



H.B. 156

127th General Assembly
(As Introduced)

Reps. Foley, Driehaus, Luckie, Lundy, Koziura, Yuko, Skindell

BILL SUMMARY

- Regulates under the Superintendent of Financial Institutions the facilitation of tax refund anticipation loans and refund anticipation checks by:
 - providing registration and bonding requirements for persons facilitating such transactions;
 - specifying loan and check transaction requirements;
 - requiring that specified disclosures be made to consumers; and
 - imposing a limitation on refund anticipation loan fees in order to prevent the overall interest rate from exceeding 28%.
- Provides civil and administrative remedies for a violation of the bill and a private right of action.

CONTENT AND OPERATION

General overview

(R.C. 1315.61)

The bill enacts new law to regulate "refund anticipation loans" and "refund anticipation check transactions" and to limit fees for refund anticipation loans in Ohio. For purposes of the bill, a "**refund anticipation loan**," or "**RAL**," means a loan secured by, or to be repaid directly or indirectly from, the proceeds of a consumer's income tax refund or tax credits. **RALs** include any sale, assignment, or purchase of a consumer's income tax refund at a discount or for a fee, whether or not the consumer is required to repay a buyer or assignee if the Internal Revenue Service denies or reduces the consumer's tax refund. A "**refund**

anticipation check," or **"RAC,"** is a check or other payment mechanism representing the proceeds of a consumer's tax refund (1) that is issued by a depository institution or other person that received a direct deposit of the consumer's tax refund or tax credits and (2) for which a consumer has paid a fee or other consideration.

Other key terms:

"Consumer" means a natural person who, singly or jointly with another consumer, is solicited for, applies for, or receives the proceeds of a RAL or RAC.

"Refund anticipation loan interest rate" means the interest rate for a RAL calculated by dividing the total amount of "refund anticipation loan fees" by the loan amount, which loan amount is minus any loan fees; then dividing by the number of days in the loan term; then multiplying by 365 and expressed as a percentage. If a deposit account is established in whole or in part for the purpose of receiving the consumer's tax refund or tax credits to repay the amount owed for the RAL, the maturity of the loan for purposes of this calculation is the estimated date when the tax refund or tax credits will be deposited in the deposit account, and any fee charged the consumer for the deposit account is considered a loan fee to be included in the calculation of the RAL interest rate. If *no* deposit account is established, the maturity of the loan is the estimated date when the tax refund or tax credits will be received by the registrant or person taking assignment of the RAL.

"Refund anticipation loan fee" means the charges, fees, or other consideration charged or imposed directly or indirectly by the registrant or person taking assignment of a RAL. Included in this fee is any consideration for a deposit account, if the account is used for receipt of the consumer's tax refund to repay the amount owed on the loan. The fee does *not* include any consideration usually charged or imposed by the registrant in the ordinary course of business, such as tax return preparation fees and fees for electronic filing of tax returns, if the same fees in the same amount are charged to the registrant's customer who do not receive RALs or RACs.

Registration and bonding requirements; application of the bill

(R.C. 1315.62)

The bill prohibits any person, individually or in conjunction or cooperation with another person, from soliciting, processing, receiving, or accepting an application or agreement for a RAL or RAC, or making, facilitating, or in any manner assisting in making a RAL or RAC transaction, unless the person (1)

obtains a certification of registration from the Superintendent of Financial Institutions and (2) maintains the surety bond required by the bill (see below).

The bill does not, however, apply to a person that is a bank, savings bank, savings and loan association, savings association, or credit union, doing business under laws of the United States or of Ohio.

Registration procedure

(R.C. 1315.63)

In order to apply for an original (or renewal) certificate of registration, a person must submit an application in writing, under oath, and in a form prescribed by the Superintendent, along with a nonrefundable fee of \$200 for each place of business where the person (or registrant) intends to solicit, process, receive, or accept an application or agreement for a RAL or RAC transaction or to make, facilitate, or in any manner assist in making a RAL or RAC transaction. All fees collected by the Superintendent are to be deposited into the state treasury to the credit of the Consumer Finance Fund created under current law.

The bill requires the Superintendent to issue a certificate of registration *if* the Superintendent finds that the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of soliciting, processing, receiving, or accepting an application or agreement for a RAL or RAC transaction, or making, facilitating, or in any manner assisting in making a RAL or RAC transaction, will be operated in compliance with the bill. If the application is for a renewal certificate of registration, the Superintendent must also find that the registrant has not violated the bill. A certificate of registration expires on December 31 following the date it was issued, unless it is renewed for the succeeding year.

If the Superintendent finds that the applicant does not meet these requirements, the Superintendent is to issue an order denying the application for an original or renewal certificate of registration and giving the applicant an opportunity for a hearing on the denial in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Superintendent must also notify the applicant of the grounds for the denial.

Surety bond

(R.C. 1315.65)

The bill requires each registrant and applicant for a certificate of registration to maintain a surety bond that (1) is in the amount of \$100,000 for each location, (2) continues in effect for at least five years after the registrant or

person ceases operations in Ohio, and (3) is available to pay damages and penalties to consumers harmed by a violation of the bill.

Duties of a registrant

Application disclosures

(R.C. 1315.66(C))

An application for a **RAC** transaction is required to include the following notice in 18-point type:

NOTICE

You are paying [enter the amount of the refund anticipation check fee] to get your tax refund or tax credits check through [name of issuer of the refund anticipation check]. **YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR TAX REFUND OR TAX CREDITS IN ABOUT 10 DAYS BY HAVING THE I.R.S. DIRECTLY DEPOSIT THE AMOUNT INTO YOUR OWN BANK ACCOUNT.** You also can wait for the I.R.S. to mail you a check. If you do not have a bank account, you may wish to consider getting one.

For a **RAL**, the application must include, in 14-point type, the "RAL interest rate" and, in 18-point type, the following notice:

NOTICE

This is a loan. This loan is borrowing money against your tax refund or tax credits. If the amount of your tax refund or tax credits is less than expected, you must still repay the entire amount of the loan. If the receipt of your tax refund or tax credits is delayed, you may have to pay additional costs. **YOU CAN GET YOUR TAX REFUND OR TAX CREDITS IN ABOUT 10 DAYS WITHOUT GETTING THIS LOAN.** You can have your tax return filed electronically and the amount deposited directly into your own bank account without obtaining a loan or other paid product.

At the time a consumer applies for a RAL or RAC, the registrant must disclose to the consumer, on a form separate from the application and in 14-point type, the fee for the RAL or RAC, the fee for electronic filing of a tax return, and the time within which the proceeds of a RAL or RAC will be paid to a consumer if the loan or check transaction is approved.

All of these disclosures must be initialed by the consumer applicant.

Copy and other transaction requirements

(R.C. 1315.66)

Additionally, a registrant (including any officer, agent, employee, or representative of the registrant) is required to do all of the following in connection with a RAL or RAC transaction:

(1) Promptly inform a consumer applicant if the consumer's application is rejected;

(2) Prior to the consummation of the transaction, provide to a consumer applicant, in a form that may be retained by the consumer, both (a) a copy of the completed application and the agreement and (b) the disclosures required to be initialed by the consumer, in English and in the language that the transaction is being negotiated;

(3) Prior to the consummation of a *RAL*, provide the disclosures required by the federal "Truth in Lending Act," in a form that may be retained by the consumer applicant.

Posting of fee schedules

(R.C. 1315.64)

Each registrant is required to prominently display the certificate of registration issued by the Superintendent in *each* place of business where the registrant solicits, processes, receives, or accepts an application or agreement for a RAL or RAC transaction or makes, facilitates, or in any manner assists in making a RAL or RAC transaction. In addition, a registrant must display a schedule showing the current fees for RALs, RACs, and electronic filing of a consumer's tax return, as well as examples of RAL interest rates for loans of \$200, \$500, \$1,000, \$1,500, \$2,000, and \$5,000. The fee schedule must also include, in one-inch letters, the following notice:

NOTICE CONCERNING REFUND ANTICIPATION LOANS

When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you still must repay the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. **YOU CAN GET YOUR TAX REFUND OR TAX CREDITS IN ABOUT TEN DAYS WITHOUT GETTING A LOAN.** You can have your tax return filed electronically and the amount deposited directly into your own bank account without obtaining a loan or paying fees for an extra product.

This fee schedule is to be displayed in not less than 28-point type on a document measuring not less than 16 inches by 20 inches.

Prohibited activities

(R.C. 1315.68)

The bill prohibits any registrant (including any officer, agent, employee or representative of the registrant) from doing any of the following:

(1) Engaging in unfair or deceptive acts or practices in connection with the business of soliciting, processing, receiving, or accepting an application or agreement for a RAL or RAC transaction, or making, facilitating, or in any manner assisting in making a RAL or RAC transaction, including misrepresenting a factor or condition of the loan or check transaction or making any oral statements contradicting any of the information required to be disclosed by the bill;

(2) Violating or failing to comply with the bill;

(3) Threatening to take any action that is prohibited by the bill or by any other law, or any action that the person actually does not intend to take;

(4) Soliciting, processing, receiving, or accepting an application or agreement for a RAL, or making, facilitating, or in any manner assisting in making a RAL, the interest rate of which is greater than 28% as calculated in accordance with the formula set forth in the bill (R.C. 1315.61(E))--see above). Any loan for which the RAL interest rate exceeds that amount is void.

(5) Directly or indirectly charging, or arranging for the charging of, any interest, fee, or charge related to a RAL or RAC transaction not specifically



authorized by the bill, including charges for insurance, attorney's fees or other collection costs, or charges for check cashing;

(6) Charging a fee for a RAL or RAC transaction that is different than the fee displayed on the fee schedule required by the bill;

(7) Including any of the following provisions in any document provided or signed in connection with a RAL or RAC transaction: (a) a hold harmless clause, (b) a confession of judgment clause, (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against the consumer, (d) any assignment of or order for payment of wages or other compensation for services, (e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract, or to seek any remedies pursuant to the consumer's private right of action granted by the bill (see below), (f) a waiver of any provision of the bill (any such waiver is deemed null, void, and of no effect), (g) a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class wide basis, (h) a provision requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. (The bill does not, however, affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential, or to later agree, after the dispute arises, to keep a resolution confidential.)

(8) Taking or arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of a RAL;

(9) Directly or indirectly, individually or in conjunction or cooperation with another person, engaging in the collection of an outstanding or delinquent RAL for any creditor or assignee, including soliciting, processing, receiving, or accepting an application or agreement for a RAL or RAC transaction that contains a provision permitting the creditor to repay from the proceeds of the consumer's income tax refund or tax credits, by offset or other means, an outstanding or delinquent RAL for that creditor or any creditor;

(10) Facilitating, referring, or soliciting consumers on behalf of a third party engaged in check cashing for a fee, or permitting third-party check cashing for a fee in any place of business identified in the application for a certificate of registration;

(11) Facilitating any loan that is secured by or arranged to be repaid directly from the proceeds of the consumer's *state* income tax refund;

(12) Making a misrepresentation of fact in obtaining or attempting to obtain a certificate of registration under the bill;

(13) Engaging in any other action prohibited by rules adopted by the Superintendent pursuant to the bill (see below).

Complaint process; toll-free telephone number

(R.C. 1315.70)

The Superintendent is required by the bill to establish and maintain a complaint process by which an aggrieved consumer may file a complaint against a registrant or unregistered person. The Superintendent must also maintain and make available upon request a list of registrants, and establish and maintain a toll-free telephone number that consumers may call to obtain information about registrants and complaint forms.

Upon receipt of a complaint and upon the consumer's request, the Superintendent, in accordance with the Administrative Procedure Act, may suspend or revoke the certificate of registration or issue a cease and desist order, if the Superintendent determines that a registrant has violated the bill. These cease and desist orders are enforceable in the court of common pleas.

Any complaints filed with the Superintendent are public records, with exception of the complainant's name, address, or other personal identifying information.

Remedies

Civil and administrative

(R.C. 1315.69(A) to (C))

The Superintendent is permitted by the bill to do any of the following, if the Superintendent determines, in accordance with the Administrative Procedure Act, that a registrant has violated the bill, or any rule adopted pursuant to the bill:

- (1) Suspend, revoke, or refuse to renew the person's certificate of registration;
- (2) Impose a \$1,000 fine for each violation;
- (3) Issue a cease and desist order.

The bill provides the Superintendent with the same authority the Superintendent is currently given under the Check-Cashing Businesses Law (R.C. 1315.24) to (a) make an investigation or conduct any hearing to determine whether a violation of the bill, or any rule adopted pursuant to the bill, has occurred, and

(b) determine whether a registrant has failed to comply with a cease and desist order.

If a registrant violates a *cease and desist order*, the Superintendent, after notice and hearing and upon order of the Superintendent, may impose a \$1,000 fine for each violation. If a person does business *without obtaining a certificate of registration*, the Superintendent, in accordance with the Administrative Procedure Act and upon order of the Superintendent, may impose a \$1,000 fine for each RAL or RAC transaction application or agreement solicited, processed, received, or accepted, or each RAL or RAC transaction made, facilitated, or in any manner assisted by the person.

The bill requires, beginning on January 31, 2009, that the amount authorized for any fine discussed in this section must be increased annually based proportionately on changes in the consumer price index (all consumers, all items), with fractional amounts rounded to the nearest dollar, that is prepared by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent year prior to the date of the violation.

Private right of action

(R.C. 1315.71)

The bill authorizes a consumer injured by a violation of any of its provisions to bring an action for actual or consequential damages, including damages in the greater amount of either three times the amount of the RAL or other unauthorized charge or \$2,000. The \$2,000 amount is to be increased annually after the bill's effective date based proportionately on changes in the consumer price index (all consumers, all items), with fractional amounts rounded to the nearest dollar, that is prepared by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent year prior to the date the action is brought. The consumer may also bring an action for injunctive or other appropriate equitable relief and collect reasonable attorney's fees and court costs. These remedies are in addition to any other remedies allowed by law.

Annual reports

(R.C. 1315.67)

On or before July 1 of each year each registrant must file a report with the Superintendent. The report is to include all of the following information for the time period of April 15 of the prior year to April 15 of the current year:

(1) The total number and dollar amount of RALs and of RACs processed by the registrant;



(2) The total number and dollar amount of refund anticipation checks processed by the registrant;

(3) The average and median number of days for which RALs processed by the registrant were outstanding before being repaid;

(4) The name and address of any person that takes assignment of RALs or RAC transactions for the registrant; and

(5) Any other information required by the Superintendent.

The Superintendent must prepare an annual consolidated report containing the information described above and make the report available to the public on or before September 1 following the filing of the registrants' annual reports.

Rule making by the Superintendent

(R.C. 1315.72)

The Superintendent is permitted to adopt rules as necessary to effectuate the purpose of the bill, to provide for the protection of the borrowing public, and to assist registrants in interpreting the bill's provisions. In addition, the Superintendent may modify the disclosure that must be included in applications for, and the fee schedules regarding, RALs to the extent that a revision of the ten-day estimate for receiving a refund from the Internal Revenue Service is appropriate.

HISTORY

ACTION	DATE
Introduced	04-17-07

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