

By: Van de Putte

S.B. No. 1905

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of refund anticipation loans; providing 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 351 to read as follows:

CHAPTER 351. TAX REFUND ANTICIPATION LOANS

Sec. 351.001. DEFINITIONS. In this chapter:

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

(2) "Facilitator" means a person who processes, 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.

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

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

(5) "Refund anticipation loan fee" means a fee imposed or other consideration required by the facilitator or the lender for a refund anticipation loan. The term does not include a fee usually imposed or other consideration usually required by the

1 facilitator in the ordinary course of business for services not
2 related to the making of loans, including a fee imposed for tax
3 return preparation or for the electronic filing of a tax return.

4 Sec. 351.002. RESTRICTION ON ACTING AS FACILITATOR. (a) A
5 person may not, individually or in conjunction or cooperation with
6 another person, act as a facilitator unless the person is:

7 (1) engaged in the business of preparing tax returns,
8 or employed by a person engaged in the business of preparing tax
9 returns;

10 (2) authorized by the Internal Revenue Service as an
11 e-file provider; and

12 (3) registered with the commissioner as a facilitator
13 under Section 351.003.

14 (b) This section does not apply to:

15 (1) a bank, thrift, savings association, industrial
16 bank, or credit union operating under the laws of the United States
17 or this state;

18 (2) an affiliate that is a servicer of a person
19 described by Subdivision (1) operating under the name of that
20 person; or

21 (3) any person who acts solely as an intermediary and
22 does not interact directly with a taxpayer in the making of the
23 refund anticipation loan.

24 Sec. 351.003. REGISTRATION OF FACILITATORS. (a) To
25 register as a facilitator, a person must provide to the
26 commissioner, on or before December 31 preceding each calendar year
27 in which the person seeks to act as a facilitator:

1 (1) a list of each location in this state at which
2 e-file providers authorized by the Internal Revenue Service file
3 tax returns on behalf of borrowers for whom the facilitator acts to
4 allow the making of a refund anticipation loan; and

5 (2) a processing fee for each location included on the
6 list furnished under Subdivision (1).

7 (b) The commissioner shall prescribe the processing fee in
8 an amount necessary to cover the costs of administering this
9 section.

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

13 (d) The commissioner shall make available to the public a
14 list of facilitators registered under this section.

15 (e) The commissioner may prescribe the registration form.

16 Sec. 351.004. DISCLOSURE REQUIREMENTS. (a) A facilitator
17 to which Section 351.002 applies shall discuss with and clearly
18 disclose to a borrower, separately from the loan application and
19 before the loan is closed:

20 (1) the refund anticipation loan fee schedule;

21 (2) a written statement disclosing:

22 (A) that a refund anticipation loan is a loan and
23 is not the borrower's actual income tax refund;

24 (B) that the taxpayer may file an income tax
25 return electronically without applying for a refund anticipation
26 loan;

27 (C) that the borrower is responsible for

1 repayment of the loan and related fees if the tax refund is not paid
2 or is insufficient to repay the loan;

3 (D) any fee that will be charged if the loan is
4 not approved;

5 (E) the average time, as published by the
6 Internal Revenue Service, within which a taxpayer can expect to
7 receive a refund for an income tax return filed:

8 (i) electronically, and the refund is:

9 (a) deposited directly into the
10 taxpayer's bank account; or

11 (b) mailed to the taxpayer; and

12 (ii) by mail, and the refund is:

13 (a) deposited directly into the
14 taxpayer's financial institution account; or

15 (b) mailed to the taxpayer;

16 (F) that the Internal Revenue Service does not
17 guarantee:

18 (i) payment of the full amount of the
19 anticipated refund; or

20 (ii) a specific date on which it will mail a
21 refund or deposit the refund into a taxpayer's financial
22 institution account; and

23 (G) the estimated time within which the proceeds
24 of the refund anticipation loan will be paid to the borrower if the
25 loan is approved; and

26 (3) the following information, specific to the
27 borrower:

1 (A) the estimated total fees for the loan; and

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

5 (b) A refund anticipation loan fee schedule required by
6 Subsection (a)(1) must be a listing or table of refund anticipation
7 loan fees charged by the lender for refund anticipation loan
8 amounts. The schedule shall:

9 (1) list separately each fee imposed related to the
10 making of a refund anticipation loan;

11 (2) list the total amount of fees imposed related to
12 the making of a refund anticipation loan; and

13 (3) include, for each stated loan amount, the
14 estimated annual percentage rate for the loan, calculated using the
15 guidelines established under the Truth in Lending Act (15 U.S.C.
16 Section 1601 et seq.).

17 Sec. 351.005. INVESTIGATION BY COMMISSIONER. The
18 commissioner may:

19 (1) monitor the operations of a facilitator to ensure
20 compliance with this chapter; and

21 (2) receive and investigate complaints against a
22 facilitator or a person acting as a facilitator.

23 Sec. 351.006. REVOCATION OF REGISTRATION. (a) The
24 commissioner may revoke the registration of a facilitator if the
25 commissioner concludes that the facilitator has violated this
26 chapter. The commissioner shall recite the basis of the decision in
27 an order revoking the registration.

1 (b) If the commissioner proposes to revoke a registration,
2 the facilitator is entitled to a hearing before the commissioner or
3 a hearings officer, who shall propose a decision to the
4 commissioner. The commissioner or hearings officer shall prescribe
5 the time and place of the hearing. The hearing is governed by
6 Chapter 2001, Government Code.

7 (c) A facilitator aggrieved by a ruling, order, or decision
8 of the commissioner is entitled to appeal to a district court in the
9 county in which the hearing was held. An appeal under this
10 subsection is governed by Chapter 2001, Government Code.

11 Sec. 351.007. ADMINISTRATIVE PENALTY. The commissioner may
12 assess an administrative penalty of \$500 against a person for each
13 knowing and wilful violation of this chapter.

14 Sec. 351.008. PREEMPTION OF LOCAL ORDINANCE. This chapter
15 preempts a local ordinance or rule regulating refund anticipation
16 loans.

17 SECTION 2. (a) Except as provided by Subsection (b) of this
18 section, this Act takes effect September 1, 2007.

19 (b) The requirement under Section 351.002(a), Finance Code,
20 as added by this Act, that a person who facilitates refund
21 anticipation loans be registered under Section 351.003, Finance
22 Code, as added by this Act, takes effect January 1, 2008.