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HOUSE BILL 372

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

INTRODUCED BY

Mimi Stewart

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, 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 or credit card company;

19 G. "person" means a natural person, firm,
20 partnership, association or corporation, or other entity that
21 makes a consumer loan in this state; and

22 H. "principal balance" means the balance due and
23 owed exclusive of any interest, service charges or other loan-
24 related charges.

25 Section 3. [NEW MATERIAL] LICENSING REQUIREMENTS AND

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1 FEES-- NUMBER AND PLACE OF BUSINESS. --

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

9 (1) authorizing the applicant to make consumer
10 loans promotes the convenience and advantage of the community
11 in which the applicant proposes to engage in business;

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

16 (3) the applicant has provided all other
17 information the division deems necessary.

18 B. A license shall not be issued for longer than
19 one year.

20 C. A licensee shall pay the following fees:

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

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

25 (3) a fee of five hundred dollars (\$500) or a

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1 fee of seventy-five cents (\$.75) for each one thousand dollars
2 (\$1,000) of loans made during the twelve months preceding the
3 submission of a license renewal application, whichever is
4 greater.

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

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

13 F. By accepting the license, the applicant agrees
14 not to use the criminal process to collect the payment of
15 consumer loans.

16 Section 4. [NEW MATERIAL] REVOCATION AND SUSPENSION OF
17 LICENSE. --If the division finds, after due notice and hearing
18 or opportunity for hearing, that a licensee or officer, agent,
19 employee or representative of the licensee has violated any of
20 the provisions of the Consumer Loan Act or rules promulgated
21 pursuant to that act, failed or refused to make its reports to
22 the division or furnished false information to the division,
23 the division may issue an order suspending or revoking any
24 license or may decide not to renew any license of the licensee.
25 Revocation, suspension, surrender or nonrenewal of a license

1 shall not relieve the licensee from civil or criminal
2 liability.

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

4 A. The division shall:

5 (1) maintain a list of licensees that is
6 available to interested persons and the public;

7 (2) establish a complaint process whereby an
8 aggrieved consumer or other person may file a complaint against
9 a licensee; and

10 (3) compile annual reports of consumer lending
11 in this state.

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

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

15 A. A check written by a consumer for a consumer
16 loan shall be made payable to the licensee.

17 B. A consumer may make partial payments on the
18 principal balance of a consumer loan at any time without charge
19 other than interest.

20 C. After each payment made on a consumer loan, the
21 licensee shall give to the consumer a signed, dated receipt
22 showing the amount paid and the principal balance due on the
23 loan.

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

25 A. A licensee shall deliver to a consumer before

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1 entering into a consumer loan with that consumer a pamphlet
2 prepared by the division that explains, in simple English and
3 Spanish, all of the consumer's rights and responsibilities in a
4 consumer loan transaction.

5 B. A licensee shall deliver to a consumer before
6 entering into a consumer loan with that consumer a contract
7 that may be kept by the consumer and that includes the
8 following information in English and Spanish:

9 (1) the name, address and telephone number of
10 the licensee making the consumer loan and the name and title of
11 the individual employee who signs the contract on behalf of the
12 licensee;

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

15 (3) disclosures required by the federal Truth
16 in Lending Act, regardless of whether the Truth in Lending Act
17 applies to the particular consumer loan;

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

20 (5) in a manner that is more conspicuous than
21 the other information provided in the contract and in at least
22 fourteen-point bold typeface located immediately preceding the
23 signature of the consumer, the statement "You cannot be
24 prosecuted in criminal court to collect this loan."

25 C. A notice in simple English and Spanish shall be

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1 conspicuously posted by a licensee in each location of a
2 business providing consumer loans. The notice shall:

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

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

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

9 A. A licensee shall not charge or receive, directly
10 or indirectly, any interest, fees or charges, except those
11 specifically authorized by this section.

12 B. A licensee may charge interest on the amount of
13 cash delivered to the consumer in a consumer loan in an amount
14 no greater than thirty-six percent a year. The interest rate
15 charged on the outstanding balance after maturity shall not be
16 greater than the interest rate charged during the loan term.
17 Interest charges on consumer loans shall be computed and paid
18 only as a percentage of an unpaid principal balance.

19 C. When a loan is repaid before its due date,
20 unearned interest charges shall be rebated to the consumer
21 based on a method at least as favorable to the consumer as the
22 actuarial method.

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

25 A. making consumer loans without first obtaining a

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1 license;

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

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

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

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

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

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

19 (1) charges for insurance; and

20 (2) attorney fees or other collection costs;

21 H. threatening to take action against a consumer
22 that is prohibited by the Consumer Loan Act or making
23 misleading or deceptive statements regarding the consumer loan
24 or any consequence thereof;

25 I. making a misrepresentation of a material fact in

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1 obtaining or attempting to obtain a license;

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

4 (1) a hold harmless clause;

5 (2) a confession of judgment clause;

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

8 (4) a mandatory arbitration clause;

9 (5) an assignment of or order for payment of
10 wages or other compensation for services;

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

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

14 K. selling insurance of any kind, whether sold or
15 not sold in connection with the making or collection of a
16 consumer loan.

17 Section 10. [NEW MATERIAL] CIVIL PENALTIES AND
18 REMEDIES. --

19 A. A violation of the Consumer Loan Act, except as
20 the result of accidental or bona fide error of computation,
21 renders the loan void, and the licensee shall have no right to
22 collect, receive or retain any principal, interest or other
23 charges whatsoever with respect to the loan.

24 B. A person found to have violated the Consumer
25 Loan Act shall be liable to a consumer for actual,

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1 consequential and punitive damages plus statutory damages of
2 one thousand dollars (\$1,000) for each violation, plus costs
3 and attorney fees.

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

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

9 E. The remedies provided in this section are not
10 intended to be exclusive remedies available to a consumer nor
11 shall the consumer exhaust any administrative remedies provided
12 pursuant to the Consumer Loan Act or any other applicable law.

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

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

21 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
22 PENALTY. --

23 A. ~~[No]~~ A person shall not engage in the business
24 of lending in amounts of two thousand five hundred dollars
25 (\$2,500) or less without first having obtained a license from

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1 the director. Nothing contained in this subsection shall
2 restrict or prohibit a licensee under the New Mexico Small Loan
3 Act of 1955 from making loans in any amount under the New
4 Mexico Bank Installment Loan Act of 1959 in accordance with the
5 provisions of Section 58-7-2 NMSA 1978.

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

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

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1 existing applicable statute of this state.

2 D. The provisions of Subsection A of this section
3 apply to:

4 (1) any person [~~owning any~~] who owns interest,
5 legal or equitable, in the business or profits of [~~any~~] a
6 licensee and whose name does not specifically appear on the
7 face of the license, except a stockholder in a corporate
8 licensee; and

9 (2) to any person who seeks to evade its
10 application by any device, subterfuge or pretense whatsoever,
11 including but not thereby limiting the generality of the
12 foregoing:

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

16 (b) the use of collateral or related
17 sales or purchases of goods or services or agreements to sell
18 or purchase, whether real or pretended;

19 (c) receiving or charging compensation
20 for goods or services, whether or not sold, delivered or
21 provided; and

22 (d) the real or pretended negotiation,
23 arrangement or procurement of a loan through any use or
24 activity of a third person, whether real or fictitious.

25 E. [~~Any~~] A person, copartnership, trust and the

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

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

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