

SENATE BILL No. 446

April 25, 2007, Introduced by Senators THOMAS, CLARK-COLEMAN, JACOBS, HUNTER, BASHAM, WHITMER, CLARKE, OLSHOVE, SCOTT, CHERRY, ANDERSON, SCHAUER and GLEASON and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1939 PA 21, entitled
"Regulatory loan act,"
by amending section 1 (MCL 493.1), as amended by 2002 PA 393, and
by adding section 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (2) As used in this act:

4 (a) "Advertising" means publishing or broadcasting, or causing
5 to be published or broadcast, material that has been prepared for
6 public distribution by means of newspapers, magazines, or
7 electronic media. Advertising does not include a stockholder

1 communication, such as an annual report, interim financial report,
2 registration statement, security, prospectus, application for
3 listing a security on a stock exchange, or proxy materials.

4 Advertising does not include a communication addressed to a person
5 who has previously executed a loan agreement relative to that
6 person's account.

7 **(B) "ANNUAL PERCENTAGE RATE" MEANS THE RATE AS COMPUTED UNDER**
8 **THE FEDERAL TRUTH IN LENDING ACT, 15 USC 1601 TO 1667F.**

9 **(C) ~~(b)~~**"Assets" means liquid assets, collectible loans made
10 in accordance with this act, and personal property acquired in the
11 general conduct of business transacted under this act.

12 **(D) ~~(e)~~**"Commissioner" means the commissioner of the office of
13 financial and insurance services in the department of ~~consumer and~~
14 ~~industry services~~ **LABOR AND ECONOMIC GROWTH.**

15 **(E) ~~(d)~~**"Control person" means a director or executive officer
16 of a licensee or a person who has the authority to participate in
17 the direction, directly or indirectly through 1 or more other
18 persons, of the management or policies of a licensee.

19 **(F) ~~(e)~~**"Executive officer" means an officer, member, or
20 partner of a licensee, including chief executive officer,
21 president, vice president, chief financial officer, controller,
22 compliance officer, or any other similar position.

23 **(G) "FACILITATOR" MEANS A PERSON THAT INDIVIDUALLY OR IN**
24 **CONJUNCTION OR COOPERATION WITH ANOTHER PERSON PROCESSES, RECEIVES,**
25 **OR ACCEPTS FOR DELIVERY AN APPLICATION FOR A REFUND ANTICIPATION**
26 **LOAN OR A CHECK IN PAYMENT OF REFUND ANTICIPATION LOAN PROCEEDS OR**
27 **IN ANY OTHER MANNER MATERIALLY FACILITATES THE MAKING OF A REFUND**

1 ANTICIPATION LOAN. THE TERM DOES NOT INCLUDE ANY OF THE FOLLOWING:

2 (i) A PERSON DESCRIBED IN SECTION 20.

3 (ii) AN AFFILIATE THAT IS A SERVICER FOR A PERSON DESCRIBED IN
4 SECTION 20.

5 (iii) A PERSON CERTIFIED, REGISTERED, OR LICENSED TO ENGAGE IN
6 THE PRACTICE OF PUBLIC ACCOUNTING UNDER ARTICLE 7 OF THE
7 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.720 TO 339.736.

8 (iv) A PERSON THAT ACTS SOLELY AS AN INTERMEDIARY AND DOES NOT
9 DEAL WITH A TAXPAYER IN THE MAKING OF A REFUND ANTICIPATION LOAN.

10 (H) ~~(f)~~—"Financial licensing act" means any act listed in
11 section 2 of the consumer financial services act, 1988 PA 161, MCL
12 487.2052.

13 (I) ~~(g)~~—"License" means a single license issued to a single
14 place of business.

15 (J) ~~(h)~~—"Licensee" means a person licensed or required to be
16 licensed under this act.

17 (K) ~~(i)~~—"Liquid assets" means cash, unrestricted deposits in
18 banks, and readily marketable securities at their then market
19 value.

20 (L) ~~(j)~~—"Loan" or "regulatory loan" means a loan made by a
21 licensee to an individual for personal, family, or household use.

22 THE TERM INCLUDES A REFUND ANTICIPATION LOAN.

23 (M) ~~(k)~~—"Person" means an individual, partnership,
24 association, corporation, limited liability company, or other legal
25 entity.

26 (N) "REFUND ANTICIPATION LOAN" MEANS A LOAN THAT A PERSON
27 ARRANGES TO BE REPAID DIRECTLY FROM THE PROCEEDS OF A TAXPAYER'S

1 FEDERAL OR STATE PERSONAL INCOME TAX REFUND.

2 (O) "REFUND ANTICIPATION LOAN FEE" MEANS THE CHARGES, FEES, OR
3 OTHER CONSIDERATION CHARGED OR IMPOSED BY A PERSON ACTING AS A
4 LENDER OR FACILITATOR FOR THE MAKING OF A REFUND ANTICIPATION LOAN.
5 THE TERM DOES NOT INCLUDE ANY CHARGE, FEE, OR OTHER CONSIDERATION
6 USUALLY CHARGED OR IMPOSED BY A FACILITATOR IN THE ORDINARY COURSE
7 OF BUSINESS FOR TAX RETURN PREPARATION, ELECTRONIC FILING OF TAX
8 RETURNS, OR OTHER NONLOAN SERVICES.

9 (P) "TAXPAYER" MEANS AN INDIVIDUAL WHO FILES A FEDERAL OR
10 MICHIGAN PERSONAL INCOME TAX RETURN.

11 SEC. 16. (1) BEFORE A TAXPAYER COMPLETES AN APPLICATION FOR A
12 REFUND ANTICIPATION LOAN, THE FACILITATOR SHALL CLEARLY DISCLOSE
13 ALL OF THE FOLLOWING IN WRITING, IN 14-POINT TYPE AND IN THE
14 PRIMARY LANGUAGE UNDERSTOOD BY THE TAXPAYER, TO THE TAXPAYER ON A
15 FORM SEPARATE FROM THE APPLICATION:

16 (A) A LISTING OR TABLE OF REFUND ANTICIPATION LOAN FEES AND
17 THE ANNUAL PERCENTAGE RATES CHARGED BY THE FACILITATOR OR LENDER
18 FOR 3 OR MORE REPRESENTATIVE REFUND ANTICIPATION LOAN AMOUNTS. FOR
19 EACH LOAN AMOUNT, THE SCHEDULE SHALL LIST SEPARATELY THE AMOUNT OF
20 EACH FEE AND THE AMOUNT OF INTEREST CHARGED BY THE FACILITATOR OR
21 LENDER AND THE TOTAL AMOUNT OF FEES AND INTEREST CHARGED.

22 (B) THAT THE REFUND ANTICIPATION LOAN IS A LOAN AND NOT THE
23 TAXPAYER'S ACTUAL PERSONAL INCOME TAX REFUND.

24 (C) THAT ELECTRONIC FILING OF THE TAXPAYER'S TAX RETURN IS
25 AVAILABLE WITHOUT APPLYING FOR A REFUND ANTICIPATION LOAN.

26 (D) THE AVERAGE TIME ANNOUNCED BY THE APPROPRIATE TAXING
27 AUTHORITY WITHIN WHICH THE TAXPAYER CAN EXPECT TO RECEIVE A REFUND

1 IF THE TAXPAYER DOES NOT OBTAIN A REFUND ANTICIPATION LOAN AND THE
2 TAXPAYER'S RETURN IS FILED USING EITHER OF THE FOLLOWING METHODS:

3 (i) ELECTRONICALLY AND THE REFUND IS DIRECTLY DEPOSITED IN THE
4 TAXPAYER'S BANK ACCOUNT.

5 (ii) BY MAIL AND THE REFUND IS DIRECTLY DEPOSITED IN THE
6 TAXPAYER'S BANK ACCOUNT OR MAILED TO THE TAXPAYER.

7 (E) THAT THE INTERNAL REVENUE SERVICE WITH RESPECT TO A
8 FEDERAL PERSONAL INCOME TAX RETURN, OR THE DEPARTMENT OF TREASURY
9 WITH RESPECT TO A MICHIGAN PERSONAL INCOME TAX RETURN, DOES NOT
10 GUARANTEE EITHER OF THE FOLLOWING:

11 (i) THAT THE FULL AMOUNT OF THE ANTICIPATED REFUND WILL BE
12 PAID.

13 (ii) A SPECIFIC DATE ON WHICH THE TAXPAYER WILL RECEIVE THE
14 REFUND.

15 (F) THAT THE TAXPAYER IS RESPONSIBLE FOR REPAYMENT OF THE LOAN
16 AND RELATED FEES IN THE EVENT THE TAX REFUND IS NOT PAID OR IS NOT
17 PAID IN FULL.

18 (G) THE ESTIMATED TIME WITHIN WHICH THE PROCEEDS OF THE LOAN
19 WILL BE PAID TO THE TAXPAYER IF THE LOAN IS APPROVED.

20 (H) THE FEES CHARGED BY THE FACILITATOR OR LENDER IF THE
21 REFUND ANTICIPATION LOAN IS NOT APPROVED.

22 (2) BEFORE ENTERING INTO A REFUND ANTICIPATION LOAN AGREEMENT,
23 THE FACILITATOR SHALL CLEARLY DISCLOSE BOTH OF THE FOLLOWING TO THE
24 TAXPAYER:

25 (A) THE ESTIMATED TOTAL FEES FOR THE LOAN.

26 (B) THE ESTIMATED ANNUAL PERCENTAGE RATE FOR THE LOAN.

27 (3) A POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ADOPT ANY

1 RULE, REGULATION, CODE, OR ORDINANCE TO RESTRICT OR LIMIT ANY
2 REQUIREMENTS UNDER THIS SECTION RELATING TO REFUND ANTICIPATION
3 LOANS. THIS SECTION SUPERSEDES AND PREEMPTS ANY RULE, REGULATION,
4 CODE, OR ORDINANCE OF ANY POLITICAL SUBDIVISION OF THIS STATE
5 RELATING TO REFUND ANTICIPATION LOANS.

6 (4) AS PART OF THE REPORT REQUIRED UNDER SECTION 11, EACH
7 LENDER AND FACILITATOR SHALL DISCLOSE FOR THE PRECEDING CALENDAR
8 YEAR THE NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
9 MADE, THE AVERAGE REFUND ANTICIPATION LOAN, AND THE AVERAGE TIME TO
10 DISPENSE LOAN PROCEEDS.

11 (5) AS USED IN THIS SECTION, "LENDER" MEANS A PERSON THAT
12 MAKES A REFUND ANTICIPATION LOAN BUT DOES NOT INCLUDE A PERSON
13 DESCRIBED IN SECTION 20.