



# House of Representatives

General Assembly

**File No. 167**

February Session, 2024

Substitute House Bill No. 5140

*House of Representatives, March 28, 2024*

The Committee on Banking reported through REP. DOUCETTE of the 13th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING EARNED WAGE ACCESS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (11) of section 36a-555 of the 2024 supplement  
2 to the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective from passage*):

4 (11) "Small loan" (A) means any loan of money or extension of credit,  
5 or the purchase of, or an advance of money on, a borrower's future  
6 potential source of money, including, but not limited to, future pay,  
7 salary, pension income or a tax refund, if (i) the amount or value is fifty  
8 thousand dollars or less, and (ii) the APR is greater than twelve per cent,  
9 and (B) does not include (i) a retail installment contract made in  
10 accordance with section 36a-772, (ii) a loan or extension of credit for  
11 agricultural, commercial, industrial or governmental use, (iii) a  
12 residential mortgage loan, as defined in section 36a-485, [or] (iv) an  
13 open-end credit account that is accessed by a credit card issued by an  
14 exempt entity, as described in subdivision (1) of subsection (b) of section  
15 36a-557, or (v) a wage, as defined in section 31-58, paid by an employer

16 directly to an employee prior to a regular pay day in accordance with  
17 title 31;

18 Sec. 2. Subsection (a) of section 36a-557 of the 2024 supplement to the  
19 general statutes is repealed and the following is substituted in lieu  
20 thereof (*Effective from passage*):

21 (a) The following persons are exempt from the requirement for  
22 licensure set forth in section 36a-556:

23 (1) A licensed pawnbroker;

24 (2) A person licensed as a consumer collection agency in accordance  
25 with section 36a-801 when engaged in the activities of a consumer  
26 collection agency in the normal course of business;

27 (3) A person who services small loans for an exempt person described  
28 in subsection (b) of this section, when such exempt person owns the  
29 small loans, provided the servicing arrangements include, in addition to  
30 receiving payments of principal and interest in connection with the  
31 small loans, the provision of accounting, recordkeeping and data  
32 processing services and such person does not engage in the activities set  
33 forth in subsection (d) of section 36a-556;

34 (4) A person who is a passive buyer of a small loan. For purposes of  
35 this subdivision, "passive buyer" means a person who: (A) Has acquired  
36 a small loan for investment purposes from a person who is either  
37 licensed or exempt from licensure under subdivisions (1) to (3),  
38 inclusive, of subsection (b) of this section; (B) will receive the principal  
39 and interest and any other moneys due under the small loan through a  
40 person who is either licensed or exempt from licensure under  
41 subdivisions (1) to (3), inclusive, of subsection (b) of this section; and (C)  
42 has had and will have no communications of any kind with the  
43 Connecticut borrower regarding the small loan it has acquired;

44 (5) A consumer reporting agency, as defined in Section 603(f) of the  
45 Fair Credit Reporting Act, 15 USC 1681a, as amended from time to time,  
46 when generating leads; [and]

47 (6) A retail seller who offers, extends or facilitates credit through an  
48 open-end or closed-end credit plan for the purchase of goods or services  
49 from such retail seller; and

50 (7) A payroll service provider that, on behalf of an employer or  
51 person licensed under section 36a-565, verifies the available earnings of  
52 an employee in connection with an employer-integrated advance issued  
53 under subsection (i) of section 36a-558, as amended by this act, and  
54 performs related activities to facilitate such verification, provided such  
55 payroll service provider does not provide the funds for such employer-  
56 integrated advance or control the activities of such person licensed  
57 under section 36a-565. For purposes of this subdivision, "control" has  
58 the same meaning as provided in section 36a-555, as amended by this  
59 act.

60 Sec. 3. Section 36a-558 of the 2024 supplement to the general statutes  
61 is repealed and the following is substituted in lieu thereof (*Effective from*  
62 *passage*):

63 (a) Except as provided in subsection (c) of section 36a-557, no person  
64 licensed or required to be licensed under section 36a-556 shall engage in  
65 any of the activities described in subsection (a) of section 36a-556 for any  
66 small loan that contains any condition or provision inconsistent with the  
67 requirements in subsections (d) to (g), inclusive, or subsection (i) of this  
68 section.

69 (b) No person exempt from licensure under section 36a-557, as  
70 amended by this act, shall engage in any of the activities described in  
71 subdivision (4), (5) or (6) of subsection (a) of section 36a-556 for any  
72 small loan made by a person who was licensed or who was required to  
73 be licensed under section 36a-556 that contains any condition or  
74 provision inconsistent with the requirements in subsections (d) to (g),  
75 inclusive, or subsection (i) of this section.

76 (c) (1) Except as the result of a bona fide error or as set forth in  
77 subdivision (2) of this subsection, any small loan described in subsection  
78 (a) or (b) of this section that contains any condition or provision

79 inconsistent with the requirements in subsections (d) to (g), inclusive, or  
80 subsection (i) of this section shall not be enforced in this state. Such small  
81 loan shall be void and no person shall have the right to collect or receive  
82 any principal, interest, charge or other consideration thereon. Any  
83 person attempting to collect or receive principal, interest, charge or  
84 other consideration on such small loan shall be subject to the provisions  
85 of section 36a-570.

86 (2) Subdivision (1) of this subsection shall not apply when: (A) The  
87 inconsistent condition or provision is the result of a bona fide error; or  
88 (B) the small loan was lawfully made in compliance with a validly  
89 enacted licensed loan law of another state to a borrower who was not,  
90 at the time of the making of such loan, a Connecticut borrower but who  
91 has since become a Connecticut borrower.

92 (3) For the purposes of this subsection, the term "bona fide error"  
93 includes, but is not limited to, clerical, calculation and computer  
94 malfunction, programming and printing errors, but does not include an  
95 error of legal judgment with respect to a person's obligations under  
96 sections 36a-555 to 36a-573, inclusive, as amended by this act, or under  
97 regulations implemented pursuant to section 36a-573.

98 (d) Small loans that are the subject of the activities set forth in  
99 subsections (a) and (b) of this section shall not contain:

100 (1) [For] Except as provided in subsection (i) of this section, for a small  
101 loan that is under five thousand dollars, an APR that exceeds the lesser  
102 of thirty-six per cent or the maximum annual percentage rate for interest  
103 that is permitted with respect to the consumer credit extended under the  
104 Military Lending Act, 10 USC 987, as amended from time to time, or for  
105 a small loan that is between five thousand and fifty thousand dollars, an  
106 APR that exceeds twenty-five per cent;

107 (2) For other than an open-end small loan, a provision that increases  
108 the interest rate due to payment default;

109 (3) A payment schedule with regular periodic payments that when

- 110 aggregated do not fully amortize the outstanding principal balance;
- 111 (4) A payment schedule with regular periodic payments that cause  
112 the principal balance to increase;
- 113 (5) A payment schedule that consolidates more than two periodic  
114 payments and pays them in advance from the proceeds, unless such  
115 payments are required to be escrowed by a governmental agency;
- 116 (6) A prepayment penalty;
- 117 (7) An adjustable rate provision;
- 118 (8) A waiver of participation in a class action or a provision requiring  
119 a borrower, whether acting individually or on behalf of others similarly  
120 situated, to assert any claim or defense in a nonjudicial forum that: (A)  
121 Utilizes principles that are inconsistent with the law as set forth in the  
122 general statutes or common law; or (B) limits any claim or defense the  
123 borrower may have;
- 124 (9) A call provision that permits the lender, in its sole discretion, to  
125 accelerate the indebtedness, except when repayment of the loan is  
126 accelerated by a bona fide default pursuant to a due-on-sale clause;
- 127 (10) A security interest, except as provided in subsection (e) of this  
128 section; or
- 129 (11) Fees or charges of any kind, except as expressly permitted by  
130 [subsection (e)] subsections (e) and (i) of this section.
- 131 (e) [Small] Except as provided in subsection (i) of this section, small  
132 loans as described in subsections (a) and (b) of this section may contain  
133 provisions:
- 134 (1) For late fees, if: (A) Such fees are assessed after an installment  
135 remains unpaid for ten or more consecutive days, including Sundays  
136 and holidays; (B) such fees do not exceed five per cent of the outstanding  
137 installment payment, excluding any previously assessed late fees, or a  
138 total of twenty-five dollars per month, whichever is less; and (C) no

139 interest is charged on such fees;

140 (2) Allowing charges for a dishonored check or any other form of  
141 returned payment, provided the total fee for such returned payment  
142 shall not exceed twenty dollars;

143 (3) Allowing for collection of deferral charges, but only upon the  
144 specific written authorization of the borrower and in a total amount not  
145 to exceed the interest due during the applicable billing cycle;

146 (4) Allowing for the accrual of interest after the maturity date or the  
147 deferred maturity date, provided such interest shall not exceed twelve  
148 per cent per annum computed on a daily basis on the respective unpaid  
149 balances;

150 (5) Providing for reasonable attorney's fees subject to the conditions  
151 and restrictions set forth in section 42-150aa;

152 (6) Including credit life insurance or credit accident and health  
153 insurance subject to the conditions and restrictions set forth in section  
154 36a-559; and

155 (7) Taking a security interest in a motor vehicle in connection with a  
156 closed-end small loan made solely for the purchase or refinancing of  
157 such motor vehicle, provided the APR of such loan shall not exceed the  
158 rates indicated for the respective classifications of motor vehicles as  
159 follows: (A) New motor vehicles, fifteen per cent; (B) used motor  
160 vehicles of a model designated by the manufacturer by a year not more  
161 than two years prior to the year in which the sale is made, seventeen per  
162 cent; and (C) used motor vehicles of a model designated by the  
163 manufacturer by a year more than two years prior to the year in which  
164 the sale is made, nineteen per cent.

165 (f) Open-end small loans as described in subsections (a) and (b) of this  
166 section shall, in addition to the requirements set forth in subsections (d)  
167 and (e) of this section:

168 (1) Not provide for an advance of money exceeding at any one time

169 an unpaid principal of fifty thousand dollars;

170 (2) Provide for payments and credits to be made to the same  
171 borrower's account from which advances, interests, charges and costs  
172 on such loan are debited;

173 (3) Provide for interest to be computed on any unpaid principal  
174 balance of the account in each billing cycle by one of the following  
175 methods: (A) By converting the APR to a daily rate and multiplying  
176 such daily rate by the daily unpaid principal balance of the account, in  
177 which case the daily rate is determined by dividing the APR by three  
178 hundred sixty-five; or (B) by converting the APR to a monthly rate and  
179 multiplying the monthly rate by the average daily unpaid principal  
180 balance of the account in the billing cycle, in which case (i) the monthly  
181 rate is determined by dividing the APR by twelve, and (ii) the average  
182 daily unpaid principal balance is the sum of the amount unpaid each  
183 day during the cycle divided by the number of days in the cycle. In  
184 either of such computations, the billing cycle shall be monthly and the  
185 unpaid principal balance on any day shall be determined by adding to  
186 any balance unpaid as of the beginning of such day all advances and  
187 other permissible amounts charged to the borrower and deducting all  
188 payments and other credits made or received that day;

189 (4) Not compound interest or charges by adding any unpaid interest  
190 or charges authorized by sections 36a-555 to 36a-573, inclusive, as  
191 amended by this act, to the unpaid principal balance of the borrower's  
192 account; or

193 (5) Not include any other fees or charges of any kind, except as  
194 expressly permitted by subsection (g) of this section.

195 (g) Open-end small loans as described in subsections (a) and (b) of  
196 this section, in addition to the requirements set forth in subsections (d)  
197 to (f), inclusive, of this section, may:

198 (1) Provide for an annual fee for the privileges made available to the  
199 borrower under the open-end loan agreement, provided such annual fee

200 shall not exceed fifty dollars; and

201 (2) Include credit life insurance or credit accident and health  
202 insurance, subject to the conditions and restrictions set forth in section  
203 36a-559.

204 (h) No person licensed or required to be licensed under sections 36a-  
205 555 to 36a-573, inclusive, as amended by this act, who is engaged in  
206 generating leads shall in connection with lead generation activities:

207 (1) Initiate any outbound telephone call using an automatic telephone  
208 dialing system or an artificial or prerecorded voice without the prior  
209 express written consent of the recipient;

210 (2) Fail to transmit or cause to transmit the lead generator's name and  
211 telephone number to any caller identification service in use by a  
212 consumer;

213 (3) Initiate an outbound telephone call to a consumer's residence  
214 between nine o'clock p.m. and eight o'clock a.m. local time at the  
215 consumer's location;

216 (4) Fail to clearly and conspicuously identify the lead generator and  
217 the purpose of the contact in its written and oral communications with  
218 a consumer;

219 (5) Fail to provide the ability to opt out of any unsolicited  
220 advertisement communicated to a consumer via an electronic mail  
221 address;

222 (6) Initiate an unsolicited advertisement via electronic mail to a  
223 consumer more than ten business days after the receipt of a request from  
224 such consumer to opt out of such unsolicited advertisements;

225 (7) Use a subject heading or electronic mail address in a commercial  
226 electronic mail message that would likely mislead a recipient, acting  
227 reasonably under the circumstances, about a material fact regarding the  
228 sender, contents or subject matter of the message;



229 (8) Sell, lease, exchange or otherwise transfer or release the electronic  
230 mail address or telephone number of a consumer who has requested to  
231 be opted out of future solicitations;

232 (9) Collect, buy, lease, exchange or otherwise transfer or receive an  
233 individual's Social Security number or bank account number;

234 (10) Use information from a trigger lead to solicit consumers who  
235 have opted out of firm offers of credit under the federal Fair Credit  
236 Reporting Act;

237 (11) Initiate a telephone call to a consumer who has placed his or her  
238 contact information on a federal or state Do Not Call list, unless the  
239 consumer has provided express written consent;

240 (12) Represent to the public, through advertising or other means of  
241 communicating or providing information, including, but not limited to,  
242 the use of business cards or stationery, brochures, signs or other  
243 promotional items, that such lead generator can or will perform any  
244 other activity requiring licensure under this title, unless such lead  
245 generator is duly licensed to perform such other activity or exempt from  
246 such licensure requirements;

247 (13) Refer applicants to, or receive a fee from, any person who is  
248 required to be licensed under this title, but was not so licensed as of the  
249 time of the performance of such lead generator's services; or

250 (14) Assist or aid and abet any person in the conduct of business  
251 requiring licensure under this title when such person does not hold the  
252 license required.

253 (i) (1) On and after the effective date of this section, any person  
254 licensed under section 36a-565 may engage in the activities set forth in  
255 subsection (a) of section 36a-556 for any employer-integrated advance,  
256 provided:

257 (A) Notwithstanding the provisions of subdivision (1) of subsection  
258 (d) of this section that prohibit a small loan that is under five thousand

259 dollars from containing an APR that exceeds the lesser of thirty-six per  
260 cent or the maximum annual percentage rate for interest that is  
261 permitted with respect to the consumer credit extended under the  
262 Military Lending Act, 10 USC 987, as amended from time to time: (i) The  
263 amount of any expedited transfer fee paid by the consumer for such  
264 employer-integrated advance shall not exceed four dollars per advance;  
265 and (ii) the total amount of all such expedited transfer fees paid by the  
266 consumer for such employer-integrated advances shall not exceed  
267 sixteen dollars per thirty-day period;

268 (B) An expedited transfer fee is the only finance charge, fee, payment  
269 or cost imposed or received by the licensee for the employer-integrated  
270 advance;

271 (C) The licensee shall only be repaid for any advanced amount and  
272 expedited transfer fee by way of a payroll deduction; and

273 (D) The licensee shall not charge or receive any additional charge, fee,  
274 payment or cost, including, but not limited to, a late fee, if the employer-  
275 integrated advance is not repaid on the scheduled pay date.

276 (2) For purposes of this subsection:

277 (A) "Employer-integrated advance" means any advance of money  
278 that is: (i) In an original principal amount that is less than five thousand  
279 dollars, and (ii) made by a person that (I) is licensed under section 36a-  
280 565, and (II) maintains a contract with a consumer's employer under  
281 which an amount is advanced by such licensed person to the consumer,  
282 which amount represents not more than fifty per cent of the amount of  
283 the income or wages earned by the consumer for any particular pay  
284 period, as verified by such licensed person with the consumer's  
285 employer prior to any advance disbursement;

286 (B) "Expedited transfer fee" means any amount offered or paid by a  
287 consumer in connection with an employer-integrated advance: (i) To  
288 instantaneously complete the transfer of funds to the consumer as part  
289 of the employer-integrated advance; or (ii) on the day the consumer

290 requests such advance; and

291 (C) "Finance charge, fee, payment or cost" includes, but is not limited  
 292 to: (i) All charges and elements of cost included in the calculation of the  
 293 military annual percentage rate under the Military Lending Act, 10 USC  
 294 987, and the regulations promulgated thereunder, as amended from  
 295 time to time; (ii) the charges set forth in 32 CFR 232.4(c)(1), as amended  
 296 from time to time; (iii) any charge for an ancillary product, membership  
 297 or service sold in connection or concurrent with the employer-  
 298 integrated advance; (iv) any amount offered or agreed to by the  
 299 consumer in furtherance of obtaining the employer-integrated advance  
 300 or as compensation for the use of money; and (v) any fee, voluntarily or  
 301 otherwise, charged, agreed to or paid by the consumer in connection or  
 302 concurrent with the employer-integrated advance.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	36a-555(11)
Sec. 2	<i>from passage</i>	36a-557(a)
Sec. 3	<i>from passage</i>	36a-558

**Statement of Legislative Commissioners:**

In Section 1(11)(B)(v), "wages" was changed to "a wage" for internal consistency; Section 3(i)(1)(A) was redrafted for clarity; in Section 3(i)(1)(B), "The expedited transfer fee" was changed to "An expedited transfer fee" for internal consistency, and provisions enumerating the components of "finance charge, fee or payment" were redesignated as Section 3(i)(2)(C) for consistency with standard drafting conventions; in Section 3(i)(2), "section" was changed to "subsection" for accuracy; in Section 3(i)(2)(A), "and" was deleted for internal consistency; in Section 3(i)(2)(B), "and" was added for internal consistency; and in Section 3(i)(2)(C), "finance charge, fee or payment" was changed to "Finance charge, fee, payment or cost" for consistency with Section 3(i)(1)(B), and "shall include, but need not be limited to" was changed to "includes, but is not limited to" for internal consistency.

**BA**            *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 25 \$	FY 26 \$
Banking Dept.	BF - Potential Revenue Gain	Minimal	Minimal

Note: BF=Banking Fund

**Municipal Impact:** None

**Explanation**

The bill exempts an “employer-integrated advance” from the state’s small loan lending law provisions on annual percentage rate and finance charges, resulting in a potential revenue gain to the state to the extent that such an exemption results in more applications for small loan licenses. The initial and annual renewal fee for the small loan license is currently \$400.

The bill also makes clarifying and conforming changes that result in no fiscal impact to the state.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of small loan licenses granted.

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**OLR Bill Analysis****sHB 5140****AN ACT CONCERNING EARNED WAGE ACCESS.****SUMMARY**

This bill establishes an exemption from the small loan law's annual percentage rate (APR) and finance charge requirements for advances of funds that an employee would have received as income or wages in an upcoming paycheck, subject to certain restrictions (i.e., an "employer-integrated advance"). In doing so, the bill allows for these transactions though they may exceed the law's APR cap.

The bill relatedly exempts from the small loan licensure requirement payroll service providers that, on behalf of an employer or someone who has a small loan lending license, verify available earnings related to an employer-integrated advance and perform activities related to the verification. For the exemption to apply, the providers cannot provide the funds for the advance or control the licensed lender's activities (e.g., by directing management or policies).

Lastly, the bill (1) makes conforming changes and (2) explicitly exempts a wage that an employer directly pays to an employee before a regular pay day from the small loan lending law's scope.

EFFECTIVE DATE: Upon passage

**EMPLOYER-INTEGRATED ADVANCE**

The state's small loan lending law generally applies to loans, extensions of credit, or the purchase of, or an advance of money on, a borrower's future source of money (e.g., future pay or salary) of up to \$50,000 and with an APR exceeding 12%. In calculating the APR, it includes charges and fees assessed to a borrower as part of the transaction, including voluntarily provided amounts from the borrower (e.g., finance charges).

The bill exempts an “employer-integrated advance” from the law’s provisions on APR and finance charges (e.g., the 36% cap). This is an advance of money to a consumer that is (1) less than \$5,000 and (2) made by a licensed small loan lender that has a contract with the consumer’s employer that allows for these advances to the consumer. But the amount advanced cannot exceed 50% of the amount of income or wages the consumer earned in a particular pay period, which the licensee must verify with the consumer’s employer before providing the funds.

The bill also caps the amount of any “expedited transfer fee” at \$4 per advance and \$16 per 30-day period (i.e., fees offered or paid by a consumer as part of an employer-integrated advance to complete the funds transfer at the same time or on the same day the consumer asks for it). The expedited transfer fee is the only finance charge, fee, payment, or cost the bill allows the licensee to assess or receive for completing the advance.

Additionally, the bill (1) restricts the consumer’s method of repaying the advance and the expedited transfer fee to a payroll deduction and (2) prohibits the licensee from charging or receiving an additional charge, fee, payment, or cost, such as a late fee, if repayment is late.

**COMMITTEE ACTION**

Banking Committee

Joint Favorable Substitute

Yea 10 Nay 2 (03/12/2024)