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SENATE BILL 787

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Tsosie

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE CONSUMER LOAN ACT; REQUIRING LICENSURE; PROVIDING POWERS AND DUTIES; REQUIRING RECORDS AND REPORTS; LIMITING CHARGES FOR LOANS; PRESCRIBING CRIMINAL AND CIVIL PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. ~~[NEW MATERIAL]~~ SHORT TITLE. -- Sections 1 through 11 of this act may be cited as the "Consumer Loan Act".

Section 2. ~~[NEW MATERIAL]~~ DEFINITIONS. -- As used in the Consumer Loan Act:

A. "consumer" means a natural person who is a resident of New Mexico and who, individually or jointly with another natural person, enters into a consumer loan;

B. "consumer lender" means any person who makes

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1 consumer loans;

2 C. "consumer loan" means any transaction in which  
3 funds are advanced to be repaid at a later date,  
4 notwithstanding the fact that the transaction contains one or  
5 more other elements;

6 D. "division" means the financial institutions  
7 division of the regulation and licensing department;

8 E. "facilitator" means a person who offers,  
9 originates or makes a consumer loan;

10 F. "licensee" means any person who offers,  
11 originates or makes a consumer loan, who arranges a consumer  
12 loan for a consumer lender, who acts as an agent for a consumer  
13 lender or who assists a consumer lender in any way in the  
14 origination of a consumer loan. "Licensee" does not include a  
15 state or federally chartered bank, thrift association, savings  
16 and loan association, credit union, pawnbroker, mortgage  
17 company, mortgage broker, motor vehicle sales finance company,  
18 credit card company or a consumer lender operating under the  
19 New Mexico Bank Installment Loan Act of 1959 making a loan  
20 repayable in substantially equal installments of principal and  
21 interest for a period of no less than one hundred twenty days  
22 to maturity, unless the loan is secured by a check, tax refund  
23 or motor vehicle title;

24 G. "person" means a natural person, firm,  
25 partnership, association or corporation, or other entity that

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1 makes a consumer loan in this state; and

2 H. "principal balance" means the balance due and  
3 owed exclusive of any interest, service charges or other loan-  
4 related charges.

5 Section 3. [NEW MATERIAL] LICENSING REQUIREMENTS AND  
6 FEES-- NUMBER AND PLACE OF BUSINESS. --

7 A. A person shall not make consumer loans, act as a  
8 facilitator of consumer loans or assist a consumer lender in  
9 any way in the origination of consumer loans without first  
10 obtaining a license from the division and complying with the  
11 Consumer Loan Act. This provision does not apply to any person  
12 excluded from the definition of licensee. The division shall  
13 not issue or renew a license until determining that:

14 (1) authorizing the applicant to make consumer  
15 loans promotes the convenience and advantage of the community  
16 in which the applicant proposes to engage in business;

17 (2) the applicant has available for operation  
18 of the business under a license cash or its equivalent,  
19 convertible securities or receivables of thirty thousand  
20 dollars (\$30,000) or any combination thereof; and

21 (3) the applicant has provided all other  
22 information the division deems necessary.

23 B. A license shall not be issued for longer than  
24 one year.

25 C. A licensee shall pay the following fees:

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1 (1) a first-time application fee of one  
2 thousand dollars (\$1,000);

3 (2) a renewal application fee of five hundred  
4 dollars (\$500); and

5 (3) a fee of five hundred dollars (\$500) or a  
6 fee of seventy-five cents (\$.75) for each one thousand dollars  
7 (\$1,000) of loans made during the twelve months preceding the  
8 submission of a license renewal application, whichever is  
9 greater.

10 D. More than one place of business shall not be  
11 maintained under the same license, but the division may issue  
12 more than one license to the same licensee.

13 E. A licensee shall not make consumer loans within  
14 an office, suite, room or place of business in which any other  
15 business is solicited or engaged in, unless the division finds  
16 that the other business is not contrary to the best interest of  
17 consumers and is authorized by the division in writing.

18 F. By accepting the license, the applicant agrees  
19 not to use the criminal process to collect the payment of  
20 consumer loans.

21 Section 4. [NEW MATERIAL] REVOCATION AND SUSPENSION OF  
22 LICENSE. --If the division finds, after due notice and hearing  
23 or opportunity for hearing, that a licensee or officer, agent,  
24 employee or representative of the licensee has violated any of  
25 the provisions of the Consumer Loan Act or rules promulgated

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1 pursuant to that act, failed or refused to make its reports to  
2 the division or furnished false information to the division,  
3 the division may issue an order suspending or revoking any  
4 license or may decide not to renew any license of the licensee.  
5 Revocation, suspension, surrender or nonrenewal of a license  
6 shall not relieve the licensee from civil or criminal  
7 liability.

8 Section 5. [NEW MATERIAL] DUTIES OF DIVISION. --

9 A. The division shall:

- 10 (1) maintain a list of licensees that is  
11 available to interested persons and the public;  
12 (2) establish a complaint process whereby an  
13 aggrieved consumer or other person may file a complaint against  
14 a licensee; and  
15 (3) compile annual reports of consumer lending  
16 in this state.

17 B. The division may promulgate rules to carry out  
18 the provisions of the Consumer Loan Act.

19 Section 6. [NEW MATERIAL] REQUIRED ACTS. --

- 20 A. A check written by a consumer for a consumer  
21 loan shall be made payable to the licensee.  
22 B. A consumer may make partial payments on the  
23 principal balance of a consumer loan at any time without charge  
24 other than interest.

25 C. After each payment made on a consumer loan, the

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1 licensee shall give to the consumer a signed, dated receipt  
2 showing the amount paid and the principal balance due on the  
3 loan.

4 Section 7. [NEW MATERIAL] REQUIRED DISCLOSURES. --

5 A. A licensee shall deliver to a consumer before  
6 entering into a consumer loan with that consumer a pamphlet  
7 prepared by the division that explains, in simple English and  
8 Spanish, all of the consumer's rights and responsibilities in a  
9 consumer loan transaction.

10 B. A licensee shall deliver to a consumer before  
11 entering into a consumer loan with that consumer a contract  
12 that may be kept by the consumer and that includes the  
13 following information in English and Spanish:

14 (1) the name, address and telephone number of  
15 the licensee making the consumer loan and the name and title of  
16 the individual employee who signs the contract on behalf of the  
17 licensee;

18 (2) an itemization of the fees and interest  
19 charges to be paid by the consumer;

20 (3) disclosures required by the federal Truth  
21 in Lending Act, regardless of whether the Truth in Lending Act  
22 applies to the particular consumer loan;

23 (4) a clear description of the consumer's  
24 payment obligations pursuant to the loan contract; and

25 (5) in a manner that is more conspicuous than

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1 the other information provided in the contract and in at least  
2 fourteen-point bold typeface located immediately preceding the  
3 signature of the consumer, the statement "You cannot be  
4 prosecuted in criminal court to collect this loan."

5 C. A notice in simple English and Spanish shall be  
6 conspicuously posted by a licensee in each location of a  
7 business providing consumer loans. The notice shall:

8 (1) inform consumers that it is illegal for  
9 the licensee to use the criminal process against a consumer to  
10 collect on any consumer loan; and

11 (2) display the schedule of all interest and  
12 fees to be charged on a consumer loan.

13 Section 8. [NEW MATERIAL] PERMITTED CHARGES AND FEES. --

14 A. A licensee shall not charge or receive, directly  
15 or indirectly, any interest, fees or charges, except those  
16 specifically authorized by this section.

17 B. A licensee may charge interest on the amount of  
18 cash delivered to the consumer in a consumer loan in an amount  
19 no greater than forty percent a year. The interest rate  
20 charged on the outstanding balance after maturity shall not be  
21 greater than the interest rate charged during the loan term.  
22 Interest charges on consumer loans shall be computed and paid  
23 only as a percentage of an unpaid principal balance.

24 C. When a loan is repaid before its due date,  
25 unearned interest charges shall be rebated to the consumer

1 based on a method at least as favorable to the consumer as the  
2 actuarial method.

3 Section 9. [NEW MATERIAL] PROHIBITED ACTS. -- The following  
4 acts are prohibited:

5 A. making consumer loans without first obtaining a  
6 license;

7 B. offering, arranging, acting as an agent for or  
8 assisting a facilitator in any way in the making of a consumer  
9 loan, unless the facilitator complies with all applicable  
10 federal and state regulations, including the Consumer Loan Act;

11 C. threatening to use or using the criminal process  
12 in this or any other state to collect on a loan;

13 D. altering the date or any other information on a  
14 check written or accepted for repayment of a consumer loan;

15 E. using a device or agreement that would have the  
16 effect of charging or collecting more fees, charges or interest  
17 than allowed by the Consumer Loan Act, including entering into  
18 a different type of transaction with the consumer;

19 F. engaging in unfair, deceptive or fraudulent  
20 practices in the making of or collecting on a consumer loan;

21 G. charging interest, fees or charges other than  
22 those specifically authorized by the Consumer Loan Act,  
23 including, but not limited to:

24 (1) charges for insurance; and

25 (2) attorney fees or other collection costs;

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1           H. threatening to take action against a consumer  
2 that is prohibited by the Consumer Loan Act or making  
3 misleading or deceptive statements regarding the consumer loan  
4 or any consequence thereof;

5           I. making a misrepresentation of a material fact in  
6 obtaining or attempting to obtain a license;

7           J. including any of the following provisions in  
8 contracts required by the Consumer Loan Act:

9                   (1) a hold harmless clause;

10                   (2) a confession of judgment clause;

11                   (3) a waiver of the right to a jury trial, if  
12 applicable, in any action brought by or against a consumer;

13                   (4) a mandatory arbitration clause;

14                   (5) an assignment of or order for payment of  
15 wages or other compensation for services;

16                   (6) a provision in which a consumer agrees not  
17 to assert any claim or defense arising out of the contract; and

18                   (7) a waiver of any provision of the act; and

19           K. selling insurance of any kind, whether sold or  
20 not sold in connection with the making or collection of a  
21 consumer loan.

22           Section 10. [NEW MATERIAL] CIVIL PENALTIES AND  
23 REMEDIES. --

24           A. A violation of the Consumer Loan Act, except as  
25 the result of accidental or bona fide error of computation,

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1 renders the loan void, and the licensee shall have no right to  
2 collect, receive or retain any principal, interest or other  
3 charges whatsoever with respect to the loan.

4 B. A person found to have violated the Consumer  
5 Loan Act shall be liable to a consumer for actual,  
6 consequential and punitive damages plus statutory damages of  
7 one thousand dollars (\$1,000) for each violation, plus costs  
8 and attorney fees.

9 C. A consumer may sue for injunctive and other  
10 appropriate equitable relief to stop a person from violating  
11 provisions of the Consumer Loan Act.

12 D. A consumer may bring a class action suit to  
13 enforce the Consumer Loan Act.

14 E. The remedies provided in this section are not  
15 intended to be exclusive remedies available to a consumer nor  
16 shall the consumer exhaust any administrative remedies provided  
17 pursuant to the Consumer Loan Act or any other applicable law.

18 Section 11. [NEW MATERIAL] CRIMINAL PENALTIES. -- A  
19 licensee, including members, officers and directors of the  
20 licensee, that knowingly violates the Consumer Loan Act is  
21 guilty of a petty misdemeanor and upon conviction shall be  
22 sentenced pursuant to the provisions of Subsection B of Section  
23 31-19-1 NMSA 1978.

24 Section 12. Section 58-15-3 NMSA 1978 (being Laws 1955,  
25 Chapter 128, Section 3, as amended) is amended to read:

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1 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
2 PENALTY.--

3 A. [~~No~~] A person shall not engage in the business  
4 of lending in amounts of two thousand five hundred dollars  
5 (\$2,500) or less without first having obtained a license from  
6 the director. Nothing contained in this subsection shall  
7 restrict or prohibit a licensee under the New Mexico Small Loan  
8 Act of 1955 from making loans in any amount under the New  
9 Mexico Bank Installment Loan Act of 1959 in accordance with the  
10 provisions of Section 58-7-2 NMSA 1978.

11 B. Nothing in the New Mexico Small Loan Act of 1955  
12 shall apply to a person making individual advances of two  
13 thousand five hundred dollars (\$2,500) or less under a written  
14 agreement providing for a total loan or line of credit in  
15 excess of two thousand five hundred dollars (\$2,500) for which  
16 real estate is pledged as collateral.

17 C. [~~Any~~] A banking corporation, savings and loan  
18 association or credit union operating under the laws of the  
19 United States or of New Mexico shall be exempt from the  
20 licensing requirements of the New Mexico Small Loan Act of  
21 1955, nor shall that act apply to [~~any~~] business transacted by  
22 any such person under the authority of and as permitted by any  
23 such law, nor to any bona fide pawnbroking business transacted  
24 under a pawnbroker's license, nor to a licensee as defined  
25 pursuant to the Consumer Loan Act, nor to bona fide commercial

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1 loans made to dealers upon personal property held for resale.  
2 Nothing contained in the New Mexico Small Loan Act of 1955  
3 shall be construed as abridging the rights of any of those  
4 exempted from the operations of that act from contracting for  
5 or receiving interest or charges not in violation of [~~any~~] an  
6 existing applicable statute of this state.

7 D. The provisions of Subsection A of this section  
8 apply to:

9 (1) any person [~~owning any~~] who owns interest,  
10 legal or equitable, in the business or profits of [~~any~~] a  
11 licensee and whose name does not specifically appear on the  
12 face of the license, except a stockholder in a corporate  
13 licensee; and

14 (2) to any person who seeks to evade its  
15 application by any device, subterfuge or pretense whatsoever,  
16 including but not thereby limiting the generality of the  
17 foregoing:

18 (a) the loan, forbearance, use or sale  
19 of credit (as guarantor, surety, endorser, comaker or  
20 otherwise), money, goods or things in action;

21 (b) the use of collateral or related  
22 sales or purchases of goods or services or agreements to sell  
23 or purchase, whether real or pretended;

24 (c) receiving or charging compensation  
25 for goods or services, whether or not sold, delivered or

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1 provided; and

2 (d) the real or pretended negotiation,  
3 arrangement or procurement of a loan through any use or  
4 activity of a third person, whether real or fictitious.

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

17 F. The provisions of the Consumer Loan Act do not  
18 apply to any person excluded from the definition of licensee."

19 Section 13. EFFECTIVE DATE. --The effective date of the  
20 provisions of this act is July 1, 2005.

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