

By: Johnson

S.B. No. 2245

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of earned wage access services; creating a criminal offense; providing an administrative penalty; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 14.251, Finance Code, is amended by adding Subsection (a-2) to read as follows:

(a-2) The commissioner shall assess an administrative penalty against an earned wage access services provider who knowingly and wilfully violates or causes a violation of Chapter 398, or a rule adopted under Chapter 398.

SECTION 2. Title 5, Finance Code, is amended by adding Chapter 398 to read as follows:

CHAPTER 398. EARNED WAGE ACCESS SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 398.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Consumer" means an individual who resides in this state.

(3) "Earned but unpaid income" means wages, compensation, or income that a consumer represents, and an earned wage access services provider reasonably determines, has been earned or has accrued to the benefit of the consumer but has not, at

1 the time of the payment of proceeds, been paid to the consumer by an
2 obligor.

3 (4) "Earned wage access services" means the business
4 of delivering proceeds to a consumer before the next date on which
5 an obligor is obligated to pay salary, wages, compensation, or
6 other income to the consumer.

7 (5) "Earned wage access services provider" or
8 "provider" means a person who is in the business of offering and
9 providing earned wage access services to consumers.

10 (6) "Mandatory payment" means an amount determined by
11 a provider that must be paid by a consumer to the provider as a
12 condition of receiving or repaying proceeds.

13 (7) "Non-mandatory payment" means an amount other than
14 a mandatory payment that is paid by a consumer or an obligor to a
15 provider. The term includes:

16 (A) a fee imposed by a provider for delivery or
17 expedited delivery of proceeds to a consumer, as long as the
18 provider offers the consumer at least one option to receive
19 proceeds at no cost to the consumer;

20 (B) an amount paid by an obligor to a provider on
21 a consumer's behalf that entitles the consumer to receive proceeds
22 at no cost to the consumer;

23 (C) a subscription or membership fee imposed by a
24 provider for a group of services that include earned wage access
25 services, as long as the provider offers the consumer at least one
26 option to receive proceeds at no cost to the consumer; and

27 (D) a tip or gratuity paid by a consumer to a

1 provider, as long as the provider offers the consumer at least one
2 option to receive proceeds at no cost to the consumer.

3 (8) "Nonrecourse," with respect to a repayment of
4 proceeds or other amounts owed, means that a provider cannot compel
5 or attempt to compel repayment by a consumer of outstanding
6 proceeds or non-mandatory payments owed by the consumer to the
7 provider through:

8 (A) a civil suit filed against the consumer;

9 (B) use of a third-party to pursue collection of
10 outstanding proceeds or non-mandatory payments on the provider's
11 behalf; or

12 (C) sale of outstanding amounts owed to a
13 third-party collector or debt buyer.

14 (9) "Obligor" means an employer or other person who is
15 contractually or legally obligated to pay a consumer earned but
16 unpaid income on an hourly, project-based, piecework, or other
17 basis, including to a consumer who is acting as an independent
18 contractor. The term does not include a service provider of an
19 obligor or another third party that has an obligation to make any
20 payment to a consumer based solely on the consumer's agency
21 relationship with the obligor.

22 (10) "Outstanding proceeds" means proceeds paid by an
23 earned wage access services provider to a consumer that have not
24 been repaid to the provider.

25 (11) "Person" means a corporation, partnership,
26 cooperative, association, or other business entity.

27 (12) "Proceeds" means a payment of funds by an earned

1 wage access services provider to a consumer that is based on earned
2 but unpaid income.

3 Sec. 398.002. PERSONS NOT COVERED. (a) This chapter does
4 not apply to:

5 (1) a person:

6 (A) authorized to make a loan or grant an
7 extension of consumer credit under the laws of this state or the
8 United States; and

9 (B) subject to regulation and supervision by this
10 state or the United States;

11 (2) a bank or savings association the deposits or
12 accounts of which are eligible to be insured by the Federal Deposit
13 Insurance Corporation or a subsidiary of the bank or association;

14 (3) a credit union doing business in this state;

15 (4) a nonprofit organization exempt from taxation
16 under Section 501(c)(3), Internal Revenue Code of 1986; or

17 (5) a consumer reporting agency.

18 (b) In an action under this chapter, a person claiming an
19 exemption under this section has the burden of proving the
20 exemption.

21 Sec. 398.003. APPLICABILITY OF OTHER LAW. A person
22 registered under this chapter is not subject to the provisions of
23 Title 4 of this code with respect to its earned wage access
24 services.

25 Sec. 398.004. WAIVER VOID. A waiver of a provision of this
26 chapter by a consumer is void.

27 SUBCHAPTER B. REGISTRATION AND DISCLOSURE STATEMENTS

1 Sec. 398.051. REGISTRATION STATEMENT. (a) Before
2 conducting business in this state, an earned wage access services
3 provider shall register with the secretary of state by filing a
4 statement that:

5 (1) contains the name and address of:

6 (A) the provider; and

7 (B) each person who directly or indirectly owns
8 or controls at least 10 percent of the outstanding shares of stock
9 in the provider; and

10 (2) fully discloses any litigation or unresolved
11 complaint relating to the operation of the provider filed with a
12 governmental authority of this state or contains a notarized
13 statement that there has been no litigation or unresolved complaint
14 of that type.

15 (b) The provider shall keep a copy of the registration
16 statement in its files.

17 (c) The secretary of state may not require a provider to
18 provide information other than information contained in the
19 registration statement.

20 (d) A registration statement expires on the first
21 anniversary of its date of issuance. A registered provider may
22 renew a registration statement by filing a renewal application, in
23 the form prescribed by the secretary of state, and paying the
24 renewal fee.

25 Sec. 398.052. UPDATE OF REGISTRATION STATEMENT. An earned
26 wage access services provider shall update information contained in
27 the registration statement not later than the 90th day after the

1 date on which the information changes.

2 Sec. 398.053. INSPECTION OF REGISTRATION STATEMENT. An
3 earned wage access services provider shall allow a consumer to
4 inspect the registration statement on request.

5 Sec. 398.054. FILING FEE. The secretary of state may charge
6 an earned wage access services provider a reasonable fee to cover
7 the cost of filing a registration statement or renewal application
8 in an amount not to exceed \$100.

9 Sec. 398.055. DISCLOSURE STATEMENT. Before executing a
10 contract with a consumer for the provision of earned wage access
11 services, an earned wage access services provider shall provide the
12 consumer with a disclosure that:

13 (1) may be in written or electronic form;

14 (2) may be included as part of the contract to provide
15 earned wage access services; and

16 (3) contains:

17 (A) the terms of the earned wage access services
18 offered by the provider, including a description of any
19 non-mandatory payments that may be directly imposed by the provider
20 in connection with the provision of earned wage access services;

21 (B) a statement that the commissioner has
22 oversight authority over the earned wage access services performed
23 by the provider and includes a telephone number and an Internet
24 website for submission of consumer complaints to the commissioner
25 regarding the provider's earned wage access services;

26 (C) an explanation of the consumer's right to
27 proceed against the surety bond or account obtained under

1 Subchapter E; and

2 (D) the name and address of the surety company
3 that issued the surety bond or the name and address of the
4 depository and the trustee and the account number of the surety
5 account, as appropriate.

6 Sec. 398.056. COPY OF DISCLOSURE STATEMENT. An earned wage
7 access services provider shall keep in its files a copy of the
8 disclosure statement required under Section 398.055 that includes
9 consumer's written or digital signatures acknowledging receipt of
10 the disclosure statement until the second anniversary of the date
11 on which the provider provides the disclosure.

12 SUBCHAPTER C. CONTRACT FOR SERVICES

13 Sec. 398.101. FORM AND TERMS OF CONTRACT. (a) Each
14 contract for the provision of earned wage access services to a
15 consumer by a provider may be in writing or electronic form and
16 must:

17 (1) be dated;

18 (2) include the written or digital signature of the
19 consumer; and

20 (3) be written in language intended to be easily
21 understood by a layperson.

22 (b) Each contract must disclose that:

23 (1) proceeds will be provided to the consumer on a
24 nonrecourse basis;

25 (2) non-mandatory payment obligations will be treated
26 as nonrecourse payment obligations;

27 (3) proceeds will be provided to the consumer using a

1 method agreed to by the consumer and the provider;

2 (4) in any case in which a provider seeks repayment of
3 proceeds from the consumer, the provider will inform the consumer
4 when the provider will first attempt to seek the repayment of
5 proceeds from the consumer;

6 (5) the provider will comply with any applicable rules
7 for use of an automated clearinghouse transaction if the provider
8 attempts to seek repayment of proceeds from a consumer's depository
9 institution; and

10 (6) the consumer may cancel the contract at any time
11 without financial penalty.

12 Sec. 398.102. ISSUANCE OF CONTRACT. An earned wage access
13 services provider shall make available to the consumer a copy of the
14 completed contract, when receipt of the document is acknowledged by
15 the consumer.

16 SUBCHAPTER D. PROHIBITIONS

17 Sec. 398.151. PROHIBITED ACTS. (a) An earned wage access
18 services provider may not, in connection with providing earned wage
19 access services to consumers:

20 (1) impose a mandatory payment on a consumer that
21 directly relates to the provision of earned wage access services;

22 (2) make the amount of proceeds a consumer is eligible
23 to request or the frequency with which the provider will provide
24 proceeds to the consumer contingent on:

25 (A) whether the consumer makes any non-mandatory
26 payments to the provider; or

27 (B) the size of any non-mandatory payments a

1 consumer may make to the provider in connection with the provision
2 of earned wage access services;

3 (3) charge a late fee, interest, or other penalty or
4 charge for failure to pay outstanding proceeds;

5 (4) charge a fee or any other charge in connection with
6 deferring the collection of any outstanding proceeds beyond the
7 original scheduled repayment date;

8 (5) solicit a consumer to delay repayment of
9 outstanding proceeds for the purpose of increasing the total
10 non-mandatory payments the provider may collect;

11 (6) report a consumer's payment or failed repayment of
12 outstanding proceeds to a consumer credit reporting agency or a
13 debt collector;

14 (7) base eligibility for earned wage access services
15 on a consumer's credit score; or

16 (8) provide, sell, or otherwise disclose to any
17 third-party, including an obligor, any nonpublic personal
18 information collected from or about a consumer, except as necessary
19 to provide earned wage access services to the consumer or with the
20 consumer's written consent.

21 (b) The prohibition described by Subsection (a)(2) may not
22 be construed to prohibit a non-mandatory payment equal to a
23 percentage of proceeds provided.

24 (c) An earned wage access services provider is not precluded
25 from using any of the methods described by Section 398.001(8) to
26 compel or attempt to compel repayment of outstanding amounts
27 incurred by a consumer through fraudulent means.

1 Sec. 398.152. FALSE OR MISLEADING REPRESENTATION OR
2 STATEMENT. An earned wage access services provider may not make or
3 use a false or misleading representation or statement to a consumer
4 during the offer or provision of earned wage access services.

5 Sec. 398.153. FRAUDULENT OR DECEPTIVE CONDUCT. An earned
6 wage access services provider may not directly or indirectly engage
7 in a fraudulent or deceptive act, practice, or course of business
8 relating to the offer or provision of earned wage access services.

9 Sec. 398.154. ADVERTISING SERVICES WITHOUT FILING
10 REGISTRATION STATEMENT PROHIBITED. An earned wage access services
11 provider may not advertise its services if the provider has not
12 filed the registration statement required by Subchapter B.

13 Sec. 398.155. WAIVER OF CONSUMER RIGHT PROHIBITED. An
14 earned wage access services provider may not attempt to cause a
15 consumer to waive a right under this chapter.

16 SUBCHAPTER E. SURETY BOND OR ACCOUNT

17 Sec. 398.201. SURETY BOND. (a) The surety bond of an
18 earned wage access services provider must be issued by a surety
19 company authorized to do business in this state.

20 (b) A copy of the bond shall be filed with the secretary of
21 state.

22 Sec. 398.202. SURETY ACCOUNT. (a) The surety account of an
23 earned wage access services provider must be held in trust at a
24 federally insured bank or savings association located in this
25 state.

26 (b) The name of the depository and the trustee and the
27 account number of the surety account must be filed with the

1 secretary of state.

2 Sec. 398.203. AMOUNT OF SURETY BOND OR ACCOUNT. The surety
3 bond or account of an earned wage access services provider must be
4 in the amount of \$10,000.

5 Sec. 398.204. BENEFICIARY OF SURETY BOND OR ACCOUNT. The
6 surety bond or account of an earned wage access services provider
7 must be in favor of:

8 (1) this state for the benefit of a person damaged by a
9 violation of this chapter; and

10 (2) a person damaged by a violation of this chapter.

11 Sec. 398.205. CLAIM AGAINST SURETY BOND OR ACCOUNT. (a) A
12 person making a claim against a surety bond or account of an earned
13 wage access services provider for a violation of this chapter may
14 file suit against:

15 (1) the provider; and

16 (2) the surety or trustee.

17 (b) A surety or trustee is liable only for actual damages,
18 reasonable attorney's fees, and court costs awarded under Section
19 398.253(a).

20 (c) The aggregate liability of a surety or trustee for a
21 provider's violation of this chapter may not exceed the amount of
22 the surety bond or account.

23 Sec. 398.206. TERM OF SURETY BOND OR ACCOUNT. The surety
24 bond or account of an earned wage access services provider must be
25 maintained until the second anniversary of the date on which the
26 provider ceases operations in this state.

27 Sec. 398.207. PAYMENT OF MONEY IN SURETY ACCOUNT TO CREDIT

1 SERVICES ORGANIZATION. (a) A depository may not pay money in a
2 surety account to an earned wage access services provider that
3 established the account or a representative of the provider unless
4 the provider or the provider's representative presents a statement
5 issued by the secretary of state indicating that the requirement of
6 Section 398.206 has been satisfied in relation to the account.

7 (b) The secretary of state may conduct an investigation and
8 require information to be submitted as necessary to enforce this
9 section.

10 SUBCHAPTER F. CRIMINAL PENALTIES AND CIVIL REMEDIES

11 Sec. 398.251. CRIMINAL PENALTY. (a) A person commits an
12 offense if the person violates this chapter.

13 (b) An offense under this chapter is a Class B misdemeanor.

14 Sec. 398.252. INJUNCTIVE RELIEF. A district court, on
15 application of the attorney general or a consumer, may enjoin a
16 violation of this chapter.

17 Sec. 398.253. DAMAGES. (a) A consumer injured by a
18 violation of this chapter is entitled to recover:

19 (1) actual damages in an amount not less than the
20 amount the consumer paid the earned wage access services provider;

21 (2) reasonable attorney's fees; and

22 (3) court costs.

23 (b) A consumer who prevails in an action brought under this
24 section may also be awarded punitive damages.

25 Sec. 398.254. DECEPTIVE TRADE PRACTICE. A violation of
26 this chapter is a deceptive trade practice actionable under
27 Subchapter E, Chapter 17, Business & Commerce Code.

1 Sec. 398.255. STATUTE OF LIMITATIONS. An action under
2 Section 398.253 or 398.254 must be brought not later than the fourth
3 anniversary of the date on which the contract to which the action
4 relates is executed.

5 SECTION 3. A person engaging in business as an earned wage
6 access services provider on the effective date of this Act must
7 register with the secretary of state under Section 398.051, Finance
8 Code, as added by this Act, not later than January 1, 2024.

9 SECTION 4. Sections 398.055 and 398.101, Finance Code, as
10 added by this Act, apply only to a contract for earned wage access
11 services entered into on or after the effective date of this Act.

12 SECTION 5. This Act takes effect September 1, 2023.