

26 Be It Enacted by the Legislature of the State of Florida:

27

28 Section 1. Chapter 437, Florida Statutes, of sections
29 437.01-437.06, is created to read:

30

31 Chapter 437

32 Earned Wage Access Services

33 437.01 Short title.—This chapter shall be cited as the
34 "Florida Earned Wage Access Services Act."

35 437.02 Definitions.—As used in this chapter, the term:

36 (1) "Applicant" means a provider that has submitted an
37 application for a certificate of registration under s. 437.03.

38 (2) "Business entity" means any corporation, limited
39 liability company, partnership, association, or other commercial
40 entity.

41 (3) "Commission" means the Financial Services Commission.

42 (4) "Consumer" means a person who resides in the state.

43 (5) "Consumer-directed earned wage access services" means
44 the business of delivering to consumers access to earned but
45 unpaid income that is based on the consumer's representations
46 and the provider's reasonable determination of the consumer's
47 earned but unpaid income.

48 (6) "Director" means a member of the applicant's or
49 registrant's board of directors.

50 (7) "Earned but unpaid income" means salary, wages,
51 compensation, or other income that a consumer or an employer has
52 represented, and that a provider has reasonably determined has
53 been earned or accrued to the benefit of the consumer in
54 exchange for the consumer's provision of services to the
55 employer or on behalf of the employer, including on an hourly,
56 project-based, piecework, or other basis and including
57 circumstances in which the consumer is acting as an independent
58 contractor of the employer, but has not, at the time of the
59 payment of proceeds, been paid to the consumer by the employer.

60 (8) "Earned wage access services" means the business of
61 providing consumer-directed earned wage access services or
62 employer-integrated earned wage access services, or both.

63 (9) (a) "Employer," except as provided in paragraph (b),
64 means any of the following:

65 1. A person who employs a consumer.

66 2. Any other person who is contractually obligated to pay
67 a consumer earned but unpaid income in exchange for the
68 consumer's provision of services to the employer or on behalf of
69 the employer including on an hourly, project-based, piecework,
70 or other basis and including circumstances in which the consumer
71 is acting as an independent contractor with respect to the
72 employer.

73 (b) "Employer" does not include any of the following:

74 1. A customer of an employer.

75 2. Any other person whose obligation to make a payment of
76 salary, wages, compensation, or other income to a consumer is
77 not based on the provision of services by that consumer for or
78 on behalf of the person.

79 (10) "Employer-integrated earned wage access services"
80 means the business of delivering to consumers access to earned
81 but unpaid income that is based on employment, income, or
82 attendance data obtained directly or indirectly from an employer

83 (11) (a) "Fee," except as provided in paragraph (b),
84 includes any of the following:

85 1. A fee imposed by a provider for delivery or expedited
86 delivery of proceeds to a consumer.

87 2. A subscription or membership fee imposed by a provider
88 for a bona fide group of services that included earned wage
89 access services.

90 (b) "Fee" does not include a voluntary tip, gratuity, or
91 other donation.

92 (12) "Key officer" means chief executive officer, Chief
93 financial officer, and chief compliance officer.

94 (13) "Member," except as used in subsection (6), means a
95 person that has the right to receive upon dissolution, or has
96 contributed, 10 percent or more of the capital of an applicant
97 or registrant that is organized as a limited liability company.

HB 1009

2024

98 (14) "Outstanding proceeds" means proceeds remitted to a
99 consumer by a provider that have not yet been repaid to the
100 provider.

101 (15) "Partner" means a person that has the right to
102 receive upon dissolution, or has contributed, 10 percent or more
103 of the capital of an applicant or registrant that is organized
104 as a partnership.

105 (16) "Proceeds" means a payment to a consumer by a
106 provider that is based on earned but unpaid income.

107 (17) (a) "Provider," except as provided in paragraph (b),
108 means a business entity that is in the business of providing
109 earned wage access services to consumers.

110 (b) "Provider" does not include any of the following:

111 1. A service provider, such as a payroll service provider,
112 whose role may include verifying the available earnings but that
113 is not contractually obligated to fund proceeds delivered as
114 part of an earned wage access service.

115 2. An employer that offers a portion of salary, wages, or
116 compensation directly to its employees or independent
117 contractors before the normally scheduled pay date.

118 (18) "Registrant" means a business entity that is
119 registered with the commission under s. 437.03.

120 437.03 Registration.—

121 (1) Each provider must register with the commission and
122 must provide:

123 (a) Its legal business and trade name, mailing address,
124 and business locations.

125 (b) The full names and addresses of its partners, members,
126 or directors and key officers and the Florida agent of the
127 corporation.

128 (c) A statement documenting whether the provider is a
129 domestic or foreign corporation.

130 (d) The state and date of incorporation, the charter
131 number, and, if the provider is a foreign corporation, the date
132 it registered with the Department of State.

133 (e) The date on which the provider registered its
134 fictitious name if the provider is operating under a fictitious
135 or trade name.

136 (2) The commission shall issue a certificate evidencing
137 proof of registration which the provider must prominently
138 display at the provider's primary place of business. If the
139 provider conducts business on a website, the provider must also
140 post its registration number on the website.

141 (3) A registration must be renewed biennially on or before
142 the expiration date. In order to establish staggered expiration
143 dates, the commission may extend the expiration date of a
144 registration for a period not to exceed 12 months.

145 (4) A registration issued under this chapter is not
146 assignable and the provider may not conduct business under more
147 than one name except as registered. A provider desiring to

148 change its registered name, location, or designated agent for
149 service of process at a time other than upon renewal of
150 registration must notify the commission of the change.

151 (5) The commission may deny, refuse to renew, or revoke
152 the registration of any provider based on a determination that
153 the provider, or any of the provider's partners, members, or
154 directors and key officers:

155 (a) Has failed to meet the requirements for registration
156 as provided in this chapter;

157 (b) Has been convicted of a crime involving fraud,
158 dishonest dealing, or any other act of moral turpitude;

159 (c) Has not satisfied a civil fine or penalty arising out
160 of any administrative or enforcement action brought by any
161 governmental agency or private person based upon conduct
162 involving fraud, dishonest dealing, or a violation of this
163 chapter;

164 (d) Has any pending criminal, administrative, or
165 enforcement proceedings in any jurisdiction, based on conduct
166 involving fraud, dishonest dealing, or any other act of moral
167 turpitude; or

168 (e) Has had a judgment entered against the provider in any
169 action brought by the commission or the Department of Legal
170 Affairs under this chapter or under ss. 501.201-501.213, the
171 Florida Deceptive and Unfair Trade Practices Act.

172 (6) The commission shall deny or refuse to renew the
173 registration of a provider or deny a registration or renewal
174 request by any of the provider's partners, members, or directors
175 and key officers if the provider has not satisfied a civil
176 penalty or administrative fine for a violation of s. 437.04.

177 437.04 Provider requirements; limitations.—

178 (1) A provider that is registered under s. 437.03 must:

179 (a) Develop and implement policies and procedures to
180 respond to questions raised by consumers and address complaints
181 from consumers in an expedient manner.

182 (b) Offer to the consumer at least one reasonable option
183 to obtain proceeds at no cost to the consumer and clearly
184 explain how to elect that no-cost option.

185 (c) Before entering into an agreement with a consumer for
186 the provision of earned wage access services:

187 1. Inform the consumer of his or her rights under the
188 agreement.

189 2. Clearly disclose all fees associated with the earned
190 wage access services.

191 (d) Inform the consumer of any material changes to the
192 terms and conditions of the earned wage access services before
193 implementing those changes for that consumer.

194 (e) Allow the consumer to cancel use of the provider's
195 earned wage access services at any time without incurring a
196 cancellation fee or penalty imposed by the provider.

197 (f) Comply with all applicable local, state, and federal
 198 privacy and information security laws.

199 (g) If a provider solicits, charges, or receives a tip,
 200 gratuity, or other donation from a consumer:

201 1. Clearly and conspicuously disclose to the consumer
 202 immediately before each transaction that a tip, gratuity, or
 203 other donation amount may be zero and is voluntary.

204 2. Clearly and conspicuously disclose in its service
 205 contract with the consumer that tips, gratuities, or donations
 206 are voluntary and that the offering of earned wage access
 207 services, including the amount of proceeds a consumer is
 208 eligible to request and the frequency with which proceeds are
 209 provided to a consumer, is not contingent upon whether the
 210 consumer pays any tip, gratuity, or other donation or upon the
 211 size of the tip, gratuity, or other donation.

212 (h) Provide proceeds to a consumer by any means mutually
 213 agreed upon by the consumer and the provider.

214 (i) If the provider seeks repayment of outstanding
 215 proceeds or payment of fees or other amounts owed or paid,
 216 including voluntary tips, gratuities, or other donations, in
 217 connection with the activities covered by this chapter, from a
 218 consumer's depository institution, including by means of
 219 electronic funds transfer:

220 1. Comply with applicable provisions of the federal
 221 Electronic Funds Transfer Act of 1978, 15 U.S.C. 1693 et. seq.,

222 and regulations adopted under the act.

223 2. Reimburse the consumer for the full amount of any
224 overdraft or insufficient funds fees imposed on a consumer by
225 the consumer's depository institution that were caused by the
226 provider attempting to seek payment of any outstanding proceeds,
227 fees, or other payments, in connection with the activities
228 covered by this chapter, including voluntary tips, gratuities,
229 or other donations, on a date before, or in an incorrect amount
230 from, the date or amount disclosed to the consumer. However, the
231 provider is not subject to the requirements in this subsection
232 with respect to payments of outstanding amounts or fees incurred
233 by a consumer through fraudulent or other unlawful means.

234 (2) A provider registered under s. 437.03 may not:

235 (a) Share with an employer a portion of any fees,
236 voluntary tips, gratuities, or other donations that were
237 received from or charged to a consumer for earned wage access
238 services.

239 (b) Require a consumer's credit report or a credit score
240 provided or issued by a consumer reporting agency to determine a
241 consumer's eligibility for earned wage access services.

242 (c) Accept payment of outstanding proceeds, fees,
243 voluntary tips, gratuities, or other donations from a consumer
244 by means of a credit card or charge card.

245 (d) Charge a late fee, deferral fee, interest, or any
246 other penalty or charge for failure to pay outstanding proceeds,

247 fees, voluntary tips, gratuities, or other donations.

248 (e) Report to a consumer reporting agency or debt
249 collector any information about the consumer regarding the
250 inability of the provider to be repaid outstanding proceeds,
251 fees, voluntary tips, gratuities, or other donations.

252 (f) Compel or attempt to compel payment by a consumer of
253 outstanding proceeds, fees, voluntary tips, gratuities, or other
254 donations to the provider through any of the following means:

255 1. A suit against the consumer in a court of competent
256 jurisdiction.

257 2. Use of a third party to pursue collection from the
258 consumer on the provider's behalf.

259 3. Sale of outstanding amounts to a third-party collector
260 or debt buyer for collection from the consumer.

261 (g) If the provider solicits, charges, or receives tips,
262 gratuities, or other donations from a consumer; misleads or
263 deceives consumers about the voluntary nature of the tips,
264 gratuities, or donations; or makes representations that tips,
265 gratuities, or other donations benefit any specific individuals.

266 (3) The limitations set forth in paragraph (2)(f) do not
267 preclude the use by a provider of any of the methods specified
268 in paragraph (2)(f) to compel payment of outstanding amounts or
269 fees incurred by a consumer through fraudulent or other unlawful
270 means, nor do they preclude a provider from pursuing an employer
271 for breach of its contractual obligations to the provider.

272 (4) A provider may use the mailing address provided by a
273 consumer to determine the consumer's state of residence for
274 purposes of this chapter.

275 437.05 Interoperation; applicability.—

276 (1) (a) Notwithstanding any other provision of law to the
277 contrary, any earned wage access services offered or provided by
278 a provider in compliance with this chapter is not considered:

279 1. A violation of or noncompliance with s. 516.17 or any
280 other general law governing the sale or assignment of, or an
281 order for, earned but unpaid income.

282 2. A loan or other form of credit or debt, and the
283 provider is not considered a creditor, debt collector, or
284 lender.

285 3. A money transmission, and the provider is not
286 considered a money transmitter, as defined in s. 560.103(24).

287 (b) Notwithstanding any other law, fees paid to a provider
288 in accordance with this chapter are not considered interest or
289 finance charges. If there is a conflict between the provisions
290 of this chapter and any other general law, the provisions of
291 this chapter control.

292 (2) Chapter 516 does not apply to proceeds a provider
293 provides to a consumer in accordance with this chapter.

294 (3) A voluntary tip, gratuity, or other donation paid by a
295 consumer to a registrant in accordance with this chapter may not
296 be considered a finance charge.

297 437.06 Administrative remedies; penalties.—
 298 (1) If the commission finds that a provider has violated
 299 this chapter or any rules adopted or orders issued under this
 300 chapter, the commission may enter an order doing one or more of
 301 the following:
 302 (a) Issue a notice of noncompliance under s. 120.695.
 303 (b) Impose an administrative fine in the Class II category
 304 under s. 570.971 for each act or omission.
 305 (c) Direct that the provider cease and desist specified
 306 activities.
 307 (d) Refuse to re-register the provider or revoke or
 308 suspend a registration.
 309 (e) Place the provider on probation, subject to conditions
 310 specified by the commission.
 311 (2) The administrative proceedings that could result in
 312 the entry of an order imposing any of the penalties specified in
 313 subsection (1) are governed by chapter 120.
 314 Section 2. Upon this act becoming law, the Financial
 315 Services Commission is authorized, and all conditions are deemed
 316 met, to adopt rules pursuant to ss. 120.536(1) and 120.54,
 317 Florida Statutes. No later than January 1, 2025, the commission
 318 shall prescribe the form and content of an application for
 319 registration to provide earned wage access services pursuant to
 320 this act.
 321 Section 3. An individual who, as of January 1, 2023, was

HB 1009

2024

322 engaged in the business of providing earned wage access services
323 in the state may, until July 1, 2025, continue to engage in the
324 business of providing earned wage access services without
325 registering if the individual has submitted an application for
326 registration under s. 437.03, Florida Statutes, and otherwise
327 complies with this act.

328 Section 4. Section 437.04 (1) (b), Florida Statutes, as
329 created by this act, first applies, with respect to a provider
330 that offers proceeds to a consumer under the terms of an
331 agreement that specifies the consumer's cost of obtaining
332 proceeds, to any agreement entered into, renewed, or modified on
333 or after January 1, 2025.

334 Section 5. Except as otherwise expressly provided in this
335 act and except for this section, which shall take effect upon
336 this act becoming a law, this act shall take effect January 1,
337 2025.