

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1914 By: Anderson of the Senate
3 and
4 Hickman of the House
5
6
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8 (Consumer Protection - Oklahoma Tax Refund Services
9 Oversight Act - exemptions - codification -
10 emergency)
11
12

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
14 entire bill and insert

15 "(Consumer Protection - Oklahoma Tax Refund Services
16 Oversight Act - exemptions - codification -
17 effective date)
18
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20

21 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 10-101 of Title 14A, unless
24 there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Tax
2 Refund Services Oversight Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 10-102 of Title 14A, unless
5 there is created a duplication in numbering, reads as follows:

6 As used in the Oklahoma Tax Refund Services Oversight Act:

7 1. "Administrator" means the Administrator of Consumer Credit
8 as defined in the Uniform Consumer Credit Code;

9 2. "Advertise" means to produce, distribute, broadcast, or
10 otherwise display, or have displayed, written materials, oral
11 statements, or visual materials describing products or services;

12 3. "Commission" means the Commission on Consumer Credit;

13 4. "Consumer" means any person who obtains a refund
14 anticipation loan;

15 5. "Creditor" means any person who makes a refund anticipation
16 loan;

17 6. "Enrolled agent" means an individual enrolled to practice
18 before the Internal Revenue Service as provided in Title 31 of the
19 Code of Federal Regulations, Subtitle A, Part 10;

20 7. "Facilitator" means a person that independently or with
21 another person performs any of the following:

22 a. solicits, either directly or indirectly, the execution
23 of, processes, receives, or accepts an application for
24 a refund anticipation loan,

- 1 b. solicits, either directly or indirectly, the execution
2 of, receipt of, or acceptance of an application for a
3 refund anticipation loan as a creditor if there is no
4 third-party facilitator,
5 c. services or collects upon a refund anticipation loan,
6 or
7 d. facilitates the making of a refund anticipation loan
8 in any other manner;

9 8. "Facilitation services" means the execution, acceptance,
10 processing, or receiving of an application for a refund anticipation
11 loan for a fee or other consideration;

12 9. "Permit" means the document issued by the Administrator
13 authorizing a person to provide facilitation services;

14 10. "Person" means an individual, a firm, a partnership, an
15 association, a corporation, or another entity;

16 11. "Refund anticipation loan (RAL)" means:

- 17 a. a loan that is secured by proceeds of an income tax
18 refund or that a creditor arranges to be repaid
19 directly or indirectly from those proceeds or tax
20 credits of a consumer, or
21 b. any sale, assignment, or purchase of a tax refund at a
22 discount or for a fee, whether or not the consumer is
23 required to repay the buyer or assignee if the
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1 Internal Revenue Service denies or reduces the tax
2 refund of the consumer;

3 12. "Refund anticipation loan fee" means the charges, fees, or
4 other consideration:

5 a. charged or imposed directly or indirectly by the
6 creditor for the making of or in connection with a
7 refund anticipation loan, or

8 b. charged for a deposit account, if the deposit account
9 is used for receipt of the tax refund of the consumer
10 to repay the amount owed on the loan; and

11 13. "Refund anticipation loan interest rate" means the interest
12 rate for a refund anticipation loan calculated pursuant to the
13 provisions of the Oklahoma Tax Refund Services Oversight Act.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 10-103 of Title 14A, unless
16 there is created a duplication in numbering, reads as follows:

17 In performing the duties imposed pursuant to the Oklahoma Tax
18 Refund Services Oversight Act, the Administrator of Consumer Credit
19 shall have the following powers and duties:

20 1. To prescribe, promulgate, implement and enforce rules upon
21 approval of the Commission on Consumer Credit, and make such orders
22 as deemed necessary to implement all the provisions of the Oklahoma
23 Tax Refund Services Oversight Act, including the duties imposed
24 pursuant to this section;

- 1 2. To establish necessary forms for use in implementing the
2 provisions of the Oklahoma Tax Refund Services Oversight Act,
3 including, but not limited to, forms for initial registration and
4 renewal registrations;
- 5 3. To prepare and administer tests required for registration;
- 6 4. To establish authorized fees;
- 7 5. To register and issue permits to qualified applicants as
8 facilitators;
- 9 6. To deny facilitators registration or to suspend, revoke, or
10 reinstate registration for good cause shown;
- 11 7. To reprimand or place on probation a facilitator, upon good
12 cause shown;
- 13 8. To impose an administrative penalty or fine as deemed proper
14 and appropriate by the Administrator. Such administrative penalty
15 or fine shall be assessed against facilitators for the failure to
16 pay the renewal fees or for the violation or noncompliance with any
17 provision of the Oklahoma Tax Refund Services Oversight Act or any
18 rule or order of the Commission on Consumer Credit;
- 19 9. To refer for prosecution any person who violates any of the
20 provisions of the Oklahoma Tax Refund Services Oversight Act;
- 21 10. To establish minimum standards to be followed in providing
22 disclosures, including, but not limited to, the Refund Anticipation
23 Loan Fee Charges List which may include language used, phraseology,
24 and size of the print;

1 11. To deposit all fees and administrative fines collected as
2 provided in Section 11 of this act;

3 12. To confer with and request legal assistance from the Office
4 of the Attorney General whenever deemed appropriate by the
5 Administrator; and

6 13. To have a seal which shall be affixed to all permits,
7 certified copies of documents on file, and such other instruments as
8 the Administrator may direct. All courts in this state shall take
9 judicial notice of the seal, and copies of records and proceedings
10 of the Administrator, and all documents filed with the Administrator
11 and certified under seal shall be received as evidence in all courts
12 of record.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 10-104 of Title 14A, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Beginning October 1, 2010, any person who desires to provide
17 facilitator services to consumers for a fee or other consideration
18 in this state shall be approved and registered with and hold a valid
19 permit issued by the Administrator of Consumer Credit, except as
20 otherwise provided in the Oklahoma Tax Refund Services Oversight
21 Act.

22 B. Beginning October 1, 2010, an initial application for
23 approval and registration as a facilitator shall be in writing,
24 signed under oath, and contain information from the applicant on a

1 form prescribed by the Administrator. Any person who makes
2 application for approval and registration as a facilitator shall pay
3 a fee at the time of application in an amount prescribed by rule of
4 the Commission on Consumer Credit.

5 C. The following persons are exempt from registration as a
6 facilitator and may provide facilitation services notwithstanding
7 subsection B of this section as follows:

8 1. A person doing business as a bank, thrift, savings
9 association, or credit union, subject to regulation by federal or
10 state law;

11 2. An individual employed by or serving as a volunteer with a
12 nonprofit organization that provides free tax preparation services
13 to low- and moderate-income taxpayers, such as a Volunteer Income
14 Tax Assistance program; and

15 3. Supervised lenders as defined in Section 3-501 of Title 14A
16 of the Oklahoma Statutes.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 10-105 of Title 14A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. A permit shall expire on September 30 following the date it
21 was issued.

22 B. Prior to the expiration of the permit, the registered
23 facilitator may renew the registration by filing an application for
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1 renewal in the form prescribed by the Administrator of Consumer
2 Credit and by paying the required fee.

3 C. Upon renewal of a permit, the applicant shall provide proof
4 of the continuing maintenance of any bond required for original
5 registration.

6 D. The renewal fee which shall accompany a renewal application
7 shall be in an amount prescribed by rule of the Commission on
8 Consumer Credit.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 10-106 of Title 14A, unless
11 there is created a duplication in numbering, reads as follows:

12 A. At the time a consumer applies for a refund anticipation
13 loan, in addition to the application provided, the facilitator or
14 creditor shall disclose to the consumer on a separate form the
15 following information:

16 1. The fee for the refund anticipation loan;

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

19 3. For refund anticipation loans, the disclosures shall
20 specifically address the following issues:

21 a. the borrowing of money is against the tax refund of
22 the consumer,

23 b. if the tax refund is less than expected, the consumer
24 will still owe the entire amount of the loan, and

1 c. if a tax refund is delayed, the consumer may have to
2 pay additional costs;

3 4. The time within which the proceeds of the refund
4 anticipation loan will be paid to the consumer if the loan or check
5 is approved;

6 5. The fact that a tax refund may be filed electronically and
7 the refund may be deposited directly into a specific bank account
8 without obtaining a loan or other facilitation service for which a
9 fee would be charged; and

10 6. The interest rate for a refund anticipation loan.

11 B. Prior to consummation of a transaction for a refund
12 anticipation loan, the facilitator shall explain each fee being
13 charged for the facilitation services provided. The facilitator
14 shall also provide to the consumer a printed Refund Anticipation
15 Loan Fee Charges List which contains an itemized list stating in
16 words and numbers, each fee the consumer will be charged for the
17 facilitation services. The printed Refund Anticipation Loan Fee
18 Charges List provided by the facilitator shall be signed by the
19 consumer receiving the refund anticipation loan verifying that the
20 fees being charged have been explained prior to the finalizing of
21 the transaction.

22 1. The facilitator shall retain the original of the Refund
23 Anticipation Loan Fee Charges List.

24 2. The facilitator shall provide to the consumer:

- a. a copy of the signed Refund Anticipation Loan Fee Charges List,
- b. a copy of the complete loan application and agreement, and
- c. the disclosure statements required by the federal Truth-In-Lending Act applicable to refund anticipation loans.

C. If the registered facilitator at any time provides an estimate of the amount that the consumer shall receive after deducting all applicable fees, the facilitator shall describe the options from which the consumer may choose.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-107 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A. The interest rate for a refund anticipation loan shall be calculated as follows:

1. The total amount of fees for the refund anticipation loan shall be divided by the loan amount, minus any loan fees;

2. Then the amount shall be further divided by the number of days in the loan term, and then multiplied by three hundred sixty-five (365) days; and

3. The resulting figure shall be expressed as a percentage.

1 B. The total amount of the fees for a refund anticipation loan
2 as used in this calculation shall include all refund anticipation
3 loan fees.

4 C. If a deposit account is established or maintained, in whole
5 or in part, for the purpose of receiving the tax refund to repay the
6 amount owed on a refund anticipation loan:

7 1. The maturity date of the loan for the purpose of determining
8 the refund anticipation loan interest rate shall be assumed to be
9 the estimated date when the tax refund will be deposited in the
10 deposit account; and

11 2. Any fee charged to the consumer for the deposit account
12 shall be considered a loan fee and shall be included in the
13 calculation of the refund anticipation loan interest rate.

14 D. If no deposit account is established or maintained for the
15 repayment of the tax refund loan, the maturity date of the loan
16 shall be assumed to be the estimated date when the tax refund is
17 received by the creditor.

18 E. The provisions of this section shall not apply to persons
19 facilitating for or doing business as a bank, thrift, savings
20 association, or credit union which are subject to regulation
21 pursuant to other federal or state laws.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 10-108 of Title 14A, unless
24 there is created a duplication in numbering, reads as follows:

1 No person shall:

2 1. Charge or impose any fee, charge or other consideration in
3 the making or facilitating of a refund anticipation loan apart from
4 the fee charged by the creditor or bank that provides the loan;
5 provided, however, this prohibition shall not include any charge or
6 fee imposed by a registered facilitator to all customers, such as
7 fees for tax return preparation, if the same fee in the same amount
8 is charged to the customers who do not receive refund anticipation
9 loans or any other tax-related financial product;

10 2. Engage in unfair or deceptive acts or practices in the
11 facilitating of a refund anticipation loan, including making any
12 verbal statements contradicting any of the information required to
13 be disclosed under the Oklahoma Tax Refund Services Oversight Act;

14 3. Directly or indirectly arrange for a third party to charge
15 any interest, fee or charge related to a refund anticipation loan
16 other than the fee imposed by the creditor, including, but not
17 limited to, charges for:

- 18 a. insurance,
- 19 b. attorney fees,
- 20 c. check cashing, or
- 21 d. other collection costs;

22 4. Include any of the following provisions in any document
23 including the loan application, agreement, or disclosure statements
24 presented to the consumer for signature:

- 1 a. a hold harmless clause,
- 2 b. a confession of judgment clause,
- 3 c. a waiver of the right to a jury trial, if applicable,
- 4 in any action brought by or against the consumer,
- 5 d. any assignment of or order for payment of wages or
- 6 other compensation for services,
- 7 e. a provision in which the consumer waives the right to
- 8 assert any claim or defense arising from facilitation
- 9 services or to seek any private right of action
- 10 provided for in the Oklahoma Tax Refund Services
- 11 Oversight Act,
- 12 f. a waiver of the right to injunctive, declaratory,
- 13 other equitable relief, or relief on a class-wide
- 14 basis, or
- 15 g. a provision requiring that any aspect of a resolution
- 16 of a dispute between the parties to the agreement
- 17 shall be kept confidential. This provision shall not
- 18 affect the right of the parties to agree that certain
- 19 specified information is a trade secret or otherwise
- 20 confidential or to later agree, after the dispute
- 21 arises, to keep a resolution confidential;

22 5. Take or arrange for a creditor to take a security interest

23 in any property of the consumer other than the proceeds of the tax

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1 refund of a consumer to secure payment of a refund anticipation
2 loan;

3 6. Directly or indirectly, individually or in conjunction with
4 another person, engage in the collection of an outstanding refund
5 anticipation loan for any creditor assignee, including soliciting
6 the execution of, processing, receiving, or accepting an application
7 for a refund anticipation loan that contains a provision permitting
8 the creditor to repay, by offset or other means, an outstanding
9 refund anticipation loan for that creditor or any creditor from the
10 proceeds of the tax refund of the consumer;

11 7. Refer, facilitate, or solicit consumers on behalf of a third
12 party engaged in check cashing for a fee, or permit third-party
13 check cashing for a fee, in any place of business in which refund
14 anticipation loans are facilitated;

15 8. Facilitate any loan that is secured by or that the creditor
16 arranges to be repaid from the proceeds of the state tax refund of
17 the consumer from the State Treasury; or

18 9. Make a misrepresentation of fact in obtaining or attempting
19 to obtain a registration as a facilitator.

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 10-109 of Title 14A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. The Administrator of Consumer Credit is hereby charged with
24 the duty of administering the Oklahoma Tax Refund Services Oversight

1 Act. The Administrator shall be the sole governmental entity,
2 state, county or municipal, authorized to register persons desiring
3 to provide facilitation services in this state. For the purposes of
4 exercising the powers and performing the duties imposed by the
5 Oklahoma Tax Refund Services Oversight Act, the Administrator shall
6 be subject to the provisions of the Administrative Procedures Act.

7 B. The Administrator shall appoint an independent hearing
8 examiner to conduct all administrative hearings involving alleged
9 violations of the Oklahoma Tax Refund Services Oversight Act. The
10 independent hearing examiner shall have authority to exercise all
11 powers granted by Article II of the Administrative Procedures Act in
12 conducting hearings. The independent hearing examiner shall
13 recommend penalties authorized by the Oklahoma Tax Refund Services
14 Oversight Act and issue proposed orders, with proposed findings of
15 fact and proposed conclusions of law, to the Administrator pursuant
16 to Article II of the Administrative Procedures Act. The
17 Administrator shall review the proposed order and issue a final
18 agency order in accordance with Article II of the Administrative
19 Procedures Act. A final agency order issued by the Administrator
20 shall be appealable by all parties to the district court as provided
21 in Article II of the Administrative Procedures Act. The costs of
22 the hearing examiner may be assessed by the hearing examiner against
23 the respondent, unless the respondent is the prevailing party.

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1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 10-110 of Title 14A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Administrator of Consumer Credit may censure, suspend,
5 revoke or refuse to register a person as a facilitator pursuant to
6 the provisions of the Oklahoma Tax Refund Services Oversight Act if,
7 after a hearing, the Administrator finds any one or more of the
8 following conditions:

9 1. Any untrue statement in the application for registration;

10 2. The violation of or noncompliance with any provision of the
11 Oklahoma Tax Refund Services Oversight Act or rule, regulation, or
12 order of the Administrator;

13 3. The obtaining of or attempt to obtain registration through
14 fraud or misrepresentation;

15 4. Conviction of or plea of guilty or nolo contendere to a
16 felony in this state, another state, or a federal court or of a
17 misdemeanor involving moral turpitude;

18 5. Failure to provide disclosures to consumers pursuant to the
19 provisions of the Oklahoma Tax Refund Services Oversight Act;

20 6. Failure to provide a Refund Anticipation Loan Fee Charges
21 List for facilitation services provided; or

22 7. Failure to obtain consumer acknowledgement of receipt of a
23 Refund Anticipation Loan Fee Charges List.

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1 B. In addition to, or in lieu of, any censure, denial,
2 suspension, or revocation of a permit, any person, firm,
3 corporation, or other entity violating the provisions of the
4 Oklahoma Tax Refund Services Oversight Act shall be subject to a
5 civil penalty in an amount not less than One Hundred Dollars
6 (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) for each
7 occurrence. The fine may be enforced in the same manner in which
8 civil judgments may be enforced. Any administrative order or
9 settlement agreement imposing a civil penalty pursuant to this
10 section may be enforced in the same manner as civil judgments in
11 this state. The Administrator may file an application to enforce an
12 administrative order or settlement agreement imposing a civil
13 penalty in the district court of Oklahoma County.

14 SECTION 11. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 10-111 of Title 14A, unless
16 there is created a duplication in numbering, reads as follows:

17 A. On or before July 1 of each year, beginning July 2012, each
18 facilitator shall file an annual report with the Administrator of
19 Consumer Credit in such form as the Administrator shall direct. An
20 annual consolidated report shall be prepared by the Administrator
21 and made available to the public. These reports shall include the
22 following information for the time periods of April 15 of the prior
23 year to April 15 of that year:

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1 1. The total number and dollar amount of refund anticipation
2 loans facilitated by the registrant;

3 2. The average number of days for which refund anticipation
4 loans facilitated by the registrant were outstanding before being
5 repaid;

6 3. The name and address of any creditor or person for whom the
7 registrant facilitates refund anticipation loans; and

8 4. Any other information required by the Administrator.

9 B. At such times as the Administrator of Consumer Credit may
10 deem necessary, the Administrator or a duly authorized
11 representative of the Administrator may make an examination of the
12 place of business of each licensee and may inquire into and examine
13 the transactions, books, accounts, papers, correspondence and
14 records of such licensee insofar as they pertain to the business
15 regulated by the Oklahoma Tax Refund Services Oversight Act. Such
16 books, accounts, papers, correspondence and records shall also be
17 open for inspection at any reasonable time by any peace officer,
18 without any need of judicial writ or other process. In the course
19 of an examination, the Administrator or a duly authorized
20 representative of the Administrator shall have free access to the
21 office, place of business, files, safes and vaults of such licensee,
22 and shall have the right to make copies of any books, accounts,
23 papers, correspondence and records. The Administrator or duly
24 authorized representative, during the course of such examination,

1 may administer oaths and examine any person under oath upon any
2 subject pertinent to any matter about which the Administrator is
3 authorized or required by the Oklahoma Tax Refund Services Oversight
4 Act to consider, investigate or secure information. Any licensee
5 who fails or refuses to permit the Administrator or duly authorized
6 representative to examine or make copies of such books or other
7 relevant documents shall be deemed to be in violation of the
8 Oklahoma Tax Refund Services Oversight Act and such failure or
9 refusal shall constitute grounds for the suspension or revocation of
10 such license. The information obtained in the course of any
11 examination or inspection shall be confidential, except in civil or
12 administrative proceedings conducted by the Administrator, or
13 criminal proceedings instituted by the state. Each licensee shall
14 pay to the Administrator an examination fee. The Administrator may
15 require payment of an examination fee either at the time of initial
16 application, renewal of the license, or after an examination has
17 been conducted.

18 C. The Commission on Consumer Credit shall prescribe by
19 administrative rule all fees authorized by the Oklahoma Tax Refund
20 Services Oversight Act. All fees prescribed by rule of the
21 Commission shall be in accordance with Article I of the
22 Administrative Procedures Act. Prior to July 1, 2011, the
23 Commission shall establish all authorized fees by emergency rule.
24 Any fee established by emergency rule shall remain effective until

1 the fee is prescribed by permanent rule of the Commission in
2 accordance with Article I of the Administrative Procedures Act. Any
3 fees prescribed by rule after July 1, 2011, shall be prescribed as
4 permanent rules.

5 D. Seventy percent (70%) of fees and civil penalties collected
6 pursuant to the Oklahoma Tax Refund Services Oversight Act shall be
7 deposited in the Consumer Credit Administrative Expenses Revolving
8 Fund created in Section 6-301 of Title 14A of the Oklahoma Statutes.
9 Thirty percent (30%) of fees and civil penalties collected pursuant
10 to the Oklahoma Tax Refund Services Oversight Act shall be deposited
11 in the General Revenue Fund of the State Treasury.

12 SECTION 12. This act shall become effective October 1, 2010."

13 Passed the House of Representatives the 19th day of April, 2010.

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16 _____
Presiding Officer of the House of
Representatives

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18 Passed the Senate the ____ day of _____, 2010.

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Presiding Officer of the Senate

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