

SUBSTITUTE FOR
HOUSE BILL NO. 4645

A bill to amend 1939 PA 21, entitled
"Regulatory loan act,"
by amending the title and section 1 (MCL 493.1), the title as
amended by 2001 PA 270 and section 1 as amended by 2002 PA 393, and
by adding section 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to define and regulate the business of making
regulatory loans; to permit the licensing of persons engaged in
that business; to provide for the administration of **THE LICENSING
PROVISIONS OF** this act and for the promulgation of rules; **TO
PROVIDE FOR THE POWERS AND DUTIES OF CERTAIN STATE GOVERNMENTAL
OFFICERS AND ENTITIES; TO REQUIRE DISCLOSURE OF CERTAIN INFORMATION
FOR REFUND ANTICIPATION LOANS; TO PRESCRIBE CERTAIN DUTIES AND**

1 **OBLIGATIONS OF THE PARTIES TO A REFUND ANTICIPATION LOAN;** and to
2 prescribe penalties.

3 Sec. 1. (1) This act shall be known and may be cited as the
4 "regulatory loan act".

5 (2) As used in this act:

6 (a) "Advertising" means publishing or broadcasting, or causing
7 to be published or broadcast, material that has been prepared for
8 public distribution by means of newspapers, magazines, or
9 electronic media. Advertising does not include a stockholder
10 communication, such as an annual report, interim financial report,
11 registration statement, security, prospectus, application for
12 listing a security on a stock exchange, or proxy materials.
13 Advertising does not include a communication addressed to a person
14 who has previously executed a loan agreement relative to that
15 person's account.

16 (B) **"ANNUAL PERCENTAGE RATE" MEANS THE RATE AS COMPUTED UNDER**
17 **THE FEDERAL TRUTH IN LENDING ACT, 15 USC 1601 TO 1667F.**

18 (C) ~~(b)~~—"Assets" means liquid assets, collectible loans made
19 in accordance with this act, and personal property acquired in the
20 general conduct of business transacted under this act.

21 (D) ~~(e)~~—"Commissioner" means the commissioner of the office of
22 financial and insurance ~~services~~ **REGULATION** in the department of
23 ~~consumer and industry services~~ **LABOR AND ECONOMIC GROWTH.**

24 (E) ~~(d)~~—"Control person" means a director or executive officer
25 of a licensee or a person who has the authority to participate in
26 the direction, directly or indirectly through 1 or more other
27 persons, of the management or policies of a licensee.

1 (F) ~~(e)~~—"Executive officer" means an officer, member, or
2 partner of a licensee, including chief executive officer,
3 president, vice president, chief financial officer, controller,
4 compliance officer, or any other similar position.

5 (G) "FACILITATOR" MEANS A PERSON THAT INDIVIDUALLY OR IN
6 CONJUNCTION OR COOPERATION WITH ANOTHER PERSON PROCESSES, RECEIVES,
7 OR ACCEPTS FOR DELIVERY AN APPLICATION FOR A REFUND ANTICIPATION
8 LOAN OR A CHECK IN PAYMENT OF REFUND ANTICIPATION LOAN PROCEEDS OR
9 IN ANY OTHER MANNER MATERIALLY FACILITATES THE MAKING OF A REFUND
10 ANTICIPATION LOAN. THE TERM DOES NOT INCLUDE ANY OF THE FOLLOWING:

11 (i) A PERSON DESCRIBED IN SECTION 20.

12 (ii) AN AFFILIATE THAT IS A SERVICER FOR A PERSON DESCRIBED IN
13 SECTION 20.

14 (iii) A PERSON CERTIFIED, REGISTERED, OR LICENSED TO ENGAGE IN
15 THE PRACTICE OF PUBLIC ACCOUNTING UNDER ARTICLE 7 OF THE
16 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.720 TO 339.736.

17 (H) ~~(f)~~—"Financial licensing act" means any act listed in
18 section 2 of the consumer financial services act, 1988 PA 161, MCL
19 487.2052.

20 (I) ~~(g)~~—"License" means a single license issued to a single
21 place of business.

22 (J) ~~(h)~~—"Licensee" means a person licensed or required to be
23 licensed under this act.

24 (K) ~~(i)~~—"Liquid assets" means cash, unrestricted deposits in
25 banks, and readily marketable securities at their then market
26 value.

27 (L) ~~(j)~~—"Loan" or "regulatory loan" means a loan made by a

1 licensee to an individual for personal, family, or household use.
2 THE TERM DOES NOT INCLUDE A REFUND ANTICIPATION LOAN.

3 (M) ~~(k)~~—"Person" means an individual, partnership,
4 association, corporation, limited liability company, or other legal
5 entity.

6 (N) "REFUND ANTICIPATION LOAN" MEANS AN EXTENSION OF CREDIT TO
7 A TAXPAYER THAT A PERSON ARRANGES TO BE REPAID DIRECTLY FROM THE
8 PROCEEDS OF THE TAXPAYER'S FEDERAL OR STATE PERSONAL INCOME TAX
9 REFUND.

10 (O) "REFUND ANTICIPATION LOAN FEE" MEANS THE CHARGES, FEES, OR
11 OTHER CONSIDERATION CHARGED OR IMPOSED BY A PERSON ACTING AS A
12 LENDER OR FACILITATOR FOR THE MAKING OF A REFUND ANTICIPATION LOAN.
13 THE TERM DOES NOT INCLUDE ANY CHARGE, FEE, OR OTHER CONSIDERATION
14 USUALLY CHARGED OR IMPOSED BY A FACILITATOR IN THE ORDINARY COURSE
15 OF BUSINESS FOR TAX RETURN PREPARATION, ELECTRONIC FILING OF TAX
16 RETURNS, OR OTHER NONLOAN SERVICES.

17 (P) "TAXPAYER" MEANS AN INDIVIDUAL WHO FILES A FEDERAL OR
18 MICHIGAN PERSONAL INCOME TAX RETURN.

19 SEC. 16. (1) BEFORE A TAXPAYER COMPLETES AN APPLICATION FOR A
20 REFUND ANTICIPATION LOAN, THE FACILITATOR SHALL CLEARLY DISCLOSE
21 ALL OF THE FOLLOWING IN WRITING, IN 14-POINT TYPE, TO THE TAXPAYER
22 ON A FORM SEPARATE FROM THE APPLICATION:

23 (A) A LISTING OR TABLE OF REFUND ANTICIPATION LOAN FEES AND
24 THE ANNUAL PERCENTAGE RATES CHARGED BY THE FACILITATOR OR LENDER
25 FOR 3 OR MORE REPRESENTATIVE REFUND ANTICIPATION LOAN AMOUNTS. FOR
26 EACH REFUND ANTICIPATION LOAN AMOUNT, THE SCHEDULE SHALL LIST
27 SEPARATELY THE AMOUNT OF EACH FEE AND THE AMOUNT OF INTEREST

1 CHARGED BY THE FACILITATOR OR LENDER AND THE TOTAL AMOUNT OF FEES
2 AND INTEREST CHARGED.

3 (B) THAT THE REFUND ANTICIPATION LOAN IS AN EXTENSION OF
4 CREDIT AND NOT THE TAXPAYER'S ACTUAL PERSONAL INCOME TAX REFUND.

5 (C) THAT ELECTRONIC FILING OF THE TAXPAYER'S TAX RETURN IS
6 AVAILABLE WITHOUT APPLYING FOR A REFUND ANTICIPATION LOAN.

7 (D) THE AVERAGE TIME ANNOUNCED BY THE APPROPRIATE TAXING
8 AUTHORITY WITHIN WHICH THE TAXPAYER CAN EXPECT TO RECEIVE A REFUND
9 IF THE TAXPAYER DOES NOT OBTAIN A REFUND ANTICIPATION LOAN AND THE
10 TAXPAYER'S RETURN IS FILED USING EITHER OF THE FOLLOWING METHODS:

11 (i) ELECTRONICALLY AND THE REFUND IS DIRECTLY DEPOSITED IN THE
12 TAXPAYER'S BANK ACCOUNT.

13 (ii) BY MAIL AND THE REFUND IS DIRECTLY DEPOSITED IN THE
14 TAXPAYER'S BANK ACCOUNT OR MAILED TO THE TAXPAYER.

15 (E) THAT THE INTERNAL REVENUE SERVICE WITH RESPECT TO A
16 FEDERAL PERSONAL INCOME TAX RETURN, OR THE DEPARTMENT OF TREASURY
17 WITH RESPECT TO A MICHIGAN PERSONAL INCOME TAX RETURN, DOES NOT
18 GUARANTEE EITHER OF THE FOLLOWING:

19 (i) THAT THE FULL AMOUNT OF THE ANTICIPATED REFUND WILL BE
20 PAID.

21 (ii) A SPECIFIC DATE ON WHICH THE TAXPAYER WILL RECEIVE THE
22 REFUND.

23 (F) THAT THE TAXPAYER IS RESPONSIBLE FOR REPAYMENT OF THE
24 REFUND ANTICIPATION LOAN AND RELATED FEES IN THE EVENT THE TAX
25 REFUND IS NOT PAID OR IS NOT PAID IN FULL.

26 (G) THE ESTIMATED TIME WITHIN WHICH THE PROCEEDS OF THE REFUND
27 ANTICIPATION LOAN WILL BE PAID TO THE TAXPAYER IF THE LOAN IS

1 APPROVED.

2 (H) THE FEES CHARGED BY THE FACILITATOR OR LENDER IF THE
3 REFUND ANTICIPATION LOAN IS NOT APPROVED.

4 (2) BEFORE ENTERING INTO A REFUND ANTICIPATION LOAN AGREEMENT,
5 THE FACILITATOR SHALL CLEARLY DISCLOSE BOTH OF THE FOLLOWING TO THE
6 TAXPAYER:

7 (A) THE ESTIMATED TOTAL FEES FOR THE REFUND ANTICIPATION LOAN.

8 (B) THE ESTIMATED ANNUAL PERCENTAGE RATE FOR THE REFUND
9 ANTICIPATION LOAN.

10 (3) A FACILITATOR THAT FACILITATES OR OFFERS TO FACILITATE A
11 REFUND ANTICIPATION LOAN SHALL NOT DO ANY OF THE FOLLOWING:

12 (A) REQUIRE A CONSUMER TO ENTER INTO A REFUND ANTICIPATION
13 LOAN ARRANGEMENT IN ORDER TO COMPLETE A TAX RETURN.

14 (B) MISREPRESENT A MATERIAL FACTOR OR CONDITION OF GRANTING A
15 REFUND ANTICIPATION LOAN.

16 (C) FAIL TO PROCESS THE APPLICATION FOR A REFUND ANTICIPATION
17 LOAN PROMPTLY AFTER AN APPLICANT APPLIES FOR THE REFUND
18 ANTICIPATION LOAN.

19 (D) ENGAGE IN ANY FRAUDULENT TRANSACTION, PRACTICE, OR COURSE
20 OF BUSINESS WITH ANY PERSON IN CONNECTION WITH A REFUND
21 ANTICIPATION LOAN.

22 (4) A BORROWER WHO OBTAINS A REFUND ANTICIPATION LOAN MAY
23 RESCIND THE REFUND ANTICIPATION LOAN, ON OR BEFORE THE CLOSE OF
24 BUSINESS ON THE BUSINESS DAY FOLLOWING THE DAY THE LOAN IS MADE, BY
25 RETURNING THE ORIGINAL CHECK ISSUED TO THE BORROWER FOR THE LOAN OR
26 PAYING THE AMOUNT OF THE REFUND ANTICIPATION LOAN BY MONEY ORDER OR
27 CERTIFIED CHECK TO THE LENDER OR THE FACILITATOR. A FACILITATOR

1 SHALL NOT CHARGE THE BORROWER A FEE FOR RESCINDING A REFUND
2 ANTICIPATION LOAN AND SHALL RETURN ANY FEE CHARGED FOR MAKING A
3 REFUND ANTICIPATION LOAN IF THE REFUND ANTICIPATION LOAN IS
4 RESCINDED UNDER THIS SUBSECTION. HOWEVER, A FACILITATOR OR LENDER
5 IS NOT REQUIRED TO RETURN TO A CUSTOMER WHO RESCINDS A REFUND
6 ANTICIPATION LOAN UNDER THIS SUBSECTION A FEE CHARGED TO THE
7 CUSTOMER BY THE FACILITATOR OR LENDER FOR ESTABLISHING AND
8 ADMINISTERING A BANK ACCOUNT TO ELECTRONICALLY RECEIVE AND
9 DISTRIBUTE THE CUSTOMER'S TAX REFUNDS.

10 (5) A PERSON IS NOT REQUIRED TO OBTAIN A LICENSE UNDER THIS
11 ACT TO ACT AS A FACILITATOR OF REFUND ANTICIPATION LOANS. SECTIONS
12 2 TO 15A AND SECTIONS 17 TO 24 DO NOT APPLY TO FACILITATORS OR
13 REFUND ANTICIPATION LOANS.

14 (6) A PERSON, INCLUDING, BUT NOT LIMITED TO, A FACILITATOR OR
15 A MEMBER, OFFICER, DIRECTOR, AGENT, OR EMPLOYEE OF A FACILITATOR,
16 THAT VIOLATES OR PARTICIPATES IN A VIOLATION OF THIS SECTION IS
17 GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN
18 \$500.00, OR IMPRISONMENT FOR NOT MORE THAN 6 MONTHS, OR BOTH.

19 (7) A POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ADOPT ANY
20 RULE, REGULATION, CODE, OR ORDINANCE TO RESTRICT OR LIMIT ANY
21 REQUIREMENTS UNDER THIS SECTION RELATING TO REFUND ANTICIPATION
22 LOANS. THIS SECTION SUPERSEDES AND PREEMPTS ANY RULE, REGULATION,
23 CODE, OR ORDINANCE OF ANY POLITICAL SUBDIVISION OF THIS STATE
24 RELATING TO REFUND ANTICIPATION LOANS.

25 (8) AS USED IN THIS SECTION, "LENDER" MEANS A PERSON THAT
26 MAKES A REFUND ANTICIPATION LOAN.