**South Carolina General Assembly**

125th Session, 2023-2024

**A190, R188, S700**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Davis

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Introduced in the Senate on March 30, 2023

Introduced in the House on February 6, 2024

Last Amended on May 8, 2024

Currently residing in the Senate

Governor's Action: May 21, 2024, Signed

Summary: Earned Wage Access Services Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/30/2023 Senate Introduced and read first time (Senate Journal‑page 6)

 3/30/2023 Senate Referred to Committee on **Labor, Commerce and Industry** (Senate Journal‑page 6)

 5/2/2023 Senate Committee report: Favorable with amendment **Labor, Commerce and Industry** (Senate Journal‑page 19)

 5/10/2023 Senate Committee Amendment Adopted (Senate Journal‑page 36)

 5/11/2023 Scrivener's error corrected

 1/31/2024 Senate Read second time (Senate Journal‑page 14)

 1/31/2024 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 14)

 2/1/2024 Senate Read third time and sent to House (Senate Journal‑page 10)

 2/6/2024 House Introduced and read first time (House Journal‑page 11)

 2/6/2024 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 11)

 2/7/2024 Scrivener's error corrected

 5/1/2024 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 468)

 5/6/2024 Scrivener's error corrected

 5/7/2024 House Requests for debate-Rep(s). Sandifer, Hiott, Hixon, Carter, Erickson, Blackwell, B Newton, Ligon, MM Smith, McCravy, West, Jefferson, Calhoon, Whitmire, Bustos (House Journal‑page 133)

 5/8/2024 House Amended (House Journal‑page 273)

 5/8/2024 House Read second time (House Journal‑page 273)

 5/8/2024 House Roll call Yeas-105 Nays-2 (House Journal‑page 284)

 5/9/2024 House Read third time and returned to Senate with amendments (House Journal‑page 86)

 5/9/2024 Senate Concurred in House amendment and enrolled (Senate Journal‑page 22)

 5/15/2024 Ratified R 188

 5/21/2024 Signed By Governor

 5/29/2024 Effective date 11/21/24

 5/29/2024 Act No. 190

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**VERSIONS OF THIS BILL**

[03/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20230330.docx)

[05/02/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20230502.docx)

[05/03/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20230503.docx)

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[05/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20240501.docx)

[05/06/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20240506.docx)

[05/08/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/700_20240508.docx)

(A190, R188, S700)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING ARTICLE 8 TO CHAPTER 5, TITLE 39 so as TO ESTABLISH THE “SOUTH CAROLINA EARNED WAGE ACCESS SERVICES ACT” SO AS TO PROVIDE FOR REQUIREMENTS FOR EARNED WAGE ACCESS SERVICES PROVIDERS, AND TO PROVIDE FOR CERTAIN EXEMPTIONS AND LIMITATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Earned Wage Access Services Act

SECTION 1. Chapter 5, Title 39 of the S.C. Code is amended by adding:

 Article 8

 South Carolina Earned Wage Access Services Act

 Section 39‑5‑810. This article may be cited as the “South Carolina Earned Wage Access Services Act”.

 Section 39‑5‑820. As used in this article, unless the context clearly requires otherwise, the term:

 (1) “Consumer” means a natural person residing in the State of South Carolina. A provider may use the mailing address provided by a consumer to determine such consumer’s state of residence for purposes of this article.

 (2) “Consumer‑directed wage access services” means offering or providing earned wage access services directly to consumers based on the consumer’s representations and the provider’s reasonable determination of the consumer’s earned but unpaid income.

 (3) “Earned but unpaid income” means salary, wages, compensation, or other income that a consumer or an employer has represented, and that a provider has reasonably determined, have been earned or have accrued to the benefit of the consumer in exchange for the consumer’s provision of services to the employer or on behalf of the employer, including on an hourly, project‑based, piecework, or other basis and including where the consumer is acting as an independent contractor of the employer, but have not, at the time of the payment of proceeds, been paid to the consumer by the employer.

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

 (5)(a) “Employer” means:

 (i) a person who employs a consumer; or

 (ii) any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for consumer’s provision of services to the employer or on behalf of the employer including on an hourly, project‑based, piecework, or other basis and including where the consumer is acting as an independent contractor with respect to the employer.

 (b) The term “employer” does not include:

 (i) a customer of the employer; or

 (ii) any other person whose obligation to make a payment of salary, wages, compensation, or other income to a consumer is not based on the provision of services by that consumer for or on behalf of such person.

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

 (7) “Fee” shall include a:

 (a) fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer; or

 (b) subscription or membership fee imposed by a provider for a bona fide group of services that include earned wage access services.

 A voluntary tip, gratuity, or other donation shall not be deemed to be a fee.

 (8) “Outstanding proceeds” means proceeds remitted to a consumer by a provider that have not yet been repaid to that provider.

 (9) “Person” means a partnership, association, corporation, or other business unit.

 (10) “Proceeds” means a payment to a consumer by a provider that is based on earned but unpaid income.

 (11) “Provider” means a person who is in the business of providing earned wage access services to consumers.

 (12) “Department” means the South Carolina Department of Consumer Affairs.

 Section 39‑5‑830. (1) A person, including a person that is not physically located in this State, may not provide earned wage access in this State unless the person is registered under this article as a provider. This article does not apply to any person doing business under authority of and as permitted by any law of this State or the United States relating to banks, credit unions, savings and loan associations, savings banks, or trust companies.

 (2) A person required to be registered under subsection (1) shall apply to the department for a registration on a form and in the manner prescribed by the department. The application shall include all of the following information:

 (a) the name of the provider;

 (b) the name under which the provider transacts business, if different than listed for item (a);

 (c) the address of the provider’s principal office, which may be outside of this State;

 (d) the addresses of all of the provider’s offices or retail stores, if any, in this State;

 (e) if the provider provides earned wage access services at a location that is not an office or retail store in this State, a brief description of the manner in which the provider provides earned wage access services;

 (f) the provider’s federal employer identification number;

 (g) a copy of the policy of the applicant relating to the privacy of information concerning users;

 (h) a schedule of fees proposed to be charged to a user or employer for the provision of earned wage access services, which must include, without limitation, a statement identifying at least one option for a user to obtain earned wage access services from the applicant at no cost to the user;

 (i) a statement that the applicant is applying to be registered as an employer‑integrated earned wage access provider or a consumer‑directed earned wage access provider, or both; and

 (j) any other information or documentation the department requires to administer this article.

 (3) Registration is on an annual basis and must be on a form prescribed by the department. The annual renewable period runs from May first until June thirtieth. A provider that files its renewal and annual report on a timely basis may continue operating unless the registration is denied or revoked by the department.

 (4) The application for a registration pursuant to subsection (2) or renewal pursuant to subsection (3) shall be accompanied by a nonrefundable fee of one thousand dollars payable to the department. All application and renewal fees collected by the department may be retained by the department and used to implement the provisions of this article.

 (5) A provider shall file with the department, and maintain in force, a surety bond that is issued by a surety company authorized to do business in this State. The surety bond must be:

 (a) in a form satisfactory to the department;

 (b) payable to the State for the benefit of a claimant against the provider to secure the faithful performance of obligations of the provider with respect to earned wage access services;

 (c) in an amount equal to $30,000; and

 (d) maintained for three years after revocation, denial, or failure to renew the registration.

 (6) A registration issued pursuant to this article is not transferable or assignable.

 Section 39‑5‑840. A provider shall comply with all of the following requirements:

 (1) The provider shall develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers in an expedient manner.

 (2) The provider shall offer to the consumer at least one reasonable option to obtain proceeds at no cost to the consumer and clearly explain how to elect that no‑cost option.

 (3) Before providing a consumer with earned wage access services, the provider shall provide a consumer with a written paper or electronic document, which can be included as part of the contract to provide earned wage access services, and which meets all of the following requirements:

 (a) informs the consumer of the terms and conditions of the earned wage access services;

 (b) clearly and conspicuously describes how the consumer may obtain proceeds at no cost to that consumer;

 (c) provides a phone number or a website through which consumers can submit complaints about the provider’s earned wage access services to the provider and the website and telephone number for the department;

 (d) is written in a font and using language intended to be easily understood by a layperson;

 (e) discloses any fees that may be directly imposed by the provider in connection with the provision of earned wage access services.

 (4) The provider must inform the consumer of the fact of any material changes to the terms and conditions of the earned wage access services before implementing those changes for that consumer, using a font and language intended to be easily understood by a layperson.

 (5) The provider shall provide proceeds to a consumer via any means mutually agreed upon by the consumer and provider.

 (6) The provider shall comply with all local, state, and federal privacy and information security laws.

 (7) If the provider solicits, charges, or receives a tip, gratuity, or other donation from a consumer, the provider shall:

 (a) clearly and conspicuously disclose to the consumer immediately prior to each transaction that a tip, gratuity, or other donation amount may be zero and is voluntary;

 (b) clearly and conspicuously disclose in its service contract with the consumer and elsewhere that tips, gratuities, or donations are voluntary and that the offering of earned wage access 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, gratuity, or other donation or on the size of the tip, gratuity, or other donation;

 (c) not mislead or deceive consumers about the voluntary nature of such tips, gratuities, or other donations; and

 (d) make no representations that tips, gratuities, or other donations will benefit any specific individuals.

 (8) In any case in which a provider will seek repayment of outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips, gratuities, or other donations from a consumer’s account at a depository institution including via electronic transfer, the provider shall:

 (a) comply with applicable provisions of the federal Electronic Fund Transfer Act and its implementing regulations;

 (b) reimburse the consumer for the full amount of any overdraft or non‑sufficient funds fees imposed on a consumer by the consumer’s depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, or other payments, in connection with the activities covered by this article, including voluntary tips, gratuities, or other donations, on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer; and

 (c) not be subject to the requirements in subitem (b) with respect to payments of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means.

 (9) In any case in which a provider will seek repayment of outstanding proceeds, fees, or other payments in connection with the activities covered by this article, including voluntary tips, gratuities, or other donations from a consumer via payroll deduction, the provider’s terms and conditions shall inform the consumer that by using the provider’s earned wage access services, the consumer consents to repayment from the consumer’s employer or its payroll services provider.

 (10) A provider shall allow a consumer to discontinue receiving services at any time, without imposing a financial penalty on that consumer.

 Section 39‑5‑850. No person subject to this article shall do any of the following:

 (1) share with an employer any fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services;

 (2) charge a late fee, interest, or any other penalty or charge for failure to repay outstanding proceeds;

 (3) accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer via credit card or charge card;

 (4) charge a deferral fee or any other charge in connection with deferring the collection of any outstanding proceeds beyond the original scheduled repayment date;

 (5) solicit a consumer to delay repayment of outstanding proceeds for the purpose of increasing the total nonmandatory payments that the provider may collect;

 (6) report a consumer’s payment or failed repayment of outstanding proceeds to a consumer credit reporting agency or a debt collector;

 (7) require a credit score to determine a consumer’s eligibility for earned wage access services;

 (8) advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised in any manner whatsoever any false, misleading, or deceptive statement or representation regarding the conditions of the earned wage access services offered and provided by the provider;

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

 (a) a suit against the consumer in a court of competent jurisdiction;

 (b) use of a third party to pursue collection from the consumer on the provider’s behalf; or

 (c) sale of outstanding amounts to a third‑party collector or debt buyer for collection from the consumer;

 (10) provide proceeds in an amount that exceeds the consumer’s earned but unpaid income, provided that this limitation shall not apply to any provision of proceeds that exceeds the consumer’s earned but unpaid income due to administrative or technical errors so long as repayment of such proceeds provided due to an error otherwise complies with the repayment provisions of this article.

 However, the limitations in this item shall not preclude the use by a provider of any of these methods to compel payment of outstanding amounts or fees incurred by a consumer through fraudulent or other unlawful means, nor shall they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

 Section 39‑5‑860. The following shall apply in connection with the earned wage access services offered and provided by a provider in compliance with the provisions of this article:

 (A) Proceeds provided to a consumer by the provider shall not be considered a consumer loan for purposes of Section 37‑3‑104 or a loan for purposes of Section 37‑3‑106.

 (B) The provider shall not be considered a lender for purposes of Section 37‑3‑107(1), unless the provider is conducting business pursuant to Chapter 3, Title 37.

 (C) Fees, voluntary tips, gratuities, or other donations paid by a consumer to a provider shall not be considered a loan finance charge for purposes of Section 37‑3‑109.

 (D) The provider shall not be considered to be engaged in the business of money transmission for purposes of Section 35‑11‑200.

 (E) Earned wage access services shall not be considered wage assignment for the purposes of Section 37‑3‑403.

 (F) The provider shall not be considered a deferred presentment provider for purposes of Section 34‑39‑130 unless the provider is conducting business pursuant to Chapter 39, Title 34.

 Section 39‑5‑870. (1) A provider shall maintain records of its earned wage access services transactions and shall preserve its records for at least two years after the final date on which it provides proceeds to a consumer. A provider shall keep such books and records that, in the opinion of the department, will enable the department to determine whether the provider is in compliance with this article. The provider may keep books and records at a place of business located outside this State if the provider is able to readily produce those books and records for review.

 (2) On or before June thirtieth of each year, a provider shall submit an annual report to the department relating to the provider’s business conducted during the prior calendar year in this State. The report shall be on a form prescribed by the department and include, at a minimum:

 (a) gross revenue attributable to those earned wage access services;

 (b) a copy of each complaint that has been filed by a consumer against the provider with the Better Business Bureau or a state or federal agency other than the department and a description of the resolution, if any, of each such complaint;

 (c) the total number of transactions in which the provider provided proceeds to consumers;

 (d) the total number of unique consumers to whom the provider provided proceeds;

 (e) the total dollar amount of proceeds the provider provided to consumers; and

 (f) the total dollar amount of fees, voluntary tips, gratuities, or other donations the provider received from consumers.

 (3) Data collected by the department pursuant to this section is confidential and may be released only in composite form, except as otherwise provided by law. The department shall prepare and make available to the public a report based on the above data. The report must be made available by October thirty‑first each year.

 Section 39‑5‑880. Upon satisfactory evidence that a provider has violated or failed to comply with a provision of this article or regulation promulgated pursuant to the authority of this article, the department may issue an order requiring the provider to cease and desist from engaging in the violation, requiring the provider to pay an administrative penalty or issue a refund to the consumer, denying, revoking, or suspending the provider’s registration, or a combination thereof.

 Section 39‑5‑890. An appeal of an order issued by the department must be made pursuant to the Administrative Procedures Act and the rules governing practice before the Administrative Law Court. A contested hearing pursuant to this article is before the Administrative Law Court, with notice to, and an opportunity for a hearing by, the affected provider.

Time effective

SECTION 2. This act takes effect six months after approval by the Governor.

Ratified the 15th day of May, 2024.

Approved the 21st day of May, 2024.

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