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HOUSE BILL 145

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Jane E. Powdrell-Culbert

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; REQUIRING REGISTRATION OF CERTAIN INCOME TAX RETURN PREPARERS; REQUIRING LICENSING OF PERSONS ENGAGED IN THE BUSINESS OF MAKING LOANS SECURED BY PROCEEDS OF AN INCOME TAX REFUND OR TAX CREDITS; REQUIRING DISCLOSURES OF FEES AND INTEREST ASSOCIATED WITH TAX REFUND ANTICIPATION LOANS.

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. "attorney" means an attorney admitted to practice law in New Mexico or one or more of the other states or jurisdictions of the United States;

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1 B. "certified public accountant" means a person
2 certified by this state pursuant to the 1999 Public Accountancy
3 Act, or a similar law of another state or jurisdiction of the
4 United States, to practice public accountancy and use the
5 designation "certified public accountant";

6 C. "commercial tax return preparer" means a tax
7 return preparer who:

8 (1) prepared ten or more returns for
9 compensation in the preceding calendar year and will prepare at
10 least one return for compensation during the current calendar
11 year; or

12 (2) prepared fewer than ten returns in the
13 preceding calendar year but will prepare ten or more returns
14 for the current calendar year;

15 D. "commercial tax return preparation business"
16 means an entity that employs tax return preparers and that
17 meets the thresholds of a commercial tax return preparer;

18 E. "creditor" means any person who makes a refund
19 anticipation loan or refund anticipation check or who takes an
20 assignment of a refund anticipation loan or refund anticipation
21 check;

22 F. "director" means the director of the financial
23 institutions division of the regulation and licensing
24 department;

25 G. "division" means the financial institutions

1 division of the regulation and licensing department;

2 H. "facilitator":

3 (1) means a person who individually or in
4 conjunction or cooperation with another person:

5 (a) solicits the execution of,
6 processes, receives or accepts an application or agreement for
7 a refund anticipation loan or refund anticipation check;

8 (b) serves or collects upon a refund
9 anticipation loan or refund anticipation check; or

10 (c) in any other manner, facilitates the
11 making of a refund anticipation loan or refund anticipation
12 check; but

13 (2) does not include an employee who only
14 provides clerical or other comparable support services;

15 I. "electronic" means computer technology;

16 J. "enrolled agent" means an agent enrolled to
17 practice before the federal internal revenue service pursuant
18 to Section 10.4 of Subpart A of Part 10 of Title 31 of the Code
19 of Federal Regulations;

20 K. "refund anticipation check" means a check,
21 stored value card or other payment mechanism:

22 (1) that represents the proceeds of a tax
23 refund;

24 (2) that was issued by a depository
25 institution or other person that received a direct deposit of

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1 the tax refund or tax credits; and

2 (3) for which a fee or other consideration is
3 paid;

4 L. "refund anticipation loan" means a loan that is
5 secured by or that the creditor arranges to be repaid, directly
6 or indirectly, from the proceeds of any income tax refund or
7 tax credits, including any sale, assignment or purchase of a
8 tax refund at a discount or for a fee, whether or not the
9 amount is required to be repaid to the buyer or assignee if the
10 internal revenue service or the taxation and revenue department
11 denies or reduces the amount of the tax refund;

12 M. "refund anticipation loan fee" means the
13 charges, fees or other consideration charged or imposed,
14 directly or indirectly, by the creditor for the making of or in
15 connection with a refund anticipation loan or refund
16 anticipation check, including any charge, fee or other
17 consideration for a deposit account if the deposit account is
18 used for receipt of the tax refund to repay the amount owed on
19 the loan;

20 N. "refund anticipation loan interest rate" means
21 the interest rate for a refund anticipation loan or refund
22 anticipation check calculated as the total amount of refund
23 anticipation loan fees divided by the loan amount, minus any
24 loan fees, then divided by the number of days in the loan term,
25 then multiplied by three hundred sixty-five and expressed as a
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1 percentage. If no deposit account is established or maintained
2 for the repayment of the loan, the maturity of the loan for the
3 purpose of determining the refund anticipation loan interest
4 rate shall be assumed to be the estimated date when the tax
5 refund is received by the creditor. If a deposit account is
6 established or maintained in whole or in part for the purpose
7 of receiving the consumer's tax refund to repay the amount owed
8 on a refund anticipation loan:

9 (1) the maturity of the loan for the purpose
10 of determining the refund anticipation loan interest rate shall
11 be assumed to be the estimated date when the tax refund will be
12 deposited in the deposit account; and

13 (2) any fee charged to the consumer for such
14 deposit account shall be considered a loan fee and shall be
15 included in the calculation of the refund anticipation loan
16 interest rate;

17 O. "registered public accountant" means an
18 accountant licensed pursuant to the 1999 Public Accountancy
19 Act, or a similar law of another state or jurisdiction of the
20 United States, to practice public accountancy and use the
21 designation "registered public accountant"; and

22 P. "tax return preparer":

23 (1) means an individual who prepares a
24 substantial portion of any tax return for compensation:

25 (2) includes:

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1 (a) an employee of a commercial tax
2 return preparer or commercial tax return preparation business
3 who prepares a tax return for a client of that preparer or
4 preparation business; and

5 (b) a partner who prepares a tax return
6 for a client of a partnership engaged in a commercial tax
7 return preparation business; but

8 (3) does not include:

9 (a) attorneys, certified public
10 accountants, enrolled agents, registered public accountants and
11 employees of an attorney, certified public accountant, enrolled
12 agent, registered public accountant or firm thereof preparing
13 tax returns under the supervision of an attorney, certified
14 public accountant, enrolled agent or registered public
15 accountant;

16 (b) volunteer tax return preparers;

17 (c) employees of a business or partners
18 in a partnership whose job responsibilities include preparation
19 of only the business' or partnership's tax returns; or

20 (e) employees of a tax return preparer
21 or a commercial tax return preparation business who provide
22 only clerical or other comparable services.

23 SECTION 3. LICENSE AND REGISTRATION--BOND--
24 APPLICABILITY.--

25 A. Without first having obtained a license from the

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1 director, a person shall not:

2 (1) solicit the execution of, process, receive
3 or accept an application or agreement for a refund anticipation
4 loan or refund anticipation check;

5 (2) serve or collect upon a refund
6 anticipation loan or refund anticipation check; or

7 (3) in any other manner, facilitate the making
8 of a refund anticipation loan or refund anticipation check.

9 B. A facilitator shall post a bond in the amount of
10 fifty thousand dollars (\$50,000) and keep the bond available to
11 pay damages and penalties resulting from a violation of the
12 Refund Anticipation Loan Act for five years after the
13 facilitator ceases operation in New Mexico.

14 C. A commercial tax return preparer and commercial
15 tax return preparation business shall register with the
16 division. The commercial tax return preparer and commercial
17 tax return preparation business shall provide the division with
18 the preparer tax identification number issued by the federal
19 internal revenue service.

20 D. A banking corporation, savings and loan
21 association or credit union operating under the laws of the
22 United States or of a state shall be exempt from the licensing
23 and bonding requirements of this section.

24 SECTION 4. APPLICATION--FEES--AGENT FOR SERVICE OF
25 PROCESS--INVESTIGATION--QUALIFICATIONS.--

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1 A. Application for a license and annual license
2 renewal shall be in writing under oath and in the form
3 prescribed by the director, shall give the exact location where
4 the business is to be conducted and shall contain such other
5 relevant information as the director may require, including
6 identification of all parties in interest and the names and
7 addresses of all the partners, officers, directors, trustees
8 and beneficiaries of any trust and of the principal owners and
9 members. The application shall also include a statement
10 accepting the license, if granted, as a privilege to be enjoyed
11 and exercised pursuant to the provisions of the Refund
12 Anticipation Loan Act and rules promulgated pursuant to that
13 act.

14 B. At the time of making an application for an
15 original license, an applicant shall pay to the director the
16 sum of one thousand dollars (\$1,000). Additionally, at the
17 time of issuance of the original license and at each annual
18 renewal, the licensee for each licensed office shall pay to the
19 director a license fee for the period covered of five hundred
20 dollars (\$500). In the event that the application for annual
21 renewal of the license is delinquent, the licensee shall also
22 pay a delinquency fee of ten dollars (\$10.00) per day for each
23 day the licensee is delinquent in filing the application for
24 renewal.

25 C. The application shall be accompanied by, and

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1 every licensee shall at all times maintain on file with the
2 director, an appointed agent for service of process. In case
3 of noncompliance with this subsection, such service, including
4 service of all notices, may be made on the manager or person in
5 charge of the registered office or place of business of the
6 licensee, and the director may by order suspend the license
7 pending compliance with this section.

8 D. Upon the filing of an application, whether it is
9 an original or a renewal, the director shall investigate the
10 facts concerning the application and the requirements provided
11 in this section. An applicant for license, upon written notice
12 to do so by the director, shall, within twenty days after
13 service of the notice, furnish in writing, under oath, to the
14 director all additional information required by the director
15 that may be relevant or, in the opinion of the director,
16 helpful in conducting the investigation.

17 E. Failure to comply with the director's
18 requirement for supplemental information or the willful
19 furnishing of false information is sufficient grounds for
20 denial of a license. False or misleading information willfully
21 and intentionally furnished to the director prior to the
22 issuance of any license is grounds for suspension or
23 revocation.

24 F. The director shall enter an order granting the
25 original application, file the director's findings and, upon

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1 payment of the license fee, issue and deliver a license to the
2 applicant if the director finds that:

3 (1) the financial responsibility, character
4 and general fitness of the applicant for a license and of the
5 individual members, officers or directors of the applicant are
6 such as to command the confidence of the public and to warrant
7 belief that the business will be operated lawfully, honestly,
8 fairly and efficiently pursuant to the provisions of the Refund
9 Anticipation Loan Act; and

10 (2) allowing the applicant to engage in
11 business will promote the convenience and advantage of the
12 community in which the business of the applicant is to be
13 conducted.

14 G. If the director does not make the findings for
15 the original application enumerated in Subsection F of this
16 section, the director shall enter an order denying the
17 application, notify the applicant of the denial and retain the
18 application fees. Within thirty days after the entry of the
19 order, the director shall prepare written findings and deliver
20 a copy to the applicant.

21 H. A written application for license renewal shall
22 be filed on or before August 31 of each year. The director
23 shall investigate the facts and review the files of the
24 applicant made by the director and of complaints filed by
25 consumers, if any. The director shall deliver a renewal

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1 license to the applicant if the director finds that:

2 (1) no valid complaints of violations or
3 abuses of the Refund Anticipation Loan Act or of the rules
4 promulgated pursuant to that act have been filed by consumers;

5 (2) investigation of the affairs of the
6 applicant indicates that the business has been conducted and
7 operated lawfully and efficiently pursuant to the provisions of
8 the Refund Anticipation Loan Act; and

9 (3) the experience and general fitness and
10 character of the applicant remain such as to command the
11 confidence of the public and to warrant the belief that the
12 business will continue to be operated lawfully and efficiently
13 pursuant to the provisions of the Refund Anticipation Loan Act.

14 I. If the director does not make the findings for a
15 renewal application enumerated in Subsection H of this section,
16 the director may grant a temporary extension of the license not
17 exceeding sixty days pending a hearing, shall enter an order
18 fixing a date for a hearing upon the application, shall notify
19 the licensee, specifying the particular complaints, violations
20 or abuses or other reasons for the director's contemplated
21 refusal to renew the license and shall afford to the applicant
22 an opportunity to be heard. At the hearing, the director shall
23 produce evidence to establish the truth of the charges of
24 violation or other grounds specified in the notice, and the
25 applicant shall be accorded the right to produce evidence or

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1 other matters of defense. If, after the hearing, the director
2 finds that the complaints of violations or other grounds
3 specified in the notice are not well-founded, the director
4 shall issue the renewal license. If the director finds that
5 the complaints of violations or other grounds are well-founded,
6 the director shall enter an order denying the renewal
7 application, notify the applicant of the denial and retain the
8 renewal license fee tendered with the application. Within
9 thirty days after the entry of such an order, the director
10 shall prepare written findings and shall deliver a copy of the
11 findings to the applicant.

12 J. The division shall maintain a list of licensees,
13 registered commercial tax return preparers and commercial tax
14 return preparation businesses and establish a complaint process
15 whereby an aggrieved consumer or other person may file a
16 complaint against a licensee, a registered commercial tax
17 return preparer or a commercial tax return preparation
18 business.

19 K. In determining the fitness and character of an
20 applicant pursuant to the provisions of this section, the fact
21 that the applicant is a member of, interested financially in or
22 connected or affiliated with, controls or is controlled by or
23 owns or is owned by any other corporation, partnership, trust,
24 association or other legal entity engaged in tax return
25 preparation or the lending of money whose policies and

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1 practices as to rates of interest, charges and fees and general
2 dealing with borrowers are questionable or would constitute
3 violation of law shall be given such consideration and weight
4 as the director determines.

5 SECTION 5. JUDICIAL REVIEW.--Any licensee or any person
6 aggrieved by any act or order of the director pursuant to the
7 Refund Anticipation Loan Act may file an appeal in the district
8 court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

9 SECTION 6. TAX RETURN PREPARER--PREPARATION SERVICES--
10 DISCLOSURES.--

11 A. A commercial tax return preparer and commercial
12 tax return preparation business shall prominently and
13 conspicuously post on the business premises an identification
14 and qualification statement. The statement shall include the
15 name of the tax return preparer, an address and phone number at
16 which the tax return preparer can be contacted throughout the
17 year and a statement of any qualifications possessed by the tax
18 return preparer, which may include a statement of satisfactory
19 completion of an educational or training program in income tax
20 law, theory or practice by the tax return preparer. A
21 commercial tax return preparer or commercial tax return
22 preparation business shall not intentionally misstate or
23 misrepresent any information relating to the education,
24 training or experience on an identification and qualification
25 statement. Records to substantiate all of the information

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1 contained on that statement shall be maintained and kept on
2 file on the business premises and shall be presented on demand
3 for inspection by a consumer or the division.

4 B. A commercial tax return preparer and commercial
5 tax return preparation business shall prominently and
6 conspicuously post on the business premises a fee schedule. A
7 commercial tax return preparer and commercial tax return
8 preparation business shall provide a written estimate of the
9 total amount due for tax return preparation services.

10 C. A commercial tax return preparer and commercial
11 tax return preparation business shall provide a consumer with a
12 receipt containing:

13 (1) an address and telephone number at which
14 the tax return preparer can be contacted throughout the year;

15 (2) the tax return preparer tax identification
16 number issued by the federal internal revenue service;

17 (3) the telephone numbers of the division for
18 information and complaints; and

19 (4) itemized fees charged for the tax return
20 preparation.

21 SECTION 7. FACILITATOR--REFUND ANTICIPATION PRODUCTS--
22 DISCLOSURES.--

23 A. A facilitator shall prominently and
24 conspicuously post on the business premises the license issued
25 by the division and a fee schedule showing the current fees and

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1 charges for a refund anticipation loan or refund anticipation
2 check facilitated at that location. The fee schedule shall
3 prominently and conspicuously display:

4 (1) a legend, centered, in bold, capital and
5 one-inch letters stating: "NOTICE CONCERNING REFUND
6 ANTICIPATION LOANS. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS
7 WITHOUT PAYING ANY EXTRA FEES AND TAKING OUT A LOAN.";

8 (2) the following verbatim statement: "When
9 you take out a refund anticipation loan, you are borrowing
10 money against your tax refund. If your tax refund is less than
11 expected, you will still owe the entire amount of the loan. If
12 your refund is delayed, you may have to pay additional costs.
13 You can have your tax return filed electronically and your
14 refund direct deposited into your own bank account without
15 obtaining a loan or paying fees for an extra product."; and

16 (3) examples of the refund anticipation loan
17 interest rates for a refund anticipation loan and refund
18 anticipation check in at least three different amounts.

19 B. Before a consumer enters into a refund
20 anticipation loan or refund anticipation loan check agreement,
21 the facilitator shall accurately complete a disclosure form as
22 provided in Subsection C of this section, shall provide the
23 required point-by-point oral explanation in the language
24 primarily used by the consumer and shall ensure that the
25 completed disclosure form is signed by the consumer before

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1 entering into the refund anticipation loan or refund
2 anticipation check agreement.

3 C. The disclosure form shall be in substantially
4 the following form:

5 "• you are not required to take a refund anticipation
6 loan or refund anticipation check.

7 • if you do sign a contract for a refund anticipation
8 loan product, you will be taking out a loan. You will be
9 responsible for repayment of the entire loan amount and all
10 related costs and fees, regardless of how much money you
11 actually receive in your tax refund.

12 • if you do not take this refund anticipation loan or
13 refund anticipation check, you are eligible to receive a gross
14 tax refund of approximately \$ [insert amount].

15 • if you do take this refund anticipation loan or refund
16 anticipation check, you will be responsible to pay \$ [insert
17 amount] in fees and interest for the loan. After these fees
18 and interest are paid, you will receive approximately \$ [insert
19 amount] as your loan.

20 • the refund anticipation loan interest rate of your
21 refund anticipation loan or refund anticipation check is
22 [insert amount]%. This is based on the actual amount of time
23 you will be lent money through this refund anticipation loan
24 product.

25 • if you do take this refund anticipation loan, you can

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1 expect to receive your loan within approximately two business
2 days of [insert date].

3 • if you do not take this refund anticipation loan, you
4 can still receive your tax refund quickly. If you file your
5 tax return electronically and receive your tax refund through
6 the mail, you can expect to receive your refund within
7 approximately two business days of [insert date].

8 • if you file your tax return electronically and have
9 your tax refund directly deposited into a bank account, you can
10 expect to receive your refund within approximately two business
11 days of [insert date]."

12 **SECTION 8. PROHIBITED ACTS.--**A facilitator shall not:

13 A. directly or indirectly represent a refund
14 anticipation loan or refund anticipation check as a refund;

15 B. charge or impose any fee, charge or other
16 consideration in the making or facilitating of a refund
17 anticipation loan or refund anticipation check apart from the
18 fee charged by the creditor or bank that provides the loan or
19 check;

20 C. require a consumer to enter into a loan
21 agreement in order to complete a tax return;

22 D. engage in a transaction, practice or course of
23 business that operates a fraud upon a consumer in connection
24 with a refund anticipation loan or refund anticipation check,
25 including making oral statements contradicting any of the

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1 information required to be disclosed pursuant to the Refund
2 Anticipation Loan Act;

3 E. directly or indirectly arrange for any third
4 party to charge interest, a fee or any other charge related to
5 a refund anticipation loan or refund anticipation check, other
6 than the refund anticipation loan or refund anticipation check
7 fee imposed by the creditor, including, without limitation,
8 charges for insurance, attorney fees, other collection costs or
9 check cashing;

10 F. misrepresent a material fact or condition of a
11 refund anticipation loan or refund anticipation check;

12 G. fail to process the application for a refund
13 anticipation loan promptly after the client applies for the
14 loan;

15 H. take or arrange for a creditor to take
16 possession of or a security interest in any property of the
17 consumer other than the proceeds of the consumer's tax refund
18 to secure payment of a refund anticipation loan or refund
19 anticipation check;

20 I. make or facilitate a refund anticipation loan or
21 refund anticipation check for which the refund anticipation
22 loan interest rate is greater than forty percent; or

23 J. make or facilitate a refund anticipation loan or
24 refund anticipation check for an amount greater than one
25 thousand five hundred dollars (\$1,500).

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1 SECTION 9. RESTRAINT OF PROHIBITED ACTS--REMEDIES FOR
2 VIOLATIONS.--

3 A. The attorney general may bring an action in the
4 name of the state alleging violations of the Refund
5 Anticipation Loan Act when the attorney general has reasonable
6 belief that proceedings would be in the public interest. The
7 action may be brought in the district court of the county in
8 which the person resides or has the person's principal place of
9 business or in the district court in a county in which the
10 person is, has or is about to violate the Refund Anticipation
11 Loan Act. The attorney general acting on behalf of the state
12 shall not be required to post bond when seeking a temporary or
13 permanent injunction in such action.

14 B. In an action filed pursuant to the Refund
15 Anticipation Loan Act, the attorney general may petition the
16 district court for temporary or permanent injunctive relief and
17 restitution.

18 SECTION 10. SETTLEMENTS.--

19 A. In lieu of beginning or continuing an action
20 pursuant to the Refund Anticipation Loan Act, the attorney
21 general may accept a written assurance of discontinuance of a
22 violation from the person who has engaged in the violation.
23 The attorney general may require an agreement by the person
24 engaged in the violation that, by the date set by the attorney
25 general and stated in the assurance, the person will make

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1 restitution to all persons of money, property or other things
2 received from them in any transaction related to the violation.
3 All settlements are a matter of public record but are not
4 admissible against a defendant in an action brought by any
5 other person or public body against the defendant under the
6 Refund Anticipation Loan Act and do not constitute a basis for
7 the introduction of the assurance of discontinuance as prima
8 facie evidence against the defendant in an action or
9 proceeding.

10 B. A person need not accept restitution pursuant to
11 an assurance. Acceptance of restitution bars recovery of
12 damages in an action by the person or on the person's behalf
13 against the same defendant on account of the same violation.

14 C. A violation of an assurance entered into
15 pursuant to this section is a violation of the Refund
16 Anticipation Loan Act.

17 SECTION 11. CIVIL PENALTIES.--In any action brought by
18 the attorney general pursuant to the Refund Anticipation Loan
19 Act, if the court finds that a person committed a willful and
20 intentional violation of the Refund Anticipation Loan Act, the
21 attorney general, upon petition to the court, may recover, on
22 behalf of the state, a civil penalty not exceeding five
23 thousand dollars (\$5,000) per violation.

24 SECTION 12. CIVIL INVESTIGATIVE DEMAND.--

25 A. Whenever the attorney general has reason to

1 believe that a person may be in possession, custody or control
2 of an original or copy of a book, record, report, memorandum,
3 paper, communication, tabulation, map, chart, photograph,
4 mechanical transcription or other tangible document or
5 recording that the attorney general believes to be relevant to
6 the subject matter of an investigation of a probable violation
7 of the Refund Anticipation Loan Act, the attorney general may,
8 prior to the institution of a civil proceeding, execute in
9 writing and cause to be served upon the person a civil
10 investigative demand requiring that person to produce
11 documentary material and permit the inspection and copying of
12 the material. The demand of the attorney general shall not be
13 a matter of public record and shall not be published except by
14 order of the court.

15 B. Each civil investigative demand shall:

16 (1) state the general subject matter of the
17 investigation;

18 (2) describe the classes of documentary
19 material to be produced with reasonable certainty;

20 (3) prescribe the return date within which the
21 documentary material is to be produced, which in no case shall
22 be less than ten days after the date of service; and

23 (4) identify the members of the attorney
24 general's staff to whom the documentary material is to be made
25 available for inspection and copying.

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C. A civil investigative demand shall not:

(1) contain a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state;

(2) require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of this state; or

(3) require the removal of any documentary material from the custody of the person upon whom the demand is served except in accordance with the provisions of Subsection E of this section.

D. Service of the civil investigative demand may be made by:

(1) delivering a duly executed copy to the agent for service of process;

(2) delivering a duly executed copy to the person to be served;

(3) delivering a duly executed copy to the principal place of business in this state of the person to be served; or

(4) mailing, by registered or certified mail, a duly executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state,

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1 to the person's principal office or place of business.

2 E. Documentary material demanded pursuant to the
3 provisions of this section shall be produced for inspection and
4 copying during normal business hours at the principal office or
5 place of business of the person served or may be inspected and
6 copied at such other times and places as may be agreed upon by
7 the person served and the attorney general.

8 F. Documentary material produced pursuant to an
9 investigative demand, or copies thereof, shall not, unless
10 otherwise ordered by the district court in the county in which
11 the person served resides or has the person's principal place
12 of business or where the violation occurred or is about to
13 occur, for good cause shown, be produced for inspection or
14 copying by anyone other than an authorized employee of the
15 attorney general nor shall the contents be disclosed to anyone
16 other than an authorized employee of the attorney general or in
17 court in an action relating to a violation of the Refund
18 Anticipation Loan Act.

19 G. At any time before the return date of the
20 investigative demand, a petition to set aside the demand,
21 modify the demand or extend the return date on the demand may
22 be filed in the district court in the county in which the
23 person served resides or has the person's principal place of
24 business or where the violation occurred or is about to occur,
25 and the court, upon a showing of good cause, may set aside the

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1 demand, modify the demand or extend the return date of the
2 demand.

3 H. After service of the investigative demand upon
4 the person, if the person neglects or refuses to comply with
5 the demand, the attorney general may invoke the aid of the
6 court in the enforcement of the demand. In appropriate cases,
7 the court shall issue its order requiring the person to appear
8 and produce the documentary material required in the demand and
9 may, upon failure of the person to comply with the order,
10 punish the person for contempt.

11 I. This section shall not be applicable to criminal
12 prosecutions.

13 SECTION 13. PRIVATE REMEDIES.--

14 A. A person likely to be damaged by a violation of
15 the Refund Anticipation Loan Act may be granted an injunction
16 against it under the principles of equity and on terms that the
17 court considers reasonable. Proof of monetary damage, loss of
18 profits or intent to deceive or take unfair advantage of a
19 person is not required.

20 B. A person who suffers loss of money or property,
21 real or personal, as a result of a violation of the Refund
22 Anticipation Loan Act may bring an action to recover actual
23 damages or the sum of one thousand dollars (\$1,000), whichever
24 is greater.

25 C. Where the trier of fact finds that the party

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1 charged committed a willful and intentional violation of the
2 Refund Anticipation Loan Act, the court may award up to three
3 times actual damages or three thousand dollars (\$3,000),
4 whichever is greater, to the complaining party.

5 D. The court shall award attorney fees and costs to
6 the party complaining of a violation of the Refund Anticipation
7 Loan Act if the party prevails. The court shall award attorney
8 fees and costs to the party charged with a violation of the
9 Refund Anticipation Loan Act if the court finds that the party
10 complaining of the violation brought forth a frivolous claim.

11 E. The relief provided in this section is in
12 addition to remedies otherwise available against the same
13 conduct under common law, the Unfair Practices Act, the New
14 Mexico Small Loan Act of 1955 or other statutes of this state.

15 F. In a class action filed under this section, the
16 court may award damages to the named plaintiffs as provided in
17 Subsections B and C of this section and may award members of
18 the class actual damages as were suffered by each member of the
19 class as a result of the violation.

20 G. A party to a court action for a private remedy
21 pursuant to this section may request in writing during the
22 thirty-day period following service of the summons and
23 complaint on all parties named in the action that the parties
24 attempt to settle the claim in early mediation. If a request
25 for mediation is made, the parties shall choose a mutually

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1 acceptable mediator and enter into mediation within sixty days
2 of the appointment of an acceptable mediator unless otherwise
3 agreed by the parties. A request for mediation may be
4 rescinded at any time if agreed to by all parties.

5 H. If the parties do not agree on a mutually
6 acceptable mediator, the court shall appoint the mediator. If
7 the early mediation pursuant to this section is entered into
8 within sixty days following the appointment of the mediator,
9 the parties suing on the basis of a violation of the Refund
10 Anticipation Loan Act shall be required to pay no more than
11 fifty percent or five hundred dollars (\$500) toward the cost of
12 the mediation, whichever is less, and the other party shall pay
13 the remainder of such cost, unless otherwise agreed by the
14 parties. If a person is seeking injunctive relief in
15 accordance with Subsection A of this section, the person may
16 pursue the claim for injunctive relief without following the
17 mediation requirements of this subsection and Subsection G of
18 this section.

19 **SECTION 14. CONSTRUCTION--APPLICABILITY OF RELIEF AND**
20 **PENALTIES.--**The relief and penalties provided in the Refund
21 Anticipation Loan Act are in addition to and supplement the
22 remedies and penalties otherwise applicable against the same
23 conduct under common law, the Unfair Practices Act, the New
24 Mexico Small Loan Act of 1955 or other statutes of this state.

25 **SECTION 15. EFFECTIVE DATE.--**The effective date of the

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1 provisions of this act is July 1, 2013.

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