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

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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:

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

PART VII--REFUND ANTICIPATION LOAN

SECTION 700. SHORT TITLE AND SCOPE.
700-A. DEFINITIONS.
700-B. REGISTRATION; BOND REQUIREMENT.
700-C. REGISTRATION PROCEDURE.
700-D. POSTING OF FEE SCHEDULE AND DISCLOSURES.
700-E. APPLICATION DISCLOSURES.
700-F. REQUIREMENTS FOR REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS.
700-G. PROHIBITED ACTIVITIES.
700-H. FACILITATOR DUTY TO CONSUMER.
700-I. PRIVATE RIGHT OF ACTION.
700-J. RULES.
700-K. RECORD KEEPING; ANNUAL REPORTS.
700-L. SEVERABILITY.

S 700. SHORT TITLE AND SCOPE. (A) SHORT TITLE. THIS PART SHALL BE KNOWN AND MAY BE CITED AS THE "REFUND ANTICIPATION LOAN ACT". THIS ACT SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSE. THE PURPOSE OF THIS ACT IS TO PROTECT CONSUMERS WHO ENTER INTO REFUND ANTICIPATION LOAN 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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ANTICIPATION LOANS FACILITATED IN NEW YORK STATE. THIS PART IS TO BE CONSTRUED AS A CONSUMER PROTECTION STATUTE FOR ALL PURPOSES.

(B) SCOPE. NO PERSON (INCLUDING ANY OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE) MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON: (1) SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, OR (2) IN ANY OTHER MANNER FACILITATE THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK UNLESS SUCH PERSON HAS COMPLIED WITH THE PROVISIONS OF THIS PART. THE PROVISIONS OF THIS PART SHALL APPLY TO ANY PERSON WHO SEEKS TO EVADE ITS APPLICABILITY BY ANY DEVICE, SUBTERFUGE, OR PRETENSE WHATSOEVER.

(C) EXEMPTION. THIS ACT SHALL NOT APPLY TO CREDIT UNIONS, AS CHARTERED BY THE NATIONAL CREDIT UNION ADMINISTRATION OR THE NEW YORK STATE BANKING DEPARTMENT.

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

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

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

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

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

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

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

(G) "PERSON" SHALL MEAN AN INDIVIDUAL, A FIRM, A PARTNERSHIP, AN ASSOCIATION, A CORPORATION, OR ANOTHER ENTITY.

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

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

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

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

(K) "REFUND ANTICIPATION LOAN INTEREST RATE" SHALL MEAN THE INTEREST RATE FOR A REFUND ANTICIPATION LOAN CALCULATED AS FOLLOWS: THE TOTAL AMOUNT OF REFUND ANTICIPATION LOAN FEES DIVIDED BY THE LOAN AMOUNT (MINUS ANY LOAN FEES), THEN DIVIDED BY THE NUMBER OF DAYS IN THE LOAN TERM, THEN MULTIPLIED BY THREE HUNDRED SIXTY-FIVE AND EXPRESSED AS A PERCENTAGE. THE TOTAL AMOUNT OF THE REFUND ANTICIPATION LOAN FEE USED IN SUCH CALCULATION SHALL INCLUDE ALL REFUND ANTICIPATION LOAN FEES AS DEFINED IN SUBSECTION (J) OF THIS SECTION. IF A DEPOSIT ACCOUNT IS ESTABLISHED OR MAINTAINED IN WHOLE OR IN PART FOR THE PURPOSE OF RECEIVING THE CONSUMER'S TAX REFUND TO REPAY THE AMOUNT OWED ON A REFUND ANTICIPATION LOAN: (1) THE MATURITY OF THE LOAN FOR THE PURPOSE OF DETERMINING THE REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE ASSUMED TO BE THE ESTIMATED DATE WHEN THE TAX REFUND WILL BE DEPOSITED IN THE DEPOSIT ACCOUNT; AND (2) ANY FEE CHARGED TO THE CONSUMER FOR SUCH DEPOSIT ACCOUNT SHALL BE CONSIDERED A LOAN FEE AND SHALL BE INCLUDED IN THE CALCULATION OF THE REFUND ANTICIPATION LOAN INTEREST RATE. IF NO DEPOSIT ACCOUNT IS ESTABLISHED OR MAINTAINED FOR THE REPAYMENT OF THE LOAN, THE MATURITY OF THE LOAN SHALL BE ASSUMED TO BE THE ESTIMATED DATE WHEN THE TAX REFUND IS RECEIVED BY THE CREDITOR.

(1) "REGISTRANT" SHALL MEAN A PERSON WHO IS REGISTERED AS A FACILITATOR OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS UNDER THIS PART.

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

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

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

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

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

OF SECURING CRIMINAL HISTORY RECORDS FROM THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES. THE APPLICANT SHALL PAY A PROCESSING FEE AS REQUIRED BY THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES. FINGERPRINTS SHALL BE TAKEN OF THE INDIVIDUAL OWNER IF THE APPLICANT IS A SOLE PROPRIETORSHIP; THE GENERAL PARTNERS OF THE APPLICANT IS A PARTNERSHIP; AND THE OFFICERS, PRINCIPALS, DIRECTORS, AND STOCKHOLDERS OWNING MORE THAN TEN PERCENT OF THE OUTSTANDING STOCK OF THE CORPORATION IF THE APPLICANT IS A CORPORATION. ANY PERSON REQUIRED TO BE FINGERPRINTED UNDER THIS PARAGRAPH SHALL FURNISH TO THE DEPARTMENT THREE CURRENT PASSPORT-SIZE PHOTOGRAPHS OF SUCH PERSON. NOTWITHSTANDING THE FOREGOING, THE SUPERINTENDENT NEED NOT REQUIRE APPLICANTS FOR LICENSES REQUIRED UNDER THIS PART TO BE FINGERPRINTED IF CRIMINAL HISTORY RECORDS CONCERNING SUCH APPLICANTS ARE NOT AVAILABLE FROM THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES.

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

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

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

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

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

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

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

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

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

(C) COMPLAINT PROCESS. THE BANKING SUPERINTENDENT SHALL MAINTAIN A LIST OF REGISTRANTS WHICH SHALL BE AVAILABLE TO INTERESTED PERSONS AND THE PUBLIC. THE BANKING SUPERINTENDENT SHALL CREATE A TOLL-FREE TELEPHONE NUMBER WHEREBY CONSUMERS MAY OBTAIN INFORMATION ABOUT REGISTRANTS AND COMPLAINT FORMS. THE BANKING SUPERINTENDENT SHALL ESTABLISH A COMPLAINT PROCESS WHEREBY AN AGGRIEVED CONSUMER OR ANY MEMBER OF THE PUBLIC MAY FILE A COMPLAINT AGAINST A REGISTRANT OR NON-REGISTRANT WHO VIOLATES ANY PROVISION OF THIS PART. ALL COMPLAINTS SHALL BE CONSIDERED PUBLIC RECORDS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW WITH THE EXCEPTION OF THE COMPLAINANT'S NAME, ADDRESS, OR OTHER PERSONAL IDENTIFYING INFORMATION. THE BANKING SUPERINTENDENT SHALL HOLD A HEARING PURSUANT TO SUBSECTION (A) OF THIS SECTION UPON THE REQUEST OF A PARTY TO THE COMPLAINT. THE BANKING SUPERINTENDENT MAY AFTER SUCH HEARING 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) THIS FORM SHALL BE SIGNED AND DATED BY THE CONSUMER AND THE REGISTRANT, AND EACH PARTY SHALL RETAIN A COPY.

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

(A) ARRANGE SUCH LOAN OR CHECK, OR INFORM THE CONSUMER THAT THE APPLICATION IS REJECTED, PROMPTLY AFTER THE CONSUMER APPLIES FOR THE LOAN OR CHECK.

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

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

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

(A) ENGAGE IN UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE FACILITATING OF A REFUND ANTICIPATION CHECK OR IN THE MAKING OR FACILITATING OF A REFUND ANTICIPATION LOAN, INCLUDING MISREPRESENTING A FACTOR OR CONDITION OF SUCH LOAN OR CHECK OR MAKING ANY ORAL STATEMENTS CONTRADICTING ANY OF THE INFORMATION REQUIRED TO BE DISCLOSED UNDER THIS PART.

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

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

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

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

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

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

THE ADVERTISEMENT SHALL BE IN ACCORD WITH AVAILABLE INTERNAL REVENUE SERVICE STATISTICS; SUCH STATISTICS ARE AVAILABLE AT WWW.IRS.GOV OR THROUGH A LOCAL INTERNAL REVENUE SERVICE OFFICE IN NEW YORK STATE.

(F) DIRECTLY OR INDIRECTLY CHARGE, OR ARRANGE FOR THE CHARGING OF, ANY INTEREST, FEE OR CHARGE RELATED TO A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, OTHER THAN THOSE SPECIFICALLY AUTHORIZED BY THIS PART, INCLUDING BUT NOT LIMITED TO: (1) CHARGES FOR INSURANCE; (2) ATTORNEYS FEES OR OTHER COLLECTION COSTS; OR (3) CHECK CASHING.

(G) INCLUDE ANY OF THE FOLLOWING PROVISIONS IN ANY DOCUMENT PROVIDED OR SIGNED IN CONNECTION WITH A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, INCLUDING THE LOAN APPLICATION OR AGREEMENT:

(1) A HOLD HARMLESS CLAUSE;

(2) A CONFESSION OF JUDGEMENT CLAUSE;

(3) A WAIVER OF THE RIGHT TO A JURY TRIAL, IF APPLICABLE, IN ANY ACTION BROUGHT BY OR AGAINST THE CONSUMER;

(4) ANY ASSIGNMENT OF OR ORDER FOR PAYMENT OF WAGES OR OTHER COMPENSATION FOR SERVICES;

(5) A PROVISION IN WHICH THE CONSUMER AGREES NOT TO ASSERT ANY CLAIM OR DEFENSE ARISING OUT OF THE CONTRACT, OR TO SEEK ANY REMEDIES PURSUANT TO SECTION SEVEN HUNDRED-I OF THIS PART;

(6) A WAIVER OF ANY PROVISION OF THIS PART. ANY SUCH WAIVER SHALL BE DEEMED NULL, VOID AND OF NO EFFECT;

(7) A WAIVER OF THE RIGHT TO INJUNCTIVE, DECLARATORY, OTHER EQUITABLE RELIEF, OR RELIEF ON A CLASSWIDE BASIS; OR

(8) A PROVISION REQUIRING THAT ANY ASPECT OF A RESOLUTION OF A DISPUTE BETWEEN THE PARTIES TO THE AGREEMENT BE KEPT CONFIDENTIAL. THIS PARAGRAPH SHALL NOT AFFECT THE RIGHT OF THE PARTIES TO AGREE THAT CERTAIN SPECIFIED INFORMATION IS A TRADE SECRET OR OTHERWISE CONFIDENTIAL OR TO LATER AGREE, AFTER THE DISPUTE ARISES, TO KEEP A RESOLUTION CONFIDENTIAL.

(H) TAKE OR ARRANGE FOR A CREDITOR TO TAKE A SECURITY INTEREST IN ANY PROPERTY OF THE CONSUMER OTHER THAN THE PROCEEDS OF THE CONSUMER'S TAX REFUND TO SECURE PAYMENT OF A REFUND ANTICIPATION LOAN.

(I) DIRECTLY OR INDIRECTLY, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON, ENGAGE IN THE COLLECTION OF AN OUTSTANDING OR DELINQUENT REFUND ANTICIPATION LOAN FOR ANY CREDITOR OR ASSIGNEE, INCLUDING SOLICITING THE EXECUTION OF, PROCESSING, RECEIVING, OR ACCEPTING AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK THAT CONTAINS A PROVISION PERMITTING THE CREDITOR TO REPAY, BY OFFSET OR OTHER MEANS, AN OUTSTANDING OR DELINQUENT REFUND ANTICIPATION LOAN FOR THAT CREDITOR OR ANY CREDITOR FROM THE PROCEEDS OF THE CONSUMER'S TAX REFUND.

(J) FACILITATE, REFER, OR SOLICIT CONSUMERS ON BEHALF OF A THIRD PARTY ENGAGED IN CHECK CASHING FOR A FEE, OR PERMIT THIRD PARTY CHECK CASHING FOR A FEE IN ANY PLACE OF BUSINESS IDENTIFIED ON THE APPLICATION FOR REGISTRATION.

(K) FACILITATE ANY LOAN THAT IS SECURED BY OR THAT THE CREDITOR ARRANGES TO BE REPAID DIRECTLY FROM THE PROCEEDS OF THE CONSUMER'S NEW YORK STATE TAX REFUND FROM THE NEW YORK STATE DIVISION OF THE TREASURY.

(L) OFFER A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK FOR GREATER THAN FIFTY PERCENT OF THE APPLICANT'S TOTAL ANTICIPATED FEDERAL TAX REFUND, OR PERMIT A CONSUMER TO ACCEPT A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK FOR GREATER THAN FIFTY PERCENT OF THE CONSUMER'S TOTAL ANTICIPATED FEDERAL TAX REFUND.

(M) MAKE OR FACILITATE A REFUND ANTICIPATION LOAN THAT COMPOUNDS 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

ANY ADMINISTRATIVE REMEDIES PROVIDED UNDER THIS PART OR ANY OTHER APPLICABLE LAW.

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

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

(B) ON OR BEFORE JULY FIRST OF EACH YEAR, BEGINNING JULY FIRST, TWO THOUSAND TEN, EACH FACILITATOR SHALL FILE AN ANNUAL REPORT WITH THE BANKING SUPERINTENDENT PURSUANT TO PROCEDURES THAT THE BANKING SUPERINTENDENT SHALL ESTABLISH. AN ANNUAL CONSOLIDATED REPORT SHALL BE PREPARED BY THE BANKING SUPERINTENDENT AND MADE AVAILABLE TO THE PUBLIC. THESE REPORTS SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE TIME PERIOD OF APRIL FIFTEENTH OF THE PRIOR YEAR TO APRIL FIFTEENTH OF THAT YEAR:

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

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

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

(4) THE NAME AND ADDRESS OF ANY CREDITOR OR PERSON FOR WHOM THE FACILITATOR FACILITATES REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS.

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

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

S 2. This act shall take effect January 1, 2010 and shall apply to refund anticipation loans or refund anticipation checks issued on or after such date; 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.