

SENATE BILL REPORT

SB 5796

As of February 18, 2005

Title: An act relating to refund anticipation loans.

Brief Description: Regulating refund anticipation loans.

Sponsors: Senator Fairley.

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 2/15/05.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Staff: Jennifer Arnold (786-7471)

Background: Refund anticipation loans (RALs) are loans made by a lender to a taxpayer based on the 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, from which broker fees are deducted. 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. The majority of RALs are made by national banks or their subsidiaries; therefore, RALs are generally not subject to regulation by the Department of Financial Institutions (DFI). However, the state is not preempted from regulating the non-banking activities of national tax preparers.

Summary of Substitute Bill: The Refund Anticipation Loan Act, which regulates the activities of facilitators, is created. Facilitator is defined under the Act as a person who assists the consumer in obtaining or applying for a RAL. This definition does not include financial institutions and their servicers, persons who do not have direct contact with the consumer, or any of the employees of a facilitator.

RAL facilitator licensing requirements. All RAL facilitators must be licensed with DFI. To obtain a license, the facilitator must submit a fee and written application to DFI for each location. DFI will evaluate the applicant's experience and training to serve as a facilitator, financial solvency, and moral business character. On the basis of DFI's evaluation, a license will be issued within 45 days, provided that the application is completed and that the facilitator is not otherwise in violation of this Act. Each location must renew its license annually. A license may be suspended, revoked, or limited by DFI and the licensee may be subject to civil penalties, if the applicant violates the Act.

RAL disclosure requirements. Facilitators must file a schedule of anticipated fees for RALs with DFI for each succeeding year. The fee schedule must be displayed at every facilitator's office in the specified font and size. The schedule must also state that a taxpayer can have his or her return filed electronically without any requirement to obtain a RAL. In addition to the posted schedule, prior to a consumer entering into a RAL agreement, a facilitator must provide the consumer with written notice on a single sheet of paper, separate from any other document. Unless otherwise approved by DFI, the notice must contain the verbatim language of the Act, including information such as, the disclosure of annual percentage rates, fees, interest, facilitator process time, and IRS average refund times.

Fiduciary duty owed to consumers. A fiduciary duty is owed by facilitators to consumers in performing tax preparation services and offering to assist or assisting in obtaining a tax refund anticipation loan.

Prohibited RAL facilitator activities. A facilitator is prohibited from engaging in any of the following activities related to RALs: (1) misrepresenting material facts; (2) failing to process an application promptly; (3) participating in any dishonest, fraudulent, unfair, unconscionable, or unethical practice; (4) facilitating a loan with fees that do not match either the posted notice or notice submitted to DFI; (5) arranging for a RAL to be used to pay for anything other than the RAL fees and interest; (6) arranging for a creditor to take a security interest in any property of the consumer, other than the tax refund; (7) cross-lender debt collection; and (8) participating in any unconscionable activity.

DFI enforcement powers and civil penalties. DFI has rule-making authority, the power to conduct investigations, and the ability to issue cease and desist orders for any act that a person or entity is engaged in or about to engage in that is in violation of this Act. The order may require corrective actions and impose civil penalties of up to 5,000 dollars per violation, unless the violation was knowingly or recklessly committed, in which event the fine can be up to 10,000 per violation.

Consumer remedies. Consumers may call a toll-free telephone number for DFI to file complaints. Damages can be recovered for wilful violations of the Act, which includes: (1) actual and consequential damages; (2) 2,000 dollars or three times the amount of the RAL, which ever is greater; and (3) attorney's fees. A consumer is also entitled to seek damages under the Consumer Protection Act.

Report to Legislature required. A report on the practices of RAL facilitators in Washington must be submitted by DFI to the appropriate House and Senate financial institution committees by July 1, 2008.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Requested on January 7, 2005.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2006.

Testimony For: People must be informed that what they are getting is a loan and that the fees are fair. We need to have the ability to determine whether these businesses are obeying our laws in order to weed out the bad actors and protect the consumers. These tax preparers prey on people without bank accounts and those who do not understand how to file their own return. The majority of persons who use these services do not know that they are getting a loan. This issue affects low to moderate income taxpayers and the enforcement mechanism of the bill will help people keep more of what they earn.

Testimony Against: None.

Other: The federal government already heavily regulates who can file electronic refunds; in addition, facilitators are subject to federal anti-fraud laws. Therefore, the regulatory environment is already in place to take care of the concerns this bill addresses; disclosure is the only additional requirement that is needed. The enforcement of existing rules should be a priority.

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