SENATE BILL 299

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

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AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING THAT CONSUMER LOANS OF TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500) OR LESS BE MADE UNDER THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING A DATABASE AND REPORTING FOR CERTAIN LOANS.

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. Section 58-7-3 NMSA 1978 (being Laws 1995, Chapter 190, Section 15) is amended to read:

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"58-7-3. LOANS COVERED BY ACT.--The New Mexico Bank Installment Loan Act of 1959 applies to a loan that is a precomputed loan repayable in installments [or that is clearly identified on the loan documents as being made under that act]."

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

"58-7-9. CONSTRUCTION.--

A. None of the provisions of the New Mexico Small Loan Act of 1955 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

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

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

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

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

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

(2) "month" means one-twelfth of a year.

F. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.
G. Any person, corporation or association complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959.

H. [All loans other than precomputed] A loan [transactions] transaction made [under] pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan documents as being made [under] pursuant to that act."

SECTION 4. 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 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:

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

B. "consumer loan" means a loan to a consumer for personal, family or household purposes, but "consumer loan" does not include a loan secured by a lien on real property, a loan for educational, commercial or business purposes of the consumer or a loan made pursuant to the Motor Vehicle Sales Finance Act;
[B-] C. "debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from the consumer's account for the specific purpose of repaying a loan;

[G-] D. "department" or "division" means the financial institutions division of the regulation and licensing department;

[D-] E. "director" means the director of the division;

[E-] F. "installment loan" means a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off [a] that loan in its entirety with a period of no less than one hundred twenty days to maturity. "Installment loan" does not mean a loan in which a licensee requires, as a condition of making the loan, the use of postdated checks or debit authorizations for repayment of that loan;

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

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

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

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

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

(b) agrees to hold a dated personal
check or debit authorization from a consumer for a period of
time prior to negotiating or depositing the personal check or
debit authorization; or
(c) pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer the amount of an instrument actually paid or to be paid pursuant to the New Mexico Small Loan Act of 1955; but

(2) does not include:

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

(b) installment loans;

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

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

[K-] L. "renewed payday loan" means a loan in which a consumer pays in cash the administrative fee payable under a payday loan agreement and refinances all or part of the unpaid principal balance of an existing payday loan with a new payday loan from the same licensee. A "renewed payday loan" includes a transaction in which a consumer pays off all or part of an existing payday loan with the proceeds of a payday loan from the same licensee; and

[L-] M. "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual interest rate disclosed in the loan agreement and is computed only on the outstanding
principal balance of the loan."

SECTION 5. Section 58-15-3 NMSA 1978 (being Laws 1955, Chapter 128, Section 3, as amended) is amended to read:

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

A. A person shall not engage in the business of lending in amounts of two thousand five hundred dollars ($2,500) or less for a loan without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in accordance with the provisions of Section 58-7-2 NMSA 1978; provided, however, that consumer loans in an amount of two thousand five hundred dollars ($2,500) or less shall be made only pursuant to the New Mexico Small Loan Act of 1955.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of two thousand five hundred dollars ($2,500) or less under a written agreement providing for a total loan or line of credit in excess of two thousand five hundred dollars ($2,500).

C. A banking corporation, savings and loan association or credit union operating under the laws of the United States or of a state shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor
shall that act apply to business transacted by any person under
the authority of and as permitted by any such law nor to any
bona fide pawnbroking business transacted under a pawnbroker's
license nor to bona fide commercial loans made to dealers upon
personal property held for resale. Nothing contained in the
New Mexico Small Loan Act of 1955 shall be construed as
abridging the rights of any of those exempted from the
operations of that act from contracting for or receiving
interest or charges not in violation of an existing applicable
statute of this state.

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

(1) a person who owns an interest, legal or
equitable, in the business or profits of a licensee and whose
name does not specifically appear on the face of the license,
except a stockholder in a corporate licensee; and

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

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

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

   (c) receiving or charging compensation

for goods or services, whether or not sold, delivered or
provided; and

   (d) the real or pretended negotiation,

arrangement or procurement of a loan through any use or
activity of a third person, whether real or fictitious.

E. A person, copartnership, trust or a trustee or
beneficiary thereof or an association or corporation or a
member, officer, director, agent or employee thereof who
violates or participates in the violation of a provision of
Subsection A of this section is guilty of a petty misdemeanor
and upon conviction shall be sentenced pursuant to the
provisions of Subsection B of Section 31-19-1 NMSA 1978. A
contract or loan in the making or collection of which an act is
done that violates Subsection A or D of this section is void
and the lender has no right to collect, receive or retain any
principal, interest or charges whatsoever."

SECTION 6. Section 58-15-20 NMSA 1978 (being Laws 1955,
Chapter 128, Section 18, as amended) is amended to read:

"58-15-20. FEES AND COSTS.--

A. Notwithstanding any provision of the New Mexico
Small Loan Act of 1955, lawful fees, if any, actually and
necessarily paid out by the licensee to a public officer for
the filing, recording or releasing in a public office of an
instrument securing the loan may be charged to the borrower.

B. Notwithstanding any provision in a note or other loan contract taken or received pursuant to the provisions of the New Mexico Small Loan Act of 1955, attorney fees shall not be charged or collected except when the note or other contract has been submitted in good faith to an attorney for collection and after diligent and good-faith effort to collect on the part of the licensee has failed.

C. Notary fees incident to the taking of a lien to secure a small loan or releasing such a lien shall not be charged or collected by a licensee, an officer, agent or employee of a licensee or anyone within an office, room or place of business in which a small loan office is conducted.

D. Delinquency fees shall not exceed five cents ($0.05) for each one dollar ($1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed ten dollars ($10.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid.

E. Upon the execution of a consumer loan agreement, the licensee may impose an administrative fee not to exceed the amount necessary to cover the fee for submitting information regarding the consumer and the consumer loan to a database reporting service required pursuant to the New Mexico Small Loan Act of 1955.
Loan Act of 1955."

SECTION 7. Section 58-15-39 NMSA 1978 (being Laws 2007, Chapter 86, Section 21) is amended to read:

"58-15-39. DUTIES OF DIVISION.--

A. The division shall:

(1) maintain a list of licensees, which list shall be available to interested persons and the public; and

(2) establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee.

B. The division shall annually provide a report to the legislature detailing statistics, including data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state. The division shall compile an annual report by October 1 of each year containing, at a minimum, data regarding all payday loan products entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public and published on the division's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding year, including:

(1) the total number and dollar amount of payday loan products entered into in the calendar year ending December 31 of the previous year;
(2) the total number and dollar amount of payday loan products outstanding as of December 31 of the previous year;

(3) the effective annualized percentage rate and the average number of days of a payday loan during the calendar year ending December 31 of the previous year;

(4) the number of payday loan products entered into in the amount of one hundred dollars ($100) or less, the number of payday loan products entered into in the amount of one hundred one dollars ($101) to five hundred dollars ($500), the number of payday loan products entered into in the amount of five hundred one dollars ($501) to one thousand dollars ($1,000), the number of payday loan products entered into in the amount of one thousand one dollars ($1,001) to one thousand five hundred dollars ($1,500), the number of payday loan products in an amount greater than one thousand five hundred dollars ($1,500) and the percentage of total payday loan products entered into in each of those ranges;

(5) an estimate of the total dollar amount of fees collected for payday loan products;

(6) the total number of payday loan products entered into and the total dollar amount of the net charge-offs or write-offs and of the net recoveries of licensees;

(7) the minimum, maximum and average dollar amounts of payday loan products entered into in the calendar.
year ending December 31 of the previous year;

(8) the average payday loan product amount,
average number of transactions and average aggregate payday
loan product amount entered into per consumer each year;

(9) the average number of days a consumer is
engaged in a payday loan product each year;

(10) an estimate of the average total fees
paid by a payday loan product consumer;

(11) the number of consumers who are eligible
for payment plans and the number of consumers who enter into
payment plans pursuant to Section 58-15-35 NMSA 1978; and

(12) the number of consumers who are subject
to the restrictions of the waiting period pursuant to Section

C. The division shall compile an annual report by
October 1 of each year containing, at a minimum, data regarding
all loans made pursuant to the New Mexico Small Loan Act of
1955 other than payday loan products entered into in the
preceding calendar year on an aggregate basis. Annual reports
shall be made available to interested parties and the general
public and published on the department's web site. Consistent
with state law, the report shall include, at a minimum,
nonidentifying consumer data from the preceding year,
including:

(1) the total number and dollar amount of
loans entered into in the calendar year ending December 31 of
the previous year;

(2) the total number and dollar amount of
loans outstanding as of December 31 of the previous year;

(3) the effective annualized percentage rate
and the average number of days of a loan during the calendar
year ending December 31 of the previous year;

(4) the number of loans entered into in the
amount of five hundred dollars ($500) or less, the number of
loans entered into in the amount of five hundred one dollars
($501) to one thousand dollars ($1,000), the number of loans
entered into in the amount of one thousand one dollars ($1,001)
to three thousand dollars ($3,000), the number of loans entered
into in the amount of three thousand one dollars ($3,001) to
five thousand dollars ($5,000), the number of loans in an
amount greater than five thousand dollars ($5,000) and the
number of loans listed by licensee entered into in each of
those ranges;

(5) the total dollar amount of interest and
fees collected for loans;

(6) the total dollar amount of the net
charge-offs or write-offs and of the net recoveries of
licensees;

(7) the minimum, maximum and average dollar
amounts of loans entered into in the calendar year ending
December 31 of the previous year;

(8) the average loan amount, average number of
transactions and average aggregate loan amount entered into per
consumer each year; and

(9) the number of loans made to renew existing
accounts, the number of loans made to former customers and the
number of loans made to new customers."

SECTION 8. A new section of the New Mexico Small Loan Act
of 1955 is enacted to read:

"[NEW MATERIAL] LOAN DATABASE.--

A. Within five business days of executing a loan
agreement with a consumer, receiving a payment on behalf of a
consumer, a default by a consumer or any collection effort by a
licensee, a licensee shall provide to one or more database
reporting services the information set forth in Paragraph (1)
of Subsection C of this section. Licensees shall comply with
the provisions of this section for all loans executed on or
after November 1, 2011.

B. No later than November 1, 2011, the director
shall certify that one or more database reporting services are
commercially reasonable methods of collecting and reporting
information regarding loans made pursuant to the New Mexico
Small Loan Act of 1955. The list of database reporting
services that the director has certified as providing
commercially reasonable methods of collecting and reporting
information regarding loans made pursuant to the New Mexico Small Loan Act of 1955 shall be posted on the division's web site and shall be mailed to each licensee by first class mail at the address of record as shown on the division's licensing files.

C. In certifying a commercially reasonable method of collecting and reporting information regarding loans made pursuant to the New Mexico Small Loan Act of 1955, the director shall ensure that the database reporting service:

   (1) requires licensees to enter the following information in a manner provided by rule adopted pursuant to the New Mexico Small Loan Act of 1955:

   (a) the consumer's unique identifier;

   (b) whether the loan is a new loan, a renewal of an existing loan or an extension of an existing loan;

   (c) information on any security or collateral for the loan;

   (d) the amount of the loan;

   (e) the contract rate of interest charged and the annual percentage rate;

   (f) the nature and amount of all fees charged other than interest;

   (g) the maturity of the loan;

   (h) the repayment terms of the loan;
(i) the dates on which loan repayments were made, the nature and amount of each repayment, the date on which the loan was paid in full and the total amount of interest collected;

(j) the date of a notice of default;

(k) the nature and amount of fees to be collected in the event of default;

(l) the amount recovered through collection; and

(m) the amount of principal, interest and fees charged off;

(2) contains a regulator interface that allows the division access to the database reporting service for the required monitoring and reporting function, including the ability to generate reports for licensee examinations, regulatory reporting and program monitoring;

(3) provides adequate safeguards to ensure that consumer information contained in the database is kept strictly confidential;

(4) ensures that information submitted to the database is kept confidential and shall not be released or otherwise made available to the public;

(5) demonstrates a working system to the division prior to the certification of the database; and

(6) is generated by a registered consumer.
reporting service that is subject to the applicable rules and regulations applied by the federal trade commission under the federal Fair Credit Reporting Act.

D. In determining whether a database reporting service should be certified as a commercially reasonable method of collecting and reporting information regarding loans made pursuant to the New Mexico Small Loan Act of 1955, the director shall consider whether the database reporting service is adequately capitalized, demonstrates the resources and the ability to perform the services required pursuant to this section and has appropriate surety to ensure performance of its obligations pursuant to this section and to protect claimants reasonably in the event that actions or inactions on the part of the database reporting service result in damages to licensees or consumers.

E. The provisions of Section 14-7-1 NMSA 1978 shall not apply to access by the division to information for purposes of compliance monitoring or preparation of reports contained in a certified database established pursuant to this section.

F. The provisions of this section do not apply to payday loans."

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is November 1, 2011.