SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Fourth Reprint]
ASSEMBLY, No. 3450

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 6, 2022

The Senate Budget and Appropriations Committee reports favorably, and with committee amendments, Assembly Bill No. 3450 (4R).

As amended, this bill creates certain requirements for earned income access service providers.

Under the bill, "earned income access services" means the delivery of funds to a consumer that represent earned but unpaid income and which should not be considered a loan. "Obligor" means an employer or another person who is contractually obligated to pay the consumer any sum of money on an hourly, project-based, piecework, or other basis for labor or services provided by the consumer. The bill defines "consumer" to mean a natural person working in the state of New Jersey.

The bill requires an earned income access service provider to offer earned income access services through a contractual arrangement with an obligor or a service provider to an obligor, in which the provider:

(1) reasonably verifies a consumer's earned income; and

(2) delivers earned but unpaid income to the consumer prior to the date on which the obligor is scheduled to pay the consumer and the amount of the earned but unpaid income delivered by the provider to the consumer is reduced or withheld from the consumer's next payment.

The bill prohibits an obligor from sharing information with an earned income access service provider pertaining to the obligor's accrued and expected obligations to the consumer unless:

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

(2) the consumer consents to sharing that information.

Under the bill, if a provider charges interest or finances charges, or their equivalent, to a consumer who opts to use the services of an earned income access service provider, determined by the application of a stated rate over a defined period of time, then the provisions of the

civil usury law and the criminal usury law are to apply, except that this provision is not to apply to fees and voluntary payments as defined pursuant to the bill.

The bill provides that any earned income access services that fail to comply with the provisions of the bill are subject to:

(1) the provisions of the civil usury law and the criminal usury law;

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

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

Earned income access services that do not comply with section 2 of the bill are to be considered a loan, even if those services are provided without recourse, and any required fees, other required contributions, or voluntary payments for those services are to be considered as interest when determining the rate of interest for purposes of compliance with a law with which an earned income access service provider is required to comply pursuant to the provisions of the bill.

The bill provides that a person is not to offer earned income access services in this State without first obtaining a license from the Department of Banking and Insurance in accordance with the bill and paying the licensing or renewal fee, as applicable, set by the department. The department may issue a license to an applicant only if the department is satisfied that the applicant possesses the necessary organization, expertise, and financial integrity to supply the services sought to be offered. A license is to be valid for a period of one year, is not to be transferable, and the application for a license is to be granted or denied within 120 days of completed application. The department may suspend, revoke or place on probation a licensee with reasonable notice under any of the following circumstances:

(1) The licensee has engaged in fraudulent activity that constitutes a violation of State or federal law;

(2) The department has received consumer complaints that justify an action under this subparagraph to protect the safety and interests of consumers; or

(3) The licensee fails to comply with any requirement set forth in P.L. , c. (C.) (pending before the Legislature as this bill).

Under the bill, the department is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System and Registry, or other entities designated by the Nationwide Multistate Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the bill. The department may use the Nationwide Multistate Licensing System and Registry as a channeling

agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

The bill authorizes the department investigate the business of all licensees, have free access, to the books, papers, and records of any licensee, and examine, under oath, any person whose testimony the department may require. The cost and charges of any such examination or investigation are to be borne by the licensee.

The bill provides that no license is to be issued by the department to an individual who has, within the five years preceding the submission of an application for a license, been convicted of embezzlement, forgery, fraud, or theft.

As amended by the committee, this bill is identical to Senate Bill No. 3611 (2R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) remove provisions of the bill establishing an Office of Earned Income Access Services;

(2) remove a provision of the bill providing that if an earned income access service provider makes a withdrawal on a consumer's account, prior to the next regularly scheduled payday, that results in the imposition of fees on the consumer, the provider is to refund the fees to the consumer upon adequate notice and proof by the customer;

(3) remove a provision of the bill prohibiting an earned income access service provider from charging a consumer for earned income access services more than two times in any week and establishing that there is to be no limit on earned income access services when the consumer is given an option for funds to be delivered without a fee;

(4) remove provisions of the bill requiring the Department of Banking and Insurance to conduct a study concerning industry practices and to review and analyze the benefits and risks to consumers;

(5) establish certain requirements for the licensing and regulation of earned income access providers through the Department of Banking and Insurance;

(6) require providers to file an annual report with the commissioner enumerating certain information concerning the number of earned income access transactions and the dollar amount of proceeds;

(7) require earned income access service providers to comply with all applicable federal laws; and

(8) provide that the bill is to take effect on the 120th day next following enactment, except the Commissioner of Banking and Insurance may take any anticipatory administrative action in advance necessary for the implementation of the bill.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.