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ENGROSSED SUBSTITUTE HOUSE BILL 1251

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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) "Borrower" means a taxpayer who receives the proceeds of a  
9 refund anticipation loan.

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

11 (3) "Director" means the director of the department of financial  
12 institutions.

13 (4) "Facilitator" means a person who receives or accepts for  
14 delivery an application for a refund anticipation loan, delivers a  
15 check in payment of refund anticipation loan proceeds, or in any other  
16 manner acts to allow the making of a refund anticipation loan.

17 "Facilitator" does not include a bank, thrift, savings association,  
18 industrial bank, or credit union operating under the laws of the United

1 States or this state, an affiliate that is a servicer for such an  
2 entity, or any person who acts solely as an intermediary and does not  
3 deal with a taxpayer in the making of the refund anticipation loan.

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

6 (6) "Person" means an individual, a firm, a partnership, an  
7 association, a corporation, or other entity.

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

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

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

26 (10) "Taxpayer" means an individual who files a federal income tax  
27 return.

28 NEW SECTION. **Sec. 3.** (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 licensed with the director  
32 as a 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 any state.

36 (3) This chapter shall preempt and be exclusive of all local acts,

1 statutes, ordinances, and regulations relating to refund anticipation  
2 loans. This subsection shall be given retroactive and prospective  
3 effect.

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

12 (2) Prior to issuing a license, the director must review the  
13 responsibility and general fitness of the applicant. The director may  
14 adopt rules establishing criteria to implement this subsection.

15 (3) Unless the director denies the application, the director shall  
16 license the applicant upon the filing of a completed application for a  
17 license. The director shall issue and transmit to the applicant a  
18 license. If the director denies the application, the director shall  
19 notify the applicant of the reasons for the denial within forty-five  
20 days of the receipt of the application.

21 (4) Upon receipt of a license, the applicant is licensed under this  
22 chapter and may engage in the business of facilitating refund  
23 anticipation loans at the offices identified on the application for the  
24 license.

25 (5) In addition to any requirements for a license set forth by rule  
26 of the director under this chapter, the director shall consider the  
27 facilitator's status as a tax preparer when determining whether to  
28 grant, renew, or revoke a facilitator's license.

29 NEW SECTION. **Sec. 5.** (1) Each license for a facilitator of refund  
30 anticipation loans expires on June 30th following the date it was  
31 issued. Before the license expires, the facilitator may renew the  
32 license by filing with the director an application for renewal in the  
33 form and containing all information prescribed by the director. Each  
34 application for renewal of a license must be accompanied by a one  
35 hundred dollar renewal fee for each office where the facilitator

1 intends to facilitate refund anticipation loans during the succeeding  
2 year.

3 (2) Upon the filing of an application for renewal of a license, the  
4 director may renew the license. Prior to renewal, the director must  
5 review the fitness and general responsibility of the facilitator. If  
6 the director does not renew the license, the director shall notify the  
7 facilitator, stating the reasons for the denial. The director may  
8 adopt rules establishing criteria to implement this subsection.

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

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

19 (a) The refund anticipation loan fee schedule; and

20 (b) A written statement containing the following elements:

21 (i) That a refund anticipation loan is a loan, and is not the  
22 borrower's actual income tax refund;

23 (ii) That the taxpayer can file an income tax return electronically  
24 without applying for a refund anticipation loan;

25 (iii) The average times according to the internal revenue service  
26 within which a taxpayer who does not obtain a refund anticipation loan  
27 can expect to receive a refund if the taxpayer's return is (A) filed  
28 electronically and the refund is directly deposited to the taxpayer's  
29 bank account or mailed to the taxpayer, and (B) mailed to the internal  
30 revenue service and the refund is directly deposited to the taxpayer's  
31 bank account or mailed to the taxpayer;

32 (iv) That the internal revenue service does not guarantee that it  
33 will pay the full amount of the anticipated refund and it does not  
34 guarantee a specific date that a refund will be deposited into a  
35 taxpayer's financial institution account or mailed to a taxpayer;

36 (v) That the borrower is responsible for repayment of the loan and

1 related fees in the event that the tax refund is not paid or paid in  
2 full;

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

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

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

10 (a) The estimated total fees for obtaining the refund anticipation  
11 loan; and

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

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

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

27 (1) Misrepresent a material factor or condition of a refund  
28 anticipation loan;

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

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

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

1 (5) Impose charges, fees, or other consideration for a refund  
2 anticipation loan. This does not preclude any charge, fee, or other  
3 consideration usually imposed by the facilitator in the ordinary course  
4 of business for nonloan services, such as fees for tax return  
5 preparation and fees for electronic filing of tax returns;

6 (6) Offer a refund anticipation loan that exceeds the amount of the  
7 anticipated tax refund less fees;

8 (7) Act as a facilitator unless they are authorized as an  
9 electronic return originator by the internal revenue service at the  
10 time; and

11 (8) Arrange for a refund anticipation loan unless the facilitator  
12 is a tax preparer or works for a person that engages in the business of  
13 tax preparation.

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

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

25 NEW SECTION. **Sec. 11.** The director may adopt rules to implement  
26 sections 4 and 5 of this act.

27 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act  
28 constitute a new chapter in Title 19 RCW.

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