

EARNED WAGE ACCESS LAW

361.749. Earned wage access services, registration to do business - requirements - prohibited acts - investigations - recordkeeping - rulemaking - sanctions on registration, when - violations, penalty. - 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:

(1) **"Consumer"**, any individual;

(2) **"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;

(3) **"Director"**, the director of the division of finance within the department of commerce and insurance;

(4) **"Division"**, the Missouri division of finance within the department of commerce and insurance;

(5) **"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;

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

(7) **"Employer"**:

(a) A person who employs a consumer; or

(b) 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 include 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;

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

(9) **"Fee"**:

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

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

(c) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. This section shall not apply to:

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

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

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

4. Each provider shall:

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

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

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

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

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

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

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

(6) In any case in which the provider will seek repayment of outstanding proceeds,

fees, or other payments, including voluntary tips, gratuities, or other donations from a consumer's account at a depository institution and including via electronic funds transfer:

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

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

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

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

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

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

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

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

5. A provider shall not:

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

(2) Charge interest for failure to repay outstanding proceeds, fees, voluntary tips, gratuities, or other donations;

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

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

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

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

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

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

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

The provisions of this subdivision shall not apply to payments of outstanding proceeds, fees, tips, gratuities, or other donations incurred by a consumer through fraudulent or other means or preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

6. For purposes of the laws of this state:

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

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

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

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

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

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

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

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

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

(2) Whenever it shall appear to the director that any provider registered pursuant to this section is failing, refusing, or neglecting to make a good faith effort to comply with the provisions of this section, the director may issue an order to cease and desist, which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure, or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

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

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

13. If there is a conflict between the provisions of this section and any other state statute, the provisions of this section shall control. (L. 2023 S.B. 103)