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SENATE BILL 876

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO FINANCE; PROVIDING CONDITIONS FOR REFUND  
ANTICIPATION LOANS; PROVIDING PENALTIES.

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

Section 1. A new section of Chapter 58 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] REFUND ANTICIPATION LOANS-- PROHIBITED  
ACTS. --

A. A refund anticipation loan shall not exceed two  
thousand five hundred dollars (\$2,500).

B. A refund anticipation loan agreement shall  
include a provision granting the consumer the right to rescind  
the transaction by returning in cash, or through certified  
funds, one hundred percent of the amount advanced by a creditor  
for a refund anticipation loan no later than 5:00 p.m. on the

underscored material = new  
[bracketed material] = delete

1 first day of business conducted by the creditor following the  
2 execution of the refund anticipation loan agreement. Unless  
3 the provisions of this subsection are followed, a refund  
4 anticipation loan shall not be subject to the consumer's right  
5 of rescission unless both the consumer and the creditor agree  
6 to the rescission. If a consumer exercises the right of  
7 rescission pursuant to this subsection, no fee for the  
8 rescinded transaction shall be charged to the consumer, and the  
9 creditor shall not charge or impose on the consumer a fee for  
10 exercising the right of rescission pursuant to this subsection.

11 C. The creditor shall provide the consumer with a  
12 copy of the refund anticipation loan agreement in Spanish or  
13 English prior to the consummation of the loan.

14 D. A creditor may not charge or receive from a  
15 consumer interest, fees or charges other than:

16 (1) delinquency fees that do not exceed five  
17 cents (\$.05) for each one dollar (\$1.00) of each installment  
18 more than ten days in arrears; provided that the total of  
19 delinquency charges on any such installment shall not exceed  
20 ten dollars (\$10.00) and that only one delinquency charge shall  
21 be made on any one installment regardless of the period during  
22 which the installment remains unpaid; and

23 (2) simple interest on the amount of loan  
24 proceeds delivered to the consumer in a refund anticipation  
25 loan, the aggregate amount of which includes all interest and

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1 all administrative fees received on the loan, including  
2 interest received after any renewals, refinance or extensions,  
3 and the total aggregate amount may not exceed one and one-half  
4 times the amount of the original loan agreement principal  
5 balance.

6 E. Once the creditor has received the interest and  
7 principal balance, the refund anticipation loan shall be  
8 terminated and considered paid in full by the consumer. The  
9 interest rate charged on the outstanding balance after initial  
10 maturity shall not be greater than the interest rate charged  
11 during the initial loan term. Interest on loans shall be  
12 computed and paid only as a percentage of the unpaid principal  
13 balance.

14 F. A creditor shall not:

15 (1) use or threaten to use a criminal process  
16 in this or another state to collect on a refund anticipation  
17 loan;

18 (2) alter the date or other information on a  
19 check drawn by a consumer in a refund anticipation loan  
20 transaction;

21 (3) use a device or agreement that would have  
22 the effect of charging or collecting more fees, charges or  
23 interest than allowed by law by entering into a different type  
24 of transaction with the consumer that has that effect except as  
25 specifically permitted by the New Mexico Small Loan Act of

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1 1955;

2 (4) engage in unfair, deceptive or fraudulent  
3 practices in the making or collecting of a refund anticipation  
4 loan;

5 (5) charge a fee to cash a check issued by the  
6 originating lender representing the proceeds of the refund  
7 anticipation loan;

8 (6) make a refund anticipation loan in excess  
9 of the refund amount;

10 (7) accept collateral for a refund  
11 anticipation loan other than the consumer's check;

12 (8) charge interest, fees or charges other  
13 than those specifically authorized, including:

14 (a) charges for insurance; or

15 (b) collection costs;

16 (9) threaten to take any action against a  
17 consumer that is prohibited by the New Mexico Small Loan Act of  
18 1955;

19 (10) include any of the following provisions  
20 in a refund anticipation loan agreement:

21 (a) a hold harmless clause;

22 (b) a confession of judgment clause or  
23 power of attorney;

24 (c) an assignment of or order for  
25 payment of wages or other compensation for services;

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[bracketed material] = delete

1 (d) a provision in which the consumer  
2 agrees not to assert a claim or defense arising out of the  
3 contract; or

4 (e) a waiver of a provision of the New  
5 Mexico Small Loan Act of 1955;

6 (11) make a refund anticipation loan  
7 contingent on the purchase of insurance or other goods or  
8 services;

9 (12) advertise, display, distribute or  
10 broadcast or cause or permit to be advertised, displayed,  
11 distributed or broadcast, in any manner, a false, misleading or  
12 deceptive statement or representation with regard to the  
13 charges, terms or conditions for refund anticipation loans;

14 (13) sign a loan consent form or instrument in  
15 which blanks are left to be filled in after execution of the  
16 refund anticipation loan, instrument or form;

17 (14) offer, arrange, act as an agent for or  
18 assist a third party in any way in the making of a refund  
19 anticipation loan unless the third party complies with all  
20 applicable federal and state laws and regulations;

21 (15) enter into a refund anticipation loan  
22 with a consumer who lacks the capacity to consent; or

23 (16) use provisions in documents associated  
24 with a refund anticipation loan that are deceptive or  
25 misleading.

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1           G. A creditor that makes a refund anticipation loan  
2 and an income tax return preparer shall not be related through  
3 common ownership or be family members, such as:

4                   (1) members of a family, including brothers  
5 and sisters, spouses, ancestors or lineal descendants, who  
6 shall be treated as individuals that own the stock or  
7 beneficial ownership interest;

8                   (2) an individual and a corporation in which  
9 that individual owns any of the outstanding stock;

10                   (3) an individual and a partner, limited  
11 liability company or limited liability partnership in which  
12 that individual owns any of the capital interests or profit  
13 interest;

14                   (4) any two corporations or any two  
15 partnerships, limited liability companies or limited  
16 partnerships in which any one individual has an ownership  
17 interest through capital stock, capital interests or profit  
18 interest;

19                   (5) a corporation and a partnership in which  
20 any one individual has an ownership interest through capital  
21 stock, capital interests or profit interest; or

22                   (6) a trust or fiduciary relationship or  
23 corporations, partnerships, limited liability companies or  
24 limited partnerships in which any one individual has an  
25 ownership interest through capital stock, capital interests or

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1 profit interest.

2 H. As used in this section:

3 (1) "creditor" means a person who individually  
4 or in conjunction or cooperation with another person makes a  
5 refund anticipation loan or processes, receives or accepts for  
6 delivery an application for a refund anticipation loan or a  
7 check in payment of refund anticipation loan proceeds or in any  
8 other manner acts to allow the making of a refund anticipation  
9 loan, but "creditor" does not include a banking corporation,  
10 savings and loan association or credit union operating under  
11 the laws of the United States or New Mexico; and

12 (2) "refund anticipation loan" means an  
13 advance of money that a creditor arranges to be repaid directly  
14 from the proceeds of a debtor's income tax refunds.

15 I. A person who violates any provision of this  
16 section is guilty of a misdemeanor and upon conviction shall be  
17 punished by a fine of not less than one hundred dollars (\$100)  
18 and not more than three hundred dollars (\$300) or by  
19 imprisonment of not more than ninety days or both. Each refund  
20 anticipation loan constitutes a separate action and a loan that  
21 violates the provisions of this section is a separate and  
22 distinct violation punishable pursuant to this subsection. "