

**MD SB 998 testimony.pdf**

Uploaded by: Aden Hizkias

Position: FAV



Testimony of Aden Hizkias  
Policy Analyst  
Chamber of Progress  
Re: MD SB 998

**March 6, 2024**

Dear Chair Beidle and Members of the Committee,

Thank you for the opportunity to submit testimony for the record regarding SB 998. On behalf of the Chamber of Progress, a tech industry coalition promoting technology's progressive future, I urge you to **support SB 998**, which will regulate earned wage access services.

### **What is Earned Wage Access (EWA)?**

The earned wage access industry has several business models. One is employer-integrated, which generally allows employees to receive their paychecks earlier from their employer. Another model is direct-to-consumer, where a third-party service provider provides funds to the consumer, without direct involvement from the employer. In both models, an EWA provider allows users to access anywhere between 50-100% of their earned wages at any given time.<sup>1</sup>

We are strong supporters of providing consumers with better alternatives to predatory lending and junk fees at banks. Earned wage access services help workers bridge the gap from today to payday and frees workers from depending on the payroll cycle and a financial system that frequently disadvantages them.

### **EWA Promotes Consumer Choice**

Based on a survey conducted by three direct-to-consumer EWA service providers, an overwhelming number of EWA consumers said they understood how the service structure works and consider it the best option to manage their spending.<sup>2</sup> EWA provides

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<sup>1</sup> Id.

<sup>2</sup> Brigit, Money Lion & Earnin Customer Research - Combined Customer Topline Report Research conducted online by FTI Consulting's Digital & Insights team from April 21st, 2021 – May 18th, 2021  
<https://www.earnin.com/assets/pdf/FTI-Earned-wage-access-memo.pdf>

consumers the opportunity to stretch their dollar farther than the standard two-week pay cycle.

The cost of living in Maryland is 16% higher than the national average and when it comes to basic necessities such as food and clothing, groceries are around 6% higher than in the rest of the country.<sup>3</sup> In this post-COVID inflationary economy, the usage of EWA has increased across the board. From 2018 until now, these services tripled in usage in response to consumers adapting to a financial environment where they are empowered to spend without a lack of liquidity.<sup>4</sup>

A majority of EWA users surveyed tended to use EWA every two weeks and access an average of \$100 - \$149 in a typical month. This funding is used to primarily pay bills on time, avoid overdraft fees at financial institutions, and buy groceries.<sup>5</sup> EWA gives consumers a safer alternative to paying bills late and getting charged bank overdraft fees that can cause a further decline into debt.

Families working paycheck to paycheck are currently beholden to the 2-4 week pay cycle, trapped in a system that does not account for real life factors that cannot wait for payday. With the right regulatory framework outlined in this bill, EWA has an opportunity to make a greater impact by providing a service that meets the consumer where they are. Like many other innovations in fintech, consumer choice with EWA will allow workers to vote with their pocketbooks and choose the service that is best for them and their budget.

Thank you for your leadership in promoting responsible policymaking for earned wage access with SB 998. This bill will help ensure that Maryland consumers, businesses, and the broader economy will thrive in the emerging fintech economy.

Thank you.

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<sup>3</sup><https://www.rentcafe.com/cost-of-living-calculator/us/md/~:text=Summary-,The%20cost%20of%20living%20in%20Maryland%20is%2016%%20higher%20than,while%20clothing%20costs%206%%20higher.>

<sup>4</sup>[https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA\\_D2C\\_Advance-sage\\_Trends\\_FINAL.pdf](https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-sage_Trends_FINAL.pdf)

<sup>5</sup> <https://www.earnin.com/assets/pdf/FTI-Earned-wage-access-memo.pdf>

**MD SB 998 Testimony - EarnIn.docx.pdf**

Uploaded by: Ben LaRocco

Position: FAV



**Ben LaRocco**  
**Senior Director, Government Relations**

Wednesday, March 6, 2024  
Senate Finance Committee - Bill Hearing

Good afternoon Chairwoman Beidle, and members of the Senate Finance Committee. My Name is Ben LaRocco, and I'm the Senior Director of Government Relations for EarnIn, one of the largest providers of Earned Wage Access services, or EWA, in the country.

I'm speaking today in support of Senate Bill 998, a Maryland specific regulatory framework for EWA services based on a national model that has been negotiated for several years, with input from dozens of legislators, regulators, attorneys general, and consumer advocacy groups. It provides a strong regulatory framework to allow regulatory oversight, and provide safe access for consumers to use the product.

In Maryland, more than 75,000 residents have used our earned wage access product, including more than 31,000 last year. The top employers of our customers include Johns Hopkins Medical, Baltimore County Public Schools, Baltimore City Public Schools, and Prince George's County Public Schools.

People are smart. They know how to manage their own money and choose the products that are best for them. Hard working families across the state are voting with their pocketbooks to choose EarnIn because it is safe and effective. The current business model empowers consumers because all fees are voluntary, and customers can reschedule or postpone their need to repay with no penalty if life happens and they can't repay. There are never any mandatory fees, credit checks, late fees, interest or credit reporting under the current framework.

Last year, Connecticut advanced a framework similar to the OFR proposal in HB 246. This framework effectively bans the current EWA business model and forced us to leave the state of Connecticut. Our customers there were left with nothing on short notice and were overwhelmingly worse off both financially and emotionally.

Our customers saw 10% more overdrafts than a similar group of customers next door in Massachusetts. Thousands of dollars of fees that should have been avoided.

We did a poll of our customers to ask them how they were faring, and 74% of respondents reported additional stress about their finances having lost EarnIn. 67% report cutting back on doing things they enjoy. 60% felt helpless, and sadness, panic, and outrage are emotions large percentages of customers said they felt after losing access to our service.

Thirty four percent said they need to resort to overdraft fees or late fees during emergencies because they did not have any other options.



Our customers are real people. People like you and me. They are not just numbers on a piece of paper or clever slogans. Teachers, nurses, and warehouse workers trying to do the best with their lives. They've chosen EarnIn to help them, and we hope you will allow us to continue to do so.

I encourage the Committee to pass SB 998 and ensure your constituents have access to this safe and effective product.

# **Maryland Senate Testimony for SB 998 DailyPay Inc.**

Uploaded by: Elyse Hicks

Position: FAV



# DailyPay, Inc. Testimony

TO: Senate Finance Committee  
RE: SB 998  
DATE: March 6, 2024  
SUBJECT: Testimony from DailyPay, Inc. *(as submitted for the record)*

## ***Position: Support***

Good afternoon,

Chair Beidle, Vice Chair Klausmeier, and members of the Senate Finance Committee. Thank you for the opportunity to provide testimony on Senate Bill 998.

My name is Elyse Hicks, and I serve as the Government Relations Manager for the East Coast at DailyPay, Inc. We are the leading provider of employer-integrated on-demand pay nationwide, partnering with 527 in-state businesses in Maryland. Today, more than 67,363 Marylanders have used DailyPay's EWA service.

As an industry, I am joined today by several other providers of earned wage access. Together, we are testifying in support of SB 998 and the consumer protections it provides for EWA users.

As this committee knows, two-thirds of Americans live paycheck to paycheck, which can result in missed or late payments, causing consumer credit scores to drop and leading to penalty fees, higher financing costs and difficulty qualifying for future credit.<sup>1</sup> Most Americans lack the necessary savings to cover emergency expenses between paychecks. Even those making \$100,000 per year prior to taxes are experiencing financial fragility.<sup>2</sup> According to Bankrate, the average American needs to earn \$233,300 to feel financially secure.<sup>3</sup> And with the average annual salary nationwide falling just shy of \$60,000<sup>4</sup>, consumers are turning to safe and affordable alternative resources to help close the gap when bills and emergencies do not wait every two weeks or once a month for an employer to run payroll.<sup>5</sup>

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<sup>1</sup> Steele, Jason. "Living Paycheck to Paycheck Statistics." *Bankrate*, [www.bankrate.com/finance/credit-cards/living-paycheck-to-paycheck-statistics/](https://www.bankrate.com/finance/credit-cards/living-paycheck-to-paycheck-statistics/). Accessed 29 Feb. 2024.

<sup>2</sup> Morabito, Charlotte. "Here's Why Even Americans Making More than \$100,000 Live Paycheck to Paycheck." *CNBC*, CNBC, 11 Dec. 2023, [www.cnbc.com/2023/12/11/why-even-americans-making-more-than-100000-live-paycheck-to-paycheck.html](https://www.cnbc.com/2023/12/11/why-even-americans-making-more-than-100000-live-paycheck-to-paycheck.html)

<sup>3</sup> Steele, Jason. "Living Paycheck to Paycheck Statistics." *Bankrate*, [www.bankrate.com/finance/credit-cards/living-paycheck-to-paycheck-statistics/](https://www.bankrate.com/finance/credit-cards/living-paycheck-to-paycheck-statistics/). Accessed 29 Feb. 2024.

<sup>4</sup> *The average annual salary nationwide is \$59,428.* Belle Wong, J.D. "Average Salary by State in 2024." *Forbes*, Forbes Magazine, 8 Nov. 2023, [www.forbes.com/advisor/business/average-salary-by-state/](https://www.forbes.com/advisor/business/average-salary-by-state/).

<sup>5</sup> SecureSave, January 25, 2023, Survey: Americans personal savings are plummeting as 74% are now living paycheck to paycheck (<https://www.prweb.com/releases/2023/01/prweb19128966.htm>).





Earned wage access provides a short term liquidity solution to the infrequency of payment issue brought about by the traditional biweekly pay schedule. It is popular amongst Maryland workers today because it facilitates access to the wages they have earned but have yet to receive. This allows EWA users to manage their finances and access liquidity when unexpected expenses arise, such as medical bills. It also gives employees an alternative to a \$35 bank overdraft fee<sup>6</sup>, an initial \$30 credit card late fee<sup>7</sup>, and other high-cost credit products.

According to a survey sponsored by DailyPay, EWA is attractive to businesses because it reduces employee turnover, employee absenteeism, helps businesses and recruiters fill roles in less time, and employees are more motivated to pick up extra shifts.

While each EWA company differs slightly, we share a few key characteristics.

1 - First, all EWA is based on wages earned. Workers can only access the money they have already worked for. We are not providing credit.

2 - All EWA products are non-recourse. If an employer fails to make payroll, the risk is on the EWA provider and not the worker. There is also no requirement to repay, no collection activity, and no credit bureau reporting for non-payment.

3 - While there are usually some small costs associated with EWA, at least one “no-cost” option is offered by most EWA providers, such as through a debit card, or a next business day ACH bank transfer. EWA providers do not assess origination fees or tack on interest. However, a nominal fee of about \$3 for instant delivery to any bank account is common and similar to an out-of-network ATM fee.

Without EWA, available options to access funds quickly can be very costly, especially without good credit.

To further illustrate the need for this product, I’d like to point to DailyPay’s [independent research](#) that was conducted in 2021 that found the majority of our platform users previously relied upon costly financial strategies that harmed their financial health before gaining access to DailyPay. Specifically, 57% of our users had previously paid bills late, 49% had borrowed money from friends and family, 39% regularly overdrew their bank accounts and incurred a fee, 21% took out payday loans, and 21% made a loan payment late or not at all.

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<sup>6</sup> *Consumer Financial Protection Bureau*, [www.consumerfinance.gov/](http://www.consumerfinance.gov/). Accessed 29 Feb. 2024.

<sup>7</sup> “CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees.” *Consumer Financial Protection Bureau*, 1 Feb. 2023, [www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/](http://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/).



For the 40% of our users who were frequent overdrafters, 97% of these individuals no longer did so after gaining access to EWA. This resulted in savings of approximately \$660 per year, per user, and the results were equally positive for the 21% of our platform users making loan payments late and the 57% of our users previously paying other bills late. Independent research commissioned in 2022 [corroborated these findings](#) as well.

We help people get out of debt. From February to May 2023, we closely monitored our high frequency users. Our data revealed a 50% decline in high frequency usage of our platform after 4 weeks, an 80% decline by week 8, and within 12 weeks, a 97% decline in high frequency usage. This meant that less than 1% of people on our platform are high frequency users for 3 months.

We take claims that our product could be radically abused or mis-used, seriously. However, in partnering with hundreds of employers across the country, this is simply not the experience that our thousands of employee-users have. It is quite the opposite. We have heard countless stories about how our platform has allowed employees to bridge short-term cash crunches and get through challenging times. For the people that are frequent users, we help them break cycles of debt that have been brought on and perpetuated by traditional lending products.

A small percentage of people use our platform frequently when they have an emergency, because it is a low cost or no-cost alternative to all other options available. This accurately depicts how EWA helps people break the debt cycle.

In December 2023, the Financial Health Network released a user study sponsored by DailyPay that spoke to users of any EWA product available. The study found people used EWA to pay bills due ahead of their paycheck or cover some other financial shortfall. Nearly all participants in the study did not view EWA as a loan. Instead, participants asserted that EWA provided wages they had already earned, fundamentally different from borrowing against future earnings.

The participants also preferred EWA to alternatives and other short-term liquidity options, with one user adding that EWA allowed them “to access the liquidity they needed, while preserving their dignity.”

We appreciate the Committee's thoughtfulness in acknowledging EWA as a separate and distinct financial product deserving its own regulatory oversight and licensing program. It is an important lifeline for Marylanders, and impacts the employers in the state who have come to use this product as an important tool to retain and grow their workforce.

Thank you for your time and I would be happy to answer any questions.

# **ZayZoon Letter re SB 0990 March 5 2024 - Senate Fi**

Uploaded by: Garth McAdam

Position: FAV



**ZayZoon US Inc.**  
4250 N. Drinkwater Blvd., #300  
Scottsdale, AZ 85251  
www.zayzoon.com

March 5, 2023

**Submitted via E-Mail**

**Senate Finance Committee**  
11 Bladen St  
Annapolis, MD, USA 21401

**Re: Senate Bill 998 – An Act Concerning Earned Wage Access Services**

To Whom it May Concern:

This letter is submitted to the Senate Finance Committee (the "**Committee**") on behalf of ZayZoon US Inc. ("**ZayZoon**"), in response to Senate Bill 998 ("**SB998**"), which relates to the regulation of earned wage access ("**EWA**") services in Maryland. I would like to thank you all for your work on the regulation of EWA. We believe in the merits of regulation as a path to provide certainty and security for both consumers and industry participants, and appreciate your diligence regarding this important new financial tool for consumers.

We **SUPPORT SB998** as presented because this bill would provide the framework for the responsible provision of EWA services to consumers in Maryland. If passed, this would be the first in the nation legislation of EWA services, and we believe that SB998 represents carefully considered protections for Maryland consumers, while ensuring they continue to have access to this responsible financial tool.

We do recognize that two bills concerning EWA have been presented in Maryland, and that these two bills have taken a fundamentally different approach to regulating EWA. We respectfully encourage this Committee to recognize that only SB998, as drafted, will permit EWA to effectively operate in Maryland. As presented, the other EWA bill will result in EWA providers being forced to significantly reduce their services for workers in Maryland, if not leave the state entirely. This has already happened in Connecticut with their recent legislation, though fortunately it appears that Connecticut legislators are revisiting this position. SB998 is a well thought out approach to ensuring that workers continue to have access to EWA services, while also ensuring that EWA is provided in a responsible manner.

ZayZoon is a financial technology platform that partners with payroll providers and employers to provide consumers with responsible, low-cost financial services, including EWA services, financial literacy tools, and other resources. We primarily work with small to midsize businesses to provide EWA services to their employees, and we provide EWA services to businesses with as few as ten employees. We are a smaller EWA provider than some of the other industry participants that have expressed their support for this bill, but wish to add our support because we believe that SB998 sets forth important consumer protections, and provides important operating certainty for industry participants. We are hopeful that our extensive experience in working with these partners can provide an additional perspective to assist the Committee as it discusses SB998.

ZayZoon would be happy to meet with members of the Committee directly to discuss these important services and our comments on SB998 in more detail.

## **EWA is Easy to Understand and Low-Cost**

We believe that an analogous financial product is a bank account being accessed through an ATM, where the employee's "account" is comprised of their earned wages that have yet to be paid by the employer, and the EWA service is analogous to an ATM transaction. Customers are able to access cash immediately, for a small flat fee,<sup>1</sup> and the amount of the withdrawal is settled between the bank associated with the ATM and the customer's bank. The service is simple for consumers to understand, low cost, and provides immediate access to cash. Similar to how ATM transactions give consumers access to their bank accounts when a bank teller is not available, EWA services give consumers access their earned wages when their paycheck is not yet available.

Workers using EWA can easily understand the product. For a small, flat fee, they can access their earned wages. A small flat fee, with no additional fees or costs ever charged to the worker, is simple and transparent. It is easy for workers to understand this service, and they understand the costs of using it. Critics of EWA argue that APR is better for workers to understand the costs of EWA, but we respectfully submit that it is disingenuous to suggest that a floating APR that changes dramatically depending on when in a pay period a worker takes a payout is somehow easier for workers to understand than a single, small flat transaction fee.

EWA exists because the paycheck may not be available, but the need is still there. In a survey of why our customers are using our services, 98% of our customers reported that they use EWA to pay for necessities, to avoid high fee alternatives, or for unexpected expenses. EWA is access to liquidity, and that access is a very real, and often very urgent, need for our customers. If EWA is taken away by defining it as a loan, that need will not disappear. Unless legislators and regulators can point to an alternative solution for these immediate cash flow needs, they should not effectively eliminate EWA by making it impossible for EWA providers to earn sufficient revenue to operate. EWA is the alternative solution to make ends meet compared to the other strategies and products that are extremely costly.

The access fee for EWA services is comparable to the average ATM fee, and is functionally the same service. In contrast, the average overdraft fee in 2022 was \$29.80 and the average NSF fee is \$26.58.<sup>2</sup> According to the Consumer Financial Protection Bureau ("CFPB"), the **daily** limit on these fees varies from bank to bank, but can be as high as \$288 per day.<sup>3</sup> For debit card purchases, the median amount triggering an overdraft fee is \$24.<sup>4</sup> For ZayZoon customers that had previously incurred an overdraft fee or an NSF fee, we have seen a significant drop-off in the amount of overdraft and NSF fees incurred by such customers since they were able to access EWA services. For these customers, the average savings from avoiding overdraft fees per customer was \$10.96/month, and the average savings from avoiding NSF fees per customer was \$32.33/month.<sup>5</sup>

When the consumer costs are compared, we hope it's clear that EWA is a different financial product from, and an extremely desirable alternative to, high-cost products like overdrafts. We urge the Committee to consider EWA services in light of the alternatives available to consumers, which is what Senator Klausmeier has done with SB998.

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<sup>1</sup> The average out-of-network ATM fee is \$4.66. See <https://www.bankrate.com/banking/checking/checking-account-survey/>

<sup>2</sup> <https://www.bankrate.com/banking/checking/checking-account-survey/> [emphasis added]

<sup>3</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-chart\\_2022-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-02.pdf)

<sup>4</sup> [https://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf) p.5

<sup>5</sup> These numbers are based on surveyed ZayZoon customer data from customers, where such customers had incurred at least one overdraft or NSF fee, as applicable.

It is also worth noting that Federal representatives from both sides of the aisle have indicated support for EWA services. Sherrod Brown, the Chairman of the Senate Banking Committee, has stated that "employer-integrated earned wage advances with strong consumer protections can, in fact, help workers cover unexpected expenses or emergencies." Then-Ranking Member Pat Toomey described EWA as, "an appealing alternative to payday loans ... EWA can help consumers to meet such [unexpected] expenses and others." While Maryland is a nationally recognized leader in its approach to payday lending, Maryland workers do still face high-cost overdrafts.

Access to liquidity is important because consumers face an array of fees that are the direct result of a cash shortfall. EWA services solve this issue by unlocking an employee's access to their earned wages, thereby eliminating the financial strain, emotional stress and associated fees traditionally associated with predatory lending services or overdraft fees. We encourage the Committee to view EWA services as a low-cost access to liquidity, as has been accomplished in SB998.

### **EWA Benefits Small to Midsize Businesses As Well**

ZayZoon offers employer-integrated EWA services, and we are proud that we primarily offer our services to the workers employed by small to midsize businesses ("SMBs"). These businesses face enormous challenges in finding and retaining talented workers, and being able to provide EWA services to their employees helps them to compete for talent against large corporations like Walmart. Walmart is able to provide similar services in house, and we are proud that we are able to give these SMBs the ability to offer the same employee benefit. Our employer partners have 29% less turnover, and receive up to twice the number of job applicants for open positions.

Critics of EWA will often point to these benefits to the employer as justification for the claim that EWA should be provided at no cost to the customer. It is true that businesses do benefit from offering EWA, but EWA benefits the workers as well. Access to EWA results in an average of 8 hours less absenteeism per month. That is clearly beneficial for our small business partners, but also means more money in workers' pockets.

We do have employer partners that are able to fund EWA advances for their employees, but this is not common. Mandating that businesses pay the costs/fees for providing EWA is, unfortunately, tantamount to removing EWA services for many workers. Businesses, especially smaller businesses, face similar financial difficulties to lower income consumers. They very often have cash flow issues, and effectively operate "paycheck to paycheck" in the same way that many employees traditionally do. JPMorgan Chase Institute research shows that **50 percent of small businesses are operating with fewer than 15 cash buffer days**,<sup>6</sup> and this concern is especially prevalent in Black and Hispanic communities. "In all majority Black or Hispanic communities, most small businesses had fewer than 14 cash buffer days."<sup>7</sup>

Given these widespread cash flow issues, employers are often unable to fund these EWA disbursements. By mandating that EWA be provided solely on a fee-free basis to the consumer will simply mean that these businesses will no longer be able to enable the services for their employees. SB998 requires EWA providers to offer at least one reasonable option to obtain an EWA payout at no cost, which we respectfully believe is the right approach. This permits EWA providers to operate, while also ensuring

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<sup>6</sup> <https://www.jpmorganchase.com/institute/research/small-business/place-matters-small-business-financial-health-in-urban-communities>

<sup>7</sup> *Ibid.*



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that workers can use the service at no cost, depending on how each worker chooses to receive a payout.

### **Conclusion**

EWA is an emerging financial tool that offers employees greater control over their finances. ZayZoon supports responsible EWA regulation, and ZayZoon is in full support of the regulation of EWA, provided it is done in a carefully considered manner. For these reasons, we **SUPPORT SB998** as presented.

ZayZoon appreciates the opportunity to submit these comments to the Committee on SB998. Thank you for taking the time to consider our comments. If you have any questions about any of the comments contained in this letter, please do not hesitate to contact me at [garth.mcadam@zayzoon.com](mailto:garth.mcadam@zayzoon.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "G. McAdam", is written over a light blue horizontal line.

Garth McAdam  
General Counsel, ZayZoon

**SB0998\_AFC\_Moloney.pdf**

Uploaded by: Ian Moloney

Position: FAV





American Fintech Council Testimony

TO: The Senate Committee on Finance  
FROM: Ian P. Moloney, Senior Vice President, Head of Policy and Regulatory Affairs,  
American Fintech Council  
DATE: March 6, 2024  
SUBJECT: Senate Bill 998

***Position: Support.***

***Testimony:***

Thank you Chair Beidle, Vice-Chair Klausmeier, and members of the Senate Committee on Finance for providing me the opportunity to testify before you in support of Senate Bill 998 (SB 998). My name is Ian Moloney, I am the Senior Vice President, Head of Policy and Regulatory Affairs at the American Fintech Council (AFC).

Our mission at AFC is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial technology (Fintech) and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved communities. We proudly represent the largest Earned Wage Access (EWA) companies who are currently serving thousands of Marylanders and millions of consumers and families across the United States.

As part of AFC's efforts to ensure EWA providers effectively serve consumers, we established clear standards on what constitutes responsible EWA. Specifically, these standards require a voluntary no-cost option be made available to all users; strong fee disclosures represented in a clear and transparent manner; and the ability for users to cancel the EWA service at any time. The provisions of SB 998 closely reflect the standards we established for responsible EWA providers.

Establishing the regulatory framework enumerated in SB 998 will allow EWA services to flourish in Maryland and help workers access the pay they are entitled to instantly by giving EWA providers a clear and functional regulatory path that recognizes the nuances of the service and allows providers to offer their services most effectively. In turn, consumers will be able to engage with responsible EWA providers in a manner that fits their lifestyle best, whether the services are offered through an employer, stand-alone product, or as part of a subscription.

In closing, I applaud the Maryland legislature for taking up this issue in a timely manner and seeking a pragmatic solution through SB 998. I thank you again for the opportunity to offer my support for this bill and am happy to answer any questions you may have.

**Payactiv Written Testimony - 03052024.pdf**

Uploaded by: Molly Jones

Position: FAV

March 4, 2024



**Re: Support for SB 998**

Dear Chair Beidle and honorable members of the Senate Finance Committee:

Thank you for your consideration of SB 998, and for your leadership on legislation to improve the financial security of hard-working Marylanders.

Payactiv is a leading employer-integrated earned wage access (EWA) provider that partners with employers to enable their employees to access their own, already earned wages when they need it – rather than having to wait for payday. Payactiv integrates into an employer's time and attendance payroll system and verifies wages from payroll, time and attendance, and census file data. Payactiv has been providing EWA services to Maryland workers for over 10 years and is proud to be a Public Benefit Corporation and Certified B Corp.

As cost of living continues to skyrocket and wages remain stagnant, it is getting harder and harder for working Marylanders to make ends meet. More than 60 percent of workers live paycheck to paycheck, and 40 percent lack an emergency fund of just \$400 to weather a financial shock. This can be devastating for workers and their families.

EWA is a significant financial security tool for the thousands of Marylanders that need cash for unexpected expenses between paychecks, and it is a responsible, safe alternative to costly online payday loans, credit card debt, and bank account overdraft. Without EWA, it might be weeks until workers can see the benefit of picking up an extra shift to pay their bills, but with EWA, they are able to access those earned wages immediately.

EWA is a widely popular employee benefit for Maryland workers. Payactiv partners with over 300 leading Maryland employers, and thousands of workers have access to this tool if they need it. Despite claims about user complaints, we have a February 2024 letter from the Maryland Office of Financial Regulation confirming there are no user complaints filed for EWA or any EWA provider in the state of Maryland. We have separately confirmed there are no user complaints from Maryland workers in the Federal Trade Commission (FTC) database either, and there are no complaints for Payactiv from Maryland users in the CFPB database.

Payactiv supports creation of a licensing system for EWA providers in Maryland that would encode strong consumer protections, prevent bad actors in the space, and provide regulatory clarity for the industry to continue to grow. SB 998 creates a number of meaningful consumer protections, including: ensuring EWA is non-recourse; that there is no credit checks or credit impacts; that there are no ballooning interest rates, late fees, origination fees, or penalties; that workers have access to at least one free option (Payactiv has five free options); that access is only based on actual earned wages; and that fees are clearly disclosed, among others. The consumer protections in SB 998 are far greater and more meaningful than alternative regulatory models proposed to this committee.

Payactiv is proud of our long-standing service to Maryland workers. Thank you for your leadership on this important issue, and we respectfully request a favorable report.

Sincerely,

Molly Jones  
Head of Public Policy, Payactiv

**Testimony of Chime Financial- MD SB 998 (3.6.24).p**

Uploaded by: Phil Cronin

Position: FAV

March 6, 2024



Testimony of Philip Cronin  
Director of Government Advocacy  
Chime Financial, Inc.

**Senate Bill 998 - Commercial Law - Earned Wage Access Services - SUPPORT**

Honorable members of the Senate Finance Committee, thank you for holding this hearing and for extending the opportunity to provide testimony on behalf of Chime Financial, Inc.

Chime is a financial technology company founded in 2012 on the premise that basic banking services should be helpful, easy and free. **In Maryland, Chime serves more than 125k consumers through our partnership with two OCC-chartered, FDIC-insured banks.** We lead the market in providing free basic banking services, including free checking and savings accounts, faster access to direct deposits, free overdraft, and credit building.

As a company that prioritizes member obsession, we've heard from and seen with our own members how short-term liquidity and the time between pay periods is a constant challenge. Our members are not alone in their experience- **more than 65% of Americans have low cash balances, making it difficult or impossible for them to withstand any form of financial shock or accommodate their income volatility.** The traditional biweekly pay cycle is resulting in a system in which Americans living paycheck-to-paycheck have to borrow money during the paycheck – often at great cost – to meet their liquidity needs. In light of this, Chime is exploring ways to bring to market an accessible, low-cost Earned Wage Access (“EWA”) offering that can expand access to liquidity for its members.

**Chime supports SB 998 because it will create a regulatory framework for EWA in Maryland that recognizes the unique nature and utility of EWA products while mandating important consumer protections.** Notably, SB 998 codifies standards for EWA which clearly distinguish EWA from traditional credit/loan products:

- **No underwriting or assessment of an individual's credit worthiness** in order to qualify for EWA;

- **No recourse against the consumer**, including no penalty for failure to pay outstanding balances, no late fees, no interest, no reporting to credit bureaus and no referral to a debt collector; and
- **Offering of at least one no cost option to the consumer** with a clear explanation on how to elect that option.

In addition, Chime aspires to offer an earned wage access product that would:

**(1) Provide access to actual earned wages in an accurate manner** through the use of consumer-permissioned payroll and time and attendance data (without needing to integrate into an employer's systems and therefore expanding access to EWA to all employees);

**(2) Settle from actual earned wages by deducting accessed wages from payroll deposits** into Chime checking accounts before the funds can be accessed by the employee;

**(3) Include a conspicuous, easily accessible, free 1-2 day transfer option** in addition to an optional \$2/transaction instant transfer fee;

**(4) Prudent caps to limit the amount of wages that can be accessed early** in a given pay period;

**(5) Provide no recourse against the consumer**, including no late fees/interest, no credit reporting, no limitation on use of other Chime services and no contractual or legal right to recover.

Passage of SB 998 would establish an appropriately-tailored EWA law that creates a clear pathway for the creation of scalable, consumer-friendly EWA products for Marylanders. **We respectfully request a favorable report from the committee on SB 998.**

Respectfully submitted,

Philip D. Cronin  
[phil.cronin@chime.com](mailto:phil.cronin@chime.com)

**cfpb\_comment-letter-attachment.pdf**

Uploaded by: Amy Hennen

Position: UNF



1700 G Street NW, Washington, D.C. 20552

November 27, 2023

*Via electronic mail*

Department of Financial Protection and Innovation  
Attn: Araceli Dyson  
2101 Arena Blvd.  
Sacramento, CA 95834  
[regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

Comment on Proposed Rule Addressing “Income-Based Advances” and Related Charges

The Consumer Financial Protection Bureau (CFPB) appreciates the opportunity to comment on the California Department of Financial Protection and Innovation (DFPI)’s proposal to undertake registration and examinations of providers of what DFPI refers to as “income-based advances.”<sup>1</sup> The CFPB is the primary regulator of consumer financial products and services at the federal level. Among its responsibilities, the CFPB has an obligation to coordinate with other regulators, including states, to promote consistent regulatory treatment of consumer financial products and services.<sup>2</sup>

I. Income-Based Advance Products Have Long Existed

Income-based advances – products where repayment is related, theoretically or concretely, to a worker’s next payday – have long been part of the U.S. consumer lending market. As DFPI references, in the early 1900s, these products often took the form of wage “sales” or

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<sup>1</sup> DFPI, Notice of Modification to Proposed Rulemaking, PRO 01-21 (Nov. 6, 2023).

<sup>2</sup> 12 U.S.C. § 5495; *see also* CFPB, Consumer Financial Protection Circular 2022-01: System of *Consumer Financial Protection Circulars* to agencies enforcing federal consumer financial law (May 16, 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_2022-01\\_circular\\_2022-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2022-01_circular_2022-05.pdf).



assignments.<sup>3</sup> In the 1990s, payday lending products proliferated and were often promoted as “deferred presentment” transactions.<sup>4</sup> Banks have marketed similar products as “deposit advances.”<sup>5</sup> With all these products, a consumer receives funds that are typically repayable in full on their next payday.

Some firms have recently begun to market income-based advance products that either are or purport to be made based on wages that the employee has earned using various branding terms, such as “earned wage access.” As DFPI has recognized, firms marketing their products in this manner include both firms seeking to integrate cash advances through an employer, where repayment of the advance is made via payroll deduction, and firms that, without the involvement of an employer, contract with a consumer to obtain authorization to debit the consumer’s bank account to collect repayment of the advance. In both scenarios, and especially when advances are provided and repayment is collected without the involvement of the consumer’s employer, these products share fundamental similarities with payday lending products. And federal and state regulators have long administered laws and regulations that apply to income-based advance products such as payday loans.<sup>6</sup>

## II. Supervision Promotes Robust Consumer Protection

The Consumer Financial Protection Act provides that the CFPB may conduct examinations of providers of consumer financial products and services, which, broadly speaking, include providers of income-based advance products.<sup>7</sup> At the same time, states have long provided critical oversight of nondepository providers of consumer financial products and services, like those typically offering income-based advance products.

While providers of these products generally do not need a federal license, they frequently must obtain licenses from the states in which they operate. In turn, obtaining a license often subjects a licensee to supervisory examinations for compliance with applicable law. This supervision is critically important for ensuring that firms are meeting their legal obligations. The CFPB believes that it is consistent with this longstanding practice to subject providers of income-based

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<sup>3</sup> See DFPI, Initial Statement of Reasons, PRO 01-21, at 53 n.88 (Mar. 15, 2023) (citing F. B. Hubachek, *The Development of Regulatory Small Loan Laws*, 8 *Law and Contemporary Problems* 108-145, 138, 142 (Winter 1941)).

<sup>4</sup> See, e.g., *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042, 1048 (M.D. Tenn. 1999) (holding that transactions described by defendant as “deferred presentment” transactions were extensions of credit and noting that “[o]ther courts which have addressed the issue are unanimous in holding that those who participate in the deferred presentment/check-cashing business are ‘creditors’”); see also Board of Governors of the Federal Reserve System, 65 Fed. Reg. 17,129, 17,130 (Mar. 31, 2000) (“[A]greements [to defer payment of a debt] are deemed to be ‘credit’ as defined by [Regulation Z] however they are described—as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name.”).

<sup>5</sup> See generally CFPB, *Payday Loans and Deposit Advance Products* (Apr. 24, 2013), [https://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf).

<sup>6</sup> The laws that the CFPB administers that apply to income-based advance products such as payday lending include the Consumer Financial Protection Act, the Truth in Lending Act, the Equal Credit Opportunity Act, and the Electronic Fund Transfer Act, as well as those laws’ implementing regulations.

<sup>7</sup> See 12 U.S.C. § 5514(a)(1).

advances marketed as “earned wage access” to state oversight – as providers of other income-based advance products, such as payday loans that have long been offered in some states, are. Rigorous supervision of all income-based advance products helps to ensure that the label of a product does not determine how providers are held accountable, or the extent to which consumers are protected, under the law.

### III. Definitions of “Loans” and “Charges”

The CFPB notes that DFPI’s proposal would clarify that income-based advances are “loans” under the California Financing Law and that “charges” under that law include “gratuities” as well as “expedite fees.” By treating these products as loans and including a variety of charges that accompany the advance, DFPI’s proposal takes a similar approach as the Truth in Lending Act and its implementing Regulation Z, which generally applies to extensions of consumer credit<sup>8</sup> and provides that a finance charge “includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit,” with certain limited exceptions.<sup>9</sup> As DFPI pursues its supervisory work, both state and federal law provide critical consumer protections.<sup>10</sup>

As the CFPB has stated previously, the CFPB plans to issue further guidance to provide greater clarity concerning the application of the Truth in Lending Act in this market.<sup>11</sup> The CFPB’s previous advisory opinion on this topic should not be misrepresented: Products that do not fit within its very narrow scope are not excluded from existing laws. To the contrary, the CFPB supports efforts to subject such products to rigorous oversight for the full scope of existing state and federal consumer protection and lending laws.

### IV. Conclusion

The CFPB believes that, in light of the emergence of firms marketing “earned wage access” income-based advance products, it is appropriate for states to ensure that these products are treated similarly to other income-based advance products with respect to supervision for compliance with applicable law, including ensuring that costs are accurately reflected in the price

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<sup>8</sup> See 12 C.F.R. 1026.1(c).

<sup>9</sup> 12 C.F.R. 1026.4(a).

<sup>10</sup> States have authority under the Consumer Financial Protection Act to bring claims with respect to violations of the federal consumer financial laws, including the Truth in Lending Act. See CFPB, Authority of States to Enforce the Consumer Financial Protection Act of 2010 (May 2022) (“[W]hen a covered person or service provider violates any of the Federal consumer financial laws, section 1042 [of the Consumer Financial Protection Act] gives States authority to address that violation by bringing a claim under section 1036(a)(1)(A) of the [Consumer Financial Protection Act].”), [https://files.consumerfinance.gov/f/documents/cfpb\\_section-1042\\_interpretive-rule\\_2022-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_section-1042_interpretive-rule_2022-05.pdf).

<sup>11</sup> See Letter from CFPB Director Rohit Chopra (Feb. 13, 2023) in Government Accountability Office, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed, GAO-23-105536, at 51 (Mar. 2023), <https://www.gao.gov/assets/gao-23-105536.pdf>.

of credit. Thank you for your consideration of the CFPB's input as you plan for examinations in this market.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Seth Frotman".

Seth Frotman  
General Counsel and Senior Advisor to the Director  
Consumer Financial Protection Bureau

**ofr-advisory-earnedwageaccess.pdf**

Uploaded by: Amy Hennen

Position: UNF



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# MARYLAND COMMISSIONER OF FINANCIAL REGULATION INDUSTRY ADVISORY REGULATORY GUIDANCE

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August 1, 2023

## Guidance on Earned Wage Access Products

The Maryland Office of Financial Regulation (OFR) is issuing this guidance to provide clarity on how this Office views Earned Wage Access products and to describe the requirements entities offering these products must adhere to.

### **What is an Earned Wage Access product?**

Earned Wage Access allows consumers to obtain access to wages that they have earned but not yet received via employer payroll. These products commonly come in two varieties: products employers offer as an employee benefit or products independent third parties offer consumers. In both circumstances, the amount the consumer is offered is limited to the amount they've earned, but not been paid.

An Earned Wage Access product, if offered directly by the employer is usually paid by a deduction from the consumer's wages in the next paycheck. When an independent third party provides the Earned Wage Access product, it is usually repaid via a direct debit from the consumer's bank account.

### **One-time or Subscription Earned Wage Products**

Earned Wage Access products can also be divided into one-time transactions or subscription-based products depending upon how frequently the consumer obtains the advance. In a one-time transaction, the advance is provided on a non-recurring basis. A subscription product provides a consumer with an advance on a recurring basis.

### **How large are the advances under an Earned Wage Access product?**

The California Department of Financial Protection and Innovation conducted a survey of Earned Wage Access providers and 80% of transactions in their state were between \$40-\$100.

### **How does Maryland law classify the Earned Wage Access product?**

Whether an Earned Wage Access product is classified as a loan or not under Maryland law depends upon certain factors. Since these advances are under \$25,000.00, if they are loans, they would fall under Maryland Commercial Law Title 12, Subtitle 3. Under Maryland Commercial Law §12-301 a loan is defined as "any loan or advance of money or credit subject to this subtitle regardless of whether the loan or advance of money is or purports to be made under this subtitle". However, Maryland Commercial Law §12-303(a)3(iii) also stipulates that Subtitle 3 does not apply "to a loan between an employer and an employee". Therefore, if the employer provides the Earned Wage Access product directly to their

employee at no cost, Maryland law does not consider it a loan subject to Subtitle 3. Additionally, if the product is truly for earned wages – i.e., the limit on what is provided is based on how much the employee has earned to date - and provided directly by the employer, it would not be an advance since the employer “owes” the employee those funds.

If a Maryland consumer receives the product from an independent third party, the arrangement’s facts and circumstances must be analyzed to determine if those providers are to be deemed lenders and whether they would require a license.

### **How does Maryland view Third-Party Providers?**

Earned Wage Access products provided directly by employers or provided by independent third parties are merely two ends of the spectrum on how consumers obtain these products. Maryland law requires a case-by-case analysis for those products provided by employers but through a connected third party. To determine if the third-party provider is truly a service provider to the employer – and thus not a lender – or the party providing the advance OFR will consider the following factors:

- Who bears the economic risk?

If the consumer defaults on their repayment obligation does the third party bear the loss of the default or the employer? If the third party bears the burden, OFR will be more likely to view them as the true provider of the advance rather than the employer and thus a lender under Maryland law.

- What level of contact does the third party have with the consumer?

If the consumer has minimal to no contact with the third-party provider, OFR is more likely to view the third party as truly a vendor/service provider to the employer. The greater the level of contact the consumer has with the third-party provider, the less the third party will appear to be merely a service provider to the employer.

- Who benefits from any fees or “tips” the consumer pays?

If the third party receives most of the economic benefit from the transaction they are more likely to be viewed not as a service provider, but as the lender. This is particularly the case if the consumer pays the “tips” or fees directly to the third party instead of the employer.

### **Are fees and “tips” permissible under Maryland law?**

Under Maryland Commercial Law §12-101(e), interest is “any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money, including any loan fee”. Maryland Commercial Law §12-306 caps the amount of interest a lender may charge a consumer on a transaction.

Because a tip or fee would be compensation for an extension of credit, whether a “tip” or fee is permissible depends upon the amount and who is providing the product. If the employer provides the product directly to the employee, as noted above, it is not considered a loan under Maryland law and thus Maryland interest rate limits do not apply. However, if a third-party provides the product, it is a loan under Maryland law and the lender must adhere to Maryland interest rate limits. If the third party sets a tip default at an amount greater than zero, the consumer may feel compelled to provide a tip. In some instances, the tip would factor into the interest rate on the loan product.

## OFR Oversight

As a new and evolving product, OFR will be monitoring the use and provision of Earned Wage Access products. OFR will pay particular attention to the fees that providers charge consumers for the use of Earned Wage Access products. As part of its monitoring efforts, OFR is issuing an advisory to consumers about these products and is encouraging consumers to contact OFR with questions or concerns about the products that they have been offered. OFR will also be monitoring this product for any practices that are deceptive, unfair, or abusive.

If you would like to discuss the Earned Wage Access product you offer to consumers, please contact Assistant Commissioner Shereefat Balogun of the Office of Financial Regulation at 410-230-6390, or by email at [shereefat.balogun@maryland.gov](mailto:shereefat.balogun@maryland.gov).

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*The Office of Financial Regulation, a division of the Maryland Department of Labor, is Maryland's consumer financial protection agency and financial services regulator. For more information, please visit our website at [www.labor.maryland.gov/finance](http://www.labor.maryland.gov/finance).*



**[Click here to subscribe to emails from the Office of Financial Regulation.](#)**

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**SB998 Letter of Opposition.docx.pdf**

Uploaded by: Amy Hennen

Position: UNF



March 6, 2024

Senate Finance Committee

Chair: Senator Beidle

Senate Bill 998 – 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 believes it is critical that any financial products allowed in the state, including earned wage access products (EWA), maintain the protective consumer framework established by Maryland law. SB 998 places no cap on the interest, charges or fees that can be charged for an EWA product, and it weakens long standing Maryland consumer protection laws just for these products by exempting them from Maryland’s Consumer Loan Law. SB998 stands in contrast to HB 246 that is pending the House of Delegates, which is supported by MDL, the Consumer Protection Division of the Attorney General’s Office, various consumer advocacy groups and unions, and which represents an approach to the regulation of EWA products that is consistent with Maryland’s existing consumer protection approach and laws. For reasons explained further below, the Department requests an unfavorable report on SB 998.

By way of background on these products; employers have long offered their employees, mostly low-wage and hourly workers, the opportunity to access some of their accrued wages before the end of their payroll cycle. Recently, this service has become known as “earned wage access (EWA)” and with advances in financial technology, third-party companies have aggressively marketed EWA products directly to workers. Such products typically involve the EWA company advancing its own funds to the employee with the expectation that they will be repaid from the employee's bank account when the employee is paid. Workers are generally charged fees or other associated costs to receive their pay this way. The fees and associated costs are generally not well disclosed and come in many different forms, making it difficult for the average worker to compare the costs of the services provided by different companies. And, some companies even ask workers to give the company a “tip” to provide the loan. Overall, the fees and costs come in many forms, are not clearly disclosed, and are difficult to compare.

**EWA products clearly fall within the definition of a loan under Maryland’s consumer loan law:** The third-party EWA products involve a company that is not the employer advancing its own funds to the employee with the expectation that they will be repaid when the employee receives their wages. This activity clearly falls within the scope of Maryland’s definition of a loan and as such, providers of such EWA products must be licensed as consumer lenders and the products subject to the disclosure requirements of Maryland’s consumer loan law.

OFR has issued guidance for EWA providers describing the factors they need to consider in determining whether they should be licensed with the state. To date, however, third party EWA providers have not

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sought licensing as consumer lenders in Maryland and those operating in the State typically do not give consumers a statement of the true cost of their service. As noted above, such costs can be difficult for a consumer to understand and avoid, particularly since there is no disclosure of the rate of interest being charged. Statistically, consumers using these products seek advances of \$100 or less. And while these products are marketed as affordable, costing only a few dollars over a two-week period, it can result in an annual percentage rate (APR) of between 100% and 400%, far above the maximum interest rate of 33% APR permitted under Maryland's Consumer Loan Law. This APR range is similar to those offered by the payday lenders the General Assembly have sought to bar from Maryland. Like all consumer lending services, these products require careful regulation.

In the last two years, some states have introduced and/or passed legislation to address earned wage access products through either licensure or registration of providers, or the establishment of product requirements and consumer protections. This includes Connecticut and California which have passed/proposed regulations and statutes treating earned wage access products as loans. Hawaii has also recently introduced legislation that would also define earned wage access as a loan. Kentucky has also recently introduced legislation that would prohibit earned wage access providers from requesting a "tip" as well as limiting the fees they can charge consumers. Some other states such as Missouri and Nevada, have passed or are considering legislation along the lines reflected in SB 998, but they do not have strict rate caps and strong consumer protections.

### **Federal regulators have also described these products as loans and should be regulated**

**accordingly.** While there is no direct federal law on the topic, the products are likely covered by federal Regulation Z, which covers consumer loan disclosures, as well as the Truth in Lending Act. The Consumer Financial Protection Bureau ([CFPB](#)) [recently affirmed](#) treating these products as loans and stated "these products share fundamental similarities with payday lending products." In a [letter regarding California's proposed rule](#), the CFPB also said it "supports efforts to subject such products to rigorous oversight for the full scope of existing state and federal consumer protection and lending laws," and that "it is appropriate for states to ensure...that costs [of these products] are accurately reflected in the price of credit."

The MDL licenses and regulates consumer lenders in Maryland and introduced HB246. That proposed legislation codifies principles that the MDL determines currently apply to earned wage access products under existing provisions of Maryland's Consumer Loan Law.

This Committee has already recognized the importance of transparency in loan transactions for small businesses by giving a favorable report to SB 509. Moreover, as the American Fintech Council stated in announcing their support for SB 509 (HB 574), a bill that requires "important transparency for small business borrowers including annual percentage rate (APR) financing charges, and clearly identifiable loan terms and payment amounts," such information provides "clarity" that "enables" borrowers "to make informed decisions about the financial options" available to them. The Committee should recognize that SB 998 fails to apply those same standards for workers in the EWA context.



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

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While many EWA providers may operate reasonably and responsibly, passage of this bill would weaken Maryland consumer loan law and inadvertently create an opening for a return of many predatory lending practices Maryland has worked hard to eliminate.

With that, we urge an unfavorable Committee Report.

# **SB998-PJC-Oppose.pdf**

Uploaded by: David Rodwin

Position: UNF



David Rodwin  
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## SB 998: Commercial Law – Earned Wage Access Services

Hearing before the Senate Finance Committee, March 6, 2024

### Position: UNFAVORABLE

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. **The PJC respectfully opposes SB 998 because it (1) creates a registration system for Earned Wage Access (EWA) lenders that does not acknowledge that their paid products are loans and (2) allows EWA lenders to charge unlimited amounts of fees and to solicit and receive "tips."**

**SB 998 does not acknowledge that these EWA products—which are loans in every meaningful sense—are loans and does not regulate them as loans.**

- SB 998 authorizes direct-to-consumer loans by lenders with no relationship to the borrower's employer. These loans are due in their entirety on the borrower's payday.
- Maryland law is clear that a loan is an advance of credit. EWAs are funded by banks, not through the employer or employee's actual paycheck.
- These products are loans, plain and simple. They should be regulated as loans.

**SB 998's authorization of "tips" will confuse and mislead consumers, enriching lenders at the expense of working people who by definition are living paycheck to paycheck.**

- Low-wage workers—who are disproportionately Black and Brown—use EWA products when they have urgent expenses that cannot wait for their payday. These workers do not have money to spare.
- The very idea of soliciting "tips" for loans is confusing and misleading. Workers who see a "tip" option are unlikely to believe that the tip is in fact voluntary and will not affect the speed or quality of the loan.
- The fees and tips associated with EWA services are not regulated within SB 998. Maryland law is clear that small dollar loans have limits on how much customers can be charged. This is to protect customers from high-cost products like payday loans which trap them in a cycle of borrowing.
- There is also pending guidance expected to come in 2024 from the federal Consumer Financial Protection Bureau, which has announced "plans to issue further guidance to provide greater clarity concerning the application of federal law to income-based advance products."<sup>1</sup>

For the foregoing reasons, the PJC **OPPOSES SB 998** and respectfully urges an **UNFAVORABLE** report. Should you have any questions, please contact David Rodwin at [rodwind@publicjustice.org](mailto:rodwind@publicjustice.org) or 410-625-9409 ext. 249.

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

# **SB 998 - Commercial Law - Earned Wage Access Servi**

Uploaded by: Donna Edwards

Position: UNF



# MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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*President*

**Donna S. Edwards**

*Secretary-Treasurer*

**Gerald W. Jackson**

**SB 998 - Commercial Law - Earned Wage Access Services  
Senate Finance Committee  
March 6, 2024**

**OPPOSE**

**Donna S. Edwards  
President  
Maryland State and DC AFL-CIO**

Madame Chair and members of the Committee, thank you for the opportunity to provide testimony in opposition to SB 998. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

We support workers receiving their wages promptly. We fully support employer connected entities that provide wage advancement at no cost and believe the ultimate solution to this issue is for workers to be paid fast, reliable, and predictable family sustaining wages. The National AFL-CIO in partnership with 118 other labor, civil rights, consumer, legal services and community organizations wrote a letter opposing efforts at the federal level, the so-called Earned Wage Access Consumer Protection Act, that would have similarly exempted earned wage access products from consumer lending protections and interest rate caps. We have attached this letter to our testimony.

SB 998 does not limit the fees that workers will have to pay in order to access their wages early. SB 998 does not classify earned wage access products as loans. SB 998 does not require earned wage access companies to be licensed lenders. The bill permits earned wage access companies to ask for voluntary tips. From the National Consumer Law Center, “Tip based companies collect tips 73% of the time. Just three companies generated \$17.55 million in tip revenue plus another \$6.24 million in other fees, likely expedite fees, in 2021.” Unregulated earned wage access products that skirt Maryland’s consumer lending laws are not the temporary financial solution that workers need. Workers should not have to pay egregious tips, fees, or interest. The true cost of any loan or advance of money will be the total amount of money workers had to spend voluntarily or involuntarily to receive that loan.

We support this year’s SB 998 because workers deserve protection from lenders that fail to register or abide by Maryland’s lending laws and it ends the unfair and opaque tipping practices used by some earned wage access products.

Companies that are providing loans, regardless of whether they call themselves financial technology platforms, must follow Maryland’s lending rules and register with the Office of Financial Regulation. SB 998 is ambiguous. It does not provide a path forward for earned wage access products to be safe,

reliable, and transparent for consumers. We urge an unfavorable report on SB 998. Earned wage access products must register as lenders and follow Maryland's consumer lending protections.



**MD SB 998 EWA Testimony of NCLC-Unfav.pdf**

Uploaded by: Lauren Saunders

Position: UNF



**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.

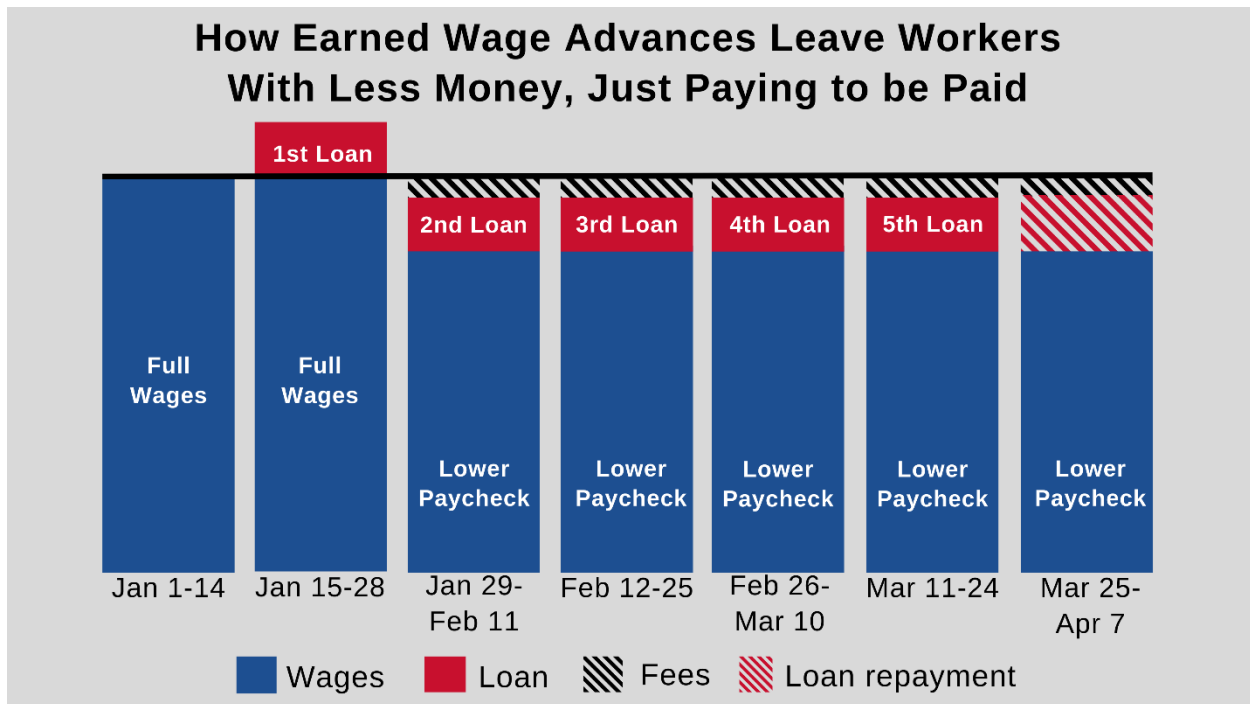
Both versions result in a cycle of reborrowing and multiplying costs.

## 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](mailto:lsaunders@nclc.org).

# **SB998\_CASHCampaign\_UNF**

Uploaded by: Lonia Muckle

Position: UNF



**SB 998 - Commercial Law - Earned Wage Access Services**

**Finance Committee**

**March 6, 2024**

**OPPOSE**

Chair Beidle, Vice-Chair Klausmeier and members of the committee, thank you for the opportunity to submit testimony in respectful opposition to Senate Bill 998. 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 SB 998. 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."<sup>1</sup> This guidance is expected to come in 2024.

**Thus, we strongly urge an unfavorable report on SB 998 to give all stakeholders more time to discuss this important issue.**

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<sup>1</sup> <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.

	<b>Current Law SMALL DOLLAR LOANS IN MD</b>	<b>INDUSTRY BILL HB 1425/ SB 998</b>	<b>MD REGULATOR BILL HB 246</b>
<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.



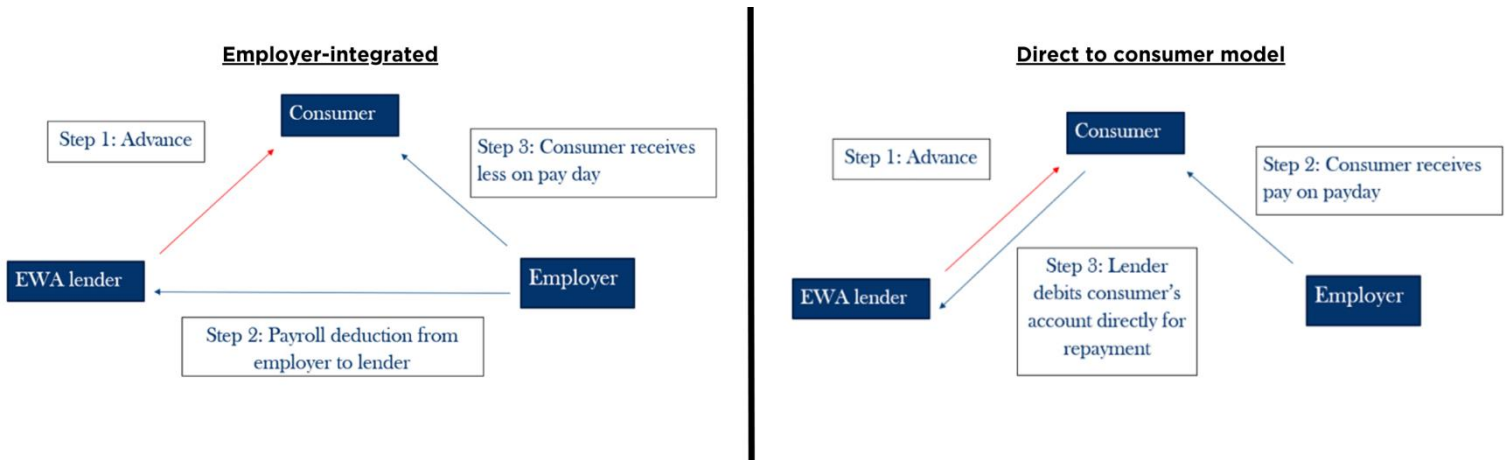


<i>Expedited or "Rush" Fees Allowed</i>	No	Yes, completely unlimited, cannot be counted towards the cost of the loan.	Yes, but must be counted in the cost of credit.
<i>Allows access to the borrower's bank account?</i>	Yes	Yes	Yes

**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.

**SB998\_CRL\_UNF.pdf**

Uploaded by: Monica Burks

Position: UNF



March 6, 2024

Maryland General Assembly

Finance Committee

Public Hearing Regarding SB 998: An Act concerning Commercial Law – Earned Wage Access Services

My name is Monica Burks, and I am Policy Counsel for the Center for Responsible Lending (CRL), a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. CRL is affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers. I am here on behalf of CRL and the communities we serve to recommend you **oppose SB 998: An Act concerning Commercial Law – Earned Wage Access Services.**

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). While there are many different types of EWA products, from those that are truly employer-integrated wage advances to those that offer nothing more than a traditional small dollar loan, accessed through an app and based on wages earned instead of the borrower's full paycheck. SB 998 would require that Maryland regulators treat all iterations of this product as though they are the same, exempting them all from Maryland's longstanding and hard-fought consumer loan statutes, allowing lenders to charge as much as they want, and legitimizing the EWA industry's legal fiction that lending money does not create a loan. The vast majority of EWAs are very short-term loans of small dollar amounts that users can access through a smartphone app. Like payday loan borrowers before them, the initial "advance" creates a cycle of reborrowing. Users report that they borrow nearly every pay cycle, taking out, on average, less than \$100 at a time. Some users also report using multiple apps at one time, "stacking" loans on top of one another and increasing the amount they owe to multiple lenders. Users report that they borrow nearly every pay cycle, taking out, on average, less than \$100 at a time. Some users also report using multiple apps at one time, "stacking" loans on top of one another and increasing the amount they owe to multiple lenders.

While the industry touts EWA as a "free" option for accessing wages early, so-called no-cost options for consumers are mostly illusory. According to Earnin's terms of service, the non-expedited advance would take 1-2 banking days to be deposited, while the expedited service takes up to 30 minutes. The overwhelming majority of users pay express fees when paying such fees is necessary to get immediate access to cash (after all, that is the entire purpose of getting an EWA advance). Despite this, SB 998 would not require EWA providers to count these fees towards the costs of the "advance", nor would it place any cap on the amount providers could charge for the service.

Beyond charging to expedite the loan, several EWA providers also use a host of techniques, adopted from the field of Behavioral Economics, to induce users to pay the company a “tip” for a product that is advertised as “free.” For example, EWA providers that derive revenues from tips typically design their consumer-facing applications (“apps”) to default to the payment of a tip, so that the user must take additional steps to avoid paying. Other tactics include suggesting to the users that paying a “tip” helps keep the service available. For example, the Earnin terms of service tells consumers that tips “help fund” the service and “keep [it] going.” These tactics have proved highly effective at driving users to pay “tips” to the EWA providers.

Multiple regulators have illustrated the substantial finance charge represented by tipping, expedite fees, and subscription fees. In fact, in the past, Earnin has testified that 40% of their revenue comes from tips and that they would have to significantly change their business model without them, and the industry has strongly opposed even minor reform – like changing the default tip option to \$0. This is strong evidence that their business model depends on loans for which the true cost is often going to be higher than advertised or disclosed.

Most concerningly to CRL and our partners, proponents of this legislation have generated significant confusion by asserting that the Consumer Financial Protection Bureau (CFPB) and other states have blessed EWA products like those allowed under the bill. That is flatly inaccurate. In fact, the CFPB and regulators in other states have demonstrated serious concerns about certain types of EWA products authorized by this legislation. Were Maryland to pass SB 998, they would be the **only state with an effective small dollar lending cap to do so**. Maryland would be leading the nation towards deregulation of consumer loans, establishing a new definition of “loan” that, so far, every state with a small dollar rate cap of 36% or less has refused to do.

In reality, the CFPB has said only that EWA products that are entirely free to the consumer, including not soliciting so-called “tips” from users, are exempt from the federal Truth in Lending Act. In the waning days of the Trump administration, the CFPB issued an Advisory Opinion that EWA products are not “credit” under TILA *so long as* (among other things) the “employee makes no payment, voluntary or otherwise, to access EWA funds or otherwise use the Covered EWA Program, and the Provider or its agents do not solicit or accept tips or any other payments from the employee.” The CFPB later expressly clarified that this Advisory Opinion did not apply to businesses that collect fees from consumers, whether voluntary or otherwise.

The CFPB has indicated concerns about EWA models that are not completely free to the consumer, announcing in summer 2022 that it “plans to issue further guidance soon to provide greater clarity concerning the application of the [federal] definition of ‘credit’” to EWA products. Later, in fall 2022, the agency invoked its authority to supervise nonbank financial companies that provide consumer financial products or services and that CFPB has reasonable cause to determine are engaging in conduct that poses risks to consumers. And in November of 2023, the CFPB And in November of 2023, [the CFPB](#) again made clear that EWA products are not, as a whole, exempt from being supervised as loans. “The CFPB’s previous advisory opinion on this topic should not be misrepresented: Products that do not fit within its very narrow scope are not excluded from existing laws. To the contrary, the CFPB supports efforts to subject such products to rigorous oversight for the full scope of existing state and federal consumer protection and lending laws.” Certain EWA providers may end up being subject to CFPB oversight through this area of CFPB jurisdiction. Indeed, we expect additional regulatory guidance from the CFPB within the next few months.

At the state level, Maryland’s own Office of Financial Regulation has echoed the CFPBs guidance echoed [the CFPBs guidance](#), noting that EWAs are not loans **only when they are offered directly from an employer to their employee, and based on wages that have already been earned**.

Finally, regulators in nearly a dozen states have announced a multi-state joint investigation in EWA companies like Earnin. New York State, which is leading the investigation, described the investigation as centered on the fact that “some of these firms appear to collect usurious or otherwise unlawful interest rates in the guise of ‘tips,’ monthly membership and/or exorbitant additional fees, and may force improper overdraft charges on vulnerable low-income consumers.”<sup>8</sup>

Earned Wage Access providers target “liquidity constrained and credit thin” laborers living paycheck to paycheck, often struggling with insufficient income to meet their expenses. But costly debt tends to make matters worse. EWA providers should not get a pass to provide a loan product that is exempted from Maryland’s hard won consumer lending statutes, nor should they be allowed to charge whatever they want for the service. As drafted, SB 998 is a one-sided contract for the industry, effectively removing any oversight from Maryland regulators and any cost protections for Maryland consumers. If passed as is, Maryland would be the first state with a history of serious consumer protections to allow this industry to make their own definitions for what a loan is while offering no meaningful guardrails for their product.

CRL joins the Office of Financial Regulation, the CFPB and our national partners in recommending that any regulation of EWA products include provisions classifying these payday advances as credit, and the providers as lenders. We recommend defining tips and expedite fees as finance charges and subjecting said fees to the existing state usury cap for these single payment loans.

Thank you for your consideration.

Sincerely,

Monica Burks

Policy Counsel

Center for Responsible Lending

[www.responsiblelending.org](http://www.responsiblelending.org)

# **SB 998 Commercial Law – Earned Wage Access Service**

Uploaded by: Tammy Bresnahan

Position: UNF



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**SB 998 Commercial Law – Earned Wage Access Services  
UNFAVORABLE  
Senate Finance Committee  
March 6, 2024**

Good afternoon, Chair Beidle, and members of the Senate Finance Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP Maryland advocates for well over two million Marylanders age 50 and over. AARP is the largest nonprofit, nonpartisan organization. Key priorities of our organization include helping all Marylanders achieve financial and health security. AARP MD does not support SB 998.

Employers have a role to play in helping workers manage their finances, and cash management tools can help older workers juggle expenses. At the same time, high-cost loans and products that drain fees from slim budgets and lead workers to pay to be paid worsen the financial health of older workers. We do not support SB 998 because it erodes Maryland's strong consumer protection laws and interest rate limits by earned wage access (EWA) and other fintech payday loan companies, that claim, their product is not a loan. In addition, SB 998 places no limits on fees or tips on EWA companies and would remove protections from existing consumer protection laws. This leaves the users of EWA products—low-wage workers, who are predominantly people of color—vulnerable to a cycle of ongoing fees to access their wages.

**Background**

EWA enable consumers to obtain an advance of wages that they have earned prior to their scheduled pay date. Employer-based EWAs are offered by third parties that have access to the employer's time and attendance system. Other direct-to-consumer advances have no connection to the employer but claim to pay wages and collect instant access fees along with purportedly voluntary tips or donations. In both circumstances, the amount the consumer is offered is limited to the amount they have earned, or estimated to have earned, but is not yet been paid.

Employers offering EWA may cover the full costs themselves, may contract with an EWA provider or payroll provider that offers the advances for free to the worker, or may allow the provider to charge fees to the worker. In any of these models, the third party typically advances the funds to the worker and then is repaid the amount the consumer receives and any associated fees or costs from the consumer's next paycheck, either through payroll deduction, split direct deposit, or another manner. When offered through direct-to-consumer apps unconnected to the employer, the consumer is typically required to provide the third party with a copy of a previous pay stub and their bank account information. The consumer repays the advance by allowing the lender to make a direct debit of the advance along with fees, tips or donations from the consumer's bank account at the time of their next paycheck.

[California data](#) collected on nearly 6 million transactions reveal an average annual percentage rate (APR) over 330% for both tip-based and fee-based products, and a cycle of chronic reborrowing with an average of 36 advances a year and up to 100. California's regulator also observed multiple strategies that lenders use to make tips almost as certain as required fees" and that, while providers technically limit their recourse if they cannot collect, as a practical matter they are repaid 97% of the time.

AARP has a long history against payday lending loans, and EWA that collect fees or tips are remarkably similar. The Consumer Financial Protection Bureau recently observed that "these products share fundamental similarities with payday lending products." You know that there are more older people in the labor market than ever before living paycheck to paycheck. If they fall short before payday, they should not be subject to high fees and a cycle of "paying to be paid" for borrowing against their wages.

### **AARP Policy and Suggestions for States**

Alternative financial services such as payday loans and their variant called "earned wage advances/access" are provided outside the traditional banking system. Providers of these products are disproportionately located in workplaces with a sizable proportion of Black and Hispanic/Latino residents, and they disproportionately strip wealth from these communities. They are also a major source of transactional and credit services for consumers with low and moderate incomes and people with heavy debt burdens or less favorable credit histories. Like traditional payday loans, EWA offer advances of pay before it is due. These products impose fees, interest, or other costs on workers, including tips. This leads to payment of effective interest rates like payday loans. Products may also contribute to chronic financial instability if borrowers become too reliant on them to meet expenses.

As such, these EWA products and other fintech payday loans should be regulated as loans subject to state and federal law. Maryland has strong consumer protection laws that limit interest rates and prevent predatory payday lending, and new fintech providers of payday advances should be required to abide by the same cost limits and licensing requirements as other lenders.

AARP believes that regulators should eliminate unfair, deceptive, or abusive practices in the alternative financial services industry. Prior to extending a loan, lenders should be required to evaluate whether an applicant can be expected to be able to repay the loan without reborrowing or refinancing, and while covering expected essential expenses.

States' ability to cap interest rates and enforce interest rate caps on new forms of loans should be upheld. We believe programs that offer EWA should be regulated as loans subject to Maryland's loan laws. Employers can continue to offer access to early pay for free as a benefit, but third parties that charge fees or tips should not get a special exemption to charge more than other lenders for payday advances.

For these reasons we ask for an unfavorable report on SB 998. If you have questions or comments, please contact me at [tbresnahan@aapr.org](mailto:tbresnahan@aapr.org) or by calling 410-302-8451.



**CPD - SB 998 - testimony in opposition.pdf**

Uploaded by: Wilson Meeks

Position: UNF

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March 6, 2024

To: The Honorable Pamela Beidle  
Chair, Senate Finance Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: Senate Bill 998 – Commercial Law – Earned Wage Access Services (OPPOSE)

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The Consumer Protection Division of the Office of the Attorney General opposes Senate Bill 998, introduced by Senator Klausmeier, because the bill would legalize a form of usurious payday lending, harming low-to-moderate income Marylanders by subjecting them to exorbitant interest rates for short-term, low-risk loans. Under current Maryland law, direct-to-consumer earned wage access (“EWA”) providers (those that charge consumers, rather than their employers, for services) are lenders,<sup>1</sup> the advances they provide to consumers are loans,<sup>2</sup> and EWA providers’ fees and charges, including supposed “tips” or “donations,” are interest.<sup>3</sup> Senate Bill 998 would change the law to exempt these payday lenders and their loans, which on average charge interest at an Annualized Percentage Rate (“APR”) over 330%, from the consumer protections in Maryland’s lending laws, including its usury law banning lenders from charging interest at an APR over 33% on consumer loans of \$1,000 or less.<sup>4</sup>

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<sup>1</sup>See Md. Code. Ann., Com. Law 12-303 (applying lending laws to the “purchase of wages”).

<sup>2</sup>See Md. Code Ann., Com. Law § 12-301(e)(1) (“‘Loan’ means any loan or advance of money or credit subject to this subtitle, regardless of whether the loan or advance of money or credit is or purports to be made under this subtitle.”); *Matter of Cash-N-Go, Inc.*, 256 Md. App. 182, 202–03 (2023) (“‘[L]oan’ or ‘consumer loan’ means any loan or advance of money or credit made, provided, advertised, offered, or made available to any Maryland consumer regardless of what the loan is called or how it is characterized....”).

<sup>3</sup> See Md. Code Ann., Com. Law § 12-101 (“‘Interest’ means ... any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money....”); *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021) (“since money is fungible and people are creative, efforts to circumvent the restrictions of the Usury Law have sometimes taken the form of fees or other charges that were assessed to the borrower.”).

<sup>4</sup> See Md. Code Ann., Com. Law § 12-306.

According to a 2023 U.S. Government Accountability Office report on financial product technology, the vast majority of consumers using EWA loans earned less than \$50,000 a year, with many earning less than \$25,000 a year.<sup>5</sup> The loans appear to pose little risk to lenders because they are backed by wages consumers have already earned but have not yet received. Lenders obtain direct withdrawal access to bank accounts where the wages are deposited, and if for some reason the wages from one pay period are insufficient to cover an EWA loan, the provider can withdraw funds from the next deposit. Around 80% of EWA loans are between \$40 and \$100, with their average length being about ten days.<sup>6</sup> The times consumers used advances per quarter averaged nine and ranged from one to twenty-five times.<sup>7</sup>

EWA lenders employ a baffling array of pricing models, making it extremely hard to understand their loans' true costs as an APR or otherwise, which consequently makes it particularly difficult to either compare those costs to the cost of other credit options, or the costs of one EWA provider to those of another. These pricing models include charging consumers subscription fees, "expedite fees" for faster access to funds, or soliciting so-called "tips" or "donations,"<sup>8</sup> none of which are related to the borrower's credit risk or market factors. When these fees are added up, the cumulative result is that, on average, EWA loans charge interest at APRs over 330%,<sup>9</sup> ten times Maryland's 33% APR interest cap on small consumer loans.<sup>10</sup>

The Division opposes Senate Bill 998 because it would change Maryland law to exempt EWA lenders from Maryland's lending laws, including lender licensing and interest rate disclosure requirements and usury caps. Under Senate Bill 998, EWA companies would have no limit on the fees they can charge borrowers, and would not be required to disclose the costs of lending as an APR. While the primary justification for exempting EWA lenders appears to be a conjecture that, if their loans remain subject to usury caps and other requirements, EWA providers may withdraw from Maryland because they would make insufficient profits, the Division is aware of no evidence that this is true. Given that the loans present no credit risk to the lender, it is hard to believe that charging the lawful 33% APR on EWA loans is unprofitable. Regardless, whatever dubious benefits these short term, low dollar loans may provide to consumers does not justify modifying Maryland law so that payday lenders can prey on the financially desperate.

The Division further opposes Senate Bill 998 because it allows the inherently misleading practice of EWA lenders seeking consumer "tips" "gratuities," or "donations." Calling these charges "tips" or "donations" itself is misleading because it implies the charges go to individuals for providing a service, or are somehow generous or altruistic, when they are simply finance charges. Moreover, while Senate Bill 998 requires a disclosure to consumers that "tips" and the

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<sup>5</sup> *Financial Technology Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (March 2023), at pg. 24.

<sup>6</sup> *2021 Earned Wage Access Data Findings*, CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION (Analysis completed Q1 2023) ("California Earned Wage Access Analysis"), at pg. 10, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.

<sup>7</sup> California Earned Wage Access Analysis, at pg. 10.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> See Md. Code Ann., Com. Law § 12-306.

like are not required and do not impact lending determinations, in practice consumers feel required to “tip” even when such disclosures are made.<sup>11</sup> Indeed, lenders have used tactics such as disabling services if borrowers do not tip, setting default tips, making it hard to avoid tipping in user interfaces, making it unclear whether the tip is optional, and misleadingly claiming or implying that tips or “donations” are used to help other consumers.<sup>12</sup> The predominant purpose of tipping models in lending appears to be an improper one: obfuscating the true cost of lending. Given that the loans are short term and low dollar, the amount of the tip can drastically alter the relative cost of the transaction, which is nearly impossible for a consumer to calculate.

Additionally, while Senate Bill 998 requires providers to offer “at least one reasonable option to obtain proceeds at no cost,” the statute does not define what a “reasonable option” is, or what “no cost” means. In practice, providers purport to provide “no cost” options while still soliciting tips or promoting monthly subscriptions containing other products like credit monitoring. Moreover, the services offered at “no cost” might be structured to be substantially less usable than those that incur fees. For example, no cost products may provide funding only a few days before wages would be paid anyway or have low caps on the amounts loaned.

Accordingly, for the reasons set forth, the Consumer Protection Division requests that the Finance Committee give Senate Bill 998 an unfavorable report.

cc. The Honorable Katherine Klausmeier  
Members, Finance Committee

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<sup>11</sup> The California Department of Financial Protection found that data from 5.8 million transactions shows that consumers paid tips 73% of the time. *California Earned Wage Access Analysis*, at pg. 1. Why would anyone “tip” a lender unless they felt obligated to do so?

<sup>12</sup> See *Initial Statement of Reasons for the Proposed Adoption of Regulations*, STATE OF CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, at pgs. 61-62, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-ISOR.pdf>.

**SB998 UNFAV 2024 (1).pdf**

Uploaded by: Zoe Gallagher

Position: UNF



Testimony to the Senate Finance Committee  
SB998: Commercial Law-Earned Wage Access Services  
Position: Unfavorable

March 5, 2024

The Honorable Pamela Beidle, Chair  
Senate Finance Committee  
3 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

cc: Members, Senate Finance Committee

Honorable Chair Beidle and members of the committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today in opposition to SB998. While we appreciate the intention of the sponsor and share the desire that working families have access to credit, we want to make sure that the credit provided is affordable and sustainable for individuals and low income families.

Since 2023, Economic Action Maryland 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 achieve our shared goals of protecting consumers while providing access to credit.

Maryland law must provide clarity and consistency at a time when new fintech products are flooding the market. Maryland has had a long history and legislative record of maintaining reasonable rate caps for small dollar consumer loans.

SB998 would be a complete departure from these long-held and hard-won protections for working families. At the most fundamental level, SB998 does not recognize that Earned Wage Advance companies are lenders -that they give money to borrowers with the expectation that it will be paid back-which



means that if SB998 passes there will be no rate caps at all for these loans. Studies have shown that these loans can carry APRs of up to 300%.

It is premature. The Consumer Financial Protection Bureau (CFPB) has signaled their intent to regulate these products as loans. It's expected that guidance from the CFPB should be forthcoming in the next few months. It would be better to wait for federal guidance on how the CFPB intends to address these products and use that information as a baseline for Maryland regulations.

We need more information. These are complex products and we need more time to sufficiently reach out to clients to understand their usage of EWA products, the frequency, benefits, costs, and context related to usage and uptake. Economic Action Maryland serves thousands of older adults, tenants, and individuals facing housing discrimination each year. We want to better understand their experiences with these products which will help to inform our policy recommendations.

We urge an unfavorable report to give all stakeholders more time to discuss these issues over the interim and develop the best approach for Maryland consumers.

Best,

Zoe Gallagher, Policy Associate