

ASSEMBLY BILL NO. 436—COMMITTEE
ON COMMERCE AND LABOR

MARCH 27, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Provides for the regulation of earned wage access providers. (BDR 52-466)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to financial services; requiring a person who provides earned wage access services to register with the Commissioner of Financial Institutions; imposing certain requirements on such registrants; providing for the regulation by the Commissioner of earned wage access providers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2-32 of this bill establish provisions relating to a business that provides to a person money that represents wages, compensation or other income that the person has earned but that has not yet been paid to the person. **Section 13** of this bill defines “provider of earned wage access services” as a person who engages in such a business. **Section 6** of this bill defines “earned wage access services” as the delivery to a person of money that represents earned but unpaid income.

Section 14 of this bill prohibits a person from engaging in the business of a provider of earned wage access services without registering with the Commissioner of Financial Institutions. **Sections 14 and 15** of this bill set forth certain requirements for registration as a provider of earned wage access services. **Section 16** of this bill requires a registered provider of earned wage access services to maintain a surety bond. **Sections 18 and 19** of this bill set forth certain requirements for the operation of an earned wage access services provider. **Sections 21-24** of this bill authorize the Commissioner to conduct certain examinations of registrants and charge fees for such examinations. **Section 25** of this bill establishes a process for filing complaints against a registrant. **Sections 26-28** of this bill set forth certain procedures for disciplinary actions against a registrant or person who violates the provisions of this bill. **Sections 29 and 30** of this bill require a



registrant to submit a notice to and obtain the approval of the Commissioner before taking certain actions. **Section 31** of this bill requires a registrant to submit certain information to the Commissioner annually. **Section 32** of this bill authorizes the Commissioner to adopt regulations to carry out the provisions of this bill.

Section 20 of this bill provides that for the purposes of the regulation of lending businesses, earned wage access services are not a loan, a provider of earned wage access services is not a lender and the charges for such services are not finance charges. **Section 34** of this bill provides that the provisions of existing law governing persons engaged in the business of transmitting money do not apply to a provider of earned wage access services.

Section 33 of this bill makes a conforming change to refer to both licenses and registrations with the Commissioner because this bill provides for the registration of earned wage access providers with the Commissioner.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 32, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 4. *“Consumer” means a natural person who resides in this State.*

Sec. 5. *“Earned but unpaid income” means wages, compensation or income that a consumer has represented, and that a provider of earned wage access services has reasonably determined, to have been earned or accrued to the benefit of the consumer, but, at the time of the remittance of the proceeds, have not yet been paid to the consumer by an obligor.*

Sec. 6. *“Earned wage access services” means the business of delivering proceeds to consumers before the next date on which an obligor is obligated to pay wages, compensation or other income to the consumer.*

Sec. 7. *“Mandatory payment” means an amount determined by a provider of earned wage access services, which must be paid by a consumer to that provider as a condition of receiving or repaying proceeds in connection with the provision of earned wage access services.*

Sec. 8. *“Non-mandatory payment” means any amount paid by a consumer or an obligor to a provider of earned wage access services other than mandatory payment. The term includes, without limitation:*



1 1. A fee imposed by a provider of earned wage access services
2 for delivery or expedited delivery of proceeds to a consumer, as
3 long as the provider offers the consumer at least one option of
4 receiving proceeds at no cost to the consumer.

5 2. An amount paid by an obligor to a provider of earned wage
6 access services on a consumer's behalf, which entitles the
7 consumer to receive proceeds at no cost to the consumer.

8 3. A subscription or membership fee imposed by a provider
9 for a group of services that include earned wage access services,
10 as long as the provider offers the consumer at least one option of
11 receiving proceeds at no cost to the consumer.

12 4. A tip or gratuity paid by a consumer to a provider, as long
13 as the provider offers the consumer at least one option of receiving
14 proceeds at no cost.

15 **Sec. 9.** "Non-recourse" means that a provider may not
16 compel or attempt to compel repayment by a consumer of
17 outstanding proceeds or non-mandatory payments owed by that
18 consumer to that provider through any of the following means:

19 1. A civil action against the consumer in a court of competent
20 jurisdiction;

21 2. Use of a third party to pursue collection of outstanding
22 proceeds or non-mandatory payments on the provider's behalf.

23 3. The sale of an outstanding amount to a third-party debt
24 collector or debt buyer.

25 ↪ The term does not include the use by a provider of any of the
26 foregoing methods to compel or attempt to compel repayment of
27 outstanding amounts incurred by a consumer through fraudulent
28 or unauthorized means.

29 **Sec. 10.** "Obligor" means an employer or any other person
30 who is contractually or legally obligated to pay a consumer earned
31 but unpaid income on an hourly, project-based, piecework or
32 other basis, including, without limitation, a consumer who is an
33 independent contractor. The term does not include a customer of
34 an obligor or any other person that has an obligation to make a
35 payment to a consumer based on an agency relationship between
36 the consumer and the obligor.

37 **Sec. 11.** "Outstanding proceeds" means proceeds remitted to
38 a consumer by a provider but not yet repaid to that provider.

39 **Sec. 12.** "Proceeds" means the amount of earned but unpaid
40 income that has been remitted to a consumer by a provider.

41 **Sec. 13.** "Provider of earned wage access services" or
42 "provider" means a person who is in the business of offering and
43 providing earned wage access services to consumers.

44 **Sec. 14.** 1. A person shall not engage in the business of a
45 provider of earned wage access services unless the person has



1 *been issued a registration by the Commissioner pursuant to this*
2 *section.*

3 2. *A person who wishes to be registered as a provider must*
4 *submit to the Commissioner the fee established pursuant to*
5 *subsection 5 and an application, on a form prescribed by the*
6 *Commissioner, which must contain:*

7 (a) *The name and address of the applicant, which address is*
8 *not required to be a location in this State;*

9 (b) *Financial statements of the applicant for the immediately*
10 *preceding year which have been audited by an independent*
11 *certified public accountant;*

12 (c) *A copy of the proposed terms and conditions or terms of*
13 *use which will govern the provision of earned wage access services*
14 *by the applicant;*

15 (d) *A copy of the policy of the applicant relating to the privacy*
16 *of information concerning consumers;*

17 (e) *The schedule of fees proposed to be charged to a consumer*
18 *or obligor for the provision of earned wage access services; and*

19 (f) *Any other information required by any regulations adopted*
20 *by the Commissioner pursuant to section 32 of this act.*

21 3. *Upon receipt of the application and when satisfied that the*
22 *applicant is entitled thereto, the Commissioner shall issue to the*
23 *applicant a registration as a provider of earned wage access*
24 *services.*

25 4. *Except as otherwise provided by a regulation adopted by*
26 *the Commissioner, a registration issued pursuant to this section*
27 *expires annually on the anniversary of the issuance of the*
28 *registration and may be renewed upon submission of an*
29 *application for renewal containing such information as the*
30 *Commissioner may require by regulation.*

31 5. *The Commissioner shall establish by regulation fees for*
32 *the issuance and renewal of a registration issued pursuant to this*
33 *section.*

34 6. *A registration issued pursuant to this section is not*
35 *transferable or assignable.*

36 **Sec. 15. 1.** *In addition to the requirements set forth in*
37 *section 14 of this act, each applicant for registration as a provider*
38 *of earned wage access services must submit:*

39 (a) *Proof satisfactory to the Commissioner that the applicant:*

40 (1) *Is competent to transact the business of a provider;*

41 (2) *Has not made a false statement on the application for*
42 *the registration;*

43 (3) *Has not committed any of the acts specified in*
44 *subsection 2;*



(4) Has not had a registration as a provider suspended or revoked within the 10 years immediately preceding the date of the application; and

(5) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude, or a principal, partner, officer, director or trustee of the applicant has not been convicted of, or entered a plea of nolo contendere to, such a felony or crime.

(b) If the applicant is not a natural person, a complete set of fingerprints of each person who is a principal, partner, officer, director or trustee of the applicant, and written permission authorizing the Commissioner to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

2. In addition to any other lawful reasons, the Commissioner may refuse to issue a registration to an applicant for registration as a provider of earned wage access services if the applicant:

(a) Has committed or participated in any act for which, if committed or done by a registrant, would be grounds for the suspension or revocation of the registration;

(b) Has previously been refused a registration pursuant to this chapter or has had such a registration suspended or revoked;

(c) Has participated in any act which was a basis for the refusal, or the suspension or revocation of, a registration pursuant to this chapter; or

(d) Has falsified any of the information submitted to the Commissioner in support of the application for the registration.

Sec. 16. 1. Each registrant shall have in force a surety bond payable to the State of Nevada in the amount of \$35,000.

2. The bond must be in a form satisfactory to the Commissioner, issued by a bonding company authorized to do business in this State and must secure the faithful performance of the obligations of the registrant respecting the provision of earned wage access services.

3. A registrant shall, within 10 days after the commencement of any action or notice of entry of any judgment against the registrant by any creditor or claimant arising out of the business of a provider of earned wage access services, give notice thereof to the Commissioner by registered or certified mail with details sufficient to identify the action or judgment. The surety shall, within 10 days after it pays any claim or judgment to a creditor or claimant, give notice thereof to the Commissioner by certified mail with details sufficient to identify the creditor or claimant and the claim or judgment so paid.



4. Whenever the principal sum of the bond is reduced by recoveries or payments thereon, the registrant shall furnish:

(a) A new or additional bond so that the total or aggregate principal sum of the bonds equals the sum required pursuant to subsection 1; or

(b) An endorsement, duly executed by the surety, reinstating the bond to the required principal sum.

5. The liability of the surety on a bond to a creditor or claimant is not affected by any misrepresentation, breach of warranty, failure to pay a premium or other act or omission of the registrant, or by any insolvency or bankruptcy of the registrant.

6. The liability of the surety continues as to all transactions entered into in good faith by the creditors and claimants with the agents of the registrant within 30 days after:

(a) The death of the registrant or the dissolution or liquidation of the business of the registrant; or

(b) The termination of the bond,
↪ whichever occurs first.

Sec. 17. Each registration as a provider of earned wage access services shall remain in full force and effect until it expires or is surrendered, revoked or suspended as provided in this chapter and the regulations adopted pursuant thereto.

Sec. 18. A registrant shall:

1. Provide all proceeds to a consumer on a non-recourse basis and treat non-mandatory payments as non-recourse payment obligations.

2. Before entering into an agreement with a consumer for the provision of earned wage access services:

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

(b) Disclose any non-mandatory payments that may be associated with the provision of earned wage access services by the registrant;

3. Each time the registrant provides proceeds to a consumer, inform the consumer of the time at which the registrant will make its first attempt to seek repayment of those proceeds from the consumer.

4. Develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner.

5. Allow the consumer to cancel, at any time and without incurring a fee, his or her participation in an agreement for the provision of earned wage access services.

6. Comply with all applicable rules of the National Automated Clearinghouse Association, or its successor



organization, if the registrant seeks repayment of outstanding proceeds from the account of a consumer in a depository institution.

7. Comply with all local, state and federal privacy and information security laws.

Sec. 19. A provider of earned wage access services shall not:

1. Impose any mandatory payment on a consumer that directly relates to the provision of earned wage access services.

2. Charge a late fee or any other penalty for failure to repay outstanding proceeds.

3. Except as otherwise provided in this subsection, make the offering of earned wage access services, either in the amount of proceeds a consumer is eligible to request or the frequency with which the proceeds are provided to a consumer, contingent on the size of any non-mandatory payments that the consumer may make to that provider in connection with the provision of earned wage access services. This subsection does not prohibit a non-mandatory payment equal to a percentage of proceeds provided if the percentage applied does not vary based on the amount of proceeds provided.

4. Report to a consumer reporting agency or debt collector any information regarding the failure of a consumer to make a payment or repayment of outstanding proceeds. As used in this subsection, "consumer reporting agency" has the meaning ascribed to it in NRS 686A.640.

5. Require a credit report or credit score to determine the eligibility of a consumer for earned wage access services.

6. Provide, sell or otherwise disclose to any third party, including, without limitation, an obligor, any nonpublic personal information collected from or about a consumer, except as necessary to provide earned wage access services to the consumer or in accordance with the written consent of a consumer.

7. Advertise its services in a false, misleading or deceptive manner.

Sec. 20. 1. Proceeds provided to a consumer by a provider of earned wage access services in accordance with this chapter shall not be considered credit, the provider of the earned wage access services shall not be considered a creditor, and non-mandatory payments paid to that provider shall not be considered finance charges.

2. Proceeds provided to a consumer by a provider in accordance with this chapter shall not be subject to the provisions of chapters 604A and 675 of NRS, and a provider of those proceeds shall not be required to be licensed pursuant to either of those chapters.



1 **Sec. 21. 1.** *For the purpose of discovering violations of this*
2 *chapter or securing information lawfully required under this*
3 *chapter, the Commissioner or his or her duly authorized*
4 *representative may, upon reasonable prior notice, examine the*
5 *books, accounts, papers and records used in the business of:*

6 *(a) Any registrant;*

7 *(b) Any other person engaged in the business of an earned*
8 *wage access provider or participating in such business as a*
9 *principal, agent, broker or otherwise; and*

10 *(c) Any person who the Commissioner has reasonable cause to*
11 *believe is violating or is about to violate any provision of this*
12 *chapter, whether or not the person claims to be within the*
13 *authority or beyond the scope of this chapter.*

14 **2.** *For the purposes of examination, the Commissioner or his*
15 *or her authorized representative shall have and be given free*
16 *access to the offices and places of business, and the files, safes and*
17 *vaults of such persons.*

18 **3.** *For the purposes of this section, any person who advertises*
19 *for, solicits or holds himself or herself out as willing to provide*
20 *earned wage access services through a contractual arrangement*
21 *with an obligor is presumed to be engaged in the business of a*
22 *provider of earned wage access services.*

23 **4.** *This section does not entitle the Commissioner or his or*
24 *her authorized representative to investigate the business or*
25 *examine the books, accounts, papers or records of any attorney*
26 *who is not a person described in subsection 1, other than*
27 *examination of those books, accounts, papers and records*
28 *maintained by such attorney in his or her capacity as a registered*
29 *agent, and then only to the extent such books, accounts, papers*
30 *and records are not subject to any privilege in NRS 49.035 to*
31 *49.115, inclusive.*

32 **Sec. 22. 1.** *The Commissioner may require the attendance*
33 *of any person and examine him or her under oath regarding:*

34 *(a) Any registrant; or*

35 *(b) The subject matter of any audit, examination, investigation*
36 *or hearing.*

37 **2.** *The Commissioner may require the production of books,*
38 *accounts, papers and records for any audit, examination,*
39 *investigation or hearing.*

40 **Sec. 23.** *The Commissioner or his or her authorized*
41 *representative may annually make an examination of the place of*
42 *business of each registrant and of the transactions, books,*
43 *accounts, papers and records of the person as they pertain to the*
44 *business of a provider of earned wage access services.*



1 **Sec. 24. 1.** *The Commissioner shall charge and collect*
2 *from each registrant a fee at the rate established and, if*
3 *applicable, adjusted pursuant to NRS 658.101 for the cost of any*
4 *supervision, audit, examination, investigation or hearing*
5 *conducted pursuant to this chapter or any regulations adopted*
6 *pursuant thereto.*

7 **2.** *All money collected by the Commissioner pursuant to*
8 *subsection 1 must be deposited in the State Treasury pursuant to*
9 *the provisions of NRS 658.091.*

10 **Sec. 25.** *If the Commissioner finds that probable cause for*
11 *revocation of a registration of a registrant exists and that*
12 *enforcement of this chapter requires immediate suspension of*
13 *such a registration pending investigation, he or she may, upon 5*
14 *days' written notice and a hearing, enter an order suspending the*
15 *registration for a period of not more than 20 days, pending a*
16 *hearing about the revocation.*

17 **Sec. 26. 1.** *Whenever the Commissioner has reasonable*
18 *cause to believe that any person is violating or is threatening to or*
19 *intends to violate any provision of this chapter, the Commissioner*
20 *may, in addition to all actions provided for in this chapter and*
21 *without prejudice thereto, enter an order requiring the person to*
22 *desist or to refrain from such violation.*

23 **2.** *The Attorney General or the Commissioner may bring an*
24 *action to enjoin a person from engaging in or continuing a*
25 *violation or from doing any act or acts in furtherance thereof. In*
26 *any such action, an order or judgment may be entered awarding a*
27 *preliminary or final injunction as may be deemed proper.*

28 **Sec. 27.** *If the Commissioner has reason to believe that*
29 *grounds for revocation or suspension of a registration of a*
30 *registrant exist, he or she shall notify the registrant not later than*
31 *20 days before the date of the hearing. Such notice must state the*
32 *contemplated action and, in general, the grounds therefor and set*
33 *a date for a hearing.*

34 **Sec. 28. 1.** *A consumer, an attorney for a consumer or any*
35 *other person who believes that any provision of this chapter has*
36 *been violated may file a complaint with the Commissioner. Such a*
37 *complaint must include:*

38 **(a)** *The full name and address of the person filing the*
39 *complaint;*

40 **(b)** *A clear and concise statement of facts sufficient to*
41 *establish that the alleged violation occurred, including, without*
42 *limitation, the date, time and place of the alleged violation and the*
43 *name of each person involved in the alleged violation; and*



(c) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person.

2. Upon receipt of a complaint filed pursuant to subsection 1, the Commissioner shall send a copy of the complaint to the accused registrant. The registrant, or an authorized representative of the registrant, shall file a verified answer to the complaint within 10 business days after receipt of the complaint, unless for good cause shown, the Commissioner extends the time for a period of not more than 30 days. If the registrant, or an authorized representative of the registrant, fails to file a verified answer within the time required by this subsection, the registrant shall be deemed to have admitted to the allegations contained in the complaint.

3. The Commissioner may make investigations and conduct hearings concerning complaints filed with the Commissioner pursuant to this section.

4. Except as otherwise provided in this section, a complaint filed with the Commissioner pursuant to subsection 1, all documents and other information filed with the complaint and all documents, reports and other information resulting from the investigation of the complaint are confidential and may be disclosed only as the Commissioner deems necessary to administer the provisions of this chapter.

Sec. 29. 1. A registrant shall not make any of the following changes unless the registrant has obtained the prior approval of the Commissioner in accordance with the provisions of this section:

(a) A change in the ownership of 20 percent or more of the capital stock or other equivalent ownership interest of the registrant;

(b) A change in control of the registrant;

(c) A change in the name of the registrant, including the name under which the registrant is doing business; or

(d) A change in the principal business address of the registrant or in the address of any office of the registrant in this State.

2. A registrant who wishes to make any change described in subsection 1 must, not less than 10 business days before the date on which the change is to occur, submit a notice to the Commissioner. Such notice must include any information that the Commissioner may require.

3. Upon receipt of a notice submitted pursuant to subsection 1, the Commissioner shall approve or disapprove the proposed change. The Commissioner may disapprove a proposed change if, in the reasonable judgment of the Commissioner, the proposed



change is inconsistent with the requirements of this chapter. If the Commissioner does not respond to a registrant who submits a notice pursuant to subsection 2, including, without limitation, any request by the Commissioner for additional information from the registrant, within 10 business days of the date on which the notice was submitted, the proposed change shall be deemed approved.

4. As used in this section, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the registrant.

Sec. 30. In addition to the notice requirements set forth in section 29 of this act, a registrant must, before making a change in the principal officers or directors of a registrant, submit a notice to the Commissioner within a time period prescribed by the Commissioner. If the submission of such a notice is not possible before the change due to the unilateral resignation of a principal officer or director or other similar circumstance, the registrant must submit to the Commissioner a notice as promptly as possible after such a change. If, in the reasonable judgment of the Commissioner, the change in the principal officers or directors of the registrant is inconsistent with the requirements of this chapter, the Commissioner may require the registrant to take such action as the Commissioner deems necessary to ensure compliance with the provisions of this chapter.

Sec. 31. 1. On or before April 15 of each year, a registrant shall submit to the Commissioner:

(a) Except as otherwise provided in subsection 2, financial statements for the immediately preceding year that have been audited by an independent certified public accountant; and

(b) A copy of each complaint that has been filed against the registrant with the Better Business Bureau or the Consumer Financial Protection Bureau and a description of the resolution, if any, of each such complaint.

2. If audited financial statements are not available to a registrant on or before April 15 in any year, the registrant may satisfy the requirements of paragraph (a) of subsection 1 by submitting to the Commissioner:

(a) Unaudited financial statements on or before April 15; and

(b) Audited financial statements when such statements become available to the registrant.

Sec. 32. The Commissioner may adopt regulations for the administration and enforcement of this chapter, in addition to and not inconsistent with this chapter.



Sec. 33. NRS 232.545 is hereby amended to read as follows:

232.545 1. An Investigative Account for Financial Institutions is hereby created in the State General Fund. The Account consists of money which is:

(a) Received by the Department of Business and Industry in connection with the licensing *or registration* of financial institutions and the investigation of persons associated with those institutions; and

(b) Required by law to be placed therein.

2. The Director of the Department of Business and Industry or the Director's designee may authorize expenditures from the Investigative Account to pay the expenses incurred:

(a) In investigating applications for licensing *or registration* of financial institutions and in investigating persons associated with those institutions;

(b) In conducting special investigations relating to financial institutions and persons associated with those institutions; and

(c) In connection with mergers, consolidations, conversions, receiverships and liquidations of financial institutions.

3. As used in this section, "financial institution" means an institution for which licensing or registration is required by the provisions of title 55 and chapters 604A and 649 of NRS ~~H~~ *and the chapter consisting of sections 2 to 32, inclusive, of this act.*

Sec. 34. NRS 671.020 is hereby amended to read as follows:

671.020 1. This chapter does not apply to any:

(a) Bank, its parent or holding company or any subsidiary thereof, trust company, savings bank, savings and loan association, credit union, industrial bank or industrial loan and investment company, organized and regulated under the laws of this state or of the United States;

(b) Foreign banking corporation licensed to do banking business in this state; ~~for~~

(c) Telegraph company providing a public message service ~~H~~ ; *or*

(d) Provider of earned wage access services who is registered pursuant to the chapter consisting of sections 2 to 32, inclusive, of this act.

2. Subsection 1 does not reduce or alter any liability otherwise attaching to the sale, issuance, receipt for transmission or transmission of checks or money in any form.

Sec. 35. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 34, inclusive, of this act become effective:



- 1 (a) Upon passage and approval for the purpose of adopting any
2 regulations and performing any other preparatory administrative
3 tasks that are necessary to carry out the provisions of this act; and
4 (b) On July 1, 2024, for all other purposes.

