

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 442

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

Sponsors: Senators Moffitt and Hanig (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 3, 2023

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) Control. – The power, directly or indirectly, to direct the management or
15 policy of an entity, whether through ownership of securities, by contract, or
16 otherwise. The following persons are presumed to control an entity:
17 a. A director, general partner, or executive officer of the entity.
18 b. A person that, directly or indirectly, has ownership of or the power to
19 vote ten percent (10%) or more of a class of outstanding voting
20 securities of the entity.
21 c. In the case of a limited liability company, a managing member.
22 d. In the case of a partnership, a person that has the right to receive upon
23 dissolution, or has contributed, ten percent (10%) or more of the
24 capital of the partnership.
25 (4) Earned wage access (EWA) service provider. – A person engaged in the
26 business of providing earned wage access services.
27 (5) Earned wage access services. – The payment of amounts representing earned
28 wages to a consumer prior to the next date on which an obligor is scheduled
29 to pay the consumer, the amount of which is deducted from the obligor's next
30 payment of wages to the consumer.
31 (6) Earned wages. – Money in an amount that a consumer or obligor has
32 represented, and that an EWA service provider has reasonably verified, as
33 having already accrued to the benefit of the consumer for services rendered to
34 an obligor.
35 (7) Nationwide Multistate Licensing System and Registry (NMLS). – The
36 licensing system developed and maintained by the Conference of State Bank



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Supervisors and the American Association of Residential Mortgage Regulators for the registration of persons under this Article.

- (8) Obligor. – An employer or another person that is contractually obligated to pay a consumer a sum of money on an hourly, project-based, piecework, or other basis for services rendered by the consumer. This term does not include a customer of an obligor or other third party whose obligation to pay the consumer is based solely on the consumer's agency relationship with the obligor.

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

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

- (1) The EWA service provider verifies the consumer's earned wages based on data relating directly to the consumer's earnings in that pay period.
- (2) The EWA service provider informs the consumer in writing that the consumer has a right to receive the full amount of the obligor's next payment of wages on the next date on which the obligor is scheduled to pay the consumer if the consumer chooses to not use earned wage access services.
- (3) The consumer authorizes in writing that the amount of the payment of earned wages from the EWA service provider shall be deducted from the obligor's next payment of wages to the consumer.

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

- (1) The obligor has entered into a contract for earned wage access services with the EWA service provider.
- (2) The consumer provides advance consent to sharing that information with the EWA service provider.

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

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

(a) If an EWA service provider complies with this Article, both of the following apply:

- (1) The EWA service provider's earned wage access services are not lending activity and its payments pursuant to those services are not loans.
- (2) Any fees for the EWA service provider's earned wage access services are not interest.

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

"§ 53-444. Registration requirement.

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

(b) An EWA service provider shall pay a nonrefundable fee of one thousand dollars (\$1,000) at the time of registration and at the time of each renewal of registration. Registrations shall be renewed every three years. In addition, an EWA service provider registering for the first time shall pay the actual cost of obtaining a credit report and federal and State criminal background checks and the processing fees required by the Nationwide Multistate Licensing System and Registry.

(c) A registration issued under this Article is not assignable.

1 **"§ 53-445. Registration application.**

2 (a) Application. – Applications for registration under this Article shall be filed through
3 the Nationwide Multistate Licensing System and Registry (NMLS) in a form acceptable to the
4 Commissioner. To be considered complete, the application shall be verified by attestation of the
5 applicant or a designee of the applicant and shall include all of the following:

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

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

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

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

16 (5) The qualifications and business history of the applicant and, if applicable, the
17 business history of any person controlling the applicant, including a
18 description of any injunction or administrative order by any state or federal
19 authority to which the person is or has been subject.

20 (6) A record of any criminal convictions for the applicant, or in the case of an
21 applicant that is an entity, each individual who has control of the applicant,
22 for a 10-year period prior to the date of the application, including the
23 applicant's consent to a federal and State criminal background check and a set
24 of the applicant's fingerprints in a form acceptable to the Commissioner. In
25 the case of an applicant that is an entity, each individual who has control over
26 the applicant shall consent to a federal and State criminal background check
27 and shall submit a set of the individual's fingerprints.

28 (7) The applicant's financial condition, including its credit history, business
29 history, and most recent audited annual financial statement or, if the applicant
30 is a wholly owned subsidiary, the most recent audited annual financial
31 statement of the applicant's parent entity. This statement shall include the
32 balance sheet, statement of income or loss, statement of changes in
33 shareholder equity, if applicable, and statement of changes in financial
34 position.

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

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

39 (c) Approval of Registration. – The Commissioner shall approve an applicant's
40 registration if the Commissioner finds all of the following:

41 (1) The applicant has satisfied the requirements imposed by this Article.

42 (2) The applicant's business will be conducted honestly, fairly, and in a manner
43 commanding the confidence and trust of the community.

44 (3) Persons controlling the applicant, as a group, have degrees of character,
45 competence, and experience that command the confidence and trust of the
46 community and justify the belief that the applicant will operate safely,
47 soundly, and in compliance with the law.

48 (4) The applicant meets other similar requirements determined by the
49 Commissioner.

50 (d) Renewal. – The requirements and procedures of this section also apply to the renewal
51 of a registration.

1 **"§ 53-446. Notice of material change.**

2 If the information contained in any document filed with the Commissioner or the NMLS
3 under this Article is or becomes inaccurate or incomplete in any material respect, the EWA
4 service provider, whether registered or applying for registration, shall within 30 days file a
5 correcting amendment to the information contained in the document.

6 **"§ 53-447. Examinations; charges.**

7 (a) For the purpose of protecting consumer interests and determining an EWA service
8 provider's compliance with the requirements of this Article, the Commissioner may conduct an
9 examination of an EWA service provider.

10 (b) An EWA service provider shall reimburse the Office of the Commissioner of Banks
11 all reasonable costs and expenses of an examination. In unusual circumstances and in the interest
12 of justice, the Commissioner may waive reimbursement for the costs and expenses of an
13 examination under this section.

14 **"§ 53-448. Consumer complaints.**

15 The Commissioner may receive a complaint from a consumer regarding an EWA service
16 provider and, upon receipt of the complaint, may examine the EWA service provider pursuant to
17 G.S. 53-447.

18 **"§ 53-449. Confidentiality.**

19 (a) All information obtained by the Commissioner under this Article is subject to
20 confidential treatment as provided in G.S. 53C-2-7.

21 (b) Notwithstanding any State law to the contrary, the Commissioner shall report
22 enforcement actions under this Article and any other relevant information to the NMLS.

23 (c) The Commissioner may enter into written agreements with other governmental
24 agencies, the Conference of State Bank Supervisors, or other associations representing
25 governmental agencies and may share otherwise confidential information pursuant to these
26 agreements.

27 (d) The requirements of G.S. 53C-2-7 regarding the privacy or confidentiality of any
28 information provided under subsections (b) and (c) of this section and any privilege arising under
29 any other federal or State law with respect to the information continue to apply to the information
30 after it has been disclosed to an entity described in subsection (b) or (c) of this section.
31 Information held by the entity is not subject to disclosure under any State law governing the
32 public disclosure of information held by an officer or agency of the State. The entities described
33 in subsection (b) or (c) of this section may share information with all State and federal regulatory
34 officials with oversight authority without the loss of privilege or the loss of confidentiality
35 protections provided by State and federal law.

36 (e) Nothing in this section prohibits the Commissioner from releasing to the public a list
37 of persons registered under this Article or aggregated financial data on these registrants.

38 **"§ 53-450. Rules; appeal by aggrieved person.**

39 (a) The Commissioner may adopt rules to enforce this Article.

40 (b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule adopted or order
41 issued by the Commissioner may appeal to the State Banking Commission for review upon
42 providing a written notice of appeal within 20 days after the rule was adopted or order was issued.
43 The notice of appeal shall specifically state the grounds for appeal and, in the case of an appeal
44 from a contested case proceeding before the Commissioner, shall set forth in numbered order the
45 assignments of error for review by the State Banking Commission. Failure to specify the
46 assignments of error or failure to comply with the briefing schedule provided by the State
47 Banking Commission constitutes grounds to dismiss the appeal. Any party aggrieved by a
48 decision of the State Banking Commission may petition for judicial review pursuant to
49 G.S. 53C-2-6(b).

50 **"§ 53-451. Penalties; enforcement.**

1 (a) After notice and opportunity for hearing in accordance with Article 3A of Chapter
2 150B of the General Statutes, if the Commissioner finds that an EWA service provider has
3 violated any provision of this Article or any rule adopted under it, the Commissioner may do any
4 of the following:

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

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

8 (3) Assess a civil penalty of not more than one thousand dollars (\$1,000) for each
9 violation or ten thousand dollars (\$10,000) for each violation that the
10 Commissioner finds to be willful. The clear proceeds of civil penalties
11 imposed pursuant to this subdivision shall be remitted to the Civil Penalty and
12 Forfeiture Fund in accordance with G.S. 115C-457.2.

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

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

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

18 **"§ 53-452. Service of process.**

19 (a) A registrant under this Article is deemed to have done both of the following:

20 (1) Consented to the jurisdiction of the courts of this State for an action arising
21 under this Article.

22 (2) Appointed the Secretary of State as the registrant's agent for the purpose of
23 accepting service of process in an action arising under this Article.

24 (b) The Commissioner is deemed to have complied with the requirement of law
25 concerning service of process upon mailing by certified mail notice to a registrant, postage
26 prepaid and addressed to the last known address on file with the Commissioner.

27 **"§ 53-453. Commissioner's participation in nationwide registry.**

28 An EWA service provider shall be registered through the NMLS. In order to carry out this
29 requirement, the Commissioner may participate in the NMLS. G.S. 53-244.119 applies to this
30 section."

31 **SECTION 2.** This act becomes effective May 1, 2024.