

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1914

By: Anderson of the Senate

and

6 (Hickman) of the House

7
8
9 COMMITTEE SUBSTITUTE

10 [Consumer Protection - Oklahoma Tax Refund Services
11 Oversight Act - codification -

emergency]

12
13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

23 As used in the Oklahoma Tax Refund Services Oversight Act:
24

- 1 1. "Administrator" means the Administrator of Consumer Affairs
2 as defined in the Uniform Consumer Credit Code;
- 3 2. "Advertise" means to produce, distribute, broadcast, or
4 otherwise display, or have displayed, written materials, oral
5 statements, or visual materials describing products or services;
- 6 3. "Commission" means the Commission on Consumer Credit;
- 7 4. "Consumer" means any person who obtains a refund
8 anticipation loan;
- 9 5. "Creditor" means any person who makes a refund anticipation
10 loan;
- 11 6. "Enrolled agent" means an individual enrolled to practice
12 before the Internal Revenue Service as provided in Title 31 of the
13 Code of Federal Regulations, Subtitle A, Part 10;
- 14 7. "Facilitator" means a person that independently or with
15 another person performs any of the following:
- 16 a. solicits, either directly or indirectly, the execution
17 of, processes, receives, or accepts an application for
18 a refund anticipation loan,
- 19 b. solicits, either directly or indirectly, the execution
20 of, receipt of, or acceptance of an application for a
21 refund anticipation loan as a creditor if there is no
22 third-party facilitator,
- 23 c. services or collects upon a refund anticipation loan,
24 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 Commission
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 Commission on Consumer Credit shall have the following powers and duties:

1. To prescribe, promulgate, implement and enforce rules 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 this 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;

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

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

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

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

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

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

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

23 13. To have a seal which shall be affixed to all permits,
24 certified copies of documents on file, and such other instruments as

1 the Commission on Consumer Credit may direct. All courts in this
2 state shall take judicial notice of the seal, and copies of records
3 and proceedings of the Commission on Consumer Credit, and all
4 documents filed with the Commission and certified under seal shall
5 be received as evidence in all courts of record.

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

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

1 State Treasurer against claims filed as prescribed by law with the
2 Director of State Finance for approval and payment.

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

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

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

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

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

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

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

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

10 B. Prior to the expiration of the permit, the registered
11 facilitator may renew the registration by filing an application for
12 renewal in the form prescribed by the Commission and by paying the
13 required fee.

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

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

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

23 A. At the time a consumer applies for a refund anticipation
24 loan, in addition to the application provided, the facilitator or

1 creditor shall disclose to the consumer on a separate form the
2 following information:

3 1. The fee for the refund anticipation loan;

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

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

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

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

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

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

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

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

22 B. Prior to consummation of a transaction for a refund
23 anticipation loan, the facilitator shall explain each fee being
24 charged for the facilitation services provided. The facilitator

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

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

11 2. The facilitator shall provide to the consumer:

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

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

23

24

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:

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.

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

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

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

12 No person shall:

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

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

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

- 5 a. insurance,
- 6 b. attorney fees,
- 7 c. check cashing, or
- 8 d. other collection costs;

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

- 12 a. a hold harmless clause,
- 13 b. a confession of judgment clause,
- 14 c. a waiver of the right to a jury trial, if applicable,
15 in any action brought by or against the consumer,
- 16 d. any assignment of or order for payment of wages or
17 other compensation for services,
- 18 e. a provision in which the consumer waives the right to
19 assert any claim or defense arising from facilitation
20 services or to seek any private right of action
21 provided for in the Oklahoma Tax Refund Services
22 Oversight Act,

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

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

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

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

23 7. Refer, facilitate, or solicit consumers on behalf of a third
24 party engaged in check cashing for a fee, or permit third party

1 check cashing for a fee, in any place of business in which refund
2 anticipation loans are facilitated;

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

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

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

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

19 B. The Commission may designate and employ hearing examiners
20 who shall have the authority to conduct hearings subject to the
21 provisions of applicable rules, regulations, and orders of the
22 Commission. No person shall serve as a hearing examiner in any
23 proceeding in which any party to the proceeding is, or has been, a
24 client of the hearing examiner or any partnership, firm,

1 corporation, or other entity with which the hearing examiner is, or
2 has been, associated. In any hearing, the burden of proof shall be
3 upon the moving party.

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

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

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

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

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

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

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

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

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

3 B. In addition to, or in lieu of, any censure, denial,
4 suspension, or revocation of a permit, any person, firm,
5 corporation, or other entity violating the provisions of the
6 Oklahoma Tax Refund Services Oversight Act shall be subject to a
7 civil penalty in an amount not less than One Hundred Dollars
8 (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) for each
9 occurrence. The fine may be enforced in the same manner in which
10 civil judgments may be enforced.

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

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

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

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

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

6 4. Any other information required by the Commission.

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

11
12 52-2-3697 JCR 2/18/2010 2:27:32 PM

13

14

15

16

17

18

19

20

21

22

23

24