

ASSEMBLY, No. 3450

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)

SYNOPSIS

Creates certain requirements for earned income access services and related provider contracts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning earned income access services and
2 supplementing Title 17 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Consumer” means a natural person.

9 “Earned but unpaid income” means earned income that has not
10 yet been paid to the consumer by an earned income obligor.

11 “Earned income” means moneys that a consumer or obligor has
12 represented, and the earned income access service provider has
13 reasonably determined, have accrued to the benefit of that consumer
14 for services rendered to an earned income obligor.

15 “Earned income access service provider” or “provider” means
16 any person that is engaged in the business of delivering earned but
17 unpaid income to a consumer in New Jersey.

18 “Earned income access services” means the delivery of funds to
19 a consumer that represent earned but unpaid income.

20 “Obligor” means an employer or another person who is
21 contractually obligated to pay the consumer any sum of money on
22 an hourly, project-based, piecework, or other basis for labor or
23 services provided by the consumer. “Obligor” shall not include a
24 customer of an obligor or other third party whose obligation to
25 make any payment to a consumer is based solely on the consumer’s
26 agency relationship with the obligor.

27
28 2. a. An earned income access service provider shall offer
29 earned income access services through a contractual arrangement
30 with an obligor or a service provider to an obligor, in which the
31 provider:

32 (1) verifies a consumer’s earned income; and

33 (2) delivers earned income to the consumer prior to the date on
34 which the obligor is scheduled to pay the consumer, and the amount
35 of the earned income delivered by the provider to the consumer is
36 reduced or withheld from the consumer’s next payment.

37 b. An obligor shall not share information with an earned
38 income access service provider pertaining to the obligor’s accrued
39 and expected obligations to the consumer unless:

40 (1) the obligor or service provider to the obligor has entered into
41 a contractual arrangement for earned income access services with
42 the earned income access service provider; and

43 (2) the consumer consents to sharing that information.

44 c. An earned income access service provider shall not enter
45 into a contractual arrangement with a consumer that permits
46 delivery of earned income directly to the consumer that is to be
47 repaid directly by the consumer to the provider.

1 d. The imposition of a fee on a consumer who opts to use the
2 services of an earned income access service provider, and the
3 reduction or withholding from a consumer's payment as set forth in
4 subsection a. of this section, shall not violate section 4 of P.L.1965,
5 c.173 (C.34:11-4.4), provided that the consumer is informed in
6 writing of the right to receive the full amount of the consumer's
7 wages, without discount, if the consumer waits until the regular
8 payment due date.

9
10 3. a. Any earned income access services that fail to comply with
11 the provisions of section 2 of this act shall be subject to:

12 (1) the provisions of the civil usury law, R.S.31:1-1, and the
13 criminal usury law, N.J.S. 2C:21-19;

14 (2) any provisions of Titles 17 or 56 of the Revised Statutes that
15 would otherwise apply to a loan or credit transaction; and

16 (3) the federal "Truth in Lending Act," 15 U.S.C. s.1601 et seq.
17 and the regulations implementing that act, 12 C.F.R. s.226 et seq.,
18 to provide any disclosures required for closed-end loans.

19 b. Earned income access services that do not comply with
20 section 2 of this act shall be considered a loan, even if those
21 services are provided without recourse, and any fees or other
22 required or optional contributions of those services shall be
23 considered as interest when determining the rate of interest for
24 purposes of compliance with a law with which an earned income
25 access service provider is required to comply pursuant to the
26 provisions of this section.

27 c. Any person who violates any provision of this act shall be
28 liable for a penalty, in addition to any other penalty imposed by
29 law, of not more than \$5,000 for each violation.

30
31 4. This act shall take effect on the 90th day next following
32 enactment.

33 34 35 STATEMENT

36
37 This bill creates certain requirements for earned income access
38 service providers. Under the bill, "earned income access services"
39 means the delivery of funds to a consumer that represent earned but
40 unpaid income.

41 The bill requires an earned income access service provider to
42 offer earned income access services through a contractual
43 arrangement with an obligor or a service provider to an obligor in
44 which the provider verifies a consumer's earned income, delivers
45 earned income to the consumer prior to the date on which the
46 obligor is scheduled to pay the consumer, and the amount of the
47 earned income delivered by the provider to the consumer is reduced
48 or withheld from the consumer's next payment.

1 The bill provides that an obligor may not share information with
2 an earned income access service provider pertaining to the obligor's
3 accrued and expected obligations to the consumer unless:

4 (1) the obligor or service provider to the obligor has entered into
5 a contractual arrangement for earned income access services with
6 the earned income access service provider; and

7 (2) the consumer consents to sharing that information.

8 The bill prohibits an earned income access service provider from
9 entering into a contractual arrangement with a consumer that
10 permits delivery of earned income directly to the consumer that is
11 to be repaid directly by the consumer to the person.

12 Under the bill, the imposition of a fee on a consumer who opts to
13 use the services of an earned income access service provider, and
14 the reduction or withholding from the consumer payment, is not in
15 violation of current law prohibiting deductions from an employee's
16 wages, provided that the consumer is informed in writing of the
17 right to receive the full amount of the consumer's wages, without
18 discount, if the consumer waits until the regular payday.

19 The bill requires earned income access services that do not
20 comply with certain requirements of the bill to comply with:

21 (1) the provisions of the civil and criminal usury laws;

22 (2) any provisions of Titles 17 or 56 of the Revised Statutes that
23 would otherwise apply to a loan or credit transaction; and

24 (3) the federal "Truth in Lending Act" and the regulations
25 implementing that act, to provide any disclosures required for
26 closed-end loans.

27 For purposes of the bill, earned income access services that do
28 not comply with certain requirements of the bill are considered a
29 loan, even if those services are provided without recourse, and any
30 fees or other required or optional contributions of those services are
31 to be considered as interest when determining the rate of interest for
32 purposes of compliance with a law with which an earned income
33 access service provider is required to comply.

34 The bill also provides that any person who violates any provision
35 of the bill is liable for a penalty, in addition to any other penalty
36 imposed by law, of not more than \$5,000 for each violation.