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Bill Analysis

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Primary Sponsors: Reps. Williams and Upchurch

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SUMMARY

- Requires businesses that provide earned wage access (EWA) services to register with the Division of Financial Institutions within the Department of Commerce.
- Establishes a process through which a business may apply for a certificate of registration.
- Requires investigations and background checks for applicants and key officers.
- Regulates the operation of businesses providing EWA services.
- Establishes consumer rights and protections.
- Prohibits local fees and assessments related to EWA services.

DETAILED ANALYSIS

Earned wage access services

Background

Earned wage access (EWA) services are a financial tool by which a “provider” gives a “consumer” an advance on “earned but unpaid income,” i.e., salary, wages, compensation, or other income that the consumer has earned or accrued in exchange for the provision of services to an employer, but for which the consumer has not been paid by the employer. In other words, EWA services allow consumers to receive their pay on-demand, rather than waiting for their next paycheck. Such an advance may include income earned for services performed on an hourly, project-based, piecework, or other bases, or where the consumer acts as an independent contractor. Once that consumer receives their paycheck, they (or their employer) are required to

repay the proceeds received as advance income. Typically, the EWA provider charges a fee in exchange for providing such an advance.¹

EWA services may be either “consumer-directed” or “employer-integrated.” In a consumer-directed EWA transaction, a consumer makes an agreement directly with a provider. The consumer discloses how much earned but unpaid income they have accrued and, if the provider accepts that amount as legitimate, the provider may agree to loan the consumer that amount (or a lesser amount). Once the consumer receives their paycheck, they must repay the amount received from the provider (referred to by the bill as “proceeds”), plus any fees charged by the EWA provider, by an agreed-upon date.²

In an “employer-integrated” EWA transaction, an EWA provider receives employment and income data directly from an employer, as opposed to the consumer. Generally, employer-integrated EWA services involve agreements where the employer automatically pays the provider the consumer’s wages. Employer-integrated EWA services typically involve longer-term agreements between employers and providers and, often, the employer pays any fees associated with the service.³

Registration requirement and procedures

The bill prohibits any company from providing EWA services without receiving a certificate of registration from the Division of Financial Institutions within the Department of Commerce. The bill defines “company” as a business entity other than an individual or sole proprietorship, including a firm, business trust, partnership, limited liability company, association, corporation, or general partnership. Individuals and sole proprietorships are not permitted to register as EWA providers and, accordingly, appear to be barred from providing EWA services.

The Superintendent of Financial Institutions may require companies to utilize the Nationwide Multistate Licensing System (NMLS) to apply for or renew certificates of registration; to collect information regarding the company and its key officers; to conduct background checks using criminal fingerprint history, civil or administrative records, or credit history; and to establish other registration requirements as necessary. The bill also permits the Superintendent to set or reset renewal and reporting dates, establish requirements for amending or surrendering a registration, and to engage in any other activities that the Superintendent considers necessary for participation in the NMLS.⁴

Application and fees

The bill requires a company registering as an EWA service provider to submit a written application, under oath, in the form prescribed by the Division. The application must include an

¹ R.C. 1320.01(C), (E), (F), (G), and (M).

² R.C. 1320.01(D) and (L).

³ R.C. 1320.01(H).

⁴ R.C. 1320.01(B) and 1320.02.

affirmation that the EWA service provider will abide by the requirements of the bill and contain all other information required by the Superintendent. If the applicant is a foreign corporation, the applicant must first obtain and maintain a license to conduct business under the Ohio Foreign Corporation Law.

The bill requires applicants to pay a nonrefundable \$300 annual registration fee and a nonrefundable \$200 investigation fee. If the application necessitates an investigation outside of Ohio, and it appears that the actual expenses of conducting the investigation will exceed \$200, the Division may require the applicant to advance sufficient funds to pay those expenses. The Division is required to furnish the applicant with an itemized statement of all investigation fees in excess of \$200.

If the \$300 annual registration fee is not sufficient to cover the estimated expenditures of the Consumer Finance Section of the Division in administering and enforcing the EWA law, the bill allows the Superintendent to assess an additional fee on each registrant. The additional fee must not exceed ten cents for each \$100 of fees, tips, gratuities, and donations received by a registrant during the previous calendar year. Furthermore, the bill prohibits the fee from being less than \$250 per registrant, or more than \$2,000 per registrant. The additional fee is due on the last day of June.⁵

Investigation

The bill requires the Division to conduct an investigation of each applicant comprising of both a civil and criminal records check of the key officers of that applicant. The bill defines “key officer” as the chief executive officer, chief financial officer, or chief compliance officer. The Superintendent may also require a civil and criminal background check of other persons that have authority to direct and control the applicant’s operations. As part of the required criminal history records check, the Superintendent must request criminal record information from the Federal Bureau of Investigation (FBI). In addition, the Superintendent must request that the Bureau of Criminal Identification or an approved vendor conduct a criminal records check based on the applicant’s, key officer’s, or other person’s fingerprints, or, if their fingerprints are unreadable, their Social Security number. All fees associated with the background check must be paid by the applicant.⁶

Missing information

The bill permits the Superintendent to treat an application as withdrawn if it does not contain all of the required information, the Superintendent requests the information in writing (including by fax or electronic transmission), and the applicant fails to provide the missing information to the Division within 90 days after that request is sent. The same procedures concerning missing information apply to registration renewals.⁷

⁵ R.C. 1320.03(A)(1), (A)(2), and (B).

⁶ R.C. 1320.01(J) and 1320.03(A)(3) and (4).

⁷ R.C. 1320.03(A)(5) and (8).

Net worth and assets

An applicant seeking registration as an EWA provider must maintain a net worth of at least \$50,000, alongside assets of at least \$50,000, either in use or readily available for use as part of conducting business for each certificate of registration.⁸

Approval or denial of application

If the Division determines that the applicant meets all requirements prescribed by statute and rule, and that the applicant has the financial responsibility, experience, and general fitness to command confidence of the public that the business will be operated honestly and fairly, the Division must issue a certificate of registration to the applicant. The bill prohibits the Superintendent from using a credit score as the sole basis to deny registration.

Conversely, if the Division finds that the applicant does not meet the requirements prescribed by statute and rule, the Division must deny the application. Upon making such a determination, the division must send the applicant notice of the denial, including an explanation of why the application was denied and of the applicant's opportunity to appeal under the Administrative Procedure Act.⁹

Expiration and renewal

Certificates of registration expire annually on December 31. An EWA provider may renew the provider's registration by filing a renewal application and paying a \$300 annual registration fee on or before that date. The bill prohibits the Superintendent from approving the renewal of a registration if the applicant is subject to an order of suspension, revocation, or an unpaid and past due fine or assessment.¹⁰

Reciprocity

The bill provides reciprocity for companies which hold a license or registration to offer EWA services in other states. If the company pays all applicable fees and assessments, the bill requires the Division to issue it a certificate of registration.¹¹

Change in ownership

If a registered EWA provider's ownership changes by 5% or more, the Division may investigate the company to determine whether that change results in conditions which would have warranted a denial of the application for registration. If so, the Division may revoke the company's certificate of registration.¹²

⁸ R.C. 1320.03(D).

⁹ R.C. 1320.03(A)(6) and (10).

¹⁰ R.C. 1320.03(A)(7), (8), and (9).

¹¹ R.C. 1320.03(C).

¹² R.C. 1320.03(A)(11).

Location of business

A registered EWA provider may offer EWA services online or at one or more physical places of business in Ohio. A provider may receive more than one certificate of registration, but it may only receive one certificate for each place of business. If a registrant wishes to move their place of business to a different municipal corporation, it must file a new application and pay the requisite fees, including an investigation fee if required by the Superintendent. However, an applicant may move location within the original municipal corporation or change the name of the business as long as they provide written notice to the Division, which in turn must provide a new certificate for the new name or address at no cost.¹³

Required actions

The bill requires EWA providers to comply with several process requirements related to the provision of EWA services. These include requirements related to disclosures, consumer rights, repayment, and statutory compliance.

Disclosures

The bill requires the following disclosures related to the provision of EWA services:

- A provider must fully and clearly disclose all fees associated with the EWA services prior to entering into an agreement with a consumer;
- A provider must inform a consumer of any material changes to the terms and conditions of the EWA services before implementing those changes;
- If a provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, it must clearly and conspicuously disclose to the consumer that the tip or gratuity amount may be zero, and is voluntary;
- A provider must disclose in its service contract with a consumer and elsewhere that tips or gratuities are voluntary and that the offering of EWA services, including the amount of proceeds a consumer is eligible to request and the frequency with which proceeds are provided to a consumer, is not contingent on whether the consumer pays any tip or gratuity, or its size.¹⁴

Consumer rights

The bill imposes the following requirements upon EWA service providers related to consumer rights:

- A provider must develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner;

¹³ R.C. 1320.03(E).

¹⁴ R.C. 1320.05(C)(2), (D), and (G).

- A provider must offer at least one reasonable option to obtain proceeds at no cost to consumers and clearly explain how to elect that no-cost option;
- A provider must inform a consumer of the consumer's rights under an agreement for the provision of EWA services prior to entering into the agreement with a consumer;
- A provider must allow the consumer to cancel use of the provider's EWA services at any time, without incurring a cancellation fee or penalty;
- A provider must provide proceeds to a consumer by means mutually agreed upon by the consumer and the provider.¹⁵

Repayment

The bill requires a provider that seeks repayment of outstanding proceeds, fees, tips, donations, or gratuities from a consumer's depository institution to comply with the federal Electronic Funds Transfer Act and all related regulations. Furthermore, if a provider attempts to recover the wrong amount of funds, or attempts to recover the funds on a date other than the date disclosed to the consumer in the EWA service agreement, the provider must reimburse the consumer for any overdraft or nonsufficient funds fees charged by the consumer's depository institution as a result of that error. The bill's requirements do not apply when a consumer's outstanding amounts or fees were incurred through fraudulent or otherwise unlawful means.¹⁶

Compliance with state, local, and federal law

The bill expressly requires providers to comply with all applicable local, state, and federal privacy and information security laws.¹⁷

Prohibited actions

The bill prohibits EWA providers from doing any of the following:

- Share with employers any fees, tips, or other proceeds charged to or received from a consumer for EWA services;
- Require a consumer's credit report or credit score provided or issued by a consumer reporting agency to determine the consumer's eligibility for EWA services;
- Accept payment of any outstanding proceeds, fees, or other donations from a consumer by means of a credit card or charge card;
- Charge any late fees, interest, or other penalties for a consumer's failure to pay outstanding proceeds, fees, or other donations;

¹⁵ R.C. 1320.05(A), (B), (C)(1), (E), and (H).

¹⁶ R.C. 1320.05(I).

¹⁷ R.C. 1320.05(F).

- Report to any consumer reporting agency or debt collector any information about a consumer's inability to repay outstanding proceeds, fees, or other donations;
- If a provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, a provider may not mislead or deceive consumers about the voluntary nature of the tips or gratuities, or make representations that tips or gratuities will benefit any specific individuals.

In addition, a provider must not compel or attempt to compel a consumer to pay outstanding proceeds, fees, or other donations by bringing a civil action against the consumer in court, by using a third party to pursue collection from the consumer, or by selling the outstanding amounts to a third-party debt collector or debt buyer. However, this does not preclude other lawful means from collecting outstanding amounts from a consumer, or from enforcing the terms of a contract between a provider and employer if the employer breaches its obligations. So while a provider may not bring a civil action against a consumer for nonpayment, it may do so against an employer with which it has a contractual agreement.¹⁸

Recordkeeping and reports

The bill requires EWA service providers to maintain books, accounts, and records with respect to EWA services that will enable the Division to determine whether the provider is complying with the bill and related rules. These records must be separate from those pertaining to transactions that are not subject to the bill. The Superintendent may examine the records of a registrant as often as the Superintendent considers necessary.

In addition, each provider must file an annual report with the Division concerning the business and its operations for the preceding calendar year. Providers with more than one location in Ohio must file a report for each location. The bill requires the Division to publish an analysis of this data, but the individual reports are not open to public inspection. The Division's analysis must include all of the following:

- Gross revenue attributable to EWA services;
- The total number of transactions in which proceeds were remitted to consumers;
- The total number of unique consumers to whom proceeds were remitted;
- The total dollar amount of proceeds remitted to consumers;
- The total dollar amount of fees, tips, gratuities, and donations received from consumers;
- The total number of transactions and the total dollar amount of transactions in which proceeds were remitted to consumers for which providers did not receive repayment of any outstanding proceeds;
- The total number of transactions and the total dollar amount of transactions in which proceeds were remitted to consumers, for which providers received partial repayment of

¹⁸ R.C. 1320.06

outstanding proceeds, and the total dollar amount of unpaid, outstanding proceeds attributable to those transactions;

- The total number of transactions and the total dollar amount of transactions in which outstanding proceeds were repaid after the original, scheduled repayment date;
- Any other nonprivate information required by the Superintendent.¹⁹

Applicability

Despite EWA services resembling a short-term loan, the bill very specifically differentiates these services from loans and other financial services. The bill specifically states that EWA services are not considered a loan or other form of credit, a money transmission, or a violation of, or noncompliant with, any provisions governing the sale or assignment of earned but unpaid income. Similarly, fees, tips, or other donations paid by the consumer to a provider are not interest or finance charges. As such, an EWA provider is not considered a creditor, debt collector, lender, or money transmitter and is not subject to the provisions of the Revised Code governing money transmitting, other loans, or other credit transactions.

The bill also expressly exempts certain entities from EWA provider regulations. Specifically, any entity chartered and lawfully doing business pursuant to any state or federal law as a bank, savings bank, trust company, savings and loan association, credit union, or a subsidiary of any of those entities which is regulated by a federal banking agency and owned and controlled by one of those depository institutions is not subject to the bill.²⁰

Enforcement and penalties

The Superintendent has the power to investigate any company or individual for violations of the bill or of any rule or order promulgated under the bill. This includes conducting hearings, compelling through subpoena witnesses residing in Ohio, and taking depositions, so long as a witness is reimbursed for the fees and mileage incurred for their attendance. The Superintendent may also compel the production of, and examine, all relevant books, records, accounts, and other documents by an order or subpoena duces tecum.

In connection with any investigation, the Superintendent may file an action in the appropriate Court of Common Pleas to obtain an injunction, temporary restraining order, or other appropriate relief against any company or individual engaging or proposing to engage in any violation of the bill. If a company or individual does not comply with a subpoena or subpoena duces tecum, the Superintendent may apply to the Court of Common Pleas of Franklin County for an order compelling the company or individual to comply with the subpoena or subpoena duces tecum, or else an order to be held in contempt of court.

If the Superintendent determines that a provider has failed to comply with an order issued by the Superintendent, or that any fact or condition currently exists that would have warranted denial of a certificate of registration at the time the provider had registered with the Division,

¹⁹ R.C. 1320.04 and 1320.07.

²⁰ R.C. 1320.03(F) and 1320.09.

the Superintendent is required to revoke that provider's certificate of registration. The Superintendent may also impose fines of up to \$1,000 per violation of the bill.²¹

Preemption

The bill prohibits the state or any political subdivision from requiring an EWA provider to pay any fee or assessment, other than those expressly authorized by the bill, as a condition of providing EWA services.²²

Administration

The Division of Financial Institutions is responsible for administering the bill's registration requirement and all regulations on EWA services. The bill prohibits the Superintendent and any deputy, assistant, clerk, examiner, or any other person employed by the Division to assist in the administration of this chapter from being interested in a business registered under the bill, either directly or indirectly. If one of those individuals does have an interest in a business registered under the bill, or becomes interested in such a business, that individual is no longer eligible to hold or retain that position.

The bill authorizes the Superintendent to adopt any rules and issue orders required to enforce and carry out the purposes of this chapter. Furthermore, the bill exempts any regulatory restrictions adopted pursuant to the bill from the requirements of sections 121.95 to 121.953 of the Revised Code, which would otherwise require a complementary reduction in regulatory restrictions by the Division.

Any fees, charges, penalties, or forfeitures collected pursuant to the bill are deposited into the Consumer Finance Fund, which may be used in part to cover expenses related to the administration of the bill.²³

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 05-15-24 |

ANHB0553IN-135/ar

²¹ R.C. 1320.08.

²² R.C. 1320.03(G).

²³ R.C. 1320.10 and 1321.21.