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HOUSE BILL NO. 324

Offered January 11, 2006

Prefiled January 4, 2006

A *BILL to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 20, consisting of sections numbered 6.1-474 through 6.1-483, relating to tax refund anticipation loans; civil penalties.*

Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 20, consisting of sections numbered 6.1-474 through 6.1-483, as follows:

CHAPTER 20.**REFUND ANTICIPATION LOANS.****§ 6.1-474. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions.

"Debtor" means a person who receives the proceeds of a refund anticipation loan.

"Refund anticipation loan" means a loan, made or facilitated by a tax preparer or another entity, in anticipation of, and the payment of which is secured by or to be repaid directly from the proceeds of, a person's federal or state income tax refund or both.

"Refund anticipation loan lender" means a person who makes a refund anticipation loan or who individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.

"Refund anticipation loan fee" means the charges, fees, or other consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

§ 6.1-475. Compliance with chapter required; scope.

A. No person may individually or in conjunction or cooperation with another person process, receive, or accept for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitate the making of a refund anticipation loan unless the person has complied with the provisions of this chapter.

B. This chapter does not apply to a person who does not deal directly with debtors but who acts solely as an intermediary by processing or transmitting, electronically or otherwise, tax or credit information or by preparing for a facilitator refund anticipation loan checks to be delivered by the refund anticipation loan lender to the debtor.

§ 6.1-476. Displaying loan fees and other information.

A. Every refund anticipation loan lender shall prominently display at each office where it is making or facilitating refund anticipation loans a schedule showing the current refund anticipation loan fees for refund anticipation loans facilitated at the office and the current electronic filing fees for the electronic filing of the taxpayer's tax return. Every refund anticipation loan lender shall also prominently display on each fee schedule a statement to the effect that the taxpayer may have the tax return filed electronically without also obtaining a refund anticipation loan.

B. No refund anticipation loan lender shall make or facilitate a refund anticipation loan unless (i) the schedule required by this section is displayed and (ii) the refund anticipation loan fee actually charged is the same as the fee displayed on the schedule displayed pursuant to subsection A.

C. Every refund anticipation loan lender shall also post the Commission's telephone number and information on how to file a complaint regarding a violation of this chapter with the Commission.

§ 6.1-477. Required disclosures.

A. At the time a debtor applies for or is offered a refund anticipation loan, the refund anticipation loan lender shall disclose to the debtor, on a form separate from the loan application:

1. The fee for the loan.

2. The fee for electronic filing of a tax return.

3. The time within which the proceeds of the loan will be paid to the debtor if the loan is approved.

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59 4. That the debtor is responsible for repayment of the loan and related fees in the event the tax
60 refund is not paid or is not paid in full.

61 5. The availability of electronic filing of the taxpayer's tax return, along with the average time
62 announced by the appropriate taxing authority within which a taxpayer can expect to receive a refund if
63 the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.

64 6. Examples of the annual percentage rates, as defined by the Truth In Lending Act, 15 U.S.C.
65 § 1607 and 12 C.F.R. § 226.22, for refund anticipation loans of \$500, \$750, \$1,000, \$2,000, and
66 \$3,000. Regardless of disclosures of the annual percentage rate required by the Truth In Lending Act, if
67 the debtor is required to establish or maintain a deposit account with the creditor for receipt of the
68 debtor's tax refund to offset the amount owed on the loan, the maturity of the loan for the purpose of
69 determining the annual percentage rate disclosure under this section shall be assumed to be the
70 estimated date when the tax refund will be deposited in the debtor's account.

71 B. All required statements in the disclosure form shall be in a minimum of 14-point type, with at
72 least a double space between each line in the statement and four spaces between each statement.

73 C. The disclosure form shall be signed and dated by the refund anticipation loan lender and the
74 debtor.

75 § 6.1-478. Prohibited activities.

76 A refund anticipation loan lender shall not engage in any of the following activities:

77 1. Misrepresenting a material factor or condition of a refund anticipation loan.

78 2. Failing to arrange for a refund anticipation loan promptly after the debtor applies for the loan.

79 3. Engaging in any transaction, practice, or course of business that operates a fraud upon any
80 person in connection with a refund anticipation loan.

81 4. Making or facilitating a refund anticipation loan for which the refund anticipation loan fee is
82 different from the fee posted.

83 5. Directly or indirectly arranging for payment of any portion of the refund anticipation loan for
84 check cashing, credit insurance, or any other good or service unrelated to (i) preparing and filing tax
85 returns or (ii) facilitating refund anticipation loans.

86 6. Arranging for a creditor to take a security interest in any property of the debtor other than the
87 proceeds of the debtor's tax refund to secure payment of the loan.

88 § 6.1-479. Regulations.

89 The Commission shall promulgate such rules and regulations as it deems appropriate to effect the
90 purposes of this chapter. Before promulgating any such regulation, the Commission shall give
91 reasonable notice of its content and shall afford interested parties an opportunity to be heard, in
92 accordance with the Rules of Practice and Procedure of the Commission.

93 § 6.1-480. Civil penalties.

94 The Commission may impose a civil penalty not exceeding \$1,000 upon any person who it
95 determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the
96 Commission, has violated any of the provisions of this chapter or regulations promulgated thereunder.
97 For the purposes of this section, each separate violation shall be subject to the civil penalty therein
98 prescribed. Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary
99 Fund.

100 § 6.1-481. Civil actions.

101 Any person who suffers loss by reason of a violation of any provision of this chapter may recover in
102 a civil action against the person who violated the provision, in addition to reasonable costs and
103 attorneys' fees, the greater of: (i) \$1,000, or (ii) the amount of actual damages, if any, sustained.

104 § 6.1-482. Cease and desist orders.

105 If the Commissioner determines that any person has violated any provision of this chapter or any
106 regulation adopted hereunder, he may, upon 21 days' notice in writing, order such person to cease and
107 desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by
108 certified mail to the principal place of business of such person or other address authorized under
109 § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the
110 notice, the person or persons named therein may file with the Clerk of the Commission a written request
111 for a hearing. If a hearing is requested, the Commissioner shall not issue a cease and desist order
112 except based upon findings made at such hearing. Such hearing shall be conducted in accordance with
113 the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under
114 this section by imposition and collection of such fines and penalties as may be prescribed by law.

115 § 6.1-483. Authority of Attorney General; referral by Commission to Attorney General.

116 A. If the Commission determines that a person is in violation, or has violated, any provision of this
117 chapter, the Commission may refer the information to the Attorney General and may request that the
118 Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby
119 authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin
120 such violations notwithstanding the existence of an adequate remedy at law.

121 *B. Upon such referral of the Commission, the Attorney General may also seek, and the circuit court*
122 *may order or decree, damages and such other relief allowed by law, including restitution to the extent*
123 *available to borrowers under applicable law. Persons entitled to any relief as authorized by this section*
124 *shall be identified by order of the court within 180 days from the date of the order permanently*
125 *enjoining the unlawful act or practice.*
126 *C. In any action brought by the Attorney General by virtue of the authority granted in this provision,*
127 *the Attorney General shall be entitled to seek reasonable attorney's fees and costs.*