S T A T E O F N E W Y O R K

5584

2009-2010 Regular Sessions

I N S E N A T E

May 19, 2009

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The banking law is amended by adding a new section 46 to read as follows:

S 46. REFUND ANTICIPATION LOANS. 1. AS USED IN THIS SECTION:

(A) "BORROWER" MEANS A PERSON WHO RECEIVES THE PROCEEDS OF A REFUND ANTICIPATION LOAN;

(B) "FACILITATOR" MEANS A PERSON WHO, INDIVIDUALLY, OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON, MAKES A REFUND ANTICIPATION LOAN, PROCESSES, RECEIVES OR ACCEPTS FOR DELIVERY AN APPLICATION FOR A REFUND ANTICIPATION LOAN, ISSUES A CHECK IN PAYMENT OF REFUND ANTICIPATION LOAN PROCEEDS, OR IN ANY OTHER MANNER ACTS TO ALLOW THE MAKING OF A REFUND ANTICIPATION LOAN. THE TERM DOES NOT INCLUDE A BANK, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION OR PERSON OR ENTITY ISSUED A LICENSE UNDER THE PROVISIONS OF ARTICLE NINE OF THIS CHAPTER, OPERATING UNDER THE LAWS OF THE UNITED STATES OR THIS STATE, OR ANY PERSON WHO ACTS SOLELY AS AN INTERMEDIARY AND DOES NOT DEAL WITH THE PUBLIC IN THE MAKING OF A REFUND ANTICIPATION LOAN;

(C) "REFUND ANTICIPATION LOAN" MEANS A LOAN ARRANGED TO BE PAID DIRECTLY FROM THE PROCEEDS OF A BORROWER'S INCOME TAX REFUND;

(D) "REFUND ANTICIPATION LOAN FEE" MEANS ANY CHARGES, FEES OR OTHER CONSIDERATION CHARGED OR IMPOSED FOR THE MAKING OF A REFUND ANTICIPATION LOAN. THE TERM DOES NOT INCLUDE ANY CHARGES, FEES OR OTHER CONSIDERATION CHARGED OR IMPOSED IN THE ORDINARY COURSE OF BUSINESS BY A FACILITATOR FOR SERVICES THAT DO NOT RESULT IN THE MAKING OF A LOAN INCLUDING, BUT NOT LIMITED TO, FEES FOR TAX RETURN PREPARATION SERVICES OR FOR THE ELECTRONIC FILING OF INCOME TAX RETURNS; AND

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

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

2. AT THE TIME A BORROWER APPLIES FOR A REFUND ANTICIPATION LOAN, A FACILITATOR SHALL DISCLOSE TO SUCH BORROWER ON A DOCUMENT THAT IS SEPARATE FROM THE LOAN APPLICATION:

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

(B) THE REFUND ANTICIPATION LOAN FEE SCHEDULE;

(C) THE ANNUAL PERCENTAGE RATE FOR THE LOAN;

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

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

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

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

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

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

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

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

(B) MISREPRESENTING A MATERIAL FACTOR OR CONDITION OF A REFUND ANTICIPATION LOAN;

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

(D) ENGAGING IN ANY TRANSACTION, PRACTICE, OR COURSE OF BUSINESS THAT OPERATES A FRAUD UPON ANY PERSON IN CONNECTION WITH A REFUND ANTICIPATION LOAN.

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

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

S 2. Nothing in this act shall be construed to impair or limit the validity of any additional local laws or regulations, not inconsistent

with the provisions of this act, applicable to the making of refund anticipation loans.

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

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