

— LEGISLATIVE —
TESTIMONY

April 30, 2026

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**Legislation Could
Threaten Popular
Small Consumer
Loan Programs**

House Regulatory Reform Committee

Mackinac Center testimony on House Bill 5558-5569

A decades-old employer practice of advancing money to employees is seeing a resurgence, with employers offering Earned Wage Access programs as a common employment benefit. These programs allow employees who are short on cash to access wages they expect to have earned before their next paycheck date.

Michigan lawmakers could play a useful role in this market by clarifying the legal financial status of earned wage access programs. But proposals now being discussed are likely to do more harm than good.

Proposed legislation in Michigan would single out earned wage access programs for new licensing and regulatory restrictions that do not appear to be helpful. On the other hand, opponents of this legislation advocate instead for treating EWAs under the same regulatory umbrella as traditional lending – a change that may be even more problematic.

There is no clear reason for either of these solutions. Absent a clear regulatory failure or evidence of widespread harm to employees who use the program, Michigan leaders should see how the EWA market develops in Michigan.

Many Michigan employers, including Meijer, University of Michigan Health, Trinity Health, and Frankenmuth Credit Union, offer earned wage access programs as part of their employee benefit packages. Larger employers may manage their own programs, while others contract with third-party services like DailyPay, Payactiv, Rain, and Stream. Payactiv appears to be the leading provider in Michigan, with more than 550 employers under contract.

Earned wage access programs can make a substantial difference in employee welfare. A recent study by UCLA management professors of Uber's Instant Pay program found that the benefit to Uber drivers who use the program "is on par with increasing wages by 11% ... [by] allowing them to withdraw pay at a cadence better matching their expenses." These Uber drivers are likely to be the ones with the most urgent need for fast cash, which they can access almost immediately after completing a ride. The study found that the program is also good for Uber customers, because it leads to a greater supply of Uber drivers and shorter wait times.

A broader study by economist Jonathan M.V. Davis of the University of Oregon finds that "first-time EWA usage increases users' monthly income by about \$334 or 11.5 percent." He concludes that "EWA is used to smooth consumption rather than to finance discretionary purchases. Overall, the evidence suggests that earned wage access provides tangible short-run financial benefits without meaningful adverse effects."

By helping workers better align their cash flow with expenses, earned wage access programs can improve the financial stability of employees. The cost of administering these programs is borne by employees who use them.

Critics point to these costs to argue that earned wage access programs take advantage of employees with short-term financial needs. For example, the Community Economic Development Association of Michigan, while generally supportive of the concept, claims that EWA providers charge excessive interest rates. In CEDAM's example, a \$100 advance would require a \$7 fee plus perhaps an optional \$4 tip to the provider. That potential \$11 charge on a \$100 loan with a 10-day term until the next payday is equivalent to a 409% interest rate if converted to annual interest.

What this calculation ignores, however, is that the fees charged for the service are not really interest. Loans for cars and homes also include fees, which we normally do not consider interest because they are one-time charges. Charges on earned wage access programs go to covering the administrative costs of providing the loan. Of course, repeated use makes these fees seem more like interest that accumulates, but earned wage access programs from the leading providers already contain controls to prevent misuse and overuse.

The fact that Meijer, health care companies, and many other employers in Michigan are already offering these programs in Michigan strongly indicates that we do not need a new licensing regime and new regulations to make the market work. Nor do we need to bring earned wage access programs under current lending laws. Employers, especially those with human resources departments, have the incentive to make sure that these program are well run and that their employees aren't getting a bad deal. Without evidence that EWAs are improperly managed, we should not assume problems exist.

So what is the legal change that could benefit employers and employees? Lawmakers could clarify the nature of EWA programs. Earned wage access programs are wage advances, which is not the same as lending. That is because the "repayment" is out of wages the employee has earned, or will soon earn, and does not include late fees, interest payments, defaults, or adverse impacts on credit scores. To the extent that there is concern about whether Michigan law is clear enough on this point, it may helpful to clarify that earned wage access programs are distinct from traditional banking services and are not subject to existing regulations for loans, credit, and interest rates.

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