

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 *As Engrossed: H3/18/09 H3/20/09 H3/25/09*

2 87th General Assembly

# A Bill

3 Regular Session, 2009

HOUSE BILL 2203

4

5 By: Representatives Williams, Adcock, Allen, T. Baker, Blount, Carroll, J. Edwards, Hardy, Kerr, Lea,

6 W. Lewellen, Moore, Nickels, Rainey, Tyler, Woods

7 By: Senators Crumbly, Steele

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## For An Act To Be Entitled

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

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## Subtitle

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16 TO CREATE THE REFUND ANTICIPATION LOAN  
17 ACT.

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

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

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### Chapter 116 Refund Anticipation Loan Act

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27 4-116-101. Title and intent.

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28 (a) This act shall be known and referred to as the "Refund  
29 Anticipation Loan Act".

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

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34 4-116-102. Definitions.

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36 (1) "Consumer" means a person who, individually or in  
conjunction with another consumer, is solicited for, applies for, or receives



1 a refund anticipation loan or refund anticipation check;

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

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

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

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

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

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

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

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

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

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

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

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1 4-116-103. Scope.

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

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

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

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11 4-116-104. Posting of fee schedules and disclosures.

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

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

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

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

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

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

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

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

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

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

36 (2) The posting required in this section shall be displayed in a

1 prominent location at each office where the facilitator is facilitating  
2 refund anticipation loans.

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

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

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

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9 4-116-105. Application disclosures.

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

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

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

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

18 (A) A legend, centered, in bold, capital letters, and in  
19 18-point type stating: "NOTICE"; and

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

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

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

32 (b) If a consumer applies for a refund anticipation check, the  
33 facilitator shall disclose to the consumer on a colored-paper form separate  
34 from the application in 14-point type face, the following information:

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

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

3           (3) The following disclosures:

4           (A) A legend, centered, in bold, capital letters, and in  
5 18-point type stating: "NOTICE"; and

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

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

15           (1) The disclosures required by this subsection;

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

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

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

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24           4-116-106. Oral disclosures.

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

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

29           (2) That if the consumer's tax refund is less than expected, the  
30 consumer is liable for the full amount of the loan and must repay any  
31 difference;

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

33           (4) The refund anticipation loan interest rate.

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

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

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

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

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8           4-116-107. Prohibited activities.

9           A facilitator shall not:

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

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

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

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

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

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

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

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

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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