
**Financial Institutions &
Insurance Committee**

SSB 5692

Brief Description: Regulating tax refund anticipation loans.

Sponsors: Senate Committee on Financial Institutions, Housing & Consumer Protection
(originally sponsored by Senators Berkey, Benton, Prentice and Keiser).

Brief Summary of Substitute Bill

- Requires certain disclosures in connection with a tax refund anticipation loan.
- Prohibits specified activities in connection with a tax refund anticipation loan.
- Imposes penalties for violations.
- Retroactively and prospectively preempts any local government actions on tax refund anticipation loans.

Hearing Date: 3/22/05

Staff: Jon Hedegard (786-7127).

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 RAL "broker" 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 a loan secured by the refund immediately. Fees are deducted from the amount of money given to the borrower. The loan is repaid directly by the refund. The borrower is liable if the refund paid by the IRS is less than the loan.

RALs are currently not subject to the regulation of the Department of Financial Institutions (DFI). The majority of the loan products are made by national banks or subsidiaries. The federal government has preempted state regulation of those entities. The loan broker or facilitator is not regulated under current state lending laws.

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal . The CPA gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to hire their own attorneys to bring consumer protection lawsuits. If the consumer wins in court, the law allows the court to award triple the amount of actual damages, up to \$10,000, as well as attorney's fees.

Summary of Bill:

The bill creates a new chapter in Title 19 RCW.

Definitions.

"Refund anticipation loan" ("RAL") is defined as a loan borrowed by a taxpayer from a lender based on the taxpayer's anticipated federal income tax refund.

"Facilitator" is defined as a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. Facilitator does not include financial institutions (such as a bank or credit union), the affiliate of a financial institution, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the refund anticipation loan

Disclosure of fee schedule.

A facilitator must disclose to the borrower the refund anticipation loan fee schedule. This schedule is a list or table of loan fees charged by the facilitator or the lender for three or more representative refund anticipation loan amounts. The schedule must list each fee or charge separately imposed, the total of all fees imposed that are related to the making of the RAL, and the estimated annual percentage rate calculated under the federal truth in lending act for the three representative loans.

Disclosure of additional information.

A facilitator must disclosure the following information in writing:

- the RAL is a loan, not the borrower's actual income tax refund;
- the taxpayer can file an income tax return electronically without applying for a RAL;
- the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;
- the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer;
- the IRS does not guarantee that it will pay the full amount of the anticipated refund;
- the IRS does not guarantee does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer;
- the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full;
- the estimated time within which the loan proceeds will be paid to the borrower if the loan is approved;
- the fee that will be charged, if any, if the borrower's loan is not approved;
- the total of all fees imposed that are related to the making of the RAL; and

- the estimated annual percentage rate calculated under the federal truth in lending act for the three representative loans.

Prohibited acts.

A Facilitator is prohibited from:

- misrepresenting a material factor or condition of a refund anticipation loan;
- failing to process the application for a refund anticipation loan promptly after the consumer applies for the loan;
- engaging in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan; and
- arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of the loan.

Penalties.

Persons knowingly violating the chapter are guilty of a misdemeanor and shall be fined up to \$500 per offense.

Violations of the chapter are an unfair or deceptive for the purpose of applying the Consumer Protection Act, Chapter 19.86 RCW.

State preemption.

The bill retroactively and prospectively preempts any local actions on RALs.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.