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SENATE BILL 5796

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State of Washington

59th Legislature

2005 Regular Session

By Senator Fairley

Read first time 02/07/2005. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to refund anticipation loans; adding a new section  
2 to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW;  
3 adding a new section to chapter 36.01 RCW; adding a new chapter to  
4 Title 31 RCW; prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
7 refund anticipation loan act.

8 NEW SECTION. **Sec. 2.** This chapter shall be liberally construed to  
9 effectuate its purposes, which include protecting consumers who enter  
10 into refund anticipation loans from abuses and to ensure they are fully  
11 informed of the costs and consequences of the loans.

12 NEW SECTION. **Sec. 3.** The following definitions apply throughout  
13 this chapter unless the context clearly requires otherwise.

14 (1) "Applicant" means a person who applies for registration as a  
15 facilitator of refund anticipation loans.

16 (2) "Department" means the department of financial institutions.

1 (3) "Director" means the director of the department of financial  
2 institutions.

3 (4) "Consumer" means a taxpayer whose income tax refund is the  
4 source of repayment of a refund anticipation loan.

5 (5) "Facilitator" means a person who assists the consumer in  
6 applying for or obtaining a refund anticipation loan. The term does  
7 not include a person doing business as a bank, thrift, savings and loan  
8 association, industrial bank, or credit union under Washington or  
9 federal law, a servicer of that person who operates under that person's  
10 name, or a person who does not have direct contact with the consumer in  
11 connection with applying for or obtaining a refund anticipation loan.  
12 "Facilitator" does not include an employee of a registered facilitator  
13 at the registered facilitator's place of business. An employee, when  
14 acting under the scope of the employee's employment, is exempt from any  
15 other law that the employee's employer is exempt from.

16 (6) "Person" means an individual, a firm, a partnership, an  
17 association, a corporation, a limited liability corporation, a  
18 franchise, a joint venture, an unincorporated association, a joint  
19 stock company, or other entity. A single entity employing facilitators  
20 at multiple locations is one facilitator for purposes of this chapter.

21 (7) "Refund anticipation loan" means a loan that is secured by, or  
22 that the creditor arranges to be repaid directly or indirectly from,  
23 the proceeds of the consumer's income tax refund or tax credits and  
24 includes an assignment of the tax refund or tax credits to the  
25 creditor.

26 (8) "Annual percentage interest rate" means the same as defined by  
27 the federal truth in lending act (15 U.S.C. Sec. 1601 et seq.).

28 NEW SECTION. **Sec. 4.** (1) No person may individually, or in  
29 conjunction or cooperation with another person, solicit the execution  
30 of, process, receive, or accept an application or agreement for, a  
31 refund anticipation loan without first being registered with the  
32 director as a refund anticipation loan facilitator.

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

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

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

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

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

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

32        NEW SECTION.    **Sec. 6.**    (1) Each registration as a facilitator of  
33 refund anticipation loans expires on December 31st following the date  
34 it was issued.    Before the registration expires, the facilitator may  
35 renew the registration by filing with the director an application for  
36 renewal in the form and containing all information prescribed by the  
37 director.    Each application for renewal of registration must be

1 accompanied by a fee, which is established by the director for each  
2 office where the facilitator intends to facilitate refund anticipation  
3 loans during the succeeding year.

4 (2) Upon the filing of an application for renewal of registration,  
5 the director may renew the registration. If the director does not  
6 renew the registration, the director shall notify the facilitator,  
7 stating the reasons 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. 7.** (1) Each facilitator shall prominently  
13 display a copy of the certificate issued under this chapter in each  
14 place of business within the state where the facilitator facilitates  
15 the making of refund anticipation loans.

16 (2) Within five business days of receipt of the director's notice,  
17 as required by sections 5 and 6 of this act, the applicant may request  
18 a hearing on the denial or renewal of the application. The request  
19 must be in writing and must state facts the applicant believes are  
20 grounds for reconsideration of the application by the director. The  
21 director may hold an informal hearing to reconsider the application for  
22 registration or renewal of registration. A hearing under this chapter  
23 is subject to chapter 34.05 RCW and must be held within a reasonable  
24 time from the date the director receives the written request.

25 NEW SECTION. **Sec. 8.** (1) On or before January 1st of each year,  
26 each facilitator shall file with the director a schedule of the  
27 anticipated fees for refund anticipation loans to be facilitated by the  
28 facilitator during the succeeding year. Within five business days of  
29 any change in the fee schedule that has been filed with the director,  
30 the facilitator shall file an amendment setting forth the change. The  
31 filing is effective upon receipt by the director. The department shall  
32 keep all fee schedules confidential until the internal revenue service  
33 begins to accept electronically filed tax returns for the year.

34 (2) Any facilitator who advertises the availability of a refund  
35 anticipation loan may not directly or indirectly represent the loan as  
36 a taxpayer's actual refund. Any advertisement that mentions a refund

1 anticipation loan must state conspicuously that it is a loan and that  
2 a fee or interest will be charged by the lending institution. The  
3 advertisement must also disclose the name of the lending institution.

4 NEW SECTION. **Sec. 9.** (1) Every facilitator shall display a  
5 schedule showing the current fees for refund anticipation loans  
6 facilitated at the office, for the electronic filing of the taxpayer's  
7 tax return, for setting up a refund account, and any other related  
8 activities necessary to receive a refund anticipation loan. Every  
9 facilitator shall also prominently display on each fee schedule a  
10 statement to the effect that the taxpayer may have the tax return filed  
11 electronically without also obtaining a refund anticipation loan.

12 (2) The postings required by this section must be made in not less  
13 than twenty-eight-point type on a document measuring not less than  
14 sixteen by twenty inches. The postings required in this section must  
15 be displayed in a prominent location at each office where the  
16 facilitator is facilitating refund anticipation loans.

17 NEW SECTION. **Sec. 10.** (1) For refund anticipation loans, the  
18 facilitator must provide to the consumer a written notice on a single  
19 sheet of paper, separate from any other document or writing, containing  
20 all of the following:

21 (a) A legend, centered at the top on the single sheet of paper, in  
22 bold, capital letters, and in twenty-eight-point type stating "NOTICE";

23 (b) The following verbatim statements:

24 (i) "You are not required to enter into this refund anticipation  
25 loan agreement merely because you have received this information."

26 (ii) "This is a loan. The estimated annual percentage rate (APR),  
27 based on the estimated average payment period, is (fill in the  
28 estimated APR)."

29 (iii) "Your refund will be used to repay the loan. As a result,  
30 the amount of your refund will be reduced by (fill in appropriate  
31 dollar amount) for fees, interest, and other charges."

32 (iv) "You can get the full amount of your refund in about ten to  
33 fourteen days if you file your return electronically and have the  
34 internal revenue service send your refund to your own bank account, or  
35 in about twenty-one days if you file your return by mail. If you do  
36 not have a bank account, you may wish to consider getting one."

1 (v) "If you choose to take this loan and your refund is delayed,  
2 you may have to pay additional interest. If the refund is received in  
3 your bank account in less than the time we expect the refund to be  
4 received from the internal revenue service, you will not receive any  
5 refund in fees or charges.";

6 (c) The name and address of the lender; and

7 (d) The estimated time the loan proceeds will be made available to  
8 the borrower if the loan is approved.

9 (2) All statements required in this section must be in a minimum of  
10 fourteen-point type, with at least a double space between each line in  
11 the statement and four spaces between each statement.

12 (3) A blank written notice shall be provided to the consumer by the  
13 facilitator upon being notified by the consumer that the consumer  
14 wishes to apply for a refund anticipation loan.

15 (4) A facilitator may use a written notice in a different form upon  
16 approval from the director.

17 NEW SECTION. **Sec. 11.** Before a consumer enters into a refund  
18 anticipation loan agreement, the facilitator shall provide the  
19 filled-in written notice described in section 10 of this act or other  
20 notice approved by the director to the consumer.

21 NEW SECTION. **Sec. 12.** A facilitator of a refund anticipation loan  
22 may not engage in any of the following activities:

23 (1) Misrepresenting a material factor or condition of a refund  
24 anticipation loan;

25 (2) Failing to process the application for a refund anticipation  
26 loan promptly after the consumer applies for the loan;

27 (3) Engaging in any transaction, practice, or course of business  
28 that operates a fraud upon any person in connection with a refund  
29 anticipation loan;

30 (4) Facilitating a refund anticipation loan for which the refund  
31 anticipation loan fee is different than the fee posted or the fee filed  
32 with the director;

33 (5) Directly or indirectly arranging for payment of any portion of  
34 the refund anticipation loan for check cashing, credit insurance,  
35 attorneys' fees, or collection costs;

1 (6) Arranging for a creditor to take a security interest in any  
2 property of the consumer other than the proceeds of the consumer's tax  
3 refund to secure payment of the loan; or

4 (7) Directly or indirectly, individually or in conjunction or  
5 cooperation with another person, engaging in the collection of an  
6 outstanding or delinquent refund anticipation loan for any creditor or  
7 assignee, including soliciting the execution of, processing, receiving,  
8 or accepting an application or agreement for, a refund anticipation  
9 loan or refund anticipation check that contains a provision permitting  
10 the creditor to repay, by offset or other means, an outstanding or  
11 delinquent refund anticipation loan for that creditor or any creditor  
12 from the proceeds of the consumer's tax refund.

13 NEW SECTION. **Sec. 13.** (1)(a) Within five business days of receipt  
14 of a complaint or a notice that any action of a facilitator may be in  
15 violation of this chapter or the rules adopted under this chapter, the  
16 director shall give notice to the facilitator of the suspected  
17 violation, and an opportunity for the facilitator to cure the violation  
18 within five business days of receipt of the director's notice. The  
19 director's notice must inform the facilitator that the facilitator may  
20 make a written request for a hearing within five business days after  
21 the facilitator's receipt of the director's notice. The director may  
22 hold a hearing within fifteen business days from the date the written  
23 request for a hearing is received by the director. If, following the  
24 hearing, the director finds that an action of the facilitator is in  
25 violation of this chapter or the rules adopted under this chapter and  
26 has not cured the violation, the director shall order the facilitator  
27 to cease and desist from the action. The director may make  
28 investigations, subpoena witnesses, and require audits and reports, in  
29 preparation for hearings under this chapter, and shall make findings of  
30 fact and conclusions of law. All hearings are open to the public.

31 (b) If the facilitator continues to engage in an action in  
32 violation of the director's order to cease and desist from the action,  
33 the facilitator is subject to a penalty of one thousand dollars for  
34 each action it takes in violation of the director's order.

35 (2) After notice and hearing, and upon the finding that a  
36 facilitator has (a) engaged in a course of conduct that is in violation  
37 of this chapter or the rules adopted under this chapter or (b)

1 continued to engage in an action in violation of a cease and desist  
2 order of the director that has not been stayed upon application of the  
3 facilitator, the director may revoke the registration of the  
4 facilitator temporarily or permanently. A revocation, suspension, or  
5 surrender of any registration does not relieve the facilitator from  
6 civil or criminal liability for acts committed prior to the revocation,  
7 suspension, or surrender of the registration.

8 (3) The director shall maintain a list of facilitators that is  
9 available to interested persons and the public. The director shall  
10 create a toll-free telephone number whereby consumers may obtain  
11 information about facilitators and complaint forms. The director shall  
12 establish a complaint process whereby an aggrieved consumer or any  
13 member of the public may file a complaint against a facilitator who  
14 violates any provision of this chapter. All complaints are public  
15 records with the exception of the complainant's name, address, or other  
16 personal identifying information. The director shall hold a hearing  
17 under subsection (1) of this section upon the request of a party to the  
18 complaint. The director may, after the hearing, issue cease and desist  
19 orders under subsection (1) of this section, or suspend or revoke a  
20 registration as provided in subsection (2) of this section. If the  
21 complaint has been made public, any finding that a complaint is without  
22 merit or unsupported by any legal requirement must also be made public.

23 NEW SECTION. **Sec. 14.** (1) The remedies provided in this chapter  
24 are cumulative and apply to facilitators and to unregistered persons to  
25 whom this chapter applies and who fail to register. If the director  
26 has found that the facilitator cured a violation of this chapter, the  
27 remedies are not available unless the facilitator has cured violations  
28 of this chapter three or more times within one calendar year.

29 (2)(a) A facilitator or unregistered person who willfully engages  
30 in a course of conduct that is in violation of this chapter or the  
31 rules adopted under this chapter as set forth in section 13 of this  
32 act, in connection with a refund anticipation loan is liable to the  
33 consumer for all of the following:

- 34 (i) Actual and consequential damages;
- 35 (ii) Statutory damages of two thousand dollars, or three times the  
36 amount of the refund anticipation loan fee or other unauthorized  
37 charge, whichever is greater; and



1 (iii) Reasonable attorneys' fees and costs.

2 (b) Except in the case of a refund anticipation loan that is not  
3 approved or in the case of the nonacceptance or rejection of a tax  
4 return by the internal revenue service, within one day after it is  
5 electronically submitted, a facilitator who fails to make available to  
6 the consumer the proceeds of a refund anticipation loan within forty-  
7 eight hours after the time period promised by the facilitator when the  
8 consumer applied for the loan shall pay to the consumer an amount equal  
9 to the fee for the refund anticipation loan.

10 (3) The remedies provided in this section are not intended to be  
11 the exclusive remedies available to a consumer nor must the consumer  
12 exhaust any administrative remedies provided under this chapter or any  
13 other applicable law.

14 NEW SECTION. **Sec. 15.** The director may adopt rules, as necessary,  
15 to effectuate the purpose of this chapter, to provide for the  
16 protection of the borrowing public, and to assist facilitators in  
17 interpreting this chapter.

18 NEW SECTION. **Sec. 16.** On or before July 1, 2008, the director  
19 shall report the following information to the legislature:

20 (1) The total number of registered refund anticipation loan  
21 facilitators in the state by type, including corporations, franchises,  
22 and independent facilitators;

23 (2) The total number of refund anticipation loan registration fees  
24 collected;

25 (3) The department budget and staff allocated to the refund  
26 anticipation loan program;

27 (4) The total number of refund anticipation loans processed;

28 (5) The range of fees charged by refund anticipation loan  
29 facilitators, excluding tax preparation fees;

30 (6) The number and type of penalty actions taken by the department  
31 against refund anticipation loan facilitators;

32 (7) Any other information the director determines is needed to  
33 evaluate this program; and

34 (8) The department recommendations regarding program implementation  
35 and administration.

1        NEW SECTION.    **Sec. 17.** The legislature finds that the practices  
2 covered by this chapter are matters vitally affecting the public  
3 interest for the purpose of applying the consumer protection act,  
4 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
5 relation to the development and preservation of business and is an  
6 unfair or deceptive act in trade or commerce and an unfair method of  
7 competition for the purpose of applying the consumer protection act,  
8 chapter 19.86 RCW.

9        NEW SECTION.    **Sec. 18.** A new section is added to chapter 35.21 RCW  
10 to read as follows:

11        A city, town, or governmental entity subject to this title may not  
12 regulate the terms or conditions of any refund anticipation loan  
13 transaction under chapter 31.-- RCW (sections 1 through 17 of this  
14 act).

15        NEW SECTION.    **Sec. 19.** A new section is added to chapter 35A.21  
16 RCW to read as follows:

17        A code city or governmental entity subject to this title may not  
18 regulate the terms or conditions of any refund anticipation loan  
19 transaction under chapter 31.-- RCW (sections 1 through 17 of this  
20 act).

21        NEW SECTION.    **Sec. 20.** A new section is added to chapter 36.01 RCW  
22 to read as follows:

23        A county or governmental entity subject to this title may not  
24 regulate the terms or conditions of any refund anticipation loan  
25 transaction under chapter 31.-- RCW (sections 1 through 17 of this  
26 act).

27        NEW SECTION.    **Sec. 21.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31        NEW SECTION.    **Sec. 22.** This act takes effect January 1, 2006.

1        NEW SECTION.   **Sec. 23.**   Sections 1 through 17 of this act  
2   constitute a new chapter in Title 31 RCW.

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