

Senate Bill 968

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires facilitators of income tax refund anticipation loans to register with Director of Department of Consumer and Business Services. Sets maximum fees for facilitating refund anticipation loans. Requires filing and posting of loan fees and interest. Prohibits certain activities. Punishes violations by maximum one year's imprisonment, \$6,250 fine, or both. Provides for civil penalties and damages.

Becomes operative January 1, 2006.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to refund anticipation loans; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Definitions. As used in sections 1 to 15 of this 2005 Act, unless the context**
5 **requires otherwise:**

6 (1) **"Applicant" means a person that applies for registration as a facilitator of refund**
7 **anticipation loans.**

8 (2) **"Creditor" means a person that makes a refund anticipation loan with the person's**
9 **own funds or a line of credit or other funding from a financial institution as defined in ORS**
10 **706.008, but does not include a financial institution as defined in ORS 706.008.**

11 (3) **"Debtor" means a person that receives the proceeds of a refund anticipation loan.**

12 (4) **"Facilitator" means a person that individually or in conjunction or cooperation with**
13 **another person processes, receives or accepts for delivery an application for a refund antic-**
14 **ipation loan or a check in payment of refund anticipation loan proceeds or in any other**
15 **manner materially facilitates the making of a refund anticipation loan.**

16 (5) **"Person" means an individual, a joint venture, a partnership, a cooperative, a limited**
17 **liability company, an association, a joint stock company, a corporation, a trust, an**
18 **unincorporated organization or a government or political subdivision of a government.**

19 (6) **"Refund anticipation loan" means a loan that the creditor arranges to be repaid di-**
20 **rectly from the proceeds of the debtor's federal or state income tax refund.**

21 (7) **"Refund anticipation loan fee" means the charges, fees or other consideration charged**
22 **or imposed by the creditor or facilitator for the making of a refund anticipation loan. "Re-**
23 **fund anticipation loan fee" does not include any charge, fee or other consideration usually**
24 **charged or imposed by the facilitator in the ordinary course of business for nonloan services,**
25 **including fees for tax return preparation and fees for electronic filing of tax returns.**

26 (8) **"Registrant" means a person that is registered as a facilitator under sections 1 to 15**
27 **of this 2005 Act.**

28 (9) **"Unconscionable" means actions or conduct by which a creditor or facilitator:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) Knowingly takes advantage of a debtor or potential debtor's physical infirmity, igno-
2 rance, illiteracy or inability to understand the contracts, documents, charges or fees related
3 to a refund anticipation loan; or

4 (b) Charges fees or interest for refund anticipation loans that are deemed excessive or
5 unreasonable, as established by rule, by the Director of the Department of Consumer and
6 Business Services.

7 **SECTION 2. Registration.** (1) A person may not individually or in conjunction or cooper-
8 ation with another person process, receive or accept for delivery an application for a refund
9 anticipation loan or a check in payment of refund anticipation loan proceeds without first
10 being registered with the Director of the Department of Consumer and Business Services in
11 accordance with the registration procedure provided in sections 1 to 15 of this 2005 Act.

12 (2) This section does not apply to:

13 (a) A person or employees of a person doing business as a financial institution as defined
14 in ORS 706.008 or a savings association as defined in ORS 722.004; or

15 (b) Individuals employed by a person that is registered as a facilitator under sections 1
16 to 15 of this 2005 Act.

17 **SECTION 3. Registration procedure and fees; hearing.** (1) The Director of the Depart-
18 ment of Consumer and Business Services by rule shall establish procedures for registering
19 and renewing registrations of facilitators and the form and format for applying to be regis-
20 tered or to renew a registration. Prior to issuing a registration, the director shall determine
21 that the applicant has the experience and training to serve as a facilitator, is financially
22 solvent and is of good moral character and generally fit to engage in the business of facili-
23 tating refund anticipation loans. A fee for each application, as set by rule of the director,
24 shall be charged that is sufficient when aggregated with other application and renewal fees
25 to fund the cost of administering sections 1 to 15 of this 2005 Act, but the application fee
26 may not be less than \$350 for each office where the applicant intends to facilitate refund
27 anticipation loans.

28 (2) Upon receiving a certificate of registration from the director, the applicant is con-
29 sidered registered under sections 1 to 15 of this 2005 Act and may engage in the business of
30 facilitating refund anticipation loans at the offices identified on the application for registra-
31 tion.

32 (3) Each registration as a facilitator of refund anticipation loans expires on December
33 31 following the date it was issued, unless it is renewed for the succeeding year. Before the
34 registration expires, the registrant may renew the registration by filing with the director an
35 application for renewal in the form and containing all information prescribed by the director.
36 Each application for renewal of registration must be accompanied by a fee, as set by rule of
37 the director, that is sufficient when aggregated with other application and renewal fees to
38 fund the cost of administering sections 1 to 15 of this 2005 Act, but the application fee may
39 not be less than \$175 for each office where the registrant intends to facilitate refund antic-
40 ipation loans during the succeeding year.

41 (4) Upon the filing of an application for renewal of registration under sections 1 to 15 of
42 this 2005 Act, the director shall renew the registration unless the director determines that
43 the fitness of the registrant or the operations of the registrant do not support registration
44 of the registrant under subsection (1) of this section. If the director makes such a determi-
45 nation, the director shall notify the registrant, stating the reasons for the determination.

1 (5) Each registrant shall prominently display a certificate issued under sections 1 to 15
2 of this 2005 Act in each place of business in this state where the registrant facilitates the
3 making of refund anticipation loans.

4 (6) If the director denies an application or renewal, the director shall notify the applicant
5 of the reasons for the denial. Within 20 days of receipt of the director's notice, the applicant
6 may make written demand of the director for a hearing. The hearing shall be conducted as
7 provided in ORS chapter 183.

8 **SECTION 4. Surety bond or irrevocable letter of credit.** (1) Each registrant shall file with
9 the Director of the Department of Consumer and Business Services a corporate surety bond
10 or irrevocable letter of credit running to the State of Oregon in the sum of \$25,000. The
11 surety bond or irrevocable letter of credit shall be issued by a surety company, or an insured
12 institution as defined in ORS 706.008, authorized to do business in this state.

13 (2) The surety bond or irrevocable letter of credit shall be issued on the condition that
14 each registrant comply with all provisions under sections 1 to 15 of this 2005 Act.

15 (3) The surety bond or irrevocable letter of credit shall be continuous until canceled and
16 shall remain in full force and unimpaired at all times to comply with this section. The surety
17 company or insured institution shall give the director at least 30 days' written notice before
18 it cancels or terminates its liability under the bond or irrevocable letter of credit.

19 (4) The aggregate liability of the surety company or insured institution may not exceed
20 the principal sum of the bond or irrevocable letter of credit.

21 **SECTION 5. Filing and posting of loan fees and interest; disclosures.** (1) On or before
22 January 2 of each year, each registrant shall file with the Director of the Department of
23 Consumer and Business Services a schedule of the fees and interest for refund anticipation
24 loans to be facilitated by the registrant during the succeeding year. Immediately upon
25 learning of any change in the refund anticipation loan fee or interest for that year, the reg-
26 istrant shall file an amendment with the director setting out the change. Filing is effective
27 upon receipt by the director.

28 (2) Every registrant shall prominently display at each office where the registrant is fa-
29 cilitating refund anticipation loans a schedule showing the current refund anticipation loan
30 fees and interest for refund anticipation loans facilitated at the office and the current elec-
31 tronic filing fees for the electronic filing of the taxpayer's tax return. Every registrant shall
32 also prominently display on each schedule statements to the effect that the taxpayer may
33 have the tax return filed electronically without also obtaining a refund anticipation loan and
34 that the fee or charge for electronically filing an income tax return does not depend on
35 whether a refund anticipation loan is obtained. A registrant may not facilitate a refund an-
36 ticipation loan unless the schedule required by this subsection is displayed and the refund
37 anticipation loan fee and interest actually charged is the same as displayed on the schedule
38 and filed with the director pursuant to subsection (1) of this section.

39 (3) At the time a person applies for a refund anticipation loan, the registrant shall dis-
40 close to the person on a form separate from the application:

41 (a) The fee and interest for the loan.

42 (b) The fee for electronic filing of a tax return.

43 (c) The time within which the proceeds of the loan will be paid to the person if the loan
44 is approved.

45 (d) That the person is responsible for repayment of the loan and related fees in the event

1 the tax refund is not paid or is not paid in full.

2 (e) That electronic filing of the taxpayer's tax return is available, along with the average
3 time announced by the appropriate taxing authority within which a taxpayer can expect to
4 receive a refund if the taxpayer's return is filed electronically and the taxpayer does not
5 obtain a refund anticipation loan.

6 (f) Examples of the annual percentage rates, as defined by the federal Truth In Lending
7 Act, 15 U.S.C. 1601 et seq., for refund anticipation loans of \$500, \$750, \$1,000, \$1,500, \$2,000
8 and \$3,000. Regardless of disclosures of the annual percentage rate required by the federal
9 Truth In Lending Act, if the debtor is required to establish or maintain a deposit account
10 with the creditor for receipt of the debtor's tax refund to offset the amount owed on the
11 loan, the maturity of the loan for the purpose of determining the annual percentage rate
12 disclosure under this section shall be assumed to be the estimated date when the tax refund
13 will be deposited in the debtor's account.

14 **SECTION 6. Maximum fees.** (1) Except as provided in subsection (2) of this section, the
15 fees charged a debtor by a registrant may not exceed:

- 16 (a) \$90 to prepare and electronically file the debtor's state and federal tax returns; or
17 (b) \$90 as a refund anticipation loan fee.

18 (2) The Director of the Department of Consumer and Business Services, by rule, may
19 adjust a maximum fee established under this section upon finding that the adjusted fee more
20 accurately compensates registrants for the cost of the actual services rendered.

21 **SECTION 7. Prohibited activities.** A facilitator of a refund anticipation loan may not:

22 (1) Misrepresent a material fact or condition of a refund anticipation loan.

23 (2) Fail to arrange for a refund anticipation loan promptly after the debtor applies for the
24 loan.

25 (3) Engage in any transaction, practice or course of business that operates a fraud upon
26 any person in connection with a refund anticipation loan.

27 (4) Facilitate a refund anticipation loan for which the refund anticipation loan fee or in-
28 terest is greater than the fee posted or the fee filed with the Director of the Department of
29 Consumer and Business Services, or in an amount that the director has notified the
30 facilitator is unconscionable.

31 (5) Directly or indirectly arrange for payment of any portion of the refund anticipation
32 loan for check cashing, credit insurance or any other good or service unrelated to preparing
33 and filing tax returns or facilitating the refund anticipation loan.

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

37 (7) Engage in unconscionable activity or charge unconscionable fees or interest in excess
38 of the maximum allowed by rule of the director.

39 (8) Violate any rule or order adopted or issued by the director pursuant to sections 1 to
40 15 of this 2005 Act, or violate a consent agreement entered into with the director.

41 **SECTION 8. Grounds for revocation.** The Director of the Department of Consumer and
42 Business Services may deny, suspend, revoke or impose conditions or restrictions on a
43 facilitator's registration if the director finds that the facilitator:

44 (1) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business
45 or profession, or engaged in unfair or unethical practices or conduct in connection with being

1 a loan facilitator, including unconscionable actions and charging unconscionable fees or in-
2 terest;

3 (2) Has willfully or repeatedly violated or failed to comply with any provision of sections
4 1 to 15 of this 2005 Act, any condition or restriction imposed on a registration or any rule
5 or order of the director adopted or issued under sections 1 to 15 of this 2005 Act; or

6 (3) Has been convicted of a crime, an essential element of which is fraud, or a felony.

7 **SECTION 9. Cease and desist; enjoining violations; revocation of registration; penalties;**
8 **attorney fees.** (1) If the Director of the Department of Consumer and Business Services finds
9 that a registrant has violated, may be in violation of or may be about to violate any provision
10 of sections 2 to 7 of this 2005 Act or any rule or order of the director adopted or issued under
11 sections 1 to 15 of this 2005 Act, or that the registrant has engaged in, is engaging in or is
12 about to engage in an unfair or deceptive act or practice, the director may issue to the
13 registrant an order to cease and desist from the violation or threatened violation, unfair or
14 deceptive practice or threatened unfair or deceptive practice. Upon finding that a registrant
15 has engaged in a course of conduct that is in violation of any provision of sections 2 to 7 of
16 this 2005 Act or any rule or order of the director adopted or issued under sections 1 to 15
17 of this 2005 Act, or has continued to engage in an action in violation of a cease and desist
18 order, the director may temporarily suspend or revoke the registration of the registrant at
19 the discretion of the director.

20 (2) Whenever it appears to the director that a person has engaged in, is engaging in or
21 is about to engage in an act or practice constituting a violation of any provision of sections
22 2 to 7 of this 2005 Act or any rule or order of the director adopted or issued under sections
23 1 to 15 of this 2005 Act, the director may bring suit in the name and on behalf of the State
24 of Oregon in the circuit court for any county of this state to enjoin the acts or practices and
25 to enforce compliance with sections 2 to 7 of this 2005 Act or the rule or order. Upon a
26 proper showing, a permanent or temporary injunction, a restraining order or a writ of
27 mandamus may be granted. The court may fine the person against whom the order is entered
28 not more than \$7,500 for each violation, which shall be entered as a judgment and paid to the
29 General Fund of the State Treasury. Each violation is a separate offense. In the case of a
30 continuing violation, each day's continuance is a separate violation, but the maximum pen-
31 alty for any continuing violation may not exceed \$50,000.

32 (3) The court may award reasonable attorney fees to the director if the director prevails
33 in an action under this section. The court may award reasonable attorney fees to a defend-
34 ant who prevails in an action under this section if the court determines that the director
35 had no objectively reasonable basis for asserting the claim or no reasonable basis for ap-
36 pealing an adverse decision of the court.

37 (4) The director may include in any action authorized by this section one of the following
38 claims:

39 (a) A claim for restitution or damages on behalf of the persons injured by the act or
40 practice constituting the subject matter of the action. The court has jurisdiction to award
41 appropriate relief to such persons if the court finds that enforcement of the rights of such
42 persons by private civil action, whether by class action or otherwise, would be so burdensome
43 or expensive as to be impractical.

44 (b) A claim for disgorgement of illegal gains or profits derived. Any recovery under this
45 paragraph shall be turned over to the General Fund of the State Treasury unless the court

1 requires other disposition.

2 **SECTION 10. Damages to private parties.** (1) A registrant or creditor shall be liable to a
3 debtor if the registrant or creditor:

4 (a) Fails to deliver to the debtor the proceeds of a refund anticipation loan within 48
5 hours after the time period promised by the registrant or creditor at the time the debtor
6 applied for the loan, except in the case of a refund anticipation loan that is not approved by
7 the creditor; or

8 (b) Engages in unconscionable activity or charges fees or interest in excess of the maxi-
9 mum allowed by the Director of the Department of Consumer and Business Services.

10 (2) The debtor may recover three times the amount of the loan for a violation of sub-
11 section (1)(a) of this section and three times the fee or amount of interest charged in vio-
12 lation of subsection (1)(b) of this section. The debtor is also entitled to interest on the
13 amount of the judgment from the date of the violation at the rate of interest specified in
14 ORS 82.010 for judgments and decrees for the payment of money.

15 (3) An action or suit may not be commenced under this section more than three years
16 after the date of the violation.

17 (4) Any person having a right of action against a registrant under this section shall have
18 a right of action under the surety bond or irrevocable letter of credit provided in section 4
19 of this 2005 Act. The Director of the Department of Consumer and Business Services may
20 also bring an action against the surety bond or letter of credit on behalf of debtors.

21 (5) The court may award reasonable attorney fees to the prevailing party in an action
22 under this section.

23 **SECTION 11. Rules.** The Director of the Department of Consumer and Business Services
24 may adopt rules as necessary to administer sections 1 to 15 of this 2005 Act, to provide for
25 the protection of the borrowing public and to assist registrants in interpreting sections 1 to
26 15 of this 2005 Act.

27 **SECTION 12. Enforcement.** (1) The Director of the Department of Consumer and Busi-
28 ness Services shall have general supervision and control over all facilitators, whether regis-
29 tered with the director or not, residing or doing business in this state with respect to any
30 aspect of the facilitator's refund anticipation loan business. All facilitators described in this
31 subsection and records connected with the activities of the facilitators are subject to exam-
32 ination by the director at any time.

33 (2) The director may make such investigations within or outside this state to determine
34 whether a person has violated or is about to violate any provision of sections 2 to 7 of this
35 2005 Act or any rule or order of the director adopted or issued under sections 1 to 15 of this
36 2005 Act.

37 (3) For the purpose of an investigation or proceeding under sections 1 to 15 of this 2005
38 Act, the director may administer oaths and affirmations, subpoena witnesses, compel the
39 attendance of witnesses, take evidence and require production of books, papers and records
40 as preserved in any form or media that the director considers relevant or material to the
41 inquiry. Each witness who appears pursuant to a subpoena shall receive the fees and mileage
42 provided for witnesses in ORS 44.415 (2). The director may also require or permit a person
43 to file a statement in writing, under oath or otherwise, as to all the facts and circumstances
44 concerning the matter under investigation.

45 (4) If a person fails to comply with a subpoena issued under this section or a party or

1 witness refuses to testify on any matter, the judge of the Circuit Court for Marion County
2 or the county where the person is located shall compel obedience by proceedings for con-
3 tempt as in the case of disobedience of the requirements of a subpoena issued from the court
4 or a refusal to testify therein.

5 (5) Each person examined or investigated under this section shall pay the actual cost of
6 the examination or investigation to the director. The director may maintain an action for the
7 recovery of the costs in any court of competent jurisdiction.

8 **SECTION 13. Exemption.** Sections 1 to 15 of this 2005 Act do not apply to a person that
9 does not deal directly with debtors but that acts solely as an intermediary by processing or
10 transmitting, electronically or otherwise, tax or credit information or by preparing a refund
11 anticipation loan check to be delivered by the facilitator to the debtor.

12 **SECTION 14. Criminal penalties.** Violation of any provision of sections 2 to 7 of this 2005
13 Act or rule adopted by the Director of the Department of Consumer and Business Services
14 under sections 1 to 15 of this 2005 Act is a Class A misdemeanor.

15 **SECTION 15. Civil penalties.** (1) In addition to all other penalties and enforcement pro-
16 visions provided by law, the Director of the Department of Consumer and Business Services
17 may impose a civil penalty not to exceed \$7,500 for each violation of any provision of sections
18 2 to 7 of this 2005 Act or of any rule or order of the director adopted under sections 1 to 15
19 of this 2005 Act.

20 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

21 (3) All penalties recovered under this section shall be paid into the State Treasury and
22 credited to the General Fund.

23 (4) Every violation is a separate offense and, in the case of a continuing violation, each
24 day's continuance is a separate violation, but the maximum violation may not exceed \$50,000.

25 **SECTION 16.** (1) Sections 1 to 15 of this 2005 Act become operative on January 1, 2006.

26 (2) The Director of the Department of Consumer and Business Services may adopt rules
27 or take any action before the operative date of sections 1 to 15 of this 2005 Act that is nec-
28 essary to enable the director to exercise, on and after the operative date of sections 1 to 15
29 of this 2005 Act, all the duties, functions and powers conferred upon the director by sections
30 1 to 15 of this 2005 Act.

31 **SECTION 17.** The section captions used in this 2005 Act are provided only for the con-
32 venience of the reader and do not become part of the statutory law of this state or express
33 any legislative intent in the enactment of this 2005 Act.

34 **SECTION 18.** This 2005 Act being necessary for the immediate preservation of the public
35 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
36 on its passage.

37