



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,

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