HOSPITALITY
MAINE

45 Melville St. Augusta, ME 04330
207-623-2178
www.hospitalitymaine.com

Testimony of Nate Cloutier

Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services
May 20, 2025

Neither for Nor Against LD 1915, "*An Act to Regulate Earned Wage Access Service Providers*"

Senator Bailey, Representative Mathieson, and distinguished members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, my name is Nate Cloutier. I am here today on behalf of HospitalityMaine, representing Maine's first-rate restaurant and lodging industries. HospitalityMaine is neither for nor against LD 1915, "*An Act to Regulate Earned Wage Access Service Providers.*"

We take no position on the overall regulation of earned wage access (EWA) providers. Our comments are limited to the references to tips and gratuities in the bill.

Regarding the practice of tipping, we understand the bill's intent to focus on interactions between an EWA provider and an individual who is an employee of a business that offers access to such services. However, because the bill defines a "consumer" broadly as an individual who resides in the state of Maine, this creates some ambiguity around whether it might also be interpreted to include customers or guests.

Clarifying whether the term "consumer" applies only to employees who use EWA services – or more broadly – would help resolve this ambiguity.

If our understanding is correct, that the bill is only intended to apply to the relationship between an EWA provider and an employee, then references to "tips" and "gratuities" should be removed. These terms carry specific legal definitions under Title 26 of Maine labor law. When an employee voluntarily provides payment to an EWA provider for services, that payment should not be called a "tip" or "gratuity," but rather a "donation" only.

Under existing state law, a tipped employee, also known as a service employee, is defined as someone who "customarily and regularly" receives more than $175 per month in tips. Tips are almost exclusively understood to be payments from a customer to an employee in exchange for service, and they belong solely to the employee(s) who receives them.

To avoid confusion, any reference in the bill to "voluntary tips" or "gratuities" should instead be replaced with the term "donation" when referring to payments made by employees to providers. We are primarily concerned that inconsistent statutory references to tipping in the bill could cause confusion.

If, on the other hand, the bill becomes intended to regulate tipping involving the provider, the employee, and the customer, we would be opposed to the bill as currently drafted for the following reasons:

1. The bill uses the terms "tip," "gratuity," and "donation" interchangeably, and suggests that a tip might be *charged* by a business, which is never the case. Section 6200-H, subsection 7 states: "If a provider solicits, charges or receives a tip, gratuity or other donation from a consumer..." State labor laws and the federal Fair Labor Standards Act establish that tips are voluntary.

   Because tips are already understood to be voluntary and given at the discretion of a guest or customer, using the term "voluntary" adds unnecessary complexity. Again, if the bill is only meant to apply to payments from employees to EWA providers, then the definition of "consumer" should reflect that.

2. Subsections 6200-H(7)(A) and (B) would create new and unnecessary requirements related to tipping. These sections require that any provider soliciting, charging, or receiving a tip disclose to the consumer, immediately prior to each transaction, that the amount may be zero and is voluntary. If restaurant patrons are captured under this bill, it would upend longstanding norms between guests and servers. Customers would be confused by a formal disclaimer about tipping, and businesses could face unintended liability if an employee fails to make this disclosure with every transaction.

3. Section 6200-I(2) states that "fees, voluntary tips, gratuities, or other donations that were received from or charged to a consumer for earned wage access services may not be provided to the employer." Under existing law, employers, supervisors, and managers are already prohibited from receiving tips. Tips are the property of the employee under existing labor law.

We are here today to learn more through the public hearing process and may adjust our position accordingly. Thank you for your time and attention. I'd be happy to answer any questions.