

SUBJECT: Registration and disclosure requirements for refund anticipation lenders

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 5 ayes — Solomons, Flynn, Anderson, McCall, Orr

0 nays

2 absent — Chavez, Anchia

WITNESSES: For — Ann Baddour, Texas Appleseed; Brian Donohue, H&R Block Inc.; Michael Goeken, City of San Antonio Department of Community Initiatives; Cecilia Joseph, Children's Defense Fund; (*Registered, but did not testify:* Randal Erben, JP Morgan Chase; Eric Glenn, HSBC, N.A.; Karen R. Johnston, United Ways of Texas; Woody Widrow, Texas Asset Building Coalition)

Against — None

On — Leslie Pettijohn, Consumer Credit Commission

BACKGROUND: A refund anticipation loan (RAL) is a loan made to a person based on that individual's anticipated tax refund. RALs commonly are offered by tax preparation firms, but other businesses such as car dealerships may offer loans based on anticipated tax refunds prior to the conclusion of the tax year.

The Earned Income Tax Credit (EITC) is a rebate of federal income taxes deducted from paychecks for the previous year. Certain working individuals and families who earn low or moderate incomes may be eligible to receive the EITC. Because extra forms are required to file for the EITC, more than 72 percent of Texas EITC filers use tax preparation firms, according to Internal Revenue Service data.

DIGEST: HB 1344 would define a refund anticipation loan as a loan borrowed by a taxpayer based on the taxpayer's anticipated federal income tax refund. It would also define the borrower and lender in a RAL transaction. A refund anticipation loan fee would refer to a fee imposed or other consideration required for a refund anticipation loan. This would not include fees

unrelated to making a loan, such as a tax return preparation fee or an electronic filing fee.

The RAL facilitator would be the person who processed, received, or accepted applications for a refund anticipation loan; delivered a check in payment of refund anticipation loan proceeds; or in any other way facilitated the making of a refund anticipation loan. A person could not act as a facilitator unless the person was:

- engaged in the business of preparing tax returns or employed by a person engaged in the business of preparing tax returns;
- authorized by the Internal Revenue Service (IRS) as an e-file provider; and
- registered with the consumer credit commissioner as a RAL facilitator.

The following entities would not be restricted from acting as a facilitator:

- a U.S. or state bank, thrift, savings association, industrial bank, credit union, or an affiliate that serviced these institutions; or
- a person who acted solely as an intermediary and did not interact directly with a taxpayer in the making of the RAL.

To register as a facilitator, a person would provide the consumer credit commissioner a list of each authorized, e-file provider location at which the facilitator performed RAL-related activities and the processing fee for each location. This registration, in a form prescribed by the commissioner, would be due on or before December 31. After this date, a facilitator could amend the registration to reflect any change in the information provided. The commissioner would make the list of registered facilitators publicly available and would determine the processing fee necessary to cover the costs of registering facilitators and creating the public listing of facilitators.

Before the loan was closed, a facilitator would have to discuss with and clearly disclose to a borrower the refund anticipation loan fee schedule. A refund anticipation loan fee schedule would be a listing of refund anticipation loan fees charged by the lender for refund anticipation loan amounts. The schedule would:

- list each fee imposed related to making a refund anticipation loan;
- list the total amount of fees imposed related to making a refund anticipation loan; and
- include, for each stated loan amount, the estimated annual percentage rate for the loan.

The facilitator would have to provide a written statement disclosing:

- that a refund anticipation loan was a loan, not the borrower's actual income tax refund;
- that the taxpayer could file an income tax return electronically without applying for a refund anticipation loan;
- that the borrower would be responsible for repayment of the loan and related fees if the tax refund was not paid or was insufficient to repay the loan;
- any fee that would be charged if the loan is not approved;
- the average time, as published by the IRS, within which a taxpayer could expect to receive a refund for an income tax return filed electronically or by mail with the refund direct-deposited or mailed;
- that the IRS does not guarantee payment of the full amount of the anticipated refund or a specific date on which it would mail a refund or deposit the refund into a taxpayer's account;
- the estimated time within which the proceeds of the refund anticipation loan would be paid to the borrower if the loan was approved; and
- borrower-specific information including the estimated total fees for the loan and the estimated annual percentage rate for the loan.

The commissioner would be authorized to:

- monitor the operations of a facilitator to ensure compliance;
- receive and investigate complaints against a facilitator or a person acting as a facilitator;
- assess an administrative penalty of \$500 against a person for each knowing and willful violation; and
- revoke the registration of a facilitator if the facilitator had committed a violation.

The commissioner would have to recite the basis of a decision regarding a violation in an order revoking registration. If the commissioner proposed

to revoke a registration, the facilitator would be entitled to a hearing before the commissioner or a hearings officer, at a time prescribed by these officials. A facilitator aggrieved by a ruling, order, or decision of the commissioner would be entitled to appeal to a district court in the county in which the hearing was held. Hearings and appeals on administrative procedures would be governed by Government Code, ch. 2001.

The bill would preempt a local ordinance or rule regulating refund anticipation loans.

The bill would take effect September 1, 2007, except that the requirement for a person who facilitates refund anticipation loans to be registered with the commissioner would take effect January 1, 2008.

**SUPPORTERS  
SAY:**

HB 1344 is landmark legislation that would put in place standards for accountability in the refund anticipation loan industry. Refund anticipation loans can be of great value to consumers. These loans allow people access to funds immediately in case of an emergency, such as the need to pay medical expenses or paying past due bills. However, they are highly subject to predatory lending practices.

RALs often are issued to low-income individuals who are made to think the wait for their refund is longer than it really is or who do not realize they are borrowing money at interest rates that can exceed an annual percentage rate of 100 percent. Estimates indicate that in tax year 2004, Texas EITC recipients spent almost 7 percent of their returns on RALs simply to receive their funds 10 to 14 days earlier. HB 1344 would educate taxpayers so that they could evaluate whether a RAL was a wise choice for them or if obtaining such a loan simply would be throwing away much needed funds.

**OPPONENTS  
SAY:**

While HB 1344 would be a positive step towards consumer protection in the refund anticipation loan industry, the bill would provide greater benefit if it required disclosures to be written in other languages. It also would be beneficial to add a data reporting requirement to demonstrate on an annual basis how many RALs are being issued for what purpose and at what time of the year.

**NOTES:**

The companion bill, SB 1905 by Van de Putte, has been referred to the Senate Business and Commerce Committee.

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According to the Legislative Budget Board, costs to the Office of Consumer Credit Commissioner would be absorbed by revenues from the fee authorized by HB 1344.