Testimony on Maryland HB 246: Earned Wage Access and Credit Modernization
Senate Finance Committee
By Lauren Saunders, Associate Director, National Consumer Law Center
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Chair Beidle, Vice Chair Klausmeier and Members of the Committee:

I am Lauren Saunders, a Maryland resident and Associate Director of the National Consumer Law Center, a national nonprofit organization that uses consumer law expertise to work for economic justice for vulnerable consumers. Since 1969, the National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. We publish a 21-volume treatise series on consumer protection laws. I contribute to Consumer Credit Regulation, which analyzes state lending laws and evasions, including the legal treatment of earned wage advances.

I write to provide comments on the amended version of HB 246 regarding earned wage access. We supported HB 246 as introduced because it would prevent evasions of Maryland's strong consumer protection laws. As amended, HB 246 would strengthen Maryland law in some respects but weaken it in others. HB 246 is a nonetheless a considerable improvement over SB 998, which is a thinly veiled attempt to carve an enormous loophole into Maryland's laws and to allow fintech payday loans to enter the state. The industry amendments offered to HB 246 would similarly allow high-cost loans in Maryland with no cost cap and nothing to prevent annual percentage rates (APRs) of 400% or higher and a cycle of debt.

It is **essential** to retain language treating earned wage advances as loans and including all payments, including tips and donations, in cost caps.

In addition, the bill should be amended to:

- Add a monthly cost cap and protect the minimum wage.
- Limit special treatment to employer-integrated models and not to direct-to-consumer loans, especially models that debit bank accounts.

1. **It is essential to retain HB 246's treatment of earned wage advances as loans and to limit all costs to prevent evasions.**

Earned wage advances (EWAs) are loans: They are money advanced to a consumer ahead of when pay is due, repaid later on payday. EWAs that have no connection to employers have no plausible claim to be wages rather than loans. Like other payday loans, they debit bank accounts and trigger overdraft and NSF fees.

Most employer-based EWAs are also advances of money by a third party, not a payment of wages by the employer. They are loans, repaid later by the consumer through payroll deduction or another method. While they are not as dangerous as advances that debit bank accounts, they can also have spiraling costs that drain thin wages and cause a cycle of debt.

In a December 2023 comment, the Consumer Financial Protection Bureau stated that EWAs "**share fundamental similarities with payday lending products**," and that treating them as loans is consistent with federal law.

Regulating EWAs as loans is essential to prevent large loopholes in Maryland's strong consumer protection laws. **The payday loan industry exists in other states because, decades ago, payday lenders convinced legislatures that their loans were not loans; they were just check cashing fees for deferred presentment of checks.**

HB 246 appropriately treats all advances of income as loans, and all payments by consumers, including expedite fees and purportedly voluntary payments like tips and donations, as interest. The bill allows EWAs to charge $3.50 per transaction, but no other costs could be charged. The industry amendment, in contrast, caps expedite fees at $4 but has no other limits on other fees, tips or donations, and nothing to 300% APR loans employing the "multiple strategies that lenders use to make tips almost as certain as required fees."

Treating EWAs as loans, as HB 246 does, is also essential because it ensures that cash advances that do not comply with the EWA rules would be fully subject to Maryland's lending laws. The industry amendment gives the state no tools to prevent similar types of fintech cash advances from ignoring the EWA rules but still arguing that they are not loans and are not subject to Maryland law.

2. **A monthly fee cap and protection of the minimum wage are necessary.**

As written, the bill caps fees at $3.50 per transaction but has no cap on the monthly cost and no limit on the number of transactions. Lenders have offered models where the consumer is only allowed to take an advance of each day's wages, requiring a new fee every day. That is especially common in gig industries. A person who worked five days a week for four weeks could spend $70 in fees.

Lenders can also limit the size of the daily advance to push the consumer to take out consecutive advances. EarnIn, for example, allows only $100 per day, so a consumer who wants

$500 would have to take out five loans in a week, with five separate fees. Again, the fees could exceed $70 per month.

Employers can and do offer access to early pay for free, and more will do so if they cannot push the costs onto low wage workers. In our state earned wage recommendations, our top recommendation for a state like Maryland is to simply apply the state's interest rate limits, which is what HB 246 originally did. For other states, we recommended a nominal fee of a few dollars per month or a couple of dollars per pay period.

I also recommend adding language to protect workers from receiving less than the minimum wage. The lowest paid workers simply cannot afford to have fees deducted from their wages and should not receive net wages that are below minimum wage.

3. **Limit special treatment to employer-integrated models and not to direct-to-consumer loans, especially models that that debit bank accounts.**

HB 246 provides an exemption from Maryland's usury limits and small loan laws for fintech cash advances that have no connection to wages and that debit bank accounts. Even when purportedly tied to earned wages, cash advances that debit bank accounts trigger overdraft and NSF fees, and can also lead to late and returned item fees on other bills. Those fees add astronomically to the cost of an advance, and there is no basis to provide any special exemptions for those direct-to-consumer lenders. The bill should allow only employer-integrated models that are repaid through payroll deduction or another method through the employer. A contract with the employer also provides another check to prevent abuses.

If the Committee chooses to continue allow bank account debiting, it must add airtight language that requires full reimbursement of all fees triggered by those debits. Weak language found in the industry model bill is ineffective. Lenders should be required to repay any overdraft, nonsufficient funds, late or returned item fees triggered directly or indirectly by the debit, even if the debit timing or amount complies with the fine print of the agreement.

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For more background, please view our testimony in support of HB 246 as introduced and in opposition to SB 998.

High-cost earned wage advances drain fees from low-wage workers, disproportionately from communities of color, who just end up paying to be paid. I would be happy to work with the Committee as the bill advances.

Thank you for the opportunity to testify. If you have any questions, please contact me at lsaunders@nclc.org.