

SENATE BILL No. 189

February 4, 2009, Introduced by Senator THOMAS and referred to the Committee on Banking and Financial Institutions.

A bill to require disclosure of certain information in connection with refund anticipation loans; to prescribe certain duties and obligations of the parties to a refund anticipation loan; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "refund anticipation loan act".

3 Sec. 3. As used in this act:

4 (a) "Annual percentage rate" means the rate as computed under
5 the federal truth in lending act, 15 USC 1601 to 1667f.

6 (b) "Facilitator" means a person that individually or in
7 conjunction or cooperation with another person processes, receives,
8 or accepts for delivery an application for a refund anticipation

1 loan or a check in payment of refund anticipation loan proceeds or
2 in any other manner materially facilitates the making of a refund
3 anticipation loan. The term does not include any of the following:

4 (i) A financial institution.

5 (ii) An affiliate that is a servicer for a financial
6 institution.

7 (iii) A person certified, registered, or licensed to engage in
8 the practice of public accounting under article 7 of the
9 occupational code, 1980 PA 299, MCL 339.720 to 339.736.

10 (c) "Financial institution" means a state or nationally
11 chartered bank or a state or federally chartered savings and loan
12 association, savings bank, or credit union.

13 (d) "Lender" means a person that makes a refund anticipation
14 loan.

15 (e) "Person" means an individual, partnership, association,
16 corporation, limited liability company, or other legal entity.

17 (f) "Refund anticipation loan" means an extension of credit to
18 a taxpayer that a person arranges to be repaid directly from the
19 proceeds of the taxpayer's federal or state personal income tax
20 refund.

21 (g) "Refund anticipation loan fee" means the charges, fees, or
22 other consideration charged or imposed by a person acting as a
23 lender or facilitator for the making of a refund anticipation loan.
24 The term does not include any charge, fee, or other consideration
25 usually charged or imposed by a facilitator in the ordinary course
26 of business for tax return preparation, electronic filing of tax
27 returns, or other nonloan services.

1 (h) "Taxpayer" means an individual who files a federal or
2 Michigan personal income tax return.

3 Sec. 5. Before a taxpayer completes an application for a
4 refund anticipation loan, the facilitator shall clearly disclose
5 all of the following in writing to the taxpayer on a form separate
6 from the application:

7 (a) A listing or table of refund anticipation loan fees and
8 the annual percentage rates charged by the facilitator or lender
9 for 3 or more representative refund anticipation loan amounts. For
10 each refund anticipation loan amount, the schedule shall list
11 separately the amount of each fee and the amount of interest
12 charged by the facilitator or lender and the total amount of fees
13 and interest charged.

14 (b) That the refund anticipation loan is an extension of
15 credit and not the taxpayer's actual personal income tax refund.

16 (c) That electronic filing of the taxpayer's tax return is
17 available without applying for a refund anticipation loan.

18 (d) The average time announced by the appropriate taxing
19 authority within which the taxpayer can expect to receive a refund
20 if the taxpayer does not obtain a refund anticipation loan and the
21 taxpayer's return is filed using either of the following methods:

22 (i) Electronically and the refund is directly deposited in the
23 taxpayer's bank account.

24 (ii) By mail and the refund is directly deposited in the
25 taxpayer's bank account or mailed to the taxpayer.

26 (e) That the internal revenue service with respect to a
27 federal personal income tax return, or the department of treasury

1 with respect to a Michigan personal income tax return, does not
2 guarantee either of the following:

3 (i) That the full amount of the anticipated refund will be
4 paid.

5 (ii) A specific date on which the taxpayer will receive the
6 refund.

7 (f) That the taxpayer is responsible for repayment of the
8 refund anticipation loan and related fees in the event the tax
9 refund is not paid or is not paid in full.

10 (g) The estimated time within which the proceeds of the refund
11 anticipation loan will be paid to the taxpayer if the loan is
12 approved.

13 (h) The fees charged by the facilitator or lender if the
14 refund anticipation loan is not approved.

15 Sec. 7. Before entering into a refund anticipation loan
16 agreement, the facilitator shall clearly disclose both of the
17 following to the taxpayer:

18 (a) The estimated total fees for the refund anticipation loan.

19 (b) The estimated annual percentage rate for the refund
20 anticipation loan.

21 Sec. 9. A facilitator that facilitates or offers to facilitate
22 a refund anticipation loan shall not do any of the following:

23 (a) Require a consumer to enter into a refund anticipation
24 loan arrangement in order to complete a tax return.

25 (b) Misrepresent a material factor or condition of granting a
26 refund anticipation loan.

27 (c) Fail to process the application for a refund anticipation

1 loan after an applicant applies for the refund anticipation loan.

2 (d) Engage in any fraudulent transaction, practice, or course
3 of business with any person in connection with a refund
4 anticipation loan.

5 Sec. 11. A borrower who obtains a refund anticipation loan may
6 rescind the refund anticipation loan, on or before the close of
7 business on the business day following the day the loan is made, by
8 returning the original check issued to the borrower for the loan or
9 paying the amount of the refund anticipation loan by money order or
10 certified check to the lender or the facilitator. A facilitator
11 shall not charge the borrower a fee for rescinding a refund
12 anticipation loan and shall return any fee charged for making a
13 refund anticipation loan if the refund anticipation loan is
14 rescinded under this subsection. However, a facilitator or lender
15 is not required to return to a customer who rescinds a refund
16 anticipation loan under this subsection a fee charged to the
17 customer by the facilitator or lender for establishing and
18 administering a bank account to electronically receive and
19 distribute the customer's tax refunds.

20 Sec. 13. A person, including, but not limited to, a
21 facilitator or a member, officer, director, agent, or employee of a
22 facilitator, that violates or participates in a violation of this
23 act is guilty of a misdemeanor punishable by a fine of not more
24 than \$500.00 or imprisonment for not more than 93 days, or both.

25 Sec. 15. A political subdivision of this state shall not adopt
26 any rule, regulation, code, or ordinance to restrict or limit any
27 requirements under this act relating to refund anticipation loans.

1 This act supersedes and preempts any rule, regulation, code, or
2 ordinance of any political subdivision of this state relating to
3 refund anticipation loans.