

1 **EARNED WAGE ACCESS SERVICES AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill enacts the Earned Wage Access Services Act.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ defines terms;
- 11 ▶ enacts provisions related to earned wage access services, including provider
- 12 registration, provider operational requirements, and provider reporting;
- 13 ▶ enables the Department of Financial Institutions to enforce the Earned Wage Access
- 14 Services Act, conduct investigations, makes rules, and receive complaints regarding
- 15 earned wage access services;
- 16 ▶ requires the commissioner of Financial Institutions to include certain information
- 17 regarding providers in the commissioner's annual report to the governor and
- 18 Legislature; and
- 19 ▶ exempts providers from the provisions of Title 7, Chapter 23, Check Cashing and
- 20 Deferred Deposit Lending Registration Act.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **7-1-401**, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

28 **7-23-103.1**, as renumbered and amended by Laws of Utah 2008, Chapter 96

29 ENACTS:

30 **7-27-101**, Utah Code Annotated 1953

31 **7-27-102**, Utah Code Annotated 1953

32 **7-27-201**, Utah Code Annotated 1953

33 7-27-202, Utah Code Annotated 1953
34 7-27-203, Utah Code Annotated 1953
35 7-27-301, Utah Code Annotated 1953
36 7-27-302, Utah Code Annotated 1953
37 7-27-303, Utah Code Annotated 1953
38 7-27-304, Utah Code Annotated 1953

39

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section 7-1-401 is amended to read:

42 **7-1-401. Fees payable to commissioner.**

43 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
44 institution under the jurisdiction of the department shall pay an annual fee:

45 (a) computed by averaging the total assets of the depository institution shown on each
46 quarterly report of condition for the depository institution for the calendar year immediately
47 preceding the date on which the annual fee is due under Section 7-1-402; and

48 (b) at the following rates:

49 (i) on the first \$5,000,000 of these assets, the greater of:

50 (A) 65 cents per \$1,000; or

51 (B) \$500;

52 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

53 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

54 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

55 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

56 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

57 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

58 (2) A financial institution with a trust department shall pay a fee determined in
59 accordance with Subsection (7) for each examination of the trust department by a state
60 examiner.

61 (3) Notwithstanding Subsection (1), a credit union in ~~[its]~~ the credit union's first year of
62 operation shall pay a basic fee of \$25 instead of the fee required under Subsection (1).

63 (4) A trust company that is not a depository institution or a subsidiary of a depository

64 institution holding company shall pay:

65 (a) an annual fee of \$500; and

66 (b) an additional fee determined in accordance with Subsection (7) for each
67 examination by a state examiner.

68 (5) Any person or institution under the jurisdiction of the department that does not pay
69 a fee under Subsections (1) through (4) shall pay:

70 (a) an annual fee of \$200; and

71 (b) an additional fee determined in accordance with Subsection (7) for each
72 examination by a state examiner.

73 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,
74 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

75 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
76 person:

77 (A) is a person with authority to transact business as a depository institution, a trust
78 company, or any other person described in Section 7-1-501 as being subject to the jurisdiction
79 of the department; and

80 (B) has total assets in an amount less than \$5,000,000; or

81 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

82 (b) all reasonable expenses incurred in processing the application.

83 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
84 per hour:

85 (i) for each examiner; and

86 (ii) per hour worked.

87 (b) For an examination of a branch or office of a financial institution located outside of
88 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
89 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
90 conducting the examination.

91 (8) In addition to a fee under Subsection (5), a person registering under Section
92 7-23-201 [~~or~~], 7-24-201, or 7-27-201 shall pay an original registration fee of \$300.

93 (9) In addition to a fee under Subsection (5), a person applying for licensure under
94 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.

95 Section 2. Section 7-23-103.1 is amended to read:

96 **7-23-103.1. Exemptions.**

97 The following are not subject to the requirements of this chapter:

98 (1) a depository institution;

99 (2) a depository institution holding company;

100 (3) an institution directly or indirectly owned or controlled by one or more:

101 (a) depository institutions; or

102 (b) depository institution holding companies; [~~or~~]

103 (4) a person that cashes a check in a transaction:

104 (a) that is incidental to a retail sale of goods or services; and

105 (b) for consideration that does not exceed the greater of:

106 (i) 1% of the amount of the check; or

107 (ii) \$1[-]; or

108 (5) a person operating in accordance with Chapter 27, Earned Wage Access Services

109 Act, as a provider.

110 Section 3. Section 7-27-101 is enacted to read:

111 **CHAPTER 27. EARNED WAGE ACCESS SERVICES ACT**

112 **Part 1. General Provisions**

113 **7-27-101. Title.**

114 This chapter is known as the "Earned Wage Access Services Act."

115 Section 4. Section 7-27-102 is enacted to read:

116 **7-27-102. Definitions.**

117 As used in this chapter:

118 (1) "Annual percentage rate" means the same as defined in 15 U.S.C. Sec. 1606, as
119 implemented by regulations made under that section.

120 (2) "Earned, unpaid income" means an amount that does not exceed:

121 (a) the sum of unpaid wages and cash distributions that an individual has earned or is
122 otherwise entitled to; minus

123 (b) the sum of unpaid wages and cash distributions required through a legal or
124 equitable procedure to be withheld from the individual described in Subsection (2)(a) for
125 payment the individual owes.

- 126 (3) "Earned wage access service" means an agreement under which:
127 (a) a person remits earned, unpaid income to the individual who earned or is otherwise
128 entitled to the earned, unpaid income; and
129 (b) on or after a designated day, the person who remits the earned, unpaid income as
130 described in Subsection (3)(a) obtains from the individual described in Subsection (3)(a) an
131 amount that is less than or equal to the sum of:
132 (i) the earned, unpaid income the person remitted;
133 (ii) each fee the person charges; and
134 (iii) any voluntary payment.
135 (4) (a) "Proceeds" means earned, unpaid income that a person remits to an individual
136 as part of an earned wage access service.
137 (b) "Proceeds" includes earned, unpaid income that a person remits to an individual
138 through the individual's employer.
139 (5) "Provider" means a person who:
140 (a) offers or provides an earned wage access service to an individual; or
141 (b) contracts with an entity to offer and provide earned wage access services to the
142 entity's employees.
143 (6) "Voluntary payment" means any amount of money that an individual voluntarily
144 pays to a provider in relation to an earned wage access service.
- 145 Section 5. Section 7-27-201 is enacted to read:
- 146 **Part 2. Provider Requirements**
- 147 **7-27-201. Provider registration and registration renewal.**
- 148 (1) A person may not act as a provider in this state, or provide an earned wage access
149 service to a resident of this state, without registering with the department.
- 150 (2) To register as a provider, a person shall submit to the department an application for
151 registration:
152 (a) in the manner the department determines; and
153 (b) that includes:
154 (i) an original registration fee established under Subsection 7-1-401(8); and
155 (ii) anything else the department requires as established by rule made in accordance
156 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

157 (3) Each year a provider shall renew the provider's registration by submitting to the
158 department an application for registration renewal:

159 (a) in a manner the department determines; and

160 (b) that includes:

161 (i) the annual fee established under Subsection 7-1-401(5); and

162 (ii) anything else the department requires as established by rule made in accordance
163 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

164 (4) A person who acts as a provider in the state, or provides an earned wage access
165 service to a resident of this state, between May 5, 2021, and May 5, 2022, is permitted to
166 continue to act as a provider:

167 (a) if the person:

168 (i) applies for registration in accordance with this section; and

169 (ii) complies with the requirements of this chapter; and

170 (b) until the department makes a determination regarding the person's application for
171 registration under this section.

172 Section 6. Section **7-27-202** is enacted to read:

173 **7-27-202. Provider operations.**

174 (1) A provider may not:

175 (a) remit to an individual an amount based on future earnings;

176 (b) through a legal proceeding, directly or indirectly compel an individual to repay
177 proceeds or to pay a subscription fee or any other fee;

178 (c) engage in a debt collection activity related to an earned wage access service;

179 (d) report an individual's failure to repay proceeds or to pay a subscription fee or any
180 other fee to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1618a;

181 (e) charge a late fee or any other fee for an individual's failure to repay proceeds or to
182 pay a subscription fee or any other fee; or

183 (f) charge an individual an annual percentage rate on proceeds, on a subscription fee, or
184 on a voluntary payment.

185 (2) If a provider suggests to an individual an amount the individual may make as a
186 voluntary payment for an earned wage access service, the provider shall:

187 (a) make the suggestion in writing; and

188 (b) disclose to the individual in writing immediately adjacent to the written suggested
 189 voluntary payment the suggested voluntary payment's equivalent as an annual percentage rate,
 190 as if the suggested voluntary payment were the total interest paid over the length of time, under
 191 the earned wage access service, between the day on which:

192 (i) the provider remits the proceeds; and

193 (ii) the individual repays the proceeds.

194 (3) If an individual fails to repay proceeds or to pay a subscription fee or any other fee,
 195 a provider may refuse to provide the individual further earned wage access service.

196 Section 7. Section 7-27-203 is enacted to read:

197 **7-27-203. Annual reports.**

198 Beginning in 2023, on or before June 30 of each year, a provider shall submit a written
 199 report to the department:

200 (1) in a form the department prescribes; and

201 (2) that includes for the preceding calendar year:

202 (a) gross revenue received for engaging in earned wage access services;

203 (b) the total number of earned wage access services in which the provider engaged;

204 (c) the total dollar amount of proceeds the provider remitted;

205 (d) the total dollar amount of fees the provider received from individuals;

206 (e) the total number of proceeds for which the provider has not received any
 207 repayment;

208 (f) the total dollar amount of proceeds for which the provider has not received any
 209 repayment;

210 (g) the total number of proceeds for which the provider has received partial repayment;

211 (h) the total outstanding dollar amount of proceeds for which the provider has received
 212 partial repayment; and

213 (i) the total number of unique individuals to whom the provider remitted proceeds as
 214 part of an earned wage access service.

215 Section 8. Section 7-27-301 is enacted to read:

216 **Part 3. Enforcement**

217 **7-27-301. Enforcement by department -- Rulemaking.**

218 (1) Subject to the requirements of Title 63G, Chapter 4, Administrative Procedures

219 Act, the department may:
220 (a) receive and act on a complaint regarding a provider;
221 (b) take action designed to obtain voluntary compliance with this chapter;
222 (c) commence an administrative or judicial proceeding on the department's own
223 initiative to enforce compliance with this chapter; or
224 (d) take action against a provider who fails to:
225 (i) respond to the department in writing within 30 business days after the day on which
226 the provider receives notice from the department of a complaint filed with the department
227 regarding the provider; or
228 (ii) submit information as requested by the department.
229 (2) The department may:
230 (a) counsel a person or a group on the person or group's rights and duties under this
231 chapter;
232 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
233 Rulemaking Act, to:
234 (i) restrict or prohibit an earned wage access servicing practice that is misleading,
235 unfair, or abusive;
236 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
237 and communications between:
238 (A) an individual; and
239 (B) a provider; and
240 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
241 state or federal laws or federal regulations; and
242 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
243 perform the department's duties under this chapter.
244 (3) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
245 Administrative Rulemaking Act, to establish:
246 (a) an application process for a provider to register and renew registration with the
247 department as a provider, in accordance with Section 7-27-201; and
248 (b) a filing process for annual reports required under Section 7-27-203, including a
249 filing process for any required supporting documentation.

250 Section 9. Section 7-27-302 is enacted to read:

251 **7-27-302. Examination of books, accounts, and records by the department.**

252 (1) At least annually the department shall, for each person registered under this chapter
253 and engaging in the business of providing earned wage access services:

254 (a) examine the books, accounts, and records; and

255 (b) make investigations to determine compliance with this chapter.

256 (2) In accordance with Section 7-1-401, a person the department examines under
257 Subsection (1) shall pay a fee to the department for the examination.

258 Section 10. Section 7-27-303 is enacted to read:

259 **7-27-303. Reporting by commission.**

260 (1) Subject to Subsection (2), as part of the commissioner's annual report to the
261 governor and Legislature under Section 7-1-211, the commissioner shall report to the governor
262 and Legislature on the operations on an aggregate basis of providers operating in the state.

263 (2) In preparing the report required by Subsection (1), the commissioner:

264 (a) shall include in the report for the immediately preceding calendar year aggregate
265 information from the one or more written reports filed under Subsection 7-27-203 by providers
266 for that calendar year;

267 (b) shall include in the report:

268 (i) the total number of written complaints concerning issues material to earned wage
269 access services received by the department in a calendar year from persons who have entered
270 into an earned wage access service with a provider;

271 (ii) for providers registered with the department:

272 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
273 considers resolved; and

274 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
275 considers unresolved; and

276 (iii) for providers who are not registered with the department:

277 (A) the number of the complaints described in Subsection (2)(b)(i) that the department
278 considers resolved; and

279 (B) the number of the complaints described in Subsection (2)(b)(i) that the department
280 considers unresolved; and

281 (c) may not include in the report information from an operations statement filed with
282 the department that could identify a specific provider.

283 Section 11. Section 7-27-304 is enacted to read:

284 **7-27-304. Penalties.**

285 (1) A person who violates this chapter or who files materially false information with a
286 registration or renewal under Section 7-27-201 is:

287 (a) guilty of a class B misdemeanor, except for a violation of rules made under
288 Subsection 7-27-301(2)(b); and

289 (b) subject to revocation of a person's registration under this chapter.

290 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the department
291 determines that a person is engaging in the business of earned wage access services in violation
292 of this chapter, the department may:

293 (a) revoke that person's registration under this chapter;

294 (b) issue a cease and desist order from committing any further violations;

295 (c) prohibit the person from continuing to engage in the business of providing earned
296 wage access services;

297 (d) impose an administrative fine not to exceed \$1,000 per violation, except that the
298 aggregate total of fines imposed under this chapter against a person in a calendar year may not
299 exceed \$30,000 for that calendar year; or

300 (e) take any combination of actions listed under this Subsection (2).