

# **Crossover Testimony - HB 246 - Commercial Law - Cr**

Uploaded by: Donna Edwards

Position: FAV



# MARYLAND STATE & D.C. AFL-CIO

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*President*

**Donna S. Edwards**

*Secretary-Treasurer*

**Gerald W. Jackson**

**HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization  
Senate Finance Committee  
March 26, 2024**

**SUPPORT**

**Donna S. Edwards  
President  
Maryland State and DC AFL-CIO**

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony in support of HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

We supported HB 246 as originally written because workers deserve protection from lenders that fail to register or abide by the state's lending laws. The drafted bill ended the unfair and opaque tipping practices used by some earned wage access products. The amended bill's fee cap of \$3.50 per transaction provides some protection.

We commend HB 246 for clarifying that earned wage access products are loans and requiring lenders to register with the state. We appreciate the bill's requirements around unethical or unclear tipping practices, banning the consideration of tips in eligibility for loans and requiring that tip amounts be set at zero. HB 246 is still a step forward for consumer protections but falls far short of what workers deserve.

We still fully support employer connected entities that provide wage advancement at no cost and believe the ultimate solution to this issue is for workers to be paid reliable, prompt, and predictable family sustaining wages. We urge a favorable report on HB 246, but believe the committee should advance the bill as originally drafted.

**XO Senate - HB246 DOL - OFR FWA.pdf**

Uploaded by: Amy Hennen

Position: FWA

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.

**HB246-PJC-FWA.pdf**

Uploaded by: David Rodwin

Position: FWA



David Rodwin  
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## HB 246: Commercial Law – Credit Regulation – Earned Wage Access and Credit Modernization

Hearing before the Senate Finance Committee, March 26, 2024

### Position: FAVORABLE WITH AMENDMENTS

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. **The PJC respectfully requests a favorable with amendments report on HB246.**

**HB246 appropriately treats earned wage access (EWA) products—which are loans in every meaningful sense—as the loans they are.**

- Maryland law is clear that a loan is an advance of credit. EWAs are funded by banks, not through the employer or employee's actual paycheck. These products are loans and should be regulated as loans.
- HB246 appropriately treats EWA products as the loans they are.

**The notion of “tips” for EWA products is inherently confusing and threatens to enrich lenders at the expense of working people living paycheck to paycheck; HB246 takes some appropriate action to limit possible abuses of a “tip” option.**

- Low-wage workers—who are disproportionately Black and Brown—use EWA products when they have urgent expenses that cannot wait for their payday. These workers do not have money to spare.
- The idea of soliciting “tips” for loans is confusing and misleading. Workers who see a “tip” option are unlikely to believe that the tip is in fact voluntary and will not affect the speed or quality of the loan.
- Maryland law is clear that small dollar loans have limits on how much customers can be charged. This is to protect customers from high-cost products like payday loans which trap them in a cycle of borrowing.
- HB246 appropriately ensures that the default “tip” amount for EWA products is set to \$0 and that the product will disclose who the tip is going to.

**HB246 also makes other meaningful improvements.**

- The bill sets a fee cap of \$3.50 per transaction to protect consumers.
- The bill also requires an annual report to the Office of Financial Regulation.

**The PJC supports HB245 with certain amendments to further its goals.**

- We suggest a cap on monthly fees. 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 allowed to take an advance of only one day's wages, requiring a new fee every day—a model that is especially common in “gig work” industries. A person who worked five days a week for four weeks could spend \$70 in fees. A monthly fee cap would help.

- We also suggest language be added to protect workers from receiving less than the minimum wage. The lowest-paid workers cannot afford to have fees deducted from their wages, and employers should not be allowed to contract with companies that result in people being paid less than minimum wage.
- We also suggest that language be added to limit special treatment to employer-integrated models and not to direct-to-consumer loans, especially models that debit bank accounts.

For the foregoing reasons, the PJC respectfully urges a **FAVORABLE WITH AMENDMENTS** report on HB246. Should you have any questions, please contact David Rodwin at [rodwind@publicjustice.org](mailto:rodwind@publicjustice.org) or 410-625-9409 ext. 249.



# **Senate Finance HB246 as amended EWA EconAction\_FWA**

Uploaded by: Marceline White

Position: FWA



**Testimony to the Senate Finance Committee**  
**HB246: Commercial Law-Credit Regulation-Earned Wage Access & Credit**  
**Modernization**  
**Position: FWA**

The Honorable Pam Beidle, Chair  
Senate Finance Committee  
3 East, Miller Senate Office building  
Annapolis, MD 21401  
cc: Members, Senate Finance Committee

March 26, 2024

Chair Beidle and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances economic rights and equity for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are writing today regarding HB246. As amended, HB246 builds on Maryland's strong history of protecting consumers from high-cost, unaffordable loans with our rate-caps and regulatory oversight. And, make no mistake, despite what the industry suggests, these earned wage access (EWA) products are loans. A consumer borrows money before their payday and the money is repaid on or after payday. That is a loan. EWA products that are not employer-integrated are loans that are tied to a consumer's bank account to satisfy repayment and may trigger NSF or overdraft fees for consumers living paycheck to paycheck.

Employer-based EWA products also advance money to a consumer via a third party lender and are repaid via payroll deduction rather than a direct debit of a consumer's bank account.

HB246 rightly considers both types of EWA products to be loans and all repayment including fees, expedited fees, or tips as interest. HB246 reflects compromise language that sets out a maximum charge per transaction. Moreover, HB246 ensures that cash advance products that do not conform to these EWA terms would be subject to Maryland's lending laws to protect working families from high-cost, unsustainable loans.

Yet, there are areas where HB246 should be strengthened in order to protect vulnerable workers. We urge adoption of the following amendments to ensure the needs of low income families are protected.



## Suggested Amendments

- **Include a cap on monthly fees.**

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 allowed to take an advance of only one day's wages, requiring a new fee every day—a model that is especially common in “gig work” industries. A person who worked five days a week for four weeks could spend \$70 in fees. A monthly fee cap would help.

- **Protect workers from receiving less than minimum wage.**

The lowest-paid workers cannot afford to have fees deducted from their wages, and employers should not be allowed to contract with companies that result in people being paid less than minimum wage.

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

For all these reasons, we recommend that HB246 is favorable with the aforementioned amendments.

Best,

Marceline White  
Executive Director

**Payactiv Testimony on HB 246 - 03252024.pdf**

Uploaded by: Molly Jones

Position: FWA



March 25, 2024

**Re: Favorable for HB 246 with amendments**

Dear Chair Beidle, Vice Chair Klausmeier, and Honorable Members of the Senate Finance Committee:

Thank you for your consideration of HB 246 and your work on legislation to help ensure hard-working Marylanders are able to continue to use earned wage access (EWA) in the state.

Payactiv is a leading employer-integrated earned wage access (EWA) provider that partners with employers to enable their employees to access their own, already earned wages when they need it – rather than having to wait for payday. Payactiv integrates into an employer's time and attendance payroll system and verifies wages from payroll, time and attendance, and census file data. Payactiv has been providing EWA services to Maryland workers for over 10 years and is proud to be a Public Benefit Corporation and Certified B Corp.

We appreciate the continued dialogue with stakeholders involved in this bill, and we are hopeful to reach a compromise solution soon.

**We believe EWA should be regulated under a new subtitle within Title 12 of the Financial Institutions Article, which includes other financial service categories like check cashing, money transmission, debt settlement, and debt management. These new categories were created through legislation, and we believe the legislature has the opportunity to create similar, tailored guidance for the EWA industry as well.**

**It is critical that EWA is not regulated as a consumer loan under Title 12 of the Commercial Law Article, which would result in EWA providers leaving the state and Maryland workers losing access to this service.** This result was seen in Connecticut, where hundreds of employers and thousands of workers expressed deep concern about losing access to EWA. Further, our users in Connecticut report their financial health is worse off as a result of this change.

Payactiv is proud of our long-standing service to Maryland workers, and **we support this bill with amendments, which include additional consumer protections and greater alignment with regulatory best practices in other states.**

Thank you for your leadership on this important issue, and we respectfully request a favorable report.

Sincerely,

Molly Jones  
Head of Public Policy,  
Payactiv

# **Letter re HB 246 - Favorable with Amendments (Fina**

Uploaded by: Rodney Williams

Position: FWA



HB 246

March 26, 2024

Senate Finance Committee  
3 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: HB 246 - Favorable with Amendments -  
SoLo Funds - Consumer Protection - Regulations and Orders**

Dear Chair Beidle and Committee Members:

SoLo Funds (SoLo) co-founded by me, Rodney Williams, a Marylander and proud Baltimorean, is a Black-owned fintech company launched in 2018 with the goal of providing an alternative to short-term loans that are non-predatory, simple, and community driven. SoLo is an online peer-to-peer or P2P lending solution powered by individual capital and enabled by banking services. SoLo's mobile application platform enables access and supply of short-term funds for immediate needs. Members on SoLo's platform can request or fund transparent loans without cumbersome applications, long waiting periods or surprise fees. Lenders on SoLo's platform do not impose any interest or finance charges on the borrowers, and the borrowers' only payment on a performing loan is a self-imposed, voluntary gratuity, or tip, to the Lender. This is an important distinction, as it is Maryland residents that are obtaining the benefit of these payment, not the platform providing the service. SoLo looks forward to working with policymakers to address the unique challenges of underserved communities and enable financial autonomy for all, one loan at a time.

SoLo understands that interest can be effectively disguised as fees and charges, which can further entrench consumers in the predatory debt traps that SoLo seeks to eradicate for the underserved and underbanked communities. Although HB 246 is primarily targeted at earned-wage access companies, the bill makes several significant changes to the existing consumer loan laws in Maryland. First, the bill defines interest as a payment that is "directly or indirectly imposed by a Lender," with which SoLo agrees. The issue arises when the bill subsumes into its definition of interest as a "tip," defined as a "voluntary payment by a consumer." It is evident that there is a contradiction in meshing those concepts together, as interest is imposed, and tips are voluntary. By their very nature, tips do not equate to interest.

The bill also sets forth that a "tip" includes any payment made by a consumer, "regardless of how the payment is characterized, including as payment for expedited processing or disbursement or for a membership, registration, or subscription fee or as a donation or gratuity." This provision merely attempts to bundle all of these payments into the family of a tip. Similar to the discussion above, while tips are voluntary payments which have been appropriately defined,



expedited processing fees, membership fees, and subscription fees are *imposed* on the consumer, making their nature wholly differentiated from that of a voluntary tip.

Lastly, the bill should be amended to provide a carve-out or safe harbor when (1) payments or fees are not imposed by a lender, and (2) are not accruing or compounding over time. These characteristics would clearly distinguish those payments from the concept of interest. Instances of fees or payments that bear these characteristics would be infrequent, allowing the bill to have its operative effect. In addition, this amendment would encourage consumer finance companies of all types to adopt these cost-transparent models and the rising tide to lift all ships in the space of consumer protection.

In total, HB 246 makes great strides in attempting to provide clarity to consumers when they are subjecting themselves to a potential debt trap. The fees and payments mentioned under this bill can certainly have the effect of interest, but only to the extent that those fees and payments are accruing or compounding over time, similar to the characteristics of interest. SoLo has taken into account the mechanisms that force Maryland consumers into perpetual debt traps and have been very thoughtful in creating this innovative, cost-transparent model. SoLo's model does not create problems or issues for Maryland consumers; rather, it solves the issues of Maryland's underserved and underbanked communities and provides financial access and literacy where it previously did not exist. Furthermore, as mentioned above, the tips that are provided in appreciation of a funded loan are provided to community members, not to SoLo. The benefit to the public, as opposed to the company, creates an important distinction from the activity against which this bill is designed to protect. This groundbreaking model should be heralded as an example of innovation and problem-solving for Maryland consumers and it is exactly this type of innovation that Maryland's legislature should support to bring more founders and much needed revenue to Maryland. We look forward to working with the sponsors, the committee, and interested parties on this legislation and possible amendments.

Sincerely,

Rodney Williams  
Marylander and Baltimorean  
President and Co-Founder, SoLo Funds



# **HB 246 Commercial Law – Credit Regulation- Earned**

Uploaded by: Tammy Bresnahan

Position: FWA



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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 850,000 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](mailto:tbresnahan@aapr.org) or by calling 410-302-8451.

**03.25 (Crossover) - HB 246 - Commercial Law - Cred**

Uploaded by: Tonaeya Moore

Position: FWA



## HB 246 - Commercial Law - Credit Regulation - Earned Wage Access and Credit Modernization

Finance Committee

March 26, 2024

### FAVORABLE WITH AMENDMENTS

Chair Beidle, Vice-Chair Klausmeier, and members of the committee, thank you for the opportunity to submit testimony in support with amendments for House Bill 246. This bill will provide more consumer protections for workers who use earned wage access products.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Half of CASH's tax preparation clients earn less than \$10,000 annually; more than half earn less than \$20,000.**

EWA is a product that gives employees the ability to borrow a portion of their paycheck before payday. Most of these are through apps on the customers phones and they charge a fee to receive funds immediately and some allow for "tips." In 2024, CASH conducted a survey on how our clients use EWA services. **CASH found a significant percent of our clients use multiple apps every month and sometimes make use the products multiple times in the same pay period.** Customers who need an advance on their paychecks are experiencing a financial crisis and need immediate access to their money. The survey results support this by showing that most clients used the "expedited fee" option when available.

The bill will clarify that these advances are technically a loan. Though this industry may be new, the Maryland legislature has a long history of affirming small dollar advances as loans and maintaining a usury rate of 33%.

HB 246 would institute multiple consumer protections, including:

- Establishing EWA products as loans,
- Ensuring that EWA products have the default tip set to \$0 and will disclose who the tip will be going to,
- Setting the fee cap per transaction to \$3.50, and
- Providing an annual report to the Office of Financial Regulation

Setting the fee cap to \$3.50 per transaction is a good start to protect consumers. There are still concerns about the consumers who use EWA products multiple times in a month or pay period. Those consumers will pay the transaction fees multiple times in a month. Having a monthly fee cap set will best protect Maryland consumers and ensure that consumers who frequently use EWA products will have access to affordable credit.

The federal Consumer Financial Protection Bureau and other states are recognizing the need for more consumer protections for earned wage and cash advance providers. Without regulations, it is possible for workers to accrue debt through fees by using these providers, which have shown to accrue to more than 300% APR<sup>1</sup>. These fees benefit employers and earned wage access providers, but disproportionality impact low-wage workers in Black and Brown communities.

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<sup>1</sup> National Consumer Law Center: [Data on Earned Wage Advances and Fintech Payday Loan "Tips" Show High Costs for Low-Wage Workers - NCLC](#)



Enacting HB 246 with amendments would provide more protections for low-wage workers in Maryland and more economic stability for individual households and the state.

***For these reasons, we urge a favorable with amendments report for HB 246.***

*Creating Assets, Savings and Hope*

**testimony2024hb246crossltr.pdf**

Uploaded by: Franz Schneiderman

Position: UNF



**Auto Consumer Alliance**  
13900 Laurel Lakes Avenue, Suite 100  
Laurel, MD 20707

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**Testimony to the Senate Finance Committee  
HB 246– Commercial Law – Credit Regulation –  
Earned Wage Access and Credit Modernization  
Position: UNFAVORABLE**

The Honorable Pam Beidle  
Senate Finance Committee  
3 East, Miller Senate Building  
Annapolis, MD 21401  
cc: Members, Senate Finance Committee

March 26, 2024

**Honorable Chair Beidle and Members of the Committee:**

I'm a consumer advocate and Executive Director of Consumer Auto, a nonprofit group that works to protect Maryland consumers and promote safety, transparency and fair treatment for Maryland drivers and car buyers.

We oppose **HB 246**, as now amended by the House, because we do not believe it provides adequate safeguards for the many working Marylanders who use digital cash advance and Earned Wage Access programs to get more timely access to their wages.

Since those programs often function much like often-predatory payday loans and high-interest cash advances, those Marylanders need – but currently do not have – the same sort of protections our laws establish for older forms of cash advances.

Research has found that those who use EWA loans are mostly lower-income people who often use those services again and again. Borrowers tend to make less than \$50,000/year. And because many of those loans are repaid automatically from future pay (leaving many borrowers with ongoing shortfalls of resources) they often create a kind of debt trap, with a California study finding that the average borrower taking 36 loans per year and some taking as many as 100 advances/year. And with all the tips and fees charged taken into account, the effective average interest rates for some of these products has been found to be a shocking 330%.

While **HB 246**, as originally submitted, would have provided important protection to these borrowers by requiring EWA products NOT to charge interest rates or fees (that contribute to effective interest rates) that violate the interest rate caps Maryland law sets for other consumer lenders, that language was stripped from the amended bill. The amended bill also allows EWA lenders to charge fees of up to \$3.50 per transaction. While that may sound like a modest charge, with so many borrowers using the services dozens of times/year, those fees can add up to a real burden (and help create onerous effective interest rates) for lower-income borrowers.

While the bill does still offer some consumer protections, including clarifying that tipping for such services must be truly voluntary and requiring many EWA lenders to be licensed by the state, the fees and interest rates it allows would be burdensome for many vulnerable Marylanders.

**We oppose HB 246 and ask you to give it an UNFAVORABLE report.**

Sincerely,  
Franz Schneiderman  
Consumer Auto



# **HB 246 - CPD testimony in opposition.pdf**

Uploaded by: Wilson Meeks

Position: UNF

**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)

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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<sup>1</sup>—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.

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<sup>1</sup> 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,<sup>2</sup> the monies they provide to consumers are loans,<sup>3</sup> and providers' fees and charges, including supposed "tips" or "donations" are interest.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The times consumers used advances per quarter averaged nine and ranged from one to twenty-five times.<sup>7</sup> 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.

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<sup>2</sup>See Md. Code. Ann., Com. Law 12-303 (applying lending laws to the "purchase of wages").

<sup>3</sup>See Md. Code Ann., Com. Law § 12-301(e)(1); *Matter of Cash-N-Go, Inc.*, 256 Md. App. 182, 202–03 (2023).

<sup>4</sup>See Md. Code Ann., Com. Law § 12-101; *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021).

<sup>5</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. 10, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>.

<sup>6</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.

<sup>7</sup> 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 a 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.<sup>8</sup> 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.<sup>9</sup>

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

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<sup>8</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>9</sup> 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

**MD HB 246 EWA Senate Finance Testimony of NCLC.pdf**

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**Testimony on Maryland HB 246: Earned Wage Access and Credit Modernization  
Senate Finance Committee**

**By Lauren Saunders, Associate Director, National Consumer Law Center**

**March 26, 2024**

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.

\* \* \*

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 [Isaunders@nclc.org](mailto:Isaunders@nclc.org).