Banking Committee
JOINT FAVORABLE REPORT

Bill No.: HB-5140
Title: AN ACT CONCERNING EARNED WAGE ACCESS.
Vote Date: 3/12/2024
Vote Action: Joint Favorable Substitute
PH Date: 2/20/2024
File No.:

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SPONSORS OF BILL:

Banking Committee

REASONS FOR BILL:

Defines key terms in reference to earned wage access and creates exemptions within specific small loan lending regulations for employer-integrated advances that satisfy designated criteria.

SUBSITUTE LANGUAGE:

The substitute language defines a "small loan, as any loan of money or extension of credit, or the purchase of, or an advance of money on, a borrower's future potential source of money, including future pay, salary, pension income, or a tax refund, under the conditions that (i) the amount or value is fifty thousand dollars or less, and (ii) the APR is greater than twelve per cent. Excluded from this definition are (i) retail installment contracts made in accordance with section 36a-772, (ii) loans or extensions of credit for agricultural, commercial, industrial, or governmental use, (iii) residential mortgage loans as defined in section 36a-485, (iv) open-end credit accounts accessed by a credit card issued by an exempt entity as described in subdivision (1) of subsection (b) of section 36a-557, or (v) wages, as defined in section 31-58, paid by an employer directly to an employee prior to a regular pay day in accordance with title 31.

The substitute language establishes which types of people are exempt from the requirement of licensure set forth in section 36a-556.

The substitute language allows licensed small loan lenders to provide “employer-integrated advances” under certain circumstances (i.e., caps related expedited transfer fees at the lesser of $4 per advance or $16 per 30-day period); limits charges/fees/payments/costs for

using the advance to just the transfer fees; requires repayment through a payroll deduction; and prohibits additional charges/fees/payments/costs if the advance is not repaid on the scheduled pay date.

The substitute language defines “employer-integrated advance” as a money advance; (must be less than $5,000); made by someone licensed as a small loan lender and contracted with an employer to provide employees with advances representing up to 50% of their earned wages from that pay period.

The substitute language defines an “expedited transfer fee” as an amount paid to complete an advance at the same time or on the day the consumer asks for it.

Lastly, the substitute language creates an exemption from small loan licensure payroll service providers that verify available earnings as part of an employer-integrated advance if the providers do not provide funds for the advance or control the licensed person’s activities.

RESPONSE FROM ADMINISTRATION/AGENCY:

Matt Smith, Department of Banking, offered some general comments on HB 5140. Per the testimony, the DOB would prefer to see no changes to the law, but appreciate the limitations set forth by Hb 5140. Per the testimony, the DOB precautions the committee with the fact that despite the limitations outlined by HB 5140, there is still the possibility that some Connecticut borrowers may still be affected by its provisions.

NATURE AND SOURCES OF SUPPORT:

None Expressed

NATURE AND SOURCES OF OPPOSITION:

Tominica Beach, testified in opposition to HB 5140. The testifier commented on how she has used EWA services for years to make ends meet, but due to the legislation enacted by the Department of Banking last year, the testifier's use of EWA apps has been restricted. The testifier urges the Committee to reevaluate the proposed legislation in HB 5140, as she believes it does not amend the problem the Department of Banking created.

Charles Bell, Programs Director Consumer Reports, testified in opposition to HB 5140 because it would create an exception to Connecticut's current usury limits, and cause low-wage workers to pay higher fees to access their earned income prior to their payday.

Angela Bradfield, Financial Technology Association, testified in opposition to HB 5140 on the grounds that HB 5140 would eliminate the ability for someone to choose the EWA provider they would like, and rather forcing them to use the designated provider selected by their employer. As HB 5140, fails to include Direct to Consumer providers, it is the testifier's belief that this bill discriminates against workers whose employers do not provide them with the option to EWA. It is the testifier's belief that that HB 5140 does more harm than good for consumers.

Monica Burks, Policy Counsel Center for Responsible Lending, testified in opposition to HB 5140 on the grounds that is exempts certain employer-based earned wage access advances that have expedite fees from Connecticut small loan interest rate limitations. It is the testifier's belief that lenders should operate under existing law, and if the benefit they provide to employers is significant, then employers can bear the costs.

Philip Cronin, Chime Financial, testified in opposition to HB 5140, on the grounds that, "limiting EWA licensure to EWA providers with an “employer-integration”, will exclude models that are providing the same core consumer protections that lawmakers are seeking to promote with the “employer-integrated” model - access to and settlement from actual wages." The testifier provided suggestions on different methods that could be implemented which are consistent with the intentions of HB 5140, while ensuring the availability of on-demand pay and industry completion which would alleviate costs for users that have accumulated over time.

Liz Dupont-Diehl, Associate Director Connecticut Citizen Action Group, testified in opposition to HB 5140, on the grounds that the bill would contribute to inequality within Connecticut. The testifier offered comments that the current EWA laws in Connecticut meets the highest standards set forth by the National Consumer Law Center and Center for Responsible Lending, therefore there is no need to impose on the current legislation.

Simone dos Santos, Deputy General Counsel EarnIn, testified in opposition to HB 5140 on the grounds that EWA is not payday lending. The testifier believes that HB 5140 would categorize EWA platforms as a loan. Furthermore, the testifier used the testimony of another testifier to justify her position, as the other testimony cited is from a consumer who uses EarnIn to make ends meet. It is the testifier's belief that HB 5140 discriminates against workers whose employers do not offer EWA services.

John Erlinghauser, Senior Director of Advocacy, AARP, testified in opposition to HB 5140 on the grounds that it, "authorizes an exception to Connecticut's strong interest rate limits, allowing extra fees on low-wage workers. While those fees may appear small, they add up and reduce low wages." The testifier agrees with the sentiment that these EWA advances are loans, (as stated in HB 5140,) does not allow for any exceptions to be made for direct-to-consumer models, prohibits various forms of hidden interest fees, and eliminates the possibility for special treatment to employer-integrated advances that are repaid by payroll deduction. So, while the testifier supported some aspects of HB 5140, they expressed opposition because it is their belief that workers should not have to pay to be paid.

Phil Goldfelder, CEO, American Fintech Council, testified in opposition to HB 5140 on the grounds that the testifier believes that EWA services should have their own individualized framework with business models that are geared towards various income throughout Connecticut. The testifier provided guidelines the AFC believes would be successful in regulating EWA in Connecticut, and these guidelines can be found on page 3 of the written testimony.

Annie Harper, Assistant Professor Yale, testified in opposition to HB 5140 due to research she has conducted on the associations between finance, poverty, and mental health. It is the testifier's belief that although the fees associated with EWA may seem insignificant, there is a

possibility for them to propose great duress on those who use its services. The testifier shares the same sentiment that many others have expressed, that it is unjust to make consumers, especially those of low-income wages- to pay to access their earned pay.

Ed Hawthorne, President Connecticut AFL-CIO, testified in opposition to HB 5140 on the grounds that the current statutes in Connecticut regarding small loan law are already successful in defining loans and accurately depict earned wage access as loans. It is the testifier's belief that there is no need to rework the existing statutes and dilute regulation that will in turn heighten expedite fees on primarily low-wage workers. The testifier commends the committee for the positive aspects of the bill but ultimately feels as though the exemptions it proposes will heighten the burden placed on primarily low-income workers, seeking earlier access to a portion of their pay.

Tenisha James, testified in opposition to HB 5140, as she is a single mother who actively uses EarnIn to be able to provide for her and her children. The testifier urges the committee to reevaluate the proposed legislation in HB 5140 and allow for both low cost and no subscription fee EWA models to be made available for consumers in Connecticut.

Hamel Kothari, CEO Brigit, testified in opposition to HB 5140 based on the grounds that Hb 5140 does not allow for direct-to-consumer products, and because of this- only the employees whose employers allow for EWA services will be able to utilize them. The testifier urges the committee to make it so that EWA services are available to all consumers, regardless of if their employee offers the service or not.

Denise Philbrick, testified in opposition to HB 5140 on the grounds that she utilizes EWA but due to the Department of Banking's ruling, no longer has access to her preferred EWA service. Furthermore, as the testifier understands it, HB 5140 would only provide a narrow exception for employers who choose to provide EWA services, leaving consumers whose employers do not offer EWA options, stranded.

Raphael L. Podolsky, Connecticut Legal Services, testified in opposition to HB 5140 on the grounds that Connecticut Legal Services supports the existing legislature put forth by the Department of Banking, and does not feel that there needs to be any changes made to the current statutes. The testifier is satisfied with the cohesion between HB 5140 and the DOB about the EWA analysis which states that including their collateral charges, are in fact loans subject to the Small Loan Act. Furthermore, the testifier is "pleased that the bill’s proposed alternate regulation of employer-integrated EWAs is not a total deregulation (although the caps in the bill – potentially $120 per year -- are unnecessarily high). Nevertheless, we believe that all EWAs should be subject to the requirements of existing law and that the bill is therefore undesirable."

Lauren Saunders, Associate Director, National Consumer Law Center, testified in opposition to HB 5140, on the grounds that the proposed expedite fee of $5, up to $10, a month is much too high, resulting in heftier tax impositions on low-wage workers. "Higher expedite fees are just disguised interest. The repeat borrowing triggered by all earned wage advances means that low-wage workers could pay up to $120 a year." Similarly, to the sentiment of other testimony, the testifier feels as though the current statutes in place is fine as in, and does not need any revisions.

GENERAL COMMENTS:

Pete Isberg, President National Payroll Reporting Consortium, offered some general comments in reference to HB 5140. The testifier provided three suggestions for HB 5140. The first being that the bill should clarify that payroll service providers that facilitate EWA services by verifying available earnings but are not responsible for funding EWA services, are not required to register as an employer-integrated EWA service provider. Secondly, that HB 5140 should establish a fee cap for expedited employer-integrated EWA services. Lastly, that language should be added to define the role of payroll service providers more clearly in verifying available wages.

Molly Jones, Vice President PayActiv, offered some general comments on HB 5140. The main points from the provided written testimony are as follows; the suspension of the most popular delivery options since the Jan. 1st guidance implementation has negatively impacted consumers who rely on EWA services to make ends meet. The testifier believes that HB 5140 attempts to restore EWA for Connecticut workers. Moreover, that employer-integrated EWA is not a loan product and should not be treated as such. The testifier made suggestions in terms of fee caps, both for expedited fees and monthly charges. Lastly, it is the belief of the testifier that different EWA models require distinct EWA regulation.

Kevin Lefton, US Head of Legal and Regulatory Affairs, Wagestream Inc., offered some general comments on HB 5140. The testifier believes that earned EWA services are not credit and are not a loan and should not be treated as such. It is the opinion of the testifier that EWA services should not be considered a loan because they are based on someone's already earned wages.

Garth McAdam, General Counsel, ZayZoon, offered some general comments on HB 5140. It is the testifier's belief that if HB 5140 were to pass in its present form, then it will significantly limit access to EWA services for Connecticut workers. The testifier feels that EWA providers should not have to be licensed as a lender, and there is potential for there to be confusion amongst consumers over calling employer-integrated EWA a loan.

Carl McCluster, Pastor, Shiloh Baptist Church, offered some general comments on HB 5410. The testifier questioned why lenders should be granted licensure that gives them the potential to harm unsuspecting consumers.

Pete Myers, Public Policy Associate, CBIA, offered some general comments on HB 5140, "CBIA is concerned about the effect this ban will have on employees who are now cut off from EWA products, and we urge the Banking Committee to move quickly to adopt legislation regulating the earned wage access industry in a responsible manner that allows employees to continue using these products." It is the testifier's opinion that such stringent restrictions on EWA could drive away potential businesses looking to expand into Connecticut.

Ryan Naples, Director of Public Policy, DailyPay Inc., offered some general comments on HB 5140. Due to policy implementation by the Department of Banking, DailyPay had to restructure their EWA service. The testifier believes that because of this, consumers who utilize EWA services have been negatively impacted, as well as the employers who use EWA services. "DailyPay is appreciative that the legislature is seeking to regulate EWA in a way that allows for the industry to continue to operate in Connecticut. We also strongly support

and appreciate the creation of meaningful consumer protections for financial products like ours that prevent people from utilizing costly predatory products and strategies and from getting trapped in unending cycles of debt. Our company and our industry exist because we offer a low-cost, viable alternative for people and we are grateful for the work of this committee." The testifier expressed his desire to speak with the committee regarding reworking the content of HB 5140.

Matt Pierce, Founder and CEO of Immediate, offered some general comments to HB 5140. Firstly, it is the testifier's belief that it is incorrect to label EWA services as a loan. The testifier stated that he desired to work collaboratively with the committee to design a framework that regulates employer-integrated EWA. The testifier stated that, "through surveys of Immediate user base, we've found that utilizing EWA results in 89% of users avoiding unnecessary debt or leveraging EWA instead of over drafting an account.

Reported by: Hannah Hayes **Date: 3/25/2024**