

# MAINE STATE LEGISLATURE

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R. G. S.

Date: 5/13/19

INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 944, L.D. 1343, Bill, "An Act To Promote Consumer Fairness in Tax Refund Anticipation Loans"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 9-A MRSA §8-106, sub-§6, as enacted by PL 1991, c. 330, §2, is amended to read:

6. In the case of a tax refund loan, if it is the practice of the creditor to demand repayment upon delivery of the refund, the annual percentage rate is based on the creditor's reasonable estimate of the time the refund will be delivered.

Sec. 2. 9-A MRSA §10-102, sub-§1, ¶A, as amended by PL 2005, c. 274, §4, is further amended to read:

A. "Loan broker" means any person who, with respect to the extension of consumer credit by others, provides or offers to provide, in return for the separate payment of money or other valuable consideration, any of the following services:

- (1) Improving a consumer's credit record, history or rating;
(2) Arranging for or obtaining an extension of credit for a consumer; or
(3) Providing advice or assistance to a consumer with respect to subparagraph (1) or (2).

"Loan broker" also means any person who serves as a facilitator of a refund anticipation loan or refund anticipation check, whether or not in return for the separate payment of money or other valuable consideration.

Sec. 3. 9-A MRSA §10-102, sub-§2-A is enacted to read:

2-A. "Facilitator of a refund anticipation loan or refund anticipation check" means a person who individually or in conjunction or cooperation with another person:

COMMITTEE AMENDMENT

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- 1        A. Solicits the execution of, processes, receives or accepts application or agreement
- 2        for a refund anticipation loan or refund anticipation check;
- 3        B. Services or collects upon a refund anticipation loan or refund anticipation check;
- 4        or
- 5        C. Facilitates the making of a refund anticipation loan or refund anticipation check in
- 6        any other manner.

7        If there is no 3rd-party facilitator of a refund anticipation loan or refund anticipation  
 8        check because a creditor directly solicits the execution of, receives or accepts application  
 9        or agreement for a refund anticipation loan or refund anticipation check, that creditor is  
 10       considered a facilitator of a refund anticipation loan or refund anticipation check for  
 11       purposes of this subsection. For purposes of this subsection, "creditor" means any person  
 12       who makes a refund anticipation loan or who takes assignment of a refund anticipation  
 13       loan.

14       **Sec. 4. 9-A MRS §10-102, sub-§4** is enacted to read:

15       4. "Refund anticipation check" means a check, stored value card or other payment  
 16       mechanism representing the proceeds of the consumer's tax refund that was issued by a  
 17       depository institution or other person that received a direct deposit of the consumer's tax  
 18       refund or tax credit and for which the consumer has paid a fee or other consideration.

19       **Sec. 5. 9-A MRS §10-102, sub-§5** is enacted to read:

20       5. "Refund anticipation loan" means a loan that is secured by or that the creditor  
 21       arranges to be repaid directly or indirectly from the proceeds of the consumer's income  
 22       tax refund or tax credits. A refund anticipation loan also includes any sale, assignment or  
 23       purchase of a consumer's tax refund at a discount or for a fee, whether or not the  
 24       consumer is required to repay the buyer or assignee if the federal Internal Revenue  
 25       Service reduces the consumer's tax refund.

26       **Sec. 6. 9-A MRS §10-102, sub-§6** is enacted to read:

27       6. "Refund anticipation loan fee" means the charge, fee or other consideration  
 28       charged or imposed directly or indirectly by the creditor for the making of or in  
 29       connection with a refund anticipation loan. "Refund anticipation loan fee" includes any  
 30       charge, fee or other consideration for a deposit account if the deposit account is used for  
 31       the receipt of the consumer's tax refund to repay the amount owed on the loan.

32       **Sec. 7. 9-A MRS §10-102, sub-§7** is enacted to read:

33       7. "Refund anticipation loan interest rate" or "interest rate" means the interest rate  
 34       that must be disclosed pursuant to section 8-106, subsection 6.

35       **Sec. 8. 9-A MRS §10-202**, as amended by PL 2005, c. 274, §6, is further  
 36       amended to read:

37       **§10-202. Bond**

38       Each application must be accompanied by evidence of a surety bond, in a form  
 39       approved by the administrator in the aggregate amount of \$25,000, to run to the State for  
 40       use by the State and any person or persons who may have a cause of action against a loan

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broker. Notwithstanding this section, the aggregate amount of a surety bond accompanying the application of a loan broker conducting business solely as a facilitator of a refund anticipation loan or refund anticipation check must be \$10,000. The terms of the bond must run concurrent with the period of time during which the license is in effect.

**Sec. 9. 9-A MRSA §10-310** is enacted to read:

**§10-310. Requirements related to refund anticipation loan and refund anticipation check**

1. A facilitator of a refund anticipation loan or refund anticipation check shall make the following disclosures in accordance with this section.

A. A facilitator of a refund anticipation loan or refund anticipation check shall prominently display a schedule showing the current fees for a refund anticipation loan or refund anticipation check at its place of business. Each fee schedule must include at least 5 examples of refund anticipation loans in different amounts ranging from \$300 to \$5,000.

B. A facilitator of a refund anticipation loan or refund anticipation check shall post the following notice to consumers: "When you take out a refund anticipation 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 refund is delayed, you may have to pay additional costs. You can get your refund in 8 to 15 days without paying any extra fees and taking out a refund anticipation loan. You can have your tax return filed electronically and your refund deposited directly into your own bank account without obtaining a refund anticipation loan or paying fees for an extra product."

C. At the time a person applies for a refund anticipation loan or refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall disclose, on a form separate from the application, the refund anticipation loan fee or refund anticipation check fee; the fee for tax preparation or any other fee; the time within which the proceeds of the refund anticipation loan or refund anticipation check will be paid if the loan or check is approved; and the interest rate, calculated pursuant to section 8-106, subsection 6, if the person is applying for a refund anticipation loan.

D. Prior to the consummation of the refund anticipation loan or refund anticipation check transaction, the facilitator of a refund anticipation loan or refund anticipation check shall also provide a copy of the completed loan or check application and agreement and, for a refund anticipation loan, the disclosures required by Article 8.

E. If a person applies for a refund anticipation loan, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant that the product is a loan that lasts only one to 2 weeks, that the applicant is liable for the full amount of the loan if the anticipated tax refund is less than expected, the amount of any loan fees and the interest rate for the loan. If a person applies for a refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant of any check fee and that the applicant can receive a refund without a loan or extra fees if the refund is filed electronically and the applicant chooses direct deposit to the applicant's own bank account.

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1 2. A facilitator of a refund anticipation loan or refund anticipation check is  
2 prohibited from engaging in any of the following activities.

3 A. A facilitator of a refund anticipation loan or refund anticipation check may not  
4 assess or impose any fee, charge or other consideration in the making of a refund  
5 anticipation loan or refund anticipation check unless that fee, charge or other  
6 consideration is included in the disclosed refund anticipation loan fee and the refund  
7 anticipation loan interest rate charged by the creditor or bank that provides the loan or  
8 check. In addition, any such fee, charge or other consideration, from whatever  
9 source, must be disclosed on the written agreement required by section 10-302. A  
10 facilitator of a refund anticipation loan or refund anticipation check may charge a fee  
11 for tax preparation if the same fee in the same amount is charged to customers who  
12 do not receive a refund anticipation loan, refund anticipation check or any other tax-  
13 related financial product.

14 B. A facilitator of a refund anticipation loan or refund anticipation check may not  
15 engage in unfair or deceptive acts or practices in the facilitating of a refund  
16 anticipation loan or refund anticipation check, including making any oral statements  
17 contradicting any of the information required to be disclosed under this Article.

18 C. A facilitator of a refund anticipation loan or refund anticipation check may not  
19 threaten to take any action prohibited by this Article in facilitating a refund  
20 anticipation loan or refund anticipation check.

21 D. A facilitator of a refund anticipation loan or refund anticipation check may not  
22 directly or indirectly arrange for any 3rd party to charge any interest, fee or charge  
23 related to a refund anticipation loan or refund anticipation check, including but not  
24 limited to charges for insurance, check cashing or attorney's fees or other collection  
25 costs.

26 E. A facilitator of a refund anticipation loan or refund anticipation check may not  
27 include any of the following provisions in a refund anticipation loan application or  
28 agreement:

- 29 (1) A hold-harmless clause;  
30 (2) A confession-of-judgment clause;  
31 (3) A waiver of the right to a jury trial in any action;  
32 (4) Any assignment of or order for payment of wages or other compensation for  
33 services;  
34 (5) An agreement that the consumer will not assert any claim or defense arising  
35 out of the contract or seek any remedies pursuant to this Title;  
36 (6) A waiver of any requirement of this Article;  
37 (7) A waiver of the right to injunctive, declaratory or other equitable relief or  
38 relief on a classwide basis; or  
39 (8) A requirement that any aspect of a resolution of a dispute between the parties  
40 to the agreement be kept confidential.

1 F. A facilitator of a refund anticipation loan or refund anticipation check may not  
2 take or arrange for a creditor to take a security interest in any property of the  
3 consumer other than the proceeds of the consumer's tax refund to secure payment of a  
4 refund anticipation loan.

5 G. A facilitator of a refund anticipation loan or refund anticipation check may not  
6 directly or indirectly engage in the collection of an outstanding or delinquent refund  
7 anticipation loan for any creditor or assignee.

8 H. A facilitator of a refund anticipation loan or refund anticipation check may not  
9 refer, facilitate or solicit consumers on behalf of a 3rd party engaged in check cashing  
10 for a fee or permit 3rd-party check cashing for a fee in any place of business in which  
11 refund anticipation loans or refund anticipation checks are facilitated.

12 I. A facilitator of a refund anticipation loan or refund anticipation check may not  
13 facilitate any refund anticipation loan that is secured by or that the creditor arranges  
14 to be repaid directly from the proceeds of the consumer's state tax refund.

15 J. A facilitator of a refund anticipation loan or refund anticipation check may not  
16 make a misrepresentation of fact in obtaining or attempting to obtain a registration as  
17 a facilitator.

18 K. A facilitator of a refund anticipation loan or refund anticipation check may not  
19 advertise or market a refund anticipation loan without including in the advertising or  
20 marketing materials a disclosure that the product is a loan and that tax refunds can be  
21 obtained without a loan or extra fees if tax returns are electronically filed with direct  
22 deposit.

23 L. A facilitator of a refund anticipation loan or refund anticipation check may not  
24 advertise or market a refund anticipation check without including in the advertising  
25 or marketing materials a disclosure that there is a fee associated with the check and  
26 that tax refunds can be obtained without a loan or extra fees if tax returns are  
27 electronically filed with direct deposit.'

## 28 SUMMARY

29 This amendment replaces the bill. The amendment regulates businesses that facilitate  
30 refund anticipation loans or refund anticipation checks associated with tax refunds or tax  
31 credits. The amendment requires those acting as facilitators of refund anticipation loans  
32 or refund anticipation checks to register as loan brokers with the Department of  
33 Professional and Financial Regulation, Bureau of Consumer Credit Protection and post  
34 bonds for the protection of consumers. The bill requires disclosures to consumers who  
35 enter into these transactions and prohibits certain practices by facilitators of refund  
36 anticipation loans or refund anticipation checks.

FISCAL NOTE REQUIRED  
(See attached)



# 124th MAINE LEGISLATURE

LD 1343

LR 1767(02)

## An Act To Promote Consumer Fairness in Tax Refund Anticipation Loans

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Insurance and Financial Services**

**Fiscal Note Required: Yes**

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### Fiscal Note

Minor cost increase - Other Special Revenue Funds  
Minor revenue increase - Other Special Revenue Funds

#### Fiscal Detail and Notes

Additional costs and fee collections are expected to be minor and can be absorbed by the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation within existing budgeted resources.