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SENATE BILL 393

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR LIMITATION ON INTEREST CHARGES FOR CERTAIN CONSUMER LOANS; AMENDING 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 individuals, copartners, associations, trusts, corporations and any other legal entity;~~]

underscoring material = new
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1 A. "annual percentage rate" means an actuarial
2 annual percentage rate as defined in the federal Truth in
3 Lending Act, 15 U.S.C. 1601 et seq.;

4 B. "consumer" means a person who enters into a loan
5 agreement in New Mexico;

6 C. "consumer loan" means an extension in the amount
7 of two thousand five hundred dollars (\$2,500) or less,
8 excluding loans for which real property is pledged as
9 collateral and loans offered for the express purpose of
10 financing the purchase of real property and that are secured by
11 that real property;

12 D. "department" or "division" means the financial
13 institutions division of the regulation and licensing
14 department;

15 E. "director" means the director of the division;

16 F. "interest" means all cost elements associated
17 with the extension of credit, including fees, service charges,
18 renewal charges, credit insurance premiums, any ancillary
19 products sold with the extension of credit and any other charge
20 or premium with respect to the extension of consumer credit;

21 [~~B.~~] G. "license" [~~shall mean~~] means a permit
22 issued under the authority of the New Mexico Small Loan Act of
23 1955 to make loans and collect charges therefor strictly in
24 accordance with the provisions of [~~the New Mexico Small Loan~~
25 Act of 1955] that act at a single place of business. It shall

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1 constitute and shall be construed as a grant of a [~~revokable~~
2 revocable privilege only to be held and enjoyed subject to all
3 the conditions, restrictions and limitations contained in the
4 New Mexico Small Loan Act of 1955 and lawful regulations
5 promulgated by the director [~~of the financial institutions~~
6 ~~division~~] and not otherwise;

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

17 [D. ~~"director" means the director of the financial~~
18 ~~institutions division of the commerce and industry and~~
19 ~~licensing department;~~

20 E. ~~"department" means the financial institutions~~
21 ~~division of the commerce and industry department;]~~ and

22 I. "person" includes an individual, copartner,
23 association, trust, corporation and any other legal entity."

24 Section 2. A new section of the New Mexico Small Loan Act
25 of 1955 is enacted to read:

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1 "[NEW MATERIAL] PERMITTED CHARGES AND FEES WHEN MAKING
2 CONSUMER LOANS--PARTIAL PAYMENTS.--

3 A. A licensee shall not charge or receive, directly
4 or indirectly in connection with making any consumer loan, any
5 interest, fees or charges, except those specifically authorized
6 by this section.

7 B. A licensee shall not charge interest on the
8 amount of cash delivered to the consumer in a consumer loan in
9 an amount greater than an effective annual percentage rate of
10 thirty-six percent. The interest rate charged on the
11 outstanding balance of a consumer loan after maturity shall not
12 be greater than an effective annual percentage rate of ten
13 percent. Interest charges on consumer loans shall be computed
14 and paid only as a percentage of an unpaid principal balance.

15 C. A licensee may charge and collect from the
16 consumer a late or delinquent charge of not more than ten
17 dollars (\$10.00) or an amount equal to five cents (\$0.05) for
18 each one dollar (\$1.00) of any installment that is not paid
19 within five days from the date such payment is due, whichever
20 is greater, provided that this late or delinquent charge shall
21 not be collected more than once for an installment in default.

22 D. A consumer may make partial payments on, as well
23 as prepayment of, the principal balance of a consumer loan at
24 any time without a prepayment charge or fee. When a loan is
25 repaid before its maturity date, unearned interest charges

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1 shall be rebated to the consumer based on a method at least as
2 favorable to the consumer as the actuarial method."

3 Section 3. A new section of the New Mexico Small Loan Act
4 of 1955 is enacted to read:

5 "[NEW MATERIAL] PROHIBITED ACTS WHEN MAKING CONSUMER
6 LOANS.--When making a consumer loan, a licensee shall not:

7 A. require a consumer to pay interest except as:

8 (1) agreed pursuant to the terms of the
9 promissory note or other contract evidencing the consumer loan;
10 or

11 (2) authorized by the New Mexico Small Loan
12 Act of 1955.

13 B. roll over, renew, repay, refinance or
14 consolidate any consumer loan extended to a consumer by the
15 same licensee with the proceeds of other credit extended to the
16 consumer;

17 C. require a consumer to waive the consumer's right
18 to legal recourse under any otherwise applicable provision of
19 state or federal law;

20 D. require the consumer to submit to arbitration or
21 impose onerous legal notice provisions in the case of a
22 dispute;

23 E. demand unreasonable notice from the consumer as
24 a condition for legal action;

25 F. use a check or other method of access to a

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1 deposit, savings or other financial account maintained by the
2 consumer or the title of a vehicle as security for an
3 obligation pursuant to a consumer loan;

4 G. require as a condition for the extension of
5 credit that the consumer establish an allotment to repay an
6 obligation pursuant to a consumer loan; or

7 H. prohibit a consumer from prepaying a consumer
8 loan or charge a penalty or fee for prepaying all or part of a
9 consumer loan."

10 Section 4. A new section of the New Mexico Small Loan Act
11 of 1955 is enacted to read:

12 "[NEW MATERIAL] REMEDIES--PENALTIES.--

13 A. A violation of a provision of Section 2 or 3 of
14 this 2007 act, except as the result of accidental or bona fide
15 error of computation, renders the consumer loan agreement void,
16 and the licensee shall have no right to collect, receive or
17 retain any principal, interest or other charges whatsoever with
18 respect to that consumer loan.

19 B. A violation of a provision of Section 2 or 3 of
20 this 2007 act, except as the result of accidental or bona fide
21 error of computation, is unconscionable conduct and is an
22 unfair and deceptive practice under the Unfair Practices Act.

23 C. A person found to have violated a provision of
24 Section 2 or 3 of this 2007 act, except as the result of
25 accidental or bona fide error of computation, shall be liable

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

4 D. A consumer may sue for injunctive and other
5 appropriate equitable relief to stop a person from violating a
6 provision of Section 2 or 3 of this 2007 act.

7 E. A consumer may bring a class action suit to
8 enforce the provisions of Sections 2 and 3 of this 2007 act.

9 F. A provision of a promissory note or other
10 contract evidencing a consumer loan requiring arbitration of
11 any dispute arising under that consumer loan shall not be
12 enforceable against any consumer.

13 G. A licensee that knowingly violates the
14 provisions of this section is guilty of a misdemeanor and shall
15 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
16 1978.

17 H. A consumer shall not be required to waive any
18 administrative remedies available pursuant to the New Mexico
19 Small Loan Act of 1955 or any other applicable law prior to
20 pursuing any of the remedies set forth in this section.

21 I. The remedies and penalties provided in this
22 section are in addition to and do not preclude any remedy
23 otherwise available under state law, including any award for
24 consequential and punitive damages."

25 Section 5. A new section of the New Mexico Small Loan Act
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1 of 1955 is enacted to read:

2 "[NEW MATERIAL] REQUIRED DISCLOSURES WHEN MAKING CONSUMER
3 LOANS.--Prior to making a consumer loan, a licensee shall
4 provide to the consumer the following information orally and in
5 writing:

6 A. a statement of the annual percentage rate of
7 interest applicable to the consumer loan;

8 B. all disclosures required pursuant to the federal
9 Truth in Lending Act, 15 U.S.C. 1601 et seq.; and

10 C. a clear description of the consumer's payment
11 obligations under the term of the consumer loan."

12 Section 6. A new section of the New Mexico Small Loan Act
13 of 1955 is enacted to read:

14 "[NEW MATERIAL] EXEMPTIONS.--

15 A. The provisions of Sections 2 through 5 of this
16 2007 act do not apply to a thrift, bank or credit union
17 regulated by the office of comptroller of the currency, the
18 office of thrift supervision, federal deposit insurance
19 corporation or national credit union administration using
20 accounts or funds on deposit in the thrift, bank or credit
21 union as security or collateral for a loan made by the same
22 institution holding the account or funds.

23 B. A banking corporation, savings and loan
24 association or credit union operating under the laws of the
25 United States or of New Mexico is exempt from the licensing

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1 requirements of the New Mexico Small Loan Act of 1955, and that
2 act shall not apply to business transacted by any such person
3 under the authority of and as permitted by any such law or to
4 bona fide commercial loans made to dealers upon personal
5 property held for resale. Nothing contained in the New Mexico
6 Small Loan Act of 1955 shall be construed as abridging the
7 rights of any of those exempted from the operations of that act
8 from contracting for or receiving interest or charges not in
9 violation of an existing applicable statute of this state."

10 Section 7. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2007.