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HOUSE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAX RETURN PREPARERS; AMENDING THE DEFINITION OF "TAX RETURN PREPARER" IN THE TAX ADMINISTRATION ACT; PROVIDING CERTAIN REQUIREMENTS FOR TAX RETURN PREPARERS; REQUIRING CERTAIN TAX RETURN PREPARERS TO BE PERMITTED BY THE TAXATION AND REVENUE DEPARTMENT; IMPOSING CIVIL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended by Laws 2019, Chapter 270, Section 2 and by Laws 2019, Chapter 274, Section 10) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases

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1 appear, the singular includes the plural and the plural  
2 includes the singular:

3 A. "automated clearinghouse transaction" means an  
4 electronic credit or debit transmitted through an automated  
5 clearinghouse payable to the state treasurer and deposited with  
6 the fiscal agent of New Mexico;

7 B. "business location" means the location where a  
8 taxpayer's gross receipts and deductions are required to be  
9 reported pursuant to Section 7-1-14 NMSA 1978;

10 C. "department" means the taxation and revenue  
11 department, the secretary or any employee of the department  
12 exercising authority lawfully delegated to that employee by the  
13 secretary;

14 D. "electronic payment" means a payment made by  
15 automated clearinghouse deposit, any funds wire transfer system  
16 or a credit card, debit card or electronic cash transaction  
17 through the internet;

18 E. "employee of the department" means any employee  
19 of the department, including the secretary, or any person  
20 acting as agent or authorized to represent or perform services  
21 for the department in any capacity with respect to any law made  
22 subject to administration and enforcement under the provisions  
23 of the Tax Administration Act;

24 F. "financial institution" means any state or  
25 federally chartered, federally insured depository institution;

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1           G. "hearing officer" means a person who has been  
2 designated by the chief hearing officer to serve as a hearing  
3 officer and who is:

- 4                   (1) the chief hearing officer;  
5                   (2) an employee of the administrative hearings  
6 office; or  
7                   (3) a contractor of the administrative  
8 hearings office;

9           H. "Internal Revenue Code" means the Internal  
10 Revenue Code of 1986, as that code may be amended or its  
11 sections renumbered;

12           I. "levy" means the lawful power, hereby invested  
13 in the secretary, to take into possession or to require the  
14 present or future surrender to the secretary or the secretary's  
15 delegate of any property or rights to property belonging to a  
16 delinquent taxpayer;

17           J. "local option gross receipts tax" means a tax  
18 authorized to be imposed by a county or municipality upon a  
19 taxpayer's gross receipts, as that term is defined in the Gross  
20 Receipts and Compensating Tax Act, and required to be collected  
21 by the department at the same time and in the same manner as  
22 the gross receipts tax;

23           K. "managed audit" means a review and analysis  
24 conducted by a taxpayer under an agreement with the department  
25 to determine the taxpayer's compliance with a tax administered

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1 pursuant to the Tax Administration Act and the presentation of  
2 the results to the department for assessment of tax found to be  
3 due;

4 L. "net receipts" means the total amount of money  
5 paid by taxpayers to the department in a month pursuant to a  
6 tax or tax act less any refunds disbursed in that month with  
7 respect to that tax or tax act;

8 M. "overpayment" means an amount paid, pursuant to  
9 any law subject to administration and enforcement under the  
10 provisions of the Tax Administration Act, by a person to the  
11 department or withheld from the person in excess of tax due  
12 from the person to the state at the time of the payment or at  
13 the time the amount withheld is credited against tax due;

14 N. "paid" includes the term "paid over";

15 O. "pay" includes the term "pay over";

16 P. "payment" includes the term "payment over";

17 Q. "person" means any individual, estate, trust,  
18 receiver, cooperative association, club, corporation, company,  
19 firm, partnership, limited liability company, limited liability  
20 partnership, joint venture, syndicate, other association or  
21 gas, water or electric utility owned or operated by a county or  
22 municipality; "person" also means, to the extent permitted by  
23 law, a federal, state or other governmental unit or  
24 subdivision, or an agency, department or instrumentality  
25 thereof; and "person", as used in Sections 7-1-72 through

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1 7-1-74 NMSA 1978, also includes an officer or employee of a  
2 corporation, a member or employee of a partnership or any  
3 individual who, as such, is under a duty to perform any act in  
4 respect of which a violation occurs;

5 R. "property" means property or rights to property;

6 S. "property or rights to property" means any  
7 tangible property, real or personal, or any intangible property  
8 of a taxpayer;

9 T. "return" means any tax or information return,  
10 application or form, declaration of estimated tax or claim for  
11 refund, including any amendments or supplements to the return,  
12 required or permitted pursuant to a law subject to  
13 administration and enforcement pursuant to the Tax  
14 Administration Act and filed with the secretary or the  
15 secretary's delegate by or on behalf of any person;

16 U. "return information" means a taxpayer's name,  
17 address, government-issued identification number and other  
18 identifying information; any information contained in or  
19 derived from a taxpayer's return; any information with respect  
20 to any actual or possible administrative or legal action by an  
21 employee of the department concerning a taxpayer's return, such  
22 as audits, managed audits, denial of credits or refunds,  
23 assessments of tax, penalty or interest, protests of  
24 assessments or denial of refunds or credits, levies or liens;  
25 or any other information with respect to a taxpayer's return or

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1 tax liability that was not obtained from public sources or that  
2 was created by an employee of the department; but "return  
3 information" does not include statistical data or other  
4 information that cannot be associated with or directly or  
5 indirectly identify a particular taxpayer;

6 V. "secretary" means the secretary of taxation and  
7 revenue and, except for purposes of Subsection B of Section  
8 7-1-4 NMSA 1978, also includes the deputy secretary or a  
9 division director or deputy division director delegated by the  
10 secretary;

11 W. "secretary or the secretary's delegate" means  
12 the secretary or any employee of the department exercising  
13 authority lawfully delegated to that employee by the secretary;

14 X. "security" means money, property or rights to  
15 property or a surety bond;

16 Y. "state" means any state of the United States,  
17 the District of Columbia, the commonwealth of Puerto Rico and  
18 any territory or possession of the United States;

19 Z. "tax" means the total amount of each tax imposed  
20 and required to be paid, withheld and paid or collected and  
21 paid under provision of any law made subject to administration  
22 and enforcement according to the provisions of the Tax  
23 Administration Act, including the amount of any interest or  
24 civil penalty relating thereto; "tax" also means any amount of  
25 any abatement of tax made or any credit, rebate or refund paid

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1 or credited by the department under any law subject to  
2 administration and enforcement under the provisions of the Tax  
3 Administration Act to any person contrary to law, including the  
4 amount of any interest or civil penalty relating thereto;

5 AA. "tax return preparer" means a person who  
6 prepares for others for compensation, or who employs one or  
7 more persons to prepare for others for compensation, [~~any~~  
8 ~~return of income tax, a substantial portion of any return of~~  
9 ~~income tax, any claim for refund with respect to income tax or~~  
10 ~~a substantial portion of any claim for refund with respect to~~  
11 ~~income tax; provided that a person shall not be a "tax return~~  
12 ~~preparer" merely because such person]~~ an income tax return or  
13 claim for refund of income tax or a substantial portion of an  
14 income tax return or claim for refund of income tax. "Tax  
15 return preparer" does not include:

16 (1) a person or firm licensed or permitted to  
17 practice public accountancy pursuant to the 1999 Public  
18 Accountancy Act;

19 (2) an employee of a person or firm described  
20 in Paragraph (1) of this subsection that prepares a return  
21 under the supervision of a person described in that paragraph;

22 [~~(1)~~] (3) a person who furnishes typing,  
23 reproducing or other mechanical assistance;

24 [~~(2) is~~] (4) an employee who prepares an  
25 income tax return or claim for refund with respect to an income

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1 tax return of the employer, or of an officer or employee of the  
2 employer, by whom the person is regularly and continuously  
3 employed; or

4 [~~3~~] (5) a person who prepares as a trustee  
5 or other fiduciary an income tax return or claim for refund  
6 with respect to income tax for any person; and

7 BB. "taxpayer" means a person liable for payment of  
8 any tax; a person responsible for withholding and payment or  
9 for collection and payment of any tax; a person to whom an  
10 assessment has been made, if the assessment remains unabated or  
11 the amount thereof has not been paid; or a person who entered  
12 into a special agreement pursuant to Section 7-1-21.1 NMSA 1978  
13 to assume the liability of gross receipts tax or governmental  
14 gross receipts tax of another person and the special agreement  
15 was approved by the secretary pursuant to the Tax  
16 Administration Act."

17 SECTION 2. Section 7-1-71.1 NMSA 1978 (being Laws 1985,  
18 Chapter 65, Section 19, as amended) is amended to read:

19 "7-1-71.1. TAX RETURN PREPARERS--REQUIREMENTS--CIVIL  
20 PENALTIES.--

21 A. The secretary [~~may~~] shall require by [~~regulation~~  
22 ~~any~~] rule a tax return preparer, with respect to any return of  
23 income tax or claim for refund with respect to income tax, to:

24 (1) sign [~~such~~] the return or claim for  
25 refund; and

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1           ~~[B. The secretary may require by regulation any tax~~  
2 ~~return preparer with respect to any return of income tax or~~  
3 ~~claim for refund with respect to income tax to]~~

4           (2) furnish the tax return preparer's federal  
5 preparer tax identification number on [~~such~~] the return or  
6 claim for refund.

7           ~~[G. Any]~~ B. A tax return preparer [~~with respect to~~  
8 ~~any return of income tax or claim for refund with respect to~~  
9 ~~income tax who is required by regulations promulgated by the~~  
10 ~~secretary to sign a return or claim for refund or to furnish an~~  
11 ~~identification number on such return or claim for refund and]~~  
12 who fails to sign such return or claim for refund or to furnish  
13 an identification number on such return or claim for refund  
14 pursuant to Subsection A of this section shall pay a penalty of  
15 [~~twenty-five dollars (\$25.00)] fifty dollars (\$50.00) for such  
16 failure unless it is shown that such failure is due to  
17 reasonable cause and not due to willful [~~neglect~~] or reckless  
18 conduct. The penalty that may be imposed on a tax return  
19 preparer with respect to income tax returns or claims for  
20 refund filed during any calendar year shall not exceed  
21 twenty-five thousand dollars (\$25,000) per tax return preparer.~~

22           C. In a court of competent jurisdiction, the  
23 secretary may commence suit to enjoin a tax return preparer  
24 from further engaging in conduct described in Subsection B of  
25 this section or from further action as a tax return preparer.

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1           D. In an action commenced pursuant to Subsection C  
2 of this section, the court may enjoin the tax return preparer  
3 from further engaging in conduct specified in Subsection B of  
4 this section if the court finds that injunctive relief is  
5 appropriate to prevent the recurrence of the conduct. The  
6 court may enjoin conduct when a tax return preparer has been  
7 shown to have:

8                   (1) prepared an income tax return or claim for  
9 refund that includes an understatement of a taxpayer's  
10 liability due to an unreasonable position;

11                   (2) prepared an income tax return or claim for  
12 refund that includes an understatement of a taxpayer's  
13 liability due to the tax return preparer's willful or reckless  
14 conduct;

15                   (3) where required, failed to furnish a copy  
16 of the income tax return or claim for refund;

17                   (4) where required, failed to sign the income  
18 tax return or claim for refund;

19                   (5) where required, failed to furnish the tax  
20 return preparer's identification number;

21                   (6) where required, failed to retain a copy of  
22 the income tax return;

23                   (7) where required by due diligence  
24 requirements imposed by department rule, failed to be diligent  
25 in determining eligibility for tax benefits;

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1                   (8) negotiated a check issued to a taxpayer by  
2 the department without the permission of the taxpayer;

3                   (9) engaged in conduct subject to a criminal  
4 penalty pursuant to Sections 7-1-72 and 7-1-73 NMSA 1978;

5                   (10) misrepresented the tax return preparer's  
6 eligibility to practice before the department or otherwise  
7 misrepresented the tax return preparer's experience or  
8 education;

9                   (11) guaranteed the payment of an income tax  
10 refund or the allowance of an income tax credit; or

11                   (12) engaged in any other fraudulent or  
12 deceptive conduct that substantially interferes with the proper  
13 administration of the tax laws of the state.

14                   E. If the court finds that a tax return preparer  
15 has continually or repeatedly engaged in conduct described in  
16 Subsection D of this section and that an injunction prohibiting  
17 the conduct would not be sufficient to prevent the person's  
18 interference with the proper administration of the tax laws of  
19 state, the court may enjoin the person from acting as a tax  
20 return preparer in the state.

21                   F. The fact that a tax return preparer has been  
22 enjoined from preparing income tax returns or claims for refund  
23 for the United States or any other state in the five years  
24 preceding the petition for an injunction shall establish a  
25 prima facie case for an injunction to be issued pursuant to

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1 Subsection E of this section.

2 G. The secretary shall annually publish on the  
3 department's website a summary of the department's enjoiment  
4 actions.

5 [~~D.—Any~~] H. A tax return preparer who endorses or  
6 otherwise negotiates, either directly or through an agent, any  
7 warrant in respect of the Income Tax Act issued to a taxpayer,  
8 other than the tax return preparer, shall pay a penalty of five  
9 hundred dollars (\$500) with respect to each such warrant;  
10 provided that the provisions of this subsection shall not apply  
11 with respect to the deposit by a bank, savings and loan  
12 association, credit union or other financial corporation of the  
13 full amount of the warrant in the taxpayer's account for the  
14 benefit of the taxpayer.

15 [~~E. For the purposes of this section, any~~] I. A  
16 penalty determined to be due pursuant to this section shall be  
17 considered to be tax due.

18 J. As used in this section:

19 (1) "state" means a state of the United  
20 States, the District of Columbia, Puerto Rico, the United  
21 States Virgin Islands or any territory or insular possession  
22 subject to the jurisdiction of the United States;

23 (2) "unreasonable position" means  
24 "unreasonable position" pursuant to Section 6694(a)(2) of the  
25 Internal Revenue Code; and



1 this section, shall engage in the business of, solicit business  
2 as or advertise as furnishing tax preparation services or make  
3 representations to be a tax return preparer without a permit  
4 issued by the department pursuant to this section. An  
5 applicant for a permit or renewal of a permit shall apply by  
6 electronic means in the form and manner prescribed by the  
7 department.

8 B. A person applying for a permit shall:

9 (1) be eighteen years of age or older;

10 (2) have obtained a high school diploma or  
11 high school equivalency credential;

12 (3) possess a tax identification number issued  
13 by the federal Internal Revenue Service that shall be used by  
14 the person for each income tax return the person is required to  
15 sign as a tax return preparer; and

16 (4) beginning January 1, 2023, submit with an  
17 application for permit a certification of completion of an  
18 annual filing season program administered by the federal  
19 Internal Revenue Service.

20 C. The secretary may issue a permit pursuant to  
21 this section to an applicant that presents evidence  
22 satisfactory to the department that the applicant is authorized  
23 to act as a tax return preparer in a state that has  
24 professional requirements substantially similar to the  
25 requirements for tax return preparers in this state.

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1           D. No later than sixty days after receipt of an  
2 application, the department shall provide written notice to the  
3 applicant of the secretary's decision approving or denying an  
4 application for issuance or renewal of a permit. The notice  
5 shall include the right of the tax return preparer to dispute  
6 the denial of issuance or renewal of a permit pursuant to  
7 Subsection P of this section.

8           E. The department may impose a reasonable fee to  
9 cover the cost of administering the permit, not to exceed one  
10 hundred dollars (\$100) for an initial application and fifty  
11 dollars (\$50.00) for a renewal application.

12           F. If at any time following the issuance or renewal  
13 of a permit issued pursuant to this section, any information  
14 provided to the department by an applicant is no longer  
15 accurate, the applicant shall promptly provide updated  
16 information to the department.

17           G. Issuance of a permit pursuant to this section  
18 shall not be advertised as an endorsement by the department of  
19 a tax return preparer's services.

20           H. The secretary may impose on a person that has  
21 not been issued a permit pursuant to this section a civil  
22 penalty of one hundred dollars (\$100) for each day the  
23 secretary finds the person to have provided tax return  
24 preparation services.

25           I. If a person or business offering tax return

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1 preparation services employs an individual to provide tax  
2 return preparation services and the individual has not been  
3 issued a permit as required pursuant to this section, the  
4 secretary may impose on the employing person or business a  
5 civil penalty of five hundred dollars (\$500) per violation.

6 J. If a tax return preparer ceases to engage in tax  
7 return preparation services or in advising or assisting in tax  
8 return preparation services, the tax return preparer may apply  
9 to the department for inactive permit status. A permit that is  
10 granted inactive status shall not require renewal.  
11 Reactivation of a permit shall be subject to the requirements  
12 of Subsections B and E of this section.

13 K. A tax return preparer whose permit is inactive  
14 shall not act as a tax return preparer or advertise the tax  
15 return preparer's status as being permitted to act as a tax  
16 return preparer.

17 L. The department shall maintain on the  
18 department's website a listing accessible to the public of the  
19 name and principal business address of each tax return preparer  
20 permitted pursuant to this section.

21 M. A tax return preparer shall not do or commit any  
22 of the following acts or omissions, and the secretary may deny  
23 the issuance of a permit and may suspend or revoke a permit for  
24 the following acts or omissions or for a violation of any  
25 provision of this section:

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1 (1) engage in a criminal act resulting in  
2 conviction of the tax return preparer or in unprofessional  
3 conduct resulting in final disciplinary action by the federal  
4 government, any state or jurisdiction of the United States, any  
5 other governmental agency or any professional licensing board  
6 or similar entity; provided that the act or conduct is  
7 substantially related to qualification as a tax return  
8 preparer;

9 (2) procure or attempt to procure a permit  
10 pursuant to this section by material misrepresentation or  
11 fraud; or

12 (3) violate, attempt to violate or assist in  
13 or abet a violation of any provision of this section.

14 N. The secretary may discipline a tax return  
15 preparer by:

16 (1) issuing a written warning;

17 (2) suspending the tax return preparer's  
18 permit for a period not to exceed one year; or

19 (3) revoking the tax return preparer's permit.

20 O. The secretary shall issue a written order  
21 notifying a tax return preparer of the suspension or revocation  
22 of the tax return preparer's permit for good cause shown. The  
23 notice shall include the right of the tax return preparer to  
24 dispute the suspension or revocation pursuant to Subsection P  
25 of this section.

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1           P. A person may dispute the denial, suspension or  
2 revocation of a permit required pursuant to this section by  
3 filing with the department a written protest against the action  
4 or inaction by the department. Every protest shall identify  
5 the person and the action or inaction that is in dispute, the  
6 grounds for the protest and the affirmative relief requested.  
7 The statement of grounds for protest shall specify individual  
8 grounds upon which the protest is based and a summary statement  
9 of the evidence expected to be produced supporting each ground  
10 asserted, if any; provided that the person may supplement the  
11 statement at any time prior to a hearing conducted on the  
12 protest pursuant to the provisions of the Administrative  
13 Hearings Office Act. The secretary may, in appropriate cases,  
14 provide for an informal conference before the administrative  
15 hearings office sets a hearing of the protest.

16           Q. A protest by a person shall be filed within  
17 thirty days of the date of the mailing or verbal notification  
18 of the action proposed to be taken by the department. If a  
19 protest is not filed within the time required for filing a  
20 protest, the secretary may proceed with the action proposed by  
21 the department.

22           R. The provisions of this section do not apply to:  
23               (1) a person or firm licensed or permitted to  
24 practice public accountancy pursuant to the 1999 Public  
25 Accountancy Act;

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1 (2) an employee of a person or firm described  
2 in Paragraph (1) of this subsection that prepares a return  
3 under the supervision of a person described in that paragraph;

4 (3) a person who furnishes typing, reproducing  
5 or other mechanical assistance;

6 (4) an employee who prepares an income tax  
7 return or claim for refund with respect to an income tax return  
8 of the employer, or of an officer or employee of the employer,  
9 by whom the person is regularly and continuously employed;

10 (5) a person who prepares as a trustee or  
11 other fiduciary an income tax return or claim for refund with  
12 respect to income tax for any person;

13 (6) an attorney admitted to practice law in  
14 this state or another state or jurisdiction of the United  
15 States and any person engaged in providing tax preparation  
16 services under the supervision of the attorney;

17 (7) a person enrolled to practice before the  
18 federal Internal Revenue Service pursuant to federal  
19 regulations;

20 (8) person employed by a local, state or  
21 federal governmental agency while engaged in the performance of  
22 the person's official duties;

23 (9) a qualified volunteer tax return preparer  
24 for the federal Internal Revenue Service, including a tax  
25 return preparer sponsored by a federal tax counseling for the

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1 elderly program or a federal volunteer income tax assistance  
2 program;

3 (10) a tax return preparer who prepares fewer  
4 than ten returns for compensation in the calendar year; and

5 (11) a person serving as an employee of or  
6 assistant to a tax return preparer or other person described in  
7 Paragraphs (1) through (10) of this subsection, in the  
8 performance of official duties for the tax return preparer or  
9 other person.

10 S. As used in this section, "tax return preparation  
11 services" means the services of a tax return preparer, in  
12 regard to the preparation or assistance in the preparation of  
13 another person's income tax return or claim for refund of  
14 income tax, for a fee or other consideration."

15 SECTION 5. Section 7-1B-9 NMSA 1978 (being Laws 2015,  
16 Chapter 73, Section 9) is amended to read:

17 "7-1B-9. MOTOR VEHICLE ADMINISTRATIVE HEARINGS--TAX  
18 RETURN PREPARER PERMIT--PROCEDURES.--

19 A. A person may dispute the denial of or failure to  
20 either allow or deny a license, permit, placard or registration  
21 provided for in the Motor Vehicle Code or a permit provided for  
22 in Section 4 of this 2021 act. Upon timely receipt of a  
23 protest, the chief hearing officer shall promptly designate a  
24 hearing officer to conduct a hearing and shall set a date for  
25 the hearing. On that date, the hearing officer shall hear the

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1 protest.

2 B. A person may appear at a hearing set pursuant to  
3 the provisions of Subsection A of this section for the person's  
4 self or be represented by a bona fide employee or an attorney.  
5 A hearing shall not be open to the public except if held  
6 pursuant to the provisions of the Implied Consent Act or upon  
7 request of the person. A hearing officer may postpone or  
8 continue a hearing.

9 C. At the beginning of the hearing, the hearing  
10 officer shall inform the person of the person's right to  
11 representation. Within thirty days after the hearing, the  
12 hearing officer shall inform the protestant in writing of the  
13 decision and of the protestant's right to, and the requirements  
14 for perfection of, an appeal from the decision to the district  
15 court and of the consequences of a failure to appeal. The  
16 written decision shall embody an order granting or denying the  
17 relief requested or granting such part of the relief requested,  
18 as appropriate.

19 D. If the protestant or the secretary of taxation  
20 and revenue is dissatisfied with the decision and order of the  
21 hearing officer, the party may appeal pursuant to the  
22 provisions of Section 39-3-1.1 NMSA 1978.

23 E. No court of this state has jurisdiction to  
24 entertain a proceeding by any person in which the person calls  
25 into question the application to that person of any provision

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1 of the Motor Vehicle Code, except as a consequence of the  
2 appeal by that person to the district court from the action and  
3 order of the hearing officer as provided for in this section.

4 F. Nothing in this section shall be construed to  
5 authorize a criminal proceeding or to authorize an  
6 administrative protest of the issuance of a subpoena or  
7 summons."

8 SECTION 6. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2022.