Statement for the Record from the
Financial Technology Association

Before the
Connecticut General Assembly Banking Committee
February 20, 2024

Chair Doucette, Chair Miller, Ranking Member Delnicki, Ranking Member Berthel and members of the Banking Committee, thank you for the opportunity to submit testimony for today's hearing on HB 5140.

FTA is a non-profit trade association representing leading digitally-native financial services companies, including earned wage access providers. Our members support policy efforts that prioritize regulatory frameworks that spur innovation while safeguarding consumers. We appreciate the opportunity to provide written testimony in opposition to HB 5140, as it could have unintended consequences for Connecticut residents.

Today, in every state except Connecticut, EWA products help millions of consumers nationwide better manage cash flows between pay cycles while avoiding traditional high-cost and predatory alternatives. Unlike credit products, EWA products are not loans and instead simply give employees access to their already-earned wages. This substantive distinction matters since the characteristics of EWA products are different from those of credit or loan products—which means that rules regarding credit or loan products would poorly fit EWA products. More specifically, unlike a loan product, EWA services are non-recourse and never charge interest. This means that consumers have no legal obligation to repay an advance, and providers cannot take legal action to collect payments. Customers can cancel their engagement with an EWA provider at any time. There is never a credit pull or credit reporting associated with this service. Additionally, nonrepayment does not result in interest or penalty charges to the consumer; though providers typically pause access to additional EWA advances until the earlier advance is repaid. Because EWA products are not credit and credit laws would fail to mitigate identifiable risks, other state and federal government entities have confirmed the non-credit status of EWA products.[1]

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[1] For example, in finalizing payday loan rules, the CFPB created "specific exclusions and conditional exemptions" for certain EWA products that do "not require the consumer to pay any fees or finance charges" and where the provider "has no legal or contractual claim or remedy against the consumer based on the consumer's failure to repay in the event the amount advanced is not repaid in full." *See* U.S. Consumer Financial Protection Bureau, Payday, Vehicle Title, and Certain High-Cost Installment Loans (Docket No. CFPB-2016-0025), pp. 216-217; 278-281, *available at* https://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf. The Arizona Attorney General issued an opinion that an "EWA product that is offered as a no-interest and non-recourse product does not fall within [the Arizona] definition of 'consumer loan." *See also* Arizona Attorney General, Re: Earned Wage Access Products, (December 18, 2022); *available at* https://www.azag.gov/opinions/i22-005-r22-011.

However, HB 5140 fails to provide a workable framework for tens of thousands of Connecticut residents who choose their own EWA provider, rather than being forced to use the provider that their employer chooses for them. Multiple studies have shown that benefits, costs, and risks are similar between Direct to Consumer EWA and Employer Integrated EWA products. By not including Direct to Consumer providers, this bill discriminates against workers who do not have the option from their employer, or choose a different provider who is a better fit for them. HB 5140 uses the procurement method, rather than a risk or benefit to consumers standard, which would arbitrarily leave an estimated 70% of EWA users without this vital service. This 70% includes nearly all government employees, teachers and nurses, and most small business employees. This indispensable service should not be limited to only employees working for a large corporation. Instead, all workers, regardless if they work at a corner coffee shop, local business, school, or hospital should have access to the wages they earn daily. This bill does not protect workers, it actively harms them by taking away their choice and competition in the market.

Instead, we support the creation of an EWA registration and disclosure framework that prevents mandatory fees and collections proceedings and is business model agnostic. This approach would mitigate any perceived consumer risks, while not prematurely imposing ill-fitting requirements on an area of financial services innovation that is benefiting consumers. To that end, numerous industry participants have come together to endorse such a framework as it has significant consumer protections and is intended to ensure that these products remain consumer-friendly, consumer-protective, non-abusive, and non-predatory. This framework has already been successfully adopted in Nevada and Missouri[2] and we would be happy to work with you on enacting a similar framework in Connecticut.

We appreciate the opportunity to provide our views on this important piece of legislation and hope you will consider the key differences between EWA and credit products further. We stand ready to work with you on creating a right-sized EWA regulatory and disclosure framework that enables these innovative products while ensuring consumers remain protected when using them.

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[2] Missouri Senate Bill 103 (2023), *available at* https://senate.mo.gov/23info/BTS_Web/Bill.aspx?SessionType=R&BillID=44662,and Nevada Senate Bill 290 (2023), *available at* https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Overview.