

1 SENATE BILL 331

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

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; REPEALING A SECTION OF THE NEW MEXICO  
16 SMALL LOAN ACT OF 1955.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter  
22 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank  
23 Installment Loan Act of 1959"."

24 Section 2. Section 58-7-3 NMSA 1978 (being Laws 1995,  
25 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 58-7-3.1 NMSA 1978 (being Laws 1983,  
7 Chapter 96, Section 1) is amended to read:

8 "58-7-3.1. LOAN DEFINITIONS--PRECOMPUTED LOAN INTEREST  
9 CALCULATION.--

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

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

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

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

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

2 "58-7-9. CONSTRUCTION.--

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4 Loan Act of 1955 are amended or repealed by the New Mexico Bank  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

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

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

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

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

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

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

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

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

25 H. ~~[All loans other than precomputed]~~ A loan

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

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

7             "58-15-2. DEFINITIONS.--The following words and terms  
8 when used in the New Mexico Small Loan Act of 1955 have the  
9 following meanings unless the context clearly requires a  
10 different meaning. The meaning ascribed to the singular form  
11 applies also to the plural:

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

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

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

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

22             E. "installment loan" means a loan that is to be  
23 repaid in a minimum of four successive substantially equal  
24 payment amounts to pay off ~~[a]~~ that loan in its entirety with a  
25 period of no less than one hundred twenty days to maturity,

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1 except as otherwise provided in Subsection C of Section  
2 58-15-20.1 NMSA 1978. "Installment loan" does not mean a loan  
3 in which a licensee requires, as a condition of making the  
4 loan, the use of postdated checks or debit authorizations for  
5 repayment of that loan;

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

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

23 H. "payday loan" means a loan in which the licensee  
24 accepts a personal check or debit authorization tendered by the  
25 consumer and agrees [~~in writing~~] to defer presentment of that

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1 check or use of the debit authorization until the consumer's  
2 next payday or another date agreed to by the licensee and the  
3 consumer and:

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

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

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

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

18 (2) does not include:

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

22 (b) installment loans;

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

25 J. "person" includes an individual, copartner,

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1 association, trust, corporation and any other legal entity;

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

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

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

18 Section 6. Section 58-15-3 NMSA 1978 (being Laws 1955,  
19 Chapter 128, Section 3, as amended) is amended to read:

20 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
21 PENALTY.--

22 A. A person shall not engage in the business of  
23 [~~lending in amounts of two thousand five hundred dollars~~  
24 ~~(\$2,500) or less for a loan]~~ making loans without first having  
25 obtained a license from the director. Nothing contained in

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1 this subsection shall restrict or prohibit a licensee under the  
2 New Mexico Small Loan Act of 1955 from making precomputed loans  
3 in any amount under the New Mexico Bank Installment Loan Act of  
4 1959 in accordance with the provisions of Section 58-7-2 NMSA  
5 1978; provided, however, that loans in an amount of ten  
6 thousand dollars (\$10,000) or less shall be made only pursuant  
7 to the New Mexico Small Loan Act of 1955.

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

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

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1 operations of that act from contracting for or receiving  
2 interest or charges not in violation of an existing applicable  
3 statute of this state.

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

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

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

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

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

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

23 (d) the real or pretended negotiation,  
24 arrangement or procurement of a loan through any use or  
25 activity of a third person, whether real or fictitious.

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

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

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

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

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

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

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

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

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

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

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

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

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1 the operation of the licensee within New Mexico.

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

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1 compel the attendance of the person or the production of books,  
2 records, written instruments and documents, punish the person  
3 as for contempt of court.

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

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

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

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

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

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

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

11 "58-15-12. ADVERTISING.--A licensee or other person  
12 subject to the New Mexico Small Loan Act of 1955 shall not  
13 advertise, display, distribute or broadcast or cause or permit  
14 to be advertised, displayed, distributed or broadcast in any  
15 manner whatsoever a false, misleading or deceptive statement or  
16 representation with regard to the charges, terms or conditions  
17 for loans [~~in the amount or of the value of two thousand five~~  
18 ~~hundred dollars (\$2,500) or less~~]. The director may require  
19 that charges or rates of charge, if stated by a licensee, be  
20 stated fully and clearly in such manner as the director deems  
21 necessary to prevent misunderstanding by prospective borrowers.  
22 The director may permit or require licensees to refer in their  
23 advertising to the fact that their business is under state  
24 supervision, subject to conditions imposed by the director to  
25 prevent erroneous impressions as to the scope or degree of

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1 protection provided by the New Mexico Small Loan Act of 1955."

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

4 "58-15-20.1. [NEW MATERIAL] CONSUMER LOANS--MAXIMUM  
5 INTEREST RATES--MINIMUM LOAN PERIOD.--

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

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

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

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

23 C. A loan made pursuant to the New Mexico Small  
24 Loan Act of 1955 shall be an installment loan payable in  
25 substantially equal monthly payments and have the following

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1 minimum loan periods:

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

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

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

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

12 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE  
13 PURCHASES.--The payment of [~~two thousand five hundred dollars~~  
14 ~~(\$2,500) or less in~~] money, credit, goods or things in action,  
15 as consideration for any sale or assignment of or order for the  
16 payment of wages, salary, commission or other compensation for  
17 services, whether earned or to be earned, shall, for the  
18 purposes of regulation under the New Mexico Small Loan Act of  
19 1955, be deemed a loan of money secured by [~~such~~] the sale,  
20 assignment or order. The amount by which [~~such~~] compensation  
21 so sold, assigned or ordered paid exceeds the amount of [~~such~~]  
22 consideration actually paid shall for the purpose of regulation  
23 under the New Mexico Small Loan Act of 1955 be deemed interest  
24 or charges upon [~~such~~] the loan from the date of [~~such~~] payment  
25 to the date [~~such~~] the compensation is payable. [~~Such~~] The

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1 transaction shall be governed by and subject to the provisions  
2 of the New Mexico Small Loan Act of 1955."

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

5 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside  
6 this state to a resident of New Mexico [~~in the amount or of the~~  
7 ~~value of two thousand five hundred dollars (\$2,500) or less~~]  
8 for which a greater rate of interest, consideration, charge or  
9 compensation to the lender than is permitted by the [~~general~~]  
10 laws of New Mexico [~~presently in force governing money,~~  
11 ~~interest and usury~~] has been charged, contracted for or  
12 received shall be enforced in this state. Every person in any  
13 way participating in such a loan in this state [~~shall be~~] is  
14 subject to the provisions of the New Mexico Small Loan Act of  
15 1955. Any loan made to a nonresident of New Mexico in  
16 conformity with the law of the state where made may be enforced  
17 in this state."

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

20 "58-15-38. REQUIRED DISCLOSURES WHEN MAKING PAYDAY  
21 LOANS--REQUIRED SIGNAGE.--

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

.174956.3SA

underscoring material = new  
[bracketed material] = delete

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

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

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

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

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

22                   B. Each licensee shall prominently display in each  
23 licensed place of business, in a place where it will be readily  
24 legible by consumers, a sign in at least sixty-point bold type  
25 containing the following notice in both English and Spanish:

.174956.3SA

underscoring material = new  
[bracketed material] = delete

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

8 Section 13. REPEAL.--Section 58-15-19 NMSA 1978 (being  
9 Laws 1955, Chapter 128, Section 17) is repealed.

10 Section 14. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2009.