



# HOUSE BILL 725: Earned Wage Access Services Act.

2021-2022 General Assembly

---

<b>Committee:</b>	House Banking. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	May 5, 2021
<b>Introduced by:</b>	Reps. Moffitt, Humphrey, K. Hall, Wray	<b>Prepared by:</b>	Greg Roney
<b>Analysis of:</b>	PCS to First Edition H725-CSTMf-10		Staff Attorney

---

**OVERVIEW:** *The Proposed Committee Substitute (PCS) for House Bill 725 would authorize and regulate earned wage access services (EWA) where an employee (or person contractually due money for services) can receive an advance of earned, unpaid wages from an EWA provider. For employees, the employee repays the advance and any fee through a payroll deduction on the employee's next payday. For other recipients, the advance is repaid through a deduction from the next contractual payment. An EWA provider may impose fees which are exempt from regulation as interest or lending.*

*The PCS for House Bill 725 would require EWA providers to pay a new \$1,000 registration fee to the Commissioner of Banks at registration and at each 3-year renewal.*

**CURRENT LAW:** Article 1 of Chapter 24 governs interest and fees allowed on loans. G.S. 24-1.1(e)(3) limits the annual percentage rate to 36%, inclusive of origination fees, for personal loans below \$5,000. This limitation effectively prohibits payday loans in the State.

**BILL ANALYSIS:** The PCS for House Bill 725 would authorize earned wage access services (EWA) providers and regulate EWA under the Commissioner of Banks. However, EWA services would be exempt from regulation as lending, and fees for EWA services would be exempt from regulation as interest.

EWA providers allow "employees to request a certain amount (or share) of accrued wages, disbursing the requested amounts to the employees prior to payday, and later recouping the funds through payroll deductions or bank account debits on the subsequent payday." (CFPB Advisory Opinion) The PCS for House Bill 725 also authorizes EWA advances unrelated to an employer-employee relationship. Any contractual payment related to services rendered could be pledged to an EWA provider and funds intercepted by the EWA provider to repay the advance.

EWA providers must register with the Commissioner of Banks and under the licensing system maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The State registration fee is \$1,000, and 3-year renewals are \$1,000. In addition, an EWA provider registering for the first time must pay the actual cost of the following: a credit report; federal and State criminal background checks; and fees required by the Nationwide Multistate Licensing System and Registry.

EWA providers must also:

- Verify the earned income based on data relating directly to the consumer's earnings.
- Inform the consumer in writing that the consumer has a right to receive the full amount of the next payment of wages if the consumer chooses not to use EWA.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# House PCS 725

Page 2

- Have written authorization to deduct the amount of the advance from the next payment of wages.

An EWA provider may impose fees on a consumer for EWA services so long as the fees are disclosed in writing and in advance.

**EFFECTIVE DATE:** The PCS for House Bill 725 would be effective May 1, 2022.

**BACKGROUND:** The federal Consumer Financial Protection Bureau (CFPB) issued an advisory opinion to resolve regulatory uncertainty regarding the applicability of the definition of credit under Regulation Z of the Truth in Lending Act (TILA) to earned wage access (EWA) programs. The opinion concludes that:

Covered EWA Program does not involve the offering or extension of "credit" as defined by section 1026.2(a)(14) of Regulation Z ... The definition of "credit" in TILA is virtually identical to Regulation Z's definition of the term. See 15 U.S.C. 1602(f). Although this advisory opinion focuses on Regulation Z and concludes that its definition of "credit" does not apply to Covered EWA Programs, for similar reasons the Bureau clarifies that the same analysis applies to TILA's definition of "credit" and thus that Covered EWA Programs do not involve the offering or extension of "credit" under TILA.

The definition of "Covered EWA Program" requires:

1. Provider contracts with employers to offer EWA to the employer's employees.
2. The amount of EWA does not exceed the accrued cash value of the wages the employee has earned up to the date and time of the transaction, which amount is determined based upon timely information provided by the employer to the provider.
3. The employee makes no payment, voluntary or otherwise, to access EWA funds or otherwise use the EWA, and the provider does not solicit or accept tips or any other payments from the employee. The CFPB may allow EWA programs that charge nominal processing fees.
4. The provider recovers the amount of each EWA transaction only through an employer-facilitated payroll deduction from the employee's next paycheck.
5. In the event of a failed or partial payroll deduction, the provider retains no legal or contractual claim or remedy, direct or indirect, against the employee, although the provider may choose to refrain from offering the employee additional EWA transactions.
6. Before entering into a EWA transaction, the provider clearly and conspicuously explains to the employee, and warrants to the employee as part of the contract between the parties (and ultimately complies with these warranties) that it:
  - Will not require the employee to pay any charges or fees in connection with the EWA transaction;
  - Has no legal or contractual claim or remedy, direct or indirect, against the employee in the event the payroll deduction is insufficient to cover the full amount of a EWA transaction, including no right to take payment from any consumer account;
  - Will not engage in any debt collection activities related to a EWA transaction, place a EWA transaction amount as a debt with or sell it to a third party, or report to a consumer reporting agency concerning a EWA transaction.
7. The provider will not directly or indirectly assess the credit risk of individual employees, including through obtaining and reviewing credit reports or credit scores about the individual employees.

# **House PCS 725**

*Page 3*

The PCS for House Bill 725 does not require EWA providers to comply with the safe harbor in the CFPB advisory opinion.