

**PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R096-23

November 28, 2023

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1, 2 and 9-14, section 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2407 (NRS 604D.180); § 3, sections 9.1 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2396 and 2407 (NRS 604D.090 and 604D.180); §§ 4 and 15, sections 29 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2406 and 2407 (NRS 604D.180 and 604D.400); § 5, sections 12 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2396 and 2407 (NRS 604D.180 and 604D.200); §§ 6 and 7, sections 21 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2403 and 2407 (NRS 604D.180 and 604D.550); § 8, sections 28 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2405 and 2407 (NRS 604D.180 and 604D.500).

A REGULATION relating to providers of earned wage access services; defining and interpreting certain terms relating to providers; interpreting certain provisions of existing law relating to providers; establishing certain fees and assessments; requiring a provider to provide certain information to the Commissioner of Financial Institutions; imposing certain requirements relating to the retention of certain records by a provider; setting forth certain restrictions concerning advertising by a provider; setting forth certain requirements for a person to engage in the business of providing earned wage access services; establishing circumstances under which the Commissioner may suspend or revoke the license of a provider; authorizing the Commissioner to request certain information or documentation; imposing certain requirements for the disclosure of certain information by a provider; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the licensure and regulation of persons engaged in the business of providing earned wage access services by the Commissioner of Financial Institutions. (Sections 1 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395-2408 (Chapter 604D of NRS)) Existing law designates such persons, including direct-to-consumer earned wage access providers and employer-integrated earned wage access providers, as “providers.” (Section 10.6 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396 (NRS 604D.160)) Existing law authorizes the Commissioner to adopt regulations for the administration and enforcement of provisions of existing law governing

providers. (Section 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2407 (NRS 604D.180))

Existing law defines “employer-integrated earned wage access provider” to mean a person who is engaged in the business of offering to provide or providing employer-integrated earned wage access services. (Section 9 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2395 (NRS 604D.080)) Existing law defines “employer-integrated earned wage access services” to mean the delivery to a user of access to earned but unpaid income determined based on employment, income or attendance data obtained directly or indirectly from an employer. (Section 9.1 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396 (NRS 604D.090)) **Section 3** of this regulation sets forth the manner in which the Commissioner will interpret the term “indirectly” as used in the definition of “employer-integrated earned wage access services” set forth under existing law.

Existing law requires a provider to allow a user to cancel, at any time and without incurring a fee, his or her participation in an agreement for the provision of earned wage access services. (Section 29 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2406 (NRS 604D.400)) **Section 4** of this regulation provides that the Commissioner will interpret that provision as prohibiting a provider from charging a user a cancellation fee or other fee of any kind for the user to cancel his or her participation in such an agreement.

Existing law requires the Commissioner to establish by regulation certain fees relating to the licensure of providers. (Section 12 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396 (NRS 604D.200)) **Section 5** of this regulation establishes fees for: (1) the initial application for and initial issuance of a license as a provider; (2) the annual renewal of such a license; and (3) the reinstatement of an expired license.

Existing law requires the Commissioner to: (1) charge and collect a fee from each licensee for the cost of any supervision, audit, examination, investigation or hearing conducted pursuant to the provisions of existing law governing providers; and (2) levy an assessment upon each licensee to cover the costs related to the employment of a certified public accountant and the performance of certain audits and examinations conducted by such an accountant. (Section 21 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2403 (NRS 604D.550)) **Section 6** of this regulation establishes an hourly fee that the Commissioner will charge a licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to the provisions of existing law governing providers. **Section 7** of this regulation requires each licensee to pay an annual assessment to the Division of Financial Institutions of the Department of Business and Industry to cover costs related to the employment of a certified public accountant. **Sections 6 and 7**: (1) set forth the time in which the fee and assessment are required to be paid; (2) provide penalties for late payment; and (3) provide that the failure of a licensee to pay the fee or assessment is grounds for the revocation of the license of the licensee.

Existing law requires a licensee to annually submit to the Commissioner a report containing certain information. (Section 28 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2405 (NRS 604D.500)) **Section 8** of this regulation requires the report to contain certain additional information. **Section 9** of this regulation requires a licensee to retain certain records for at least 6 years.

Section 10 of this regulation prohibits advertising by a licensee: (1) in a manner that may tend to confuse the identity of the licensee; and (2) that is unethical, false or misleading. **Section 10** authorizes the Commissioner to require a licensee to submit proposed advertising for approval before its dissemination under certain circumstances.

Section 11 of this regulation prohibits a person from engaging in the business of a provider unless: (1) the person holds a license issued by the Commissioner and any license or permit required by a local governmental entity; and (2) the location of the principal place of business complies with any applicable planning and zoning ordinances and is a commercial place of business and not a private residence. **Section 2** of this regulation defines “principal place of business.” **Section 12** of this regulation requires a person who wishes to apply for a license where the location of the principal place of business is outside this State to agree to: (1) make available to the Commissioner at a location within this State certain books, accounts, papers, records and files; or (2) pay the reasonable expenses of the Commissioner incurred during any investigation or examination made at a location outside this State. **Section 12** also authorizes the Commissioner, for good cause, to allow the electronic submission of such books, accounts, papers, records and files.

Section 13 of this regulation authorizes the Commissioner to revoke or suspend the license of a licensee, in accordance with the procedures set forth in existing law, for certain violations. **Section 14** of this regulation authorizes the Commissioner to request any information or documentation deemed necessary to perform an examination or investigation of an applicant or licensee.

Existing law requires a provider who solicits, charges or receives a tip, gratuity or donation from a user to make certain disclosures to the user and provide the user an option to select zero as an amount for such a tip, gratuity or donation. (Section 29 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2406 (NRS 604D.400)) **Section 15** of this regulation requires such a disclosure and option to be included in an agreement for the provision of earned wage access services at a font size of at least 16-point bold type or 4 points larger than the font used in the rest of the agreement, whichever is larger.

Section 1. Chapter 604D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *As used in this chapter, “principal place of business” means a physical location where officers or senior management direct the provider’s business of providing earned wage access services, oversee the day-to-day operations of the provider’s business of providing earned wage access services and maintain all books and records relating to the provider’s business of providing earned wage access services.*

Sec. 3. *The Commissioner will interpret the term “indirectly” as used in section 9.1 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396 (NRS 604D.090), to mean verified live data of the employment, income or attendance of the user that is:*

1. *Obtained from an integrated system;*
2. *Not directly obtained from the system of an employer; and*
3. *Not directly obtained from the user.*

Sec. 4. *The Commissioner will interpret the provisions of subsection 3 of section 29 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2406 (NRS 604D.400), to prohibit a provider from charging a user a cancellation fee or other fee of any kind, regardless of the name given to the fee, for the user to cancel his or her participation in an agreement for the provision of earned wage access services.*

Sec. 5. *1. An application for a license as a provider must be accompanied by:*

- (a) A nonrefundable application fee of \$1,000; and*
- (b) A nonrefundable license fee of \$1,000.*

2. An application for the annual renewal of a license as a provider must be accompanied by a renewal fee of \$1,000.

3. An application for the reinstatement of an expired license as a provider must be accompanied by a late renewal fee of \$1,000 in addition to the renewal fee prescribed in subsection 2.

Sec. 6. *1. The Commissioner will charge and collect a fee of \$75 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to sections 1 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395-2408 (chapter 604D of NRS).*

2. The Commissioner will bill each licensee upon completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date on which the bill is received. Except as otherwise provided in this subsection, any payment received after

that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause shown.

3. Failure of a licensee to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of the license of the licensee.

Sec. 7. 1. *Each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of not more than \$300 to cover the costs related to the employment of a certified public accountant.*

2. The Division shall bill each licensee for the assessment. The assessment must be paid within 30 days after the date on which the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the assessment plus an additional 1 percent of the assessment for each month, or portion of a month, that the assessment is not paid. The Division may waive the penalty for good cause shown.

3. Failure of a licensee to pay the assessment required in subsection 1 as provided in this section constitutes grounds for revocation of the license of the licensee.

Sec. 8. 1. *In addition to the information required by section 28 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2405 (NRS 604D.500), a report submitted by a licensee pursuant to that section must include:*

(a) The total number of fees paid by users and the total value of fees paid by users in the immediately preceding year in this State;

(b) The total number of expedited fees paid by users and the total value of expedited fees paid by users in the immediately preceding year in this State;

(c) The total number of users who have outstanding proceeds at the time of reporting and the total value of such outstanding proceeds;

(d) The total number of requests for reimbursement of overdraft or non-sufficient funds fees in the immediately preceding year in this State;

(e) The total number of reimbursed overdraft or non-sufficient funds fees and the total value of reimbursed overdraft or non-sufficient funds fees in the immediately preceding year in this State;

(f) The total number of users with zero fees or charges; and

(g) The total number of voluntary tips, gratuities or donations received and the total value of such voluntary tips, gratuities or donations received.

2. The information required by this section does not restrict the Commissioner from requesting additional information during an examination or investigation, including, without limitation, a full listing of all users in this State and associated information for such users.

3. If audited financial statements are not available before April 15 and a licensee submits unaudited financial statements on or before April 15, the licensee shall submit audited financial statements to the Division of Financial Institutions of the Department of Business and Industry on or before June 30, unless the licensee requests an extension and the Commissioner grants such an extension for good cause.

Sec. 9. Each licensee shall retain all records concerning a user or employer in this State for at least 6 years.

Sec. 10. 1. A licensee shall not advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee or the employer of a user.

2. No unethical, false or misleading advertising by a licensee will be permitted. If any violation pertaining to the advertising practices of a licensee is discovered during an examination or investigation of a licensee, the Commissioner may require the licensee to submit proposed advertising for approval before its dissemination through the press or by radio, television or the Internet.

Sec. 11. A person shall not engage in the business of providing earned wage access services in this State unless:

1. The person holds a license issued pursuant to section 12 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396 (NRS 604D.200), and any license or permit required by a local governmental entity; and

2. The location of the principal place of business:

(a) Complies with any applicable planning and zoning ordinances; and

(b) Is a commercial place of business and not a private residence.

Sec. 12. 1. Except as otherwise provided in subsection 2, a person who wishes to apply for a license as a provider where the location of the principal place of business is outside of this State must agree to:

(a) Make available to the Commissioner at a location within this State the books, accounts, papers, records and files of the principal place of business located outside this State; or

(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner incurred during any investigation or examination made at an office or principal place of business located outside this State.

2. The Commissioner may, for good cause, allow the electronic submission of books, accounts, papers, records and files described in subsection 1.

Sec. 13. 1. *The Commissioner may revoke or suspend the license of a licensee for any violation of this chapter or sections 1 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395-2408 (chapter 604D of NRS), including, without limitation, a violation of any provision that imposes a fee or assessment.*

2. The Commissioner may revoke the license of a licensee if the licensee does not allow the Division of Financial Institutions of the Department of Business and Industry to conduct an examination, investigation or audit of any accounts, books and records.

3. Any revocation or suspension of a license pursuant to this section must be made in accordance with the procedures set forth in sections 1 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395-2408 (chapter 604D of NRS).

Sec. 14. *The Commissioner may request any information or documentation deemed necessary to perform an examination or investigation of an applicant or licensee.*

Sec. 15. 1. *Except as otherwise provided in subsection 3, the disclosure required by paragraph (a) of subsection 5 of section 29 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2406 (NRS 604D.400), must be in at least 16-point bold type font above the signature of the user on the agreement with the user for the provision of earned wage access services.*

2. Except as otherwise provided in subsection 3, the option required by paragraph (b) of subsection 5 of section 29 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2406 (NRS 604D.400), must be in at least 16-point bold type font above the signature of the user on the agreement with the user for the provision of earned wage access services.

3. If the body of the agreement with the user for the provision of earned wage access services uses a font larger than 12-point type, the font size required by subsections 1 and 2

must be increased to at least 4 points larger than the font size used in the rest of the body of the agreement.