



Sen. Jacqueline Y. Collins

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1 AMENDMENT TO SENATE BILL 3523

2 AMENDMENT NO. _____. Amend Senate Bill 3523 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Currency Exchange Act is amended by
5 changing 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.)

1 Section 10. The Tax Refund Anticipation Loan Disclosure Act
2 is amended by changing Sections 1, 5, 10, and 15 and by adding
3 Sections 20, 25, 30, 35, and 40 as follows:

4 (815 ILCS 177/1)

5 Sec. 1. Short title. This Act may be cited as the Tax
6 Refund Anticipation Loan Reform ~~Disclosure~~ Act.

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

8 (815 ILCS 177/5)

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

11 "Consumer" means any natural person who, singly or jointly
12 with another consumer, is solicited for, applies for, or
13 receives the proceeds of a refund anticipation loan or refund
14 anticipation check.

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

17 "Facilitator" means a person who individually or in
18 conjunction or cooperation with another person: (i) solicits
19 the execution of ~~makes a refund anticipation loan,~~ processes,
20 receives, or accepts ~~for delivery~~ an application or agreement
21 for a refund anticipation loan or refund anticipation check;
22 (ii) services or collects upon, ~~issues a check in payment of~~
23 refund anticipation loan or refund anticipation check;

1 ~~proceeds,~~ or (iii) in any other manner facilitates ~~acts to~~
2 ~~allow~~ the making of a refund anticipation loan or refund
3 anticipation check. If there is no third party facilitator
4 because a creditor directly solicits the execution of,
5 receives, or accepts an application or agreement for a refund
6 anticipation loan or refund anticipation check, that creditor
7 shall be considered a facilitator. "Facilitator" does not
8 include a bank, savings bank, savings and loan association, or
9 credit union, ~~or licensee under the Consumer Installment Loan~~
10 ~~Act~~ operating under the laws of the United States or this State
11 and does not include any person who acts solely as an
12 intermediary and does not deal with the public in the making of
13 the refund anticipation loan.

14 "Person" means an individual, a firm, a partnership, an
15 association, a corporation, or another entity. "Person" does
16 not, however, mean a bank, savings bank, savings and loan
17 association, or credit union operating under the laws of the
18 United States or this State.

19 "Refund anticipation check" means a check, stored value
20 card, or other payment mechanism: (i) representing the proceeds
21 of the consumer's tax refund; (ii) which was issued by a
22 depository institution or other person that received a direct
23 deposit of the consumer's tax refund or tax credits; and (iii)
24 for which the consumer has paid a fee or other consideration
25 for such payment mechanism.

26 ~~"Borrower" means a person who receives the proceeds of a~~

1 ~~refund anticipation loan.~~

2 "Refund anticipation loan" means a loan that is secured by
3 or that the creditor arranges ~~arranged~~ to be repaid directly
4 from the proceeds of the consumer's ~~a borrower's~~ income tax
5 refund or tax credits ~~refunds~~. "Refund anticipation loan" also
6 includes any sale, assignment, or purchase of a consumer's tax
7 refund at a discount or for a fee, whether or not the consumer
8 is required to repay the buyer or assignee if the Internal
9 Revenue Service denies or reduces the consumer's tax refund.

10 "Refund anticipation loan fee" means the charges, fees, or
11 other consideration charged or imposed directly or indirectly
12 by the creditor ~~facilitator~~ for the making of or in connection
13 with a refund anticipation loan. This term includes any charge,
14 fee, or other consideration for a deposit account, if the
15 deposit account is used for receipt of the consumer's tax
16 refund to repay the amount owed on the loan. ~~A "refund~~
17 ~~anticipation loan fee" does not include charges, fees, or other~~
18 ~~consideration charged or imposed in the ordinary course of~~
19 ~~business by a facilitator for services that do not result in~~
20 ~~the making of a loan, including fees for tax return preparation~~
21 ~~and fees for electronic filing of tax returns.~~

22 "Refund anticipation loan interest rate" means the
23 interest rate for a refund anticipation loan calculated as
24 follows: the total amount of refund anticipation loan fees
25 divided by the loan amount (minus any loan fees), then divided
26 by the number of days in the loan term, then multiplied by 365

1 and expressed as a percentage. The total amount of the refund
2 anticipation loan fee used in this calculation shall include
3 all refund anticipation loan fees as defined in this Section.
4 If a deposit account is established or maintained in whole or
5 in part for the purpose of receiving the consumer's tax refund
6 to repay the amount owed on a refund anticipation loan: (i) the
7 maturity of the loan for the purpose of determining the refund
8 anticipation loan interest rate shall be assumed to be the
9 estimated date when the tax refund will be deposited in the
10 deposit account; and (ii) any fee charged to the consumer for
11 such deposit account shall be considered a loan fee and shall
12 be included in the calculation of the refund anticipation loan
13 interest rate. If no deposit account is established or
14 maintained for the repayment of the loan, the maturity of the
15 loan shall be assumed to be the estimated date when the tax
16 refund is received by the creditor.

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

18 (815 ILCS 177/10)

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

23 (1) the fee for the refund anticipation loan or refund
24 anticipation check fee schedule;

25 (1.5) for refund anticipation loans, disclosure of the

1 refund anticipation loan interest rate. The refund
2 anticipation loan interest rate shall be calculated as set
3 forth in Section 5 ~~the Annual Percentage Rate utilizing a~~
4 ~~10-day time period;~~

5 (2) the estimated fee for preparing and electronically
6 filing a tax return;

7 (2.5) the total cost to the consumer borrower for
8 utilizing a refund anticipation loan;

9 (3) the estimated date that the loan proceeds will be
10 paid to the consumer borrower if the loan is approved;

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

14 (5) the availability of electronic filing for the
15 income tax return of the consumer borrower and the average
16 time announced by the federal Internal Revenue Service
17 within which the consumer borrower can expect to receive a
18 refund if the consumer's borrower's return is filed
19 electronically and the consumer borrower does not obtain a
20 refund anticipation loan.

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

22 (815 ILCS 177/15)

23 Sec. 15. Posting of fee schedule and disclosures. ~~Penalty.~~

24 (a) A facilitator shall display a schedule showing the
25 current fees for refund anticipation loans or refund

1 anticipation checks facilitated at the office.

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

8 (c) A facilitator shall also prominently display on each
9 fee schedule: (i) a legend, centered, in bold, capital letters,
10 and in one-inch letters stating: "NOTICE CONCERNING REFUND
11 ANTICIPATION LOANS" and (ii) the following verbatim statement:
12 "When you take out a refund anticipation loan, you are
13 borrowing money against your tax refund. If your tax refund is
14 less than expected, you will still owe the entire amount of the
15 loan. If your refund is delayed, you may have to pay additional
16 costs. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING
17 ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax
18 return filed electronically and your refund direct deposited
19 into your own financial institution account without obtaining a
20 loan or paying fees for an extra product."

21 (d) The postings required by this Section shall be made in
22 no less than 28-point type on a document measuring no less than
23 16 inches by 20 inches. The postings required by this Section
24 shall be displayed in a prominent location at each office where
25 the facilitator is facilitating refund anticipation loans.

26 (e) A facilitator may not facilitate a refund anticipation

1 loan or refund anticipation check unless (i) the disclosures
2 required by this Section are displayed and (ii) the fee
3 actually charged for the refund anticipation loan or refund
4 anticipation check is the same as the fee displayed on the
5 schedule.

6 ~~Any person who violates this Act is guilty of a petty~~
7 ~~offense and shall be fined \$500 for each offense. In addition,~~
8 ~~a facilitator who violates this Act shall be liable to any~~
9 ~~aggrieved borrower in an amount equal to 3 times the refund~~
10 ~~anticipation loan fee, plus a reasonable attorney's fee, in a~~
11 ~~civil action brought in the circuit court by the aggrieved~~
12 ~~borrower or by the Attorney General on behalf of the aggrieved~~
13 ~~borrower.~~

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

15 (815 ILCS 177/20 new)

16 Sec. 20. Advertising and marketing.

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

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

22 For print advertisements, this information must be printed
23 in type 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 (b) A facilitator may not market or advertise a refund
2 anticipation check without including this language verbatim:

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

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

10 (815 ILCS 177/25 new)

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

13 (a) Charge or impose any fee, charge, or other
14 consideration in the making or facilitating of a refund
15 anticipation loan or refund anticipation check apart from the
16 fee charged by the creditor or financial institution that
17 provides the loan or check. This prohibition does not include
18 any charge or fee imposed by the facilitator to all of its
19 customers, such as fees for tax return preparation, if the same
20 fee in the same amount is charged to the customers who do not
21 receive refund anticipation loans, refund anticipation checks,
22 or any other tax related financial product.

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

24 (c) Directly or indirectly arrange for any third party to
25 charge any interest, fee, or charge related to a refund

1 anticipation loan or refund anticipation check, other than the
2 refund anticipation loan or refund anticipation check fee
3 imposed by the creditor, including but not limited to: (i)
4 charges for insurance; (ii) attorneys fees or other collection
5 costs; or (iii) check cashing.

6 (d) Include any of the following provisions in any document
7 provided or signed in connection with a refund anticipation
8 loan or refund anticipation check, including the loan
9 application or agreement:

10 (i) A hold harmless clause;

11 (ii) A waiver of the right to a jury trial, if
12 applicable, in any action brought by or against the
13 consumer;

14 (iii) Any assignment of wages or of other compensation
15 for services;

16 (iv) A provision in which the consumer agrees not to
17 assert any claim or defense arising out of the contract, or
18 to seek any remedies pursuant to Section 35 of this Act;

19 (v) A waiver of any provision of this Act. Any such
20 waiver shall be deemed null, void, and of no effect;

21 (vi) A waiver of the right to injunctive, declaratory,
22 or other equitable relief; or

23 (vii) A provision requiring that any aspect of a
24 resolution of a dispute between the parties to the
25 agreement be kept confidential. This provision shall not
26 affect the right of the parties to agree that certain

1 specified information is a trade secret or otherwise
2 confidential, or to later agree, after the dispute arises,
3 to keep a resolution confidential.

4 (e) Take or arrange for a creditor to take a security
5 interest in any property of the consumer other than the
6 proceeds of the consumer's tax refund to secure payment of a
7 refund anticipation loan.

8 (f) Directly or indirectly, individually or in conjunction
9 or cooperation with another person, engage in the collection of
10 an outstanding or delinquent refund anticipation loan for any
11 creditor or assignee, including soliciting the execution of,
12 processing, receiving, or accepting an application or
13 agreement for a refund anticipation loan or refund anticipation
14 check that contains a provision permitting the creditor to
15 repay, by offset or other means, an outstanding or delinquent
16 refund anticipation loan for that creditor or any creditor from
17 the proceeds of the consumer's tax refund.

18 (g) Facilitate any loan that is secured by or that the
19 creditor arranges to be repaid directly from the proceeds of
20 the consumer's State tax refund from the Illinois State
21 Treasury.

22 (815 ILCS 177/30 new)

23 Sec. 30. Rate limits for non-bank refund anticipation
24 loans.

25 (a) No person shall make or facilitate a refund

1 anticipation loan for which the refund anticipation loan
2 interest rate is greater than 36% per annum. The refund
3 anticipation loan interest rate shall be calculated as set
4 forth in Section 5. Any refund anticipation loan for which the
5 refund anticipation loan interest rate exceeds 36% per annum
6 shall be void ab initio.

7 (b) This Section does not apply to persons facilitating for
8 or doing business as a bank, savings bank, savings and loan
9 association, or credit union chartered under the laws of the
10 United States or this State.

11 (815 ILCS 177/35 new)

12 Sec. 35. Applicability to certain entities. No obligation
13 or prohibition imposed upon a creditor, a person, or a
14 facilitator by this Act shall apply to a bank, savings bank,
15 savings and loan association, or credit union operating under
16 the laws of the United States or this State.

17 (815 ILCS 177/40 new)

18 Sec. 40. Violation. A violation of this Act constitutes an
19 unlawful practice under the Consumer Fraud and Deceptive
20 Business Practices Act.

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

1 (815 ILCS 505/2NNN new)

2 Sec. 2NNN. Violations of the Tax Refund Anticipation Loan
3 Reform Act. Any person who violates the Tax Refund Anticipation
4 Loan Reform Act commits an unlawful practice within the meaning
5 of this Act.

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

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".