

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/18/09

A Bill

HOUSE BILL 2203

5 By: Representative Williams
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE REFUND ANTICIPATION LOAN
10 ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12 TO CREATE THE REFUND ANTICIPATION LOAN
13 ACT.
14

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16
17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 4 is amended to create a new chapter to
21 read as follows:
22

Chapter 116 Refund Anticipation Loan Act

4-116-101. Title and intent.

25 (a) This act shall be known and referred to as the "Refund
26 Anticipation Loan Act".
27

28 (b) It is the intent of the General Assembly that this act shall
29 protect consumers who enter into a refund anticipation loan and a refund
30 anticipation check transaction.
31

4-116-102. Definitions.

32 (1) "Consumer" means a person who, individually or in
33 conjunction with another consumer, is solicited for, applies for, or receives
34 a refund anticipation loan or refund anticipation check;
35

36 (2) "Creditor" means a person who makes a refund anticipation



1 loan or who takes an assignment of a refund anticipation loan;

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

4 (i) Solicits the execution of, processes, receives,
5 or accepts an application or agreement for a refund anticipation loan or
6 refund anticipation check;

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

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

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

15 (4)(A) "Refund anticipation loan" means a loan arranged to be
16 paid directly or indirectly from the proceeds of the consumer's income tax
17 refund or tax credits.

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

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

25 (B) "Refund anticipation loan fee" includes a charge, fee,
26 or other consideration for a deposit account, if the deposit account is used
27 for receipt of the consumer's tax refund to repay the amount owed on the
28 loan; and

29 (6) "Refund anticipation check" means a check, stored value
30 card, or other payment mechanism, representing the proceeds of the consumer's
31 tax refund, which was issued by a depository institution or other person that
32 received a direct deposit of the consumer's tax refund or tax credit and for
33 which the consumer has paid a fee or other consideration for such payment
34 mechanism.

35
36 4-116-103. Scope.

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

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

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

9
10 4-116-104. Posting of fee schedules and disclosures.

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

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

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

18 (A) Two hundred fifty dollars (\$250);

19 (B) Five hundred dollars (\$500);

20 (C) One thousand dollars (\$1,000); and

21 (D) Two thousand five hundred dollars (\$2,500);

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

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

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

35 (2) The posting required in this section shall be displayed in a
36 prominent location at each office where the facilitator is facilitating

1 refund anticipation loans.

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

4 (1) The disclosures required by this section are displayed, and

5 (2) The fee charged for the refund anticipation loan or refund
6 anticipation check is the same as the fee displayed on the schedule.

7
8 4-116-105. Application disclosures.

9 When a consumer applies for a refund anticipation loan or refund
10 anticipation check, the facilitator shall disclose to the consumer on a
11 colored-paper form separate from the application in 14-point type face, the
12 following information:

13 (1) The fee for the refund anticipation loan or refund
14 anticipation check, including the fee for tax preparation and other fee
15 charged the consumer;

16 (2) The time within which the proceeds of the refund
17 anticipation loan or check will be paid to the consumer if the loan or check
18 is approved;

19 (3) For refund anticipation loans, the following disclosures:

20 (A) A legend, centered, in bold, capital letters, and in
21 18-point type stating: "NOTICE"; and

22 (B) The statement: "This is a loan. You are borrowing
23 money against your tax refund. If your tax refund is less than expected, you
24 will still owe the entire amount of the loan. If your refund is delayed, you
25 may have to pay additional costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15
26 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. You can have your tax
27 return filed electronically and your refund direct deposited into your bank
28 account without obtaining a loan or other paid product."

29 (4)(A) For refund anticipation loans, disclosure of the refund
30 anticipation loan interest rate.

31 (B) The refund anticipation loan interest rate shall be
32 calculated utilizing the guidelines established under the federal Truth in
33 Lending Act 15 U.S.C. § 1601 et seq. as it existed on January 1, 2009;

34 (5) For refund anticipation checks, the following disclosures:

35 (A) A legend, centered, in bold, capital letters, and in
36 18-point type stating: "NOTICE"; and

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

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

10 (A) The disclosures required by this subsection;

11 (B) A copy of the completed loan or check application and
12 agreement; and

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

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

18
19 4-116-106. Oral disclosures.

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

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

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

27 (3) The amount of the refund loan fee; and

28 (4) The refund anticipation loan interest rate.

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

31 (1) The amount of the refund check; and

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

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

1 the consumer.

2
3 4-116-107. Prohibited activities.

4 A facilitator shall not:

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

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

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

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

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

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

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

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

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33 4-116-108. Remedies.

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

