

By Senator Fasano

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1 A bill to be entitled
2 An act relating to tax refund loans or checks;
3 providing a short title; providing definitions;
4 requiring a person engaged in providing refund
5 anticipation loans or checks to comply with certain
6 requirements; requiring facilitators of refund
7 anticipation loans or checks to disclose certain
8 information; prescribing how that information must be
9 displayed; requiring a facilitator to disclose certain
10 information in an application for a refund
11 anticipation loan or check; prescribing how that
12 information must be displayed; requiring a facilitator
13 to provide certain information orally to an applicant
14 for a refund anticipation loan or check; providing
15 activities that are prohibited when transacting a
16 refund anticipation loan or check; limiting the amount
17 of interest that may be charged on a refund
18 anticipation loan; requiring refund anticipation loan
19 and check marketing and advertizing efforts to include
20 certain disclosures; providing remedies, including
21 attorney's fees and costs; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Tax Refund Anticipation Loan Act.—

27 (1) TITLE.—This section may be cited as the "Tax Refund
28 Anticipation Loan Act."

29 (2) DEFINITIONS.—As used in the section, the term:

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30 (a) "Consumer" means an individual who singly, or jointly
31 with another consumer, is solicited for, applies for, or
32 receives the proceeds of a refund anticipation loan or refund
33 anticipation check.

34 (b) "Creditor" means a person who makes a refund
35 anticipation loan or who takes an assignment of a refund
36 anticipation loan.

37 (c) "Facilitator" means a person who individually or with
38 another:

39 1. Solicits the execution of, processes, receives, or
40 accepts an application or agreement for a refund anticipation
41 loan or refund anticipation check;

42 2. Services or collects upon a refund anticipation loan or
43 refund anticipation check; or

44 3. Otherwise facilitates the making of a refund
45 anticipation loan or refund anticipation check.

46
47 If there is no third-party facilitator because a creditor
48 directly solicits the execution of, receives, or accepts an
49 application or agreement for a refund anticipation loan or
50 refund anticipation check, the creditor is the facilitator.

51 (d) "Market" or "advertise" means to produce, distribute,
52 broadcast, or otherwise display written materials, oral
53 statements, or visual materials describing products and
54 services.

55 (e) "Person" has the same meaning as in s. 1.01.

56 (f) "Refund anticipation check" means a check, stored value
57 card, or other payment mechanism representing the proceeds of a
58 consumer's tax refund which is issued by a depository

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59 institution or other person that receives the direct deposit of
60 the consumer's tax refund or tax credits, and for which the
61 consumer has paid a fee or other consideration for such payment.

62 (g) "Refund anticipation loan" means a loan that is secured
63 by or that the creditor arranges to be repaid, directly or
64 indirectly, from the proceeds of the consumer's income tax
65 refund or tax credits. A refund anticipation loan also includes
66 any sale, assignment, or purchase of a consumer's tax refund at
67 a discount or for a fee, regardless of whether the consumer is
68 required to repay the buyer or assignee if the Internal Revenue
69 Service denies or reduces the consumer's tax refund.

70 (h) "Refund anticipation loan fee" means the charges, fees,
71 or other consideration charged or imposed, directly or
72 indirectly, by the creditor for the making of or in connection
73 with a refund anticipation loan.

74 (i) "Refund anticipation loan interest rate" means the
75 interest rate for a refund anticipation loan calculated as
76 follows: the total amount of refund anticipation loan fees,
77 divided by the loan amount minus any loan fees, divided by the
78 number of days in the loan term, multiplied by 365 and expressed
79 as a percentage. The total amount of the refund anticipation
80 loan fees must include all refund anticipation loan fees
81 imposed. If a deposit account is established or maintained, in
82 whole or in part, to receive the consumer's tax refund in order
83 to repay the amount owed on a refund anticipation loan:

84 1. Any fee charged to the consumer for such deposit account
85 is considered a loan fee and must be included in calculating the
86 refund anticipation loan interest rate; and

87 2. For the purpose of determining the refund anticipation

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88 loan interest rate, the maturity date of the loan is the
89 estimated date that the tax refund will be deposited in the
90 deposit account. If a deposit account is not established or
91 maintained, the maturity date of the loan is the estimated date
92 that the tax refund is received by the creditor.

93 (3) SCOPE.—A person, including an agent or employee of such
94 person, may not, individually or with another person, directly
95 or indirectly, solicit the execution of, process, receive, or
96 accept an application or agreement for a tax refund anticipation
97 loan or refund anticipation check, or in any other manner
98 facilitate the making of a refund anticipation loan or refund
99 anticipation check unless the person has complied with the
100 provisions of this section.

101 (4) POSTING OF FEE SCHEDULES AND DISCLOSURES.—

102 (a) Each facilitator must display a fee schedule showing
103 the current fees for refund anticipation loans or refund
104 anticipation checks transacted at the facilitator's place of
105 business in a prominent location at the place of business, in at
106 least 28-point type, and, unless otherwise noted, on a document
107 measuring at least 16 inches by 20 inches. The fee schedule must
108 also include:

109 1. Examples of the refund anticipation loan interest rate
110 for at least five different refund anticipation loan amounts
111 calculated in accordance with the formula set forth in paragraph
112 (2) (i).

113 2. The following statement centered and in 1-inch uppercase
114 and bold type:

115
116 TAX REFUND ANTICIPATION LOANS

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117
118 WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE
119 BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX
120 REFUND IS LESS THAN EXPECTED, YOU WILL STILL OWE THE
121 ENTIRE AMOUNT OF THE LOAN. IF YOUR REFUND IS DELAYED,
122 YOU MAY HAVE TO PAY ADDITIONAL FEES.

123
124 YOU WILL USUALLY RECEIVE YOUR TAX REFUND IN 8 TO 15
125 DAYS WITHOUT OBTAINING A LOAN OR PAYING EXTRA FEES IF
126 YOUR TAX RETURN IS FILED ELECTRONICALLY AND YOUR
127 REFUND IS DEPOSITED DIRECTLY INTO YOUR BANK ACCOUNT.

128
129 (b) A facilitator may not facilitate a refund anticipation
130 loan or refund anticipation check unless the disclosures
131 required by this section are displayed and the fee charged for
132 the loan or check is the same as the fee displayed on the
133 schedule.

134 (5) APPLICATION DISCLOSURES.—

135 (a) When a consumer applies for a refund anticipation loan
136 or refund anticipation check, the facilitator must disclose to
137 the consumer on a form separate from the application in 14-point
138 type, unless otherwise noted:

139 1. The fee for the refund anticipation loan or refund
140 anticipation check.

141 2. The fee for tax preparation and any other fee charged to
142 the consumer.

143 3. The time within which the proceeds of the refund
144 anticipation loan or check will be paid to the consumer if the
145 loan or check is approved.

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146 4. For refund anticipation loans, the following statement
 147 centered and in 18-point uppercase and bold type:

149 NOTICE

151 THIS IS A LOAN. YOU ARE BORROWING MONEY AGAINST YOUR
 152 TAX REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED,
 153 YOU WILL STILL OWE THE ENTIRE AMOUNT OF THE LOAN. IF
 154 YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL
 155 FEES.

157 YOU WILL USUALLY RECEIVE YOUR REFUND IN 8 TO 15 DAYS
 158 WITHOUT OBTAINING A LOAN OR PAYING EXTRA FEES IF YOUR
 159 TAX RETURN IS FILED ELECTRONICALLY AND YOUR REFUND IS
 160 DEPOSITED DIRECTLY INTO YOUR BANK ACCOUNT.

162 5. For refund anticipation loans, the refund anticipation
 163 loan interest rate calculated in accordance with the formula set
 164 forth in paragraph (2) (i).

165 6. For refund anticipation checks, the following statement
 166 centered and in 18-point bold and uppercase type:

168 NOTICE

170 YOU ARE PAYING [...amount of refund anticipation check
 171 fee...] TO RECEIVE YOUR REFUND CHECK THROUGH [...name
 172 of issuer of refund anticipation check...]. YOU MAY
 173 AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE
 174 SAME AMOUNT OF TIME BY HAVING YOUR REFUND DIRECTLY

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175 DEPOSITED INTO YOUR BANK ACCOUNT. YOU MAY ALSO WAIT
176 FOR THE INTERNAL REVENUE SERVICE (IRS) TO MAIL YOU A
177 CHECK. IF YOU DO NOT HAVE A BANK ACCOUNT, YOU MAY WANT
178 TO CONSIDER GETTING ONE.

179
180 (b) Before consummating the loan or check transaction, the
181 facilitator must provide to the consumer, in a form that can be
182 kept by the consumer, the disclosure required by paragraph (a),
183 a copy of the completed loan or check application and agreement,
184 and, for refund anticipation loans, the disclosures required
185 under the federal Truth-In-Lending Act.

186 (c) The disclosures required by paragraph (a) must be
187 provided in English and in the language used primarily for oral
188 communication between the facilitator and the consumer.

189 (6) ORAL DISCLOSURES.—

190 (a) If a consumer applies for a refund anticipation loan,
191 the facilitator must orally inform the consumer in the language
192 primarily used for oral communications between the facilitator
193 and consumer:

194 1. That the product is a loan that lasts only for 1 to 2
195 weeks;

196 2. If the consumer's tax refund is less than expected, the
197 consumer is liable for the full amount of the loan and must
198 repay any difference;

199 3. The amount of the refund anticipation loan fee; and

200 4. The refund anticipation loan interest rate.

201 (b) If a consumer applies for a refund anticipation check,
202 the facilitator must orally inform the consumer in the language
203 primarily used for oral communications between the facilitator

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204 and consumer:

205 1. The amount of the refund anticipation check fee; and
206 2. That the consumer will usually receive a refund in the
207 same amount of time without a fee if the tax return is filed
208 electronically and the consumer chooses to have the refund
209 directly deposited to the consumer's bank account.

210 (c) If the facilitator provides an estimate of the amount
211 that the consumer will receive after deducting fees for tax
212 preparation and fees for the refund anticipation loan or refund
213 anticipation check, the facilitator must also describe all the
214 options available to the consumer and the refund amount and the
215 charge for each fee under each option, including:

216 1. Not obtaining a refund anticipation loan or check and
217 receiving the full tax refund amount by mail within 3 to 8 weeks
218 if the tax return is mailed.

219 2. Not obtaining a refund anticipation loan or check and
220 receiving the full refund amount within 8 to 15 days if the tax
221 return is electronically filed and the refund is directly
222 deposited to the consumer's bank account.

223 3. Obtaining a refund anticipation check within 8 to 15
224 days in the amount anticipated from preparing the tax refund,
225 minus the refund anticipation check fee, the tax preparation
226 fee, and any other fee charged, and not receiving a refund
227 check.

228 4. Obtaining a refund anticipation loan within 1 to 2 days
229 in the amount anticipated from preparing the tax refund, minus
230 the refund anticipation loan fee, the tax preparation fee, and
231 any other fee charged, and not receiving a refund check.

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233 These disclosures may be used to fulfill the requirements of
234 subparagraph (a)3. or paragraph (b).

235 (7) PROHIBITED ACTIVITIES.—A person, including an agent or
236 employee of such person, may not:

237 (a) Charge or impose any fee, charge, or other
238 consideration in the making or facilitating of a refund
239 anticipation loan or refund anticipation check apart from the
240 fee charged by the creditor or bank that provides the loan or
241 check. This prohibition does not include any charge or fee
242 imposed by the facilitator to all of its customers, such as a
243 fee for preparing tax returns, if the same fee amount is charged
244 to customers who do not receive a refund anticipation loan,
245 refund anticipation check, or any other tax-related financial
246 product.

247 (b) Engage in unfair or deceptive acts or practices in
248 transacting a refund anticipation check or a refund anticipation
249 loan, including making any oral statements contradicting any of
250 the information required to be disclosed under this section.

251 (c) Fail to comply with any applicable provision of this
252 section.

253 (d) In transacting a refund anticipation loan or refund
254 anticipation check, threaten to take any action that is
255 prohibited by this section or any other law, or that the person
256 does not actually intend to take.

257 (e) Directly or indirectly, arrange for any third party to
258 charge any interest, fee, or charge related to a refund
259 anticipation loan or refund anticipation check, other than the
260 loan or check fee imposed by the creditor, including, but not
261 limited to, charges for insurance, attorney's fees or other

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262 collection costs, or check cashing.

263 (f) Include any of the following provisions in any document
264 provided or signed in connection with a refund anticipation loan
265 or refund anticipation check, including the loan application or
266 agreement:

267 1. A hold harmless clause.

268 2. A confession of judgment clause.

269 3. A waiver of the right to a jury trial, if applicable, in
270 any action brought by or against the consumer.

271 4. Any assignment of, or order for, payment of wages or
272 other compensation for services.

273 5. A provision in which the consumer agrees not to assert
274 any claim or defense arising out of the contract, or to seek any
275 remedies available under this section.

276 6. A waiver of any provision of this section. Any such
277 waiver is null, void, and of no effect.

278 7. A waiver of the right to injunctive, declaratory, other
279 equitable relief, or relief on a class-wide basis.

280 8. A requirement that any aspect of a resolution of a
281 dispute between the parties to the agreement be kept
282 confidential. This does not affect the right of the parties to
283 agree that certain specified information is a trade secret or
284 otherwise confidential or to later agree, after a dispute
285 arises, to keep a resolution confidential.

286 (g) Take, or arrange for a creditor to take, a security
287 interest in any of the consumer's property, other than the
288 proceeds of the consumer's tax refund, in order to secure
289 payment of a refund anticipation loan.

290 (h) Directly, indirectly, individually, or with another

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291 person, engage in the collection of an outstanding or delinquent
292 refund anticipation loan for any creditor or assignee, including
293 soliciting the execution of, processing, receiving, or accepting
294 an application or agreement for a refund anticipation loan or
295 refund anticipation check that contains a provision authorizing
296 the creditor to repay, by offset or other means, an outstanding
297 or delinquent refund anticipation loan from the proceeds of the
298 consumer's tax refund.

299 (i) Refer, facilitate, or solicit consumers on behalf of a
300 third party engaged in check cashing for a fee, or allow third-
301 party check cashing for a fee, in any place of business in which
302 refund anticipation loans or refund anticipation checks are
303 transacted.

304 (8) INTEREST RATE CAP FOR NONBANK REFUND ANTICIPATION
305 LOANS.—

306 (a) A person may not make or facilitate a refund
307 anticipation loan for which the refund anticipation loan
308 interest rate is greater than the loan rate authorized under s.
309 687.03. The refund anticipation loan interest rate shall be
310 calculated as set forth in paragraph (2)(i). Any refund
311 anticipation loan for which the loan interest rate exceeds the
312 amount allowed under s. 687.03, Florida Statutes, is void ab
313 initio.

314 (b) This subsection does not apply to persons facilitating
315 for or doing business as a bank, thrift association, savings
316 association, or credit union subject to federal laws that
317 preempt the prohibition set forth in paragraph (a).

318 (9) ADVERTISING AND MARKETING.—

319 (a) A facilitator may not market or advertise a refund

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320 anticipation loan without including the following statement
321 verbatim: "[...Name of product...] is a loan. You will usually
322 receive get your refund in 8 to 15 days without a loan or extra
323 fees if you use e-file and direct deposit." For print
324 advertisements, the statement must be printed in type size one-
325 half as large as the largest type size in the advertisement. For
326 radio and television advertisements, this statement must receive
327 at least 7 seconds of airtime.

328 (b) A facilitator may not market or advertise a refund
329 anticipation check without including the following statement
330 verbatim: "The [...name of product...] costs [...fee for refund
331 anticipation check...]. You will usually receive your refund in
332 the same amount of time without this fee if you use e-file and
333 direct deposit." For print advertisements, the statement must be
334 printed in type size one-half as large as the largest type size
335 in the advertisement. For radio and television advertisements,
336 this statement must receive at least 7 seconds of airtime.

337 (10) REMEDIES.—

338 (a) Any violation of:

339 1. Any state law prohibiting unfair or deceptive acts or
340 practices by a facilitator or creditor constitutes a violation
341 of this section.

342 2. The federal Fair Debt Collection Practices Act, 15
343 U.S.C. s. 1692 et seq., by a facilitator or creditor constitutes
344 a violation of this section.

345 3. This section constitutes an unfair or deceptive act or
346 practice.

347 (b) A facilitator or creditor who fails to comply with any
348 provision of this section is liable to the consumer for:

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- 349 1. Actual and consequential damages;
350 2. Statutory damages of \$2,500, to be adjusted annually to
351 reflect changes in the Consumer Price Index, or three times the
352 amount of the refund anticipation loan fee or other unauthorized
353 charge, whichever is greater; and
354 3. Reasonable attorney's fees and costs.
355 (c) Any person may sue for injunctive or other appropriate
356 equitable relief to enforce this section.
357 (d) Any consumer may bring a class action suit to enforce
358 this section. In such class action, a facilitator or creditor
359 who fails to comply with any provision of this section is liable
360 to each class member as provided in this subsection.
361 (e) The remedies provided in this subsection are cumulative
362 and do not abrogate any other relief available under state or
363 federal law.
364 Section 2. This act shall take effect July 1, 2009.