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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 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



28 13-2-1, as last amended by Laws of Utah 2020, Chapter 118

29 ENACTS:

30 13-58-101, Utah Code Annotated 1953

31 13-58-102, Utah Code Annotated 1953

32 13-58-201, Utah Code Annotated 1953

33 13-58-202, Utah Code Annotated 1953

34 13-58-203, Utah Code Annotated 1953

35 13-58-301, Utah Code Annotated 1953

36 13-58-302, Utah Code Annotated 1953

37

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

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

40 **7-23-103.1. Exemptions.**

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

- 42 (1) a depository institution;
- 43 (2) a depository institution holding company;
- 44 (3) an institution directly or indirectly owned or controlled by one or more:
 - 45 (a) depository institutions; or
 - 46 (b) depository institution holding companies; [or]
- 47 (4) a person that cashes a check in a transaction:
 - 48 (a) that is incidental to a retail sale of goods or services; and
 - 49 (b) for consideration that does not exceed the greater of:
 - 50 (i) 1% of the amount of the check; or
 - 51 (ii) \$1[-]; or
- 52 (5) a person who operates in accordance with Title 13, Chapter 58, Earned Wage

53 Access Services Act, as a provider.

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

55 **13-2-1. Consumer protection division established -- Functions.**

- 56 (1) There is established within the Department of Commerce the Division of Consumer
- 57 Protection.
- 58 (2) The division shall administer and enforce the following:

- 59 (a) Chapter 5, Unfair Practices Act;
- 60 (b) Chapter 10a, Music Licensing Practices Act;
- 61 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 62 (d) Chapter 15, Business Opportunity Disclosure Act;
- 63 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 64 (f) Chapter 21, Credit Services Organizations Act;
- 65 (g) Chapter 22, Charitable Solicitations Act;
- 66 (h) Chapter 23, Health Spa Services Protection Act;
- 67 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 68 (j) Chapter 26, Telephone Fraud Prevention Act;
- 69 (k) Chapter 28, Prize Notices Regulation Act;
- 70 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 71 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 72 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 73 (o) Chapter 39, Child Protection Registry;
- 74 (p) Chapter 41, Price Controls During Emergencies Act;
- 75 (q) Chapter 42, Uniform Debt-Management Services Act;
- 76 (r) Chapter 49, Immigration Consultants Registration Act;
- 77 (s) Chapter 51, Transportation Network Company Registration Act;
- 78 (t) Chapter 52, Residential Solar Energy Disclosure Act;
- 79 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 80 (v) Chapter 54, Ticket Website Sales Act;
- 81 (w) Chapter 56, Ticket Transferability Act; [~~and~~]
- 82 (x) Chapter 57, Maintenance Funding Practices Act[-]; and
- 83 (y) Chapter 58, Earned Wage Access Services Act.

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

85 **CHAPTER 58. EARNED WAGE ACCESS SERVICES ACT**

86 **Part 1. General Provisions**

87 **13-58-101. Title.**

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

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

90 **13-58-102. Definitions.**

91 As used in this chapter:

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

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

95 (3) "Division" means the Division of Consumer Protection established in Section
96 [13-2-1.](#)

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

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

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

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

104 (a) that is not a loan; and

105 (b) under which:

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

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

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

112 (B) each fee the person charges; and

113 (C) any voluntary payment.

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

116 (7) "Provider" means a person engaged in the business of providing earned, unpaid
117 income to an individual as part of an earned wage access service.

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

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

121 **Part 1. Providers**

122 **13-58-201. Provider registration and registration renewal.**

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

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

127 (a) in the manner the division determines; and

128 (b) that includes:

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

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

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

135 (a) in a manner the division determines; and

136 (b) that includes:

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

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

141 (4) A person who acts as a provider in the state between May 5, 2020, and May 5,
142 2021, is permitted to continue to act as a provider:

143 (a) if the person:

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

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

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

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

149 **13-58-202. Provider operations.**

150 (1) A provider may not:

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

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

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

155 (d) report an individual's failure to repay proceeds or to pay a fee to a consumer

156 reporting agency, as defined in 15 U.S.C. Sec. 1681a;

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

158 (f) charge a late fee or any other fee for an individual's failure to repay proceeds or to
159 pay a fee; or

160 (g) charge an individual an annual percentage rate on proceeds, on a subscription fee,
161 or on a voluntary payment.

162 (2) If an individual is married or in a civil union, a provider may not engage in an
163 earned wage access service with the individual unless the provider obtains written consent from
164 the individual's spouse or partner.

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

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

169 **13-58-203. Annual reports.**

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

172 (1) in a form the director prescribes; and

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

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

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

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

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

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

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

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

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

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

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

188 **Part 3. Division Duties**

189 **13-58-301. Enforcement.**

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

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

194 **13-58-302. Rulemaking -- Reporting.**

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

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

199 (b) establish a filing process for annual reports required under Section [13-58-203](#),
200 including a filing process for any required supporting documentation; and

201 (c) carry out the provisions of this chapter.

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