

**House Bill 1344**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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

- (1) engaged in the business of preparing tax returns, or

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employed by a person engaged in the business of preparing tax returns;

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

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

(b) This section does not apply to:

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

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

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

Sec. 351.003. REGISTRATION OF FACILITATORS.

(a) To register as a facilitator, a person must provide to the commissioner, on or before December 31 preceding each calendar year in which the person seeks to act as a facilitator:

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

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

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employed by a person engaged in the business of preparing tax returns;

(2) primarily involved in financial services or tax preparations;

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

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

(b) This section does not apply to:

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

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

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

Sec. 351.003. REGISTRATION OF FACILITATORS.

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

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

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

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

(e) The commissioner may prescribe the registration form.

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

(1) the refund anticipation loan fee schedule;

(2) a written statement disclosing:

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

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

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

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

(E) the average time, as published by the Internal Revenue Service, within which a taxpayer can expect to

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

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

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

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

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receive a refund for an income tax return filed:

(i) electronically, and the refund is:

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

or

(b) mailed to the taxpayer; and

(ii) by mail, and the refund is:

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

(b) mailed to the taxpayer;

(F) that the Internal Revenue Service does not guarantee;

(i) payment of the full amount of the anticipated refund;

or

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

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

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

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

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

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

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

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

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

(c) A facilitator who advertises or markets refund anticipation loans in Spanish shall offer any borrower the option of receiving a Spanish-language **written** disclosure and loan contract. A facilitator who negotiates a loan with a borrower in Spanish shall offer that borrower the option of receiving a Spanish-language **written** disclosure and loan contract.

Sec. 351.005. INVESTIGATION BY COMMISSIONER. The commissioner **may**:

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

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

Sec. 351.006. REVOCATION OF REGISTRATION.

(a) The commissioner may revoke the registration of a facilitator if the commissioner concludes that the facilitator has violated this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the facilitator is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time

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

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

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and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

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

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

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

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

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

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and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

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

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