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SENATE BILL 322

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

INTRODUCED BY

Leonard Tsosie

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

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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.