

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 246

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor)

Economic Matters

**Commercial Law - Credit Regulation - Earned Wage Access and Credit
Modernization**

This departmental bill subjects “earned wage access” products to the Maryland Consumer Loan Law (MCLL) and other related statutory provisions that regulate entities that provide consumer credit, revolving credit, and closed end credit. The bill explicitly treats certain earned wage access products as loans and establishes new rules for the acceptance of “tips” in connection with the provision of earned wage access products and other credit under MCLL. Further, the bill establishes that any fees (*e.g.*, subscription fees or expedited processing fees) must be included in the calculation of a loan’s interest rate and, as a result, fall under the maximum permitted interest rates of MCLL and related provisions of State law. The bill requires licensing and registration of entities offering earned wage access products but exempts from licensure employers (and employer-connected entities) who provide earned wage access at no cost to employees. Finally, the bill limits the costs and fees associated with obtaining an earned wage access product and modifies the State’s credit licensing structure to account for new products, services, and fees.

Fiscal Summary

State Effect: The bill generally codifies existing practice and is not anticipated to materially affect State finances or operations. The Office of Financial Regulation (OFR) can handle enforcement with existing resources.

Local Effect: None.

Small Business Effect: The Maryland Department of Labor has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill defines “earned wage” as salary, wages, compensation, or other income earned (1) on an hourly, project-based, piecework, or other basis or (2) through services rendered as an independent contractor.

“Earned wage access” means an advance of earned wage that (1) a consumer or employer represents has been earned or accrued to the benefit of the consumer in exchange for the consumer’s provision of services to the employer (or on the employer’s behalf) and (2) has not been paid to the consumer by the employer at the time the earned wage access is delivered to the consumer.

“Tip” means a voluntary payment by a consumer to a lender or third party who provides (or arranges) a loan:

- made at the time of the transaction in recognition of the lender’s or third party’s provision or arrangement of the loan;
- made at the sole discretion of the consumer; and
- that does not affect the willingness of the lender or third party to provide (or arrange) the loan (or any future loan) or affect the terms of any loan.

“Tip” includes any payment made by a consumer, as described above, *regardless* of how the payment is characterized, including as payment for expedited processing or disbursement for a membership, registration, or subscription fee or as a donation or gratuity.

The bill prohibits licensed check cashing providers, secondary mortgage loan providers, debt management service providers, and debt settlement service providers from suggesting to consumers that a tip will influence (1) the lender’s willingness to provide a loan or (2) the terms of the loan. It further requires them to disclose that any tip paid by the consumer does not inure to the direct benefit of any specific employee or any other individual.

Current Law/Background:

Recent Developments Relating to Earned Wage Access

OFR notes that 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 a payroll cycle. Recently, this service has become known as “earned wage access.”

Historically, employers offered wage access directly. However, beginning in the 2010s, payroll and other third parties developed products that could offer that product or service *on behalf of* the employer and at no cost to the employee. These types of services have been growing in popularity, (sometimes billed as “work today, get paid tomorrow”) and allow consumers earlier access to their earned (but not yet paid) wages.

OFR goes on to note that these products (particularly when offered by unconnected third-party providers) often come with fees or other costs. For example, the company providing the wage access may request a “tip” to provide the loan. Other companies may only advance funds using a debit card for which transaction fees are charged to access the wage advance. These costs can be difficult for the consumer to understand and avoid. Statistically, consumers using these products seek advances of \$100 or less. While these products are marketed as “affordable,” the cost over a two-week period (for a relatively small advance) can result in an annual percentage rate of between 100% and 400%, which far exceeds the maximum interest rates allowed under Maryland’s consumer lending laws (including MCLL).

OFR further states that today’s financial marketplace offers a variety of products under numerous types of business models. The products can provide a tangible benefit to workers, particularly if it allows them to draw a portion of their earned wages (at no or very low cost) when they need them. However, depending upon how the product is structured, consumers face risks of (1) paying high costs to participate in the program or (2) drawing too much of their pay (and potentially triggering a repayment obligation).

In the last two years, OFR advises that some states have introduced legislation to address earned wage access products – through either licensure or registration of providers – or the establishment of certain product requirements and targeted consumer protections. While there is no direct federal law on the topic of earned wage access, OFR advises the products could be deemed to be covered by federal [Regulation Z](#) (which covers consumer loan disclosures).

The U.S. Consumer Financial Protection Bureau [recently affirmed](#) treating these products as loans and, furthermore, compared some of the products to payday loans.

Maryland Consumer Loan Law

MCLL (Title 12, Subtitle 3 of the Commercial Law Article) applies to a loan or advance of money of \$25,000 or less for personal, family, or household purposes – *regardless of whether the loan or advance is (or purports to be) another type of product*. In addition, a person may not lend \$25,000 or less if interest on a loan exceeds the amount authorized by Maryland law, the transaction violates the federal Military Lending Act, or the person is

not licensed (or exempt). Loans made under MCLL generally cap interest at 33% with a balance of \$2,000 or less and 24% with a balance of more than \$2,000.

MCLL does not apply to (1) a plan or loan for which a written election has been made under other provisions of law relating to interest and usury, secondary mortgage loans, revolving credit, and closed end credit transactions; (2) a loan made by an individual who makes three or fewer loans per year and is not engaged in the business of making loans; or (3) a loan between an employer and an employee.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; U.S. Consumer Financial Protection Bureau; Department of Legislative Services

Fiscal Note History: First Reader - January 19, 2024
km/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization

BILL NUMBER: HB0246

PREPARED BY: Amy Hennen

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

 WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES