

SENATE BILL 762

I3, I2

0lr2265
CF 0lr0703

By: **Senators Della and Stone**

Introduced and read first time: February 10, 2010

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Refund Anticipation Loans and**
3 **Checks**

4 FOR the purpose of prohibiting certain persons from soliciting the execution of,
5 processing, receiving, or accepting an application or agreement for a refund
6 anticipation loan or refund anticipation check or facilitating the making of a
7 refund anticipation loan or refund anticipation check under certain
8 circumstances; requiring a facilitator of a refund anticipation loan or refund
9 anticipation check to display a certain schedule of fees in a certain manner;
10 requiring the schedule to contain certain information and disclosures;
11 prohibiting a facilitator from charging certain fees; requiring a facilitator to
12 make certain written and oral disclosures to certain consumers at a certain time
13 and in a certain manner; requiring the annual percentage rate for a refund
14 anticipation loan to be calculated using certain guidelines; prohibiting a
15 facilitator from taking certain actions relating to a refund anticipation loan or
16 refund anticipation check; providing that, under certain circumstances, a
17 certain provision of this Act does not prohibit a charge or fee from being
18 imposed by a facilitator; providing that a violation of this Act is an unfair or
19 deceptive trade practice under the Maryland Consumer Protection Act and is
20 subject to certain enforcement and penalty provisions; establishing certain
21 additional penalties for a willful failure to comply with this Act; defining certain
22 terms; and generally relating to refund anticipation loans and refund
23 anticipation checks.

24 BY adding to

25 Article – Commercial Law

26 Section 14–3801 through 14–3807 to be under the new subtitle “Subtitle 38.
27 Refund Anticipation Loans and Checks”

28 Annotated Code of Maryland

29 (2005 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

SUBTITLE 38. REFUND ANTICIPATION LOANS AND CHECKS.

14-3801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CONSUMER” MEANS AN INDIVIDUAL WHO, INDIVIDUALLY OR IN CONJUNCTION WITH ANOTHER INDIVIDUAL, IS SOLICITED FOR, APPLIES FOR, OR RECEIVES A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

(C) “CREDITOR” MEANS A PERSON WHO MAKES A REFUND ANTICIPATION LOAN OR WHO TAKES AN ASSIGNMENT OF A REFUND ANTICIPATION LOAN.

(D) (1) “FACILITATOR” MEANS A PERSON WHO, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON:

(I) PROCESSES, RECEIVES, OR ACCEPTS AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK;

(II) SERVICES OR COLLECTS ON A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK; OR

(III) FACILITATES THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

(2) “FACILITATOR” DOES NOT INCLUDE A BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR PERSON WHO ACTS SOLELY AS AN INTERMEDIARY AND DOES NOT DEAL WITH THE PUBLIC IN THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

(E) “REFUND ANTICIPATION CHECK” MEANS A CHECK, STORED VALUE CARD, OR OTHER PAYMENT MECHANISM:

(1) THAT REPRESENTS THE PROCEEDS OF A CONSUMER’S TAX REFUND;

1 (2) **THAT WAS ISSUED BY A DEPOSITORY INSTITUTION OR OTHER**
2 **PERSON THAT RECEIVED A DIRECT DEPOSIT OF THE CONSUMER’S TAX REFUND;**
3 **AND**

4 (3) **FOR WHICH THE CONSUMER HAS PAID A FEE OR OTHER**
5 **CONSIDERATION.**

6 (F) (1) **“REFUND ANTICIPATION LOAN” MEANS A LOAN ARRANGED TO**
7 **BE PAID DIRECTLY OR INDIRECTLY FROM THE PROCEEDS OF A CONSUMER’S TAX**
8 **REFUND.**

9 (2) **“REFUND ANTICIPATION LOAN” INCLUDES A SALE,**
10 **ASSIGNMENT, OR PURCHASE OF A CONSUMER’S TAX REFUND AT A DISCOUNT OR**
11 **FOR A FEE, WHETHER OR NOT THE CONSUMER IS REQUIRED TO REPAY THE**
12 **BUYER OR ASSIGNEE IF THE INTERNAL REVENUE SERVICE DENIES OR REDUCES**
13 **THE CONSUMER’S TAX REFUND.**

14 (G) (1) **“REFUND ANTICIPATION LOAN FEE” MEANS ANY CHARGE,**
15 **FEE, OR OTHER CONSIDERATION CHARGED OR IMPOSED DIRECTLY OR**
16 **INDIRECTLY FOR THE MAKING OF OR IN CONNECTION WITH A REFUND**
17 **ANTICIPATION LOAN.**

18 (2) **“REFUND ANTICIPATION LOAN FEE” INCLUDES A CHARGE,**
19 **FEE, OR OTHER CONSIDERATION FOR A DEPOSIT ACCOUNT THAT IS USED FOR**
20 **RECEIPT OF A CONSUMER’S TAX REFUND TO REPAY THE AMOUNT OWED ON A**
21 **REFUND ANTICIPATION LOAN.**

22 **14-3802.**

23 **UNLESS THE FACILITATOR HAS COMPLIED WITH THIS SUBTITLE, A**
24 **FACILITATOR, OR AN OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF A**
25 **FACILITATOR, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH**
26 **ANOTHER PERSON, MAY NOT:**

27 (1) **SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT**
28 **AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR**
29 **REFUND ANTICIPATION CHECK; OR**

30 (2) **FACILITATE THE MAKING OF A REFUND ANTICIPATION LOAN**
31 **OR REFUND ANTICIPATION CHECK.**

32 **14-3803.**

1 **(A) A FACILITATOR SHALL DISPLAY, IN A PROMINENT PLACE AT EACH**
2 **BUSINESS LOCATION OF THE FACILITATOR, A SCHEDULE OF THE FEES CHARGED**
3 **FOR FACILITATING REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION**
4 **CHECKS.**

5 **(B) A FACILITATOR SHALL INCLUDE ON EACH FEE SCHEDULE THE**
6 **FOLLOWING:**

7 **(1) EXAMPLES OF THE ANNUAL PERCENTAGE RATE CHARGED**
8 **FOR REFUND ANTICIPATION LOANS IN THE AMOUNTS OF:**

9 **(I) \$250;**

10 **(II) \$500;**

11 **(III) \$1,000; AND**

12 **(IV) \$2,500;**

13 **(2) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN AT**
14 **LEAST 14 POINT TYPE, STATING:**

15 **“NOTICE CONCERNING REFUND ANTICIPATION LOANS”; AND**

16 **(3) THE FOLLOWING STATEMENT:**

17 **“WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE**
18 **BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS**
19 **THAN EXPECTED, YOU WILL STILL OWE THE ENTIRE AMOUNT OF THE REFUND**
20 **ANTICIPATION LOAN. IF YOUR TAX REFUND IS DELAYED, YOU MAY HAVE TO PAY**
21 **ADDITIONAL COSTS. YOU USUALLY CAN GET YOUR TAX REFUND IN 8 TO 15 DAYS**
22 **WITHOUT PAYING ANY EXTRA FEES FOR A REFUND ANTICIPATION LOAN. YOU**
23 **CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND**
24 **DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A**
25 **REFUND ANTICIPATION LOAN OR PAYING FEES FOR AN EXTRA PRODUCT.”.**

26 **(C) THE FEE SCHEDULE AND DISCLOSURES REQUIRED UNDER**
27 **SUBSECTIONS (A) AND (B) OF THIS SECTION SHALL BE PRINTED IN AT LEAST**
28 **14 POINT TYPE ON A SIGN NOT LESS THAN 16 BY 20 INCHES.**

29 **(D) A FACILITATOR MAY NOT CHARGE ANY FEE FOR FACILITATING A**
30 **REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK THAT IS NOT**
31 **DISCLOSED ON OR IS DIFFERENT FROM THE FEE SHOWN ON THE SCHEDULE**
32 **REQUIRED UNDER THIS SECTION.**

14-3804.

(A) AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION LOAN, A FACILITATOR SHALL DISCLOSE TO THE CONSUMER, ON A FORM THAT IS SEPARATE FROM THE APPLICATION, IN 14 POINT TYPE, THE FOLLOWING:

(1) THE FEE FOR THE REFUND ANTICIPATION LOAN, INCLUDING ANY FEE FOR TAX PREPARATION OR OTHER FEES CHARGED TO THE CONSUMER;

(2) THE ANNUAL PERCENTAGE RATE PAYABLE ON THE REFUND ANTICIPATION LOAN;

(3) THE TIME WITHIN WHICH THE PROCEEDS OF THE REFUND ANTICIPATION LOAN WILL BE PAID TO THE CONSUMER IF THE REFUND ANTICIPATION LOAN IS APPROVED;

(4) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN 18 POINT TYPE, STATING:

“NOTICE”; AND

(5) THE STATEMENT:

“THIS IS A LOAN. YOU ARE BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU WILL STILL OWE THE ENTIRE AMOUNT OF THE LOAN. IF YOUR TAX REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS. YOU USUALLY CAN GET YOUR TAX REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR TAX REFUND DIRECT DEPOSITED INTO YOUR BANK ACCOUNT WITHOUT OBTAINING A LOAN OR OTHER PAID PRODUCT.”.

(B) THE ANNUAL PERCENTAGE RATE FOR A REFUND ANTICIPATION LOAN SHALL BE CALCULATED USING THE GUIDELINES ESTABLISHED UNDER THE FEDERAL TRUTH IN LENDING ACT.

(C) AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION CHECK, A FACILITATOR SHALL DISCLOSE TO THE CONSUMER, ON A FORM THAT IS SEPARATE FROM THE APPLICATION, IN 14 POINT TYPE, THE FOLLOWING:

(1) THE FEE FOR THE REFUND ANTICIPATION CHECK, INCLUDING ANY FEE FOR TAX PREPARATION OR OTHER FEES CHARGED TO THE CONSUMER;

1 (2) THE TIME WITHIN WHICH THE PROCEEDS OF THE REFUND
2 ANTICIPATION CHECK WILL BE PAID TO THE CONSUMER;

3 (3) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN
4 18 POINT TYPE, STATING:

5 “NOTICE”; AND

6 (4) THE STATEMENT:

7 “YOU ARE PAYING (AMOUNT OF REFUND ANTICIPATION CHECK FEE) TO
8 GET YOUR TAX REFUND CHECK THROUGH (NAME OF ISSUER OF THE REFUND
9 ANTICIPATION CHECK). YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR
10 TAX REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR TAX REFUND
11 DIRECT DEPOSITED INTO YOUR BANK ACCOUNT. YOU ALSO CAN WAIT FOR THE
12 INTERNAL REVENUE SERVICE TO MAIL YOU A TAX REFUND CHECK.”.

13 (D) BEFORE COMPLETING A REFUND ANTICIPATION LOAN OR REFUND
14 ANTICIPATION CHECK TRANSACTION, A FACILITATOR SHALL PROVIDE TO A
15 CONSUMER, IN A FORM THAT CAN BE RETAINED BY THE CONSUMER, THE
16 FOLLOWING:

17 (1) THE DISCLOSURES REQUIRED BY THIS SECTION;

18 (2) A COPY OF THE COMPLETED REFUND ANTICIPATION LOAN OR
19 REFUND ANTICIPATION CHECK APPLICATION AND AGREEMENT; AND

20 (3) FOR A REFUND ANTICIPATION LOAN, THE DISCLOSURES
21 REQUIRED BY THE FEDERAL TRUTH IN LENDING ACT.

22 (E) THE DISCLOSURES REQUIRED BY THIS SECTION SHALL BE
23 PROVIDED IN ENGLISH AND IN THE LANGUAGE PRIMARILY USED FOR ORAL
24 COMMUNICATION BETWEEN THE FACILITATOR AND THE CONSUMER.

25 14-3805.

26 (A) AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION
27 LOAN, A FACILITATOR ORALLY SHALL INFORM THE CONSUMER:

28 (1) THAT THE PRODUCT IS A LOAN THAT LASTS 1 TO 2 WEEKS;

29 (2) THAT IF THE CONSUMER’S TAX REFUND IS LESS THAN
30 EXPECTED, THE CONSUMER IS LIABLE FOR THE FULL AMOUNT OF THE REFUND
31 ANTICIPATION LOAN AND MUST REPAY ANY DIFFERENCE;

1 (3) THE AMOUNT OF THE REFUND ANTICIPATION LOAN FEE; AND

2 (4) THE ANNUAL PERCENTAGE RATE PAYABLE ON THE REFUND
3 ANTICIPATION LOAN.

4 (B) AT THE TIME A CONSUMER APPLIES FOR A REFUND ANTICIPATION
5 CHECK, A FACILITATOR ORALLY SHALL INFORM THE CONSUMER:

6 (1) OF THE AMOUNT OF THE REFUND ANTICIPATION CHECK; AND

7 (2) THAT THE CONSUMER MAY RECEIVE A TAX REFUND IN THE
8 SAME AMOUNT OF TIME WITHOUT PAYING A FEE IF THE CONSUMER'S TAX
9 RETURN IS FILED ELECTRONICALLY AND THE CONSUMER DIRECT DEPOSITS
10 THE TAX REFUND INTO THE CONSUMER'S OWN BANK ACCOUNT.

11 (C) THE DISCLOSURES REQUIRED BY THIS SECTION SHALL BE
12 PROVIDED IN THE LANGUAGE PRIMARILY USED FOR ORAL COMMUNICATION
13 BETWEEN THE FACILITATOR AND THE CONSUMER.

14 14-3806.

15 (A) A FACILITATOR MAY NOT:

16 (1) REQUIRE A CONSUMER TO ENTER INTO A LOAN AGREEMENT
17 IN ORDER TO COMPLETE A TAX RETURN;

18 (2) CHARGE ANY FEE OR REQUIRE ANY OTHER CONSIDERATION
19 FOR MAKING OR FACILITATING A REFUND ANTICIPATION LOAN OR REFUND
20 ANTICIPATION CHECK OTHER THAN THE FEE IMPOSED BY THE CREDITOR OR
21 OTHER PERSON THAT PROVIDES THE REFUND ANTICIPATION LOAN OR REFUND
22 ANTICIPATION CHECK;

23 (3) ENGAGE IN A TRANSACTION, PRACTICE, OR COURSE OF
24 BUSINESS THAT OPERATES A FRAUD ON A CONSUMER IN CONNECTION WITH A
25 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, INCLUDING
26 MAKING ORAL STATEMENTS THAT CONTRADICT ANY OF THE INFORMATION
27 REQUIRED TO BE DISCLOSED UNDER THIS SUBTITLE;

28 (4) ARRANGE, DIRECTLY OR INDIRECTLY, FOR ANY THIRD PARTY
29 TO CHARGE ANY INTEREST OR FEE RELATED TO A REFUND ANTICIPATION LOAN
30 OR REFUND ANTICIPATION CHECK, OTHER THAN THE REFUND ANTICIPATION
31 LOAN OR REFUND ANTICIPATION CHECK FEE IMPOSED BY THE CREDITOR,

1 INCLUDING CHARGES FOR INSURANCE, ATTORNEY'S FEES, COLLECTION COSTS,
2 OR CHECK CASHING;

3 (5) MISREPRESENT A MATERIAL FACT OR CONDITION OF A
4 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK; OR

5 (6) FAIL TO PROCESS AN APPLICATION FOR A REFUND
6 ANTICIPATION LOAN PROMPTLY AFTER THE CONSUMER APPLIES FOR THE
7 REFUND ANTICIPATION LOAN.

8 (B) SUBSECTION (A)(2) OF THIS SECTION DOES NOT PROHIBIT A
9 CHARGE OR FEE, INCLUDING A FEE FOR TAX RETURN PREPARATION, THAT IS
10 IMPOSED BY A FACILITATOR ON ALL OF ITS CUSTOMERS IF THE SAME CHARGE
11 OR FEE, IN THE SAME AMOUNT, IS IMPOSED ON CUSTOMERS WHO DO NOT
12 RECEIVE REFUND ANTICIPATION LOANS, REFUND ANTICIPATION CHECKS, OR
13 OTHER TAX-RELATED FINANCIAL PRODUCTS.

14 14-3807.

15 (A) A VIOLATION OF THIS SUBTITLE IS:

16 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE
17 MEANING OF TITLE 13 OF THIS ARTICLE; AND

18 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
19 CONTAINED IN TITLE 13 OF THIS ARTICLE.

20 (B) IN ADDITION TO THE REMEDIES PROVIDED UNDER TITLE 13 OF
21 THIS ARTICLE, A FACILITATOR WHO WILLFULLY FAILS TO COMPLY WITH ANY
22 PROVISION OF THIS SUBTITLE IS LIABLE TO THE CONSUMER FOR:

23 (1) ACTUAL AND CONSEQUENTIAL DAMAGES;

24 (2) STATUTORY DAMAGES IN THE AMOUNT OF \$1,000; AND

25 (3) REASONABLE ATTORNEY'S FEES AND COSTS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2010.