
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 376 Session of
2009

INTRODUCED BY BROWNE, RAFFERTY, O'PAKE, WILLIAMS, COSTA, EARLL,
WONDERLING AND FERLO, FEBRUARY 20, 2009

REFERRED TO BANKING AND INSURANCE, FEBRUARY 20, 2009

AN ACT

1 Regulating tax refund anticipation loan and check providers;
2 providing for the powers and duties of the Secretary of
3 Banking; and prescribing penalties.

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6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 CHAPTER 1

9 PRELIMINARY PROVISIONS

10 Section 101. Short title.

11 This act shall be known and may be cited as the Tax Refund
12 Anticipation Loan and Check Regulation Act.

13 Section 102. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Applicant." A person who applies for registration as a
18 facilitator of loans.

19 "Check." A check or other payment mechanism representing the
20 proceeds of a consumer's tax refund or tax credits issued by a
21 depository institution or person that received a direct deposit
22 of the consumer's tax refund or tax credits, and for which the
23 consumer has paid a fee or other consideration for the payment
24 mechanism.

25 "Consumer." An individual who, singly or jointly with
26 another individual, is solicited for, applies for or receives
27 the proceeds of a loan or check.

28 "Creditor." A person who makes a refund anticipation loan or
29 who takes an assignment of a refund anticipation loan.

30 "Department." The Department of Banking of the Commonwealth.

1 "License." A license issued under this act.

2 "Loan." A loan that is secured by or that a creditor
3 arranges to be repaid directly or indirectly from the proceeds
4 of a consumer's income tax refund or tax credits. The term
5 includes a sale assignment or purchase of a consumer's tax
6 refund at a discount, whether or not the consumer is required to
7 repay the buyer or assignee if the Internal Revenue Service
8 denies or reduces the consumer's tax refund.

9 "Loan fee." The charges, fees or other consideration charged
10 or imposed by a creditor or facilitator for the making of a
11 loan. This term does not include:

12 (1) A charge, fee or other consideration usually charged
13 or imposed by the facilitator in the ordinary course of
14 business, such as fees for tax return preparation and fees
15 for electronic filing of tax returns, if the same fees in the
16 same amount are charged to the facilitator's customers who do
17 not receive loans or checks.

18 (2) A charge, fee or other consideration for a deposit
19 account if the deposit account is used for receipt of the
20 consumer's tax refund to repay the amount owed on the loan.

21 "Loan interest rate." The interest rate for a loan
22 calculated on an annualized basis. The term includes all refund
23 anticipation loan fees, including any administrative, document
24 preparation or any fees that are not charged to customers who do
25 not receive a loan or check. If a deposit account is established
26 or maintained in whole or in part for the purpose of receiving
27 the consumer's tax refund to repay the amount owed on a refund
28 anticipation loan:

29 (1) The maturity of the loan for the purpose of
30 determining the refund anticipation loan interest rate shall

1 be assumed to be the estimated date when the tax refund will
2 be deposited in the deposit account.

3 (2) A fee charged to the consumer for the deposit
4 account shall be considered a loan fee and shall be included
5 in the calculation of the interest rate.

6 "Loan provider" or "check provider." A person, including any
7 officer, agent, employee or representative, who individually or
8 in conjunction or cooperation with another person solicits the
9 execution of, processes, receives or accepts an application or
10 agreement for a refund anticipation loan or refund anticipation
11 check or in any other manner facilitates the making of a loan or
12 check.

13 "Market or advertise." To produce, distribute or otherwise
14 display or have displayed, written material describing a
15 facilitator's products and services, radio and other oral
16 marketing and advertising and telephone and in-person
17 interactions with customers.

18 "Person." An individual, firm, partnership, association,
19 corporation or any other entity.

20 "Registrant." A person who is registered under this act as a
21 facilitator of loans or checks and any officer, agent, employee
22 or representative of that person.

23 "Secretary." The Secretary of Banking of the Commonwealth.

24 CHAPTER 3

25 LICENSURE PROVISIONS

26 Section 301. License requirement.

27 No person, partnership, association, business corporation,
28 nonprofit corporation, common law trust, joint-stock company or
29 any group of individuals however organized shall, on and after
30 the effective date of this section, engage or continue to engage

1 in business as a loan provider or check provider in this
2 Commonwealth except as authorized by this act and without first
3 obtaining a license from the secretary.

4 Section 302. Application for license.

5 (a) General rule.--The application for a license shall be in
6 writing, under oath and in the form prescribed by the secretary
7 and shall contain:

8 (1) the name and address of the residence of the
9 applicant and if the applicant is a partnership, association,
10 joint-stock company or common law trust of every member and,
11 if the applicant is a business corporation or nonprofit
12 corporation, of each officer and director;

13 (2) the county and municipality with street and number,
14 if any, office building and room number, if any, where the
15 business is to be conducted; and

16 (3) such further information as the secretary may
17 require.

18 The application shall be signed by the individual owner if the
19 applicant is an individual, by all the partners if the applicant
20 is a partnership, by two officers if the applicant is an
21 association, joint-stock company or common law trust and by the
22 president and secretary if the applicant is a business
23 corporation or a nonprofit corporation.

24 (b) Posting of application.--An applicant for a new license
25 shall post, for a period of at least 30 days beginning with the
26 day the application is filed with the secretary, in a
27 conspicuous place on the outside of the premises or at the
28 proposed new location for which the licensee applies, a notice
29 of the application in the form, of the size and containing
30 provisions as the secretary may require by regulation. Proof of

1 the posting of the notice shall be filed with the secretary.

2 (c) Posting.--A loan or check provider licensed by the
3 department shall display in a conspicuous place within the
4 registered building the license approved by the secretary.

5 Section 303. License bond.

6 (a) Requirements.--

7 (1) A bond in the penal sum of \$100,000 shall accompany
8 each application for license. The bond shall be executed by a
9 surety company authorized by the laws of this Commonwealth to
10 transact business within this Commonwealth. The secretary
11 may, in lieu of the surety company bond, accept a bond
12 executed by the applicant for license if the bond is secured
13 by the deposit with the secretary of cashier's checks,
14 treasurer's checks or certificate of deposit of a banking
15 institution or readily marketable security approved by the
16 secretary. The collateral, deposited in lieu of a surety
17 company bond, shall be deposited for safekeeping by the
18 secretary in the office of the State Treasurer.

19 (2) The bond shall be renewed and refiled annually not
20 later than October 1 of each year. The bond shall be executed
21 to the Commonwealth of Pennsylvania. The bond shall be for
22 the use of the Commonwealth and for any person or persons who
23 may have a cause of action against the loan or check provider
24 as a licensee under this act.

25 (3) The condition of the bond shall be that the loan or
26 check provider shall comply with and abide by all the
27 provisions of this act and all rules and regulations of the
28 secretary lawfully issued under this act and shall pay to the
29 Commonwealth, to the secretary or to any person or persons
30 any and all moneys that may come due to the Commonwealth, to

1 the secretary or to any person or persons from the refund
2 anticipation loan or refund anticipation check provider under
3 and by virtue of the provisions of this act.

4 (b) Separate bonds.--A separate bond shall be required for
5 each place of business conducted by a loan or check provider.

6 (c) Execution on bond.--If any person shall be aggrieved by
7 the misconduct of a loan or check provider and shall recover
8 judgment against the loan or check provider, the person may, on
9 any execution issued under the judgment, maintain an action upon
10 the bond of the loan or check provider in any court having
11 jurisdiction of the amount claimed, provided the secretary
12 assents thereto.

13 Section 304. License renewal.

14 (a) General rule.--An application for license renewal shall
15 be published 30 days before renewal in a newspaper of general
16 circulation in the municipality where the license is to be
17 renewed.

18 (b) Limitation.--The secretary shall not issue a license or
19 a license renewal for a period of at least five years to any
20 applicant who has been determined to be operating as a loan or
21 check provider without a license.

22 Section 305. License fee.

23 (a) General rule.--An application for license under this act
24 shall be accompanied by an annual license fee of \$1,000. A
25 license shall expire on October 1 annually. No abatement of the
26 license fee shall be made if the license is issued for less than
27 one year. A license shall be renewed annually on the first day
28 of October, and an annual license renewal fee of \$1,000 shall be
29 paid for the next ensuing license year.

30 (b) Deposits by secretary.--All license fees and fines

received by the secretary shall be deposited in the State Treasury to the credit of the Banking Department Fund for the use of the secretary in administering this act.

Section 306. Issuance of license.

(a) General rule.--The secretary, if he approves the application for license, shall issue to each loan or check provider a certificate showing the name of the loan or check provider and the address of the place of business. The license shall be posted in a conspicuous place in the office of the loan or check provider so that it shall be in full view of the public at all times. The license may not be transferred or assigned.

(b) Change of place of business.--

(1) Whenever a loan or check provider shall change his place of business to another location within the same city, borough or township, the loan or check provider shall at once give written notice to the secretary and return the license certificate to the secretary for amendment.

(2) The secretary, if he approves the removal, shall endorse on the license in writing his record of the change of address and the date, which shall be the authority for the operation of the business under the license at the new location.

(3) No change in the place of business of a loan or check provider to a location outside the original city, borough or township shall be permitted under the same license. Not more than one place of business may be operated under the same license.

(4) If a loan or check provider operates more than one place of business, additional licenses may be obtained by filing a separate application for each additional place of

1 business and furnishing an additional bond for each
2 additional place of business and paying the license fee
3 provided in this act for each place of business.

4 Section 307. Powers of secretary.

5 (a) Grounds for rejecting application for license.--

6 (1) The secretary may reject an application for license
7 if the secretary is satisfied that the financial
8 responsibility, experience, character and general fitness of
9 the applicant or applicants are not such as to command the
10 confidence of the community and to warrant the conclusion
11 that the business will be operated honestly, fairly and
12 within the laws of this Commonwealth or if the secretary is
13 not satisfied that allowing the applicant to engage in
14 business will promote the convenience and advantage of the
15 community in which the business of the applicant is to be
16 conducted.

17 (2) No license may be issued to an applicant who has
18 been convicted under this act for engaging in the business of
19 loan or check providing in this Commonwealth without having
20 obtained a license under this act.

21 (3) The secretary may reject an application for a
22 license based upon proliferation of existing licenses within
23 the same area, community opposition to the application and
24 inability to meet minimum capital requirements or
25 recordkeeping obligations.

26 (b) Revocation of license.--The secretary may, upon 30 days'
27 written notice to the loan or check provider, forwarded by
28 registered mail to the place of business of the loan or check
29 provider as shown in the application for license, stating the
30 contemplated action and in general the grounds for revocation,

1 revoke any license if:

2 (1) the loan or check provider violates any provisions
3 of this act;

4 (2) the loan or check provider violates any rule or
5 regulation made by the secretary under and within the
6 authority of this act;

7 (3) a refund loan or check provider fails to comply with
8 any demand, rule or regulation lawfully made by the secretary
9 under and within the authority of this act;

10 (4) the loan or check provider fails to pay the cost of
11 examination by the secretary or the secretary's authorized
12 representative;

13 (5) the loan or check provider fails to maintain in
14 effect the bond required under the provisions of this act;

15 (6) the loan or check provider fails to file the annual
16 report to the secretary within the time stipulated in this
17 act; or

18 (7) if any fact or condition exists which, if it had
19 existed at the time of original application for license,
20 clearly would have warranted the secretary originally in
21 refusing to issue the license.

22 (c) Limitation.--Whenever the license is revoked, the
23 secretary may not issue another license to the loan or check
24 provider until the expiration of at least one year from the date
25 of revocation of the license and not at all if the loan or check
26 provider shall have been convicted for a deliberate violation of
27 this act or for a second offense.

28 (d) Special reports.--The secretary may require a loan or
29 check provider licensed under this act to file special reports
30 in addition to the annual report required under this act.

1 (e) Rules and regulations.--The secretary may issue rules
2 and regulations governing the records to be maintained by a loan
3 or check provider licensed under this act and may issue general
4 rules and regulations as may be necessary for the protection of
5 the public and to insure the proper conduct of the business and
6 for the enforcement of this act, which rules and regulations
7 shall have the force and effect of law. These rules and
8 regulations shall include minimum start-up and capital operating
9 requirements, the filing of annual reports to the secretary and
10 any other financial recordkeeping the secretary deems necessary
11 to ensure compliance with this act.

12 Section 308. Examination by secretary.

13 (a) General rule.--The secretary and any person designated
14 by the secretary for that purpose may at any time investigate
15 the business and examine the books, accounts, records and files
16 of every loan or check provider and of every person who or which
17 shall be engaged in the business of loan or check providing
18 whether the person shall act or claim to act as principal or
19 agent or under or without the authority of this act. For this
20 purpose, the secretary shall have free access to the office and
21 places of business, books, accounts, papers, records, files,
22 safes and vaults of all persons. A person who is not licensed
23 under this act shall be presumed to be engaged in the business
24 of loan or check providing if that person advertises or solicits
25 business as a loan or check provider as defined in this act, and
26 the secretary is in such cases authorized to examine the books,
27 accounts, papers, files, safes and vaults of the person for the
28 purpose of discovering violations of this act.

29 (b) Costs.--The costs of an examination of the business of a
30 licensed loan or check provider by the secretary shall be paid

1 by the loan or check provider so examined, and the secretary may
2 collect the costs from the surety company which has executed the
3 bond required under this act and may maintain an action for the
4 recovery of the costs in any court of competent jurisdiction.

5 Section 309. Reports to secretary.

6 (a) Duty to report.--A loan or check provider licensed under
7 this act shall annually, on or before the first day of March,
8 file a report with the secretary giving relevant information as
9 the secretary may require concerning the business and operations
10 during the previous calendar year of the licensed place of
11 business conducted by the loan or check provider within this
12 Commonwealth. The report shall be made under oath and shall be
13 in the form prescribed by the secretary.

14 (b) Penalty.--A loan or check provider who fails to file a
15 report as required by this act shall pay to the secretary a
16 penalty of \$10 for each calendar day which the report is
17 overdue, but the secretary may, in his discretion, relieve a
18 loan or check provider of any portion or all of such fine.

19 Section 310. Recordkeeping.

20 A loan or check provider licensed under this act shall
21 maintain adequate records of all business transacted containing
22 the information in English and in the forms as shall be
23 prescribed by the secretary by general rule or regulation. The
24 records of a loan or check provider shall be retained for a
25 period of two years after the date of the payment of any loan.

26 Section 311. Interest and charges.

27 (a) Interest rate.--

28 (1) A loan or check provider may not charge, contract
29 for or receive interest in excess of 36% per year on any loan
30 or check.

1 (2) The interest and charges authorized by this act
2 shall be computed at the rates specified on the actual
3 principal balance of the loan due for the actual time which
4 has elapsed from the date of the loan to the date of payment.

5 (3) For the purpose of calculation of interest and
6 charges permitted under this act, a year shall be 12 calendar
7 months and a month shall be one calendar month, or any
8 fractional part. A calendar month shall be any period from a
9 certain date in one month to the same date in the next
10 succeeding month.

11 (b) Fees.--A loan or check provider may not charge more than
12 \$5 in administrative, document preparation or application fees
13 for each loan entered into with a consumer. This limitation on
14 fees shall apply to any electronic filing fee charged by the
15 facilitator unless the same electronic filing fee is charged to
16 the facilitator's customers who do not receive loans or checks.

17 (c) Prohibition.--No greater interest nor other fees, fines,
18 charges or costs shall be charged, contracted for or received,
19 directly or indirectly, under any pretext whatsoever. Interest
20 and charges permitted under this act may not be collected or
21 deducted in advance.

22 Section 312. Penalties.

23 Any person, partnership, association or corporation or any
24 partner, director, officer, agent or member who shall engage in
25 the business of loan or check providing in this Commonwealth
26 without first obtaining a license under this act commits a
27 misdemeanor and, upon conviction, shall be sentenced to pay a
28 fine of not less than \$500 nor more than \$5,000 or a term of
29 imprisonment not less than six months nor more than three years,
30 or both, in the discretion of the court. A loan or check

1 provider licensed under the provisions of this act who violates
2 any provisions of this act or directs or consents to such
3 violations commits a misdemeanor and, upon conviction, shall be
4 sentenced to pay a fine of not more than \$1,000 or a term of
5 imprisonment not to exceed one year, or both, in the discretion
6 of the court.

7 CHAPTER 5

8 MISCELLANEOUS PROVISIONS

9 Section 501. Severability.

10 The provisions of this act are severable. If any provision of
11 this act or its application to any person or circumstance is
12 held invalid, the invalidity shall not affect other provisions
13 or applications of this act which can be given effect without
14 the invalid provision or application.

15 Section 502. Effective date.

16 This act shall take effect in 60 days.