

1 SENATE BILL 33

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Peter Wirth

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9  
10 AN ACT

11 RELATING TO LENDING; AMENDING THE NEW MEXICO BANK INSTALLMENT  
12 LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955;  
13 ADDING AND AMENDING CERTAIN DEFINITIONS; IMPOSING A CAP ON  
14 INTEREST RATES AND FEES FOR CERTAIN LOANS; AMENDING PAYDAY LOAN  
15 DISCLOSURE REQUIREMENTS; REQUIRING A DATABASE FOR CERTAIN  
16 LOANS; REPEALING A SECTION OF THE NEW MEXICO SMALL LOAN ACT OF  
17 1955.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 Section 1. Section 58-7-1 NMSA 1978 (being Laws 1959,  
21 Chapter 327, Section 1) is amended to read:

22 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter  
23 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank  
24 Installment Loan Act of 1959"."

25 Section 2. Section 58-7-3 NMSA 1978 (being Laws 1995,  
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1 Chapter 190, Section 15) is amended to read:

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

7 Section 3. Section 58-7-3.1 NMSA 1978 (being Laws 1983,  
8 Chapter 96, Section 1) is amended to read:

9 "58-7-3.1. LOAN DEFINITIONS--PRECOMPUTED LOAN INTEREST  
10 CALCULATION.--

11 A. As used in the New Mexico Bank Installment Loan  
12 Act of 1959:

13 (1) "installment loan" means a loan that is to  
14 be repaid in a minimum of four successive substantially equal  
15 payment amounts to pay off that loan in its entirety with a  
16 period of not less than one hundred twenty days to maturity;  
17 and

18 (2) "precomputed loan" means an installment  
19 loan in which the loan principal and interest owed are computed  
20 and scheduled for payment over the life of the loan.

21 B. If [the] a loan is a precomputed loan  
22 transaction, the interest charge may be calculated on the  
23 assumption that all scheduled payments will be made when due,  
24 and the effect of prepayment is governed by the provisions of  
25 rebate upon prepayment in Section 58-7-5 NMSA 1978."

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1           Section 4. Section 58-7-9 NMSA 1978 (being Laws 1959,  
2 Chapter 327, Section 10, as amended) is amended to read:

3           "58-7-9. CONSTRUCTION.--

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

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

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

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

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

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

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

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

21 G. Any person, corporation or association complying  
22 with the regulations adopted by the director of the financial  
23 institutions division of the regulation and licensing  
24 department is deemed to have complied with the provisions of  
25 the New Mexico Bank Installment Loan Act of 1959.

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

6                   Section 5. Section 58-15-2 NMSA 1978 (being Laws 1955,  
7 Chapter 128, Section 2, as amended) is amended to read:

8                   "58-15-2. DEFINITIONS.--The following words and terms  
9 when used in the New Mexico Small Loan Act of 1955 have the  
10 following meanings unless the context clearly requires a  
11 different meaning. The meaning ascribed to the singular form  
12 applies also to the plural:

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

15                   B. "debit authorization" means an authorization  
16 signed by a consumer to electronically transfer or withdraw  
17 funds from the consumer's account for the specific purpose of  
18 repaying a loan;

19                   C. "department" or "division" means the financial  
20 institutions division of the regulation and licensing  
21 department;

22                   D. "director" means the director of the division;

23                   E. "installment loan" means a loan that is to be  
24 repaid in a minimum of four successive substantially equal  
25 payment amounts to pay off ~~[a]~~ that loan in its entirety with a

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1 period of [no] not less than one hundred twenty days to  
2 maturity, except as otherwise provided in Subsection C of  
3 Section 58-15-20.1 NMSA 1978. "Installment loan" does not mean  
4 a loan in which a licensee requires, as a condition of making  
5 the loan, the use of postdated checks or debit authorizations  
6 for repayment of that loan;

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

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

24 H. "payday loan" means a loan in which the licensee  
25 accepts a personal check or debit authorization tendered by the

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1 consumer and agrees [~~in writing~~] to defer presentment of that  
2 check or use of the debit authorization until the consumer's  
3 next payday or another date agreed to by the licensee and the  
4 consumer and:

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

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

11 (b) agrees to hold a dated personal  
12 check or debit authorization from a consumer for a period of  
13 time prior to negotiating or depositing the personal check or  
14 debit authorization; or

15 (c) pays to the consumer, credits to the  
16 consumer's account or pays another person on behalf of the  
17 consumer the amount of an instrument actually paid or to be  
18 paid pursuant to the New Mexico Small Loan Act of 1955; but

19 (2) does not include:

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

23 (b) installment loans;

24 I. "payday loan product" means a payday loan or a  
25 payment plan pursuant to Section 58-15-35 NMSA 1978;

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

3 K. "precomputed loan" means an installment loan in  
4 which the loan principal and interest owed are computed and  
5 scheduled for payment over the life of the loan;

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

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

19 Section 6. 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. A person shall not engage in the business of  
24 [~~lending in amounts of two thousand five hundred dollars~~  
25 ~~(\$2,500) or less for a loan]~~ making loans without first having

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1 obtained a license from the director. Nothing contained in  
2 this subsection shall restrict or prohibit a licensee under the  
3 New Mexico Small Loan Act of 1955 from making precomputed loans  
4 in any amount under the New Mexico Bank Installment Loan Act of  
5 1959 in accordance with the provisions of Section 58-7-2 NMSA  
6 1978; provided, however, that loans in an amount of ten  
7 thousand dollars (\$10,000) or less shall be made only pursuant  
8 to the New Mexico Small Loan Act of 1955.

9 B. Nothing in the New Mexico Small Loan Act of 1955  
10 shall apply to a person making individual advances of [~~two~~  
11 ~~thousand five hundred dollars (\$2,500) or less under~~] ten  
12 thousand dollars (\$10,000) or less pursuant to a written  
13 agreement providing for a total loan or line of credit in  
14 excess of [~~two thousand five hundred dollars (\$2,500)~~] ten  
15 thousand dollars (\$10,000).

16 C. A banking corporation, savings and loan  
17 association or credit union operating under the laws of the  
18 United States or of a state shall be exempt from the licensing  
19 requirements of the New Mexico Small Loan Act of 1955, nor  
20 shall that act apply to business transacted by any person under  
21 the authority of and as permitted by any such law nor to any  
22 bona fide pawnbroking business transacted under a pawnbroker's  
23 license nor to bona fide commercial loans made to dealers upon  
24 personal property held for resale. Nothing contained in the  
25 New Mexico Small Loan Act of 1955 shall be construed as

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1 abridging the rights of any of those exempted from the  
2 operations of that act from contracting for or receiving  
3 interest or charges not in violation of an existing applicable  
4 statute of this state.

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

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

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

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

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

21 (c) receiving or charging compensation  
22 for goods or services, whether or not sold, delivered or  
23 provided; and

24 (d) the real or pretended negotiation,  
25 arrangement or procurement of a loan through any use or

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1 activity of a third person, whether real or fictitious.

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

13 F. A person making a loan pursuant to the New  
14 Mexico Small Loan Act of 1955 shall not use a device or  
15 agreement that would have the effect of charging or collecting  
16 more fees, charges or interest than that allowed by law by  
17 entering into a different type of transaction with the borrower  
18 that would have that effect."

19 Section 7. Section 58-15-9 NMSA 1978 (being Laws 1955,  
20 Chapter 128, Section 9, as amended) is amended to read:

21 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
22 WITNESSES.--

23 A. At least once each year, the director or the  
24 director's authorized representative shall make an examination  
25 of the place of business of each licensee and the loans,

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1 transactions, books, papers and records of the licensee insofar  
2 as they pertain to the business licensed under the New Mexico  
3 Small Loan Act of 1955 as the director may deem necessary. The  
4 licensee shall pay to the director for such annual examination  
5 a fee of two hundred dollars (\$200).

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

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

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

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1                   (3) any person whom the director has  
2 reasonable cause to believe is violating any provision of the  
3 New Mexico Small Loan Act of 1955, whether the person claims to  
4 be within the authority or beyond the scope of that act.

5                   D. For the purposes of this section, a person who  
6 advertises, solicits or makes any representation as being  
7 willing to make loan transactions in any amount, except  
8 persons, financial institutions or lending agencies operating  
9 under charters or licenses issued by a state or federal agency  
10 or under any special statute, shall be subject to investigation  
11 under the New Mexico Small Loan Act of 1955 and shall be  
12 presumed to be engaged in the business described in Subsection  
13 A of Section 58-15-3 NMSA 1978 as to any loans [~~of two thousand~~  
14 ~~five hundred dollars (\$2,500) or less~~].

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

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1 receiving any part of the benefits, net income or profits from  
2 the operation of the licensee within New Mexico.

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

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1 refusal to obey any order of the district court issued to  
2 compel the attendance of the person or the production of books,  
3 records, written instruments and documents, punish the person  
4 as for contempt of court.

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

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

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

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1 in civil actions pending in the district courts of this state.

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

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

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

10 Section 8. Section 58-15-12 NMSA 1978 (being Laws 1955,  
11 Chapter 128, Section 12, as amended) is amended to read:

12 "58-15-12. ADVERTISING.--A licensee or other person  
13 subject to the New Mexico Small Loan Act of 1955 shall not  
14 advertise, display, distribute or broadcast or cause or permit  
15 to be advertised, displayed, distributed or broadcast in any  
16 manner whatsoever a false, misleading or deceptive statement or  
17 representation with regard to the charges, terms or conditions  
18 for loans [~~in the amount or of the value of two thousand five~~  
19 ~~hundred dollars (\$2,500) or less~~]. The director may require  
20 that charges or rates of charge, if stated by a licensee, be  
21 stated fully and clearly in such manner as the director deems  
22 necessary to prevent misunderstanding by prospective borrowers.  
23 The director may permit or require licensees to refer in their  
24 advertising to the fact that their business is under state  
25 supervision, subject to conditions imposed by the director to

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1 prevent erroneous impressions as to the scope or degree of  
2 protection provided by the New Mexico Small Loan Act of 1955."

3 Section 9. A new section of the New Mexico Small Loan Act  
4 of 1955, Section 58-15-20.1 NMSA 1978, is enacted to read:

5 "58-15-20.1. [NEW MATERIAL] CONSUMER LOANS--MAXIMUM  
6 INTEREST RATES--MINIMUM LOAN PERIOD.--

7 A. The stated contract rate of interest for any  
8 loan with a principal amount of ten thousand dollars (\$10,000)  
9 or less entered into pursuant to the New Mexico Small Loan Act  
10 of 1955 shall be:

11 (1) for a loan with a principal amount of two  
12 thousand five hundred dollars (\$2,500) or less, no greater than  
13 forty-five percent per annum; and

14 (2) for a loan with a principal amount greater  
15 than two thousand five hundred dollars (\$2,500) but not greater  
16 than ten thousand dollars (\$10,000), no greater than thirty-six  
17 per cent per annum.

18 B. A person required to be a licensee pursuant to  
19 the New Mexico Small Loan Act of 1955, when making a loan with  
20 a principal amount of ten thousand dollars (\$10,000) or less  
21 pursuant to the New Mexico Small Loan Act of 1955 shall not  
22 charge any interest or fees not provided for in Subsection A of  
23 this section or in Section 58-15-20 NMSA 1978.

24 C. A loan made pursuant to the New Mexico Small  
25 Loan Act of 1955 shall be an installment loan payable in

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1 substantially equal monthly payments and have the following  
2 minimum loan periods:

3 (1) sixty days for a loan with a principal  
4 amount of two thousand five hundred dollars (\$2,500) or less;  
5 and

6 (2) one hundred twenty days for a loan with a  
7 principal amount greater than two thousand five hundred dollars  
8 (\$2,500) but not greater than ten thousand dollars (\$10,000).

9 D. The provisions of this section do not apply to  
10 payday loans."

11 Section 10. Section 58-15-21 NMSA 1978 (being Laws 1955,  
12 Chapter 128, Section 19, as amended) is amended to read:

13 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE  
14 PURCHASES.--The payment of [~~two thousand five hundred dollars~~  
15 ~~(\$2,500) or less in~~] money, credit, goods or things in action,  
16 as consideration for any sale or assignment of or order for the  
17 payment of wages, salary, commission or other compensation for  
18 services, whether earned or to be earned, shall, for the  
19 purposes of regulation under the New Mexico Small Loan Act of  
20 1955, be deemed a loan of money secured by [~~such~~] the sale,  
21 assignment or order. The amount by which [~~such~~] compensation  
22 so sold, assigned or ordered paid exceeds the amount of [~~such~~]  
23 consideration actually paid shall for the purpose of regulation  
24 under the New Mexico Small Loan Act of 1955 be deemed interest  
25 or charges upon [~~such~~] the loan from the date of [~~such~~] payment

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1 to the date [~~such~~] the compensation is payable. [~~Such~~] The  
2 transaction shall be governed by and subject to the provisions  
3 of the New Mexico Small Loan Act of 1955."

4 Section 11. Section 58-15-24 NMSA 1978 (being Laws 1955,  
5 Chapter 128, Section 22, as amended) is amended to read:

6 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside  
7 this state to a resident of New Mexico [~~in the amount or of the~~  
8 ~~value of two thousand five hundred dollars (\$2,500) or less~~]  
9 for which a greater rate of interest, consideration, charge or  
10 compensation to the lender than is permitted by the [~~general~~]  
11 laws of New Mexico [~~presently in force governing money,~~  
12 ~~interest and usury~~] has been charged, contracted for or  
13 received shall be enforced in this state. Every person in any  
14 way participating in such a loan in this state [~~shall be~~] is  
15 subject to the provisions of the New Mexico Small Loan Act of  
16 1955. Any loan made to a nonresident of New Mexico in  
17 conformity with the law of the state where made may be enforced  
18 in this state."

19 Section 12. Section 58-15-38 NMSA 1978 (being Laws 2007,  
20 Chapter 86, Section 20) is amended to read:

21 "58-15-38. REQUIRED DISCLOSURES WHEN MAKING PAYDAY  
22 LOANS--REQUIRED SIGNAGE.--

23 A. A licensee making payday loans shall provide a  
24 notice immediately above the consumer's signature on each  
25 payday loan agreement in at least twelve-point bold type using

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1 the following language:

2 "(1) A payday loan is not intended to meet  
3 long-term financial needs.

4 (2) You should use a payday loan only to meet  
5 short-term cash needs.

6 (3) A payday loan is a high-cost loan. You  
7 should consider what other lower-cost loans are available to  
8 you.

9 (4) If you cannot fully repay a payday loan  
10 when due, you have a right to enter into a payment plan  
11 requiring payment within a minimum of one hundred thirty days,  
12 in relatively equal installments, based upon your scheduled pay  
13 periods. If you enter into a payment plan, you will not have  
14 to pay an additional administrative fee or interest on the  
15 outstanding principal balance or any unpaid administrative  
16 fees.

17 (5) If you have had payment obligations under  
18 a payment plan pursuant to Section 58-15-35 NMSA 1978, you may  
19 not enter into a new payday loan until at least ten calendar  
20 days have passed since you have completed all payment  
21 obligations pursuant to all of your outstanding payday loan  
22 products, including that payment plan."

23 B. Each licensee shall prominently display in each  
24 licensed place of business, in a place where it will be readily  
25 legible by consumers, a sign in at least sixty-point bold type

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1 containing the following notice in both English and Spanish:  
2 "If you cannot fully repay a payday loan when due, you have a  
3 right to enter into a payment plan requiring payment within a  
4 minimum of one hundred thirty days, in relatively equal  
5 installments, based upon your scheduled pay periods. If you  
6 enter into a payment plan, you will not have to pay an  
7 additional administrative fee or interest on the outstanding  
8 principal balance or any unpaid administrative fees."

9 Section 13. A new section of the New Mexico Small Loan  
10 Act of 1955 is enacted to read:

11 "[NEW MATERIAL] LOAN DATABASE.--

12 A. Within five business days of executing a loan  
13 agreement with a consumer, receiving a payment on behalf of a  
14 consumer, a default by a consumer or any collection effort by a  
15 licensee, a licensee shall provide to one or more database  
16 reporting services the information set forth in Paragraph (1)  
17 of Subsection C of this section. Licensees shall comply with  
18 the provisions of this section for all loans executed on or  
19 after November 1, 2010.

20 B. No later than November 1, 2010, the director  
21 shall certify that one or more database reporting services are  
22 commercially reasonable methods of collecting and reporting  
23 information regarding loans made pursuant to the New Mexico  
24 Small Loan Act of 1955. The list of database reporting  
25 services that the director has certified as providing

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1 commercially reasonable methods of collecting and reporting  
2 information regarding loans made pursuant to the New Mexico  
3 Small Loan Act of 1955 shall be posted on the division's web  
4 site and shall be mailed to each licensee by first class mail  
5 at the address of record as shown on the division's licensing  
6 files.

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

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

14 (a) the consumer's unique identifier;

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

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

20 (d) the amount of the loan;

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

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

25 (g) the maturity of the loan;

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- 1 (h) the repayment terms of the loan;
- 2 (i) the dates on which loan repayments
- 3 were made, the nature and amount of each repayment, the date on
- 4 which the loan was paid in full and the total amount of
- 5 interest collected;
- 6 (j) the date of a notice of default;
- 7 (k) the nature and amount of fees to be
- 8 collected in the event of default;
- 9 (l) the amount recovered through
- 10 collection; and
- 11 (m) the amount of principal, interest
- 12 and fees charged off;
- 13 (2) contains a regulator interface that allows
- 14 the division access to the database reporting service for the
- 15 required monitoring and reporting function, including the
- 16 ability to generate reports for licensee examinations,
- 17 regulatory reporting and program monitoring;
- 18 (3) provides adequate safeguards to ensure
- 19 that consumer information contained in the database is kept
- 20 strictly confidential;
- 21 (4) ensures that information submitted to the
- 22 database is kept confidential and shall not be released or
- 23 otherwise made available to the public;
- 24 (5) demonstrates a working system to the
- 25 division prior to the certification of the database; and



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

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

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

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

23                   Section 14. REPEAL.--Section 58-15-19 NMSA 1978 (being  
24 Laws 1955, Chapter 128, Section 17) is repealed.

25                   Section 15. EFFECTIVE DATE.--The effective date of the  
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provisions of this act is November 1, 2010.

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