

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 3611

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2021

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 3611.

As amended, this bill creates certain requirements for earned income access service providers and establishes within the Division of Banking in the Department of Banking and Insurance an Office of Earned Income Access Services to regulate earned income access services for a 24-month initial period pursuant to the provisions of the bill.

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 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 or consumer, in which the provider:

- (1) reasonably verifies a consumer’s 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; or
- (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 or expense, 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.

The bill provides that an earned income access service provider is to, at the time earned income access services are offered, provide a consumer with a statement, the language of which is to be determined by the commissioner, explaining that the office oversees the regulation of earned income access services providers and including the number and purpose of the telephone hotline established pursuant the bill.

Under the bill, 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, including an overdraft or non-sufficient funds fee, the provider shall refund the fees to the consumer upon adequate notice and proof by the customer.

In addition, an earned income access service provider is not to charge a consumer for earned income access services more than two times in any week except 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.

Earned income access services that do not comply with section 3 of the bill are to be considered a loan, even if those services are provided without recourse, and any fees or other contributions of 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.

The bill requires providers to submit to the department certain information during the 24-month initial period. Under the bill, the department is required to conduct a study, during the first 12 months of the 24-month initial period, concerning industry practices, consumer demand, benefits, and cost compared to other similarly available products, and actors in the earned income access services industry and to issue the report to the Governor and the Legislature. The department is also required to review and analyze, prior to the termination of the initial 24-month period, the benefits and risks to consumers during the initial provider registration period.

As amended and reported, this bill is identical to Assembly Bill No. 3450 (3R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) establish within the Division of Banking in the Department of Banking and Insurance an Office of Earned Income Access Services to regulate earned income access services for a 24-month initial period pursuant to the provisions of the bill;

(2) establish a telephone hotline for consumers to file complaints concerning providers of earned income access services;

(3) require providers to provide certain information to consumers concerning the Office of Earned Income Access Services and the telephone hotline established pursuant to the bill;

(4) provide 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;

(5) prohibit 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;

(6) require the department to conduct a study, during the first 12 months of the 24-month initial period, concerning industry practices, consumer demand, benefits, and cost compared to other similarly available products, and actors in the earned income access services industry and issue the report to the Governor and the Legislature;

(7) require the department to review and analyze, prior to the termination of the initial 24-month period, the benefits and risks to consumers during the initial provider registration period;

(8) require earned income access service providers to provide certain information to the department every six months; and

(9) change the definition of "earned income access service provider."