

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 998
Finance

(Senator Klausmeier)

Commercial Law - Earned Wage Access Services

This bill establishes a framework for the regulation of “earned wage access services,” and requires providers of those services to register each year with the Office of Financial Regulation (OFR) within the Maryland Department of Labor. The bill establishes (1) registration procedures; (2) surety bond requirements for providers; (3) rules and prohibitions that must be adhered to by providers; (4) reporting requirements for providers; (5) processes for consumer complaints and related enforcement and penalty provisions; and (6) confidentiality and information-sharing requirements for providers. OFR must adopt regulations necessary to carry out the bill’s requirements. A person required to register with OFR as a provider of earned wage access services under the bill may continue to provide services without being registered until April 1, 2025, if the person (1) was a provider of earned wage access services on or before January 1, 2023; (2) has an application for registration pending with OFR; and (3) otherwise complies with the requirements of the bill.

Fiscal Summary

State Effect: OFR can likely implement the bill’s requirements with existing resources. As the bill is not expected to apply to a substantial number of providers, special fund revenues (from registration fees) are not materially affected. Similarly, the bill’s penalty provisions are not expected to materially affect general fund revenues.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

“Earned but unpaid income” generally means salary, wages, compensation, or other income that has been earned or accrued by a consumer but has not yet been paid by the employer, as specified.

“Earned wage access services” means the business of providing consumer-directed earned wage access services or employer-integrated earned wage access services (or both).

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

A “provider” of earned wage access services does *not* include (1) a service provider, such as a payroll service provider, whose role may include verifying the available earnings but is not contractually obligated to fund any proceeds delivered as part of an earned wage access service or (2) an employer that offers a portion of salary, wages, or compensation directly to its employees or independent contractors before the normally scheduled pay date.

Registration Requirements and Procedures

To register with OFR, a provider must (1) submit a registration on the relevant form; (2) file a bond or bond alternative (unless granted an exemption) with OFR; and (3) fulfill any other requirements for registration. The registration must include any information that OFR requires by regulation.

Generally, all fees and other revenues collected pursuant to the bill must be deposited into the Nondepository Special Fund. OFR may require a provider to register through NMLS or through other means specified by regulation.

Surety Bond Requirements

Generally, a provider must file a surety bond or irrevocable letter of credit with OFR. Among other specified requirements, the bond or letter of credit must be in an amount of up to \$100,000, as determined by OFR in regulation. The bill establishes conditions and procedures for making a claim against the bond.

General Requirements

A provider required to register under the bill must:

- develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner;
- under the terms of any agreement for the provision of earned wage access services that is entered into, renewed, or modified on or after October 1, 2024, offer to consumers at least one reasonable option to obtain proceeds at no cost and clearly explain how to elect the no-cost option;
- before entering into an agreement with a consumer for the provision of earned wage access services (1) inform the consumer of the consumer's rights under the agreement and (2) fully and clearly disclose all fees associated with the earned wage access services;
- inform the consumer of any material changes to the terms and conditions of the earned wage access services before implementing the changes for the consumer;
- subject to certain exceptions, allow the consumer to cancel the use of the provider's earned wage access services at any time, without incurring a cancellation fee or penalty imposed by the provider;
- comply with all applicable local, state, and federal privacy and information security laws;
- if the provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, clearly and conspicuously disclose certain information (*e.g.*, that a tip, gratuity, or other donation amount is voluntary and may be zero); and
- provide proceeds to a consumer by any means mutually agreed on by the consumer and the provider.

If a consumer has initiated an advance of proceeds, a provider may require the effective date of a cancellation of the provider's earned wage access services to occur after the consumer has satisfied any repayment obligation the consumer has to the provider, either through (1) payroll deduction; (2) a preauthorized electronic funds transfer from a consumer's account or depository institution; or (3) other means previously agreed to by the consumer and the provider. However, these requirements do not require a provider to allow a consumer-initiated advance to be canceled, revoked, suspended, or reversed after the consumer initiates the advance.

A provider required to register under the bill that seeks repayment of outstanding proceeds or payment of fees or other amounts owed (including voluntary tips, gratuities, or other donations in connection with the activities covered by the bill) from a consumer's depository institution, including by means of electronic funds transfer must:

- comply with applicable federal laws and regulations; and
- except in certain cases (*e.g.*, fraud) reimburse the consumer for the full amount of any overdraft or insufficient funds fees imposed on the consumer by the consumer's depository institution that were caused by the provider attempting to seek repayment, as specified.

Prohibitions

The bill establishes numerous prohibitions for providers. Among other prohibitions, a provider required to register with OFR may not:

- share with an employer a portion of any fees, voluntary tips, gratuities, or other donations that were received from (or charged to) a consumer for earned wage access services;
- require a consumer's credit report or a credit score provided or issued by a consumer reporting agency to determine a consumer's eligibility for earned wage access services; or
- accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer by means of a credit card or charge card.

Reporting Requirement

By July 1 each year, a provider required to register with OFR must submit a report to OFR that includes specified information related to earned wage access services the provider provided in the State during the immediately preceding year. Failure by a provider to submit a timely report must be grounds for disciplinary action by OFR. Generally, the information contained in the annual report is confidential and not subject to public copying or inspection under the Maryland Public Information Act. Nevertheless, OFR may prepare and make publicly available an aggregated and anonymized analysis of the submitted information. The bill also establishes recordkeeping requirements.

Consumer Complaints

A consumer who has reason to believe that the bill or any other related law has been violated by a person subject to the bill's requirements may file with OFR a written complaint describing the details of the alleged violation. OFR may initiate an investigation and inspect the books, records, letters, and contracts of a provider relating to the specific written complaint or the alleged violation.

Enforcement Provisions

OFR, in addition to taking any other action authorized by law, may (1) hold a hearing on the complaint at a time and place in the State reasonably convenient to the parties involved; (2) subpoena and take depositions of witnesses; (3) conduct investigations considered necessary; (4) administer oaths; (5) issue orders for compliance with the bill; and (6) issue cease and desist orders if after a hearing OFR finds a violation has occurred.

Instead of (or in addition to) any other action OFR may take under the bill or any other provision of law, OFR may impose a civil penalty of up to \$1,000 for a first violation and \$2,500 for each subsequent violation. OFR must consider specified factors when determining the amount of a civil penalty. OFR must pay all fines and penalties collected into the general fund. The bill establishes procedures for further enforcement in instances in which a person fails to comply with the above requirements.

A provider must pay OFR a per-day fee set by OFR for each employee engaged in any investigation of the provider conducted pursuant to the bill that is considered necessary.

Finally, the bill establishes confidentiality requirements and specifies the manner in which information sharing by OFR may be conducted.

Current Law: There is no direct federal or State law on the topic of earned wage access.

OFR notes that employers have long offered their employees (mostly low-wage and hourly workers) the opportunity to access some of their accrued wages before the end of a payroll cycle. Recently, this service has become known as “earned wage access.”

Historically, employers offered earned wage access directly. However, beginning in the 2010s, payroll and other third parties developed products that could offer that product or service *on behalf of* the employer and at no cost to the employee. These types of services have been growing in popularity, (sometimes billed as “work today, get paid tomorrow”) and allow consumers earlier access to their earned (but not yet paid) wages.

Small Business Effect: OFR notes the bill’s establishment of a regulatory framework for earned wage access in the State may encourage small businesses to utilize the products to assist employees who seek early access to their pay, particularly given that the bill only requires registration (rather than licensing).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1425 (Delegate Fraser-Hidalgo) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

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