

SENATE BILL NO. 293

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

1100S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 361.749, RSMo, and to enact in lieu thereof one new section relating to earned wage access services, with penalty provisions.

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

Section A. Section 361.749, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 361.749,
3 to read as follows:

361.749. 1. As used in this section, unless the
2 context clearly indicates otherwise, the following terms
3 mean:

- 4 (1) "Consumer", any individual;
- 5 (2) "Consumer-directed wage access services", the
6 business of offering or providing earned wage access
7 services directly to a consumer based on the consumer's
8 representation and the provider's reasonable determination
9 of the consumer's earned but unpaid income;
- 10 (3) "Director", the director of the division of
11 finance within the department of commerce and insurance;
- 12 (4) "Division", the Missouri division of finance
13 within the department of commerce and insurance;
- 14 (5) "Earned but unpaid income", salary, wages,
15 compensation, or other income that a consumer or an employer
16 has represented, and that a provider has reasonably
17 determined, has been earned or has accrued to the benefit of
18 the consumer in exchange for the consumer's provision of

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 services to the employer or on behalf of the employer,
20 including on an hourly, project-based, piecework, or other
21 basis and including where the consumer is acting as an
22 independent contractor of the employer, but has not, at the
23 time of the payment of proceeds, been paid to the consumer
24 by the employer;

25 (6) "Earned wage access services", the business of
26 providing consumer-directed wage access services, employer-
27 integrated wage access services, or both;

28 (7) "Employer":

29 (a) A person who employs a consumer; or

30 (b) Any other person who is contractually obligated to
31 pay a consumer earned but unpaid income in exchange for a
32 consumer's provision of services to the employer or on
33 behalf of the employer, including on an hourly, project-
34 based, piecework, or other basis and including where the
35 consumer is acting as an independent contractor with respect
36 to the employer.

37 "Employer" does not include a customer of an employer or any
38 other person whose obligation to make a payment of salary,
39 wages, compensation, or other income to a consumer is not
40 based on the provision of services by that consumer for or
41 on behalf of such person;

42 (8) "Employer-integrated wage access services", the
43 business of delivering to consumers access to earned but
44 unpaid income that is based on employment, income, and
45 attendance data obtained directly or indirectly from an
46 employer;

47 (9) "Fee":

48 (a) A fee imposed by a provider for delivery or
49 expedited delivery of proceeds to a consumer;

50 (b) A subscription or membership fee imposed by a
51 provider for a bona fide group of services that includes
52 earned wage access services; or

53 (c) An amount paid by an employer to a provider on a
54 consumer's behalf, which entitles the consumer to receive
55 proceeds at reduced or no cost to the consumer.

56 A voluntary tip, gratuity, or donation shall not be deemed a
57 fee;

58 (10) "Outstanding proceeds", a payment of proceeds to
59 a consumer by a provider that has not yet been repaid to
60 that provider;

61 (11) "Person", a partnership, corporation,
62 association, sole proprietorship, limited liability company,
63 or nonprofit or governmental entity;

64 (12) "Proceeds", a payment of funds to a consumer by a
65 provider that is based on earned but unpaid income;

66 (13) "Provider", a person who is in the business of
67 offering and providing earned wage access services to
68 consumers.

69 2. (1) No person shall engage in the business of
70 earned wage access services in this state without first
71 registering as an earned wage access services provider with
72 the division.

73 (2) The annual registration fee shall be one thousand
74 dollars payable to the division as of the first day of July
75 of each year. The division may establish a biennial
76 registration arrangement, but in no case shall the
77 registration fee be payable for more than one year at a time.

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

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

82 (b) Name and business address of corporate officers
83 and directors or principals or partners;

84 (c) A sworn statement by an appropriate officer,
85 principal, or partner of the earned wage access services
86 provider that:

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

89 b. If a corporation, that the corporation is
90 authorized to transact business in this state.

91 If any material change occurs in the information contained
92 in the registration form, a revised statement shall be
93 submitted to the director.

94 (4) A certificate of registration shall be issued by
95 the director within thirty calendar days after the date on
96 which all registration materials have been received by the
97 director and shall not be assignable or transferable, except
98 as approved by the director.

99 (5) Each certificate of registration shall remain in
100 full force and effect until surrendered, revoked, or
101 suspended.

102 3. This section shall not apply to:

103 (1) A bank or savings and loan association whose
104 deposits or accounts are eligible for insurance by the
105 Federal Deposit Insurance Corporation, or a subsidiary of
106 such a bank or savings and loan association;

107 (2) A credit union doing business in this state; or

108 (3) A person authorized to make loans or extensions of
109 credit under the laws of this state or the United States,

110 who is subject to regulation and supervision by this state
111 or the United States.

112 4. Each provider shall:

113 (1) Develop and implement policies and procedures to
114 respond to questions raised by consumers and address
115 complaints from consumers in an expedient manner;

116 (2) Before entering into an agreement with a consumer
117 for the provision of earned wage access services, provide a
118 consumer with a written paper or electronic document, which
119 can be included as part of the contract to provide earned
120 wage access services and which meets all of the following
121 requirements:

122 (a) Informs the consumer of his or her rights under
123 the agreement; and

124 (b) Fully and clearly discloses all fees associated
125 with the earned wage access services;

126 (3) Inform the consumer of the fact of any material
127 changes to the terms and conditions of the earned wage
128 access services before implementing those changes for that
129 consumer;

130 (4) Provide proceeds to a consumer by any means
131 mutually agreed upon by the consumer and provider;

132 (5) Comply with all local, state, and federal privacy
133 and information security laws;

134 (6) In any case in which the provider will seek
135 repayment of outstanding proceeds, fees, or other payments,
136 including voluntary tips, gratuities, or other donations
137 from a consumer's account at a depository institution and
138 including via electronic funds transfer:

139 (a) Comply with applicable provisions of the federal
140 Electronic Funds Transfer Act and its implementing
141 regulations; and

142 (b) Reimburse the consumer for the full amount of any
143 overdraft or nonsufficient funds fees imposed on a consumer
144 by the consumer's depository institution that were caused by
145 the provider attempting to seek payment of any outstanding
146 proceeds, fees, voluntary tips, gratuities, or other
147 donations on a date before, or in an incorrect amount from,
148 the date or amount disclosed to the consumer.

149 The provisions of this subdivision shall not apply with
150 respect to payments of outstanding proceeds, fees, tips,
151 gratuities, or other donations incurred by a consumer
152 through fraudulent or other means; and

153 (7) If a provider solicits, charges, or receives a
154 tip, gratuity, or donation from a consumer:

155 (a) Clearly and conspicuously disclose to the consumer
156 immediately prior to each transaction that a tip, gratuity,
157 or donation amount may be zero and is voluntary;

158 (b) Clearly and conspicuously disclose in its service
159 contract with the consumer and elsewhere that tips,
160 gratuities, or donations are voluntary and that the offering
161 of earned wage access services, including the amount of the
162 proceeds a consumer is eligible to request and the frequency
163 with which proceeds are provided to a consumer, is not
164 contingent on whether the consumer pays any tip, gratuity,
165 or donation or on the size of any tip, gratuity, or donation;

166 (c) Refrain from misleading or deceiving consumers
167 about the voluntary nature of such tips, gratuities, or
168 donations; and

169 (d) Refrain from making representations that tips or
170 gratuities will benefit any specific, individual person.

171 5. **(1)** A provider shall not:

172 [(1)] (a) Share with an employer any fees, voluntary
173 tips, gratuities, or other donations that were received from
174 or charged to a consumer for earned wage access services;

175 [(2)] (b) Charge interest for failure to repay
176 outstanding proceeds, fees, voluntary tips, gratuities, or
177 other donations;

178 [(3)] (c) Report any information about the consumer
179 regarding the inability of the provider to be repaid
180 outstanding proceeds, fees, voluntary tips, gratuities, or
181 other donations to a consumer credit reporting agency or a
182 debt collector;

183 [(4)] (d) Require a consumer's credit report or credit
184 score to determine a consumer's eligibility for earned wage
185 access services;

186 [(5)] (e) Accept payment from a consumer of
187 outstanding proceeds, fees, voluntary tips, gratuities, or
188 other donations via credit card or charge card; or

189 [(6)] (f) Compel or attempt to compel repayment by a
190 consumer of outstanding proceeds, fees, voluntary tips,
191 gratuities, or other donations through any of the following
192 means:

193 [(a)] a. A suit against the consumer in a court of
194 competent jurisdiction;

195 [(b)] b. Use of a third party to pursue collection
196 from the consumer on the provider's behalf; or

197 [(c)] c. Sale of outstanding amounts to a third-party
198 collector or debt buyer for collection from the consumer.

199 (2) The provisions of this [subdivision] subsection
200 shall not apply to payments of outstanding proceeds, fees,
201 tips, gratuities, or other donations incurred by a consumer
202 through fraudulent or other means or preclude a provider

203 from pursuing an employer for breach of its contractual
204 obligations to the provider.

205 6. For purposes of the laws of this state:

206 (1) Earned wage access services offered and provided
207 by a registered provider shall not be considered to be any
208 of the following:

209 (a) A violation of or noncompliance with the laws
210 governing the sale or assignment of or an order for earned
211 but unpaid income;

212 (b) A loan or other form of credit, and the provider
213 shall not be considered a creditor or a lender;

214 (c) Money transmission, and the provider shall not be
215 considered a money transmitter;

216 (2) Fees, voluntary tips, gratuities, or other
217 donations shall not be considered interest or finance
218 charges.

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

226 8. (1) An earned wage access services provider shall
227 maintain records of its earned wage access services
228 transactions and shall preserve its records for at least two
229 years after the final date on which it provides proceeds to
230 a consumer.

231 (2) Records required by this section may be maintained
232 electronically.

233 9. The division may promulgate rules as may be
234 necessary for the administration of this section. Any rule

235 or portion of a rule, as that term is defined in section
236 536.010, that is created under the authority delegated in
237 this section shall become effective only if it complies with
238 and is subject to all of the provisions of chapter 536 and,
239 if applicable, section 536.028. This section and chapter
240 536 are nonseverable and if any of the powers vested with
241 the general assembly pursuant to chapter 536 to review, to
242 delay the effective date, or to disapprove and annul a rule
243 are subsequently held unconstitutional, then the grant of
244 rulemaking authority and any rule proposed or adopted after
245 August 28, 2023, shall be invalid and void.

246 10. (1) Any provider registered pursuant to this
247 section who fails, refuses, or neglects to comply with the
248 provisions of this section or commits any criminal act may
249 have its registration suspended or revoked by the director,
250 after a hearing before the director on an order of the
251 director to show cause why such order of suspension or
252 revocation should not be entered specifying the grounds
253 therefor, which shall be served on the registrant at least
254 ten days prior to the hearing.

255 (2) Whenever it shall appear to the director that any
256 provider registered pursuant to this section is failing,
257 refusing, or neglecting to make a good faith effort to
258 comply with the provisions of this section, the director may
259 issue an order to cease and desist, which order may be
260 enforceable by a civil penalty of not more than one thousand
261 dollars per day for each day that the neglect, failure, or
262 refusal shall continue. The penalty shall be assessed and
263 collected by the director. In determining the amount of the
264 penalty, the director shall take into account the
265 appropriateness of the penalty with respect to the gravity

266 of the violation, the history of previous violations, and
267 such other matters as justice may require.

268 11. All revenues collected by or paid to the director
269 pursuant to this section shall be forwarded immediately to
270 the director of revenue, who shall deposit them in the
271 division of finance fund.

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

275 13. If there is a conflict between the provisions of
276 this section and any other state statute, the provisions of
277 this section shall control.

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