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HOUSE BILL NO. 324

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 7, 2006)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 20, consisting of sections numbered 6.1-474 through 6.1-479, relating to tax refund anticipation loans; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and 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 6.1-479, as follows:

CHAPTER 20.

REFUND ANTICIPATION LOANS.

§ 6.1-474. Definitions.

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

"Applicant" means a customer who applies for a refund anticipation loan through a facilitator.

"Borrower" means an applicant who receives a refund anticipation loan through a facilitator.

"Customer" means an individual for whom tax preparation services are performed.

"Facilitator" means a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. "Facilitator" does not include a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or the Commonwealth, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with an applicant in the making of the refund anticipation loan.

"Refund anticipation loan" means a loan, whether provided through a facilitator or by another entity such as a financial institution, in anticipation of, and whose payment is secured by, a customer's federal or state income tax refund or by both.

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

"Refund anticipation loan fee schedule" means a list or table of refund anticipation loan fees that includes three or more representative refund anticipation loan amounts. The schedule shall separately list each fee or charge imposed, as well as a total of all fees imposed, related to the making of a refund anticipation loan. The schedule shall also include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.).

"Tax return" means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes.

§ 6.1-475. Advertising and disclosures.

A. Any facilitator who advertises the availability of a refund anticipation loan shall not directly or indirectly represent the loan as a customer's actual refund. Any advertisement that mentions a refund anticipation loan shall state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement shall also disclose the name of the lending institution.

B. Every facilitator who offers to facilitate, or who facilitates, a refund anticipation loan to a customer shall display a refund anticipation loan schedule showing the current fees for refund anticipation loans facilitated at the office, for the electronic filing of a customer's tax return, for setting up a refund account, and any other related activities necessary to receive a refund anticipation loan. The fee schedule shall also include a statement indicating that a customer may have the tax return filed electronically without also obtaining a refund anticipation loan.

C. The posting required by subsection B shall be made in not less than 28-point type on a document measuring not less than 16 by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where any facilitator is offering to facilitate or is -facilitating a refund anticipation loan.

D. Prior to an applicant's:

1. Completion of the refund anticipation loan application, a facilitator that offers to facilitate a refund anticipation loan shall provide to the applicant a clear disclosure containing all of the following

60 information:

61 a. The refund anticipation loan fee schedule.

62 b. That a refund anticipation loan is a loan and is not the applicant's actual income tax refund.

63 c. That a customer can file an income tax return electronically without applying for a refund
64 anticipation loan.

65 d. The average amount of time, according to the Internal Revenue Service, within which a customer
66 who does not obtain a refund anticipation loan can expect to receive a refund if a customer's return is
67 filed or mailed as follows:

68 (1) Filed electronically and the refund is deposited directly into a customer's bank account or mailed
69 to the customer.

70 (2) Mailed to the Internal Revenue Service and the refund is deposited directly into a customer's
71 bank account or mailed to a customer.

72 e. That the Internal Revenue Service does not guarantee that it will pay the full amount of the
73 anticipated refund and it does not guarantee a specific date that a refund will be deposited into a
74 customer's bank account or mailed to a customer.

75 f. That the borrower is responsible for the repayment of the refund anticipation loan and the related
76 fees in the event that the tax refund is not paid or not paid in full.

77 g. The estimated time within which the loan proceeds will be paid to the borrower if the loan is
78 approved.

79 h. The fee that will be charged, if any, if the applicant's loan is not approved.

80 2. Consummation of the refund anticipation loan transaction, a facilitator shall provide to the
81 applicant, in either written or electronic form, the following information:

82 a. The estimated total fees for obtaining the refund anticipation loan.

83 b. The estimated annual percentage rate for the applicant's refund anticipation loan, using the
84 guidelines established under the federal Truth In Lending Act (15 U.S.C. § 1601 et seq.).

85 c. The various costs, fees, and finance charges, if applicable, associated with receiving a refund by
86 mail or by direct deposit directly from the Internal Revenue Service, a refund anticipation loan, a refund
87 anticipation check, or any other refund settlement options facilitated by the facilitator.

88 § 6.1-476. Prohibited activities.

89 A. Any facilitator who offers to facilitate, or who facilitates, a refund anticipation loan shall not
90 engage in any of the following activities:

91 1. Requiring a customer to enter into a loan arrangement in order to complete a tax return.

92 2. Misrepresenting a material factor or condition of a refund anticipation loan.

93 3. Failing to process the application for a refund anticipation loan promptly after an applicant
94 applies for the loan.

95 4. Engaging in any transaction, practice, or course of business that operates a fraud upon any
96 person in connection with a refund anticipation loan.

97 B. When an application involves more than one customer, notification pursuant to this section need
98 only be given to one customer.

99 § 6.1-477. Right of rescission.

100 A borrower who obtains a refund anticipation loan may rescind the loan, on or before the close of
101 business on the next day of business, by either returning the original check issued for the loan or
102 providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge
103 the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded but
104 may charge the customer a fee for establishing and administering a bank account to electronically
105 receive and distribute the refund.

106 § 6.1-478. Preemption of local laws.

107 This chapter shall preempt and be exclusive of all local acts, statutes, ordinances, and regulations
108 relating to refund anticipation loans. This subsection shall be given retroactive and prospective effect.

109 § 6.1-479. Civil penalties.

110 Any violation of the provisions of this chapter shall constitute a prohibited practice under the
111 provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the
112 Virginia Consumer Protection Act (§ 59.1-196 et seq.).

113 § 59.1-200. Prohibited practices.

114 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
115 transaction are hereby declared unlawful:

116 1. Misrepresenting goods or services as those of another;

117 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

118 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
119 services, with another;

120 4. Misrepresenting geographic origin in connection with goods or services;

121 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or

benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.1-796.78, 3.1-796.79, or 3.1-796.82, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in

183 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
184 agreement;
185 18. Violating any provision of the Virginia Health Spa Act, Chapter 24 (§ 59.1-294 et seq.) of this
186 title;
187 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
188 seq.) of this title;
189 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
190 seq.) of this title;
191 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
192 (§ 59.1-207.17 et seq.) of this title;
193 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;
194 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
195 (§ 59.1-424 et seq.) of this title;
196 24. Violating any provision of § 54.1-1505;
197 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
198 17.6 (§ 59.1-207.34 et seq.) of this title;
199 26. Violating any provision of § 3.1-949.1, relating to the pricing of merchandise;
200 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this
201 title;
202 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of
203 this title;
204 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
205 seq.) of this title;
206 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
207 seq.) of this title;
208 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this
209 title;
210 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
211 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
212 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
213 35. Using the consumer's social security number as the consumer's account number with the supplier,
214 if the consumer has requested in writing that the supplier use an alternate number not associated with
215 the consumer's social security number;
216 36. Violating any provision of Chapter 18 (§ 6.1-444 et seq.) of Title 6.1;
217 37. Violating any provision of § 8.01-40.2;
218 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
219 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;
220 40. Violating any provision of Chapter 10.2 (§ 6.1-363.2 et seq.) of Title 6.1;
221 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
222 (§ 59.1-525 et seq.) of this title;
223 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;
224 43. Violating any provision of § 59.1-443.2; ~~and~~
225 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title; *and*
226 45. *Violating any provision of Chapter 20 (§ 6.1-474 et seq.) of Title 6.1.*
227 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
228 lease solely by reason of the failure of such contract or lease to comply with any other law of the
229 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
230 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
231 such contract or lease.
232 **2. That the provisions of this act shall become effective on January 1, 2007.**