

Amendment No. 1 to SB1488

**Southerland
Signature of Sponsor**

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 1488*

House Bill No. 1226

by deleting all language after the enacting clause of the introduced bill and by substituting instead the following:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Applicant" means a customer who applies for a refund anticipation loan through a facilitator;

(2) "Borrower" means an applicant who receives a refund anticipation loan through a facilitator;

(3) "Customer" means an individual for whom tax preparation services are performed;

(4) "Facilitator" means a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. "Facilitator" does not include a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or this state, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with an applicant in the making of the refund anticipation loan;

(5) "Person" means an individual, a firm, a proprietorship, an association, a corporation, or another entity;

(6) "Refund anticipation loan" means a loan, whether provided through a facilitator or by another entity such as a financial institution, in anticipation of, and whose payment is secured by, a customer's federal or state income tax refund or by both;

(7) "Refund anticipation loan fee" means any fee, charge or other

consideration imposed by a lender or a facilitator for a refund anticipation loan. The term does not include any fee, charge or other consideration usually imposed by a facilitator in the ordinary course of business for nonloan services, such as fees for preparing tax returns and fees for the electronic filing of tax returns; and

(8) "Refund anticipation loan fee schedule" means a list or table of refund anticipation loan fees that includes three (3) or more representative refund anticipation loan amounts. The schedule shall separately list each fee or charge imposed, as well as a total of all fees imposed, related to the making of a refund anticipation loan. The schedule shall also include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal Truth in Lending Act (15 U.S.C. Sec. 1601 and following):

(i) "Tax return" means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes.

SECTION 2.

(a) Any facilitator who advertises the availability of a refund anticipation loan shall not directly or indirectly represent the loan as a customer's actual refund. Any advertisement that mentions a refund anticipation loan shall state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement shall also disclose the name of the lending institution.

(b) Every facilitator who offers to facilitate, or who facilitates a refund anticipation loan to a customer shall display a refund anticipation loan schedule showing the current fees for refund anticipation loans facilitated at the office, for the electronic filing of customer's tax return, for setting up a refund account, and any other related activities necessary to receive a refund anticipation loan. The fee schedule shall also include a statement indicating that a customer may have the tax return filed electronically without also obtaining a refund anticipation loan.

(c) The posting required by this subsection (b) shall be made in not less than twenty-

eight (28) point type on a document measuring not less than 16 by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where any facilitator is offering to facilitate or facilitating a refund anticipation loan.

(d)

(1) Prior to an applicant's completion of the refund anticipation loan application, a facilitator that offers to facilitate a refund anticipation loan shall provide to the applicant a clear disclosure containing all of the following information:

(A) The refund anticipation loan fee schedule;

(B) That a refund anticipation loan is a loan and is not the applicant's actual income tax refund;

(C) That a customer can file an income tax return electronically without applying for a refund anticipation loan;

(D) The average amount of time, according to the Internal Revenue Service, within which a customer who does not obtain a refund anticipation loan can expect to receive a refund if a customer's return is filed or mailed as follows:

(i) Filed electronically and the refund is deposited directly into a customer's bank account or mailed to the customer; and

(ii) Mailed to the Internal Revenue Service and the refund is deposited directly into a customer's bank account or mailed to a customer.

(E) That the Internal Revenue Service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into a customer's bank account or mailed to a customer;

(F) That the borrower is responsible for the repayment of the refund anticipation loan and the related fees in the event that the tax refund is not paid or paid in full;

(G) The estimated time within which the loan proceeds will be paid to the borrower if the loan is approved; and

(H) The fee that will be charged, if any, if the applicant's loan is not approved.

(2) Prior to an applicant's consummation of the refund anticipation loan transaction, a facilitator shall provide to the applicant, in either written or electronic form, the following information:

(A) The estimated total fees for obtaining the refund anticipation loan;

(B) The estimated annual percentage rate for the applicant's refund anticipation loan, using the guidelines established under the federal Truth in Lending Act (15 U.S.C. Sec. 1601 and following); and

(C) The various costs, fees, and finance charges, if applicable, associated with receiving a refund by mail or by direct deposit directly from the Internal Revenue Service, a refund anticipation loan, a refund anticipation check, or any other refund settlement options facilitated by the facilitator.

(e) Any facilitator who offers to facilitate, or who facilitates, a refund anticipation loan may not engage in any of the following activities:

(1) Requiring a customer to enter into a loan arrangement in order to complete a tax return;

(2) Misrepresenting a material factor or condition of a refund anticipation loan;

(3) Failing to process the application for a refund anticipation loan promptly after an applicant applies for the loan; or

(4) Engaging in any transaction, practice, or course of business that operates a fraud upon any person in connection with a refund anticipation loan.

(f) When an application involves more than one (1) customer, notification pursuant to this section need only be given to one (1) customer.

SECTION 3.

(a) A borrower who obtains a refund anticipation loan may rescind the loan, on or before the close of business on the next day of business, by either returning the original check issued for the loan or providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded. For the purpose of establishing or maintaining an account to electronically receive and distribute the refund, a customer may be charged a fee by a federally insured depository institution.

SECTION 4.

(a) This chapter shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations relating to refund anticipation loans.

SECTION 5. Any person who knowingly and willfully violates any provision of this chapter is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) for each violation.

SECTION 6. This act shall take effect January 1, 2008, the public welfare requiring it.