

**ANTHONY G. BROWN**  
*Attorney General*

**CANDACE MCLAREN LANHAM**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*

**LEONARD HOWIE**  
*Deputy Attorney General*



**WILLIAM D. GRUHN**  
*Chief*  
Consumer Protection Division

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

Writer's Direct Dial No.  
410-576-6957  
wmeeks@oag.state.md.us

January 19, 2024

To: The Honorable C. T. Wilson  
Chair, Economic Matters Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 246 – Earned Wage Access and Credit Modernization (SUPPORT WITH AMENDMENTS)

---

The Consumer Protection Division of the Office of the Attorney General supports House Bill 246, a Departmental Bill introduced by the Commissioner of Financial Regulation, with amendments. House Bill 246 explicitly provides that “direct-to-consumer earned wage access” products, where companies charge consumers for supposed “advances” on their wages which are paid back when consumers’ employers pay the consumers their wages, are loans, and that the companies providing those loans are subject to Maryland lending laws, including lender licensing requirements and loan interest rate caps.<sup>1</sup> The Division believes that the bill should also ban the practice of lenders accepting so-called “tips” from consumers.

Direct-to-consumer earned wage access products generally are targeted at and used by lower-income consumers. A U.S. Government Accountability Office report on financial product technology observed that the vast majority of consumers surveyed who used the products earned less than \$50,000 a year, with one provider indicating that approximately 78% of its users “made under \$25,000 a year.”<sup>2</sup> The amounts advanced are usually small. The California Department of

---

<sup>1</sup> House Bill 246 treats “employer-integrated earned wage access” companies, those that contract directly with and are paid for advancing funds to employees by their employers, differently, prohibiting the employer-integrated earned wage access providers from seeking interest from consumers and requiring them to register with the Commissioner.

<sup>2</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 (“Data we received from the four earned wage access companies we interviewed indicated their products generally were used by lower-income consumers. Data from three companies showed that about 75 to 97 percent of users reported earning less than \$50,000 a year from 2019 through 2021; data from the remaining company indicated that around 59 percent of

Financial Protection and Innovation found that 80% of earned wage access advances are between \$40 and \$100.<sup>3</sup>

Direct-to-consumer earned wage access companies typically require consumers to provide both proof of employment or regular income and access to a checking or savings account with direct deposit, allowing the company to withdraw funds owed when the consumer is paid.<sup>4</sup> Rather than charging a specific interest rate, these companies use a confusing array of pricing models, making it difficult for consumers to understand the product’s true cost or to compare those costs to other credit options. Many providers generate revenue by charging consumers subscription fees, “expedite fees” for faster access to funds, or by accepting so-called “tips.”<sup>5</sup> According to the California Department of Financial Protection and Innovation, these fees and charges result in an average Annual Percentage Rate (“APR”) on advances of “334% for tip companies and 331% for the non-tip companies.”<sup>6</sup>

The Division believes that, under existing Maryland law, direct-to-consumer earned wage access products clearly are loans,<sup>7</sup> and the fees the providers charge are interest<sup>8</sup>—i.e., the products are pay-day loans under a different name. Maryland caps the interest rate chargeable on loans of \$1,000 or less at 33%.<sup>9</sup> Thus, the vast majority of direct-to-consumer earned wage advances observed by the California Department of Financial Protection would be usurious in Maryland. Although the General Assembly long ago specifically provided that a “transaction [that] purports to be the purchase of wages” is a loan, *see* Section 12-303 of the Commercial Law Article, direct-to-consumer earned wage access companies have taken the position that their advances are not loans, and that the fees they charge are not interest charges.

The Division supports House Bill 246 because it confirms the current law in the Maryland Commercial Code that direct-to-consumer earned wage access products are loans and the fees and charges that providers are charging consumers for their loans are interest. However, the Division supports amending House Bill 246 to prohibit lenders from accepting so-called “tips” from consumers altogether—an amendment the Division understands the Commissioner will be

---

users reported earning less than \$50,000 a year as of August 2022. Further, data from one direct-to-consumer company indicated that about 78 percent of its users made under \$25,000 a year.”).

<sup>3</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. 1, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 1.

<sup>7</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) (“we adopt the definition of ‘loan’ as articulated in the Division’s final order and relied upon by the circuit court: ‘[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>8</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, including any loan fee, origination fee, service and carrying charge, investigator’s fee, time-price differential, and any amount payable as a discount or point or otherwise payable for services.”).

<sup>9</sup> *See* Md. Code Ann., Com. Law § 12-306(a)(6).

submitting. The reason for this amendment is that “tipping” in the context of lending is inherently deceptive, unfair, abusive, and predatory. Indeed, the current form of House Bill 246, which deems “tips” to be interest, may have the perverse effect of normalizing the practice of lenders seeking “tips” from consumers—imagine mortgage lenders seeking tips from consumers.

Consumers may feel required to “tip” even when companies claim the tips are optional and do not impact lending determinations.<sup>10</sup> Indeed, direct-to-consumer earned wage access lenders have used tactics such as disabling services if borrowers do not tip, setting default tips, making it hard to avoid tipping or to set a “\$0 tip” in user interfaces, making it unclear whether the tip is optional, and misleadingly claiming or implying that tips are used to help other consumers.<sup>11</sup> The word “tip” itself is confusing in the context of lending, misleadingly implying the charge goes to an individual for providing a service (like tipping a waiter whose primary income is from tips), or is customary, expected, or generous, when the “tip” is really just a finance charge to the lender.

Likewise, the predominant purpose of tipping models in lending appears to be an improper one: obfuscating the true cost of lending, which varies wildly depending on the amount of the tip. The California Department of Financial Protection and Innovation estimates that earned wage access loans with tipping models are paid back in an average of 10.1 days.<sup>12</sup> It is difficult for consumers to calculate the APR for a tip on advances averaging \$40-100 that are paid back in less than two weeks. Presumably, lenders have adopted supposedly “optional” tipping, rather than set charges, *because* the end result is that consumers pay an average 334% APR in tipping models.<sup>13</sup> Ultimately, if lenders wish to charge for their loans, the charges should be clear and the impact on the true cost of lending should be transparent and not usurious.

cc. Members, Economic Matters Committee  
The Honorable Anthony Salazar

---

<sup>10</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>11</sup> See *Initial Statement of Reasons for the Proposed Adoption of Regulations*, 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>.

<sup>12</sup> *California Earned Wage Access Analysis*, at pg. 10.

<sup>13</sup> *Id.* at 10.