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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 14, 2024
9:30 a.m.
Via Videoconference**

**On the following measure:
S.B. 2664, RELATING TO RELATING TO EARNED WAGE ACCESS.**

Chair Keohokalole and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs (Department) Division of Financial Institutions (DFI). The Department offers comments on this bill.

The purpose of this bill is to amend the law governing interest and usury by defining "debt" to include any amount that a consumer agrees to pay under certain conditions; requiring "annual percentage rates" to be calculated pursuant to the Truth in Lending Act and requiring certain charges, amounts and fees to be deemed as "finance charges" in its calculation; clarify the types of expected sources of funds to be included in the term "credit"; and repeal the stand-alone definition of "finance charge".

The Department comments that the definition of "finance charge" that differs from TILA is in how the APR is calculated. It may be confusing for both the employer and employee to determine what the APR will be with this new definition.

The earned wage access (EWA) is often referred to by consumers as instant payment or on-demand pay. EWA is a financial service offered to employees where EWA providers advance accrued wages before the end of their employer's payroll cycle. This service is offered through an app. There are two types of EWA, employer-direct and direct-to-employees. Generally the employer-direct EWA partners directly with EWA companies. Those employers often cover any costs employees incur to get access to their money or have the payment expedited to their bank accounts. Finally, at payday, the employer only pays the difference of the pay reduced by the advance pay.

The direct-to-employees EWAs operate independently of employers. Direct-to-consumer services may have an extra level of integration with the employer's payroll system; employees can still access their earned wages before payday, but the process may involve higher fees and less seamless interactions. If the employee fails to re-pay the EWA for the advance pay, the EWA will take the funds directly from the employees account, which may cause an overdraft fee.

The big advantage to consumers is that it provides employees an alternative to high-cost forms of credit and may help employees meet their financial needs in the middle of a pay period. The EWA accounts are easy to set up for employees as they only need to: 1) download the app and link a bank account (debit cards only); 2) request part of your pay; 3) agree to the potential fees; and 4) get the rest of your paycheck on payday (the advance is deducted from their paycheck).

States are looking at this product as a loan, credit, or a type of payday loan. There are also issues with garnishment and government levy administration that limits the EWA companies. In an employer-direct EWA, employers need to assure that any deductions do not drop the employee's effective rate below the state minimum wage while also being cognizant to comply with state wage assignment statutes.

The Department would be available to work with the committee to address this type of earned wage access programs to protect consumers.

Thank you for the opportunity to testify and offer comments on this bill.

LATE



Testimony in Support of Hawaii SB 2664

Chair Keohokalole and members of the Committee:

The Center for Responsible Lending (CRL) and National Consumer Law Center® (NCLC®) write in support of SB 2664, which clarifies that earned wage advances and other fintech cash advances are loans subject to Hawaii law and interest rate limits. In 2021, the Hawaii Legislature voted unanimously to end predatory payday lending in the state when it enacted HB 1192. SB 2664 closes a potential loophole in that law that fintech lenders exploit to offer 300%+ APR loans to Hawaii residents. The bill would prevent these new high-cost loans, which result in workers paying to be paid, from evading Hawaii’s strong consumer protection laws.

CRL is 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.

Since 1969, the NCLC has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. Among our consumer law treatises is Consumer Credit Regulation, which covers state law treatment of small dollar loans including earned wage advances.

How Earned Wage Advances and Other Fintech Cash Advances Work

Earned wage advances (EWAs) are advances made ahead of payday, repaid on payday. Contrary to industry talking points, these services do not allow a worker to “access” their own money. Instead, these loans are made by third-party lenders that advance a worker wages and then recoup that advance on the worker’s payday (in many cases *directly* from the worker after the worker has been paid by the employer). Thus, these products are loans under any conception of that term.

With employer-based EWAs, a third party typically advances money, based on the amount of wages that have been earned but are not yet due, and is repaid through payroll deduction or another method. Employers may cover the costs, but otherwise workers generally pay fees.

There are also direct-to-consumer products have no connection to payroll and are repaid by debiting a consumer's bank account.

Many of these companies advertise their products as "free" or "0% interest" while obscuring the many ways in which they earn fees from users. To make money, these companies require users to pay a fee to receive an "instant" advance and also collect "tips" or "donations" from users during the process of taking out an advance.

The Cost and Impact of Wage Advances: 330% APR Loans and Paying to be Paid

California studied EWAs and collected [data](#) on nearly 6 million advances, finding:

- The average **APR is over 330%**, for both tip-based and employer-based advances.
- Workers take an **average of 36 loans a year and up to 100**. As with payday loans, using next week's pay to pay this week's expenses leaves a hole in the next paycheck that triggers chronic reborrowing. Fees quickly snowball, and workers end up paying to be paid week after week.
- Companies that **push "tips" collect them 73% of the time**, generating over \$17 million for three companies. California [identified](#) "multiple strategies that lenders use to make tips almost as certain as required fees."
- With the ability to debit payroll or bank accounts, lenders [collect 97% of the time](#). California concluded EWAs are credit as workers agree to repay, and it is immaterial if the loans are "non-recourse" in the sense that lenders don't sue or use debt collectors.

SB 2664 will protect Hawaii workers from these high, snowballing costs, requiring earned wage advances to comply with the same fee and interest rate limits as other cash advances.

EWAs and Other Fintech Payday Loans are Loans

SB 2664 is consistent with the historic and modern treatment of wage advances.

Small dollar loan laws across the country arose to address abuses by "salary lenders." Loan laws in [at least 24 states](#) include in their loan definitions money provided for assignments of unpaid earnings or for wages "earned or to be earned." EWAs also fit in other states' loan definitions.

More recently:

- In a [December 2023](#) comment, the Consumer Financial Protection Bureau stated that earned wage advances "**share fundamental similarities with payday lending products**," and that California's proposal to treat them as loans is consistent with federal law. The CFPB's 2020 advisory opinion only applies to [completely free advances](#).

- Connecticut has enacted a law sponsored by its banking regulator to treat earned wage advances as loans
- A similar bill from the Maryland State regulator is pending.
- California has proposed to treat EWAs as loans, and “tips” and expedite fees as charges.

SB 2664 is important to clarify Hawaii’s treatment of wage advances and to prevent evasions of Hawaii’s anti-predatory lending laws.

The bill would continue to exempt free employer loans, and to allow third-party EWA services where the employer covers the cost or the service is otherwise free to workers.

But the bill would make clear that any advance that comes with a cost is a loan that must comply with Hawaii’s interest rate limits. Third-party lenders that charge fees for wage advances must simply comply with the cost limits and other protections that other cash advances follow.

Old Wine in New Bottles

Evasions often take the form of new innovations. The payday loan industry got its start by arguing that it was not making loans, just charging check cashing fees on deferred checks. We must reject similar arguments equating fees for fintech cash advances to ATM fees.

High-cost earned wage advances drain fees from low-wage workers, disproportionately from communities of color, who just end up paying to be paid. The loans should comply with Hawaii law.

Thank you for the opportunity to testify. We urge you to support SB 2664.

Yours truly,

Monica Burks
Policy Counsel
Center for Responsible Lending

Lauren Saunders
Associate Director
National Consumer Law Center



DailyPay, Inc. Testimony

TO: Senate Commerce and Consumer Protection
Committee
RE: SB 2664
DATE: February 14, 2024
SUBJECT: Testimony from DailyPay, Inc.

Position: Oppose

Testimony:

Good morning.

Chair Nakashima, Vice Chair Sayama, and members of the Commerce and Consumer Protection Committee thank you for the opportunity to provide opponent testimony on Senate Bill 2664.

My name is Ryan Naples, and I serve as the Director of Public Policy at DailyPay, Inc. We are the leading provider of employer-integrated on-demand pay nationwide, partnering with hundreds in-state businesses in Hawaii. Today, thousands of Hawaiians have used DailyPay's EWA service.

While we may not be household names, all of our companies are currently operating in the state.

As an industry, I am joined today by several other providers of earned wage access. Together, we are testifying in opposition to Senate Bill 2664. We seek for our comments to serve as a starting point for a constructive dialogue on how best to regulate EWA in a way that benefits Hawaiian workers.

dailypay.



As this committee knows, two-thirds of Americans live paycheck to paycheck. But bills and emergencies do not wait every two weeks or once a month for an employer to run payroll.¹

Earned wage access is popular with workers in Hawaii because it facilitates access to the wages they have earned but have yet to receive. This allows EWA users to manage their finances and access liquidity when unexpected expenses arise. It also gives hardworking employees an alternative to late fees, bank overdraft fees, and high-cost credit products.

EWA is popular with businesses because it reduces employee turnover, absenteeism, and filling open jobs. My company's own in-house surveys have found, that specifically, EWA is popular with employers because it reduces turnover by 45%, employee absenteeism by 38%, helps businesses and recruiters fill roles 52% faster, and employees are 3x more motivated to pick up extra shifts.

While each EWA company differs slightly, we share a few key characteristics.

1 - First, all EWA is based on wages earned. Workers can only access their own money they have already worked for. We are not providing credit.

2 - No EWA provider charges interest or late fees because our product is not a loan.

3 - All EWA products are also non-recourse. If an employer fails to make payroll, the risk is on the EWA provider, not the worker. There is also no requirement to repay, no collection activity, and no credit bureau reporting for non-payment.

¹ SecureSave, January 25, 2023, Survey: Americans personal savings are plummeting as 74% are now living paycheck to paycheck (<https://www.prweb.com/releases/2023/01/prweb19128966.htm>).



4 - While there are usually some small costs associated with EWA, at least one “no-cost” option is offered by most EWA providers, such as through a debit card, or a next business day bank transfer. A nominal fee of about \$3 for instant delivery to any bank account is also common.

Without EWA, available options to access funds quickly can be very costly, especially without good credit.

In 2021, DailyPay commissioned [independent research](#) that found the majority of our platform users previously relied upon costly financial strategies that harmed their financial health before gaining access to DailyPay. Specifically, 78% of our users had previously paid bills late or not at all, 49% had borrowed money from friends and family, 39% regularly overdrew their bank accounts and incurred a fee, and 21% took out small dollar loans.

For the 40% of our users who were frequent overdrafters, 97% of these individuals no longer did so after gaining access to EWA. This resulted in savings of approximately \$660 per year, per user, and the results were equally positive for the 78% of our users previously paying other bills late.

Independent research commissioned in 2022 [corroborated these findings](#) as well.

I do want to address how we know we help people get out of debt. From February to May of last year we closely tracked our high frequency users. Our data showed a 50% decline in high frequency usage of our platform after 4 weeks, an 80% decline by week 8, and within 12 weeks or 3 months, a 97% decline in high frequency usage. This meant that less than 1% of people on our platform are high frequency users for 3 months.

I also want to address what could happen if EWA products are radically abused or mis-used. In partnering with hundreds of employers across the country, this is simply not the experience that our thousands of



employee-users have. To the contrary, we have heard from countless stories on how our platform has allowed employees to bridge short-term cash crunches and get through challenging times. For the people that are frequent users, we break the cycle of debt.

Clearly, an extremely small portion of people use our platform often when they have an emergency, because it is a low cost or no-cost alternative to all other options available. This accurately depicts how EWA helps people break the debt cycle.

In December 2023, the Financial Health Network recently released a user study sponsored by DailyPay that spoke to users of any EWA product available. The study found people used EWA to pay bills due ahead of their paycheck or cover some other financial shortfall. Nearly all participants in the study did not view EWA as a loan. Instead, participants asserted that EWA provided wages they had already earned, fundamentally different from borrowing against future earnings.

The participants also preferred EWA to alternatives and other short-term liquidity options, with one user adding that EWA allowed them “to access the liquidity they needed, while preserving their dignity.”

This is welcome feedback and we believe it is because our companies do the opposite of how lenders treat consumers. For example, since EWA is not credit, our industry conducts no underwriting and does not base its low transaction fees or access to wages on creditworthiness. We also do not charge these low fees in installments.

For these reasons as well, an APR rate, which would be misleadingly high even with our low fees, are incongruous to how EWA is structured. These rates therefore do not represent the actual cost and potential savings available to EWA users.



EWA is best regulated as a separate and distinct financial product because a credit designation is not the answer. Senate Bill 2664 would radically change how EWA services are structured, removing an important lifeline for Hawaiians, and negatively impacting the employers in the state who have come to use this product as an important tool to help their employees cover short-term liquidity crunches in the modern day.

DailyPay, Inc. strongly supports the creation of meaningful consumer protections for financial products that prevent costly predatory products from getting trapped in unending cycles of debt. Our company and our industry exist because we offer a viable alternative.

Instead of passing SB 2664, as written which we oppose, we respectfully request the opportunity to collaborate on a compromise that creates new regulatory oversight and licensing for the EWA industry. Our request is that the compromise allows EWA to continue to be utilized by those presently accessing this service.

Thank you for your time and I would be happy to take any questions.

Immediate

LATE

To: Senate Commerce and Consumer Protection Committee
Re: SB 2664
Date: February 14, 2024
Subject: Testimony from Immediate Solutions, Inc

Position: Oppose

Thank you Chair Keohokalole, Vice-Chair Fukunaga, and members of the Senate Committee for the opportunity to speak today.

My name is Matt Pierce, Founder and CEO of Immediate, a Financial Wellness and Earned Wage Access company. We share the Committee's goal of increasing safeguards for the people of Hawaii, but respectfully testify in opposition to Senate Bill 2664 (SB 2664), due to the inclusion of Earned Wage Access.

We started Immediate with a mission to combat predatory lending. When workers face unexpected expenses between paydays, traditional options go from bad to worse. High interest credit or cash advances leave workers deeper in debt to address a short-term need.

The concept of responsible earned wage access is a system designed to contract with employers as an extension of their payroll to allow employees access to their earned but unpaid wages. Our model includes customizable guardrails, often set in partnership with an employer, to provide access but protect the employee's overall paycheck.

As others have mentioned, EWA is not a loan or form of credit. Since these are earnings the employee has a legal right to, the wages they are accessing don't constitute a loan. Whereas traditional administrative payroll keeps wages locked in a cycle, technology now empowers employees to access their earnings when they need it most. We don't charge interest or tips to utilize our service. Unlike credit products, we do not pull credit, report employees to creditors, or have recourse in any way for helping facilitate access for the employee.

There are multiple free options for employees to access their earned funds but often employees need earnings right away to pay a bill on time, or fill their gas tank to get to work, and will need their money within minutes. In contrast, payroll systems often take days to issue an off-cycle payment. Our users incur a flat, nominal \$3 fee to receive funds immediately due to the costs incurred to move those earnings in real-time.

As many have pointed out, workers in Hawaii are living paycheck to paycheck. Through user data, we found that over 85% of usage has been for needs-based items with the top uses being Bills, Groceries, Transportation, and Housing. Limiting use of EWA doesn't prevent workers from needing access to funds in between paydays to manage these expenses- it just prevents them from using a responsible way to access money they've already earned.

Earned Wage Access is a responsible alternative to a loan and the inclusion of it in SB2664 will negatively impact the people of Hawaii who rely on it for their basic needs.

Our request is that we can have the opportunity to collaborate with the Committee on a new framework to regulate EWA under its own financial product and not as a loan.

Thank you again for your time and consideration today.

Matt Pierce
Founder/CEO, Immediate



HAWAII WORKERS CENTER

Defending and Respecting the workers of
Hawai'i

LATE

LATE

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February 13, 2024

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Executive Director

Sergio Alcubilla III, Esq.

Hawai'i State Senate

Committee on Commerce and Consumer Protection

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

RE: SUPPORT for S.B. 2664 RELATING TO EARNED WAGE ACCESS

Dear Chair Sen. Keohokalole, Vice-Chair Sen. Fukunaga, and Members of the Committee on
Commerce and Consumer Protection:

The Hawai'i Workers Center (HWC) envisions a Hawai'i in which all workers are empowered to
exercise their right to organize for their social, economic and political well-being.

It is a resource of information, education, training and organizing for Hawaii's workers.

The HWC stands in support of S.B. 2664 which amends the law governing interest and usury by
defining "debt" to include any amount that a consumer agrees to pay under certain conditions;
requiring "annual percentage rates" to be calculated pursuant to the Truth in Lending Act and
requiring certain charges, amounts, and fees to be deemed as "finance charges" in its calculation;
clarifying the types of expected sources of funds to be included in the term "credit"; and repealing
the stand-alone definition of "finance charge".

While Earned Wage Access (EWA) has its benefits in providing access to some of a worker's earned
wages before payday, there are pitfalls that need to be addressed to provide greater transparency
for workers that use this system. Specifically, plain language should be used when providing
disclosures under the Truth in Lending Act. As this model gains greater traction and use here in
Hawai'i where so many are living paycheck to paycheck, attempts to better protect workers and
consumers should be supported.

We ask that you please pass and support S.B. 2664.

Sincerely,

Sergio Alcubilla
Executive Director



American Fintech Council Testimony

TO: The Senate Committee on Commerce and Consumer Protection
FROM: Ian P. Moloney, Senior Vice President, Head of Policy and Regulatory Affairs,
American Fintech Council
DATE: February 14, 2024
SUBJECT: Senate Bill 2664

Position: Oppose.

Testimony:

Thank you Chair Keohokalole, Vice-Chair Fukunaga, and members of the Senate Committee on Commerce and Consumer Protection for allowing me the opportunity to testify in opposition to Senate Bill 2664 (SB 2664). My name is Ian Moloney, I am the Senior Vice President, Head of Policy and Regulatory Affairs at the American Fintech Council (AFC).

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting responsible innovation in financial technology (Fintech) and encouraging sound public policy. To that end, we have developed a specific set of standards for determining what constitutes a responsible Earned Wage Access (EWA) provider.

Simply put, EWA is not a loan and should not be regulated as such. As written, SB 2664 would shoehorn EWA into existing Hawaii lending laws and develop definitions that are incongruous with other state and federal laws.¹ Categorizing EWA as a loan would make operating in Hawaii unviable for responsible actors and would fundamentally change the current service offering.

As I mentioned, the American Fintech Council believes in properly regulating Earned Wage Access. In our view, the best path forward is to develop a new and distinct regulatory framework for EWA that only allows responsible actors to offer the product in Hawaii. As we have successfully done in other states, we commit to working with you to develop this framework.

In closing, I respect the bill sponsors' efforts to ensure that Hawaiians are adequately protected as they engage in EWA services. However, as I noted, SB 2664 may not be the right path to attain this goal and could ultimately harm consumers. According to data we collected from our members, over 100,000 Hawaiians already use the responsible EWA services provided by our members. My sincere hope is that we can find a path forward to draft pragmatic legislation that will establish the proper guardrails for the industry while allowing responsible EWA providers to

¹ See definition of "debt" under the Fair Debt Collection Practices Act, 15 U.S. Code § 1692(a)(5).

continue offering their much-needed services across Hawaii. I thank the committee for your consideration of my perspectives and am happy to answer any questions.



Testimony in Support of Hawaii SB 2664

Chair Keohokalole and members of the Committee:

The Center for Responsible Lending (CRL) and National Consumer Law Center® (NCLC®) write in support of SB 2664, which clarifies that earned wage advances and other fintech cash advances are loans subject to Hawaii law and interest rate limits. In 2021, the Hawaii Legislature voted unanimously to end predatory payday lending in the state when it enacted HB 1192. SB 2664 closes a potential loophole in that law that fintech lenders exploit to offer 300%+ APR loans to Hawaii residents. The bill would prevent these new high-cost loans, which result in workers paying to be paid, from evading Hawaii’s strong consumer protection laws.

CRL is 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.

Since 1969, the NCLC has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. Among our consumer law treatises is Consumer Credit Regulation, which covers state law treatment of small dollar loans including earned wage advances.

How Earned Wage Advances and Other Fintech Cash Advances Work

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Many of these companies advertise their products as "free" or "0% interest" while obscuring the many ways in which they earn fees from users. To make money, these companies require users to pay a fee to receive an "instant" advance and also collect "tips" or "donations" from users during the process of taking out an advance.

The Cost and Impact of Wage Advances: 330% APR Loans and Paying to be Paid

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- The average **APR is over 330%**, for both tip-based and employer-based advances.
- Workers take an **average of 36 loans a year and up to 100**. As with payday loans, using next week's pay to pay this week's expenses leaves a hole in the next paycheck that triggers chronic reborrowing. Fees quickly snowball, and workers end up paying to be paid week after week.
- Companies that **push "tips" collect them 73% of the time**, generating over \$17 million for three companies. California [identified](#) "multiple strategies that lenders use to make tips almost as certain as required fees."
- With the ability to debit payroll or bank accounts, lenders [collect 97% of the time](#). California concluded EWAs are credit as workers agree to repay, and it is immaterial if the loans are "non-recourse" in the sense that lenders don't sue or use debt collectors.

SB 2664 will protect Hawaii workers from these high, snowballing costs, requiring earned wage advances to comply with the same fee and interest rate limits as other cash advances.

EWAs and Other Fintech Payday Loans are Loans

SB 2664 is consistent with the historic and modern treatment of wage advances.

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More recently:

- In a [December 2023](#) comment, the Consumer Financial Protection Bureau stated that earned wage advances "**share fundamental similarities with payday lending products**," and that California's proposal to treat them as loans is consistent with federal law. The CFPB's 2020 advisory opinion only applies to [completely free advances](#).

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- A similar bill from the Maryland State regulator is pending.
- California has proposed to treat EWAs as loans, and “tips” and expedite fees as charges.

SB 2664 is important to clarify Hawaii’s treatment of wage advances and to prevent evasions of Hawaii’s anti-predatory lending laws.

The bill would continue to exempt free employer loans, and to allow third-party EWA services where the employer covers the cost or the service is otherwise free to workers.

But the bill would make clear that any advance that comes with a cost is a loan that must comply with Hawaii’s interest rate limits. Third-party lenders that charge fees for wage advances must simply comply with the cost limits and other protections that other cash advances follow.

Old Wine in New Bottles

Evasions often take the form of new innovations. The payday loan industry got its start by arguing that it was not making loans, just charging check cashing fees on deferred checks. We must reject similar arguments equating fees for fintech cash advances to ATM fees.

High-cost earned wage advances drain fees from low-wage workers, disproportionately from communities of color, who just end up paying to be paid. The loans should comply with Hawaii law.

Thank you for the opportunity to testify. We urge you to support SB 2664.

Yours truly,

Monica Burks
Policy Counsel
Center for Responsible Lending

Lauren Saunders
Associate Director
National Consumer Law Center

February 14, 2024

Dear Chair Keohokalole and Honorable Members of the Committee:

On behalf of Payactiv, an employer-integrated earned wage access (EWA) provider, we are **respectfully testifying as opposed to SB 2664**. This bill would create a number of adverse consequences for consumers and would likely lead to significant reduction of EWA services in Hawaii.

Payactiv partners with employers across the country to provide EWA as a benefit to their employees. Payactiv signs a contract with these employers, integrates into the time and attendance and payroll systems (such as ADP, Paychex, Paycor, etc.), and makes an accessible balance of verified, earned wages available to workers. If the employee access earned wages, the EWA is then settled through their paycheck and the paycheck is adjusted by the EWA amount.

Access to earned wages can make all the difference for someone living paycheck to paycheck. Without this critical service, workers would have to turn to traditional, high-cost products like payday loans, title loans, and credit card debt.

With Payactiv's program, the employee has five free ways to access their earned wages. The five free options are (1) instant deposit to Payactiv's debit card program if the employee has direct deposit set up to that card; (2) ACH transfer to any bank account, which generally arrives the next business day; (3) a bill pay feature integrated in the app to pay a bill; (4) a load to their Uber account; and (5) load to their Amazon account.

If an employee doesn't want to take advantage of one of these free options and instead wants their wages transferred instantly to any bank account (beyond the Payactiv card), they can choose to pay a flat fee of \$3.49. Since EWA is not a loan, there is no interest, no late fees, or other penalties. There is no inability to pay risk, and there is never any recourse against the consumer. There are no credit checks or credit impacts from participating. In [a recent FHN study](#), users reported they do not view EWA as a loan and value it as an alternative to loan products.

In Hawaii, the [Pew Research Center](#) states it costs a worker \$138 in fees and interest to borrow \$500 in a payday loan. **This is \$138 for a payday loan, in comparison to a maximum of \$3.49 to access that same amount through EWA.** It is clear that EWA is a responsible, pro-worker alternative to payday loans.

Payactiv has been operating in Hawaii since 2017. Payactiv partners with over 325 businesses in Hawaii and about 8,000 Hawaii workers have access to Payactiv's EWA in Hawaii if they need it. Workers highly value access to their earned wages, and there are no complaints from Hawaii users in the CFPB database.

Payactiv is in strong support of regulation for the EWA industry to codify important consumer protections. While we believe SB 2664 forces EWA into an incongruent lending framework, we respectfully recommend the model bill passed in Nevada (SB 290) in 2023 and [endorsed by the Council of State Governments](#) (CSG) as the appropriate framework to regulate EWA. This framework creates a licensing system for EWA providers and encodes a number of meaningful consumer protections that are aligned with how the product operates.

Thank you for your engagement on this topic, and I am happy to take any questions.

Sincerely,
Molly Jones
Head of Public Policy, Payactiv



Innovative Payments Association

110 Chestnut Ridge Road

Suite 111

Montvale, NJ 07645

February 14, 2024

The Honorable Jarrett Keohokalole
Chairman, Senate Committee on
Commerce and Consumer Protection
Hawaii State Senate
415 South Beretania Street
Honolulu, HI 96813

Re: The IPA Opposes SB 2664

Mr. Chairman and Members of the Committee.

My name is Brian Tate. I am the President and CEO of the Innovative Payments Association. Our members include a number of companies who are part of the value chain which makes EWA available to the public.

Today I am here to testify to express my opposition to SB 2664 and to convey the IPA's willingness to collaborate with members of the Committee to develop legislation that will be beneficial to working Hawaiians.

While the preamble of the SB 2664 acknowledges that many Hawaiians face economic instability, the bill would make it more difficult for those same people to utilize technology that can help them meet their day-to-day financial needs by inaccurately classifying all EWA services as loans. Converting wages into credit on its face contradicts decades of wage and hour laws that seek to protect all workers from those who seek to unjustly take away their hard-earned wages.

Let me be clear, EWA is not a loan or a form of credit.

EWA services make earned, but yet to be paid, wages available to employees. Once wages are earned through labor, the employee has a fundamental property right to them whether they are paid out today or on Friday. Those wages should not be transformed into something they are not, such as credit, simply because the employee has elected to receive their earned, but not yet paid wages before their employer's arbitrary payday.

In their 2020 Advisory Opinion, the Consumer Financial Protection Bureau said it best when it stated: "EWA products seek to address the lag between consumers' hours worked and receipt of their paychecks by facilitating advance access to earned but as yet unpaid wages."



Innovative Payments Association

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In the same Advisory Opinion, the CFPB also said: “credit has not been extended because the consumer is, in effect, only using the consumer’s own money” and “thus (EWA) functionally operates like an employer that pays its employees earlier than the scheduled payday.”

EWA services are a valuable tool for American workers to manage financial insecurity. Don’t take my word for it, just review the research conducted by the Financial Health Network. EWA allows employees to gain greater control over their own financial lives without having to rely on costly alternatives like traditional payday loans or overdraft programs.

For these reasons, I respectfully request that the Committee withdraw or amend its bill, and work with the IPA, and our members, to learn more about EWA and its myriad benefits to workers, and to craft legislation to regulate EWA in a more appropriate manner, while still permitting EWA companies to work with employers and employees in Hawaii.

I hope this is the beginning of a much longer and more detailed conversation. I welcome the opportunity to meet with you and your staff(s) to discuss policy solutions that benefit all Hawaiians.

This concludes my testimony, and I am happy to answer any questions.

Additional Resources:

- **2017 Cordray Payday Rule Statement:** [Encouraging Develop of EWA products](#)
- **2020 CFPB:** [EWA Advisory Opinion](#)
- **2021 House Financial:** [Task Force Hearing](#) on EWA/BNPL
- **2022 IPA:** [EWA Letter to CFPB](#)
- **2021 Financial Health Network:** [EWA and Direct-to-Consumer](#) Advance Usage Trends
- **2023 Financial Health Network:** [Exploring Earned Wage Access](#) as a Liquidity Solution
- **2024: Financial Health Network:** [Exploring Earned Wage Access as a Liquidity Solution \(finhealthnetwork.org\)](#)
- **2024: Law360:** [Eric Goldberg on LinkedIn: CFPB Shouldn't Ditch Prior Earned Wage Access Precedent - Law360](#)

Sincerely,



Innovative Payments Association

110 Chestnut Ridge Road

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Brian Tate
President and CEO
IPA

6258614.1



February 6, 2024

The Honorable Jarrett Keohokalole
Chair, Commerce and Consumer Protection
Committee
Hawai'i State Senate
senkeohokalole@capitol.hawaii.gov

The Honorable Carol Fukunaga
Vice-Chair, Commerce and Consumer
Protection Committee
Hawai'i State Senate
senfukunaga@capitol.hawaii.gov

The Honorable Donovan M. Dela Cruz
Chair, Ways and Means
Hawai'i State Senate
sendelacruz@capitol.hawaii.gov

The Honorable Sharon Y. Moriwaki
Chair, Ways and Means
Hawai'i State Senate
senmoriwaki@capitol.hawaii.gov

RE: In opposition to S.B. 2664, relating to earned wage access

Dear Senators:

PayrollOrg (PAYO) supports the Hawai'i legislature's efforts to regulate earned wage access (EWA) benefits to protect consumers from predatory practices. However, PAYO is concerned about bill provisions defining EWA as an advance and a loan, which could prevent employee-consumers from taking advantage of EWA benefits and without providing the consumer protections we all envision.

About PAYO

PAYO, formerly the American Payroll Association, is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. PAYO's Government Relations Task Force partners with government agencies to help payroll professionals with compliance, while minimizing the administrative burden on government, employers, and individual workers. PAYO members are directly responsible for calculating wages and withholding for their employers across all industries and employer types. PAYO does not endorse any technology or management approach. Therefore, PAYO is not positioning itself with any specific business, employer, or group.

These comments are only applicable to employer-integrated models of EWA. Direct-to-consumer models do not impact payroll management.

Financial Wellness

Today, employees say that the most important employer-provided benefit is financial wellness.



Research data varies on employees' stress about their finances, but the numbers are significant. A [December 2023 report](#) by PYMNTS and LendingClub found that 62% of employees are living paycheck to paycheck. PwC [found](#) that 60% of employees are stressed about their finances. BrightPlan's [2023 survey](#) determined that 92% of employees are financially stressed. In PAYO's [2023 Getting Paid in America Survey](#), 49% of survey participants said it would be very difficult if their paycheck was delayed for just one week.

Employers are adopting or improving financial wellness programs to increase worker satisfaction and retention. The Employee Benefits Research Institute found that 85% of the companies it [surveyed](#) indicated that financial wellbeing initiatives had either a large impact or a small impact on employees' mental, emotional, and social wellbeing.

The research data on the need for financial wellness are not limited to lower-income workers. Instead, financial health applies to all employees regardless of earned income amounts. This is why payroll professionals are helping their employers to identify and offer employees financial wellness benefits.

One employer-provided financial benefit comes from advances in technology that have made possible the ability of employees to access their earned wages before their regularly scheduled payday. These technologies, collectively known as earned wage access (EWA), are an important benefit and in demand by employees.

Culture of U.S. Consumers

In the U.S., neither government entities nor employers control how employees spend their earned income (with some exceptions). Therefore, regardless of which financial tools employees use or the laws and regulations that apply to these tools, the advantages and potential disadvantages of EWA are based on employees' needs at the time wages are accessed.

In context of the U.S. culture of employee financial control, it is imperative that Hawaii's approach to regulating EWA does not interfere with employees' decision-making to better manage their finances. Regulations should not unintentionally lead to more expensive outcomes for employees. Arbitrarily adding restrictions on EWA products and services is not the answer, especially without a clear process to properly evaluate restrictions.

Technological Advances Versus Administrative Capabilities

Financial tools, like EWA, bridge the gap between pay periods to help workers meet expenses as they come due. If implementation and use of EWA become too cumbersome, the value of the benefit will diminish and could become untenable for use.

The payroll period concept began during the Industrial Revolution when factories hired workers and paid them weekly. Over time, payroll periods have been used to ensure that workers received

pay at regular intervals, overtime pay could be calculated, taxes were paid, children received support, and contributions were made to healthcare insurance and retirement plans.

This background information is important. Today, technological advances to payroll management systems have created the capability to eliminate the pay period approach, meaning the technology would allow workers to receive their earned pay at any time. However, payroll professionals, employers, and government agencies do not have the resources to manage the administration of this capability. The technology is available but not all employers and government agencies are able to acquire, implement, and maintain these systems or have the cash flow to fully process payroll and legal withholding at employees' demand.

EWA is Not a Form of Credit

PAYO asserts that employer-integrated EWA is not a form of credit, and fees should not be considered in the context of credit. EWA is simply a new administrative feature that allows employees to obtain part of their already earned wages easily and efficiently in the current pay period before the next scheduled payroll.

In EWA, employees receive earned wages earlier than they would otherwise and without owing interest. That an employer makes wages available to employees earlier than the scheduled date, does not necessarily mean that an employee has received an income-based advance. Because the amount of earnings an employee receives on a regularly scheduled payday is reduced by the amount the employee received at an earlier date, also does not necessarily mean the earlier payment is defined as credit. This is especially true when the employee is receiving already earned wages and the employer is providing real-time payroll data to the EWA provider to ensure accuracy of earnings calculations.

When EWA is employer-integrated, employers may pay the EWA provider fees or pay for the provider's services through a contract arrangement. It is not unusual for employers to share the costs of benefits with employees. For example, provision of healthcare insurance benefits usually involves employee contributions that are withheld from their pay. The cost of other benefits, such as gym memberships, subsidized meals, and wellness programs, are also provided through shared payments by employers and employees. EWA benefits should be considered in this context. If the employee costs are too high and employees do not take advantage of the benefits, the employer's purpose in offering the benefits is defeated. This is part of the negotiation between the employer and EWA vendor.

So too, if Hawai'i regulates EWA as a loan measured through Annual Percentage Rate (APR) fee caps, employees will be forced to take out larger amounts than are needed, e.g., \$500 or more when they only need \$60, and without adding to consumer protections. If EWA is considered a loan, employees, especially those living paycheck to paycheck, would not be able to apply the least-costly alternative that would otherwise be available to them. Employees only options will be to seek high-interest

payday loans, overdraw their bank accounts resulting in non-sufficient fund fees, or pay bills late. These expensive options build actual cycles of debt that EWA benefits are designed to prevent.

Predatory Practices

PAYO supports regulation of EWA benefits and offers recommendations to the Hawai'i legislature. Payroll professionals have consistently stated that predatory practices should not be allowed. Requirements should include transparency for employers, payroll professionals, employees, and government agencies with plain language explanations of an EWA provider's process, how the provider complies with regulatory requirements, how payroll management will be impacted, all fees and costs associated with EWA benefits, and employee responsibilities.

Usually, predatory practices refer to high-interest rates and penalties to repay loans, threats that an employee's credit rating will be lowered, and harassment by providers to pay the money back. In employer-integrated EWA, there is no interest and funds are reimbursed to the EWA provider on the employee's next payday. A true EWA benefit would not have carryover beyond the next pay period. EWA providers have no recourse if unable to recoup an EWA amount with the next payroll.

To discuss these comments on EWA benefits further, PAYO can be reached through Alice Jacobsohn at 202-669-4001 or ajacobsohn@payroll.org.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For: Government Relations Task Force
State and Local Topics Subcommittee:
Cochairs Pete Isberg; Carlanna Livingstone, CPP; and Bruce Phipps, CPP

Electronic Payments Subcommittee:
Cochairs Nancy Fletcher, CPP; Ronn Gilson, CPP; and Kristine Willson, CPP

Cc: The Honorable Chris Lee - senlee@capitol.hawaii.gov
The Honorable Angus L.K. McKelvey - senmckelvey@capitol.hawaii.gov

SB-2664

Submitted on: 2/13/2024 4:57:42 AM

Testimony for CPN on 2/14/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|------------------------------------|---------------------------|-------------------|
| Robert Singleton | Testifying for Chamber of Progress | Oppose | Remotely Via Zoom |

Comments:

Chamber of Progress is opposed to this bill because it would treat Earned Wage Access (EWA) as a form of debt, and impose restrictions and calculations on these innovative financial products that would be appropriate to forms of credit. EWA is not a form of a credit, as only wages already earned by the those receiving the funds are made available. My remote testimony via Zoom will provide more details.

Sincerely,

Robert Singleton, Director of Policy and Public Affairs, US West

Hawaii Senate Bill 2664
Testimony of Kevin Lefton – Wagestream, Inc.
US Head of Legal and Regulatory Affairs

Good afternoon.

Thank you very much for the opportunity to submit testimony on this very important issue. My name is Kevin Lefton, and I am the US Head of Legal and Regulatory Affairs for Wagestream. Wagestream is an employer-integrated Earned Wage Access provider similar to DailyPay and PayActiv, other Earned Wage Access providers that are testifying today.

Like many other providers in this space, we are supportive of regulations that help protect consumers, and like so many other Earned Wage Access providers, we oppose payday loans and other predatory financial products. However, it is critical to understand that Earned Wage Access services are not credit and are not a loan and should not be viewed or regulated as such. Earned Wage Access services are critical to many users, many of whom are in the hospitality, healthcare, manufacturing, education industries, and other many important industries that have hourly and frontline workers.

The benefits to users of Earned Wage Access services are that they are paid for wages they have already earned when THEY need it and have a low or NO cost option that is an alternative to high-cost payday loan or excessive overdraft charges that many consumers face without this service.

The benefit to employers is that the employer has an easier time filling shifts when workers know they can be paid the same or next day. Further, studies have shown that it is easier to attract and retain new talent with Earned Wage Access as an employee benefit.

To really understand employer-integrated earned wage access, it is critical to understand how the service works:

1. First, the earned wage access provider (such as Wagestream) enters into a contract with the employer. This allows the Earned Wage Access provider to obtain accurate employee time and attendance data. We are not estimating earned wages - we see actual data.
2. Second, unlike credit or loan products:
 - a. Earned Wage Access services are provided at either low or no cost to the user (low cost would typically be less than an ATM fee);
 - b. Providers do not charge interest;
 - c. Providers do not pull credit reports on the user;
 - d. The service is not based on creditworthiness;
 - e. The service is non-recourse to the user; and
 - f. There are no reports to collections or creditors at any time!

In summary, Earned Wage Access services are an excellent financial tool for employees, and a great benefit for employers to offer. This service should not be considered credit or a loan, because Earned Wage Access services are based on wages that have already been earned and do not share any of the same characteristics of a loan.

Earned Wage Access is a financial well-being tool that helps its users, many of which are hourly and frontline workers, better plan their finances and manage future expenses and emergencies.

Thank you all for your time on this important issue.



ZayZoon US Inc.
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Scottsdale, AZ 85251
www.zayzoon.com

February 13, 2024

Submitted via E-Mail

Committee on Commerce & Consumer Protection
Honolulu, HI 96813

LATE

Re: Senate Bill 2664 – An Act Relating to Earned Wage Access

To Whom it May Concern:

This letter is submitted to the Committee on Commerce & Consumer Protection (the "**Committee**") on behalf of ZayZoon US Inc. ("**ZayZoon**"), in response to Senate Bill 2664 ("**SB2664**"), which relates to the regulation of earned wage access ("**EWA**") services in Hawaii. I would like to thank you all for your work on the regulation of EWA. We believe in the merits of regulation as a path to provide certainty and security for both consumers and industry participants, and appreciate your diligence regarding this important new financial tool for consumers.

While we support the responsible regulation of EWA services, we **OPPOSE SB2664** as presented because this bill would provide the framework for the responsible provision of EWA services to consumers in Hawaii. If passed, this would be the first in the nation legislation of EWA services, and we believe that SB2664 represents carefully considered protections for Hawaii consumers, while ensuring they continue to have access to this responsible financial tool.

ZayZoon is a financial technology platform that partners with payroll providers and employers to provide consumers with responsible, low-cost financial services, including EWA services, financial literacy tools, and other resources. We primarily work with small to midsize businesses to provide EWA services to their employees, and we provide EWA services to businesses with as few as ten employees. Companies like Walmart can offer EWA programs in house, and we are proud that we are able to help these small businesses offer employee benefits like EWA and free financial literacy tools. This helps these small businesses compete.

ZayZoon would be happy to meet with members of the Committee directly to discuss these important services and our comments on SB2664 in more detail.

APR is not an Appropriate Measure for EWA

Using APR as a measure for EWA services is improper because it represents the yearly interest charged on loans, which is not reflective of the nature of an EWA transaction. The fees charged by EWA providers are related to the processing and delivery of the disbursement (e.g. in an expedited manner, or to a specific out-of-network account). With most EWA providers, these fees are single payment of a flat rate fee that is, on average, \$2.59 - \$6.27.¹ There is no ongoing interest associated with the advance, no late fees, or any other fees that are imposed on the consumer as a result of the transaction. APR is also calculated based on the period of time between the initial advance and the date of repayment. If two employees are paid bi-weekly, and one takes a payout on the first day of a new pay cycle, whereas the other takes their payout on the 13th day, they will pay the same transaction fee, but the APR will be dramatically different for the two. The only difference between these two employees would be the timing of when they needed to access their funds. By defining EWA as a loan and using APR as the measure for permitted fees, one employee might be precluded from using EWA because the repayment date would be too close, thus causing the APR of the transaction to be too high.

¹ Financial Health Network, *Earned Wage Access Report*, p. 11, available at https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-_sage_Trends_FINAL.pdf

But the actual costs to both employees are the exact same. It is for this reason that we believe that APR does not adequately capture EWA transaction fees.

We believe that a more analogous financial product is a bank account being accessed through an ATM, where the employee's "account" is comprised of their earned wages that have yet to be paid by the employer, and the EWA service is analogous to an ATM transaction. Customers are able to access cash immediately, for a small flat fee,² and the amount of the withdrawal is settled between the bank associated with the ATM and the customer's bank. The service is simple for consumers to understand, low cost, and provides immediate access to cash. Similar to how ATM transactions give consumers access to their bank accounts when a bank teller is not available, EWA services give consumers access their earned wages when their paycheck is not yet available.

The access fee for EWA services is comparable to the average ATM fee, and is functionally the same service. In contrast, the average overdraft fee in 2022 was \$29.80 and the average NSF fee is \$26.58.³ According to the Consumer Financial Protection Bureau ("CFPB"), the **daily** limit on these fees varies from bank to bank, but can be as high as \$288 per day.⁴ For debit card purchases, the median amount triggering an overdraft fee is \$24.⁵ For ZayZoon customers that had previously incurred an overdraft fee or an NSF fee, we have seen a significant drop-off in the amount of overdraft and NSF fees incurred by such customers since they were able to access EWA services. For these customers, the average savings from avoiding overdraft fees per customer was \$10.96/month, and the average savings from avoiding NSF fees per customer was \$32.33/month.⁶

Payday loans are another costly tool for consumers. In Hawaii, the average cost to consumers to borrow \$500 for 4 months is \$158.⁷ With most EWA providers, the cost to access \$500 is less than \$20.⁸ Customers with access to ZayZoon report a 61% drop in payday loan use, and nearly 50% fewer payday loans taken per month.⁹

When the consumer costs are compared, we hope it's clear that EWA is a different financial product from, and an extremely desirable alternative to, overdrafts and payday loans. We urge the Committee to consider EWA services in light of the alternatives available to consumers.

It is also worth noting that Federal representatives from both sides of the aisle have indicated support for EWA services. Sherrod Brown, the Chairman of the Senate Banking Committee, has stated that "employer-based earned wage advances with strong consumer protections can, in fact, help workers cover unexpected expenses or emergencies." Then-Ranking Member Pat Toomey described EWA as, "an appealing alternative to payday loans ... EWA can help consumers to meet such [unexpected] expenses and others."

Access to liquidity is important because consumers face an array of fees that are the direct result of a cash

² The average out-of-network ATM fee is \$4.66. See <https://www.bankrate.com/banking/checking/checking-account-survey/>

³ <https://www.bankrate.com/banking/checking/checking-account-survey/> [emphasis added]

⁴ https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-02.pdf

⁵ https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf p.5

⁶ These numbers are based on surveyed ZayZoon customer data from customers, where such customers had incurred at least one overdraft or NSF fee, as applicable.

⁷ <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/payday-loans-cost-4-times-more-in-states-with-few-consumer-protections>

⁸ Certain EWA providers have limits on access, as set out in the Government Accountability Office's 2023 Report on Financial Technology. The \$20 amount here is calculated using the model with the lowest limits, thereby requiring the most amount of transactions to access \$500, and using their highest fee listed. <https://www.gao.gov/assets/gao-23-105536.pdf>, p. 50.

⁹ ZayZoon Customer Survey of 637 ZayZoon customers, January 2023.

shortfall. EWA services solve this issue by unlocking an employee's access to their earned wages, thereby eliminating the financial strain, emotional stress and associated fees traditionally associated with predatory lending services or overdraft fees. We encourage the Committee to view EWA services as a low-cost access to liquidity.

EWA Models May Vary, but Can be Provided in a Responsible, Consumer Friendly Way

There are numerous EWA models that are presently offered to consumers in Hawaii. Predominantly, these fall into two main categories: employer-based models and direct-to-consumer models. Employer-based models rely on integration between the EWA provider, the employer, and the employer's payroll processor. These EWA providers primarily rely on data received through this integration to determine and verify an employee's accrued earnings. Direct-to-consumer models are offered directly to consumers by the direct-to-consumer provider, and will use other data, such as other third-party data or a pre-existing financial relationship with the consumer, to determine an employee's earnings. Recoupment of a disbursement under an employer-based EWA model is generally accomplished through a payroll deduction on the employee's next settlement date. Recoupment for direct-to-consumer models is generally accomplished by debiting the consumer's bank account upon confirmation of a payroll deposit.¹⁰

ZayZoon offers employer-based EWA services, but we urge the Committee not to approve or endorse business models in SB2664. Direct-to-consumer models may have unique benefits to consumers, and generally offer their services to employees whose employers have not partnered with an employer-based EWA provider. Indirect competition between the various EWA models will offer many benefits to consumers, such as broader coverage, expanded consumer choice, and lower cost delivery of this important benefit.

We also urge the Committee to not consider the source of funding for EWA disbursements. Generally, EWA disbursements are funded by the EWA provider. However, employer-based, employer funded models are EWA models where the source of funding for disbursements is provided by the employer, not the EWA provider.

Businesses, especially smaller businesses, face similar financial difficulties to lower income consumers. They very often have cash flow issues, and effectively operate "paycheck to paycheck" in the same way that many employees traditionally do. JPMorgan Chase Institute research shows that **50 percent of small businesses are operating with fewer than 15 cash buffer days**,¹¹ and this concern is especially prevalent in Black and Hispanic communities. "In all majority Black or Hispanic communities, most small businesses had fewer than 14 cash buffer days."¹²

Given these widespread cash flow issues, employers are often unable to fund these EWA disbursements. In acceptance of these cash-flow issues faced by many businesses, certain employer-based EWA models that claim to be employer-funded advertise that they can also "lend" money to the employer for the purposes of EWA. However, if the EWA provider is truly lending these funds to the business, this burdens the employer with additional debt, greater cash flow uncertainty, and increased risk of bankruptcy.¹³

Alternatively, if there is no true debt burden on the employer from these loans, they are simply illusory

¹⁰ Many direct-to-consumer models have consumer-friendly refund policies in place to ensure that the consumer is not negatively impacted by an overdraft arising from the debit.

¹¹ <https://www.jpmorganchase.com/institute/research/small-business/place-matters-small-business-financial-health-in-urban-communities>

¹² *Ibid.*

¹³ <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-facing-uncertainty.pdf>, p.23



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“lending” to the employer whereby the EWA disbursements are still effectively funded by the EWA provider, simply under the guise that they are funded by the employer. This is substantively identical to employer-based models, with the only distinction being this symbolic “loan” by the EWA provider to the employer. Therefore, distinguishing employer-funded models from employer-based EWA models may lead to a symbolic “loan”, at best, or a financially risky loan for the business at worst.

For these reasons, we encourage the Committee to not endorse or approve specific models, or to limit the scope of any such approval and endorsement. This would foster competition, lower cost of delivery, elevate substance over form, increase consumer access to responsible EWA services, and protect small to midsize businesses, particularly in Black and Hispanic communities, from the risks of taking on additional debt.

Conclusion

EWA is an emerging financial tool that offers employees greater control over their finances. ZayZoon supports responsible EWA regulation, but unfortunately SB2664 in its present form will mean EWA providers are unable to provide their services to Hawaiian workers. This is what has happened in Connecticut since January 1, 2024. While we are hopeful that Connecticut will be amending its laws in the near term, the effect of their recent legislation deeming EWA to be a loan has resulted in many Connecticut workers no longer having access to the service.

ZayZoon is in full support of the regulation of EWA, provided it is done in a carefully considered manner that will permit Hawaiians to continue to benefit from the service. For this reason, we must **OPPOSE SB2664** as presented.

ZayZoon appreciates the opportunity to submit these comments to the Committee on SB2664. Thank you for taking the time to consider our comments. If you have any questions about any of the comments contained in this letter, please do not hesitate to contact me at garth.mcadam@zayzoon.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garth McAdam", is written over a light blue horizontal line.

Garth McAdam
General Counsel, ZayZoon

LATE



LATE

**Statement for the Record from the
Financial Technology Association**

**Before the
Hawaii Senate Committee on Commerce and Consumer Protection
February 14, 2024**

Chair Keohokalole, Chair Fukunaga and members of the Senate Committee on Commerce and Consumer Protection, thank you for the opportunity to testify today.

FTA is a non-profit trade association representing leading digitally-native financial services companies, including earned wage access providers. Our members support policy efforts that prioritize regulatory frameworks that spur innovation while safeguarding consumers. We appreciate the opportunity to testify today in opposition to SB 2664, as it could impact our members and have unintended consequences for Hawaii residents.

Today, EWA products help over ten thousand Hawaiians – and millions of consumers nationwide – better manage cash flows between pay cycles while avoiding traditional high-cost and predatory alternatives. Unlike credit products, EWA products are not loans and instead simply give employees access to their already earned wages. This substantive distinction matters since the characteristics of EWA products are different from those of credit or loan products—which means that rules regarding credit or loan products would poorly fit EWA products. More specifically, unlike a loan product, EWA services are non-recourse and never charge interest. This means that consumers have no legal obligation to repay an advance, and providers cannot take legal action to collect payments. Customers can cancel their engagement with an EWA provider at any time. There is never a credit pull or credit reporting associated with this service. Additionally, nonrepayment does not result in interest or penalty charges to the consumer; though providers typically pause access to additional EWA advances until the earlier advance is repaid. Because EWA products are not credit and credit laws would fail to mitigate identifiable risks, other state and federal government entities have confirmed the non-credit status of EWA products.¹

¹ For example, in finalizing payday loan rules, the CFPB created “specific exclusions and conditional exemptions” for certain EWA products that do “not require the consumer to pay any fees or finance charges” and where the provider “has no legal or contractual claim or remedy against the consumer based on the consumer’s failure to repay in the event the amount advanced is not repaid in full.” See U.S. Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans (Docket No. CFPB-2016-0025), pp. 216-217; 278-281, available at https://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf. The Arizona Attorney General issued an opinion that an “EWA product that is offered as a no-interest and non-recourse product does not fall within [the Arizona] definition of ‘consumer loan.’” See also Arizona Attorney General, Re: Earned Wage Access Products, (December 18, 2022); available at <https://www.azag.gov/opinions/i22-005-r22-011>.

However, SB 2664 would deem EWA as “credit”; include tips within an APR calculation; and consider the provision of already earned wages, through EWA providers, as debt. We believe this is inappropriate and ill-fitting for EWA products. As discussed above, EWA does not operate like a credit product, and therefore should not be deemed credit (or wages provided to consumers deemed debt). Second, voluntary tips, gratuity or donations should not be considered as part of any APR calculation as these transactions do not form a legal, contractual obligation.

Instead, we support the creation of an EWA registration and disclosure framework that prevents mandatory fees and collections proceedings. This approach would mitigate any perceived consumer risks, while not prematurely imposing ill-fitting requirements on an area of financial services innovation that is benefiting consumers. To that end, numerous industry participants have come together to endorse such a framework as it has significant consumer protections and is intended to ensure that these products remain consumer-friendly, consumer-protective, non-abusive, and non-predatory. This framework has already been successfully adopted in Nevada and Missouri² and we would be happy to work with you on enacting a similar framework in Hawaii.

We appreciate the opportunity to provide our views on this important piece of legislation and hope you will consider the key differences between EWA and credit products further. We stand ready to work with you on creating a right-sized EWA regulatory and disclosure framework that enables these innovative products while ensuring consumers remain protected when using them.

² Missouri Senate Bill 103 (2023), available at https://senate.mo.gov/23info/BTS_Web/Bill.aspx?SessionType=R&BillID=44662, and Nevada Senate Bill 290 (2023), available at <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Overview>.



LATE

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Testimony of Vidushi Dyll

Chamber of Progress
Re: HI SB 2664

February 14, 2024

Dear Chair Keohokalole and Members of the Committee,

Thank you for the opportunity to submit testimony for the record regarding SB 2664. On behalf of the Chamber of Progress, a tech industry coalition promoting technology's progressive future, I write to urge your committee to **oppose SB 2664** because this bill could possibly stop many earned wage access (EWA) products from being offered in the state of Hawaii.

Hawaiians experience one of the highest costs of living in the country.¹ As SB 2664 acknowledges, more than than sixty percent of Hawaii residents currently live paycheck to paycheck and forty-five percent of four-person families in the State have average household incomes below the level of self-sufficiency, according to their income standards for 2022.

Current market conditions are making it even harder to stretch bills from today to payday. EWA is an emerging financial innovation where workers can access money they've earned but haven't been paid yet. It's helpful during money emergencies or when bills are due, so that consumers don't have to turn to expensive options like payday loans or overdraft fees at the bank. This frees workers from dependency on the payroll cycle and alternative options like predatory lending practices.

Earned Wage Access Differs from Traditional Lending

Because EWA providers do not charge interest for consumers using their products, an Annual Percentage Rate (APR) is not applicable to them. The short-term nature of EWA usage contrasts with the annual focus of APR, making it an inappropriate characterization of EWA as described in this bill. Misrepresenting EWA costs in terms of an annual rate is likely to inflate the perceived expense of this service.

¹ <https://meric.mo.gov/data/cost-living-data-series>



Service providers do not engage in lending-related activities such as pulling credit reports, underwriting, assessing fees based on creditworthiness, charging interest, or imposing origination fees. There is also no credit reporting or any form of collection activity associated with delinquent earned wage access accounts. In essence, EWA is the opposite of a loan provider, providing a straightforward way for individuals to access their own income as an alternative to traditional, high-cost financial products. Misrepresenting EWA as a loan product that may cause consumers to incur debt will mislead consumers and impact the ability for service providers to continue providing low-or-no-fee services for Hawaiians.

Families working paycheck to paycheck are currently beholden to the 2-4 week pay cycle, trapped in a system that does not account for real life factors that cannot wait for payday. Hawaiians deserve flexible financial options, which is **why I urge you to oppose SB 2664**.

With the right regulatory approach framework, EWA has an opportunity to make a greater impact by providing a service that meets the consumer where they are. Like many other innovations in fintech, consumer choice with EWA will allow workers to vote with their pocketbooks and choose the service that is best for them and their budget.

Because EWA is an emerging fintech service, we recommend the committee take reasonable steps to fully understand the scope of this service – like looking at the characteristics of each business model and what draws consumers to them. The committee should solicit the input of stakeholders like consumers, service providers, and non-profit organizations to accurately capture EWA's impact on the state.

Thank you.



LATE

DailyPay, Inc. Testimony

February 14, 2024

TO: Chair Jarrett Keohokalole
Vice Chair Carol Fukunaga
Members of the Committee on Commerce and
Consumer Protection

FR: Ryan Naples
Director of Public Policy
DailyPay, Inc.

RE: SB2664 Relating to Earned Wage Access. - **OPPOSE**

Chair Keohokalole, Vice Chair Fukunaga, and members of the Commerce and Consumer Protection Committee thank you for the opportunity to provide testimony in opposition to SB2664.

My name is Ryan Naples, and I serve as the Director of Public Policy at DailyPay, Inc. We are the leading provider of employer-integrated on-demand pay nationwide, partnering with hundreds of in-state businesses in Hawaii. Today, thousands of employed residents of Hawaii have used DailyPay's EWA service.

While we may not be household names, all our companies are currently operating in the state.

As an industry, I am joined today by several other providers of earned wage access. Together, we are testifying in opposition to SB2664. We seek for our comments to serve as a starting point for a constructive dialogue on how best to regulate EWA in a way that benefits workers in Hawaii.

dailypay.



As this committee knows, two-thirds of Americans live paycheck to paycheck. But bills and emergencies do not wait every two weeks or once a month for an employer to run payroll.¹

Earned wage access is popular with workers in Hawaii because it facilitates access to the wages, they have earned but have yet to receive. This allows EWA users to manage their finances and access liquidity when unexpected expenses arise. It also gives hardworking employees an alternative to late fees, bank overdraft fees, and high-cost credit products.

EWA is popular with businesses because it reduces employee turnover, absenteeism, and filling open jobs. My company's own in-house surveys have found, that specifically, EWA is popular with employers because it reduces turnover by 45%, employee absenteeism by 38%, helps businesses and recruiters fill roles 52% faster, and employees are 3x more motivated to pick up extra shifts.

While each EWA company differs slightly, we share a few key characteristics.

1 - First, all EWA is based on wages earned. Workers can only access their own money they have already worked for. We are not providing credit.

2 - No EWA provider charges interest or late fees because our product is not a loan.

3 - All EWA products are also non-recourse. If an employer fails to make payroll, the risk is on the EWA provider, not the worker. There is also no requirement to repay, no collection activity, and no credit bureau reporting for non-payment.

¹ SecureSave, January 25, 2023, Survey: Americans personal savings are plummeting as 74% are now living paycheck to paycheck (<https://www.prweb.com/releases/2023/01/prweb19128966.htm>).



4 - While there are usually some small costs associated with EWA, at least one “no-cost” option is offered by most EWA providers, such as through a debit card, or a next business day bank transfer. A nominal fee of about \$3 for instant delivery to any bank account is also common.

Without EWA, available options to access funds quickly can be very costly, especially without good credit.

In 2021, DailyPay commissioned [independent research](#) that found the majority of our platform users previously relied upon costly financial strategies that harmed their financial health before gaining access to DailyPay. Specifically, 78% of our users had previously paid bills late or not at all, 49% had borrowed money from friends and family, 39% regularly overdrew their bank accounts and incurred a fee, and 21% took out small dollar loans.

For the 40% of our users who were frequent overdrafters, 97% of these individuals no longer did so after gaining access to EWA. This resulted in savings of approximately \$660 per year, per user, and the results were equally positive for the 78% of our users previously paying other bills late.

Independent research commissioned in 2022 [corroborated these findings](#) as well.

I do want to address how we know we help people get out of debt. From February to May of last year we closely tracked our high frequency users. Our data showed a 50% decline in high frequency usage of our platform after 4 weeks, an 80% decline by week 8, and within 12 weeks or 3 months, a 97% decline in high frequency usage. This meant that less than 1% of people on our platform are high frequency users for 3 months.

I also want to address what could happen if EWA products are radically abused or mis-used. In partnering with hundreds of employers across the country, this is simply not the experience that our thousands of employee-



users have. To the contrary, we have heard countless stories on how our platform has allowed employees to bridge short-term cash crunches and get through challenging times. For the people that are frequent users, we break the cycle of debt.

Clearly, an extremely small portion of people use our platform often when they have an emergency, because it is a low cost or no-cost alternative to all other options available. This accurately depicts how EWA helps people break the debt cycle.

In December 2023, the Financial Health Network recently released a user study sponsored by DailyPay that spoke to users of any EWA product available. The study found people used EWA to pay bills due ahead of their paycheck or cover some other financial shortfall. Nearly all participants in the study did not view EWA as a loan. Instead, participants asserted that EWA provided wages they had already earned, fundamentally different from borrowing against future earnings.

The participants also preferred EWA to alternatives and other short-term liquidity options, with one user adding that EWA allowed them “to access the liquidity they needed, while preserving their dignity.”

This is welcome feedback and we believe it is because our companies do the opposite of how lenders treat consumers. For example, since EWA is not credit, our industry conducts no underwriting and does not base its low transaction fees or access to wages on creditworthiness. We also do not charge these low fees in installments.

For these reasons as well, an APR rate, which would be misleadingly high even with our low fees, are incongruous to how EWA is structured. These rates therefore do not represent the actual cost and potential savings available to EWA users.



EWA is best regulated as a separate and distinct financial product because a credit designation is not the answer. Senate Bill 2664 would radically change how EWA services are structured, removing an important lifeline for Hawaiians, and negatively impacting the employers in the state who have come to use this product as an important tool to help their employees cover short-term liquidity crunches in the modern day.

DailyPay, Inc. strongly supports the creation of meaningful consumer protections for financial products that prevent costly predatory products from getting trapped in unending cycles of debt. Our company and our industry exist because we offer a viable alternative.

Instead of passing SB2664, as written which we oppose, we respectfully request the opportunity to collaborate on a compromise that creates new regulatory oversight and licensing for the EWA industry. Our request is that the compromise allows EWA to continue to be utilized by those presently accessing this service.

Thank you for your time and I would be happy to take any questions.

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STAND. COM. REP. NO.

Honolulu, Hawaii

RE: S.B. No. 524

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 524 entitled:

"A BILL FOR AN ACT RELATING TO BUSINESS REGULATION,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the law relating to business regulation.

Prior to the hearing on this measure, your Committee posted and made available for public review a proposed S.D. 1, which amends this measure by deleting its contents and replacing it with language to authorize the Insurance Commissioner to require pre-approval for certain salary increases granted to any person receiving a salary from an insurer.

Your Committee has amended this measure by adopting the proposed S.D. 1.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 524, as amended herein, and recommends that it be recommitted to your Committee on Commerce and Consumer Protection, in the form attached hereto as S.B. No. 524, S.D. 1, for further consideration.



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



JARRETT KEOHOKALOLE, Chair



A BILL FOR AN ACT

RELATING TO BUSINESS REGULATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 431:2-201, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
- 3 "(c) The commissioner may:
- 4 (1) Make reasonable rules for effectuating any provision
5 of this code, except those relating to the
6 commissioner's appointment, qualifications, or
7 compensation. The commissioner shall adopt rules to
8 effectuate article 10C of chapter 431, subject to the
9 approval of the governor's office and the requirements
10 of chapter 91;
- 11 (2) Conduct examinations and investigations to determine
12 whether any person has violated any provision of this
13 code or to secure information useful in the lawful
14 administration of any provision;
- 15 (3) Require applicants to provide fingerprints and pay a
16 fee to allow the commissioner to make a determination
17 of license eligibility after obtaining state and



1 national criminal history record checks from the
2 Hawaii criminal justice data center and the Federal
3 Bureau of Investigation;

4 (4) Require, upon reasonable notice, that insurers report
5 any claims information the commissioner may deem
6 necessary to protect the public interest; [~~and~~]

7 (5) Upon showing of good cause, waive or modify, in whole
8 or part, any or all fees by order[-]; and

9 (6) Require pre-approval from the commissioner for any
10 salary increase granted to any person receiving from
11 an insurer a salary exceeding \$1,000,000."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Insurance; Insurance Commissioner; Insurers; Salary Increases;
Pre-Approval

Description:

Authorizes the Insurance Commissioner to require pre-approval
for certain salary increases granted to any person receiving a
salary from an insurer. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

