

1 SENATE BILL 269

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

3 INTRODUCED BY

4 Daniel A. Ivey-Soto

5
6
7
8
9
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;

.219031.2

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

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

.219031.2

underscoring material = new
~~[bracketed material] = delete~~

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;

.219031.2

underscoring material = new
~~[bracketed material] = delete~~

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.

.219031.2

underscoring material = new
[bracketed material] = delete

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:

.219031.2

underscoring material = new
~~[bracketed material] = delete~~

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

.219031.2

underscored material = new
[bracketed material] = delete

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

.219031.2

underscored material = new
[bracketed material] = delete

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

.219031.2

underscoring material = new
~~[bracketed material] = delete~~

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

.219031.2

underscoring material = new
~~[bracketed material]~~ = delete

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

.219031.2

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

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

underscoring material = new
~~[bracketed material] = delete~~

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."

11 - 13 -
12
13
14
15
16
17
18
19
20
21
22
23
24
25