

March 26, 2024

Senate Finance Committee

Chair: Senator Beidle

House Bill 246 – Earned Wage Access and Credit Modernization

Re: Favorable with Amendment

The Maryland Department of Labor (MDL) and its Office of Financial Regulation (OFR) are responsible for providing consumer financial protections, licensing consumer lenders, and enforcing state laws regarding pay and wages. Earned Wage Access products are being used with increasing frequency by hundreds of thousands of workers across Maryland. 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.

HB246 is a departmental bill that was amended by the Economic Matters Committee after that Committee considered comments from both the Department and industry. The version of HB246 that is before the Committee represents a compromise approach that was adopted by the House. It includes a number of consumer protections that are acceptable to both the Department and the industry while at the same time it exempts the industry from some components of lending laws that they found objectionable in the original draft of HB246, notably compliance with APR disclosures, but honors the Department's priority that EWA products be acknowledged as loans subject to suitable fee limits and their issuers licensed as lenders.

EWA products clearly fall within the definition of a loan under Maryland's consumer loan law:

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 as stated in both relevant case law and in Maryland statutes. In fact, the legislature has already clearly addressed the financing of wages in Commercial Law Article §12-303 which provides:

(c)(1) The purpose of this subsection is to prevent evasion of the provisions of this subtitle by means of a purchase or assignment of wages.

(2) For the purposes of this subtitle:

(i) The payment of \$25,000 or less in money, credit, goods, or things in action as consideration for any sale, assignment, or order for the payment of wages, whether earned or to be earned, is considered a loan of money secured by the sale, assignment, or order for payment of wages; and

(ii) The amount by which the wages exceed the consideration paid for them is considered interest or charges on the loan from the date of the payment to the date the wages are payable.

(3) The transaction described in this subsection is governed by and subject to the provisions of this subtitle.

As such, unless the Finance Committee wants to set the legislature on a course of reversing previous law in this area, providers of EWA products must be licensed as consumer lenders and the products subject to the disclosure requirements of Maryland's consumer loan law. HB246 is the vehicle to maintain that continuity through the framework it establishes.

Federal regulators have also described these products as loans and they should be regulated accordingly. While there is not yet direct federal law explicitly naming EWA products, they 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](#)) [has recently affirmed](#) a state's treatment of these products as loans and in doing so stated "these products share fundamental similarities with payday lending products." In a [letter regarding California's proposed rule](#) on EWA products, 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 Department and OFR believe that Maryland consumers and the industry would be best served by the passage of EWA legislation during this session. By utilizing a well-established legal framework, HB246 provides clarity for EWA providers and also parity by retaining the existing general approach for financial services providers, instead of creating special carve outs and standalone requirements. It also reduces regulatory and legal complexity, whereas introducing new frameworks just for these products would run the risk of duplication and confusion, particularly for traditional financial services providers that may wish to enter this market.

OFR has engaged with EWA providers over the last several months, and after HB246 passed the House, has continued to consider their additional feedback regarding their reservations about the bill. OFR has worked to address those concerns by drafting amendments to the bill to remove EWA providers from the coverage of the Credit Services Business Act and revising certain provisions to better meet the expectations of both the OFR and the industry. Additionally we support a technical amendment clarifying how fees are calculated. The Department and OFR plan to continue conversations with the industry in order to produce the best outcome for Maryland. With those additional sponsor amendments, OFR supports the version of the bill that is before the Committee.

With that, we urge a favorable with amendment Committee Report.