

HOUSE BILL NO. 1393

Introduced by

Representative Dockter

Senator Klein

1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century
2 Code, relating to payday lending organizations; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 13 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Business entity" means a limited liability company, partnership, or corporation
9 authorized to engage in business under the laws of this state. The term does not
10 include a single-member limited liability company.
- 11 2. "Commissioner" means the commissioner of financial institutions.
- 12 3. "Consumer" means an individual who is a resident of this state and who engages in or
13 intends to engage in an earned income access transaction.
- 14 4. "Control" means:
- 15 a. In the case of a business entity:
- 16 (1) A direct or indirect ownership;
- 17 (2) The right to control twenty-five percent or more of the voting shares of the
18 business entity; or
- 19 (3) The ability of an individual to elect a majority of the directors or otherwise
20 affect a change in policy of the business entity.
- 21 b. In the case of any other entity, the ability to exchange the principals of the
22 organization, whether active or passive.
- 23 5. "Debt collection" means the:

- 1 a. Act of collecting or attempting to collect debts owed or due or asserted to be
2 owed or due another; and
- 3 b. Solicitation of debts for the purpose of collection and accepting assignment of
4 debts for the purpose of collection.
- 5 6. "Earned but unpaid income" means wages or compensation that have been earned or
6 have accrued to the benefit of a consumer but have not been paid by an obligor to that
7 consumer for labor or services performed for or on behalf of an obligor.
- 8 7. "Earned income access rate cap" means the limit on the amount that may be charged
9 to or received from a consumer, over which the consumer has no option, for an earned
10 income access transaction established by the department.
- 11 8. "Earned income access transaction" means the payment of earned but unpaid income
12 to a consumer at a time other than the consumer's regular payday or other regularly
13 scheduled time on which the obligor pays to the consumer wages or compensation
14 earned or that have accrued to the benefit of consumer income.
- 15 9. "Earned income access provider" or "provider" means a person that:
- 16 a. Provides, or offers to provide, on behalf of an obligor earned income access
17 transactions to consumers earning wages or compensation from the obligor; or
- 18 b. Offers earned income access transactions to, or enters earned income
19 transactions with, consumers.
- 20 10. "Exempt organization" means:
- 21 a. Any banking organization, foreign banking corporation licensed by the
22 department to transact business in this state, national bank, federal savings
23 bank, federal savings and loan association, federal credit union, or any bank,
24 trust company, savings bank, savings and loan association, or credit union
25 organized under the laws of this state, another state, or the United States.
- 26 b. A service provider, including a payroll service provider, that verifies available
27 earnings, but is not contractually obligated to pay earned but unpaid income as
28 part of an earned income access transaction; or
- 29 c. An obligor that offers a portion of salary, wages, or compensation directly to its
30 employees or independent contractors before the normally scheduled pay date.

- 1 11. "Fees" means any amount charged or received by a provider to a consumer for an
2 earned income access transaction, including amounts paid voluntarily as described in
3 this chapter.
- 4 12. "Licensee" means an earned income access provider licensed by the commissioner.
- 5 13. "Nonrecourse" means the unavailability of any legal cause of action or remedy against
6 a consumer relating to an earned income access transaction.
- 7 14. "Notice" means communication from the provider to the consumer in a clear and
8 conspicuous manner.
- 9 15. "Obligor" means a person obligated to pay a consumer any sum of money on an
10 hourly, project-based, piecework, or other basis for labor or services performed by the
11 consumer for or on behalf of that person. The term does not include a customer of an
12 obligor or another third party that has an obligation to make any payment to a
13 consumer based solely on the consumer's agency relationship with the obligor.
- 14 16. "Proceeds" means funds received by a consumer under an earned income access
15 transaction.

16 **License.**

- 17 1. An individual or business entity, except for an exempt organization as defined in this
18 chapter, may not engage in the business of providing or offering earned income
19 access transactions to consumers, or enter an earned income access transaction with
20 a consumer, without first obtaining a license under this chapter. An individual or
21 business entity is considered to be engaging in the business of earned wage access
22 service if the consumer is located in this state.
- 23 2. An application for a license under this chapter must be in writing, under oath, and in
24 the form prescribed by the commissioner.
- 25 3. Each applicant shall maintain a tangible net worth of at least twenty-five thousand
26 dollars or other amount as the commissioner may determine necessary to protect the
27 public interests.
- 28 4. The financial responsibility, financial condition, business experience, character, and
29 general fitness of the applicant must reasonably warrant the belief that the applicant's
30 business will be conducted lawfully and fairly. In determining whether this qualification
31 is met and for the purpose of investigating compliance with this chapter, the

- 1 commissioner may review and consider the relevant business records and the capital
2 adequacy of the applicant and the competence, experience, integrity, and financial
3 ability of any person that is a member, partner, director, officer, or twenty-five percent
4 or more shareholder of the applicant, and whether the applicant has filed any
5 appropriate registration with the secretary of state.
- 6 5. Each applicant shall establish that neither the individual nor any officer, director, or
7 proposed employee of the applicant has been convicted of a crime involving
8 dishonesty, fraud, or breach of trust. A deferred imposition of sentence or federal
9 pretrial diversion must be considered a conviction for purposes of this section.
- 10 6. Each applicant shall maintain a bond issued by a surety company authorized to
11 conduct business in this state, in the amount of fifty thousand dollars, and the
12 commissioner may require a larger bond if the commissioner determines the larger
13 bond is necessary based on the volume of the applicant's business.
- 14 7. Each application for a license must include:
- 15 a. An application fee as determined by the commissioner;
16 b. The legal name of the applicant, residence of the applicant, business address of
17 the applicant, and, if applicable, the address at which earned wage access
18 service is provided if different from the business address and, if the applicant is a
19 business entity, the name and address of every member, officer, and director;
20 c. The location at which the registered office of the applicant is located; and
21 d. Any other data or information the commissioner may require with respect to the
22 applicant and the applicant's directors, officers, members, and shareholders.
- 23 8. The commissioner may establish relationships or contracts with a nationwide
24 multistate licensing system and registry or other entities designated by a nationwide
25 multistate licensing system and registry to collect and maintain records and process
26 transaction fees or other fees related to licensees or other persons subject to the
27 chapter. The applicant shall pay directly to the nationwide multistate licensing system
28 any additional fee relating to participation in the nationwide multistate licensing
29 system.
- 30 9. In connection with an application for licensure as an earned wage access service
31 provider, or any license renewals, the applicant shall furnish to the nationwide

1 multistate licensing system information concerning the applicant's identity, which may
2 include:

- 3 a. Fingerprints for submission to the federal bureau of investigation and any
4 governmental agency or entity authorized to receive information for a state,
5 national, and international criminal history background check;
6 b. Personal history and experience in a form prescribed by the nationwide multistate
7 licensing system, including the submission of authorization for the nationwide
8 multistate licensing system and the commissioner to obtain:
9 (1) An independent credit report obtained from a consumer reporting agency
10 described in the Fair Credit Reporting Act [15 U.S.C. 1681a]; and
11 (2) Information related to any administrative, civil, or criminal findings by any
12 governmental jurisdiction; and
13 c. Any other documents, information, or evidence the commissioner deems
14 necessary.

15 10. The commissioner may use the nationwide multistate licensing system and registry as
16 a channeling agent for requesting information from and distributing information to the
17 department of justice or any governmental agency or to any other source.

18 11. Upon receipt of a completed application, the commissioner shall determine whether
19 the qualifications prescribed under this chapter are satisfied. The commissioner may
20 refuse to issue the license if the commissioner finds the financial responsibility,
21 experience, character, or general fitness of the applicant or any person associated
22 with the applicant are insufficient to warrant the belief the business will be conducted
23 honestly, fairly, and efficiently. If the commissioner determines the qualifications are
24 satisfied and approves the documents, the commissioner shall issue a license to
25 engage in the earned wage access service business.

26 **Denial of license - Hearing - Notification of change in status.**

- 27 1. If the commissioner determines an applicant is not qualified to receive a license, the
28 commissioner shall notify the applicant, in writing, stating the application is denied and
29 stating the basis for denial. If the commissioner denies an application, the applicant
30 may request a hearing in accordance with chapter 28-32 before the commissioner on
31 the question of whether the license should be granted. The hearing must be scheduled

1 within thirty days after receipt of the request. At the hearing, the commissioner shall
2 reconsider the application and issue a written order granting or denying the
3 application. If an applicant requests a hearing and the commissioner's denial is
4 upheld, the commissioner may assess the reasonable out-of-pocket costs incurred for
5 the hearing to the applicant.

6 2. Within fifteen days of the occurrence of any of the following events, a licensee shall file
7 a written report with the commissioner describing the event and the event's expected
8 impact on the activities of the licensee:

9 a. The filing for bankruptcy or reorganization by the licensee.

10 b. The institution of revocation or suspension proceedings against the licensee by
11 any governmental authority.

12 c. The filing of any criminal charges involving dishonesty, fraud, or breach of trust of
13 the licensee or any of the licensee's members, directors, officers, or
14 shareholders.

15 d. Any other event the commissioner identifies by rule.

16 **License renewal.**

17 A license may be renewed upon application, continued qualification for licensure as
18 required in this chapter, and the payment to the commissioner of the annual license fee, which
19 is not subject to refund, before December first of each year. A renewal application may be
20 denied upon the same grounds as would justify denial of an initial application for licensure.
21 When a licensee has been delinquent in renewing the licensee's license, the department may
22 charge an additional fee of fifty dollars for the renewal of the license.

23 **Records.**

24 1. Each licensee shall keep and use in the licensee's business any books, accounts, and
25 records the commissioner may require. A licensee shall preserve required books,
26 accounts, and records for at least six years. The records of a licensee may be
27 maintained electronically if the records can be reproduced upon request by the
28 commissioner and within the time required under this section. When a licensee ceases
29 operations for any reason, the licensee shall inform the commissioner of the location
30 of the records. In addition, the licensee shall provide the name of the individual
31 responsible for maintenance of the records. The licensee shall notify the commissioner

1 within ten business days of the change of the location of the records or the change of
2 the individual responsible for maintenance of the records.

3 2. An applicant, licensee, or other person subject to this chapter shall comply with any
4 request for information, documents, or other records from the commissioner within the
5 time specified in the request, which must be a minimum of ten days, or, if no time is
6 specified, within thirty days of receipt of the request by the commissioner. If the
7 request for information is related to a new application or renewal of an existing
8 application and is not received by the commissioner within the time specified in the
9 request, or within thirty days of receipt of the request, the commissioner may deny the
10 application.

11 **Suspension, nonrenewal, or revocation of license.**

- 12 1. The commissioner may issue and serve upon any licensee an order suspending or
13 revoking a license if the commissioner finds the licensee has been convicted of a
14 felony or any crime involving dishonesty, fraud, or breach of trust, or the licensee
15 knowingly or through lack of reasonable care:
- 16 a. Failed to pay the annual license fee imposed under this chapter or any
17 examination fee imposed by the commissioner;
 - 18 b. Committed any fraud, engaged in any dishonest activities, or made any
19 misrepresentations;
 - 20 c. Violated this chapter or any rule adopted by the commissioner under this chapter
21 or violated any other law in the course of the licensee's business activities as a
22 licensee;
 - 23 d. Made false statements in the application for the license;
 - 24 e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct
25 of an earned wage access business;
 - 26 f. Failed to fully cooperate with an examination or investigation authorized by the
27 commissioner;
 - 28 g. Continued to allow any current or former officer, director, or employee to provide
29 earned income access services or participate in any earned income service
30 transaction after the officer, director, or employee has been suspended or
31 removed by an order issued by the commissioner;

- 1 h. Failed to maintain the required bond;
2 i. Failed to maintain any required registration with the secretary of state; or
3 j. No longer meets the requirements for licensure under this chapter.
4 2. An order issued by the commissioner under this section must contain a notice of
5 opportunity for hearing under chapter 28-32.
6 3. If a hearing is not requested within twenty business days of the date of service upon
7 the licensee, the order becomes final.

8 **Temporary suspension - Appeal.**

- 9 1. If the commissioner determines probable cause exists for the suspension or
10 revocation of a license, that enforcement of this chapter requires immediate
11 suspension of the license pending investigation, or that probable cause exists to
12 indicate the continued operation of a licensee's business may create a significant risk
13 of serious and ongoing harm to the public while a disciplinary action is pending, the
14 commissioner may, upon written notice to the licensee, issue an ex parte order
15 suspending the license.
16 2. An ex parte order remains in effect until a final order is issued after a full hearing and
17 appeal is conducted in accordance with chapter 28-32 or until the suspension is
18 otherwise terminated by the commissioner. If a hearing is not requested within twenty
19 business days of the date of service of the order upon the licensee, the order becomes
20 final.
21 3. The commissioner shall conduct a full hearing on the merits of the evidence
22 warranting immediate suspension to determine if disciplinary action must be taken
23 against the licensee.
24 4. The licensee may appeal the ex parte temporary suspension order before a full
25 hearing is conducted. For purposes of appeal, the district court shall decide whether
26 the commissioner acted reasonably or arbitrarily. The court shall give priority to the
27 appeal for prompt disposition.

1 **Suspension and removal of earned wage access service provider officers and**
2 **employees.**

- 3 1. The commissioner may issue and serve upon any current or former officer, director, or
4 employee of a licensed business entity, and upon the licensee involved, an order
5 stating:
- 6 a. That the current or former officer, director, or employee is willfully engaging or
7 has willfully engaged in any of the following conduct:
- 8 (1) Violation of a law, rule, order, or written agreement with the commissioner;
9 (2) Harassment or abuse, false or misleading representations to the
10 commissioner, or unfair practices; or
- 11 (3) An act of commission or omission or practice which constitutes breach of
12 trust or a breach of fiduciary duty.
- 13 b. The term of suspension or removal from employment and participation within the
14 conduct or the affairs of an earned wage access service provider.
- 15 2. An order issued by the commissioner under this section must contain a notice of
16 opportunity for hearing under chapter 28-32. The order becomes effective immediately
17 upon service on the officer, director, or employee, and remains in effect pending the
18 outcome of a hearing held in accordance with chapter 28-32.
- 19 3. If a hearing is not requested within twenty business days of the date the order is
20 served, the order becomes final and the officer, director, or employee must be
21 removed from any further participation in the affairs of, or employment with, the
22 licensee.
- 23 4. A contested or default suspension or removal order is effective immediately upon
24 service of the final order on the current or former officer or employee and upon the
25 licensee. A consent order is effective as agreed upon in the order. Any current or
26 former officer or employee suspended or removed from employment and participation
27 within the conduct or the affairs of a licensee under this section is not eligible, while
28 under suspension or removal, to be employed or otherwise participate in the affairs of
29 any financial corporation, financial institution, credit union, or any other entity licensed
30 by the department of financial institutions.

- 1 5. When a current or former officer or employee or other person participating in the
2 conduct of the affairs of a licensee is charged with a felony in state or federal court
3 which involves dishonesty, fraud, or breach of trust, the commissioner may
4 immediately suspend the individual from office or prohibit the individual from further
5 participation in the earned wage access service provider affairs, or both. The order is
6 effective immediately upon service of the order on the licensee and the individual
7 charged and remains in effect until the criminal charge is finally disposed of or until
8 modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or
9 similar state order or judgment is entered, the commissioner may order the
10 suspension or prohibition be made permanent. A finding of not guilty or other
11 disposition of the charge does not preclude the commissioner from pursuing
12 administrative or civil remedies.
- 13 6. The commissioner may deny an application to renew a license if the licensee no
14 longer meets the criteria for licensure or otherwise fails to comply with this chapter.

15 **Violations - Cease and desist orders - Penalties.**

16 Except as otherwise provided in this chapter, any person that willfully provides earned wage
17 access services without a license is guilty of a class C felony and any person that violates any
18 other provision of this chapter or any rule adopted under this chapter is guilty of an infraction. If
19 the commissioner finds, whether without a hearing or after a hearing if a hearing is requested
20 within twenty days of notice of an action by the commissioner, a person violated this chapter or
21 any rule adopted under chapter, the commissioner may:

- 22 1. Order the person to cease and desist violating this chapter or the rule;
23 2. Require the refund of any fees collected by the person in violation of this chapter; or
24 3. Impose a civil penalty not to exceed one hundred thousand dollars per violation upon
25 a person that willfully violates a law, rule, written agreement, or order under this
26 chapter. An interested party may appeal the assessment of a civil money penalty
27 under chapter 28-32 by filing a written notice of appeal within twenty days after service
28 of the assessment of civil money penalties. A civil money penalty collected under this
29 section must be paid to the state treasurer and deposited in the financial institutions
30 regulatory fund.

1 **Investigations and examinations.**

2 1. A licensee shall pay an examination or visitation fee, and the commissioner shall
3 charge the licensee for the actual cost of the examination or visitation at an hourly rate
4 set by the commissioner which is sufficient to cover all reasonable expenses
5 associated with the examination or visitation.

6 2. a. Except as otherwise provided in Public Law 110-289, section 1512, the
7 requirements under any federal law, chapter 44-04, or section 6-01-07.1,
8 regarding the privacy or confidentiality of any information or material provided to
9 the nationwide multistate licensing system and registry, and any privilege arising
10 under federal or state law, including the rules of any federal or state court, with
11 respect to the information or material, continue to apply to the information or
12 material after the information or material has been disclosed to the nationwide
13 multistate licensing system and registry. Any information and material may be
14 shared with all state and federal regulatory officials with mortgage industry
15 oversight authority without the loss of privilege or the loss of confidentiality
16 protections provided by federal law, chapter 44-04, or section 6-01-07.1.

17 b. The commissioner may enter agreements or sharing arrangements with other
18 governmental agencies, the conference of state bank supervisors, the American
19 association of residential mortgage regulators, or other associations representing
20 governmental agencies.

21 c. Information or material subject to a privilege or confidentiality under this section is
22 not subject to:

23 (1) Disclosure under any federal or state law governing the disclosure to the
24 public of information held by an officer or an agency of the federal
25 government or the respective state; or

26 (2) Subpoena or discovery, or admission into evidence, in any administrative
27 process, unless with respect to any privilege held by the nationwide
28 multistate licensing system and registry with respect to the information or
29 material, the person to which the information or material pertains waives, in
30 whole or in part, in the discretion of the person, that privilege.

1 d. The commissioner shall take all necessary steps, under any applicable law or
2 rule, to protect the disclosure of information or material subject to a privilege or
3 confidentiality under this section. Records subject to a privilege or confidentiality
4 may be required to be disclosed only pursuant to an order of the court. The court
5 ordering the disclosure shall issue a protective order to protect the confidential
6 nature of the records.

7 **Documentation of earned wage access transaction and notification to consumer.**

8 1. Each earned wage access transaction must be documented by a written or electronic
9 agreement signed or similarly authenticated by the consumer. The original agreement
10 must contain:

11 a. The name of the licensee.

12 b. The transaction date.

13 c. The amount of the obligation.

14 d. A statement of the total amount of fees charged, expressed as a dollar amount.

15 e. The name and signature of the individual who signs the agreement on behalf of
16 the licensee.

17 f. The transaction number assigned by the database.

18 g. A statement that indicates the maximum term of the transaction may not exceed
19 fourteen calendar days.

20 2. The earned wage access service agreement must include in no less than ten-point
21 font, the following notification: State law prohibits this business from allowing
22 consumers to have earned wage access totaling more than one thousand dollars
23 outstanding at any time.

24 3. Before distributing funds as part of an earned wage access transaction, a licensee
25 shall provide to the consumer a clear and conspicuous notice which indicates:

26 a. An earned wage access service transaction is not intended to meet long-term
27 financial needs.

28 b. The customer should use an earned wage access service transaction only to
29 meet short-term cash needs.

30 c. The schedule of fees charged for each earned wage access transaction.

31 d. Any additional information required under federal law.

- 1 4. This section does not apply to earned wage access transactions in which the fees or
2 charges are paid by the consumer's employer, or for earned wage access transactions
3 with fees and charges which total less than an effective annual percentage rate of less
4 than thirty-six percent.
- 5 5. A licensee may charge any fees for the earned wage access service, not to exceed
6 ten percent of the amount paid to the consumer by the licensee. A fee may not be
7 deemed interest for any purpose of law. No other fee or charge may be charged for
8 the earned wage access service, except that a fee, not to exceed the cost to the
9 licensee, may be charged for registering a transaction on a database administered or
10 authorized by the commissioner. No fee, including the fee for registering a transaction
11 on a database, may be charged when the consumer elects the no-cost option.
- 12 6. A licensee may not disburse more than a total of one thousand dollars to a consumer
13 across earned wage access service transactions. If disbursing an additional amount
14 would result in the consumer having more than one thousand dollars outstanding
15 across all licensees, the licensee may disburse only an amount that brings the total to
16 one thousand dollars.
- 17 7. A licensee may not engage in an earned wage access service transaction with a
18 consumer who has an aggregate value of all outstanding obligations from any one
19 consumer exceeding one thousand dollars which is payable to the same or any other
20 licensee. A licensee may not enter a new earned wage access service transaction with
21 a consumer within three business days of that consumer's completion of a previous
22 earned wage access service transaction. A licensee may rely on a written or electronic
23 representation of a consumer regarding the existence of any outstanding obligations
24 for earned wage access transactions held by a licensee other than the licensee
25 receiving the representation until the database provided for under subsection 8 is
26 operational, and after that time may not rely on a consumer's representation but must
27 verify the fact using the database.
- 28 8. The commissioner shall administer or authorize the development of a database in
29 which each transaction must be recorded for the purpose of preventing violations of
30 this section. The commissioner shall adopt rules governing the creation, structure, and
31 use of the database.

- 1 9. An earned wage access provider may rely on the information contained in the
2 database as accurate and is not subject to any administrative penalty or civil liability
3 due to relying on inaccurate information contained in the database.
- 4 10. A consumer agreeing to an electronic earned wage access service transaction may
5 repay the obligation at any time before the agreed-upon date. A consumer may
6 rescind, at no cost, any transaction by the close of the business day following the day
7 on which the consumer receives payment from the licensee. If a consumer agreeing to
8 an electronic earned wage access service transaction rescinds the transaction, the
9 licensee must facilitate the repayment of the funds through the same electronic means
10 the licensee used to deliver the funds to the customer.
- 11 11. If an electronic debit is returned to the licensee from a payer financial institution due to
12 insufficient funds, closed account, or a stop payment order, the licensee may seek civil
13 remedies available to collect the obligation.
- 14 12. A consumer who has authority to authorize an electronic debit and enters an earned
15 wage access service agreement is not subject to a criminal penalty relating to the
16 electronic debit or the earned wage access service agreement unless the consumer's
17 account was closed on the original date of the transaction. A licensee may not pursue
18 or threaten to pursue criminal penalties against a consumer for criminal penalties
19 prohibited by this subsection.
- 20 13. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the
21 conduct of an earned wage access service business.
- 22 14. The amount paid to the consumer by the licensee in an earned wage access service
23 transaction must be paid in the form of electronic credit to the customer's account.
- 24 15. A licensee may enter a workout agreement with the consumer if the consumer
25 believes financial hardship prevents the consumer from paying off the earned wage
26 access service transaction at the end of the original agreement. The workout
27 agreement must outline the repayment terms in writing and must require weekly,
28 biweekly, or monthly even installments not to exceed twelve months. An additional
29 interest or fee may not be charged as part of this workout and the earned wage
30 access service provider shall continue to report the transaction as an outstanding
31 earned wage access service transaction on the database administered by the

1 commissioner. Entering a workout agreement is voluntary on the part of the earned
2 wage access service provider and the consumer.

3 16. A licensee may not renew, repay, refinance, or consolidate an earned wage access
4 service transaction with the proceeds of another earned wage access service
5 transaction with that licensee by the consumer. It is presumed that an earned wage
6 access service transaction initiated within three business days before completion of an
7 earned wage access service transaction is a violation of this subsection.

8 17. A licensee or any agent of a licensee that willfully violates this section is guilty of a
9 class A misdemeanor.

10 18. If an earned income access provider takes custody of a consumer's earned but unpaid
11 income before paying proceeds to the consumer, the provider shall ensure the
12 proceeds are fully insured by the federal deposit insurance corporation at the
13 consumer's individual account level. At least quarterly, a provider shall deliver written
14 notice to each consumer to whom it has paid proceeds in that quarter an itemization of
15 transactions and costs, the total amount the consumer has paid in fees, information on
16 how to report complaints to the provider and to the commissioner, definitions of terms
17 used in the notice, and an explanation of the costs of the services provided.

18 19. It is a violation of this chapter to conduct an earned income access transaction unless:
19 a. The transaction is nonrecourse;
20 b. The provider does not engage in debt collection activity or retain the services of
21 another to engage in debt collection activity in connection with the earned income
22 access transaction and does not convey the debt itself;
23 c. If repayment is to be made through a debit of a consumer's account, the debit is
24 made in accordance with rules established by the commissioner;
25 d. The provider charges or receives a fee for the earned income access transaction
26 that does not exceed the earned income access rate cap or charges or receives
27 no fee for a transaction;
28 e. No portion of the earned but unpaid income to be paid as part of the earned
29 income access transaction is used before receipt by the consumer to settle or
30 pay down an obligation arising from a prior earned income access transaction;

- 1 and no proceeds roll over or are structured in any way to create any continuing
2 obligation to the provider on the part of a consumer;
- 3 f. The provider offers the consumer at least one reasonable option to obtain
4 proceeds at no cost to the consumer and clearly explains how to elect a no-cost
5 option;
- 6 g. The consumer receives the proceeds no less than three business days after a
7 consumer's request for no-fee procession, no less than one business day after a
8 consumer's request for processing subject to a fee, and no less than one
9 business day before the next regularly scheduled date on which the obligor is
10 scheduled to pay earned wages or income to the consumer;
- 11 h. Before a consumer enters the earned income access transaction, the provider
12 gives the consumer written notice, of all fees associated with the earned income
13 access transaction and the full potential cost of the transaction, including the cost
14 expressed as an annual percentage rate;
- 15 i. If the provider offers consumers the opportunity to pay an additional amount for
16 an earned income access transaction voluntarily, including a tip or donation:
- 17 (1) The provider gives notice to the consumer in writing that paying an
18 additional amount is not required for the consumer to receive the proceeds;
19 and
- 20 (2) The provider offers zero dollars among any amounts suggested to the
21 consumer by, for example, offering amount options from which the
22 consumer may select or pre-filling an amount in any form used in the
23 transaction process, or otherwise using a transaction process designed to
24 require the consumer to take affirmative action to avoid or opt-out of paying
25 an additional amount;
- 26 j. The provider does not charge a late fee or prepayment penalty on the earned
27 income access transaction;
- 28 k. The provider does not pull a credit report or otherwise assess credit risk of the
29 consumer prior to, during, or after the earned income access transaction except
30 that the provider may verify the consumer's source of income as part of
31 determining the amount of the proceeds;

- 1 l. The provider does not report on the earned income access transaction to a
2 consumer reporting agency prior to, during, or after the transaction;
3 m. The provider does not require a consumer to waive the right to class action to
4 engage in an earned income access transaction;
5 n. The provider gives a consumer written notice of any amendment to the contract
6 or terms of service for earned income access transactions, and the consumer
7 agrees to the amendments before proceeding with an earned income access
8 transaction to which the amendments would apply;
9 o. If the provider charges a subscription or membership fee it is optional and must
10 be for a bona fide group of services that include earned income access
11 transactions; and
12 p. The consumer is eighteen years of age or older.

13 20. Transactions made in accordance with this section may not be subject to usury laws.

14 **Advertising.**

- 15 1. An advertisement for an earned income access transaction service may not be
16 misleading or otherwise deceptive.
17 2. An advertisement for earned income access transaction service shall clearly and
18 accurately disclose the costs of the service to consumers.
19 3. The commissioner may adopt rules governing advertising of earned income
20 transaction services consistent with the purposes of this section.

21 **Regulations and rulings.**

22 The commissioner is authorized and empowered to make rules and regulations, conduct
23 hearings and make specific rulings, orders, demands and findings as may be necessary for the
24 proper conduct of the business authorized and licensed under and for the enforcement of this
25 chapter.