



ZayZoon US Inc.
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January 17, 2025

Submitted via Website

North Dakota House Industry, Business and Labor

600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1393 – A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century Code, relating to payday lending organizations; and to provide a penalty.

To Whom it May Concern:

This letter is submitted to the North Dakota House Committee on Industry, Business and Labor (the "**Committee**") on behalf of ZayZoon US Inc. ("**ZayZoon**"), in response to House Bill 1393 ("**HB 1393**"), which relates to the regulation of earned wage access ("**EWA**") services in North Dakota. I would like to thank you all for your work on the regulation of EWA. We believe in the merits of regulation as a path to provide certainty and security for both consumers and industry participants, and appreciate your diligence regarding this important new financial tool for consumers.

ZayZoon is an employer-integrated EWA provider that partners with payroll providers and employers to provide consumers with responsible, low-cost financial services, including EWA services, financial literacy tools, and other resources. We primarily work with small to midsize businesses to provide EWA services to their employees, and we provide EWA services to businesses with as few as ten employees. Companies like Walmart can offer EWA programs in house, and we are proud that we are able to help these small businesses offer employee benefits like EWA and free financial literacy tools. This helps employees with much needed access to liquidity, and helps small businesses compete for talent.

While we support the responsible regulation of EWA services, we cannot support HB 1393 as presented, and this letter sets forth our **OPPOSITION TO HB 1393** in its present form. If passed in its present form, this bill would significantly limit access to EWA services for North Dakota workers. HB 1393 represents many carefully considered protections, but believe that North Dakota businesses and consumers are not best served by the provisions of this bill in its present form.

The Fee Cap and Use Restrictions Will Unnecessarily Harm Consumers

HB 1393 proposes a fee cap of ten percent of the amount paid to the consumer per EWA advance ("**Advance Fee Cap**"). While we understand and appreciate the desire to limit the costs to the consumer¹, the Advance Fee Cap is an inappropriate restriction that will cause consumer harm by reducing the availability of EWA services. Consumers use EWA for any number of expenses, and budget their funds uses different methods. A percentage fee cap will simply mean small dollar advances will no longer be available to consumers. If, for example, a consumer simply wanted to access \$20 because they needed gas to get to work that day, they would not be able to do so because the permitted fee would be too low. The consumer may have limited earnings in the applicable pay period, and only have access to lower dollar amounts. Or they may prefer to leave as much as possible for their paycheck, and only access what they need at the particular time of the transaction. The cost to access \$100 is the same as \$20. The Advance Fee Cap would either force the consumer to access a greater amount of their earnings than they may desire to, or to seek alternative financial products if EWA is

¹ These average fees are single payment of a flat rate fee of \$2.59 - \$6.27 Financial Health Network, *Earned Wage Access Report*, p. 11, available at https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-_sage_Trends_FINAL.pdf

unavailable to them.

Similarly, the three-day restriction on use of EWA services in HB 1393 will harm consumers by unnecessarily reducing their access to this financial service, thereby pushing them back to high cost alternatives.

EWA is analogous to an ATM, and there are no restrictions on how often North Dakota consumers are permitted to use ATMs in the state. The cost to use ATMs² is comparable to EWA fees, and consumers use ATMs to get cash at an average rate of 3.8-4.7 times per month.³ By limiting the number of times a worker may use EWA, HB 1393 will limit the options for liquidity available to North Dakota workers. And these workers need access to liquidity. In a survey of why our customers are using our services, **98% of our customers reported that they use EWA to pay for necessities, to avoid high fee alternatives, or for unexpected expenses.** EWA is access to liquidity, and that access is a very real, and often very urgent, need for our customers. The usage cap set forth in HB 1393 will severely limit this access.

Additionally, ZayZoon's EWA advances are generally limited to a maximum of fifty per cent of the net amount of income or wages earned. This ensures that a worker will not use the EWA services so much that they will have no funds available to them on pay day. By ensuring the consumer can access only a portion of their earned wages, ZayZoon's EWA services already balances the consumer's desire for access to their earned wages with protections against overuse.

Creating blackout periods for when a worker is permitted to use EWA services will not make the need to pay for necessities or unexpected expenses cease to be a problem for such workers. Instead, it will push workers back to using high fee alternatives. We encourage the Committee to benchmark the cost of EWA relative to the costs of not having access to it and being pushed to alternative products. The average overdraft fee in 2022 was \$29.80 and the average NSF fee is \$26.58.⁴ According to the Consumer Financial Protection Bureau ("CFPB"), the **daily limit** on these fees varies from bank to bank, but can be as high as \$288 per day.⁵ For debit card purchases, the median amount triggering an overdraft fee is \$24.⁶ For ZayZoon customers that had previously incurred an overdraft fee or an NSF fee, 75% report a drop-off in the amount of overdraft and NSF fees incurred by such customers since they were able to access EWA services. For these customers, the average savings from avoiding overdraft fees per customer was \$10.96/month, and the average savings from avoiding NSF fees per customer was \$32.33/month.⁷

When the consumer costs are compared, we hope it's clear that EWA is a different financial product from, and an extremely desirable alternative to, overdrafts and payday loans. We urge the Committee to consider EWA services in light of the high fee alternatives available to consumers, and to amend HB 1393 to remove the Fee Cap and Use Restrictions.

Requiring APR Disclosures will cause confusion and mislead consumers

APR disclosures were established to ensure consumers can make an informed use of credit. The primary purpose of APR disclosures is to ensure that consumers receive adequate information to compare different credit offers easily and make informed decisions. However, if the HB 1393 is enacted, the required disclosures regarding APR would mislead and confuse users because actual APRs will vary depending on transaction size,

² The average out-of-network ATM fee is \$4.66. See <https://www.bankrate.com/banking/checking/checking-account-survey/>

³ <https://www.paymentsjournal.com/the-demographics-of-atm-use/>

⁴ <https://www.bankrate.com/banking/checking/checking-account-survey/> [emphasis added]

⁵ https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-02.pdf

⁶ https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf p.5

⁷ These numbers are based on surveyed ZayZoon customer data from customers, where such customers had incurred at least one overdraft or NSF fee, as applicable.



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fees paid, and duration. APR disclosure is inappropriate for EWA products because it can vary so dramatically for consumers, even though the actual dollar cost to the consumer remains the same. This will only mislead and confuse users.

APR will not help the consumer understand the costs of EWA products. It will not help the consumer understand and compare the costs of two different transactions within the same pay period, let alone in comparison to high-cost alternatives. In North Dakota, the average cost to consumers to borrow \$500 for 4 months using a payday loan is \$543, at an APR of 354%.⁸ With most EWA providers, the cost to access \$500 is less than \$20. With the required APR disclosures, a consumer may conclude that 354% is close enough to the APR for an EWA transaction with a short repayment date, and simply settle for the payday loan. However, if the consumer is comparing the dollar cost between the two, it is clear which product the consumer will choose.

For ZayZoon, the costs are extremely simple. The consumer has several options to take a payout at no cost, or they can pay a small flat fee if taken to the consumer's bank account or non-ZayZoon prepaid card. There are no other fees, interest, or any costs to the consumer. Disclosures to the consumer are clear, simple, and extremely transparent. Disclosing a sliding scale APR that varies greatly depending on whether the consumer has a need for their money on day two or day ten of their payroll cycle will not add clarity to the consumer, and runs the risk of misleading them greatly on the actual costs of the product.

Conclusion

EWA is an emerging financial tool that offers employees greater control over their finances. ZayZoon supports responsible EWA regulation, but unfortunately HB 1393 in its present form will mean employer-integrated EWA providers are unable to provide their services to North Dakota workers beyond a very limited scope.

ZayZoon is in full support of the regulation of EWA, provided it is done in a carefully considered manner that will permit North Dakota workers to continue to benefit from the service.

We sincerely appreciate your efforts to provide responsible, thoughtful legislation of EWA in North Dakota, and we would like to express our desire to work with the Committee on amendments to HB 1393.

Thank you for taking the time to consider our comments. If you have any questions about any of the comments contained in this letter, please do not hesitate to contact me at garth.mcadam@zayzoon.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garth McAdam", is written over a light blue horizontal line.

Garth McAdam
General Counsel, ZayZoon

⁸ See <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/payday-loans-cost-4-times-more-in-states-with-few-consumer-protections>