

1 SENATE BILL 269

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; EXEMPTING LOANS THAT DO NOT  
12 ACCRUE INTEREST FROM CERTAIN PROVISIONS OF THE NEW MEXICO SMALL  
13 LOAN ACT OF 1955; CLARIFYING CERTAIN RECORD REQUIREMENTS FOR AN  
14 OUT-OF-STATE LICENSEE.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 58-15-2 NMSA 1978 (being Laws 1955,  
18 Chapter 128, Section 2, as amended) is amended to read:

19 "58-15-2. DEFINITIONS.--The following words and terms  
20 when used in the New Mexico Small Loan Act of 1955 have the  
21 following meanings unless the context clearly requires a  
22 different meaning. The meaning ascribed to the singular form  
23 applies also to the plural:

24 A. "consumer" means a person who resides in New  
25 Mexico or who enters into a loan agreement in New Mexico;

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1           B. "consumer reporting agency" means any person  
2 that, for monetary fees or dues or on a cooperative nonprofit  
3 basis, regularly engages in the practice of assembling or  
4 evaluating, and maintaining, for the purpose of furnishing  
5 consumer reports to third parties bearing on a consumer's  
6 creditworthiness, credit standing or credit capacity, each of  
7 the following regarding consumers:

8                   (1) public record information; or

9                   (2) credit account information from persons  
10 who furnish that information regularly and in the ordinary  
11 course of business;

12           C. "debit authorization" means an authorization  
13 signed by a consumer to electronically transfer or withdraw  
14 funds from the consumer's account for the specific purpose of  
15 repaying a loan;

16           D. "division" means the financial institutions  
17 division of the regulation and licensing department;

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

19           F. "installment loan" means a loan in an amount  
20 less than or equal to five thousand dollars (\$5,000) that is to  
21 be repaid in a minimum of four substantially equal payments of  
22 principal and interest to pay off a loan in its entirety with  
23 an initial stated maturity of not less than one hundred twenty  
24 days to maturity. "Installment loan" does not mean a:

25                   (1) refund anticipation loan; or

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1                                   (2) loan that is five thousand dollars  
2                                   (\$5,000) or less, and upon which no interest, finance charge or  
3                                   other fee is assessed;

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

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

21                                   I. "make a loan" means to originate a new loan  
22                                   agreement or to make any change to the terms of an existing  
23                                   loan agreement, including the principal amount financed, the  
24                                   annual percentage rate, finance charge, fees or payment  
25                                   schedule;

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1           J. "person" includes an individual, copartner,  
2 association, trust, corporation and any other legal entity;

3           K. "refund anticipation loan" means a loan that is  
4 secured by or that the creditor arranges or expects to be  
5 repaid, directly or indirectly, from the proceeds of the  
6 consumer's federal or state personal income tax refunds or tax  
7 credits, including any sale, assignment or purchase of a tax  
8 refund or tax credit at a discount or for a fee; and

9           L. "simple interest" means a method of calculating  
10 interest in which the amount of interest is calculated based on  
11 the annual percentage rate disclosed in the loan agreement and  
12 is computed only on the outstanding principal balance of the  
13 loan."

14           SECTION 2. Section 58-15-3 NMSA 1978 (being Laws 1955,  
15 Chapter 128, Section 3, as amended) is amended to read:

16           "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
17 PENALTY.--

18           A. A person shall not engage in the business of  
19 lending in amounts of five thousand dollars (\$5,000) or less  
20 for a loan without first having obtained a license from the  
21 director. Nothing contained in this subsection shall restrict  
22 or prohibit a licensee under the New Mexico Small Loan Act of  
23 1955 from making loans in any amount under the New Mexico Bank  
24 Installment Loan Act of 1959 in accordance with the provisions  
25 of Section 58-7-2 NMSA 1978.

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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 five  
3 thousand dollars (\$5,000) or less under a written agreement  
4 providing for a total loan or line of credit in excess of five  
5 thousand dollars (\$5,000).

6           C. A person engaged in the business of lending in  
7 amounts of five thousand dollars (\$5,000) or less, upon which  
8 no interest, finance charge or other fee is assessed, shall be  
9 exempted from Sections 58-15-10.2 and 58-15-42 NMSA 1978.

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

24           ~~[D.]~~ E. The provisions of Subsection A of this  
25 section apply to:

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

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

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

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

15 (c) receiving or charging compensation  
16 for goods or services, whether or not sold, delivered or  
17 provided; and

18 (d) the real or pretended negotiation,  
19 arrangement or procurement of a loan through any use or  
20 activity of a third person, whether real or fictitious.

21 ~~[E.]~~ F. A person, copartnership, trust or a trustee  
22 or beneficiary thereof or an association or corporation or a  
23 member, officer, director, agent or employee thereof who  
24 violates or participates in the violation of a provision of  
25 Subsection A of this section is guilty of a petty misdemeanor

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1 and upon conviction shall be sentenced pursuant to the  
2 provisions of Subsection B of Section 31-19-1 NMSA 1978. A  
3 contract or loan in the making or collection of which an act is  
4 done that violates Subsection A or ~~[D]~~ E of this section or  
5 Section 58-15-17 or 58-15-20 NMSA 1978 is void and the lender  
6 has no right to collect, receive or retain any principal,  
7 interest or charges whatsoever.

8 ~~[F-]~~ G. A loan in an amount equal to five thousand  
9 dollars (\$5,000) or less shall be made only pursuant to the New  
10 Mexico Bank Installment Loan Act of 1959 or the New Mexico  
11 Small Loan Act of 1955.

12 ~~[G-]~~ H. A violation of a provision of the New  
13 Mexico Small Loan Act of 1955 that constitutes either an unfair  
14 or deceptive trade practice or an unconscionable trade practice  
15 pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to  
16 the Unfair Practices Act."

17 **SECTION 3.** Section 58-15-9 NMSA 1978 (being Laws 1955,  
18 Chapter 128, Section 9, as amended) is amended to read:

19 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
20 WITNESSES.--

21 A. At least once each year, the director or the  
22 director's authorized representative shall make an examination  
23 of the place of business of each licensee and the loans,  
24 transactions, books, papers and records of the licensee insofar  
25 as they pertain to the business licensed under the New Mexico

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1 Small Loan Act of 1955 as the director may deem necessary. The  
2 licensee shall pay to the director for such annual examination  
3 a fee of two hundred dollars (\$200).

4 B. Within a reasonable time after the completion of  
5 an examination of a licensed office, the director shall mail to  
6 the licensee a copy of the report of the examination, together  
7 with any comments, exceptions, objections or criticisms of the  
8 director concerning the conduct of the licensee and the  
9 operation of the licensed office.

10 C. For the purpose of discovering violations of the  
11 New Mexico Small Loan Act of 1955 or of securing information  
12 lawfully required under that act, the director or the  
13 director's authorized representative may at any time  
14 investigate the business and examine the books, accounts,  
15 papers and records used therein, including income tax returns  
16 or other reports filed in the office of the director of the  
17 revenue processing division of the taxation and revenue  
18 department of:

19 (1) any licensee;

20 (2) any other person engaged in the business  
21 described in Subsection A of Section 58-15-3 NMSA 1978 or  
22 participating in such business as principal, agent, broker or  
23 otherwise; and

24 (3) any person ~~[whom]~~ who the director has  
25 reasonable cause to believe is violating any provision of the

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1 New Mexico Small Loan Act of 1955, whether the person claims to  
2 be within the authority or beyond the scope of that act.

3 D. For the purposes of this section, a person who  
4 advertises, solicits or makes any representation as being  
5 willing to make loan transactions in any amount, except  
6 persons, financial institutions or lending agencies operating  
7 under charters or licenses issued by a state or federal agency  
8 or under any special statute, shall be subject to investigation  
9 under the New Mexico Small Loan Act of 1955 and shall be  
10 presumed to be engaged in the business described in Subsection  
11 A of Section 58-15-3 NMSA 1978 as to any loans of five thousand  
12 dollars (\$5,000) or less.

13 E. To facilitate the examinations and  
14 investigations by the director and fully disclose the  
15 operations and methods of operation of each licensed office,  
16 the licensee shall, in each licensed office, keep on file as  
17 part of the records of the office all office manuals,  
18 communications or directives containing statements of loan  
19 policy to office managers and employees. If the licensee is an  
20 individual, corporation, trust or association, the licensee  
21 shall keep in at least one office for information of the  
22 director a record of the several individuals, firms,  
23 beneficiaries of any trust and corporations deriving or  
24 receiving any part of the benefits, net income or profits from  
25 the operation of the licensee within New Mexico. If the

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1 licensee is located in another state, the licensee shall make  
2 documents available to the director in a manner as requested by  
3 the director.

4 F. For the purposes of this section, the director  
5 or the director's authorized representative shall have and be  
6 given free access to the offices and places of business, files,  
7 safes and vaults of all licensees and shall have authority to  
8 require the attendance of any person and to examine the person  
9 under oath relative to such loans or business or to the subject  
10 matter of any examination, investigation or hearing as provided  
11 in the New Mexico Small Loan Act of 1955. Notices to appear  
12 before the director for examination under oath may be served by  
13 registered mail. If the party notified to appear is the  
14 licensee, any person named on the face of the license being  
15 investigated or any agent, employee or manager participating in  
16 the licensee's business and the party fails to appear for  
17 examination or refuses to answer questions submitted, the  
18 director may, forthwith and without further notice to the  
19 licensee, suspend the license involved pending compliance with  
20 the notice. Upon failure of any other person to appear or to  
21 answer questions, the director may apply to and invoke the aid  
22 of any district court of New Mexico in compelling the  
23 attendance and testimony of any such person and the production  
24 of books, records, written instruments and documents relating  
25 to the business of the licensee. The district court whose aid

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1 is so invoked by the director may, in case of contumacy or  
2 refusal to obey any order of the district court issued to  
3 compel the attendance of the person or the production of books,  
4 records, written instruments and documents, punish the person  
5 as for contempt of court.

6 G. The director shall prescribe rules of procedure  
7 for all hearings, examinations or investigations provided for  
8 in the New Mexico Small Loan Act of 1955. The director is not  
9 bound by the usual common law or statutory rules of evidence or  
10 by any technical or formal rules of procedure or pleading and  
11 specification of charges other than as specifically provided in  
12 the New Mexico Small Loan Act of 1955 but may conduct hearings,  
13 examinations and investigations in the manner best calculated  
14 to ascertain the substantial rights of the parties interested.

15 H. The director has the power to administer oaths,  
16 certify official acts and records of the director's office,  
17 issue subpoenas for witnesses in the name of and under the seal  
18 of the director's office and compel the production of papers,  
19 books, accounts and documents. The director shall issue  
20 subpoenas at the instance of any party to a hearing before the  
21 division upon payment of a fee of two dollars fifty cents  
22 (\$2.50) for each subpoena so issued.

23 I. Depositions may be taken with or without a  
24 commission, and written interrogatories may be submitted in the  
25 same manner and on the same grounds provided by law for the

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1 taking of depositions or submission of written interrogatories  
2 in civil actions pending in the district courts of this state.

3 J. Each witness who appears before the director by  
4 the director's order shall receive the fees and mileage  
5 provided for witnesses in civil actions in the district court.  
6 Fees and mileage shall be paid by the state, but no witness  
7 subpoenaed at the instance of parties other than the director  
8 is entitled to compensation from the state for attendance or  
9 mileage unless the director certifies that the witness'  
10 testimony is material.

11 K. Whenever the director has reasonable cause to  
12 believe that a person is violating a provision of the New  
13 Mexico Small Loan Act of 1955, the director may, in addition to  
14 all actions provided for in that act and without prejudice  
15 thereto, enter an order requiring the person to desist or to  
16 refrain from the violation. An action may be brought on the  
17 relation of the attorney general and the director to enjoin the  
18 person from engaging in or continuing the violation or from  
19 doing any act in furtherance of the violation. In any such  
20 action, an order or judgment may be entered awarding a  
21 preliminary or final injunction as may be deemed proper. In  
22 addition to all other means provided by law for the enforcement  
23 of a temporary restraining order, temporary injunction or final  
24 injunction, the court in which such action is brought shall  
25 have power and jurisdiction to impound and to appoint a

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1 receiver for the property and business of the defendants,  
2 including books, papers, documents and records pertaining  
3 thereto or so much thereof as the court may deem reasonably  
4 necessary to prevent further violations of the New Mexico Small  
5 Loan Act of 1955 through or by means of the use of the property  
6 and business. The receiver, when appointed and qualified,  
7 shall have powers and duties as to custody, collection,  
8 administration, winding up and liquidation of the property and  
9 business as are from time to time conferred upon the receiver  
10 by the court."

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