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SENATE BILL 340

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Howie C. Morales

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE TAX REFUND  
ANTICIPATION LOAN ACT; REQUIRING THE LICENSURE OF TAX REFUND  
ANTICIPATION LOAN FACILITATORS; REQUIRING DISCLOSURES REGARDING  
TAX REFUND ANTICIPATION LOANS AND CHECKS; PROHIBITING CERTAIN  
PRACTICES; PROVIDING FOR PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Tax Refund Anticipation Loan Act".

Section 2. DEFINITIONS.--As used in the Tax Refund  
Anticipation Loan Act:

A. "advertise" means to produce, distribute,  
broadcast or otherwise display or have displayed written  
materials, oral statements or visual materials describing a  
facilitator's products or services;

1           B. "creditor" means a person who makes a tax refund  
2 anticipation loan or who takes assignment of a tax refund  
3 anticipation loan;

4           C. "customer" means a resident of New Mexico who  
5 files a federal or state personal income tax return and who  
6 applies for a tax refund anticipation loan;

7           D. "department" means the regulation and licensing  
8 department;

9           E. "director" means the director of the division;

10          F. "division" means the financial institutions  
11 division of the department;

12          G. "facilitate tax refund anticipation loans" means  
13 to:

14                 (1) make, process, receive or accept for  
15 delivery an application for a tax refund anticipation loan;

16                 (2) issue a check in payment for the proceeds  
17 of a tax refund anticipation loan; or

18                 (3) act in any other manner to further the  
19 making of a tax refund anticipation loan;

20          H. "facilitator" means a person acting  
21 individually, or in conjunction or cooperation with another  
22 person for money or other consideration, who facilitates a tax  
23 refund anticipation loan or tax refund anticipation check for a  
24 customer. A facilitator shall be primarily engaged in the  
25 business of preparing tax returns and shall be authorized by

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1 the federal internal revenue service to file federal income tax  
2 returns electronically;

3 I. "person" includes an individual, copartner,  
4 association, trust, corporation and any other legal entity;

5 J. "subsidiary" means:

6 (1) any company twenty-five percent or more of  
7 whose voting shares are directly or indirectly owned or  
8 controlled by a banking corporation, savings and loan  
9 association or credit union or are held by them with power to  
10 vote;

11 (2) any company the election of a majority of  
12 whose directors is controlled in any manner by a banking  
13 corporation, savings and loan association or credit union; or

14 (3) any company with respect to the management  
15 of policies of which a banking corporation, savings and loan  
16 association or credit union has the power, directly or  
17 indirectly, to exercise a controlling influence, as determined  
18 by the director;

19 K. "tax refund anticipation check" means a check or  
20 other payment mechanism:

21 (1) representing the proceeds of a customer's  
22 federal or state personal income tax refund;

23 (2) issued by a depository institution or  
24 other person that received a direct deposit of the consumer's  
25 federal or state personal income tax refund or credits; and

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1 (3) for which the consumer has paid a fee or  
2 other consideration; and

3 L. "tax refund anticipation loan" means a loan that  
4 is secured by or that the lender arranges to be repaid directly  
5 or indirectly from the proceeds of a customer's federal or  
6 state personal income tax refund.

7 Section 3. LICENSE REQUIRED--APPLICABILITY OF ACT.--

8 A. A person shall not facilitate tax refund  
9 anticipation loans in New Mexico or facilitate tax refund  
10 anticipation loans for customers in New Mexico without first  
11 having obtained a license pursuant to the Tax Refund  
12 Anticipation Loan Act.

13 B. A banking corporation, savings and loan  
14 association or credit union and its subsidiaries operating  
15 under the laws of the United States or of a state is exempt  
16 from the licensing requirements of the Tax Refund Anticipation  
17 Loan Act.

18 Section 4. LICENSE APPLICATION--FEES--LICENSE ISSUANCE--  
19 LICENSE RENEWAL.--

20 A. An application for a license to facilitate tax  
21 refund anticipation loans in New Mexico or for a renewal of a  
22 license shall be made under oath, in writing in a form  
23 prescribed by the director, and shall include:

24 (1) the full name and business address of the  
25 applicant;

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1 (2) evidence that the applicant is authorized  
2 by the federal internal revenue service to electronically file  
3 federal income tax returns;

4 (3) a list of the locations at which the  
5 applicant engages in or will engage in the business of  
6 facilitating tax refund anticipation loans; and

7 (4) any other pertinent data that the director  
8 may require by regulation.

9 B. An application for a license and for the renewal  
10 of a license shall be accompanied by an application or renewal  
11 fee of one thousand dollars (\$1,000). No license application  
12 or renewal fee shall be refunded.

13 C. Upon the filing of a complete application,  
14 whether it is an initial or a renewal application, the director  
15 shall investigate the facts concerning the application and the  
16 requirements provided in this section. An applicant for an  
17 initial license or for a license renewal shall, within twenty  
18 days of receipt of a written request by the director, furnish  
19 the director in writing and under oath all additional  
20 information required by the director that may be relevant or,  
21 in the opinion of the director, helpful in conducting the  
22 investigation. Failure to comply with the director's  
23 requirement for supplemental information or the willful  
24 furnishing of false information is sufficient grounds for  
25 denial of a license or license renewal. The willful and

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1 intentional furnishing of false or misleading information to  
2 the director shall constitute grounds for the denial of any  
3 license or license renewal application and for the suspension  
4 or revocation of any license in accordance with the procedures  
5 for license suspension or revocation as set forth in the Tax  
6 Refund Anticipation Loan Act.

7 D. A written application for the renewal of a  
8 license shall be filed on or before November 30 of the year  
9 following its date of issue. In the event that an application  
10 for the renewal of a license is delinquent, the licensee shall  
11 also pay a delinquency fee of ten dollars (\$10.00) per day for  
12 each day the licensee is delinquent in filing the renewal  
13 application.

14 E. The director shall grant or deny an application  
15 for an initial or renewal license within sixty days from the  
16 filing of a complete application with the required information  
17 and fees, unless the period is extended by written agreement  
18 between the applicant and the director.

19 F. Not more than one place of business shall be  
20 maintained under the same license; but the director may issue  
21 additional licenses to the same licensee upon compliance with  
22 all the provisions of the Tax Refund Anticipation Loan Act  
23 governing issuance of a single license; provided that when more  
24 than one license is issued to any person, each licensed office  
25 of the person shall be operated under the same trade name.

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1           G. No licensee shall facilitate tax refund  
2 anticipation loans under any name, or at any place of business  
3 within this state, other than that stated in the license.

4           H. Each license shall state the address at which  
5 the business is to be conducted and shall state fully the name  
6 of the licensee if an individual, and if a corporation the  
7 name, date and place of incorporation, and if a copartnership,  
8 trust or association or other legal entity, the names of all  
9 the copartners and all the members and beneficiaries thereof,  
10 and the trade name under which the licensee may desire to  
11 conduct such business. Each license shall be kept  
12 conspicuously posted in the licensed place of business and  
13 shall not be transferable or assignable.

14           I. By accepting a license that is issued or renewed  
15 or by acting as a facilitator licensed pursuant to the Tax  
16 Refund Anticipation Loan Act, a licensee shall by such actions  
17 be deemed to have consented to be bound by the provisions of  
18 that act and all lawful requirements, regulations and orders of  
19 the director promulgated or issued pursuant to that act.

20           Section 5. DUTIES OF LICENSEES--DISCLOSURES.--

21           A. A facilitator shall disclose the following  
22 information to the customer at the time that an application for  
23 a tax refund anticipation loan or a tax refund anticipation  
24 check is submitted:

- 25                   (1) the tax refund anticipation loan fee

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1 schedule that is used by the facilitator; and

2 (2) a written statement or, if the transaction  
3 is conducted using electronic commerce, an electronic statement  
4 containing the following information:

5 (a) that the tax refund anticipation  
6 loan is a loan that creates a legally enforceable debt and that  
7 the loan is not the customer's actual tax refund;

8 (b) that the customer may file a  
9 personal income tax return electronically without applying for  
10 the tax refund anticipation loan and that the federal internal  
11 revenue service and the taxation and revenue department do not  
12 charge for the electronic filing of personal income tax  
13 returns;

14 (c) that neither the federal internal  
15 revenue service nor the taxation and revenue department  
16 guarantees that a person will be paid the full amount of an  
17 anticipated tax refund nor do they guarantee that an  
18 anticipated tax refund will be deposited into a person's  
19 account or mailed to a person on a specific date;

20 (d) that the customer is responsible for  
21 repayment of the tax refund anticipation loan and payment of  
22 related fees and charges if the anticipated tax refund is not  
23 paid in the full anticipated amount;

24 (e) the estimated time frame within  
25 which the proceeds of the tax refund anticipation loan will be

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1 paid to the customer if the loan is approved;

2 (f) the fee or charge that will be  
3 imposed, if any, if the tax refund anticipation loan is not  
4 approved;

5 (g) the estimated total fees and charges  
6 to be incurred by the customer if the tax refund anticipation  
7 loan is approved;

8 (h) the estimated annual percentage rate  
9 for the tax refund anticipation loan; and

10 (i) for tax refund anticipation loans or  
11 for tax refund anticipation checks, a written or electronic  
12 document containing the following: 1) a legend, centered, in  
13 bold capital letters in eighteen-point type stating "NOTICE";  
14 and 2) in at least twelve-point type the statement "This is a  
15 loan. This loan is borrowing money against your tax refund.  
16 If your tax refund is less than expected, you will be required  
17 to repay the entire amount of the loan. If your refund is  
18 delayed, you may incur additional fees or costs. YOU CAN GET  
19 YOUR PERSONAL INCOME TAX REFUND JUST AS FAST WITHOUT GETTING  
20 THIS LOAN IF YOU FILE YOUR RETURN ELECTRONICALLY. You can have  
21 your tax return filed electronically and your refund direct  
22 deposited into your own bank account without obtaining a loan  
23 or other paid product."

24 B. The full disclosures required pursuant to this  
25 section shall be made in a fourteen-point or larger bold type

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1 and shall be provided in English, Spanish or other language as  
2 determined by the director.

3 C. The full disclosures required pursuant to this  
4 section shall be prominently posted at any place of business at  
5 which a person facilitates a tax refund anticipation loan for  
6 customers. The posting shall be at least fourteen inches by  
7 twenty inches in size, shall be in at least sixty-point font  
8 and shall be posted in English, Spanish or other language as  
9 determined by the director.

10 D. If a customer applies for a tax refund  
11 anticipation loan or a tax refund anticipation check, a  
12 facilitator shall promptly notify the customer in writing if  
13 the application is denied and shall provide the customer with a  
14 written or electronic copy of the tax refund anticipation loan  
15 or tax refund anticipation check application and, if approved,  
16 of any tax refund anticipation loan or tax refund anticipation  
17 check agreement.

18 Section 6. PROHIBITED ACTIVITIES.--A facilitator shall  
19 not:

20 A. engage in unfair or deceptive acts or practices  
21 in the facilitating of a tax refund anticipation loan or tax  
22 refund anticipation check, including misrepresenting a factor  
23 or condition of such loan or check or making any oral  
24 statements contradicting any of the information required to be  
25 disclosed pursuant to the Tax Refund Anticipation Loan Act;

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1           B. fail to comply with any provision of the Tax  
2 Refund Anticipation Loan Act;

3           C. threaten to take any action that is prohibited  
4 by the Tax Refund Anticipation Loan Act or by any other law;

5           D. include any of the following provisions in any  
6 document provided or signed in connection with a tax refund  
7 anticipation loan or tax refund anticipation check, including a  
8 loan or check application or agreement:

9                   (1) a hold harmless clause;

10                   (2) a confession of judgment clause;

11                   (3) a waiver of the right to a jury trial, if  
12 applicable, in any action brought by or against the customer;

13                   (4) an assignment of or order for payment of  
14 wages or other compensation for services;

15                   (5) a provision in which the customer agrees  
16 not to:

17                           (a) assert any claim or defense arising  
18 out of a tax refund anticipation loan agreement or tax refund  
19 anticipation check agreement; or

20                           (b) seek any remedies pursuant to  
21 Section 10 of the Tax Refund Anticipation Loan Act;

22                   (6) a waiver of any provision of the Tax  
23 Refund Anticipation Loan Act; any such waiver shall be deemed  
24 null, void and of no effect;

25                   (7) a waiver of the right to injunctive,

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1 declaratory or other equitable relief, or relief on a  
2 class-wide basis;

3 (8) a provision requiring that any aspect of a  
4 resolution of a dispute between the parties to a tax refund  
5 anticipation loan agreement or tax refund anticipation check  
6 agreement be kept confidential. This provision shall not  
7 affect the right of the parties to agree that certain specified  
8 information is a trade secret or otherwise confidential or to  
9 later agree, after the dispute arises, to keep a resolution  
10 confidential; or

11 (9) a mandatory arbitration clause;

12 E. take or arrange for a lender to take a security  
13 interest in any property of a customer other than the proceeds  
14 of the customer's federal or state personal income tax refund  
15 to secure repayment of a tax refund anticipation loan or tax  
16 refund anticipation check;

17 F. collect on an outstanding or delinquent tax  
18 refund anticipation loan or tax refund anticipation check for  
19 any other lender, creditor or assignee;

20 G. facilitate, refer or solicit customers on behalf  
21 of a third party engaged in check cashing for a fee, or permit  
22 third party check cashing for a fee in any place of business  
23 identified on the facilitator's license application; or

24 H. make a misrepresentation of fact in obtaining or  
25 attempting to obtain a license pursuant to the Tax Refund

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1 Anticipation Loan Act.

2 Section 7. ADVERTISING.--

3 A. A facilitator shall not advertise tax refund  
4 anticipation loans without including the following language:  
5 "You can get your personal income tax refund without a loan or  
6 without incurring fees or costs if you file electronically and  
7 authorize the direct deposit of your refund into your bank  
8 account."

9 B. A facilitator shall not advertise tax refund  
10 anticipation checks without including the following language:  
11 "A tax refund anticipation check is a loan. You can get your  
12 personal income tax refund without a loan or without incurring  
13 fees or costs if you file electronically and authorize the  
14 direct deposit of your refund into your bank account."

15 C. For print advertisements, the information  
16 required in Subsections A and B of this section shall be in a  
17 type size that is at least one-half as large as the largest  
18 type size used in the advertisement. For radio and television  
19 advertisements, the information required in Subsections A and B  
20 of this section shall receive at least seven seconds of air  
21 time.

22 Section 8. DUTIES OF DIRECTOR.--

23 A. The director may at any time examine all the  
24 books, records, papers, assets and liabilities of every kind of  
25 a licensee to determine the licensee's financial condition and

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1 business methods. The licensee shall pay a fee of one hundred  
2 fifty dollars (\$150) for each day or any portion of a day  
3 thereof for the conduct of the examination.

4 B. The director may at any time suspend or revoke a  
5 license on any ground on which the director might refuse to  
6 grant a license, for failure to pay an annual fee or for the  
7 violation of any provision of the Tax Refund Anticipation Loan  
8 Act.

9 C. No license shall be denied except on fifteen  
10 days' notice to the applicant. Upon receipt of notice, the  
11 applicant may, within five days of its receipt, make written  
12 demand for a hearing at the applicant's cost. The director  
13 shall thereafter with reasonable promptness hear and determine  
14 the matter, and the director's decision shall be subject to  
15 judicial review in accordance with Section 58-1-45 NMSA 1978.

16 D. The director may promulgate rules for the  
17 administration and enforcement of the Tax Refund Anticipation  
18 Loan Act.

19 Section 9. REVOCATION, SUSPENSION AND REINSTATEMENT OF  
20 LICENSE.--

21 A. The director shall not suspend or revoke a  
22 license issued pursuant to the Tax Refund Anticipation Loan Act  
23 unless the director first serves upon the licensee a written  
24 notice that states in general the grounds therefor, together  
25 with the time and place of hearing, which shall be held not

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1 less than fifteen days after the mailing of such notice to the  
2 licensee by registered mail as provided in this section.

3 Following the hearing, the director shall suspend or revoke a  
4 license if the director finds that:

5 (1) the licensee, either knowingly or without  
6 the exercise of due care to prevent the same, has violated a  
7 provision of the Tax Refund Anticipation Loan Act or a  
8 regulation or order made pursuant to and within the authority  
9 of that act; or

10 (2) a fact or condition exists at the time of  
11 the proposed suspension or revocation that, if it had existed  
12 at the time of the initial application for the license or for a  
13 renewal thereof, clearly would have justified the director in  
14 refusing to issue or renew the license.

15 B. If the director finds that probable cause exists  
16 and that enforcement of the Tax Refund Anticipation Loan Act  
17 requires immediate suspension of a license pending  
18 investigation, the director may, upon three days' written  
19 notice by registered mail and a hearing, enter an order  
20 suspending a license for a period not exceeding thirty days.

21 C. Whenever the director revokes or suspends a  
22 license issued pursuant to the Tax Refund Anticipation Loan  
23 Act, the director shall enter an order to that effect and shall  
24 forthwith in writing notify the licensee of the revocation or  
25 suspension by registered mail, which notice shall state the

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1 grounds therefor.

2 D. A licensee may surrender a license by delivering  
3 it to the director with written notice of its surrender, but  
4 such surrender shall not affect any civil or criminal liability  
5 of the licensee for acts committed prior thereto.

6 E. No revocation, suspension or surrender of a  
7 license shall impair or affect the obligation of a preexisting  
8 lawful contract between the licensee and an obligor thereon.

9 F. The director may reinstate a suspended license  
10 or issue a new license to a person whose license or licenses  
11 have been revoked if no fact or condition then exists that  
12 clearly would have justified the director in initially refusing  
13 to issue the license pursuant to the Tax Refund Anticipation  
14 Loan Act.

15 G. Whenever the Tax Refund Anticipation Loan Act  
16 provides for service of notice by registered mail, such service  
17 shall be deemed complete upon deposit of such notice in the  
18 post office. For the purpose of this section, mailing of  
19 notice addressed to the person designated as the agent for  
20 service of process pursuant to the Tax Refund Anticipation Loan  
21 Act or to the manager or person in charge of the licensed  
22 office shall be sufficient.

23 Section 10. CIVIL PENALTIES--INJUNCTIVE RELIEF--CRIMINAL  
24 PENALTIES.--

25 A. Whoever violates a provision of the Tax Refund  
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1 Anticipation Loan Act or a rule promulgated pursuant to that  
2 act shall be punished by a fine of not more than one thousand  
3 dollars (\$1,000) for each day during which a violation  
4 continues.

5 B. The director may bring an action in a court of  
6 competent jurisdiction to enjoin a person from violating the  
7 provisions of the Tax Refund Anticipation Loan Act.

8 C. If a person has a license suspended or revoked  
9 pursuant to Section 9 of the Tax Refund Anticipation Loan Act,  
10 is required to pay a fine pursuant to Subsection A of this  
11 section or is enjoined pursuant to Subsection B of this  
12 section, that person shall be liable for the reasonable  
13 expenses incurred by the department in investigating and  
14 enforcing the provisions of the Tax Refund Anticipation Loan  
15 Act against that person and for reasonable attorney fees and  
16 court costs incurred by the department in an action pursuant to  
17 Subsection B of this section.

18 D. A person who facilitates tax refund anticipation  
19 loans in New Mexico or who facilitates tax refund anticipation  
20 loans for customers in New Mexico without a license required  
21 pursuant to Subsection A of Section 3 of the Tax Refund  
22 Anticipation Loan Act is guilty of a misdemeanor and upon  
23 conviction shall be sentenced pursuant to the provisions of  
24 Section 31-19-1 NMSA 1978.

25 Section 11. PRIVATE RIGHT OF ACTION.--A violation of a  
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1 provision of the Tax Refund Anticipation Loan Act constitutes  
2 an unfair or deceptive trade practice pursuant to the Unfair  
3 Practices Act.

4 Section 12. SEVERABILITY.--If any part or application of  
5 this act is held invalid, the remainder or its application to  
6 other situations or persons shall not be affected.

7 Section 13. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is January 1, 2010.

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