

March 5, 2024

House Economic Matters Committee

Chair: Delegate CT Wilson

House Bill 1425 – Earned Wage Access and Credit Modernization

Re: Letter of Opposition

The Maryland Department of Labor (MDL) and its Office of Financial Regulation (OFR) are responsible for providing consumer financial protections and enforcing state laws regarding pay and wages. The Department recognizes that earned wage access products (EWA), with appropriate safeguards, can be useful tools for workers who face short-term funding needs. The Department has provided the Economic Matters Committee with information about EWA products and their providers with its testimony in support of HB246 which was heard by the Economic Matters Committee on January 23, 2024 (copy attached).

Notwithstanding that recognition, the Department believes that EWA products and their providers should be regulated in a manner that is consistent with Maryland’s historically strong consumer protection values and approach (the approach embodied in HB 246). Consequently, we request an unfavorable report on HB1425.

HB1425 represents an approach to regulating EWA that is based upon the low/no regulation values and philosophy followed by states that typically have high or no consumer loan rate caps and permit payday and other high cost lending. It is an approach that has features that are foreign to Maryland’s long-standing consumer loan system:

- contains **no limits on the fees** that EWA providers can charge Maryland workers for access to their already earned pay;
- permits EWA companies to ask for and retain **unlimited amounts of purported “tips”**;
- authorizes **unlicensed entities to provide a minimally regulated class of financial products** to Maryland consumers; and
- allows EWA companies to meet **lower standards** (e.g., bond requirements; no State entry due diligence) than those met by every other consumer lender and consumer financial product provider licensed to operate in Maryland.

No other financial service providers or consumer financial products legally offered in Maryland enjoy such latitude.

The Department considers Earned Wage Access to be a loan from the provider to the worker that is repaid from the proceeds of the worker’s pay. The conclusion is based on Maryland law and is echoed in a recent advisory from the Consumer Financial Protection Bureau. Under Maryland consumer lending law, all companies who loan money operating in Maryland must be licensed by the state and therefore subject

to the strong consumer protections embedded in the law. Just registering with the state means the consumer protections the General Assembly put in place would not apply to EWA. Additionally, bonding requirements are an important financial protection both for the state and consumers because they ensure the consumer can be made whole if the company goes out of business or in the event of fraud.

Maryland law sets a ceiling on how much a customer can be charged for a loan or cash advance to protect Maryland consumers from exorbitant and excessively high rates. There is no ceiling or cap of charges in this bill. Data from the industry shows that once consumers use EWA products, they use them repeatedly. If there is no restriction on charges, consumers who become dependent on these products might be subject to extremely high fees. Some EWA providers request that consumers leave a "tip" or gratuity to the company as additional payment for a cash advance. This is not a traditional gratuity given to an employee like a restaurant server whose tip is part of their wage, but an additional charge that the company gets. Studies of EWA providers show that many consumers leave a tip because they believe it is part of the cost of accessing the service. The Department believes that HB 1425 and the approach it embodies should not form the basis for a discussion of the regulation of EWA providers and their products. Philosophically and practically, such an approach changes Maryland's existing consumer financial protections for EWA providers and their products, creating an entirely separate regime for these products.

The third-party EWA provider industry claims that this legislation is needed to enable them to continue to make their products available to Maryland's workers. However, it is critical to note that by creating a new regime with no limits on costs or fees and substantially lower consumer protections than required for other products, the legislation risks supporting the proliferation of products that are costly, complicated, and potentially misleading, which does not benefit consumers or workers. HB 1425 is a bill that presents a diametrically opposite approach to financial regulation from that found in existing Maryland law.

By contrast, HB 246, as amended, is consistent with Maryland's traditional approach to consumer financial protection. HB 246 would provide clear guidelines and incorporate the regulation of EWA products and their providers into existing Maryland law. The proposed legislation protects consumers from unlimited charges by setting clear limits on fees and tips and it generally protects the public by requiring that EWA providers follow the same licensing procedures, and meet the same standards (e.g., including bonding and suitability), as all other financial service providers do to operate in Maryland.

HB 246, is supported by OFR, the Consumer Protection Division of the Attorney General's Office, and a large coalition of consumer advocacy groups and unions, because it represents a strong approach to the regulation of EWA products that is consistent with Maryland's existing consumer protection approach and laws.

Today's marketplace offers EWA products under a variety of business models. They can provide a tangible benefit to workers, particularly if it allows them to draw a portion of their earned wages when they need them at a low or no cost. However, depending upon the product's structure, consumers may risk paying high costs to participate in the program, drawing too much of their pay triggering a repayment obligation, or becoming caught in a cycle of reliance on these advances like in the payday loan scenario. Just as with



OFFICE OF FINANCIAL REGULATION
1100 NORTH EUTAW STREET; SUITE 611
BALTIMORE, MARYLAND 21201
ANTONIO P. SALAZAR, COMMISSIONER

all consumer lending services, these products require careful regulation. In the view of the Department, HB 1425 does not provide that careful regulation.

Passage of HB1425 would weaken Maryland consumer financial law and inadvertently potentially create an opening for a return of many predatory lending practices Maryland has worked hard to eliminate.

Based on all of the foregoing, **we urge an unfavorable committee report** on HB 1425.