



## Memorandum in Opposition to A5053 (Vanel)

We write to express our strong opposition to A5053, an act relating to regulating so-called earned wage advance (“EWA”) services. This bill is a direct threat to New York’s long-standing usury protections and would authorize predatory loan products, undermining consumer and worker protections and exacerbating wealth extraction from our state’s low-income communities and communities of color.

New Economy Project’s mission is to build an economy that works for all, based on cooperation, neighborhood equity, social and racial justice, and ecological sustainability. For nearly 30 years, New Economy Project has worked with community groups to challenge systemic discrimination by Wall Street banks and other financial corporations, and to support responsible, cooperative, and community development finance.

EWA is payday lending by another name. Financial technology (“fintech”) companies use deceptive marketing to mask EWA’s exorbitant and predatory fees, which amount to an effective average APR of more than 300%. For example, companies tout the product as free but require payment of an “expedite fee” to receive instant access and use manipulative behavioral economics techniques to coax users to “tip” as part of receiving an advance. Although EWA companies are plainly making loans under any definition, they argue that they’re not lenders by relying on a litany of legal fictions and other prevarications, including that they simply advance access to the employee’s own money and do not require any mandatory payments.

New York’s strong usury laws cap interest rates at 25%, effectively keeping insidious payday lending out of our state. New York has never allowed companies to offer predatory loan products of this type, thereby protecting low-income New Yorkers and New Yorkers of color from the fee drain and debt trap that are part and parcel of the payday lending industry’s business model. Given that EWA loans bear many of the hallmarks of traditional payday lending – extremely high APRs, repeat borrowing, and the triggering of costly bank overdraft fees – the legislature must not allow EWA companies to circumvent our strong laws.

Recently, both the federal government<sup>1</sup> and the State of California<sup>2</sup> (where, unlike New York, payday lending is legal) have released data clearly demonstrating the egregious harms that result from EWA products. Among other concerning findings, they reported that EWA products are characterized by:

- **High APRs:** The average annual percentage rate (APR) in California was ~330% across the industry.
- **Repeat borrowing:** California consumers took out 36 advances a year on average, and up to 100.
- **Very little credit extended:** Most advances were between \$40 and \$100, for an average of 10 days.

New York does not need legislation to regulate EWA products since our usury caps already limit the costs of all small dollar loan products. The NYS Department of Financial Services is already has the authority to take enforcement actions against entities, including EWA companies, that violate our usury laws.

If New York is serious about meeting New Yorkers’ income and financial services needs, the state should establish a living wage, tied to inflation, and advance other policies that address root causes of inequality and poverty. We urge the legislature, for example, to support public banks and community development financial institutions that responsibly serve historically-redlined Black, brown, and immigrant communities.

For the above reasons, New Economy Project strongly opposes A5053. Please contact Andy Morrison with questions: [andy@neweconomy.nyc.org](mailto:andy@neweconomy.nyc.org).

<sup>1</sup> <https://www.gao.gov/assets/gao-23-105536.pdf>

<sup>2</sup> <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>