

HOUSE BILL NO. 215
INTRODUCED BY S. AUGARE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA REFUND ANTICIPATION LOAN ACT; GRANTING THE DEPARTMENT OF ADMINISTRATION RULEMAKING AUTHORITY TO IMPLEMENT THE ACT; PROVIDING DEFINITIONS; REQUIRING DISCLOSURE BY LOAN FACILITATORS; REQUIRING FEE SCHEDULES TO BE POSTED AND FILED WITH THE DEPARTMENT; PROVIDING PENALTIES FOR VIOLATIONS OF THE ACT; AND AUTHORIZING THE ATTORNEY GENERAL TO BRING CIVIL ACTIONS ON BEHALF OF BORROWERS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Refund Anticipation Loan Act".

NEW SECTION. **Section 2. Scope -- rules.** (1) A person may not individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of [sections 1 through 7].

(2) The department may adopt rules necessary to enforce the provisions of [sections 1 through 7] in order to provide for the protection of the borrowing public and to help facilitators implement the provisions of [sections 1 through 7]. In order to enforce [sections 1 through 7], the department may conduct investigations, subpoena witnesses, require audits and reports, issue cease and desist orders, seek court-ordered injunctions, and conduct hearings regarding possible violations of [sections 1 through 7].

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Borrower" means a person who applies for or receives the proceeds of a refund anticipation loan.
- (2) "Department" means the department of administration provided for in 2-15-1001.
- (3) (a) "Facilitator" means a person who, individually or in conjunction or cooperation with another person, makes a refund anticipation loan, processes, receives, or accepts for delivery an application for a refund

anticipation loan, issues a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. The term includes, without limitation, a tax preparer who engages in any of the acts described in this subsection (3)(a).

(b) The term does not include a bank, savings and loan association, or credit union operating under the laws of the United States or this state or any person who acts solely as an intermediary and does not deal with the public in the making of a refund anticipation loan.

(4) "Refund anticipation loan" means a loan to be repaid directly from the proceeds of a borrower's income tax refund.

(5) (a) "Refund anticipation loan fee" means any charge, fee, or other consideration charged or imposed for the making of a refund anticipation loan.

(b) The term does not include any charge, fee, or other consideration charged or imposed in the ordinary course of business by a facilitator for services that do not result in the making of a loan, including but not limited to fees for tax return preparation services or for the electronic filing of income tax returns.

(6) "Refund anticipation loan fee schedule" means a listing or table of refund anticipation loan fees charged by a facilitator for three or more representative refund anticipation loan amounts.

(7) "Tax return" means a federal or state income tax return.

NEW SECTION. Section 4. Filing of fee schedule -- posting of refund anticipation loan fee schedule. (1) On or before January 1 of each year, each facilitator shall file with the department a refund anticipation loan fee schedule for refund anticipation loan fees to be charged by the facilitator during the succeeding year. Immediately upon making or learning of any change in the refund anticipation loan fee for that year, the facilitator shall file an amendment with the department setting out the change. Filing is effective upon receipt by the department.

(2) A facilitator shall prominently display at each office where the facilitator is making refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return.

(3) A facilitator shall prominently display on each refund anticipation loan fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan.

(4) A facilitator may not facilitate a refund anticipation loan unless:

(a) the refund anticipation loan fee schedule required by this section is displayed; and

(b) the refund anticipation loan fee actually charged is the same as the fee displayed on the refund anticipation loan fee schedule and the fee filed with the department pursuant to subsection (1).

NEW SECTION. Section 5. Disclosures -- notice on loan document. (1) At the time that a borrower applies for a refund anticipation loan, a facilitator shall disclose to the borrower on a document that is separate from the loan application:

- (a) the estimated fee for preparing and electronically filing an income tax return;
- (b) the refund anticipation loan fee schedule;
- (c) the annual percentage rate using the guidelines established by the official staff interpretations of federal regulation Z to the Truth in Lending Act, 12 CFR, part 226; and
- (d) the estimated total cost to the borrower for using a refund anticipation loan.

(2) On the front page of each refund anticipation loan document, the following statement must appear in at least 18-point type and in bold, capitalized letters:

"NOTICE

THIS IS A LOAN DOCUMENT. THIS IS AN AGREEMENT IN WHICH YOU ARE BORROWING AGAINST YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU ARE STILL OBLIGATED TO REPAY THE ENTIRE AMOUNT OF THE LOAN PLUS INTEREST. IF YOUR TAX REFUND IS DELAYED, YOU MAY STILL HAVE TO PAY ADDITIONAL COSTS. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING THIS LOAN. YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND DEPOSITED DIRECTLY INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING THIS LOAN."

NEW SECTION. Section 6. Prohibited activities. A facilitator of a refund anticipation loan may not engage in any of the following activities:

- (1) misrepresenting a material factor or condition of a refund anticipation loan;
- (2) failing to arrange for a refund anticipation loan promptly after the borrower applies for the refund anticipation loan;
- (3) engaging in any transaction, practice, or course of business that operates a fraud upon any person in connection with a refund anticipation loan;
- (4) facilitating a refund anticipation loan for which the refund anticipation loan fee is different from the fee posted or the fee filed with the department; or
- (5) arranging for a creditor to take a security interest in any property of the borrower other than the

proceeds of the borrower's tax refund to secure payment of the refund anticipation loan.

NEW SECTION. Section 7. Penalties. A facilitator who violates a provision of [sections 1 through 7]:

(1) may be fined by the department in an amount not to exceed \$500 for each violation; and

(2) is liable to any aggrieved borrower in an amount equal to three times the amount of the refund anticipation loan fee, plus reasonable attorney fees, in a civil action brought by the borrower or by the attorney general on behalf of the borrower.

NEW SECTION. Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to [sections 1 through 7].

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