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HOUSE BILL 427

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
REGULATION OF PAYDAY LOANS; AMENDING, REPEALING AND ENACTING
CERTAIN PROVISIONS OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

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 [~~shall~~] have
the following meanings unless the context clearly requires a
different meaning. The meaning ascribed to the singular form
[~~shall apply~~] applies also to the plural:

A. "person" [~~shall include~~] includes individuals,
copartners, associations, trusts, corporations and any other
legal entity;

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1 B. "license" [~~shall mean~~] means a permit issued
2 under the authority of the New Mexico Small Loan Act of 1955 to
3 make loans and collect charges therefor strictly in accordance
4 with the provisions of [~~the New Mexico Small Loan Act of 1955~~]
5 that act at a single place of business. It shall constitute
6 and shall be construed as a grant of a [~~revokable~~] revocable
7 privilege only to be held and enjoyed subject to all the
8 conditions, restrictions and limitations contained in the New
9 Mexico Small Loan Act of 1955 and lawful regulations
10 promulgated by the director [~~of the financial institutions~~
11 ~~division~~] and not otherwise;

12 C. "licensee" [~~shall mean~~] means a person to whom
13 one or more licenses have been issued [~~hereunder~~] under the New
14 Mexico Small Loan Act of 1955 upon [~~their~~] his written
15 application electing to become a licensee and consenting to
16 exercise the privilege of a licensee solely in conformity with
17 the New Mexico Small Loan Act of 1955 and the lawful
18 regulations promulgated by the director [~~of the financial~~
19 ~~institutions division hereunder~~] under that act and whose name
20 [~~or names appear~~] appears on the face of the license;

21 D. "director" means the director of the financial
22 institutions division of the [~~commerce and industry~~] regulation
23 and licensing department;

24 E. "department" or "division" means the financial
25 institutions division of the [~~commerce and industry~~] regulation

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1 and licensing department;

2 F. "payday loan" means a loan in which the business
3 operator cashes a personal check tendered by the customer and
4 agrees in writing to defer presentment of that check until the
5 customer's next payday, or another date agreed to by the
6 business operator and the customer; and

7 G. "simple interest" means a method of calculating
8 interest in which the amount of interest is computed on the
9 outstanding principal balance of a loan for each given period. "

10 Section 2. Section 58-15-3 NMSA 1978 (being Laws 1955,
11 Chapter 128, Section 3, as amended) is amended to read:

12 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
13 PENALTY.--

14 A. No person shall engage in the business of
15 lending in amounts of two thousand five hundred dollars
16 (\$2,500) or less without first having obtained a license from
17 the director. Nothing contained in this subsection shall
18 restrict or prohibit a licensee under the New Mexico Small Loan
19 Act of 1955 from making loans in [~~any amount~~] amounts greater
20 than two thousand five hundred dollars (\$2,500) under the New
21 Mexico Bank Installment Loan Act of 1959 in accordance with the
22 provisions of Section 58-7-2 NMSA 1978 and the general laws of
23 this state governing money, interest and usury.

24 B. Nothing in the New Mexico Small Loan Act of 1955
25 shall apply to a person making individual advances of two

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1 thousand five hundred dollars (\$2,500) or less under a written
2 agreement providing for a total loan or line of credit in
3 excess of two thousand five hundred dollars (\$2,500) [~~for which~~
4 ~~real estate is pledged as collateral~~].

5 C. [~~Any~~] A banking corporation, savings and loan
6 association or credit union operating under the laws of the
7 United States or of [~~New Mexico~~] a state shall be exempt from
8 the licensing requirements of the New Mexico Small Loan Act of
9 1955, nor shall that act apply to [~~any~~] business transacted by
10 any such person under the authority of and as permitted by any
11 such law, nor to any bona fide pawnbroking business transacted
12 under a pawnbroker's license, nor to bona fide commercial loans
13 made to dealers upon personal property held for resale.
14 Nothing contained in the New Mexico Small Loan Act of 1955
15 shall be construed as abridging the rights of any of those
16 exempted from the operations of that act from contracting for
17 or receiving interest or charges not in violation of [~~any~~] an
18 existing applicable statute of this state.

19 D. The provisions of Subsection A of this section
20 apply to [~~any~~] a person owning any interest, legal or
21 equitable, in the business or profits of any licensee whose
22 name does not specifically appear on the face of the license,
23 except a stockholder in a corporate licensee, and to [~~any~~] a
24 person who seeks to evade its application by any device,
25 subterfuge or pretense whatsoever, including but not thereby

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1 limiting the generality of the foregoing: the loan,
2 forbearance, use or sale of credit (as guarantor, surety,
3 endorser, comaker or otherwise), money, goods or things in
4 action; the use of collateral or related sales or purchases of
5 goods or services or agreements to sell or purchase, whether
6 real or pretended; receiving or charging compensation for goods
7 or services, whether or not sold, delivered or provided; and
8 the real or pretended negotiation, arrangement or procurement
9 of a loan through any use or activity of a third person,
10 whether real or fictitious.

11 E. Any person, copartnership, trust and the
12 trustees or beneficiaries thereof, association or corporation
13 and the several members, officers, directors, agents and
14 employees thereof who violate or participate in the violation
15 of [~~any~~] a provision of Subsection A of this section is guilty
16 of a petty misdemeanor and upon conviction shall be sentenced
17 pursuant to the provisions of Subsection B of Section 31-19-1
18 [~~(B)~~] NMSA 1978. [~~Any~~] A contract or loan in the making or
19 collection of which [~~any~~] an act is done that violates
20 Subsection A or D of this section is void and the lender has no
21 right to collect, receive or retain any principal, interest or
22 charges whatsoever. "

23 Section 3. Section 58-15-10 NMSA 1978 (being Laws 1955,
24 Chapter 128, Section 10, as amended) is amended to read:

25 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL

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1 INFORMATION. - -

2 A. Each licensee shall keep and use in his business
3 such books, accounts and records in accordance with sound
4 accounting practices [~~as in the director's opinion~~] that will
5 enable [~~him~~] the director to determine whether the licensee is
6 complying with the provisions of the New Mexico Small Loan Act
7 of 1955 and with the orders and regulations lawfully ~~made~~ by
8 the director [~~under~~] pursuant to provisions of that act. Each
9 licensee shall preserve the books, accounts and records for at
10 least two years after ~~making~~ the final entry on [~~any~~] a loan
11 recorded therein.

12 B. Each licensee shall, annually on or before March
13 31, file a report with the director giving such relevant
14 information as he ~~may~~ reasonably require concerning the
15 business and operations during the preceding calendar year for
16 each licensed place of business conducted by the licensee
17 within the state pursuant to the provisions of the New Mexico
18 Small Loan Act of 1955. The report shall be ~~made~~ under oath
19 and shall be in the form prescribed by the director. A ~~summary~~
20 of the reports shall be included in the published annual report
21 of the director.

22 C. At the ~~time~~ of filing each annual report, at the
23 ~~time~~ of the annual examination or at any other ~~time~~ when [~~any~~]
24 a license is in effect, the director ~~may~~, upon written notice,
25 require [~~any~~] a licensee to furnish within twenty days in

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1 writing, and under oath if so specified by any written notice
2 issued and served by the director upon the licensee, [~~any and~~
3 ~~all~~] additional information as to ownership of any office;
4 operation of any office; books, records, files and papers; and
5 affiliation or relationship with any other person, firm, trust,
6 association or corporation as, in the opinion of the director,
7 may be helpful to [~~him~~] the director in the discharge of his
8 official duties.

9 D. False or misleading information willfully
10 furnished to the director by [~~any~~] a licensee in [~~any~~] an
11 annual report or pursuant to [~~any~~] a notice or requirement of
12 the director is sufficient ground for suspension and revocation
13 of license in accordance with the procedures for suspension or
14 revocation of license set forth in the New Mexico Small Loan
15 Act of 1955. "

16 Section 4. Section 58-15-12 NMSA 1978 (being Laws 1955,
17 Chapter 128, Section 12, as amended) is amended to read:

18 "58-15-12. ADVERTISING [~~SCHEDULE OF CHARGES~~]. -- [~~A. No~~] A
19 licensee or other person subject to the New Mexico Small Loan
20 Act of 1955 shall not advertise, display, distribute or
21 broadcast or cause or permit to be advertised, displayed,
22 distributed or broadcast in [~~any~~] a manner whatsoever [~~any~~] a
23 false, misleading or deceptive statement or representation with
24 regard to the charges, terms or conditions for loans in the
25 amount or of the value of two thousand five hundred dollars

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1 (\$2,500) or less. The director may require that charges or
2 rates of charge, if stated by a licensee, be stated fully and
3 clearly in such manner as he may deem necessary to prevent
4 misunderstanding [~~thereof~~] by prospective borrowers. The
5 director may permit or require licensees to refer in their
6 advertising to the fact that their business is under state
7 supervision, subject to conditions imposed by him to prevent
8 [any] erroneous impressions as to the scope or degree of
9 protection provided by the New Mexico Small Loan Act of 1955.

10 [B. ~~Each licensee shall display in each licensed~~
11 ~~place of business, in a place where it will be readily visible~~
12 ~~by borrowers, a full and accurate schedule of the rates of~~
13 ~~charges upon all classes of loans currently to be made by him,~~
14 ~~stated on a percent per annum basis and also on a percent per~~
15 ~~month basis.~~]"

16 Section 5. Section 58-15-14.1 NMSA 1978 (being Laws 1983,
17 Chapter 95, Section 2) is amended to read:

18 "58-15-14.1. CHARGES--METHOD OF COMPUTATION. -- [Charges
19 ~~on~~] The simple interest method shall be used for loans made
20 under the New Mexico Small Loan Act of 1955. Charges shall not
21 be paid, deducted or received in advance. Such charges shall
22 not be compounded. However, if part or all of the
23 consideration for a loan contract is the unpaid principal
24 balance of a prior loan, then the principal amount payable
25 under the loan contract may include any unpaid charges [which]

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1 that have accrued within sixty days on the prior loan. Such
2 charges shall be computed on the basis of the number of days
3 actually elapsed. [~~For the purpose of computing charges,~~
4 ~~whether at the maximum rate or less, a month shall be any~~
5 ~~period of thirty consecutive days and the rate of charge for~~
6 ~~each day shall be one-thirtieth of the monthly rate.~~]"

7 Section 6. Section 58-15-17 NMSA 1978 (being Laws 1955,
8 Chapter 128, Section 15, as amended) is amended to read:

9 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
10 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
11 AND INTEREST.--

12 A. Every licensee shall:

13 (1) at the time [~~any~~] a loan is made within
14 the provisions of the New Mexico Small Loan Act of 1955,
15 deliver to the borrower or, if there are two or more borrowers
16 on the same obligation, to one of them, a statement in English
17 on which shall be printed a copy of Section 58-15-14.1 NMSA
18 1978, disclosing in clear and distinct terms the amount of the
19 loan, the date the loan was made, a schedule or a description
20 of the payments, the type of the security, if any, for the
21 loan, the name and address of the licensed office, the name of
22 the person primarily obligated for the loan, the amount of
23 principal, the agreed rate of charge stated on [~~a percent per~~
24 ~~month and~~] a percent per year basis and the amount in dollars
25 and cents and other items allowable pursuant to that act, so

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1 stated as to clearly show the allocation of each item included;

2 (2) for each payment made on account of any
3 such loan, give to the person making it a plain and complete
4 receipt specifying the date and amount of the payment, the
5 amount applied to interest and principal and the balance
6 unpaid. When payment is made in any other manner than by the
7 borrower in person, by an agent of the borrower or by check or
8 money order, the licensee shall mail the receipt to the
9 borrower's last known address or hold the receipt for delivery
10 upon request of the borrower. A copy of all receipts shall be
11 kept on file in the office of the licensee as a part of his
12 records; and

13 (3) upon payment of the loan in full, mark
14 plainly every note and promise to pay signed by any obligor
15 with the word "paid" or "canceled" and promptly file or record
16 a release of any mortgage if the mortgage has been recorded,
17 restore any pledge and cancel and return any note and any
18 assignment given to the licensee. A licensee may mark and
19 return a copy of the note, promise to pay or any assignment if
20 the copy accurately reproduces the complete original.

21 B. No licensee shall take [~~any~~] a note or promise
22 to pay that does not disclose the amount of the loan, a
23 schedule of payments, or a description thereof, and the agreed
24 charge or rate of charge or any instrument in which blanks are
25 left to be filled in after execution.

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1 C. If judgment is obtained against ~~[any]~~ a party or
2 ~~[any]~~ a loan made ~~[under]~~ pursuant to the provisions of the New
3 Mexico Small Loan Act of 1955, neither the judgment nor the
4 loan shall carry, from the date of the judgment, ~~[any]~~ charges
5 against ~~[any]~~ a party to the loan other than court costs,
6 ~~[attorneys']~~ attorney fees and interest on the amount of the
7 judgment at ten percent a year.

8 D. ~~[Any]~~ A loan made ~~[under]~~ pursuant to the
9 provisions of the New Mexico Small Loan Act of 1955 that is
10 filed and approved as a claim in any bankruptcy proceeding
11 shall, from a date ninety days subsequent to the date of
12 adjudication, bear interest at the rate of ten percent a year
13 only. This limitation shall not apply when the bankrupt is not
14 discharged in bankruptcy or to any obligation not dischargeable
15 under the provisions of the federal Bankruptcy Act ~~[presently~~
16 ~~in force or as hereafter amended]~~.

17 E. No loan made under the provisions of the New
18 Mexico Small Loan Act of 1955 shall bear interest after ninety
19 days from the date of the death of the borrower in excess of a
20 rate of ten percent a year on the unpaid principal balance of
21 the loan.

22 F. No loan made under the provisions of the New
23 Mexico Small Loan Act of 1955 shall bear interest after twelve
24 months from the date of maturity of the loan in excess of ten
25 percent a year upon the unpaid principal balance of the loan."

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1 Section 7. Section 58-15-20 NMSA 1978 (being Laws 1955,
2 Chapter 128, Section 18) is amended to read:

3 "58-15-20. FEES AND COSTS. --

4 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding
5 any provision of [~~this Act~~] the New Mexico Small Loan Act of
6 1955, lawful fees, if any, actually and necessarily paid out by
7 the licensee to [~~any~~] a public officer for the filing,
8 recording or releasing in [~~any~~] a public office [~~any~~] of an
9 instrument securing the loan may be charged to the borrower.

10 [~~(b) ATTORNEY FEES~~] B. Notwithstanding any
11 provision in [~~any~~] a note or other loan contract taken or
12 received under [~~this Act~~] the New Mexico Small Loan Act of
13 1955, attorney fees shall not be charged or collected [~~except~~
14 ~~where such~~] when the note or other contract has been [~~turned~~]
15 submitted in good faith to an attorney for collection and after
16 diligent effort to collect [~~has failed~~] on the part of the
17 licensee has failed.

18 [~~(c) COURTS COSTS Where~~] C. When suit is filed in
19 [~~any~~] a court of competent jurisdiction, court costs shall be
20 [~~collectable~~] collectible in accordance with the laws of New
21 Mexico applicable thereto.

22 [~~(d) NOTARY FEES PROHIBITED~~] D. Notary fees
23 incident to the taking of [~~any~~] a lien to secure a small loan
24 or releasing such a lien shall not be charged or collected by
25 [~~any~~] a licensee [~~nor by any~~], an officer, agent or employee of

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1 a licensee ~~[nor by]~~ or anyone within ~~[any]~~ an office, room or
2 place of business in which a small loan office is conducted.

3 E. Delinquency fees shall not exceed five cents
4 (\$.05) for each one dollar (\$1.00) of each installment more
5 than ten days in arrears, provided that the total of
6 delinquency charges on any such installment shall not exceed
7 ten dollars (\$10.00) and that only one delinquency charge shall
8 be made on any one installment regardless of the period during
9 which the installment remains unpaid. "

10 Section 8. Section 58-15-23 NMSA 1978 (being Laws 1955,
11 Chapter 128, Section 21) is amended to read:

12 "58-15-23. VIOLATION OF GENERAL USURY LAWS. -- The ~~[willful]~~
13 willful violation by ~~[any]~~ a licensee or by ~~[any]~~ an officer,
14 manager, director, trustee, executive or employee directly
15 engaged in operating a small loan office under the provisions
16 of ~~[this Act]~~ the New Mexico Small Loan Act of 1955 of any
17 usury statute of this state within ~~[any]~~ an office, room or
18 place of business in which the making of loans as a licensee is
19 solicited or engaged in or in association or conjunction
20 therewith ~~[shall be]~~ is ground for suspension and revocation of
21 license in accordance with the applicable procedures
22 ~~[applicable thereto as]~~ set forth ~~[herein]~~ in that act."

23 Section 9. A new section of the New Mexico Small Loan Act
24 of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

25 "58-15-32. [NEW MATERIAL] LIMITATIONS ON PAYDAY LOANS. --

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1 A. A consumer shall be permitted to make partial
2 payments in any amount on a payday loan at any time.

3 B. After each payment is made, in full or in part,
4 on a payday loan, the licensee shall give to the person making
5 the payment a signed, dated receipt showing the amount paid,
6 amount credited toward interest and principal, and the balance
7 due on the loan.

8 C. A check written by a consumer for a payday loan
9 shall be payable to the order of the licensee.

10 D. The licensee shall provide the consumer, or each
11 consumer if there is more than one, with copies of the payday
12 loan agreement prior to the consummation of the loan.

13 E. The holder or assignee of a check written by a
14 consumer in connection with a payday loan takes the instrument
15 subject to all claims and defenses of the consumer. A payday
16 loan agreement may not be renewed, refinanced or extended
17 without the mutual written consent of the licensee and the
18 consumer. "

19 Section 10. A new section of the New Mexico Small Loan
20 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

21 "58-15-33. [NEW MATERIAL] PAYDAY LOANS-- PERMITTED
22 CHARGES. --

23 A. A licensee may not charge or receive from a
24 consumer, directly or indirectly, interest, fees or charges
25 except as provided in this section.

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1 B. A licensee may charge an administrative fee of
2 not more than five dollars (\$5.00) for each payday loan entered
3 into with a consumer.

4 C. In addition to the administrative fee, the
5 licensee may only charge simple interest on the amount of loan
6 proceeds delivered to the consumer in a payday loan. The
7 aggregate amount of interest received by the licensee for a
8 payday loan includes all interest received on the loan,
9 including interest received after any renewals, refinance or
10 extensions. The total aggregate amount may not exceed three
11 times the amount of the original loan agreement principal
12 balance. Once the licensee has received in total aggregate
13 interest equal to three times the original loan agreement
14 principal balance, the payday loan shall be terminated and
15 considered paid in full by the consumer. The interest rate
16 charged on the outstanding balance after initial maturity shall
17 not be greater than the interest rate charged during the
18 initial loan term. Interest on loans shall be computed and
19 paid only as a percentage of the unpaid principal balance.

20 D. If there are insufficient funds to pay a check
21 on the date of presentment, a licensee may charge a fee not to
22 exceed fifteen dollars (\$15.00). Only one fee may be collected
23 on a check even if it has been redeposited and returned more
24 than once. A fee charged pursuant to this subsection is a
25 licensee's only charge for a late payment. "

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1 Section 11. A new section of the New Mexico Small Loan
2 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

3 "58-15-34. [NEW MATERIAL] PAYDAY LOANS-- PROHIBITED
4 ACTS. -- A licensee shall not:

5 A. use or threaten to use a criminal process in
6 this or another state to collect on a payday loan;

7 B. alter the date or other information on a check
8 drawn by a consumer in a payday loan transaction;

9 C. use a device or agreement that would have the
10 effect of charging or collecting more fees, charges or interest
11 than allowed by entering into a different type of transaction
12 with the consumer that has that effect;

13 D. engage in unfair, deceptive or fraudulent
14 practices in the making or collecting of a payday loan;

15 E. charge a fee to cash a check representing the
16 proceeds of the payday loan;

17 F. use or attempt to use the check written by the
18 consumer for a payday loan as security for purposes of a state
19 or federal law;

20 G. make more than one payday loan to a consumer at
21 a time;

22 H. enter into another new payday loan with a
23 consumer for at least three calendar days after termination of
24 a payday loan by payment of the loan or another method of
25 termination;

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1 I. accept collateral for a payday loan other than
2 the consumer's check;

3 J. charge interest, fees or charges other than
4 those specifically authorized, including:

5 (1) charges for insurance; or

6 (2) collection costs;

7 K. threaten to take any action against a consumer
8 that is prohibited by the New Mexico Small Loan Act of 1955; or

9 L. include any of the following provisions in a
10 payday loan agreement:

11 (1) a hold harmless clause;

12 (2) a confession of judgment clause;

13 (3) a waiver of the right to a jury trial, if
14 applicable, in an action brought by or against a consumer;

15 (4) a mandatory arbitration clause;

16 (5) an assignment of or order for payment of
17 wages or other compensation for services;

18 (6) a provision in which the consumer agrees
19 not to assert a claim or defense arising out of the contract;
20 or

21 (7) a waiver of a provision of the New Mexico
22 Small Loan Act of 1955. "

23 Section 12. REPEAL. -- Sections 58-15-15 and 58-15-19 NMSA
24 1978 (being Laws 1959, Chapter 201, Section 1 and Laws 1955,
25 Chapter 128, Section 17, as amended) are repealed.

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