
SUBSTITUTE HOUSE BILL 1251

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Santos, Roach, Kirby, Morrell, Simpson, Hasegawa, P. Sullivan and McIntire)

READ FIRST TIME 03/03/05.

1 AN ACT Relating to tax refund anticipation loans; adding a new
2 chapter to Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
5 tax refund anticipation loan act.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Facilitator" means a person who receives or accepts for
9 delivery an application for a refund anticipation loan, delivers a
10 check in payment of refund anticipation loan proceeds, or in any other
11 manner acts to allow the making of a refund anticipation loan.
12 "Facilitator" does not include a bank, thrift, savings association,
13 industrial bank, or credit union operating under the laws of the United
14 States or this state, an affiliate that is a servicer for such an
15 entity, or any person who acts solely as an intermediary and does not
16 deal with a taxpayer in the making of the refund anticipation loan.

17 (2) "Person" means an individual, a firm, a partnership, an
18 association, a corporation, or other entity.

1 (3) "Lender" means a person who extends credit to a borrower in the
2 form of a refund anticipation loan.

3 (4) "Taxpayer" means an individual who files a federal income tax
4 return.

5 (5) "Borrower" means a taxpayer who receives the proceeds of a
6 refund anticipation loan.

7 (6) "Refund anticipation loan" means a loan borrowed by a taxpayer
8 from a lender based on the taxpayer's anticipated federal income tax
9 refund.

10 (7) "Refund anticipation loan fee" means the charges, fees, or
11 other consideration imposed by the lender for a refund anticipation
12 loan. This term does not include any charge, fee, or other
13 consideration usually imposed by the facilitator in the ordinary course
14 of business for nonloan services, such as fees for tax return
15 preparation and fees for electronic filing of tax returns.

16 (8) "Refund anticipation loan fee schedule" means a listing or
17 table of refund anticipation loan fees charged by the facilitator or
18 the lender for three or more representative refund anticipation loan
19 amounts. The schedule shall list separately each fee or charge
20 imposed, as well as a total of all fees imposed, related to the making
21 of refund anticipation loans. The schedule shall also include, for
22 each representative loan amount, the estimated annual percentage rate
23 calculated under the guidelines established by the federal truth in
24 lending act, 15 U.S.C. Sec. 1601 et seq.

25 NEW SECTION. **Sec. 3.** (1) No person may individually, or in
26 conjunction or cooperation with another person, solicit the execution
27 of, process, receive, or accept an application or agreement for, a
28 refund anticipation loan without first being licensed with the director
29 as a facilitator.

30 (2) This section does not apply to a person doing business as a
31 bank, thrift, industrial bank, savings and loan association, or credit
32 union, under the laws of the United States or of this state.

33 (3) This chapter shall preempt and be exclusive of all local acts,
34 statutes, ordinances, and regulations relating to refund anticipation
35 loans. This subsection shall be given retroactive and prospective
36 effect.

1 NEW SECTION. **Sec. 4.** (1) An application to become licensed as a
2 facilitator must be in writing, under oath, and in a form prescribed by
3 the director. The application must contain all information prescribed
4 by the director and must include any licenses that a state or federal
5 entity has issued to the applicant. Each application for a license
6 must be accompanied by a two hundred fifty dollar initial licensing fee
7 for each office where the facilitator intends to facilitate refund
8 anticipation loans.

9 (2) Unless the director denies the application, the director shall
10 license the applicant upon the filing of a completed application for a
11 license. The director shall issue and transmit to the applicant a
12 license. If the director denies the application, the director shall
13 notify the applicant of the reasons for the denial within forty-five
14 days of the receipt of the application.

15 (3) Upon receipt of a license, the applicant is licensed under this
16 chapter and may engage in the business of facilitating refund
17 anticipation loans at the offices identified on the application for the
18 license.

19 (4)(a) In addition to any requirements for a license set forth by
20 rule of the director under this chapter, the director shall consider
21 the facilitator's status as a tax preparer when determining whether to
22 grant, renew, or revoke a facilitator's license.

23 (b) A tax preparer owes the consumer a fiduciary duty in connection
24 with performing tax preparation services, the sale of any goods or
25 services, and the offer to assist or assisting a consumer in obtaining
26 a tax refund anticipation loan or other loan related to tax preparation
27 services, and may not engage in any conduct or practice that is
28 deceptive or likely to mislead the consumer. A tax preparer covered by
29 this section owes this duty to the consumer regardless of whether the
30 tax preparer may be acting in part as an agent for another.

31 NEW SECTION. **Sec. 5.** (1) Each license for a facilitator of refund
32 anticipation loans expires on December 31st following the date it was
33 issued. Before the license expires, the facilitator may renew the
34 license by filing with the director an application for renewal in the
35 form and containing all information prescribed by the director. Each
36 application for renewal of a license must be accompanied by a two

1 hundred fifty dollar renewal fee for each office where the facilitator
2 intends to facilitate refund anticipation loans during the succeeding
3 year.

4 (2) Upon the filing of an application for renewal of a license, the
5 director may renew the license. If the director does not renew the
6 license, the director shall notify the facilitator, stating the reasons
7 for the denial.

8 (3) The director shall establish rules defining the time frame in
9 which the application required under this section must be filed, and
10 the time frame in which the department must process and notify the
11 applicant of the department's decision regarding the application.

12 NEW SECTION. **Sec. 6.** (1) For all refund anticipation loans, a
13 facilitator must provide a clear disclosure statement to the borrower,
14 prior to the borrower's completion of the application. The disclosure
15 statement required under this subsection must be printed in a minimum
16 of ten-point type. Further, the disclosure statement must contain the
17 following:

- 18 (a) The refund anticipation loan fee schedule; and
- 19 (b) A written statement containing the following elements:
 - 20 (i) That a refund anticipation loan is a loan, and is not the
21 borrower's actual income tax refund;
 - 22 (ii) That the taxpayer can file an income tax return electronically
23 without applying for a refund anticipation loan;
 - 24 (iii) The average times according to the internal revenue service
25 within which a taxpayer who does not obtain a refund anticipation loan
26 can expect to receive a refund if the taxpayer's return is (A) filed
27 electronically and the refund is directly deposited to the taxpayer's
28 bank account or mailed to the taxpayer, and (B) mailed to the internal
29 revenue service and the refund is directly deposited to the taxpayer's
30 bank account or mailed to the taxpayer;
 - 31 (iv) That the internal revenue service does not guarantee that it
32 will pay the full amount of the anticipated refund and it does not
33 guarantee a specific date that a refund will be deposited into a
34 taxpayer's financial institution account or mailed to a taxpayer;
 - 35 (v) That the borrower is responsible for repayment of the loan and
36 related fees in the event that the tax refund is not paid or paid in
37 full;

1 (vi) The estimated time within which the loan proceeds will be paid
2 to the borrower if the loan is approved; and

3 (vii) The fee that will be charged, if any, if the borrower's loan
4 is not approved.

5 (2) The following additional information must be provided to the
6 borrower of a refund anticipation loan before consummation of the loan
7 transaction:

8 (a) The estimated total fees for obtaining the refund anticipation
9 loan; and

10 (b) The estimated annual percentage rate for the borrower's refund
11 anticipation loan, using the guidelines established under the federal
12 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

13 NEW SECTION. **Sec. 7.** A borrower may rescind a loan, on or before
14 the close of business on the next day of business at the location where
15 the loan was originated, by returning the principal in cash or the
16 original check disbursed by the facilitator to fund the refund
17 anticipation loan. The facilitator may not charge the borrower for
18 rescinding the loan and shall return to the borrower any postdated
19 check taken as security for the loan or any electronic equivalent. The
20 facilitator shall conspicuously disclose to the borrower this right of
21 rescission in writing in the disclosure statement required under
22 section 6(1) of this act.

23 NEW SECTION. **Sec. 8.** It is unlawful for a facilitator of a refund
24 anticipation loan to engage in any of the following activities:

25 (1) Misrepresent a material factor or condition of a refund
26 anticipation loan;

27 (2) Fail to process the application for a refund anticipation loan
28 promptly after the consumer applies for the loan;

29 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or
30 unethical practice or conduct in connection with a refund anticipation
31 loan;

32 (4) Arrange for a creditor to take a security interest in any
33 property of the consumer other than the proceeds of the consumer's tax
34 refund to secure payment of the loan;

35 (5) Impose charges, fees, or other consideration for a refund
36 anticipation loan. This does not preclude any charge, fee, or other

1 consideration usually imposed by the facilitator in the ordinary course
2 of business for nonloan services, such as fees for tax return
3 preparation and fees for electronic filing of tax returns;

4 (6) Offer a refund anticipation loan that exceeds the amount of the
5 anticipated tax refund less any refund anticipation loan fees; and

6 (7) Act as a facilitator unless they are authorized as an
7 electronic return originator by the internal revenue service at the
8 time.

9 NEW SECTION. **Sec. 9.** Any person who knowingly and willfully
10 violates this chapter is guilty of a misdemeanor and shall be fined up
11 to five hundred dollars for each offense.

12 NEW SECTION. **Sec. 10.** The legislature finds that the practices
13 covered by this chapter are matters vitally affecting the public
14 interest for the purpose of applying the consumer protection act,
15 chapter 19.86 RCW. A violation of this chapter is not reasonable in
16 relation to the development and preservation of business and is an
17 unfair or deceptive act in trade or commerce and an unfair method of
18 competition for the purpose of applying the consumer protection act,
19 chapter 19.86 RCW.

20 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
21 constitute a new chapter in Title 19 RCW.

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