

[Third Reprint]

ASSEMBLY, No. 3450

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

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Assemblywoman Swain

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on November 16, 2020.



(Sponsorship Updated As Of: 1/11/2021)

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 ¹“Department” means the Department of Banking and
10 Insurance”¹

11 “Earned but unpaid income” means earned income ³[², wages,
12 government benefits, or other cash distributions²]³ that ³[²[has]
13 have²] has³ not yet been paid to the consumer by an earned income
14 obligor.

15 “Earned income” means moneys that a consumer or obligor has
16 represented, and the earned income access service provider has
17 reasonably determined ¹based on that representation¹, have accrued
18 to the benefit of that consumer for services rendered to an earned
19 income obligor.

20 “Earned income access service provider” or “provider” means
21 any person that is engaged in the business of delivering earned but
22 unpaid income to a consumer in New Jersey. ²An earned income
23 access service provider ³[may] shall³ be employer-integrated ³[or
24 direct-to-consumer]^{3 2} .

25 “Earned income access services” means the delivery of funds to
26 a consumer that represent earned but unpaid income ²and which
27 shall not be considered a loan² .

28 “Obligor” means an employer or another person who is
29 contractually obligated to pay the consumer any sum of money on
30 an hourly, project-based, piecework, or other basis for labor or
31 services provided by the consumer. “Obligor” shall not include a
32 customer of an obligor or other third party whose obligation to
33 make any payment to a consumer is based solely on the consumer’s
34 agency relationship with the obligor.

35
36 2. a. An earned income access service provider shall offer
37 earned income access services through a contractual arrangement
38 with an obligor or a service provider to an obligor, ³[¹or a
39 consumer]^{1 3} in which the provider:

40 (1) verifies a consumer’s ¹net¹ earned income; and

41 (2) delivers earned income to the consumer prior to the date on
42 which the obligor is scheduled to pay the consumer ²[, and the
43 amount of the earned income delivered by the provider to the
44 consumer is reduced or withheld from the consumer’s next

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted October 19, 2020.

²Assembly floor amendments adopted October 29, 2020.

³Assembly floor amendments adopted November 16, 2020.

1 payment² ³, and the amount of the earned income delivered by
 2 the provider to the consumer is reduced or withheld from the
 3 consumer's next payment³.

4 b. An obligor shall not share information with an earned
 5 income access service provider pertaining to the obligor's accrued
 6 and expected obligations to the consumer unless:

7 (1) the obligor or service provider to the obligor has entered into
 8 a contractual arrangement for earned income access services with
 9 the earned income access service provider; and

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

11 c. ¹[An earned income access service provider shall not enter
 12 into a contractual arrangement with a consumer that permits
 13 delivery of earned income directly to the consumer that is to be
 14 repaid directly by the consumer to the provider.

15 d. ³[¹(1)¹]³ The imposition of a fee on a consumer who opts
 16 to use the services of an earned income access service provider, and
 17 the reduction or withholding from a consumer's payment as set
 18 forth in subsection a. of this section, shall not violate section 4 of
 19 P.L.1965, c.173 (C.34:11-4.4) ²or section 13 of P.L.1999, c.90
 20 (C.34:11-4.14)², provided that the consumer is informed in writing
 21 of the right to receive the full amount of the consumer's wages,
 22 without discount, if the consumer waits until the regular payment
 23 due date.

24 ³[¹(2)A provider that contracts ²[directly] solely² with a
 25 consumer shall not charge a mandatory fee to the consumer ²for the
 26 provision of earned income access services².¹]³
 27

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

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

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

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

37 b. Earned income access services that do not comply with
 38 section 2 of this act shall be considered a loan, even if those
 39 services are provided without recourse, and any ¹required¹ fees or
 40 other required ¹[or optional]¹ contributions of those services shall
 41 be considered as interest when determining the rate of interest for
 42 purposes of compliance with a law with which an earned income
 43 access service provider is required to comply pursuant to the
 44 provisions of this section.

45 c. ¹Each earned income access ²service² provider shall
 46 annually register with the department in a form and manner
 47 prescribed by the department. ²Each provider shall include with the

1 registration a list of the fees charged by the provider. A provider
2 may continue to operate prior to the department prescribing the
3 form and manner of the annual registration pursuant to this
4 subsection.²

5 d.¹ Any person who violates any provision of this act shall be
6 liable for a penalty, in addition to any other penalty imposed by
7 law, of not more than \$5,000 for each violation.

8 ³e. The provisions of this act shall not apply to a contractual
9 arrangement between a provider and a consumer that permits
10 delivery of earned income directly to the consumer that is to be
11 repaid directly by the consumer to the provider.³

12
13 4. This act shall take effect on the 90th day next following
14 enactment.