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To: The Honorable C.T. Wilson  
Chair, House Economic Matters Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: House Bill 1294 – Commercial Law – Credit Regulation – Earned Wage Access and  
Credit Modernization (OPPOSE)

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The Consumer Protection Division of the Office of the Attorney General opposes House Bill 1294, introduced by Chairman Wilson, 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, which research shows trap consumers in debt spirals and increase bank overdrafts. Under current Maryland law, earned wage access (“EWA”) providers are lenders,<sup>1</sup> the advances they provide to consumers are loans,<sup>2</sup> and EWA providers’ fees and charges, including supposed “expedite fees,” “tips,” or “donations,” are interest.<sup>3</sup> House Bill 1294 would change the law to exempt these payday lenders and their loans from the consumer protections in Maryland’s lending laws, including its usury law banning lenders from charging interest at an APR over 33% on consumers.<sup>4</sup>

House Bill 1294 purports to subject EWA providers to regulation and limit the cost of services to consumers, but House Bill 1294 strips consumers of important protections by creating dangerous

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<sup>1</sup>See Md. Code Ann., Com. Law 12-303(a)(2)(iv) and (iv) (applying consumer lending laws to advances of money “Whether the transaction is or purports to be nonrecourse or contingent; and ... Whether the transaction purports to be the purchase of wages.”).

<sup>2</sup>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....”).

<sup>3</sup> 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.”).

<sup>4</sup> See Md. Code Ann., Com. Law § 12-306.

exemptions from existing laws and promoting predatory lending practices. Proposed section 12-1502(A) requires EWA providers to be licensed with the State, purportedly an important consumer protection. However, 12-1502(C) then exempts any EWA provider who is licensed by the State from Title 12, Subtitles 1, 3, 9 and 10: interest and usury laws, the consumer lending laws, and the credit grantor revolving and closed end credit provisions. House Bill 1294 also specifically endorses the deceptive practice of lenders seeking “tips” from consumers. Regarding its real-world impact on financially vulnerable consumers, even setting aside the impact of “tips” on the cost of EWA loans, House Bill 1294 would result in typical EWA consumers paying over 240% APR on their loans. Moreover, according to research on EWA usage, typical consumers with an income of \$25,000—of which there are many—who use the products 25 times a quarter could pay up to 3% of their entire gross take home pay on EWA fees and tips alone.<sup>5</sup>

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.<sup>6</sup> The target consumer for EWA lenders is one who is desperate for small amounts of cash in the short period, often two weeks or less, between when they earn their wages and when they are paid. The average length of the loan is about ten days.<sup>7</sup> Given the low-income target borrower, the typical loan is small; around 80% of EWA loans are between \$40 and \$100. The average EWA consumer used advances nine times per quarter, with EWA uses ranging from one to twenty-five advances per consumer.<sup>8</sup> Research has shown that EWA loans often trap consumers in “debt cycles,” *i.e.*, where part of each new loan is used to pay back the fees and charges on the prior loan. Indeed, not only are repeat users the “heaviest users” of earned wage access products,<sup>9</sup> but “1 in 3 users reborrowed within 2 weeks at least 80% of the time.”<sup>10</sup> Many EWA providers claim to help consumers avoid bank overdraft fees, yet research shows that these products significantly increase bank overdrafts and contribute to the debt cycles.<sup>11</sup> Some EWA providers advertise a large amount that may be accessible per day, but then set a “daily max” that ultimately requires consumers to take out numerous loans during a pay period to obtain that advertised amount, forcing the consumers to incur additional fees and costs for each loan. Many consumers use multiple EWA lenders in a single pay period.

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<sup>5</sup> *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>.

<sup>6</sup> *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.

<sup>7</sup> California Earned Wage Access Analysis at pg. 10.

<sup>8</sup> *Id.*

<sup>9</sup> *A Loan Shark in Your Pocket: The Perils of Earned Wage Advance*, CENTER FOR RESPONSIBLE LEARNING (October 2024), at pg. 4 (Many EWA borrowers are trapped in a debt cycle and the heaviest users drive the business model. Repeat use of advances is common, and high-frequency users accounted for 38% of users and 86% of advances).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 8, available at <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf>. (“Our previous report found that the number of overdrafts increased 56% on average after use of an advance product. In the updated larger sample, we found that out of EWA users who experienced overdrafts, 67% saw their overdrafts increase after initial advance use. In the most extreme case, one user incurred no overdrafts in the three months leading up to their initial EWA advance, and experienced 58 overdrafts in the three months following their initial EWA use. These overdrafts cost the borrower \$1,740 in total fees.”)

House Bill 1294 allows EWA lenders to (i) charge deceptive tips, (ii) charge exorbitant and unwarranted fees, and (iii) fail to disclose the true cost of credit, preventing consumers from price shopping for the most economical credit. Despite these downsides, there is no evidence of which the Division is aware showing that EWA lenders cannot make sufficient profit and operate in Maryland without the exemptions to Maryland lending laws created by House Bill 1294. Thus, House Bill 1294 will end up imposing unnecessary costs and harming Maryland low-income consumers, while providing no corresponding benefit.<sup>12</sup>

**First**, House Bill 1294 allows Maryland lenders—all lenders, not just EWA lenders—to solicit and charge so called “tips” up to the limit of the Maryland usury rate. The very act of soliciting a tip from a consumer is inherently deceptive and should not be permitted in Maryland. 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 the money from the “tip” is simply a finance charge. It is a charge for the use of money, not a tip for service. Moreover, allowing lenders to solicit tips opens the door to further deception. Lenders historically have used tactics such as disabling services if borrowers do not tip, 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.<sup>13</sup> While House Bill 1294 requires a disclosure to consumers that “tips” are not required and do not impact lending determinations, in practice consumers feel required to “tip” even when such disclosures are made.<sup>14</sup>

**Second**, House Bill 1294 allows EWA lenders to charge exorbitant fees. As stated above, the bill allows lenders to seek tips up to the limit of the usury rate or 33% on an annual basis. House Bill 1294 then, in addition, allows lenders to charge a \$5.00 fee on each consumer transaction under \$75, and a \$7.50 fee for loans over \$75. Thus, under House Bill 1294, a user incurs a 243% APR for loans under \$75, and a 273% APR for a \$100 loan. A user of EWA products who earns \$25,000 in a year and obtained 25 advances in a quarter would pay 2-3% of their entire gross take-home pay in fees to EWA lenders, simply to get their money a few days early.

While House Bill 1294 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, promoting monthly subscriptions containing other products like credit monitoring, or charging “expedite fees” for the prompt delivery of the loan money. Indeed, 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 lent. In practice, because the target consumers are desperate for

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<sup>12</sup> While the research shows the most impacted population of consumers are low-income, EWA products also harm moderate income consumers as the exorbitant fees are applied to all transactions.

<sup>13</sup> 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>.

<sup>14</sup> 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?

cash, they almost always pay the supposed “expedite” fees that EWA lenders seek, regardless of the cost. As stated, consumers also feel obligated to pay “tips.”

**Third**, these exorbitant fees to EWA lenders are not merited. The loans are not risky 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. Moreover, while EWA lenders often cloak their fees as for “expediting” payment of the loan to a consumer, there is no material additional cost of which the Division is aware of the supposed “expediting” of the loans. 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 do not justify modifying Maryland law so that payday lenders can prey on the financially desperate.

**Fourth**, an important anti-consumer impact of injecting “tips” and “fees” of various sort into the lending process, without the safeguard of usury limits or APR disclosures, is to obfuscate the true cost of lending from consumers and prevent them from shopping for better deals. Given the extremely high APRs from EWA loans under House Bill 1294, it would be far less expensive for consumers to get even the most expensive credit card to finance whatever purchases they have in mind, rather than turn to EWA lenders. Under House Bill 1294, consumers will be unable to appreciate that they could get a better deal elsewhere.

Finally, it is the Division’s understanding there is some concern about whether lenders can be prohibited from soliciting tips under the First Amendment. The Division firmly believes established law supports the premise that prohibiting lenders from soliciting tips is constitutional.<sup>15</sup> Such a prohibition would target lenders’ commercial behavior, *i.e.*, it would limit the kinds of fees they can charge, not their speech. Barring a lender from charging a fee does not implicate the First Amendment. Moreover, even if it did implicate First Amendment considerations, the Constitution gives great leeway to the regulation of commercial speech that is or can be deceptive. As discussed, a lender asking for a “tip,” rather than charging interest, is inherently deceptive.<sup>16</sup> The Division also understands that there may be concern that it is unfair to lenders to prohibit them from charging large fees for EWA loans when consumers are already charged fees to access their cash at ATMs from another bank. However, the appropriate way to address financial exploitation is to address the exploitation, not make consumers subject to more fees.

The General Assembly long ago passed laws that restrict the charges that payday lenders like EWA lenders can charge consumers and has consistently reaffirmed those restrictions. It should

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<sup>15</sup> See *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980); see also *Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 47, 137 S. Ct. 1144, 1151, 197 L. Ed. 2d 442 (2017).

<sup>16</sup> *Supra* note 8.

not change those laws to harm consumers. It is especially important to stand against House Bill 1294 and other proposed legislation seeking to significantly weaken Maryland's lending protections given the Trump Administration's evisceration of federal consumer protections and the Consumer Financial Protection Bureau. Accordingly, for the reasons set forth, the Consumer Protection Division requests that the Economic Matters Committee give House Bill 1294 an unfavorable report.

cc. Members, House Economic Matters Committee