

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
- 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 **Administration.**

7 The department of financial institutions shall administer and enforce this chapter. The department  
has the power to promulgate rules and regulations having the force and effect of law, reasonably  
necessary to carry out the provisions of this chapter, in accordance with chapter 28-32

8 **Definitions.**

9 As used in this chapter:

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

- 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.~~

8. a. "Fee" means the following:

- (1) A fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer.
- (2) A subscription or membership fee imposed by a provider for a bona fide group of services that include earned wage access services.

b. "Fee" does not include a voluntary tip, gratuity, or other donation.

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

10. "Proceeds" means a payment to a consumer by a provider that is based on earned but unpaid income.

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. "Provider" or "earned wage access services provider" does 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
- (2) An employer that offers a portion of salary, wages, or compensation directly to its employees or independent contractors before the normally scheduled pay date.

~~16~~

17 **License.**

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

- 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

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compensation, or other income or the purchase, sale or assignment of, or an order for earned but unpaid income;

b. A loan or other form of credit or debt, nor shall the provider be considered a creditor, debt collector, or lender with respect thereto; or

c. Money transmission, nor shall the provider be considered a money transmitter with respect to the provision of any earned wage access services.

3. Notwithstanding any other provision of law, fees, voluntary tips, gratuities, or other donations paid in accordance with this chapter to a provider shall not be considered interest or finance charges.

4. If there is a conflict between the provisions of this chapter and any other provision of law, the provisions of this chapter shall prevail.

23

24        **Records.**

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

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means of electronic fund transfer, the provider shall do all of the following:

- a. Comply with applicable provisions of the federal Electronic Fund Transfer Act, 15 USC 1693 to 1693r, and regulations adopted thereunder.
- b. Reimburse the consumer for the full amount of any overdraft or non-sufficient 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, or other payments, in connection with the activities covered by this chapter, including voluntary tips, gratuities, or other donations, on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer. However, the provider is not subject to the requirements in this subdivision with respect to payments of outstanding proceeds or fees incurred by a consumer through fraudulent or other unlawful means.

**Prohibited acts and practices**

1. It is a violation of this chapter for a person required to be licensed under this chapter to:
  - a. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
  - b. Fail to make disclosures as required by this chapter and any applicable regulations.
  - c. Fail to comply with this chapter or rules adopted under this chapter, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
  - d. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency of this state or the nationwide multistate licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency or this state.
  - e. Share with an employer a portion of any fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services.
  - f. Require a consumer's credit report or a credit score provided or issued by a consumer reporting agency to determine a consumer's eligibility for earned wage access services.
  - g. Accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer by means of a credit card or charge card.
  - h. Charge a consumer a late fee, deferral fee, interest, or any other penalty or charge for failure to pay outstanding proceeds, fees, voluntary tips, gratuities, or other donations.
  - i. Report to a consumer reporting agency or debt collector any information about the consumer regarding the inability of the provider to be repaid outstanding proceeds, fees, voluntary tips, gratuities, or other donations.
  - j. Compel or attempt to compel payment by a consumer of outstanding proceeds, fees, voluntary tips, gratuities, or other donations to the provider through any of the following means:
    - (1) A suit against the consumer in a court of competent jurisdiction.
    - (2) Use of a third party to pursue collection from the consumer on the provider's behalf.
    - (3) Sale of outstanding proceeds, fees, voluntary tips, gratuities, or other donations to a third-party collector or debt buyer for collection from a consumer.
  - k. If the provider solicits, charges, or receives tips, gratuities, or other donations from a consumer, mislead or deceive a consumer about the voluntary nature of the tips, gratuities, or donations or represent that they will benefit any specific individuals or group of individuals.
2. The limitations set forth in subdivision 1. j. do not preclude the use by a provider of any of the methods specified in subdivision 1. j. to compel payment of outstanding proceeds or fees incurred by a consumer through fraudulent or other unlawful means, nor do they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

14 — ~~Advertising.~~

15 — ~~1. An advertisement for an earned income access transaction service may not be~~