



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3523

Introduced 2/8/2012, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

205 ILCS 405/3.1 from Ch. 17, par. 4805
815 ILCS 177/1
815 ILCS 177/5
815 ILCS 177/10
815 ILCS 177/15
815 ILCS 177/20 new
815 ILCS 177/25 new
815 ILCS 177/30 new
815 ILCS 177/35 new
815 ILCS 505/2NNN new

Amends the Tax Refund Anticipation Loan Disclosure Act. Changes the short title of the Act to the Tax Refund Anticipation Loan Reform Act. Makes changes concerning disclosure requirements, prohibited activities, interest rate limits for non-bank refund anticipation loans, and defined terms. Provides a calculation for the refund anticipation loan interest rate. Provides that a person who violates the Tax Refund Anticipation Loan Reform Act commits an unlawful practice under the Consumer Fraud and Deceptive Practices Act. Makes conforming changes in the Currency Exchange Act and the Consumer Fraud and Deceptive Business Practices Act. Contains a severability provision. Effective immediately.

LRB097 18601 JLS 65596 b

1 AN ACT concerning tax refunds.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Currency Exchange Act is amended by changing
5 Section 3.1 as follows:

6 (205 ILCS 405/3.1) (from Ch. 17, par. 4805)

7 Sec. 3.1. Nothing in this Act shall prevent a currency
8 exchange from rendering State or Federal income tax service;
9 nor shall the rendering of such service be considered a
10 violation of this Act if such service be rendered either by the
11 proprietor, any of his employees, or a licensed, regulated tax
12 service approved by the Internal Revenue Service. For the
13 purpose of this Section, "tax service" does not mean to make or
14 offer to make a refund anticipation loan as defined by the Tax
15 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

16 (Source: P.A. 97-315, eff. 1-1-12.)

17 Section 10. The Tax Refund Anticipation Loan Disclosure Act
18 is amended by changing Sections 1, 5, 10, and 15 and by adding
19 Sections 20, 25, 30, and 35 as follows:

20 (815 ILCS 177/1)

21 Sec. 1. Short title. This Act may be cited as the Tax

1 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

2 (Source: P.A. 92-664, eff. 1-1-03.)

3 (815 ILCS 177/5)

4 Sec. 5. Definitions. The following definitions apply in
5 this Act:

6 "Consumer" means any natural person who, singly or jointly
7 with another consumer, is solicited for, applies for, or
8 receives the proceeds of a refund anticipation loan or refund
9 anticipation check.

10 "Creditor" means any person who makes a refund anticipation
11 loan or who takes an assignment of a refund anticipation loan.

12 "Facilitator" means a person who individually or in
13 conjunction or cooperation with another person: (i) solicits
14 the execution of ~~makes a refund anticipation loan,~~ processes,
15 receives, or accepts ~~for delivery~~ an application or agreement
16 for a refund anticipation loan or refund anticipation check;
17 (ii) services or collects upon, ~~issues a check in payment of~~
18 refund anticipation loan or refund anticipation check;
19 ~~proceeds,~~ or (iii) in any other manner facilitates ~~acts to~~
20 ~~allow~~ the making of a refund anticipation loan or refund
21 anticipation check. If there is no third party facilitator
22 because a creditor directly solicits the execution of,
23 receives, or accepts an application or agreement for a refund
24 anticipation loan or refund anticipation check, that creditor
25 shall be considered a facilitator. "Facilitator" does not

1 include a bank, savings and loan association, or credit union,
2 ~~or licensee under the Consumer Installment Loan Act~~ operating
3 under the laws of the United States or this State and does not
4 include any person who acts solely as an intermediary and does
5 not deal with the public in the making of the refund
6 anticipation loan.

7 "Person" means an individual, a firm, a partnership, an
8 association, a corporation, or another entity.

9 "Refund anticipation check" means a check, stored value
10 card, or other payment mechanism: (i) representing the proceeds
11 of the consumer's tax refund; (ii) which was issued by a
12 depository institution or other person that received a direct
13 deposit of the consumer's tax refund or tax credits; and (iii)
14 for which the consumer has paid a fee or other consideration
15 for such payment mechanism.

16 ~~"Borrower" means a person who receives the proceeds of a~~
17 ~~refund anticipation loan.~~

18 "Refund anticipation loan" means a loan that is secured by
19 or that the creditor arranges ~~arranged~~ to be repaid directly or
20 indirectly from the proceeds of the consumer's ~~a borrower's~~
21 income tax refund or tax credits ~~refunds~~. "Refund anticipation
22 loan" also includes any sale, assignment, or purchase of a
23 consumer's tax refund at a discount or for a fee, whether or
24 not the consumer is required to repay the buyer or assignee if
25 the Internal Revenue Service denies or reduces the consumer's
26 tax refund.

1 "Refund anticipation loan fee" means the charges, fees, or
2 other consideration charged or imposed directly or indirectly
3 by the creditor ~~facilitator~~ for the making of or in connection
4 with a refund anticipation loan. This term includes any charge,
5 fee, or other consideration for a deposit account, if the
6 deposit account is used for receipt of the consumer's tax
7 refund to repay the amount owed on the loan. ~~A "refund~~
8 ~~anticipation loan fee" does not include charges, fees, or other~~
9 ~~consideration charged or imposed in the ordinary course of~~
10 ~~business by a facilitator for services that do not result in~~
11 ~~the making of a loan, including fees for tax return preparation~~
12 ~~and fees for electronic filing of tax returns.~~

13 "Refund anticipation loan interest rate" means the
14 interest rate for a refund anticipation loan calculated as
15 follows: the total amount of refund anticipation loan fees
16 divided by the loan amount (minus any loan fees), then divided
17 by the number of days in the loan term, then multiplied by 365
18 and expressed as a percentage. The total amount of the refund
19 anticipation loan fee used in this calculation shall include
20 all refund anticipation loan fees as defined in this Section.
21 If a deposit account is established or maintained in whole or
22 in part for the purpose of receiving the consumer's tax refund
23 to repay the amount owed on a refund anticipation loan: (i) the
24 maturity of the loan for the purpose of determining the refund
25 anticipation loan interest rate shall be assumed to be the
26 estimated date when the tax refund will be deposited in the

1 deposit account; and (ii) any fee charged to the consumer for
2 such deposit account shall be considered a loan fee and shall
3 be included in the calculation of the refund anticipation loan
4 interest rate. If no deposit account is established or
5 maintained for the repayment of the loan, the maturity of the
6 loan shall be assumed to be the estimated date when the tax
7 refund is received by the creditor.

8 (Source: P.A. 92-664, eff. 1-1-03.)

9 (815 ILCS 177/10)

10 Sec. 10. Disclosure requirements. At the time a consumer
11 ~~borrower~~ applies for a refund anticipation loan or check, a
12 facilitator shall disclose to the consumer ~~borrower~~ on a
13 document that is separate from the ~~loan~~ application:

14 (1) the fee for the refund anticipation loan or refund
15 anticipation check fee schedule;

16 (1.5) for refund anticipation loans, disclosure of the
17 refund anticipation loan interest rate. The refund
18 anticipation loan interest rate shall be calculated as set
19 forth in Section 5 the Annual Percentage Rate utilizing a
20 10-day time period;

21 (2) the estimated fee for preparing and electronically
22 filing a tax return;

23 (2.5) the total cost to the consumer ~~borrower~~ for
24 utilizing a refund anticipation loan;

25 (3) the estimated date that the loan proceeds will be

1 paid to the consumer borrower if the loan is approved;

2 (4) that the consumer borrower is responsible for
3 repayment of the loan and related fees in the event the tax
4 refund is not paid or not paid in full; and

5 (5) the availability of electronic filing for the
6 income tax return of the consumer borrower and the average
7 time announced by the federal Internal Revenue Service
8 within which the consumer borrower can expect to receive a
9 refund if the consumer's borrower's return is filed
10 electronically and the consumer borrower does not obtain a
11 refund anticipation loan.

12 (Source: P.A. 92-664, eff. 1-1-03; 93-287, eff. 1-1-04.)

13 (815 ILCS 177/15)

14 Sec. 15. Posting of fee schedule and disclosures. Penalty.

15 (a) A facilitator shall display a schedule showing the
16 current fees for refund anticipation loans or refund
17 anticipation checks facilitated at the office.

18 (b) A facilitator shall display on each fee schedule
19 examples of the refund anticipation loan interest rates for
20 refund anticipation loans of at least 5 different amounts, such
21 as \$300, \$500, \$1,000, \$1,500, \$2,000, and \$5,000. The refund
22 anticipation loan interest rate shall be calculated as set
23 forth in Section 5 of this Act.

24 (c) A facilitator shall also prominently display on each
25 fee schedule: (i) a legend, centered, in bold, capital letters,

1 and in one-inch letters stating: "NOTICE CONCERNING REFUND
2 ANTICIPATION LOANS" and (ii) the following verbatim statement:
3 "When you take out a refund anticipation loan, you are
4 borrowing money against your tax refund. If your tax refund is
5 less than expected, you will still owe the entire amount of the
6 loan. If your refund is delayed, you may have to pay additional
7 costs. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING
8 ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax
9 return filed electronically and your refund direct deposited
10 into your own bank account without obtaining a loan or paying
11 fees for an extra product.".

12 (d) The postings required by this Section shall be made in
13 no less than 28-point type on a document measuring no less than
14 16 inches by 20 inches. The postings required by this Section
15 shall be displayed in a prominent location at each office where
16 the facilitator is facilitating refund anticipation loans.

17 (e) A facilitator may not facilitate a refund anticipation
18 loan or refund anticipation check unless (i) the disclosures
19 required by this Section are displayed and (ii) the fee
20 actually charged for the refund anticipation loan or refund
21 anticipation check is the same as the fee displayed on the
22 schedule.

23 ~~Any person who violates this Act is guilty of a petty~~
24 ~~offense and shall be fined \$500 for each offense. In addition,~~
25 ~~a facilitator who violates this Act shall be liable to any~~
26 ~~aggrieved borrower in an amount equal to 3 times the refund~~

1 ~~anticipation loan fee, plus a reasonable attorney's fee, in a~~
2 ~~civil action brought in the circuit court by the aggrieved~~
3 ~~borrower or by the Attorney General on behalf of the aggrieved~~
4 ~~borrower.~~

5 (Source: P.A. 92-664, eff. 1-1-03.)

6 (815 ILCS 177/20 new)

7 Sec. 20. Advertising and marketing.

8 (a) A facilitator may not market or advertise a refund
9 anticipation loan without including this language verbatim:

10 "(Name of product) is a loan. You can get your refund in 8
11 to 15 days without a loan or extra fees if you use e-file and
12 direct deposit.".

13 For print advertisements, this information must be printed
14 in type size one-half as large as the largest type size in the
15 advertisement. For radio and television advertisements, this
16 information must receive at least 7 seconds of airtime.

17 (b) A facilitator may not market or advertise a refund
18 anticipation check without including this language verbatim:

19 "The (name of product) costs (fee for RAC). You can get
20 your refund in the same amount of time without this fee if you
21 use e-file and direct deposit.".

22 For print advertisements, this information must be in type
23 size one-half as large as the largest type size in the
24 advertisement. For radio and television advertisements, this
25 information must receive at least 7 seconds of airtime.

1 (815 ILCS 177/25 new)

2 Sec. 25. Prohibited activities. No person, including any
3 officer, agent, employee, or representative, shall:

4 (a) Charge or impose any fee, charge, or other
5 consideration in the making or facilitating of a refund
6 anticipation loan or refund anticipation check apart from the
7 fee charged by the creditor or bank that provides the loan or
8 check. This prohibition does not include any charge or fee
9 imposed by the facilitator to all of its customers, such as
10 fees for tax return preparation, if the same fee in the same
11 amount is charged to the customers who do not receive refund
12 anticipation loans, refund anticipation checks, or any other
13 tax related financial product.

14 (b) Fail to comply with any provision of this Act.

15 (c) Directly or indirectly arrange for any third party to
16 charge any interest, fee, or charge related to a refund
17 anticipation loan or refund anticipation check, other than the
18 refund anticipation loan or refund anticipation check fee
19 imposed by the creditor, including but not limited to: (i)
20 charges for insurance; (ii) attorneys fees or other collection
21 costs; or (iii) check cashing.

22 (d) Include any of the following provisions in any document
23 provided or signed in connection with a refund anticipation
24 loan or refund anticipation check, including the loan
25 application or agreement:

- 1 (i) A hold harmless clause;
- 2 (ii) A waiver of the right to a jury trial, if
3 applicable, in any action brought by or against the
4 consumer;
- 5 (iii) Any assignment of wages or of other compensation
6 for services;
- 7 (iv) A provision in which the consumer agrees not to
8 assert any claim or defense arising out of the contract, or
9 to seek any remedies pursuant to Section 35 of this Act;
- 10 (v) A waiver of any provision of this Act. Any such
11 waiver shall be deemed null, void, and of no effect;
- 12 (vi) A waiver of the right to injunctive, declaratory,
13 or other equitable relief; or
- 14 (vii) A provision requiring that any aspect of a
15 resolution of a dispute between the parties to the
16 agreement be kept confidential. This provision shall not
17 affect the right of the parties to agree that certain
18 specified information is a trade secret or otherwise
19 confidential, or to later agree, after the dispute arises,
20 to keep a resolution confidential.
- 21 (e) Take or arrange for a creditor to take a security
22 interest in any property of the consumer other than the
23 proceeds of the consumer's tax refund to secure payment of a
24 refund anticipation loan.
- 25 (f) Directly or indirectly, individually or in conjunction
26 or cooperation with another person, engage in the collection of

1 an outstanding or delinquent refund anticipation loan for any
2 creditor or assignee, including soliciting the execution of,
3 processing, receiving, or accepting an application or
4 agreement for a refund anticipation loan or refund anticipation
5 check that contains a provision permitting the creditor to
6 repay, by offset or other means, an outstanding or delinquent
7 refund anticipation loan for that creditor or any creditor from
8 the proceeds of the consumer's tax refund.

9 (g) Facilitate any loan that is secured by or that the
10 creditor arranges to be repaid directly from the proceeds of
11 the consumer's State tax refund from the Illinois State
12 Treasury.

13 (815 ILCS 177/30 new)

14 Sec. 30. Rate limits for non-bank refund anticipation
15 loans.

16 (a) No person shall make or facilitate a refund
17 anticipation loan for which the refund anticipation loan
18 interest rate is greater than 36% per annum. The refund
19 anticipation loan interest rate shall be calculated as set
20 forth in Section 5. Any refund anticipation loan for which the
21 refund anticipation loan interest rate exceeds 36% per annum
22 shall be void ab initio.

23 (b) This Section does not apply to persons facilitating for
24 or doing business as a bank, thrift, savings association, or
25 credit union chartered under the laws of the United States or

1 this State.

2 (815 ILCS 177/35 new)

3 Sec. 35. Violation. A violation of this Act constitutes an
4 unlawful practice under the Consumer Fraud and Deceptive
5 Business Practices Act.

6 Section 15. The Consumer Fraud and Deceptive Business
7 Practices Act is amended by adding Section 2NNN as follows:

8 (815 ILCS 505/2NNN new)

9 Sec. 2NNN. Violations of the Tax Refund Anticipation Loan
10 Disclosure Reform Act. Any person who violates the Tax Refund
11 Anticipation Loan Reform Act commits an unlawful practice
12 within the meaning of this Act.

13 Section 97. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.