

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

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 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Tax Refund Anticipation Loan Act.--

24 (1) TITLE.--This section may be cited as the "Tax Refund
 25 Anticipation Loan Act."

26 (2) DEFINITIONS.--As used in this section, the term:

27 (a) "Consumer" means an individual who singly, or jointly
 28 with another consumer, is solicited for, applies for, or

29 receives the proceeds of a refund anticipation loan or refund
 30 anticipation check.

31 (b) "Creditor" means a person who makes a refund
 32 anticipation loan or who takes an assignment of a refund
 33 anticipation loan.

34 (c) "Facilitator" means a person who individually or with
 35 another:

36 1. Solicits the execution of, processes, receives, or
 37 accepts an application or agreement for a refund anticipation
 38 loan or refund anticipation check;

39 2. Services or collects upon a refund anticipation loan or
 40 refund anticipation check; or

41 3. Otherwise facilitates the making of a refund
 42 anticipation loan or refund anticipation check.

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

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

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

53 (f) "Refund anticipation check" means a check, stored
 54 value card, or other payment mechanism that represents the
 55 proceeds of a consumer's tax refund which was issued by a
 56 depository institution or other person that receives a direct

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57 deposit of the consumer's tax refund or tax credits, and for
58 which the consumer has paid a fee or other consideration for
59 such payment.

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

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

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

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

85 2. For the purpose of determining the refund anticipation
 86 loan interest rate, the maturity date of the loan is the
 87 estimated date the tax refund will be deposited in the deposit
 88 account. If a deposit account is not established or maintained,
 89 the maturity date of the loan is the estimated date the tax
 90 refund is received by the creditor.

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

99 (4) POSTING OF FEE SCHEDULES AND DISCLOSURES.--

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

107 1. Examples of the refund anticipation loan interest rate
 108 for at least 5 different refund anticipation loan amounts
 109 calculated in accordance with the formula set forth in paragraph

110 (3) (i).

111 2. The following statement centered and bolded in 1-inch
 112 uppercase letters:

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TAX REFUND ANTICIPATION LOANS

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 FEES.

YOU CAN USUALLY GET YOUR TAX REFUND IN 8 TO 15 DAYS
WITHOUT GETTING A LOAN OR PAYING EXTRA FEES IF YOU
HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR
REFUND DIRECTLY DEPOSITED INTO YOUR BANK ACCOUNT.

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

(5) APPLICATION DISCLOSURES.--

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

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

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

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

144 4. For refund anticipation loans, the following statement
 145 centered and bolded in 18-point uppercase type:

147 NOTICE

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

155 YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS
 156 WITHOUT GETTING A LOAN OR PAYING EXTRA FEES IF YOU
 157 HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR
 158 REFUND DIRECTLY DEPOSITED INTO YOUR BANK ACCOUNT.

160 5. For refund anticipation loans, the refund anticipation
 161 loan interest rate calculated in accordance with the formula set
 162 forth in paragraph (3) (i).

163 6. For refund anticipation checks, the following statement
 164 centered and bolded in 18-point uppercase type:

166 NOTICE

168 YOU ARE PAYING [...amount of refund anticipation check

169 fee...] TO GET YOUR REFUND CHECK THROUGH [...name of
 170 issuer of refund anticipation check...]. YOU CAN AVOID
 171 THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME
 172 AMOUNT OF TIME BY HAVING YOUR REFUND DIRECTLY
 173 DEPOSITED INTO YOUR BANK ACCOUNT. YOU CAN ALSO WAIT
 174 FOR THE INTERNAL REVENUE SERVICE (IRS) TO MAIL YOU A
 175 CHECK. IF YOU DO NOT HAVE A BANK ACCOUNT, YOU MAY WANT
 176 TO CONSIDER GETTING ONE.

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

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

187 (6) ORAL DISCLOSURES.--

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

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

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

- 197 3. The amount of the refund anticipation loan fee; and
- 198 4. The refund anticipation loan interest rate.

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

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

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

- 214 1. Not obtaining a refund anticipation loan or check and
 215 receiving the full tax refund amount by mail in 3 to 8 weeks if
 216 the tax return is mailed.

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

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

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

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230 These disclosures can be used to fulfill the requirements of
231 subparagraph (a)3. or paragraph (b).

232 (7) PROHIBITED ACTIVITIES.--A person, including the agent
233 or employee of such person, may not:

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

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

248 (c) Fail to comply with any applicable provision of this
249 section.

250 (d) In transacting a refund anticipation loan or refund
251 anticipation check, threaten to take any action that is
252 prohibited by this section or any other law, or that the person

253 does not actually intend to take.

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

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

- 264 1. A hold harmless clause.
- 265 2. A confession of judgment clause.
- 266 3. A waiver of the right to a jury trial, if applicable,
 267 in any action brought by or against the consumer.
- 268 4. Any assignment of, or order for, payment of wages or
 269 other compensation for services.
- 270 5. A provision in which the consumer agrees not to assert
 271 any claim or defense arising out of the contract, or to seek any
 272 remedies available under this section.
- 273 6. A waiver of any provision of this section. Any such
 274 waiver is null, void and of no effect.
- 275 7. A waiver of the right to injunctive, declaratory, other
 276 equitable relief, or relief on a class-wide basis.
- 277 8. A requirement that any aspect of a resolution of a
 278 dispute between the parties to the agreement be kept
 279 confidential. This does not affect the right of the parties to
 280 agree that certain specified information is a trade secret or

281 otherwise confidential or to later agree, after the dispute
 282 arises, to keep a resolution confidential.

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

287 (h) Directly or indirectly, individually or with another
 288 person, engage in the collection of an outstanding or delinquent
 289 refund anticipation loan for any creditor or assignee, including
 290 soliciting the execution of, processing, receiving, or accepting
 291 an application or agreement for a refund anticipation loan or
 292 refund anticipation check that contains a provision authorizing
 293 the creditor to repay, by offset or other means, an outstanding
 294 or delinquent refund anticipation loan from the proceeds of the
 295 consumer's tax refund.

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

301 (j) Facilitate any loan that is secured by, or that the
 302 creditor arranges to be repaid directly from, the proceeds of a
 303 consumer's state tax refund from the state treasury.

304 (8) INTEREST RATE CAP FOR NON-BANK 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.

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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. 678.03 is void ab initio.

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

317 (9) ADVERTISING AND MARKETING.--

318 (a) A facilitator may not market or advertise a refund
319 anticipation loan without including the following statement
320 verbatim: "[...Name of product...] is a loan. You can get your
321 refund in 8 to 15 days without a loan or extra fees if you use
322 e-file and direct deposit." For print advertisements, the
323 statement must be printed in type size one-half as large as the
324 largest type size in the advertisement. For radio and television
325 advertisements, this statement must receive at least 7 seconds
326 of airtime.

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

336 (10) REMEDIES.--

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337 (a) Any violation of:

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

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

344 3. This section constitutes a violation of any state law
345 prohibiting unfair or deceptive acts or practices.

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

348 1. Actual and consequential damages;

349 2. Statutory damages of \$2,500, to be adjusted annually to
350 reflect changes in the Consumer Price Index, or three times the
351 amount of the refund anticipation loan fee or other unauthorized
352 charge, whichever is greater; and

353 3. Reasonable attorney's fees and costs.

354 (c) Any person may sue for injunctive or other appropriate
355 equitable relief to enforce this section.

356 (d) Any consumer may bring a class action suit to enforce
357 this section. In such class action, a facilitator who fails to
358 comply with any provision of this section is liable to each
359 class member as provided in paragraph (e).

360 (e) The remedies provided in this section are cumulative
361 and do not abrogate any other relief available under state or
362 federal law.

363 Section 2. This act shall take effect July 1, 2009.