

FIRST REGULAR SESSION

# HOUSE BILL NO. 1113

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CUPPS.

2576H.011

JOSEPH ENGLER, Chief Clerk

### AN ACT

To repeal section 361.749, RSMo, and to enact in lieu thereof one new section relating to earned wage access services, with penalty provisions.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 361.749, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 361.749, to read as follows:

361.749. 1. As used in this section, unless the context clearly indicates otherwise, the following terms mean:

(1) "Consumer", any individual;

(2) "Consumer-directed wage access services", the business of offering or providing earned wage access services directly to a consumer based on the consumer's representation and the provider's reasonable determination of the consumer's earned but unpaid income;

(3) "Director", the director of the division of finance within the department of commerce and insurance;

(4) "Division", the Missouri division of finance within the department of commerce and insurance;

(5) "Earned but unpaid income", salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, has been earned or has accrued to the benefit of the consumer in exchange for the consumer's provision of services to the employer or on behalf of the employer, including on an hourly, project-based, piecework, or other basis and including where the consumer is acting as an independent contractor of the employer, but has not, at the time of the payment of proceeds, been paid to the consumer by the employer;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (6) "Earned wage access services", the business of providing consumer-directed wage  
19 access services, employer-integrated wage access services, or both;

20 (7) "Employer":

21 (a) A person who employs a consumer; or

22 (b) Any other person who is contractually obligated to pay a consumer earned but  
23 unpaid income in exchange for a consumer's provision of services to the employer or on  
24 behalf of the employer, including on an hourly, project-based, piecework, or other basis and  
25 including where the consumer is acting as an independent contractor with respect to the  
26 employer.

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28 "Employer" does not include a customer of an employer or any other person whose obligation  
29 to make a payment of salary, wages, compensation, or other income to a consumer is not  
30 based on the provision of services by that consumer for or on behalf of such person;

31 (8) "Employer-integrated wage access services", the business of delivering to  
32 consumers access to earned but unpaid income that is based on employment, income, and  
33 attendance data obtained directly or indirectly from an employer;

34 (9) "Fee":

35 (a) A fee imposed by a provider for delivery or expedited delivery of proceeds to a  
36 consumer;

37 (b) A subscription or membership fee imposed by a provider for a bona fide group of  
38 services that includes earned wage access services; or

39 (c) An amount paid by an employer to a provider on a consumer's behalf, which  
40 entitles the consumer to receive proceeds at reduced or no cost to the consumer.

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42 A voluntary tip, gratuity, or donation shall not be deemed a fee;

43 (10) "Outstanding proceeds", a payment of proceeds to a consumer by a provider that  
44 has not yet been repaid to that provider;

45 (11) "Person", a partnership, corporation, association, sole proprietorship, limited  
46 liability company, or nonprofit or governmental entity;

47 (12) "Proceeds", a payment of funds to a consumer by a provider that is based on  
48 earned but unpaid income;

49 (13) "Provider", a person who is in the business of offering and providing earned  
50 wage access services to consumers.

51 2. (1) No person shall engage in the business of earned wage access services in this  
52 state without first registering as an earned wage access services provider with the division.

53 (2) The annual registration fee shall be one thousand dollars payable to the division as  
54 of the first day of July of each year. The division may establish a biennial registration

55 arrangement, but in no case shall the registration fee be payable for more than one year at a  
56 time.

57 (3) Registration shall be made on forms prepared by the director and shall contain the  
58 following information:

59 (a) Name, business address, and telephone number of the earned wage access services  
60 provider;

61 (b) Name and business address of corporate officers and directors or principals or  
62 partners;

63 (c) A sworn statement by an appropriate officer, principal, or partner of the earned  
64 wage access services provider that:

65 a. The provider is financially capable of engaging in the business of earned wage  
66 access services; and

67 b. If a corporation, that the corporation is authorized to transact business in this state.  
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69 If any material change occurs in the information contained in the registration form, a revised  
70 statement shall be submitted to the director.

71 (4) A certificate of registration shall be issued by the director within thirty calendar  
72 days after the date on which all registration materials have been received by the director and  
73 shall not be assignable or transferable, except as approved by the director.

74 (5) Each certificate of registration shall remain in full force and effect until  
75 surrendered, revoked, or suspended.

76 3. This section shall not apply to:

77 (1) A bank or savings and loan association whose deposits or accounts are eligible for  
78 insurance by the Federal Deposit Insurance Corporation, or a subsidiary of such a bank or  
79 savings and loan association;

80 (2) A credit union doing business in this state; or

81 (3) A person authorized to make loans or extensions of credit under the laws of this  
82 state or the United States, who is subject to regulation and supervision by this state or the  
83 United States.

84 4. Each provider shall:

85 (1) Develop and implement policies and procedures to respond to questions raised by  
86 consumers and address complaints from consumers in an expedient manner;

87 (2) Before entering into an agreement with a consumer for the provision of earned  
88 wage access services, provide a consumer with a written paper or electronic document, which  
89 can be included as part of the contract to provide earned wage access services and which  
90 meets all of the following requirements:

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

92 (b) Fully and clearly discloses all fees associated with the earned wage access  
93 services;

94 (3) Inform the consumer of the fact of any material changes to the terms and  
95 conditions of the earned wage access services before implementing those changes for that  
96 consumer;

97 (4) Provide proceeds to a consumer by any means mutually agreed upon by the  
98 consumer and provider;

99 (5) Comply with all local, state, and federal privacy and information security laws;

100 (6) In any case in which the provider will seek repayment of outstanding proceeds,  
101 fees, or other payments, including voluntary tips, gratuities, or other donations from a  
102 consumer's account at a depository institution and including via electronic funds transfer:

103 (a) Comply with applicable provisions of the federal Electronic Funds Transfer Act  
104 and its implementing regulations; and

105 (b) Reimburse the consumer for the full amount of any overdraft or nonsufficient  
106 funds fees imposed on a consumer by the consumer's depository institution that were caused  
107 by the provider attempting to seek payment of any outstanding proceeds, fees, voluntary tips,  
108 gratuities, or other donations on a date before, or in an incorrect amount from, the date or  
109 amount disclosed to the consumer.

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111 The provisions of this subdivision shall not apply with respect to payments of outstanding  
112 proceeds, fees, tips, gratuities, or other donations incurred by a consumer through fraudulent  
113 or other means; and

114 (7) If a provider solicits, charges, or receives a tip, gratuity, or donation from a  
115 consumer:

116 (a) Clearly and conspicuously disclose to the consumer immediately prior to each  
117 transaction that a tip, gratuity, or donation amount may be zero and is voluntary;

118 (b) Clearly and conspicuously disclose in its service contract with the consumer and  
119 elsewhere that tips, gratuities, or donations are voluntary and that the offering of earned wage  
120 access services, including the amount of the proceeds a consumer is eligible to request and the

121 frequency with which proceeds are provided to a consumer, is not contingent on whether the  
122 consumer pays any tip, gratuity, or donation or on the size of any tip, gratuity, or donation;

123 (c) Refrain from misleading or deceiving consumers about the voluntary nature of  
124 such tips, gratuities, or donations; and

125 (d) Refrain from making representations that tips or gratuities will benefit any  
126 specific, individual person.

127 5. (1) A provider shall not:

128       ~~[(1)]~~ (a) Share with an employer any fees, voluntary tips, gratuities, or other  
129 donations that were received from or charged to a consumer for earned wage access services;

130       ~~[(2)]~~ (b) Charge interest for failure to repay outstanding proceeds, fees, voluntary  
131 tips, gratuities, or other donations;

132       ~~[(3)]~~ (c) Report any information about the consumer regarding the inability of the  
133 provider to be repaid outstanding proceeds, fees, voluntary tips, gratuities, or other donations  
134 to a consumer credit reporting agency or a debt collector;

135       ~~[(4)]~~ (d) Require a consumer's credit report or credit score to determine a consumer's  
136 eligibility for earned wage access services;

137       ~~[(5)]~~ (e) Accept payment from a consumer of outstanding proceeds, fees, voluntary  
138 tips, gratuities, or other donations via credit card or charge card; or

139       ~~[(6)]~~ (f) Compel or attempt to compel repayment by a consumer of outstanding  
140 proceeds, fees, voluntary tips, gratuities, or other donations through any of the following  
141 means:

142       ~~[(a)]~~ a. A suit against the consumer in a court of competent jurisdiction;

143       ~~[(b)]~~ b. Use of a third party to pursue collection from the consumer on the provider's  
144 behalf; or

145       ~~[(c)]~~ c. Sale of outstanding amounts to a third-party collector or debt buyer for  
146 collection from the consumer.

147       (2) The provisions of this ~~[subdivision]~~ **subsection** shall not apply to payments of  
148 outstanding proceeds, fees, tips, gratuities, or other donations incurred by a consumer through  
149 fraudulent or other means or preclude a provider from pursuing an employer for breach of its  
150 contractual obligations to the provider.

151       6. For purposes of the laws of this state:

152       (1) Earned wage access services offered and provided by a registered provider shall  
153 not be considered to be any of the following:

154       (a) A violation of or noncompliance with the laws governing the sale or assignment of  
155 or an order for earned but unpaid income;

156       (b) A loan or other form of credit, and the provider shall not be considered a creditor  
157 or a lender;

158       (c) Money transmission, and the provider shall not be considered a money  
159 transmitter;

160       (2) Fees, voluntary tips, gratuities, or other donations shall not be considered interest  
161 or finance charges.

162       7. The director, or his or her duly authorized representative, may make such  
163 investigation as is deemed necessary and, to the extent necessary for this purpose, may  
164 examine the registrant or any other person having personal knowledge of the matters under

165 investigation, and shall have the power to compel the production of all relevant books,  
166 records, accounts, and documents by registrants.

167 8. (1) An earned wage access services provider shall maintain records of its earned  
168 wage access services transactions and shall preserve its records for at least two years after the  
169 final date on which it provides proceeds to a consumer.

170 (2) Records required by this section may be maintained electronically.

171 9. The division may promulgate rules as may be necessary for the administration of  
172 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
173 created under the authority delegated in this section shall become effective only if it complies  
174 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
175 This section and chapter 536 are nonseverable and if any of the powers vested with the  
176 general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
177 disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
178 rulemaking authority and any rule proposed or adopted after August 28, 2023, shall be invalid  
179 and void.

180 10. (1) Any provider registered pursuant to this section who fails, refuses, or neglects  
181 to comply with the provisions of this section or commits any criminal act may have its  
182 registration suspended or revoked by the director, after a hearing before the director on an  
183 order of the director to show cause why such order of suspension or revocation should not be  
184 entered specifying the grounds therefor, which shall be served on the registrant at least ten  
185 days prior to the hearing.

186 (2) Whenever it shall appear to the director that any provider registered pursuant to  
187 this section is failing, refusing, or neglecting to make a good faith effort to comply with the  
188 provisions of this section, the director may issue an order to cease and desist, which order  
189 may be enforceable by a civil penalty of not more than one thousand dollars per day for each  
190 day that the neglect, failure, or refusal shall continue. The penalty shall be assessed and  
191 collected by the director. In determining the amount of the penalty, the director shall take into  
192 account the appropriateness of the penalty with respect to the gravity of the violation, the  
193 history of previous violations, and such other matters as justice may require.

194 11. All revenues collected by or paid to the director pursuant to this section shall be  
195 forwarded immediately to the director of revenue, who shall deposit them in the division of  
196 finance fund.

197 12. Any earned wage access services provider knowingly and willfully violating the  
198 provisions of this section shall be guilty of a class A misdemeanor.

199           13. If there is a conflict between the provisions of this section and any other state  
200 statute, the provisions of this section shall control.

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