

[First Reprint]

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



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 ¹“Commissioner” means the Commissioner of Banking and
9 Insurance.¹

10 “Consumer” means a natural person.

11 “Department” means the Department of Banking and
12 Insurance ¹**[""]**.¹

13 “Earned but unpaid income” means earned income that has not
14 yet been paid to the consumer by an earned income 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 based on that representation, have accrued to
18 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 Jersey¹**[""]**. An earned income
23 access service provider shall be employer-integrated**[""]** through an
24 integration with an employer. “Earned income access service
25 provider” shall not include a wage advance provider that does not
26 operate through an integration with an employer¹.

27 “Earned income access services” means the delivery of funds to
28 a consumer that represent earned but unpaid income and which shall
29 not be considered a loan.

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

37 ¹“Office” means the Office of Earned Income Access Services
38 within the Division of Banking in the Department of Banking and
39 Insurance.¹

40
41 ¹2. a. There is established within the Division of Banking in the
42 Department of Banking and Insurance, an Office of Earned Income
43 Access Services. The purpose of the office shall be to oversee the
44 regulation of earned income access services pursuant to this act.

EXPLANATION – Matter enclosed in bold-faced brackets **[""]** 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:

¹Senate SCM committee amendments adopted December 16, 2021.

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

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

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

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

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

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

32 d. (1) The office shall establish a telephone hotline for
33 consumers to file complaints concerning providers. Each complaint
34 shall be separately registered within the office and investigated by
35 the department.

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

47 (3) Prior to the termination of the 24-month initial period, the
48 department shall review and analyze the benefits and risks to

1 consumers during the initial provider registration period. The
2 department may consider or analyze issues including, but not
3 limited to, average fees and costs imposed on consumers and
4 whether limits on frequency of access to earned pay should be
5 imposed.

6 (4) Upon conclusion of a review and analysis, the department
7 shall issue a report concerning whether further regulation of the
8 industry by the Legislature is warranted to the Governor and,
9 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
10 Legislature. The department may also propose and implement
11 regulations thereto.¹

12
13 ¹~~2.~~ ^{3.}¹ a. An earned income access service provider shall
14 offer earned income access services through a contractual
15 arrangement with an obligor or a service provider to an obligor ¹~~or~~
16 a consumer¹, in which the provider:

17 (1) ¹~~reasonably~~¹ verifies a consumer's ¹~~net~~¹ earned income;
18 and

19 (2) delivers earned income to the consumer prior to the date on
20 which the obligor is scheduled to pay the consumer¹~~,~~¹ and the
21 amount of the earned income delivered by the provider to the
22 consumer is reduced or withheld from the consumer's next
23 payment.

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

27 (1) the obligor or service provider to the obligor has entered into
28 a contractual arrangement for earned income access services with
29 the earned income access service provider; ¹~~and~~¹ or¹

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

31 c. The imposition of a fee on a consumer who opts to use the
32 services of an earned income access service provider, and the
33 reduction or withholding from a consumer's payment as set forth in
34 subsection a. of this section, shall not violate section 4 of P.L.1965,
35 c.173 (C.34:11-4.4) or section 13 of P.L.1999, c.90 (C.34:11-4.14),
36 provided that the consumer is informed in writing of the right to
37 receive the full amount of the consumer's wages, without discount
38 ¹~~or expense~~¹, if the consumer waits until the regular payment due
39 date.

40 ¹d. An earned income access service provider shall, at the time
41 earned income access services are offered, provide a consumer with
42 a statement, the language of which shall be determined by the
43 commissioner, explaining that the office oversees the regulation of
44 earned income access services providers and including the number
45 and purpose of the telephone hotline established pursuant to section
46 2 of this act.

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

7 f. An earned income access service provider shall not charge a
8 consumer for earned income access services more than two times in
9 any week except there shall be no limit on earned income access
10 services when the consumer is given an option for funds to be
11 delivered without a fee.¹

12
13 ¹~~3.1~~ 4.¹ a. Any earned income access services that fail to
14 comply with the provisions of section ¹~~2~~ 3¹ of this act shall be
15 subject to:

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

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

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

23 b. Earned income access services that do not comply with
24 section ¹~~2~~ 3¹ of this act shall be considered a loan, even if those
25 services are provided without recourse, and any ¹~~required~~¹ fees
26 or other ¹~~required~~¹ contributions of those services shall be
27 considered as interest when determining the rate of interest for
28 purposes of compliance with a law with which an earned income
29 access service provider is required to comply pursuant to the
30 provisions of this section.

31 c. ¹~~Each~~ earned income access service provider shall annually
32 register with the department in a form and manner prescribed by the
33 department. Each provider shall include with the registration a list
34 of the fees charged by the provider. A provider may continue to
35 operate prior to the department prescribing the form and manner of
36 the annual registration pursuant to this subsection.

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

40 ¹~~e.~~ The provisions of this act shall not apply to a contractual
41 arrangement between a provider and a consumer that permits
42 delivery of earned income directly to the consumer that is to be
43 repaid directly by the consumer to the provider.¹

44
45 ¹~~4.~~ This act shall take effect on the 90th day next following
46 enactment.¹

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

4 a. the number of consumers requesting advances;

5 b. the number of approved advances and denied advances;

6 c. the average number of advances made to a single consumer
7 in:

8 (1) a pay period; and

9 (2) a month;

10 d. the fee charged per advance;

11 e. the average term length of an advance;

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

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

19 g. consumer complaint information, including:

20 (1) the total number of complaints;

21 (2) the number of resolved complaints; and

22 (3) a list of the reason for the complaint listed by frequency of
23 reason for complaint.¹

24
25 ¹6. Section 2 of this act shall take effect immediately and the
26 remainder of this act shall take effect on 90th day after the date of
27 enactment.¹