

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR Powdrell-Culbert **LAST UPDATED** 02/06/13 **HB** 145

SHORT TITLE Refund Anticipation Loan Act **SB** _____

ANALYST Weber

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Indeterminate		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate			Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB122

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General Office (AGO)

New Mexico Tax and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 145 creates the Refund Anticipation Loan Act. The Act requires the licensure of certain persons defined as a facilitator, registration of certain income tax return preparers and tax preparation businesses. The bill requires specific disclosure of fees, interest and charges and defines how to calculate the “refund anticipation loan interest rate”. The bill caps the rate of interest at forty percent as calculated per the definition. The bill also caps the amount of a refund anticipation loan at \$1,500 or less. The Act provides the Attorney General with the ability to bring an action in the name of the state alleging violations of the Act. The Act also provides for

private remedies.

Section 2 provides definitions

Section 3 requires licensing and bonding (\$50,000) of persons participating in the refund anticipation loan procedures as defined in the Act.

Section 4 provides for licensing procedures and applicable fees of \$1,000 for application and \$500 for annual renewal. Provisions for license approval or denial are also included and provides for a hearing if necessary.

Section 5 allows for any licensee or any person aggrieved by any act or order of the director pursuant to the Refund Anticipation Loan Act to file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978

Section 6 requires various disclosures by a tax return preparer to be conspicuously posted including: 1) name, address and phone number of preparer along with qualifications and training related to the preparer ability to satisfactorily perform; 2) a fee schedule along with a written estimation of the cost for proposed services; 3) a receipt for services rendered that contains permanent contact information of the preparer, tax identification number, Financial Division telephone number to file a complaint; and, itemized fees charged.

Section 7 requires additional disclosures:

Prominently posted on the business premises the license issued by the division and a fee schedule showing the current fees and charges for a refund anticipation loan or refund anticipation check. facilitated at that location. The fee schedule shall prominently and conspicuously display:

- (1) a legend, centered, in bold, capital and one-inch letters stating: "NOTICE CONCERNING REFUND ANTICIPATION LOANS. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING ANY EXTRA FEES AND TAKING OUT A LOAN."
- (2) the following verbatim statement: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or paying fees for an extra product.; and
- (3) examples of the refund anticipation loan interest rates for a refund anticipation loan and refund anticipation check in at least three different amounts.

Before a consumer enters into a refund anticipation loan or refund anticipation loan check agreement, the facilitator shall accurately complete the provided disclosure form. Also, required is a point-by-point oral explanation in the language primarily used by the consumer as well as the executed provided form.

Section 8 prohibits a facilitator from representing the loan or check as a refund; charging a fee in excess of the fee charged by the creditor or bank that provides the loan or check; requiring a

consumer to enter into a loan to complete a tax return; engage in a practice that operates a fraud on the consumer; arrange for any third party to charge additional interest or fee, misrepresent a material fact, fail to process the application promptly, take possession of or a security interest in any property other than the proceeds of the tax refund, make or facilitate a loan or check for which the interest rate is greater than forty percent, or make or facilitate a loan or check for an amount greater than \$1,500.

Section 9 provides that the Attorney General may bring action in the name of the state in district court when there is reasonable belief the proceedings are in the public interest.

Section 10 provides an outline for the Attorney General to follow if settlements are reached for Act violations.

Section 11 provides for civil penalties up to \$5,000 per violation.

Section 12 outlines procedure for when the attorney general has reason to belief that a person has documents or materials relevant to the subject matter of an investigation of a violation of this Act, the attorney general may serve a civil investigative demand for production of such documents or material, such demand shall not be a matter of public record, except by order of the court. This section sets forth the information to be included in the CID, the procedure to follow, how service shall be made and the manner of production of the documents or material. The subject of a CID, may file a petition to set aside the demand, modify it or extend the time in which to reply and this petition may be filed in the district court.

Section 13 notes that individuals may also bring action and outlines provisions, including the possibility of initiating a class action suit.

Section 14 notes other areas in statute where action against violations may be initiated.

Section 15 provided for an effective date of July1, 2013.

FISCAL IMPLICATIONS

The Financial Institutions Division (FID) notes that it does not currently license or regulate tax refund facilitators or require the registration of certain income tax return preparers and tax preparation businesses. The FID cannot determine how many persons are acting as facilitators as defined by the bill or how many income tax preparers and tax preparation businesses would need to register. It appears that the bill requires a \$1,000 new application fee and \$500 renewal fee for a facilitator but no fee for the registration of the income tax preparers and tax preparation businesses. The FID is unable to determine how much revenue would be generated by the bill.

In a similar fashion, without knowledge of the number of persons or businesses that would be subject to the act it is difficult to estimate the cost to enforce the provisions of the bill.

Likewise, costs for the Attorney General would be dependent on the number of cases prosecuted which is not possible to determine at this time.

SIGNIFICANT ISSUES

The bill would provide considerable consumer protection for persons that do not realize the costs related to a tax preparation refund loan.

The following is from a National Consumer Law Center January 17, 2012 press release regarding refund anticipation loans (RAL):

RALs are bank loans secured by the taxpayer's expected refund—loans that last about 7 to 14 days until the actual IRS refund repays the loan. RALs are expensive. This year for Jackson Hewitt customers, Republic Bank is charging \$61.22 for a RAL of \$1,500, which translates into an APR of 149%. If the refund exceeds \$1561.22, the taxpayer is charged another \$29.95 when the remainder of the refund arrives in the form of a RAC, for a total of \$91.17 in fees. In fact, RALs are so expensive that the Military Lending Act bans them for service members. RALs were also big business. Using the most recent data available from the IRS, about 6.85 million taxpayers applied for a RAL in the 2010 tax filing season (for tax year 2009), and NCLC and CFA estimate that about 5 million received them.

This represents a significant drop from the 8.4 million taxpayers who applied for RALs and the estimate of 7.2 million who received them in 2009. In contrast, the number of taxpayers receiving RACs has increased to an estimated 14.6 million taxpayers in 2010, up from the 12.9 million in 2009.

The AGO offers the following commentary:

Both Refund anticipation loans and refund anticipation checks are presently unregulated in New Mexico.

Refund Anticipation Loans: Refund anticipation loans (RALs) are loans secured by and repaid directly from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). The loan is typically made in conjunction with the preparation of the consumer's tax return and serve to provide a loan as an "advance" on the anticipated tax refund. Because RALs are usually made for a duration of about seven to fourteen days (the difference between when the RAL is made and when it is repaid by deposit of the taxpayer's refund), fees for these loans can translate into triple digit annual percentage rates (APRs). Refund anticipation loans are used mostly by low and moderate income consumers. Using the IRS process, most taxpayers could have their refund in two weeks or less. Nevertheless, RALs are aggressively marketed by income-tax preparation companies. They advertise "Instant Refunds" or "Quick Cash", and disguise the fact that they are selling advance loans on anticipated tax refunds. RALs are often marked by a failure to adequately disclose fees and interest rates.

The marketing and practices used by banks making RALs has been targeted by the FDIC for claims of federal law violations, resulting in a number of national settlements with RAL-lending national banks largely reducing the use of RALs *outside of New Mexico* and the payment of significant legal penalties. ***However, RALs continue to be marketed and used in New Mexico, particularly in the four corners area, with Native American tax payers targeted for these high interest loans.***

Refund Anticipation Checks (RAC): A refund anticipation check (RACs) is also a tax-time financial product offered by financial institutions. With RACs, the bank opens a temporary bank account into which the IRS direct deposits the refund check. Upon receipt of the tax refund, the bank issues the consumer a paper check or prepaid debit card with the RAC proceeds, or direct deposits the refund to the taxpayer's own account and closes the temporary account. For taxpayers who can receive direct deposit from the IRS into a bank account or onto a prepaid card, a RAC does not provide any advantage in terms of a faster refund, and the only reason to incur this added expense is to delay payment of tax preparation fees.

RACs can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee. Tax preparation fees can often be opaque and expensive, with taxpayers unable to obtain estimates of fees to comparison shop. When taxpayers obtain a RAC to pay the price of tax preparation, the RAC is essentially a costly loan of the tax preparation fee. For example, paying \$30 to borrow a tax preparation fee of \$189 for two weeks equates to an APR of 414%.

Both RALs and RACs are marked by a lack of transparency around tax preparation fees. The NCLC reports that mystery shopper testing by consumer groups and others has found systemic problems in the ability of consumers to obtain information about how much tax preparation services will cost. There are numerous examples of preparers giving low-ball estimates on preparation fees or even refusing to provide testers with a quote. Typically, the tax prepare works in cooperation or coordination with the person or business that offers the RAL or RAC.

TECHNICAL ISSUES

RLD notes the following:

Page 3 Lines 2 through 14, definition of “facilitator” states “means a person”. There is no definition of “person”. Is “person” an individual or business entity or both? Lines 13 through 14 appear to infer that “person” is an individual as it states “does not include an employee”. “Person” needs to be clarified as it is used throughout the Bill.

Section 3 of the Bill page 6 line 23 through page 7 line 19 regarding license and registration--bond applicability, again the word “person” is used in page 7 line 1 then the word “facilitator” is used in line 9. This needs to be clarified. The Bill does not specify what type of bond a facilitator is to post. It does reference that the bond is to be available to pay damages and penalties for violation of the Act. Bonds of this type are generally Surety Bonds which are not available for individuals to purchase. The Bill appears to identify a facilitator as an individual.

Section 4 of the Bill Application--Fees--Agent for Service of Process--Investigation--Qualifications. Page 7 line 24 through page 13 line 4 it is not clear what license the applicant is applying for. If application is for a facilitators' license and a facilitator is an individual then licensing requirements would be incorrect. For example the wording “including identification of all parties, officers, directors, trustees.....”. Another example is an individual would not have an agent for service of process. These are two examples where the requirements are for a business entity and not an individual. It appears that the

licensing requirements in the Bill are for a business entity and not for an individual. Clarification is needed.

Page 12 lines 12 through 18 requires the Financial Institutions Division (FID) to establish a complaint process whereby an aggrieved consumer or other person to file a complaint on registered commercial tax return preparers and commercial tax return preparation businesses. The FID does not have anyone on staff that is an expert in the filing of tax returns. The FID would not be able to provide assistance to the consumer other than receiving the complaint. There is no appropriation in the Bill for the FID to hire staff to fulfill this requirement of the Bill.

Page 12 line 19 through page 13 line 4 Requires the Director to determine the character and fitness of an applicant. If the applicant lends money, it requires the Director to take into regards the lenders policies and practices as to rates of interest, charges and fees. The state of New Mexico currently does not have a usury rate cap. This would require the Director to make arbitrary decisions as to whether interest and fees are too high. This could result in the Director being sued for determining that an interest rate is too high especially since there is no guidance in current statute or the Bill as to what is a conscionable rate.

Page 18 lines 20 through 22 should provide a reference back to the definition of “refund anticipation loan interest rate” that way there is no confusion when it caps the loan interest rate at forty percent. Without the clarification some may assume that it is a cap on the contract rate of interest.

Page 18 lines 23 through 25 caps the amount of a refund anticipation loan to \$1,500 or less. This would require a business that only provides refund anticipation loans to have dual licensure even though the business does engage in any other type of loan products. The business would be required to be licensed under the Act and also be licensed as a Small Loan Company.

The bill does not specify whether the registration for a commercial tax preparer and commercial tax return preparation business is a onetime registration and is perpetual with no renewals required. Also the Bill does not require any registration fees.

The effective date stated on the bill is July 1, 2013. This may not be enough time for the FID to have processes in place for the required applicants and registrants as specified in the Bill. There is also no appropriation in the Bill for the FID to hire additional staff to administer the provisions of the Bill.