

1 AN ACT concerning tax anticipation loans.

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

4 Section 1. Short title. This Act may be cited as the Tax
5 Refund Anticipation Loan Act.

6 Section 5. Scope. No person may individually or in
7 conjunction or cooperation with another person process,
8 receive, or accept for delivery an application for a tax
9 refund anticipation loan or a check in payment of tax refund
10 anticipation loan proceeds or in any other manner facilitate
11 the making of a tax refund anticipation loan unless the
12 person has complied with the provisions of this Act.

13 Section 10. Definitions.

14 The following definitions apply in this Act:

15 "Applicant" means a person who applies for registration
16 as a facilitator of tax refund anticipation loans.

17 "Creditor" means a person who makes a tax refund
18 anticipation loan.

19 "Debtor" means a person who receives the proceeds of a
20 tax refund anticipation loan.

21 "Department" means the Department of Financial
22 Institutions.

23 "Facilitator" means a person who individually or in
24 conjunction or cooperation with another person processes,
25 receives, or accepts for delivery an application for a tax
26 refund anticipation loan or a check in payment of a tax
27 refund anticipation loan proceeds or in any other manner
28 facilitates the making of a tax refund anticipation loan.

29 "Person" means an individual, a firm, a partnership, an
30 association, a corporation, or another entity.

1 "Registrant" means a person who is registered as a
2 facilitator of tax refund anticipation loans under this Act.

3 "Tax refund anticipation loan" means a loan that the
4 creditor arranges to be repaid directly from the proceeds of
5 the debtor's income tax refund.

6 "Tax refund anticipation loan fee" means the charges,
7 fees, or other consideration charged or imposed by the
8 creditor or facilitator for the making of a tax refund
9 anticipation loan. This term does not include any charge,
10 fee, or other consideration usually charged or imposed by
11 the facilitator in the ordinary course of business for
12 nonloan services, such as fees for tax return preparation
13 and fees for electronic filing of tax returns.

14 Section 15. Registration requirement.

15 (a) No person may individually or in conjunction or
16 cooperation with another person process, receive, or accept
17 for delivery an application for a tax refund anticipation
18 loan or a check in payment of tax refund anticipation loan
19 proceeds without first being registered with the Department
20 in accordance with the registration procedure provided in
21 this Act.

22 (b) A person who violates this Section is guilty of a
23 Class A misdemeanor. The penalty is a fine of not less than
24 \$1,000.

25 (c) This Section does not apply to a person doing
26 business as a bank, a savings association, or a credit union
27 under the laws of this State or the United States.

28 Section 20. Registration procedure; informal hearing.

29 (a) An application to become registered as a facilitator
30 shall be in writing, under oath, and in a form prescribed by
31 the Department. The application shall contain all information
32 prescribed by the Department. An application for registration

1 shall be accompanied by a fee, payable to the Department, of
2 \$250 for each office where the registrant intends to
3 facilitate tax refund anticipation loans.

4 Upon the filing of an application for registration, if
5 the Department finds that the responsibility and general
6 fitness of the applicant are such as to command the
7 confidence of the community and to warrant belief that the
8 business of facilitating tax refund anticipation loans will
9 be operated within the purposes of this Act, the Department
10 shall register the applicant as a facilitator of tax refund
11 anticipation loans and shall issue and transmit to the
12 applicant a certificate attesting to the registration. If the
13 Department does not so find, it shall not register the
14 applicant and shall notify the applicant of the reasons for
15 the denial.

16 Upon receipt of a certificate of registration, the
17 applicant is registered under this Act and may engage in the
18 business of facilitating tax refund anticipation loans at the
19 offices identified on the application for registration.

20 (b) A registration as a facilitator of tax refund
21 anticipation loans shall expire on December 31 following the
22 date it was issued, unless it is renewed for the succeeding
23 year. Before the registration expires, the registrant may
24 renew the registration by filing with the Department an
25 application for renewal in the form and containing all
26 information prescribed by it. An application for renewal of
27 registration shall be accompanied by a fee of \$200 for each
28 office where the registrant intends to facilitate tax refund
29 anticipation loans during the succeeding year.

30 Upon the filing of an application for renewal of
31 registration under this Act, the Department shall renew the
32 registration unless it determines that the fitness of the
33 registrant or the operations of the registrant would not
34 support registration of the registrant under subsection (a).

1 If the Department makes such a determination, it shall so
2 notify the registrant, stating the reasons for the
3 determination.

4 (c) Within 5 days after receipt of the Department's
5 notice, as required by subsections (a) and (b) of this
6 Section, the applicant may make written demand of the
7 Department for a hearing. The hearing before the Department
8 shall be an informal hearing and shall be held with
9 reasonable promptness.

10 (d) A registrant shall prominently display a certificate
11 issued under this Act in each place of business in the State
12 where the registrant facilitates the making of tax refund
13 anticipation loans.

14 Section 25. Filing and posting of loan fees;
15 disclosures.

16 (a) On or before December 31 of each year, a registrant
17 shall file with the Department a schedule of the tax refund
18 anticipation loan fees for tax refund anticipation loans to
19 be facilitated by the registrant during the succeeding year.
20 Immediately upon learning of any change in the tax refund
21 anticipation loan fee for that year, the registrant shall
22 file an amendment with the Department setting out the change.
23 Filing is effective upon receipt by the Department.

24 (b) If the Department finds that a tax refund
25 anticipation loan fee filed pursuant to subsection (a) is
26 unconscionable, it shall notify the registrant that in its
27 opinion the fee is unconscionable. The consequences of
28 charging a tax refund anticipation loan fee in an amount that
29 the Department has notified the registrant is unconscionable
30 include, but are not limited to, liability to the debtor for
31 5 times the amount of that fee and possible revocation of
32 registration as a facilitator after notice and a hearing.

33 (c) A registrant shall prominently display at each

1 office where the registrant is facilitating tax refund
2 anticipation loans a schedule showing the current tax refund
3 anticipation loan fees for tax refund anticipation loans
4 facilitated at the office and the current electronic filing
5 fees for the electronic filing of the taxpayer's tax return.
6 A registrant shall also prominently display on each fee
7 schedule a statement to the effect that the taxpayer may have
8 the tax return filed electronically without also obtaining a
9 tax refund anticipation loan. No registrant may facilitate a
10 tax refund anticipation loan unless (i) the schedule required
11 by this subsection is displayed and (ii) the tax refund
12 anticipation loan fee actually charged is the same as the fee
13 displayed on the schedule and the fee filed with the
14 Department pursuant to subsection (a).

15 (d) At the time a debtor applies for a tax refund
16 anticipation loan, the registrant shall disclose all of the
17 following to the debtor on a form separate from the
18 application:

19 (1) The fee for the loan.

20 (2) The fee for electronic filing of a tax return.

21 (3) The time within which the proceeds of the loan
22 will be paid to the debtor if the loan is approved.

23 (4) That the debtor is responsible for repayment of
24 the loan and related fees in the event the tax refund is
25 not paid or is not paid in full.

26 (5) The availability of electronic filing of the
27 taxpayer's tax return, along with the average time
28 announced by the appropriate taxing authority within
29 which a taxpayer can expect to receive a refund if the
30 taxpayer's return is filed electronically and the
31 taxpayer does not obtain a tax refund anticipation loan.

32 (6) Examples of the annual percentage rates, as
33 defined by the Truth In Lending Act, 15 U.S.C. 1607, for
34 tax refund anticipation loans of \$500, \$750, \$1,000,

1 \$1,500, \$2,000, \$3,000, and \$5,000. Regardless of
2 disclosures of the annual percentage rate required by the
3 Truth In Lending Act, if the debtor is required to
4 establish or maintain a deposit account with the creditor
5 for receipt of the debtor's tax refund to offset the
6 amount owed on the loan, the maturity of the loan for the
7 purpose of determining the annual percentage rate
8 disclosure under this Section shall be assumed to be the
9 estimated date when the tax refund will be deposited in
10 the debtor's account.

11 Section 30. Prohibited activities. A facilitator of a
12 tax refund anticipation loan may not engage in any of the
13 following activities:

14 (1) Misrepresenting a material factor or condition
15 of a tax refund anticipation loan.

16 (2) Failing to arrange for a tax refund
17 anticipation loan promptly after the debtor applies for
18 the loan.

19 (3) Engaging in any transaction, practice, or
20 course of business that operates a fraud upon any person
21 in connection with a tax refund anticipation loan.

22 (4) Facilitating a tax refund anticipation loan for
23 which the tax refund anticipation loan fee is (i)
24 different from the fee posted or the fee filed with the
25 Department or (ii) in an amount that the Department has
26 notified the facilitator is unconscionable.

27 (5) Directly or indirectly arranging for payment of
28 any portion of the tax refund anticipation loan for check
29 cashing, credit insurance, or any other good or service
30 unrelated to (i) preparing and filing tax returns or (ii)
31 facilitating tax refund anticipation loans.

32 (6) Arranging for a creditor to take a security
33 interest in any property of the debtor other than the

1 proceeds of the debtor's tax refund to secure payment of
2 the loan.

3 Section 35. Cease and desist; revocation of
4 registration; penalties.

5 (a) Upon the finding that any action of a registrant may
6 be in violation of this Act or that the registrant has
7 engaged in an unfair or deceptive act or practice, the
8 Department shall give reasonable notice to the registrant of
9 the suspected violation or unfair or deceptive act or
10 practice and an opportunity for the registrant to be heard.
11 If, following the hearing, the Department finds that an
12 action of the registrant is in violation of this Act or that
13 the registrant has engaged in an unfair or deceptive act or
14 practice, the Department shall order the registrant to cease
15 and desist from the action and impose a civil penalty upon
16 the registrant of \$1,000. If, following the hearing, the
17 Director finds that an action of the registrant is in
18 violation of this Act or that the registrant has engaged in
19 an unfair or deceptive act or practice against an individual
20 who is 62 years of age or older, the Department shall order
21 the registrant to cease and desist from the action and impose
22 a civil penalty upon the registrant of \$3,000. If the
23 registrant fails to appeal a cease and desist order of the
24 Department and continues to engage in an action in violation
25 of the Department's order to cease and desist from the
26 action, the registrant shall be subject to a civil penalty of
27 \$1,000 for each action it takes in violation of the
28 Department's order. Penalties collected under this subsection
29 shall be deposited into General Revenue Fund. At the request
30 of the Department, the Attorney General shall bring an action
31 in circuit court to enforce the collection of any monetary
32 penalty imposed under this Act.

33 (b) After notice and hearing, and upon the finding that

1 a registrant has (i) engaged in a course of conduct that is
2 in violation of this Act or (ii) continued to engage in an
3 action in violation of a cease and desist order of the
4 Department that has not been stayed upon application of the
5 registrant, the Department may revoke the registration of the
6 registrant temporarily or permanently in the discretion of
7 the Department.

8 (c) Except in the case of a tax refund anticipation loan
9 that is not approved by the creditor, a facilitator who fails
10 to deliver to the debtor the proceeds of a tax refund
11 anticipation loan within 48 hours after the time period
12 promised by the facilitator when the debtor applied for the
13 loan shall pay to the debtor an amount equal to the tax
14 refund anticipation loan fee. A facilitator who engages in an
15 activity prohibited under Section 30 in connection with a tax
16 refund anticipation loan is liable to the debtor for damages
17 of 5 times the amount of the tax refund anticipation loan fee
18 or other unauthorized charge plus a reasonable attorney's
19 fee.

20 Section 40. Appeal of Department's decision. The
21 Department shall have full authority to review any rule,
22 order, or act of the Department done pursuant to or with
23 respect to the provisions of this Act; and any person
24 aggrieved by any the rule, order, or act may appeal to the
25 Department for review upon giving notice in writing within 20
26 days after the rule, order, or act complained of is adopted,
27 issued, or done. Notwithstanding any other provision of law,
28 any aggrieved party to a decision of the Department shall be
29 entitled to an appeal before the Department itself.

30 Section 45. Rules; enforcement. The Department may adopt
31 reasonable rules as necessary to effectuate the purpose of
32 this Act, to provide for the protection of the borrowing

1 public, and to assist registrants in interpreting this Act.
2 In order to enforce this Act, the Department may make
3 investigations, subpoena witnesses, require audits and
4 reports, and conduct hearings regarding possible violations
5 of its provisions.

6 Section 50. Exemption. This Act does not apply to a
7 person who does not deal directly with debtors but who acts
8 solely as an intermediary by processing or transmitting,
9 electronically or otherwise, tax or credit information or by
10 preparing for a facilitator tax refund anticipation loan
11 checks to be delivered by the facilitator to the debtor.

12 Section 99. Effective date. This Act takes effect on
13 July 1, 2002.