

742

2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sens. KRUEGER, DUANE, C. JOHNSON, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to enacting the refund anticipation loan act

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

1 Section 1. Article 22 of the tax law is amended by adding a new part 7
2 to read as follows:

3 PART VII--REFUND ANTICIPATION LOAN

4 SECTION 700. SHORT TITLE AND SCOPE.

5 700-A. DEFINITIONS.

6 700-B. REGISTRATION; BOND REQUIREMENT.

7 700-C. REGISTRATION PROCEDURE.

8 700-D. POSTING OF FEE SCHEDULE AND DISCLOSURES.

9 700-E. APPLICATION DISCLOSURES.

10 700-F. REQUIREMENTS FOR REFUND ANTICIPATION LOANS AND REFUND
11 ANTICIPATION CHECKS.

12 700-G. PROHIBITED ACTIVITIES.

13 700-H. FACILITATOR DUTY TO CONSUMER.

14 700-I. PRIVATE RIGHT OF ACTION.

15 700-J. RULES.

16 700-K. RECORD KEEPING; ANNUAL REPORTS.

17 700-L. SEVERABILITY.

18 S 700. SHORT TITLE AND SCOPE. (A) SHORT TITLE. THIS PART SHALL BE
19 KNOWN AND MAY BE CITED AS THE "REFUND ANTICIPATION LOAN ACT". THIS ACT
20 SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSE. THE PURPOSE OF
21 THIS ACT IS TO PROTECT CONSUMERS WHO ENTER INTO REFUND ANTICIPATION LOAN
22 AND REFUND ANTICIPATION CHECK TRANSACTIONS AND TO LIMIT FEES FOR REFUND

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

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1 ANTICIPATION LOANS FACILITATED IN NEW YORK STATE. THIS PART IS TO BE
2 CONSTRUED AS A CONSUMER PROTECTION STATUTE FOR ALL PURPOSES.

3 (B) SCOPE. NO PERSON (INCLUDING ANY OFFICER, AGENT, EMPLOYEE OR REPRE-
4 SENTATIVE) MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTH-
5 ER PERSON: (1) SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT AN
6 APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTIC-
7 IPATION CHECK, OR (2) IN ANY OTHER MANNER FACILITATE THE MAKING OF A
8 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK UNLESS SUCH PERSON
9 HAS COMPLIED WITH THE PROVISIONS OF THIS PART. THE PROVISIONS OF THIS
10 PART SHALL APPLY TO ANY PERSON WHO SEEKS TO EVADE ITS APPLICABILITY BY
11 ANY DEVICE, SUBTERFUGE, OR PRETENSE WHATSOEVER.

12 (C) EXEMPTION. THIS ACT SHALL NOT APPLY TO CREDIT UNIONS, AS CHARTERED
13 BY THE NATIONAL CREDIT UNION ADMINISTRATION OR THE NEW YORK STATE BANK-
14 ING DEPARTMENT.

15 S 700-A. DEFINITIONS. THE FOLLOWING DEFINITIONS APPLY IN THIS PART:

16 (A) "APPLICANT" SHALL MEAN A PERSON WHO APPLIES FOR REGISTRATION AS A
17 FACILITATOR OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS.

18 (B) "BANKING DEPARTMENT" SHALL MEAN THE STATE OF NEW YORK BANKING
19 DEPARTMENT.

20 (C) "BANKING SUPERINTENDENT" SHALL MEAN THE SUPERINTENDENT OF BANKS
21 FOR THE STATE OF NEW YORK.

22 (D) "CONSUMER" SHALL MEAN ANY NATURAL PERSON WHO, SINGLY OR JOINTLY
23 WITH ANOTHER CONSUMER, IS SOLICITED FOR, APPLIES FOR, OR RECEIVES THE
24 PROCEEDS OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

25 (E) "CREDITOR" SHALL MEAN ANY PERSON WHO MAKES A REFUND ANTICIPATION
26 LOAN OR WHO TAKES AN ASSIGNMENT OF A REFUND ANTICIPATION LOAN.

27 (F) "FACILITATOR" SHALL MEAN A PERSON WHO INDIVIDUALLY OR IN CONJUNC-
28 TION OR COOPERATION WITH ANOTHER PERSON: (1) SOLICITS THE EXECUTION OF,
29 PROCESSES, RECEIVES, OR ACCEPTS AN APPLICATION OR AGREEMENT FOR A REFUND
30 ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, OR (2) IN ANY OTHER
31 MANNER FACILITATES THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND
32 ANTICIPATION CHECK.

33 (G) "PERSON" SHALL MEAN AN INDIVIDUAL, A FIRM, A PARTNERSHIP, AN ASSO-
34 CIATION, A CORPORATION, OR ANOTHER ENTITY.

35 (H) "REFUND ANTICIPATION CHECK" SHALL MEAN A CHECK, CASH PAYMENT,
36 DEBIT CARD, STORE CREDIT, OR OTHER PAYMENT MECHANISM: (1) REPRESENTING
37 THE PROCEEDS OF THE CONSUMER'S TAX REFUND; (2) WHICH WAS ISSUED BY A
38 DEPOSITORY INSTITUTION OR OTHER PERSON THAT RECEIVED A DIRECT DEPOSIT OF
39 THE CONSUMER'S TAX REFUND OR TAX CREDITS; AND (3) FOR WHICH THE CONSUMER
40 HAS PAID A FEE OR OTHER CONSIDERATION FOR SUCH PAYMENT MECHANISM.

41 (I) "REFUND ANTICIPATION LOAN" SHALL MEAN A LOAN THAT IS SECURED BY OR
42 THAT THE CREDITOR ARRANGES TO BE REPAID DIRECTLY OR INDIRECTLY FROM THE
43 PROCEEDS OF THE CONSUMER'S INCOME TAX REFUND OR TAX CREDITS. A REFUND
44 ANTICIPATION LOAN ALSO INCLUDES ANY SALE, ASSIGNMENT, OR PURCHASE OF A
45 CONSUMER'S TAX REFUND AT A DISCOUNT OR FOR A FEE, WHETHER OR NOT THE
46 CONSUMER IS REQUIRED TO REPAY THE BUYER OR ASSIGNEE IF THE INTERNAL
47 REVENUE SERVICE DENIES OR REDUCES THE CONSUMER'S TAX REFUND.

48 (J) "REFUND ANTICIPATION LOAN FEE" SHALL MEAN THE CHARGES, FEES, OR
49 OTHER CONSIDERATION CHARGED OR IMPOSED DIRECTLY OR INDIRECTLY BY THE
50 CREDITOR OR FACILITATOR FOR THE MAKING OF OR IN CONNECTION WITH A REFUND
51 ANTICIPATION LOAN. SUCH TERM INCLUDES ANY CHARGE, FEE, OR OTHER CONSID-
52 ERATION FOR A DEPOSIT ACCOUNT, IF THE DEPOSIT ACCOUNT IS USED FOR
53 RECEIPT OF THE CONSUMER'S TAX REFUND TO REPAY THE AMOUNT OWED ON THE
54 LOAN. SUCH TERM DOES NOT INCLUDE ANY CHARGE, FEE, OR OTHER CONSIDERATION
55 USUALLY CHARGED OR IMPOSED BY THE FACILITATOR IN THE ORDINARY COURSE OF
56 BUSINESS, SUCH AS FEES FOR TAX RETURN PREPARATION AND FEES FOR ELECTRON-

1 IC FILING OF TAX RETURNS, IF THE SAME FEES IN THE SAME AMOUNT ARE
2 CHARGED TO THE FACILITATOR'S CUSTOMERS WHO DO NOT RECEIVE REFUND ANTIC-
3 IPATION LOANS OR REFUND ANTICIPATION CHECKS.

4 (K) "REFUND ANTICIPATION LOAN INTEREST RATE" SHALL MEAN THE INTEREST
5 RATE FOR A REFUND ANTICIPATION LOAN CALCULATED AS FOLLOWS: THE TOTAL
6 AMOUNT OF REFUND ANTICIPATION LOAN FEES DIVIDED BY THE LOAN AMOUNT
7 (MINUS ANY LOAN FEES), THEN DIVIDED BY THE NUMBER OF DAYS IN THE LOAN
8 TERM, THEN MULTIPLIED BY THREE HUNDRED SIXTY-FIVE AND EXPRESSED AS A
9 PERCENTAGE. THE TOTAL AMOUNT OF THE REFUND ANTICIPATION LOAN FEE USED IN
10 SUCH CALCULATION SHALL INCLUDE ALL REFUND ANTICIPATION LOAN FEES AS
11 DEFINED IN SUBSECTION (J) OF THIS SECTION. IF A DEPOSIT ACCOUNT IS
12 ESTABLISHED OR MAINTAINED IN WHOLE OR IN PART FOR THE PURPOSE OF RECEIV-
13 ING THE CONSUMER'S TAX REFUND TO REPAY THE AMOUNT OWED ON A REFUND
14 ANTICIPATION LOAN: (1) THE MATURITY OF THE LOAN FOR THE PURPOSE OF
15 DETERMINING THE REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE ASSUMED
16 TO BE THE ESTIMATED DATE WHEN THE TAX REFUND WILL BE DEPOSITED IN THE
17 DEPOSIT ACCOUNT; AND (2) ANY FEE CHARGED TO THE CONSUMER FOR SUCH DEPOS-
18 IT ACCOUNT SHALL BE CONSIDERED A LOAN FEE AND SHALL BE INCLUDED IN THE
19 CALCULATION OF THE REFUND ANTICIPATION LOAN INTEREST RATE. IF NO DEPOSIT
20 ACCOUNT IS ESTABLISHED OR MAINTAINED FOR THE REPAYMENT OF THE LOAN, THE
21 MATURITY OF THE LOAN SHALL BE ASSUMED TO BE THE ESTIMATED DATE WHEN THE
22 TAX REFUND IS RECEIVED BY THE CREDITOR.

23 (1) "REGISTRANT" SHALL MEAN A PERSON WHO IS REGISTERED AS A FACILITA-
24 TOR OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS UNDER
25 THIS PART.

26 S 700-B. REGISTRATION; BOND REQUIREMENT. (A) REGISTRATION REQUIREMENT.
27 NO PERSON MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER
28 PERSON FACILITATE IN ANY WAY, SOLICIT THE EXECUTION OF, PROCESS,
29 RECEIVE, OR ACCEPT AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION
30 LOAN OR REFUND ANTICIPATION CHECK WITHOUT FIRST BEING REGISTERED WITH
31 THE BANKING SUPERINTENDENT AND POSTING A BOND IN ACCORDANCE WITH THE
32 PROCEDURES PROVIDED IN THIS PART.

33 (B) BOND. EACH FACILITATOR MUST POST A BOND IN THE AMOUNT OF ONE
34 HUNDRED THOUSAND DOLLARS PER LOCATION, WHICH MUST CONTINUE IN EFFECT FOR
35 FIVE YEARS AFTER THE FACILITATOR CEASES OPERATION IN NEW YORK STATE.
36 SUCH BOND MUST BE AVAILABLE TO PAY FOR THE COST OF EXAMS, ANY UNPAID
37 REGISTRATION FEES, AND ANY DAMAGES AND PENALTIES TO CONSUMERS HARMED BY
38 ANY VIOLATION OF THIS PART.

39 (C) EXEMPTION. THIS SECTION DOES NOT APPLY TO A PERSON DOING BUSINESS
40 AS A BANK, THRIFT, SAVINGS ASSOCIATION, OR CREDIT UNION, UNDER THE LAWS
41 OF THE UNITED STATES OR OF NEW YORK STATE. A FACILITATOR IS NOT EXEMPT
42 MERELY BECAUSE THE CREDITOR DOES BUSINESS AS A BANK, THRIFT, SAVINGS
43 ASSOCIATION, OR CREDIT UNION, UNDER THE LAWS OF THE UNITED STATES OR OF
44 NEW YORK STATE.

45 S 700-C. REGISTRATION PROCEDURE. (A) INITIAL REGISTRATION. ANY PERSON
46 DOING BUSINESS IN THIS STATE AS A FACILITATOR SHALL BE REGISTERED IN
47 THIS STATE AS PROVIDED IN THIS SECTION. AN APPLICATION TO BECOME REGIS-
48 TERED AS A FACILITATOR SHALL BE IN WRITING, UNDER OATH, AND IN A FORM
49 PRESCRIBED BY THE BANKING SUPERINTENDENT. THE APPLICATION SHALL CONTAIN
50 ALL INFORMATION PRESCRIBED BY THE BANKING SUPERINTENDENT. EACH APPLICA-
51 TION FOR REGISTRATION SHALL BE ACCOMPANIED BY A FEE OF FIVE HUNDRED
52 DOLLARS, PAYABLE TO THE BANKING SUPERINTENDENT, FOR EACH OFFICE WHERE
53 THE REGISTRANT INTENDS TO FACILITATE REFUND ANTICIPATION LOANS OR REFUND
54 ANTICIPATION CHECKS.

55 (1) THE BANKING SUPERINTENDENT SHALL REQUIRE THAT APPLICANTS FOR
56 LICENSES ISSUED PURSUANT TO THIS PART BE FINGERPRINTED FOR THE PURPOSE

1 OF SECURING CRIMINAL HISTORY RECORDS FROM THE STATE DIVISION OF CRIMINAL
2 JUSTICE SERVICES. THE APPLICANT SHALL PAY A PROCESSING FEE AS REQUIRED
3 BY THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES. FINGERPRINTS SHALL
4 BE TAKEN OF THE INDIVIDUAL OWNER IF THE APPLICANT IS A SOLE PROPRIETOR-
5 SHIP; THE GENERAL PARTNERS OF THE APPLICANT IS A PARTNERSHIP; AND THE
6 OFFICERS, PRINCIPALS, DIRECTORS, AND STOCKHOLDERS OWNING MORE THAN TEN
7 PERCENT OF THE OUTSTANDING STOCK OF THE CORPORATION IF THE APPLICANT IS
8 A CORPORATION. ANY PERSON REQUIRED TO BE FINGERPRINTED UNDER THIS PARA-
9 GRAPH SHALL FURNISH TO THE DEPARTMENT THREE CURRENT PASSPORT-SIZE PHOTO-
10 GRAPHS OF SUCH PERSON. NOTWITHSTANDING THE FOREGOING, THE SUPERINTENDENT
11 NEED NOT REQUIRE APPLICANTS FOR LICENSES REQUIRED UNDER THIS PART TO BE
12 FINGERPRINTED IF CRIMINAL HISTORY RECORDS CONCERNING SUCH APPLICANTS ARE
13 NOT AVAILABLE FROM THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES.

14 (2) UPON THE FILING OF AN APPLICATION FOR REGISTRATION, IF THE BANKING
15 SUPERINTENDENT FINDS THAT THE RESPONSIBILITY AND GENERAL FITNESS OF THE
16 APPLICANT ARE SUCH AS TO COMMAND THE CONFIDENCE OF THE COMMUNITY AND TO
17 WARRANT BELIEF THAT THE BUSINESS OF FACILITATING REFUND ANTICIPATION
18 LOANS OR REFUND ANTICIPATION CHECKS WILL BE OPERATED WITHIN THE PURPOSES
19 OF THIS PART, THE BANKING SUPERINTENDENT SHALL REGISTER THE APPLICANT
20 AND SHALL ISSUE AND TRANSMIT TO THE APPLICANT A CERTIFICATE ATTESTING TO
21 THE REGISTRATION. IF THE BANKING SUPERINTENDENT DOES NOT SO FIND, HE OR
22 SHE SHALL NOT REGISTER THE APPLICANT AND SHALL NOTIFY THE APPLICANT OF
23 THE REASONS FOR THE DENIAL.

24 (3) UPON RECEIPT OF A CERTIFICATE OF REGISTRATION, THE APPLICANT IS
25 REGISTERED UNDER THIS PART AND MAY ENGAGE IN THE BUSINESS OF FACILITAT-
26 ING REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS AT THE
27 OFFICES IDENTIFIED ON THE APPLICATION FOR REGISTRATION.

28 (B) RENEWAL, SUSPENSION AND REVOCATION. IN ADDITION TO ANY OF THE
29 POWERS THAT MAY BE EXERCISED BY THE BANKING SUPERINTENDENT PURSUANT TO
30 THIS PART, THE BANKING SUPERINTENDENT, AFTER NOTICE AND AN OPPORTUNITY
31 TO BE HEARD, MAY REFUSE TO ISSUE OR RENEW, OR MAY SUSPEND OR REVOKE, A
32 LICENSE REQUIRED UNDER THIS PART IF THE APPLICANT OR LICENSEE, OR ANY OF
33 ITS PRINCIPALS, OFFICERS OR DIRECTORS, OR ANY OF ITS STOCKHOLDERS OWNING
34 MORE THAN TEN PERCENT OF THE OUTSTANDING STOCK OF THE CORPORATION HAS
35 BEEN CONVICTED OF A CRIME WHICH, IN THE JUDGMENT OF THE BANKING SUPER-
36 INTENDENT, HAS A DIRECT RELATIONSHIP TO SUCH PERSON'S FITNESS OR ABILITY
37 TO PERFORM ANY OF THE ACTIVITIES FOR WHICH A LICENSE IS REQUIRED UNDER
38 THIS PART OR HAS BEEN CONVICTED OF ANY OTHER CRIME WHICH, IN ACCORDANCE
39 WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, WOULD PROVIDE A
40 JUSTIFICATION FOR THE BANKING SUPERINTENDENT TO REFUSE TO ISSUE OR
41 RENEW, OR TO SUSPEND OR REVOKE, SUCH LICENSE. THE BANKING SUPERINTEN-
42 DENT MAY, ON GOOD CAUSE SHOWN, OR WHERE THERE IS A SUBSTANTIAL RISK OF
43 PUBLIC HARM, SUSPEND ANY REGISTRATION OR DELETE THE NAME OF ANY REGIS-
44 TRANT FOR A PERIOD NOT EXCEEDING THIRTY DAYS, PENDING INVESTIGATION.
45 "GOOD CAUSE", AS USED IN THIS SUBSECTION, SHALL EXIST ONLY WHEN THE
46 REGISTRANT HAS DEFAULTED OR IS LIKELY TO DEFAULT IN PERFORMING ITS
47 FINANCIAL ENGAGEMENTS OR ENGAGES IN DISHONEST OR INEQUITABLE PRACTICES
48 WHICH MAY CAUSE SUBSTANTIAL HARM TO THE PERSONS AFFORDED THE PROTECTION
49 OF THIS PART.

50 (1) CEASE AND DESIST ORDER. WHENEVER THE BANKING DEPARTMENT BELIEVES
51 OR HAS NOTICE THAT ANY ACTION OF A FACILITATOR MAY BE IN VIOLATION OF
52 THIS PART OR THE RULES OR REGULATIONS PROMULGATED UNDER THIS PART, OR
53 THAT THE FACILITATOR HAS ENGAGED IN AN UNFAIR OR DECEPTIVE ACT OR PRAC-
54 TICE, THE BANKING SUPERINTENDENT SHALL GIVE REASONABLE NOTICE TO THE
55 FACILITATOR OF THE SUSPECTED VIOLATION OR UNFAIR OR DECEPTIVE ACT OR
56 PRACTICE, AND AN OPPORTUNITY FOR THE FACILITATOR TO BE HEARD. IF THE

1 BANKING SUPERINTENDENT FINDS THAT AN ACTION OF THE FACILITATOR IS IN
2 VIOLATION OF THIS PART OR THE RULES OR REGULATIONS PROMULGATED UNDER
3 THIS PART OR THAT THE FACILITATOR HAS ENGAGED IN AN UNFAIR OR DECEPTIVE
4 ACT OR PRACTICE, THE BANKING SUPERINTENDENT SHALL ORDER THE FACILITATOR
5 TO CEASE AND DESIST FROM THE ACTION. THE BANKING SUPERINTENDENT MAY MAKE
6 INVESTIGATIONS, SUBPOENA WITNESSES, AND REQUIRE AUDITS AND REPORTS AND
7 SHALL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

8 IF THE FACILITATOR CONTINUES TO ENGAGE IN AN ACTION IN VIOLATION OF
9 THE BANKING SUPERINTENDENT'S ORDER TO CEASE AND DESIST FROM THE ACTION,
10 THE FACILITATOR SHALL BE SUBJECT TO A PENALTY OF UP TO FIVE THOUSAND
11 DOLLARS FOR EACH ACTION IT TAKES IN VIOLATION OF THE BANKING SUPERINTEN-
12 DENT'S ORDER.

13 (2) REVOCATION OF REGISTRATION. UPON THE FINDING THAT A REGISTRANT HAS
14 (I) ENGAGED IN A COURSE OF CONDUCT THAT IS IN VIOLATION OF THIS PART OR
15 THE RULES OR REGULATIONS PROMULGATED UNDER THIS PART OR (II) CONTINUED
16 TO ENGAGE IN AN ACTION IN VIOLATION OF A CEASE AND DESIST ORDER OF THE
17 BANKING SUPERINTENDENT THAT HAS NOT BEEN STAYED UPON APPLICATION OF THE
18 REGISTRANT, THE BANKING SUPERINTENDENT MAY REVOKE THE REGISTRATION OF
19 THE REGISTRANT TEMPORARILY OR PERMANENTLY AT THE DISCRETION OF THE BANK-
20 ING SUPERINTENDENT. NO REVOCATION, SUSPENSION, OR SURRENDER OF ANY
21 REGISTRATION SHALL RELIEVE THE REGISTRANT FROM CIVIL OR CRIMINAL LIABIL-
22 ITY FOR ACTS COMMITTED PRIOR THERETO.

23 (3) RENEWAL FEES. EACH REGISTRATION AS A FACILITATOR OF REFUND ANTIC-
24 IPATION LOANS AND REFUND ANTICIPATION CHECKS SHALL EXPIRE ON DECEMBER
25 THIRTY-FIRST FOLLOWING THE DATE IT WAS ISSUED, UNLESS IT IS RENEWED FOR
26 THE SUCCEEDING YEAR. BEFORE THE REGISTRATION EXPIRES, THE REGISTRANT MAY
27 RENEW THE REGISTRATION BY FILING WITH THE BANKING SUPERINTENDENT AN
28 APPLICATION FOR RENEWAL IN THE FORM AND CONTAINING ALL INFORMATION
29 PRESCRIBED BY THE BANKING SUPERINTENDENT. EACH APPLICATION FOR RENEWAL
30 OF REGISTRATION SHALL BE ACCOMPANIED BY A FEE OF FIVE HUNDRED DOLLARS
31 FOR EACH OFFICE WHERE THE REGISTRANT INTENDS TO FACILITATE REFUND ANTIC-
32 IPATION LOANS OR REFUND ANTICIPATION CHECKS DURING THE SUCCEEDING YEAR.

33 (4) RENEWAL CRITERION. UPON THE FILING OF AN APPLICATION FOR RENEWAL
34 OF REGISTRATION UNDER THIS PART, THE BANKING SUPERINTENDENT SHALL RENEW
35 THE REGISTRATION, PROVIDED THAT NO REGISTRATION SHALL BE ISSUED IF THE
36 BANKING SUPERINTENDENT FINDS THAT THE REGISTRANT HAS VIOLATED THIS PART
37 OR DETERMINES THAT THE FITNESS OF THE REGISTRANT OR THE OPERATIONS OF
38 THE REGISTRANT WOULD NOT SUPPORT REGISTRATION OF THE REGISTRANT UNDER
39 SUBSECTION (A) OF THIS SECTION. IF THE BANKING SUPERINTENDENT MAKES SUCH
40 A FINDING OR DETERMINATION, HE OR SHE SHALL SO NOTIFY THE REGISTRANT,
41 STATING THE REASONS FOR THE DETERMINATION.

42 (C) COMPLAINT PROCESS. THE BANKING SUPERINTENDENT SHALL MAINTAIN A
43 LIST OF REGISTRANTS WHICH SHALL BE AVAILABLE TO INTERESTED PERSONS AND
44 THE PUBLIC. THE BANKING SUPERINTENDENT SHALL CREATE A TOLL-FREE TELE-
45 PHONE NUMBER WHEREBY CONSUMERS MAY OBTAIN INFORMATION ABOUT REGISTRANTS
46 AND COMPLAINT FORMS. THE BANKING SUPERINTENDENT SHALL ESTABLISH A
47 COMPLAINT PROCESS WHEREBY AN AGGRIEVED CONSUMER OR ANY MEMBER OF THE
48 PUBLIC MAY FILE A COMPLAINT AGAINST A REGISTRANT OR NON-REGISTRANT WHO
49 VIOLATES ANY PROVISION OF THIS PART. ALL COMPLAINTS SHALL BE CONSIDERED
50 PUBLIC RECORDS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW WITH
51 THE EXCEPTION OF THE COMPLAINANT'S NAME, ADDRESS, OR OTHER PERSONAL
52 IDENTIFYING INFORMATION. THE BANKING SUPERINTENDENT SHALL HOLD A HEARING
53 PURSUANT TO SUBSECTION (A) OF THIS SECTION UPON THE REQUEST OF A PARTY
54 TO THE COMPLAINT. THE BANKING SUPERINTENDENT MAY AFTER SUCH HEARING
55 ISSUE CEASE AND DESIST ORDERS PURSUANT TO PARAGRAPH ONE OF SUBSECTION

(B) OF THIS SECTION, OR SUSPEND OR REVOKE A REGISTRATION AS PROVIDED IN PARAGRAPH TWO OF SUBSECTION (B) OF THIS SECTION.

(D) DISPLAY OF CERTIFICATE. EACH REGISTRANT SHALL PROMINENTLY DISPLAY A CERTIFICATE ISSUED UNDER THIS PART IN EACH PLACE OF BUSINESS IN THE STATE WHERE THE REGISTRANT FACILITATES THE MAKING OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS. IT SHALL BE UNLAWFUL FOR ANY REGISTRANT TO CARRY ON HIS OR HER BUSINESS AT ANY PLACE OTHER THAN THE ONE DESIGNATED IN SUCH LICENSE.

(E) ANY PERSON WHO SHALL VIOLATE ANY OF THE PROVISIONS OF THIS PART OR ANY RULE OR REGULATION ISSUED UNDER THIS PART SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND UPON THE FIRST CONVICTION BE SUBJECT TO A FINE OF AT LEAST FIVE HUNDRED DOLLARS AND UPON ANY SUBSEQUENT CONVICTION BE SUBJECT TO A FINE OF UP TO FIVE THOUSAND DOLLARS AND/OR IMPRISONMENT OF AT LEAST FIFTEEN DAYS.

(F) FOR THE PURPOSE OF DISCOVERING VIOLATIONS OF THIS PART OR SECURING INFORMATION LAWFULLY REQUIRED BY HIM OR HER UNDER THIS PART, THE BANKING SUPERINTENDENT MAY AT ANY TIME, AND AS OFTEN AS HE OR SHE MAY DETERMINE, EITHER PERSONALLY OR BY A PERSON DULY DESIGNATED BY HIM OR HER, INVESTIGATE THE BUSINESS AND EXAMINE THE BOOKS, ACCOUNTS, RECORDS, AND FILES USED THEREIN OF EVERY REGISTRANT. FOR THAT PURPOSE THE BANKING SUPERINTENDENT AND HIS OR HER DULY DESIGNATED REPRESENTATIVE SHALL HAVE FREE ACCESS TO THE OFFICES AND PLACES OF BUSINESS, BOOKS, ACCOUNTS, PAPERS, RECORDS, FILES, SAFES AND VAULTS OF ALL SUCH REGISTRANTS. THE BANKING SUPERINTENDENT AND ANY PERSON DULY DESIGNATED BY HIM OR HER SHALL HAVE AUTHORITY TO REQUIRE THE ATTENDANCE OF AND TO EXAMINE UNDER OATH ALL PERSONS WHOSE TESTIMONY HE OR SHE MAY REQUIRE RELATIVE TO SUCH BUSINESS. THE EXPENSES INCURRED IN MAKING ANY EXAMINATION PURSUANT TO THIS SECTION SHALL BE ASSESSED AGAINST AND PAID BY THE REGISTRANT SO EXAMINED, EXCEPT THAT TRAVELING AND SUBSISTENCE EXPENSES SO INCURRED SHALL BE CHARGED AGAINST AND PAID BY REGISTRANTS IN SUCH PROPORTIONS AS THE BANKING SUPERINTENDENT SHALL DEEM JUST AND REASONABLE, AND SUCH PROPORTIONATE CHARGES SHALL BE ADDED TO THE ASSESSMENT OF THE OTHER EXPENSES INCURRED UPON EACH EXAMINATION. UPON WRITTEN NOTICE BY THE BANKING SUPERINTENDENT OF THE TOTAL AMOUNT OF SUCH ASSESSMENT, THE REGISTRANT SHALL BECOME LIABLE FOR AND SHALL PAY SUCH ASSESSMENT TO SUCH SUPERINTENDENT.

S 700-D. POSTING OF FEE SCHEDULE AND DISCLOSURES. (A) EVERY FACILITATOR SHALL PROMINENTLY DISPLAY AT EACH OFFICE WHERE REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS ARE FACILITATED A SCHEDULE SHOWING THE CURRENT FEES FOR REFUND ANTICIPATION LOANS FACILITATED AT SUCH OFFICE, FOR REFUND ANTICIPATION CHECKS FACILITATED AT SUCH OFFICE, AND FOR ELECTRONIC FILING OF THE CONSUMER'S TAX RETURN.

(B) EVERY FACILITATOR SHALL DISPLAY ON EACH FEE SCHEDULE EXAMPLES OF THE REFUND ANTICIPATION LOAN INTEREST RATES FOR REFUND ANTICIPATION LOANS OF TWO HUNDRED DOLLARS, FIVE HUNDRED DOLLARS, ONE THOUSAND DOLLARS, ONE THOUSAND FIVE HUNDRED DOLLARS, TWO THOUSAND DOLLARS, AND FIVE THOUSAND DOLLARS. THE REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE CALCULATED AS SET FORTH IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A OF THIS PART.

(C) EVERY FACILITATOR SHALL ALSO PROMINENTLY DISPLAY ON EACH FEE SCHEDULE: (1) A LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN ONE-INCH LETTERS STATING: NOTICE CONCERNING REFUND ANTICIPATION LOANS; AND (2) THE FOLLOWING VERBATIM STATEMENT: "WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT OF THE LOAN. IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING A LOAN."

1 YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND DIRECT
2 DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A LOAN OR PAYING
3 FEES FOR AN EXTRA PRODUCT. IF YOU DO NOT HAVE A BANK ACCOUNT, YOU CAN
4 SIGN UP FOR A BASIC BANKING ACCOUNT AT ANY NEW YORK BANK FOR A MINIMAL
5 FEE."

6 (D) THE POSTINGS REQUIRED BY THIS SECTION SHALL BE MADE IN NO LESS
7 THAN TWENTY-EIGHT-POINT TYPE ON A DOCUMENT MEASURING NO LESS THAN
8 SIXTEEN INCHES BY TWENTY INCHES. THE POSTINGS REQUIRED IN THIS SECTION
9 SHALL BE DISPLAYED IN A PROMINENT LOCATION AT EACH OFFICE WHERE THE
10 FACILITATOR IS FACILITATING REFUND ANTICIPATION LOANS.

11 (E) NO FACILITATOR MAY FACILITATE A REFUND ANTICIPATION LOAN OR REFUND
12 ANTICIPATION CHECK UNLESS (1) THE DISCLOSURES REQUIRED BY THIS SECTION
13 ARE DISPLAYED; (2) THE FEE ACTUALLY CHARGED FOR THE REFUND ANTICIPATION
14 LOAN OR REFUND ANTICIPATION CHECK IS THE SAME AS THE FEE DISPLAYED ON
15 THE SCHEDULE; AND (3) FOR REFUND ANTICIPATION LOANS, THE REFUND ANTIC-
16 IPATION LOAN INTEREST RATE DOES NOT EXCEED TWENTY-FIVE PERCENT. THE
17 REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE CALCULATED AS SET FORTH
18 IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A OF THIS PART.

19 S 700-E. APPLICATION DISCLOSURES. AT THE TIME A CONSUMER APPLIES FOR
20 A REFUND ANTICIPATION LOAN OR CHECK, THE FACILITATOR OR CREDITOR SHALL
21 DISCLOSE TO THE CONSUMER ON A FORM SEPARATE FROM THE APPLICATION IN
22 FOURTEEN-POINT TYPE, UNLESS OTHERWISE NOTED:

23 (A) THE FEE FOR THE REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
24 CHECK.

25 (B) THE FEE FOR ELECTRONIC FILING OF A TAX RETURN.

26 (C) ANY AND ALL OTHER FEES CHARGED FOR THE TRANSACTION, INCLUDING, BUT
27 NOT LIMITED TO, FINANCE CHARGES, ADMINISTRATIVE FEES, TAX PREPARATION
28 FEES, AND ACCOUNT CREATION FEES.

29 (D) THE TIME WITHIN WHICH THE PROCEEDS OF THE REFUND ANTICIPATION LOAN
30 OR CHECK WILL BE PAID TO THE CONSUMER IF THE LOAN OR CHECK IS APPROVED.

31 (E) FOR REFUND ANTICIPATION LOANS, THE FOLLOWING DISCLOSURES: (1) A
32 LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN EIGHTEEN-POINT TYPE
33 STATING: NOTICE; AND (2) THE FOLLOWING VERBATIM STATEMENT: "THIS IS A
34 LOAN. THIS LOAN IS BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX
35 REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT OF
36 THE LOAN. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING THIS
37 LOAN. YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND
38 DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A LOAN OR
39 OTHER PAID PRODUCT. IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION
40 LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY
41 \$(INSERT AMOUNT). IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU
42 WILL RECEIVE APPROXIMATELY \$(INSERT AMOUNT)."

43 (F) FOR REFUND ANTICIPATION LOANS, DISCLOSURE OF THE REFUND ANTIC-
44 IPATION LOAN INTEREST RATE. THE REFUND ANTICIPATION LOAN INTEREST RATE
45 SHALL BE CALCULATED AS SET FORTH IN SUBSECTION (K) OF SECTION SEVEN
46 HUNDRED-A OF THIS PART.

47 (G) FOR REFUND ANTICIPATION CHECKS, THE FOLLOWING DISCLOSURES: (1) A
48 LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN EIGHTEEN-POINT TYPE
49 STATING: NOTICE; AND (2) THE FOLLOWING VERBATIM STATEMENT: "YOU ARE
50 PAYING (AMOUNT OF REFUND ANTICIPATION CHECK FEE) TO GET YOUR REFUND
51 CHECK THROUGH (NAME OF ISSUER OF REFUND ANTICIPATION CHECK). YOU CAN
52 AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN ABOUT 10 DAYS BY HAVING
53 THE IRS DIRECT DEPOSIT YOUR REFUND INTO YOUR OWN BANK ACCOUNT."

54 (H) FOR BOTH REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS,
55 THE FOLLOWING VERBATIM STATEMENT: "IF YOU CAN WAIT 10 DAYS FOR YOUR
56 REFUND BUT YOU DO NOT HAVE A BANK ACCOUNT, YOU CAN SIGN UP FOR A BASIC

1 BANKING ACCOUNT AT ANY NEW YORK STATE BANK FOR A MINIMAL FEE. YOU MAY
2 ALSO BE ELIGIBLE TO JOIN A CREDIT UNION."

3 (I) THIS FORM SHALL BE SIGNED AND DATED BY THE CONSUMER AND THE REGIS-
4 TRANT, AND EACH PARTY SHALL RETAIN A COPY.

5 S 700-F. REQUIREMENTS FOR REFUND ANTICIPATION LOANS AND REFUND ANTIC-
6 IPATION CHECKS. ANY PERSON (INCLUDING ANY OFFICER, AGENT, EMPLOYEE OR
7 REPRESENTATIVE) WHO MAKES OR FACILITATES A REFUND ANTICIPATION LOAN OR
8 REFUND ANTICIPATION CHECK SHALL:

9 (A) ARRANGE SUCH LOAN OR CHECK, OR INFORM THE CONSUMER THAT THE APPLI-
10 CATION IS REJECTED, PROMPTLY AFTER THE CONSUMER APPLIES FOR THE LOAN OR
11 CHECK.

12 (B) PROVIDE TO THE CONSUMER, PRIOR TO CONSUMMATION OF THE LOAN OR
13 CHECK TRANSACTION IN A FORM THAT CAN BE KEPT BY THE CONSUMER: (1) A COPY
14 OF THE COMPLETED LOAN OR CHECK APPLICATION AND AGREEMENT; (2) THE
15 SIGNED DISCLOSURES REQUIRED BY SECTION SEVEN HUNDRED-E OF THIS PART; AND
16 (3) FOR REFUND ANTICIPATION LOANS, THE DISCLOSURES REQUIRED BY THE
17 FEDERAL TRUTH-IN-LENDING ACT.

18 (C) PROVIDE THE DISCLOSURES REQUIRED BY SECTION SEVEN HUNDRED-E OF
19 THIS PART IN ENGLISH AND IN THE LANGUAGE IN WHICH THE LOAN WAS NEGOTI-
20 ATED.

21 S 700-G. PROHIBITED ACTIVITIES. NO PERSON, INCLUDING ANY OFFICER,
22 AGENT, EMPLOYEE OR REPRESENTATIVE OF SUCH PERSON, IN THE MAKING OR
23 FACILITATING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK
24 SHALL:

25 (A) ENGAGE IN UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE FACILITAT-
26 ING OF A REFUND ANTICIPATION CHECK OR IN THE MAKING OR FACILITATING OF A
27 REFUND ANTICIPATION LOAN, INCLUDING MISREPRESENTING A FACTOR OR CONDI-
28 TION OF SUCH LOAN OR CHECK OR MAKING ANY ORAL STATEMENTS CONTRADICTING
29 ANY OF THE INFORMATION REQUIRED TO BE DISCLOSED UNDER THIS PART.

30 (B) FAIL TO COMPLY WITH ANY PROVISION OF THIS PART.

31 (C) THREATEN TO TAKE ANY ACTION THAT IS PROHIBITED BY THIS PART OR BY
32 ANY OTHER LAW, OR THAT THE PERSON DOES NOT ACTUALLY INTEND TO TAKE.

33 (D) MAKE OR FACILITATE A REFUND ANTICIPATION LOAN FOR WHICH THE REFUND
34 ANTICIPATION LOAN INTEREST RATE IS GREATER THAN TWENTY-FIVE PERCENT. THE
35 REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE CALCULATED AS SET FORTH
36 IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A OF THIS PART. ANY REFUND
37 ANTICIPATION LOAN FOR WHICH THE REFUND ANTICIPATION LOAN INTEREST RATE
38 EXCEEDS TWENTY-FIVE PERCENT SHALL BE VOID AB INITIO, INSOFAR AS THIS
39 PROVISION DOES NOT OBSTRUCT, IMPAIR, OR CONDITION POWERS GRANTED UNDER
40 FEDERAL LAW.

41 (E) ADVERTISE OR PROMOTE REFUND ANTICIPATION LOANS WITHOUT PROMINENTLY
42 FEATURING THE WORD "LOAN." IF THE ADVERTISEMENT DOES NOT APPEAR IN
43 ENGLISH, THE DIRECT TRANSLATION OF THE WORD "LOAN" MUST BE PROMINENTLY
44 FEATURED IN SUCH ADVERTISEMENT. PROVIDED, FURTHER, NO PERSON SHALL:

45 (1) ADVERTISE OR PROMOTE REFUND ANTICIPATION LOANS WITHOUT DISTIN-
46 GUISHING SUCH A LOAN FROM A REFUND EXPEDITING SERVICE OFFERED BY THE
47 INTERNAL REVENUE SERVICE, SUCH AS DIRECT DEPOSIT OR ELECTRONIC FILING.
48 DIRECT DEPOSIT AND ELECTRONIC FILING SHALL NOT BE ADVERTISED IN SUCH A
49 WAY AS TO STATE OR SUGGEST THAT SUCH A SERVICE WILL DELIVER A REFUND TO
50 THE CONSUMER WITHOUT ANY WAITING TIME OR IN AS LITTLE AS TWO TO THREE
51 DAYS. SUCH ADVERTISING SHALL DISTINGUISH BETWEEN REFUND ANTICIPATION
52 LOAN PRODUCTS AND NON-LOAN PRODUCTS, WHETHER IT APPEARS IN ENGLISH OR IN
53 ANY OTHER LANGUAGE.

54 (2) MAKE ANY CLAIMS IN ADVERTISING THAT OVERSTATE THE TIME FRAME
55 DURING WHICH INTERNAL REVENUE SERVICE REFUNDS CAN BE EXPECTED TO BE
56 RECEIVED, ABSENT A REFUND ANTICIPATION LOAN. THE TIME FRAME CLAIMED IN

1 THE ADVERTISEMENT SHALL BE IN ACCORD WITH AVAILABLE INTERNAL REVENUE
2 SERVICE STATISTICS; SUCH STATISTICS ARE AVAILABLE AT WWW.IRS.GOV OR
3 THROUGH A LOCAL INTERNAL REVENUE SERVICE OFFICE IN NEW YORK STATE.
4 (F) DIRECTLY OR INDIRECTLY CHARGE, OR ARRANGE FOR THE CHARGING OF, ANY
5 INTEREST, FEE OR CHARGE RELATED TO A REFUND ANTICIPATION LOAN OR REFUND
6 ANTICIPATION CHECK, OTHER THAN THOSE SPECIFICALLY AUTHORIZED BY THIS
7 PART, INCLUDING BUT NOT LIMITED TO: (1) CHARGES FOR INSURANCE; (2)
8 ATTORNEYS FEES OR OTHER COLLECTION COSTS; OR (3) CHECK CASHING.
9 (G) INCLUDE ANY OF THE FOLLOWING PROVISIONS IN ANY DOCUMENT PROVIDED
10 OR SIGNED IN CONNECTION WITH A REFUND ANTICIPATION LOAN OR REFUND ANTIC-
11 IPATION CHECK, INCLUDING THE LOAN APPLICATION OR AGREEMENT:
12 (1) A HOLD HARMLESS CLAUSE;
13 (2) A CONFESSION OF JUDGEMENT CLAUSE;
14 (3) A WAIVER OF THE RIGHT TO A JURY TRIAL, IF APPLICABLE, IN ANY
15 ACTION BROUGHT BY OR AGAINST THE CONSUMER;
16 (4) ANY ASSIGNMENT OF OR ORDER FOR PAYMENT OF WAGES OR OTHER COMPEN-
17 SATION FOR SERVICES;
18 (5) A PROVISION IN WHICH THE CONSUMER AGREES NOT TO ASSERT ANY CLAIM
19 OR DEFENSE ARISING OUT OF THE CONTRACT, OR TO SEEK ANY REMEDIES PURSUANT
20 TO SECTION SEVEN HUNDRED-I OF THIS PART;
21 (6) A WAIVER OF ANY PROVISION OF THIS PART. ANY SUCH WAIVER SHALL BE
22 DEEMED NULL, VOID AND OF NO EFFECT;
23 (7) A WAIVER OF THE RIGHT TO INJUNCTIVE, DECLARATORY, OTHER EQUITABLE
24 RELIEF, OR RELIEF ON A CLASSWIDE BASIS; OR
25 (8) A PROVISION REQUIRING THAT ANY ASPECT OF A RESOLUTION OF A DISPUTE
26 BETWEEN THE PARTIES TO THE AGREEMENT BE KEPT CONFIDENTIAL. THIS PARA-
27 GRAPH SHALL NOT AFFECT THE RIGHT OF THE PARTIES TO AGREE THAT CERTAIN
28 SPECIFIED INFORMATION IS A TRADE SECRET OR OTHERWISE CONFIDENTIAL OR TO
29 LATER AGREE, AFTER THE DISPUTE ARISES, TO KEEP A RESOLUTION CONFIDEN-
30 TIAL.
31 (H) TAKE OR ARRANGE FOR A CREDITOR TO TAKE A SECURITY INTEREST IN ANY
32 PROPERTY OF THE CONSUMER OTHER THAN THE PROCEEDS OF THE CONSUMER'S TAX
33 REFUND TO SECURE PAYMENT OF A REFUND ANTICIPATION LOAN.
34 (I) DIRECTLY OR INDIRECTLY, INDIVIDUALLY OR IN CONJUNCTION OR COOPER-
35 ATION WITH ANOTHER PERSON, ENGAGE IN THE COLLECTION OF AN OUTSTANDING OR
36 DELINQUENT REFUND ANTICIPATION LOAN FOR ANY CREDITOR OR ASSIGNEE,
37 INCLUDING SOLICITING THE EXECUTION OF, PROCESSING, RECEIVING, OR ACCEPT-
38 ING AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND
39 ANTICIPATION CHECK THAT CONTAINS A PROVISION PERMITTING THE CREDITOR TO
40 REPAY, BY OFFSET OR OTHER MEANS, AN OUTSTANDING OR DELINQUENT REFUND
41 ANTICIPATION LOAN FOR THAT CREDITOR OR ANY CREDITOR FROM THE PROCEEDS OF
42 THE CONSUMER'S TAX REFUND.
43 (J) FACILITATE, REFER, OR SOLICIT CONSUMERS ON BEHALF OF A THIRD PARTY
44 ENGAGED IN CHECK CASHING FOR A FEE, OR PERMIT THIRD PARTY CHECK CASHING
45 FOR A FEE IN ANY PLACE OF BUSINESS IDENTIFIED ON THE APPLICATION FOR
46 REGISTRATION.
47 (K) FACILITATE ANY LOAN THAT IS SECURED BY OR THAT THE CREDITOR
48 ARRANGES TO BE REPAID DIRECTLY FROM THE PROCEEDS OF THE CONSUMER'S NEW
49 YORK STATE TAX REFUND FROM THE NEW YORK STATE DIVISION OF THE TREASURY.
50 (L) OFFER A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK FOR
51 GREATER THAN FIFTY PERCENT OF THE APPLICANT'S TOTAL ANTICIPATED FEDERAL
52 TAX REFUND, OR PERMIT A CONSUMER TO ACCEPT A REFUND ANTICIPATION LOAN OR
53 REFUND ANTICIPATION CHECK FOR GREATER THAN FIFTY PERCENT OF THE CONSUM-
54 ER'S TOTAL ANTICIPATED FEDERAL TAX REFUND.
55 (M) MAKE OR FACILITATE A REFUND ANTICIPATION LOAN THAT COMPOUNDS
56 INTEREST OR CHARGES INTEREST ON INTEREST.

(N) CHARGE OR FACILITATE A LOAN THAT CHARGES LATE FEES FOR THE DELAYED PAYMENT OF A REFUND.

(O) MAKE A MISREPRESENTATION OF FACT IN OBTAINING OR ATTEMPTING TO OBTAIN A REGISTRATION AS A FACILITATOR.

(P) ENGAGE IN ANY OTHER ACTION PROHIBITED BY RULES PROMULGATED BY THE BANKING DEPARTMENT.

S 700-H. FACILITATOR DUTY TO CONSUMER. (A) THE FACILITATOR IS A BROKER OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS AND SHALL UPHOLD THE DUTIES OF BROKERS REQUIRED BY LAW.

(B) A FACILITATOR, INCLUDING ANY REGISTRANT AND ANY PERSON REQUIRED TO BE REGISTERED AS A FACILITATOR UNDER THIS PART, SHALL HAVE A FIDUCIARY DUTY TO THE CONSUMER, AND SHALL, IN ADDITION TO OTHER DUTIES IMPOSED BY LAW:

(1) SAFEGUARD AND ACCOUNT FOR ANY MONEY HANDLED FOR THE CONSUMER OR BORROWER;

(2) FOLLOW REASONABLE AND LAWFUL INSTRUCTIONS FROM THE CONSUMER OR BORROWER;

(3) MAKE REASONABLE EFFORTS TO ENSURE THAT THE AMOUNT OF THE REFUND ANTICIPATION LOAN OFFERED TO THE BORROWER IS REASONABLY ADVANTAGEOUS TO THE CONSUMER, OR BORROWER CONSIDERING ALL THE CIRCUMSTANCES, INCLUDING THE LIKELIHOOD THAT SUCH CONSUMER, OR BORROWER, WILL RECEIVE HIS OR HER REFUND IN THE PROJECTED AMOUNT AND THE PROJECTED TIMEFRAME;

(4) DISCLOSE ANY AND ALL OFFSETS TO WHICH THE CONSUMER'S OR BORROWER'S PROJECTED TAX REFUND WOULD BE EXPOSED PURSUANT TO ANY CROSS-LENDER AGREEMENTS BETWEEN THE CONSUMER'S OR BORROWER'S CREDITOR AND OTHER LENDERS. THE FACILITATOR SHALL DISCLOSE POTENTIAL OFFSETS PRIOR TO THE DISTRIBUTION OF THE LOAN PROCEEDS, AT WHICH TIME THE CONSUMER OR BORROWER, MAY DECLINE TO TAKE THE REFUND ANTICIPATION LOAN OR CHECK; AND

(5) ACT WITH REASONABLE SKILL, CARE AND DILIGENCE.

S 700-I. PRIVATE RIGHT OF ACTION. (A) THE REMEDIES PROVIDED IN THIS SECTION ARE CUMULATIVE AND APPLY TO REGISTRANTS AND TO UNREGISTERED PERSONS TO WHOM THIS PART APPLIES AND WHO FAIL TO REGISTER.

(B) ANY VIOLATION RELATING TO THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK BY A FACILITATOR OF ANY PROVISION OF ARTICLE TWENTY-TWO-A OF THE GENERAL BUSINESS LAW PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES CONSTITUTES A VIOLATION OF THIS PART.

(C) ANY VIOLATION OF THIS PART CONSTITUTES A VIOLATION OF ARTICLE TWENTY-TWO-A OF THE GENERAL BUSINESS LAW PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES.

(D) A FACILITATOR WHO FAILS TO COMPLY WITH ANY PROVISION OF THIS PART IS LIABLE TO THE CONSUMER FOR: (1) ACTUAL AND CONSEQUENTIAL DAMAGES; (2) STATUTORY DAMAGES OF TWO THOUSAND DOLLARS (TO BE INCREASED ANNUALLY BASED PROPORTIONALLY ON CHANGES IN THE CONSUMER PRICE INDEX, WITH FRACTIONAL AMOUNTS ROUNDED TO THE NEAREST DOLLAR) OR THREE TIMES THE AMOUNT OF THE REFUND ANTICIPATION LOAN FEE OR OTHER UNAUTHORIZED CHARGE, WHICHEVER IS GREATER; AND (3) REASONABLE ATTORNEY'S FEES AND COSTS.

(E) ANY PERSON MAY SUE FOR INJUNCTIVE OR OTHER APPROPRIATE EQUITABLE RELIEF TO ENFORCE THIS PART.

(F) ANY CONSUMER MAY BRING A CLASS ACTION SUIT TO ENFORCE THIS PART. IN ANY SUCH CLASS ACTION, A FACILITATOR WHO FAILS TO COMPLY WITH ANY PROVISION OF THIS PART IS LIABLE FOR: (1) ACTUAL AND CONSEQUENTIAL DAMAGES FOR EACH CLASS MEMBER; (2) STATUTORY DAMAGES AS SET FORTH IN PARAGRAPH TWO OF SUBSECTION (D) OF THIS SECTION FOR EACH CLASS MEMBER; AND (3) REASONABLE ATTORNEY'S FEES AND COSTS.

(G) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT INTENDED TO BE THE EXCLUSIVE REMEDIES AVAILABLE TO A CONSUMER NOR MUST THE CONSUMER EXHAUST

1 ANY ADMINISTRATIVE REMEDIES PROVIDED UNDER THIS PART OR ANY OTHER APPLI-
2 CABLE LAW.

3 S 700-J. RULES. THE BANKING DEPARTMENT MAY ADOPT RULES AS NECESSARY TO
4 EFFECTUATE THE PURPOSE OF THIS PART, TO PROVIDE FOR THE PROTECTION OF
5 THE BORROWING PUBLIC, AND TO ASSIST FACILITATORS IN INTERPRETING THIS
6 PART. THE BANKING DEPARTMENT MAY MODIFY THE DISCLOSURES IN SUBSECTION
7 (C) OF SECTION SEVEN HUNDRED-D AND SUBSECTION (D) OF SECTION SEVEN
8 HUNDRED-E OF THIS PART TO THE EXTENT THAT A REVISION OF THE TEN DAY
9 ESTIMATE FOR RECEIVING A REFUND FROM THE INTERNAL REVENUE SERVICE (WITH
10 ELECTRONIC FILING AND DIRECT DEPOSIT) IS APPROPRIATE.

11 S 700-K. RECORD KEEPING; ANNUAL REPORTS. (A) THE FACILITATOR SHALL
12 KEEP RECORDS OF ALL REFUND ANTICIPATION LOANS THAT IT ISSUES. THESE
13 RECORDS SHALL INCLUDE THE DISCLOSURE FORMS SIGNED BY CONSUMERS. THESE
14 RECORDS SHALL BE OPEN TO THE INSPECTION OF THE BANKING SUPERINTENDENT,
15 MUNICIPAL DEPARTMENTS OF CONSUMER AFFAIRS, OR ANY PERSON DULY AUTHORIZED
16 IN WRITING FOR SUCH PURPOSES BY THE BANKING SUPERINTENDENT WHO SHALL
17 EXHIBIT SUCH WRITTEN AUTHORITY TO THE FACILITATOR.

18 (B) ON OR BEFORE JULY FIRST OF EACH YEAR, BEGINNING JULY FIRST, TWO
19 THOUSAND TEN, EACH FACILITATOR SHALL FILE AN ANNUAL REPORT WITH THE
20 BANKING SUPERINTENDENT PURSUANT TO PROCEDURES THAT THE BANKING SUPER-
21 INTENDENT SHALL ESTABLISH. AN ANNUAL CONSOLIDATED REPORT SHALL BE
22 PREPARED BY THE BANKING SUPERINTENDENT AND MADE AVAILABLE TO THE PUBLIC.
23 THESE REPORTS SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE TIME PERI-
24 OD OF APRIL FIFTEENTH OF THE PRIOR YEAR TO APRIL FIFTEENTH OF THAT YEAR:

25 (1) THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
26 FACILITATED BY THE FACILITATOR.

27 (2) THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION CHECKS
28 FACILITATED BY THE FACILITATOR.

29 (3) THE AVERAGE NUMBER OF DAYS FOR WHICH REFUND ANTICIPATION LOANS
30 FACILITATED BY THE FACILITATOR WERE OUTSTANDING BEFORE BEING REPAYED.

31 (4) THE NAME AND ADDRESS OF ANY CREDITOR OR PERSON FOR WHOM THE FACI-
32 LITATOR FACILITATES REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION
33 CHECKS.

34 (5) ANY OTHER INFORMATION REQUIRED BY THE BANKING SUPERINTENDENT.

35 S 700-L. SEVERABILITY. IF ANY PORTION OF THIS PART IS DETERMINED TO BE
36 INVALID FOR ANY REASON BY A FINAL NONAPPEALABLE ORDER OF ANY COURT OF
37 NEW YORK STATE OR OF A FEDERAL COURT OF COMPETENT JURISDICTION, THEN IT
38 SHALL BE SEVERED FROM THIS PART. ALL OTHER PROVISIONS OF THIS PART SHALL
39 REMAIN IN FULL FORCE AND EFFECT.

40 S 2. This act shall take effect January 1, 2010 and shall apply to
41 refund anticipation loans or refund anticipation checks issued on or
42 after such date; provided however that effective immediately, the addi-
43 tion, amendment and/or repeal of any rule or regulation necessary for
44 the implementation of this act on its effective date are authorized and
45 directed to be made and completed on or before such effective date.