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2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. DIAZ -- read twice and ordered printed, and when
printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to refund anticipation
loans

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The banking law is amended by adding a new section 46 to
2 read as follows:
3 S 46. REFUND ANTICIPATION LOANS. 1. AS USED IN THIS SECTION:
4 (A) "BORROWER" MEANS A PERSON WHO RECEIVES THE PROCEEDS OF A REFUND
5 ANTICIPATION LOAN;
6 (B) "FACILITATOR" MEANS A PERSON WHO, INDIVIDUALLY, OR IN CONJUNCTION
7 OR COOPERATION WITH ANOTHER PERSON, MAKES A REFUND ANTICIPATION LOAN,
8 PROCESSES, RECEIVES OR ACCEPTS FOR DELIVERY AN APPLICATION FOR A REFUND
9 ANTICIPATION LOAN, ISSUES A CHECK IN PAYMENT OF REFUND ANTICIPATION LOAN
10 PROCEEDS, OR IN ANY OTHER MANNER ACTS TO ALLOW THE MAKING OF A REFUND
11 ANTICIPATION LOAN. THE TERM DOES NOT INCLUDE A BANK, TRUST COMPANY,
12 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR PERSON OR
13 ENTITY ISSUED A LICENSE UNDER THE PROVISIONS OF ARTICLE NINE OF THIS
14 CHAPTER, OPERATING UNDER THE LAWS OF THE UNITED STATES OR THIS STATE, OR
15 ANY PERSON WHO ACTS SOLELY AS AN INTERMEDIARY AND DOES NOT DEAL WITH THE
16 PUBLIC IN THE MAKING OF A REFUND ANTICIPATION LOAN;
17 (C) "REFUND ANTICIPATION LOAN" MEANS A LOAN ARRANGED TO BE PAID
18 DIRECTLY FROM THE PROCEEDS OF A BORROWER'S INCOME TAX REFUND;
19 (D) "REFUND ANTICIPATION LOAN FEE" MEANS ANY CHARGES, FEES OR OTHER
20 CONSIDERATION CHARGED OR IMPOSED FOR THE MAKING OF A REFUND ANTICIPATION
21 LOAN. THE TERM DOES NOT INCLUDE ANY CHARGES, FEES OR OTHER CONSIDERATION
22 CHARGED OR IMPOSED IN THE ORDINARY COURSE OF BUSINESS BY A FACILITATOR
23 FOR SERVICES THAT DO NOT RESULT IN THE MAKING OF A LOAN INCLUDING, BUT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 NOT LIMITED TO, FEES FOR TAX RETURN PREPARATION SERVICES OR FOR THE
2 ELECTRONIC FILING OF INCOME TAX RETURNS; AND

3 (E) "ANNUAL PERCENTAGE RATE" SHALL HAVE THE SAME MEANING AS PROVIDED
4 IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION SIX-L OF THIS CHAPTER.

5 2. AT THE TIME A BORROWER APPLIES FOR A REFUND ANTICIPATION LOAN, A
6 FACILITATOR SHALL DISCLOSE TO SUCH BORROWER ON A DOCUMENT THAT IS SEPA-
7 RATE FROM THE LOAN APPLICATION:

8 (A) THE ESTIMATED FEE FOR PREPARING AND ELECTRONICALLY FILING AN
9 INCOME TAX RETURN;

10 (B) THE REFUND ANTICIPATION LOAN FEE SCHEDULE;

11 (C) THE ANNUAL PERCENTAGE RATE FOR THE LOAN;

12 (D) THE ESTIMATED TOTAL COST TO THE BORROWER FOR UTILIZING A REFUND
13 ANTICIPATION LOAN;

14 (E) THE ESTIMATED NUMBER OF DAYS WITHIN WHICH THE LOAN PROCEEDS SHALL
15 BE PAID TO THE BORROWER IF THE LOAN IS APPROVED;

16 (F) THE BORROWER IS RESPONSIBLE FOR REPAYMENT OF THE LOAN AND RELATED
17 FEES IN THE EVENT THE INCOME TAX REFUND IS NOT PAID OR NOT PAID IN FULL;
18 AND

19 (G) THE AVAILABILITY OF ELECTRONIC FILING OF THE INCOME TAX RETURN OF
20 THE BORROWER AND THE AVERAGE TIME ANNOUNCED BY THE INTERNAL REVENUE
21 SERVICE WITHIN WHICH THE BORROWER CAN EXPECT TO RECEIVE A REFUND IF THE
22 BORROWER'S RETURN IS ELECTRONICALLY FILED AND THE BORROWER DOES NOT
23 OBTAIN A REFUND ANTICIPATION LOAN.

24 3. NO REFUND ANTICIPATION LOAN SHALL BE MADE AT ANY LOCATION OTHER
25 THAN A LOCATION IN WHICH THE PRINCIPAL BUSINESS IS TAX PREPARATION. ALL
26 DISCLOSURE DOCUMENTS REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL
27 BE AVAILABLE IN ENGLISH, SPANISH AND IN ANY OTHER LANGUAGE SPOKEN BY
28 MORE THAN FIVE PERCENT OF THE POPULATION IN THE VICINITY OF THE
29 FACILITATOR'S LOCATION.

30 4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER OR THE GENERAL
31 OBLIGATIONS LAW, THE INTEREST RATE FOR A REFUND ANTICIPATION LOAN SHALL
32 NOT EXCEED (A) SIXTY PERCENT PER ANNUM FOR THE INITIAL TWENTY-ONE DAYS
33 OF SUCH LOAN, AND (B) TWENTY PERCENT PER ANNUM FOR THE PERIOD COMMENCING
34 ON THE TWENTY-SECOND DAY OF SUCH LOAN AND ENDING ON THE DATE OF PAYMENT.

35 5. IN OFFERING TO FACILITATE OR FACILITATING A REFUND ANTICIPATION
36 LOAN, NO FACILITATOR SHALL ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES:

37 (A) REQUIRING A CLIENT TO ENTER INTO A LOAN ARRANGEMENT IN ORDER TO
38 COMPLETE A TAX RETURN;

39 (B) MISREPRESENTING A MATERIAL FACTOR OR CONDITION OF A REFUND ANTIC-
40 IPATION LOAN;

41 (C) FAILING TO PROCESS THE APPLICATION FOR A REFUND ANTICIPATION LOAN
42 PROMPTLY AFTER THE CLIENT APPLIES FOR THE LOAN; OR

43 (D) ENGAGING IN ANY TRANSACTION, PRACTICE, OR COURSE OF BUSINESS THAT
44 OPERATES A FRAUD UPON ANY PERSON IN CONNECTION WITH A REFUND ANTIC-
45 IPATION LOAN.

46 6. ANY FACILITATOR WHO VIOLATES ANY PROVISION OF THIS SECTION SHALL BE
47 SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR
48 EACH SUCH VIOLATION. SUCH PENALTY SHALL BE ASSESSED BY THE SUPERINTEN-
49 DENT AS PROVIDED IN SECTION FORTY-FOUR OF THIS ARTICLE. IN ADDITION, ANY
50 FACILITATOR WHO VIOLATES ANY PROVISION OF THIS SECTION SHALL BE LIABLE
51 TO ANY AGGRIEVED BORROWER IN AN AMOUNT EQUAL TO THREE TIMES THE AMOUNT
52 OF THE REFUND ANTICIPATION LOAN FEE, PLUS REASONABLE ATTORNEY'S FEES, IN
53 A CIVIL ACTION BROUGHT BY THE AGGRIEVED BORROWER OR BY THE ATTORNEY
54 GENERAL ON BEHALF OF THE AGGRIEVED BORROWER.

55 7. THE SUPERINTENDENT MAY PRESCRIBE REGULATIONS TO CARRY OUT THE
56 PROVISIONS AND PURPOSES OF THIS SECTION.

1 S 2. Nothing in this act shall be construed to impair or limit the
2 validity of any additional local laws or regulations, not inconsistent
3 with the provisions of this act, applicable to the making of refund
4 anticipation loans.

5 S 3. If any clause, sentence, paragraph, section or part of this act
6 be adjudged by any court of competent jurisdiction to be invalid, such
7 judgment shall not affect, impair or invalidate the remainder thereof
8 but shall be applied in its operation to the clause, sentence, para-
9 graph, section or part thereof directly involved in the controversy in
10 which such judgment shall have been rendered.

11 S 4. This act shall take effect on the first of November next succeed-
12 ing the date on which it shall have become a law; provided, however,
13 that effective immediately, the addition, amendment and/or repeal of any
14 rule or regulation necessary for the implementation of this act on its
15 effective date are authorized and directed to be made and completed on
16 or before such effective date.