



2009 ASSEMBLY BILL 265

May 12, 2009 – Introduced by Representatives ROYS, HINTZ, BERCEAU, BERNARD SCHABER, BLACK, DEXTER, GRIGSBY, HEBL, RICHARDS, SCHNEIDER, SEIDEL, SINICKI, SMITH, SOLETSKI, YOUNG, ZEPNICK and HIXSON, cosponsored by Senators LASSA, COGGS and TAYLOR. Referred to Committee on Financial Institutions.

1 **AN ACT to repeal** 422.310 (title), 422.310 (1) (d) and 422.310 (1) (f); **to renumber**
2 422.310 (1) (e) and 422.310 (1) (g); **to renumber and amend** 422.310 (1)
3 (intro.), 422.310 (1) (a) to (c), 422.310 (1) (h), 422.310 (2) and 422.310 (3); and
4 **to create** subchapter VI of chapter 422 [precedes 422.601] of the statutes;
5 **relating to:** the regulation of income tax refund anticipation loans and
6 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law requires a creditor to make specified disclosures before a “refund anticipation loan” (RAL) is made to a customer. An RAL is defined as an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer’s income tax refund. Current law defines “creditor” to include a merchant who regularly engages in arranging an RAL for a customer, as well as the merchant who makes the RAL. The disclosure requirements are enforced by the Department of Financial Institutions (DFI).

This bill creates additional requirements, also enforced by DFI, for a creditor who makes or arranges an RAL. In addition to the disclosures required under current law, the bill requires a creditor to disclose the fee charged if an RAL is not approved. The bill also requires a creditor to disclose that: 1) the Internal Revenue Service and the Department of Revenue do not guarantee refunds; 2) an RAL is a loan and is not the customer’s actual refund; and 3) a customer may rescind an RAL, as

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described below. Additionally, the bill requires disclosure of a chart indicating the estimated amount of time that a customer is expected to receive either a refund or loan for different filing and payment options, as well as for each loan program offered or arranged by the creditor. The chart must also indicate whether up-front payment of a tax preparation fee is required for each filing and payment option and each loan program. Also, the creditor must disclose how much of a refund a customer is expected to receive after charges and fees for the RAL are deducted from the customer's tax refund. Under the bill, the foregoing disclosures, as well as the disclosures required under current law, must be in a type size no smaller than 10 point. The bill also incorporates into the statutes certain requirements under DFI's rules, including requirements regarding the timing of the disclosures, as well as the manner for disclosing annual percentage interest rates of RALs. In addition, the bill incorporates into the statutes a DFI rule that requires a creditor to make certain disclosures that are required under federal law at the time that the creditor actually makes a loan.

The bill also allows a customer to rescind an RAL before the close of business on the next business day after the RAL is made. The bill provides that the only fee a creditor may charge a customer for rescinding an RAL is a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the customer's refund. The bill prohibits a creditor from doing any of the following: 1) misrepresenting a material fact of condition of an RAL; 2) failing to process promptly an RAL application; 3) offering or arranging an RAL in which the amount of the loan, including charges and fees related to the loan, tax preparation, or electronic filing, exceed the customer's anticipated refund; and 4) taking or arranging a security interest in any property other than the customer's tax refund.

The bill provides that a creditor who violates the bill is liable to a customer in amount equal to the greater of: 1) twice the finance charge imposed for the RAL; or 2) the actual damages sustained by the customer due to the violation. The amount under the first component of the foregoing formula is subject to a minimum of \$100 and a maximum of \$1,000. Current law creates similar liability for violations of the disclosures required under current law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 422.310 (title) of the statutes is repealed.

2 **SECTION 2.** 422.310 (1) (intro.) of the statutes is renumbered 422.601 (intro.)
3 and amended to read:

4 **422.601 Advance disclosures.** (intro.) In addition to any other requirements
5 under ~~this subchapter~~ subch. III, a creditor who makes or arranges a refund

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1 anticipation loan shall disclose all of the following in writing to a customer in type
2 size no smaller than 10 point on a form that is signed by the customer before the
3 customer enters into a ~~is asked to sign either an application containing an~~
4 agreement for the refund anticipation loan, or, if there is no application, an
5 agreement for the refund anticipation loan:

6 **SECTION 3.** 422.310 (1) (a) to (c) of the statutes are renumbered 422.601 (1) to
7 (3), and 422.601 (2) and (3), as renumbered, are amended to read:

8 422.601 (2) Any charge or fee for electronically filing an income tax return,
9 including any charge or fee for checking tax return information, entering data for tax
10 return information, or transmitting a tax return by computer modem.

11 (3) The total dollar amount of all charges and fees under ~~pars. (a)~~ subs. (1) and
12 ~~(b)~~ (2).

13 **SECTION 4.** 422.310 (1) (d) of the statutes is repealed.

14 **SECTION 5.** 422.310 (1) (e) of the statutes is renumbered 422.601 (5).

15 **SECTION 6.** 422.310 (1) (f) of the statutes is repealed.

16 **SECTION 7.** 422.310 (1) (g) of the statutes is renumbered 422.610 (7).

17 **SECTION 8.** 422.310 (1) (h) of the statutes is renumbered 422.601 (8) (intro.) and
18 amended to read:

19 422.601 (8) (intro.) The estimated annual percentage rate, based on the size
20 of the refund anticipation loan, the refund anticipation loan fees, and the anticipated
21 maturity date of the refund anticipation loan. The anticipated maturity date shall
22 be the date disclosed under ~~par. (f)~~ sub. (6g) (a) 3. The requirement to disclose the
23 estimated annual percentage rate shall be fulfilled by doing one of the following:

24 **SECTION 9.** 422.310 (2) of the statutes is renumbered 422.603 (4) and amended
25 to read:

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1 422.603 (4) ~~A creditor may not impose~~ Impose a different fee or charge for
2 electronically filing an income tax return, including any fee or charge for checking
3 tax return information, entering data for tax return information, or transmitting a
4 tax return by computer modem, on a customer who obtains a refund anticipation loan
5 that is different than the fee or charge the creditor imposes on a customer who does
6 not obtain a refund anticipation loan.

7 **SECTION 10.** 422.310 (3) of the statutes is renumbered 422.606 and amended
8 to read:

9 **422.606 Violations.** A violation of this section subchapter is subject to s.
10 425.304.

11 **SECTION 11.** Subchapter VI of chapter 422 [precedes 422.601] of the statutes
12 is created to read:

CHAPTER 422**SUBCHAPTER VI****REFUND ANTICIPATION LOANS**

16 422.601 (3g) The fee charged, if any, if the customer's refund anticipation loan
17 is not approved.

18 (3r) Any fees for establishing an account with a financial institution to
19 electronically receive the refund.

20 (6g) A chart titled "timeline" that shows all of the following:

21 (a) The estimated amount of time that the customer is expected to receive his
22 or her tax refund for all of the following options:

23 1. The customer files a paper return and the Internal Revenue Service mails
24 a refund check to the customer.

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1 2. The customer files a paper return and the Internal Revenue Service directly
2 deposits a refund check into the customer's account with a financial institution.

3 3. The customer electronically files a tax return and the Internal Revenue
4 Service mails a refund check to the customer. The estimated amount of time under
5 this subdivision may not exceed 14 days.

6 4. The customer electronically files a tax return and the Internal Revenue
7 Service directly deposits a refund check into the customer's account with a financial
8 institution. The estimated amount of time under this subdivision may not exceed 14
9 days.

10 (b) The estimated amount of time that a customer is expected to receive a
11 refund anticipation loan under each refund anticipation loan program that the
12 creditor offers or arranges.

13 (c) An indication whether the creditor requires up-front payment of a tax
14 preparation fee for each option and program disclosed under pars. (a) and (b).

15 **(6r)** That the Internal Revenue Service and the department of revenue do not
16 guarantee that they will pay the full amount of an anticipated refund and do not
17 guarantee a specific date that a refund will be deposited into the customer's financial
18 institution account or mailed to the customer.

19 **(7m)** That a refund anticipation loan is a loan and is not the customer's actual
20 income tax refund.

21 **(8)** (a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated
22 amount of the refund and the length of time disclosed under sub. (6g) (a) 3.

23 (b) Distributing a chart titled "representative range of loan amounts" with
24 headings for total loan amount, amount financed, finance charge, estimated
25 payment period, and annual percentage rate. The representative loan amounts shall

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1 be in \$300 increments starting with \$300 and ending with \$3,000 and represent the
2 anticipated refund amount.

3 (9) The following statement: “If your refund anticipation loan is approved, you
4 will be responsible to pay \$.... (creditor inserts amount disclosed under sub. (3)) in
5 charges and fees for the loan, which we will automatically deduct from your tax
6 refund. After we deduct these charges and fees, you will receive approximately \$....
7 (creditor inserts amount).”

8 (10) That the customer has the right to rescind the refund anticipation loan
9 transaction as provided in s. 422.605.

10 **422.602 Disclosures at loan consummation.** At the time that a refund
11 anticipation loan is actually made, a creditor shall make the disclosures required
12 under 12 CFR 226.18. For the purpose of calculating the annual percentage rate at
13 the time the refund anticipation loan is actually made, the disclosure shall be based
14 upon the actual amount of the loan and the length of time disclosed under s. 422.601
15 (6g) (a) 3.

16 **422.603 Prohibitions.** A creditor who makes or arranges a refund
17 anticipation loan to or for a customer may not do any of the following:

18 (1) Misrepresent a material fact or condition of a refund anticipation loan.

19 (2) Fail to process an application for a refund anticipation loan promptly after
20 the customer applies for the loan.

21 (3) Offer or arrange for a refund anticipation loan that, including any charges
22 or fees related to the loan, tax preparation, or electronically filing a tax return,
23 exceeds the amount of the customer’s anticipated tax refund.

24 **422.604 Security interests.** With respect to a refund anticipation loan, a
25 creditor may not take or arrange for taking a security interest in any property of the

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1 customer other than the proceeds of the customer's tax refund and the account into
2 which that tax refund is deposited to secure payment of the loan.

3 **422.605 Recission.** A customer may rescind a refund anticipation loan, before
4 the close of business on the next day of business after the loan is made, by either
5 returning the original check issued for the loan or providing the amount of the loan
6 in cash, money order, or cashier's check to the creditor who made or arranged for the
7 loan. The creditor may not charge the customer any fee for rescinding the loan,
8 except for a fee equal to the administrative cost of establishing an account with a
9 financial institution to electronically receive the refund.

10 **SECTION 12. Initial applicability.**

11 (1) This act first applies to refund anticipation loans, as defined in section
12 421.301 (37m) of the statutes, for which applications are received on the effective
13 date of this subsection.

14 **SECTION 13. Effective date.**

15 (1) This act takes effect on the first day of the 4th month beginning after
16 publication.

17 (END)