

SUBJECT: Exempting some e-file providers from credit services organization regulation

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 6 ayes — Solomons, Christian, Flynn, Hopson, Paxton, Wise
0 nays
1 absent — Gutierrez

WITNESSES: No public hearing

SENATE VOTE: On final passage, March 13 — 30-0, on Local and Uncontested Calendar.

BACKGROUND: Chapter 393 of the Finance Code governs credit services organizations that provide, or represent the provider of, services to improve a consumer's credit history or rating, obtain a loan, or provide assistance with such services. It requires credit services organizations to register with the secretary of state before doing business, to pay a registration fee of up to \$100, and to file a \$10,000 surety bond with the secretary of state. Section 393.002 describes the entities that are exempt from the chapter's provisions.

The Internal Revenue Service (IRS) authorizes e-file providers to help taxpayers electronically file federal income tax returns. The IRS checks an applicant's suitability by verifying that the prospective e-file provider has no outstanding IRS penalties or balance due, no missing tax returns, and no criminal record. Applicants that are attorneys, IRS enrolled agents, or certified public accountants (CPAs) must provide proof of professional standing. All other applicants must provide fingerprints with their applications. E-file providers do not have to renew their authorizations, but their suitability is re-verified annually.

In 2001, the 77th Legislature enacted SB 935 by Armbrister, establishing that authorized e-file providers did not have to obtain a regulated loan license to facilitate a customer's loan from a financial institution.

DIGEST: SB 324 would exempt from regulation as a credit services organization an authorized IRS e-file provider who arranges for a client's tax refund loan from a bank, savings bank, savings and loan association, or credit union.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY: In recent years, consumers have sought loans backed by their anticipated tax returns in order to access tax refund dollars more quickly. A tax preparer will prepare the client's tax return and then submit it to a bank or other financial institution that makes the loan. Prior to 2001, tax preparers were required to obtain a regulated loan license for offering such a service from the Office of the Consumer Credit Commissioner. When the 77th Legislature exempted authorized e-file providers from consumer loan licensing requirements, it did not intend to place a new requirement on e-file providers, who have subsequently defaulted to regulation under the credit services organization statute.

SB 324 is needed to clarify that e-file providers, who already are authorized by the IRS, should not be subject to additional state registration requirements for providing only minimal services associated with tax refund loans by financial institutions. Such a requirement would be burdensome on e-file providers and could discourage them from offering their services, though consumers clearly value their presence in the marketplace.

OPPONENTS SAY: This bill would put consumers at risk because IRS-authorized e-file providers are not well regulated. There are no competency qualifications for e-file providers, although the IRS checks an applicant's suitability, and they never have to renew the authorization. This minimal level of oversight by the IRS is insufficient to protect consumers, who trust e-file providers to facilitate loans, about which an e-file provider may have no expertise. An e-file provider who is also a CPA would be regulated by the State Board of Public Accountancy, but most e-file providers are not CPAs.

State credit services organization statutes, like IRS authorization of e-file providers, provide a relatively low level of regulation. However, they at least require that credit services organizations register with the secretary of state

and maintain a surety bond of \$10,000 for the protection of consumers that might be wronged by the credit service organization. In exempting e-file providers from state law, this bill would remove the bonding requirement for e-file providers and decrease consumer protection.