

Legislative Analysis



REFUND ANTICIPATION LOAN ACT

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House Bill 4166

Sponsor: Rep. Rashida Tlaib

Committee: Banking and Financial Services

Complete to 3-10-09

A SUMMARY OF HOUSE BILL 4166 AS INTRODUCED 2-4-09

The bill would create the Refund Anticipation Loan Act. A "refund anticipation loan" or RAL is defined in the bill as an extension of credit to a taxpayer that a person arranged to be repaid directly from the proceeds of a taxpayer's federal or state personal income tax refund. The bill would require certain actions on the part of an RAL "facilitator" when involved in providing a refund anticipation loan. The bill also creates a right of rescission for a borrower who had a change of mind.

A "refund anticipation loan fee" would mean the charges, fees, or other consideration charged or imposed by a lender or facilitator; it would not include any charge, fee, or other consideration usually charged or imposed by a facilitator in the ordinary course of business for tax return preparation, electronic filing of tax returns, or other nonloan services. "Taxpayer" would mean an individual who filed a federal or Michigan personal income tax return.

"Facilitator" would mean a person that individually or in conjunction with another person processed, received, or accepted for delivery an application for a refund anticipation loan or a check in payment of RAL proceeds or in any other manner materially facilitated the making of an RAL. The term would not include a financial institution; an affiliate that was a servicer for a financial institution; or a person certified, registered, or licensed to engage in the practice of public accounting.

Required disclosure *before* an application is completed. Before a taxpayer completed an application for an RAL, the facilitator would have to clearly disclose certain information in writing on a separate form. Among the information required to be disclosed would be the following:

- That the RAL is an extension of credit and not the taxpayer's actual personal income tax refund.
- Application loan fees and the annual percentage rates charged by the facilitator or lender for at least three representative RAL amounts.
- That electronic filing of a tax return is available without applying for an RAL.
- The average time for refunds if an RAL was not applied for, as specified in the bill.
- That the amount of the anticipated tax refund may not be the actual amount refunded by the IRS or state Department of Treasury.

- That the full amount of the RAL and fees would have to be repaid.
- The estimated time for the proceeds to be paid to the taxpayer if the RAL were approved.
- Fees charged to the taxpayer even if the RAL was not approved.

Disclosure prior to a RAL agreement. Before entering into an RAL agreement, the facilitator would also have to disclose the estimated total fees for the loan and the estimated annual percentage rate for the loan.

Prohibited conduct. A facilitator could not require a consumer to enter into an RAL arrangement in order to complete a tax return; misrepresent a material factor or condition of granting an RAL; fail to process the application for an RAL after an applicant applied for the loan; or engage in any fraudulent transaction, practice, or course of business with any person in connection with an RAL.

Penalty. A person, including, but not limited to, a facilitator and/or his employees, agent, director, etc. that violated or participated in a violation of the act, would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

Consumer right of rescission. The bill also creates a right of rescission for a borrower who had a change of mind. The borrower would have until the end of business on the day after the loan was made to rescind the RAL (one business day). The borrower would have to return the original check issued for the RAL or pay the amount of the loan in cash to the lender or facilitator. The borrower could not be charged a fee for rescinding the RAL and would have any fee charged for making the RAL refunded, as well. However, any fee charged to the customer for establishing and administering a bank account to electronically receive and distribute the customer's tax refunds would not have to be refunded by the facilitator.

Restrictions on local governments. Lastly, the bill would prohibit a political subdivision of the state (city, township, etc.) from adopting any rule, regulation, code, or ordinance to restrict or limit any of the bill's provisions relating to RALs. Further, the bill's provisions would supersede and preempt any rule, regulation, code, or ordinance of a local unit relating to RALs.

FISCAL IMPACT:

Enforcement of the bill would have no impact on the state and an indeterminate, though not likely significant, impact on local units of government. The bill does not contain any provisions concerning enforcement or administration by a state agency. This generally precludes the Office of Financial and Insurance Regulation, which has general authority over consumer finance issues, from imposing fines and penalties, and taking other administrative actions necessary to ensure compliance with the bill. (See, for example, Article 4 of the Deferred Presentment Service Transactions Act, 2005 PA 244, which regulates "payday" loans, which are similar in concept to refund anticipation loans.

Article 4 provides for the investigation of customer complaints; cease and desist orders; license suspension, revocation, and termination; the imposition of civil fines; and administrative hearings.) Enforcement of the bill would, then, be an activity of local law enforcement agencies.

Additionally, the bill provides that any violation would be a misdemeanor subject to a fine of not more than \$500 or imprisonment of up to 93 days, or both. As a result, the bill would have no fiscal impact on the Department of Corrections. Any local impact would depend on how the bill affected the number of misdemeanants sentenced to jail or misdemeanor probation supervision, the costs of which vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

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