

SUBJECT: Exempting certain tax preparers from license requirements

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 7 ayes — Averitt, Denny, Hopson, Marchant, Menendez, Pitts, Wise
0 nays
2 absent — Solomons, Grusendorf

SENATE VOTE: On final passage, April 20 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Chuck Bailey, Jackson Hewitt
Against — None
On — Leslie Pettijohn, Office of the Consumer Credit Commissioner

BACKGROUND: Finance Code, chapter 342 establishes requirements for loans made in Texas. All people engaged in the business of making, transacting, or negotiating loans under this law must be licensed by the consumer credit commissioner. License requirements include, among other requirements, filing a written application, fingerprinting principals of businesses that make loans, paying certain fees and assessments, and establishing an applicant's assets in excess of \$25,000 for the purpose of operating a lending business.

DIGEST: SB 935 would provide that an electronic return originator (tax preparer) who was authorized as an e-file provider by the U.S. Internal Revenue Service (IRS) would not have to obtain a license to make, negotiate, or transact a loan based on a person's federal income-tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

The bill would take effect September 1, 2001.

SUPPORTERS SAY: SB 935 would exempt tax preparers authorized by the IRS to file electronic returns from the requirement to be licensed by the consumer credit commissioner. Current law could be interpreted to require these electronic

tax preparers to have a license in order to transact or facilitate refund anticipation loans (RALs) on behalf of their customers through a bank or other lending institution.

RALs are loans made by banks or other lending institutions on behalf of their customers. The loan amount of a RAL is based on a tax refund, less applicable fees, that a taxpayer customer expects to receive from the IRS. For a tax preparer to transact RALs, the preparer must be an authorized e-file provider pursuant to IRS regulations.

All lending decisions regarding a RAL and its terms are made by a particular bank, not by the tax preparer. The tax preparer's involvement in the RAL is limited to inputting customer information, provided by the customer, on a loan application form; obtaining the customer's signature on the application; forwarding the completed application to a bank electronically; and, if the loan is made, making a cashier's check issued by the bank available to the customer at the location where the tax return was prepared.

Because IRS authorization of e-file providers involves stringent requirements such as a background check and fingerprinting, IRS approval should be enough to ensure public trust in facilitating RALs. Only one state, North Carolina, makes any requirements of IRS authorized e-file providers. That state does not require a license but has provisions for registration, which permits disclosure of information to consumers.

SB 935 is intended to exempt IRS-authorized e-filer providers who merely facilitate RALs on behalf of their customers. Texas alone has 6,500 of these authorized tax preparers. This exemption would extricate them from licensing requirements intended to regulate parties who actually make loans, not those who merely facilitate them on behalf of taxpayer customers.

OPPONENTS
SAY:

No apparent opposition.