

EarnIn Earned Wage Access Model Bill Suggestions

Earned Wage Access (“EWA”) is regulated by federal consumer protection laws including Unfair, Deceptive, or Abusive Acts (“UDAAP”), Know Your Customer (“KYC”), which prevents financial fraud, and Gramm, Leach, Bliley Act (“GLBA”), which regulates privacy for financial institutions. Only a few states have regulated EWA on the state level (NV, MO, WI). Nevada was the first state to regulate EWA and require licensure for providers ([SB 290](#)). The bill passed in an overwhelmingly bipartisan manner in a supermajority Democratic legislature, and signed into law by a Republican governor with the full support of industry. SB 290 was later adopted as a Council of State Governments model law when it was adopted in the 2023 Shared State Legislation docket.

A model bill would stipulate that:

- EWA providers must offer their customers at least one no-cost option for receiving advances.
- EWA must be provided on a non-recourse basis, so if the consumer does not repay, the EWA provider cannot go to court to sue the consumer or pursue debt collection activities.
- EWA providers may not condition access to the product on a consumer’s credit score and may not report consumers’ repayment behavior to credit reporting agencies.
- EWA providers must clearly communicate with consumers regarding when they will be asked to repay advanced funds. If a company debits a bank account before the repayment date, an overdraft, the company must reimburse for the cost of it.
- EWA providers must register with and submit annual data to their state regulator

	PROPOSED TERMS
Key Definitions	Consumer-directed wage access services, employer-integrated wage access services, earned wage access services, employer, fee, earned but unpaid income, provider, outstanding proceeds, consumer
Type of Oversight	Licensure (Massachusetts Commissioner of Banks)
Type of Recourse	Non-recourse; repayment of fees, tips, gratuities, and donations may not be compelled through unsolicited outbound telephone calls, lawsuit, third party debt collector, or third party debt buyer.
Disclosures Required (Timing)	Before entering into a contract with a consumer, before implementing material changes to contract terms and conditions
Disclosures Required (Content)	Consumers’ rights under the contract; all fees associated with the product; a statement that the agreement is not intended to create a legal obligation for the consumer to repay advances
Additional Disclosures if Tips are Solicited or Accepted	Tips, gratuities, and donations may be zero and are voluntary; a consumer’s eligibility for the product (amount and frequency) is not dependent on whether the consumer pays a tip/gratuity/donation or on the size of that tip/gratuity/donation; a tip/gratuity/donation does not benefit any specific person

	PROPOSED TERMS
Consumer Protections When Repayment is Sought from a Consumer's Depository Institution Account Via Electronic Funds Transfer	Provider must comply with the federal EFTA; must reimburse the consumer for any overdraft or NSF fees incurred by a consumer as a result of a provider seeking to debit the consumer's account on a date before or in an incorrect amount from the date or amount disclosed to the consumer
Policies and Procedures to Address Consumer Questions and Complaints	Required
Use of Credit Reports and Credit Scores	Prohibited to determine eligibility for the product; providers prohibited from reporting payment or nonpayment by a consumer to consumer reporting agencies
Cancellation by Consumer Authorized	Yes, at any time, with no cancellation fee
Monetization allowed	Free option required, allows tips, subscription fees, and expediting fees
Interest Charges Allowed	No
Late Fees Allowed	No
Annual Report Required	Yes (annual data required)
Examinations Authorized by Regulator	Yes, as necessary.
Independent Financial Audits Required	No
Penalties for Noncompliance	Yes, they vary by state, generally similar as for money transmitters or small lenders.