



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1393/1
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2021 ASSEMBLY BILL 1099

March 10, 2022 - Introduced by Representatives NEYLON and ALLEN. Referred to
Committee on Ways and Means.

1 **AN ACT to amend** 73.0301 (1) (d) 6., 108.227 (1) (e) 6. and 138.14 (3); and **to**
2 **create** 138.09 (1a) (c) and chapter 203 of the statutes; **relating to:** regulating
3 earned income access services, providing a penalty, and granting rule-making
4 authority.

Analysis by the Legislative Reference Bureau

This bill regulates persons that provide earned income access services in this state to individuals who reside in this state (consumers) and requires such persons to register with the Division of Banking (division) in the Department of Financial Institutions before providing those services.

Under the bill, “earned income access service” is defined as “the business of delivering proceeds to consumers before the date on which obligors are obligated to pay salary, wages, or other benefits.” A person other than an individual that is in the business of providing earned income access services to consumers is a “provider.” The bill defines “proceeds” as “the amount of earned but unpaid income that a provider provides to a consumer,” and “earned but unpaid income” is defined as “money that is based on wages, compensation, or other income that a consumer represents, and that a provider determines, has been earned by or has accrued to the benefit of the consumer but that has not, at the time the proceeds are provided, been paid to the consumer by an obligor.” The bill defines “obligor” as “an employer, independent contractor, or other person that is legally obligated to pay a consumer a sum of money on an hourly, project-based, piecework, or other basis,” but “obligor” does not include “the customer of an obligor or a 3rd party that has an obligation to

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make a payment to a consumer based solely on the consumer's agency relationship with the obligor."

Under the bill, a provider that wants to provide earned income access services in this state must apply to the division for a certificate of registration, pay a registration fee, and do all of the following:

1. Supply certain information to the division, including the addresses of the provider's offices or retail stores in this state and, if the provider provides earned income 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 income access services.

2. Notify the division of any material changes in the information supplied to division.

3. File with the division and maintain in force a surety bond or irrevocable letter of credit in the amount of \$25,000 for the purpose of protecting consumers or other persons that may be damaged if the provider does not comply with the regulations created in the bill.

4. Conspicuously post the provider's certificate of registration at the provider's physical place of business or, if the provider conducts business on an Internet site, post the provider's registration number on the Internet site.

Under the bill, the division generally must issue a certificate of registration to a provider if the division finds that the character and general fitness and the financial responsibility of the provider warrant the belief that the provider will operate its business in compliance with the regulations created in the bill. The bill requires the division to deny registration if the provider is liable for delinquent taxes or unemployment insurance contributions. A registered provider must pay an annual registration fee.

If a provider is required to register under the bill, the bill imposes various requirements and limitations on the provider in connection with providing earned income access services in this state to consumers, including all of the following:

1. The provider must provide proceeds to consumers on a nonrecourse basis.

2. Each time the provider provides proceeds to a consumer, the provider must inform the consumer when the provider will make its first attempt to collect repayment of those proceeds from the consumer.

3. If the provider attempts to collect repayment of proceeds from a consumer's depository institution account, the provider must comply with applicable National Automated Clearinghouse Association rules.

4. The provider may not charge a consumer a late fee or any other monetary penalty if the consumer fails to repay proceeds.

5. The provider may not require a consumer to make a "mandatory payment," which the bill defines as "an amount the provider determines a consumer must pay to the provider as a condition of receiving proceeds."

6. The provider must, before providing proceeds to a consumer, inform the consumer in writing of any "nonmandatory payments" that may be associated with the provider providing earned income access services to consumers. The bill defines "nonmandatory payment" as "an amount paid by a consumer or an obligor to a

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provider that is not a mandatory payment,” for example, a tip or gratuity a consumer pays to the provider.

7. The provider may collect a nonmandatory payment from a consumer, but the provider may not condition the amount of proceeds, or the frequency with which the provider provides proceeds, based on the amount of the consumer’s nonmandatory payment.

The bill provides that current state laws that regulate persons that originate or service payday loans do not apply to registered providers, and current laws that regulate licensed lenders, which are certain lenders licensed by the division that assess finance charges greater than 18 percent for consumer loans, do not apply to registered providers. The bill also provides that the Wisconsin Consumer Act does not apply to proceeds. Under current law, the Wisconsin Consumer Act grants consumers certain rights and remedies and contains notice and disclosure requirements and prohibitions relating to consumer credit transactions that are entered into for personal, family, or household purposes. The bill also specifies that 1) proceeds provided in compliance with the regulations created in the bill are not considered credit and a registered provider that provides proceeds is not considered a creditor; and 2) nonmandatory payments by a consumer are not considered a finance charge under the federal Truth in Lending Act.

The bill requires a registered provider to submit an annual report to the division that includes certain information related to the provider’s earned income access services in this state and to keep certain books and records. The bill gives the division the right to suspend or revoke a provider’s certificate of registration under certain circumstances, including if the provider fails to pay the annual registration fee, fails to maintain the required bond or letter of credit, or makes a material misstatement to the division. The bill provides the division with certain authority to enforce the regulations created in the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.0301 (1) (d) 6. of the statutes is amended to read:

2 73.0301 (1) (d) 6. A license or certificate of registration issued by the
3 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
4 138.14, 202.12 to 202.14, 202.22, 203.03, 217.06, 218.0101 to 218.0163, 218.02,
5 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

6 **SECTION 2.** 108.227 (1) (e) 6. of the statutes is amended to read:

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1 108.227 (1) (e) 6. A license or certificate of registration issued by the
2 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
3 138.14, 202.12 to 202.14, 202.22, 203.03, 217.06, 218.0101 to 218.0163, 218.02,
4 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

5 **SECTION 3.** 138.09 (1a) (c) of the statutes is created to read:

6 138.09 (1a) (c) Providers of earned income access services required to register
7 under s. 203.03 (1).

8 **SECTION 4.** 138.14 (3) of the statutes is amended to read:

9 138.14 (3) EXEMPTIONS. This section does not apply to banks, savings banks,
10 savings and loan associations, trust companies, credit unions, or any of their
11 affiliates or to providers of earned income access services required to register under
12 s. 203.03 (1).

13 **SECTION 5.** Chapter 203 of the statutes is created to read:

14 **CHAPTER 203**

15 **EARNED INCOME ACCESS SERVICES**

16 **203.01 Definitions.** In this chapter:

17 (1) "Consumer" means an individual who resides in this state.

18 (2) "Division" means the division of banking.

19 (3) "Earned but unpaid income" means money that is based on wages,
20 compensation, or other income that a consumer represents, and that a provider
21 determines, has been earned by or has accrued to the benefit of the consumer but that
22 has not, at the time the proceeds are provided, been paid to the consumer by an
23 obligor.

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1 **(4)** “Earned income access service” means the business of delivering proceeds
2 to consumers before the date on which obligors are obligated to pay salary, wages, or
3 other benefits.

4 **(5)** “Mandatory payment” means an amount a provider determines a consumer
5 must pay to the provider as a condition of receiving proceeds.

6 **(6)** “Nonmandatory payment” means an amount paid by a consumer or an
7 obligor to a provider that is not a mandatory payment. “Nonmandatory payment”
8 includes any of the following:

9 (a) A fee imposed by the provider for delivery or expedited delivery of proceeds
10 to the consumer, as long as the provider offers the consumer at least one option of
11 receiving proceeds at no cost.

12 (b) An amount paid by the obligor to the provider on the consumer’s behalf that
13 entitles the consumer to receive proceeds at no cost to the consumer.

14 (c) A subscription or membership fee imposed by the provider for a group of
15 services that includes earned income access services, as long as the provider offers
16 the consumer at least one option of receiving proceeds at no cost.

17 (d) A tip or gratuity paid by the consumer to the provider, as long as the provider
18 offers the consumer at least one option of receiving proceeds at no cost.

19 **(7)** (a) “Nonrecourse” means that a provider may not compel or attempt to
20 compel repayment by a consumer of outstanding proceeds or nonmandatory
21 payments owed by the consumer to the provider using any of the following means:

22 1. A civil suit against the consumer in court.

23 2. Using a 3rd party to pursue collection of outstanding proceeds or
24 nonmandatory payments on the provider’s behalf.

25 3. Selling the debt to a 3rd-party collector or debt buyer.

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1 (b) “Nonrecourse” does not include the use by a provider of any of the means
2 described under par. (a) 1. to 3. to compel or attempt to compel repayment of
3 outstanding proceeds or nonmandatory payments incurred by a consumer through
4 fraudulent means.

5 (8) “Obligor” means an employer, independent contractor, or other person that
6 is legally obligated to pay a consumer a sum of money on an hourly, project-based,
7 piecework, or other basis. “Obligor” does not include the customer of an obligor or
8 a 3rd party that has an obligation to make a payment to a consumer based solely on
9 the consumer’s agency relationship with the obligor.

10 (9) “Outstanding proceeds” means proceeds provided to a consumer by a
11 provider but not yet repaid to the provider.

12 (10) “Proceeds” means the amount of earned but unpaid income that a provider
13 provides to a consumer.

14 (11) “Provider” means a person that is not an individual and that is in the
15 business of offering and providing earned income access services to consumers.

16 **203.02 Powers of the division.** (1) The division may issue any general or
17 special order in execution of or supplementary to this chapter.

18 (2) The division may promulgate such rules as it considers necessary for the
19 administration of this chapter.

20 (3) The division has the same power to conduct hearings, take testimony, and
21 secure evidence as is provided in ss. 217.17 and 217.18.

22 (4) The division for the purpose of discovering violations of this chapter may
23 investigate the business of a provider registered under this chapter that is
24 transacted under this chapter and shall investigate convictions reported to the
25 division by any district attorney for violation by a provider of this chapter. The place

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1 of business, if any, books of account, papers, records, safes, and vaults of a provider
2 registered under this chapter shall be open to inspection and examination by the
3 division for the purpose of such investigation and the division may examine under
4 oath all persons whose testimony the division may require relative to such
5 investigation.

6 (5) The cost of any investigation, examination, or hearing, including witness
7 fees or any other expenses, conducted by the division under this chapter involving
8 a provider shall be paid by the provider within 30 days after demand therefor by the
9 division, and the state may maintain an action for the recovery of such costs and
10 expenses.

11 (6) Actual costs incurred by the division to examine books and records
12 maintained outside of this state shall be paid by the provider.

13 **203.03 Registration.** (1) A provider, including a provider that is not
14 physically located in this state, may not provide earned income access services in this
15 state without first registering with the division and complying with the bond or letter
16 of credit requirements under sub. (5).

17 (2) A provider required to register under sub. (1) shall apply to the division for
18 a certificate of registration on a form and in the manner prescribed by the division.
19 The application shall include all of the following information:

20 (a) The name of the provider.

21 (b) The name under which the provider transacts business, if different from
22 par. (a).

23 (c) The address of the provider's principal office, which may be outside this
24 state.

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1 (d) The addresses of all of the provider's offices or retail stores, if any, in this
2 state.

3 (e) If the provider provides earned income access services at a location that is
4 not an office or retail store in this state, a brief description of the manner in which
5 the provider provides earned income access services.

6 (f) The address of the provider's designated agent upon whom service of process
7 may be made in this state.

8 (g) The provider's federal employer identification number.

9 (h) Any other similar information the division requires to administer this
10 chapter.

11 **(3)** Each provider required to register under sub. (1) shall update any
12 information provided in its registration application within 15 business days after a
13 material change in that information.

14 **(4)** A provider that submits an application for a certificate of registration under
15 sub. (2) shall pay a nonrefundable fee to the division determined in accordance with
16 rates set by the division. In setting the rates, the division shall consider the division's
17 costs of administering this chapter. The division may require an applicant to submit
18 financial and other information the division requires to determine the amount of the
19 fee an applicant is required to pay.

20 **(5)** (a) A provider required to register under sub. (1) shall file with the division,
21 and maintain in force, a surety bond that is issued by a surety company admitted to
22 do business in this state or an irrevocable letter of credit from a federally insured
23 bank or savings and loan association located in this state that meets all of the
24 following requirements:

25 1. The bond or letter of credit is in an amount equal to \$25,000.

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1 2. The bond or letter of credit is in favor of the state for the benefit of any person
2 that is damaged by a violation of this chapter.

3 3. The bond or letter of credit is in favor of any person that is damaged by a
4 violation of this chapter.

5 (b) A person claiming against a bond or letter of credit described under this
6 subsection for a violation of this chapter may maintain an action at law against the
7 provider that obtained the bond or letter of credit and against the surety or financial
8 institution that issued the bond or letter of credit. The surety or financial institution
9 is liable only for actual damages and not for punitive damages. The aggregate
10 liability of the surety or financial institution to all persons damaged by a provider's
11 violation of this chapter does not exceed the amount of the bond or letter of credit.

12 **(6)** Upon the filing of an application under sub. (2) and the payment of the fee
13 required under sub. (4) by a provider, the division shall investigate the relevant facts.
14 If the division finds that the character and general fitness and the financial
15 responsibility of the provider, and the provider's partners if the provider is a
16 partnership, the provider's members if the provider is a limited liability company or
17 association, and the provider's officers and directors if the provider is a corporation,
18 warrant the belief that the provider's business will be operated in compliance with
19 this chapter, the division shall issue a certificate of registration to the provider. If the
20 division does not make the finding, the division shall deny the provider's application.

21 **(7)** The division may not issue a certificate of registration under this section
22 to a provider if any of the following applies:

23 (a) The provider fails to provide any information required under sub. (2).

24 (b) The department of revenue certifies under s. 73.0301 that the provider is
25 liable for delinquent taxes.

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1 (c) The department of workforce development certifies under s. 108.227 that
2 the provider is liable for delinquent unemployment insurance contributions.

3 (8) A provider's certificate of registration remains in force and effect until the
4 division suspends or revokes the certificate of registration in accordance with this
5 chapter or the provider surrenders the certificate of registration. A registered
6 provider shall, on or before each December 10, pay to the division the annual
7 registration fee established by the division for the next succeeding calendar year.

8 (9) A provider may not assign a certificate of registration.

9 (10) A provider shall conspicuously post its certificate of registration at the
10 provider's physical place of business, or, if the provider conducts business on an
11 Internet site, the provider shall post its registration number on the Internet site.

12 **203.04 Provider requirements; limitations.** (1) A provider required to
13 register under s. 203.03 (1) shall do all of the following:

14 (a) Provide proceeds to consumers on a nonrecourse basis and shall treat
15 nonmandatory payments as nonrecourse payment obligations.

16 (b) Before providing proceeds to a consumer, inform the consumer in writing
17 of any nonmandatory payments that may be associated with the provider providing
18 earned income access services to consumers.

19 (c) Each time the provider provides proceeds to a consumer, inform the
20 consumer when the provider will make its first attempt to collect repayment of those
21 proceeds from the consumer.

22 (d) If the provider attempts to collect repayment of proceeds from a consumer's
23 depository institution account, comply with applicable National Automated
24 Clearinghouse Association rules.

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1 (2) A provider required to register under s. 203.03 (1) may not do any of the
2 following:

3 (a) Require a consumer to make a mandatory payment.

4 (b) Charge a consumer a late fee or any other monetary penalty for failure to
5 repay outstanding proceeds.

6 (c) Condition the amount of proceeds the provider provides to a consumer on
7 the amount of a nonmandatory payment the consumer makes to the provider. This
8 paragraph does not prohibit the provider from collecting a nonmandatory payment
9 from a consumer that is equal to a percentage of proceeds the provider provides to
10 the consumer if the percentage does not change based on the amount of proceeds
11 provided to the consumer.

12 (d) Condition the frequency with which the provider provides proceeds to a
13 consumer on the amount of a nonmandatory payment the consumer makes to the
14 provider. This paragraph does not prohibit the provider from collecting a
15 nonmandatory payment from a consumer that is equal to a percentage of proceeds
16 the provider provides to the consumer if the percentage does not change based on the
17 amount of proceeds provided to the consumer.

18 (e) Report a consumer's repayment of or failure to repay proceeds to a consumer
19 credit reporting agency or a debt collector.

20 (f) Require a credit report or credit score to determine a consumer's eligibility
21 for earned income access services.

22 (g) Provide, sell, or otherwise disclose to a 3rd party, including an obligor, any
23 nonpublic personal information collected from or about a consumer. This paragraph
24 does not prohibit the provider from providing, selling, or otherwise disclosing

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1 information to the extent necessary to provide earned income access services to the
2 consumer or in accordance with a consumer's written consent.

3 **203.045 Interpretation; applicability.** (1) If a provider provides proceeds
4 to a consumer in accordance with this chapter, the proceeds are not considered credit,
5 the provider is not considered a creditor, and a nonmandatory payment made by the
6 consumer to the provider is not considered a finance charge under the federal Truth
7 in Lending Act, 15 USC 1601 to 1667f.

8 (2) Chapters 421 to 427 do not apply to proceeds a provider provides to a
9 consumer in accordance with this chapter.

10 **203.05 Reporting requirements; books and records.** (1) On or before
11 March 10 of each year, a provider required to register under s. 203.03 (1) shall submit
12 an annual report to the division that includes all of the following information related
13 to earned income access services the provider provided in this state during the prior
14 year:

15 (a) Gross revenue attributable to those earned income access services.

16 (b) The total number of transactions in which the provider provided proceeds
17 to consumers.

18 (c) The total number of unique consumers to whom the provider provided
19 proceeds.

20 (d) The total dollar amount of proceeds the provider provided to consumers.

21 (e) The total dollar amount of nonmandatory payments the provider received
22 from consumers.

23 (f) The total number of transactions in which proceeds were provided to
24 consumers for which the provider did not receive repayment of any outstanding
25 proceeds.

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1 (g) The total dollar amount of transactions described under par. (f).

2 (h) The total number of transactions in which proceeds were provided to
3 consumers for which the provider received partial repayment of outstanding
4 proceeds.

5 (i) The total dollar amount of transactions described under par. (h) and the total
6 dollar amount of unpaid outstanding proceeds attributable to those transactions.

7 (j) The total number of transactions in which outstanding proceeds were repaid
8 after the original scheduled repayment date.

9 (k) The total dollar amount of transactions described under par. (j).

10 **(2)** Failure by a provider to submit a timely report as required under sub. (1)
11 is grounds for disciplinary action by the division.

12 **(3)** A provider required to register under s. 203.03 (1) shall keep such books and
13 records that, in the opinion of the division, will enable the division to determine
14 whether the provider is in compliance with this chapter. The provider shall retain
15 records related to proceeds for at least 2 years following the date on which proceeds
16 are provided. The provider may keep books and records at a place of business located
17 outside of this state if the provider is able to readily produce those books and records
18 for review by the division upon reasonable request by the division.

19 **203.06 Suspension or revocation of registration.** (1) The division may
20 suspend or revoke a provider's certificate of registration issued under this chapter
21 if the division finds any of the following:

22 (a) That the provider violated any provision of this chapter, any rule
23 promulgated under this chapter, or any lawful order of the division made under this
24 chapter.

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1 (b) That any fact or condition exists that, if it had existed at the time of the
2 provider's original application for a certificate of registration, would have warranted
3 the division refusing to issue the certificate of registration.

4 (c) That the provider made a material misstatement in an application for a
5 certificate of registration or in information furnished to the division.

6 (d) That the provider failed to pay the annual registration fee or to maintain
7 in effect the bond required under s. 203.03 (5).

8 (2) The division shall revoke a provider's certificate of registration issued
9 under this chapter if the department of revenue certifies under s. 73.0301 that the
10 provider is liable for delinquent taxes. A provider whose registration is revoked
11 under this subsection for delinquent taxes is entitled to a notice under s. 73.0301 (2)
12 (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice
13 or hearing under this chapter.

14 (3) The division shall revoke a provider's certificate of registration issued
15 under this chapter if the department of workforce development certifies under s.
16 108.227 that the provider is liable for delinquent unemployment insurance
17 contributions. A provider whose registration is revoked under this subsection for
18 delinquent unemployment insurance contributions is entitled to a notice under s.
19 108.227 (2) (b) 1. b. and a hearing under s. 108.227 (5) (a) but is not entitled to any
20 other notice or hearing under this chapter.

21 (4) Except as provided in subs. (2) and (3), the division may not revoke or
22 suspend a provider's certificate registration except after a hearing under this
23 chapter.

24 **203.07 Violations and enforcement.** (1) The division may bring a civil
25 action to restrain by temporary or permanent injunction a person from violating this

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1 chapter or rules promulgated under this chapter or to restrain a person from
2 engaging in false, misleading, deceptive, or unconscionable conduct in connection
3 with offering earned income access services.

4 (2) The division may seek a temporary restraining order without written or
5 oral notice to the adverse party. If a court finds that there is reasonable cause to
6 believe that the respondent is engaged in the conduct sought to be restrained and
7 that such conduct violates this chapter or rules promulgated under this chapter, the
8 court may grant a temporary restraining order or any temporary relief the court
9 determines is appropriate. A temporary restraining order granted without notice
10 shall expire by its terms within a stated time after entry, not to exceed 30 days, as
11 the court fixes, unless within this time it is extended by the court, or unless the party
12 against whom the order is directed consents that it may be extended for a longer
13 period. When a temporary restraining order is granted without notice, the motion
14 for a preliminary injunction shall be set down for a hearing at the earliest possible
15 time. Upon notice to the party who obtained the temporary restraining order without
16 notice, the adverse party may appear and move its dissolution or modification, and,
17 in this event, the court shall proceed to hear and determine such motion as
18 expeditiously as the ends of justice require.

19 (3) The division may recover in a civil action from a person that violates this
20 chapter or rules promulgated under this chapter a civil penalty of not less than \$100
21 and not more than \$1,000 for each violation.

22 (4) In addition to the amount to which the division is entitled under sub. (3),
23 the division may recover in a civil action from a person that knowingly or willfully
24 violates this chapter or rules promulgated under this chapter a civil penalty of not
25 less than \$1,000 and not more than \$10,000 for each violation.

