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MEMORANDUM

To: House Committee on Financial Institutions and Pensions
From: Office of Revisor of Statutes
Date: January 30, 2023
Subject: **HB 2105: Enacting the Kansas earned wage access services act, establishing requirements, duties and prohibitions for persons engaged in earned wage access services and providing for the administration of such act by the office of the state bank commissioner.**

House Bill No. 2105 adds 16 new sections of law to be known as the Kansas earned wage access services act.

Section 1 names sections 1 through 16 the Kansas earned wage access services act.

Section 2 provides definitions of terms used in the act. “Earned wage access services” means the business of delivering proceeds to consumers prior to the next date on which an obligor is obligated to pay salary, wages, compensation or other income to a consumer.

Section 3 requires a person to register with the state bank commissioner to engage in any earned wage access services business. This section provides the list of information required to be included on the application for registration form. Applications shall be accompanied by a nonrefundable fee established by rules and regulations of the commissioner. Registrations expire April 30 in each year. At least 30 days prior to expiration, a registration shall be renewed by filing a renewal application and paying a nonrefundable renewal fee.

Section 4 requires each applicant or registrant to file a surety bond with the commissioner and provides the requirements for such surety bond. The bond is to be in the amount \$25,000.

Section 5 establishes requirements earned wage access services providers shall follow before providing a consumer with earned wage access services regarding the disclosure of certain information, treatment of payments and a consumer's right to cancel participation in an earned wage access service at any time without incurring a charge for doing so.

Section 6 provides restrictions on registrants and prohibits certain actions in connection with the providing of earned wage access services.

Section 7 states that a registrant providing proceeds to a consumer in accordance with the act shall not be subject to the provisions of the uniform consumer credit code in connection with

such registrant's earned wage access services. This section also states that non-mandatory payments paid by a consumer in accordance with the act shall not be considered finance charges for purposes of the federal truth in lending act.

Section 8 requires each registrant to file an annual report with the commissioner relating to earned wage access services by provided by the registrant during the preceding calendar year. Information in such report shall be confidential and not subject to the open records act. This section also requires a registrant to file a written report with the commissioner within 30 days of the occurrence of certain events impacting the registrant's business. Failure to make any report required by this section may subject the registrant to a late penalty of \$100 for each day a report is overdue.

Section 9 requires registrants to maintain and preserve earned wage access services business records. If records are located outside the state, the registrant shall provide such records to the commissioner within three days or pay reasonable and necessary expenses for the commissioner or commissioner's designee to examine them at the place where such records are maintained. The registrant may provide the records electronically to the commissioner.

Section 10 establishes the criteria in which the commissioner may deny, suspend, revoke or refuse to renew a registration after notice and opportunity for a hearing conducted in accordance with the Kansas administrative procedure act.

Section 11 requires the commissioner to administer the act and grants the commissioner the ability to exercise certain powers in order to do so, including the power to adopt rules and regulations as necessary to carry out the intent and purpose of the act.

Section 12 establishes the enforcement mechanisms for the commissioner when the commissioner has determined a violation of the act has occurred. Such enforcement mechanisms include issuing cease and desist orders, levying a fine not to exceed \$2,000 per incident, ordering restitution be paid or requiring disgorgement of any profits arising from the violation, ordering a person to take such action that in the judgment of the commissioner will carry out the purposes of the act or barring a person from subsequently applying for registration. The commissioner may also issue emergency orders.

Section 13 establishes requirements in cases of failure or refusal to obey a subpoena and allows a court to issue an order requiring a person to appear before the commissioner. A failure to obey such court order may be punished by the court as contempt of court.

Section 14 establishes criminal penalties when a person is convicted of an intentional violation of the act.

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Section 15 allows the commissioner, attorney general or a county or district attorney to bring an action in district court to enjoin any violation of this act or any rules and regulations adopted thereunder.

Section 16 provides that all fees collected pursuant to this act shall be subject to the provisions of K.S.A. 75-1308. That statute requires that fees of the bank commissioner be deposited in the state treasury with 10% of such deposit credited to the state general fund and the balance credited to the bank commissioner fee fund.

The bill becomes effective upon publication in the statute book, July 1, 2023.