

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2113S.01I
Bill No.: SB 586
Subject: Department of Commerce and Insurance; Business and Commerce; Consumer Protection
Type: Original
Date: April 24, 2023

Bill Summary: This proposal regulates Earned Wage Access Services.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2024 | FY 2025 | FY 2026 |
| | | | |
| | | | |
| | | | |
| Total Estimated Net Effect on General Revenue | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2024 | FY 2025 | FY 2026 |
| Division of Finance Fund | \$135 | \$135 | \$135 |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$135 | \$135 | \$135 |

Numbers within parentheses: () indicate costs or losses.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2024 | FY 2025 | FY 2026 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2024 | FY 2025 | FY 2026 |
| | | | |
| | | | |
| Total Estimated Net Effect on FTE | 0 | 0 | 0 |

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2024 | FY 2025 | FY 2026 |
| | | | |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Commerce and Insurance (DCI) – Division of Finance (DOF)** assume the following:

Section 361.750

DOF assumes this section of the proposal creates the Missouri Earned Wage Access Services Registration Act, which requires registration with the Division of Finance (DOF) for entities that provide earned wage access services.

Subsection 2 requires an annual registration fee of \$1,000 due on July 1 each year. For the purposes of this estimate, DOF assumes ten providers would register and renew annually, generating \$10,000 in revenue each fiscal year which would be deposited to the Division of Finance Fund (0550). This subsection also requires DOF to create forms and processes for initial registrations and reporting changes material to the registrant's information. The Division would also issue certificates of registration. Development of and revisions to forms and processes for the program is estimated to take 40 hours annually at \$25.00 per hour for a cost of \$1,000. DOF assumes registration would be allowed via paper and electronically, which would require website development and maintenance at a cost of \$75 per hour, for an estimated 40 hours annually, resulting in a cost of \$3,000.

Review of registration applications by a Consumer Credit Examiner would take approximately one hour each, at an average of \$43.63 per hour. The processing and issuance of registration certificates by an Administrative Office Support Assistant would require an hour each at \$20.76 per hour. The total processing cost for each registration would be \$64.39. For the estimated 10 registrants, the estimated total annual cost is \$644.

DOF assumes this subsection 7 allows the Commissioner or a representative to make necessary investigations. The Division assumes each registrant would be examined every two years resulting in five examinations each year. Each exam is expected to take an estimated sixteen hours. At an average hourly rate of \$43.63, DOF estimates examination expenses at \$9,865 annually.

The Commissioner of the Division of Finance is also granted power to promulgate any necessary rules for administration of this section in Subsection nine. Promulgation and revision of administrative rules would require an estimated 40 hours annually by Associate Legal Counsel X \$43.27 per hour = \$1,731.

In summary, DCI assumes a net income of \$135 in each year to provide for the implementation of the changes in this proposal to the Division of Finance Fund.

Officials from the **Office of the State Public Defender (SPD)** state the proposed legislation creates a new offense under section 290.686 which could result in additional cases eligible for SPD representation. The number of additional cases is unknown and as a result the fiscal impact is unknown.

Oversight notes in FY22 the SPD was appropriated moneys for 53 additional FTE. Oversight assumes this proposal will create a minimal number of new cases and that the SPD can absorb the additional caseload required by this proposal with current staff and resources. Therefore, Oversight will reflect no fiscal impact to the SPD for fiscal note purposes. However, if multiple bills pass which require additional staffing and duties, the SPD may request funding through the appropriation process.

In response to a similar proposal from this year (HB 759), officials from the **Department of Labor and Industrial Relations** defer to the Department of Commerce and Insurance for the potential fiscal impact of this proposal.

Officials from the **Department of Corrections**, the **Missouri Office of Prosecution Services** the **Department of Revenue** and the **Department of Public Safety - Missouri Highway Patrol** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Rule Promulgation

In response to a similar proposal from this year (HB 759), officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

In response to a similar proposal from this year (HB 759), officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

| <u>FISCAL IMPACT – State Government</u> | FY 2024 (10 Mo.) | FY 2025 | FY 2026 |
|--|---------------------|---------------------|---------------------|
| DIVISION OF FINANCE FUND (0550) | | | |
| <u>Revenue – DCI</u> Registration Fees §361.750 | \$10,000 | \$10,000 | \$10,000 |
| <u>Cost – DCI §361.750</u> | (\$9,865) | (\$9,865) | (\$9,865) |
| ESTIMATED NET EFFECT TO THE DIVISION OF FINANCE FUND (0550) | <u>\$135</u> | <u>\$135</u> | <u>\$135</u> |

| <u>FISCAL IMPACT – Local Government</u> | FY 2024 (10 Mo.) | FY 2025 | FY 2026 |
|---|---------------------|-------------------|-------------------|
| | | | |
| | | | |
| | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |

FISCAL IMPACT – Small Business

A direct fiscal impact to a business that engages in the business of earned wage access services would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act creates new provisions relating to earned wage access services.

Earned Wage Access Services

An earned wage access service is the business of delivering funds that have been earned but are unpaid, referred to as proceeds, to consumers prior to the next date on which an employer or other person paying a salary, wages, compensation, or other income to a consumer is obligated to pay such funds.

Registration Requirements

The act prohibits any person from engaging in the business of earned wage access services without registering with the Division of Finance by filling out a registration form and paying a \$1,000 registration fee. The act outlines the obligations and restrictions on how an earned wage access services provider may engage in business, including how services may be provided, notices required to be given consumers, and the types of fees that may be charged.

Proceeds Provided on Non-Recourse Basis

Providers are required to provide proceeds on a non-recourse basis, meaning that a provider may not compel or attempt to compel repayment by a consumer of outstanding proceeds through any of the following means:

- A civil suit against the consumer in a court of competent jurisdiction;
- Use of a third-party to pursue collection of outstanding proceeds or non-mandatory payments on the provider's behalf; or
- Sale of outstanding amounts to a third-party collector or debt buyer.

Fees and other Payments

Providers are limited in the fees that may be charged in connection with the provision of services. Providers are likewise prohibited from charging any late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds. The act furthermore distinguishes between mandatory payments and non-mandatory payments. Providers are prohibited from charging mandatory payments, defined as an amount that must be paid by the consumer to the provider as a condition of receiving or repaying any funds paid to the consumer.

Providers may charge non-mandatory payment, defined as any other amount that is paid to a provider that is not a mandatory payment. Examples of non-mandatory payments are fees imposed by a provider for delivery or expedited delivery of proceeds to a consumer, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer; amounts paid by an obligor to a provider on a consumer's behalf, which entitles the consumer to receive proceeds at no cost to the consumer; a subscription or membership fee imposed by a provider for a group of services that include earned wage access services, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer; and a tip or gratuity paid by a consumer to a provider, as long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer.

Providers may not make the offering of earned wage access services contingent upon the payment of a non-mandatory payment. Providers are required to treat all such payments as non-recourse payment obligations, meaning that a provider may not compel or attempt to compel payment of such payments through any of the following means:

- A civil suit against the consumer;
- Use of a third-party to pursue collection of such payments; or
- Sale of outstanding amounts to a third-party collector or debt buyer.

Providers are required to disclose all non-mandatory payments imposed by the provider in connection with the provision of earned wage access services. Furthermore, providers are prohibited from making the offering of earned wage access services contingent on whether the consumer makes any non-mandatory payments or on the size of any non-mandatory 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 non-mandatory payment equal to a percentage of proceeds provided.

Investigations and Punishments

The Director is allowed to make investigations to examine any registrant and may compel the production of all relevant books, records, accounts, and documents of registrants. Registrants are required to maintain records of its earned wage access services, which may be in electronic form, for at least two years. Enforcement measures are created allowing for the suspension or revocation of registration if a provider fails, refuses, or neglects to comply with this act. Any earned wage access services provider knowingly violating the provisions of this chapter shall be guilty of a class A misdemeanor.

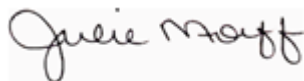
Exemptions

The act does not apply to banks or savings and loan associations whose deposits or accounts are eligible for insurance by the FDIC; credit unions; and any person authorized to make loans or extensions of credit.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Commerce and Insurance
Department of Corrections
Department of Labor and Industrial Relations
Department of Public Safety - Missouri Highway Patrol
Office of the Secretary of State
Office of the State Public Defender
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Department of Revenue



Julie Morff
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April 24, 2023



Ross Strobe
Assistant Director
April 24, 2023