

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1206
Economic Matters

(Delegate Frick, *et al.*)

Finance

Commercial Law - Consumer Protection - Refund Anticipation Loans and Checks

This bill limits the fees charged for a refund anticipation loan or refund anticipation check and requires certain written and oral disclosures to be provided to a consumer. Under the bill, a consumer may not be required to enter into a refund anticipation loan agreement as a condition of completing a tax return. The bill also sets forth civil and criminal penalties for a violation of the bill's provisions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Defined Terms

The bill defines a "refund anticipation loan" as (1) a loan arranged to be paid directly or indirectly from the proceeds of a consumer's tax refund; and (2) includes the sale,

assignment, or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer must repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer's tax refund.

The bill defines a "facilitator" as a person who processes, receives, or accepts an application or agreement for a refund anticipation loan or check or facilitates the making of a refund anticipation loan or check. A facilitator does not include certain financial institutions such as a bank, savings and loan association, credit union and specified affiliates or subsidiaries, or a person who acts solely as an intermediary and does not interact with the public in the making of a refund anticipation loan or check.

Consumer Disclosures

A facilitator of a refund anticipation loan or check must prominently display a fee schedule at the place of business that includes examples of the annual percentage rate for certain loan amounts. A conspicuous notice must inform a consumer that the funds will be borrowed against his or her tax refund and that the entire loan amount must be repaid even if the tax refund is an amount less than anticipated. The notice must inform the consumer that a facilitator is prohibited from charging any fee for a refund anticipation loan that is not disclosed on the fee schedule or is different than the disclosed amount.

At the time a consumer applies for a refund anticipation loan through a facilitator, the facilitator must disclose in writing the fee for the loan including any tax preparation or other fees, the annual percentage rate of the loan, the time within which the loan proceeds will be paid if the loan is approved, and a specified written notice to the consumer. The annual percentage rate for the loan must be calculated using guidelines established under the federal Truth in Lending Act.

Before completing a refund anticipation loan or check transaction, a facilitator must provide a consumer with the specific written disclosures required under the bill, a copy of the completed refund anticipation loan or check application and agreement, and for a refund anticipation loan, the disclosures required under the federal Truth in Lending Act. Certain disclosures must be provided in English and the language primarily used for oral communication between the facilitator and the consumer.

When a consumer applies for a refund anticipation loan through a facilitator, the facilitator must orally inform the consumer:

- that the product is a loan that lasts one to two weeks;
- 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 deficiency;
- the amount of the refund anticipation loan fee; and

- the annual percentage rate payable on the loan.

At the time a consumer applies for a refund anticipation check through a facilitator, the facilitator must orally inform the consumer of the amount of the refund anticipation check and 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 has the tax refund deposited directly into the consumer's own bank account.

Prohibitions

Unless the provisions of the bill are complied with, a facilitator of a refund anticipation loan or check or any officer, agent, employee, or representative may not solicit the execution of, process, receive, or accept an application for a refund anticipation loan or check, or facilitate the making of a refund anticipation loan or check.

A facilitator of a refund anticipation loan or check may not:

- require a consumer to enter into a loan agreement as a condition of completing a tax return;
- charge any fee to a consumer or require any other consideration for making or facilitating a loan other than the fee imposed by the party that provides the refund anticipation loan or check;
- engage in a transaction, practice, or business that operates as a fraud on a consumer in connection with a refund anticipation loan or check including oral statements that contradict the bill's required disclosures;
- arrange for any third party to charge any interest or fee related to a refund anticipation loan or check other than the charge imposed by the creditor, including a charge for insurance, attorney's fees, collection costs, or check cashing;
- misrepresent a material fact or condition of a refund anticipation loan or check; or
- fail to process an application for a refund anticipation loan promptly after the consumer applies for the loan.

Penalties

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. A facilitator of a refund anticipation loan or check who willfully violates the bill's provisions may be liable for the consumer's actual and consequential damages, statutory damages in the amount of \$1,000, and reasonable attorney's fees and costs.

Current Law/Background: On May 15, 2008, the Commissioner of Financial Regulation issued an advisory notice on the application of the Maryland Credit Services Businesses Act (MCSBA) to tax preparers that facilitate refund anticipation loans. A credit services business is a person who, with respect to the extension of credit by others, represents that the person can or will, in exchange for payment: (1) improve a consumer's credit record, history, or rating or establish a new credit file or record; (2) obtain an extension of credit for a consumer; (3) provide advice or assistance to a consumer about improving the consumer's credit record, history, or rating; or (4) provide advice about establishing a new credit file or record or obtaining an extension of credit.

Under Maryland law, the maximum permissible annual interest rate for small loans (under \$6,000) varies with the amount of the loan, up to 33%.

The commissioner interpreted MCSBA to apply to all businesses (except those specifically excluded under MCSBA) that assist consumers in obtaining extensions of credit, including tax preparers who are compensated to assist consumers in obtaining a refund anticipation loan from third-party lenders. Credit services businesses must obtain licenses from the Commissioner of Financial Regulation.

A credit services business, its employees, and its independent contractors may not:

- receive payment for referring a customer to a credit grantor who will or may extend credit to the consumer, if the credit is extended on substantially similar terms available to the general public;
- make, assist, or advise a consumer to make false statements connected with a credit application;
- make or use false or misleading representations in offering or selling its services;
- engage in an act, practice, or course of business that operates as a fraud or deception in connection with offering or selling its services;
- accept payment before rendering full and complete performance of the contracted services;
- create or assist a consumer in creating a new consumer credit report by obtaining and using a different name, address, telephone number, Social Security number, or employer tax identification number; or
- assist a consumer in obtaining an extension of credit at an interest rate which, except for federal preemption, would be prohibited under the State's consumer credit provisions.

Violation of MCSBA is an unfair or deceptive trade practice under MCPA, subject to MCPA's civil and criminal penalty provisions. An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Cross File: SB 762 (Senator Della, *et al.*) - Finance.

Information Source(s): Department of Legislative Services

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