



INDIANA COMMUNITY ACTION POVERTY INSTITUTE

Research and Public Policy

Testimony before the Senate Insurance and Financial Institutions Committee

HB 1125 – Earned Wage Access Products

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Good morning Senator Baldwin and Members of the Committee,

I'm here today on behalf of the Institute and also on behalf of Hoosiers for Responsible Lending – a coalition of faith, veteran, social service and community organizations. I want to start by thanking the individuals on the committee, especially Senator Walker, who took time to meet and discuss our concerns. Our coalition opposes HB 1125 in its current form.

This is not to say that we do not support early access to wages as an employee benefit. However, there's a wide spectrum of services being swept in under this heading. First, there are companies that contract with an employer to provide advances on pay as an employee benefit, and the employer pays a fee for this service.

Then there are companies that create a contract with employers to provide early access to wages, but pass the fees on to consumers. While they may sell employers on "no-cost" options, one analysis of transactions from employer-integrated wage advances services showed that when employers are picking up the cost, employees are – 82% of transactions carried fees. If reasonable, this *may* be a better option to some alternatives.

Then there are app-based products called "direct-to-consumer" products where is no relationship to the employer. The app requires access to an individual's bank account and verification of employment, then will offer advances based on payment history and deduct the advance and fee from the individual's bank account on their payday. When I experimented with one of these, they requested \$12 for a \$50 advance for 7 days – some of that in tips, which I'll address momentarily. But this is almost double what a payday lender would charge for a \$50 advance – and by statute, they would have to give someone 14 days make repayment. You could keep an average balance of \$50 on a credit card at 29% APR for 10 months before you'd pay that much.

The current bill proposes to regulate this industry, but will allow providers of these services to charge more than a payday lender because **there is no cap on overall charges**.

This bill places earned wage access products as outside the scope of Indiana's lending laws, and as such they are not subject to rate caps, fee limits, or our criminal loansharking statute. So while you may hear today about options that are more affordable than a payday loan, or that certain fees are optional, there is absolutely nothing to stop a provider from charging more than a payday lender.

Payday lenders. This bill allows payday lenders to also be licensed as Earned Wage Access providers. This could allow providers to circumvent existing limits and draw people deeper into high-cost debt.

Tipping: We're introducing, for the first time, the idea of tipping your financial services provider.



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That's worth thinking through. Will we soon see other financial services also requesting tips? Could a payday lender drive up their revenue with tips, or a bank teller, or an ATM machine? This is especially strange in the context of a service in which there is no human interaction. In one state's analysis of these products, apps generated \$17 million in tips in one year. And if tips become exempt from taxation, will this revenue also be exempt and create even more pressure to seek tips.

Finally, tips appear to be voluntary but there is no prohibition against raising fees on individuals who do not tip or are "bad" tippers.

There are a number of other items we'd like to see addressed that I'll just touch on briefly since they are outlined in what I've given you.

- **Compelled use:** My counterparts in Texas have added language protecting the freedom of employees to opt out of EWA services and to have earned wage advances sent to a bank account of their choosing, not one required by the EWA provider.
 - EWA providers may not: *"ENTER INTO AN AGREEMENT WITH AN EMPLOYER THAT WOULD REQUIRE A CONSUMER WHO IS AN EMPLOYEE OF SUCH EMPLOYER TO USE EARNED-WAGE ACCESS SERVICES AS A NECESSARY CONDITION OF RECEIVING PAYMENT OF WAGES."*
- **Timely and accurate payment.** They are also addressing one of the top complaints about scenarios where the EWA provider that do not release the remainder of an individual's paycheck in a timely or accurate fashion. On page 28, the bill explicitly says that EWA providers are not money transmitters under Indiana code, which has criminal consequences and penalties for failing to transmit money in accordance with the written contract ranging from a misdemeanor to a felony. If EWA providers fail to remit money in a timely fashion, what is the recourse for Hoosiers?
- **Bank Account Protections:** For EWAs that use ACH payments as the means of collection, we suggest a limit on the number of ACH deduction attempts so borrowers who are struggling don't rack up overdraft or NSF fees.
- **Regulatory accountability and transparency:** In several places in the bill, the Director of DFI has discretion about disclosing information – such as "significant or recurring violations" – or waiving certain requirements that are vital to transparency and accountability. *For example:*
 - *On p. 9 lines 9 and 10, "the director may regularly report significant or recurring violations of this chapter to NMLSR" This should be shall.*
 - *On p. 11 line 24 "This section does not prohibit the director from releasing to the public" licensees or aggregated financial data. This should be required.*
 - *On p. 16, we lay out requirements for licensees such as criminal background checks and credit reports, but then at line 29 "The director may waive one or more requirements." This should not be permitted.*
 - *On p. 18 line 19 we allow EWA providers to opt out of providing data to NMLSR*
 - *On p. 22 we only require EWA providers to keep records of transactions for two years*



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- *And on that same page we ask for data “not more frequently than annually.” This should be at least an annual requirement.*

Data to Inform Policymaking: Finally, in that same vein, we’d really like to see public reporting of aggregate data about who is taking advances, the cost, and repeat borrowing. One of the challenges our coalition has seen with payday lending is that an expensive, short term loan isn’t always the best solution to a financial shortfall – in fact, paying for access to money might worsen a household’s financial position and increase the need for social or charitable services. Making decisions about the value of products and services – especially emerging ones like this – requires data.

We look forward to working with you on this and other efforts to create a fair and responsible marketplace for financial services in Indiana.