



House Committee on Commerce and Economic Development
Public Hearing Regarding H. 99
January 29, 2025

Dear Members of the House Committee on Commerce and Economic Development:

My name is Monica Burks, and I am Policy Counsel for the Center for Responsible Lending (CRL), a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. CRL is affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers. I am here on behalf of CRL and the communities we serve to recommend you **oppose H.99: An Act Related to Regulating Earned Wage Access Services.**

Among the hottest consumer finance topics in recent years is the proliferation of online lenders offering fintech cash advances, including the subset of those lenders who offer earned wage advances (EWA). There are many different types of EWA products, from those that are truly employer-integrated wage advances to those that offer nothing more than a traditional small dollar loan, accessed through an app and based on wages earned instead of the borrower's full paycheck. H.99 would require that Vermont regulators treat all iterations of this product as though they are the same, exempting them all from Vermont's longstanding and hard-fought consumer loan statutes, allowing lenders to charge as much as they want, and legitimizing the EWA industry's legal fiction that lending money does not create a loan. The vast majority of EWAs are very short-term loans of small dollar amounts that users can access through a smartphone app. Like payday loan borrowers before them, the initial "advance" creates a cycle of reborrowing. Users report that they borrow nearly every pay cycle, taking out, on average, less than \$100 at a time. Some users also report using multiple apps at one time, "stacking" loans on top of one another and increasing the amount they owe to multiple lenders.

While the industry touts EWA as a "free" option for accessing wages early, so-called no-cost options for consumers are mostly illusory. According to Earnin's terms of service, the non-expedited advance would take 1-2 banking days to be deposited, while the expedited service takes up to 30 minutes. The overwhelming majority of users pay express fees when paying such fees is necessary to get immediate access to cash (after all, that is the entire purpose of getting an EWA advance). Despite this, H. 99 would not require EWA providers to count these fees towards the costs of the "advance", nor would it place any cap on the amount providers could charge for the service.

Beyond charging to expedite the loan, several EWA providers also use a host of techniques, adopted from the field of Behavioral Economics, to induce users to pay the company a "tip" for a product that is advertised as "free." While the bill prevents companies from suggesting a default "tip," that is insufficient to protect consumers. Companies use other tactics such as suggesting to the users that paying a "tip" helps keep the service available. For example, the Earnin terms of service tells consumers that tips "help fund" the service and "keep [it] going." These tactics have proved highly effective at driving users to pay "tips" to the EWA providers.

Multiple regulators have illustrated the substantial finance charge represented by tipping, expedite fees, and subscription fees. In fact, in the past, Earnin has testified that 40% of their revenue comes from tips. This is strong evidence that their business model depends on loans for which the true cost is often going to be higher than advertised or disclosed.

The only pro-consumer way to regulate these companies is to require that all monies received in connection with an EWA transaction, including expedite fees and so-called “tip” be subject to the state’s interest rate cap.

In fact, were Vermont to pass H.99, it would be the **only state with an effective small dollar lending cap to do so**. Vermont would be leading the nation towards deregulation of consumer loans, establishing a new definition of “loan” that, so far, every state with a small dollar rate cap of 36% or less has refused to do.

Earned Wage Access providers target “liquidity constrained and credit thin” laborers living paycheck to paycheck, often struggling with insufficient income to meet their expenses. But costly debt tends to make matters worse. EWA providers should not get a pass to provide a loan product that is exempted from Vermont’s consumer lending statutes, nor should they be allowed to charge whatever they want for the service. As drafted, H.99 is a one-sided contract for the industry, effectively removing cost protections for Vermont consumers. If passed as is, Vermont would be the first state with a history of serious consumer protections to allow this industry to make their own definitions for what a loan is while offering no meaningful guardrails for the finance charge associated with this product.

We urge you to reject any regulation of EWA products that does not include provisions classifying these payday advances as credit, and the providers as lenders. We recommend defining tips and expedite fees as finance charges and subjecting said fees to the existing state usury cap for these single payment loans.

Thank you for your consideration.

Sincerely,

Monica Burks
Policy Counsel
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