

CHAPTER 237

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 10-1400

BY REPRESENTATIVE(S) Apuan, Ferrandino, Casso, Fischer, Frangas, Labuda, Levy, Merrifield, Middleton, Pommer, Primavera, Ryden, Schafer S., Carroll T.;
also SENATOR(S) Johnston, Steadman.

AN ACT

CONCERNING REFUND ANTICIPATION LOAN FACILITATORS, AND, IN CONNECTION THEREWITH, REQUIRING REFUND ANTICIPATION LOAN FACILITATORS TO BE REGISTERED AS ELECTRONIC RETURN ORIGINATORS WITH THE FEDERAL INTERNAL REVENUE SERVICE AND TO MAKE CERTAIN DISCLOSURES WHEN FACILITATING REFUND ANTICIPATION LOANS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 9.5
Refund Anticipation Loans

5-9.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "REFUND ANTICIPATION LOANS ACT".

5-9.5-102. Legislative declaration - scope. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT IT IS IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY, AND WELFARE TO ENACT MINIMUM PROTECTIONS FOR THE BENEFIT OF CONSUMERS AVAILING THEMSELVES OF REFUND ANTICIPATION LOANS OFFERED BY FACILITATORS.

5-9.5-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR DESIGNATED IN SECTION 5-6-103.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) "CONSUMER" MEANS A NATURAL PERSON WHO IS SOLICITED FOR, APPLIES FOR, OR RECEIVES THE PROCEEDS OF A REFUND ANTICIPATION LOAN.

(3) "ELECTRONIC RETURN ORIGINATOR" MEANS A PERSON AUTHORIZED BY THE INTERNAL REVENUE SERVICE TO ORIGINATE THE ELECTRONIC SUBMISSION OF INCOME TAX RETURNS TO THE INTERNAL REVENUE SERVICE.

(4) "PERSON" HAS THE MEANING SET FORTH IN SECTION 2-4-401, C.R.S.

(5) "REFUND ANTICIPATION LOAN" MEANS A LOAN MADE TO A COLORADO CONSUMER BASED ON THE COLORADO CONSUMER'S ANTICIPATED INCOME TAX REFUND.

(6) (a) "REFUND ANTICIPATION LOAN FACILITATOR" OR "FACILITATOR" MEANS A PERSON WHO, INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON, SOLICITS THE EXECUTION OF, PROCESSES, ARRANGES FOR, RECEIVES, OR ACCEPTS AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR IN ANY OTHER MANNER FACILITATES THE MAKING OF A REFUND ANTICIPATION LOAN AND INCLUDES AN ELECTRONIC RETURN FACILITATOR.

(b) "REFUND ANTICIPATION LOAN FACILITATOR" DOES NOT INCLUDE A PERSON VALIDLY:

(I) DOING BUSINESS AS A BANK, THRIFT, SAVINGS ASSOCIATION, OR CREDIT UNION UNDER THE LAWS OF THE UNITED STATES OR OF THIS STATE OR IS AN AFFILIATE OF SUCH AN ENTITY THAT IS ACTING AS A SERVICER FOR THAT ENTITY;

(II) PRACTICING AS A CERTIFIED PUBLIC ACCOUNTANT LICENSED UNDER ARTICLE 2 OF TITLE 12, C.R.S.; OR

(III) LICENSED AS AN ATTORNEY BY THE COLORADO SUPREME COURT IN ACCORDANCE WITH SECTION 12-5-101, C.R.S.

5-9.5-104. Restriction on facilitating refund anticipation loans. A PERSON SHALL NOT ACT AS A REFUND ANTICIPATION LOAN FACILITATOR UNLESS THE PERSON IS, OR IS DIRECTLY EMPLOYED BY, AN ELECTRONIC RETURN ORIGINATOR.

5-9.5-105. Disclosures required. (1) A FACILITATOR SHALL NOT FACILITATE A REFUND ANTICIPATION LOAN UNLESS THE FACILITATOR MAKES THE DISCLOSURES REQUIRED BY SUBSECTIONS (2), (3), AND (4) OF THIS SECTION.

(2) **Fee schedule to be posted.** (a) EVERY PLACE OF BUSINESS IN WHICH FACILITATORS FACILITATE REFUND ANTICIPATION LOANS SHALL POST A SCHEDULE SHOWING THE CURRENT FEES FOR FACILITATING REFUND ANTICIPATION LOANS AND FOR THE ELECTRONIC FILING OF A CONSUMER'S TAX RETURN.

(b) EACH FEE SCHEDULE POSTED PURSUANT TO THIS SUBSECTION (2) SHALL CONTAIN EXAMPLES OF THE REFUND ANTICIPATION LOAN ANNUAL PERCENTAGE RATES FOR REFUND ANTICIPATION LOANS OF TWO HUNDRED DOLLARS, FIVE HUNDRED DOLLARS, ONE THOUSAND DOLLARS, ONE THOUSAND FIVE HUNDRED DOLLARS, TWO THOUSAND DOLLARS, AND FIVE THOUSAND DOLLARS.

(c) EACH FEE SCHEDULE SHALL ALSO PROMINENTLY CONTAIN THE FOLLOWING STATEMENT, IN AT LEAST TWENTY-EIGHT-POINT, BOLD-FACED TYPE AND IN BOTH ENGLISH AND SPANISH:

NOTICE

WHEN YOU TAKE OUT A REFUND ANTICIPATION LOAN, YOU ARE TAKING OUT A LOAN BY 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. YOU CAN MAKE COMPLAINTS REGARDING YOUR REFUND ANTICIPATION LOAN TO THE ADMINISTRATOR OF THE UNIFORM CONSUMER CREDIT CODE IN THE COLORADO STATE ATTORNEY GENERAL'S OFFICE AT [CURRENT TELEPHONE NUMBER].

(d) THE FEE SCHEDULE AND NOTICE REQUIRED BY THIS SUBSECTION (2) SHALL BE MADE ON A SIGN MEASURING NO LESS THAN SIXTEEN INCHES BY TWENTY INCHES AND SHALL BE DISPLAYED CONSPICUOUSLY AND IN A PROMINENT LOCATION.

(3) **Oral disclosures.** (a) WHEN A CONSUMER APPLIES FOR A REFUND ANTICIPATION LOAN, THE FACILITATOR SHALL ORALLY DISCLOSE TO THE CONSUMER:

(I) THAT THE PRODUCT IS A LOAN THAT ONLY LASTS ONE TO TWO WEEKS;

(II) THAT, 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.

(b) THE ORAL DISCLOSURE REQUIRED UNDER THIS SUBSECTION (3) SHALL BE MADE IN ENGLISH, SPANISH, OR ANY OTHER LANGUAGE THAT THE FACILITATOR USES TO COMMUNICATE ORALLY WITH THE CONSUMER.

(4) **Written statement.** (a) WHEN A CONSUMER APPLIES FOR A REFUND ANTICIPATION LOAN AND BEFORE CLOSING THE REFUND ANTICIPATION LOAN, THE FACILITATOR FACILITATING THE LOAN SHALL GIVE THE CONSUMER A WRITTEN STATEMENT INFORMING THE CONSUMER:

(I) THAT A REFUND ANTICIPATION LOAN IS A LOAN AND IS NOT THE BORROWER'S ACTUAL INCOME TAX REFUND;

(II) THAT THE CONSUMER MAY FILE AN INCOME TAX RETURN ELECTRONICALLY WITHOUT APPLYING FOR A REFUND ANTICIPATION LOAN;

(III) THAT THE CONSUMER IS RESPONSIBLE FOR REPAYMENT OF THE LOAN AND

RELATED FEES IF THE TAX REFUND IS NOT PAID OR IS INSUFFICIENT TO REPAY THE LOAN;

(IV) ANY FEE THAT WILL BE CHARGED IF THE LOAN IS NOT APPROVED;

(V) THE AVERAGE TIME, AS PUBLISHED BY THE FEDERAL INTERNAL REVENUE SERVICE, WITHIN WHICH A TAXPAYER CAN EXPECT TO RECEIVE A REFUND FOR AN INCOME TAX RETURN FILED:

(A) ELECTRONICALLY, AND THE REFUND IS DEPOSITED DIRECTLY INTO THE TAXPAYER'S FINANCIAL INSTITUTION ACCOUNT OR MAILED TO THE TAXPAYER; AND

(B) BY MAIL, AND THE REFUND IS DEPOSITED DIRECTLY INTO THE TAXPAYER'S FINANCIAL INSTITUTION ACCOUNT OR MAILED TO THE TAXPAYER;

(VI) THAT THE FEDERAL INTERNAL REVENUE SERVICE DOES NOT GUARANTEE:

(A) PAYMENT OF THE FULL AMOUNT OF THE ANTICIPATED REFUND;

(B) A SPECIFIC DATE ON WHICH IT WILL MAIL A REFUND OR DEPOSIT THE REFUND INTO A TAXPAYER'S FINANCIAL INSTITUTION ACCOUNT; OR

(C) THE ESTIMATED TIME WITHIN WHICH THE PROCEEDS OF THE REFUND ANTICIPATION LOAN WILL BE PAID TO THE CONSUMER IF THE LOAN IS APPROVED;

(VII) THE FOLLOWING INFORMATION, SPECIFIC TO THE CONSUMER:

(A) THE TOTAL FEES FOR THE LOAN; AND

(B) THE ESTIMATED ANNUAL PERCENTAGE RATE FOR THE LOAN, CALCULATED USING THE GUIDELINES ESTABLISHED UNDER THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ., AS AMENDED;

(VIII) THE PROCEDURE FOR MAKING A COMPLAINT TO THE ADMINISTRATOR REGARDING THE REFUND ANTICIPATION LOAN, INCLUDING THE CURRENT ADDRESS, TELEPHONE NUMBER, OR WEB SITE OF THE ADMINISTRATOR TO WHICH SUCH COMPLAINTS MAY BE DIRECTED.

(b) THE WRITTEN STATEMENT REQUIRED UNDER THIS SUBSECTION (4) SHALL BE PROVIDED TO THE CONSUMER IN ENGLISH, SPANISH, OR BOTH ENGLISH AND SPANISH, AS REQUESTED BY THE CONSUMER.

5-9.5-106. Unlawful acts - fine. ANY PERSON WHO WILLFULLY VIOLATES THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT.

5-9.5-107. Enforcement - investigation - penalties. (1) THE ADMINISTRATOR SHALL ENFORCE THIS ARTICLE. TO CARRY OUT THIS RESPONSIBILITY, THE ADMINISTRATOR IS AUTHORIZED TO:

(a) RECEIVE AND ACT ON COMPLAINTS, TAKE ACTION DESIGNED TO OBTAIN VOLUNTARY COMPLIANCE WITH THIS ARTICLE, OR COMMENCE PROCEEDINGS ON THE ADMINISTRATOR'S OWN INITIATIVE;

(b) ISSUE AND ENFORCE CEASE-AND-DESIST OR OTHER ADMINISTRATIVE ENFORCEMENT ORDERS IN THE SAME MANNER AS SET FORTH IN SECTION 5-6-109;

(c) MAKE INVESTIGATIONS, ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS, ADMINISTER OATHS, AND CONDUCT HEARINGS IN AID OF ANY INVESTIGATION OR INQUIRY NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ARTICLE;

(d) BRING A CIVIL ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE AND FOR OTHER APPROPRIATE RELIEF IN THE SAME MANNER AS SET FORTH IN SECTIONS 5-6-111 TO 5-6-114; AND

(e) USE ANY OF THE ADMINISTRATOR'S ENFORCEMENT POWERS TO RESTRAIN OR TAKE OTHER ACTION AGAINST ANY PERSON FOUND TO BE FACILITATING OR ENFORCING REFUND ANTICIPATION LOANS IN VIOLATION OF THIS ARTICLE.

5-9.5-108. Severability. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THE ARTICLE THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE ARE DECLARED TO BE SEVERABLE.

5-9.5-109. Repeal of article. (1) THIS ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2019.

(2) PRIOR TO THE REPEAL OF THIS ARTICLE, THE FUNCTIONS OF THE ADMINISTRATOR UNDER THIS ARTICLE SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104 (50.5), C.R.S.

SECTION 2. 24-34-104 (50.5), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (50.5) The following agencies, functions, or both, shall terminate on September 1, 2019:

(a) The Colorado public utilities commission, created by article 2 of title 40, C.R.S.;

(b) THE FUNCTIONS OF THE ADMINISTRATOR, DEFINED IN SECTION 5-9.5-103, C.R.S., WITH REGARD TO REFUND ANTICIPATION LOAN FACILITATORS REGULATED UNDER ARTICLE 9.5 OF TITLE 5, C.R.S.

SECTION 3. Act subject to petition - specified effective date - applicability.

(1) This act shall take effect November 1, 2010; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not

take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

Approved: May 19, 2010