

REFUND ANTICIPATION LOAN ACT

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House Bill 5903 ((Substitute H-1)

Sponsor: Rep. Bert Johnson

Committee: Banking and Financial Services

Complete to 4-29-08

A SUMMARY OF HOUSE BILL 5903 AS REPORTED FROM COMMITTEE

The bill would create the Refund Anticipation Loan Act. A "refund anticipation loan" or RAL would be defined 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. 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.

The bill would require certain actions on the part of a RAL facilitator when facilitating a refund anticipation loan. "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 a 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.

Before a taxpayer completed an application for a 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 a RAL.
- The average time for refunds if a 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 would have to be paid.
- The estimated time for a RAL to be approved and the proceeds paid to the taxpayer.
- Fees charged to the taxpayer even if the RAL was not approved.

Before entering into a 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.

A facilitator could not require a consumer to enter into a RAL arrangement in order to complete a tax return; misrepresent a material factor or condition of granting a RAL; fail to process the application for a 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 a RAL.

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.

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 loans 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.

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 impact on local units of government. The bill does not contain any provisions concerning enforcement or administration, including licensure, 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 "pay day" 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 numbers 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.

BACKGROUND INFORMATION:

For additional information on refund anticipation loans, see the HFA analysis of House Bill 4645 dated 1-30-08. That bill, which deals with such loans through an amendment to the Regulatory Loan Act, has passed the House and is the Senate Banking and Financial Institutions Committee.

Also, information on refund anticipation loans can be found at www.nclc.org, the webpage of the National Consumer Law Center, a nonprofit organization specializing in consumer issues on behalf of low-income people.

POSITIONS:

The Office of Financial and Insurance Regulation (OFIR) supports the bill. (4-28-08)

H & R Block indicated support for the bill with amendments. (4-28-08)

HSBC indicated support for the bill with amendments. (4-28-08)

The Michigan Bankers Association indicated neutrality. (4-28-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.