

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### 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~~ earned wage access providers; and to provide a  
3 penalty.

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

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

7 **Definitions.**

8 As used in this chapter:

9 1. ~~"Business entity" means a limited liability company, partnership, or corporation~~  
10 ~~authorized to engage in business under the laws of this state. The term does not~~  
11 ~~include a single-member limited liability company.~~

12 ~~2.~~ a. "Charge" means:

13 (1) The amount imposed by a provider for delivery or expedited delivery of  
14 proceeds to a consumer.

15 (2) A subscription or membership imposed by a provider for a bona fide group  
16 of services that include earned wage access services.

17 b. The term does not include a voluntary tip, gratuity, or other donation.

18 2. "Commissioner" means the commissioner of financial institutions.

19 3. "Consumer" means an individual who ~~is a resident of this state and who engages in or~~  
20 intends to engage in an earned income access transaction resides in this state.

1 ~~4. "Control" means:~~

2 ~~a. In the case of a business entity:~~

3 ~~(1) A direct or indirect ownership;~~

4 ~~(2) The right to control twenty-five percent or more of the voting shares of the~~  
5 ~~business entity; or~~

6 ~~(3) The ability of an individual to elect a majority of the directors or otherwise~~  
7 ~~affect a change in policy of the business entity.~~

8 ~~b. In the case of any other entity, the ability to exchange the principals of the~~  
9 ~~organization, whether active or passive.~~

10 ~~5. "Debt collection" means the:~~

11 ~~a. Act of collecting or attempting to collect debts owed or due or asserted to be~~  
12 ~~owed or due another; and~~

13 ~~b. Solicitation of debts for the purpose of collection and accepting assignment of~~  
14 ~~debts for the purpose of collection.~~

15 6.4. "Consumer-directed wage access services" means delivering to a consumer access to  
16 earned but unpaid income that is based on the consumer's representations and the  
17 provider's reasonable determination of the consumer's earned but unpaid income.

18 5. "Earned but unpaid income" means salary, wages, or compensation that ~~have been~~  
19 ~~earned or have accrued to the benefit of a consumer but have not been paid by an~~  
20 ~~obligor to that consumer for labor or services performed for or on behalf of an obligor~~  
21 consumer or an employer has represented, and that a provider reasonably has  
22 determined, has been earned or accrued to the benefit of the consumer in exchange  
23 for the consumer's provision of services to the employer or on behalf of the employer,  
24 including on an hourly, project-based, piecework, or other basis, and including  
25 circumstances in which the consumer is acting as an independent contractor of the  
26 employer, but has not, at the time of the payment of proceeds, been paid to the  
27 consumer by the employer.

28 ~~7. "Earned income access rate cap" means the limit on the amount that may be charged~~  
29 ~~to or received from a consumer, over which the consumer has no option, for an earned~~  
30 ~~income access transaction established by the department.~~

1 ~~8. "Earned income access transaction" means the payment of earned but unpaid income~~  
2 ~~to a consumer at a time other than the consumer's regular payday or other regularly~~  
3 ~~scheduled time on which the obligor pays to the consumer wages or compensation~~  
4 ~~earned or that have accrued to the benefit of consumer income.~~

5 ~~9. "Earned income access provider" or "provider" means a person that:~~

6 ~~a. Provides, or offers to provide, on behalf of an obligor earned income access~~  
7 ~~transactions to consumers earning wages or compensation from the obligor; or~~

8 ~~b. Offers earned income access transactions to, or enters earned income~~  
9 ~~transactions with, consumers.~~

10 ~~10. "Exempt organization" means:~~

11 ~~a. Any banking organization, foreign banking corporation licensed by the~~  
12 ~~department to transact business in this state, national bank, federal savings~~  
13 ~~bank, federal savings and loan association, federal credit union, or any bank,~~  
14 ~~trust company, savings bank, savings and loan association, or credit union~~  
15 ~~organized under the laws of this state, another state, or the United States.~~

16 ~~b. A service provider, including a payroll service provider, that verifies available~~  
17 ~~earnings, but is not contractually obligated to pay earned but unpaid income as~~  
18 ~~part of an earned income access transaction; or~~

19 ~~c. An obligor that offers a portion of salary, wages, or compensation directly to its~~  
20 ~~employees or independent contractors before the normally scheduled pay date.~~

21 ~~11. "Fees" means any amount charged or received by a provider to a consumer for an~~  
22 ~~earned income access transaction, including amounts paid voluntarily as described in~~  
23 ~~this chapter.~~

24 ~~12. "Licensee" means an earned income access provider licensed by the commissioner.~~

25 ~~13. "Nonrecourse" means the unavailability of any legal cause of action or remedy against~~  
26 ~~a consumer relating to an earned income access transaction.~~

27 ~~14. "Notice" means communication from the provider to the consumer in a clear and~~  
28 ~~conspicuous manner.~~

29 ~~15. "Obligor" means a person obligated to pay a consumer any sum of money on an~~  
30 ~~hourly, project-based, piecework, or other basis for labor or services performed by the~~  
31 ~~consumer for or on behalf of that person. The term does not include a customer of an~~

~~obligor or another third party that has an obligation to make any payment to a  
consumer based solely on the consumer's agency relationship with the obligor.~~

16.6. "Earned wage access services" means providing consumer-directed wage access  
services or employer-integrated wage access services.

7. a. "Employer" means:

(1) A person who employs a consumer.

(2) Any other person who is contractually obligated to pay a consumer earned  
but unpaid income 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 circumstances in which the  
consumer is acting as an independent contractor with respect to the  
employer.

b. The term does not include:

(1) A customer of an employer.

(2) 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 the person.

8. "Employer-integrated wage access services" means delivering to a consumer access  
to earned but unpaid income that is based on employment, income, and attendance  
data obtained directly or indirectly from an employer or an employer's payroll service  
provider.

9. "Outstanding proceeds" means proceeds remitted to a consumer by a provider that  
have not yet been repaid to the provider.

10. "Proceeds" means funds received by a consumer under an earned income access  
transaction.

11. a. "Provider" or "earned wage access services provider" means a person that is in  
the business of providing earned wage access services to consumers.

b. The terms do not include:

(1) A service provider, such as a payroll service provider, whose role may  
include verifying the available earnings but is not contractually obligated to  
fund any proceeds delivered as part of an earned wage access service; or

1 (2) An employer that offers a portion of salary, wages, or compensation directly  
2 to its employees or independent contractors before the normally scheduled  
3 pay date.

4 **Administration.**

5 The department of financial institutions shall administer and enforce this chapter. The  
6 department has the power to promulgate rules, in accordance with chapter 28-32, as necessary  
7 to carry out the provisions of this chapter.

8 **License.**

- 9 1. An individual or business entity, except for an exempt organization as defined in this  
10 chapter, may not engage in the business of providing or offering earned income  
11 access transactions to consumers, or enter an earned income access transaction with  
12 a consumer, without first obtaining a license under this chapter. An individual or  
13 business entity is considered to be engaging in the business of earned wage access  
14 service if the consumer is located in this state.
- 15 2. An application for a license under this chapter must be in writing, under oath, and in  
16 the form prescribed by the commissioner.
- 17 3. Each applicant shall maintain a tangible net worth of at least twenty-five thousand  
18 dollars or other amount as the commissioner may determine necessary to protect the  
19 public interests.
- 20 4. The financial responsibility, financial condition, business experience, character, and  
21 general fitness of the applicant must reasonably warrant the belief that the applicant's  
22 business will be conducted lawfully and fairly. In determining whether this qualification  
23 is met and for the purpose of investigating compliance with this chapter, the  
24 commissioner may review and consider the relevant business records and the capital  
25 adequacy of the applicant and the competence, experience, integrity, and financial  
26 ability of any person that is a member, partner, director, officer, or twenty-five percent  
27 or more shareholder of the applicant, and whether the applicant has filed any  
28 appropriate registration with the secretary of state.
- 29 5. Each applicant shall establish that neither the individual nor any officer, director, or  
30 proposed employee of the applicant has been convicted of a crime involving

1            dishonesty, fraud, or breach of trust. A deferred imposition of sentence or federal  
2            pretrial diversion must be considered a conviction for purposes of this section.

3            6. Each applicant shall maintain a bond issued by a surety company authorized to  
4            conduct business in this state, in the amount of fifty thousand dollars, and the  
5            commissioner may require a larger bond if the commissioner determines the larger  
6            bond is necessary based on the volume of the applicant's business.

7            7. Each application for a license must include:

8            a. An application fee as determined by the commissioner;

9            b. The legal name of the applicant, residence of the applicant, business address of  
10           the applicant, and, if applicable, the address at which earned wage access  
11           service is provided if different from the business address and, if the applicant is a  
12           business entity, the name and address of every member, officer, and director;

13           c. The location at which the registered office of the applicant is located; and

14           d. Any other data or information the commissioner may require with respect to the  
15           applicant and the applicant's directors, officers, members, and shareholders.

16           8. The commissioner may establish relationships or contracts with a nationwide  
17           multistate licensing system and registry or other entities designated by a nationwide  
18           multistate licensing system and registry to collect and maintain records and process  
19           transaction fees or other fees related to licensees or other persons subject to the  
20           chapter. The applicant shall pay directly to the nationwide multistate licensing system  
21           any additional fee relating to participation in the nationwide multistate licensing  
22           system.

23           9. In connection with an application for licensure as an earned wage access service  
24           provider, or any license renewals, the applicant shall furnish to the nationwide  
25           multistate licensing system information concerning the applicant's identity, which may  
26           include:

27           a. Fingerprints for submission to the federal bureau of investigation and any  
28           governmental agency or entity authorized to receive information for a state,  
29           national, and international criminal history background check;

1           b. Personal history and experience in a form prescribed by the nationwide multistate  
2           licensing system, including the submission of authorization for the nationwide  
3           multistate licensing system and the commissioner to obtain:

4           (1) An independent credit report obtained from a consumer reporting agency  
5           described in the Fair Credit Reporting Act [15 U.S.C. 1681a]; and

6           (2) Information related to any administrative, civil, or criminal findings by any  
7           governmental jurisdiction; and

8           c. Any other documents, information, or evidence the commissioner deems  
9           necessary.

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

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

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

22       1. If the commissioner determines an applicant is not qualified to receive a license, the  
23       commissioner shall notify the applicant, in writing, stating the application is denied and  
24       stating the basis for denial. If the commissioner denies an application, the applicant  
25       may request a hearing in accordance with chapter 28-32 before the commissioner on  
26       the question of whether the license should be granted. The hearing must be scheduled  
27       within thirty days after receipt of the request. At the hearing, the commissioner shall  
28       reconsider the application and issue a written order granting or denying the  
29       application. If an applicant requests a hearing and the commissioner's denial is  
30       upheld, the commissioner may assess the reasonable out-of-pocket costs incurred for  
31       the hearing to the applicant.

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

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

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

7       c. The filing of any criminal charges involving dishonesty, fraud, or breach of trust of  
8       the licensee or any of the licensee's members, directors, officers, or  
9       shareholders.

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

11      **License renewal.**

12      A license may be renewed upon application, continued qualification for licensure as  
13      required in this chapter, and the payment to the commissioner of the annual license fee, which  
14      is not subject to refund, before December first of each year. A renewal application may be  
15      denied upon the same grounds as would justify denial of an initial application for licensure.  
16      When a licensee has been delinquent in renewing the licensee's license, the department may  
17      charge an additional fee of fifty dollars for the renewal of the license. An application must be  
18      filed within forty-five days from the date change of controlling ownership is completed. For  
19      purposes of this section "controlling ownership" means ownership of twenty-five percent or  
20      more of voting shares, or the power to appoint the majority of the board of directors. The earned  
21      wage access license granted to the previous owner continues in effect to the new purchaser  
22      until the application is either granted or denied.

23      **Exemptions and applicability.**

24      1. This chapter does not apply to banks, credit unions, or savings and loan associations.

25      2. Notwithstanding any other provision of law, earned wage access services offered and  
26      provided by a provider in accordance with this chapter may not be considered:

27      a. A violation of any law governing deductions from payroll, salary, wages,  
28      compensation, or other income or the purchase, sale or assignment of, or an  
29      order for earned but unpaid income.

30      b. A loan or other form of credit or debt. The provider may not be considered a  
31      creditor, debt collector, or lender.



- 1 c. Money transmission. The provider may not be considered a money transmitter  
2 with respect to the provision of any earned wage access services.
- 3 3. Notwithstanding any other provision of law, charges, voluntary tips, gratuities, or other  
4 donations paid in accordance with this chapter to a provider may not be considered  
5 interest or finance charges.
- 6 4. If there is a conflict between the provisions of this chapter and any other provision of  
7 law, the provisions of this chapter prevail.

8 **Records.**

- 9 1. Each licensee shall keep and use in the licensee's business any books, accounts, and  
10 records the commissioner may require. A licensee shall preserve required books,  
11 accounts, and records for at least six years. The records of a licensee may be  
12 maintained electronically if the records can be reproduced upon request by the  
13 commissioner and within the time required under this section. When a licensee ceases  
14 operations for any reason, the licensee shall inform the commissioner of the location  
15 of the records. In addition, the licensee shall provide the name of the individual  
16 responsible for maintenance of the records. The licensee shall notify the commissioner  
17 within ten business days of the change of the location of the records or the change of  
18 the individual responsible for maintenance of the records.
- 19 2. An applicant, licensee, or other person subject to this chapter shall comply with any  
20 request for information, documents, or other records from the commissioner within the  
21 time specified in the request, which must be a minimum of ten days, or, if no time is  
22 specified, within thirty days of receipt of the request by the commissioner. If the  
23 request for information is related to a new application or renewal of an existing  
24 application and is not received by the commissioner within the time specified in the  
25 request, or within thirty days of receipt of the request, the commissioner may deny the  
26 application.

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

- 28 1. The commissioner may issue and serve upon any licensee an order suspending or  
29 revoking a license if the commissioner finds the licensee has been convicted of a  
30 felony or any crime involving dishonesty, fraud, or breach of trust, or the licensee  
31 knowingly or through lack of reasonable care:

- 1           a. Failed to pay the annual license fee imposed under this chapter or any  
2           examination fee imposed by the commissioner;
- 3           b. Committed any fraud, engaged in any dishonest activities, or made any  
4           misrepresentations;
- 5           c. Violated this chapter or any rule adopted by the commissioner under this chapter  
6           or violated any other law in the course of the licensee's business activities as a  
7           licensee;
- 8           d. Made false statements in the application for the license;
- 9           e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct  
10          of an earned wage access business;
- 11          f. Failed to fully cooperate with an examination or investigation authorized by the  
12          commissioner;
- 13          g. Continued to allow any current or former officer, director, or employee to provide  
14          earned income access services or participate in any earned income service  
15          transaction after the officer, director, or employee has been suspended or  
16          removed by an order issued by the commissioner;
- 17          h. Failed to maintain the required bond;
- 18          i. Failed to maintain any required registration with the secretary of state; or
- 19          j. No longer meets the requirements for licensure under this chapter.
- 20        2. An order issued by the commissioner under this section must contain a notice of  
21        opportunity for hearing under chapter 28-32.
- 22        3. If a hearing is not requested within twenty business days of the date of service upon  
23        the licensee, the order becomes final.

24        **Temporary suspension - Appeal.**

- 25        1. If the commissioner determines probable cause exists for the suspension or  
26        revocation of a license, that enforcement of this chapter requires immediate  
27        suspension of the license pending investigation, or that probable cause exists to  
28        indicate the continued operation of a licensee's business may create a significant risk  
29        of serious and ongoing harm to the public while a disciplinary action is pending, the  
30        commissioner may, upon written notice to the licensee, issue an ex parte order  
31        suspending the license.

- 1       2. An ex parte order remains in effect until a final order is issued after a full hearing and  
2       appeal is conducted in accordance with chapter 28-32 or until the suspension is  
3       otherwise terminated by the commissioner. If a hearing is not requested within twenty  
4       business days of the date of service of the order upon the licensee, the order becomes  
5       final.
- 6       3. The commissioner shall conduct a full hearing on the merits of the evidence  
7       warranting immediate suspension to determine if disciplinary action must be taken  
8       against the licensee.
- 9       4. The licensee may appeal the ex parte temporary suspension order before a full  
10      hearing is conducted. For purposes of appeal, the district court shall decide whether  
11      the commissioner acted reasonably or arbitrarily. The court shall give priority to the  
12      appeal for prompt disposition.

13      **Suspension and removal of earned wage access service provider officers and**  
14      **employees.**

- 15      1. The commissioner may issue ~~and serve~~ upon any current or former officer, director, or  
16      employee of a licensed business entity, and upon the licensee involved, an order  
17      stating:
- 18      a. That the current or former officer, director, or employee is ~~willfully~~ engaging or  
19      has ~~willfully~~ engaged in any of the following conduct:
- 20          (1) Violation of a law, rule, order, or written agreement with the commissioner;  
21          (2) Harassment or abuse, false or misleading representations to the  
22              commissioner, or unfair practices; or  
23          (3) An act of commission or omission or practice which constitutes breach of  
24              trust or a breach of fiduciary duty.
- 25      b. The term of suspension or removal from employment and participation within the  
26      conduct or the affairs of an earned wage access service provider.
- 27      2. An order issued by the commissioner under this section must contain a notice of  
28      opportunity for hearing under chapter 28-32. The order becomes effective immediately  
29      upon ~~service~~issuance on the officer, director, or employee, and remains in effect  
30      pending the outcome of a hearing held in accordance with chapter 28-32.

- 1       3. If a hearing is not requested within twenty business days of the date the order is  
2       served, the order becomes final and the officer, director, or employee must be  
3       removed from any further participation in the affairs of, or employment with, the  
4       licensee.
- 5       4. A contested or default suspension or removal order is effective immediately upon  
6       serviceissuance of the final order on the current or former officer or employee and  
7       upon the licensee. A consent order is effective as agreed upon in the order. Any  
8       current or former officer or employee suspended or removed from employment and  
9       participation within the conduct or the affairs of a licensee under this section is not  
10       eligible, while under suspension or removal, to be employed or otherwise participate in  
11       the affairs of any financial corporation, financial institution, credit union, or any other  
12       entity licensed by the department of financial institutions.
- 13       5. When a current or former officer or employee or other person participating in the  
14       conduct of the affairs of a licensee is charged with a felony in state or federal court  
15       which involves dishonesty, fraud, or breach of trust, the commissioner may  
16       immediately suspend the individual from office or prohibit the individual from further  
17       participation in the earned wage access service provider affairs, or both. The order is  
18       effective immediately upon serviceissuance of the order on the licensee and the  
19       individual charged and remains in effect until the criminal charge is finally disposed of  
20       or until modified by the commissioner. If a judgment of conviction, federal pretrial  
21       diversion, or similar state order or judgment is entered, the commissioner may order  
22       the suspension or prohibition be made permanent. A finding of not guilty or other  
23       disposition of the charge does not preclude the commissioner from pursuing  
24       administrative or civil remedies.
- 25       6. The commissioner may deny an application to renew a license if the licensee no  
26       longer meets the criteria for licensure or otherwise fails to comply with this chapter.

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

28       Except as otherwise provided in this chapter, any person that willfully provides earned wage  
29       access services without a license is guilty of a class C felony and any person that violates any  
30       other provision of this chapter or any rule adopted under this chapter is guilty of an infraction. If  
31       the commissioner finds, whether without a hearing or after a hearing if a hearing is requested

1 within twenty days of notice of an action by the commissioner, a person violated this chapter or  
2 any rule adopted under chapter, the commissioner may:

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

13 **Investigations and examinations.**

- 14 1. A licensee shall pay an examination or visitation fee, and the commissioner shall  
15 charge the licensee for the actual cost of the examination or visitation at an hourly rate  
16 set by the commissioner which is sufficient to cover all reasonable expenses  
17 associated with the examination or visitation.
- 18 2. a. Except as otherwise provided in Public Law 110-289, section 1512, the  
19 requirements under any federal law, chapter 44-04, or section 6-01-07.1,  
20 regarding the privacy or confidentiality of any information or material provided to  
21 the nationwide multistate licensing system and registry, and any privilege arising  
22 under federal or state law, including the rules of any federal or state court, with  
23 respect to the information or material, continue to apply to the information or  
24 material after the information or material has been disclosed to the nationwide  
25 multistate licensing system and registry. Any information and material may be  
26 shared with all state and federal regulatory officials with mortgage industry  
27 oversight authority without the loss of privilege or the loss of confidentiality  
28 protections provided by federal law, chapter 44-04, or section 6-01-07.1.
- 29 b. The commissioner may enter agreements or sharing arrangements with other  
30 governmental agencies, the conference of state bank supervisors, the American

1           association of residential mortgage regulators, or other associations representing  
2           governmental agencies.

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

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

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

13           d. The commissioner shall take all necessary steps, under any applicable law or  
14           rule, to protect the disclosure of information or material subject to a privilege or  
15           confidentiality under this section. Records subject to a privilege or confidentiality  
16           may be required to be disclosed only pursuant to an order of the court. The court  
17           ordering the disclosure shall issue a protective order to protect the confidential  
18           nature of the records.

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

20       ~~1. Each earned wage access transaction must be documented by a written or electronic~~  
21       ~~agreement signed or similarly authenticated by the consumer. The original agreement~~  
22       ~~must contain:~~

23       ~~a. The name of the licensee.~~

24       ~~b. The transaction date.~~

25       ~~c. The amount of the obligation.~~

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

27       ~~e. The name and signature of the individual who signs the agreement on behalf of~~  
28       ~~the licensee.~~

29       ~~f. The transaction number assigned by the database.~~

30       ~~g. A statement that indicates the maximum term of the transaction may not exceed~~  
31       ~~fourteen calendar days.~~

- 1 ~~2. The earned wage access service agreement must include in no less than ten-point~~  
2 ~~font, the following notification: State law prohibits this business from allowing~~  
3 ~~consumers to have earned wage access totaling more than one thousand dollars~~  
4 ~~outstanding at any time.~~
- 5 ~~3. Before distributing funds as part of an earned wage access transaction, a licensee~~  
6 ~~shall provide to the consumer a clear and conspicuous notice which indicates:~~
- 7 ~~a. An earned wage access service transaction is not intended to meet long-term~~  
8 ~~financial needs.~~
- 9 ~~b. The customer should use an earned wage access service transaction only to~~  
10 ~~meet short-term cash needs.~~
- 11 ~~c. The schedule of fees charged for each earned wage access transaction.~~
- 12 ~~d. Any additional information required under federal law.~~
- 13 ~~4. This section does not apply to earned wage access transactions in which the fees or~~  
14 ~~charges are paid by the consumer's employer, or for earned wage access transactions~~  
15 ~~with fees and charges which total less than an effective annual percentage rate of less~~  
16 ~~than thirty-six percent.~~
- 17 ~~5. A licensee may charge any fees for the earned wage access service, not to exceed~~  
18 ~~ten percent of the amount paid to the consumer by the licensee. A fee may not be~~  
19 ~~deemed interest for any purpose of law. No other fee or charge may be charged for~~  
20 ~~the earned wage access service, except that a fee, not to exceed the cost to the~~  
21 ~~licensee, may be charged for registering a transaction on a database administered or~~  
22 ~~authorized by the commissioner. No fee, including the fee for registering a transaction~~  
23 ~~on a database, may be charged when the consumer elects the no-cost option.~~
- 24 ~~6. A licensee may not disburse more than a total of one thousand dollars to a consumer~~  
25 ~~across earned wage access service transactions. If disbursing an additional amount~~  
26 ~~would result in the consumer having more than one thousand dollars outstanding~~  
27 ~~across all licensees, the licensee may disburse only an amount that brings the total to~~  
28 ~~one thousand dollars.~~
- 29 ~~7. A licensee may not engage in an earned wage access service transaction with a~~  
30 ~~consumer who has an aggregate value of all outstanding obligations from any one~~  
31 ~~consumer exceeding one thousand dollars which is payable to the same or any other~~

1 ~~licensee. A licensee may not enter a new earned wage access service transaction with~~  
2 ~~a consumer within three business days of that consumer's completion of a previous~~  
3 ~~earned wage access service transaction. A licensee may rely on a written or electronic~~  
4 ~~representation of a consumer regarding the existence of any outstanding obligations~~  
5 ~~for earned wage access transactions held by a licensee other than the licensee~~  
6 ~~receiving the representation until the database provided for under subsection 8 is~~  
7 ~~operational, and after that time may not rely on a consumer's representation but must~~  
8 ~~verify the fact using the database.~~

9 ~~8. The commissioner shall administer or authorize the development of a database in~~  
10 ~~which each transaction must be recorded for the purpose of preventing violations of~~  
11 ~~this section. The commissioner shall adopt rules governing the creation, structure, and~~  
12 ~~use of the database.~~

13 ~~9. An earned wage access provider may rely on the information contained in the~~  
14 ~~database as accurate and is not subject to any administrative penalty or civil liability~~  
15 ~~due to relying on inaccurate information contained in the database.~~

16 ~~10. A consumer agreeing to an electronic earned wage access service transaction may~~  
17 ~~repay the obligation at any time before the agreed-upon date. A consumer may~~  
18 ~~rescind, at no cost, any transaction by the close of the business day following the day~~  
19 ~~on which the consumer receives payment from the licensee. If a consumer agreeing to~~  
20 ~~an electronic earned wage access service transaction rescinds the transaction, the~~  
21 ~~licensee must facilitate the repayment of the funds through the same electronic means~~  
22 ~~the licensee used to deliver the funds to the customer.~~

23 ~~11. If an electronic debit is returned to the licensee from a payer financial institution due to~~  
24 ~~insufficient funds, closed account, or a stop payment order, the licensee may seek civil~~  
25 ~~remedies available to collect the obligation.~~

26 ~~12. A consumer who has authority to authorize an electronic debit and enters an earned~~  
27 ~~wage access service agreement is not subject to a criminal penalty relating to the~~  
28 ~~electronic debit or the earned wage access service agreement unless the consumer's~~  
29 ~~account was closed on the original date of the transaction. A licensee may not pursue~~  
30 ~~or threaten to pursue criminal penalties against a consumer for criminal penalties~~  
31 ~~prohibited by this subsection.~~



- 1 ~~13. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the~~  
2 ~~conduct of an earned wage access service business.~~
- 3 ~~14. The amount paid to the consumer by the licensee in an earned wage access service~~  
4 ~~transaction must be paid in the form of electronic credit to the customer's account.~~
- 5 ~~15. A licensee may enter a workout agreement with the consumer if the consumer~~  
6 ~~believes financial hardship prevents the consumer from paying off the earned wage~~  
7 ~~access service transaction at the end of the original agreement. The workout~~  
8 ~~agreement must outline the repayment terms in writing and must require weekly,~~  
9 ~~biweekly, or monthly even installments not to exceed twelve months. An additional~~  
10 ~~interest or fee may not be charged as part of this workout and the earned wage~~  
11 ~~access service provider shall continue to report the transaction as an outstanding~~  
12 ~~earned wage access service transaction on the database administered by the~~  
13 ~~commissioner. Entering a workout agreement is voluntary on the part of the earned~~  
14 ~~wage access service provider and the consumer.~~
- 15 ~~16. A licensee may not renew, repay, refinance, or consolidate an earned wage access~~  
16 ~~service transaction with the proceeds of another earned wage access service~~  
17 ~~transaction with that licensee by the consumer. It is presumed that an earned wage~~  
18 ~~access service transaction initiated within three business days before completion of an~~  
19 ~~earned wage access service transaction is a violation of this subsection.~~
- 20 ~~17. A licensee or any agent of a licensee that willfully violates this section is guilty of a~~  
21 ~~class A misdemeanor.~~
- 22 ~~18. If an earned income access provider takes custody of a consumer's earned but unpaid~~  
23 ~~income before paying proceeds to the consumer, the provider shall ensure the~~  
24 ~~proceeds are fully insured by the federal deposit insurance corporation at the~~  
25 ~~consumer's individual account level. At least quarterly, a provider shall deliver written~~  
26 ~~notice to each consumer to whom it has paid proceeds in that quarter an itemization of~~  
27 ~~transactions and costs, the total amount the consumer has paid in fees, information on~~  
28 ~~how to report complaints to the provider and to the commissioner, definitions of terms~~  
29 ~~used in the notice, and an explanation of the costs of the services provided.~~
- 30 ~~19. It is a violation of this chapter to conduct an earned income access transaction unless:~~  
31 ~~a. The transaction is nonrecourse;~~

- 1 ~~b. The provider does not engage in debt collection activity or retain the services of~~  
2 ~~another to engage in debt collection activity in connection with the earned income~~  
3 ~~access transaction and does not convey the debt itself;~~
- 4 ~~c. If repayment is to be made through a debit of a consumer's account, the debit is~~  
5 ~~made in accordance with rules established by the commissioner;~~
- 6 ~~d. The provider charges or receives a fee for the earned income access transaction~~  
7 ~~that does not exceed the earned income access rate cap or charges or receives~~  
8 ~~no fee for a transaction;~~
- 9 ~~e. No portion of the earned but unpaid income to be paid as part of the earned~~  
10 ~~income access transaction is used before receipt by the consumer to settle or~~  
11 ~~pay down an obligation arising from a prior earned income access transaction;~~  
12 ~~and no proceeds roll over or are structured in any way to create any continuing~~  
13 ~~obligation to the provider on the part of a consumer;~~
- 14 ~~f. The provider offers the consumer at least one reasonable option to obtain~~  
15 ~~proceeds at no cost to the consumer and clearly explains how to elect a no-cost~~  
16 ~~option;~~
- 17 ~~g. The consumer receives the proceeds no less than three business days after a~~  
18 ~~consumer's request for no-fee procession, no less than one business day after a~~  
19 ~~consumer's request for processing subject to a fee, and no less than one~~  
20 ~~business day before the next regularly scheduled date on which the obligor is~~  
21 ~~scheduled to pay earned wages or income to the consumer;~~
- 22 ~~h. Before a consumer enters the earned income access transaction, the provider~~  
23 ~~gives the consumer written notice, of all fees associated with the earned income~~  
24 ~~access transaction and the full potential cost of the transaction, including the cost~~  
25 ~~expressed as an annual percentage rate;~~
- 26 ~~i. If the provider offers consumers the opportunity to pay an additional amount for~~  
27 ~~an earned income access transaction voluntarily, including a tip or donation:~~
- 28 ~~(1) The provider gives notice to the consumer in writing that paying an~~  
29 ~~additional amount is not required for the consumer to receive the proceeds;~~  
30 ~~and~~

- 1 ~~\_\_\_\_\_ (2) The provider offers zero dollars among any amounts suggested to the~~  
2 ~~\_\_\_\_\_ consumer by, for example, offering amount options from which the~~  
3 ~~\_\_\_\_\_ consumer may select or pre-filling an amount in any form used in the~~  
4 ~~\_\_\_\_\_ transaction process, or otherwise using a transaction process designed to~~  
5 ~~\_\_\_\_\_ require the consumer to take affirmative action to avoid or opt-out of paying~~  
6 ~~\_\_\_\_\_ an additional amount;~~
- 7 ~~\_\_\_\_\_ j. The provider does not charge a late fee or prepayment penalty on the earned~~  
8 ~~\_\_\_\_\_ income access transaction;~~
- 9 ~~\_\_\_\_\_ k. The provider does not pull a credit report or otherwise assess credit risk of the~~  
10 ~~\_\_\_\_\_ consumer prior to, during, or after the earned income access transaction except~~  
11 ~~\_\_\_\_\_ that the provider may verify the consumer's source of income as part of~~  
12 ~~\_\_\_\_\_ determining the amount of the proceeds;~~
- 13 ~~\_\_\_\_\_ l. The provider does not report on the earned income access transaction to a~~  
14 ~~\_\_\_\_\_ consumer reporting agency prior to, during, or after the transaction;~~
- 15 ~~\_\_\_\_\_ m. The provider does not require a consumer to waive the right to class action to~~  
16 ~~\_\_\_\_\_ engage in an earned income access transaction;~~
- 17 ~~\_\_\_\_\_ n. The provider gives a consumer written notice of any amendment to the contract~~  
18 ~~\_\_\_\_\_ or terms of service for earned income access transactions, and the consumer~~  
19 ~~\_\_\_\_\_ agrees to the amendments before proceeding with an earned income access~~  
20 ~~\_\_\_\_\_ transaction to which the amendments would apply;~~
- 21 ~~\_\_\_\_\_ o. If the provider charges a subscription or membership fee it is optional and must~~  
22 ~~\_\_\_\_\_ be for a bona fide group of services that include earned income access~~  
23 ~~\_\_\_\_\_ transactions; and~~
- 24 ~~\_\_\_\_\_ p. The consumer is eighteen years of age or older.~~
- 25 ~~\_\_\_\_\_ 20. Transactions made in accordance with this section may not be subject to usury laws.~~
- 26 ~~\_\_\_\_\_ **Advertising:**~~
- 27 ~~\_\_\_\_\_ 1. An advertisement for an earned income access transaction service may not be~~  
28 ~~\_\_\_\_\_ misleading or otherwise deceptive.~~
- 29 ~~\_\_\_\_\_ 2. An advertisement for earned income access transaction service shall clearly and~~  
30 ~~\_\_\_\_\_ accurately disclose the costs of the service to consumers.~~

~~3. The commissioner may adopt rules governing advertising of earned income transaction services consistent with the purposes of this section.~~

**Required acts and practices.**

A person required to be licensed under this chapter 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. Offer to the consumer at least one reasonable option to obtain proceeds at no cost to the consumer and clearly explain how to elect the no-cost option when the person offers a consumer the option to receive proceeds for a charge or solicits an optional tip, gratuity, or other donation.
3. Before entering into an agreement with a consumer for the provision of earned wage access services:
  - a. Inform the consumer of the consumer's rights under the agreement; and
  - b. Fully and clearly disclose all charges associated with the earned wage access services.
4. Inform the consumer of any material changes to the terms and conditions of the earned wage access services before implementing those changes for that consumer.
5. Allow the consumer to cancel use of the provider's earned wage access services at any time, without incurring a cancellation charge imposed by the provider.
6. Comply with all applicable local, state, and federal privacy and information security laws.
7. If soliciting, charging, or receiving a tip, gratuity, or other donation from a consumer, clearly and conspicuously disclose to the consumer immediately before each transaction that a tip, gratuity, or other donation amount may be zero and is voluntary.
8. If soliciting, charging, or receiving a tip, gratuity, or other donation from a consumer, 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 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 a tip, gratuity, or other donation or on the size of the tip, gratuity, or other donation.

1 9. Provide proceeds to a consumer by any means mutually agreed upon by the  
2 consumer and the provider.

3 10. If the provider will seek repayment of outstanding proceeds or payment of charges or  
4 other amounts owed, including voluntary tips, gratuities, or other donations, in  
5 connection with the activities covered by this chapter, from a consumer's account at a  
6 depository institution, including by means of electronic fund transfer:

7 a. Comply with applicable provisions of the Electronic Fund Transfer Act of 1978,  
8 [15 U.S.C. 1693-1693r], and regulations adopted under the the Electronic Fund  
9 Transfer Act; and

10 b. Reimburse the consumer for the full amount of any overdraft or nonsufficient  
11 funds charges imposed on a consumer by the consumer's depository institution  
12 which were caused by the provider attempting to seek payment of any  
13 outstanding proceeds, charges, or other payments, in connection with the  
14 activities covered by this chapter, including voluntary tips, gratuities, or other  
15 donations, on a date before, or in an incorrect amount from, the date or amount  
16 disclosed to the consumer. The provider is not subject to the requirements in this  
17 subdivision with respect to payments of outstanding proceeds or charges  
18 incurred by a consumer through fraudulent or other unlawful means.

19 **Prohibited acts and practices.**

20 1. A person required to be licensed under this chapter may not:

21 a. Make or cause to be made any material false statement or representation in any  
22 application or other document or statement required to be filed under any  
23 provision of this chapter, or to omit any material statement or fact necessary to  
24 make the statements not misleading.

25 b. Fail to make disclosures as required by this chapter and rules adopted under this  
26 chapter.

27 c. Fail to comply with this chapter or rules adopted under this chapter applicable to  
28 any business authorized or conducted under this chapter.

29 d. Negligently make a false statement or an omission of material fact in connection  
30 with any information or reports filed with a governmental agency of this state or  
31 the nationwide multistate licensing system and registry or in connection with any

1 investigation conducted by the commissioner or another governmental agency or  
2 this state.

3 e. Share with an employer a portion of any charges, voluntary tips, gratuities, or  
4 other donations that were received from or charged to a consumer for earned  
5 wage access services.

6 f. Require a consumer's credit report or a credit score provided or issued by a  
7 consumer reporting agency to determine a consumer's eligibility for earned wage  
8 access services.

9 g. Accept payment of outstanding proceeds, charges, voluntary tips, gratuities, or  
10 other donations from a consumer by means of a credit card or charge card.

11 h. Charge a consumer a late charge, deferral charge, interest, or any other penalty  
12 or charge for failure to pay outstanding proceeds, charges, voluntary tips,  
13 gratuities, or other donations.

14 i. Report to a consumer reporting agency or debt collector any information about  
15 the consumer regarding the inability of the provider to be repaid outstanding  
16 proceeds, charges, voluntary tips, gratuities, or other donations.

17 j. Compel or attempt to compel payment by a consumer of outstanding proceeds,  
18 charges, voluntary tips, gratuities, or other donations to the provider through:

19 (1) A suit against the consumer in a court of competent jurisdiction.

20 (2) Use of a third party to pursue collection from the consumer on the provider's  
21 behalf.

22 (3) Sale of outstanding proceeds, charges, voluntary tips, gratuities, or other  
23 donations to a third-party collector or debt buyer for collection from a  
24 consumer.

25 k. Mislead or deceive a consumer about the voluntary nature of the tips, gratuities,  
26 or donations or represent the amounts will benefit any specific individuals or  
27 group of individuals.

28 2. The limitations in subdivision j of subsection 1 do not preclude the use by a provider of  
29 any of the methods specified in that subdivision to compel payment of outstanding  
30 proceeds or charges incurred by a consumer through fraudulent or other unlawful  
31 means. The limitations in subdivision j of subsection 1 do not preclude a provider from

1 pursuing an employer for breach of the employer's contractual obligations to the  
2 provider.

3 **Reporting requirements.**

4 A licensee shall file with the commissioner, at a time and in the manner specified by the  
5 commissioner, a report containing data requested by the commissioner. The report must be filed  
6 under oath.

7 **Regulations and rulings.**

8 The commissioner ~~is authorized and empowered to make~~ may adopt rules and regulations,  
9 conduct hearings, and make specific rulings, orders, demands, and findings as may be  
10 necessary for the proper conduct of the business authorized and licensed under and for the  
11 enforcement of this chapter.

12 **Operation of existing providers.**

13 1. A provider operating in this state on January 1, 2025, may continue to act as a  
14 provider if the person:

15 a. Applies for licensure in accordance with this section within six months of the date  
16 the commissioner makes an application available to potential applicants; and

17 b. Complies with the requirements of this chapter.

18 2. A person operating in this state on January 1, 2025, may continue to act as a provider  
19 until the commissioner grants or denies the person's application for licensure under  
20 this section.