



General Assembly

January Session, 2005

**Raised Bill No. 6830**

LCO No. 4148

\*04148 \_\_\_\_\_ BA\_\*

Referred to Committee on Banks

Introduced by:  
(BA )

**AN ACT PROTECTING CONSUMERS FROM ABUSES IN THE MAKING AND COLLECTION OF INCOME TAX REFUND ANTICIPATION LOANS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-480 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 [(a)] As used in this section and sections 2 to 4, inclusive, of this act:

4 (1) "Borrower" means a person who receives the proceeds of a  
5 refund anticipation loan;

6 (2) "Facilitator" means a person who, individually, or in conjunction  
7 or cooperation with another person, makes a refund anticipation loan,  
8 processes, receives or accepts for delivery an application for a refund  
9 anticipation loan, issues a check in payment of refund anticipation loan  
10 proceeds, or in any other manner acts to allow the making of a refund  
11 anticipation loan. The term does not include a bank, savings and loan  
12 association, credit union or person issued a license under the  
13 provisions of sections 36a-555 to 36a-573, inclusive, operating under  
14 the laws of the United States or this state, or any person who acts

15 solely as an intermediary and does not deal with the public in the  
16 making of a refund anticipation loan;

17 (3) "Refund anticipation loan" means a loan arranged to be paid  
18 directly from the proceeds of a borrower's income tax refund; [and]

19 (4) "Refund anticipation loan fee" means any charges, fees or other  
20 consideration charged or imposed for the making of a refund  
21 anticipation loan. The term does not include any charges, fees or other  
22 consideration charged or imposed in the ordinary course of business  
23 by a facilitator for services that do not result in the making of a loan  
24 including, but not limited to, fees for tax return preparation services or  
25 for the electronic filing of income tax returns; and

26 (5) "Refund anticipation loan interest rate" means the interest rate  
27 for a refund anticipation loan calculated as follows: The total amount  
28 of refund anticipation loan fees divided by the loan amount, minus  
29 any loan fees, then divided by the number of days in the loan term,  
30 then multiplied by three hundred sixty-five and expressed as a  
31 percentage. The total amount of the refund anticipation loan fee used  
32 in this calculation shall include all refund anticipation loan fees. If a  
33 deposit account is established or maintained in whole or in part for the  
34 purpose of receiving the consumer's tax refund to repay the amount  
35 owed on a refund anticipation loan: (A) The maturity of the loan for  
36 the purpose of determining the refund anticipation loan interest rate  
37 shall be assumed to be the estimated date when the tax refund will be  
38 deposited in the deposit account; and (B) any fee charged to the  
39 borrower for such deposit account shall be considered a loan fee and  
40 shall be included in the calculation of the refund anticipation loan  
41 interest rate. If no deposit account is established or maintained for the  
42 repayment of the loan, the maturity of the loan shall be assumed to be  
43 the estimated date when the tax refund is received by the borrower.

44 [(b) At the time a borrower applies for a refund anticipation loan, a  
45 facilitator shall disclose to such borrower on a document that is  
46 separate from the loan application:

47 (1) The estimated fee for preparing and electronically filing an  
48 income tax return;

49 (2) The refund anticipation loan fee schedule;

50 (3) The annual percentage rate utilizing the guidelines established  
51 by the official staff interpretations of federal Regulation Z to the Truth  
52 in Lending Act, 12 CFR, Part 226;

53 (4) The estimated total cost to the borrower for utilizing a refund  
54 anticipation loan;

55 (5) The estimated number of days within which the loan proceeds  
56 shall be paid to the borrower if the loan is approved;

57 (6) The borrower is responsible for repayment of the loan and  
58 related fees in the event the income tax refund is not paid or not paid  
59 in full; and

60 (7) The availability of electronic filing of the income tax return of the  
61 borrower and the average time announced by the Internal Revenue  
62 Service within which the borrower can expect to receive a refund if the  
63 borrower's return is electronically filed and the borrower does not  
64 obtain a refund anticipation loan.

65 (c) Any facilitator who violates any provision of subsection (b) of  
66 this section shall be fined five hundred dollars for each such violation.  
67 Any facilitator who violates any provision of said subsection shall be  
68 liable to any aggrieved borrower in an amount equal to three times the  
69 amount of the refund anticipation loan fee, plus reasonable attorney's  
70 fees, in a civil action brought by the aggrieved borrower or by the  
71 Attorney General on behalf of the aggrieved borrower.]

72 Sec. 2. (NEW) (*Effective October 1, 2005*) At the time a borrower  
73 applies for a refund anticipation loan, a facilitator shall disclose to such  
74 borrower on a document that is separate from the loan application:

75 (1) The estimated fee for preparing and electronically filing an  
76 income tax return;

77 (2) The refund anticipation loan fee schedule;

78 (3) The annual percentage rate utilizing the guidelines established  
79 by the official staff interpretations of federal Regulation Z to the Truth  
80 in Lending Act, 12 CFR, Part 226;

81 (4) The estimated total cost to the borrower for utilizing a refund  
82 anticipation loan;

83 (5) The estimated number of days within which the loan proceeds  
84 shall be paid to the borrower if the loan is approved;

85 (6) The borrower's responsibility for repayment of the loan and  
86 related fees in the event the income tax refund is not paid or not paid  
87 in full; and

88 (7) The availability of electronic filing of the income tax return of the  
89 borrower and the average time announced by the Internal Revenue  
90 Service within which the borrower can expect to receive a refund if the  
91 borrower's return is electronically filed and the borrower does not  
92 obtain a refund anticipation loan.

93 Sec. 3. (NEW) (*Effective October 1, 2005*) Each facilitator shall:

94 (1) Either arrange such refund anticipation loan or inform the  
95 person applying for such loan that the application is rejected, promptly  
96 after such person applies for such loan;

97 (2) Provide to the person applying for such loan, prior to  
98 consummation of the loan transaction in a form that can be kept by  
99 such person (A) a copy of the completed loan application and  
100 agreement, (B) the disclosures required in section 2 of this act, and (C)  
101 the disclosures required by the federal Truth-In-Lending Act; and

102 (3) Provide to the person applying for such loan the disclosures

103 required in English and in any other language in which such loan was  
104 negotiated.

105 Sec. 4. (NEW) (*Effective October 1, 2005*) No facilitator shall:

106 (1) Engage in unfair or deceptive acts or practices in the making or  
107 facilitating of a refund anticipation loan, including misrepresenting a  
108 factor or condition of such loan or making any oral statements  
109 contradicting any of the information required to be disclosed under  
110 sections 2 and 3 of this act;

111 (2) Fail to comply with any provision of sections 2 to 4, inclusive, of  
112 this act;

113 (3) Threaten to take any action that is prohibited by sections 2 to 4,  
114 inclusive, of this act or by any other law, or that the person does not  
115 actually intend to take;

116 (4) Make a refund anticipation loan for which the refund  
117 anticipation loan interest rate is greater than thirty-six per cent per  
118 annum. The refund anticipation loan interest rate shall be calculated as  
119 set forth in subdivision (5) of section 42-480 of the general statutes, as  
120 amended by this act. Any refund anticipation loan for which the  
121 refund anticipation loan interest rate exceeds thirty-six per cent per  
122 annum shall be void ab initio;

123 (5) Directly or indirectly charge, or arrange for the charging of, any  
124 interest, fee or charge related to a refund anticipation loan, other than  
125 those specifically authorized by sections 2 to 4, inclusive, of this act  
126 including, but not limited to, charges for insurance, attorney's fees or  
127 other collection costs or check cashing;

128 (6) Include any of the following provisions in any document  
129 provided or signed in connection with a refund anticipation loan,  
130 including the loan application or agreement, which provisions shall be  
131 null and void: (A) A hold harmless clause; (B) a confession of  
132 judgment clause; (C) a waiver of the right to a jury trial, if applicable,

133 in any action brought by or against the borrower; (D) any assignment  
134 of or order for payment of wages or other compensation for services;  
135 (E) a provision in which the borrower agrees not to assert any claim or  
136 defense arising out of the contract, or to seek any remedies pursuant to  
137 section 5 of this act; (F) a waiver of any provision of sections 2 to 4,  
138 inclusive, of this act; (G) a waiver of the right to injunctive, declaratory  
139 or other equitable relief or relief on a class-wide basis; or (H) a  
140 provision requiring that any aspect of a resolution of a dispute  
141 between the parties to the agreement be kept confidential. Such  
142 provision shall not affect the right of the parties to agree that certain  
143 specified information is a trade secret or otherwise confidential or to  
144 later agree, after the dispute arises, to keep a resolution confidential;

145 (7) Take or arrange for a creditor to take a security interest in any  
146 property of the borrower other than the proceeds of the borrower's tax  
147 refund to secure payment of a refund anticipation loan;

148 (8) Directly or indirectly, individually or in conjunction or  
149 cooperation with another person, engage in the collection of an  
150 outstanding or delinquent refund anticipation loan for any creditor or  
151 assignee, including soliciting the execution of, processing, receiving or  
152 accepting an application or agreement for a refund anticipation loan  
153 that contains a provision permitting the creditor to repay, by offset or  
154 other means, an outstanding or delinquent refund anticipation loan for  
155 that creditor or any creditor from the proceeds of the borrower's tax  
156 refund;

157 (9) Facilitate, refer or solicit consumers on behalf of a third party  
158 engaged in check cashing for a fee or permit third party check cashing  
159 for a fee in any place of business; or

160 (10) Facilitate any loan that is secured by or that the creditor  
161 arranges to be repaid directly from the proceeds of the consumer's  
162 state income tax refund from the State Treasurer.

163 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) The Banking

164 Commissioner shall have the power to enforce the provisions of  
165 sections 2 to 4, inclusive, of this act.

166 (b) Any violation of the provisions of sections 2 to 4, inclusive, of  
167 this act shall be deemed to be an unfair trade practice within the  
168 provisions of chapter 735a of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	42-480
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section

**Statement of Purpose:**

To protect consumers from abuses in the making and collection of refund anticipation loans by adopting various provisions of the Model Refund Anticipation Loan Act.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*