

1 HOUSE BILL 438

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Patricio Ruiloba

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10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "58-15-2. DEFINITIONS.--The following words and terms
21 when used in the New Mexico Small Loan Act of 1955 have the
22 following meanings unless the context clearly requires a
23 different meaning. The meaning ascribed to the singular form
24 applies also to the plural:

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

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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;

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

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

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

24 [~~L.~~] M. "renewed payday loan" means a loan in which
25 a consumer pays in cash the administrative fee payable under a

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

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

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

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

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

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

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

24 (a) that the refund anticipation loan is
25 a loan that creates a legally enforceable debt and that the

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1 loan is not the consumer's actual tax refund or tax credit;

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

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

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

15 (e) the fee or charge that will be
16 imposed, if any, if the refund anticipation loan is not
17 approved;

18 (f) the estimated total interest, fees
19 and charges to be incurred by the consumer if the refund
20 anticipation loan is approved;

21 (g) the estimated annual percentage rate
22 for the refund anticipation loan; and

23 (h) that the consumer is not required to
24 take out a refund anticipation loan.

25 B. The disclosures required pursuant to this

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1 section shall be made in a ten-point or larger font type and
2 shall be provided in English, Spanish or other language as
3 determined by the director.

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

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

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

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

17 B. No refund anticipation loan shall have a stated
18 maturity greater than forty-five days or less than fifteen
19 days.

20 C. A refund anticipation loan shall include a
21 provision granting the consumer the right to rescind the
22 transaction by returning in cash, or through certified funds,
23 one hundred percent of the amount advanced by a licensee for a
24 refund anticipation loan by no later than 5:00 p.m. on the
25 first day of business conducted by the licensee following the

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1 execution of the refund anticipation loan. If a consumer
2 exercises the right of rescission pursuant to this subsection,
3 no interest or fee for the rescinded transaction shall be
4 charged to the consumer, and the licensee shall not charge or
5 impose on the consumer a fee for exercising the right of
6 rescission pursuant to this subsection. If this subsection is
7 applicable, any interest or fee collected by a licensee shall
8 be refunded in full to the consumer.

9 D. Prior to the consummation of a refund
10 anticipation loan, the licensee shall provide the consumer, or
11 each consumer if there is more than one, with copies of
12 disclosures required pursuant to Section 2 of this 2017 act in
13 English, Spanish or other language as determined by the
14 director. Consumers shall have the option to decide which
15 language version of the disclosures they wish to receive.

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

22 F. A licensee shall collect on refund anticipation
23 loans in default in a professional, fair and lawful manner. A
24 licensee that complies with the requirements and prohibitions
25 set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt

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1 Collection Practices Act shall be deemed to have operated in a
2 professional, fair and lawful manner."

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

5 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--PERMITTED
6 CHARGES.--The following provisions shall apply to refund
7 anticipation loans:

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

11 B. upon the execution of a new refund anticipation
12 loan, the licensee may impose interest of not more than
13 eighteen dollars (\$18.00) per one hundred dollars (\$100) of
14 principal, which interest fully accrues and is nonrefundable at
15 the time a refund anticipation loan agreement is executed
16 unless a refund anticipation loan is rescinded pursuant to
17 Subsection C of Section 3 of this 2017 act and which interest
18 is payable in full at the due date of the refund anticipation
19 loan agreement or upon prepayment of the refund anticipation
20 loan;

21 C. a one-time charge of an amount not to exceed
22 thirty-five dollars (\$35.00) may be charged if a consumer has
23 not yet filed a tax return to defray the costs of preparing an
24 estimated tax return and other disclosures that may be required
25 by federal law;

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1 D. a document fee not to exceed ten dollars
2 (\$10.00) per refund anticipation loan shall be permitted; and

3 E. a licensee shall not charge a consumer any
4 additional interest, fees or other charges on the outstanding
5 principal owed on a refund anticipation loan after the
6 effective due date."

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

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

11 A. directly or indirectly represent a refund
12 anticipation loan as a refund or tax credit;

13 B. charge or impose any fee, charge or other
14 consideration in the making of a refund anticipation loan other
15 than the fees permitted pursuant to Section 4 of this 2017 act;

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

18 D. engage in a transaction, practice or course of
19 business that operates a fraud upon a consumer in connection
20 with a refund anticipation loan, including making oral
21 statements contradicting any of the information required to be
22 disclosed pursuant to Section 2 of this 2017 act;

23 E. misrepresent a material fact or condition of a
24 refund anticipation loan;

25 F. take or arrange for a creditor to take

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1 possession of or a security interest in any property of the
2 consumer other than the proceeds of the consumer's tax refund
3 or tax credit to secure payment of a refund anticipation loan;

4 G. advertise, display, distribute or broadcast in
5 any manner whatsoever a false, misleading or deceptive
6 statement or representation with regard to the charges, terms
7 or conditions for refund anticipation loans; or

8 H. withhold from a consumer, or from a dependent of
9 a consumer, original personal identification documents,
10 including:

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

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

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

21 The state has exclusive jurisdiction and authority regarding
22 the terms and conditions of permitted refund anticipation
23 loans, and counties, municipalities and other political
24 subdivisions of the state are preempted from any regulation of
25 terms and conditions of permitted refund anticipation loans by

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1 ordinance, resolution or otherwise."

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

6 SECTION 8. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2017.