

1 ENGROSSED SENATE  
2 BILL NO. 1914

By: Anderson of the Senate

3 and

4 Hickman of the House

5  
6 [ Consumer Protection - Oklahoma Tax Refund Services  
7 Oversight Act - exemptions - codification -  
8 emergency ]

9  
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 b. charged for a deposit account, if the deposit account  
21 is used for receipt of the tax refund of the consumer  
22 to repay the amount owed on the loan; and  
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1 13. "Refund anticipation loan interest rate" means the interest  
2 rate for a refund anticipation loan calculated pursuant to the  
3 provisions of the Oklahoma Tax Refund Services Oversight Act.

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

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

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

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

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

18 4. To establish authorized fees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           2.   An individual employed by or serving as a volunteer with a  
24 nonprofit organization that provides free tax preparation services

1 to low and moderate income taxpayers, such as a Volunteer Income Tax  
2 Assistance program.

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

6 E. Deferred deposit lenders as defined in Section 3102 of Title  
7 59 of the Oklahoma Statutes are exempt from all of the provisions of  
8 the Oklahoma Tax Refund Services Oversight Act.

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

14 B. Prior to the expiration of the permit, the registered  
15 facilitator may renew the registration by filing an application for  
16 renewal in the form prescribed by the Commission and by paying the  
17 required fee.

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

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

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

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

8 1. The fee for the refund anticipation loan;

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

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

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

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

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

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

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

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

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

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

17 2. The facilitator shall provide to the consumer:

18 a. a copy of the signed Refund Anticipation Loan Fee  
19 Charges List,

20 b. a copy of the complete loan application and agreement,  
21 and

22 c. the disclosure statements required by the federal  
23 Truth-In-Lending Act applicable to refund anticipation  
24 loans.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 No person shall:

18 1. Charge or impose any fee, charge or other consideration in  
19 the making or facilitating of a refund anticipation loan apart from  
20 the fee charged by the creditor or bank that provides the loan;  
21 provided, however, this prohibition shall not include any charge or  
22 fee imposed by a registered facilitator to all customers, such as  
23 fees for tax return preparation, if the same fee in the same amount

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1 is charged to the customers who do not receive refund anticipation  
2 loans or any other tax-related financial product;

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

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

- 11 a. insurance,
- 12 b. attorney fees,
- 13 c. check cashing, or
- 14 d. other collection costs;

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

- 18 a. a hold harmless clause,
- 19 b. a confession of judgment clause,
- 20 c. a waiver of the right to a jury trial, if applicable,  
21 in any action brought by or against the consumer,
- 22 d. any assignment of or order for payment of wages or  
23 other compensation for services,

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

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

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

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

20 6. Directly or indirectly, individually or in conjunction with  
21 another person, engage in the collection of an outstanding refund  
22 anticipation loan for any creditor assignee, including soliciting  
23 the execution of, processing, receiving, or accepting an application  
24 for a refund anticipation loan that contains a provision permitting

1 the creditor to repay, by offset or other means, an outstanding  
2 refund anticipation loan for that creditor or any creditor from the  
3 proceeds of the tax refund of the consumer;

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

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

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

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

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

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1 B. The Commission may designate and employ hearing examiners  
2 who shall have the authority to conduct hearings subject to the  
3 provisions of applicable rules, regulations, and orders of the  
4 Commission. No person shall serve as a hearing examiner in any  
5 proceeding in which any party to the proceeding is, or has been, a  
6 client of the hearing examiner or any partnership, firm,  
7 corporation, or other entity with which the hearing examiner is, or  
8 has been, associated. In any hearing, the burden of proof shall be  
9 upon the moving party.

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

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

- 18 1. Any untrue statement in the application for registration;
- 19 2. The violation of or noncompliance with any provision of the  
20 Oklahoma Tax Refund Services Oversight Act or rule, regulation, or  
21 order of the Commission;
- 22 3. The obtaining of or attempt to obtain registration through  
23 fraud or misrepresentation;

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

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

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

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

10 B. In addition to, or in lieu of, any censure, denial,  
11 suspension, or revocation of a permit, any person, firm,  
12 corporation, or other entity violating the provisions of the  
13 Oklahoma Tax Refund Services Oversight Act shall be subject to a  
14 civil penalty in an amount not less than One Hundred Dollars  
15 (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) for each  
16 occurrence. The fine may be enforced in the same manner in which  
17 civil judgments may be enforced.

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

21 On or before July 1 of each year, beginning July 2012, each  
22 facilitator shall file an annual report with the Commission on  
23 Consumer Credit in such form as the Commission shall direct. An  
24 annual consolidated report shall be prepared by the Commission and

1 made available to the public. These reports shall include the  
2 following information for the time periods of April 15 of the prior  
3 year to April 15 of that year:

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

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

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

11 4. Any other information required by the Commission.

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

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1 Passed the Senate the 1st day of March, 2010.

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Presiding Officer of the Senate

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5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,

6 2010.

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Presiding Officer of the House  
of Representatives

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