

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscored material = new  
[bracketed material] = delete

SENATE BILL 200  
47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005  
INTRODUCED BY  
Bernadette M Sanchez

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

underscored material = new  
[bracketed material] = del ete

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

. 152325. 3

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

. 152325. 3

underscored material = new  
[bracketed material] = delete

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

. 152325. 3

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

. 152325. 3

underscored material = new  
[bracketed material] = del ete

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,

. 152325. 3

underscored material = new  
[bracketed material] = delete

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

. 152325. 3

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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.