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HOUSE BILL 100

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

INTRODUCED BY

Javier Martínez

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; REQUIRING THE REPORTING OF
POSITIVE CREDIT TO NATIONWIDE CONSUMER REPORTING AGENCIES BY
PAYDAY, AUTOMOBILE TITLE AND INSTALLMENT LOAN LENDERS; DEFINING
"POSITIVE CREDIT" AND "NATIONWIDE CONSUMER REPORTING AGENCY".

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

SECTION 1. Section 58-7-1 NMSA 1978 (being Laws 1959,
Chapter 327, Section 1) is amended to read:

"58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
Installment Loan Act of 1959"."

SECTION 2. A new section of the New Mexico Bank
Installment Loan Act of 1959 is enacted to read:

"[NEW MATERIAL] REPORTING OF POSITIVE CREDIT REQUIRED.--A
lender shall report to a nationwide consumer reporting agency

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1 positive credit of the borrower. For the purposes of this
2 section, "positive credit" means financial records solely
3 relating to the existence of the borrower's loan and the timely
4 performance of the borrower in making payments on the loan."

5 SECTION 3. Section 58-7-9 NMSA 1978 (being Laws 1959,
6 Chapter 327, Section 10, as amended) is amended to read:

7 "58-7-9. CONSTRUCTION.--

8 A. None of the provisions of the New Mexico Small
9 Loan Act of 1955 are amended or repealed by the New Mexico Bank
10 Installment Loan Act of 1959.

11 B. With the exception of precomputed loan
12 transactions, a lender is not bound by the provisions of the
13 New Mexico Bank Installment Loan Act of 1959 in making loans
14 where the loan is made in accordance with the provisions of
15 Sections 56-8-9 through 56-8-14 NMSA 1978.

16 C. None of the provisions of the New Mexico Bank
17 Installment Loan Act of 1959 apply to the assignment or
18 purchase of retail installment contracts originated under the
19 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
20 originated under the provisions of Sections 56-1-1 through
21 56-1-15 NMSA 1978.

22 D. In the event of a conflict between a requirement
23 of the New Mexico Bank Installment Loan Act of 1959 and a
24 requirement of the Home Loan Protection Act, the requirement of
25 the Home Loan Protection Act shall control.

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1 E. As used in the New Mexico Bank Installment Loan
2 Act of 1959:

3 (1) "year" means three hundred sixty-five
4 days; ~~and~~

5 (2) "month" means one-twelfth of a year; and

6 (3) "nationwide consumer reporting agency"
7 means any person that, for monetary fees or dues or on a
8 cooperative nonprofit basis, regularly engages in the practice
9 of assembling or evaluating, and maintaining, for the purpose
10 of furnishing consumer reports to third parties bearing on a
11 consumer's creditworthiness, credit standing or credit
12 capacity, each of the following regarding consumers residing
13 nationwide:

14 (a) public record information; or

15 (b) credit account information from
16 persons who furnish that information regularly and in the
17 ordinary course of business.

18 F. The director of the financial institutions
19 division of the regulation and licensing department shall issue
20 and file as required by law interpretive regulations to
21 effectuate the purposes of the New Mexico Bank Installment Loan
22 Act of 1959. In issuing, amending or repealing interpretive
23 regulations, the director shall issue the regulation amendment
24 or repeal of the regulation as a proposed regulation amendment
25 or repeal of a regulation and file it for public inspection in

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1 the office of the director of the financial institutions
2 division. Distribution thereof shall be made to interested
3 persons, and their comments shall be invited. After the
4 proposed regulation has been on file for not less than two
5 months, the director may issue it as a final regulation by
6 filing as required by law. Any person who is or may be
7 adversely affected by the adoption, amendment or repeal of a
8 regulation under this section may file an appeal of that action
9 in the district court in Santa Fe county within thirty days
10 after the filing of the adopted regulation, amendment or repeal
11 as required by law.

12 G. Any person, corporation or association complying
13 with the regulations adopted by the director of the financial
14 institutions division of the regulation and licensing
15 department is deemed to have complied with the provisions of
16 the New Mexico Bank Installment Loan Act of 1959.

17 H. All loans other than precomputed loan
18 transactions made under the New Mexico Bank Installment Loan
19 Act of 1959 shall be clearly identified on the loan documents
20 as being made under that act."

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

23 "[NEW MATERIAL] REPORTING OF POSITIVE CREDIT REQUIRED.--A
24 licensee shall report to a nationwide consumer reporting agency
25 positive credit of the consumer. For the purposes of this

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1 section, "positive credit" means financial records solely
2 relating to the existence of the consumer's payday loan and the
3 timely performance of the consumer in making payments on the
4 payday loan."

5 SECTION 5. Section 58-15-2 NMSA 1978 (being Laws 1955,
6 Chapter 128, Section 2, as amended) is amended to read:

7 "58-15-2. DEFINITIONS.--The following words and terms
8 when used in the New Mexico Small Loan Act of 1955 have the
9 following meanings unless the context clearly requires a
10 different meaning. The meaning ascribed to the singular form
11 applies also to the plural:

12 A. "consumer" means a person who enters into a loan
13 agreement and receives the loan proceeds in New Mexico;

14 B. "debit authorization" means an authorization
15 signed by a consumer to electronically transfer or withdraw
16 funds from the consumer's account for the specific purpose of
17 repaying a loan;

18 C. "department" or "division" means the financial
19 institutions division of the regulation and licensing
20 department;

21 D. "director" means the director of the division;

22 E. "installment loan" means a loan that is to be
23 repaid in a minimum of four successive substantially equal
24 payment amounts to pay off a loan in its entirety with a period
25 of [~~no~~] not less than one hundred twenty days to maturity.

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1 "Installment loan" does not mean a loan in which a licensee
2 requires, as a condition of making the loan, the use of
3 postdated checks or debit authorizations for repayment of that
4 loan;

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

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

22 H. "nationwide consumer reporting agency" means any
23 person that, for monetary fees or dues or on a cooperative
24 nonprofit basis, regularly engages in the practice of
25 assembling or evaluating, and maintaining, for the purpose of

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1 furnishing consumer reports to third parties bearing on a
2 consumer's creditworthiness, credit standing or credit
3 capacity, each of the following regarding consumers residing
4 nationwide:

- 5 (1) public record information; or
- 6 (2) credit account information from persons
7 who furnish that information regularly and in the ordinary
8 course of business;

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

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

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

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

25 (c) pays to the consumer, credits to the

1 consumer's account or pays another person on behalf of the
2 consumer the amount of an instrument actually paid or to be
3 paid pursuant to the New Mexico Small Loan Act of 1955; but

4 (2) does not include:

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

8 (b) installment loans;

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

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

13 ~~[L.]~~ L. "renewed payday loan" means a loan in which
14 a consumer pays in cash the administrative fee payable under a
15 payday loan agreement and refinances all or part of the unpaid
16 principal balance of an existing payday loan with a new payday
17 loan from the same licensee. A "renewed payday loan" includes
18 a transaction in which a consumer pays off all or part of an
19 existing payday loan with the proceeds of a payday loan from
20 the same licensee; and

21 ~~[M.]~~ M. "simple interest" means a method of
22 calculating interest in which the amount of interest is
23 calculated based on the annual interest rate disclosed in the
24 loan agreement and is computed only on the outstanding
25 principal balance of the loan."

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1 SECTION 6. A new section of the Motor Vehicle Sales
2 Finance Act is enacted to read:

3 "[NEW MATERIAL] REPORTING OF POSITIVE CREDIT REQUIRED.--A
4 holder of a retail installment contract shall report to a
5 nationwide consumer reporting agency positive credit of the
6 buyer. For the purposes of this section, "positive credit"
7 means financial information solely related to the existence of
8 the buyer's retail installment contract and the timely
9 performance of the buyer in making payments on the retail
10 installment contract."

11 SECTION 7. Section 58-19-2 NMSA 1978 (being Laws 1959,
12 Chapter 204, Section 2, as amended) is amended to read:

13 "58-19-2. DEFINITIONS.--As used in the Motor Vehicle
14 Sales Finance Act:

15 A. "motor vehicles" means automobiles, recreational
16 vehicles, recreational travel trailers, trailers, motorcycles,
17 trucks, semi-trailers, truck tractors and buses designed and
18 used primarily to transport persons or property on a public
19 highway, farm machinery and all vehicles new or used, with any
20 power other than muscular power except boat trailers, aircraft
21 or any vehicle that runs only on rails or tracks, but does not
22 include any motor vehicle having a gross vehicle weight of ten
23 thousand pounds or more purchased primarily for business or
24 commercial purposes;

25 B. "retail buyer" or "buyer" means a person who

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1 buys a motor vehicle primarily for personal, family or
2 household purposes from a retail seller and who executes a
3 retail installment contract in connection therewith;

4 C. "retail seller" or "seller" means a person who
5 sells a motor vehicle to a retail buyer or subject to a retail
6 installment contract;

7 D. "holder" of a retail installment contract means
8 the retail seller of the motor vehicle under or subject to the
9 contract or, if the contract is purchased by a sales finance
10 company or other assignee, the sales finance company or other
11 assignee;

12 E. "retail installment transaction" means any
13 transaction evidenced by a retail installment contract entered
14 into between a retail buyer and a retail seller wherein the
15 retail buyer buys a motor vehicle from the retail seller at a
16 time price payable in one or more deferred installments. The
17 cash sale price of the motor vehicle, the amount included for
18 insurance and other benefits if a separate charge is made
19 therefor, official fees and the finance charge together
20 constitute the time price;

21 F. "retail installment contract" or "contract" means
22 an agreement, entered into in this state or made subject to the
23 laws of this state, pursuant to which the title to or a lien
24 upon the motor vehicle that is the subject matter of a retail
25 installment transaction is retained or taken by a retail seller

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1 from a retail buyer as security for the buyer's obligation.
2 The term includes a chattel mortgage, a conditional sales
3 contract and a contract for the bailment or leasing of a motor
4 vehicle by which the bailee or lessee contracts to pay as
5 compensation for its use a sum substantially equivalent to or
6 in excess of its value and by which it is agreed that the
7 bailee or lessee is bound to become or has the option of
8 becoming the owner of the motor vehicle upon full compliance
9 with the provisions of the contract;

10 G. "cash sale price" means the price stated in a
11 retail installment contract for which the seller would have
12 sold to the buyer, and the buyer would have bought from the
13 seller, the motor vehicle that is the subject matter of the
14 retail installment contract, if the sale had been a sale for
15 cash instead of a retail installment transaction. Cash sale
16 price may include any taxes, registration fee, certificate of
17 title fee, license and other fees and charges for accessories
18 and their installation and for delivery, servicing, repairing
19 or improving the motor vehicle;

20 H. "official fees" means the fee prescribed by law
21 for filing, recording or otherwise perfecting and releasing or
22 satisfying a retained title or a lien created by a retail
23 installment contract;

24 I. "finance charge" means the amount agreed upon
25 between the buyer and the seller to be added to the aggregate

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1 of the cash sale price, the amount, if any, included for
2 insurance and other benefits and official fees, in determining
3 the time price;

4 J. "person" means an individual, partnership,
5 corporation, association and any other group however organized;

6 K. "sales finance company" means a person engaged in
7 whole or in part in the business of purchasing retail
8 installment contracts from one or more retail sellers. The
9 term includes but is not limited to a bank, trust company,
10 private banker, small loan licensee, industrial bank or
11 investment company, if so engaged; the term also includes a
12 retail seller engaged in whole or in part in the business of
13 creating and holding retail installment contracts that exceed a
14 total aggregate outstanding indebtedness of one hundred
15 thousand dollars (\$100,000);

16 L. "director" means the director of the financial
17 institutions division of the regulation and licensing
18 department; [~~and~~]

19 M. "nationwide consumer reporting agency" means any
20 person that, for monetary fees or dues or on a cooperative
21 nonprofit basis, regularly engages in the practice of
22 assembling or evaluating, and maintaining, for the purpose of
23 furnishing consumer reports to third parties bearing on a
24 consumer's creditworthiness, credit standing or credit
25 capacity, each of the following regarding consumers residing

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nationwide:

(1) public record information; or

(2) credit account information from persons who

furnish that information regularly and in the ordinary course
of business; and

[M-] N. "year" means a period of three hundred sixty-
five days; "month" means one-twelfth of a year; and "day" means
one three-hundred-sixty-fifth of a year."

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