

SENATE BILL 762

I3, I2

0lr2265
CF HB 1206

By: ~~Senators Della and Stone~~, Stone, Middleton, and Exum

Introduced and read first time: February 10, 2010

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2010

CHAPTER _____

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Commercial Law

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

Annotated Code of Maryland

(2005 Replacement Volume and 2009 Supplement)

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~~:

(I) A BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT
UNION, ~~OR~~;

1 **(II) AN AFFILIATE OR SUBSIDIARY OF A BANK, SAVINGS AND**
2 **LOAN ASSOCIATION, OR CREDIT UNION THAT, IN CONNECTION WITH REFUND**
3 **ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS, ACTS SOLELY AS A**
4 **SERVICER FOR THE FINANCIAL INSTITUTION WITH WHICH IT IS AFFILIATED OR**
5 **OF WHICH IT IS A SUBSIDIARY; OR**

6 **(III) A PERSON WHO ACTS SOLELY AS AN INTERMEDIARY**
7 **AND DOES NOT DEAL WITH THE PUBLIC IN THE MAKING OF A REFUND**
8 **ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.**

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

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

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

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

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

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

26 **(G) (1) “REFUND ANTICIPATION LOAN FEE” MEANS ANY CHARGE,**
27 **FEE, OR OTHER CONSIDERATION CHARGED OR IMPOSED DIRECTLY OR**
28 **INDIRECTLY FOR THE MAKING OF OR IN CONNECTION WITH A REFUND**
29 **ANTICIPATION LOAN.**

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

34 **14-3802.**

1 **UNLESS THE FACILITATOR HAS COMPLIED WITH THIS SUBTITLE, A**
2 **FACILITATOR, OR AN OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF A**
3 **FACILITATOR, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH**
4 **ANOTHER PERSON, MAY NOT:**

5 **(1) SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT**
6 **AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR**
7 **REFUND ANTICIPATION CHECK; OR**

8 **(2) FACILITATE THE MAKING OF A REFUND ANTICIPATION LOAN**
9 **OR REFUND ANTICIPATION CHECK.**

10 **14-3803.**

11 **(A) A FACILITATOR SHALL DISPLAY, IN A PROMINENT PLACE AT EACH**
12 **BUSINESS LOCATION OF THE FACILITATOR, A SCHEDULE OF THE FEES CHARGED**
13 **FOR FACILITATING REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION**
14 **CHECKS.**

15 **(B) A FACILITATOR SHALL INCLUDE ON EACH FEE SCHEDULE THE**
16 **FOLLOWING:**

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

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

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

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

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

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

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

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

27 **“WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE**
28 **BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS**
29 **THAN EXPECTED, YOU WILL STILL OWE THE ENTIRE AMOUNT OF THE REFUND**
30 **ANTICIPATION LOAN. IF YOUR TAX REFUND IS DELAYED, YOU MAY HAVE TO PAY**
31 **ADDITIONAL COSTS. YOU USUALLY CAN GET YOUR TAX REFUND IN 8 TO 15 DAYS**

1 WITHOUT PAYING ANY EXTRA FEES FOR A REFUND ANTICIPATION LOAN. YOU
2 CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND
3 DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A
4 REFUND ANTICIPATION LOAN OR PAYING FEES FOR AN EXTRA PRODUCT.”.

5 (C) THE FEE SCHEDULE AND DISCLOSURES REQUIRED UNDER
6 SUBSECTIONS (A) AND (B) OF THIS SECTION SHALL BE PRINTED IN AT LEAST
7 14 POINT TYPE ON A SIGN NOT LESS THAN 16 BY 20 INCHES.

8 (D) A FACILITATOR MAY NOT CHARGE ANY FEE TO A CONSUMER FOR
9 FACILITATING A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
10 CHECK THAT IS NOT DISCLOSED ON OR IS DIFFERENT FROM THE FEE SHOWN ON
11 THE SCHEDULE REQUIRED UNDER THIS SECTION.

12 14-3804.

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

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

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

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

24 (4) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN
25 18 POINT TYPE, STATING:

26 “NOTICE”; AND

27 (5) THE STATEMENT:

28 “THIS IS A LOAN. YOU ARE BORROWING MONEY AGAINST YOUR TAX
29 REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU WILL STILL OWE
30 THE ENTIRE AMOUNT OF THE LOAN. IF YOUR TAX REFUND IS DELAYED, YOU MAY
31 HAVE TO PAY ADDITIONAL COSTS. YOU USUALLY CAN GET YOUR TAX REFUND IN
32 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. YOU CAN
33 HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR TAX REFUND

1 DIRECT DEPOSITED INTO YOUR BANK ACCOUNT WITHOUT OBTAINING A LOAN
2 OR OTHER PAID PRODUCT.”.

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

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

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

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

14 (3) A LEGEND, CENTERED AND IN BOLD CAPITAL LETTERS IN
15 18 POINT TYPE, STATING:

16 “NOTICE”; AND

17 (4) THE STATEMENT:

18 “YOU ARE PAYING (AMOUNT OF REFUND ANTICIPATION CHECK FEE) TO
19 GET YOUR TAX REFUND CHECK THROUGH (NAME OF ISSUER OF THE REFUND
20 ANTICIPATION CHECK). YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR
21 TAX REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR TAX REFUND
22 DIRECT DEPOSITED INTO YOUR BANK ACCOUNT. YOU ALSO CAN WAIT FOR THE
23 INTERNAL REVENUE SERVICE TO MAIL YOU A TAX REFUND CHECK.”.

24 (D) BEFORE COMPLETING A REFUND ANTICIPATION LOAN OR REFUND
25 ANTICIPATION CHECK TRANSACTION, A FACILITATOR SHALL PROVIDE TO A
26 CONSUMER, IN A FORM THAT CAN BE RETAINED BY THE CONSUMER, THE
27 FOLLOWING:

28 (1) THE DISCLOSURES REQUIRED BY THIS SECTION;

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

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

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

14-3805.

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

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

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

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

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

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

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

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

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

14-3806.

(A) A FACILITATOR MAY NOT:

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

(2) CHARGE ANY FEE TO A CONSUMER OR REQUIRE ANY OTHER CONSIDERATION FOR MAKING OR FACILITATING A REFUND ANTICIPATION LOAN

1 OR REFUND ANTICIPATION CHECK OTHER THAN THE FEE IMPOSED BY THE
2 CREDITOR OR OTHER PERSON THAT PROVIDES THE REFUND ANTICIPATION
3 LOAN OR REFUND ANTICIPATION CHECK;

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

9 (4) ARRANGE, DIRECTLY OR INDIRECTLY, FOR ANY THIRD PARTY
10 TO CHARGE ANY INTEREST OR FEE RELATED TO A REFUND ANTICIPATION LOAN
11 OR REFUND ANTICIPATION CHECK, OTHER THAN THE REFUND ANTICIPATION
12 LOAN OR REFUND ANTICIPATION CHECK FEE IMPOSED BY THE CREDITOR,
13 INCLUDING CHARGES FOR INSURANCE, ATTORNEY'S FEES, COLLECTION COSTS,
14 OR CHECK CASHING;

15 (5) MISREPRESENT A MATERIAL FACT OR CONDITION OF A
16 REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK; OR

17 (6) FAIL TO PROCESS AN APPLICATION FOR A REFUND
18 ANTICIPATION LOAN PROMPTLY AFTER THE CONSUMER APPLIES FOR THE
19 REFUND ANTICIPATION LOAN.

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

26 14-3807.

27 (A) A VIOLATION OF THIS SUBTITLE IS:

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

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

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

- 1 **(1) ACTUAL AND CONSEQUENTIAL DAMAGES;**
- 2 **(2) STATUTORY DAMAGES IN THE AMOUNT OF \$1,000; AND**
- 3 **(3) REASONABLE ATTORNEY’S FEES AND COSTS.**

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.