

AMERICAN PAYROLL ASSOCIATION

February 24, 2021

The Honorable James A. Dunnigan
Utah House of Representatives
jdunnigan@le.utah.gov

The Honorable Joel Ferry
Chair, Business and Labor Committee
Utah House of Representatives
jferry@le.utah.gov

The Honorable Walt Brooks
Vice Chair, Business and Labor Committee
Utah House of Representatives
wbrooks@le.utah.gov

Re: Comments on H.B. 370, Earned Wage Access Services Act

Dear Representatives Dunnigan, Ferry, and Brooks:

The American Payroll Association (APA) is concerned about H.B. 370, Earned Wage Access Services Act, in that it does not fully recognize the role of payroll professionals and their employers in the decision-making process, nor does the Act recognize the variety of available Earned Wage Access (EWA) models. The APA urges the Utah House of Representatives to study EWA programs further before passage of legislation.

Established in 1982, the APA is a not-for-profit association serving the interests of about 20,000 payroll professionals nationwide, including 200 physically located in Utah. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations.

The APA supports legislation that enables employers to offer EWA programs to their employees as a means for financial wellness that is an inexpensive and efficient alternative to payday lending and bank overdraft fees. The APA also supports measures that establish a reasonable approach to employer and employee protections.

The APA is concerned about specific issues with H.B. 370, including but not limited to, the following:

- **7-23-103.1** subsection 5 offers an exemption to the Check Cashing and Deferred Deposit Lending Registration Act for EWA providers but does not offer the same exemption for employers and their payroll service providers that facilitate EWA arrangements.
- **13-58-102** provides a definition of “earned, unpaid income” (subsection 4) that describes employee wages without identifying legal withholding obligations, such as employment taxes and child support and other garnishments. Generally, H.B. 370 does not provide any mechanism for verifying or calculating the amount of earned, unpaid income. The definition of “earned wage access service” (subsection 5) describes a debit process on deposit accounts for consumers to repay the EWA provider. This is only one option available in EWA programs. Arrangements may include a payroll deduction or an employee settlement account.
- **13-58-202** describes provider operations and service fees and does not include per-transaction fees. In addition, the APA questions the legality of requiring a consumer to receive consent from a spouse or partner to receive earned wages (subsection 2). An employer cannot hold an employee’s earned wages pending spousal permission under federal and state labor laws.

The APA also questions subsection 3 which requires an EWA provider to insure an individuals account if the provider receives an employee’s earned income before distributing the pay to the employee. This requirement appears to reflect whether an employer or provider is funding the program not a reflection on an employee’s earned wages or account with the provider.

Proposed provisions in H.B. 370 do not recognize the variety of available EWA models. Instead, H.B. 370 appears to be written to benefit a non-employer-based business model for which different regulatory considerations apply. For example, the federal Consumer Financial Protection Bureau (CFPB) recently issued an [advisory opinion](#) and compliance assistance sandbox (CAS) [approval order](#) that identify certain characteristics for EWA that impact a credit determination under the Truth in Lending Act (TILA). The opinion and order were issued strictly in response to the facts presented in the individual requests regarding the applicability of TILA, Regulation Z; however, the CFPB offers some insight on EWA programs that the Utah legislature should consider.

Again, the APA urges the Utah House of Representatives to study EWA programs further before passage of legislation. To discuss EWA and APA's comments further, please contact me at 202-669-4001 or by email at ajacobsohn@americanpayroll.org.

Sincerely,

A handwritten signature in black ink that reads "Alice P. Jacobsohn". The signature is written in a cursive, flowing style.

Alice P. Jacobsohn, Esq.
Director, Government Relations

For APA's Government Relations Task Force