

1 SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 787

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10 47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

11 AN ACT

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

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

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

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

22 A. "consumer" means a natural person who,  
23 individually or jointly with another natural person, enters  
24 into a consumer loan;

25 B. "consumer lender" means any person who makes

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 and credit union and their affiliates,  
17 pawnbroker, mortgage company, mortgage broker, motor vehicle  
18 sales finance company, credit card company or a consumer lender  
19 operating under the New Mexico Bank Installment Loan Act of  
20 1959 making a loan repayable in substantially equal  
21 installments of principal and interest for a period of no less  
22 than one hundred twenty days to maturity, unless the loan is  
23 secured by a check, tax refund or motor vehicle title;

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

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:

. 157039. 3

underscoring material = new  
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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

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

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

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 shall not charge an interest rate on  
 18 a consumer loan greater than the prime rate plus thirty-six  
 19 percent per year. For the purposes of this subsection, "prime  
 20 rate" means the consumer prime rate published in the *Wall*  
 21 *Street Journal* on the last business day of the month preceding  
 22 the month in which a consumer loan is initiated. The interest  
 23 rate charged on the outstanding balance after maturity shall  
 24 not be greater than the interest rate charged during the loan  
 25 term. Interest charges on consumer loans shall be computed and

. 157039. 3

1 paid only as a percentage of an unpaid principal balance.

2 C. A licensee may charge an administrative fee in  
3 an amount not to exceed five percent of the principal balance.  
4 This fee may be charged only once on a consumer loan and shall  
5 not be charged on a refinance of an existing consumer loan.

6 D. When a loan is repaid before its due date,  
7 unearned interest charges shall be rebated to the consumer  
8 based on a method at least as favorable to the consumer as the  
9 actuarial method.

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

12 A. making consumer loans without first obtaining a  
13 license;

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

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

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

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



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

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

6 (1) charges for insurance; and

7 (2) attorney fees or other collection costs;

8 H. threatening to take action against a consumer  
9 that is prohibited by the Consumer Loan Act or making  
10 misleading or deceptive statements regarding the consumer loan  
11 or any consequence thereof;

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

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

16 (1) a hold harmless clause;

17 (2) a confession of judgment clause;

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

20 (4) a mandatory arbitration clause;

21 (5) an assignment of or order for payment of  
22 wages or other compensation for services;

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

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

1           K. selling insurance of any kind, whether sold or  
2 not sold in connection with the making or collection of a  
3 consumer loan.

4           Section 10. [NEW MATERIAL] CIVIL PENALTIES AND  
5 REMEDIES. --

6           A. A violation of the Consumer Loan Act, except as  
7 the result of accidental or bona fide error of computation,  
8 renders the loan void, and the licensee shall have no right to  
9 collect, receive or retain any principal, interest or other  
10 charges whatsoever with respect to the loan.

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

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

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

21           E. The remedies provided in this section are not  
22 intended to be exclusive remedies available to a consumer nor  
23 shall the consumer exhaust any administrative remedies provided  
24 pursuant to the Consumer Loan Act or any other applicable law.

25           Section 11. [NEW MATERIAL] CRIMINAL PENALTIES. -- A

1 licensee, including members, officers and directors of the  
 2 licensee, that knowingly violates the Consumer Loan Act is  
 3 guilty of a petty misdemeanor and upon conviction shall be  
 4 sentenced pursuant to the provisions of Subsection B of Section  
 5 31-19-1 NMSA 1978.

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

8 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
 9 PENALTY.--

10 A. [~~No~~] A person shall not engage in the business  
 11 of lending in amounts of two thousand five hundred dollars  
 12 (\$2,500) or less without first having obtained a license from  
 13 the director. Nothing contained in this subsection shall  
 14 restrict or prohibit a licensee under the New Mexico Small Loan  
 15 Act of 1955 from making loans in any amount under the New  
 16 Mexico Bank Installment Loan Act of 1959 in accordance with the  
 17 provisions of Section 58-7-2 NMSA 1978.

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

24 C. [~~Any~~] A banking corporation, savings and loan  
 25 association or credit union and their affiliates operating

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1 under the laws of the United States or of New Mexico shall be  
2 exempt from the licensing requirements of the New Mexico Small  
3 Loan Act of 1955, nor shall that act apply to ~~[any]~~ business  
4 transacted by any such person under the authority of and as  
5 permitted by any such law, nor to any bona fide pawnbroking  
6 business transacted under a pawnbroker's license, nor to a  
7 licensee as defined pursuant to the Consumer Loan Act, nor to  
8 bona fide commercial loans made to dealers upon personal  
9 property held for resale. Nothing contained in the New Mexico  
10 Small Loan Act of 1955 shall be construed as abridging the  
11 rights of any of those exempted from the operations of that act  
12 from contracting for or receiving interest or charges not in  
13 violation of ~~[any]~~ an existing applicable statute of this  
14 state.

15 D. The provisions of Subsection A of this section  
16 apply to:

17 (1) any person ~~[owning any]~~ who owns interest,  
18 legal or equitable, in the business or profits of ~~[any]~~ a  
19 licensee and whose name does not specifically appear on the  
20 face of the license, except a stockholder in a corporate  
21 licensee; and

22 (2) to any person who seeks to evade its  
23 application by any device, subterfuge or pretense whatsoever,  
24 including but not thereby limiting the generality of the  
25 foregoing:

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

4                    (b) the use of collateral or related  
5 sales or purchases of goods or services or agreements to sell  
6 or purchase, whether real or pretended;

7                    (c) receiving or charging compensation  
8 for goods or services, whether or not sold, delivered or  
9 provided; and

10                   (d) the real or pretended negotiation,  
11 arrangement or procurement of a loan through any use or  
12 activity of a third person, whether real or fictitious.

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

25                   F. The provisions of the Consumer Loan Act do not

1 apply to a person excluded from the definition of licensee."

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

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