CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

ANTHONY G. BROWN
Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

WILLIAM D. GRUHN
Chief
Consumer Protection Division

Writer's Direct Dial No.
410-576-6957

March 25, 2024

To: The Honorable Pamela Beidle
Chair, Senate Finance Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 246 – 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 246, a Departmental Bill introduced by the Department of Labor' Office of Financial Regulation and amended by the House, for the following reasons:

- First, the bill reverses Maryland's longstanding prohibition on payday lending, harming low-to-moderate income Marylanders by subjecting them to exorbitant charges for short-term, low-risk loans.
- Second, the bill permits Maryland lenders—not just earned wage access ("EWA") lenders who are the focus of the bill, but *all* lenders[1]—to seek supposed "tips" from consumers, severely changing the traditional compensation model for lending in Maryland while making the cost of lending less clear and more susceptible to manipulation and deception.
- Third, the bill does not require employer-integrated EWA providers to be licensed, even though there is no substantive difference between employer-integrated and direct to consumer lenders when it comes to the necessity for consumer protections.
- Fourth, while the bill prevents employer-integrated EWA providers from filing collection lawsuits against consumers, the bill inexplicably fails to prevent direct-to-consumer EWA providers from filing such lawsuits.

[1] As written, the bill appears to explicitly enumerate tips as a type of interest, then prevents EWA lenders from accepting interest while simultaneously providing a process for EWA and other lenders to solicit tips. This testimony is written assuming that the intent of the bill is allow EWA providers to solicit and accept tips.

Under current Maryland law, EWA providers are lenders,[2] the monies they provide to consumers are loans,[3] and providers' fees and charges, including supposed "tips" or "donations" are interest.[4] Under the existing law, therefore, EWA lenders must comply with Maryland's limit on charging 33% interest on their payday loans. While there is no evidence of which the Division is aware that EWA lenders cannot profitably operate in Maryland under the current law, HB 246 would change current law to allow these lenders to both charge $3.50 per transaction on loans that average $40 to $100, that are paid back in an average of ten days, and on which there is little or no credit risk, *and*, to solicit "tips" on these loans up to an equivalent of an extra 33% interest.[5] While a $3.50 fee may sound minimal, even without the tips, a $3.50 charge on a $40, ten-day loan is the equivalent of about 315% interest, ten times Maryland's rate, while a $3.50 charge on a ten-day $100 loan is the equivalent of approximately 120% interest, about four times Maryland's usury rate.

In evaluating the bill, it is important to consider that these loans are targeted at financially desperate, low-income Marylanders. 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.[6] The times consumers used advances per quarter averaged nine and ranged from one to twenty-five times.[7] Thus, of the many EWA consumers who make $25,000 per year, those who use the product twenty-five times a quarter will pay 1.5% percent of their gross earnings to EWA lenders for the privilege of accessing $100 or less of already-earned income a few days early.

HB 246 allows EWA lenders to take advantage of low-income consumers' financial desperation by charging excessive fees when the fact is that EWA loans pose very little risk to lenders and are nearly always paid back. The loans are backed by wages consumers have already earned but have not yet received. Lenders obtain direct withdrawal access to bank accounts where the wages are deposited, and if for some reason the wages from one pay period are insufficient to cover an EWA loan, the provider can withdraw funds from the next deposit.

Indeed, the $3.50 charge authorized in HB 246 seems completely disconnected from lenders' lending credit risk, market factors, or even the purported motivation behind the bill which is, as the Division understands it, to address EWA lenders' claims, which remain unsubstantiated to date, that they cannot profitably operate in Maryland under the current law. The $3.50 charge cap instead appears to have been conjured from thin air. The Division suspects the vast majority of that $3.50 charge in HB 246 is simply profit to the lenders, and that lenders could operate and reap profits in Maryland with much lower charges, and even under the current law.

---

[2]See Md. Code. Ann., Com. Law 12-303 (applying lending laws to the "purchase of wages").
[3]See Md. Code Ann., Com. Law § 12-301(e)(1); *Matter of Cash-N-Go, Inc*., 256 Md. App. 182, 202–03 (2023).
[4]See Md. Code Ann., Com. Law § 12-101; *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021).
[5] 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, available at https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf.
[6]*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.
[7] California Earned Wage Access Analysis, at pg. 10.

The Division further opposes HB 246 because it allows lenders—again, *all* lenders, not just EWA lenders—to solicit "tips" from Maryland consumers, and to present those tips, among other things, as "donations," "membership" fees, "registration" fees, and "expedited processing" fees. Under HB 246, your mortgage lender, your auto lender, and any other lender who provides you any sort of credit could ask you for a supposed "tip." This expansive rewriting of the Commercial Law is without any purpose connected to EWA lending and creates and new pathway for deception and manipulation for unscrupulous lenders from all walks of life, including those that traditionally prey on low-income Marylanders desperate for credit.

Calling these charges "tips" or "donations" itself is flatly misleading. The name implies the charges are somehow generous or altruistic when they are simply finance charges. And while HB 246 requires a disclosure to consumers that "tips" and the like are not required and do not impact lending determinations, in practice consumers feel required to "tip" even when such disclosures are made.[8] Moreover, EWA lenders have historically used deceptive and manipulative tactics to get consumers to pay supposed "tips" such as disabling services if borrowers do not tip, making it hard to avoid tipping in user interfaces, and misleadingly claiming or implying that supposed "tips" or "donations" are used to help other consumers.[9]

Beyond adding a layer of confusion and potential deception to the lending process, injecting the supposed "tipping" in lending transaction serves to obfuscate the true cost of lending and unmoors it from traditional lending compensation models. Taking just EWA loans, which are short term and small, even a modest tip can drastically increase the relative cost of a transaction. Injecting a "tip" model to lending transactions skews the traditional idea that lender compensation should be based on consumer credit risk and market factors, not on a consumer's personal suggestibility, confusion, or manipulability. If a lender wishes to charge for a loan, the charge should be clear, in the form of an annualized interest rate, and based on empirical factors related to the lending transaction. And while there has been mention that preventing lenders from soliciting consumer "tips" is somehow unconstitutional, the Division disagrees with that assertion and is aware of no authority of any kind that supports it. Maryland law has long been able to limit the types of fees and charges a regulated industry may charge.

The Division further opposes the bill because it does not require an employer-integrated EWA provider to be licensed. Under HB 246, consumers, and not employers, pay for employer-integrated EWA services. There is no good reason to justify exempting employer-integrated EWA providers from Maryland lender licensing laws.

Similarly, the Division opposes the bill because, while it prevents employer-integrated EWA providers from filing collections suits against consumers, it allows direct-to-consumer EWA providers to file such suits. There is no plausible reason for this distinction. As the EWA providers who testified represented that the loans are and should be non-recourse and the

[8] 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?

[9] 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.

providers have direct access to the consumers' paychecks. All EWA providers should be prevented from filing civil collections suits against consumers.

Accordingly, for the reasons set forth, the Consumer Protection Division requests that the Finance Committee give House Bill 246 an unfavorable report.

cc. Members, Finance Committee
The Honorable Portia Wu, Secretary of Labor
The Honorable Antonio Salazar, Commissioner of Financial Regulation