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MEMORANDUM

To: Chairman Longbine and the Senate Committee on Financial Institutions and Insurance
From: Office of Revisor of Statutes
Date: February 8, 2024
Subject: **HB 2105, AFAHC**

HB 2105, as further amended by House Committee would enact the Kansas earned wage access services act. The bill passed out of the House committee of the whole on March 16, 2023 on a vote of 108-13.

Section 1 provides the name and citation of the act. The balloon proposes an amendment to make certain entities exempt from the act. The act shall not apply to a bank holding company regulated by the Federal Reserve, a depository institution regulated by a federal banking agency, or a subsidiary of either one of those entities, if such subsidiary directly owns 25% of the bank holding company or the depository institution's common stock.

Section 2 provides the definitions section of the bill. During the portions of the some of the defined terms were stricken and are being added again in this balloon. You can see an example of this in the definition of "Commissioner."

Notably, the definition of "Consumer directed wage access services" has been simplified to state that it is the "offering or providing earned age access services directly to consumers based on the consumer's representations and the provider's reasonable determination of the consumer's earned but unpaid income.

"Earned but unpaid income" has been amended, adding "salary" and "other" income to the types of income to which the bill applies, making the definition of "earned but unpaid income" to mean "salary, wages, compensation or other income that a consumer has represented and that a provider has reasonably determined to been earned or to have accrued to the benefit of the consumer in exchange for the consumer's provision of services to an employer or on behalf of an 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.

"Earned wage access services" means the business of providing consumer-directed wage access services or employer-integrated wage access services, or both.

"Employer-integrated wage access services" means the business of delivering to consumers access to earned but unpaid income that is based on employment, income and attendance data obtained directly or indirectly from an employer.

Three new defined terms have been added to the section: "Fee," "member," and nationwide multistate licensing system and registry." Those appear in the big box on page 2.

Importantly, "Nonrecourse" means that a provider shall not compel or attempt to compel repayment by a consumer of outstanding proceeds or fees owed by such consumer to such provider through any of three means: a civil suit against the consumer; use of a third party to pursue collection of fees on the provider's behalf, or sale of outstanding amounts to a third-party collector or debt buyer.

The "obligor" is an employer or other person who employs a person in exchange for a 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.

Section 3 requires registration as an earned wage access services provider with the office of the state bank commissioner (OSBC). Section 3 also specifies the information required by the OSBC for registration by a provider. This section requires the bank commissioner to prescribe the form and content of the application for registration not later than the first day of the sixth month beginning after the effective date of this act. The section provides that any person who provided earned wage access services as of the first of this year may continue to provide those services without registering if the person has filed an application for registration as a provider.

Section 4 lists the requirement that an applicant or registrant furnish a surety bond that is payable to the OSBC, provide that the bond may not be terminated without 30 calendar days' prior written notice to the commissioner and provide that the bond shall not expire for two years after the date of surrender, revocation or expiration of the applicant or registrant's registration. The bond shall be in the amount of \$100,000.

Section 5 lists some requirements for providers of earned wage access services. The registrant is required to provide all proceeds on a nonrecourse basis, develop and implement policies and procedures to answer questions and complaints from consumers and provide certain disclosures of consumer rights, services and fees. Additional requirements and strictures places on the registrant's are listed in the biggest box on page 6.

Section 6 describes certain prohibitions on registrants under the act. Registrants are prohibited from compelling or attempting to compel repayment by a consumer of proceeds or payments through certain means listed in the second box on page 6 (under the largest box). Registrants are not allowed to charge certain fees, such as late fees, deferral fees, interest, penalties or other charges for failure to repay outstanding proceeds. Further requirements are listed in the box on the duplicate page 6.

The contents of the original section 7 have been stricken and the new language appears in the large box on page 7. The new provisions of the section carve out certain exceptions from current law for earned wage access services. These provisions include a statement that earned wage access services provided by a registrant shall not be considered a loan or other form of credit.

Section 8 is mostly complete and unamended from the house bill that was passed, and states that each registrant shall file an annual report relating to the earned wage access services provided by the registrant during the previous year. The commissioner is allowed to publish aggregate annual report for multiple registrants in composite form. Section 8 also requires a registrant to provide a written report explaining the occurrence, cause and impact, should any of a list of events occur.

Section 9 requires a registrant maintain and preserve complete and adequate business records and records of each earned wage access services contract during the term of the contract and for five years from the date on which the registrant last provides proceeds to the consumer.

Section 10 authorizes the commissioner to deny, suspend, revoke or refuse to renew a registration issued pursuant to this act if the commissioner finds that the applicant or registrant has engaged in certain activities or if certain conditions occur. The registrant or applicant is entitled to notice and an opportunity for a hearing conducted in accordance with the Kansas Administrative Procedure Act.

Section 11 describes the commissioner's powers, duties and responsibilities in administering the act, and provides that certain information that comes into the commissioner's possession during examinations or investigations shall be considered confidential and not subject to the Kansas open records act.

Section 12 authorizes the commissioner, after notice and opportunity for a hearing, issue any one of certain orders if the commissioner finds that the person has engaged, is engaging in or is about to engage in any act or practice constituting a violation of the act.

Section 13 allows the commissioner to order a person to appear before him or to provide documentary evidence if the person has refused to obey a subpoena that has been issued by any court of competent jurisdiction.

Section 14 states that it is unlawful for any person to violate the provisions of the act, or rules and regulations promulgated thereunder, or any order issued under the act and provides for any intention violation to be classified as a class A nonperson misdemeanor. Penalties scale up, based on subsequent violations.

Section 15 states that the commissioner, attorney general, or county or district attorney to bring an action in district court to enjoin any violation of the act.

Sec. 16 provides that all fees collected by the commissioner be subject to the provisions of K.S.A. 75-1308, and amendments thereto.

If approved, the bill would take effect on July 1, 2024.