

AMERICAN PAYROLL ASSOCIATION

Via Electronic Mail

October 27, 2020

The Honorable Gordon M. Johnson
Speaker Pro Tempore
New Jersey General Assembly
Trenton, NJ 08625-0098

Re: Assembly Bill 3450, An Act concerning earned income access services and supplementing Title 17 of the Revised Statutes – **Support with proposed amendment**

Dear Speaker Pro Tempore Johnson:

The American Payroll Association (APA) appreciates this opportunity to comment on Assembly Bill 3450 which would establish requirements for earned income access services. We support legislation, such as A3450, that would recognize and regulate earned income access services. We were concerned about recent amendments to the bill that would have inadvertently prohibited earned income access providers from assessing fees for their services if they offer a model that integrates with employers. Such a restriction would limit the wage advance options available in the market and would diminish the value employees receive from earned income access services. However, proposed amendments to Section 2 (d)(2) would appear to resolve this concern, i.e., “(2) A provider that contracts solely with a consumer shall not charge a mandatory fee to the consumer for the provision of earned income access services.”

Employer-integrated providers interact with employees through a mobile app or a website that allows the worker to request and manage their advances. These mobile apps and websites all require the employee to agree to privacy policies and terms of service, which are a form of contract. As a result, even in wage advance programs that operate through employers, the consumer contracts directly with the provider. The proposed amendment reflected above appears to resolve this concern. The APA urges you to adopt the proposed amendment to clarify the intended purpose of the fee restriction.

The American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA’s primary mission is to educate its members and the payroll industry regarding best practices associated with paying America’s workers while

complying with applicable federal, state, and local laws. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

APA's GRTF monitors the development and use of innovative payroll technologies — such as earned income access — within the employer community and educates policymakers and regulators about the uses and benefits of technology. The GRTF has supported numerous legislative and regulatory initiatives that provide employers with clear guidance on their responsibilities under the law, ensure that employees have full and free access to their wages, and that require employees are provided with information on how to use payroll technologies to their advantage.

Thank you for the opportunity to comment on this legislation. We would welcome the opportunity to discuss the above issues with you further. In this regard, please contact Alice Jacobsohn at ajacobsohn@americanpayroll.org or by phone at 202-669-4001.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

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Background on APA's Concern Regarding the Prohibition on Mandatory Fees

On October 19, 2020, the Financial Institutions and Insurance Committee reported an amended version of A3450. Among several modifications, the Committee deleted language in Section 2(c) that prohibited an earned income access provider from entering into a contract with a consumer that permits direct delivery and direct repayment of an advance by the consumer. That provision essentially prohibited the direct-to-consumer business model by barring providers from directly debiting consumer accounts to recover advances. By striking old Section 2(c), the Committee had revived the direct-to-consumer business model, at least to a degree. The amendment also added a new Section 2(c)(2) which states that a "provider that contracts directly with a consumer shall not charge a mandatory fee to the consumer." This new language would have prohibited providers from charging "mandatory" fees but presumably allows "voluntary" payments or tips by consumers who use the service.

Because this new provision only applied to a provider that "contracts directly with a consumer," we assume it was intended to apply only to providers offering a direct-to-consumer model for earned wage access. The APA was concerned that the bill language could be misread to also apply to providers offering an employer-integrated model.

Typically, earned income access services make advances available to consumers without charge or for a small fee via an electronic fund transfer which take 2-3 days to arrive at the consumer's bank account. Most providers also offer a real-time payment option at a nominal fee which makes the advanced funds available to the worker in a few minutes. If employer-integrated providers are unable to assess a fee for an expedited advance, they will be unable to provide the service in real time, greatly diminishing the value of the product to workers. For this reason, APA supports A3450 as amended to clarify that the prohibition on mandatory fees only applies to direct-to-consumer providers.

While as payroll professionals, our primary concern is with the bill's impact on employer-integrated providers, we are also concerned that the legislation appears to favor voluntary fee or tip-based business models over providers that assess properly disclosed fees for their services. Treating all direct-to-consumer fees, both mandatory and voluntary, the same would be a fairer approach.