

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 356

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO
SMALL LOAN ACT OF 1955; REQUIRING DISCLOSURES OF FEES AND
INTEREST ASSOCIATED WITH TAX REFUND ANTICIPATION LOANS;
ESTABLISHING REQUIREMENTS, PERMITTED CHARGES AND PROHIBITED
ACTS FOR TAX REFUND ANTICIPATION LOANS.

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

SECTION 1. Section 58-15-2 NMSA 1978 (being Laws 1955,
Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS.--The following words and terms
when used in the New Mexico Small Loan Act of 1955 have the
following meanings unless the context clearly requires a
different meaning. The meaning ascribed to the singular form
applies also to the plural:

A. "consumer" means a person who enters into a loan

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underscored material = new
[bracketed material] = delete

1 agreement and receives the loan proceeds in New Mexico;

2 B. "creditor" means any person who makes a refund
3 anticipation loan, issues a refund anticipation check or takes
4 an assignment of a refund anticipation loan or refund
5 anticipation check;

6 [~~B.~~] C. "debit authorization" means an
7 authorization signed by a consumer to electronically transfer
8 or withdraw funds from the consumer's account for the specific
9 purpose of repaying a loan;

10 [~~G.~~] D. "department" or "division" means the
11 financial institutions division of the regulation and licensing
12 department;

13 [~~D.~~] E. "director" means the director of the
14 division;

15 [~~E.~~] F. "installment loan" means a loan that is to
16 be repaid in a minimum of four successive substantially equal
17 payment amounts to pay off a loan in its entirety with a period
18 of [~~nø~~] not less than one hundred twenty days to maturity.

19 "Installment loan" does not mean a loan in which a licensee
20 requires, as a condition of making the loan, the use of
21 postdated checks or debit authorizations for repayment of that
22 loan;

23 [~~F.~~] G. "license" means a permit issued under the
24 authority of the New Mexico Small Loan Act of 1955 to make
25 loans and collect charges therefor strictly in accordance with

1 the provisions of that act at a single place of business. It
 2 shall constitute and shall be construed as a grant of a
 3 revocable privilege only to be held and enjoyed subject to all
 4 the conditions, restrictions and limitations contained in the
 5 New Mexico Small Loan Act of 1955 and lawful regulations
 6 promulgated by the director and not otherwise;

7 ~~[G.]~~ H. "licensee" means a person to whom one or
 8 more licenses have been issued pursuant to the New Mexico Small
 9 Loan Act of 1955 upon the person's written application electing
 10 to become a licensee and consenting to exercise the privilege
 11 of a licensee solely in conformity with the New Mexico Small
 12 Loan Act of 1955 and the lawful regulations promulgated by the
 13 director under that act and whose name appears on the face of
 14 the license;

15 ~~[H.]~~ I. "payday loan" means a loan in which the
 16 licensee accepts a personal check or debit authorization
 17 tendered by the consumer and agrees in writing to defer
 18 presentment of that check or use of the debit authorization
 19 until the consumer's next payday or another date agreed to by
 20 the licensee and the consumer and:

21 (1) includes any advance of money or
 22 arrangement or extension of credit whereby the licensee, for a
 23 fee, finance charge or other consideration:

24 (a) accepts a dated personal check or
 25 debit authorization from a consumer for the specific purpose of

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1 repaying a payday loan;

2 (b) agrees to hold a dated personal
3 check or debit authorization from a consumer for a period of
4 time prior to negotiating or depositing the personal check or
5 debit authorization; or

6 (c) pays to the consumer, credits to the
7 consumer's account or pays another person on behalf of the
8 consumer the amount of an instrument actually paid or to be
9 paid pursuant to the New Mexico Small Loan Act of 1955; but

10 (2) does not include:

11 (a) an overdraft product or service
12 offered by a banking corporation, savings and loan association
13 or credit union; and

14 (b) installment loans;

15 [~~F.~~] J. "payday loan product" means a payday loan
16 or a payment plan pursuant to Section 58-15-35 NMSA 1978;

17 [~~J.~~] K. "person" includes an individual, copartner,
18 association, trust, corporation and any other legal entity;

19 L. "refund anticipation loan" means a loan that is
20 secured by or that the creditor arranges or expects to be
21 repaid, directly or indirectly, from the proceeds of the
22 consumer's federal or state personal income tax refunds or tax
23 credits, including any sale, assignment or purchase of a tax
24 refund or tax credit at a discount or for a fee;

25 [~~K.~~] M. "renewed payday loan" means a loan in which

1 a consumer pays in cash the administrative fee payable under a
 2 payday loan agreement and refinances all or part of the unpaid
 3 principal balance of an existing payday loan with a new payday
 4 loan from the same licensee. [A] "Renewed payday loan"
 5 includes a transaction in which a consumer pays off all or part
 6 of an existing payday loan with the proceeds of a payday loan
 7 from the same licensee; and

8 [E-] N. "simple interest" means a method of
 9 calculating interest in which the amount of interest is
 10 calculated based on the annual interest rate disclosed in the
 11 loan agreement and is computed only on the outstanding
 12 principal balance of the loan."

13 SECTION 2. A new section of the New Mexico Small Loan Act
 14 of 1955 is enacted to read:

15 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--REQUIRED
 16 DISCLOSURES.--

17 A. A licensee shall disclose the following
 18 information to the consumer at the time that an application for
 19 a refund anticipation loan is submitted:

20 (1) the fee schedule for refund anticipation
 21 loans used by the licensee; and

22 (2) a written statement or, if the transaction
 23 is conducted using electronic commerce, an electronic statement
 24 containing the following information:

25 (a) that the refund anticipation loan is

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1 a loan that creates a legally enforceable debt and that the
2 loan is not the consumer's actual tax refund or tax credit;

3 (b) that the consumer may file a
4 personal income tax refund electronically without applying for
5 a refund anticipation loan;

6 (c) that neither the federal internal
7 revenue service nor the department guarantees a person will be
8 paid the full amount of an anticipated tax refund or tax
9 credit, nor do they guarantee that an anticipated tax refund or
10 tax credit will be deposited into a consumer's account or
11 mailed to a consumer on a specific date;

12 (d) that the consumer is responsible for
13 repayment of the refund anticipation loan, and payment of
14 related fees and charges, if the anticipated tax refund or tax
15 credit is not paid in the full anticipated amount;

16 (e) the estimated time frame within
17 which the proceeds of the refund anticipation loan will be paid
18 to the consumer if the loan is approved;

19 (f) the fee or charge that will be
20 imposed, if any, if the refund anticipation loan is not
21 approved;

22 (g) the estimated total interest, fees
23 and charges to be incurred by the consumer if the refund
24 anticipation loan is approved;

25 (h) the estimated annual percentage rate

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1 for the refund anticipation loan; and

2 (i) that the consumer is not required to
3 take out a refund anticipation loan.

4 B. The disclosures required pursuant to this
5 section shall be made in a ten-point or larger bold type and
6 shall be provided in English, Spanish or other language as
7 determined by the director.

8 C. Prior to executing a refund anticipation loan
9 agreement, a consumer shall provide to the licensee a statement
10 signed by the consumer stating that the consumer has received
11 the disclosures required pursuant to Subsection A of this
12 section."

13 SECTION 3. A new section of the New Mexico Small Loan Act
14 of 1955 is enacted to read:

15 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--REQUIREMENTS.--

16 A. No licensee shall make a refund anticipation
17 loan to a consumer that exceeds eighty-five percent of the
18 consumer's anticipated combined total federal and state tax
19 refunds and tax credits, inclusive of principal and all related
20 interest, fees and charges.

21 B. No refund anticipation loan shall have a stated
22 maturity greater than thirty-one days or less than fifteen
23 days.

24 C. A refund anticipation loan shall include a
25 provision granting the consumer the right to rescind the

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1 transaction by returning in cash, or through certified funds,
2 one hundred percent of the amount advanced by a licensee for a
3 refund anticipation loan by no later than 5:00 p.m. on the
4 first day of business conducted by the licensee following the
5 execution of the refund anticipation loan. If a consumer
6 exercises the right of rescission pursuant to this subsection,
7 no interest or fee for the rescinded transaction shall be
8 charged to the consumer, and the licensee shall not charge or
9 impose on the consumer a fee for exercising the right of
10 rescission pursuant to this subsection. If this subsection is
11 applicable, any interest or fee collected by a licensee shall
12 be refunded in full to the consumer.

13 D. Prior to the consummation of a refund
14 anticipation loan, the licensee shall provide the consumer, or
15 each consumer if there is more than one, with copies of
16 disclosures required pursuant to Section 2 of this 2015 act in
17 English, Spanish or other language as determined by the
18 director. Consumers shall have the option to decide which
19 language version of the disclosures they wish to receive.

20 E. The disclosure of the credit terms of a refund
21 anticipation loan shall be according to and governed by the
22 requirements of 12 CFR 226, known as "Regulation Z". The
23 definitions and requirements of that regulation and commentary
24 shall apply to refund anticipation loans as if those provisions
25 are fully set out in this subsection.

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1 F. A licensee shall collect on refund anticipation
2 loans in default in a professional, fair and lawful manner. A
3 licensee that complies with the requirements and prohibitions
4 set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt
5 Collection Practices Act shall be deemed to have operated in a
6 professional, fair and lawful manner."

7 SECTION 4. A new section of the New Mexico Small Loan Act
8 of 1955 is enacted to read:

9 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--PERMITTED
10 CHARGES.--The following provisions shall apply to refund
11 anticipation loans:

12 A. a licensee shall not charge or receive from a
13 consumer, directly or indirectly, interest, fees or charges
14 except as provided in this section;

15 B. upon the execution of a new refund anticipation
16 loan, the licensee may impose interest of not more than
17 eighteen dollars (\$18.00) per one hundred dollars (\$100) of
18 principal, which interest is fully earned and nonrefundable at
19 the time a refund anticipation loan agreement is executed
20 unless a refund anticipation loan is rescinded pursuant to
21 Subsection C of Section 3 of this 2015 act and which interest
22 is payable in full at the due date of the refund anticipation
23 loan agreement or upon prepayment of the refund anticipation
24 loan;

25 C. a one-time charge of an amount not to exceed

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1 seventy-five dollars (\$75.00) may be charged if a consumer has
2 not yet filed a tax return to defray the costs of preparing an
3 estimated tax return and other disclosures that may be required
4 by federal law;

5 D. a document fee not to exceed ten dollars
6 (\$10.00) per refund anticipation loan shall be permitted; and

7 E. a licensee shall not charge a consumer any
8 additional interest, fees or other charges on the outstanding
9 principal owed on a refund anticipation loan after the
10 effective due date."

11 SECTION 5. A new section of the New Mexico Small Loan Act
12 of 1955 is enacted to read:

13 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--PROHIBITED
14 ACTS.--A licensee shall not:

15 A. directly or indirectly represent a refund
16 anticipation loan as a refund or tax credit;

17 B. charge or impose any fee, charge or other
18 consideration in the making of a refund anticipation loan other
19 than the fees permitted pursuant to Section 4 of this 2015 act;

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, including making oral
25 statements contradicting any of the information required to be

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1 disclosed pursuant to Section 2 of this 2015 act;

2 E. misrepresent a material fact or condition of a
3 refund anticipation loan;

4 F. take or arrange for a creditor to take
5 possession of or a security interest in any property of the
6 consumer other than the proceeds of the consumer's tax refund
7 or tax credit to secure payment of a refund anticipation loan;

8 G. advertise, display, distribute or broadcast in
9 any manner whatsoever a false, misleading or deceptive
10 statement or representation with regard to the charges, terms
11 or conditions for refund anticipation loans; or

12 H. withhold from a consumer, or from a dependent of
13 a consumer, original personal identification documents,
14 including:

- 15 (1) certificate of degree of Indian blood;
- 16 (2) census card;
- 17 (3) social security card;
- 18 (4) birth certificate;
- 19 (5) driver's license;
- 20 (6) military identification card; or
- 21 (7) passport."

22 SECTION 6. A new section of the New Mexico Small Loan Act
23 of 1955 is enacted to read:

24 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--
25 PREEMPTION.--The state has exclusive jurisdiction and authority

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1 regarding the terms and conditions of permitted refund
2 anticipation loans, and counties, municipalities and other
3 political subdivisions of the state are preempted from any
4 regulation of terms and conditions of permitted refund
5 anticipation loans by ordinance, resolution or otherwise."

6 SECTION 7. SEVERABILITY.--If any part or application of
7 the provisions of this act is held invalid, the remainder or
8 its application to other situations or persons shall not be
9 affected.

10 SECTION 8. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2015.