

SENATE BILL REPORT

SB 5328

As of January 30, 2025

Title: An act relating to establishing a new chapter for the licensing and regulation of businesses providing earned wage access services.

Brief Description: Establishing a new chapter for the licensing and regulation of businesses providing earned wage access services.

Sponsors: Senators Lovick, Dozier and Nobles.

Brief History:

Committee Activity: Business, Financial Services & Trade: 1/30/25.

Brief Summary of Bill

- Creates a licensure framework for earned wage access services to be regulated by the Department of Financial Institutions.
- Excludes earned wage access services from being classified as loans, credit, or money transmission services, and fees are not considered interest or finance charges.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Staff: Clint McCarthy (786-7319)

Background: How Employees Get Paid. Since the 1970's, automated clearinghouse (ACH) has allowed employers to pay employees without the need for depositing physical checks. While some employees still receive physical checks, most use ACH which allows employees to get their pay quickly and safely. According to Bureau of Labor Statistics, the frequency in which employees are paid is as follows:

- monthly: 4 percent;
- semimonthly: 18 percent;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- biweekly: 46 percent; and
- weekly: 32 percent.

For many employers, there is a lag of time between when an employee has earned their paycheck and when they are paid for their time.

Earned Wage Access Providers. Since the beginning of the 2010's, a number of financial technology companies known as earned wage access (EWA) providers have developed financial products that allow employees to receive a portion of their earned income earlier than when they are due to be paid. There are two types of EWA providers.

Employer-Integrated Wage Access Services Model. Employer-integrated wage access services are products where the provider contracts directly with employers, creating a business-to-business relationship. EWA providers that use this model are able to verify employment through payroll data provided by the employer. The EWA provider can be repaid through a deduction from payroll. The main fee in this relationship is for an expedited delivery fee. The cost to the employee can range from free to completely paid by the employee. Funds can be distributed to the employee by payroll card or through a direct deposit into the employee's bank account. Typically, the employee is limited to 50 to 80 percent of their earned wages during a pay period, and potentially a limit on the maximum amount. The restrictions on the frequency of use is variable, but might be once per week or per pay period.

Consumer Directed Wage Access Services Model. Consumer directed wage access service providers work directly with the consumer consumer to provide access to earned wages, bypassing the employer. EWA providers using this model verify employment by having the employee upload employment records such as pay stubs and time sheets, provide access to the employee bank account, and in some cases geolocation. The EWA provider is repaid through debiting the employees consumer bank account. Fees can include a subscription fee, expedited delivery fee, a per transaction fee, or a tip, or any combination thereof. Free options are available, but typically require the consumer open an account or debit card with the EWA provider. Funds are distributed to the employee through direct deposit to their bank account. There is typically a dollar limit on how much the employee can advance, but there is typically no restriction on the frequency for using the product.

The Regulation of Earned Wage Access Providers. *Federal.* In July 2024, the Consumer Financial Protection Bureau (CFPB) issued a proposed interpretive rule to regulate EWA. This is rule based on the CFPB's determination that earned wage products are consumer loans subject to the Truth in Lending Act. The key provisions of the rule include:

- stricter guidelines for financial institutions regarding the disclosure of fees and interest rates; and
- reporting requirements to ensure greater accountability and oversight within the industry.

On January 15, 2025, the CFPB published an advisory opinion in the Federal Register. The publication notes, in the advisory opinion notes, that seeking comment on the rule issued in July 2024 was voluntary and the comment period closed on August 30, 2024. The advisory opinion also rescinds a previous advisory opinion which the CFPB issued in November 2020. The November 2020 advisory opinion stated that earned wage products do not constitute the offering or extension of credit under the Truth in Lending Act. The 2020 advisory opinion distinguished between the two models of earned wage products: employer-partnered products and direct to consumer products.

States That Do Not Regulate Earned Wage Access Services as Loans. Since 2003, the states of Nevada, Kansas, Missouri, Wisconsin, and South Carolina have established that EWA services are not considered loans and they are not subject to banking laws. They are regulated by a state regulatory agency, and EWA businesses are subject to licensure requirements.

States That Regulate All or Some Earned Wage Access Services as Loans. In 2023, the state of Connecticut enacted legislation that categorized employer integrated wage access products and consumer directed wage access products are considered loans that must comply with the state's Small Loan Lending and Related Activities Act. California passed legislation in 2024 that categorizes EWA payroll advances as loans and designates providers as finance lenders under California law. EWA businesses that use the consumer directed wage access services model will have to register with the California Department of Financial Protection and Innovation.

Maryland's Office of Financial Regulation (OFR) provided guidance that the state's law on loans under \$25,000 does not apply to EWA products and does not apply to EWA payments provided by an employer directly to an employee. The OFR's position is that it would analyze third party EWA providers that work directly with consumers on a case by case basis. In Maryland, some third party EWA providers that work directly with the consumer may be considered a lender.

Summary of Bill: The Washington State Earned Wage Access Services Act Is Created.

Beginning on July 1, 2026, all EWA providers must obtain a license from the Department of of Financial Institutions (DFI). EWA services is defined as a business of providing consumer directed wage access services, employer-integrated wage access services, or both.

EWA services are not classified as loans, credit, or money transmission services, and fees are not considered interest or finance charges. Consumer directed wage access services is the offer or provision of an advance of earned but unpaid income directly to a consumer based on the consumer's representations and the provider's reasonable determination of the consumer's earned but unpaid income. Employer-integrated wage access services is the business of delivering consumers access to earned but unpaid income through information obtained directly or indirectly from their employer.

Licensure of Earned Wage Access Providers. EWA service providers are subject to

background checks, meeting certain financial standards, and satisfying bonding requirements.

Licensees must:

- pay the annual assessment on or before the first day of March;
- develop and implement policies and procedures to respond to questions raised by consumers and address complaints from consumers quickly;
- inform the customer of their rights under the agreement as well as disclose all fees associated with EWA services, including those fees associated with memberships or subscriptions;
- inform the consumer of any material changes to the terms and conditions of the EWA services before implementing changes for the consumer; and
- allow the consumer to cancel the use of the licensees EWA services at any time; without cancellation fee imposed by the licensee.

Licensees must not:

- charge fees in excess of \$7 per transaction delivery;
- require credit checks for eligibility; or
- impose penalties for late payments or use aggressive collection practices.

Licensees are not allowed to:

- charge late fees, deferral fees, interest, or any penalty or charge for failure to pay outstanding proceeds;
- report to a consumer reporting agency any information about the consumer; or
- advertise any false statement with regard to the terms of EWA services.

EWA providers must provide the consumer with proceeds as agreed upon mutually between the licensee and the consumer. The licensee must reimburse the consumer for the full amount of any overdraft or nonsufficient fund fees imposed on a consumer caused by a licensee not providing proceeds on the date agreed upon between the consumer and the licensee.

Licensees are required to keep books in order to ensure that DFI can confirm that the licensee is complying with applicable laws and rules. Each licensee must file a report on July 1 of each year with aggregate data related to the transactions that the licensee conducted with consumers in the state.

Tips, Gratuities, or Other Donations from a Consumer to a Licensee. If a licensee solicits, charges, or receives a tip, gratuity, or other donation from a consumer, the licensee must:

- disclose to the consumer immediately before each transaction that a tip, gratuity, or other donation may be zero and is voluntary; and
- disclose that offering EWA services is not dependent on whether a consumer pays any tip.

Licensees are not allowed to:

- share with an employer a portion of any fees, voluntary tips, gratuities, or other donations that received or charged to a consumer;
- accept payment of outstanding proceeds, fees, voluntary tips, gratuities, or other donations from a consumer by a credit card;
- mislead or deceive consumers about the voluntary nature of tips;
- make representations that tips will benefit any specific individual; or
- present tips as a default option to the customer.

Department of Financial Institutions Regulatory Requirements. The director of DFI (Director) must ensure that EWA services applicants have:

- paid all required fees;
- completed their applications for licensure correctly;
- ensured that the applicant has not had a license issued by the state of Washington or any other state revoked or suspended within the last five years of filing for application;
- ensured that the neither the applicant nor its principals have been convicted of certain crimes within seven years of filing for an application; and
- ensured the financial responsibility, experience, character, and general fitness of the applicant.

The Director is responsible for the enforcement of all laws and rules relating to the licensing and regulation of EWA services.

DFI may deny applications when the applicant:

- fails to demonstrate that it meets the requirements for being licensed;
- has a violation of an order issued by DFI pertaining to EWA services or another chapter;
- has had their license to provide EWA services revoked by the state of Washington or any other state; or
- has filed an incomplete application.

The proceedings for denying license application, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties is governed through the Administrative Procedures Act. DFI may condition, suspend, or revoke a license if the licensee has not paid fees due to the state, failed to maintain its bond, or failed to comply with any specific order demand of DFI. DFI may impose fines of up to \$100, per day, per violation, if the licensee is found to violated any requirements of the EWA services statutes, or has failed to comply with any directive, order, or subpoena issued by the Director under this chapter.

DFI may engage in informal settlement of complaints or enforcement actions, or enforcement actions including payments to DFI for purposes of financial literacy and education programs.

DFI has rule making authority. DFI may apply for a superior court order authorizing a subpoena. DFI may recover the state's costs and expenses for prosecuting violations of the Washington State Earned Wage Access Services Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO:Thirty-five percent of our citizens live paycheck to paycheck. The alternatives are high interest charges. These loans reduce absenteeism. AFC has established standards for EWA services that are consumer focused. This framework will allow responsible earned wage access services to be provided to the state. This is a great alternative to predatory lending and outrageous bank fees. This acknowledges how EWA services are different from loans. These are not loans. Over 1000 employers offer this benefit to other employers. These benefits need to be distinguished from payday loans. These funds are earned and owed to employees. This bill is focused on transparency and allows employees to make responsible decisions. Washingtonians are already reaping the rewards of EWA services in Washington State. EWA is fundamentally different from loans. It allows them to access money that employees have already earned. There are no exploitive interest rates. The accessibility and availability of EWA services is unprecedented, and it allows people to avoid overdraft fees and payday loans. This bill reasonably addresses consumer protections by offering transparency so that employees will understand how EWA services work. This product helps make ends meet for households that live paycheck to paycheck. We believe EWA requires its own oversight system.

OTHER: We want to effectively regulate EWAs. Direct to consumer EWAs are payday loans. These are loans. EWAs charge you a fee. Sometime they say they need \$130 for \$3.49. This equates to 139 percent interest. You have to look at these as the cost of the product. A loan occurs when someone gives someone money with the expectation that they will be repaid. This is what EWA services do. They provide short term loans. Look at the cost of the product, not if it is interest or a fee. Stronger consumer protections are necessary. Direct to Consumer Loans are payday loans. This bill takes positive steps and should be limited to employer directed EWA services. This bill does not create strong enough consumer protections. Unregulated, the EWA can pull employees into a spiral similar to other payday loans. Direct to consumer EWA services need to be regulated under our small loan lending laws.

Persons Testifying: PRO: Senator John Lovick, Prime Sponsor; Alice Jacobsohn, PayrollOrg; Tahra Jirari, Chamber of Progress; Nancy Coleman-Chavez, Public Policy Manager, Western States, DailyPay, Inc.; Molly Jones, Vice President, Head of Public

Policy at Payactiv; Nicole Miller, Deputy General Counsel at EarnIn; Garth McAdam, ZayZoon; Phil Goldfeder, American Fintech Council; Sarah Mamula, Financial Technology Association.

OTHER: Andrew Kushner, Center for Responsible Lending; Sam Leonard, WA State Association for Justice; Amanda Martin, NW Consumer Law Center; Molly Gallagher, Statewide Poverty Action Network; Jane Doyle, Woodstock Institute; Cathleen MacCaul, AARP Washington State.

Persons Signed In To Testify But Not Testifying: No one.