

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 13, 2010

Committee Substitute for  
ENGROSSED  
Senate Bill No. 1914

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1914 - By:  
ANDERSON of the Senate and HICKMAN of the House.

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

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

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

4       This act shall be known and may be cited as the “Oklahoma Tax Refund Services  
5 Oversight Act”.

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

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

10       1. “Administrator” means the Administrator of Consumer Credit as defined in the  
11 Uniform Consumer Credit Code;

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

4           3. “Commission” means the Commission on Consumer Credit;

5           4. “Consumer” means any person who obtains a refund anticipation loan;

6           5. “Creditor” means any person who makes a refund anticipation loan;

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

10          7. “Facilitator” means a person that independently or with another person performs  
11 any of the following:

12           a.       solicits, either directly or indirectly, the execution of, processes,  
13                receives, or accepts an application for a refund anticipation loan,  
14           b.       solicits, either directly or indirectly, the execution of, receipt of, or  
15                acceptance of an application for a refund anticipation loan as a creditor  
16                if there is no third-party facilitator,  
17           c.       services or collects upon a refund anticipation loan, or  
18           d.       facilitates the making of a refund anticipation loan in any other  
19                manner;

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

1           9. “Permit” means the document issued by the Administrator authorizing a person  
2 to provide facilitation services;

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

5           11. “Refund anticipation loan (RAL)” means:

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

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

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

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

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

19          13. “Refund anticipation loan interest rate” means the interest rate for a refund  
20 anticipation loan calculated pursuant to the provisions of the Oklahoma Tax Refund  
21 Services Oversight Act.

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

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

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

11       2. To establish necessary forms for use in implementing the provisions of the  
12 Oklahoma Tax Refund Services Oversight 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 facilitators;

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

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

20       8. To impose an administrative penalty or fine as deemed proper and appropriate  
21 by the Administrator. Such administrative penalty or fine shall be assessed against  
22 facilitators for the failure to pay the renewal fees or for the violation or noncompliance

1 with any provision of the Oklahoma Tax Refund Services Oversight Act or any rule or  
2 order of the Commission on Consumer Credit;

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

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

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

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

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

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

20 A. Beginning January 1, 2011, any person who desires to provide facilitator  
21 services to consumers for a fee or other consideration in this state shall be approved and

1 registered with and hold a valid permit issued by the Administrator of Consumer Credit,  
2 except as otherwise provided in the Oklahoma Tax Refund Services Oversight Act.

3 B. Beginning January 1, 2011, an initial application for approval and registration  
4 as a facilitator shall be in writing, signed under oath, and contain information from the  
5 applicant on a form prescribed by the Administrator. Any person who makes application  
6 for approval and registration as a facilitator shall pay a fee at the time of application in  
7 an amount prescribed by rule of the Commission on Consumer Credit.

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

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

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

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

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

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

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

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

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

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

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

- 14 1. The fee for the refund anticipation loan;
- 15 2. The fee for tax preparation and any other fee charged to the consumer;
- 16 3. For refund anticipation loans, the disclosures shall specifically address the  
17 following issues:
- 18 a. the borrowing of money is against the tax refund of the consumer,
- 19 b. if the tax refund is less than expected, the consumer will still owe the  
20 entire amount of the loan, and
- 21 c. if a tax refund is delayed, the consumer may have to pay additional  
22 costs;

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

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

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

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

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

17           2. The facilitator shall provide to the consumer:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

13          No person shall:

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

20           2. Engage in unfair or deceptive acts or practices in the facilitating of a refund  
21 anticipation loan, including making any verbal statements contradicting any of the

1 information required to be disclosed under the Oklahoma Tax Refund Services Oversight  
2 Act;

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

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

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

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

- 1 f. a waiver of the right to injunctive, declaratory, other equitable relief,  
2 or relief on a class-wide basis, or  
3 g. a provision requiring that any aspect of a resolution of a dispute  
4 between the parties to the agreement shall be kept confidential. This  
5 provision shall not affect the right of the parties to agree that certain  
6 specified information is a trade secret or otherwise confidential or to  
7 later agree, after the dispute arises, to keep a resolution confidential;

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

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

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

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

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

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

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

13          B. The Administrator shall appoint an independent hearing examiner to conduct  
14 all administrative hearings involving alleged violations of the Oklahoma Tax Refund  
15 Services Oversight Act. The independent hearing examiner shall have authority to  
16 exercise all powers granted by Article II of the Administrative Procedures Act in  
17 conducting hearings. The independent hearing examiner shall recommend penalties  
18 authorized by the Oklahoma Tax Refund Services Oversight Act and issue proposed  
19 orders, with proposed findings of fact and proposed conclusions of law, to the  
20 Administrator pursuant to Article II of the Administrative Procedures Act. The  
21 Administrator shall review the proposed order and issue a final agency order in  
22 accordance with Article II of the Administrative Procedures Act. A final agency order

1 issued by the Administrator shall be appealable by all parties to the district court as  
2 provided in Article II of the Administrative Procedures Act. The costs of the hearing  
3 examiner may be assessed by the hearing examiner against the respondent, unless the  
4 respondent is the prevailing party.

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

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

- 12 1. Any untrue statement in the application for registration;
- 13 2. The violation of or noncompliance with any provision of the Oklahoma Tax  
14 Refund Services Oversight Act or rule, regulation, or order of the Administrator;
- 15 3. The obtaining of or attempt to obtain registration through fraud or  
16 misrepresentation;
- 17 4. Conviction of or plea of guilty or nolo contendere to a felony in this state, another  
18 state, or a federal court or of a misdemeanor involving moral turpitude;
- 19 5. Failure to provide disclosures to consumers pursuant to the provisions of the  
20 Oklahoma Tax Refund Services Oversight Act;
- 21 6. Failure to provide a Refund Anticipation Loan Fee Charges List for facilitation  
22 services provided; or

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

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

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

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

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

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

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

7           4. Any other information required by the Administrator.

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



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

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

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

1 the Oklahoma Tax Refund Services Oversight Act shall be deposited in the General  
2 Revenue Fund of the State Treasury.

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

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,  
7 dated 04-12-10 - DO PASS, As Amended.