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An Act To Promote Consumer Fairness in Tax Refund Anticipation Loans

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

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:

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

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

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

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

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

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

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

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

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

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

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

§ 10-202. Bond

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

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

A. A facilitator of a refund anticipation loan or refund anticipation check may not assess or impose any fee, charge or other consideration in the making of a refund anticipation loan or refund anticipation check unless that fee, charge or other consideration is included in the disclosed refund anticipation loan fee and the refund anticipation loan interest rate charged by the creditor or bank that provides the loan or check. In addition, any such fee, charge or other consideration, from whatever

source, must be disclosed on the written agreement required by section 10-302. A facilitator of a refund anticipation loan or refund anticipation check may charge a fee for tax preparation if the same fee in the same amount is charged to customers who do not receive a refund anticipation loan, refund anticipation check or any other tax-related financial product.

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

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

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

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

(1) A hold-harmless clause;

(2) A confession-of-judgment clause;

(3) A waiver of the right to a jury trial in any action;

(4) Any assignment of or order for payment of wages or other compensation for services;

(5) An agreement that the consumer will not assert any claim or defense arising out of the contract or seek any remedies pursuant to this Title;

(6) A waiver of any requirement of this Article;

(7) A waiver of the right to injunctive, declaratory or other equitable relief or relief on a classwide basis; or

(8) A requirement that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential.

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

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

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

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

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

K. A facilitator of a refund anticipation loan or refund anticipation check 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.

L. A facilitator of a refund anticipation loan or refund anticipation check 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.

Effective September 12, 2009