DailyPay, LLC Written Testimony

TO:	**North Dakota House Committee on Industry, Business, & Labor**
FROM:	***Andrew Welch of DailyPay, LLC***
DATE:	**January 20, 2025**
SUBJECT:	**House Bill 1393**

***Position:* Oppose.**

Testimony:

Good morning, Chairman Warrey and House Industry, Business and Labor Committee Members.

I'm Andrew Welch from DailyPay and I am testifying in opposition to House Bill 1393. DailyPay is the country's largest employer-integrated earned wage access, or EWA company.

While we may not be a household name, DailyPay has operated in North Dakota since 2015. Since then we've partnered with over 200 in-state businesses to provide over 21,000 of their employees our service.

After we sign contracts with our clients, who are businesses, we integrate with their payroll systems and then all of their employees are eligible to download our app.

For those who do, we pull their net earnings 4 times a day from our partnerships with payroll providers and if they choose, our users can access their own earned pay, before payday. These are verified earned wages, including any withholdings. Users are only ever able to access wages they have already earned - they are not accessing credit or being loaned funds based on projected wages they hope to earn in the future.

EWA is popular with businesses because it reduces employee turnover, absenteeism, and helps with filling open jobs.

It's popular with employees because North Dakota workers today expect life on-demand, including from HR departments and payroll systems.

Almost all EWA companies share a few key characteristics: we are credit invisible, charge no origination fees, late fees, or interest, do not sell unsettled EWA debt, conduct no underwriting but instead base access on wages earned.

Most EWA providers offer instant delivery of earned wages to a bank account for a flat, one-time fee of around $3, or at "no cost" for a transfer taking 1-3 business days. An instant transfer at "no cost" to an EWA company's debit card is also common.

Around 36% of DailyPay's clients' employees download our app, which includes a host of financial wellness tools, and about 49% of those on our platform just track their net wages and never make a transfer. The other 51% who choose to pay themselves early, access an average of $153 of their own, already earned wages in the state of North Dakota.

Ours is a voluntary service that is there when you need it and it is not overused. Over two thirds of people take a 4 month to 1 year break after their first transaction.

While EWA does not solve for income insufficiency, it does solve for a frequency of pay problem due to biweekly pay and it is popular with employees because it saves them money. Specifically, it gives North

Dakota workers an alternative to higher cost financial products and strategies when they face the possibility of paying a bill late or missing work.

DailyPay's research from 2021 specifically found 78% of users who had previously paid bills late, saved money by using DailyPay once gaining access to our platform.

In December 2023 the Financial Health Network found that people used EWA to pay bills due ahead of their paycheck, that these users did not consider it a loan, but did believe it provided them access to the liquidity they needed, while also preserving their dignity.

This is notable and it's why EWA is best regulated as a separate and distinct financial product which codifies industry best practices, encodes consumer protections, and helps free workers from cycles of debt, not get trapped in these same cycles.

DailyPay supports the data-driven, common sense regulation of our industry that provides an equal playing field for all competitors. Currently there are laws that regulate EWA as its own financial product that will help the industry grow.

Unfortunately, this bill does not do that. Instead, while well-intentioned, this bill over-regulates our industry and places unnecessary limits on our service that would have a detrimental impact to our employer clients and their employees who use us.

We would support being regulated in the state and would welcome the opportunity to collaborate on legislation that achieves that objective. Unfortunately, House Bill 1393 must be revised in order to achieve this. Specifically, if enacted, many of this bills requirements would require

DailyPay to change how our app functions in nearly every aspect, from download, to enrollment, to viewing earned wages, to accessing earned wages.

The four most significant problems with the bill include its: (1) $1,000 paycheck access cap, (2) the 10% per transaction fee cap, (3) the 3 day frequency cap, and (4) the required APR disclosure, regardless of the fee amount.

Below are additional details about why these four provisions require DailyPay to unfortunately oppose House Bill 1393 in its current form. I am grateful for the opportunity to provide testimony on this important piece of legislation and I would welcome the opportunity to collaborate on revisions for the committee to consider.

Opposition further explained:
1 - Paycheck Access Cap:
DailyPay does not oppose common sense regulation of our industry, provided it is based on data that shows the regulation will lead to better outcomes for our users or their employers who are also our clients.

Unfortunately, the paycheck access cap is not based on any data that would lead to positive results. The first problem with a $1,000 paycheck access cap is logistical - it would require a revision of the contracts we have signed with the 207 businesses we work with in the state of North Dakota. Under our business model, we contract with employers and the terms of the contract set the percentage of the paycheck that is available to the employers' workers. Contract revisions are not impossible but this would be an unnecessary extra step that increases the cost of doing business for the state of North Dakota, only.

Secondly, EWA is popular with employers because it removes the expensive process of cutting a paycheck for one employee in the middle of a pay period if an employee has a short-term liquidity need. Limiting a service in this manner that employers already offer to their employees and that workers already utilize with no evidence to suggest that this limit will improve user outcomes is why we must oppose this legislation.

Lastly, this cap will likely lead to people paying more to access liquidity. The Financial Health Network 2023 study sponsored by DailyPay showed that EWA is the lowest cost financial product that employees choose to utilize. This makes sense to us because of how low cost or no-cost DailyPay's service is for our users. If this bill became law and if an employee needed to access over $1,000 during a payroll period, there are unfortunately no other financial products or strategies that are no cost or $3.49 like ours.

<u>2 - 10% Fee Cap:</u>
DailyPay does not oppose per transaction fee caps. However, we do oppose caps that are not based on data. If a fee cap was to be imposed, we would ask that a study be conducted first in order to better determine the optimal fee cap that would not result in companies dramatically raising their fees or needing to dramatically lower their fees and thus potentially pull out of the state completely. This unknown impact on consumer pricing and the industry is why Nevada chose not to impose a fee cap in 2023 when it became the first state to pass a law that licensed EWA as its own financial product. Instead the Nevada law sunsets after six years and requires consumer transaction data to be disclosed every year in order to best determine if a fee cap is needed and if so, at what price.

Secondly, DailyPay does not charge interest. As mentioned above, the only fee charged on our platform is an optional one if a user chooses to access their wages early and instantly send their money to an external bank account. We are not opposed to making changes to our product as needed, but an unnecessary regulation like this one will complicate our business model that works with employers in all 50 states. Creating a new pricing structure just for one state without any data to suggest that this will lead to better efficiency for the industry or lower costs for consumers which our employer clients prioritize, is why must oppose this bill. If anything it will almost certainly raise costs for consumers. Despite any short-term benefits to DailyPay, in the long-term our market expansion efforts would be negatively impacted by the high fees other companies may charge that would be allowed under this proposed cap, even if DailyPay kept its fee low.

3 - Three Day Frequency Cap:
As a product and industry created to help solve financial instability, we take accusations that our product could be radically abused or mis-used, seriously. However, in partnering with hundreds of employers across the country, this is simply not the experience that our thousands of employee-users have. Instead, it is quite the opposite. We have heard countless stories about how our platform has allowed employees to bridge short-term cash crunches and get through challenging times. For the people that are frequent users, we help them break cycles of debt that have been brought on and perpetuated by traditional lending products.

A small percentage of people may use our platform frequently when they have an emergency, but that is because it is a low cost or no-cost alternative to all other options available.

This is why a frequency cap is not needed. If our users were limited to accessing their wages with a built in arbitrary cooling off period, there is no evidence to suggest that they would be better off turning to a different financial product or strategy if they need access to liquidity on day 2.

Over the past four years, all of our research has showed that our platform works for people as its currently structured. Requiring an arbitrary 3 day frequency cap that's proposed in this bill threatens this success. This is an additional reason for why we must unfortunately oppose House Bill 1393 at this time, as its currently written.

4 - Annual Percentage Rate (APR) Disclosure:
Based on how DailyPay's service is structured, disclosing an annual percentage rate for each transaction is not helpful. First, the rate would be misleadingly high, even with our low fees. It would therefore not represent the actual cost and potential savings available to our users since it obscures the actual cost of DailyPay's flat, one-time fee of around $3.50. When compared to credit card interest, late fees, penalty fees and others fees, all cost far more in an actual dollar amount despite having a lower APR or no APR assigned to it.

In addition, federal credit law, which does not apply to EWA, does not require APR fees as low as DailyPay's current fee of around $3.49. Specifically, the federal Truth In Lending Act does not require disclosure of an APR when charging $5 or less on $75 or less, or $7.50 or less on an amount more than $75.[1] This is unsurprising since, as mentioned above, it would be unhelpful and confusing to annualize low dollar fees.

In July 2024, the Biden administration proposed a federal interpretive rule that would have regulated EWA as a loan under federal law. APR disclosure would have been required if DailyPay's fee ever became high enough. The Biden administration chose not to finalize this rule. If House Bill 1393 became law as written, it would become the first state to require this unhelpful disclosure which is an additional reason why we must oppose this bill.

[1] See the federal Truth In Lending Act, Regulation Z, § 1026.18(d)(2)(e) or see here: https://www.consumerfinance.gov/rules-policy/regulations/1026/18/#d-2

Thank you for the opportunity to provide this information and testimony in opposition to HB 1393. We encourage a **Do Not Pass Recommendation** for HB 1393. I would be willing to try to respond to any questions.

XXX

dailypay.