

1 AN ACT relating to earned wage access services.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. SUBTITLE 13 OF KRS CHAPTER 286 IS ESTABLISHED,  
4 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this subtitle, unless the context requires otherwise:*

6 *(1) "Applicant" means a person filing an application for a license;*

7 *(2) "Consumer" means an individual who resides in this state;*

8 *(3) "Control" means the power to direct the management or policies of a licensee or*  
9 *applicant, whether through ownership of securities, by contract, or otherwise;*

10 *(4) "Earned but unpaid income" means salary, wages, compensation, or other*  
11 *income that a consumer or an employer has represented, and that an earned*  
12 *wage access services provider has reasonably determined, has:*

13 *(a) Been earned or accrued to the benefit of the consumer in exchange for the*  
14 *consumer's provision of services to, and on behalf of, the employer,*  
15 *including:*

16 *1. Services provided on an hourly basis, project-based basis, piecework*  
17 *basis, or other basis; and*

18 *2. Circumstances in which the consumer is acting as an independent*  
19 *contractor of the employer; and*

20 *(b) Not been paid to the consumer by the employer at the time of the payment of*  
21 *proceeds;*

22 *(5) (a) "Earned wage access services" means consumer-directed wage access*  
23 *services, employer-integrated wage access services, or both.*

24 *(b) As used in this subsection:*

25 *1. "Consumer-directed wage access services" means the delivery to a*  
26 *consumer of access to earned but unpaid income that is based on the*  
27 *consumer's representations, and the earned wage access services*

1 provider's reasonable determination, of the consumer's earned but  
2 unpaid income; and

3 2. "Employer-integrated wage access services" means the delivery to a  
4 consumer of access to earned but unpaid income that is based on  
5 employment, income, or attendance data, or any combination thereof,  
6 obtained directly from an employer or an employer's payroll service  
7 provider;

8 (6) "Earned wage access services provider" or "provider":

9 (a) Means a person that is in the business of offering or providing earned wage  
10 access services to consumers; and

11 (b) Does not include:

12 1. A service provider, including a payroll service provider, that:

13 a. Verifies available earnings; and

14 b. Is not contractually obligated to fund any proceeds delivered as  
15 part of earned wage access services; or

16 2. An employer that offers a portion of salary, wages, compensation, or  
17 other income directly to its employees or independent contractors  
18 before the normally scheduled pay date;

19 (7) "Employer":

20 (a) Means:

21 1. A person who employs a consumer; or

22 2. Any other person who is contractually obligated to pay a consumer  
23 earned but unpaid income in exchange for the consumer's provision  
24 of services to, or on behalf of, the employer, including:

25 a. Services provided on an hourly basis, project-based basis,  
26 piecework basis, or other basis; and

27 b. Circumstances in which the consumer is acting as an

1 independent contractor of the employer; and

2 (b) Does not include:

3 1. A customer of a person referenced in paragraph (a) of this subsection;

4 or

5 2. Any other person whose obligation to make a payment of salary,

6 wages, compensation, or other income to a consumer is not based on

7 the provision of services by that consumer for, or on behalf of, the

8 person;

9 (8) "License" means an earned wage access services provider license issued under

10 Section 3 of this Act;

11 (9) "Licensee" means a person licensed as an earned wage access services provider

12 under this subtitle;

13 (10) "Managing principal" means a natural person who:

14 (a) Meets the applicable requirements of Section 7 of this Act; and

15 (b) Actively participates in, and is primarily responsible for, the operations of a

16 licensee;

17 (11) "Material fact" means a fact that a reasonable person knows, or should know,

18 could reasonably be expected to influence any decision or action taken by the

19 commissioner under this subtitle;

20 (12) "Outstanding proceeds" means proceeds remitted to a consumer by an earned

21 wage access services provider that have not yet been repaid to the provider;

22 (13) (a) "Person in control of a licensee or applicant" means, with respect to an

23 applicant or licensee, any of the following:

24 1. A director, general partner, or executive officer;

25 2. In the case of a limited liability company, a:

26 a. Managing member; or

27 b. Manager;

1           3. Any person that directly or indirectly has the right to vote twenty-five  
2           percent (25%) or more of a class of voting securities;

3           4. Any person that has the power to sell, or direct the sale of, twenty-five  
4           percent (25%) or more of a class of voting securities; or

5           5. In the case of a partnership or limited liability company, any person  
6           that has the right to receive twenty-five percent (25%) or more of the  
7           capital upon dissolution.

8           (b) As used in this subsection, "executive officer" means a natural person  
9           holding the title or responsibility of president, vice president, chief executive  
10           officer, chief financial officer, chief operational officer, or chief compliance  
11           officer; and

12           (14) "Proceeds" means a payment to a consumer by an earned wage access services  
13           provider that is based on earned but unpaid income.

14           ➔SECTION 2. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
15 IS CREATED TO READ AS FOLLOWS:

16           This subtitle shall not apply to any person doing business under and as permitted by  
17           any law of this state or the United States relating to:

18           (1) Banks;

19           (2) Savings banks;

20           (3) Trust companies;

21           (4) Savings and loan associations;

22           (5) Agricultural cooperative associations;

23           (6) Credit unions;

24           (7) Licensed pawn brokers; or

25           (8) Consumer loan companies.

26           ➔SECTION 3. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
27 IS CREATED TO READ AS FOLLOWS:

1 (1) A natural person shall not engage in the business of offering or providing earned  
2 wage access services.

3 (2) A person other than a natural person shall not engage in the business of offering  
4 or providing earned wage access services without first obtaining an earned wage  
5 access services provider license from the commissioner.

6 ➔SECTION 4. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
7 IS CREATED TO READ AS FOLLOWS:

8 (1) As used in this section, "registry" means the State Regulatory Registry, LLC, or  
9 its successor organization.

10 (2) When an application, report, or approval request is required under this subtitle to  
11 be filed with the commissioner, the commissioner may require, by administrative  
12 regulation or order, that the filing, including any applicable fees and any  
13 supporting documentation, be submitted to:

14 (a) The registry;

15 (b) The registry's parent, affiliate, or operating subsidiary; or

16 (c) Other agencies or authorities as part of a nationwide licensing system,  
17 which may act as an agent for receiving, requesting, and distributing  
18 information to and from any source directed by the commissioner.

19 (3) Notwithstanding any provision of this subtitle to the contrary, the commissioner  
20 may report violations of this subtitle, enforcement actions, and other relevant  
21 information to the registry.

22 (4) The commissioner may use the registry as an agent for requesting information  
23 from and distributing information to:

24 (a) The United States Department of Justice; or

25 (b) Other governmental agencies.

26 ➔SECTION 5. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
27 IS CREATED TO READ AS FOLLOWS:

1 **Each application for a license shall:**

2 **(1) Be made:**

3 **(a) In writing;**

4 **(b) Under oath or affirmation; and**

5 **(c) In a form the commissioner prescribes; and**

6 **(2) Contain the following information:**

7 **(a) In the case of an applicant that is a partnership, limited liability company,**  
8 **or association:**

9 **1. The names, email addresses, and physical addresses of the:**

10 **a. Members; and**

11 **b. Managing principals; and**

12 **2. A statement that the business will be conducted:**

13 **a. At one (1) or more physical addresses, which address or**  
14 **addresses shall be listed;**

15 **b. Entirely online; or**

16 **c. Both online and at one (1) or more physical addresses, which**  
17 **address or addresses shall be listed;**

18 **(b) In the case of an applicant that is a corporation:**

19 **1. The names, email addresses, and physical addresses of the:**

20 **a. Principal officers;**

21 **b. Directors; and**

22 **c. Managing principals; and**

23 **2. A statement that the business will be conducted:**

24 **a. At one (1) or more physical addresses, which address or**  
25 **addresses shall be listed;**

26 **b. Entirely online; or**

27 **c. Both online and at one (1) or more physical addresses, which**

1 address or addresses shall be listed; and

2 (c) Any additional information that the commissioner prescribes.

3 ➔SECTION 6. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
4 IS CREATED TO READ AS FOLLOWS:

5 Each applicant, at the time of making an application for a license, shall pay the  
6 following to the commissioner:

7 (1) Five hundred dollars (\$500) as a fee for investigating the application; and

8 (2) The additional sum of five hundred dollars (\$500) as an annual license fee for  
9 the period terminating on the last day of the current calendar year.

10 ➔SECTION 7. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
11 IS CREATED TO READ AS FOLLOWS:

12 (1) (a) To qualify for a license, an applicant shall deposit, and maintain for the  
13 duration of licensure under this subtitle, with the commissioner, in a form  
14 directed by the commissioner, one (1) of the following instruments that  
15 satisfy the requirements of paragraph (b) of this subsection:

16 1. An irrevocable letter of credit;

17 2. A corporate surety bond;

18 3. Evidence, which shall include a signed and notarized  
19 acknowledgement from the financial institution, that the applicant  
20 has:

21 a. Established an account payable to the commissioner in a  
22 federally insured financial institution in this state; and

23 b. Deposited United States currency in the account referenced in  
24 subdivision a. of this subparagraph in an amount that satisfies  
25 the requirements of paragraph (b) of this subsection; or

26 4. A savings certificate of a federally insured financial institution in this  
27 state that is not available for withdrawal except by direct order of the

1                   commissioner, with a signed and notarized acknowledgement from the  
2                   financial institution. Interest earned on the certificate shall accrue to  
3                   the applicant.

4           **(b) The instruments identified in paragraph (a) of this subsection shall:**

5                   **1. Be made payable to the commissioner;**

6                   **2. Be in the following amounts:**

7                           **a. If the applicant is privately held, one hundred thousand dollars**  
8   **(\$100,000); or**

9                           **b. If the applicant is publicly traded, two hundred fifty thousand**  
10   **dollars (\$250,000);**

11                   **3. Provide for claim on the instrument by the commissioner who has a**  
12   **cause of action under this subtitle. The total liability of the surety,**  
13   **cumulative or otherwise, shall not exceed the amount specified in the**  
14   **instrument; and**

15                   **4. Be available for:**

16                           **a. The recovery of expenses, fines, and fees levied or imposed by**  
17   **the commissioner under this subtitle; and**

18                           **b. Losses or damages that are determined by the commissioner to**  
19   **have been incurred by any customer as a result of the applicant's**  
20   **or licensee's failure to comply with the requirements of this**  
21   **subtitle.**

22           **(c) A claim shall not be maintained to enforce any liability on an instrument**  
23   **under this subsection unless the claim is brought within three (3) years after**  
24   **the act upon which it is based.**

25           **(2) For any application, including renewal applications, an applicant or licensee**  
26   **shall demonstrate that its financial condition is sufficient to effectively conduct**  
27   **the business of a licensee in Kentucky by having and maintaining, for the**



1 duration of licensure under this subtitle:

2 (a) If the applicant is privately held, a total net worth of at least one hundred  
3 thousand dollars (\$100,000); or

4 (b) If the applicant is publicly traded, a total net worth in excess of two hundred  
5 fifty thousand dollars (\$250,000).

6 (3) (a) Each applicant shall have, at the time of making an application and for the  
7 duration of licensure under this subtitle, at least one (1) managing  
8 principal.

9 (b) Each licensee shall notify the department within thirty (30) days following a  
10 change in any of its managing principals.

11 (4) (a) At the time of application and following any change in a managing  
12 principal, the commissioner shall require each managing principal and  
13 person in control of an applicant or licensee to submit to a criminal  
14 background check.

15 (b) The cost of each criminal background check shall be borne by the applicant  
16 or licensee.

17 (5) (a) The commissioner may deem an application incomplete if the applicant fails  
18 to pay any fee, or submit any documentation or information, required under  
19 this subtitle within sixty (60) days from the date the application was filed.

20 (b) After sixty (60) days, if an application is incomplete, it shall be considered  
21 abandoned.

22 (6) (a) After a completed application is filed and an investigation is completed, the  
23 commissioner shall issue an earned wage access services provider license to  
24 the applicant in accordance with this subtitle if the commissioner finds that  
25 the financial responsibility, financial condition, experience, character, and  
26 general fitness of the applicant reasonably demonstrate that the applicant,  
27 each managing principal of the applicant, and each person in control of the

1           applicant will operate honestly, fairly, and efficiently in accordance with the  
2           purposes of this subtitle.

3           (b) If the commissioner finds that the applicant does not meet the requirements  
4           of paragraph (a) of this subsection, the commissioner shall:

- 5           1. Not issue a license to the applicant;
- 6           2. Return the annual license fee paid by the applicant; and
- 7           3. Retain the five hundred dollar (\$500) investigation fee to cover the  
8           cost of investigating the application.

9           (c) When determining whether an applicant has satisfied the qualifications  
10           required under this subsection, the commissioner shall consider the  
11           grounds set forth in Section 11 of this Act.

12           (d) The commissioner shall approve or deny every application for a license  
13           within sixty (60) days from the receipt of a completed application, unless the  
14           time is extended by a written agreement between the applicant and the  
15           commissioner.

16           (e) 1. If the commissioner denies a license, the applicant may, within twenty  
17           (20) days from the date of denial, file a written petition requesting a  
18           hearing to appeal with the office of the commissioner.

19           2. Upon the timely filing of a petition to appeal, an administrative  
20           hearing shall be conducted in accordance with KRS Chapter 13B.

21           3. If the applicant does not file a petition within the required timeframe,  
22           the applicant shall be deemed to have waived the right to appeal.

23           (f) The official record of the hearing shall be filed in the office of the  
24           commissioner as a public record, open to public inspection.

25           (7) Any applicant, or person in control of an applicant, that has a license denied by  
26           the commissioner shall not be eligible to apply for a license, or serve as a person  
27           in control of an applicant or licensee, until the expiration of one (1) year from the

1 date a final order denying the license is entered by the commissioner.

2 ➔SECTION 8. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
3 IS CREATED TO READ AS FOLLOWS:

4 (1) Every license shall state:

5 (a) That the business will be conducted:

6 1. At one (1) or more physical addresses, which address or addresses  
7 shall be listed;

8 2. Entirely online; or

9 3. Both online and at one (1) or more physical addresses, which address  
10 or addresses shall be listed;

11 (b) The name of the licensee;

12 (c) Any assumed names used by the licensee; and

13 (d) The initial date of licensure.

14 (2) A license shall not be transferable or assignable without the prior written  
15 approval of the commissioner pursuant to Section 9 of this Act.

16 (3) A licensee may offer and provide earned wage access services online, at one (1)  
17 or more locations, or both, pursuant to a single license issued to the licensee.

18 (4) Whenever a licensee desires to change a physical place of business to another  
19 location, the licensee shall give written notice to the commissioner at least fifteen  
20 (15) days prior to the location change.

21 (5) A licensee shall not offer or provide earned wage access services under a name  
22 that is not designated on the license unless the licensee has given written notice to  
23 the commissioner at least thirty (30) days prior to the name change.

24 ➔SECTION 9. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
25 IS CREATED TO READ AS FOLLOWS:

26 (1) As used in this section, "change of control" means any of the following:

27 (a) A transfer of ownership interest that results in giving a person the power to

- 1           direct the management or policies of a licensee;
- 2           (b) For publicly traded licensees, a transfer of at least ten percent (10%) of the
- 3           licensee's outstanding voting stock;
- 4           (c) For privately held licensees, a transfer of at least fifty percent (50%) of the
- 5           licensee's outstanding voting stock; or
- 6           (d) If the licensee operates out of one (1) or more physical locations in this
- 7           state, the acquisition of an existing licensed location or locations by a
- 8           licensee.
- 9           (2) (a) Except as provided in paragraph (b) of this subsection, a change of control
- 10           shall be approved in writing by the commissioner prior to the change.
- 11           (b) A licensee shall file an application with the commissioner within fifteen (15)
- 12           days after learning of any change of control that:
- 13           1. Results when a person acquires control of a licensee by devise or
- 14           descent;
- 15           2. Results when a person acquires authority to act:
- 16           a. As a personal representative, custodian, guardian, conservator,
- 17           or trustee;
- 18           b. As an officer appointed by a court of competent jurisdiction; or
- 19           c. By operation of law;
- 20           3. Results from the public offering of securities; or
- 21           4. Has been exempted by administrative regulation or order of the
- 22           commissioner, if the commissioner makes a finding that it is in the
- 23           public interest to do so.
- 24           (3) A licensee shall make an application to the commissioner for approval of a
- 25           change of control on a form prescribed by the commissioner.
- 26           (4) (a) For changes of control resulting in an existing licensee obtaining control of
- 27           another licensee's existing licensed location or locations, the application fee

1           shall:

2           1. Except as provided in subparagraph 2. of this paragraph, be one  
 3           hundred (\$100) dollars per location; and

4           2. Not exceed one thousand dollars (\$1,000) regardless of the number of  
 5           locations acquired.

6           (b) For all other changes of control, the application fee shall be the fees set  
 7           forth in Section 6 of this Act.

8           (5) The commissioner shall approve an application for a change of control if the  
 9           commissioner determines that the requirements for obtaining a license will be  
 10           satisfied after the change of control.

11           (6) (a) Before filing an application for approval of a change of control, a licensee  
 12           may submit a written request for a determination from the commissioner as  
 13           to whether a proposed transaction constitutes a change of control.

14           (b) If the commissioner determines that a proposed transaction would not  
 15           constitute a change of control, then:

16           1. The commissioner shall respond in writing to that effect; and

17           2. The licensee shall not be subject to the requirements of this section.

18           (c) If the commissioner does not make a determination as to whether a  
 19           proposed transaction would constitute a change of control within sixty (60)  
 20           days from the date of a request, then an application for a change of control  
 21           shall not be required.

22           ➔SECTION 10. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 23 IS CREATED TO READ AS FOLLOWS:

24           (1) Each license shall remain in full force and effect until it is surrendered by the  
 25           licensee, suspended, revoked, or expired as provided in this subtitle.

26           (2) (a) Each licensee shall, on or before December 31 of each year, pay to the  
 27           commissioner the annual license fee set forth in Section 6 of this Act for the

1 next succeeding calendar year.

2 (b) Failure of a licensee to pay the annual license fee shall result in the  
 3 expiration of the licensee's license on January 1 of the next succeeding  
 4 calendar year.

5 (3) (a) The commissioner may reinstate an expired license if, within thirty-one (31)  
 6 days of expiration, the licensee:

7 1. Satisfies all requirements set forth in this subtitle; and

8 2. Pays a one hundred dollar (\$100) late fee.

9 (b) Any reinstatement under paragraph (a) of this subsection shall be  
 10 retroactive to January 1 of the calendar year in which the license expired.

11 ➔SECTION 11. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 12 IS CREATED TO READ AS FOLLOWS:

13 (1) For the purposes of this section, "adverse action" means the:

14 (a) Suspension of, revocation of, conditioning or restricting of, or refusal to  
 15 issue or renew a license; or

16 (b) Acceptance of the surrender of a license in lieu of revocation or suspension.

17 (2) The commissioner may take adverse action against, or issue a cease-or-desist  
 18 order to, a licensee, applicant, or person in control of a licensee or applicant if  
 19 the commissioner finds, after a thorough investigation, that the person:

20 (a) Has committed fraud or made a misrepresentation of material fact;

21 (b) Does not meet, has failed to comply with, or has violated, any provision of:

22 1. This subtitle; or

23 2. Any administrative regulation or order of the commissioner issued  
 24 under this subtitle;

25 (c) Has:

26 1. Made a false statement of material fact in an application for a license;

27 or

- 1           2. Failed to give a truthful reply to a question in an application;
- 2           (d) Has demonstrated incompetence or untrustworthiness to act as a licensee;
- 3           (e) Is unfit, through lack of financial responsibility or experience, to conduct
- 4           the business of a licensee;
- 5           (f) Does not conduct business in accordance with the law or conducts business
- 6           by a method that includes activities that are illegal where performed;
- 7           (g) Is insolvent;
- 8           (h) Is the subject of a permanent or temporary injunction of any court of
- 9           competent jurisdiction entered under any other federal or state law
- 10           applicable to the financial services industry;
- 11           (i) Has:
- 12               1. Made, or caused to be made, to the commissioner a false
- 13               representation of material fact; or
- 14               2. Suppressed or withheld from the commissioner information that the
- 15               applicant or licensee possesses and which, if submitted, would have
- 16               rendered the applicant or licensee ineligible to be licensed under this
- 17               subtitle;
- 18           (j) Has:
- 19               1. Refused to permit a lawful examination or investigation by the
- 20               commissioner; or
- 21               2. Refused or failed, within a reasonable time, to furnish to the
- 22               commissioner any information or records, or make any report, that
- 23               may be required under this subtitle;
- 24           (k) Has been convicted of a felony;
- 25           (l) Has been convicted of any misdemeanor of which an essential element is:
- 26               1. Fraud;
- 27               2. Breach of trust; or

1           3. Dishonesty;

2           (m) Has:

3           1. Had any license, registration, or claim of exemption related to the  
4           financial services industry denied, revoked, suspended, conditioned,  
5           restricted, or probated under the laws of this state; or

6           2. Surrendered, withdrawn, or terminated any license, registration, or  
7           claim of exemption issued, or registration granted, under the laws of  
8           this state under threat of administrative action;

9           (n) Has knowingly employed or contracted with a person who has:

10          1. Failed to obtain any necessary license or registration related to the  
11          financial services industry; or

12          2. Had a license, registration, or claim of exemption related to the  
13          financial services industry denied, revoked, suspended, conditioned,  
14          restricted, or probated in this state or another jurisdiction;

15          (o) Has failed to pay any fee required under this subtitle;

16          (p) Has failed to:

17          1. Pay state income taxes; or

18          2. Comply with any administrative or court order directing the payment  
19          of state income tax; or

20          (q) No longer meets the requirements of this subtitle to hold a license.

21          (3) (a) Except as provided in paragraph (b) of this subsection, any person, or  
22          person in control of a licensee, who has had a license revoked by the  
23          commissioner shall not be eligible to apply for a license or to serve as a  
24          person in control of a licensee until after expiration of two (2) years from  
25          the date a final order of revocation is entered by the commissioner.

26          (b) A person whose license has been revoked twice shall:

27          1. Be deemed permanently revoked; and



1           2. Not be eligible for a license or to serve as a person in control of a  
2           licensee.

3   (4) A person, or person in control of a licensee, against whose license adverse action  
4   has been taken under this section shall not participate in any business in this  
5   state for which a license is required under Section 3 of this Act.

6   (5) (a) Adverse action taken against a license, or the expiration of a license, shall  
7   not abrogate or modify:

8           1. The civil or criminal liability of a licensee for acts committed prior to  
9           the surrender or expiration; or

10          2. The obligation of any preexisting contract between a licensee and a  
11          consumer.

12          (b) The surrender or expiration of a license shall not affect a proceeding to  
13          suspend or revoke a license.

14   (6) (a) If the commissioner has reason to believe from evidence satisfactory to the  
15   commissioner that a person has violated, or is about to violate, a provision  
16   of this subtitle, the commissioner may file a complaint in the Franklin  
17   Circuit Court or any court of competent jurisdiction for temporary or  
18   permanent relief against any person.

19          (b) The court shall have:

20           1. Jurisdiction over the proceeding; and

21           2. The power to enter an order or judgment awarding:

22            a. Preliminary or final injunctive relief; and

23            b. Any other relief the court deems proper.

24          (c) Any person who violates a temporary restraining order or injunction issued  
25          by the court, in addition to being held in contempt of court, may be assessed  
26          a civil penalty under Section 25 of this Act by the court.

27          ➔SECTION 12. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

- 2 (1) The commissioner may enter an emergency order suspending, conditioning,  
3 limiting, or restricting a license without notice or hearing if, after a thorough  
4 investigation and written findings, it appears upon grounds satisfactory to the  
5 commissioner that the licensee has engaged or is engaging in unsafe, unsound,  
6 or illegal practices that pose an imminent threat to the public interest.
- 7 (2) The commissioner may enter an emergency cease-and-desist order against an  
8 unlicensed person if, after a thorough investigation, it appears upon grounds  
9 satisfactory to the commissioner that the unlicensed person has engaged or is  
10 engaging in unsafe or unsound practices relating to earned wage access services,  
11 or actions contrary to this subtitle, that pose an imminent threat to the public  
12 interest.
- 13 (3) One (1) or more of the following circumstances shall be considered sufficient  
14 grounds for an emergency order under this section if it appears on grounds  
15 satisfactory to the commissioner that:
- 16 (a) The licensee has willfully failed to comply with one (1) or more of the  
17 requirements of this subtitle;
- 18 (b) The licensee is in such financial condition that it cannot continue in the  
19 business with safety to its consumers;
- 20 (c) The licensee, or a person in control of the licensee:
- 21 1. Has been found guilty of any act involving fraud, deception, theft, or  
22 breach of trust; or
- 23 2. Is the subject of:
- 24 a. An active administrative cease-and-desist order or similar order  
25 in this state; or
- 26 b. A permanent or temporary injunction currently in effect entered  
27 by any court or agency of competent jurisdiction;

1        (d) The licensee has:

- 2            1. Made a misrepresentation of material fact to, or concealed an  
3            essential or material fact from, a person in the course of doing  
4            business; or  
5            2. Engaged in a course of business that has worked or tended to work a  
6            fraud or deceit upon a person or would so operate;

7        (e) The licensee has refused to permit a lawful examination or investigation, or  
8        has refused or failed, within a reasonable time, to furnish any information  
9        or make any report that may have been requested by commissioner in  
10       connection with a lawful investigation or examination; or

11       (f) The licensee has:

- 12           1. Had any license, registration, or claim of exemption related to the  
13           financial services industry denied, suspended, or revoked under the  
14           laws of this state; or  
15           2. Surrendered or terminated any license, registration, or claim of  
16           exemption issued under the laws of this state under threat of  
17           administrative action.

18       (4) (a) An emergency order issued under this section, compliant with KRS  
19       13B.125, becomes effective when served by the commissioner.

20       (b) The emergency order shall be delivered by personal service or certified mail  
21       to the last known address of every affected party.

22       (5) (a) A person aggrieved by an emergency order issued by the commissioner  
23       under this section may request an emergency hearing.

24       (b) The request for hearing shall be filed with the commissioner within twenty  
25       (20) days of service of the emergency order.

26       (6) Upon receipt of a timely written request for an emergency hearing, an emergency  
27       hearing shall be conducted as set forth in KRS 13B.125.

1 (7) An emergency order issued under this section shall remain in effect until it is:

2 (a) Stayed, withdrawn, or superseded by an order of the commissioner; or

3 (b) Terminated by a court order.

4 ➔SECTION 13. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
5 IS CREATED TO READ AS FOLLOWS:

6 (1) (a) Notice of entry of any order denying a license shall be in writing and served  
7 personally or sent by certified mail to the last known address of the  
8 applicant.

9 (b) A person whose application has been denied may, within twenty (20) days of  
10 service of the notice, submit a written petition to the commissioner  
11 requesting a hearing. The hearing shall be held in accordance with KRS  
12 Chapter 13B.

13 (c) If no written petition is received, the commissioner may enter a final order  
14 denying the license.

15 (2) (a) The commissioner may file an administrative complaint against any person  
16 or licensee that the commissioner believes has or may have violated this  
17 subtitle and the violation of which is subject to the penalties set forth in  
18 Section 11 or 25 of this Act.

19 (b) 1. The commissioner shall serve an administrative complaint against a  
20 person or licensee personally or by certified mail, return receipt  
21 requested, postage prepaid, to the last known address of each person  
22 or licensee named in the complaint.

23 2. a. The person or licensee named in the complaint shall be entitled  
24 to a hearing on the complaint, held in accordance with KRS  
25 Chapter 13B.

26 b. A written request for a hearing shall be submitted to the  
27 department, along with a written answer to the complaint, within

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twenty (20) days of being served the complaint.

3. If a written answer and request for a hearing are not filed within twenty (20) days of being served the complaint:

a. The person or licensee shall be deemed to have waived the hearing; and

b. The commissioner may enter a final order granting the relief requested in the complaint.

(3) Whenever the commissioner denies any application for a license or assesses any of the penalties set forth in Section 11 or 25 of this Act, the commissioner shall file in his or her office a written order to that effect, stating:

(a) The commissioner's findings with respect to the order; and

(b) The reasons for the action.

(4) Any final order shall be served in the same manner as an administrative complaint under subsection (2) of this section.

(5) Service by certified mail under this subtitle shall be deemed complete as provided in KRS 13B.050(2).

➔SECTION 14. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

Unless a remedy is otherwise specifically provided in this subtitle, any licensee or person aggrieved by a final decision of the commissioner issued pursuant to this subtitle may, within twenty (20) days of service of notice of the decision, request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔SECTION 15. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "fee":

(a) Means:

- 1           1. A fee imposed by an earned wage access services provider for delivery  
2           or expedited delivery of proceeds to a consumer; or
- 3           2. A subscription or membership fee imposed by an earned wage access  
4           services provider for a bona fide group of services that include earned  
5           wage access services; and
- 6           (b) Does not include a tip, gratuity, or other donation.
- 7           (2) An earned wage access services provider shall:
- 8           (a) Develop and implement policies and procedures to:
- 9           1. Respond to questions raised by consumers; and  
10           2. Address complaints from consumers in an expedient manner;
- 11           (b) If the provider offers a consumer the option to receive proceeds for a fee or  
12           solicits a tip, gratuity, or other donation:
- 13           1. Offer the consumer at least one (1) reasonable option to obtain  
14           proceeds at no cost to the consumer; and
- 15           2. Clearly explain how to elect the no-cost option;
- 16           (c) If the provider solicits, charges, or receives a tip, gratuity, or other donation  
17           from a consumer:
- 18           1. Clearly and conspicuously disclose to the consumer immediately prior  
19           to each transaction that a tip, gratuity, or other donation amount:
- 20           a. May be zero dollars (\$0); and  
21           b. Is voluntary; and
- 22           2. Clearly and conspicuously disclose in its service contract with the  
23           consumer and elsewhere that:
- 24           a. Tips, gratuities, and other donations are voluntary; and  
25           b. The offering of earned wage access services, including the  
26           amount of proceeds the consumer is eligible to request and the  
27           frequency with which proceeds are provided to the consumer, are

- 1                    not contingent on:
- 2                    i. Whether the consumer pays a tip, gratuity, or other
- 3                    donation; or
- 4                    ii. The size of a tip, gratuity, or other donation;
- 5                    (d) Before entering into an agreement with a consumer for earned wage access
- 6                    services:
- 7                    1. Inform the consumer of his or her rights under the agreement; and
- 8                    2. Fully and clearly disclose all fees associated with the earned wage
- 9                    access services;
- 10                   (e) Inform the consumer of any material changes to the terms and conditions
- 11                   of an agreement for earned wage access services before implementing those
- 12                   changes for that consumer;
- 13                   (f) Provide proceeds to a consumer by any means mutually agreed upon by the
- 14                   consumer and the provider;
- 15                   (g) Allow the consumer to cancel use of the provider's earned wage access
- 16                   services at any time without incurring a cancellation fee imposed by the
- 17                   provider;
- 18                   (h) Comply with all applicable local, state, and federal privacy laws and
- 19                   information security laws; and
- 20                   (i) If the provider will seek repayment of outstanding proceeds or payment of
- 21                   fees or other amounts owed, including tips, gratuities, or other donations, in
- 22                   connection with the activities covered by this subtitle from a consumer's
- 23                   account at a depository institution, including by means of electronic fund
- 24                   transfer:
- 25                   1. Comply with applicable provisions of the Electronic Fund Transfer
- 26                   Act, 15 U.S.C. 1693 to 1693r, as amended, and any administrative
- 27                   regulations promulgated thereunder, as amended; and

1            2. a. Except as provided in subdivision b. of this subparagraph,  
 2            reimburse the consumer for the full amount of any overdraft or  
 3            nonsufficient fund fees imposed on the consumer by the  
 4            consumer's depository institution that were caused by the  
 5            provider attempting to seek payment of any outstanding  
 6            proceeds, fees, or other payments, including tips, gratuities, or  
 7            other donations, in connection with the activities covered by this  
 8            subtitle, on a date before, or in an incorrect amount from, the  
 9            date or amount disclosed to the consumer.

10           b. A provider shall not be subject to subdivision a. of this  
 11           subparagraph for payments of outstanding proceeds or fees  
 12           incurred by a consumer through fraudulent or other unlawful  
 13           means.

14           ➔SECTION 16. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 15 IS CREATED TO READ AS FOLLOWS:

16           For purposes of this subtitle, an earned wage access services provider may use the  
 17           mailing address or state of residence provided to the provider by a consumer or the  
 18           consumer's employer to determine the consumer's state of residence.

19           ➔SECTION 17. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 20 IS CREATED TO READ AS FOLLOWS:

21           (1) As used in this section:

22           (a) "Fee" has the same meaning as in Section 15 of this Act; and

23           (b) "Nationwide consumer reporting agency" means a consumer reporting  
 24           agency that compiles and maintain files on consumers on a nationwide  
 25           basis as defined by the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p).

26           (2) An earned wage access services provider shall not:

27           (a) Share with an employer a portion of any fees or any tips, gratuities, or other



1           donations received from or charged to a consumer for earned wage access  
2           services;

3           (b) Require a consumer's credit report or credit score provided or issued by a  
4           nationwide consumer reporting agency to determine a consumer's eligibility  
5           for earned wage access services;

6           (c) Accept payment of outstanding proceeds, fees, or tips, gratuities, or other  
7           donations from a consumer by means of a credit card or charge card;

8           (d) Charge a consumer a late fee, deferral fee, interest, or any other penalty or  
9           charge for failure to pay:

10           1. Outstanding proceeds;

11           2. Fees; or

12           3. Tips, gratuities, or other donations;

13           (e) Report to a nationwide consumer reporting agency or debt collector  
14           information about a consumer regarding the inability of the provider to be  
15           repaid:

16           1. Outstanding proceeds;

17           2. Fees; or

18           3. Tips, gratuities, or other donations;

19           (f) 1. Except as provided in subparagraph 2. of this paragraph, compel or  
20           attempt to compel payment by a consumer of outstanding proceeds,  
21           fees, or tips, gratuities, or other donations to the provider through any  
22           of the following means:

23           a. A suit against the consumer in a court of competent jurisdiction;

24           b. Use of a third party to pursue collection from the consumer on  
25           the provider's behalf; or

26           c. Sale of the outstanding proceeds, fees, or tips, gratuities, or other  
27           donations to a third-party debt collector or debt buyer for

- 1 collection from a consumer.
- 2 2. The prohibitions in subparagraph 1. of this paragraph shall not:
- 3 a. Apply to payments of outstanding proceeds or fees incurred by a
- 4 consumer through fraudulent or other unlawful means; or
- 5 b. Preclude a provider from pursuing an employer for breach of its
- 6 contractual obligations to the provider;
- 7 (g) If the provider solicits, charges, or receives tips, gratuities, or other
- 8 donations from a consumer:
- 9 1. Mislead or deceive a consumer about the voluntary nature of the tips,
- 10 gratuities, or other donations; or
- 11 2. Represent that tips, gratuities, or other donations will benefit any
- 12 specific individual or group of individuals; or
- 13 (h) Advertise, print, display, publish, distribute, broadcast, or televise, or permit
- 14 to be advertised, printed, displayed, published, distributed, broadcasted, or
- 15 televised, any false, misleading, or deceptive statement or representation
- 16 regarding the terms or conditions of the provider's earned wage access
- 17 services.

18 ➔SECTION 18. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
19 IS CREATED TO READ AS FOLLOWS:

- 20 (1) Every licensee shall maintain an agent in this state for service of process.
- 21 (2) The name, physical address, telephone number, and email address of the agent in
- 22 this state for service of process shall be filed with an application for a license.
- 23 (3) The commissioner shall be notified in writing by the licensee at least five (5) days
- 24 prior to any change in the status of an agent in this state for service of process.

25 ➔SECTION 19. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
26 IS CREATED TO READ AS FOLLOWS:

- 27 (1) On or before January 30 of each year, each licensee shall file with the

1 commissioner a report, which shall:

2 (a) Be made:

3 1. Under oath; and

4 2. In a form prescribed by the commissioner; and

5 (b) Include the following information regarding the earned wage access  
 6 services provided by the licensee in this state for the preceding calendar  
 7 year:

8 1. The gross revenue attributable to the licensee's earned wage access  
 9 services;

10 2. The total number of:

11 a. Transactions in which the licensee provided proceeds to  
 12 consumers; and

13 b. Unique consumers to whom the licensee provided proceeds;

14 3. The total dollar amount of:

15 a. Proceeds the licensee provided to consumers; and

16 b. The following that the licensee received from consumers:

17 i. Fees; and

18 ii. Tips, gratuities, and other donations; and

19 4. Any other relevant information as the commissioner may reasonably  
 20 require.

21 (2) The commissioner shall annually make and publish an analysis and  
 22 recapitulation of the reports submitted under subsection (1) of this section.

23 ➔SECTION 20. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 24 IS CREATED TO READ AS FOLLOWS:

25 (1) (a) To enable the commissioner to determine whether a licensee is complying  
 26 with this subtitle and with the administrative regulations promulgated under  
 27 this subtitle, each licensee shall keep and use in the licensee's business

1           books, accounts, and records in accordance with sound accounting  
2           principles and practices.

3           (b) Unless applicable state or federal law requires a longer retention period,  
4           each licensee shall, after making a final entry in its earned wage access  
5           services-related books, accounts, or records, preserve the books, accounts,  
6           or records for at least two (2) years.

7           (2) (a) Any licensee that intends to cease operation of any business or location  
8           licensed under this subtitle shall:

9           1. Give the commissioner at least thirty (30) days prior written notice of  
10           the cessation of operations and a plan for ceasing operations that is  
11           sufficient to safeguard the interest of the public; and

12           2. Designate a custodian of records prior to cessation of operations, who  
13           shall:

14           a. Agree in writing to:

15                   i. Serve in that capacity; and

16                   ii. Comply with the requirements of this section; and

17           b. Notify the commissioner of:

18                   i. The designation, including but not limited to the  
19                   custodian's name, physical address, email address, and  
20                   telephone number; and

21                   ii. The physical location inside or outside of this state where  
22                   the records required to be kept under this subtitle will be  
23                   preserved.

24           (b) This subsection shall not apply to changes of location authorized under  
25           Section 8 of this Act.

26           (3) (a) Except as provided in paragraph (b) of this subsection, all records  
27           referenced in this section shall be made accessible to the commissioner or

- 1           *the commissioner's designated representative upon demand.*
- 2           *(b) Records held by a designated custodian under subsection (2) of this section*
- 3           *shall be made accessible upon five (5) business days' written notice.*
- 4           *(4) If good cause is demonstrated, the commissioner may approve a written request*
- 5           *for the destruction of records required to be preserved under this subtitle prior to*
- 6           *the minimum retention period required under this section.*
- 7           *(5) It shall be unlawful for any person to knowingly withhold, abstract, alter, remove,*
- 8           *mutilate, destroy, or secrete any books, records, or other information required to*
- 9           *be preserved under this subtitle for the purpose of obstructing a subpoena issued*
- 10           *by, or an investigation or examination conducted by, the commissioner.*

11           ➔SECTION 21. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286

12 IS CREATED TO READ AS FOLLOWS:

- 13           *(1) The following shall be considered confidential by law and privileged, and shall*
- 14           *not be subject to disclosure under the Kentucky Open Records Act, KRS 61.870 to*
- 15           *61.884:*
- 16           *(a) Reports of examination, and correspondence that relates to a report of*
- 17           *examination, of a licensee;*
- 18           *(b) Investigations, and records that relate to an investigation, conducted under*
- 19           *this subtitle;*
- 20           *(c) Annual reports filed under Section 19 of this Act; and*
- 21           *(d) Any confidential and privileged documents, materials, reports, or*
- 22           *information received by the commissioner under subsection (5)(c) of this*
- 23           *section.*
- 24           *(2) Confidential and privileged documents shall not be subject to subpoena, and shall*
- 25           *not be subject to discovery or admissible in evidence in any civil action, unless the*
- 26           *commissioner determines, or after notice to the commissioner and a hearing, a*
- 27           *court of competent jurisdiction determines, that the commissioner would not be*

1        prejudiced.

2        (3) (a) Subject to paragraph (b) of this subsection, all other documents, materials,  
3                reports, or other information that are provided to or filed with the  
4                commissioner under this subtitle shall be open to public inspection.

5        (b) The commissioner may, as authorized by KRS Chapter 61, classify as  
6                confidential or withhold from public inspection for a period of time as the  
7                commissioner considers necessary, any information which, in the  
8                commissioner's judgment, the public welfare or the welfare of any licensee  
9                or its consumers requires to be withheld.

10       (4) The commissioner or any person who receives documents, materials, reports, or  
11               other information while acting under the authority of the commissioner shall not  
12               be required to testify in any civil action concerning any confidential documents,  
13               materials, reports, or information.

14       (5) In order to assist in the performance of the commissioner's duties, the  
15               commissioner may:

16       (a) Use, disclose, or make public the confidential and privileged documents or  
17               information referenced in subsection (1) of this section in furtherance of  
18               any regulatory or legal action brought as part of the commissioner's official  
19               duties;

20       (b) Share the confidential and privileged documents referenced in subsection  
21               (1) of this section with other state or federal regulatory agencies, or with  
22               local, state, federal, and international law enforcement authorities, if the  
23               recipient agrees to maintain the confidential and privileged status of the  
24               documents in accordance with any sharing or use agreements referenced in  
25               paragraph (d) of this subsection;

26       (c) Receive documents, materials, reports, or other information, including  
27               otherwise confidential and privileged documents, materials, reports, or

1 information, from other state, federal, and international regulatory  
 2 agencies, the related associations, affiliates, or subsidiaries, and from local,  
 3 state, federal, and international law enforcement authorities, except the  
 4 commissioner shall maintain as confidential and privileged any documents,  
 5 materials, reports, or information received with notice or the understanding  
 6 that they are confidential and privileged under the laws of the jurisdiction  
 7 that is the source of the documents, materials, reports, or information; and

8 (d) Enter into agreements governing the sharing and use of confidential  
 9 documents and information when the sharing or use is serving a legitimate  
 10 governmental need or is necessary in the performance of a legitimate  
 11 governmental function, including the furtherance of any regulatory or legal  
 12 action brought as part of the recipient's official duties.

13 (6) No waiver of any applicable privilege or claim of confidentiality in documents,  
 14 materials, report, or information shall occur as a result of the disclosures  
 15 authorized under this section.

16 ➔SECTION 22. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 17 IS CREATED TO READ AS FOLLOWS:

18 (1) The provisions of this subtitle shall be enforced by the commissioner, who may  
 19 promulgate administrative regulations in accordance with KRS Chapter 13A for  
 20 the proper conduct of the business regulated under this subtitle.

21 (2) (a) 1. The commissioner may examine the affairs, business, office, and  
 22 earned wage access services-related records of every licensee as the  
 23 commissioner deems necessary to:

24 a. Discover violations of this subtitle; or

25 b. Secure information necessary for the proper enforcement of this  
 26 subtitle.

27 2. Every licensee shall pay a reasonable fee sufficient to cover the cost of

1                   each examination based upon fair compensation for time and actual  
2                   expenses.

3           **(b) The commissioner may conduct investigations of licensees or persons within**  
4           **or outside this state.**

5           **(c) For the purpose of making examinations or investigations under this**  
6           **subsection, the commissioner and the commissioner's representatives:**

7           **1. May:**

8                   **a. Compel the attendance of any person or obtain any documents**  
9                   **by subpoenas;**

10                   **b. Administer oaths and affirmations; and**

11                   **c. Examine under oath or affirmation all persons whose testimony**  
12                   **the commissioner may require, relative to the business of the**  
13                   **licensee; and**

14                   **2. Shall have free access to the accounts, papers, records, files, safes,**  
15                   **vaults, offices, and places of business used in connection with any**  
16                   **business conducted under a license.**

17           **(3) (a) The commissioner may investigate any person who is or appears to be**  
18           **engaging in the business regulated by this subtitle without first obtaining a**  
19           **license.**

20           **(b) For the purpose of investigations of unlicensed persons, the commissioner**  
21           **or the commissioner's representatives may:**

22                   **1. Compel the attendance of any person or obtain any documents by**  
23                   **subpoenas;**

24                   **2. Administer oaths and affirmations; and**

25                   **3. Examine under oath or affirmation all persons whose testimony the**  
26                   **commissioner may require, relative to the business of the person.**

27           **(4) If any person fails to comply with a subpoena issued by the commissioner under**



1 *this section, the commissioner may petition the Franklin Circuit Court or any*  
 2 *court of competent jurisdiction for enforcement of the subpoena.*

3 *(5) In order to carry out the purposes of this subtitle, the commissioner may:*

4 *(a) Retain examiners, auditors, investigators, attorneys, accountants, or other*  
 5 *professionals and specialists to conduct or assist in the conduct of any:*

6 *1. Examination;*

7 *2. Investigation; or*

8 *3. Enforcement action; and*

9 *(b) Use, hire, contract, or employ public or private analytical systems, methods,*  
 10 *or software.*

11 *(6) The authority of this section shall remain in effect regardless of whether a person*  
 12 *acts or claims to act under any licensing law of this subtitle.*

13 ➔SECTION 23. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 14 IS CREATED TO READ AS FOLLOWS:

15 *(1) Notwithstanding any other provision of law:*

16 *(a) Earned wage access services offered and provided by a licensee shall not be*  
 17 *considered any of the following:*

18 *1. In violation of, or noncompliant with, any law governing:*

19 *a. Deductions from payroll, salary, wages, compensation, or other*  
 20 *income; or*

21 *b. The purchase, sale, or assignment of, or an order for, earned but*  
 22 *unpaid income;*

23 *2. A loan or other form of credit or debt; or*

24 *3. Money transmission; and*

25 *(b) With respect to earned wage access services, a licensee shall not be*  
 26 *considered:*

27 *1. A creditor, debt collector, or lender; or*

1                    2. A money transmitter; and  
 2                    (c) Fees or tips, gratuities, or other donations paid in accordance with this  
 3                    subtitle to a licensee shall not be considered interest or finance charges.

4                    (2) If there is a conflict between a provision of this subtitle and any other provision  
 5                    of law, the provision of this subtitle shall prevail.

6                    ➔SECTION 24. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 7 IS CREATED TO READ AS FOLLOWS:

8                    A licensee shall not be subject to any liability for any act or omission made in  
 9                    conformity with a written notice, opinion, or interpretation issued by the commissioner.

10                   ➔SECTION 25. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 11 IS CREATED TO READ AS FOLLOWS:

12                   (1) (a) For any repetitive violation of this subtitle or an administrative regulation  
 13                   promulgated under this subtitle, or any willful violation of an order of the  
 14                   commissioner entered under this subtitle, the commissioner may levy a civil  
 15                   penalty against any licensee.

16                   (b) The civil penalty shall not be less than two hundred fifty dollars (\$250) or  
 17                   more than two thousand five hundred dollars (\$2,500) per violation, plus  
 18                   the state's costs and expenses for the examination and prosecution of the  
 19                   matter, including reasonable attorney's fees and court costs.

20                   (2) (a) For an occurrence of consumer harm by any licensee resulting from any  
 21                   violation of this subtitle, an administrative regulation promulgated under  
 22                   this subtitle, or an order of the commissioner entered under this subtitle, the  
 23                   commissioner may:

24                   1. Order any remedy authorized in subsection (4) of this section; and  
 25                   2. Levy a civil penalty against the licensee if the total amount of  
 26                   consumer harm exceeds one thousand dollars (\$1,000).

27                   (b) The civil penalty shall be:

- 1           1. The lesser of:
- 2                 a. One thousand dollars (\$1,000) per consumer harmed; or
- 3                 b. Ten percent (10%) of the total cumulative amount of ordered
- 4                         rescission, restitution, refund, disgorgement, or the recovery of
- 5                         expenses; and
- 6           2. The state's costs and expenses for the examination and prosecution of
- 7                         the matter, including reasonable attorney's fees and court costs.
- 8   (3) (a) The commissioner shall levy a civil penalty against any unlicensed person
- 9                         who violates any provision of this subtitle, administrative regulation
- 10                         promulgated under this subtitle, or order of the commissioner entered under
- 11                         this subtitle.
- 12           (b) The civil penalty shall not be less than two thousand five hundred dollars
- 13                         (\$2,500) or more than seven thousand five hundred dollars (\$7,500) per
- 14                         violation, plus the state's costs and expenses for the examination,
- 15                         investigation, and prosecution of the matter, including reasonable
- 16                         attorney's fees and court costs.
- 17   (4) The commissioner:
- 18           (a) May order rescission, restitution, refund, disgorgement, recovery of
- 19                         expenses, and direct such other affirmative action as the commissioner
- 20                         deems necessary against any licensee or person who violates any order
- 21                         issued by the commissioner or any provision of, or administrative regulation
- 22                         promulgated under, this subtitle; and
- 23           (b) Shall have jurisdiction to institute an action in Franklin Circuit Court or
- 24                         any court of competent jurisdiction for the enforcement of orders issued
- 25                         under paragraph (a) of this subsection.
- 26   (5) The commissioner may notify the Department of Revenue, which may institute an
- 27                         action in the name of the Commonwealth of Kentucky in Franklin Circuit Court

1 or any court of competent jurisdiction for the recovery of any civil penalty, fine,  
 2 cost, or fee assessed or levied under this subtitle.

3 ➔SECTION 26. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 286  
 4 IS CREATED TO READ AS FOLLOWS:

5 (1) Any person that violates Section 3 of this Act shall be guilty of a misdemeanor  
 6 and, upon conviction thereof, shall be punished by a fine of not less than five  
 7 hundred dollars (\$500) or more than five thousand dollars (\$5,000).

8 (2) (a) Any person who willfully violates any administrative regulation or order of  
 9 the commissioner authorized under this subtitle shall be guilty of a Class A  
 10 misdemeanor.

11 (b) A person that violates an order of the commissioner shall not be imprisoned  
 12 for the violation unless the person had actual knowledge of the order.

13 (3) Any contract made in violation of this subtitle shall be void and the earned wage  
 14 access services provider shall not have the right to collect any outstanding  
 15 proceeds, fees, or tips, gratuities, or other donations in connection with the  
 16 earned wage access services described in the contract.

17 (4) Nothing in this section limits the power of the commissioner to revoke any license  
 18 in accordance with Section 11 of this Act.

19 ➔Section 27. KRS 286.4-410 is amended to read as follows:

20 (1) As used in this subtitle, unless the context requires otherwise:

21 (a) "Applicant" means a person filing an application under this subtitle;

22 (b) "Consumer loan company" means a person licensed under this subtitle to  
 23 engage in the business of making loans to a consumer for personal, family, or  
 24 household use in the amount or value of fifteen thousand dollars (\$15,000) or  
 25 less;

26 (c) "Control" means the power to direct the management or policies of a licensee  
 27 or applicant, whether through ownership of securities, by contract, or

- 1 otherwise;
- 2 (d) "Executive officer" means a natural person holding the title or responsibility  
3 of president, vice president, chief executive officer, chief financial officer,  
4 chief operational officer, or chief compliance officer;
- 5 (e) "Licensee" means a person licensed under this subtitle;
- 6 (f) "Managing principal" means a natural person who meets the requirements of  
7 KRS 286.4-450 and actively participates in and is primarily responsible for  
8 the operations of a licensee;
- 9 (g) "Material fact" means a fact that a reasonable person knows, or should know,  
10 that could reasonably be expected to influence any decision or action taken by  
11 the commissioner under this subtitle;
- 12 (h) "Nationwide consumer reporting agency" means a consumer reporting agency  
13 that compiles and maintains files on consumers on a nationwide basis as  
14 defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec.  
15 1681a(p); and
- 16 (i) "Person in control of a licensee or applicant" means, with respect to an  
17 applicant or licensee, any of the following:
- 18 1. A director, general partner, or executive officer;
  - 19 2. In the case of a limited liability company, a managing member or  
20 manager;
  - 21 3. Any person who directly or indirectly has the right to vote twenty-five  
22 percent (25%) or more of a class of voting securities;
  - 23 4. Any person who has the power to sell or direct the sale of twenty-five  
24 percent (25%) or more of a class of voting securities;
  - 25 5. In the case of a partnership or limited liability company, any person that  
26 has the right to receive twenty-five percent (25%) or more of the capital  
27 upon dissolution; or

1           6. Any person that exercises control.

2       (2) This subtitle shall not apply to:

3           (a) Any person doing business under and as permitted by any law of this state or  
4           of the United States relating to banks, savings banks, trust companies, savings  
5           and loan associations, agricultural cooperative associations, credit unions, or  
6           licensed pawnbrokers; ~~[- This subtitle does not apply to -]~~

7           (b) The purchase or acquisition, directly or indirectly, of notes, chattel mortgages,  
8           installment or conditional sales contracts, embodying liens or evidencing title  
9           retention arising from the bona fide sale of goods or services by a seller of the  
10          goods or services; and

11          (c) Any person doing business under and as permitted by Subtitle 13 of this  
12          chapter.

13          ➔Section 28. KRS 286.11-007 is amended to read as follows:

14       This subtitle does not apply to:

15       (1) The United States or any department, agency, or instrumentality thereof;

16       (2) The United States Post Office or a contractor acting on behalf of the United States  
17       Post Office;

18       (3) A state or any agency, department, or political subdivision of a state;

19       (4) A financial institution or its subsidiaries, affiliates, and service corporations, or any  
20       office of an international banking corporation, branch of a foreign bank, or  
21       corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C.  
22       secs. 181 to 1867, or a corporation organized under the Edge Act, 12 U.S.C. secs.  
23       611 to 633;

24       (5) A service provider that:

25           (a) Pursuant to a written agreement, acts on behalf of an entity exempt from  
26           licensure as set forth in subsection (4) of this section; and

27           (b) Allows the state or federal regulators with regulatory jurisdiction over the

1 exempt entity to examine and inspect the service provider's applicable  
2 records, books, and transactions;

3 (6) A service provider that receives money or monetary value on behalf of an entity  
4 selling goods or services other than money transmission services if:

5 (a) The entity, upon receipt of funds by the service provider, immediately either:

- 6 1. Provides the purchased goods or services to the purchaser; or
- 7 2. Credits the purchaser for the full amount of money or monetary value  
8 received by the service provider, which credit is not revocable by the  
9 entity, and evidences this credit in writing; and

10 (b) The entity is obligated to provide the purchased goods or services to the  
11 purchaser regardless of whether or not the service provider transmits the  
12 money or monetary value to the entity;~~or~~

13 (7) **Any person doing business under and as permitted by Subtitle 13 of this chapter;**  
14 **or**

15 **(8)** The provision of electronic transfer of government benefits for any federal, state, or  
16 county governmental agency as defined in Federal Reserve Board Regulation E, by  
17 a contractor for and on behalf of the United States or any department, agency, or  
18 instrumentality thereof, or any state or any political subdivisions thereof.

19 ➔Section 29. KRS 371.150 is amended to read as follows:

20 KRS 371.110 to 371.150 do not apply to any:

21 **(1)** National or state bank;~~or to any~~

22 **(2)** Credit union;~~or~~

23 **(3)** Trust company;**or**

24 **(4) Person doing business under and as permitted by Subtitle 13 of KRS Chapter 286.**

25 ➔Section 30. Sections 1 to 26 of this Act may be cited as the Kentucky Earned  
26 Wage Access Services Act.

27 ➔Section 31. (1) Except as provided in subsection (2) of this section, a person

1 other than a natural person that was acting as an earned wage access services provider in  
2 this state on January 1, 2025, may continue to act as a provider on and after the effective  
3 date of this Act without obtaining the license required under Section 3 of this Act if the  
4 person:

5 (a) Complies with all other requirements of Subtitle 13 of KRS Chapter 286; and

6 (b) Submits an application for a license under Section 3 of this Act within six (6)  
7 months of the date that the commissioner of the Department of Financial Institutions  
8 makes the application available.

9 (2) The authority to act as an earned wage access services provider under  
10 subsection (1) of this section shall expire when the commissioner of the Department of  
11 Financial Institutions approves or denies an application made by the person in accordance  
12 with subsection (1)(b) of this section.