

**HOUSE BILL NO. 1393**

Introduced by

Representative Dockter

Senator Klein

1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century  
2 Code, relating to payday lending organizations; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 13 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Business entity" means a limited liability company, partnership, or corporation  
9 authorized to engage in business under the laws of this state. The term does not  
10 include a single-member limited liability company.
- 11 2. "Commissioner" means the commissioner of financial institutions.
- 12 3. "Consumer" means an individual who is a resident of this state and who engages in or  
13 intends to engage in an earned income access transaction.
- 14 4. "Control" means:
- 15 a. In the case of a business entity:
- 16 (1) A direct or indirect ownership;
- 17 (2) The right to control twenty-five percent or more of the voting shares of the  
18 business entity; or
- 19 (3) The ability of an individual to elect a majority of the directors or otherwise  
20 affect a change in policy of the business entity.
- 21 b. In the case of any other entity, the ability to exchange the principals of the  
22 organization, whether active or passive.
- 23 5. "Debt collection" means the:

- 1           a. Act of collecting or attempting to collect debts owed or due or asserted to be  
2                     owed or due another; and
- 3           b. Solicitation of debts for the purpose of collection and accepting assignment of  
4                     debts for the purpose of collection.
- 5       6. "Earned but unpaid income" means wages or compensation that have been earned or  
6                     have accrued to the benefit of a consumer but have not been paid by an obligor to that  
7                     consumer for labor or services performed for or on behalf of an obligor.
- 8       7. "Earned income access rate cap" means the limit on the amount that may be charged  
9                     to or received from a consumer, over which the consumer has no option, for an earned  
10                    income access transaction established by the department.
- 11       8. "Earned income access transaction" means the payment of earned but unpaid income  
12                    to a consumer at a time other than the consumer's regular payday or other regularly  
13                    scheduled time on which the obligor pays to the consumer wages or compensation  
14                    earned or that have accrued to the benefit of consumer income.
- 15       9. "Earned income access provider" or "provider" means a person that:
- 16           a. Provides, or offers to provide, on behalf of an obligor earned income access  
17                    transactions to consumers earning wages or compensation from the obligor; or
- 18           b. Offers earned income access transactions to, or enters earned income  
19                    transactions with, consumers.
- 20       10. "Exempt organization" means:
- 21           a. Any banking organization, foreign banking corporation licensed by the  
22                    department to transact business in this state, national bank, federal savings  
23                    bank, federal savings and loan association, federal credit union, or any bank,  
24                    trust company, savings bank, savings and loan association, or credit union  
25                    organized under the laws of this state, another state, or the United States.
- 26           b. A service provider, including a payroll service provider, that verifies available  
27                    earnings, but is not contractually obligated to pay earned but unpaid income as  
28                    part of an earned income access transaction; or
- 29           c. An obligor that offers a portion of salary, wages, or compensation directly to its  
30                    employees or independent contractors before the normally scheduled pay date.

- 1        11. "Fees" means any amount charged or received by a provider to a consumer for an  
2            earned income access transaction, including amounts paid voluntarily as described in  
3            this chapter.
- 4        12. "Licensee" means an earned income access provider licensed by the commissioner.
- 5        13. "Nonrecourse" means the unavailability of any legal cause of action or remedy against  
6            a consumer relating to an earned income access transaction.
- 7        14. "Notice" means communication from the provider to the consumer in a clear and  
8            conspicuous manner.
- 9        15. "Obligor" means a person obligated to pay a consumer any sum of money on an  
10           hourly, project-based, piecework, or other basis for labor or services performed by the  
11           consumer for or on behalf of that person. The term does not include a customer of an  
12           obligor or another third party that has an obligation to make any payment to a  
13           consumer based solely on the consumer's agency relationship with the obligor.
- 14       16. "Proceeds" means funds received by a consumer under an earned income access  
15           transaction.

16        **License.**

- 17        1. An individual or business entity, except for an exempt organization as defined in this  
18           chapter, may not engage in the business of providing or offering earned income  
19           access transactions to consumers, or enter an earned income access transaction with  
20           a consumer, without first obtaining a license under this chapter. An individual or  
21           business entity is considered to be engaging in the business of earned wage access  
22           service if the consumer is located in this state.
- 23        2. An application for a license under this chapter must be in writing, under oath, and in  
24           the form prescribed by the commissioner.
- 25        3. Each applicant shall maintain a tangible net worth of at least twenty-five thousand  
26           dollars or other amount as the commissioner may determine necessary to protect the  
27           public interests.
- 28        4. The financial responsibility, financial condition, business experience, character, and  
29           general fitness of the applicant must reasonably warrant the belief that the applicant's  
30           business will be conducted lawfully and fairly. In determining whether this qualification  
31           is met and for the purpose of investigating compliance with this chapter, the

- 1           commissioner may review and consider the relevant business records and the capital  
2           adequacy of the applicant and the competence, experience, integrity, and financial  
3           ability of any person that is a member, partner, director, officer, or twenty-five percent  
4           or more shareholder of the applicant, and whether the applicant has filed any  
5           appropriate registration with the secretary of state.
- 6           5. Each applicant shall establish that neither the individual nor any officer, director, or  
7           proposed employee of the applicant has been convicted of a crime involving  
8           dishonesty, fraud, or breach of trust. A deferred imposition of sentence or federal  
9           pretrial diversion must be considered a conviction for purposes of this section.
- 10          6. Each applicant shall maintain a bond issued by a surety company authorized to  
11          conduct business in this state, in the amount of fifty thousand dollars, and the  
12          commissioner may require a larger bond if the commissioner determines the larger  
13          bond is necessary based on the volume of the applicant's business.
- 14          7. Each application for a license must include:
- 15           a. An application fee as determined by the commissioner;  
16           b. The legal name of the applicant, residence of the applicant, business address of  
17           the applicant, and, if applicable, the address at which earned wage access  
18           service is provided if different from the business address and, if the applicant is a  
19           business entity, the name and address of every member, officer, and director;  
20           c. The location at which the registered office of the applicant is located; and  
21           d. Any other data or information the commissioner may require with respect to the  
22           applicant and the applicant's directors, officers, members, and shareholders.
- 23          8. The commissioner may establish relationships or contracts with a nationwide  
24          multistate licensing system and registry or other entities designated by a nationwide  
25          multistate licensing system and registry to collect and maintain records and process  
26          transaction fees or other fees related to licensees or other persons subject to the  
27          chapter. The applicant shall pay directly to the nationwide multistate licensing system  
28          any additional fee relating to participation in the nationwide multistate licensing  
29          system.
- 30          9. In connection with an application for licensure as an earned wage access service  
31          provider, or any license renewals, the applicant shall furnish to the nationwide

1 multistate licensing system information concerning the applicant's identity, which may  
2 include:

- 3 a. Fingerprints for submission to the federal bureau of investigation and any  
4 governmental agency or entity authorized to receive information for a state,  
5 national, and international criminal history background check;  
6 b. Personal history and experience in a form prescribed by the nationwide multistate  
7 licensing system, including the submission of authorization for the nationwide  
8 multistate licensing system and the commissioner to obtain:  
9 (1) An independent credit report obtained from a consumer reporting agency  
10 described in the Fair Credit Reporting Act [15 U.S.C. 1681a]; and  
11 (2) Information related to any administrative, civil, or criminal findings by any  
12 governmental jurisdiction; and  
13 c. Any other documents, information, or evidence the commissioner deems  
14 necessary.

15 10. The commissioner may use the nationwide multistate licensing system and registry as  
16 a channeling agent for requesting information from and distributing information to the  
17 department of justice or any governmental agency or to any other source.

18 11. Upon receipt of a completed application, the commissioner shall determine whether  
19 the qualifications prescribed under this chapter are satisfied. The commissioner may  
20 refuse to issue the license if the commissioner finds the financial responsibility,  
21 experience, character, or general fitness of the applicant or any person associated  
22 with the applicant are insufficient to warrant the belief the business will be conducted  
23 honestly, fairly, and efficiently. If the commissioner determines the qualifications are  
24 satisfied and approves the documents, the commissioner shall issue a license to  
25 engage in the earned wage access service business.

26 **Denial of license - Hearing - Notification of change in status.**

27 1. If the commissioner determines an applicant is not qualified to receive a license, the  
28 commissioner shall notify the applicant, in writing, stating the application is denied and  
29 stating the basis for denial. If the commissioner denies an application, the applicant  
30 may request a hearing in accordance with chapter 28-32 before the commissioner on  
31 the question of whether the license should be granted. The hearing must be scheduled

1           within thirty days after receipt of the request. At the hearing, the commissioner shall  
2           reconsider the application and issue a written order granting or denying the  
3           application. If an applicant requests a hearing and the commissioner's denial is  
4           upheld, the commissioner may assess the reasonable out-of-pocket costs incurred for  
5           the hearing to the applicant.

6           2. Within fifteen days of the occurrence of any of the following events, a licensee shall file  
7           a written report with the commissioner describing the event and the event's expected  
8           impact on the activities of the licensee:

9           a. The filing for bankruptcy or reorganization by the licensee.

10          b. The institution of revocation or suspension proceedings against the licensee by  
11          any governmental authority.

12          c. The filing of any criminal charges involving dishonesty, fraud, or breach of trust of  
13          the licensee or any of the licensee's members, directors, officers, or  
14          shareholders.

15          d. Any other event the commissioner identifies by rule.

16           **License renewal.**

17           A license may be renewed upon application, continued qualification for licensure as  
18           required in this chapter, and the payment to the commissioner of the annual license fee, which  
19           is not subject to refund, before December first of each year. A renewal application may be  
20           denied upon the same grounds as would justify denial of an initial application for licensure.  
21           When a licensee has been delinquent in renewing the licensee's license, the department may  
22           charge an additional fee of fifty dollars for the renewal of the license.

23           **Records.**

24           1. Each licensee shall keep and use in the licensee's business any books, accounts, and  
25           records the commissioner may require. A licensee shall preserve required books,  
26           accounts, and records for at least six years. The records of a licensee may be  
27           maintained electronically if the records can be reproduced upon request by the  
28           commissioner and within the time required under this section. When a licensee ceases  
29           operations for any reason, the licensee shall inform the commissioner of the location  
30           of the records. In addition, the licensee shall provide the name of the individual  
31           responsible for maintenance of the records. The licensee shall notify the commissioner

1           within ten business days of the change of the location of the records or the change of  
2           the individual responsible for maintenance of the records.

3           2. An applicant, licensee, or other person subject to this chapter shall comply with any  
4           request for information, documents, or other records from the commissioner within the  
5           time specified in the request, which must be a minimum of ten days, or, if no time is  
6           specified, within thirty days of receipt of the request by the commissioner. If the  
7           request for information is related to a new application or renewal of an existing  
8           application and is not received by the commissioner within the time specified in the  
9           request, or within thirty days of receipt of the request, the commissioner may deny the  
10          application.

11          **Suspension, nonrenewal, or revocation of license.**

- 12          1. The commissioner may issue and serve upon any licensee an order suspending or  
13          revoking a license if the commissioner finds the licensee has been convicted of a  
14          felony or any crime involving dishonesty, fraud, or breach of trust, or the licensee  
15          knowingly or through lack of reasonable care:
- 16          a. Failed to pay the annual license fee imposed under this chapter or any  
17          examination fee imposed by the commissioner;
  - 18          b. Committed any fraud, engaged in any dishonest activities, or made any  
19          misrepresentations;
  - 20          c. Violated this chapter or any rule adopted by the commissioner under this chapter  
21          or violated any other law in the course of the licensee's business activities as a  
22          licensee;
  - 23          d. Made false statements in the application for the license;
  - 24          e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct  
25          of an earned wage access business;
  - 26          f. Failed to fully cooperate with an examination or investigation authorized by the  
27          commissioner;
  - 28          g. Continued to allow any current or former officer, director, or employee to provide  
29          earned income access services or participate in any earned income service  
30          transaction after the officer, director, or employee has been suspended or  
31          removed by an order issued by the commissioner;

- 1           h. Failed to maintain the required bond;
- 2           i. Failed to maintain any required registration with the secretary of state; or
- 3           j. No longer meets the requirements for licensure under this chapter.
- 4        2. An order issued by the commissioner under this section must contain a notice of
- 5        opportunity for hearing under chapter 28-32.
- 6        3. If a hearing is not requested within twenty business days of the date of service upon
- 7        the licensee, the order becomes final.

8        **Temporary suspension - Appeal.**

- 9        1. If the commissioner determines probable cause exists for the suspension or
- 10       revocation of a license, that enforcement of this chapter requires immediate
- 11       suspension of the license pending investigation, or that probable cause exists to
- 12       indicate the continued operation of a licensee's business may create a significant risk
- 13       of serious and ongoing harm to the public while a disciplinary action is pending, the
- 14       commissioner may, upon written notice to the licensee, issue an ex parte order
- 15       suspending the license.
- 16       2. An ex parte order remains in effect until a final order is issued after a full hearing and
- 17       appeal is conducted in accordance with chapter 28-32 or until the suspension is
- 18       otherwise terminated by the commissioner. If a hearing is not requested within twenty
- 19       business days of the date of service of the order upon the licensee, the order becomes
- 20       final.
- 21       3. The commissioner shall conduct a full hearing on the merits of the evidence
- 22       warranting immediate suspension to determine if disciplinary action must be taken
- 23       against the licensee.
- 24       4. The licensee may appeal the ex parte temporary suspension order before a full
- 25       hearing is conducted. For purposes of appeal, the district court shall decide whether
- 26       the commissioner acted reasonably or arbitrarily. The court shall give priority to the
- 27       appeal for prompt disposition.



1        **Suspension and removal of earned wage access service provider officers and**  
2 **employees.**

- 3        1. The commissioner may issue and serve upon any current or former officer, director, or  
4 employee of a licensed business entity, and upon the licensee involved, an order  
5 stating:
- 6        a. That the current or former officer, director, or employee is willfully engaging or  
7 has willfully engaged in any of the following conduct:
- 8            (1) Violation of a law, rule, order, or written agreement with the commissioner;  
9            (2) Harassment or abuse, false or misleading representations to the  
10 commissioner, or unfair practices; or
- 11            (3) An act of commission or omission or practice which constitutes breach of  
12 trust or a breach of fiduciary duty.
- 13        b. The term of suspension or removal from employment and participation within the  
14 conduct or the affairs of an earned wage access service provider.
- 15        2. An order issued by the commissioner under this section must contain a notice of  
16 opportunity for hearing under chapter 28-32. The order becomes effective immediately  
17 upon service on the officer, director, or employee, and remains in effect pending the  
18 outcome of a hearing held in accordance with chapter 28-32.
- 19        3. If a hearing is not requested within twenty business days of the date the order is  
20 served, the order becomes final and the officer, director, or employee must be  
21 removed from any further participation in the affairs of, or employment with, the  
22 licensee.
- 23        4. A contested or default suspension or removal order is effective immediately upon  
24 service of the final order on the current or former officer or employee and upon the  
25 licensee. A consent order is effective as agreed upon in the order. Any current or  
26 former officer or employee suspended or removed from employment and participation  
27 within the conduct or the affairs of a licensee under this section is not eligible, while  
28 under suspension or removal, to be employed or otherwise participate in the affairs of  
29 any financial corporation, financial institution, credit union, or any other entity licensed  
30 by the department of financial institutions.

1       5. When a current or former officer or employee or other person participating in the  
2       conduct of the affairs of a licensee is charged with a felony in state or federal court  
3       which involves dishonesty, fraud, or breach of trust, the commissioner may  
4       immediately suspend the individual from office or prohibit the individual from further  
5       participation in the earned wage access service provider affairs, or both. The order is  
6       effective immediately upon service of the order on the licensee and the individual  
7       charged and remains in effect until the criminal charge is finally disposed of or until  
8       modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or  
9       similar state order or judgment is entered, the commissioner may order the  
10      suspension or prohibition be made permanent. A finding of not guilty or other  
11      disposition of the charge does not preclude the commissioner from pursuing  
12      administrative or civil remedies.

13      6. The commissioner may deny an application to renew a license if the licensee no  
14      longer meets the criteria for licensure or otherwise fails to comply with this chapter.

15      **Violations - Cease and desist orders - Penalties.**

16      Except as otherwise provided in this chapter, any person that willfully provides earned wage  
17      access services without a license is guilty of a class C felony and any person that violates any  
18      other provision of this chapter or any rule adopted under this chapter is guilty of an infraction. If  
19      the commissioner finds, whether without a hearing or after a hearing if a hearing is requested  
20      within twenty days of notice of an action by the commissioner, a person violated this chapter or  
21      any rule adopted under chapter, the commissioner may:

- 22      1. Order the person to cease and desist violating this chapter or the rule;
- 23      2. Require the refund of any fees collected by the person in violation of this chapter; or
- 24      3. Impose a civil penalty not to exceed one hundred thousand dollars per violation upon  
25      a person that willfully violates a law, rule, written agreement, or order under this  
26      chapter. An interested party may appeal the assessment of a civil money penalty  
27      under chapter 28-32 by filing a written notice of appeal within twenty days after service  
28      of the assessment of civil money penalties. A civil money penalty collected under this  
29      section must be paid to the state treasurer and deposited in the financial institutions  
30      regulatory fund.

1       **Investigations and examinations.**

2       1. A licensee shall pay an examination or visitation fee, and the commissioner shall  
3       charge the licensee for the actual cost of the examination or visitation at an hourly rate  
4       set by the commissioner which is sufficient to cover all reasonable expenses  
5       associated with the examination or visitation.

6       2. a. Except as otherwise provided in Public Law 110-289, section 1512, the  
7       requirements under any federal law, chapter 44-04, or section 6-01-07.1,  
8       regarding the privacy or confidentiality of any information or material provided to  
9       the nationwide multistate licensing system and registry, and any privilege arising  
10      under federal or state law, including the rules of any federal or state court, with  
11      respect to the information or material, continue to apply to the information or  
12      material after the information or material has been disclosed to the nationwide  
13      multistate licensing system and registry. Any information and material may be  
14      shared with all state and federal regulatory officials with mortgage industry  
15      oversight authority without the loss of privilege or the loss of confidentiality  
16      protections provided by federal law, chapter 44-04, or section 6-01-07.1.

17      b. The commissioner may enter agreements or sharing arrangements with other  
18      governmental agencies, the conference of state bank supervisors, the American  
19      association of residential mortgage regulators, or other associations representing  
20      governmental agencies.

21      c. Information or material subject to a privilege or confidentiality under this section is  
22      not subject to:

23      (1) Disclosure under any federal or state law governing the disclosure to the  
24      public of information held by an officer or an agency of the federal  
25      government or the respective state; or

26      (2) Subpoena or discovery, or admission into evidence, in any administrative  
27      process, unless with respect to any privilege held by the nationwide  
28      multistate licensing system and registry with respect to the information or  
29      material, the person to which the information or material pertains waives, in  
30      whole or in part, in the discretion of the person, that privilege.

1           d. The commissioner shall take all necessary steps, under any applicable law or  
2           rule, to protect the disclosure of information or material subject to a privilege or  
3           confidentiality under this section. Records subject to a privilege or confidentiality  
4           may be required to be disclosed only pursuant to an order of the court. The court  
5           ordering the disclosure shall issue a protective order to protect the confidential  
6           nature of the records.

7           **Documentation of earned wage access transaction and notification to consumer.**

8           1. Each earned wage access transaction must be documented by a written or electronic  
9           agreement signed or similarly authenticated by the consumer. The original agreement  
10           must contain:

11           a. The name of the licensee.

12           b. The transaction date.

13           c. The amount of the obligation.

14           d. A statement of the total amount of fees charged, expressed as a dollar amount.

15           e. The name and signature of the individual who signs the agreement on behalf of  
16           the licensee.

17           f. The transaction number assigned by the database.

18           g. A statement that indicates the maximum term of the transaction may not exceed  
19           fourteen calendar days.

20           2. The earned wage access service agreement must include in no less than ten-point  
21           font, the following notification: State law prohibits this business from allowing  
22           consumers to have earned wage access totaling more than one thousand dollars  
23           outstanding at any time.

24           3. Before distributing funds as part of an earned wage access transaction, a licensee  
25           shall provide to the consumer a clear and conspicuous notice which indicates:

26           a. An earned wage access service transaction is not intended to meet long-term  
27           financial needs.

28           b. The customer should use an earned wage access service transaction only to  
29           meet short-term cash needs.

30           c. The schedule of fees charged for each earned wage access transaction.

31           d. Any additional information required under federal law.

- 1       4. This section does not apply to earned wage access transactions in which the fees or  
2       charges are paid by the consumer's employer, or for earned wage access transactions  
3       with fees and charges which total less than an effective annual percentage rate of less  
4       than thirty-six percent.
- 5       5. A licensee may charge any fees for the earned wage access service, not to exceed  
6       ten percent of the amount paid to the consumer by the licensee. A fee may not be  
7       deemed interest for any purpose of law. No other fee or charge may be charged for  
8       the earned wage access service, except that a fee, not to exceed the cost to the  
9       licensee, may be charged for registering a transaction on a database administered or  
10      authorized by the commissioner. No fee, including the fee for registering a transaction  
11      on a database, may be charged when the consumer elects the no-cost option.
- 12      6. A licensee may not disburse more than a total of one thousand dollars to a consumer  
13      across earned wage access service transactions. If disbursing an additional amount  
14      would result in the consumer having more than one thousand dollars outstanding  
15      across all licensees, the licensee may disburse only an amount that brings the total to  
16      one thousand dollars.
- 17      7. A licensee may not engage in an earned wage access service transaction with a  
18      consumer who has an aggregate value of all outstanding obligations from any one  
19      consumer exceeding one thousand dollars which is payable to the same or any other  
20      licensee. A licensee may not enter a new earned wage access service transaction with  
21      a consumer within three business days of that consumer's completion of a previous  
22      earned wage access service transaction. A licensee may rely on a written or electronic  
23      representation of a consumer regarding the existence of any outstanding obligations  
24      for earned wage access transactions held by a licensee other than the licensee  
25      receiving the representation until the database provided for under subsection 8 is  
26      operational, and after that time may not rely on a consumer's representation but must  
27      verify the fact using the database.
- 28      8. The commissioner shall administer or authorize the development of a database in  
29      which each transaction must be recorded for the purpose of preventing violations of  
30      this section. The commissioner shall adopt rules governing the creation, structure, and  
31      use of the database.

- 1        9. An earned wage access provider may rely on the information contained in the  
2        database as accurate and is not subject to any administrative penalty or civil liability  
3        due to relying on inaccurate information contained in the database.
- 4        10. A consumer agreeing to an electronic earned wage access service transaction may  
5        repay the obligation at any time before the agreed-upon date. A consumer may  
6        rescind, at no cost, any transaction by the close of the business day following the day  
7        on which the consumer receives payment from the licensee. If a consumer agreeing to  
8        an electronic earned wage access service transaction rescinds the transaction, the  
9        licensee must facilitate the repayment of the funds through the same electronic means  
10       the licensee used to deliver the funds to the customer.
- 11       11. If an electronic debit is returned to the licensee from a payer financial institution due to  
12       insufficient funds, closed account, or a stop payment order, the licensee may seek civil  
13       remedies available to collect the obligation.
- 14       12. A consumer who has authority to authorize an electronic debit and enters an earned  
15       wage access service agreement is not subject to a criminal penalty relating to the  
16       electronic debit or the earned wage access service agreement unless the consumer's  
17       account was closed on the original date of the transaction. A licensee may not pursue  
18       or threaten to pursue criminal penalties against a consumer for criminal penalties  
19       prohibited by this subsection.
- 20       13. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the  
21       conduct of an earned wage access service business.
- 22       14. The amount paid to the consumer by the licensee in an earned wage access service  
23       transaction must be paid in the form of electronic credit to the customer's account.
- 24       15. A licensee may enter a workout agreement with the consumer if the consumer  
25       believes financial hardship prevents the consumer from paying off the earned wage  
26       access service transaction at the end of the original agreement. The workout  
27       agreement must outline the repayment terms in writing and must require weekly,  
28       biweekly, or monthly even installments not to exceed twelve months. An additional  
29       interest or fee may not be charged as part of this workout and the earned wage  
30       access service provider shall continue to report the transaction as an outstanding  
31       earned wage access service transaction on the database administered by the

1           commissioner. Entering a workout agreement is voluntary on the part of the earned  
2           wage access service provider and the consumer.

3        16. A licensee may not renew, repay, refinance, or consolidate an earned wage access  
4           service transaction with the proceeds of another earned wage access service  
5           transaction with that licensee by the consumer. It is presumed that an earned wage  
6           access service transaction initiated within three business days before completion of an  
7           earned wage access service transaction is a violation of this subsection.

8        17. A licensee or any agent of a licensee that willfully violates this section is guilty of a  
9           class A misdemeanor.

10       18. If an earned income access provider takes custody of a consumer's earned but unpaid  
11           income before paying proceeds to the consumer, the provider shall ensure the  
12           proceeds are fully insured by the federal deposit insurance corporation at the  
13           consumer's individual account level. At least quarterly, a provider shall deliver written  
14           notice to each consumer to whom it has paid proceeds in that quarter an itemization of  
15           transactions and costs, the total amount the consumer has paid in fees, information on  
16           how to report complaints to the provider and to the commissioner, definitions of terms  
17           used in the notice, and an explanation of the costs of the services provided.

18       19. It is a violation of this chapter to conduct an earned income access transaction unless:  
19           a. The transaction is nonrecourse;  
20           b. The provider does not engage in debt collection activity or retain the services of  
21           another to engage in debt collection activity in connection with the earned income  
22           access transaction and does not convey the debt itself;  
23           c. If repayment is to be made through a debit of a consumer's account, the debit is  
24           made in accordance with rules established by the commissioner;  
25           d. The provider charges or receives a fee for the earned income access transaction  
26           that does not exceed the earned income access rate cap or charges or receives  
27           no fee for a transaction;  
28           e. No portion of the earned but unpaid income to be paid as part of the earned  
29           income access transaction is used before receipt by the consumer to settle or  
30           pay down an obligation arising from a prior earned income access transaction;

- 1           and no proceeds roll over or are structured in any way to create any continuing  
2           obligation to the provider on the part of a consumer;
- 3           f. The provider offers the consumer at least one reasonable option to obtain  
4           proceeds at no cost to the consumer and clearly explains how to elect a no-cost  
5           option;
- 6           g. The consumer receives the proceeds no less than three business days after a  
7           consumer's request for no-fee procession, no less than one business day after a  
8           consumer's request for processing subject to a fee, and no less than one  
9           business day before the next regularly scheduled date on which the obligor is  
10           scheduled to pay earned wages or income to the consumer;
- 11           h. Before a consumer enters the earned income access transaction, the provider  
12           gives the consumer written notice, of all fees associated with the earned income  
13           access transaction and the full potential cost of the transaction, including the cost  
14           expressed as an annual percentage rate;
- 15           i. If the provider offers consumers the opportunity to pay an additional amount for  
16           an earned income access transaction voluntarily, including a tip or donation:
- 17           (1) The provider gives notice to the consumer in writing that paying an  
18           additional amount is not required for the consumer to receive the proceeds;  
19           and
- 20           (2) The provider offers zero dollars among any amounts suggested to the  
21           consumer by, for example, offering amount options from which the  
22           consumer may select or pre-filling an amount in any form used in the  
23           transaction process, or otherwise using a transaction process designed to  
24           require the consumer to take affirmative action to avoid or opt-out of paying  
25           an additional amount;
- 26           j. The provider does not charge a late fee or prepayment penalty on the earned  
27           income access transaction;
- 28           k. The provider does not pull a credit report or otherwise assess credit risk of the  
29           consumer prior to, during, or after the earned income access transaction except  
30           that the provider may verify the consumer's source of income as part of  
31           determining the amount of the proceeds;



- 1           l. The provider does not report on the earned income access transaction to a  
2           consumer reporting agency prior to, during, or after the transaction;  
3           m. The provider does not require a consumer to waive the right to class action to  
4           engage in an earned income access transaction;  
5           n. The provider gives a consumer written notice of any amendment to the contract  
6           or terms of service for earned income access transactions, and the consumer  
7           agrees to the amendments before proceeding with an earned income access  
8           transaction to which the amendments would apply;  
9           o. If the provider charges a subscription or membership fee it is optional and must  
10          be for a bona fide group of services that include earned income access  
11          transactions; and  
12          p. The consumer is eighteen years of age or older.

13       20. Transactions made in accordance with this section may not be subject to usury laws.

14       **Advertising.**

- 15       1. An advertisement for an earned income access transaction service may not be  
16       misleading or otherwise deceptive.  
17       2. An advertisement for earned income access transaction service shall clearly and  
18       accurately disclose the costs of the service to consumers.  
19       3. The commissioner may adopt rules governing advertising of earned income  
20       transaction services consistent with the purposes of this section.

21       **Regulations and rulings.**

22       The commissioner is authorized and empowered to make rules and regulations, conduct  
23       hearings and make specific rulings, orders, demands and findings as may be necessary for the  
24       proper conduct of the business authorized and licensed under and for the enforcement of this  
25       chapter.