

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 438

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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

1 agreement and receives the loan proceeds in New Mexico;

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

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

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

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

14 ~~[E.]~~ F. "installment loan" means a loan that is to
15 be repaid in a minimum of four successive substantially equal
16 payment amounts to pay off a loan in its entirety with a period
17 of ~~[no]~~ not less than one hundred twenty days to maturity.

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

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

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

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

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

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

23 (a) accepts a dated personal check or
24 debit authorization from a consumer for the specific purpose of
25 repaying a payday loan;

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

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

9 (2) does not include:

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

13 (b) installment loans; and

14 (c) refund anticipation 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 ~~[G.]~~ 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. Section 58-15-14.1 NMSA 1978 (being Laws 1983,
 14 Chapter 95, Section 2, as amended) is amended to read:

15 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--The simple
 16 interest method shall be used for charging interest on loans,
 17 other than refund anticipation loans, made under the New Mexico
 18 Small Loan Act of 1955. Interest charges shall not be paid,
 19 deducted or received in advance. Interest charges shall not be
 20 compounded. However, if part or all of the consideration for a
 21 loan contract is the unpaid principal balance of a prior loan,
 22 then the principal amount payable under the loan contract may
 23 include any unpaid interest charges that have accrued within
 24 sixty days on the prior loan. Such interest charges shall be
 25 computed on the basis of the number of days actually elapsed.

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1 In addition to the simple interest allowed pursuant to this
2 section, licensees making refund anticipation loans may also
3 charge the precomputed interest, fees and charges permitted
4 pursuant to Section 5 of this 2017 act, and as agreed by the
5 parties."

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

8 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--REQUIRED
9 DISCLOSURES.--

10 A. A licensee shall disclose the following
11 information to the consumer at the time that an application for
12 a refund anticipation loan is submitted:

13 (1) a uniform fee disclosure form provided by
14 the director for use by all licensees; and

15 (2) a written statement or, if the transaction
16 is conducted using electronic commerce, an electronic statement
17 containing the following information:

18 (a) that the refund anticipation loan is
19 a loan that creates a legally enforceable debt, and that the
20 refund anticipation loan is not the consumer's actual tax
21 refund or tax credit;

22 (b) that the consumer may file a
23 personal income tax refund electronically without applying for
24 or engaging in a refund anticipation loan;

25 (c) that neither the federal internal

1 revenue service nor the taxation and revenue department
 2 guarantees that: 1) a person will be paid the full amount of
 3 an anticipated tax refund or tax credit; or 2) an anticipated
 4 tax refund or tax credit will be deposited into a consumer's
 5 account or mailed to a consumer on a specific date;

6 (d) that the consumer is responsible for
 7 repayment of the refund anticipation loan, including the
 8 related fees, interest and charges therein, regardless of
 9 whether the expected or anticipated tax refund or tax credit
 10 amount is paid; and

11 (e) any fee or charge imposed, if a
 12 request for a refund anticipation loan is denied.

13 B. The disclosures required pursuant to this
 14 section shall be made in a ten-point or larger font type and
 15 shall be provided in English, Spanish or other language as
 16 determined by the director.

17 C. Prior to executing a refund anticipation loan
 18 agreement, a consumer shall provide to the licensee a statement
 19 signed by the consumer stating that the consumer has received
 20 the disclosures required pursuant to Subsection A of this
 21 section."

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

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

25 A. No licensee shall make a refund anticipation

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1 loan to a consumer, the principal amount of which exceeds
2 seventy percent of the consumer's anticipated combined total
3 federal and state tax refunds and tax credits.

4 B. A refund anticipation loan may be payable upon
5 demand or for any term not in excess of one year.

6 C. A licensee shall grant a consumer the right to
7 rescind the refund anticipation loan transaction by returning
8 in cash, or through certified funds, the principal loan amount
9 advanced no later than 5:00 p.m. on the first business day
10 following the day the refund anticipation loan agreement was
11 executed. If a consumer exercises the right of rescission
12 pursuant to this subsection, then all fees, interest and
13 charges otherwise owing shall be rebated and refunded to the
14 consumer's refund anticipation loan account. No licensee shall
15 charge a fee for a consumer exercising the right of rescission
16 pursuant to this subsection.

17 D. Prior to the consummation of a refund
18 anticipation loan, the licensee shall provide the consumer with
19 a copy of the disclosures required pursuant to Section 3 of
20 this 2017 act in English, and if requested by the consumers, a
21 copy of the disclosures in Spanish or other language as
22 determined by the director.

23 E. The disclosure of the credit terms of a refund
24 anticipation loan shall be made according to and governed by
25 the requirements of 12 CFR 1026, known as "Regulation Z".

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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 relating to debt collectors set forth in 15 U.S.C. Sections
5 1692c(a), (b) and (d), 1692d, 1692e and 1692f of the federal
6 Fair Debt Collection Practices Act shall be deemed to have
7 operated in a professional, fair and lawful manner."

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

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

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

16 (1) precomputed interest of not more than
17 eighteen dollars (\$18.00) per one hundred dollars (\$100) of
18 principal for the term of the refund anticipation loan, which
19 precomputed interest is fully due, earned and owing on the day
20 a refund anticipation loan agreement is executed, which is
21 payable in full upon maturity of the refund anticipation loan
22 agreement and which is not subject to rebate upon prepayment in
23 part or in full of the refund anticipation loan;

24 (2) a one-time tax refund estimate charge in
25 an amount not to exceed thirty-five dollars (\$35.00) to defray

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1 a licensee's costs related to preparing, obtaining or securing
2 an estimate, either internally or from a third-party
3 professional, of the consumer's anticipated federal or state
4 tax refunds;

5 (3) a document fee not to exceed ten dollars
6 (\$10.00) per refund anticipation loan; and

7 (4) 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; and

11 B. the interest, tax refund estimate charge and
12 document fee as set forth in Subsection A of this section are
13 nonrefundable as of the time a refund anticipation loan
14 agreement is executed, unless a consumer timely rescinds the
15 refund anticipation loan pursuant to Subsection C of Section 4
16 of this 2017 act."

17 **SECTION 6.** A new section of the New Mexico Small Loan Act
18 of 1955 is enacted to read:

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

21 A. directly or indirectly represent a refund
22 anticipation loan as a refund or tax credit;

23 B. charge or impose any fee, charge, interest or
24 other consideration in the making of a refund anticipation loan
25 other than the fees, charges and interest permitted pursuant to

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1 Section 5 of this 2017 act;

2 C. require a consumer to enter into a refund
3 anticipation loan agreement in order to complete a tax return;

4 D. engage in a transaction, practice or course of
5 business that defrauds a consumer in connection with a refund
6 anticipation loan, including making oral statements
7 contradicting any of the information required to be disclosed
8 pursuant to Section 3 of this 2017 act;

9 E. misrepresent a material fact or condition of a
10 refund anticipation loan;

11 F. advertise, display, distribute or broadcast in
12 any manner whatsoever a false, misleading or deceptive
13 statement or representation with regard to the charges, terms
14 or conditions for refund anticipation loans; or

15 G. withhold from a consumer, or from a dependent of
16 a consumer, original personal identification documents,
17 including:

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

25 SECTION 7. A new section of the New Mexico Small Loan Act

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1 of 1955 is enacted to read:

2 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--PREEMPTION.--

3 The state has exclusive jurisdiction and authority regarding
4 the terms and conditions of permitted refund anticipation
5 loans, and counties, municipalities and other political
6 subdivisions of the state are preempted from any regulation of
7 terms and conditions of permitted refund anticipation loans by
8 ordinance, resolution or otherwise."

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

13 SECTION 9. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2017.

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