

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 1914

6 By: Anderson

7 COMMITTEE SUBSTITUTE

8 An Act relating to Consumer Protection; creating the  
9 Oklahoma Tax Refund Services Oversight Act; providing  
10 short title; defining terms; directing Commission on  
11 Consumer Credit to promulgate rules; granting  
12 authority over facilitator registrations; directing  
13 deposit of certain monies to certain fund; allowing  
14 Attorney General to provide legal assistance;  
15 establishing certain seal for certain purpose;  
16 requiring certain reports; stating content of certain  
17 reports; providing for forms and examinations;  
18 creating the Oklahoma Tax Refund Services Oversight  
19 Revolving Fund; providing for deposits and  
20 expenditures; establishing procedure for application  
21 for registration as facilitator; providing for  
22 application and maximum application fee; exempting  
23 certain persons from registration requirement;  
24 setting expiration date for registrations; providing  
for renewals; setting maximum renewal fee;  
authorizing the Commission on Consumer Credit to  
establish standards for disclosure statements for  
certain information affecting consumer; directing  
that specified list be provided; requiring disclosure  
of certain information about fees, loans and  
conditions; prohibiting loans greater than certain  
maximum percentage; providing loan calculation  
method; determining maturity date of certain loans;  
exempting banks and other financial institutions from  
certain disclosures; prohibiting certain acts;  
allowing hearing officers; prohibiting certain person  
from being hearing officer; allowing censure,  
suspension, revocation and refusal to renew  
registrations for certain conditions; stating  
prohibited conditions; prohibiting felony conviction

1 from registration; allowing civil penalty; setting  
2 maximum civil penalty; requiring annual report by  
3 registered facilitator; stating information to be  
4 contained in certain report; providing for  
5 codification; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

11           b. solicits, either directly or indirectly, the execution  
12           of, receipt of, or acceptance of an application for a  
13           refund anticipation loan as a creditor if there is no  
14           third-party facilitator,

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

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

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

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

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

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

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

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

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

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

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

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

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

4           In performing the duties imposed pursuant to the Oklahoma Tax  
5 Refund Services Oversight Act, the Commission on Consumer Credit  
6 shall have the following powers and duties:

7           1. To prescribe, promulgate, implement and enforce rules and  
8 make such orders as deemed necessary to implement all the provisions  
9 of the Oklahoma Tax Refund Services Oversight Act, including the  
10 duties imposed pursuant to this section;

11          2. To establish necessary forms for use in implementing the  
12 provisions of this act, including, but not limited to, forms for  
13 initial registration and renewal registrations;

14          3. To prepare and administer tests required for registration;

15          4. To establish authorized fees;

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

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

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

22          8. To impose an administrative penalty or fine as deemed proper  
23 and appropriate by the Board. Such administrative penalty or fine  
24 shall be assessed against facilitators for the failure to pay the

1 renewal fees or for the violation or noncompliance with any  
2 provision of the Oklahoma Tax Refund Services Oversight Act or any  
3 rule or order of the Commission on Consumer Credit;

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

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

10 11. To deposit all fees and administrative fines collected to  
11 the credit of the Oklahoma Tax Refund Services Oversight Revolving  
12 Fund;

13 12. To confer with and request legal assistance from the Office  
14 of the Attorney General whenever deemed appropriate by the  
15 Commission on Consumer Credit; and

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

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

4           There is hereby created in the State Treasury a revolving fund  
5 for the Commission on Consumer Credit to be designated the "Oklahoma  
6 Tax Refund Services Oversight Revolving Fund". Beginning July 1,  
7 2010, any monies collected pursuant to the Oklahoma Tax Refund  
8 Services Oversight Act shall be deposited into the Oklahoma Tax  
9 Refund Services Oversight Revolving Fund. The fund shall be a  
10 continuing fund, not subject to fiscal year limitations, and shall  
11 consist of all monies received by Commission on Consumer Credit from  
12 any transfers, fees, bonds, penalties or fines paid to the  
13 Commission on Consumer Credit pursuant to the Oklahoma Tax Refund  
14 Services Oversight Act. All monies accruing to the credit of the  
15 fund are hereby appropriated and may be budgeted and expended by the  
16 Commission on Consumer Credit for the purpose of effectuating the  
17 purposes of the Oklahoma Tax Refund Services Oversight Act and to  
18 pay all costs and expenses incurred in connection therewith.  
19 Expenditures from the fund shall be made upon warrants issued by the  
20 State Treasurer against claims filed as prescribed by law with the  
21 Director of State Finance for approval and payment.

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

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

7 B. Beginning January 1, 2011, an initial application for  
8 approval and registration as a facilitator shall be in writing,  
9 signed under oath, and contain information from the applicant on a  
10 form prescribed by the Commission on Consumer Credit. Any person  
11 who makes application for approval and registration as a facilitator  
12 shall pay a fee at the time of application in an amount to be set by  
13 the Board which shall not exceed Fifty Dollars (\$50.00).

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

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

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

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

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

6 B. Prior to the expiration of the permit, the registered  
7 facilitator may renew the registration by filing an application for  
8 renewal in the form prescribed by the Commission and by paying the  
9 required fee.

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

13 D. The renewal fee which shall accompany a renewal application  
14 shall be in an amount to be set by the Commission which shall not  
15 exceed One Hundred Dollars (\$100.00).

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

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

23 1. The fee for the refund anticipation loan;

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

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

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

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

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

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

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

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

19          B. Prior to consummation of a transaction for a refund  
20 anticipation loan, the facilitator shall explain each fee being  
21 charged for the facilitation services provided. The facilitator  
22 shall also provide to the consumer with a printed Refund  
23 Anticipation Loan Fee Charges List which contains an itemized list  
24 stating in words and numbers, each fee the consumer will be charged

1 for the facilitation services. The printed Refund Anticipation Loan  
2 Fee Charges List provided by the facilitator shall be signed by the  
3 consumer receiving the refund anticipation loan verifying that the  
4 fees being charged have been explained prior to the finalizing of  
5 the transaction.

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

8 2. The facilitator shall provide to the consumer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 No person shall:

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

17 2. Engage in unfair or deceptive acts or practices in the  
18 facilitating of a refund anticipation loan, including making any  
19 verbal statements contradicting any of the information required to  
20 be disclosed under this act;

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

- 1 a. insurance,
- 2 b. attorney fees,
- 3 c. check cashing, or
- 4 d. other collection costs;

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

- 8 a. a hold harmless clause,
- 9 b. a confession of judgment clause,
- 10 c. a waiver of the right to a jury trial, if applicable,  
11 in any action brought by or against the consumer,
- 12 d. any assignment of or order for payment of wages or  
13 other compensation for services,
- 14 e. a provision in which the consumer waives the right to  
15 assert any claim or defense arising from facilitation  
16 services or to seek any private right of action  
17 provided for in the Oklahoma Tax Refund Services  
18 Oversight Act,
- 19 f. a waiver of the right to injunctive, declaratory,  
20 other equitable relief, or relief on a class-wide  
21 basis, or
- 22 g. a provision requiring that any aspect of a resolution  
23 of a dispute between the parties to the agreement  
24 shall be kept confidential. This provision shall not

1 affect the right of the parties to agree that certain  
2 specified information is a trade secret or otherwise  
3 confidential or to later agree, after the dispute  
4 arises, to keep a resolution confidential;

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

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

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

21 8. Facilitate any loan that is secured by or that the creditor  
22 arranges to be repaid from the proceeds of the state tax refund of  
23 the consumer from the State Treasury; or  
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1           9. Make a misrepresentation of fact in obtaining or attempting  
2 to obtain a registration as a facilitator.

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

6           A. The Commission on Consumer Credit is hereby charged with the  
7 duty of administering the Oklahoma Tax Refund Services Oversight  
8 Act. The Commission shall be the sole governmental entity, state,  
9 county or municipal, authorized to register persons desiring to  
10 provide facilitation services in this state. For the purposes of  
11 exercising the powers and performing the duties imposed by the  
12 Oklahoma Tax Refund Services Oversight Act, the Commission shall be  
13 subject to the provisions of the Administrative Procedures Act.

14           B. The Commission may designate and employ hearing examiners  
15 who shall have the authority to conduct hearings subject to the  
16 provisions of applicable rules, regulations, and orders of the  
17 Commission. No person shall serve as a hearing examiner in any  
18 proceeding in which any party to the proceeding is, or has been, a  
19 client of the hearing examiner or any partnership, firm,  
20 corporation, or other entity with which the hearing examiner is, or  
21 has been, associated. In any hearing, the burden of proof shall be  
22 upon the moving party.

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

4 A. The Commission on 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 Commission 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 Commission;

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;

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.

9 SECTION 12. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 10-112 of Title 14A, unless  
11 there is created a duplication in numbering, reads as follows:

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

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

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

24

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

3 4. Any other information required by the Commission.

4 SECTION 13. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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