

# Taxpayer Protection and Assistance Act

## A BILL

To amend the \_\_\_\_\_ Code to provide taxpayer protection and assistance, and for other purposes.

### SECTION 1: SHORT TITLE

- (a) Short Title-This Act may be cited as the “Taxpayer Protection and Assistance Act of 20\_\_.”
- (b) Amendment \_\_\_\_\_ Code- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the \_\_\_\_\_.

### SECTION 2: DEFINITIONS FOR THE PURPOSES OF THIS ARTICLE:

- (a) The term “applicant” shall mean a person who applies for registration as a facilitator of refund anticipation loans or refund anticipation checks.
- (b) The term “Board” means the Tax Preparer Oversight Board.
- (c) The term “client” shall mean an individual or entity for which a tax preparer performs or agrees to perform tax return preparation. The term “consumer” shall mean any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.
- (d) The term “enrolled agent” shall refer to an individual enrolled to practice before the Internal Revenue Service as described in Title 31 of the Federal regulations, Subtitle A, Part 10.
- (e) The term “facilitator” shall mean a person who individually or in conjunction or cooperation with another person: (i) solicits the execution of, process, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, (ii) services or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner facilitates the making of a refund anticipation loan or refund anticipation check. If there is no third party facilitator because a creditor directly solicits the execution of, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, that creditor shall be considered a facilitator.
- (f) The term “market” or “advertise” shall mean to produce, distribute, broadcast, or otherwise display or have displayed written materials, oral statements, or visual materials describing products and services.
- (g) The term “person” shall mean an individual, a firm, a partnership, an association, a corporation, or another entity.
- (h) The term “refund anticipation check” (RAC) shall mean a check, stored value card, or other payment mechanism: (i) representing the proceeds of the consumer’s tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the consumer’s tax refund or tax credits; and (iii) for which the consumer has paid a fee or other consideration for such payment mechanism.
- (i) The term “refund anticipation loan” (RAL) shall mean 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 Internal Revenue Service denies or reduces the consumer's tax refund.

- (j) The term "refund anticipation loan fee" shall mean the charges, fees, or other consideration charged or imposed directly or indirectly by the creditor for the making of or in connection with a refund anticipation loan. This term includes any charge, fee, or other consideration for a deposit account, if the deposit account is used for receipt of the consumer's tax refund to repay the amount owed on the loan.
- (k) The term "refund anticipation loan interest rate" shall mean the interest rate for a refund anticipation loan calculated as follows: the total amount of refund anticipation loan fees divided by the loan amount (minus any loan fees), then divided by the number of days in the loan term, then multiplied by 365 and expressed as a percentage. The total amount of the refund anticipation loan fee used in this calculation shall include all refund anticipation loan fees as defined in subsection (n). If a deposit account is established or maintained in whole or in part for the purpose of receiving the consumer's tax refund to repay the amount owed on a refund anticipation loan (i) the maturity of the loan for the purpose of determining the refund anticipation loan interest rate shall be assumed to be the estimated date when the tax refund will be deposited in the deposit account; and (ii) any fee charged to the consumer for such deposit account shall be considered a loan fee and shall be included in the calculation of the refund anticipation loan interest rate. If no deposit account is established or maintained for the repayment of the loan, the maturity of the loan shall be assumed to be the estimated date when the tax refund is received by the creditor.
- (l) The term "registrant" shall mean a person who is registered as a facilitator of refund anticipation loans or refund anticipation checks under this Act.
- (m) The terms "tax refund preparer," "return preparer," or "tax return preparer" shall mean:
  - (1) A person who, for a fee or for other consideration, assists with or prepares five or more tax returns for a client or clients in any one year or who assumes final responsibility for completed work on such returns on which preliminary work has been done by other persons, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this article, irrespective of affiliation with, or employment by, another tax preparer; and
  - (2) A corporation, partnership, association, or other entity that has associated with it persons not exempted under subsection (b) of this section, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns, and who assist with or prepare five or more tax returns for a fee or other consideration in any one year, or that holds itself out as offering those services or having that authority.
  - (3) Notwithstanding the foregoing, the term "tax preparer" does not include:
    - (i) Any person with an active license or permit by the Accountancy Board and authorized to practice public accountancy in this state or the state Board of Public Accountancy in another state and his or her staff support personnel while functioning within the scope of their employment. Employees who sign tax returns that are not registered or licensed by an accountancy Board are not exempt from the registration requirement.
    - (ii) Any person currently admitted to practice law in this state or another state where the person renders service within the course and scope of his or her practice as an attorney at law and his or her staff support personnel while functioning within the

- scope of their employment. Employees signing tax returns that are not admitted to practice law in this state are not exempt from the registration requirement.
- (iii) Any financial institution regulated by the state or federal government, and employees thereof, insofar as the activities of the employees are related to their employment and the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.
  - (iv) Any other person, corporation, partnership, association or other entity subject to the provisions of the banking law and subject to examination, oversight or supervision by the banking administrative entity and the employees thereof while functioning within the scope of their employment.
  - (v) A person who, as part of the regular duties of his or her employment, prepares his or her employers income, franchise or excise tax returns.
  - (vi) An individual employed by a local, state, or federal governmental agency, but only in performance of official duties.
- (n) The term “tax return” shall mean a return, declaration, statement, refund, claim, or other document required to be made or filed in connection with state or federal income taxes or entity franchise taxes.

### **SECTION 3: REGULATION OF INCOME TAX RETURN PREPARERS**

#### **(a) Registration of tax preparers.**

- (1) Except as otherwise provided in this section or as otherwise permitted by law, no person shall, for a fee or for other consideration, assist with or prepare five or more tax returns for other persons or entities, assume final responsibility for completed work on a return on which preliminary work has been done by another person, in any one year, or hold himself or herself out as offering such services for a fee or other compensation, unless such person has applied for and received a registration from the administrative entity pursuant to this section; or employs one or more registered tax preparers who are solely responsible for providing such services.
- (2) To qualify for registration as a tax preparer, an applicant shall fulfill the following requirements:
  - (i) Application: have filed the appropriate application with the administrative entity;
  - (ii) Education: have satisfied the education requirements set forth in subdivision three of this section;
  - (iii) Age: be at least eighteen years of age;
  - (iv) Character: be of good moral character as determined by the administrative entity;
  - (v) Code of ethics: agree in writing to comply with the code of ethics adopted by the administrative entity; and
  - (vi) Fee: pay a fee to be determined by the Board for application and registration.
  - (vii) Examination: shall have passed any of the examinations offered by the Accreditation Council for Accountancy and Taxation, Inc., and be accredited as an Accredited Business Accountant/Advisor, Accredited Tax Advisor, or Accredited Tax Preparer.
- (3) An initial registration and each renewal of such registration shall be valid for a period of two years. An applicant for renewal of registration shall meet the requirements of subdivision two of this section; provided, however, that the continuing education requirements for renewal shall be equivalent to the continuing education requirements

established by the U. S. Treasury pursuant to the regulatory power established by Title 31 of the U. S. Code.

- (4) A corporation, partnership, association or other entity as defined in Section 2 shall submit an application for registration as provided in the regulations of the Board. Such regulations shall at a minimum require the application to contain such information as the Board deems necessary to identify the entity and its principals, and to be accompanied by the document subscribed by the principals agreeing to comply with the code of ethics, pursuant to subsection (a)(2)(v) of this section, and the fee established pursuant to subsection (a)(2)(vi) of this section.
- (5) An individual that is accredited by and current with the Accreditation Council for Accountancy and Taxation, Inc., as an Accredited Business Accountant (Advisor), or Accredited Tax Advisor, Or Accredited Tax Preparer shall only be exempt from the examination portion of registration.
- (6) An individual that is enrolled to practice before the Internal Revenue Service as an Enrolled Agent and current with enrollment requirements shall only be exempt from the examination portion of registration.

#### **SECTION 4: RESPONSIBILITIES OF TAX PREPARERS; VIOLATIONS; CIVIL AND CRIMINAL PENALTIES**

- (a) Every tax preparer shall have the affirmative responsibility to act in the best interests of his or her clients and in accordance with the code of ethics promulgated by the Board pursuant to this Act.
- (b) It shall be a violation of this article for a tax preparer to:
  - (1) Fail to register as a tax preparer with the Board;
  - (2) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading;
  - (3) Obtain the signature of a client on a tax return or authorizing document which contains blank spaces to be filled in after it has been signed;
  - (4) fail to sign a customer's tax return when payment for services rendered has been made;
  - (5) Knowingly give false or misleading information to the Board or the client;
  - (6) Violate any provision of this Act, or standards of professional conduct established by the U. S. Treasury Department pursuant to the regulatory power established by Title 31 of the U. S. Code.
- (c) An individual tax return preparer or the firm that employs the individual tax preparer shall maintain for five years all records of personal tax returns prepared by the individual tax preparer. All returns shall be made available to the consumer for a period of three years as required by the Internal Revenue Service.
- (d) The Board may seek temporary or permanent injunctions, revoke or suspend the registration, and assess cost, of any person who is determined to have failed to comply with any of the provisions of this Act or any regulation adopted pursuant to this Act, or to have knowingly aided and abetted another person in violating any of the provisions of this Act or any regulation adopted pursuant to this Act. In addition to such revocation or suspension, the Board may assess a civil penalty not to exceed five thousand dollars and cost for any such violation.

- (d) Any violation of any provision of this Act shall be a misdemeanor, and upon conviction the court may order as part of the sentence imposed restitution or reparation to the victim of the crime.

## **SECTION 5: REGULATIONS**

- (a) The Tax Preparer Oversight Board is authorized to promulgate regulations to implement the provisions of this Act. Such regulations shall include the adoption of a code of ethics for tax preparers, and such other matters as are required by this Act or are deemed necessary by the Board. Nothing in this Act shall be construed to impair or limit the validity of any additional local laws or regulations, not inconsistent with the provisions of this Act, applicable to tax preparers.
- (b) If any clause, sentence, paragraph, section or part of this Act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.
- (c) This Act shall take effect one year after the date of enactment; provided, however, that the Board shall be authorized, as of the date of enactment, to promulgate any rules and regulations and take any other actions necessary for implementation of this Act on such effective date.

## **SECTION 6: BOARD COMPOSITION**

The Tax Preparer Oversight Board shall consist of five (5) members, four (4) of whom shall be persons who have been tax preparers as defined in Section 2 of the Tax Preparer Oversight Act for not less than seven (7) years prior to appointment and one (1) public member who is not a tax preparer as defined in Section 2 of this Act. The five members shall be appointed by the Governor and approved by the Senate.

- (a) Terms
  - (1) For initial appointments:
    - (i) One member to serve a term of one year,
    - (ii) One member to serve a term of two years,
    - (iii) One member to serve a term of three years,
    - (iv) One member to serve a term of four years.
    - (v) The public member to serve a term coterminous with the Governor.
  - (2) Thereafter, except for the public member, each member shall be appointed to serve terms of four (4) years;
- (b) Each member shall serve until such time as the successor member has been appointed;
- (c) Any vacancy in the Board shall be filled by the Governor in the manner provided by regular appointments;
- (d) Members shall serve without compensation, but shall be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel reimbursement Act; and
- (e) Members may be removed by the Governor for just cause.
- (f) The Board shall establish rules of procedure which shall include, but not be limited to, the following guidelines:
  - (2) Election of a chair and such other officers as deemed necessary annually;
  - (3) A quorum of not less than three members shall be required to conduct business;

- (4) The Board shall meet not less than four (4) times annually; and
  - (5) Compliance with the Administrative Procedures Act, the \_\_\_\_\_ Open Meeting Act, and such other statutory provisions applicable to Boards, commissions, and committees.
- (g) Members of the Board may not be held personally liable for actions taken under this act while acting in good faith with reasonable grounds.

## **SECTION 7: BOARD DUTIES**

The Tax Preparer Oversight Board shall:

- (a) Develop and administer the examination for registration as a tax preparer including exemptions for holders of acceptable accreditation credentials;
- (b) Develop and administer forms for use in implementing the provisions of the Tax Preparer Oversight Act including, but not limited to, forms for initial registration and renewal registration;
- (c) Make reports and recommendations to the State Treasurer pursuant to the provisions of the tax Preparer Oversight Act;
- (d) Promulgate rules for adoption by the Board necessary for the implementation of the provisions of the Tax Preparer Oversight Act. Such rules shall include, but not be limited to:
  - (1) Preparing and administering tests required for registration,
  - (2) Adoption of rules of professional conduct for tax preparers consistent with incompetent and disreputable conduct as defined in Section 10.51 of Circular 230, “Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers” before the Internal Revenue Service Department of the Treasury Internal Revenue Service, Title 31, Code of Federal Regulations, Subtitle A, Part 10,
  - (3) Standards of service consistent with the Duties and Restrictions relating to Practice before the Internal revenue service as set out in Subpart B of Circular 230, “Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers” before the Internal Revenue Service Department of the Treasury Internal Revenue Service, Title 31, Code of Federal Regulations, Subtitle A, Part 10,
  - (4) Such other matters deemed necessary by the Board.
- (e) The Board shall remit ten percent (10%) of the annual preparer registration fees to the general fund of the state.
- (f) The Board may employ the necessary personnel for performance of its function and fix their compensation.
- (g) The Board, or a hearing officer designated by the Board, may administer oaths, hold hearings, and take testimony about matters within the jurisdiction of the Board.
- (h) The Board or its designee may issue a subpoena for the attendance of witnesses to testify or the production of evidence in connection with a disciplinary action brought under this act or a proceeding brought for an alleged violation of this act.
- (i) If an individual fails to comply with a subpoena issued under this section, on petition of the Board, a court of competent jurisdiction may compel compliance with the subpoena.
- (j) The Board shall adopt rules for the reinstatement of an individual who fails to renew a registration for any reason if the individual otherwise is entitled to be registered, complies with the continuing education requirements set by the Board, and pays to the Board all past

due renewal fees and a reinstatement fee.

- (k) The Board, on the affirmative vote of a majority of its member's then serving, may deny a registration to any applicant, reprimand any registered individual, or suspend or revoke a registration if the applicant or registered individual:
  - (1) Fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registration or for another.
  - (2) Fraudulently or deceptively uses a registration.
  - (3) Under the laws of the United States or any state, is convicted of a felony or a misdemeanor directly related to the fitness and qualification of the applicant or registered individual to provide individual tax preparation services,
  - (4) Is guilty of negligence, incompetence, or misconduct while providing individual tax preparation services.
  - (5) Violates any provision of this Act.
- (l) For purposes of the individual income tax imposed by (insert appropriate state Title and Code), if there is an understatement of liability on a return that would cause a tax return preparer to be subject to the penalties imposed by 26 U.S.C. §6694, except §6994©, §6700, or §6701, and if any of the failures enumerated in 26 U.S.C. §6695, except §6695(e) and (g), occurs, the Board may impose, in addition to any other penalties assessed by the Internal Revenue Service and the Department of Revenue, upon a tax return preparer certain penalties. The Board shall promulgate regulations to establish such penalties.
- (m) A civil action in the name of the State of (Insert state name) may be commenced at the request of the Board to enjoin any individual who is a tax return preparer, or an employer having knowledge of an employee tax return preparer, who is doing business in this state and engaging in conduct described in this subsection, from further engaging in preparing tax returns.
  - (1) This action may be brought by the Board in the circuit court for the judicial circuit of the tax return preparer's residence or principal place of business, or in which the taxpayer with respect to whose tax return the action is brought resides.
  - (2) The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State of (insert state name) against the tax return preparer or any taxpayer.
  - (3) In an action under this subsection, the court may issue an injunction prohibiting an individual from acting as a tax return preparer if the court finds that the individual has:
    - (i) Engaged in any pattern of conduct subject to a civil penalty under 7 (a) (13).
    - (ii) Willfully misreported the preparer's eligibility to practice before the department, or otherwise willfully misreported the preparer's experience or education as a tax return preparer.
    - (iii) Knowingly guaranteed the payment of any tax refund or the allowance of any tax credit.
    - (iv) Aided or assisted in, counseled, or advised the preparation or presentation under, or in connection with any matter arising under, the state revenue laws, or any returns, affidavits, claims, or other documents, which may constitute a significant congruous pattern of any of the following:
      - a. Knowingly omitting the reporting of income.
      - b. Knowingly claiming excessive or nonexistent deductions.
      - c. Knowingly claiming nonexistent dependents.

- d. Knowingly claiming fictitious business schedules.
  - e. Knowingly claiming or creating nonexistent losses.
  - f. Using for tax return purposes any documents that that the tax return preparer knows or should know are fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the individual authorized or required to present the return, affidavit, claim, or document.
- (n) For purposes of this section, the term “understatement of liability” means an understatement of the net amount payable with respect to the individual income tax imposed by (insert Title and Code of State), or an overstatement of the net amount creditable or refundable with respect to the individual income tax imposed by (insert Title and Code of State). The determination of whether there is an understatement of liability must be made without regard to any administrative or judicial action involving the taxpayer. For purposes of this section, the amount determined as an underpayment of estimated income tax is not considered an understatement of liability.
- (o) For purposes of this section an individual shall not be considered, a tax return preparer merely because the individual:
- (1) Furnishes typing, reproduction, or other mechanical assistance.
  - (2) Prepares a return or claim for refund of the employer, or an officer or employee, by whom the individual is regularly and continuously employed.
  - (3) Prepares a return or claim for refund of any individual as a fiduciary for that individual.
  - (4) Prepares a claim for refund for a taxpayer in response to an assessment issued to the taxpayer.
- (p) Except as otherwise provided, before the Board takes any final action to deny, suspend, or revoke a registration, the Board shall give an individual an opportunity for a hearing before the Board.
- (q) The Board shall investigate all complains which allege a violation of this act. In the case where a complaint is filed with the Board involving an individual or firm governed by the Board of Accountancy, the complaint will be immediately forwarded to the Board of Accountancy and the Internal Revenue service Office of Professional Responsibility. In the case of a complaint involving a member of the bar, the complaint will immediately forwarded to the state bar association and the Internal Revenue Service Office of Professional Responsibility. In case involving Enrolled Agents, unless the complaint is adjudged to be without merit, upon conclusion of the investigation and hearing or consent order, the complaint and results of Board action shall be forwarded to the Internal Revenue Service Office of Professional Responsibility.

## **SECTION 8: PROHIBITIONS: INCOME TAX RETURN PREPARERS**

- (a) On or after the date of enactment of this Act, no individual shall assist with or prepare or offer to assist with or prepare in any one calendar year five or more returns for other individuals or entities or assume final responsibility for completed work on such tax returns on which preliminary work has been done by other individuals for a fee or for other consideration who is not currently registered pursuant to, or exempted by Section 2 of this Act.
- (b) On or after the date of enactment of this Act, only those individuals registered under Section 3 or exempted under Section 3 of this Act shall assume or use the title or designation “tax

preparer” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or as a representation that such individual is a tax preparer.

## **SECTION 9: REFUND ANTICIPATION LOANS OR CHECKS; REQUIREMENT FOR REGISTRATION**

- (a) No person may solicit the execution of, process, receive, or accept an application or agreement for a RAL or a RAC without first being registered with the Tax Preparer Oversight Board and posting a bond in accordance with the procedures provided in this Act.
- (b) Each facilitator must post a bond in the amount of \$50,000, which must continue in effect for five (5) years after the facilitator ceases operation in the state. Such bond must be available to pay damages and penalties to consumers harmed by any violation of this Act.
- (c) This section does not apply to persons:
  - (1) Doing business as a bank, thrift, savings association, or credit union, under the laws of the United States or of this state;
  - (2) Licensed as a certified public accountant in this state;
  - (3) Licensed as an attorney in this state; or
  - (4) Employed by or serving as a volunteer with a nonprofit organization that provides free tax preparation services to low and moderate income taxpayers, such as a Volunteer Income Tax Assistance program.
- (d) Registration Procedure:
  - (1) An initial application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Board. The application shall contain all information prescribed by the Board. Each application for registration shall be accompanied by a fee, payable to the Board, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_).
  - (2) The applicant must be registered as a tax preparer in order to register as a facilitator. Upon completion of the registration process, the Board shall issue and transmit to the applicant a certificate attesting to the registration.
  - (3) Each registration as a facilitator of RAL’s and or RAC’s shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Board an application for renewal in the form and containing all information prescribed by the Board. Each application for renewal of registration shall be accompanied by a renewal fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_).
  - (4) Upon the filing of an application for renewal of registration under this Act, the Board shall renew the registration, provided that the Board determines that the registrant has not violated this Act or the Board determines that the registrant no longer meets the qualification for registration under this section. If the Board makes such a finding or determination, the Board shall so notify the registrant, stating the reasons for the determination.
  - (5) Within five (5) days of receipt of the Board’s notice of non renewal, the applicant may make written demand of the Board for a hearing. The hearing before the Board shall be an informal hearing and shall be held with reasonable promptness.

## **SECTION 10: POSTING OF FEE SCHEDULES AND DISCLOSURE**

- (a) Every facilitator shall prominently display a schedule showing the current fees for refund anticipation loans or refund anticipation checks at each place of business where the facilitator provides facilitation services.
- (b) Every facilitator shall prominently display on each fee schedule examples of the refund anticipation loan interest rates for refund anticipation loans of at least five (5) different amounts, such as three hundred dollars (\$300.00), five hundred dollars (\$500.00), one thousand dollars (\$1,000.00), one thousand five hundred dollars (\$1,500.00), two thousand dollars (\$2,000.00) and five thousand (\$5,000.00). The refund anticipation loan interest shall be calculated as set forth in Section 2 (o) of this Act.
- (c) Every facilitator shall also prominently display on each fee schedule: (i) a legend, centered, in bold, capital letters, and in one-inch letters stating: **NOTICE CONCERNING REFUND ANTICIPATION LOANS**; and (ii) the following verbatim statement: “When you take out a refund anticipation loan, your 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 LOAN.** You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or paying fees for an extra product.” Before completing the refund anticipation loan paperwork, each individual requesting a refund anticipation loan must sign a document stating that they have read and understand the above required statement.
- (d) The postings required by this section shall be made in no less than 28-point type on a document measuring no less than 16 inches by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where the facilitator is facilitating refund anticipation loans.
- (e) No facilitator may facilitate a refund anticipation loan or refund anticipation check unless (i) the disclosures required by this section are displayed; and (ii) the fee actually charged for the refund anticipation loan or refund anticipation check is the same as the fee displayed on the schedule.
- (f) At the time a consumer applies for a refund anticipation loan or check, the facilitator or creditor shall disclose to the consumer on a form separate from the application in 14-point type, unless otherwise noted:
  - (1) The fee for the refund anticipation loan or refund anticipation check.
  - (2) The fee for tax preparation and any other fee charged to the consumer.
  - (3) The time within which the proceeds of the refund anticipation loan or check will be paid to the consumer if the loan or check is approved.
  - (4) For refund anticipation loans, the following disclosures: (i) a legend, centered, in bold, capital letters, and in 18-point type stating: **NOTICE**; and (ii) the following verbatim statement: “This is a 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 USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES.** You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or other paid product.”

- (5) For refund anticipation loans, disclosure of the refund anticipation loan interest rate. The refund anticipation loan interest rate shall be calculated as set forth in Section 2 (o) of this Act.
- (6) For refund anticipation checks, the following disclosures: (i) a legend, centered, in bold, capital letters, and in 18-point type stating: NOTICE: and (ii) the following verbatim statement; “You are paying [amount of refund anticipation check fee] to get your refund check through [name of issuer of refund anticipation check]. **YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND DEPOSITED INTO YOUR OWN BANK ACCOUNT.** You can also wait for the IRS to mail you a check. If you do not have a bank account, you may wish to consider getting one.”
- (g) The facilitator shall provide to the consumer, prior to consummation of a loan or check transaction in a form that can be kept by the consumer: (i) the disclosures required by this section; (ii) a copy of the completed loan or check application and agreement; and (iii) for refund anticipation loans, the disclosures required by the federal Truth-In-Lending Act.
- (h) The disclosures required by this section shall be provided in English and in the language used primarily for oral communication between the facilitator and the consumer.
- (i) The facilitator shall make the following oral disclosures:
  - (1) If a consumer applies for a refund anticipation loan, the facilitator shall orally inform the consumer in the language primarily used for oral communication between the facilitator and the consumer:
    - (i) That the product is a loan that lasts only 1 to 2 weeks;
    - (ii) If the consumer’s tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference;
    - (iii) The amount of the refund anticipation loan fee; and
    - (iv) The refund anticipation loan interest rate.
  - (2) If a consumer applies for a refund anticipation check, the facilitator shall orally inform the consumer in the language primarily used for oral communication between the facilitator and the consumer:
    - (i) the amount of the refund anticipation check fee;
    - (ii) that the consumer can receive a refund in the same amount of time without a fee if the tax return is filed electronically, and the consumer chooses direct deposit to the consumer’s own bank account.
  - (3) If the facilitator at any time provides an estimate of the amount that the consumer will receive after deducting tax preparation and RAL or RAC fees, the facilitator shall describe the options that the consumer can choose from as:
    - (i) “You can receive (state the full refund amount) dollars in 3 to 8 weeks”
    - (ii) “You can receive (state the full refund amount) dollars in 8 to 15 days with electronic filing and direct deposit to your own bank account. This option will not cost you a fee to receive your refund.”
    - (iii) “You can receive (state the refund amount minus the RAC fee, tax preparation fee, and any other fee charged) dollars in 8 to 15 days, but you will not receive anything in 3 to 8 weeks. This option will cost you (state the amount of RAC-related fees) dollars, plus your tax preparation fees are deducted from the refund.”
    - (iv) “You can receive (state refund amount minus RAL fee, tax preparation fee, and any other fee charged) dollars in one to two days, but you will not receive

anything in 8 to 15 days or 3 to 8 weeks. This option will cost you (state RAL-related fees) dollars, plus your tax preparation fees are deducted from the refund.” These disclosures can be used to fulfill the requirements of subsection 1 (iii) or 2 of this section.

## **SECTION 11: Prohibited Activities for Facilitators**

No facilitator or any other person (including any officer, agent, employee or representative) shall:

- (a) Charge or impose any fee, charge or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provides the loan or check. This prohibition does not include any charge or fee imposed by the facilitator to all of its customers, such as feeds for tax return preparation, if the same fee in the same amount is charged to the customers who do not receive refund anticipation loans, refund anticipation checks, or any other tax-related financial product.
- (b) Engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation check or a refund anticipation loan, including making any oral statements contradicting any of the information required to be disclosed under this Act.
- (c) Fail to comply with any provision of this Act.
- (d) In facilitating a refund anticipation loan or refund anticipation check, threaten to take any action that is prohibited by this Act or by any other law, or that the person does not actually intend to take.
- (e) Directly or indirectly arrange for any third party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check, other than the refund anticipation loan or refund anticipation check fee imposed by the creditor, including but not limited to : charges for
  - (1) Insurance;
  - (2) Attorneys fees;
  - (3) Check cashing; or
  - (4) Other collection costs.
- (f) Include any of the following provisions in any document provided or signed in connection with a refund anticipation loan or refund anticipation check, including the 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, if applicable, in any action brought by or against the consumer;
  - (4) Any assignment of or order for payment of wages or other compensation for services;
  - (5) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract, or to seek any remedies pursuant to Section 15 of this Act;
  - (6) A waiver of any provision of this Act. Any such waiver shall be deemed null, void and of no effect;
  - (7) A waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class-wide basis; or
  - (8) A provision requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. This provision shall not affect the right of the parties to agree that certain specified information is a trade secret or otherwise

- confidential or to later agree, after the dispute arises, to keep a resolution confidential.
- (g) 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.
  - (h) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor assignee, including soliciting the execution of, processing, receiving, or accepting an application or agreement for a refund anticipation loan or refund anticipation check that contains a provision permitting the creditor to repay, by offset or other means, an outstanding or delinquent refund anticipation loan for that creditor or any creditor from the proceeds of the consumer's tax refund.
  - (i) Refer, facilitate, or solicit consumers on behalf of a third party engaged in check cashing for a fee, or permit third party check cashing for a fee, in any place of business in which refund anticipation loans or refund anticipation checks are facilitated.
  - (j) Facilitate any loan that is secured by or that the creditor arranges to be repaid from the proceeds of the consumer's state tax refund from the State Treasury.
  - (k) Make a misrepresentation of fact in obtaining or attempting to obtain a registration as a facilitator.
  - (l) Engage in any other action prohibited by rules promulgated by the Board.

## **SECTION 12: Interest Rate Cap for Non-Bank Refund Anticipation Loans**

- (a) No person shall make or facilitate a refund anticipation loan for which the refund anticipation loan rate interest rate is greater than [36% per annum or the rate set forth in other applicable state law, if any, whichever is lower]. The refund anticipation loan rate interest rate shall be calculated as set forth in Section 2 (o) of this Act. Any refund anticipation loan for which the refund anticipation loan interest rate exceeds [36% or the rate set forth in other applicable state law, whichever is lower] shall be void ab initio.
- (b) This section does not apply to persons facilitating for or doing business as a bank, thrift, savings association, or credit union, for which the laws of the United States preempt the prohibition set forth in subsection (a).

## **SECTION 13: Advertising and Marketing**

- (a) No facilitator shall market or advertise a refund anticipation loan without this language verbatim:

“[Name of product] is a loan. You can get your refund in 8 to 15 days without a loan or extra fees if you use e-file and direct deposit.”

For print advertisements, this information must be printed in type size one-half as large as the largest type size in the advertisement. For radio and television advertisements, this information must receive at least 7 seconds of airtime.
- (c) No facilitator shall market or advertise a refund anticipation check without including this language verbatim:

“The [name of product] costs [fee for a RAC]. You can get your refund in the same amount of time without this fee if you use e-file and direct deposit.”

For print advertisements, this information must be in type size one-half as large as the largest type size in the advertisement. For radio and television advertisements, this information must receive at least 7 seconds of airtime.

## **SECTION 14: Administrative Remedies**

- (a) Whenever the Board believes or has notice that any action of a facilitator may be in violation of this Act or the rules or regulations promulgated there under, or that the facilitator has engaged in an unfair or deceptive act or practice, the Board shall give reasonable notice to the facilitator of the suspected violation or unfair or deceptive act or practice, and an opportunity for the facilitator to be heard. If, following the hearing, the Board finds that an action of the facilitator is in violation of this Act or the rules or regulations promulgated there under or that the facilitator has engaged in an unfair or deceptive act or practice, the Board shall order the facilitator to cease and desist from the action. The Board may make investigations, subpoena witnesses, and require audits and reports, in preparation for such hearings, and shall make findings of fact and conclusions of law. All such hearings shall be open to the public.
- (b) If the facilitator continues to engage in an action in violation of the Board's order to cease and desist from the action, the facilitator shall be subject to a penalty of five thousand dollars (\$5,000.00) plus cost for each action it takes in violation of the Board's order.
- (c) After notice and hearing, and upon finding that a registrant has:
  - (1) engaged in a course of conduct that is in violation of this Act or the rules or regulations promulgated there under or
  - (2) continued to engage in an action in violation of a cease and desist order of the Board that has not been stayed upon application of the registrant, the Board may revoke the registration of the registrant temporarily or permanently at the discretion of the Board. No revocation, suspension, or surrender of any registration shall relieve the registrant from civil or criminal liability for acts committed prior thereto.
- (d) The Board shall maintain a list of registrants which shall be available to interested persons and the public. The Board shall create a toll-free telephone number and an Internet page whereby consumers may obtain information about registrants and complaint forms. The Board shall establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a registrant or non-registrant who violates any provision of this Act. All complaints shall be considered public records pursuant to [cite for state public records law] with the exception of the complainant's name, address, or other personal identifying information. The Board shall hold a hearing pursuant to subsection (a) upon the request of a party to the complaint. The Board may, after such hearing, issue cease and desist orders pursuant to subsection (a), or suspend or revoke a registration as provided in subsection (c).

## **SECTION 15: Private Right of Action**

- (a) The remedies provided herein are cumulative and apply to registrants and to unregistered persons to whom this Act applies and who fail to register.
- (b) Any violation by a facilitator of any state law prohibiting unfair or deceptive acts or practices constitutes a violation of this Act.
- (c) Any violation of this Act constitutes a violation of any state law prohibiting unfair or deceptive acts or practices.
- (d) Any violation by a facilitator of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* constitutes a violation of this Act.
- (e) A facilitator who fails to comply with any provision of this Act is liable to the consumer for:

- (1) actual and consequential damages;
  - (2) statutory damages of \$2,500 (to be increased annually based proportionally on changes in the Consumer Price Index, with fractional amounts rounded to the nearest dollar) or three times the amount of the refund anticipation loan fee or other unauthorized charge, whichever is greater; and (iii) reasonable fees and costs.
- (f) Any person may sue for injunctive or other appropriate equitable relief to enforce this Act.
- (g) Any consumer may bring a class action suit to enforce this Act. In any such class action, a facilitator who fails to comply with any provision of this Act is liable for; (i) actual and consequential damages for each class member; (ii) statutory damages as set forth in subsection (d)(ii) for each class member; and (iii) reasonable attorney's fees and costs.
- (f) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

### **SECTION 16: Rules**

The Board may adopt rules necessary to effectuate the purpose of this Act, to provide for the protection of the borrowing public, and to assist facilitators in interpreting this Act. The Board may modify the disclosures in subsections 10 (c), 10 (f), and 10, (i) to the extent that a revision of the estimate for receiving a refund from the Internal Revenue Service (with electronic filing and direct deposit) is appropriate.

### **SECTION 17: Annual reports**

On or before July 1 of each year, beginning July\_\_\_\_\_, each registrant shall file an annual report with the Board pursuant to procedures that the Board shall establish. An annual consolidated report shall be prepared by the Board and made available to the public. These reports shall include the following information for the time periods of April 15 of the prior year to April 15 of that year:

- (a) The total number and dollar amount of refund anticipation loans facilitated by the registrant.
- (b) The total number and dollar amount of refund anticipation checks facilitated by the registrant.
- (c) The average number of days for which refund anticipation loans facilitated by the registrant were outstanding before being repaid.
- (d) The name and address of any creditor or person for whom the registrant facilitates refund anticipation loans or refund anticipation checks.
- (e) Any other information required by the Board.

### **Section 18: Severability**

If any portion of this Act is determined to be invalid for any reason by a final non-appealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.