

Nevada Enacts Nation's First State Licensing Regime for Earned Wage Access Services

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Go-To Guide:

On June 15, 2023, Nevada Gov. Joe Lombardo signed **SB 290**, establishing the nation's first state licensing regime for earned wage access (EWA) services provided to consumers in the state. Earned wage access allows employees to receive portions of their earned but unpaid income in advance to be repaid by the employees after being paid on payday. The governor signed the legislation (EWA Law) after it passed in both houses of the state legislature with wide margins.

Licensing Requirements

Under the EWA Law, a provider of EWA (Provider) is required to obtain a license from the Commissioner of

Financial Institutions (Commissioner) in order to engage in EWA activities. The EWA Law includes both “employer-integrated” and “direct-to-consumer” earned wage access services as regulated activity requiring a license. “Employer-integrated” EWA involves the delivery of earned and unpaid wages to consumers (Users) based on data obtained directly or indirectly from an employer or an employer’s payroll service provider. “Direct-to-consumer” EWA delivers earned and unpaid wages to Users based on data that is not provided by an employer or the employer’s payroll service provider. Payroll service providers are excluded from the term “Providers” and do not require a license.

Among other requirements, a Provider must submit a license application containing the following:

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The license will likely be administered through the Nationwide Multistate Licensing System and Registry (NMLS). The Commissioner may set initial application and license fees of up to \$1,000.

Applicant control persons, including direct owners of at least 25% of the applicant, must submit to background vetting including credit checks and fingerprint submission. Licenses will expire Dec. 31 each year. Renewal applications must be submitted with a renewal fee of up to \$1,000.

A licensed Provider will be required to submit an annual report to the Commissioner by April 15 containing:

Section 170.17 of the EWA Law requires providers to submit an annual report to the Commissioner by April 15 containing:

Licensees will be required to obtain prior approval before making a change of control, a name change, or other changes. Advance notice must be submitted before a licensee changes control persons.

Licensee Compliance Requirements

Licensed Providers must adhere to the EWA Law's compliance requirements, which obligate licensees to:

Section 170.18 of the EWA Law requires licensees to adhere to the following compliance requirements:

Additionally, Providers are prohibited from:

Section 170.19 of the EWA Law prohibits providers from:

- Civil action against a User;
- Use of a third party to pursue collection from a User on the Provider's behalf;
- Sale or assignment of outstanding amounts to a third-party collector or debt buyer for collection from the User.

Some of the above requirements and restrictions do not apply in circumstances pertaining to outstanding amounts or

fees Users incur through fraudulent or unlawful means. Further, a Provider may pursue an employer for breach of contractual obligations in employer-integrated business models.

EWA Law Implementation Timeline

The EWA Law requires the Commissioner to prescribe the application requirements for the license by **Sept. 30, 2023**. The EWA Law generally goes into effect upon passage and approval for the purpose of adopting implementing regulations and performing other administrative tasks to implement the law, upon the Commissioner's finding that the NMLS has sufficient capabilities to allow the Commissioner to carry out the law, and otherwise on July 1, 2024. A Provider that was engaged in providing EWA services as of Jan. 1, 2023, may continue to provide services until Dec. 31, 2024, provided that it submits a license application by Jan. 1, 2024, and otherwise complies with the law.

State Regulatory Impact

The EWA Law provides that EWA services a licensee provides do *not* constitute loans or other credit or money transmissions under Nevada law, nor do such transactions violate Nevada laws governing the sale or assignment of, or an order of, earned but unpaid income. Licensed Providers in compliance with the EWA Law may not be deemed creditors, lenders, or money transmitters. Fees that Providers charge to Users may not be deemed interest or finance charges. In the case of a conflict between the EWA

Law and other state laws, the EWA Law will control. SB 290 includes requisite amendments to other affected laws to exempt a licensee under the EWA Law from other licensing law requirements.

Regulatory Outlook

Nevada's first-in-the-nation EWA Law provides a potential model for other state legislatures to follow. Legislation requiring registration for EWA providers has been progressing in the [Missouri](#) legislature. In 2021, the California Department of Financial Protection and Innovation (DFPI) [agreed](#) to five Memorandums of Understanding (MOUs) with EWA providers under the California Consumer Financial Protection Law (CCFPL). Under the MOUs, the providers agreed to submit quarterly reporting to the DFPI and abide by industry best practices. The DFPI ultimately entered into a total of 11 MOUs with EWA providers and recently [published](#) its data findings. The California regulator has proposed [regulations](#) that would include EWA services as a "subject product" under the CCFPL and require EWA providers that are not already licensed under other laws to register with the DFPI. EWA legislation has been proposed in recent legislative sessions in other states.

EWA Providers continue to face state and federal regulator scrutiny in an uncertain and developing regulatory landscape; by way of example, the Consumer Financial Protection Bureau granted, and later [rescinded](#) at the company's request, a regulatory "sandbox" to one EWA provider that gave the company a temporary safe harbor

from liability under the Truth in Lending Act and Regulation Z. While Nevada's EWA Law excludes EWA products from being considered loans or other credit, this position ultimately may not be uniformly held or interpreted among various regulators. Industry participants should monitor state and federal regulatory developments in this evolving regulatory space.

Conclusion

Nevada's EWA Law is a watershed moment for the EWA and broader financial services industry. Nevada's implementation of the first state licensing regime will likely spur other state regulators and legislatures to consider enacting similar legislation and licensing regimes.

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