

SENATE, No. 866

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 14, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Creates certain requirements for earned income access services.

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.

"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 has represented, and the earned income access service provider has reasonably determined, 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.

"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. "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 in which the provider delivers earned income to the consumer prior to the date on which the obligor is scheduled to pay the consumer, and the obligor deducts the amount of the earned income delivered by the provider to the consumer from the consumer's next paycheck.

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

(1) 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. An earned income access service provider shall not enter into a contractual arrangement with a consumer that permits delivery of earned income directly to the consumer that is to be repaid directly by the consumer to the provider.

d. The imposition of a fee on a consumer who opts to use the services of an earned income access service provider shall not violate section 4 of P.L.1965, c.173 (C.34:11-4.4), 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 payday.

e. An earned income access service provider shall comply with:

(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.

f. For purposes of this section:

(1) earned income access services shall be considered a loan, even if those services are provided without recourse; and

(2) any fees or other required or optional contributions 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.

g. 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.

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

This bill creates certain requirements for earned income access services. Under the bill, "earned income access services" means the delivery of funds to a consumer that represent earned but unpaid income.

The bill requires an earned income access service provider to offer earned income access services through a contractual arrangement with an obligor in which the provider delivers earned income to the consumer prior to the date on which the obligor is scheduled to pay the consumer, and the obligor deducts the amount of the earned income delivered by the provider to the consumer from the consumer's next paycheck.

The bill provides that an obligor may not share information with the earned income access service provider pertaining to the obligor's accrued and expected obligations to the consumer unless:

- (1) 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 bill prohibits an earned income access service provider from entering into a contractual arrangement with a consumer that permits delivery of earned income directly to the consumer that is to be repaid directly by the consumer to the person.

Under the bill, the imposition of a fee on a consumer who opts to use the services of an earned income access service provider is not in violation of current law prohibiting deductions from an employee's wages, 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 payday.

The bill requires an earned income access service provider to comply with:

- (1) the provisions of the civil and criminal usury laws;
- (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" and the regulations implementing that act, to provide any disclosures required for closed-end loans.

For purposes of the bill, earned income access services are to be considered a loan, even if those services are provided without recourse. Any fees or other required or optional contributions 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 also provides that 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.