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March 6, 2024

To: The Honorable Pamela Beidle
Chair, Senate Finance Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: Senate Bill 998 – Commercial Law – Earned Wage Access Services (OPPOSE)

The Consumer Protection Division of the Office of the Attorney General opposes Senate Bill 998, introduced by Senator Klausmeier, because the bill would legalize a form of usurious payday lending, harming low-to-moderate income Marylanders by subjecting them to exorbitant interest rates for short-term, low-risk loans. Under current Maryland law, direct-to-consumer earned wage access ("EWA") providers (those that charge consumers, rather than their employers, for services) are lenders,[1] the advances they provide to consumers are loans,[2] and EWA providers' fees and charges, including supposed "tips" or "donations," are interest.[3] Senate Bill 998 would change the law to exempt these payday lenders and their loans, which on average charge interest at an Annualized Percentage Rate ("APR") over 330%, from the consumer protections in Maryland's lending laws, including its usury law banning lenders from charging interest at an APR over 33% on consumer loans of $1,000 or less.[4]

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[1]See Md. Code. Ann., Com. Law 12-303 (applying lending laws to the "purchase of wages").
[2]See Md. Code Ann., Com. Law § 12-301(e)(1) ("'Loan' means any loan or advance of money or credit subject to this subtitle, regardless of whether the loan or advance of money or credit is or purports to be made under this subtitle."); *Matter of Cash-N-Go, Inc.*, 256 Md. App. 182, 202–03 (2023) ("'[L]oan' or 'consumer loan' means any loan or advance of money or credit made, provided, advertised, offered, or made available to any Maryland consumer regardless of what the loan is called or how it is characterized….").
[3] See Md. Code Ann., Com. Law § 12-101 ("'Interest' means … any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money…."); *Nationstar Mortg. LLC v. Kemp*, 476 Md. 149, 159 (2021) ("since money is fungible and people are creative, efforts to circumvent the restrictions of the Usury Law have sometimes taken the form of fees or other charges that were assessed to the borrower.").
[4] See Md. Code Ann., Com. Law § 12-306.

According to a 2023 U.S. Government Accountability Office report on financial product technology, the vast majority of consumers using EWA loans earned less than $50,000 a year, with many earning less than $25,000 a year.[5] The loans appear to pose little risk to lenders because they are backed by wages consumers have already earned but have not yet received. Lenders obtain direct withdrawal access to bank accounts where the wages are deposited, and if for some reason the wages from one pay period are insufficient to cover an EWA loan, the provider can withdraw funds from the next deposit. Around 80% of EWA loans are between $40 and $100, with their average length being about ten days.[6] The times consumers used advances per quarter averaged nine and ranged from one to twenty-five times.[7]

EWA lenders employ a baffling array of pricing models, making it extremely hard to understand their loans' true costs as an APR or otherwise, which consequently makes it particularly difficult to either compare those costs to the cost of other credit options, or the costs of one EWA provider to those of another. These pricing models include charging consumers subscription fees, "expedite fees" for faster access to funds, or soliciting so-called "tips" or "donations,"[8] none of which are related to the borrower's credit risk or market factors. When these fees are added up, the cumulative result is that, on average, EWA loans charge interest at APRs over 330%,[9] ten times Maryland's 33% APR interest cap on small consumer loans.[10]

The Division opposes Senate Bill 998 because it would change Maryland law to exempt EWA lenders from Maryland's lending laws, including lender licensing and interest rate disclosure requirements and usury caps. Under Senate Bill 998, EWA companies would have no limit on the fees they can charge borrowers, and would not be required to disclose the costs of lending as an APR. While the primary justification for exempting EWA lenders appears to be a conjecture that, if their loans remain subject to usury caps and other requirements, EWA providers may withdraw from Maryland because they would make insufficient profits, the Division is aware of no evidence that this is true. Given that the loans present no credit risk to the lender, it is hard to believe that charging the lawful 33% APR on EWA loans is unprofitable. Regardless, whatever dubious benefits these short term, low dollar loans may provide to consumers does not justify modifying Maryland law so that payday lenders can prey on the financially desperate.

The Division further opposes Senate Bill 998 because it allows the inherently misleading practice of EWA lenders seeking consumer "tips" "gratuities," or "donations." Calling these charges "tips" or "donations" itself is misleading because it implies the charges go to individuals for providing a service, or are somehow generous or altruistic, when they are simply finance charges. Moreover, while Senate Bill 998 requires a disclosure to consumers that "tips" and the

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[5] *Financial Technology Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (March 2023), at pg. 24.

[6] *2021 Earned Wage Access Data Findings*, CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION (Analysis completed Q1 2023) ("California Earned Wage Access Analysis"), at pg. 10, available at https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf.

[7] California Earned Wage Access Analysis, at pg. 10.

[8] *Id.* at 2-3.

[9] *Id.* at 1.

[10] See Md. Code Ann., Com. Law § 12-306.

like are not required and do not impact lending determinations, in practice consumers feel required to "tip" even when such disclosures are made.[11] Indeed, lenders have used tactics such as disabling services if borrowers do not tip, setting default tips, making it hard to avoid tipping in user interfaces, making it unclear whether the tip is optional, and misleadingly claiming or implying that tips or "donations" are used to help other consumers.[12] The predominant purpose of tipping models in lending appears to be an improper one: obfuscating the true cost of lending. Given that the loans are short term and low dollar, the amount of the tip can drastically alter the relative cost of the transaction, which is nearly impossible for a consumer to calculate.

Additionally, while Senate Bill 998 requires providers to offer "at least one reasonable option to obtain proceeds at no cost," the statute does not define what a "reasonable option" is, or what "no cost" means. In practice, providers purport to provide "no cost" options while still soliciting tips or promoting monthly subscriptions containing other products like credit monitoring. Moreover, the services offered at "no cost" might be structured to be substantially less usable than those that incur fees. For example, no cost products may provide funding only a few days before wages would be paid anyway or have low caps on the amounts loaned.

Accordingly, for the reasons set forth, the Consumer Protection Division requests that the Finance Committee give Senate Bill 998 an unfavorable report.

cc. The Honorable Katherine Klausmeier
Members, Finance Committee

[11] The California Department of Financial Protection found that data from 5.8 million transactions shows that consumers paid tips 73% of the time. *California Earned Wage Access Analysis*, at pg. 1. Why would anyone "tip" a lender unless they felt obligated to do so?

[12] See *Initial Statement of Reasons for the Proposed Adoption of Regulations*, STATE OF CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, at pgs. 61-62, available at https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/PRO-01-21-ISOR.pdf.