

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 340

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11 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

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

B. "department" means the regulation and licensing

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1 department;

2 C. "director" means the director of the division;

3 D. "division" means the financial institutions  
4 division of the department;

5 E. "facilitate tax refund anticipation loans or tax  
6 refund anticipation checks" means to:

7 (1) make, process, receive or accept for  
8 delivery an application for a tax refund anticipation loan or  
9 tax refund anticipation check;

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

12 (3) act in any other manner to further the  
13 making of a tax refund anticipation loan or the issuing of a  
14 tax refund anticipation check;

15 F. "facilitator" means a person acting  
16 individually, or in conjunction or cooperation with another  
17 person for money or other consideration, who facilitates a tax  
18 refund anticipation loan or tax refund anticipation check for a  
19 customer. A facilitator shall be primarily engaged in the  
20 business of preparing tax returns and shall be authorized by  
21 the federal internal revenue service to file federal income tax  
22 returns electronically;

23 G. "person" includes an individual, copartner,  
24 association, trust, corporation and any other legal entity;

25 H. "subsidiary" means:

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

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

9 (3) any company with respect to the management  
 10 of policies of which a banking corporation, savings and loan  
 11 association or credit union has the power, directly or  
 12 indirectly, to exercise a controlling influence, as determined  
 13 by the director;

14 I. "tax refund anticipation check" means a check or  
 15 other payment mechanism:

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

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

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

23 J. "tax refund anticipation loan" means a loan that  
 24 is secured by or that the lender arranges to be repaid from the  
 25 proceeds of a customer's federal or state personal income tax

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1 refund.

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

3 A. A person shall not facilitate tax refund  
4 anticipation loans or tax refund anticipation checks in New  
5 Mexico or facilitate tax refund anticipation loans or tax  
6 refund anticipation checks for customers in New Mexico without  
7 first having obtained a license pursuant to the Tax Refund  
8 Anticipation Loan Act.

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

14 Section 4. LICENSE APPLICATION--FEES--LICENSE ISSUANCE--  
15 LICENSE RENEWAL.--

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

21 (1) the full name and business address of the  
22 applicant;

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

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

5 (4) any other pertinent data that the director  
6 may require by regulation.

7 B. An application for a license and for the renewal  
8 of a license shall be accompanied by an application or renewal  
9 fee of one hundred dollars (\$100). No license application or  
10 renewal fee shall be refunded.

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

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1 license or license renewal application and for the suspension  
2 or revocation of any license in accordance with the procedures  
3 for license suspension or revocation as set forth in the Tax  
4 Refund Anticipation Loan Act.

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

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

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

24 G. No licensee shall facilitate tax refund  
25 anticipation loans under any name, or at any place of business

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1 within this state, other than that stated in the license.

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

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

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

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

- 23 (1) the tax refund anticipation loan or tax
- 24 refund anticipation check fee schedule that is used by the
- 25 facilitator; and

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

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

7 (b) that the customer may file a  
8 personal income tax return electronically without applying for  
9 the tax refund anticipation loan;

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

16 (d) that the customer is responsible for  
17 repayment of the tax refund anticipation loan or tax refund  
18 anticipation check and payment of related fees and charges if  
19 the anticipated tax refund is not paid in the full anticipated  
20 amount;

21 (e) the estimated time frame within  
22 which the proceeds of the tax refund anticipation loan or tax  
23 refund anticipation check will be paid to the customer if the  
24 loan is approved;

25 (f) the fee or charge that will be

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1 imposed, if any, if the tax refund anticipation loan or tax  
 2 refund anticipation check is not approved;

3 (g) the estimated total fees and charges  
 4 to be incurred by the customer if the tax refund anticipation  
 5 loan or tax refund anticipation check is approved; and

6 (h) the estimated annual percentage rate  
 7 for the tax refund anticipation loan or tax refund anticipation  
 8 check.

9 B. The full disclosures required pursuant to this  
 10 section shall be made in a fourteen-point or larger bold type  
 11 and shall be provided in English, Spanish or other language as  
 12 determined by the director.

13 C. The full disclosures required pursuant to this  
 14 section shall be prominently posted at any place of business at  
 15 which a person facilitates a tax refund anticipation loan or  
 16 tax refund anticipation check for customers. The posting shall  
 17 be at least fourteen inches by twenty inches in size, shall be  
 18 in at least sixty-point font and shall be posted in English,  
 19 Spanish or other language as determined by the director.

20 Section 6. DUTIES OF DIRECTOR.--

21 A. The director may at any time examine all the  
 22 books, records, papers, assets and liabilities of every kind of  
 23 a licensee to determine the licensee's financial condition and  
 24 business methods. The licensee shall pay a fee of one hundred  
 25 fifty dollars (\$150) for each day or any portion of a day

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1       thereof for the conduct of the examination.

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

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

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

17              Section 7. REVOCATION, SUSPENSION AND REINSTATEMENT OF  
18 LICENSE.--

19              A. The director shall not suspend or revoke a  
20 license issued pursuant to the Tax Refund Anticipation Loan Act  
21 unless the director first serves upon the licensee a written  
22 notice that states in general the grounds therefor, together  
23 with the time and place of hearing, which shall be held not  
24 less than fifteen days after the mailing of such notice to the  
25 licensee by registered mail as provided in this section.

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1 Following the hearing, the director shall suspend or revoke a  
 2 license if the director finds that:

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

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

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

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

25 D. A licensee may surrender a license by delivering

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1 it to the director with written notice of its surrender, but  
2 such surrender shall not affect any civil or criminal liability  
3 of the licensee for acts committed prior thereto.

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

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

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

21 Section 8. CIVIL PENALTIES--INJUNCTIVE RELIEF--CRIMINAL  
22 PENALTIES.--

23 A. Whoever violates a provision of the Tax Refund  
24 Anticipation Loan Act or a rule promulgated pursuant to that  
25 act shall be punished by a fine of not more than fifty dollars

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1 (\$50.00) for each day during which a violation continues.

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

5 C. If a person has a license suspended or revoked  
 6 pursuant to Section 7 of the Tax Refund Anticipation Loan Act,  
 7 is required to pay a fine pursuant to Subsection A of this  
 8 section or is enjoined pursuant to Subsection B of this  
 9 section, that person shall be liable for the reasonable  
 10 expenses incurred by the department in investigating and  
 11 enforcing the provisions of the Tax Refund Anticipation Loan  
 12 Act against that person and for reasonable attorney fees and  
 13 court costs incurred by the department in an action pursuant to  
 14 Subsection B of this section.

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

22 Section 9. SEVERABILITY.--If any part or application of  
 23 this act is held invalid, the remainder or its application to  
 24 other situations or persons shall not be affected.

25 Section 10. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is January 1, 2010.

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