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MEMORANDUM

DATE: January 20, 2025

TO: House Industry, Business and Labor Committee

FROM: Corey Krebs, Assistant Commissioner

SUBJECT: Neutral Testimony on House Bill No. 1393

Chairman Warrey and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify on House Bill No. 1393.

Mr. Chairman and members of the Committee, House Bill 1393 creates a new section of title 13 of the North Dakota Century Code to regulate earned wage access providers. The decision to regulate an industry and the specific approach to regulate the industry is a public policy decision, thus we are not advocating for or against this bill. I am here today to provide you with information about the earned wage access industry, how this regulation looks in different states, the approach this bill is taking, and to answer any question you may have.

Earned wage access is a financing product that allows people to borrow money against wages owed to them by their employer. There is a wide range of business models within this space, ranging from an employer paid benefit to their employees to high-cost products offered by independent third parties which are comparable to payday lending products. Effective annual percentage rates on these products typically range from as high as 320% or as low as 0%.

These companies typically will require a borrower to download an app. The app will link to the user's bank account and to the employer's payroll system. The employee makes the request for the funds and agrees to the fees associated with the financing product. Funds are then provided to the customer, typically less than 3 days of the request. On payday, the borrower will be paid the balance of the money owed to them by the employer and the earned wage access company will also be paid. Not every company's process looks exactly like this but follows this general process.

These products can be beneficial to consumers; however, there may be risk as well. The benefit is quick financing, and with regards to the employer provided or low fee products, a cheep source of funds. The risk is that not all products are low cost, and frequent use of the higher cost products could put the consumer in a debt trap, a constant reliance upon a financing product which is expensive in the long term. This is a similar risk to the use of payday lending products.

States have taken different approaches to regulating earned wage access products. Some states have defined earned wage access transactions as a consumer loan, which would subject these products to traditional lending regulations such as the interest rate caps. Some states have defined earned wage access as a separate industry with disclosure rules but without other consumer protections such as maximum fee. Some states have established both disclosure requirements and maximum fees.

House bill 1393 falls into this last category, the bill requires both disclosures to the customer and establish a maximum fee of $10 per $1,000 borrowed. Additionally, this bill requires the use of a tracking database and mandatory rest periods to limit the risk of the borrower falling into a debt trap. In this way, the bill establishes a similar regulatory framework for earned wage access transactions to comparable payday loan transactions. Finally, the bill exempts companies that offer low or no cost transactions from these restrictions.

We have a fiscal note on this bill. Based upon the experience of states which have licensed earned wage access companies, we estimate 16 companies may apply for licensure. Licensing and examination fees are estimated to generate $43,000 in revenue over the biennium. Rolling out a program like this is time intensive, most notably the time to contract for and administer a tracking database and setting up an examination program. We need an additional FTE to do this. Salary and operating cost associated with the FTE for the biennium totals $278,039.

Finally, there is a cost to the consumer related the tracking database established within this bill. This cost is not part of the fiscal note since it is paid directly by the consumer, it is not paid by the state. The database required within this bill is similar to the requirement of payday lenders, thus we assume the per transaction cost will be similar. Per transaction costs are estimated to be $3 per transaction.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.