

SENATE BILL REPORT

SB 5692

As Reported By Senate Committee On:
Financial Institutions, Housing & Consumer Protection, February 24, 2005

Title: An act relating to tax refund anticipation loans.

Brief Description: Regulating tax refund anticipation loans.

Sponsors: Senators Berkey, Benton, Prentice and Keiser.

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 2/15/05, 2/24/05 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 5692 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Benton, Ranking Minority Member; Benson, Brandland, Delvin, Franklin, Keiser, Prentice, Schmidt and Spanel.

Staff: Jennifer Arnold (786-7471)

Background: Refund anticipation loans (RALs) are loans made by a lender to a taxpayer based on that taxpayer's anticipated federal income tax refund. If a refund is due, a loan may be offered to a taxpayer at the time of tax preparation and filing by a tax preparer or "facilitator." The taxpayer/borrower signs a contract authorizing the lender to receive the tax refund from the federal Internal Revenue Service (IRS). The borrower is given an immediate loan secured by the refund. Broker fees are deducted from the borrower's IRS tax refund. The borrower is liable if the refund paid by the IRS is less than the loan.

State law is preempted by federal regulation in regards to the lending practices of national banks. Therefore, RALs are generally not subject to regulation by the Department of Financial Institutions (DFI), as the majority of these loan products are made by national banks or their subsidiaries. However, the state is not preempted from regulating the non-banking activities of national tax preparers.

Summary of Substitute Bill: The Tax Refund Anticipation Loan Act is created. The Act defines a "facilitator" as a person who receives or accepts for delivery an application for a RAL, delivers a check in payment of RAL proceeds, or acts in any other manner to allow the making of a refund anticipation loan. Facilitator does not include financial institutions, the affiliate of a financial institution, or any person who acts solely as an intermediary and who does not deal with the taxpayer in the making of the refund anticipation loan.

Under the Act, the following must be clearly disclosed, in a minimum of 10 point font, by the facilitator to the borrower prior to completion of the loan application:

- the refund anticipation fee schedule, which itemizes the fees charged and includes the estimated annual percentage rate for the loan;
- the RAL is a loan, not the borrower's actual tax refund;
- the taxpayer can file a tax return electronically, without applying for a RAL;
- the average time it takes a taxpayer to receive a refund from the IRS, if that taxpayer was to apply directly to the IRS either electronically or by mail and depending upon whether the taxpayer were to elect to receive the refund by mail or direct deposit;
- the IRS does not guarantee that it will pay the full amount of the anticipated refund;
- the IRS does not guarantee a specific date that a refund will be mailed or deposited into a taxpayer's banking account;
- the borrower is responsible for repayment of the loan and related fees, if the tax refund is less than the loan amount;
- the estimated time in which the loan proceeds will be paid to the borrower, if the loan is approved; and
- the fee that will be charged, if any, if the loan is not approved.

In addition, the facilitator must provide the borrower with the federal disclosures required under the Truth In Lending Act.

A facilitator is expressly prohibited from engaging in the following activities: (1) misrepresenting material facts; (2) failing to process an application promptly; (3) participating in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with the RAL; and arranging for a creditor to take a security interest in any of the consumer's property, other than the proceeds from the tax refund to secure payment of the loan.

A knowing and willful violation of these requirements is a misdemeanor, subject to a fine of up to 500 dollars per offense. Further, a violation under this Act is also a violation of the Consumer Protection Act and as such, is subject to the penalties thereunder. This Act retroactively and prospectively preempts any other state and local laws relating to RAL facilitators.

Substitute Bill Compared to Original Bill: It is added that a violation of this Act is also a violation of the Consumer Protection Act. The prohibited activities of facilitators are expressly enumerated. The disclosures required under the original bill must be made to the borrower prior to completion of the loan application and be in at least 10 point font. It is clarified that facilitators must be in compliance with applicable federal lending disclosure requirements.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: We need to ensure that taxpayers make informed decisions. This is good consumer protection legislation, as disclosure is the cornerstone to protecting consumers. Tax preparers are already heavily regulated by the federal government; therefore, what is needed most is a disclosure requirement to inform taxpayers of exactly what they are getting.

Testimony Against: None.

Other: Stronger enforcement provisions are needed.

Who Testified: PRO: Tom Echols, Hongkong and Shanghai Banking Corporation Limited; Michael Beresik, H&R Block; Stephen Sprenger, H&R Block Franchise; Steve Gano, Jackson Hewitt; Robert Pregulman, Washington PIRL. OTHER: Gene Forrester, Washington Senior Citizen's Lobby; Julie Nelson, City of Seattle; Jennifer Romich, Researcher.