

SENATE BILL REPORT

SB 6697

As of February 15, 2008

Title: An act relating to refund anticipation loans.

Brief Description: Addressing facilitators of refund anticipation loans.

Sponsors: Senators Berkey and Benton.

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/29/08.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Aaron Gutierrez (786-7448)

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.

In 2005 the Legislature created the Tax Refund Anticipation Loan Act. 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.

Facilitators are required to register with DFI, as well as be an IRS authorized e-file provider. Further, it is required that a facilitator must be a tax preparer or work for a tax preparer. A borrower is allowed to rescind the loan by the close of business the next day. An additional prohibition on the activities of a facilitator is included, which provides that a RAL cannot be

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offered for more than the amount of the borrower's anticipated tax refund, not including related loan fees.

Summary of Bill: Creates the category of "retailer," which is defined as a distributor and collector of information or materials for a facilitator.

The facilitator must establish policies and procedures to ensure such a retailer is safeguarding applicant information, remaining limited to a clerical role and not counseling the applicant.

The Director of the Department of Financial Institutions may adopt any rules necessary to implement the provisions of the Act.

Appropriation: None.

Fiscal Note: Requested on January 25, 2008.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This is a chance to market products in new areas, and keeps retailers from having to obtain an IRS EFIN number. Retailers must remain in a purely clerical role, cannot give tax advice, must return all records to the customer, and make no copies. This bill incorporates all suggestions from the Department of Financial Institutions, including safeguards.

CON: This bill increases availability and exposure to RAL's. Loans are a serious financial decision, and the seriousness is undermined when a tax loan is obtained from a used car lot. RAL's are targeted at low-income consumers. Over half of RAL consumers are recipients of the Earned Income Tax Credit, and as such, this bill further undermines the purpose of the EITC and the efforts of tax preparation assistance programs. RAL's are generally a bad thing for consumers. The IRS already offers free electronic filing, and many resources are available (some paid by the state) to assist with tax preparation. Further, a loan on a refund is essentially a loan on your own money, with traditionally high interest rates. Normal E-File refunds are available in as little as 8-14 days. RAL rates range from 36 percent to 700 percent. Borrowers often pay an additional \$20-45 for a same day loan. Concern was expressed about the practical effects of the bill on cancellation rights.

Persons Testifying: PRO: Denny Eliason, H&R Block.

CON: Roberta Marsh, South Sound Outreach; Kim Justice, Statewide Poverty Action Network; Bruce Nees, Columbia Legal Services.