

Assembly Bill No. 340—Assemblymen Giunchigliani, Leslie, Parks, Ohrenschall, Anderson, Buckley, Claborn, Denis, Koivisto, McClain, McCleary and Perkins

CHAPTER.....

AN ACT relating to financial transactions; establishing certain requirements and prohibitions relating to refund anticipation loans; providing remedies and penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 13, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Customer” means a person who, in connection with the preparation or filing of a tax return, applies for a refund anticipation loan or receives the proceeds of a refund anticipation loan.*

Sec. 4. 1. *“Facilitator of a refund anticipation loan” or “facilitator” means a person who:*

(a) Receives or accepts for delivery an application for a refund anticipation loan;

(b) Delivers a check in payment of the proceeds of a refund anticipation loan; or

(c) In any other manner, acts to allow or facilitates the offering or making of a refund anticipation loan.

2. The term includes, without limitation, a tax preparer who engages in any of the acts described in subsection 1.

3. The term does not include:

(a) A bank, thrift, savings association, industrial bank or credit union operating under the laws of the United States or this State;

(b) An affiliate, other than a tax preparer, that is a servicer for such an entity; or

(c) Any person who acts solely as an intermediary and does not deal with a customer in the making of a refund anticipation loan.

Sec. 5. *“Internal Revenue Service” means the Internal Revenue Service of the United States Department of the Treasury.*

Sec. 6. *“Lender” means a person who offers to extend or extends credit to a customer in the form of a refund anticipation loan.*

Sec. 7. 1. “Refund anticipation loan” means a loan offered or made to a customer by a lender or through a facilitator based on the customer’s anticipated federal income tax refund.

2. The term includes, without limitation, a refund anticipation loan offered or made using electronic commerce.

Sec. 8. 1. “Refund anticipation loan fee” means any fee, charge or other consideration imposed by a lender or a facilitator for a refund anticipation loan.

2. The term does not include any fee, charge or other consideration usually imposed by a facilitator in the ordinary course of business for nonloan services, such as fees for preparing tax returns and fees for the electronic filing of tax returns.

Sec. 9. 1. “Refund anticipation loan fee schedule” means a listing or table of refund anticipation loan fees charged by a lender or a facilitator for three or more representative refund anticipation loan amounts.

2. A refund anticipation loan fee schedule must:

(a) List separately each fee or charge imposed and a total of all fees and charges imposed which are related to the making of refund anticipation loans; and

(b) Include, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the Truth in Lending Act and Regulation Z.

Sec. 10. “Regulation Z” means the federal regulations, as amended, 12 C.F.R. Part 226, adopted pursuant to the Truth in Lending Act and commonly known as Regulation Z.

Sec. 11. “Tax preparer” means a person who engages in the business of preparing or filing tax returns for any fee, charge or other consideration.

Sec. 12. “Tax return” means a federal income tax return.

Sec. 13. “Truth in Lending Act” means the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq.

Sec. 14. A facilitator of a refund anticipation loan shall post the refund anticipation loan fee schedule used by the facilitator in a conspicuous place in every location at which the facilitator conducts business.

Sec. 15. 1. If a facilitator of a refund anticipation loan offers a customer an opportunity to apply for a refund anticipation loan, the facilitator shall provide to the customer, before the customer completes the application process, the following disclosures:

(a) The refund anticipation loan fee schedule used by the facilitator; and

(b) A written statement or, if the transaction is conducted using electronic commerce, an electronic statement, in at least 10-point type, containing the following information:

(1) A disclosure that the refund anticipation loan is a loan which creates a legally enforceable debt and that the loan is not the customer's actual tax refund;

(2) A disclosure that the customer may file a tax return electronically without applying for the refund anticipation loan;

(3) A disclosure of the average times, according to the Internal Revenue Service, within which a person who does not obtain a refund anticipation loan can expect to receive a tax refund if the person:

(I) Files a tax return electronically and the person's tax refund is directly deposited to the person's account or mailed to the person; or

(II) Mails a tax return to the Internal Revenue Service and the person's tax refund is directly deposited to the person's account or mailed to the person;

(4) A disclosure that the Internal Revenue Service does not guarantee that a person will be paid the full amount of an anticipated tax refund and does not guarantee that an anticipated tax refund will be deposited into a person's account or mailed to a person on a specific date;

(5) A disclosure that the customer is responsible for repayment of the refund anticipation loan and related fees and charges if the anticipated tax refund is not paid or paid in full;

(6) A disclosure of the estimated time within which the proceeds of the refund anticipation loan will be paid to the customer if the loan is approved; and

(7) A disclosure of the fee or charge that will be imposed, if any, if the refund anticipation loan is not approved.

2. In addition to the disclosures required pursuant to subsection 1, the facilitator shall provide to the customer, before the loan transaction is completed, the following additional disclosures:

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

(b) The estimated annual percentage rate for the refund anticipation loan calculated under the guidelines established by the Truth in Lending Act and Regulation Z.

Sec. 16. A facilitator of a refund anticipation loan shall not:

1. Misrepresent a material factor or condition of a refund anticipation loan;

2. Fail to process the application for a refund anticipation loan promptly after the customer applies for the loan;

3. Engage in any dishonest, fraudulent, unfair, unconscionable or unethical practice or conduct in connection with a refund anticipation loan;

4. *Arrange for a lender to take a security interest in any property of the customer, other than the proceeds of the customer's tax refund and the account into which that tax refund is deposited, to secure payment of the loan; or*

5. *Offer a refund anticipation loan to a customer in an amount that, when added to the refund anticipation loan fees and any other fees or charges related to the loan or the preparation of the tax return, exceeds the amount of the customer's anticipated tax refund.*

Sec. 17. *Any person who knowingly and willfully violates any provision of this chapter is guilty of a misdemeanor and shall be punished by a fine of not more than \$500 for each violation.*

Sec. 18. 1. *The remedies, penalties, duties and prohibitions set forth in this chapter are not exclusive and are in addition to any other remedies, penalties, duties and prohibitions provided by law.*

2. *Any violation of this chapter constitutes a deceptive trade practice for the purposes of the civil and administrative remedies and penalties set forth in NRS 598.0903 to 598.0999, inclusive.*