

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
LENDING AND FINANCE

ANTHONY G. BROWN
Attorney General

WILLIAM D. GRUHN
Division Chief

PETER V. BERNIS
General Counsel

CHRISTIAN E. BARRERA
Chief Operating Officer

WILSON M. MEEKS III
Assistant Attorney General

March 25, 2025

To: The Honorable Pamela Beidle
Chair, Senate Finance Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 1294 – Commercial Law – Credit Regulation – Earned Wage Access and
Credit Modernization (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General opposes House Bill 1294, sponsored by Delegates C.T. Wilson and Marlon Amprey, because it exempts so-called earned wage access (“EWA”) lenders from Maryland consumer lending laws. Without reasonable justification, the bill would reverse longstanding Maryland law banning usurious payday lending, harming low-to-moderate income Marylanders by (a) subjecting them to exorbitant and unwarranted interest rates of over 250% for small, short-term, low-risk loans, which research shows trap consumers in debt spirals and increase bank overdrafts, (b) preventing them from shopping for better terms for credit by obfuscating the true, high cost of EWA lending, and (c) explicitly authorizing all consumer lenders in Maryland to solicit supposed “tips” from consumers, an inherently deceptive practice. While the justification for House Bill 1294 seems to be that EWA companies cannot operate profitably in Maryland under the current laws, there is no credible evidence of which the Division is aware that this is true, let alone that the excessive interest rates of over 250% authorized under the bill are in any way defensible. Maryland law allows for a generous 33% interest rate on consumer loans. Some EWA lenders already charge rates close to that mark. EWA companies can and should operate under Maryland law as it currently exists.

Attached is Attorney General Brown’s November 14, 2024, Baltimore Sun op-ed, *Highlighting an alarming threat to Maryland’s workers*, which addresses EWA loans and encourages Maryland to “maintain its steadfast commitment to preventing payday lenders from gouging consumers.” As referenced in that article, in studies by federal agencies, state governments, research organizations, and in the Maryland Department of Labor, Office of Financial Regulation’s recent *Earned Wage Access Market Analysis*, EWA loans have the following impact on and harms to consumers:

- EWA lenders target consumers who are low to moderate income and desperate for small amounts of cash in the short period, often two weeks or less, between when they earn their wages and when they are paid. Thus, (i) many consumers using EWA loans earn less than \$25,000 a year, with the vast majority earning \$50,000 or less a year, (ii) the average length of the loan is short, about ten days, and (iii) the typical loan is small, with the OFR Analysis and other studies showing that most are between \$40 and \$100.¹
- EWA loans are extremely expensive, with each Maryland provider who participated in the OFR Market Analysis charging well over Maryland's 33% usury rate. OFR's analysis shows that (i) Maryland EWA providers that charge only fees have average fees equating to interest of 101% APR, with some charging fees equating to interest of over 225% APR, while (ii) one Maryland EWA provider that charges so-called "tips" and fees appears to charge consumers charges equating to interest of 1,660% APR, on average. As discussed below, House Bill 1294 allows charges equating to interest of over 250% APR.
- Black and African American majority zip codes, zip codes without access to banks, and zip codes having fewer people with a bachelor's degree are more likely to use EWA loans.
- EWA loans often trap consumers in "debt cycles," *i.e.*, where part of each new loan is used to pay back the fees and charges on the prior loan.²
- The average EWA consumer uses the products frequently, taking advances nine times per quarter, with use ranging from one to twenty-five advances per quarter per consumer.³ The OFR Market Analysis shows the number of customers making over 21 transactions a month is growing significantly more quickly than those with fewer repeat transactions, reflecting the debt trap that EWA users find themselves in.
- EWA loans often lead to increased overdrafts on bank accounts.⁴
- The loan process can also be deceptive. EWA providers advertise the potential for consumers to take out large loans but then set a "daily max" on the loans that requires consumers to take out numerous loans during a pay period to obtain the advertised amount, forcing the consumers to incur additional fees and costs for each loan. Many consumers

¹ *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. *See also*, 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.

² *A Loan Shark in Your Pocket: The Perils of Earned Wage Advance*, CENTER FOR RESPONSIBLE LENDING (October 2024), at pg. 4 (Many EWA borrowers are trapped in a debt cycle and the heaviest users drive the business model. Repeat use of advances is common. High-frequency users accounted for 38% of users and 86% of advances).

³ *California Earned Wage Access Analysis*, at pg. 10.

⁴ *Id.* at 8, ("Our previous report found that the number of overdrafts increased 56% on average after use of an advance product. In the updated larger sample, we found that out of EWA users who experienced overdrafts, 67% saw their overdrafts increase after initial advance use. In the most extreme case, one user incurred no overdrafts in the three months leading up to their initial EWA advance, and experienced 58 overdrafts in the three months following their initial EWA use. These overdrafts cost the borrower \$1,740 in total fees.")

use multiple EWA lenders in a single pay period, meaning that the process of consumers taking out multiple loans can occur across multiple platforms.

- Because EWA lenders are large, well-funded, national technology companies that offer their loans over the internet and through apps, their products are especially pernicious because EWA lenders can offer their payday loans to a wide group of low-income individuals, thus expanding the scope of and harms from traditional payday lending to new heights.

HB 1294 would expressly change Maryland law to roll back existing consumer protections and allow EWA lenders to prey on Marylanders working paycheck to paycheck to provide for their families.

First, under current Maryland law, earned wage access (“EWA”) providers are lenders,⁵ the advances they provide to consumers are loans,⁶ and EWA lenders’ fees and charges, including supposed “expedite fees,” “tips,” or “donations,” are interest.⁷ House Bill 1294 would exempt these payday lenders from the consumer protections in Maryland’s consumer lending laws, including the usury cap banning lenders from charging interest at an APR over 33%, and the requirement that lenders provide their charges as an APR, which allows consumers to understand the true cost of lending and to shop for a better deal.

The bill would expressly allow EWA lenders to charge supposed “delivery” or “expedited delivery” fees and tips that far exceed even the usurious average 101% APR lenders are currently charging in Maryland. House Bill 1294 allows lenders to seek tips up to the limit of the usury rate or 33% on an annual basis. House Bill 1294 then allows lenders to charge a \$5.00 fee on each consumer transaction under \$75, and a \$7.50 fee for loans over \$75. Thus, under the bill, a user taking a ten-day loan incurs at least a 243% APR for loans under \$75, and a \$273% APR for a \$100 loan, not inclusive of other tips or fees. The APR would be higher for shorter loans. To provide an example of the negative impact on a low-income consumer, a user of EWA products who earns \$25,000 in a year and obtained 25 advances in a quarter would pay 2-3% of their entire gross take-home pay in fees to EWA lenders, simply to get their money a few days early.

Nor is there any reasonable justification for the high charges authorized under House Bill 1294. The loans are not risky because they are backed by wages consumers have already earned but have

⁵See Md. Code. Ann., Com. Law 12-303(a)(2)(iv) and (iv) (applying consumer lending laws to advances of money “Whether the transaction is or purports to be nonrecourse or contingent; and ... Whether the transaction purports to be the purchase of wages.”).

⁶See 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....”).

⁷See 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.”).

not yet received. Lenders obtain direct withdrawal access to bank accounts where the wages are deposited, and if for some reason wages from one pay period are insufficient to cover an EWA loan, the provider withdraws funds from the next deposit. Nor is there any material cost to EWA lenders to “deliver” or to “expedite delivery” of funds; these fees are made up. Moreover, despite the primary justification for House Bill 1294 being that EWA lenders cannot operate profitably in Maryland under the current laws, there is no evidence of which the Division is aware that this is true. Indeed, OFR’s Analysis indicates certain EWA lenders operate near Maryland’s 33% usury rate, with one charging an average APR of 42%. At the least, this shows the exorbitant 250%-plus interest rates allowed under House Bill 1294 are wholly unwarranted.

Further, and importantly, House Bill 1294’s exemption for EWA loans from Maryland’s requirement that finance charges associated with consumer lending be provided to consumers as an APR would make it nearly impossible for consumers to comparison-shop for loans with a lower cost of lending or to otherwise understand the true cost of EWA borrowing. This is especially important here where, given the extremely high charges House Bill 1294 allows for EWA loans, it would, for example, be far less expensive for consumers to get even the most expensive credit card to finance whatever purchases they have in mind, rather than turn to EWA lenders. Under House Bill 1294, consumers will be unable to appreciate that they could get a better deal elsewhere.

Second, House Bill 1294 allows all Maryland consumer lenders—not just EWA lenders—to solicit and charge so called “tips,” up to the limit of the Maryland usury rate, an inherently deceptive practice that should not be permitted in Maryland. 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 the money from the “tip” is simply a finance charge. It is a charge for the use of money, not a tip for service. Moreover, allowing lenders to solicit tips opens the door to further deception. EWA lenders historically have used tactics such as disabling services if borrowers do not tip, 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.⁸

Third, the purported consumer protections in House Bill 1294 are largely illusory. While House Bill 1294 requires EWA lenders 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 reality, when EWA providers currently purport to provide “no cost” options, consumers rarely elect that supposed option because those products are less useful than the “cost” versions. For example, services offered at “no cost” can be structured to provide funding more slowly than the “cost” version, and/or have low caps on the amounts lent. Thus, in practice, because the target consumers are seeking quick cash, they almost always pay the “cost” version, regardless of the cost. Similarly, while House Bill 1294 requires a disclosure to consumers that “tips” are not required and do not

⁸ 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>.

impact lending determinations, in practice consumers feel required to “tip” even when such disclosures are made.⁹

The General Assembly long ago passed laws that protect consumers by restricting the charges that payday lenders like EWA lenders can charge consumers and has consistently reaffirmed those restrictions. It should not now change those laws to allow EWA loans that harm consumers. It is especially important to stand against House Bill 1294 and other proposed legislation seeking to significantly weaken Maryland’s lending protections given the Trump Administration’s evisceration of federal consumer protections and the Consumer Financial Protection Bureau. Accordingly, for the reasons set forth, the Consumer Protection Division requests that the Senate Finance Committee give House Bill 1294 an unfavorable report.

cc. Delegates C.T. Wilson and Marlon Amprey.

⁹ 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?

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AG Anthony Brown: Highlighting an alarming threat to Maryland workers | GUEST COMMENTARY



By ANTHONY G. BROWN

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“Earned wage access” is marketed as a means of making it easier for workers to get their paychecks before payday. In reality, these so-called EWA advances are exorbitant loans that harm workers by putting them in a worse financial position than before they borrowed money in the first place. With “fees” and “tips” that the lenders require or solicit, EWA advances are loans with interest rates that regularly exceed 100%, and often exceed 300%, far above interest rates allowed by Maryland law. Because of their high cost, EWA advances trap borrowers in repayment cycles that erode their hard-earned wages.

That is why my office opposed a bill in the General Assembly that would have legalized these predatory loans and exempted EWA advances from Maryland’s interest rate caps. Together with 13 other states, my office also recently supported a proposed rule from the Consumer Financial Protection Bureau (CFPB) confirming that EWA services are loans and requiring lenders to inform consumers whether their “fees” and “tips” exceed the allowable annual percentage rate (APR) charged to borrowers.

Maryland must maintain its steadfast commitment to preventing payday lenders from gouging consumers. EWA providers’ claims that their advances are somehow not “loans” is contrary to the evidence. It is money advanced to an employee who is then required to repay on payday. EWAs, whether or not they are employer-based, are advances of money offered by a third party not an early payment of wages by the employer. They are loans, repaid later by the employee either directly or through a payroll deduction or another method of payment, for which the employee must pay fees.

EWA providers claim that they offer an important service. But Maryland workers, many of whom live paycheck-to-paycheck, cannot afford exorbitant interest on these loans which diminish their hard-earned wages. Although my office understands the inconvenience caused by employers who don’t pay workers frequently enough, or bills that come due between paychecks, the answer is not payday and other predatory loans that charge more than permitted by law. 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. Those who took out EWA loans did

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Although the fees charged by EWA providers appear to be small compared with the total loan amount, those fees, which include “subscription” costs and charges for “expediting” delivery of the advance, add up to excessive APRs. The CFPB found employer-sponsored advances carried an average interest rate of 110%, while a separate study found that paycheck advances from non-employer-sponsored lenders cost workers an average interest rate of 367%.

Companies providing EWA advances often tout their product as a way for consumers to avoid penalties from overdrawing their checking accounts. However, a Center for Responsible Lending [study](#) found that, for consumers who took out these advances, checking account overdrafts increased by 56%. Clearly, these loans do not save consumers from overdraft fees; instead, they often cause consumers to be subjected to more overdraft fees as they are caught in a cycle of debt.

EWA lenders misleadingly call some of their charges “tips” or “donations.” While consumers are told that “tips” are not required to get a loan, in practice consumers feel obligated to “tip.” Moreover, the CFPB has reported that EWA lenders have used deceptive and manipulative practices to induce consumers to pay “tips,” such as disabling services for those who refuse and falsely implying that so-called tips or donations are used to help other consumers.

For EWA loans, even a modest “tip” can drastically increase the cost of a transaction and make it more likely lenders will unfairly profit from consumers’ confusion. When a lender charges for a loan, the charge should be clear, in the form of an annualized interest rate, and based on factors related to the lending transaction, not smoke, mirrors and susceptibility.

EWA lenders have not made the case for exemption from the interest-rate caps that all Maryland lenders must follow. The pitch that EWA advances are a new and innovative way to help workers living paycheck-to-paycheck should not fool the General Assembly the same way that EWA lenders seek to fool and prey on unsuspecting consumers. I commend the General Assembly for enacting strong protections against predatory loans, and I urge legislators to stand with hardworking Marylanders and resist efforts to exempt usurious EWA advances from our state’s interest rate caps.

Anthony G. Brown (oag@oag.state.md.us) is Maryland’s attorney general.

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