

[Fourth 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 reported by the Senate Commerce Committee on December 16, 2021, with amendments.



(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 ⁴“Commissioner” means the Commissioner of Banking and
9 Insurance.⁴

10 “Consumer” means a natural person.

11 ¹“Department” means the Department of Banking and Insurance
12 ⁴[_].^{4 1}

13 “Earned but unpaid income” means earned income ³², wages,
14 government benefits, or other cash distributions²]³ that ³²[has]
15 have²] has³ not yet been paid to the consumer by an earned income
16 obligor.

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

22 “Earned income access service provider” or “provider” means
23 any person that is engaged in the business of delivering earned but
24 unpaid income to a consumer in New Jersey ⁴[. ²An earned income
25 access service provider ³[may] shall³ be employer-integrated ³[or
26 direct-to-consumer]³] through an integration with an employer.
27 “Earned income access service provider” shall not include a wage
28 advance provider that does not operate through an integration with
29 an employer^{4 2}.

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

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

40 ⁴“Office” means the Office of Earned Income Access Services
41 within the Division of Banking in the Department of Banking and
42 Insurance.⁴

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.

⁴Senate SCM committee amendments adopted December 16, 2021.

1 ⁴2. a. There is established within the Division of Banking in the
2 Department of Banking and Insurance, an Office of Earned Income
3 Access Services. The purpose of the office shall be to oversee the
4 regulation of earned income access services pursuant to this act.

5 b. (1) Upon the establishment of the office, there shall be a 24-
6 month initial period for the registration and regulation of earned
7 income access services pursuant to this act.

8 (2) The commissioner shall, at the end of the 24-month initial
9 period established pursuant to this section, determine whether each
10 of the providers registered pursuant to subsection c. of this section
11 is in compliance with the provisions of this act.

12 (3) A provider that is determined by the commissioner to be in
13 compliance with the provisions of this act shall be allowed to
14 operate in this State on an ongoing basis.

15 (4) A provider that is determined by the commissioner to not be
16 in compliance with the provisions of this act shall not offer earned
17 income access services in this State.

18 c. (1) A provider shall register with the department prior to
19 offering earned income access services pursuant to this act, except
20 that a provider that has not been denied a registration by the
21 department may operate while registration procedures are being
22 promulgated by the department.

23 (2) The department may investigate and examine any provider
24 or other person the commissioner deems necessary to determine
25 compliance with this act and any orders, rules and regulations
26 issued hereunder. For these purposes, the commissioner may
27 examine the books, accounts, records, and other documents or
28 matters of any provider or other person. The commissioner shall
29 have the power to compel by subpoena the production of all
30 relevant books, records and other documents and materials relative
31 to an examination or investigation. The cost of the investigations
32 and examinations shall be borne by the provider. The
33 commissioner shall have the power to prohibit any provider not in
34 compliance with the provisions of this act from doing business in
35 this State.

36 d. (1) The office shall establish a telephone hotline for
37 consumers to file complaints concerning providers. Each complaint
38 shall be separately registered within the office and investigated by
39 the department.

40 (2) During the first 12 months of the 24-month initial period
41 established pursuant to subsection b. of this section, the department
42 shall conduct a study of industry practices, consumer demand,
43 benefits, and cost compared to other similarly available products,
44 and actors in the earned income access services industry. The
45 department shall issue a report of its findings, conclusions, and
46 recommendations to the Governor and, pursuant to section 2 of
47 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Prior to the
48 termination of the initial 24-month period, the department shall

1 review and analyze the benefits and risks to consumers during the
 2 initial provider registration period.

3 (3) Prior to the termination of the 24-month initial period, the
 4 department shall review and analyze the benefits and risks to
 5 consumers during the initial provider registration period. The
 6 department may consider or analyze issues including, but not
 7 limited to, average fees and costs imposed on consumers and
 8 whether limits on frequency of access to earned pay should be
 9 imposed.

10 (4) Upon conclusion of a review and analysis, the department
 11 shall issue a report concerning whether further regulation of the
 12 industry by the Legislature is warranted to the Governor and,
 13 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
 14 Legislature. The department may also propose and implement
 15 regulations thereto.⁴

16
 17 ⁴[2.] 3.⁴ a. An earned income access service provider shall
 18 offer earned income access services through a contractual
 19 arrangement with an obligor or a service provider to an obligor,
 20 ³[¹or a consumer¹]³ ⁴or a consumer⁴ in which the provider:

21 (1) ⁴reasonably⁴ verifies a consumer's ⁴[¹net¹]⁴ earned income;
 22 and

23 (2) delivers earned income to the consumer prior to the date on
 24 which the obligor is scheduled to pay the consumer ²[, and the
 25 amount of the earned income delivered by the provider to the
 26 consumer is reduced or withheld from the consumer's next
 27 payment]² ⁴[³.]⁴ and the amount of the earned income delivered
 28 by the provider to the consumer is reduced or withheld from the
 29 consumer's next payment³.

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

33 (1) the obligor or service provider to the obligor has entered into
 34 a contractual arrangement for earned income access services with
 35 the earned income access service provider; ⁴[and] or⁴

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

37 c. ¹[An earned income access service provider shall not enter
 38 into a contractual arrangement with a consumer that permits
 39 delivery of earned income directly to the consumer that is to be
 40 repaid directly by the consumer to the provider.

41 d. ¹[³(1)¹]³ The imposition of a fee on a consumer who opts
 42 to use the services of an earned income access service provider, and
 43 the reduction or withholding from a consumer's payment as set
 44 forth in subsection a. of this section, shall not violate section 4 of
 45 P.L.1965, c.173 (C.34:11-4.4) ²or section 13 of P.L.1999, c.90
 46 (C.34:11-4.14)², provided that the consumer is informed in writing
 47 of the right to receive the full amount of the consumer's wages,

1 without discount ⁴or expense⁴, if the consumer waits until the
2 regular payment due date.

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

6 ⁴d. An earned income access service provider shall, at the time
7 earned income access services are offered, provide a consumer with
8 a statement, the language of which shall be determined by the
9 commissioner, explaining that the office oversees the regulation of
10 earned income access services providers and including the number
11 and purpose of the telephone hotline established pursuant to section
12 2 of this act.

13 e. If an earned income access service provider makes a
14 withdrawal on a consumer's account, prior to the next regularly
15 scheduled payday, that results in the imposition of fees on the
16 consumer, including an overdraft or non-sufficient funds fee, the
17 provider shall refund the fees to the consumer upon adequate notice
18 and proof by the customer.

19 f. An earned income access service provider shall not charge a
20 consumer for earned income access services more than two times in
21 any week except there shall be no limit on earned income access
22 services when the consumer is given an option for funds to be
23 delivered without a fee.⁴

24
25 ⁴[3.] ⁴a. Any earned income access services that fail to
26 comply with the provisions of section ⁴[2] ³4 of this act shall be
27 subject to:

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

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

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

35 b. Earned income access services that do not comply with
36 section ⁴[2] ³4 of this act shall be considered a loan, even if those
37 services are provided without recourse, and any ⁴[¹required¹]⁴ fees
38 or other ⁴[required]⁴ ¹[or optional]¹ contributions of those services
39 shall be considered as interest when determining the rate of interest
40 for purposes of compliance with a law with which an earned income
41 access service provider is required to comply pursuant to the
42 provisions of this section.

43 c. ⁴[¹Each earned income access ²service² provider shall
44 annually register with the department in a form and manner
45 prescribed by the department. ²Each provider shall include with the
46 registration a list of the fees charged by the provider. A provider
47 may continue to operate prior to the department prescribing the

1 form and manner of the annual registration pursuant to this
2 subsection.²

3 d.¹⁴ Any person who violates any provision of this act shall be
4 liable for a penalty, in addition to any other penalty imposed by
5 law, of not more than \$5,000 for each violation.

6 ⁴³e. The provisions of this act shall not apply to a
7 contractual arrangement between a provider and a consumer that
8 permits delivery of earned income directly to the consumer that is
9 to be repaid directly by the consumer to the provider.³⁴

10
11 ⁴[4. This act shall take effect on the 90th day next following
12 enactment.]⁴

13
14 ⁴5. During the 24 month initial period established pursuant to
15 this act, an earned income access service provider shall submit to
16 the department the following information every six months:

17 a. the number of consumers requesting advances;
18 b. the number of approved advances and denied advances;
19 c. the average number of advances made to a single consumer
20 in:

21 (1) a pay period; and

22 (2) a month;

23 d. the fee charged per advance;

24 e. the average term length of an advance;

25 f. (1) the total number of consumers for whom a withdrawal
26 was made on an account with insufficient funds, and the number of
27 times the account was overdrawn, per consumer;

28 (2) for consumers for whom a withdrawal was made on an
29 account with insufficient funds, how many continuous withdrawals
30 the provider made on the account and what additional fees, if any,
31 were incurred by the consumer; and

32 g. consumer complaint information, including:

33 (1) the total number of complaints;

34 (2) the number of resolved complaints; and

35 (3) a list of the reason for the complaint listed by frequency of
36 reason for complaint.⁴

37
38 ⁴6. Section 2 of this act shall take effect immediately and the
39 remainder of this act shall take effect on 90th day after the date of
40 enactment.⁴