LEGISLATIVE SUMMARY SHEET
Tracking No. 0362-17

DATE: September 11, 2017

SUBJECT AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'IYATI'; SUPPORTING NEW MEXICO SENATE BILL 414 AMENDING THE NEW MEXICO SMALL LOAN ACT OF 1955 TO REQUIRE DISCLOSURE OF FEES AND INTERESTS ASSOCIATED WITH TAX REFUND ANTICIPATION LOANS

PURPOSE: The purpose of this legislation is to support New Mexico Senate Bill 414 amending the New Mexico Small Loan Act of 1955 to better protect consumers of tax refund anticipation loans.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.

PROPOSED STANDING COMMITTEE RESOLUTION

23rd NAVAJO NATION COUNCIL -- Third Year, 2017

INTRODUCED BY

Jonathan L Hale

(Prime Sponsor)

TRACKING NO. 0362-17

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'IYATI'; SUPPORTING NEW MEXICO SENATE BILL 414 AMENDING THE NEW MEXICO SMALL LOAN ACT OF 1955 TO REQUIRE DISCLOSURE OF FEES AND INTERESTS ASSOCIATED WITH TAX REFUND ANTICIPATION LOANS

Section One. Authority

A. The Health, Education and Human Services Committee (HEHSC) is a standing committee of the Navajo Nation Council. The Committee is empowered to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2012); see also C0-45-12.

B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Among other duties and responsibilities, it "coordinate[s] all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation. 2 N.N.C. §701(A)(4).

Section Two. Findings

A. The Navajo Nation's borders are frequently populated outside the boundary of the Nation by enterprises offering tax refund anticipation loans.

B. Frequently these loans carry with them significant fees and substantial interest charges and are often not understood as a legally enforceable debt and not the consumer's actual tax refund or credit.

C. New Mexico Senate Bill 414, sponsored by Senator Munoz, proposes amending the New Mexico Small Loan Act of 1955 to require certain disclosures concerning those fees and interest charges for the benefit of individuals who apply and receive a tax refund anticipation loan. See Exhibit "A".

D. The requirements of these disclosures would apply to any person who makes a tax refund anticipation loan or takes an assignment of a refund anticipation loan.

E. The disclosures include, in part, requiring the fee schedule used to determine the fee charged; acknowledgement that it is a legally enforceable debt and not the actual tax refund; that the consumer can file a personal income tax refund electronically without applying for a loan; there is no guarantee the tax refund will be the amount of the loan; the right of the consumer to timely rescind the loan; a limit of interest in the amount of eighteen dollars ($18) per one hundred dollars ($100) of principal. See Exhibit "A".

F. The Navajo Nation has determined the adoption of the New Mexico Senate Bill 414 is in the best interest of the People of the Navajo Nation.

Section Three. Approval

The Navajo Nation hereby supports the passage of the New Mexico Senate Bill 414 as found at Exhibit "A".

SENATE BILL 414

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

INTRODUCED BY

George K. Munoz

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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agreement and receives the loan proceeds in New Mexico;

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

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

[~~C.~~] D. "department" or "division" means the financial institutions division of the regulation and licensing department;

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

[~~E.~~] F. "installment loan" means a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off a loan in its entirety with a period of [~~no~~] not less than one hundred twenty days to maturity. "Installment loan" does not mean a loan in which a licensee requires, as a condition of making the loan, the use of postdated checks or debit authorizations for repayment of that loan;

[~~F.~~] G. "license" means a permit issued under the authority of the New Mexico Small Loan Act of 1955 to make loans and collect charges therefor strictly in accordance with the provisions of that act at a single place of business. It shall constitute and shall be construed as a grant of a revocable privilege only to be held and enjoyed subject to all the conditions, restrictions and limitations contained in the New Mexico Small Loan Act of 1955 and lawful regulations promulgated by the director and not otherwise;

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

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

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

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

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

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

(2) does not include:

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

(b) installment loans;

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

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

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

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

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

[~~L.~~] N. "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual interest rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. A refund anticipation loan 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 licensee for a refund anticipation loan by no later than 5:00 p.m. on the first day of business conducted by the licensee following the execution of the refund anticipation loan. If a consumer exercises the right of rescission pursuant to this subsection, no interest or fee for the rescinded transaction shall be charged to the consumer, and the licensee shall not charge or impose on the consumer a fee for exercising the right of rescission pursuant to this subsection. If this subsection is applicable, any interest or fee collected by a licensee shall be refunded in full to the consumer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. take or arrange for a creditor to take

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

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

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

(1) certificate of degree of Indian blood;

(2) census card;

(3) social security card;

(4) birth certificate;

(5) driver's license;

(6) military identification card; or

(7) passport."

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

"[NEW MATERIAL] REFUND ANTICIPATION LOANS--PREEMPTION.--The state has exclusive jurisdiction and authority regarding the terms and conditions of permitted refund anticipation loans, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of permitted refund anticipation loans by ordinance, resolution or otherwise."

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

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

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Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable LoRenzo Bates
Speaker
23rd Navajo Nation Council

MEMORANDUM

TO: Honorable Jonathan Hale
Navajo Nation Council

FROM: Edward A. McCool
Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE: September 11, 2017

SUBJECT: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'IYATI'; SUPPORTING NEW MEXICO SENATE BILL 414 AMENDING THE NEW MEXICO SMALL LOAN ACT OF 1955 TO REQUIRE DISCLOSURE OF FEES AND INTERESTS ASSOCIATED WITH TAX REFUND ANTICIPATION LOANS

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0362-17__ **SPONSOR: Jonathan L. Hale**

TITLE: An Action Relating To Health, Education And Human Services And NAABIK'IYATI'; Supporting New Mexico Senate Bill 414 Amending The New Mexico Small Loan Act Of 1955 To Require Disclosure Of Fees And Interests Associated With Tax Refund Anticipation Loans

***Date posted*: September 13, 2017 at 4:05 PM**

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Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

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THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0362-17

SPONSOR: Honorable Jonathan L. Hale

TITLE: An Action Relating To Health, Education And Human Services And NAABIK'IYATI'; Supporting New Mexico Senate Bill 414 Amending The New Mexico Small Loan Act Of 1955 To Require Disclosure Of Fees And Interests Associated With Tax Refund Anticipation Loans.

Posted: September 13, 2017 at 4:05 PM

5 DAY Comment Period Ended: September 18, 2017

Digital Comments received:

Comments Supporting	*None*
Comments Opposing	*None*
Inclusive Comments	*None*

[signature]
Legislative Secretary II
Office of Legislative Services

9/19/2017 8:22am
Date/Time