SENATE, No. 3611

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

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

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

1. As used in this act:

"Consumer" means a natural person.

"Department" means the Department of Banking and Insurance"

"Earned but unpaid income" means earned income that has not yet been paid to the consumer by an earned income obligor.

"Earned income" means moneys that a consumer or obligor has represented, and the earned income access service provider has reasonably determined based on that representation , have accrued to the benefit of that consumer for services rendered to an earned income obligor.

"Earned income access service provider" or "provider" means any person that is engaged in the business of delivering earned but unpaid income to a consumer in New Jersey. An earned income access service provider shall be employer-integrated.

"Earned income access services" means the delivery of funds to a consumer that represent earned but unpaid income and which shall 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. "Obligor" shall not include a customer of an obligor or other third party whose obligation to make any payment to a consumer is based solely on the consumer's agency relationship with the obligor.

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

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

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

b. An obligor shall not share 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; and

(2) the consumer consents to sharing that information.

c. The imposition of a fee on a consumer who opts to use the services of an earned income access service provider, and the

reduction or withholding from a consumer's payment as set forth in subsection a. of this section, shall not violate section 4 of P.L.1965, c.173 (C.34:11-4.4) or section 13 of P.L.1999, c.90 (C.34:11-4.14), provided that the consumer is informed in writing of the right to receive the full amount of the consumer's wages, without discount, if the consumer waits until the regular payment due date.

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

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

(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, 12 C.F.R. s.226 et seq., to provide any disclosures required for closed-end loans.

b. Earned income access services that do not comply with section 2 of this act shall be considered a loan, even if those services are provided without recourse, and any required fees or other required contributions of those services shall 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 this section.

c. Each earned income access service provider shall annually register with the department in a form and manner prescribed by the department. Each provider shall include with the registration a list of the fees charged by the provider. A provider may continue to operate prior to the department prescribing the form and manner of the annual registration pursuant to this subsection.

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

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

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

STATEMENT

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. "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 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) verifies a consumer's net earned income; and

(2) delivers earned income to the consumer prior to the date on which the obligor is scheduled to pay the consumer, and the amount of the earned 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; and

(2) the consumer consents to sharing that information.

The imposition of a fee on a consumer who opts to use the services of an earned income access service provider, and the reduction or withholding from a consumer's payment, does not violate certain provisions of current law, provided that the consumer is informed in writing of the right to receive the full amount of the consumer's wages, without discount, if the consumer waits until the regular payment due date.

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, R.S.31:1-1, and the criminal usury law, N.J.S. 2C:21-19;

(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, 12 C.F.R. s.226 et seq., 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 or other required contributions of those services shall 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.

The bill also requires that earned income access providers register with the Department of Banking and Insurance. Any person who violates any provision of the bill is liable for a penalty, in addition to any other penalty imposed by law, of not more than $5,000 for each violation.

The provisions of the bill do not apply to a contractual arrangement between a provider and a consumer that permits delivery of earned income directly to the consumer that is to be repaid directly by the consumer to the provider.