

SENATE CORPORATIONS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 527

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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

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

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

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

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

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

24 (h) the estimated annual percentage rate
25 for the refund anticipation loan; and

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underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

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

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

23 C. A refund anticipation loan shall include a
24 provision granting the consumer the right to rescind the
25 transaction by returning in cash, or through certified funds,

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

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

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

25 F. A licensee shall collect on refund anticipation

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

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

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

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

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

24 C. a one-time charge of an amount not to exceed
 25 seventy-five dollars (\$75.00) may be charged if a consumer has

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1 not yet filed a tax return to defray the costs of preparing an
2 estimated tax return and other disclosures that may be required
3 by federal law;

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

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

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

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

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

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

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

21 D. engage in a transaction, practice or course of
22 business that operates a fraud upon a consumer in connection
23 with a refund anticipation loan, including making oral
24 statements contradicting any of the information required to be
25 disclosed pursuant to Section 2 of this 2015 act;

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

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

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

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

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

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

23 "[NEW MATERIAL] REFUND ANTICIPATION LOANS--
24 PREEMPTION.--The state has exclusive jurisdiction and authority
25 regarding the terms and conditions of permitted refund

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underscored material = new
[bracketed material] = delete

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

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

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