

By: Shapleigh

S.B. No. 1518

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of tax refund anticipation loans.

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

SECTION 1. Section 351.001, Finance Code, as added by Chapter 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session, 2007, is amended by amending Subdivisions (1), (2), and (5) and adding Subdivision (4-a) to read as follows:

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

(2) "Facilitator" means a person who processes, receives, or accepts for delivery an application for a refund anticipation loan or refund anticipation check, 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 or the issuing of a refund anticipation check.

(4-a) "Refund anticipation check" means a check, stored value card, or other payment mechanism:

(A) that represents the proceeds of a borrower's tax refund;

(B) that was issued by a depository institution or other person who receives a direct deposit of the borrower's tax refund or tax credits; and

(C) for which the borrower pays a fee or other consideration.

1 (5) "Refund anticipation loan fee" means a fee,
2 charge, [imposed] or other consideration charged or imposed
3 directly or indirectly [required] by [~~the facilitator or~~] the
4 lender for the making of, or in connection with, a refund
5 anticipation loan. The term includes any charge, fee, or other
6 consideration for a deposit account, if the deposit account is used
7 for receipt of the consumer's tax refund to repay the amount owed on
8 the loan. [~~The term does not include a fee usually imposed or other~~
9 ~~consideration usually required by the facilitator in the ordinary~~
10 ~~course of business for services not related to the making of loans,~~
11 ~~including a fee imposed for tax return preparation or for the~~
12 ~~electronic filing of a tax return.]~~

13 SECTION 2. Chapter 351, Finance Code, as added by Chapter
14 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
15 2007, is amended by adding Section 351.0015 to read as follows:

16 Sec. 351.0015. RULES. The Finance Commission of Texas may
17 adopt rules as necessary to accomplish the purposes of this chapter
18 and assist facilitators in interpreting this chapter.

19 SECTION 3. Section 351.002(a), Finance Code, as added by
20 Chapter 135 (H.B. 1344), Acts of the 80th Legislature, Regular
21 Session, 2007, is amended to read as follows:

22 (a) A person may not, individually or in conjunction or
23 cooperation with another person, act as a facilitator unless the
24 person is:

25 (1) engaged in the business of preparing tax returns,
26 or employed by a person engaged in the business of preparing tax
27 returns;

1 (2) primarily involved in [~~financial services or~~] tax
2 preparations;

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

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

7 SECTION 4. Chapter 351, Finance Code, as added by Chapter
8 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
9 2007, is amended by adding Section 351.0025 to read as follows:

10 Sec. 351.0025. RESTRICTION ON LOCATION. A refund
11 anticipation loan may be made only at:

12 (1) a business location that primarily provides tax
13 preparation services; or

14 (2) a bank, thrift, savings association, industrial
15 bank, or credit union operating under the laws of the United States
16 or this state.

17 SECTION 5. Section 351.003, Finance Code, as added by
18 Chapter 135 (H.B. 1344), Acts of the 80th Legislature, Regular
19 Session, 2007, is amended to read as follows:

20 Sec. 351.003. REGISTRATION OF FACILITATORS. (a) A
21 facilitator shall register as provided by this chapter.

22 (a-1) To register as a facilitator, a person must file a
23 written application with the commissioner accompanied by an
24 application fee in an amount determined by [provide to] the
25 commissioner [~~on or before December 31 preceding each calendar year~~
26 in which the person seeks to act as a facilitator:

27 [(1) a list of each location in this state at which

1 ~~e-file providers authorized by the Internal Revenue Service file~~
2 ~~tax returns on behalf of borrowers for whom the facilitator acts to~~
3 ~~allow the making of a refund anticipation loan; and~~

4 ~~[(2) a processing fee for each location included on~~
5 ~~the list furnished under Subdivision (1)].~~

6 (b) An application must:

7 (1) be made under oath on a form prescribed by the
8 commissioner;

9 (2) contain all information required by the
10 commissioner; and

11 (3) identify each office at which the applicant
12 intends to act as a facilitator of a refund anticipation loan or
13 check ~~[The commissioner shall prescribe the processing fee in an~~
14 ~~amount necessary to cover the costs of administering this section].~~

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

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

20 ~~[(e) The commissioner may prescribe the registration form.]~~

21 SECTION 6. Chapter 351, Finance Code, as added by Chapter
22 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
23 2007, is amended by adding Sections 351.0031, 351.0032, 351.0033,
24 351.0034, 351.0035, and 351.0036 to read as follows:

25 Sec. 351.0031. BOND. (a) An applicant shall post a bond in
26 the amount of \$50,000.

27 (b) The bond must be in favor of this state for the use of a

1 borrower who has a cause of action under this chapter against the
2 facilitator. The bond must remain in effect for five years after
3 the facilitator ceases operation in this state.

4 (c) The bond must be conditioned on:

5 (1) the facilitator's faithful performance under this
6 chapter and rules adopted under this chapter; and

7 (2) the payment of all amounts that become due to a
8 borrower under this chapter.

9 Sec. 351.0032. CERTIFICATE OF REGISTRATION. (a) The
10 commissioner shall register an applicant and shall issue a
11 certificate attesting to the registration if the commissioner finds
12 that:

13 (1) the applicant meets the qualification
14 requirements of Sections 351.002(a)(1), (2), and (3); and

15 (2) the responsibility and general fitness of the
16 applicant commands the confidence of the community and warrants
17 belief that the business of facilitating refund anticipation loans
18 or checks will be operated according to the purposes of this
19 chapter.

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

23 Sec. 351.0033. EXPIRATION OF REGISTRATION; RENEWAL. (a)
24 Registration as a facilitator expires on the first December 31
25 following the date the certificate of registration was issued.

26 (b) A registrant may renew a registration before the
27 registration expires by filing with the commissioner an application

1 for renewal in the form prescribed by the commissioner. An
2 application to renew a registration must contain all information
3 required by the commissioner and be accompanied by a fee in an
4 amount determined by the commissioner.

5 (c) The commissioner shall renew a registration on
6 receiving an application for renewal that complies with Subsection
7 (b) unless the commissioner finds that the registrant has violated
8 this chapter or that the registrant no longer meets the
9 qualifications for registration under Section 351.0032(a). If the
10 commissioner denies an application for renewal, the commissioner
11 shall notify the registrant, stating the reason for the denial.

12 Sec. 351.0034. HEARING ON DENIAL OF REGISTRATION OR
13 RENEWAL. (a) An applicant or registrant is entitled to a hearing
14 on written request made to the commissioner not later than the fifth
15 day after the date the applicant or registrant receives notice of
16 the commissioner's denial of an application for registration or
17 renewal.

18 (b) The commissioner shall hold an informal hearing
19 promptly after the commissioner receives the request.

20 Sec. 351.0035. COMPUTATION OF INTEREST. (a) The refund
21 anticipation loan interest rate is the rate, expressed as a
22 percentage, computed according to the following formula:

23
$$\text{RAL RATE} = (F \times 365) / ((L - F) \times T)$$

24 where:

25 "RAL RATE" is the refund anticipation loan interest rate;

26 "F" is the total amount of refund anticipation loan fees;

27 "L" is the total amount of the refund anticipation loan; and

1 "T" is the number of days in the refund anticipation loan.

2 (b) If a deposit account is established or maintained wholly
3 or partly for the purpose of receiving a borrower's tax refund to
4 repay the amount owed on a refund anticipation loan, the loan
5 matures for purposes of determining the refund anticipation loan
6 interest rate on the estimated date the tax refund will be deposited
7 in the deposit account. If a deposit account is not established or
8 maintained for the repayment of the loan, the loan matures for
9 purposes of determining the interest rate on the estimated date the
10 tax refund will be received by the creditor.

11 Sec. 351.0036. MAXIMUM INTEREST RATE. (a) A refund
12 anticipation loan may not provide for interest that exceeds the
13 lesser of:

14 (1) 36 percent a year; or

15 (2) the applicable alternative rate ceiling under
16 Chapter 303.

17 (b) A refund anticipation loan that provides for an interest
18 rate in violation of this section is void.

19 SECTION 7. Chapter 351, Finance Code, as added by Chapter
20 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
21 2007, is amended by adding Sections 351.0041, 351.0042, 351.0043,
22 351.0044, 351.0045, 351.0046, 351.0047, 351.00471, 351.00472,
23 351.00473, 351.00474, 351.00475, 351.0048, and 351.0049 to read as
24 follows:

25 Sec. 351.0041. FEE SCHEDULE POSTING. (a) A facilitator
26 shall display schedules showing the fees for a refund anticipation
27 loan or check currently charged by the facilitator at each place of

1 business in this state where the registrant facilitates refund
2 anticipation loans or checks.

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

4 (1) displayed in a prominent location in each place of
5 business in this state where the facilitator facilitates refund
6 anticipation loans; and

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

9 (c) A schedule of the fees charged for refund anticipation
10 loans displayed under Subsection (a) must include:

11 (1) the interest rates for refund anticipation loans
12 of \$300, \$500, \$1,000, \$1,500, \$2,000, and \$5,000;

13 (2) the following title centered on the page in
14 bold-faced capital letters at least one inch tall: "NOTICE
15 CONCERNING REFUND ANTICIPATION LOANS"; and

16 (3) the following statement: "When you take out a
17 refund anticipation loan, you are borrowing against your tax
18 refund. If your tax refund is less than expected you will still owe
19 the entire amount of the loan. If your refund is delayed, you may
20 have to pay additional costs. YOU CAN GET YOUR REFUND IN 8 TO 15
21 DAYS WITHOUT PAYING ANY EXTRA FEES OR TAKING OUT A LOAN. You can
22 have your tax return filed electronically and your refund directly
23 deposited into your own bank account without obtaining a loan or
24 paying fees for an extra product."

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

27 (1) the facilitator displays the schedules as required

1 by this section; and

2 (2) the fee actually charged for the refund
3 anticipation loan or check is the same as the fee displayed on the
4 schedule.

5 Sec. 351.0042. APPLICATION DISCLOSURES. (a) At the time a
6 borrower applies for a refund anticipation loan or check, the
7 facilitator or lender shall disclose to the borrower on a form
8 separate from the application:

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

10 (2) the fee for preparing a tax return and any other
11 fee charged to the borrower;

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

15 (4) for refund anticipation loans:

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

18 (B) the following statement: "This is a loan.
19 You are borrowing money against your tax refund. If your tax refund
20 is less than expected, you will still owe the entire amount of the
21 loan. If your refund is delayed, you may have to pay additional
22 costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT
23 GETTING A LOAN OR PAYING EXTRA FEES. You can have your tax return
24 filed electronically and your refund directly deposited into your
25 own bank account without obtaining a loan or other paid product.";
26 and

27 (C) the refund anticipation loan interest rate

1 computed as set forth in Section 351.0035; and

2 (5) for refund anticipation checks:

3 (A) the following title centered on the page in
4 bold-faced capital letters and 18-point type: "NOTICE"; and

5 (B) the following statement: "You are paying
6 [amount of refund anticipation check fee] to get your refund
7 through [name of issuer of refund anticipation check]. YOU CAN
8 AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN ABOUT 8 TO 15 DAYS BY
9 HAVING THE INTERNAL REVENUE SERVICE DIRECTLY DEPOSIT YOUR REFUND
10 INTO YOUR OWN BANK ACCOUNT. You can also wait for the IRS to mail you
11 a check. If you do not have a bank account, you may wish to consider
12 getting one."

13 (b) A disclosure under this section must be written:

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

15 (2) in English and in the language used primarily for
16 oral communication between the facilitator and the borrower.

17 Sec. 351.0043. ORAL DISCLOSURES. (a) If a borrower applies
18 for a refund anticipation loan, the facilitator shall orally
19 disclose to the borrower in the language primarily used for oral
20 communication between the facilitator and borrower:

21 (1) that the product is a loan that only lasts one to
22 two weeks;

23 (2) if the borrower's tax refund is less than expected,
24 that the borrower is liable for the full amount of the loan and must
25 repay the difference;

26 (3) the amount of the refund anticipation loan fee;

27 and

1 (4) the refund anticipation loan interest rate.

2 (b) If a borrower applies for a refund anticipation check,
3 the facilitator shall orally disclose to the borrower in the
4 language primarily used for oral communication between the
5 facilitator and borrower:

6 (1) the amount of the refund anticipation check fee;
7 and

8 (2) that the borrower can receive a refund in the same
9 amount of time without a fee if the tax return is filed
10 electronically and the borrower chooses direct deposit to the
11 borrower's own bank account.

12 (c) If the facilitator at any time provides an estimate of
13 the amount that the borrower will receive after deducting tax
14 preparation and refund anticipation loan or check fees, the
15 facilitator shall describe the options that the borrower can choose
16 from as:

17 "You can receive (state the full refund amount) in 3 to 8
18 weeks."

19 "You can receive (state the full refund amount) in 8 to 15
20 days with electronic filing and direct deposit to your own bank
21 account. This option will not cost you a fee to receive your
22 refund."

23 "You can receive (state the refund amount minus the refund
24 anticipation check fee, tax preparation fee, and any other fee
25 charged) in 8 to 15 days, but you will not receive anything in 3 to 8
26 weeks. This option will cost you (state the amount of refund
27 anticipation-related fees), plus your tax preparation fees are

1 deducted from the refund."

2 "You can receive (state refund amount minus refund
3 anticipation loan fee, tax preparation fee, and any other fee
4 charged) in one to two days, but you will not receive anything in 8
5 to 15 days or 3 to 8 weeks. This option will cost you (state the
6 amount of refund anticipation loan-related fees), plus your tax
7 preparation fees are deducted from the refund."

8 (d) The disclosures described by Subsection (c) may be used
9 by the facilitator to satisfy the requirements of Subsection (a)(3)
10 or Subsection (b).

11 Sec. 351.0044. ADVERTISING DISCLOSURES. (a) In this
12 section, "advertise" means to produce, distribute, broadcast, or
13 otherwise display or have displayed written or visual materials or
14 oral statements describing a facilitator's products and services.

15 (b) A facilitator may not advertise a refund anticipation
16 loan without including the following statement:

17 "[Name of refund anticipation loan product] is a loan. You
18 can get your refund in about 8 to 15 days without a loan or extra
19 fees if you use electronic filing and direct deposit."

20 (c) A facilitator may not advertise a refund anticipation
21 check without including the following statement:

22 "The [name of refund anticipation check product] costs
23 [refund anticipation check fee]. You can get your refund in about 8
24 to 15 days without this fee if you use electronic filing and direct
25 deposit."

26 (d) For a print advertisement, the disclosure required by
27 Subsections (b) and (c) must be in type size that is one-half as

1 large as the largest type size in the advertisement. For a radio or
2 television advertisement, the disclosures required by Subsections
3 (b) and (c) must receive at least seven seconds of broadcast time.

4 Sec. 351.0045. MODIFICATION OF REFUND RECEIPT ESTIMATE.

5 The commissioner may by rule revise the disclosures required by
6 this chapter to the extent that the 8- to 15-day estimate for
7 receiving a refund from the Internal Revenue Service is no longer
8 appropriate.

9 Sec. 351.0046. PROHIBITED PRACTICES. (a) A facilitator or
10 an officer, agent, employee, or other representative of a
11 facilitator may not:

12 (1) charge or impose a fee or other consideration in
13 the making or facilitating of a refund anticipation loan or refund
14 anticipation check apart from the fee charged by the lender that
15 provides the loan or check;

16 (2) engage in unfair or deceptive acts or practices in
17 facilitating a refund anticipation loan or check, including making
18 an oral statement contradicting information required to be
19 disclosed under this chapter;

20 (3) fail to comply with this chapter;

21 (4) misrepresent a material fact in obtaining or
22 attempting to obtain a registration as a facilitator;

23 (5) engage in conduct that violates Subchapter E,
24 Chapter 17, Business & Commerce Code; or

25 (6) in facilitating a refund anticipation loan or
26 check, threaten to take an action prohibited by this chapter or any
27 other law or that the person does not intend to take.

1 (b) The prohibition of Subsection (a)(1) does not include
2 any charge or fee imposed by the facilitator on all of the
3 facilitator's customers, including tax preparation fees, if the
4 same fee amount is charged to the facilitator's customers who do not
5 receive refund anticipation loans, refund anticipation checks, or
6 any other tax-related financial product.

7 Sec. 351.0047. COPIES OF APPLICATION AND AGREEMENT. At the
8 time a refund anticipation loan is closed or a refund anticipation
9 check transaction is completed, a facilitator or an officer, agent,
10 employee, or other representative of a facilitator shall give the
11 borrower copies, in a form that can be kept by the borrower, of:

12 (1) the complete loan or check application and
13 agreement; and

14 (2) the disclosures that a lender is required to make
15 under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), if
16 the transaction is a refund anticipation loan.

17 Sec. 351.00471. PROHIBITED PROVISIONS. (a) A facilitator
18 or an officer, agent, employee, or other representative of a
19 facilitator may not include in a document provided in connection
20 with a refund anticipation loan or check:

21 (1) a hold harmless clause;
22 (2) a confession of judgment clause;
23 (3) a waiver of the right to a jury trial, if
24 applicable, in an action brought by or against a borrower;

25 (4) an assignment of or order for payment of wages or
26 other compensation for services;

27 (5) a provision in which the borrower agrees not to

1 assert a claim or defense arising out of the contract;

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

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

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

9 (c) Subsection (a)(7) does not affect the rights of the
10 parties to a refund anticipation loan or check agreement to agree
11 that certain specified information is a trade secret or otherwise
12 confidential or to agree after a dispute arises to keep the dispute
13 resolution confidential.

14 Sec. 351.00472. ADDITIONAL SECURITY INTEREST PROHIBITED. A
15 facilitator or an officer, agent, employee, or other representative
16 of a facilitator may not take or arrange for a lender to take a
17 security interest in a borrower's property other than the proceeds
18 of the borrower's tax refund to secure payment of a refund
19 anticipation loan.

20 Sec. 351.00473. CERTAIN ACTIONS WITH RESPECT TO OUTSTANDING
21 OR DELINQUENT REFUND ANTICIPATION LOANS PROHIBITED. A facilitator
22 or an officer, agent, employee, or other representative of a
23 facilitator may not:

24 (1) directly or indirectly, individually or in
25 cooperation with another person, engage in the collection of an
26 outstanding or delinquent refund anticipation loan for another
27 lender or assignee; or

1 (2) act as facilitator for a refund anticipation loan
2 or check that contains a provision permitting the lender to repay
3 from the proceeds of the borrower's tax refund, by offset or other
4 means, another outstanding or delinquent refund anticipation loan.

5 Sec. 351.00474. ASSOCIATION WITH CHECK CASHING ENTERPRISE
6 PROHIBITED. A facilitator or an officer, agent, employee, or other
7 representative of a facilitator may not:

8 (1) refer a borrower to or solicit a borrower on behalf
9 of a third party who cashes a check for a fee; or

10 (2) permit a third party to cash a check for a fee in a
11 place of business identified in the facilitator's application for
12 registration.

13 Sec. 351.00475. CERTAIN CHARGES PROHIBITED. A facilitator
14 may not directly or indirectly arrange for any third party to charge
15 any interest, a fee, or another charge related to a refund
16 anticipation loan or check, other than the refund anticipation loan
17 or refund anticipation check fee imposed by the lender, including
18 the charging of:

19 (1) fees for insurance;

20 (2) attorney's fees;

21 (3) collection costs; or

22 (4) fees for cashing a check.

23 Sec. 351.0048. VIOLATION OF RULES. A facilitator or an
24 officer, agent, employee, or other representative of a facilitator
25 may not violate a rule adopted by the finance commission under this
26 chapter.

27 Sec. 351.0049. ANNUAL REPORTS. (a) On or before July 1 of

1 each year, a facilitator shall file a report with the commissioner
2 according to procedures established by the commissioner.

3 (b) A report filed under this section must include the
4 following information for the period beginning April 15 of the
5 preceding year and ending April 14 of the year the report is filed:

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

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

10 (3) the average number of days for which refund
11 anticipation loans facilitated by the facilitator were outstanding
12 before being repaid;

13 (4) the name and address of any lender or other person
14 for whom the facilitator facilitates a refund anticipation loan or
15 check; and

16 (5) any other information required by the
17 commissioner.

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

20 (d) Annually the commissioner shall prepare and make
21 available to the public a consolidated report of reports filed
22 under this section.

23 SECTION 8. Chapter 351, Finance Code, as added by Chapter
24 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
25 2007, is amended by adding Sections 351.0051 and 351.0052 to read as
26 follows:

27 Sec. 351.0051. HEARING. (a) If the commissioner believes

1 or has notice that an action of a facilitator may violate this
2 chapter or a rule adopted under this chapter, the commissioner
3 shall give the facilitator reasonable notice of the suspected
4 violation and an opportunity to be heard.

5 (b) The commissioner may make investigations, subpoena
6 witnesses, and require audits and reports in preparation for a
7 hearing under this section.

8 (c) A hearing under this section shall be open to the
9 public.

10 (d) After the hearing the commissioner shall make findings
11 of fact and conclusions of law.

12 Sec. 351.0052. CEASE AND DESIST ORDER. If the commissioner
13 finds under Section 351.0051(d) that an action of a facilitator
14 violates this chapter or a rule adopted under this chapter, the
15 commissioner shall order the facilitator to cease and desist from
16 the action.

17 SECTION 9. The heading to Section 351.006, Finance Code, as
18 added by Chapter 135 (H.B. 1344), Acts of the 80th Legislature,
19 Regular Session, 2007, is amended to read as follows:

20 Sec. 351.006. REVOCATION OR SUSPENSION OF REGISTRATION.

21 SECTION 10. Section 351.006, Finance Code, as added by
22 Chapter 135 (H.B. 1344), Acts of the 80th Legislature, Regular
23 Session, 2007, is amended by amending Subsection (a) and adding
24 Subsection (d) to read as follows:

25 (a) If the commissioner finds under Section 351.005 that a
26 registrant has engaged in a course of conduct that violates this
27 chapter or a rule adopted under this chapter or has continued to

1 engage in an action in violation of a cease and desist order of the
2 commissioner that has not been stayed on application of the
3 registrant, the ~~[The]~~ commissioner may revoke or suspend the
4 registration of a facilitator ~~[if the commissioner concludes that~~
5 ~~the facilitator has violated this chapter]~~. The commissioner
6 shall recite the basis of the decision in an order revoking or
7 suspending the registration.

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

12 SECTION 11. Chapter 351, Finance Code, as added by Chapter
13 135 (H.B. 1344), Acts of the 80th Legislature, Regular Session,
14 2007, is amended by adding Sections 351.0071, 351.0072, and
15 351.0073 to read as follows:

16 Sec. 351.0071. COMPLAINT PROCEDURE. (a) The commissioner
17 shall establish a complaint procedure that enables an aggrieved
18 borrower or a member of the public to file a complaint against a
19 registrant or non-registrant who violates a provision of this
20 chapter. The commissioner shall maintain a toll-free number that a
21 borrower may use to obtain information about registrants and
22 complaint forms.

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

27 (c) On the request of a party to a complaint, the

1 commissioner shall hold a hearing as provided by Section 351.0051.
2 After the hearing, the commissioner may issue a cease and desist
3 order under Section 351.0052 or suspend or revoke a registration as
4 provided by Section 351.006.

5 Sec. 351.0072. DECEPTIVE TRADE PRACTICES. A violation of
6 this chapter is a deceptive trade practice under Subchapter E,
7 Chapter 17, Business & Commerce Code.

8 Sec. 351.0073. CIVIL ACTION. (a) A facilitator who fails
9 to comply with this chapter is liable to the borrower for:

- 10 (1) actual and consequential damages;
11 (2) the greater of:
12 (A) \$2,500; or
13 (B) three times the amount of the refund
14 anticipation loan fee or other unauthorized charge; and
15 (3) reasonable attorney's fees and costs.

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

18 (c) A borrower may bring a class action suit to enforce this
19 chapter. In a class action suit brought under this subsection, a
20 facilitator who violates this chapter is liable for:

- 21 (1) actual and consequential damages for each class
22 member;
23 (2) damages provided by Subsection (a)(2) for each
24 class member; and
25 (3) reasonable attorney's fees and costs.

26 (d) The remedies provided in this section are cumulative and
27 are not intended to be the exclusive remedies available to a

1 borrower. A borrower is not required to exhaust any administrative
2 remedies provided by this chapter or other applicable law.

3 SECTION 12. A facilitator of refund anticipation loans or
4 checks shall file the first report with the consumer credit
5 commissioner as required by Section 351.0049, Finance Code, as
6 added by this Act, not later than July 1, 2011.

7 SECTION 13. This Act takes effect September 1, 2009.