



**Testimony in Opposition to Maryland HB 1425/SB 998: Earned Wage Access Services
Senate Finance Committee
By Lauren Saunders, Associate Director, National Consumer Law Center
March 5, 2024**

Chair Beidle and members of the Committee:

I am Lauren Saunders, Associate Director of the National Consumer Law Center, a national non-profit organization that uses its consumer law expertise to work for economic justice for vulnerable consumers.

I write in opposition to HB 1425/SB 998, which would exempt fintech payday loans from Maryland's lending laws and interest rate limits. The bill is based on the [model law](#) by the conservative American Legislative Exchange Council (ALEC). It offers meaningless protections as cover for exempting a broad swath of cash advance loans from Maryland's interest rate limits and strong consumer protection laws. Let me be crystal clear: If this bill passes, 300% APR payday lending, including by traditional payday lenders, will come to Maryland.

How Earned Wage Advances and Other Fintech Cash Advances Work

Earned wage advances (EWAs) are advances made ahead of payday, repaid on payday. With employer-based EWAs, a third party typically advances money, based on the amount of wages that have been earned but are not yet due, and is repaid by the consumer through payroll deduction or another method the consumer authorizes. Some employers cover the costs or the programs are structured so they are free to workers, but more commonly workers pay fees.

Other direct-to-consumer cash advances claim to be paying wages but have no connection to payroll and are repaid by debiting a consumer's bank account. They can and do trigger overdraft and nonsufficient funds (NSF) fees. These lenders collect "tips," "donation,s" or instant access fees.

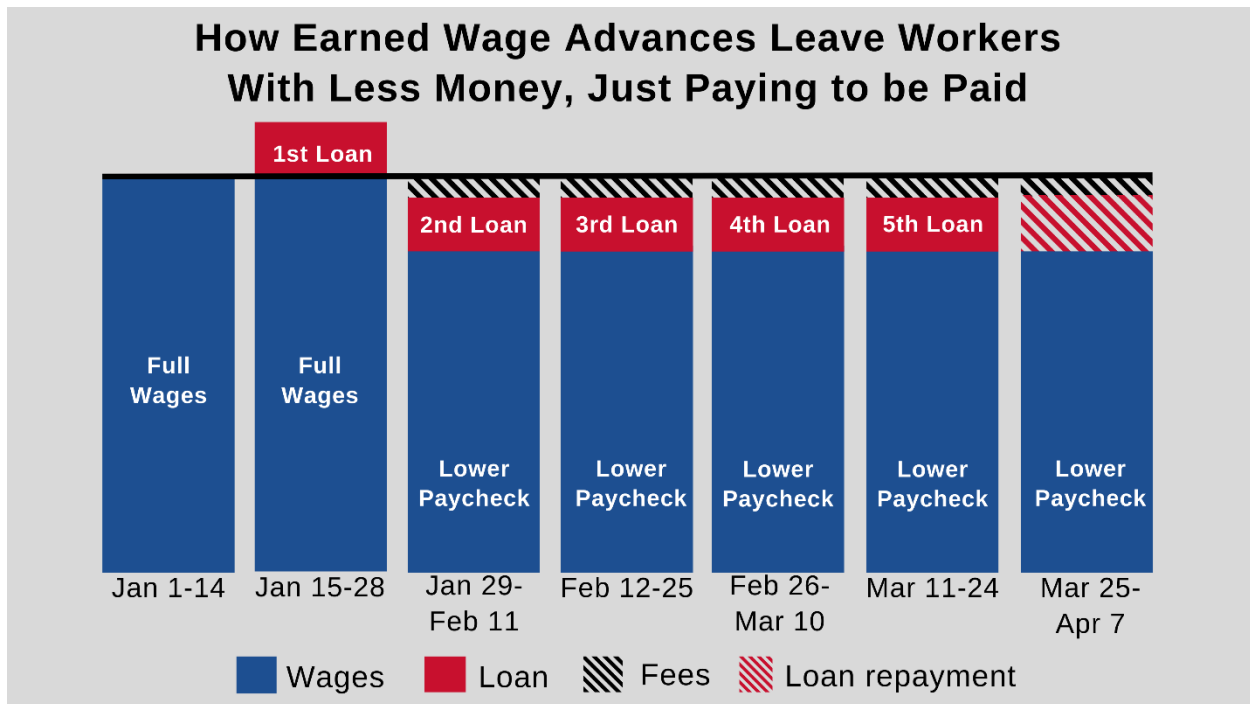
Both versions result in a cycle of reborrowing and multiplying costs.

The Cost and Impact of Wage Advances: 330% APR Loans and Paying to be Paid

California studied EWAs and collected [data](#) on nearly 6 million advances, finding:

- The average **APR is over 330%**, for both tip-based and employer-based advances.
- Workers take an **average of 36 loans a year and up to 100**.
- Companies that **push “tips” collect them 73% of the time**, generating over \$17 million for three companies. California [identified](#) “multiple strategies that lenders use to make tips almost as certain as required fees.”
- As a practical matter, with the ability to debit payroll or bank accounts, lenders [collect 97% of the time](#), and claims that the loans are non-recourse are “immaterial.”

As with payday loans, using next week’s pay to pay this week’s expenses leaves a hole in the next paycheck that triggers chronic reborrowing to meet expenses. Fees quickly snowball, and workers end up paying to be paid week after week, with less money rather than additional liquidity.



HB 1425/SB 998 Creates a Broad Exemption for Fintech Payday Loans, and Even Traditional Payday Loans, with Meaningless Protections

The bill falsely declares that earned wage advances and other fintech advances are not loans. Maryland Commercial Law §12-303(a)3(iii) does currently exempt “a loan between an employer and an employee.” But the Office of Financial Regulation has [made clear](#) that “if a third-party provides the product, it is a loan under Maryland law and the lender must adhere to Maryland interest rate limits,” including any tips paid as compensation. Even for loans “provided by

employers but through a connected third party,” OFR identified factors that point to many if not most providers of earned wage advances being lenders under Maryland law.

Just like payday loans, most earned wage advances are advances of money by a third party, before pay is due, repaid later by the consumer (directly or indirectly). Indeed, the nation’s small dollar loan laws arose out of the abuses of salary lenders. In a [December 2023](#) letter, the CFPB traced the evolution of payday advances and found that earned wage advances “share fundamental similarities with payday lending products.”

Even traditional payday lenders could exploit the bill’s broad scope, which reaches any loan based on income that a consumer “represents” and a provider “reasonably determines” has been earned or accrued in exchange for services. **Payday lenders would merely need to (1) ask for the consumer’s representation that they have worked a few days since the last paycheck and to (2) look at bank statements to determine the consumer’s paycheck amount and schedule – as payday lenders already do.**

Any payday lender that fit the bill’s broad definition would be free to offer triple-digit APR loans in Maryland, with no cost limit whatsoever. In exchange, the so-called protections offered in the bill are meaningless and merely codify existing business models:

- Providers would have to offer a no-cost option, but they do so today, and those options are slow (delaying the advance) or inconvenient (not into the consumer’s own bank account) and are hardly used by consumers. The nature of small dollar loans is based on urgency. That’s why the vast majority of consumers pay for expedited funds.
- Declaring that tips are voluntary does not stop their high cost, the use of dark patterns and psychological tricks to push people into tipping or making it hard to undo a tip, or every possible repercussion of not tipping enough.
- The narrow requirement that the lender repay overdraft and NSF fees in limited circumstances does not cover all overdraft, NSF or late fees people will incur, and pledges to repay those fees do not work today as people cannot get through to customer service or are often rebuffed when they do.
- The prohibition of credit reporting is meaningless, as payday lenders do not use or report to traditional credit bureaus today.
- The “non-recourse” ban on using debt collectors, lawsuits or debt buyers does not help as lenders have recourse to the paycheck or bank account, collect 97% of the time.

The CFPB Will Soon Be Issuing Guidance

It is especially inappropriate for Maryland to be adopt a new loophole in its consumer protection laws when the CFPB is about to come out with guidance that may inform how Maryland views and treats these products. We expect that guidance soon.

In February 2023, the CFPB stated in a letter to the Government Accountability Office that it agreed with GAO's recommendation to clarify the application of the Truth in Lending Act's definition of credit to earned wage access products not covered by the CFPB's 2020 advisory opinion (which only covered completely free advances) and that the CFPB "intends to issue further clarification in this area."

In a signal that the guidance is [likely coming soon](#), a December 2023 CFPB blog [reaffirmed](#) that, given the many developments in this market, the agency plans to issue guidance.

Maryland should not rush to enact legislation that may be at odds with the approach of the nation's top consumer protection agency.

Old Wine in New Bottles

Evasions often take the form of new innovations. The payday loan industry got its start by arguing that it was not making loans, just charging check cashing fees on deferred checks. We must reject similar arguments equating fees for fintech cash advances to ATM fees as an excuse for gutting Maryland's consumer protection laws.

High-cost earned wage advances drain fees from low-wage workers, disproportionately from communities of color, who just end up paying to be paid. The loans should comply with Maryland's lending laws.

Thank you for the opportunity to testify. I urge you to oppose SB 998. If you have any questions, please feel free to reach out to me at lsaunders@nclc.org.