

By: Villarreal, Pena, et al.

H.B. No. 398

Substitute the following for H.B. No. 398:

By: Solomons

C.S.H.B. No. 398

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of tax refund anticipation loans;
imposing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Finance Code, is amended by
adding Chapter 350 to read as follows:

CHAPTER 350. TAX REFUND ANTICIPATION LOANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 350.001. PURPOSE; CONSTRUCTION. (a) The purposes of
this chapter are:

(1) to protect consumers who enter into refund
anticipation loans or refund anticipation check transactions from
abuses; and

(2) to ensure that consumers are fully informed of the
costs and consequences of refund anticipation loans and checks.

(b) This chapter shall be liberally construed to accomplish
its purposes.

Sec. 350.002. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who applies for
registration as a facilitator.

(2) "Consumer" means an individual who singly or
jointly with another consumer is solicited for, applies for, or
receives the proceeds of a refund anticipation loan or check.

(3) "Creditor" means a person who makes a refund

1 anticipation loan or who takes an assignment of a refund
2 anticipation loan.

3 (4) "Facilitator" means a person who processes,
4 receives, or accepts for delivery an application for a refund
5 anticipation loan, delivers a check in payment of refund
6 anticipation loan proceeds, or in any other manner acts to allow the
7 making of a refund anticipation loan. "Facilitator" does not
8 include:

9 (A) a bank, thrift, savings association,
10 industrial bank, or credit union operating under the laws of the
11 United States or this state, when not engaging in tax return
12 preparation; or

13 (B) any person who acts solely as an intermediary
14 and does not interact directly with a taxpayer in the making of the
15 refund anticipation loan.

16 (5) "Refund anticipation check" means a check or other
17 payment mechanism:

18 (A) that represents the proceeds of a consumer's
19 tax refund;

20 (B) that is issued by a depository institution or
21 other person who receives a direct deposit of the consumer's tax
22 refund or tax credits; and

23 (C) for which the consumer pays a fee or other
24 consideration.

25 (6) "Refund anticipation loan" means a loan that is
26 secured by the proceeds of a consumer's income tax refund or tax
27 credits or that the creditor arranges to be repaid directly or

1 indirectly from the proceeds of a consumer's income tax refund or
2 tax credits. A refund anticipation loan includes the sale,
3 assignment, or purchase of a consumer's tax refund at a discount or
4 for a fee, whether or not the consumer is required to repay the
5 purchaser or assignee if the Internal Revenue Service denies or
6 reduces the consumer's tax refund.

7 (7) "Registrant" means a person registered as a
8 facilitator under this chapter or an officer, agent, employee, or
9 representative of a person registered as a facilitator under this
10 chapter.

11 Sec. 350.003. RESTRICTION ON FACILITATING REFUND
12 ANTICIPATION LOANS OR CHECKS. (a) A person may not, individually
13 or in cooperation with another person, solicit the execution of or
14 process, receive, or accept an application or agreement for a
15 refund anticipation loan or check or in any other manner facilitate
16 the making of a refund anticipation loan or check, unless the person
17 has complied with this chapter.

18 (b) A person may not use any device, subterfuge, or pretense
19 to evade the application of this chapter.

20 Sec. 350.004. RULES. The commissioner may adopt rules as
21 necessary to accomplish the purposes of this chapter and assist
22 facilitators in interpreting this chapter.

23 [Sections 350.005-350.050 reserved for expansion]

24 SUBCHAPTER B. REGISTRATION

25 Sec. 350.051. REGISTRATION REQUIRED; EXCEPTIONS. (a) A
26 facilitator shall register as provided by this subchapter.

27 (b) The commissioner shall maintain a list of registrants

1 that is available to interested persons and the public.

2 (c) A bank, credit union, or savings and loan association is
3 not required to register under this subchapter.

4 Sec. 350.052. APPLICATION FOR REGISTRATION. (a) An
5 applicant for registration as a facilitator must file a written
6 application with the commissioner accompanied by an application fee
7 in an amount determined by the commissioner. An applicant shall pay
8 a separate fee for each office at which the applicant intends to act
9 as a facilitator of a refund anticipation loan or check.

10 (b) An application must:

11 (1) be made under oath on a form prescribed by the
12 commissioner;

13 (2) contain all information required by the
14 commissioner; and

15 (3) identify each office at which the applicant
16 intends to act as a facilitator of a refund anticipation loan or
17 check.

18 Sec. 350.053. BOND. (a) Except as provided by Subsections
19 (d) and (g), an applicant shall file with the application a bond in
20 the amount of \$50,000 for each office at which the applicant intends
21 to act as a facilitator of refund anticipation loans or checks.

22 (b) The bond must be in favor of this state for the use of a
23 consumer who has a cause of action under this chapter against the
24 facilitator. The bond must remain in effect for five years after
25 the facilitator ceases operation in this state.

26 (c) The bond must be conditioned on:

27 (1) the facilitator's faithful performance under this

1 chapter and rules adopted under this chapter; and

2 (2) the payment of all amounts that become due to a
3 consumer under this chapter.

4 (d) An applicant may apply to the commissioner for a waiver
5 of the bond requirement by demonstrating that obtaining a bond is a
6 hardship for the applicant and that the applicant has and will
7 maintain net assets of at least \$25,000, indexed to inflation as
8 provided by Subsection (e), for each office at which the applicant
9 intends to act as a facilitator of refund anticipation loans or
10 checks. In this subsection, "net assets" means the difference
11 between total assets and total liabilities, as determined by
12 generally accepted accounting principles.

13 (e) As often as determined necessary by the commissioner,
14 the commissioner shall adopt an adjustment for inflation of the
15 amount of net assets required by Subsection (d). In adopting the
16 adjustment, the commissioner may consider any index of inflation
17 the commissioner considers appropriate.

18 (f) The assets of an applicant's parent company may be
19 considered in determining whether an applicant has sufficient net
20 assets under Subsection (d) if the parent company guarantees the
21 performance and financial responsibility of the applicant.

22 (g) A parent company may file a bond in an amount determined
23 by the commissioner, not to exceed \$500,000, that is effective for
24 all of the parent company's franchise locations. An applicant
25 whose parent company files a bond under this subsection is not
26 required to file a bond with the application.

27 Sec. 350.054. REGISTRATION; CERTIFICATE. (a) The

1 commissioner shall register an applicant and shall issue a
2 certificate attesting to the registration if the commissioner finds
3 that:

4 (1) the applicant is authorized to provide electronic
5 tax filing services by the Internal Revenue Service; and

6 (2) the responsibility and general fitness of the
7 applicant commands the confidence of the community and warrants
8 belief that the business of facilitating refund anticipation loans
9 or checks will be operated according to the purposes of this
10 chapter.

11 (b) If the commissioner does not make the findings required
12 by Subsection (a), the commissioner may not register the applicant
13 and shall notify the applicant, stating the reason for the denial.

14 (c) On receiving a certificate of registration, the
15 applicant may act as a facilitator at each office identified on the
16 application for registration.

17 (d) The commissioner may adopt rules to:

18 (1) provide for an expedited procedure to register
19 additional offices of a registrant; and

20 (2) enable a registrant to change its registered
21 address.

22 Sec. 350.055. EXPIRATION OF REGISTRATION; RENEWAL. (a)
23 Registration as a facilitator expires on the first April 30
24 following the date the certificate of registration was issued.

25 (b) A registrant may renew a registration before the
26 registration expires by filing with the commissioner an application
27 for renewal in the form prescribed by the commissioner. An

1 application to renew a registration must contain all information
2 required by the commissioner and be accompanied by a fee in an
3 amount determined by the commissioner. A registrant shall pay a
4 separate renewal fee for each office at which the registrant
5 intends to facilitate a refund anticipation loan or check during
6 the succeeding year.

7 (c) The commissioner shall renew a registration on
8 receiving an application for renewal that complies with Subsection
9 (b).

10 Sec. 350.056. HEARING ON DENIAL OF REGISTRATION. (a) An
11 applicant is entitled to a hearing on written request made to the
12 commissioner not later than the 30th day after the date the
13 applicant receives notice of the commissioner's denial of an
14 application for registration. The hearing must be held not later
15 than the 60th day after the date the request is made.

16 (b) If the commissioner determines after the hearing that
17 the applicant is an electronic return originator authorized by the
18 Internal Revenue Service as an e-file provider and the
19 responsibility and general fitness of the applicant commands the
20 confidence of the community and warrants belief that the business
21 of facilitating refund anticipation loans or checks will be
22 operated according to the purposes of this chapter, the
23 commissioner shall register the applicant. If the commissioner
24 does not make the findings required by this subsection, the
25 commissioner may not register the applicant.

26 [Sections 350.057-350.100 reserved for expansion]

1 SUBCHAPTER C. INTEREST AND FEES

2 Sec. 350.101. REFUND ANTICIPATION LOAN FEE. (a) Except as
3 provided by Subsection (b) or (c), a fee or other consideration
4 charged by a creditor or facilitator in connection with making a
5 refund anticipation loan is considered a refund anticipation loan
6 fee.

7 (b) A fee or other consideration charged for a deposit
8 account used wholly or partly for receiving a consumer's tax refund
9 to repay the amount owed on the refund anticipation loan is
10 considered a refund anticipation loan fee.

11 (c) A fee or other consideration charged by a facilitator in
12 the ordinary course of business, including a fee for preparing or
13 electronically filing a tax return, is not a refund anticipation
14 loan fee if the facilitator charges the same fee in the same amount
15 to a customer who does not receive a refund anticipation loan or
16 check.

17 Sec. 350.102. REFUND ANTICIPATION LOAN RATE. A facilitator
18 shall disclose the refund anticipation loan rate in terms of the
19 annual percentage rate for the borrower's refund anticipation loan,
20 using the guidelines established under the Truth in Lending Act (15
21 U.S.C. Section 1601 et seq.). At the same time the facilitator
22 discloses the refund anticipation loan rate, the facilitator shall
23 disclose the total amount of all fees associated with the loan that
24 are not included in the computation of the refund anticipation loan
25 rate.

26 Sec. 350.103. CERTAIN CHARGES PROHIBITED. A facilitator
27 may not, in connection with making a refund anticipation loan or

1 issuing a refund anticipation check, directly or indirectly charge
2 or arrange for the charging of:

3 (1) fees for insurance;

4 (2) attorney's fees; or

5 (3) collection costs.

6 [Sections 350.104-350.150 reserved for expansion]

7 SUBCHAPTER D. REQUIRED POSTINGS AND DISCLOSURES

8 Sec. 350.151. DISPLAY OF CERTIFICATE. A registrant shall
9 prominently display a certificate issued under this chapter in each
10 place of business in this state where the registrant facilitates
11 refund anticipation loans or checks.

12 Sec. 350.152. FEE SCHEDULE POSTING. (a) A facilitator
13 shall display schedules showing the fees for:

14 (1) a refund anticipation loan or check, currently
15 charged by the facilitator at that place of business; and

16 (2) electronically filing a taxpayer's tax return.

17 (b) A schedule required by Subsection (a) must be:

18 (1) displayed in a prominent location in each place of
19 business in this state where the facilitator facilitates refund
20 anticipation loans or checks; and

21 (2) written in not less than 28-point type on a
22 document measuring not less than 16 inches by 20 inches.

23 (c) A schedule of the fees charged for refund anticipation
24 loans displayed under Subsection (a)(1) shall include:

25 (1) the refund anticipation loan rates and examples of
26 the rates charged for refund anticipation loans of \$200, \$500,
27 \$1,000, \$1,500, \$2,000, and \$5,000;

1 (2) the following title centered on the page in
2 boldfaced capital letters at least one inch tall: "NOTICE
3 CONCERNING REFUND ANTICIPATION LOANS"; and

4 (3) the following statement: "When you take out a
5 refund anticipation loan, you are borrowing against your tax
6 refund. If your tax refund is less than expected you must still
7 repay the entire amount of the loan. If your refund is delayed, you
8 may have to pay additional costs. YOU CAN GET YOUR REFUND IN ABOUT
9 _____ (average time, as published by the Internal Revenue
10 Service) WITHOUT GETTING A LOAN OR PAYING ADDITIONAL FEES. You can
11 have your tax return filed electronically and directly deposited
12 into your own bank account without obtaining a loan or paying fees
13 for an extra product."

14 (d) A facilitator may facilitate a refund anticipation loan
15 or check only if:

16 (1) the facilitator displays the schedules as required
17 by this section;

18 (2) the fee actually charged for the refund
19 anticipation loan or check is the same as the fee displayed on the
20 schedule; and

21 (3) the rate actually charged is the same as the rate
22 displayed on the schedule as required by Subsection (c)(1).

23 Sec. 350.153. APPLICATION DISCLOSURES. (a) A facilitator
24 has an affirmative duty to:

25 (1) explain to the consumer that the consumer has a
26 choice of methods for receiving a tax refund;

27 (2) disclose the availability and timing of receiving

1 a refund directly from the Internal Revenue Service without
2 incurring the cost of using a bank product, before describing any
3 available bank product; and

4 (3) provide clear, complete, and accurate information
5 about each available option, including receiving a refund directly
6 from the Internal Revenue Service.

7 (b) Before or at the same time the facilitator first
8 mentions or offers a bank product to the consumer, the facilitator
9 shall disclose to the consumer on a form separate from a refund
10 anticipation loan or check application:

11 (1) the fee for a refund anticipation loan or check;

12 (2) the fee for electronically filing a tax return;

13 (3) the time in which the proceeds of a refund
14 anticipation loan or check will be paid to the consumer if the loan
15 or check is approved;

16 (4) for refund anticipation loans:

17 (A) the following title centered on the page in
18 boldfaced capital letters and 18-point type: "NOTICE";

19 (B) the following statement: "This is a loan.
20 This loan is borrowing money against your tax refund. If your tax
21 refund is less than expected, you must still repay the entire amount
22 of the loan. If your refund is delayed, you may have to pay
23 additional costs. YOU CAN GET YOUR REFUND IN ABOUT _____
24 (average time, as published by the Internal Revenue Service)
25 WITHOUT GETTING THIS LOAN. You can have your tax return filed
26 electronically and your refund directly deposited into your own
27 bank account without obtaining a loan or other paid product.";

1 (C) disclosure of the refund anticipation loan
2 rate computed as set forth in Section 350.102; and

3 (D) the estimated total cost to the borrower for
4 the loan; and

5 (5) for refund anticipation checks:

6 (A) the following title centered on the page in
7 boldfaced capital letters and 18-point type: "NOTICE"; and

8 (B) the following statement: "You are paying
9 _____ (amount of refund anticipation check fee) to get your refund
10 through _____ (name of issuer of refund anticipation check).

11 YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN ABOUT
12 _____ (average time, as published by the Internal Revenue
13 Service) BY HAVING THE INTERNAL REVENUE SERVICE DIRECTLY DEPOSIT
14 YOUR REFUND INTO YOUR OWN BANK ACCOUNT. You can also wait for the
15 IRS to mail you a check. If you do not have a bank account, you may
16 wish to consider getting one."

17 (c) If a facilitator charges the consumer a fee for cashing
18 a check, the facilitator shall inform the consumer that if the
19 consumer has a bank account, the consumer's bank may cash the check
20 without charging a fee.

21 (d) A disclosure under this section must be written:

22 (1) in 14-point type unless otherwise noted; and

23 (2) in English, Spanish, and any other language in
24 which the refund anticipation loan or check is negotiated.

25 (e) A facilitator must disclose fees under this section
26 based on the best available information from the creditor. If the
27 terms of a loan change after the disclosure, the facilitator shall

1 notify the consumer, and the consumer is entitled to refuse the
2 loan.

3 Sec. 350.154. ALTERNATIVE APPLICATION DISCLOSURE. (a) A
4 facilitator may use disclosure language other than the language
5 prescribed by Section 350.153 only if the facilitator submits the
6 disclosure language to the commissioner. The commissioner shall
7 issue an order disapproving the disclosure if the commissioner
8 determines that the disclosure does not substantially comply with
9 Section 350.153 or rules adopted under this chapter.

10 (b) A facilitator may begin using the alternative
11 disclosure language on the date the facilitator submits the
12 disclosure to the commissioner for review. If the commissioner
13 issues an order disapproving the disclosure, the facilitator may
14 not use the disclosure after the order takes effect.

15 (c) A facilitator may not represent that the commissioner's
16 failure to disapprove a disclosure constitutes an approval of the
17 disclosure by the commissioner, the Office of the Consumer Credit
18 Commissioner, or the finance commission.

19 Sec. 350.155. ADVERTISING DISCLOSURES. (a) In this
20 section, "advertise" means to produce, distribute, broadcast, or
21 otherwise display or have displayed written or visual materials or
22 oral statements describing a facilitator's products and services.

23 (b) A facilitator may not:

24 (1) advertise or promote a refund anticipation loan
25 unless the advertisement prominently features the word "loan" or a
26 translation of "loan" if the advertisement is not in English;

27 (2) advertise or promote a refund anticipation loan

1 without distinguishing a refund anticipation loan from non-loan
2 products and from refund expediting services offered by the
3 Internal Revenue Service for which the Internal Revenue Service
4 does not charge a fee, such as direct deposit or electronic filing;

5 (3) state or suggest in an advertisement that direct
6 deposit or electronic filing delivers a refund to the taxpayer
7 without any waiting time or in three days or less;

8 (4) advertise that the time during which a tax refund
9 may be expected to be received from the Internal Revenue Service is
10 longer than the time during which a tax refund may be expected to be
11 received according to the Internal Revenue Service statistics
12 available on the Internet website of the Internal Revenue Service
13 or at a local Internal Revenue Service office; or

14 (5) advertise a refund anticipation loan without
15 including a statement that the taxpayer may file a tax return
16 electronically without obtaining a loan.

17 (c) For a print advertisement, any word or disclosure
18 required by Subsection (b) must be in type size that is one-half as
19 large as the largest type size in the advertisement.

20 Sec. 350.156. MODIFICATION OF REFUND RECEIPT ESTIMATE. The
21 commissioner may by rule revise the disclosures required by this
22 subchapter to conform to the Internal Revenue Service's published
23 average time for receiving a refund.

24 [Sections 350.157-350.200 reserved for expansion]

25 SUBCHAPTER E. ADDITIONAL DUTIES OF AND RESTRICTIONS ON
26 FACILITATORS

27 Sec. 350.201. DECEPTIVE PRACTICES PROHIBITED. A

1 facilitator or an officer, agent, employee, or other representative
2 of a facilitator may not:

3 (1) engage in unfair, deceptive, or fraudulent
4 practices in facilitating a refund anticipation loan or check,
5 including misrepresenting a factor or condition of the loan or
6 check or making an oral statement contradicting information
7 required to be disclosed under Subchapter D;

8 (2) misrepresent a material fact in obtaining or
9 attempting to obtain a registration as a facilitator;

10 (3) engage in conduct that violates Subchapter E,
11 Chapter 17, Business & Commerce Code; or

12 (4) threaten to take an action prohibited by this
13 chapter or that the person does not intend to take.

14 Sec. 350.202. DUTY TO ARRANGE TRANSACTION OR NOTIFY OF
15 REJECTION. Promptly after a consumer applies for a refund
16 anticipation loan or check, a facilitator or an officer, agent,
17 employee, or other representative of a facilitator shall arrange
18 for the loan or check or notify the consumer that the application is
19 rejected.

20 Sec. 350.203. COPIES OF APPLICATION AND AGREEMENT. At the
21 time a refund anticipation loan is closed or a refund anticipation
22 check transaction is completed, a facilitator or an officer, agent,
23 employee, or other representative of a facilitator shall give the
24 consumer copies, in a form that can be kept by the consumer, of:

25 (1) the complete loan or check application and
26 agreement; and

27 (2) the disclosures that a creditor is required to

1 make under the Truth in Lending Act (15 U.S.C. Section 1601 et
2 seq.), if the transaction is a refund anticipation loan.

3 Sec. 350.204. PROHIBITED PROVISIONS. (a) A facilitator or
4 an officer, agent, employee, or other representative of a
5 facilitator may not include in a document provided in connection
6 with a refund anticipation loan or check:

7 (1) a hold harmless clause;

8 (2) a confession of judgment clause;

9 (3) a waiver of the right to a jury trial in an action
10 brought by or against a consumer;

11 (4) an assignment of or order for payment of wages or
12 other compensation for services;

13 (5) a provision in which the consumer agrees not to
14 assert a claim or defense arising out of the contract;

15 (6) a waiver of any provision of this chapter,
16 including the right to injunctive, declaratory, or other equitable
17 relief or relief on a class-wide basis; or

18 (7) a provision requiring that any provision of a
19 dispute resolution between the parties to a refund anticipation
20 loan or check agreement be kept confidential.

21 (b) A waiver of any provision of this chapter is void.

22 (c) Subsection (a)(7) does not affect the rights of the
23 parties to a refund anticipation loan or check agreement to agree
24 that certain specified information is a trade secret or otherwise
25 confidential or to agree after a dispute arises to keep the dispute
26 resolution confidential.

27 Sec. 350.205. ADDITIONAL SECURITY INTEREST PROHIBITED. A

1 facilitator or an officer, agent, employee, or other representative
2 of a facilitator may not take or arrange for a creditor to take a
3 security interest in a consumer's property other than the proceeds
4 of the consumer's tax refund to secure payment of a refund
5 anticipation loan.

6 Sec. 350.206. VIOLATION OF RULES. A facilitator or an
7 officer, agent, employee, or other representative of a facilitator
8 may not violate a rule adopted by the commissioner under this
9 chapter.

10 Sec. 350.207. ANNUAL REPORTS. (a) Each year, a facilitator
11 shall file a report with the commissioner according to procedures
12 established by the commissioner.

13 (b) A report filed under this section must include the
14 following information for the period beginning May 1 of the
15 preceding year and ending April 30 of the year the report is filed:

16 (1) the total number and dollar amount of refund
17 anticipation loans facilitated by the facilitator;

18 (2) the total number and dollar amount of refund
19 anticipation checks facilitated by the facilitator;

20 (3) the creditor's best estimate of the average number
21 of days for which refund anticipation loans facilitated by the
22 facilitator were outstanding before being repaid with the
23 consumer's tax refund;

24 (4) the name and address of any creditor or other
25 person for whom the facilitator facilitates a refund anticipation
26 loan or check; and

27 (5) the number of loans that are not paid in full from

1 the consumer's tax refund.

2 (c) The commissioner shall establish procedures for filing
3 a report under this section.

4 (d) Each year, the commissioner shall prepare and publish a
5 consolidated analysis and recapitulation of reports filed under
6 this section.

7 [Sections 350.208-350.250 reserved for expansion]

8 SUBCHAPTER F. ENFORCEMENT

9 Sec. 350.251. INVESTIGATION AND HEARING. (a) If the
10 commissioner has reasonable cause to believe or has notice that an
11 action of a facilitator may violate this chapter or a rule adopted
12 under this chapter, the commissioner shall give the facilitator
13 reasonable notice of the suspected violation and an opportunity to
14 be heard, and may require the facilitator to furnish information
15 regarding a specific loan or business practice to which the
16 violation relates. If the facilitator fails to furnish the
17 information requested by the commissioner, the commissioner may
18 conduct an investigation to determine whether a violation exists.

19 (b) The commissioner or the commissioner's representative
20 may investigate the records, including the books, accounts, papers,
21 and correspondence, of any facilitator who the commissioner has
22 reasonable cause to believe is violating this chapter, regardless
23 of whether the facilitator claims that the facilitator is not
24 subject to this chapter.

25 (c) A hearing under this section shall be open to the public
26 and conducted in accordance with Chapter 2001, Government Code.

27 Sec. 350.252. ENFORCEMENT ORDERS; APPEAL OF ORDER. (a) If

1 the commissioner has reasonable cause to believe that a person is
2 violating this chapter, the commissioner may do one or more of the
3 following:

4 (1) issue an order to cease and desist from the
5 violation;

6 (2) issue an order to take affirmative action; or

7 (3) take any other action authorized by law.

8 (b) A person may appeal an order to the finance commission
9 or to district court in accordance with Chapter 2001, Government
10 Code.

11 (c) If a person against whom an order is made requests a
12 hearing, the commissioner shall set a hearing before a hearings
13 officer and give notice of the hearing. The hearing shall be
14 governed by Chapter 2001, Government Code. The commissioner by
15 order may determine whether a violation of this chapter has
16 occurred, based on the findings of fact, conclusions of law, and
17 recommendations of the hearings officer.

18 (d) If a person does not request a hearing under Subsection
19 (c) on or before the 30th day after the date the order is issued, the
20 order is considered final and enforceable. The commissioner, after
21 giving notice, may impose an administrative penalty against a
22 person who violates an order to cease and desist or an order to take
23 affirmative action in an amount not to exceed \$1,000 for each day a
24 violation occurs. In addition to any other remedy provided by law,
25 the commissioner may bring a suit in district court for injunctive
26 relief and to collect an administrative penalty. A bond is not
27 required of the commissioner with respect to injunctive relief

1 granted under this section.

2 Sec. 350.253. REVOCATION OR SUSPENSION OF REGISTRATION.

3 (a) The commissioner may revoke or suspend the registration of a
4 registrant if the commissioner finds, after an administrative
5 hearing under Section 350.251, that a registrant has engaged in a
6 course of conduct that violates this chapter or a rule adopted under
7 this chapter or has continued to engage in an action in violation of
8 the commissioner's cease and desist order or order to take
9 affirmative action.

10 (b) The revocation, suspension, or surrender of a
11 facilitator's registration does not relieve a registrant from civil
12 or criminal liability for an action committed before the
13 revocation, suspension, or surrender.

14 Sec. 350.254. COMPLAINT PROCEDURE. (a) The commissioner
15 shall establish a complaint procedure that enables an aggrieved
16 consumer or a member of the public to file a complaint against a
17 registrant or non-registrant who violates a provision of this
18 chapter. The commissioner shall maintain a toll-free number that a
19 consumer may use to obtain information about registrants and
20 complaint forms.

21 (b) Except as provided by this subsection, a complaint is a
22 public record under Chapter 552, Government Code. A complainant's
23 name, address, and other personal identifying information are
24 confidential and may not be disclosed to the public.

25 Sec. 350.255. DECEPTIVE TRADE PRACTICES. A violation of
26 this chapter is a deceptive trade practice under Subchapter E,
27 Chapter 17, Business & Commerce Code.

1 Sec. 350.256. CIVIL ACTION. (a) A facilitator who engages
2 in an activity prohibited by this chapter is liable to the consumer
3 for:

4 (1) actual and consequential damages;

5 (2) the greater of:

6 (A) \$2,000; or

7 (B) three times the amount of the refund
8 anticipation loan fee or other unauthorized charge; and

9 (3) reasonable attorney's fees and costs.

10 (b) Any person may sue for injunctive or other appropriate
11 equitable relief to enforce this chapter.

12 (c) A consumer may bring a class action suit to enforce this
13 chapter. In a class action suit brought under this subsection, a
14 facilitator who violates this chapter is liable for:

15 (1) actual and consequential damages for each class
16 member;

17 (2) damages provided by Subsection (a)(2) for each
18 class member; and

19 (3) reasonable attorney's fees and costs.

20 (d) The remedies provided in this section are cumulative and
21 are not intended to be the exclusive remedies available to a
22 consumer. A consumer is not required to exhaust any administrative
23 remedies provided by this chapter or other applicable law.

24 SECTION 2. A facilitator of refund anticipation loans or
25 checks shall file the first report with the consumer credit
26 commissioner as required by Section 350.207, Finance Code, as added
27 by this Act, not later than July 1, 2007.

1 SECTION 3. This Act takes effect January 1, 2006.