

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 H3/30/09 S4/1/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 2203

4

5 *By: Representatives Williams, Adcock, Allen, Baird, T. Baker, Barnett, Blount, M. Burris, Carnine,*
6 *Carroll, Carter, Clemmer, D. Creekmore, Dale, Davis, J. Dickinson, Dunn, J. Edwards, English,*
7 *Flowers, Garner, Greenberg, Hardy, Hobbs, D. Hutchinson, Hyde, Ingram, Kerr, Lea, W. Lewellen,*
8 *Lovell, Maxwell, McLean, Moore, Nickels, Nix, Pennartz, Pierce, Pyle, Rainey, Rice, T. Rogers, G. Smith,*
9 *L. Smith, Tyler, Webb, Woods, Word*

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

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13

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For An Act To Be Entitled

15

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

17

18

19

Subtitle

20

TO CREATE THE REFUND ANTICIPATION LOAN
21 ACT.

22

23

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

25

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

28

29

Chapter 116 Refund Anticipation Loan Act

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4-116-101. Title and intent.

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

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



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2 4-116-102. Definitions.

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

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

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

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

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

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

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

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

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

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

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

34 (6) "Refund anticipation check" means a check, stored value
35 card, or other payment mechanism, representing the proceeds of the consumer's
36 tax refund, which was issued by a depository institution or other person that

1 received a direct deposit of the consumer's tax refund or tax credit and for
2 which the consumer has paid a fee or other consideration for such payment
3 mechanism.

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5 4-116-103. Scope.

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

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

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

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15 4-116-104. Posting of fee schedules and disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13 4-116-105. Application disclosures.

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

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

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

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

22 (A) A legend, centered, in bold, capital letters, and in
23 18-point type stating: "NOTICE"; and

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

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

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

36 (b) If a consumer applies for a refund anticipation check, the

1 facilitator shall disclose to the consumer on a colored-paper form separate
2 from the application in 14-point type face, the following information:

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

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

7 (3) The following disclosures:

8 (A) A legend, centered, in bold, capital letters, and in
9 18-point type stating: "NOTICE"; and

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

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

19 (1) The disclosures required by this subsection;

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

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

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

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28 4-116-106. Oral disclosures.

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

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

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

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

1 (4) The refund anticipation loan interest rate.

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

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

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

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

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12 4-116-107. Prohibited activities.

13 A facilitator shall not:

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

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

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

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

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

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

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

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

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6 4-116-108. Remedies.

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

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

12 (1) Actual and consequential damages;

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

14 (3) Reasonable attorney's fees and costs.

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16 /s/ Williams
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