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BILL ANALYSIS

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House Bill 4166 (Substitute H-1 as passed by the House)
House Bill 4607 (Substitute H-1 as passed by the House)
Sponsor: Representative Rashida Tlaib (H.B. 4166)
Representative Bert Johnson (H.B. 4607)
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 6-22-09

CONTENT

House Bill 4166 (H-1) would create the "Refund Anticipation Loan Disclosure Act" to do the following:

- **Require a refund anticipation loan (RAL) facilitator, before a taxpayer completed an application for an RAL, to give the taxpayer certain information, including a table of loan fees and percentage rates for representative loan amounts, and a statement that the RAL was an extension of credit and not the taxpayer's actual refund.**
- **Require a facilitator, before entering into an RAL agreement, to disclose to the taxpayer the estimated fees and annual percentage rate of the loan.**

House Bill 4607 (H-1) would create the "Refund Anticipation Loan Act" to do the following:

- **Prohibit an RAL facilitator from requiring a customer to obtain an RAL in order to complete a tax return, misrepresenting a condition of granting an RAL, failing to process an RAL, or engaging in any fraudulent activities in connection with an RAL.**
- **Permit a borrower to rescind an RAL by returning the check or repaying the loan amount by the close of business on the business day following the day the loan was made.**

A person who violated either bill would be guilty of a misdemeanor. Each bill would preempt any local regulation or ordinance relating to RALs.

"Refund anticipation loan" would mean an extension of credit to a taxpayer that a person arranged to be repaid directly from the proceeds of the taxpayer's Federal or State personal income tax refund.

The two bills are tie-barred to one another, and are described in detail below.

House Bill 4166 (H-1)

RAL Application

Before a taxpayer completed an application for an RAL, the facilitator would have to disclose certain information clearly in writing, on a form separate from the application. "Facilitator" would mean a person that individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for an RAL or a check in payment for RAL proceeds or in any other manner materially facilitates the making of an RAL. The term would not include a financial institution, an affiliate that is a servicer for a financial institution, or a person certified, registered, or licensed to engage in the practice of public accounting under the Occupational Code.)

Specifically, a facilitator would have to provide a listing or table of refund anticipation loan fees and annual percentage rates charged by the facilitator or lender for three or more representative loan amounts. For each loan amount, the schedule would have to list separately the amount of each fee and the amount of interest charged by the facilitator or lender and the total amount of fees and interest charged.

("Refund anticipation loan fee" would mean the charges, fees, or other consideration charged or imposed by a person acting as a lender or facilitator for the making of an RAL. The term 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.)

The facilitator also would have to disclose that the RAL was an extension of credit and not the taxpayer's actual personal income tax refund, and that electronic filing of the return was available without application for an RAL.

In addition, the facilitator would have to disclose the average time announced by the appropriate taxing jurisdiction within which the taxpayer could expect to receive a refund if he or she did not obtain an RAL and filed the tax return using either of the following methods:

- Electronically, with the refund directly deposited into the taxpayer's bank account.
- By mail, with the refund directly deposited into the taxpayer's bank account or mailed to the taxpayer.

The facilitator would have to disclose that the IRS, with respect to a Federal income tax return, or the Michigan Department of Treasury, with respect to a Michigan income tax return, did not guarantee that the full amount of the anticipated refund would be paid, or guarantee a specific date on which the taxpayer would receive the refund.

The facilitator also would have to disclose that the taxpayer was responsible for repayment of the RAL and related fees if the tax refund were not paid or were not paid in full, and would have to include the estimated time within which the proceeds of the RAL would be paid to the taxpayer if the loan were approved, and the fees charged by the facilitator or lender if the RAL were not approved.

RAL Agreement

Before entering into an RAL agreement, a facilitator would have to disclose clearly both of the following to the taxpayer:

- The estimated total fees for the RAL.
- The estimated annual percentage rate for the RAL.

Penalty for Violation

A person, including a facilitator or a member, officer, director, agent, or employee of a facilitator, that violated or participated in a violation of the RAL Disclosure Act would be guilty of a misdemeanor punishable by a maximum fine of \$500 or imprisonment for up to 93 days, or both.

Preemption

A political subdivision of the State could not adopt any rule, regulation, code, or ordinance to restrict or limit any requirements under the proposed Act relating to RALs. The Act would supersede and preempt any rule, regulation, code, or ordinance of any political subdivision of the State relating to RALs.

House Bill 4607 (H-1)

RAL Facilitator

A facilitator that facilitated or offered to facilitate an RAL could not do any of the following:

- Require a customer to enter into an RAL 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.
- Engage in any fraudulent transaction, practice, or course of business with any person in connection with an RAL.

Loan Rescission

A borrower who obtained an RAL could rescind the loan, on or before the close of business on the business day following the day the loan was made, by returning the original check issued to the borrower for the loan or paying the amount of the loan by money order or certified check to the lender or facilitator. A facilitator could not charge the borrower a fee for rescinding an RAL and would have to return any fee charged for making an RAL if the loan were rescinded.

A facilitator would not be required to return a fee charged to the customer for establishing and administering a bank account to receive and distribute the customer's tax refunds electronically.

Penalty for Violation

A person, including a facilitator or a member, officer, director, agent, or employee of a facilitator, that violated or participated in a violation of the Refund Anticipation Loan Act would be guilty of a misdemeanor punishable by a maximum fine of \$500 or imprisonment for up to 93 days, or both.

Preemption

A political subdivision of the State could not adopt any rule, regulation, code, or ordinance to restrict or limit any requirements under the proposed Act relating to RALs. The Act would supersede and preempt any rule, regulation, code, or ordinance of any political subdivision of the State relating to RALs.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on local corrections costs. There are no data to indicate how many facilitators or members, officers, directors, agents, or employees of facilitators would be convicted of the proposed offenses. Local governments would incur costs of misdemeanor probation and incarceration in local facilities, which vary by county. Penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.