

HOUSE BILL No. 2105

By Committee on Financial Institutions and Pensions

1-19

1 AN ACT concerning financial institutions; relating to earned wage access
2 services; enacting the Kansas earned wage access services act;
3 establishing the administration of such act by the office of the state
4 bank commissioner; providing for registration, bond requirements;
5 duties, prohibited acts, reports, records retention, orders, civil fines,
6 penalties and fees.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Sections 1 through 16, and amendments thereto, shall be
10 known and may be cited as the Kansas earned wage access services act.

11 Sec. 2. As used in sections 1 through 16, and amendments thereto:

12 (a) "Act" means the Kansas earned wage access services act.

13 (b) "Commissioner" means the state bank commissioner or the deputy
14 commissioner of the consumer and mortgage lending division of the office
15 of the state bank commissioner.

16 (c) "Consumer" means an individual who is a resident of this state.

17 (d) "Earned but unpaid income" means wages, compensation or
18 income that a consumer has represented, and that a provider has
19 reasonably determined, to have been earned or to have accrued to the
20 benefit of the consumer but, at the time of the payment of proceeds, have
21 not been paid to the consumer by an obligor.

22 (e) "Earned wage access services" means the business of delivering
23 proceeds to consumers prior to the next date on which an obligor is
24 obligated to pay salary, wages, compensation or other income to a
25 consumer.

26 (f) "Mandatory payment" means an amount determined by a provider
27 that must be paid by a consumer to such provider as a condition of
28 receiving or repaying proceeds.

29 (g) "Nationwide mortgage licensing system and registry" means a
30 mortgage licensing system developed and maintained by the conference of
31 state bank supervisors and the American association of residential
32 mortgage regulators for the licensing and registration of licensed mortgage
33 loan originators and other financial service providers.

34 (h) "Nonmandatory payment" means an amount paid by a consumer
35 or an obligor to a provider that does not meet the definition of a mandatory
36 payment. "Nonmandatory payment" includes, but is not limited to:

1 (1) A fee imposed by a provider for delivery or expedited delivery of
2 proceeds to a consumer so long as a provider offers the consumer at least
3 one option to receive proceeds at no cost to the consumer;

4 (2) an amount paid by an obligor to a provider on a consumer's behalf
5 that entitles the consumer to receive proceeds at no cost to the consumer;

6 (3) a subscription or membership fee imposed by a provider for a
7 group of services that include earned wage access services so long as the
8 provider offers the consumer at least one option to receive proceeds at no
9 cost to the consumer; or

10 (4) a tip or gratuity paid by a consumer to a provider so long as the
11 provider offers the consumer at least one option to receive proceeds at no
12 cost to the consumer.

13 (i) "Nonrecourse" means a provider shall not compel or attempt to
14 compel repayment by a consumer of outstanding proceeds or
15 nonmandatory payments owed by such consumer to such provider through
16 any of the following means:

17 (1) A civil suit against the consumer in a court of competent
18 jurisdiction;

19 (2) use of a third party to pursue collection of outstanding proceeds or
20 nonmandatory payments on the provider's behalf; or

21 (3) sale of outstanding amounts to a third-party collector or debt
22 buyer.

23 (j) "Obligor" means an employer or other person who is contractually
24 or legally obligated to pay a consumer earned but unpaid income on an
25 hourly, project-based, piecework or other basis, including where the
26 consumer is acting as an independent contractor. "Obligor" does not
27 include a service provider of an obligor or another third party that has an
28 obligation to make any payment to a consumer based solely on the
29 consumer's agency relationship with the obligor.

30 (k) "Outstanding proceeds" means a payment of proceeds to a
31 consumer by a provider that has not yet been repaid to such provider.

32 (l) "Person" means any corporation, partnership, association or other
33 commercial entity.

34 (m) "Proceeds" means a payment of funds to a consumer by a
35 provider that is based on earned but unpaid income.

36 (n) "Provider" means a person who is in the business of offering and
37 providing earned wage access services to consumers.

38 (o) "Registrant" means a person who is registered with the
39 commissioner as an earned wage access services provider.

40 Sec. 3. (a) No person shall engage in or hold such person out as
41 willing to engage in any earned wage access services business with a
42 consumer without registering with the commissioner. Any person required
43 to be registered as an earned wage access services provider shall submit to

1 the commissioner an application for registration on forms prescribed and
2 provided by the commissioner. Such application for registration shall
3 include:

4 (1) The applicant's name, business address, telephone number and, if
5 any, website address;

6 (2) the name and address of each owner, officer, director, member or
7 partner of the applicant;

8 (3) a description of the ownership interest of any officer, director,
9 member, partner, agent or employee of the applicant in any affiliate or
10 subsidiary of the applicant or in any other entity that provides any service
11 to the applicant or any consumer relating to the applicant's earned wage
12 access services business; and

13 (4) any other information the commissioner may deem necessary to
14 evaluate the financial responsibility, financial condition, character,
15 qualifications and fitness of the applicant.

16 (b) Each application for registration shall be accompanied by a
17 nonrefundable fee that shall be established by rules and regulations
18 adopted by the commissioner.

19 (c) The commissioner shall approve an application and shall issue a
20 nontransferable and nonassignable registration to the applicant when the
21 commissioner:

22 (1) Receives the complete application and fee required by this
23 section; and

24 (2) determines the financial responsibility, financial condition,
25 character, qualifications and fitness warrants a belief that the business of
26 the applicant will be conducted competently, honestly, fairly and in
27 accordance with all applicable state and federal laws.

28 (d) Each earned wage access services registration issued under this
29 section shall expire on April 30 of each year. A registration shall be
30 renewed by filing a complete renewal application with the commissioner
31 at least 30 calendar days prior to the expiration of the registration. Such
32 renewal application shall contain all information the commissioner
33 requires to determine the existence and effect of any material change from
34 the information contained in the applicant's original application, annual
35 reports or prior renewal applications. Each renewal application shall be
36 accompanied by a nonrefundable renewal fee that shall be established by
37 rules and regulations adopted by the commissioner.

38 (e) If the commissioner fails to issue a registration within 60 calendar
39 days after a filed application is deemed complete by the commissioner, the
40 applicant may make written request for a hearing. Upon receipt of such
41 written request for a hearing, the commissioner shall conduct a hearing in
42 accordance with the Kansas administrative procedure act.

43 Sec. 4. Each applicant or registrant shall file with the commissioner a

1 surety bond in a form acceptable to the commissioner. Such surety bond
2 shall be issued by a surety or insurance company authorized to conduct
3 business in this state, securing the applicant's or registrant's faithful
4 performance of all duties and obligations of a registrant. The surety bond
5 shall:

6 (a) Be payable to the office of the state bank commissioner;

7 (b) provide that the bond may not be terminated without 30 calendar
8 days' prior written notice to the commissioner, that such termination shall
9 not affect the surety's liability for violations of this act occurring prior to
10 the effective date of cancellation, and principal and surety shall be and
11 remain liable for a period of two years from the date of any action or
12 inaction of principal that gives rise to a claim under the bond;

13 (c) provide that the bond shall not expire for two years after the date
14 of surrender, revocation or expiration of the applicant's or registrant's
15 registration, whichever occurs first;

16 (d) be available for:

17 (1) The recovery of expenses, fines and fees levied by the
18 commissioner under this act; and

19 (2) payment of losses or damages that are determined by the
20 commissioner to have been incurred by any consumer as a result of the
21 applicant's or registrant's failure to comply with the requirements of this
22 act; and

23 (e) be in the amount of \$25,000.

24 Sec. 5. A provider that is registered in the state of Kansas shall be
25 subject to the following requirements:

26 (a) The registrant shall provide all proceeds on a non-recourse basis
27 and shall treat non-mandatory payments as non-recourse payment
28 obligations.

29 (b) Before providing a consumer with earned wage access services,
30 the registrant shall provide a consumer with a written paper or electronic
31 document, which may be included as part of the contract to provide earned
32 wage access services, that meets all of the following requirements:

33 (1) Informs the consumer of the terms and conditions of the earned
34 wage access services;

35 (2) includes a statement that the commissioner has jurisdiction over
36 the earned wage access services performed by the registrant and provides
37 both a phone number and a website through which consumers can submit
38 complaints about the provider's earned wage access services to the
39 commissioner;

40 (3) is written in a font and using language intended to be easily
41 understood by a layperson; and

42 (4) discloses any non-mandatory payments that may be directly
43 imposed by the registrant in connection with the provision of earned wage

1 access services.

2 (c) The registrant shall provide proceeds to a consumer via any means
3 mutually agreed upon by the consumer and registrant.

4 (d) In any case in which the registrant will seek repayment of
5 proceeds from a consumer, the registrant shall inform the consumer when
6 the registrant will make such registrant's first attempt to seek repayment of
7 such proceeds from the consumer.

8 (e) A registrant that seeks repayment of proceeds from a consumer's
9 depository institution account shall comply with all applicable NACHA
10 rules.

11 (f) A registrant shall permit a consumer to cancel participation in an
12 earned wage access service at any time without incurring a charge for
13 doing so.

14 Sec. 6. No person required to be registered under this act shall:

15 (a) Impose a mandatory payment on a consumer that directly relates
16 to the provision of earned wage access services;

17 (b) charge a late fee, interest or any other penalty or charge for failure
18 to repay outstanding proceeds;

19 (c) make the offering of earned wage access services, either in the
20 amount of proceeds a consumer is eligible to request or the frequency with
21 which proceeds are provided to a consumer, contingent on whether the
22 consumer makes any non-mandatory payments or on the size of any non-
23 mandatory payments that the consumer may make to that registrant in
24 connection with the provision of earned wage access services. This
25 subsection shall not be construed to prohibit a non-mandatory payment
26 equal to a percentage of proceeds provided;

27 (d) charge a deferral fee or any other charge in connection with
28 deferring the collection of any outstanding proceeds beyond the original
29 scheduled repayment date;

30 (e) solicit a consumer to delay repayment of outstanding proceeds for
31 the purpose of increasing the total non-mandatory payments that the
32 registrant may collect;

33 (f) report a consumer's payment or failed repayment of outstanding
34 proceeds to a consumer credit reporting agency or a debt collector;

35 (g) require a credit score to determine a consumer's eligibility for
36 earned wage access services; or

37 (h) provide, sell or otherwise disclose to any third party, including an
38 obligor, any non-public personal information collected from or about a
39 consumer except as necessary to provide earned wage access services to
40 such consumer or in accordance with a consumer's written consent.

41 Sec. 7. (a) A registrant that provides proceeds to a consumer in
42 accordance with this act shall not be subject to the provisions of the
43 uniform consumer credit code in connection with such registrant's earned

1 wage access services.

2 (b) Non-mandatory payments paid by a consumer to a registrant in
3 accordance with this act shall not be considered finance charges for the
4 purposes of applying the federal truth in lending act to the earned wage
5 access services provided by such registrant.

6 Sec. 8. (a) (1) On or before April 1 of each year, each registrant shall
7 file with the commissioner an annual report relating to earned wage access
8 services provided by the registrant in this state during the preceding
9 calendar year. The annual report shall be on a form prescribed by the
10 commissioner.

11 (2) The information contained in the annual report shall be
12 confidential and shall not be subject to the open records act, K.S.A. 45-215
13 et seq., and amendments thereto. The provisions of this paragraph shall
14 expire on July 1, 2028, unless the legislature reviews and acts to continue
15 such provisions pursuant to K.S.A. 45-229, and amendments thereto, prior
16 to July 1, 2028.

17 (b) Within 30 calendar days of any of the following events, a
18 registrant shall file a written report with the commissioner describing the
19 event and such event's expected impact on the registrant's business:

20 (1) The filing for bankruptcy or reorganization by the registrant;

21 (2) the institution of a revocation, suspension or other proceeding
22 against the registrant by a governmental authority that is related to the
23 registrant's earned wage access services business in any state;

24 (3) a felony conviction of the registrant or any of such registrant's
25 owners, officers, principals, directors or partners; or

26 (4) a change in the registrant's name or legal entity status.

27 (c) If a registrant fails to make any report to the commissioner as
28 required by this section, the commissioner may require the registrant to
29 pay a late penalty of \$100 for each day such report is overdue.

30 Sec. 9. (a) Each registrant shall maintain and preserve complete and
31 adequate business records, including a general ledger containing all assets,
32 liabilities, capital, income and expense accounts for a period of three
33 years.

34 (b) Each registrant shall maintain and preserve complete and
35 adequate records of each earned wage access services contract during the
36 term of the contract and for a period of five years from the date on which
37 the registrant last provides proceeds to the consumer.

38 (c) If the registrant's records are located outside this state, the
39 registrant shall provide the records to the commissioner within three
40 calendar days or, at the commissioner's discretion, pay reasonable and
41 necessary expenses for the commissioner or commissioner's designee to
42 examine them at the place where such records are maintained. The
43 registrant may provide such records electronically to the commissioner in

1 a manner prescribed by the commissioner.

2 Sec. 10. The commissioner may deny, suspend, revoke or refuse to
3 renew a registration issued pursuant to this act if the commissioner finds,
4 after notice and opportunity for a hearing conducted in accordance with
5 the provisions of the Kansas administrative procedure act, that:

6 (a) The applicant or registrant has repeatedly or willfully violated any
7 provision of this act, any rules and regulations adopted thereunder or any
8 order lawfully issued by the commissioner pursuant to this act;

9 (b) the applicant or registrant has failed to file and maintain the surety
10 bond required under this act;

11 (c) the applicant or registrant is insolvent;

12 (d) the applicant or registrant has filed with the commissioner any
13 document or statement containing any false representation of a material
14 fact or omitting to state a material fact;

15 (e) the applicant, registrant or any officer, director, member, owner,
16 partner, principal or debt management counselor thereof has been
17 convicted of any crime;

18 (f) the applicant or registrant fails to keep and maintain sufficient
19 records to permit an audit satisfactorily disclosing to the commissioner the
20 applicant's or registrant's compliance with the provisions of this act;

21 (g) the applicant, registrant or an employee of the applicant or
22 registrant has been the subject of any disciplinary action by the
23 commissioner or any other state or federal regulatory agency;

24 (h) a final judgment has been entered against the applicant or
25 registrant in a civil action and the commissioner finds that the conduct on
26 which the judgment is based indicates that it would be contrary to the
27 public interest to permit such person to be registered;

28 (i) the applicant or registrant has engaged in any deceptive business
29 practice;

30 (j) facts or conditions exist that would have justified the denial of the
31 registration or renewal had such facts or conditions existed or been known
32 to exist at the time the application for registration or renewal was made; or

33 (k) the applicant or registrant has refused to furnish information
34 required by the commissioner within a reasonable period of time as
35 established by the commissioner.

36 Sec. 11. (a) The commissioner shall administer the provisions of this
37 act. In addition to other powers granted by this act, the commissioner,
38 within the limitations provided by law, may exercise the following powers:

39 (1) Adopt, amend and revoke rules and regulations as necessary to
40 carry out the intent and purpose of this act;

41 (2) make any investigation and examination of the operations, books
42 and records of an earned wage access services provider as the
43 commissioner deems necessary to aid in the enforcement of this act;

1 (3) have free and reasonable access to the offices, places of business
2 and all records of the registrant that relate to the earned wage access
3 services business. The commissioner may designate persons, including
4 comparable officials of the state in which the records are located, to
5 inspect the records on the commissioner's behalf;

6 (4) establish, charge and collect fees from applicants or registrants for
7 reasonable costs of investigation, examination and administration of this
8 act, in such amounts as the commissioner may determine to be sufficient to
9 meet the budget requirements of the commissioner for each fiscal year.
10 The commissioner may maintain an action in any court to recover such
11 costs;

12 (5) order any registrant or person to cease any activity or practice that
13 the commissioner deems to be deceptive, dishonest, a violation of this act,
14 or of any other state or federal law, or unduly harmful to the interests of
15 the public;

16 (6) exchange any information regarding the administration of this act
17 with any agency of the United States or any state that regulates the
18 applicant or registrant or administers statutes, rules and regulations or
19 programs related to earned wage access services laws;

20 (7) disclose to any person or entity that an applicant's or registrant's
21 application or registration has been denied, suspended, revoked or refused
22 renewal;

23 (8) require or permit any person to file a written statement, under oath
24 or otherwise as the commissioner may direct, setting forth all the facts and
25 circumstances concerning any apparent violation of this act, any rule and
26 regulation adopted thereunder or any order issued pursuant to this act;

27 (9) receive, as a condition in settlement of any investigation or
28 examination, a payment designated for consumer education to be
29 expended for such purpose as directed by the commissioner;

30 (10) delegate the authority to sign any orders, official documents or
31 papers issued under or related to this act to the deputy of consumer and
32 mortgage lending division of the office of the state bank commissioner;

33 (11) require fingerprinting of any registrant, agent acting on behalf of
34 a registrant or other person as deemed appropriate by the commissioner, or
35 the commissioner's designee. The commissioner, or commissioner's
36 designee, may submit such fingerprints to the Kansas bureau of
37 investigation, federal bureau of investigation or any other law enforcement
38 agency for the purposes of verifying the identity of such persons and
39 obtaining records of their criminal arrests and convictions;

40 (12) issue, amend and revoke written administrative guidance
41 documents in accordance with the applicable provisions of the Kansas
42 administrative procedure act; and

43 (13) enter into any informal agreement with any person for a plan of

1 action to address violations of this act.

2 (b) Examination reports and correspondence regarding such reports
3 made by the commissioner or the commissioner's designees shall be
4 confidential and shall not be subject to the provisions of the open records
5 act, K.S.A. 45-215 et seq., and amendments thereto. The commissioner
6 may release examination reports and correspondence regarding the reports
7 in connection with a disciplinary proceeding conducted by the
8 commissioner, a liquidation proceeding or a criminal investigation or
9 proceeding. Additionally, the commissioner may furnish to federal or other
10 state regulatory agencies or any officer or examiner thereof, a copy of any
11 or all examination reports and correspondence regarding the reports made
12 by the commissioner or the commissioner's designees. The provisions of
13 this subsection shall expire on July 1, 2028, unless the legislature reviews
14 and acts to continue such provisions pursuant to K.S.A. 45-229, and
15 amendments thereto, prior to July 1, 2028.

16 (c) For the purpose of any examination, investigation or proceeding
17 under this act, the commissioner or the commissioner's designee may
18 administer oaths and affirmations, subpoena witnesses, compel such
19 witnesses' attendance, introduce evidence and require the production of
20 any matter that is relevant to the examination or investigation, including
21 the existence, description, nature, custody, condition and location of any
22 books, documents or other tangible things and the identity and location of
23 persons having knowledge of relevant facts or any other matter reasonably
24 calculated to lead to the discovery of relevant information or items.

25 (d) The adoption of an informal agreement authorized by this section
26 shall not be subject to the provisions of the Kansas administrative
27 procedure act or the Kansas judicial review act. Any informal agreement
28 authorized by this subsection shall not be considered an order or other
29 agency action and shall be considered confidential examination material.
30 All such examination material shall be confidential by law and privileged,
31 shall not be subject to the provisions of the open records act, K.S.A. 45-
32 215 et seq., and amendments thereto, shall not be subject to subpoena and
33 shall not be subject to discovery or admissible in evidence in any private
34 civil action. The provisions of this subsection shall expire on July 1, 2028,
35 unless the legislature reviews and acts to continue such provisions
36 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

37 Sec. 12. (a) If the commissioner determines after notice and
38 opportunity for a hearing pursuant to the Kansas administrative procedure
39 act that any person has engaged, is engaging or is about to engage in any
40 act or practice constituting a violation of any provision of this act, any
41 rules and regulations adopted or order issued thereunder, the commissioner
42 may issue an order requiring any or all of the following:

43 (1) That the person cease and desist from the unlawful act or practice;

1 (2) that the person pay a fine not to exceed \$2,000 per incident for the
2 unlawful act or practice;

3 (3) if any person is found to have violated any provision of this act
4 and such violation is committed against elder or disabled persons as
5 defined in K.S.A. 50-676, and amendments thereto, the commissioner may
6 impose an additional penalty not to exceed \$2,000 for each such violation,
7 in addition to any civil penalty otherwise provided by law;

8 (4) that the person to pay restitution for any loss arising from the
9 violation or requiring the person to disgorge any profits arising from the
10 violation. Such order may include the assessment of interest not to exceed
11 8% per annum from the date of the violation;

12 (5) that the person take such action as in the judgment of the
13 commissioner will carry out the purposes of this act; or

14 (6) that the person be barred from subsequently applying for
15 registration under this act.

16 (b) (1) If the commissioner makes written findings of fact that the
17 public interest will be irreparably harmed by delay in issuing an order
18 under subsection (a), the commissioner may issue an emergency cease and
19 desist order.

20 (2) Such emergency order, even if not an order within the meaning of
21 K.S.A. 77-502, and amendments thereto, shall be subject to the same
22 procedures as an emergency order issued under K.S.A. 77-536, and
23 amendments thereto.

24 (3) Upon the entry of such an emergency order, the commissioner
25 shall promptly notify the person subject to the order that such order has
26 been entered, the reasons for such order and that a hearing will be held
27 upon written request by such person.

28 (4) If such person requests a hearing or, in the absence of any request,
29 if the commissioner determines that a hearing should be held, the matter
30 shall be set for a hearing that shall be conducted in accordance with the
31 provisions of the Kansas administrative procedure act. Upon completion of
32 the hearing the commissioner shall, by written findings of fact and
33 conclusions of law, vacate, modify or make permanent the emergency
34 order.

35 (5) If no hearing is requested and none is ordered by the
36 commissioner, the emergency order shall remain in effect until such order
37 is modified or vacated by the commissioner.

38 Sec. 13. (a) In case of failure or refusal to obey a subpoena issued to
39 any person, any court of competent jurisdiction, upon application by the
40 commissioner, may issue an order requiring such person to appear before
41 the commissioner, or the officer designated by the commissioner, to
42 produce documentary evidence if so ordered or to give evidence relating to
43 the matter under investigation or in question. Any failure to obey the order

1 of the court may be punished by the court as contempt of court.

2 (b) No person shall be excused from attending, testifying or
3 producing any document or record before the commissioner or in
4 obedience to the subpoena of the commissioner or the commissioner's
5 designee, or in any proceeding instituted by the commissioner, on the
6 ground that such testimony or evidence, documentary or otherwise,
7 required of the person may tend to incriminate the person or subject the
8 person to a penalty or forfeiture. No individual may be prosecuted or
9 subjected to any penalty or forfeiture for or on account of any transaction,
10 matter or thing concerning which such person is compelled, after claiming
11 privilege against self-incrimination, to testify or produce evidence,
12 documentary or otherwise, except that the individual so testifying shall not
13 be exempt from prosecution and punishment for perjury committed in so
14 testifying.

15 Sec. 14. It is unlawful for any person to violate the provisions of this
16 act, any rules and regulations adopted or any order issued under this act. A
17 conviction for an intentional violation is a class A nonperson misdemeanor.
18 A second or subsequent conviction of this section is a severity level 7,
19 nonperson felony. No person may be imprisoned for the violation of this
20 section if such person proves that such person had no knowledge of the
21 rules and regulations or order.

22 Sec. 15. The commissioner, attorney general or a county or district
23 attorney may bring an action in a district court to enjoin any violation of
24 this act or any rules and regulations adopted thereunder.

25 Sec. 16. All fees collected by the commissioner pursuant to this act
26 shall be subject to the provisions of K.S.A. 75-1308, and amendments
27 thereto.

28 Sec. 17. This act shall take effect and be in force from and after its
29 publication in the statute book.