Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1402 of the Regular Session

State of Arkansas

87th General Assembly

Regular Session, 2009


A Bill

HOUSE BILL 2203


By: Senators H. Wilkins, Broadway, Crumbly, Elliott, D. Johnson, T. Smith, Steele, R. Thompson, D. Wyatt

For An Act To Be Entitled

AN ACT TO CREATE THE REFUND ANTICIPATION LOAN ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE REFUND ANTICIPATION LOAN ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4 is amended to create a new chapter to read as follows:

Chapter 116 Refund Anticipation Loan Act

4-116-101. Title and intent.
(a) This act shall be known and referred to as the “Refund Anticipation Loan Act”.
(b) It is the intent of the General Assembly that this act shall protect consumers who enter into a refund anticipation loan and a refund
4-116-102. Definitions.

(1) “Consumer” means a person who, individually or in conjunction with another consumer, is solicited for, applies for, or receives a refund anticipation loan or refund anticipation check;

(2) “Creditor” means a person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan;

(3)(A) “Facilitator” means a person who, individually or in conjunction or cooperation with another person:

(i) Processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check;

(ii) Services or collects upon a refund anticipation loan or refund anticipation check; or

(iii) Facilitates the making of a refund anticipation loan or refund anticipation check.

(B) “Facilitator” does not include a bank, savings and loan association, credit union, or person who acts solely as an intermediary and does not deal with the public in making of a refund anticipation loan or refund anticipation check;

(4)(A) “Refund anticipation loan” means a loan arranged to be paid directly or indirectly from the proceeds of the consumer’s income tax refund or tax credits.

(B) “Refund anticipation loan” includes any sale, assignment, or purchase of a consumer’s tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer’s tax refund.

(5)(A) “Refund anticipation loan fee” means any charges, fees, or other consideration charged or imposed directly or indirectly for the making of or in connection with a refund anticipation loan.

(B) “Refund anticipation loan fee” includes a charge, fee, or other consideration for a deposit account, if the deposit account is used for receipt of the consumer’s tax refund to repay the amount owed on the loan; and

(6) “Refund anticipation check” means a check, stored value card, or other payment mechanism, representing the proceeds of the consumer’s

4-116-103. Scope.

Unless a facilitator has complied with the provisions of this chapter, a facilitator, including any officer, agent, employee or representative, individually or in conjunction or cooperation with another person shall not:

(1) Solicit the execution of, process, receive, or accept an application or agreement for a refund anticipation loan or refund anticipation check; or

(2) Facilitate the making of a refund anticipation loan or refund anticipation check.

4-116-104. Posting of fee schedules and disclosures.

(a) A facilitator shall display a schedule showing the current fees for refund anticipation loans or refund anticipation checks facilitated at the office.

(b) A facilitator also shall prominently display on each fee schedule the following information:

(1) Examples of the interest rates charged for refund anticipation loans in the amounts of:

(A) Two hundred fifty dollars ($250);
(B) Five hundred dollars ($500);
(C) One thousand dollars ($1,000); and
(D) Two thousand five hundred dollars ($2,500);

(2) A legend, centered, in bold capital letters, and in one-inch letters stating: “NOTICE CONCERNING REFUND ANTICIPATION LOANS”; and

(3) The following statement: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a
loan or paying fees for an extra product."

(c)(1) The postings required by this section shall be made in no less than 28-point type on a document measuring no less than sixteen (16") inches by twenty (20") inches.

(2) The posting required in this section shall be displayed in a prominent location at each office where the facilitator is facilitating refund anticipation loans.

(d) A facilitator shall not facilitate a refund anticipation loan or refund anticipation check unless;

(1) The disclosures required by this section are displayed, and
(2) The fee charged for the refund anticipation loan or refund anticipation check is the same as the fee displayed on the schedule.

4-116-105. Application disclosures.

(a) When a consumer applies for a refund anticipation loan, the facilitator shall disclose to the consumer on a colored-paper form separate from the application in 14-point type face, the following information:

(1) The fee for the refund anticipation loan, including the fee for the tax preparation and other fees charged the consumer;
(2) The time within which the proceeds of the refund anticipation loan will be paid to the consumer if the loan is approved;
(3) For refund anticipation loans, the following disclosures:
   (A) A legend, centered, in bold, capital letters, and in 18-point type stating: “NOTICE”; and
   (B) The statement: “This is a loan. You are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. You can have your tax return filed electronically and your refund direct deposited into your bank account without obtaining a loan or other paid product.”; and
(4)(A) For refund anticipation loans, disclosure of the refund anticipation loan interest rate.

(B) The refund anticipation loan interest rate shall be calculated utilizing the guidelines established under the federal Truth in Lending Act 15 U.S.C. § 1601 et seq. as it existed on January 1, 2009.
(b) If a consumer applies for a refund anticipation check, the facilitator shall disclose to the consumer on a colored-paper form separate from the application in 14-point type face, the following information:

(1) The fee for the refund anticipation check, including the fee for tax preparation and other fees charged the consumer;

(2) The time within which the proceeds of the refund anticipation check will be paid to the consumer; and

(3) The following disclosures:

   (A) A legend, centered, in bold, capital letters, and in 18-point type stating: “NOTICE”; and

   (B) The statement: “You are paying [amount of refund anticipation check fee] to get your refund check through [name of issuer of the refund anticipation check]. YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND DIRECTED DEPOSITED INTO YOUR BANK ACCOUNT. You can also wait for the Internal Revenue Service to mail you a check.”

(c) The facilitator shall provide to the consumer before completing the loan or check transaction in a form that can be kept by the consumer the following:

(1) The disclosures required by this subsection;

(2) A copy of the completed loan or check application and agreement; and

(3) For refund anticipation loans, the disclosures required by the federal Truth in Lending Act; and

(d) The disclosures required by this section shall be provided in English and in the language used primarily for oral communication between the facilitator and the consumer.

4-116-106. Oral disclosures.

(a) If a consumer applies for a refund anticipation loan, the facilitator shall orally inform the consumer:

(1) That the product is a loan that lasts one (1) or two (2) weeks;

(2) That if the consumer’s tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference;
(3) The amount of the refund loan fee; and

(4) The refund anticipation loan interest rate.

(b) If a consumer applies for a refund anticipation check, the facilitator shall orally inform the consumer:

(1) The amount of the refund check; and

(2) That the consumer may receive a refund in the same amount of time without a fee if the tax return is filed electronically and if the consumer directly deposits the refund in the consumer’s own bank account.

(c) The disclosures required in this section shall be provided in the language primarily used for oral communication between the facilitator and the consumer.

4-116-107. Prohibited activities.

A facilitator shall not:

(1) Require a consumer to enter into a loan agreement in order to complete a tax return;

(2)(A) Charge or impose any fee, or charge or require other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provides the loan or check.

(B)(i) This section does not prohibit the charge or fee imposed by the facilitator to all of its customers if the same fee in the same amount is charged to customers who do not receive refund anticipation loans, refund anticipation checks, or other tax-related financial products.

(ii) This fee may include fees for tax return preparation;

(3) Engage in a transaction, practice, or course of business that operates a fraud upon a consumer in connection with a refund anticipation loan or refund anticipation check, including making oral statements contradicting any of the information required to be disclosed under this chapter;

(4) Directly or indirectly arrange for any third party to charge an interest, fee, or charge related to a refund anticipation loan or refund anticipation check, other than the refund anticipation loan or refund anticipation check fee imposed by the creditor including without limitation charges for insurance, attorney’s fees, other collection costs, or check
cashing.

(5) Misrepresent a material fact or condition of a refund anticipation loan or refund anticipation check; and

(6) Fail to process the application for a refund anticipation loan promptly after the client applies for the loan.

4-116-108. Remedies.

(a) A facilitator who violates a provision of this chapter is in violation of The Arkansas Deceptive Trade Practices Act, § 4-88-101 et seq., and a consumer shall have all rights and remedies provided under this law.

(b) A facilitator who willfully fails to comply with any provision of this chapter is liable to the consumer for:

(1) Actual and consequential damages;

(2) Statutory damages of one thousand dollars ($1,000); and

(3) Reasonable attorney’s fees and costs.

/s/ Williams

APPROVED: 4/9/2009