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HB 246 Commercial Law – Credit Regulation- Earned Wage Access and Credit Modernization
Favorable with Amendments
Senate Finance Committee
March 26, 2024

Good afternoon, Chair Beidle and members of the Senate Finance Committee. I am Tammy Bresnahan, Senior Director of Advocacy for AARP Maryland. AARP has more than 850,00 members statewide. AARP is the largest nonprofit, nonpartisan organization representing the interests of Marylanders age 50 and older and their families. Key priorities of our organization include helping all Marylanders achieve financial and health security. AARP MD supports with amendments HB 246. We support the efforts of the Department of Labor and believe HB 246 is the bill that needs to pass. We also believe that fee caps are critical.

HB 246 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. 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.

Historically employers have had a role to play in helping workers manage their finances, and cash management tools can help older workers juggle expenses. At the same time, high-cost loans and products that drain fees from slim budgets lead workers to pay to be paid and worsens the financial health of older workers.

Earned Wage Advances (EWA) enable consumers to obtain an advance of wages that they have earned prior to their scheduled pay date. Employer-based EWAs are offered by third parties that have access to the employer’s time and attendance system. Other direct-to-consumer advances have no connection to the employer but claim to pay wages and collect instant access fees along with purportedly voluntary tips or donations. In both circumstances, the amount the consumer is offered is limited to the amount they have earned, or estimated to have earned, but is not yet due.

Employers offering EWA may cover the full costs themselves, may contract with an EWA provider or payroll provider that offers the advances for free to the worker, or may allow the provider to charge fees to the worker. In any of these models, the third party typically advances the funds to the worker and then is repaid the amount the consumer receives and any associated fees or costs from the consumer's next paycheck, either through payroll deduction, split direct deposit, or another manner. When offered through direct-to-consumer apps unconnected to the employer, the consumer is typically required to provide the third party with a copy of a previous pay stub and their bank account information. The consumer repays the advance by allowing the lender to make a direct debit of the advance along with fees, tips, or donations from the consumer's bank account at the time of their next paycheck.

AARP has a long history advocating against payday lending loans, and EWA that collect fees or tips seem remarkably similar. The Consumer Financial Protection Bureau recently observed that "these products share fundamental similarities with payday lending products." You know that there are more older people in the labor market than ever before living paycheck to paycheck. If they fall short before payday, they should not be subject to high fees and a cycle of "paying to be paid" for borrowing against their wages.

Alternative financial services such as payday loans and their variant called "earned wage advances" are provided outside the traditional banking system. Providers of these products are disproportionately located in workplaces with a sizable proportion of Black and Hispanic/Latino residents, and they disproportionately strip wealth from these communities. They are also a major source of transactional and credit services for consumers with low and moderate incomes and people with heavy debt burdens or less favorable credit histories. Like traditional payday loans, earned wage advances offer advances of pay before it is due. These products impose fees, interest, or other costs on workers. This leads to payment of effective interest rates like payday loans. Products may also contribute to chronic financial instability if borrowers become too reliant on them to meet expenses.

As such, these earned wage advance products and other fintech payday loans need to be regulated as loans subject to state and federal law. Maryland has strong consumer protection laws that limit interest rates and prevent predatory payday lending, and new fintech providers of payday advances should be required to abide by the same cost limits and licensing requirements as other lenders.

AARP believes that regulators should oversee alternative financial services and all the trappings that go along with those services. Prior to extending a loan, lenders should be required to evaluate whether an applicant can be expected to be able to repay the loan without reborrowing or refinancing, and while covering expected essential expenses. Additionally, States' ability to cap interest rates and enforce interest rate caps on new forms of loans should be upheld.

AARP believes programs that offer early access to someone's pay should be regulated as loans and subject to Maryland's loan laws. Employers can continue to offer access to early pay for free as a benefit, third parties that charge fees or tips should not get a special exemption to charge more than other lenders for payday advances.

For these reasons we ask the Committee for a favorable with amendments report on HB 246. If you have questions or comments, please contact me at tbresnahan@aapr.org or by calling 410-302-8451.