COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1914 _____ Of the printed Bill

Page _____ Section _____ Lines _____ Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jeff Hickman _____

Adopted: _____

_____
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

PROPOSED COMMITTEE
SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1914 By: Anderson of the Senate

and

Hickman of the House

PROPOSED COMMITTEE SUBSTITUTE

[Consumer Protection - Oklahoma Tax Refund Services Oversight Act – exemptions - codification - emergency]

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

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

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

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

As used in the Oklahoma Tax Refund Services Oversight Act:

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

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

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

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

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

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

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

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

b. solicits, either directly or indirectly, the execution of, receipt of, or acceptance of an application for a

refund anticipation loan as a creditor if there is no third-party facilitator,

c. services or collects upon a refund anticipation loan, or

d. facilitates the making of a refund anticipation loan in any other manner;

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

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

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

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

a. a loan that is secured by proceeds of an income tax refund or that a creditor arranges to be repaid directly or indirectly from those proceeds or tax credits of a consumer, or

b. any sale, assignment, or purchase of a tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the tax refund of the consumer;

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

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

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

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

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

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

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

2. To establish necessary forms for use in implementing the provisions of the Oklahoma Tax Refund Services Oversight Act,

including, but not limited to, forms for initial registration and renewal registrations;

3. To prepare and administer tests required for registration;

4. To establish authorized fees;

5. To register and issue permits to qualified applicants as facilitators;

6. To deny facilitators registration or to suspend, revoke, or reinstate registration for good cause shown;

7. To reprimand or place on probation a facilitator, upon good cause shown;

8. To impose an administrative penalty or fine as deemed proper and appropriate by the Administrator. Such administrative penalty or fine shall be assessed against facilitators for the failure to pay the renewal fees or for the violation or noncompliance with any provision of the Oklahoma Tax Refund Services Oversight Act or any rule or order of the Commission on Consumer Credit;

9. To refer for prosecution any person who violates any of the provisions of the Oklahoma Tax Refund Services Oversight Act;

10. To establish minimum standards to be followed in providing disclosures, including, but not limited to, the Refund Anticipation Loan Fee Charges List which may include language used, phraseology, and size of the print;

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

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

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

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

A. Beginning January 1, 2011, any person who desires to provide facilitator services to consumers for a fee or other consideration in this state shall be approved and registered with and hold a valid permit issued by the Administrator of Consumer Credit, except as otherwise provided in the Oklahoma Tax Refund Services Oversight Act.

B. Beginning January 1, 2011, an initial application for approval and registration as a facilitator shall be in writing, signed under oath, and contain information from the applicant on a form prescribed by the Administrator. Any person who makes application for approval and registration as a facilitator shall pay

a fee at the time of application in an amount prescribed by rule of the Commission on Consumer Credit.

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

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

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

D. Supervised lenders as defined in Section 3-501 of Title 14A of the Oklahoma Statutes are exempt from all of the provisions of the Oklahoma Tax Refund Services Oversight Act.

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

A. A permit shall expire on December 31 following the date it was issued.

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

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

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

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

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

1. The fee for the refund anticipation loan;

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

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

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

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

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

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

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

6. The interest rate for a refund anticipation loan.

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

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

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.

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

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

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

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

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

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

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

No person shall:

1. Charge or impose any fee, charge or other consideration in the making or facilitating of a refund anticipation loan apart from

the fee charged by the creditor or bank that provides the loan; provided, however, this prohibition shall not include any charge or fee imposed by a registered facilitator to all customers, such as fees for tax return preparation, if the same fee in the same amount is charged to the customers who do not receive refund anticipation loans or any other tax-related financial product;

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

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

a. insurance,

b. attorney fees,

c. check cashing, or

d. other collection costs;

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

a. a hold harmless clause,

b. a confession of judgment clause,

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

d. any assignment of or order for payment of wages or other compensation for services,

e. a provision in which the consumer waives the right to assert any claim or defense arising from facilitation services or to seek any private right of action provided for in the Oklahoma Tax Refund Services Oversight Act,

f. a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class-wide basis, or

g. a provision requiring that any aspect of a resolution of a dispute between the parties to the agreement shall be kept confidential. This provision shall not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential or to later agree, after the dispute arises, to keep a resolution confidential;

5. Take or arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the tax refund of a consumer to secure payment of a refund anticipation loan;

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

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

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

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

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

A. The Administrator of Consumer Credit is hereby charged with the duty of administering the Oklahoma Tax Refund Services Oversight Act. The Administrator shall be the sole governmental entity, state, county or municipal, authorized to register persons desiring

to provide facilitation services in this state. For the purposes of exercising the powers and performing the duties imposed by the Oklahoma Tax Refund Services Oversight Act, the Administrator shall be subject to the provisions of the Administrative Procedures Act.

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

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

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

1. Any untrue statement in the application for registration;

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

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

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

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

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

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

B. In addition to, or in lieu of, any censure, denial, suspension, or revocation of a permit, any person, firm, corporation, or other entity violating the provisions of the Oklahoma Tax Refund Services Oversight Act shall be subject to a

civil penalty in an amount not less than One Hundred Dollars ($100.00) nor more than Ten Thousand Dollars ($10,000.00) for each occurrence. The fine may be enforced in the same manner in which civil judgments may be enforced. Any administrative order or settlement agreement imposing a civil penalty pursuant to this section may be enforced in the same manner as civil judgments in this state. The Administrator may file an application to enforce an administrative order or settlement agreement imposing a civil penalty in the district court of Oklahoma County.

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

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

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

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

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

4. Any other information required by the Administrator.

B. At such times as the Administrator of Consumer Credit may deem necessary, the Administrator or a duly authorized representative of the Administrator may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records of such licensee insofar as they pertain to the business regulated by the Oklahoma Tax Refund Services Oversight Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without any need of judicial writ or other process. In the course of an examination, the Administrator or a duly authorized representative of the Administrator shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Administrator or duly authorized representative, during the course of such examination, may administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Administrator is authorized or required by the Oklahoma Tax Refund Services Oversight Act to consider, investigate or secure information. Any licensee who fails or refuses to permit the Administrator or duly authorized

representative to examine or make copies of such books or other relevant documents shall be deemed to be in violation of the Oklahoma Tax Refund Services Oversight Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state. Each licensee shall pay to the Administrator an examination fee. The Administrator may require payment of an examination fee either at the time of initial application, renewal of the license, or after an examination has been conducted.

C. The Commission on Consumer Credit shall prescribe by administrative rule all fees authorized by the Oklahoma Tax Refund Services Oversight Act. All fees prescribed by rule of the Commission shall be in accordance with Article I of the Administrative Procedures Act. Prior to July 1, 2011, the Commission shall establish all authorized fees by emergency rule. Any fee established by emergency rule shall remain effective until the fee is prescribed by permanent rule of the Commission in accordance with Article I of the Administrative Procedures Act. Any fees prescribed by rule after July 1, 2011, shall be prescribed as permanent rules.

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

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

52-2-10598 SD 04/07/10