

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1343

H.P. 944

House of Representatives, March 31, 2009

An Act To Promote Consumer Fairness in Tax Refund Anticipation Loans

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PRATT of Eddington.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 9-A MRSA art. 13 is enacted to read:

3 ARTICLE 13

4 TAX REFUND ANTICIPATION LOANS

5 §13-101. Short title

6 This article may be known and cited as "the Maine Consumer Credit Code Tax
7 Refund Anticipation Loans."

8 §13-102. Definitions

9 As used in this article, unless the context otherwise indicates, the following terms
10 have the following meanings.

11 1. "Creditor" means any person who makes a refund anticipation loan or who takes
12 assignment of a refund anticipation loan.

13 2. "Facilitator" means a person who individually or in conjunction or cooperation
14 with another person:

15 A. Solicits the execution of, processes, receives or accepts application or agreement
16 for a refund anticipation loan or refund anticipation check;

17 B. Services or collects upon a refund anticipation loan or refund anticipation check;
18 or

19 C. Facilitates the making of a refund anticipation loan or refund anticipation check in
20 any other manner.

21 If there is no 3rd-party facilitator because a creditor directly solicits the execution of,
22 receives or accepts application or agreement for a refund anticipation loan or refund
23 anticipation check, that creditor is considered a facilitator for purposes of this subsection.

24 3. "Refund anticipation check" means a check, stored value card or other payment
25 mechanism representing the proceeds of the consumer's tax refund that was issued by a
26 depository institution or other person that received a direct deposit of the consumer's tax
27 refund or tax credits and for which the consumer has paid a fee or other consideration.

28 4. "Refund anticipation loan" means a loan that is secured by or that the creditor
29 arranges to be repaid directly or indirectly from the proceeds of the consumer's income
30 tax refund or tax credits. A refund anticipation loan also includes any sale, assignment or
31 purchase of a consumer's tax refund at a discount or for a fee, whether or not the
32 consumer is required to repay the buyer or assignee if the federal Internal Revenue
33 Service reduces the consumer's tax refund.

34 5. "Refund anticipation loan fee" means the charges, fees or other consideration
35 charged or imposed directly or indirectly by the creditor for the making of or in

1 connection with a refund anticipation loan. "Refund anticipation loan fee" includes any
2 charge, fee or other consideration for a deposit account if the deposit account is used for
3 the receipt of the consumer's tax refund to repay the amount owed on the loan.

4 6. "Refund anticipation loan interest rate" means the interest rate for a refund
5 anticipation loan calculated by taking the total amount of refund anticipation loan fees
6 divided by the loan amount minus any loan fees, then divided by the number of days in
7 the loan term multiplied by 365 and expressed as a percentage. The total amount of the
8 refund anticipation loan fee used in this calculation must include any refund anticipation
9 loan fees. If a deposit account is established or maintained in whole or in part for the
10 purpose of receiving the consumer's tax refund to repay the amount owed on a refund
11 anticipation loan, the maturity of the loan for the purposes of determining the refund
12 anticipation loan interest must be assumed to be the estimated date when the tax refund
13 will be deposited in the deposit account and any fee charged to the consumer for such
14 deposit account must be considered a loan fee and included in the calculation of the
15 refund anticipation loan interest rate. If no deposit account is established or maintained
16 for repayment of the loan, the maturity date of the loan is assumed to be the estimated
17 date when the tax refund is received by the creditor.

18 **§13-103. Registration and bonding**

19 1. A person may not solicit the execution of, process, receive or accept an
20 application or agreement for a refund anticipation loan or refund anticipation check
21 without registering as a facilitator with the administrator and meeting the requirements of
22 this article. Registration must be filed in the manner prescribed by the administrator and
23 must contain the information the administrator requires to make an evaluation of the
24 character, fitness and financial responsibility of the applicant. The initial application must
25 be accompanied by a \$500 fee. A renewal registration must include a \$200 fee. A
26 registration must be renewed every 2 years and expires on September 30th.

27 2. A facilitator shall post a bond with the administrator in the amount of \$50,000 to
28 pay damages and penalties associated with violations of this article. The bond must
29 remain in effect for 5 years after the facilitator ceases operation in the State.

30 3. This article does not apply to:

31 A. A supervised lender or supervised financial organization;

32 B. An attorney licensed in this State; and

33 C. A person employed by or serving as a volunteer with a nonprofit organization that
34 provides free tax preparation services to taxpayers.

35 **§13-104. Required disclosures**

36 A facilitator shall make the following disclosures in accordance with this section.

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

1 2. A facilitator shall post the following notice to consumers: "When you take out a
2 refund anticipation loan, you are borrowing money against your tax refund. If your tax
3 refund is less than expected, you will still owe the entire amount of the loan. If your
4 refund is delayed, you may have to pay additional costs. You can get your refund in 8 to
5 15 days without paying any extra fees and taking out a refund anticipation loan. You can
6 have your tax return filed electronically and your refund deposited directly into your own
7 bank account without obtaining a refund anticipation loan or paying fees for an extra
8 product."

9 3. At the time a person applies for a refund anticipation loan or refund anticipation
10 check, the facilitator shall disclose on a form separate from the application the refund
11 anticipation loan fee or refund anticipation check fee, the fee for tax preparation or any
12 other fee; the time within which the proceeds of the refund anticipation loan or refund
13 anticipation check will be paid if the loan or check is approved; and the interest rate if the
14 person is applying for a refund anticipation loan.

15 4. Prior to the consummation of the refund anticipation loan or refund anticipation
16 check transaction, the facilitator shall also provide a copy of the completed loan or check
17 application and agreement and, for refund anticipation loans, the disclosures required by
18 the Federal Truth in Lending Act.

19 5. If a person applies for a refund anticipation loan, the facilitator shall orally inform
20 the applicant that the product is a loan that lasts only one to 2 weeks, that the applicant is
21 liable for the full amount of the loan if the anticipated tax refund is less than expected, the
22 amount of any loan fees and the interest rate for the loan. If a person applies for a refund
23 anticipation check, the facilitator shall orally inform the applicant of any check fee and
24 that the applicant can receive a refund in the same amount of time if the refund is filed
25 electronically and the applicant chooses direct deposit to the applicant's own bank
26 account.

27 **§13-105. Prohibited activities**

28 1. A facilitator may not charge or impose any fee, charge or other consideration in
29 the making of a refund anticipation loan or refund anticipation check apart from the
30 refund anticipation fee charged by the creditor or bank that provides the loan or check. A
31 facilitator may charge a fee for tax preparation if the same fee in the same amount is
32 charged to customers who do not receive refund anticipation loans, refund anticipation
33 checks or any other tax-related financial product.

34 2. A facilitator may not engage in unfair or deceptive acts or practices in the
35 facilitating of a refund anticipation loan or refund anticipation check, including making
36 any oral statements contradicting any of the information required to be disclosed under
37 this article.

38 3. A facilitator may not threaten to take any action prohibited by this article in
39 facilitating a refund anticipation loan or refund anticipation check.

40 4. A facilitator may not directly or indirectly arrange for any 3rd party to charge any
41 interest, fee or charge related to a refund anticipation loan or refund anticipation check,

1 including but not limited to charges for insurance, check cashing or attorney's fees or
2 other collection costs.

3 5. A facilitator may not include any of the following provisions in a refund
4 anticipation loan application or agreement:

5 A. A hold-harmless clause;

6 B. A confession-of-judgment clause;

7 C. A waiver of the right to a jury trial in any action;

8 D. Any assignment of or order for payment of wages or other compensation for
9 services;

10 E. An agreement that the consumer will not assert any claim or defense arising out of
11 the contract or to seek any remedies pursuant to this Title;

12 F. A waiver of any provision of this article;

13 G. A waiver of the right to injunctive, declaratory, other equitable relief or relief on a
14 classwide basis; or

15 H. A requirement that any aspect of a resolution of a dispute between the parties to
16 the agreement be kept confidential.

17 6. A facilitator may not take or arrange for a creditor to take a security interest in any
18 property of the consumer other than the proceeds of the consumer's tax refund to secure
19 payment of a refund anticipation loan.

20 7. A facilitator may not directly or indirectly engage in the collection of an
21 outstanding or delinquent refund anticipation loan for any creditor or assignee.

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

26 9. A facilitator may not facilitate any refund anticipation loan that is secured by or
27 that the creditor arranges to be repaid directly from the proceeds of the consumer's state
28 tax refund.

29 10. A facilitator may not make a misrepresentation of fact in obtaining or attempting
30 to obtain a registration as a facilitator.

31 **§13-106. Interest rate cap for nonbank refund anticipation loans**

32 A person may not facilitate or make a refund anticipation loan for which the refund
33 anticipation loan interest rate is greater than 36% per annum. The refund anticipation loan
34 interest rate must be calculated as set forth in section 13-102, subsection 7.

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§13-107. Advertising and marketing

1. A person may not advertise or market a refund anticipation loan without including in the advertising or marketing materials a disclosure that the product is a loan and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit.

2. A person may not advertise or market a refund anticipation check without including in the advertising or marketing materials a disclosure that there is a fee associated with the check and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit.

§13-108. Administration and enforcement

1. The powers and functions of the administrator are as set forth in article 6, except that references to consumer credit transactions in article 6 are considered to be references to refund anticipation loans.

2. The administrator shall maintain a list of all registered companies and make that list available to consumers, attorneys and others on a publicly accessible website.

3. The administrator shall require a facilitator registered pursuant to section 13-103 to annually submit certain data, in a form and manner acceptable to the administrator, regarding the facilitator's refund anticipation loan activities.

4. Beginning March 1, 2010 and annually thereafter, the administrator shall report on the status of refund anticipation loan activities in the State. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

§13-109. Private right of action

1. A person may bring a private right of action against a facilitator for any violation of this article in accordance with this section.

2. A person may sue for injunctive or other equitable relief.

3. A person may be awarded actual and consequential damages and reasonable attorney's fees and costs. A person may also be awarded statutory damages of \$2,500 or 3 times the amount of the refund anticipation loan fee or the refund anticipation check fee or other unauthorized charges.

SUMMARY

This bill regulates businesses that provide refund anticipation loans or refund anticipation checks associated with tax refunds or tax credits. The bill requires those acting as facilitators of refund anticipation loans to register with the Bureau of Consumer Credit Protection and post bonds for the protection of consumers. The bill requires disclosures to consumers who enter into these transactions and prohibits certain practices by facilitators of refund anticipation loans.