



HB 1425 - Commercial Law - Earned Wage Access Services

Economic Matters Committee

March 5, 2024

OPPOSE

Chair Wilson, Vice-Chair Crosby and members of the committee, thank you for the opportunity to submit testimony in respectful opposition to House Bill 1425. This bill creates a registration system for Earned Wage Access (EWA) lenders that does not acknowledge that their paid products are loans and allows them to charge unlimited amounts of fees and to receive tips.

Since 2023, CASH has been in conversations with consumer advocates, the Office of Financial Regulation, and industry representatives. We believe these conversations should continue in the interim to create a bill that will best protect Maryland consumers and give them access to affordable credit.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA,' offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

EWA is a product that gives employees the ability to borrow a portion of their paycheck before payday. Most of these are through apps on the customers phones and they charge a fee to receive funds immediately and some allow for "tips." In 2024, CASH conducted a survey on how our clients use EWA services. **CASH found a significant percent of our clients use multiple apps every month and sometimes in the same pay period.** Customers who need an advance on their paychecks are experiencing a financial crisis and need immediate access to their money. The survey results support this by showing that most clients used the "expedited fee" option when available.

The fees and tips associated with EWA services are not regulated within HB 1425. Maryland law is clear for small dollar loans that they are limited on how much they can charge customers. This is to protect customers from high-cost products like payday loans which trap them in a cycle of borrowing. Maryland law is also clear that a loan is an advance of credit – EWAs are funded by banks, not through the employer or employee's actual paycheck. There is also pending guidance expected from the federal Consumer Financial Protection Bureau (CFPB). They have announced "plans to issue further guidance to provide greater clarity concerning the application of federal law to income-based advance products."¹ This guidance is expected to come in 2024.

Thus, we strongly urge an unfavorable report on HB 1425 to give all stakeholders more time to discuss this important issue.

¹ <https://www.consumerfinance.gov/about-us/blog/state-regulatory-developments-on-income-based-advances/>



EARNED WAGE ACCESS: WHAT IT IS AND HOW MARYLAND CAN REGULATE IT

Among the hottest consumer finance topics in recent years is the proliferation of online lenders offering fintech cash advances, including the subset of those lenders who offer earned wage advances (EWA). These are very short-term loans of small dollar amounts that users can access through a smartphone app. The Consumer Financial Protection Bureau (CFPB), as well as several states, have signaled their intent to regulate many of these products as loans – especially the Direct-to-Consumer models. However, the EWA industries HB 1425 would create a law contradicting this guidance and CFPB’s judgment, making Maryland an outlier among states with rate caps by allowing all “Earned Wage Access” companies to operate without any caps on their costs to consumers.

Maryland should regulate Earned Wage Access in a way that honors its historical commitment to borrowers, while also considering how federal authorities are likely to deal with these emerging loan products. At the very least, this means recognizing that Earned Wage Advance companies are lenders – they give money to borrowers with the expectation that it will be paid back – and ensuring that they play by the same rules as every other lender in MD.

HB 246 Puts Appropriate Guardrails on EWA Products

HB 246 has important guardrails that will ensure that borrowers have access to loans without losing the protections that state law already affords them. The bill is also in line with Maryland’s history as a state that values consumer protections and is likely to more accurately reflect forthcoming guidance from the Consumer Financial Protection Bureau, which provides federal oversight.

As you can see in the chart below, HB 246 offers real protection to borrowers. The industry bill contains no limits to how much EWA borrowers can charge, whether through fees or “tips” that go to the corporation.

	Current Law SMALL DOLLAR LOANS IN MD	INDUSTRY BILL HB 1425/ SB 998	MD REGULATOR BILL HB 246
<i>Is this a loan?</i>	Yes	No	Yes
<i>What is the maximum allowable APR?</i>	Balance of \$2000 or less – 33% Balance of more than \$2,000 - 24%	No limit – APR isn’t even considered because these loans are exempt from regulation. Studies show that these loans can carry APRs of up to 300%	33%, as stated in Maryland’s Consumer Loan Law
<i>“Tips” Allowed</i>	No	Yes, completely unlimited, cannot be counted towards the costs of the loan.	Yes, but must be counted in the cost of credit and the default must be set to \$0.

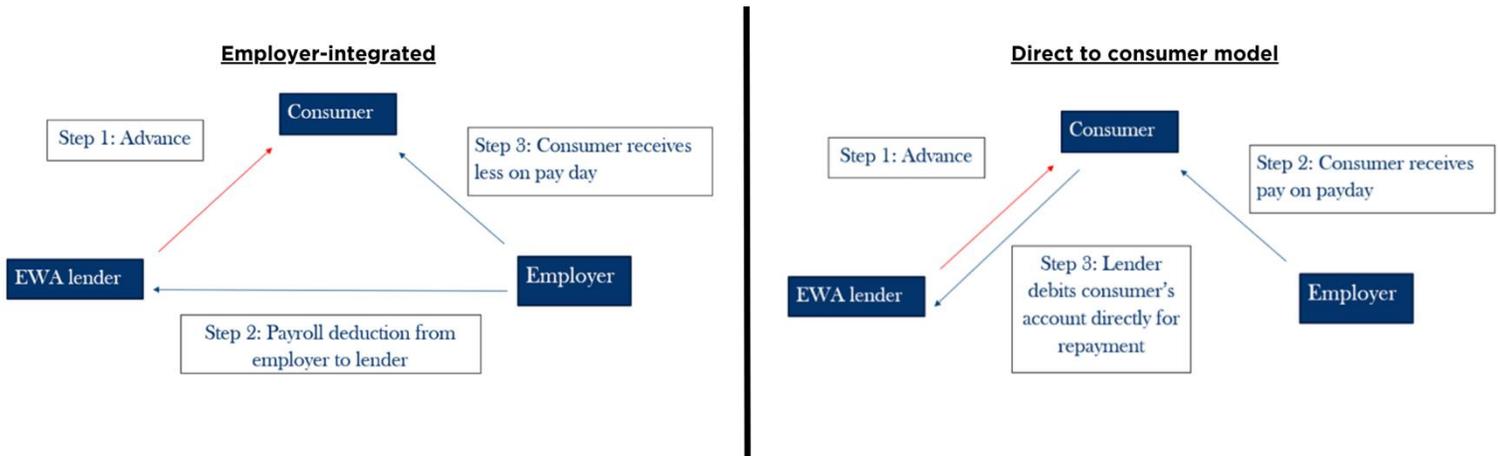


<i>Expedited or "Rush" Fees Allowed</i>	No	Yes, completely unlimited, cannot be counted towards the cost of the loan.	Yes, but must be counted in the cost of credit.
<i>Allows access to the borrower's bank account?</i>	Yes	Yes	Yes

Two Different Type of EWAs Claiming to Be the Same

While earned wage advance providers present a united front with HB 1425, there are two very different products that would be authorized by this legislation.

The first is employer integrated. They have partnerships with employers that allow them to make a deduction from the borrower's paycheck. Despite this, the loan is still funded by a bank partner, not the borrower's actual pay.



HB 1425, however, would also authorize direct-to-consumer loans by companies like EarnIn. **These lenders have no relationship with a borrower's employer, other than hanging posters in the company break room.** Instead, they are offering a short-term, small-dollar loan, due in its entirety on the borrower's payday. Direct-to-consumer earned wage access providers are lenders and should be regulated as such. HB 1425 is offering no price protections to borrowers and formalizing collection practices that are just common sense – **there is no need to hire a third-party debt collector when you can attempt to withdraw from a borrower's bank account over and over**, with no regards to how much the borrower is paying in insufficient fund fees.