

SENATE AMENDMENTS

2nd Printing

By: Villarreal

H.B. No. 1344

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, after the borrower's tax return has been
19 prepared and 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 (c) A facilitator who advertises or markets refund
18 anticipation loans in Spanish shall offer any borrower the option
19 of receiving a Spanish-language written disclosure and loan
20 contract. A facilitator who negotiates a loan with a borrower in
21 Spanish shall offer that borrower the option of receiving a
22 Spanish-language written disclosure and loan contract.

23 Sec. 351.005. INVESTIGATION BY COMMISSIONER. The
24 commissioner may:

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

27 (2) receive and investigate complaints against a

1 facilitator or a person acting as a facilitator.

2 Sec. 351.006. REVOCATION OF REGISTRATION. (a) The
3 commissioner may revoke the registration of a facilitator if the
4 commissioner concludes that the facilitator has violated this
5 chapter. The commissioner shall recite the basis of the decision in
6 an order revoking the registration.

7 (b) If the commissioner proposes to revoke a registration,
8 the facilitator is entitled to a hearing before the commissioner or
9 a hearings officer, who shall propose a decision to the
10 commissioner. The commissioner or hearings officer shall prescribe
11 the time and place of the hearing. The hearing is governed by
12 Chapter 2001, Government Code.

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

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

20 Sec. 351.008. PREEMPTION OF LOCAL ORDINANCE. This chapter
21 preempts a local ordinance or rule regulating refund anticipation
22 loans.

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

25 (b) The requirement under Section 351.002(a), Finance Code,
26 as added by this Act, that a person who facilitates refund
27 anticipation loans be registered under Section 351.003, Finance

H.B. No. 1344

1 Code, as added by this Act, takes effect January 1, 2008.

ADOPTED

MAY 02 2007

Leta Spaw
Secretary of the Senate

H.B. No. 1344

By: Villarreal/Van de PoHe

Substitute the following for H.B. No. 1344 :

By: Setun Vandulutt

C.S.H.B. No. 1344

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AN ACT

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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) primarily involved in financial services or tax
11 preparations;

12 (3) authorized by the Internal Revenue Service as an
13 e-file provider; and

14 (4) registered with the commissioner as a facilitator
15 under Section 351.003.

16 (b) This section does not apply to:

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

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

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

26 Sec. 351.003. REGISTRATION OF FACILITATORS. (a) To
27 register as a facilitator, a person must provide to the

1 commissioner, on or before December 31 preceding each calendar year
2 in which the person seeks to act as a facilitator:

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

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

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

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

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

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

18 Sec. 351.004. DISCLOSURE REQUIREMENTS. (a) A facilitator
19 to which Section 351.002 applies shall discuss with and clearly
20 disclose to a borrower, after the borrower's tax return has been
21 prepared and before the loan is closed:

22 (1) the refund anticipation loan fee schedule;

23 (2) a written statement disclosing:

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

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

1 loan;

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

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

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

10 (i) electronically, and the refund is:

11 (a) deposited directly into the
12 taxpayer's bank account; or

13 (b) mailed to the taxpayer; and

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

15 (a) deposited directly into the
16 taxpayer's financial institution account; or

17 (b) mailed to the taxpayer;

18 (F) that the Internal Revenue Service does not
19 guarantee:

20 (i) payment of the full amount of the
21 anticipated refund; or

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

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

1 (3) the following information, specific to the
2 borrower:

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

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

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

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

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

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

19 (c) A facilitator who advertises or markets refund
20 anticipation loans in Spanish shall offer any borrower the option
21 of receiving a Spanish-language printed disclosure and loan
22 contract. A facilitator who negotiates a loan with a borrower in
23 Spanish shall offer that borrower the option of receiving a
24 Spanish-language printed disclosure and loan contract.

25 Sec. 351.005. INVESTIGATION BY COMMISSIONER. The
26 commissioner shall:

27 (1) monitor the operations of a facilitator to ensure

1 compliance with this chapter; and

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

4 Sec. 351.006. REVOCATION OF REGISTRATION. (a) The
5 commissioner may revoke the registration of a facilitator if the
6 commissioner concludes that the facilitator has violated this
7 chapter. The commissioner shall recite the basis of the decision in
8 an order revoking the registration.

9 (b) If the commissioner proposes to revoke a registration,
10 the facilitator is entitled to a hearing before the commissioner or
11 a hearings officer, who shall propose a decision to the
12 commissioner. The commissioner or hearings officer shall prescribe
13 the time and place of the hearing. The hearing is governed by
14 Chapter 2001, Government Code.

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

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

22 Sec. 351.008. PREEMPTION OF LOCAL ORDINANCE. This chapter
23 preempts a local ordinance or rule regulating refund anticipation
24 loans.

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

27 (b) The requirement under Section 351.002(a), Finance Code,

1 as added by this Act, that a person who facilitates refund
2 anticipation loans be registered under Section 351.003, Finance
3 Code, as added by this Act, takes effect January 1, 2008.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 25, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1344** by Villarreal (Relating to the regulation of refund anticipation loans; providing an administrative penalty.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1344, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Change in Number of State Employees from FY 2007
2008	(\$252,119)	\$252,119	3.0
2009	(\$174,619)	\$174,619	3.0
2010	(\$174,619)	\$174,619	3.0
2011	(\$174,619)	\$174,619	3.0
2012	(\$182,119)	\$182,119	3.0

Fiscal Analysis

The bill would amend the Finance Code relating to the regulation of refund anticipation loans and provide an administrative penalty for certain violations. The bill would require the commissioner to prescribe the amount of the processing fee necessary to administer the provisions of the bill, make available to the public a list of registered facilitators, and authorize the commissioner to prescribe a registration form for facilitators. This bill also requires the commissioner to monitor and investigate complaints against a facilitator, while authorizing the commissioner to revoke the registration of a facilitator and assess an administrative penalty of \$500 for knowingly and willfully violating certain provisions.

The bill would provide that a person who facilitates refund anticipation loans comply with the registration requirements of the bill beginning January 1, 2008.

This bill would take effect September 1, 2007.

Methodology

Based on information provided by the Office of Consumer Credit Commissioner (OCCC), this analysis assumes that 10,000 authorized electronic return originators would be required to register as tax refund anticipation loan facilitators.

It is estimated that OCCC would have a cost associated with registering tax refund anticipation loan facilitators (facilitators). Based on the analysis of OCCC, it is assumed that registering facilitators and regulating this industry would necessitate additional resources at a cost of \$426,738 through fiscal year 2009.

OCCC also estimates costs for staff of \$110,000 for 3.0 FTEs in fiscal year 2008 through fiscal year 2012. Other operating expenses, travel, equipment, and consumable supplies are estimated at \$142,119 in fiscal year 2008, \$64,619 in fiscal year 2009 through fiscal year 2011, and \$72,119 in fiscal year 2012. Estimated costs also include \$31,119 in fiscal year 2008 through fiscal year 2012 for associated benefits.

OCCC is required by statute to adjust fees to generate revenue sufficient to cover all direct and indirect costs. Therefore, this analysis assumes that any increased costs resulting from this bill would be offset by an equal increase in fee generated revenue.

Technology

It is assumed that there would be a one time technology impact of \$70,000 in fiscal year 2008 to upgrade and enhance the agency's database for tracking this new type of registration.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, CL, JRO, MW, TGI

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 20, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1344** by Villarreal (Relating to the regulation of refund anticipation loans; providing an administrative penalty.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1344, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2007
2008	(\$252,119)	\$252,119	3.0
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Fiscal Analysis

The bill would amend the Finance Code relating to the regulation of refund anticipation loans and provide an administrative penalty for certain violations. The bill would require the commissioner to prescribe the amount of the processing fee necessary to administer the provisions of the bill, make available to the public a list of registered facilitators, and authorize the commissioner to prescribe a registration form for facilitators. This bill also authorizes the commissioner to monitor and investigate complaints against a facilitator, revoke the registration of a facilitator, and assess an administrative penalty of \$500 for knowingly and willfully violating certain provisions.

The bill would provide that a person who facilitates refund anticipation loans comply with the

registration requirements of the bill beginning January 1, 2008.

This bill would take effect September 1, 2007.

Methodology

Based on information provided by the Office of Consumer Credit Commissioner (OCCC), this analysis assumes that 10,000 authorized electronic return originators would be required to register as tax refund anticipation loan facilitators.

It is estimated that OCCC would have a cost associated with registering tax refund anticipation loan facilitators (facilitators). Based on the analysis of OCCC, it is assumed that registering facilitators and regulating this industry would necessitate additional resources at a cost of \$426,738 through 2009.

OCCC also estimates costs for staff of \$110,000 for 3.0 FTEs in FY08 through FY12. Other operating expenses, travel, equipment, and consumable supplies are estimated at \$142,119 in FY08, \$64,619 in FY09 through FY11, and \$72,119 in FY12. Estimated costs also include \$31,119 in FY08 through FY12 for associated benefits.

OCCC is required by statute to adjust fees to generate revenue sufficient to cover all direct and indirect costs. Therefore, this analysis assumes that any increased costs resulting from this bill would be offset by an equal increase in fee generated revenue.

Technology

It is assumed that there would be a one time technology impact of \$70,000 in fiscal year 2008 to upgrade and enhance the agency's database for tracking this new type of registration.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, CL, JRO, MW, TGI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 18, 2007

TO: Honorable Burt R. Solomons, Chair, House Committee on Financial Institutions

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1344 by Villarreal (Relating to the regulation of refund anticipation loans; providing an administrative penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1344, As Introduced: an impact of \$0 through the biennium ending August 31, 2009.

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Source Agencies: 466 Office of Consumer Credit Commissioner

LBB Staff: JOB, JRO, MW, TGI

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