licensee in the commonwealth during the preceding calendar year. A licensee neglecting to file such report or failing to amend the same within fifteen days of notice from said commissioner directing the same shall, unless such neglect or failure is due to justifiable cause and not due to wilful neglect, pay to the commonwealth fifty dollars for each day during which such neglect or failure continues.

A licensee shall keep and use such business records in such form and at such location as said commissioner shall, by regulation, determine, which shall enable said commissioner to determine whether such licensee is complying with the provisions of this chapter and any rules or regulations promulgated hereunder by said commissioner and any other law, rule or regulation applicable to the conduct of the business for which it is licensed under this chapter. Such regulations may contain provisions for the suspension or revocation of licenses for violations hereof and for such records to be recorded, copied or reproduced by photographic, photostatic, microfilm, microcard, miniature photographic, electronic, including, but not limited to, optical imaging, or other process which accurately reproduces or forms a durable medium for reproducing the original record or document or in any other form or manner authorized by the commissioner; provided, however, that nothing in this section shall be construed to permit any such licensee to destroy original records or documents. Each such licensee shall preserve all such business records for as long a period as the commissioner shall prescribe by regulation.

248 Notwithstanding the provisions of any general or special law or the Massachusetts Rules of Civil
249 Procedure to the contrary, service of a subpoena for business records upon a licensee, delivered
250 to an office of such licensee located within the commonwealth or delivered to a licensee's agent
251 for service of process, shall be deemed to have been served at the location, whether within or
252 outside the commonwealth, where the original business records or documents are kept or
253 maintained.

254 The commissioner may inspect a licensee's relevant records and evidence of compliance
255 with the provisions of this chapter or any rule or regulation issued hereunder and with any other
256 law, rule or regulation applicable to the conduct of the business for which it is licensed under this
257 chapter. For the purposes of such inspection, the commissioner or a representative of the
258 commissioner shall have access to the offices and place of business, books, accounts, papers,
259 records and files of all such licensees. The commissioner, and any person designated by him,
260 may require the attendance and testimony of any person whom the commissioner deems
261 necessary relative to the conduct and operation of such business. The total cost for any such
262 inspection, which shall be paid by the licensee within 30 days after the receipt of an invoice
263 therefore, shall be in accordance with fees determined annually by the commissioner of
264 administration pursuant to section 3B of chapter 7, including expenses for necessary travel
265 outside the commonwealth for the purposes of conducting such inspections.

266 The commissioner shall adopt regulations implementing the requirements of this section.

267 The commissioner shall preserve a full record of each such examination of a licensee,
268 including a statement of its condition. All records of investigation and reports of examination by
269 the commissioner, including work papers, information derived from such reports or in response

to such reports, and any copies thereof in the possession of any licensee under the supervision of the commissioner, shall be confidential and privileged communications, shall not be subject to subpoena and shall not be a public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of this paragraph, records of investigation and reports of examinations shall include records of investigation and reports of examinations conducted by any financial institution regulatory agency of the federal government and any other state, and of any foreign government which are considered confidential by such agency or foreign government and which are in possession of the commissioner. In any proceeding before a court, the court may issue a protective order to seal the record protecting the confidentiality of any such record, other than any such record on file with the court or filed in connection with the court proceeding, and the court may exclude the public from any portion of a proceeding at which any such record may be disclosed. Copies of such reports of examination shall be furnished to a licensee for its use only and shall not be exhibited to any other person, organization or agency without prior written approval by the commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the federal government, of other states, or of foreign countries and any law enforcement agency, such information, reports, inspections and statements relating to the licensees under his supervision.

Section 11: Civil actions filed by the commissioner. The commissioner may enforce the provisions of this chapter, or restrain any violations thereof, by filing a civil action in any court of competent jurisdiction.

Section 12: Penalties. (a) Whenever the commissioner finds that a person has violated section 2 or any rule or regulation promulgated thereunder, the commissioner may, by order, in addition to any other action authorized under this chapter or any rule or regulation made

thereunder, impose a penalty upon the person which shall not exceed \$1,000, plus the costs of investigation. The penalty provision of this section shall be in addition to, and not in lieu of, any other law applicable to a licensee or other person for violating section 2 or any rule or regulation made thereunder.

(b) Whenever the commissioner finds that any licensee or exempt person under section 2 has violated this chapter or any regulation, rule or order adopted thereunder, the commissioner may, by order, in addition to any other action authorized under this chapter or any rule or regulation made thereunder, impose a penalty upon the person which shall not exceed \$500 for each violation, plus the costs of investigation.

(c) Any findings or order issued by the commissioner pursuant to this section shall be subject to review as provided in chapter 30A.

Section 13. Applicability of other state laws. (a) Notwithstanding any other provision of law, earned wage access services offered and provided by a licensee in accordance with this chapter shall not be considered to be any of the following: (1) a violation of or noncompliance with any law of this state governing the sale or assignment of, or an order for, earned but unpaid income; (2) a loan or other form of credit or debt, nor shall the provider be considered a creditor, debt collector, or lender with respect thereto; (3) money transmission, nor shall the provider be considered a money transmitter for purposes of any law of this state.

(b) Notwithstanding any other provision of law, fees, voluntary tips, gratuities, or other donations paid by a consumer to a licensee in accordance with this part shall not be considered interest or finance charges. If there is a conflict between the provisions of this chapter and any other state statute, the provisions of this chapter control.

315 Section 14. Coverage of providers operating in the commonwealth prior to enactment of
316 this chapter. A person who, as of January 1, 2024, was engaged in the business of providing
317 earned wage access services in the commonwealth may, until July 1, 2025, continue to engage in
318 the business of providing earned wage access services in the commonwealth without obtaining a
319 license pursuant to Section 2 if the person submits an application for such a license before
320 January 1, 2025, and otherwise complies with this chapter.