



Senate

General Assembly

File No. 617

January Session, 2005

Substitute Senate Bill No. 1365

Senate, May 2, 2005

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING INCOME TAX REFUND ANTICIPATION LOANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-480 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) As used in this section:

4 (1) "Borrower" means a person who receives the proceeds of a
5 refund anticipation loan;

6 (2) "Facilitator" means a person who, individually, or in conjunction
7 or cooperation with another person, makes a refund anticipation loan,
8 processes, receives or accepts for delivery an application for a refund
9 anticipation loan, issues a check in payment of refund anticipation loan
10 proceeds, or in any other manner acts to allow the making of a refund
11 anticipation loan. The term does not include a bank, savings and loan
12 association, credit union or person issued a license under the

13 provisions of sections 36a-555 to 36a-573, inclusive, operating under
14 the laws of the United States or this state, or any person who acts
15 solely as an intermediary and does not deal with the public in the
16 making of a refund anticipation loan;

17 (3) "Refund anticipation loan" means a loan arranged to be paid
18 directly from the proceeds of a borrower's income tax refund; and

19 (4) "Refund anticipation loan fee" means any charges, fees or other
20 consideration charged or imposed for the making of a refund
21 anticipation loan. The term does not include any charges, fees or other
22 consideration charged or imposed in the ordinary course of business
23 by a facilitator for services that do not result in the making of a loan
24 including, but not limited to, fees for tax return preparation services or
25 for the electronic filing of income tax returns.

26 (b) At the time a borrower applies for a refund anticipation loan, a
27 facilitator shall disclose to such borrower on a document that is
28 separate from the loan application:

29 (1) The estimated fee for preparing and electronically filing an
30 income tax return;

31 (2) The refund anticipation loan fee schedule;

32 (3) The annual percentage rate utilizing the guidelines established
33 by the official staff interpretations of federal Regulation Z to the Truth
34 in Lending Act, 12 CFR, Part 226;

35 (4) The estimated total cost to the borrower for utilizing a refund
36 anticipation loan;

37 (5) The estimated number of days within which the loan proceeds
38 shall be paid to the borrower if the loan is approved;

39 (6) The borrower is responsible for repayment of the loan and
40 related fees in the event the income tax refund is not paid or not paid
41 in full; and

42 (7) The availability of electronic filing of the income tax return of the
 43 borrower and the average time announced by the Internal Revenue
 44 Service within which the borrower can expect to receive a refund if the
 45 borrower's return is electronically filed and the borrower does not
 46 obtain a refund anticipation loan.

47 (c) No facilitator shall make or facilitate the making of a refund
 48 anticipation loan that has a rate of interest in excess of three per cent
 49 per month.

50 ~~[(c)]~~ (d) Any facilitator who violates any provision of subsection (b)
 51 or (c) of this section shall be fined five hundred dollars for each such
 52 violation. Any facilitator who violates any provision of [said]
 53 subsection (b) or (c) of this section shall be liable to any aggrieved
 54 borrower in an amount equal to three times the amount of the refund
 55 anticipation loan fee, plus reasonable attorney's fees, in a civil action
 56 brought by the aggrieved borrower or by the Attorney General on
 57 behalf of the aggrieved borrower.

58 (e) Any violation of subsection (b) or (c) of this section shall be
 59 deemed an unfair or deceptive trade practice under subsection (a) of
 60 section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	42-480

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Consumer Protection, Dept.; Attorney General	Various - Revenue Gain	Potential Minimal	Potential Minimal

Municipal Impact: None

Explanation

The bill makes violations of its provisions an unfair trade practice. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General can impose CUTPA fines. In FY 04, \$18,789 was deposited in the General Fund as a result of such fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the General Fund. Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 04, \$86,500 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 04, \$135,212 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General (OAG). The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

OLR Bill Analysis

sSB 1365

AN ACT CONCERNING INCOME TAX REFUND ANTICIPATION LOANS**SUMMARY:**

The bill prohibits refund anticipation loan (RAL) facilitators from making or helping to make a refund anticipation loan with an interest rate that exceeds 3% per month. It makes it an unfair trade practice to violate this prohibition and the current law requiring RAL facilitators to make certain disclosures to borrowers. A refund anticipation loan means a loan arranged to be paid directly from the proceeds of a borrower's income tax refund.

The bill makes the current criminal penalty that applies to failing to make required disclosures, apply to any violation of the bill. Thus, a facilitator who charges more than 3% a month is subject to a \$500 criminal penalty for each violation. It also makes violators liable to the aggrieved borrower for three times the amount of the refund anticipation loan fee, plus reasonable attorney's fees. Aggrieved borrowers may also sue, or the attorney general may sue on their behalf.

EFFECTIVE DATE: October 1, 2005

BACKGROUND***Refund Anticipation Loan Facilitator***

The law defines a "facilitator" as the person who, acting alone or in conjunction with another (1) makes the refund anticipation loan; (2) processes, receives, or accepts an application for delivery; (3) issues a check in payment of a loan; or (4) otherwise facilitates a refund anticipation loan. The law specifies that the term does not include a bank, savings and loan association, credit union, a licensed Connecticut small loan lender operating under state or federal law, or a person who acts solely as an intermediary and does not deal with the public.

Required Disclosures

The law requires a facilitator to disclose, when the borrower makes the loan application, on a document separate from the application:

1. the estimated fee for preparing and electronically filing a tax return,
2. the refund anticipation loan fee schedule,
3. the annual percentage rate (APR) using guidelines established by official staff interpretations of Regulation Z of the federal Truth in Lending Act,
4. the estimated total cost to the borrower for the refund anticipation loan,
5. the estimated number of days within which the loan will be paid if the borrower's application is approved,
6. that the borrower must repay the loan and related fees if the tax refund is not paid or not paid in full, and
7. that electronic filing is available and the average time within which the Internal Revenue Service says a consumer can expect to receive a refund if he files his return electronically and does not obtain an anticipation loan.

Regulation Z

The Board of Governors of the Federal Reserve System issued Regulation Z to implement the Truth in Lending Act. Its purpose is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. Among other things, it requires the APR to be calculated and stated in a standard way.

Connecticut Unfair Trade Practices Act

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution

in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Bill

HB 6830, File 440 (1) requires refund anticipation loans to be made only at locations where tax preparation is the principal business and (2) limits the interest rate on such loans to no more than 36% annually. Violators are subject to a \$500 fine and, in a civil action brought by the borrower or the attorney general on the borrower's behalf, are liable to the borrower for three times the amount of the loan plus reasonable attorney's fees.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 1