

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

LCB File No. R096-23

January 24, 2024

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

AUTHORITY: §§ 1, 2 and 11-17, section 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2407; § 3, sections 9.1 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2396 and 2407, respectively; §§ 4 and 7, sections 13.1, 13.2 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2398, 2399 and 2407, respectively; § 5, sections 29 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2406 and 2407, respectively; § 6, sections 12 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2396 and 2407, respectively; §§ 8 and 9, sections 21 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2403 and 2407, respectively; § 10, sections 28 and 32 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2405 and 2407, respectively.

A REGULATION relating to providers of earned wage access services; defining and interpreting certain terms relating to providers; interpreting certain provisions of Senate Bill No. 290 of the 2023 Legislative Session 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; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Senate Bill No. 290 (S.B. 290) of the 2023 Legislative Session provides for the licensure and regulation by the Commissioner of Financial Institutions of persons engaged in the business of providing earned wage access services. (Sections 2 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395-2408) S.B. 290 designates such persons, including direct-to-consumer earned wage access providers and employer-integrated earned wage access providers, as “providers.” (Sections 3.2, 9.1 and 10.6 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395 and 2396) S.B. 290 authorizes the Commissioner to adopt regulations for the administration and enforcement of provisions of S.B.

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

S.B. 290 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) S.B. 290 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) **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.”

S.B. 290 enacts provisions governing the licensing of providers through the Nationwide Multistate Licensing System and Registry developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and operated by the State Regulatory Registry, LLC. (Sections 10.1, 13.1-13.3 and 18.1 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2396, 2398-2400 and 2403) S.B. 290 requires the submission of fingerprints and certain other information to the Registry by: (1) each applicant for the issuance of a license as a provider; (2) each owner, officer, director, responsible person and person in control of an applicant; and (3) any other person the Commissioner may require in accordance with the guidelines of the Registry or other multistate agreements. (Section 13.2 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2399) **Section 4** of this regulation provides that the Commissioner will interpret the term “owner” for the purposes of such requirements to mean a person who holds an ownership interest of 10 percent or more in an applicant for the issuance of a license as a provider that is a business entity. **Section 7** of this regulation requires an applicant for the issuance of a license as a provider that is a business entity to submit to the Commissioner a list consisting of each person who holds any ownership interest in the applicant. **Section 7** authorizes the Commissioner to require any person on the list who is not otherwise required to comply with the requirements concerning the submission of fingerprints and certain information to the Registry to comply with those requirements, if the Commissioner determines it to be necessary.

S.B. 290 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) **Section 5** 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.

S.B. 290 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) **Section 6** of this regulation establishes fees for: (1) the initial application for and the initial issuance of a license as a provider; (2) the annual renewal of such a license; and (3) the reinstatement of an expired license.

S.B. 290 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 S.B. 290 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) **Section 8** of this regulation establishes an hourly fee that the Commissioner will charge to and collect from a licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to the provisions of S.B. 290 governing providers. **Section 9** 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 8 and 9:** (1) set forth the time within which the fee and assessment are required to be paid; (2) provide for penalties for late payment; and (3) provide that the failure of a licensee to pay the fee or assessment is grounds for revocation of the license of the licensee.

S.B. 290 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) **Section 10** of this regulation requires that the report contain certain additional information. **Section 11** of this regulation requires a licensee to retain certain records for at least 6 years.

Section 12 of this regulation prohibits a licensee from advertising in any manner that: (1) may tend to confuse the identity of the licensee; or (2) is unethical, false or misleading. **Section 12** authorizes the Commissioner to require a licensee to submit a proposed advertisement for approval before its dissemination, under certain circumstances.

Section 13 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 14** of this regulation requires a person who wishes to apply for a license as a provider 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 14** also authorizes the Commissioner, for good cause, to allow the electronic submission of such books, accounts, papers, records and files.

Section 15 of this regulation authorizes the Commissioner to revoke or suspend the license of a licensee, in accordance with the procedures set forth in S.B. 290, for certain violations. **Section 16** 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.

Section 1. Chapter 604D of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *As used in this chapter, “principal place of business” means a physical location where the officers or senior management of a provider 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. As used in section 9.1 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396, the Commissioner will interpret the term "indirectly" to mean verified 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. As used in section 13.2 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2399, the Commissioner will interpret the term "owner" to mean a person who holds an ownership interest of 10 percent or more in an applicant for the issuance of a license as a provider that is a business entity.

Sec. 5. 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, 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. 6. 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. 7. 1. In addition to any other requirements set forth in this chapter and sections 2 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395 to 2408, inclusive, each applicant for the issuance of a license as a provider that is a business entity must submit to the Commissioner, with the application required by section 12 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2396, a list consisting of each person who holds an ownership interest in the applicant.

2. If the Commissioner determines it to be necessary, the Commissioner may require any person on the list submitted pursuant to subsection 1 who is not otherwise required to comply with the requirements of section 13.2 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2399, to comply with the requirements of that section.

Sec. 8. 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 2 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395 to 2408, inclusive.

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. 9. *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. 10. *1. In addition to the information required by section 28 of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at page 2405, 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 this State in the immediately preceding year;

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

(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 this State in the immediately preceding year;

(e) In cases where the licensee is seeking repayment of outstanding proceeds, the total number of reimbursed overdraft or non-sufficient funds fees in this State and the total value of reimbursed overdraft or non-sufficient funds fees in this State in the immediately preceding year;

(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 of the same year, unless the licensee requests an extension and the Commissioner grants such an extension for good cause.

Sec. 11. *Each licensee shall retain all records concerning a user or employer in this State for at least 6 years.*

Sec. 12. *1. A licensee shall not advertise in any manner that:*

(a) May tend to confuse the identity of the licensee with any other unrelated licensee or the employer of a user; or

(b) Is unethical, false or misleading.

2. 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 to the Commissioner for approval any proposed advertisement before the advertisement is disseminated through:

(a) The press or by radio, television or the Internet; or

(b) Any electronic or print format that is distributed in a workplace where the licensee offers to provide earned wage access services.

Sec. 13. *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, 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. 14. *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. 15. *1. The Commissioner may revoke or suspend the license of a licensee for any violation of this chapter or sections 2 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395 to 2408, inclusive, 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 books, accounts, papers, records and files.

3. Any revocation or suspension of a license pursuant to this section must be made in accordance with the procedures set forth in sections 2 to 33.5, inclusive, of Senate Bill No. 290, chapter 400, Statutes of Nevada 2023, at pages 2395 to 2408, inclusive.

Sec. 16. *The Commissioner may request any information or documentation deemed necessary to perform an examination or investigation of an applicant or licensee.*

Sec. 17. This regulation becomes effective on the later of:

1. July 1, 2024; or
2. The date on which this regulation is approved by the Legislative Commission and filed with the Secretary of State pursuant to NRS 233B.070.