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HOUSE BILL 338

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

INTRODUCED BY

Patricia A. Lundstrom

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 CERTAIN LOANS TO BE MADE PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955; RESTRICTING FEES, INTEREST AND LOAN PERIODS FOR CAR TITLE LOANS; REPEALING A SECTION OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

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

**SECTION 1.** Section 58-7-1 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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1           "58-7-3. LOANS COVERED BY ACT.--The New Mexico Bank  
2 Installment Loan Act of 1959 applies to a loan that is a  
3 precomputed loan repayable in installments [~~or that is clearly~~  
4 ~~identified on the loan documents as being made under that~~  
5 ~~act~~]."

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

8           "58-7-9. CONSTRUCTION.--

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10 Loan Act of 1955 are amended or repealed by the New Mexico Bank  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

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

17           C. None of the provisions of the New Mexico Bank  
18 Installment Loan Act of 1959 apply to the assignment or  
19 purchase of retail installment contracts originated under the  
20 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or  
21 originated under the provisions of Sections 56-1-1 through  
22 56-1-15 NMSA 1978.

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

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1 the Home Loan Protection Act shall control.

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

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

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

7 F. The director of the financial institutions  
8 division of the regulation and licensing department shall issue  
9 and file as required by law interpretive regulations to  
10 effectuate the purposes of the New Mexico Bank Installment Loan  
11 Act of 1959. In issuing, amending or repealing interpretive  
12 regulations, the director shall issue the regulation amendment  
13 or repeal of the regulation as a proposed regulation amendment  
14 or repeal of a regulation and file it for public inspection in  
15 the office of the director of the financial institutions  
16 division. Distribution thereof shall be made to interested  
17 persons, and their comments shall be invited. After the  
18 proposed regulation has been on file for not less than two  
19 months, the director may issue it as a final regulation by  
20 filing as required by law. Any person who is or may be  
21 adversely affected by the adoption, amendment or repeal of a  
22 regulation under this section may file an appeal of that action  
23 in the district court in Santa Fe county within thirty days  
24 after the filing of the adopted regulation, amendment or repeal  
25 as required by law.

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1 G. Any person, corporation or association complying  
2 with the regulations adopted by the director of the financial  
3 institutions division of the regulation and licensing  
4 department is deemed to have complied with the provisions of  
5 the New Mexico Bank Installment Loan Act of 1959.

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

11 SECTION 4. Section 58-15-3 NMSA 1978 (being Laws 1955,  
12 Chapter 128, Section 3, as amended) is amended to read:

13 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
14 PENALTY.--

15 A. A person shall not engage in the business of  
16 lending in amounts of two thousand five hundred dollars  
17 (\$2,500) or less for a loan without first having obtained a  
18 license from the director. Nothing contained in this  
19 subsection shall restrict or prohibit a licensee under the New  
20 Mexico Small Loan Act of 1955 from making loans in any amount  
21 under the New Mexico Bank Installment Loan Act of 1959 in  
22 accordance with the provisions of Section 58-7-2 NMSA 1978;  
23 provided, however, that loans in an amount of two thousand five  
24 hundred dollars (\$2,500) or less shall be made only pursuant to  
25 the New Mexico Small Loan Act of 1955.

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

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

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

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

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

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

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

11 (c) receiving or charging compensation  
12 for goods or services, whether or not sold, delivered or  
13 provided; and

14 (d) the real or pretended negotiation,  
15 arrangement or procurement of a loan through any use or  
16 activity of a third person, whether real or fictitious; and

17 (3) a person who makes consumer loans  
18 utilizing the internet.

19 E. A person, copartnership, trust or a trustee or  
20 beneficiary thereof or an association or corporation or a  
21 member, officer, director, agent or employee thereof who  
22 violates or participates in the violation of a provision of  
23 Subsection A of this section is guilty of a petty misdemeanor  
24 and upon conviction shall be sentenced pursuant to the  
25 provisions of Subsection B of Section 31-19-1 NMSA 1978. A

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1 contract or loan in the making or collection of which an act is  
2 done that violates Subsection A or D of this section is void  
3 and the lender has no right to collect, receive or retain any  
4 principal, interest or charges whatsoever.

5 F. A person making a loan pursuant to the New  
6 Mexico Small Loan Act of 1955 shall not use a device or  
7 agreement that would have the effect of charging or collecting  
8 more fees, charges or interest than that allowed by law by  
9 entering into a different type of transaction with the consumer  
10 that would have that effect."

11 SECTION 5. A new section of the New Mexico Small Loan Act  
12 of 1955, Section 58-15-20.1 NMSA 1978, is enacted to read:

13 "58-15-20.1. [NEW MATERIAL] CAR TITLE LOANS--MAXIMUM  
14 INTEREST CHARGES--MINIMUM LOAN PERIOD.--

15 A. A person required to be a licensee pursuant to  
16 the New Mexico Small Loan Act of 1955, when making a loan with  
17 a principal amount of two thousand five hundred dollars  
18 (\$2,500) or less that is secured by a motor vehicle certificate  
19 of title, shall not charge interest in excess of the United  
20 States prime rate of interest, as listed in the online internet  
21 edition of the *Wall Street Journal* of the last business day of  
22 the prior month, plus twenty-one percent, and shall not make  
23 more than one loan at a time to a consumer. A person required  
24 to be a licensee pursuant to the New Mexico Small Loan Act of  
25 1955, when making a consumer loan with a principal amount of

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1 two thousand five hundred dollars (\$2,500) or less that is  
2 secured by a motor vehicle certificate of title, may charge an  
3 administrative fee not greater than fifteen dollars (\$15.00)  
4 per consumer loan.

5 B. A person required to be a licensee pursuant to  
6 the New Mexico Small Loan Act of 1955, when making a loan with  
7 a principal amount of two thousand five hundred dollars  
8 (\$2,500) or less pursuant to that act, shall not charge any  
9 interest or fees not provided for in Subsection A of this  
10 section or in Section 58-15-20 NMSA 1978.

11 C. A loan made pursuant to Subsection A of this  
12 section shall have a minimum loan period of ninety days and  
13 shall include payment terms of at least three substantially  
14 equal payments with the final payment due upon loan maturity.

15 D. The provisions of this section do not apply to  
16 payday loans."

17 SECTION 6. REPEAL.--Section 58-15-19 NMSA 1978 (being  
18 Laws 1955, Chapter 128, Section 17) is repealed.

19 SECTION 7. APPLICABILITY.--The provisions of this act  
20 shall not apply to loans entered into before July 1, 2011.

21 SECTION 8. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2011.