

SENATE BILL REPORT

SSB 5328

As of Third Reading

Title: An act relating to the licensing and regulation of businesses providing earned wage access services.

Brief Description: Concerning the regulation of earned wage access services.

Sponsors: Senate Committee on Business, Trade & Economic Development (originally sponsored by Senators Lovick, Dozier and Nobles).

Brief History:

Committee Activity: Business, Trade & Economic Development: 1/30/25, 2/19/25 [DPS, DNP].

Brief Summary of First Substitute Bill

- Creates a licensure framework for employer-integrated earned wage access services to be regulated by the Department of Financial Institutions.
- Makes employer-integrated earned wage access services subject to the Consumer Protection Act.
- Defines consumer-directed earned wage access services as loans that are subject to the Washington State Consumer Loan Act.
- Limits the fees that employer-integrated earned wage access services can charge consumers.
- Limits the aggregate amount of fees that an employer-integrated earned wage access services provider can charge a consumer to no more than \$10 per month.

SENATE COMMITTEE ON BUSINESS, TRADE & ECONOMIC DEVELOPMENT

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.

Majority Report: That Substitute Senate Bill No. 5328 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kauffman, Chair; Cortes, Vice Chair; Hasegawa, Lovick and Stanford.

Minority Report: Do not pass.

Signed by Senators Dozier, Ranking Member; Fortunato, McCune and Wilson, J..

Staff: William Bridges (786-7312)

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;
- 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 First Substitute Bill: Distinguishing Between Two Types of Earned Wage Access Services. Earned wage access services is defined as a financial service that provides earned but unpaid income to a consumer. There are two models of earned wage access services:

- consumer-directed wage access services means any sum of money advanced to a consumer of earned but unpaid income that is based on the consumer's representations and the provider's reasonable determination of a consumer's earned but unpaid income. Consumer-directed wage access services are defined as loans and subject to the Consumer Loan Act in RCW 31.04; and
- employer-integrated wage access services means any sum of money advanced to a consumer based on earned but unpaid income that is determined from employment, income, or attendance data obtained from an employer of the consumer. Employer-integrated wage access services are regulated under the Washington State Employer-Integrated Wage Access Services Act and exempt from the provisions of the Consumer Loan Act in RCW 31.04.

Regulating Employer-Integrated Wage Access Services. *Licensing Persons to Provide Employer-Integrated Wage Access Services.* Beginning July 1, 2026, persons providing employer-integrated earned wage services must be licensed by the Department of Financial Institutions. Licensees are defined as a person based inside or outside the state of Washington who is required to have a license. If a person offers employer-integrated wage access services in the state without obtaining and maintaining a license, the various fees charged to a consumer must be refunded to the consumer and outstanding proceeds are null and void.

A person applying for a license must submit an application to the nationwide mortgage licensing system and registry or in a form prescribed by the Director of the Department of Financial Services (Director). Each applicant must maintain a surety bond of at least \$50,000. The Director may waive one or more requirements for an applicant, and allow applicants to submit other information to address application requirements.

The Director will issue a license when:

- the applicant has paid all required fees;
- submitted a completed application;
- neither the applicant nor its officers have had a license revoked or suspended within the last five years of application;
- neither the applicant nor its officers have been convicted of certain gross misdemeanors or felonies within the last seven years; and
- the applicant has demonstrated financial responsibility.

The Director has the authority to deny applications for licenses under under certain

conditions. A license is not transferable or assignable.

The Director is responsible for the enforcement of all laws and rules relating to the licensing and regulation of licensees. The Director has broad administrative discretion to administer and interpret the Washington State-Integrated Wage Access Services Act. The Director may direct the discontinuance of any injurious or illegal practice if it appears that a license is conducting business in an injurious manner. The Director, or their designee, may bring an action in Superior Court to enjoin the acts or practices that constitute violation to enforce compliance.

The Director is responsible for implementing a database to gather data and provide performance measure information on employer-integrated earned wage access services. The Director is authorized to implement a fee to support the system.

The Director establishes fees that are sufficient to cover the cost of administering the Washington State-Integrated Wage Access Services Act. All fees received from licensees will be deposited into the Financial Services Regulation Account.

Requirements of Licenses. Licensees must:

- retain certain documents for a period of six years; and
- file a report made under oath in a format prescribed by the Director. If the report is late, the licensee is subject to a \$50 per day fine.

Fee Caps on Employer-Integrated Earned Wage Access Wage Advance Transaction. A licensee may not charge to or receive from a consumer more than \$5 per wage advance transaction, and no more than \$10 total per calendar month. Transfer fees, expedited transfer fees, subscription fees, tips, gratuities, donations, voluntary contributions are all subject to these caps.

Employer-Integrated Wage Access Services are subject to the Consumer Protection Act. Violations of requirements relating to employer-integrated wage access services are deemed to affect public interest and constitute an unfair or deceptive act in trade or commerce for purposes of the Consumer Protection 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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.