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**THE STATE SENATE**  
**Thursday, February 18, 2010**

**Committee Substitute for**  
**Senate Bill No. 1914**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1914 - By: Anderson of the Senate and Hickman of the House.

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

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

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

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

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

As used in the Oklahoma Tax Refund Services Oversight Act:

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

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

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

- 1           4. "Consumer" means any person who obtains a refund  
2 anticipation loan;
- 3           5. "Creditor" means any person who makes a refund anticipation  
4 loan;
- 5           6. "Enrolled agent" means an individual enrolled to practice  
6 before the Internal Revenue Service as provided in Title 31 of the  
7 Code of Federal Regulations, Subtitle A, Part 10;
- 8           7. "Facilitator" means a person that independently or with  
9 another person performs any of the following:
- 10           a. solicits, either directly or indirectly, the execution  
11 of, processes, receives, or accepts an application for  
12 a refund anticipation loan,
- 13           b. solicits, either directly or indirectly, the execution  
14 of, receipt of, or acceptance of an application for a  
15 refund anticipation loan as a creditor if there is no  
16 third-party facilitator,
- 17           c. services or collects upon a refund anticipation loan,  
18 or
- 19           d. facilitates the making of a refund anticipation loan  
20 in any other manner;
- 21           8. "Facilitation services" means the execution, acceptance,  
22 processing, or receiving of an application for a refund anticipation  
23 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

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;

- 1           7. To reprimand or place on probation a facilitator, upon good  
2 cause shown;
- 3           8. To impose an administrative penalty or fine as deemed proper  
4 and appropriate by the Board. Such administrative penalty or fine  
5 shall be assessed against facilitators for the failure to pay the  
6 renewal fees or for the violation or noncompliance with any  
7 provision of the Oklahoma Tax Refund Services Oversight Act or any  
8 rule or order of the Commission on Consumer Credit;
- 9           9. To refer for prosecution any person who violates any of the  
10 provisions of the Oklahoma Tax Refund Services Oversight Act;
- 11          10. To establish minimum standards to be followed in providing  
12 disclosures, including, but not limited to, the Refund Anticipation  
13 Loan Fee Charges List which may include language used, phraseology,  
14 and size of the print;
- 15          11. To deposit all fees and administrative fines collected to  
16 the credit of the Oklahoma Tax Refund Services Oversight Revolving  
17 Fund;
- 18          12. To confer with and request legal assistance from the Office  
19 of the Attorney General whenever deemed appropriate by the  
20 Commission on Consumer Credit; and
- 21          13. To have a seal which shall be affixed to all permits,  
22 certified copies of documents on file, and such other instruments as  
23 the Commission on Consumer Credit may direct. All courts in this

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

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

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

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

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

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

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

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

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

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

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

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

1           c.    the disclosure statements required by the federal  
2                    Truth-In-Lending Act applicable to refund anticipation  
3                    loans.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 No person shall:

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

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

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

- 17           a. insurance,
- 18           b. attorney fees,
- 19           c. check cashing, or
- 20           d. other collection costs;

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

- 1 a. a hold harmless clause,  
2 b. a confession of judgment clause,  
3 c. a waiver of the right to a jury trial, if applicable,  
4 in any action brought by or against the consumer,  
5 d. any assignment of or order for payment of wages or  
6 other compensation for services,  
7 e. a provision in which the consumer waives the right to  
8 assert any claim or defense arising from facilitation  
9 services or to seek any private right of action  
10 provided for in the Oklahoma Tax Refund Services  
11 Oversight Act,  
12 f. a waiver of the right to injunctive, declaratory,  
13 other equitable relief, or relief on a class-wide  
14 basis, or  
15 g. a provision requiring that any aspect of a resolution  
16 of a dispute between the parties to the agreement  
17 shall be kept confidential. This provision shall not  
18 affect the right of the parties to agree that certain  
19 specified information is a trade secret or otherwise  
20 confidential or to later agree, after the dispute  
21 arises, to keep a resolution confidential;

22 5. Take or arrange for a creditor to take a security interest  
23 in any property of the consumer other than the proceeds of the tax

1 refund of a consumer to secure payment of a refund anticipation  
2 loan;

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

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

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

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

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

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

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

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

21           A. The Commission on Consumer Credit may censure, suspend,  
22 revoke or refuse to register a person as a facilitator pursuant to  
23 the provisions of the Oklahoma Tax Refund Services Oversight Act if,

1 after a hearing, the Commission finds any one or more of the  
2 following conditions:

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

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

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

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

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

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

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

18 B. In addition to, or in lieu of, any censure, denial,  
19 suspension, or revocation of a permit, any person, firm,  
20 corporation, or other entity violating the provisions of the  
21 Oklahoma Tax Refund Services Oversight Act shall be subject to a  
22 civil penalty in an amount not less than One Hundred Dollars  
23 (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) for each

1 occurrence. The fine may be enforced in the same manner in which  
2 civil judgments may be enforced.

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

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

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

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

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

20 4. Any other information required by the Commission.

21 SECTION 13. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.  
3 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-16-10 - DO PASS,  
4 As Amended and Coauthored.