

FIRST REGULAR SESSION

SENATE BILL NO. 586

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

2113S.01H

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 361, RSMo, by adding thereto one new section relating to the regulation of earned wage access services, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 361, RSMo, is amended by adding thereto
2 one new section, to be known as section 361.750, to read as
3 follows:

361.750. 1. Unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) "Consumer", a natural person residing in the state
4 of Missouri;

5 (2) "Director", the director of the division of
6 finance;

7 (3) "Earned but unpaid income", wages, compensation,
8 or income that a consumer has represented, and that a
9 provider has reasonably determined, have been earned or have
10 accrued to the benefit of the consumer but have not, at the
11 time of the payment of proceeds, been paid to the consumer
12 by an obligor;

13 (4) "Earned wage access services", the business of
14 delivering proceeds to consumers prior to the next date on
15 which an obligor is obligated to pay salary, wages,
16 compensation, or other income to a consumer;

17 (5) "Mandatory payment", an amount determined by a
18 provider, which must be paid by a consumer to that provider
19 as a condition of receiving or repaying proceeds;

20 (6) "Nonmandatory payment", an amount paid by a
21 consumer or an obligor to a provider, which does not meet
22 the definition of a mandatory payment. For purposes of this
23 section, permitted nonmandatory payments include, but are
24 not limited to, the following:

25 (a) A fee imposed by a provider for delivery or
26 expedited delivery of proceeds to a consumer, as long as the
27 provider offers the consumer at least one option to receive
28 proceeds at no cost to the consumer;

29 (b) An amount paid by an obligor to a provider on a
30 consumer's behalf, which entitles the consumer to receive
31 proceeds at no cost to the consumer;

32 (c) A subscription or membership fee imposed by a
33 provider for a group of services that include earned wage
34 access services, as long as the provider offers the consumer
35 at least one option to receive proceeds at no cost to the
36 consumer;

37 (d) A tip or gratuity paid by a consumer to a
38 provider, as long as the provider offers the consumer at
39 least one option to receive proceeds at no cost to the
40 consumer;

41 (7) "Nonrecourse", that a provider may not compel or
42 attempt to compel repayment by a consumer of outstanding
43 proceeds or nonmandatory payments owed by that consumer to
44 that provider through any of the following means:

45 (a) A civil suit against the consumer in a court of
46 competent jurisdiction;

47 (b) Use of a third-party to pursue collection of
48 outstanding proceeds or nonmandatory payments on the
49 provider's behalf; or

50 (c) Sale of outstanding amounts to a third-party
51 collector or debt buyer.

52 The term "nonrecourse" does not preclude the use by a
53 provider of any of the foregoing methods to compel or
54 attempt to compel repayment of outstanding amounts incurred
55 by a consumer through fraudulent means;

56 (8) "Obligor", an employer or another person, who is
57 contractually or legally obligated to pay a consumer earned
58 but unpaid income on an hourly, project-based, piecework, or
59 other basis, including where the consumer is acting as an
60 independent contractor. "Obligor" shall not include a
61 service provider of an obligor or another third party that
62 has an obligation to make any payment to a consumer based
63 solely on the consumer's agency relationship with the
64 obligor;

65 (9) "Outstanding proceeds", a payment of proceeds to a
66 consumer by a provider, which has not yet been repaid to
67 that provider;

68 (10) "Person", a partnership, corporation, or
69 association;

70 (11) "Proceeds", a payment of funds to a consumer by a
71 provider, which is based on earned but unpaid income;

72 (12) "Provider", a person who is in the business of
73 offering and providing earned wage access services to
74 consumers.

75 2. (1) No person shall engage in the business of
76 earned wage access services in this state without first

77 registering as an earned wage access services provider with
78 the division of finance.

79 (2) The annual registration fee shall be one thousand
80 dollars payable to the division as of the first day of July
81 of each year. The division may establish a biennial
82 registration arrangement but in no case shall the
83 registration fee be payable for more than one year at a time.

84 (3) Registration shall be made on forms prepared by
85 the director and shall contain the following information:

86 (a) Name, business address, and telephone number of
87 the earned wage access services provider;

88 (b) Name and business address of corporate officers
89 and directors or principals or partners;

90 (c) A sworn statement by an appropriate officer,
91 principal, or partner of the earned wage access services
92 provider that:

93 a. The provider is financially capable of engaging in
94 the business of earned wage access services; and

95 b. If a corporation, that the corporation is
96 authorized to transact business in this state;

97 (d) If any material change occurs in the information
98 contained in the registration form, a revised statement
99 shall be submitted to the director.

100 (4) A certificate of registration shall not be
101 assignable or transferable, except as approved by the
102 director.

103 (5) Each certificate of registration shall remain in
104 full force and effect until surrendered, revoked, or
105 suspended.

106 3. This section shall not apply to:

107 (1) A bank or savings and loan association whose
108 deposits or accounts are eligible for insurance by the

109 Federal Deposit Insurance Corporation, or a subsidiary of
110 such a bank or savings and loan association;

111 (2) A credit union doing business in this state; and

112 (3) A person authorized to make loans or extensions of
113 credit under the laws of this state or the United States,
114 who is subject to regulation and supervision by this state
115 or the United States.

116 4. Each provider shall:

117 (1) Provide all proceeds on a nonrecourse basis and
118 shall treat nonmandatory payments as nonrecourse payment
119 obligations;

120 (2) Before providing a consumer with earned wage
121 access services, provide a consumer with a written paper or
122 electronic document, which can be included as part of the
123 contract to provide earned wage access services, and which
124 meets all of the following requirements:

125 (a) Informs the consumer of the terms and conditions
126 of the earned wage access services;

127 (b) Includes a statement that the division has
128 jurisdiction over the earned wage access services performed
129 by the provider and provides both a phone number and a
130 website through which consumers can submit complaints about
131 the provider's earned wage access services to the division
132 of finance;

133 (c) Is written in a font and using language intended
134 to be easily understood by a layperson;

135 (d) Discloses any nonmandatory payments that may be
136 directly imposed by the provider in connection with the
137 provision of earned wage access services;

138 (3) Provide proceeds to a consumer by any means
139 mutually agreed upon by the consumer and provider;

(4) In any case in which the provider will seek repayment of proceeds from a consumer, inform the consumer when the provider will make its first attempt to seek repayment of those proceeds from the consumer;

(5) Comply with applicable Nacha rules, if applicable, in the case of a provider that seeks repayment of proceeds from a consumer's depository institution account; and

(6) Permit a consumer to cancel participation in an earned wage access service at any time without incurring a charge for doing so.

5. A provider shall not:

(1) Impose a mandatory payment on a consumer that directly relates to the provision of earned wage access services;

(2) Charge a late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds;

(3) Make the offering of earned wage access services, either in the amount of proceeds a consumer is eligible to request, or the frequency with which proceeds are provided to a consumer, contingent on whether the consumer makes any nonmandatory payments or on the size of any nonmandatory payments that consumer may make to that provider in connection with the provision of earned wage access services, provided, however, that this prohibition shall not be construed to prohibit a nonmandatory payment equal to a percentage of proceeds provided;

(4) Charge a deferral fee or any other charge in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date;

(5) Solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the total nonmandatory payments that provider may collect;

(6) Report a consumer's payment or failed repayment of outstanding proceeds to a consumer credit reporting agency or a debt collector;

(7) Require a credit score to determine a consumer's eligibility for earned wage access services; or

(8) Provide, sell, or otherwise disclose to any third party, including an obligor, any nonpublic personal information collected from or about a consumer, except as necessary to provide earned wage access services to that consumer or in accordance with a consumer's written consent.

6. (1) Earned wage access services shall not be considered an assignment of wages for purposes of section 408.210 or section 432.030.

(2) The provision of proceeds shall not be considered a loan for purposes of any of the following: sections 367.100 through 367.215, section 408.210, or sections 408.500 through 408.512.

(3) Nonmandatory payments paid by a consumer to a provider shall not be considered finance charges, for the purposes of applying the federal Truth in Lending Act to the earned wage access services provided by that provider.

7. The director, or his or her duly authorized representative, may make such investigation as is deemed necessary and, to the extent necessary for this purpose, may examine the registrant or any other person having personal knowledge of the matters under investigation, and shall have the power to compel the production of all relevant books, records, accounts, and documents by registrants.

8. (1) An earned wage access services provider shall maintain records of its earned wage access services transactions and shall preserve its records for at least two

203 years after the final date on which it provides proceeds to
204 a consumer.

205 (2) Records required by this section may be maintained
206 electronically.

207 9. The division may promulgate rules as may be
208 necessary for the administration of this section. Any rule
209 or portion of a rule, as that term is defined in section
210 536.010, that is created under the authority delegated in
211 this section shall become effective only if it complies with
212 and is subject to all of the provisions of chapter 536 and,
213 if applicable, section 536.028. This section and chapter
214 536 are nonseverable and if any of the powers vested with
215 the general assembly pursuant to chapter 536 to review, to
216 delay the effective date, or to disapprove and annul a rule
217 are subsequently held unconstitutional, then the grant of
218 rulemaking authority and any rule proposed or adopted after
219 August 28, 2023, shall be invalid and void.

220 10. (1) Any provider registered pursuant to this
221 section who fails, refuses, or neglects to comply with the
222 provisions of this section or commits any criminal act, may
223 have its registration suspended or revoked by the director
224 after a hearing before the director on an order of the
225 director to show cause why such order of suspension or
226 revocation should not be entered specifying the grounds
227 therefor, which shall be served on the registrant at least
228 ten days prior to the hearing.

229 (2) Whenever it shall appear to the director that any
230 provider registered pursuant to this section is failing,
231 refusing, or neglecting to make a good faith effort to
232 comply with the provisions of this section, the director may
233 issue an order to cease and desist which order may be
234 enforceable by a civil penalty of not more than one thousand

235 dollars per day for each day that the neglect, failure, or
236 refusal shall continue. The penalty shall be assessed and
237 collected by the director. In determining the amount of the
238 penalty, the director shall take into account the
239 appropriateness of the penalty with respect to the gravity
240 of the violation, the history of previous violations, and
241 such other matters as justice may require.

242 11. All revenues collected by or paid to the director
243 pursuant to this section shall be forwarded immediately to
244 the director of revenue, who shall deposit them in the
245 division of finance fund.

246 12. Any earned wage access services provider knowingly
247 and willfully violating the provisions of this section shall
248 be guilty of a class A misdemeanor.

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