

HB0370S01 compared with HB0370

~~deleted text~~ shows text that was in HB0370 but was deleted in HB0370S01.

inserted text shows text that was not in HB0370 but was inserted into HB0370S01.

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Representative James A. Dunnigan proposes the following substitute bill:

EARNED WAGE ACCESS SERVICES ACT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Earned Wage Access Services Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to earned wage access services, including provider registration, provider operational requirements, and provider reporting;
- ▶ requires the Division of Consumer Protection to enforce the Earned Wage Access Services Act, make rules under the Earned Wage Access Services Act, and report to the Business and Labor Interim Committee in relation to earned wage access services; and
- ▶ exempts providers from the provisions of Title 7, Chapter 23, Check Cashing and

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Deferred Deposit Lending Registration Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

13-2-1, as last amended by Laws of Utah 2020, Chapter 118

ENACTS:

13-58-101, Utah Code Annotated 1953

13-58-102, Utah Code Annotated 1953

13-58-201, Utah Code Annotated 1953

13-58-202, Utah Code Annotated 1953

13-58-203, Utah Code Annotated 1953

13-58-301, Utah Code Annotated 1953

13-58-302, Utah Code Annotated 1953

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

Section 1. Section **7-23-103.1** is amended to read:

7-23-103.1. Exemptions.

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

- (1) a depository institution;
- (2) a depository institution holding company;
- (3) an institution directly or indirectly owned or controlled by one or more:
 - (a) depository institutions; or
 - (b) depository institution holding companies; [~~or~~]
- (4) a person that cashes a check in a transaction:
 - (a) that is incidental to a retail sale of goods or services; and
 - (b) for consideration that does not exceed the greater of:
 - (i) 1% of the amount of the check; or

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(ii) §1[-]; or

(5) a person who operates in accordance with Title 13, Chapter 58, Earned Wage Access Services Act, as a provider.

Section 2. Section 13-2-1 is amended to read:

13-2-1. Consumer protection division established -- Functions.

(1) There is established within the Department of Commerce the Division of Consumer Protection.

(2) The division shall administer and enforce the following:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls During Emergencies Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act;
- (s) Chapter 51, Transportation Network Company Registration Act;
- (t) Chapter 52, Residential Solar Energy Disclosure Act;
- (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (v) Chapter 54, Ticket Website Sales Act;
- (w) Chapter 56, Ticket Transferability Act; [~~and~~]

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(x) Chapter 57, Maintenance Funding Practices Act~~[:]~~; and

(y) Chapter 58, Earned Wage Access Services Act.

Section 3. Section **13-58-101** is enacted to read:

CHAPTER 58. EARNED WAGE ACCESS SERVICES ACT

Part 1. General Provisions

13-58-101. Title.

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

Section 4. Section **13-58-102** is enacted to read:

13-58-102. Definitions.

As used in this chapter:

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

(2) "Director" means the director of the division.

(3) "Division" means the Division of Consumer Protection established in Section 13-2-1.

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

(a) the sum of unpaid wages~~{, government benefits,}~~ and cash distributions that an individual has earned or is otherwise entitled to; minus

(b) the sum of unpaid wages~~{, government benefits,}~~ and cash distributions required through a legal or equitable procedure to be withheld from the individual described in Subsection (4)(a) for payment the individual owes.

(5) "Earned wage access service" means an agreement:

(a) that is not a loan; and

(b) under which:

(i) a person remits earned, unpaid income ~~{into a deposit account}~~to the individual who earned or is otherwise entitled to the earned, unpaid income ~~{designates}~~; and

(ii) on or after a designated day, the person who remits the earned, unpaid income as described in Subsection (5)(b)(i) ~~{debits}~~obtains from the ~~{deposit account}~~individual described in Subsection (5)(b)(i) ~~{in}~~ an amount that is less than or equal to the sum of:

(A) the earned, unpaid income the person remitted;

(B) each fee the person charges; and

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(C) any voluntary payment.

(6) (a) "Proceeds" means earned, unpaid income that a person remits to an individual as part of an earned wage access service.

(b) "Proceeds" includes earned, unpaid income that a person remits to an individual through the individual's employer.

(7) "Provider" means a person ~~engaged in the business of providing earned, unpaid income to an individual as part of~~ who:

(a) contracts with an entity to offer and provide earned wage access services to the entity's employees; or

(b) offers or provides an earned wage access service to an individual.

(8) "Voluntary payment" means any amount of money that an individual voluntarily pays to a provider in relation to an earned wage access service.

Section 5. Section **13-58-201** is enacted to read:

Part ~~1~~2. Providers

13-58-201. Provider registration and registration renewal.

(1) A person may not act as a provider in this state without registering with the division.

(2) To register as a provider, a person shall submit to the division an application for registration:

(a) in the manner the division determines; and

(b) that includes:

(i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and

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

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

(a) in a manner the division determines; and

(b) that includes:

(i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and

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

(4) A person who acts as a provider in the state between May 5, 2020, and May 5, 2021, is permitted to continue to act as a provider:

(a) if the person:

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

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

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

Section 6. Section **13-58-202** is enacted to read:

13-58-202. Provider operations.

(1) A provider may not:

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

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

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

(d) report an individual's failure to repay proceeds or to pay a subscription fee or any other fee to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;

~~{ (e) charge an individual a mandatory fee that is not a subscription fee for proceeds;~~

~~{ (ff)e} charge a late fee or any other fee for an individual's failure to repay proceeds or to pay a subscription fee or any other fee; or~~

~~{ (gf)f} charge an individual an annual percentage rate on proceeds, on a subscription fee, or on a voluntary payment.~~

~~{ (h) If an individual is married fails to repay proceeds or fails to pay a civil union subscription fee or any other fee, a provider may not engage in an refuse to provide the individual further earned wage access service with the individual unless the provider obtains written consent from the individual's spouse or partner.~~

~~{ (i) If a provider takes custody of an individual's earned, unpaid wages before remitting the earned, unpaid wages to the individual as proceeds, the provider shall ensure that the proceeds are fully FDIC insured at the individual's account level}.~~

Section 7. Section **13-58-203** is enacted to read:

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13-58-203. Annual reports.

Beginning in 2022, on or before June 30 of each year, a provider shall submit a written report to the division:

- (1) in a form the director prescribes; and
- (2) that includes for the preceding calendar year:
 - (a) gross revenue received for engaging in earned wage access services;
 - (b) the total number of earned wage access services in which the provider engaged;
 - (c) the total dollar amount of proceeds the provider remitted;
 - (d) the total dollar amount of fees the provider received from individuals;
 - (e) the total number of proceeds for which the provider has not received any

repayment;

- (f) the total dollar amount of proceeds for which the provider has not received any

repayment;

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

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

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

Section 8. Section **13-58-301** is enacted to read:

Part 3. Division Duties

13-58-301. Enforcement.

In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection, the division may impose an administrative fine of up to \$500 for each violation of this chapter.

Section 9. Section **13-58-302** is enacted to read:

13-58-302. Rulemaking -- Reporting.

(1) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish an application process for a provider to register and renew registration with the division as a provider, in accordance with Section 13-58-201;

(b) establish a filing process for annual reports required under Section 13-58-203,

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including a filing process for any required supporting documentation; and

(c) carry out the provisions of this chapter.

(2) Before October 1, 2023, the director shall provide a written report to the Business and Labor Interim Committee on the status of earned wage access services in the state and make any recommendation the director decides is necessary to improve the regulatory framework of earned wage access services.