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**HOUSE BILL 705**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Ray Begaye**

**AN ACT**

**RELATING TO FINANCE; ENACTING THE REFUND ANTICIPATION LOAN  
ACT; PROVIDING PENALTIES; DECLARING AN EMERGENCY.**

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

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

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

**A. "creditor" or "refund anticipation loan  
creditor" means a person who individually or in conjunction or  
cooperation with another person makes a refund anticipation  
loan or processes, receives or accepts for delivery an  
application for a refund anticipation loan or a check in  
payment of refund anticipation loan proceeds or in any other  
manner acts to allow the making of a refund anticipation loan;**

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1 provided that "creditor" or "refund anticipation loan  
2 creditor" does not include a banking corporation, savings and  
3 loan association or credit union operating under the laws of  
4 the United States or New Mexico;

5 B. "debtor" means a person who receives the  
6 proceeds of a refund anticipation loan;

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

8 D. "division" means the financial institutions  
9 division of the regulation and licensing department;

10 E. "licensee" means a person licensed as a  
11 facilitator or creditor pursuant to the Refund Anticipation  
12 Loan Act;

13 F. "refund anticipation loan" means a loan that a  
14 creditor arranges to be repaid directly from the proceeds of a  
15 debtor's income tax refunds; and

16 G. "refund anticipation loan fee" means the  
17 charges, fees or other consideration charged or imposed by the  
18 creditor for the making of a refund anticipation loan. A  
19 "refund anticipation loan fee" does not include charges, fees  
20 or other consideration charged or imposed in the ordinary  
21 course of business by a creditor for services that do not  
22 result in the making of a loan, including fees for tax return  
23 preparation and fees for electronic filing of tax returns.

24 Section 3. CREDITOR-- LICENSE REQUIRED-- APPLICATION--  
25 RENEWAL. --

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1           A. No person shall engage in the business of a  
2 refund anticipation loan creditor without a creditor's license  
3 issued by the division.

4           B. The application for a license shall be in  
5 writing, under oath and in the form prescribed by the  
6 director. The application shall contain the name of the  
7 applicant; date of incorporation, if incorporated; the address  
8 where the business is or is to be conducted and similar  
9 information as to any branch office of the applicant; the name  
10 and resident address of the owner or partners or, if a  
11 corporation or association, of the directors, trustees and  
12 principal officers; and such other pertinent information as  
13 the director may require.

14           C. The license fee for each calendar year or part  
15 thereof shall be four hundred dollars (\$400) for the principal  
16 place of business of the licensee and four hundred dollars  
17 (\$400) for each branch of the licensee maintained in this  
18 state.

19           D. Each license shall specify the location of the  
20 office or branch, and the license shall be conspicuously  
21 displayed in the office or branch.

22           E. Upon the filing of an application and the  
23 payment of the fee, the director shall issue to the applicant  
24 a license to engage in the business of refund anticipation  
25 loan creditor in accordance with the provisions of the Refund

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1 Anticipation Loan Act for a period expiring on December 31  
2 next following the date of its issuance. The license shall  
3 not be transferable or assignable. No licensee shall transact  
4 any business provided for by the Refund Anticipation Loan Act  
5 under any other name.

6 F. The director shall deny a license under the  
7 Refund Anticipation Loan Act if the director finds that:

8 (1) the applicant has failed to pay the  
9 required fee;

10 (2) the applicant has willfully furnished  
11 false or misleading information in the application; or

12 (3) there is reason to believe that the  
13 financial responsibility, character and general fitness of the  
14 applicant are such as to warrant belief that the business will  
15 not be operated lawfully, honestly, fairly and efficiently  
16 within the declared purposes and spirit of that act. If an  
17 original license is denied by the director, the director shall  
18 immediately notify the applicant in writing setting forth the  
19 reasons for denial.

20 Section 4. LICENSE SUSPENSION OR REVOCATION-- APPEALS. --

21 A. Renewal of a license originally granted under  
22 the Refund Anticipation Loan Act may be denied or a license  
23 may be suspended or revoked by the director on any of the  
24 following grounds:

25 (1) material misstatement in the application

1 for license;

2 (2) willful failure to comply with any  
3 provision of that act;

4 (3) defrauding a debtor to the debtor's  
5 detriment while a licensee under that act; or

6 (4) fraudulent misrepresentation,  
7 circumvention or concealment by the licensee through whatever  
8 subterfuge or device of any of the material particulars  
9 required to be posted or disclosed to a debtor under that act.

10 B. If a licensee is a firm, association or  
11 corporation, it is sufficient cause for the suspension or  
12 revocation of a license that any officer, director or trustee  
13 of a licensed firm, association or corporation, or any member  
14 of a licensed partnership, has acted or failed to act in the  
15 conduct of the business under its license as would be cause  
16 for suspending or revoking a license to the person as an  
17 individual. A licensee shall be responsible for the acts of  
18 any of its employees while acting as its agent, if the  
19 licensee after actual knowledge of the acts retained the  
20 benefits, proceeds, profits or advantages accruing from the  
21 acts or otherwise ratified the acts.

22 C. No license shall be denied, suspended or  
23 revoked except after a hearing, conducted with the notice  
24 requirements and procedures established by rule of the  
25 director.

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1           D. A person aggrieved by the denial, suspension or  
2 revocation of a license may file an appeal to the district  
3 court pursuant to the provisions of Section 39-3-1.1 NMSA  
4 1978.

5           Section 5. REFUND ANTICIPATION LOAN FEES-- FILING WITH  
6 DIVISION-- POSTING. --

7           A. No later than January 2 of 2002 and each year  
8 thereafter, each licensee shall file with the division a  
9 schedule of the refund anticipation loan fees for refund  
10 anticipation loans to be made during that year. If, during  
11 the year, a licensee changes the fees, the changed fees shall  
12 not be effective until a revised schedule is filed with the  
13 division.

14           B. Each creditor shall prominently display at each  
15 office where the creditor conducts business a schedule showing  
16 the current refund anticipation loan fees charged by that  
17 creditor and the current fees charged by the creditor for  
18 preparing and electronically filing an income tax return.  
19 Each creditor shall also prominently display on each fee  
20 schedule a statement that a taxpayer may have an income tax  
21 return prepared and filed electronically without also  
22 obtaining a refund anticipation loan.

23           Section 6. DISCLOSURE REQUIREMENTS.--At the time a  
24 debtor applies for a refund anticipation loan, a creditor  
25 shall disclose to the debtor on a form separate from the loan

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application:

A. the refund anticipation loan fee;

B. the fee for preparing and electronically filing a tax return;

C. the date that the loan proceeds will be paid to the debtor if the loan is approved;

D. that the debtor is responsible for repayment of the loan and related fees in the event the tax refund is not paid or not paid in full;

E. the availability of electronic filing for the income tax return of the debtor and the average time announced by the federal internal revenue service within which the debtor can expect to receive a refund if the debtor's return is filed electronically and the debtor does not obtain a refund anticipation loan; and

F. the annual percentage rate, as defined in the federal Truth In Lending Act, computed:

(1) by using the sum of the fee charged to prepare and electronically file the income tax return and the refund anticipation loan fee as the amount of the finance charge; and

(2) by using the average time announced by the federal internal revenue service for the receipt of refunds due on electronically filed returns as the term of the loan.

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1           Section 7.   MAXIMUM FEES. --

2           A.   Except as provided in Subsection B of this  
3 section, the fees charged a debtor by a refund anticipation  
4 loan creditor shall not exceed:

5                   (1)   ninety dollars (\$90.00) to prepare and  
6 file a debtor's state and federal income tax returns;

7                   (2)   ninety dollars (\$90.00) as a refund  
8 anticipation loan fee; or

9                   (3)   an annual percentage rate, calculated  
10 pursuant to Subsection F of Section 6 of the Refund  
11 Anticipation Loan Act, of one hundred twenty percent.

12           B.   The director, by rule, may adjust the maximum  
13 fee established in Paragraph (1) or (2) of Subsection A of  
14 this section upon a finding that the adjusted fee more  
15 accurately compensates a creditor for the actual services  
16 rendered.

17           Section 8.   PROHIBITED ACTS. -- No refund anticipation loan  
18 creditor shall:

19                   A.   misrepresent a material factor or condition of  
20 a refund anticipation loan;

21                   B.   fail to arrange for a refund anticipation loan  
22 promptly after a debtor applies for the loan;

23                   C.   engage in a transaction, practice or course of  
24 business that operates a fraud upon any person in connection  
25 with a refund anticipation loan;

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D. charge a fee higher than:

- (1) the fee schedule filed with the division;
- (2) the posted fee schedule; or
- (3) the amounts specified in Section 7 of the

Refund Anticipation Loan Act;

E. directly or indirectly arrange for payment of any portion of the refund anticipation loan for check cashing, credit insurance or any other good or service unrelated to:

- (1) preparing and filing income tax returns;
- or
- (2) refund anticipation loans; or

F. arrange to take a security interest in any property of the debtor other than the proceeds of the debtor's income tax refunds to secure payment of the loan.

Section 9. EXEMPTIONS. --The provisions of the Refund Anticipation Loan Act do not apply to a person who acts solely as an intermediary by processing or transmitting, electronically or otherwise, tax or credit information.

Section 10. CRIMINAL PENALTY. --A person who engages in the business of a creditor without a license is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500). Every refund anticipation loan entered into by the person constitutes a separate offense.

Section 11. CIVIL PENALTIES. --

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A. A person who violates any provision of the Refund Anticipation Loan Act is subject to a civil penalty, imposed by the director, in an amount not to exceed three hundred dollars (\$300) for each violation.

B. The receiving or charging of a fee in violation of Subsection D of Section 8 of the Refund Anticipation Loan Act shall be deemed a forfeiture of the entire amount of the fee. If the excessive fee has been received, the debtor, in a civil action, may recover twice the amount of the total fee paid.

Section 12. DELAYED EFFECTIVE DATE. --This effective date of the provisions of Sections 3, 4 and 10 of this act is January 1, 2002.

Section 13. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately.