

1-1 By: Villarreal (Senate Sponsor - Van de Putte) H.B. No. 1344
1-2 (In the Senate - Received from the House April 16, 2007;
1-3 April 17, 2007, read first time and referred to Committee on
1-4 Business and Commerce; April 26, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; April 26, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1344 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of refund anticipation loans; providing
1-11 an administrative penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 4, Finance Code, is amended by
1-14 adding Chapter 351 to read as follows:

1-15 CHAPTER 351. TAX REFUND ANTICIPATION LOANS

1-16 Sec. 351.001. DEFINITIONS. In this chapter:

1-17 (1) "Borrower" means an individual who receives the
1-18 proceeds of a refund anticipation loan.

1-19 (2) "Facilitator" means a person who processes,
1-20 receives, or accepts for delivery an application for a refund
1-21 anticipation loan, delivers a check in payment of refund
1-22 anticipation loan proceeds, or in any other manner acts to allow the
1-23 making of a refund anticipation loan.

1-24 (3) "Lender" means a person who extends credit to a
1-25 borrower in the form of a refund anticipation loan.

1-26 (4) "Refund anticipation loan" means a loan borrowed
1-27 by a taxpayer based on the taxpayer's anticipated federal income
1-28 tax refund.

1-29 (5) "Refund anticipation loan fee" means a fee imposed
1-30 or other consideration required by the facilitator or the lender
1-31 for a refund anticipation loan. The term does not include a fee
1-32 usually imposed or other consideration usually required by the
1-33 facilitator in the ordinary course of business for services not
1-34 related to the making of loans, including a fee imposed for tax
1-35 return preparation or for the electronic filing of a tax return.

1-36 Sec. 351.002. RESTRICTION ON ACTING AS FACILITATOR. (a) A
1-37 person may not, individually or in conjunction or cooperation with
1-38 another person, act as a facilitator unless the person is:

1-39 (1) engaged in the business of preparing tax returns,
1-40 or employed by a person engaged in the business of preparing tax
1-41 returns;

1-42 (2) primarily involved in financial services or tax
1-43 preparations;

1-44 (3) authorized by the Internal Revenue Service as an
1-45 e-file provider; and

1-46 (4) registered with the commissioner as a facilitator
1-47 under Section 351.003.

1-48 (b) This section does not apply to:

1-49 (1) a bank, thrift, savings association, industrial
1-50 bank, or credit union operating under the laws of the United States
1-51 or this state;

1-52 (2) an affiliate that is a servicer of a person
1-53 described by Subdivision (1) operating under the name of that
1-54 person; or

1-55 (3) any person who acts solely as an intermediary and
1-56 does not interact directly with a taxpayer in the making of the
1-57 refund anticipation loan.

1-58 Sec. 351.003. REGISTRATION OF FACILITATORS. (a) To
1-59 register as a facilitator, a person must provide to the
1-60 commissioner, on or before December 31 preceding each calendar year
1-61 in which the person seeks to act as a facilitator:

1-62 (1) a list of each location in this state at which
1-63 e-file providers authorized by the Internal Revenue Service file

2-1 tax returns on behalf of borrowers for whom the facilitator acts to
 2-2 allow the making of a refund anticipation loan; and

2-3 (2) a processing fee for each location included on the
 2-4 list furnished under Subdivision (1).

2-5 (b) The commissioner shall prescribe the processing fee in
 2-6 an amount necessary to cover the costs of administering this
 2-7 section.

2-8 (c) After the December 31 deadline, a facilitator may amend
 2-9 the registration required under Subsection (a) to reflect any
 2-10 change in the information provided by the registration.

2-11 (d) The commissioner shall make available to the public a
 2-12 list of facilitators registered under this section.

2-13 (e) The commissioner may prescribe the registration form.

2-14 Sec. 351.004. DISCLOSURE REQUIREMENTS. (a) A facilitator
 2-15 to which Section 351.002 applies shall discuss with and clearly
 2-16 disclose to a borrower, after the borrower's tax return has been
 2-17 prepared and before the loan is closed:

2-18 (1) the refund anticipation loan fee schedule;

2-19 (2) a written statement disclosing:

2-20 (A) that a refund anticipation loan is a loan and
 2-21 is not the borrower's actual income tax refund;

2-22 (B) that the taxpayer may file an income tax
 2-23 return electronically without applying for a refund anticipation
 2-24 loan;

2-25 (C) that the borrower is responsible for
 2-26 repayment of the loan and related fees if the tax refund is not paid
 2-27 or is insufficient to repay the loan;

2-28 (D) any fee that will be charged if the loan is
 2-29 not approved;

2-30 (E) the average time, as published by the
 2-31 Internal Revenue Service, within which a taxpayer can expect to
 2-32 receive a refund for an income tax return filed:

2-33 (i) electronically, and the refund is:

2-34 (a) deposited directly into the
 2-35 taxpayer's bank account; or

2-36 (b) mailed to the taxpayer; and

2-37 (ii) by mail, and the refund is:

2-38 (a) deposited directly into the
 2-39 taxpayer's financial institution account; or

2-40 (b) mailed to the taxpayer;

2-41 (F) that the Internal Revenue Service does not
 2-42 guarantee:

2-43 (i) payment of the full amount of the
 2-44 anticipated refund; or

2-45 (ii) a specific date on which it will mail a
 2-46 refund or deposit the refund into a taxpayer's financial
 2-47 institution account; and

2-48 (G) the estimated time within which the proceeds
 2-49 of the refund anticipation loan will be paid to the borrower if the
 2-50 loan is approved; and

2-51 (3) the following information, specific to the
 2-52 borrower:

2-53 (A) the estimated total fees for the loan; and

2-54 (B) the estimated annual percentage rate for the
 2-55 loan, calculated using the guidelines established under the Truth
 2-56 in Lending Act (15 U.S.C. Section 1601 et seq.).

2-57 (b) A refund anticipation loan fee schedule required by
 2-58 Subsection (a)(1) must be a listing or table of refund anticipation
 2-59 loan fees charged by the lender for refund anticipation loan
 2-60 amounts. The schedule shall:

2-61 (1) list separately each fee imposed related to the
 2-62 making of a refund anticipation loan;

2-63 (2) list the total amount of fees imposed related to
 2-64 the making of a refund anticipation loan; and

2-65 (3) include, for each stated loan amount, the
 2-66 estimated annual percentage rate for the loan, calculated using the
 2-67 guidelines established under the Truth in Lending Act (15 U.S.C.
 2-68 Section 1601 et seq.).

2-69 (c) A facilitator who advertises or markets refund

3-1 anticipation loans in Spanish shall offer any borrower the option
3-2 of receiving a Spanish-language printed disclosure and loan
3-3 contract. A facilitator who negotiates a loan with a borrower in
3-4 Spanish shall offer that borrower the option of receiving a
3-5 Spanish-language printed disclosure and loan contract.

3-6 Sec. 351.005. INVESTIGATION BY COMMISSIONER. The
3-7 commissioner shall:

3-8 (1) monitor the operations of a facilitator to ensure
3-9 compliance with this chapter; and

3-10 (2) receive and investigate complaints against a
3-11 facilitator or a person acting as a facilitator.

3-12 Sec. 351.006. REVOCATION OF REGISTRATION. (a) The
3-13 commissioner may revoke the registration of a facilitator if the
3-14 commissioner concludes that the facilitator has violated this
3-15 chapter. The commissioner shall recite the basis of the decision in
3-16 an order revoking the registration.

3-17 (b) If the commissioner proposes to revoke a registration,
3-18 the facilitator is entitled to a hearing before the commissioner or
3-19 a hearings officer, who shall propose a decision to the
3-20 commissioner. The commissioner or hearings officer shall prescribe
3-21 the time and place of the hearing. The hearing is governed by
3-22 Chapter 2001, Government Code.

3-23 (c) A facilitator aggrieved by a ruling, order, or decision
3-24 of the commissioner is entitled to appeal to a district court in the
3-25 county in which the hearing was held. An appeal under this
3-26 subsection is governed by Chapter 2001, Government Code.

3-27 Sec. 351.007. ADMINISTRATIVE PENALTY. The commissioner may
3-28 assess an administrative penalty of \$500 against a person for each
3-29 knowing and wilful violation of this chapter.

3-30 Sec. 351.008. PREEMPTION OF LOCAL ORDINANCE. This chapter
3-31 preempts a local ordinance or rule regulating refund anticipation
3-32 loans.

3-33 SECTION 2. (a) Except as provided by Subsection (b) of this
3-34 section, this Act takes effect September 1, 2007.

3-35 (b) The requirement under Section 351.002(a), Finance Code,
3-36 as added by this Act, that a person who facilitates refund
3-37 anticipation loans be registered under Section 351.003, Finance
3-38 Code, as added by this Act, takes effect January 1, 2008.

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