

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS35214-MUF-13A

Short Title: Earned Wage Access Services Act. (Public)

Sponsors: Senators Johnson and Perry (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE EARNED WAGE ACCESS SERVICES ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 53 of the General Statutes is amended by adding a new Article
5 to read:

6 "Article 26.

7 "Earned Wage Access Services Act.

8 **"§ 53-440. Short title.**

9 This act may be cited as the "Earned Wage Access Services Act."

10 **"§ 53-441. Definitions.**

11 The following definitions apply in this Article:

- 12 (1) Commissioner. – The North Carolina Commissioner of Banks.
13 (2) Consumer. – An individual residing in this State.
14 (3) Earned wage access (EWA) service provider. – A person engaged in the
15 business of providing earned wage access services.
16 (4) Earned wage access services. – The payment of earned wages to a consumer
17 prior to the next date on which an obligor is scheduled to pay the consumer,
18 the amount of which is deducted from the obligor's next payment of wages to
19 the consumer.
20 (5) Earned wages. – Money in an amount that a consumer or obligor has
21 represented and that an EWA service provider has verified as accruing to the
22 benefit of the consumer for services rendered to an obligor.
23 (6) Obligor. – An employer or another person that is contractually obligated to
24 pay a consumer a sum of money on an hourly, project-based, piecework, or
25 other basis for services rendered by the consumer. This term does not include
26 a customer of an obligor or other third party whose obligation to pay the
27 consumer is based solely on the consumer's agency relationship with the
28 obligor.

29 **"§ 53-442. Earned wage access services and fees allowed; information sharing.**

30 (a) Earned Wage Access Services. – An earned wage access (EWA) service provider
31 registered under this Article may provide earned wage access services through a contract with an
32 obligor or service provider to an obligor so long as all of the following are true:

- 33 (1) The EWA service provider verifies the consumer's earned wages based on
34 data relating directly to the consumer's earnings in that pay period.
35 (2) The EWA service provider informs the consumer in writing that the consumer
36 has a right to receive the full amount of the obligor's next payment of wages



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1 on the next date on which the obligor is scheduled to pay the consumer if the
2 consumer chooses to not use earned wage access services.

3 (3) The consumer authorizes in writing that the amount of the payment of earned
4 wages from the EWA service provider shall be deducted from the obligor's
5 next payment of wages to the consumer.

6 (b) Information Sharing. – An obligor shall not share information with an EWA service
7 provider relating to the obligor's accrued and expected obligations to the consumer unless all of
8 the following are true:

9 (1) The obligor has entered into a contract for earned wage access services with
10 the EWA service provider.

11 (2) The consumer provides advance consent to sharing that information with the
12 EWA service provider.

13 (c) Fees. – An EWA service provider may impose fees on a consumer for earned wage
14 access services so long as the fees are disclosed in writing to the consumer before the consumer
15 chooses to use the earned wage access services.

16 **"§ 53-443. Article's relationship to other laws.**

17 (a) If an EWA service provider complies with this Article, all of the following are deemed
18 to be true:

19 (1) The EWA service provider's earned wage access services are not lending
20 activity and its payments pursuant to those services are not loans.

21 (2) Any fees for the EWA service provider's earned wage access services are not
22 interest.

23 (b) To the extent that this Article conflicts with any other law, this Article supersedes that
24 law for purposes of regulating earned wage access services in this State.

25 **"§ 53-444. Registration requirement.**

26 (a) A person shall not provide earned wage access services without first registering as an
27 EWA service provider with the Commissioner in a format prescribed by the Commissioner and
28 submitting a registration fee, as required by this section. An EWA service provider shall comply
29 with all provisions of this Article.

30 (b) An EWA service provider shall pay a nonrefundable fee of one thousand dollars
31 (\$1,000) at the time of registration and at the time of each renewal of registration. Registrations
32 shall be renewed every three years.

33 (c) The Commissioner may deny an EWA service provider's registration or renewal of
34 registration for failure to comply with this Article.

35 **"§ 53-445. Registration application.**

36 (a) Application. – Applications for registration under this Article shall be filed in a form
37 acceptable to the Commissioner. To be considered complete, the application shall be verified by
38 attestation of the applicant or a designee of the applicant and shall include all of the following:

39 (1) The applicant's legal name, along with any assumed business name, principal
40 address, including street address and mailing address, contact information,
41 and social security number or taxpayer identification number.

42 (2) The applicant's form and place of organization, if applicable.

43 (3) A certificate of good standing from the state in which the applicant was
44 organized, if applicable.

45 (4) A certificate of authority from the North Carolina Secretary of State to
46 conduct business in this State, if required by Article 15 of Chapter 55 of the
47 General Statutes, or other evidence of the applicant's registration or
48 qualification to do business in this State.

49 (5) The qualifications and business history of the applicant and, if applicable, the
50 business history of any person controlling the applicant, including a

1 description of any injunction or administrative order by any state or federal
2 authority to which the person is or has been subject.

3 (6) A record of any criminal convictions for the applicant, or in the case of an
4 applicant that is an entity, each individual who has control of the applicant,
5 for a 10-year period prior to the date of the application, including the
6 applicant's consent to a federal and State criminal background check and a set
7 of the applicant's fingerprints in a form acceptable to the Commissioner. In
8 the case of an applicant that is an entity, each individual who has control over
9 the applicant shall consent to a federal and State criminal background check
10 and shall submit a set of the individual's fingerprints.

11 (7) The applicant's financial condition, including its credit history, business
12 history, and most recent audited annual financial statement, or if the applicant
13 is a wholly owned subsidiary, of the applicant's parent entity. This statement
14 shall include the balance sheet, statement of income or loss, statement of
15 changes in shareholder equity, if applicable, and statement of changes in
16 financial position.

17 (8) Any additional information that the Commissioner deems relevant.

18 (b) Abandoned Application. – The Commissioner may deem an application abandoned if
19 the applicant fails to respond to a written request for information by the Commissioner within 30
20 days of the date of the request.

21 **"§ 53-446. Examinations; charges.**

22 For the purpose of protecting consumer interests and determining an EWA service provider's
23 compliance with the requirements of this Article, the Commissioner may conduct an examination
24 of an EWA service provider. The EWA service provider shall reimburse the Office of the
25 Commissioner of Banks all reasonable costs and expenses of the examination. In unusual
26 circumstances and in the interest of justice, the Commissioner may waive reimbursement for the
27 costs and expenses of an examination under this section.

28 **"§ 53-447. Rules.**

29 The Commissioner may adopt rules to enforce this Article.

30 **"§ 53-448. Penalties; enforcement.**

31 (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter
32 150B of the General Statutes, the Commissioner may do any of the following:

33 (1) Revoke, suspend, or refuse to renew an EWA service provider's registration.

34 (2) Order an EWA service provider to cease and desist from providing earned
35 wage access services.

36 (3) Assess a civil penalty of not more than one thousand dollars (\$1,000) for each
37 violation or ten thousand dollars (\$10,000) for each violation that the
38 Commissioner finds to be willful.

39 (4) Order the EWA service provider to make restitution to the injured consumer.

40 (b) The powers vested in the Commissioner by this Article are in addition to any other
41 enforcement powers of the Commissioner.

42 (c) An EWA service provider's failure to comply with the requirements of this Article is
43 an unfair or deceptive trade practice under Chapter 75 of the General Statutes."

44 **SECTION 2.** This act becomes effective October 1, 2021.