

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 233

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO LENDING; AMENDING THE NEW MEXICO BANK INSTALLMENT
LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955;
ADDING AND AMENDING CERTAIN DEFINITIONS; IMPOSING A CAP ON
INTEREST RATES AND FEES FOR CERTAIN LOANS; AMENDING PAYDAY LOAN
DISCLOSURE REQUIREMENTS; REPEALING A SECTION OF THE NEW MEXICO
SMALL LOAN ACT OF 1955.

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

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

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

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

.188347.2SA

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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,
.188347.2SA

underscored material = new
[bracketed material] = delete

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~~] the
15 Motor Vehicle Sales Finance Act or originated under the
16 provisions of [~~Sections 56-1-1 through 56-1-15~~] Chapter 56,
17 Article 1 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

.188347.2SA

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

.188347.2SA

underscored material = new
[bracketed material] = delete

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. "active borrower" means a consumer with an
14 existing, open loan or debt obligation to the lender;

15 ~~[A-]~~ B. "consumer" means a person who enters into a
16 loan agreement and receives the loan proceeds in New Mexico;

17 ~~[B-]~~ C. "debit authorization" means an
18 authorization signed by a consumer to electronically transfer
19 or withdraw funds from the consumer's account for the specific
20 purpose of repaying a loan;

21 D. "debt-to-income ratio" means the percentage of
22 the consumer's monthly income used for payment of monthly debt
23 obligations, including rent or mortgage, credit card payments
24 and other monthly debt obligations compared to the consumer's
25 gross monthly income;

underscored material = new
[bracketed material] = delete

1 ~~[G-]~~ E. "department" or "division" means the
2 financial institutions division of the regulation and licensing
3 department;

4 ~~[D-]~~ F. "director" means the director of the
5 division;

6 G. "inactive borrower" means a consumer who has had
7 at least one prior loan or debt obligation with the lender;

8 ~~[E-]~~ H. "installment loan" means a loan that is to
9 be repaid in a minimum of four successive substantially equal
10 payment amounts to pay off ~~[a]~~ that loan in its entirety with a
11 period of ~~[no]~~ not less than one hundred twenty days to
12 maturity. "Installment loan" does not mean a loan in which a
13 licensee requires, as a condition of making the loan, the use
14 of postdated checks or debit authorizations for repayment of
15 that loan;

16 ~~[F-]~~ I. "license" means a permit issued under the
17 authority of the New Mexico Small Loan Act of 1955 to make
18 loans and collect charges therefor strictly in accordance with
19 the provisions of that act at a single place of business. It
20 shall constitute and shall be construed as a grant of a
21 revocable privilege only to be held and enjoyed subject to all
22 the conditions, restrictions and limitations contained in the
23 New Mexico Small Loan Act of 1955 and lawful regulations
24 promulgated by the director and not otherwise;

25 ~~[G-]~~ J. "licensee" means a person to whom one or

.188347.2SA

underscored material = new
[bracketed material] = delete

1 more licenses have been issued pursuant to the New Mexico Small
2 Loan Act of 1955 upon the person's written application electing
3 to become a licensee and consenting to exercise the privilege
4 of a licensee solely in conformity with the New Mexico Small
5 Loan Act of 1955 and the lawful regulations promulgated by the
6 director under that act and whose name appears on the face of
7 the license;

8 [H.] K. "payday loan" means a loan in which the
9 licensee accepts a personal check or debit authorization
10 tendered by the consumer and agrees [~~in writing~~] to defer
11 presentment of that check or use of the debit authorization
12 until the consumer's next payday or another date agreed to by
13 the licensee and the consumer and:

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

17 (a) accepts a dated personal check or
18 debit authorization from a consumer for the specific purpose of
19 repaying a payday loan;

20 (b) agrees to hold a dated personal
21 check or debit authorization from a consumer for a period of
22 time prior to negotiating or depositing the personal check or
23 debit authorization; or

24 (c) pays to the consumer, credits to the
25 consumer's account or pays another person on behalf of the

.188347.2SA

underscored material = new
[bracketed material] = delete

1 consumer the amount of an instrument actually paid or to be
2 paid pursuant to the New Mexico Small Loan Act of 1955; but

3 (2) does not include:

4 (a) an overdraft product or service
5 offered by a banking corporation, savings and loan association
6 or credit union; and

7 (b) installment loans;

8 [~~F~~] L. "payday loan product" means a payday loan
9 or a payment plan pursuant to Section 58-15-35 NMSA 1978;

10 [~~J~~] M. "person" includes an individual, copartner,
11 association, trust, corporation and any other legal entity;

12 N. "precomputed loan" means an installment loan in
13 which the loan principal and interest owed are computed and
14 scheduled for payment over the life of the loan;

15 [~~K~~] O. "renewed payday loan" means a loan in which
16 a consumer pays in cash the administrative fee payable under a
17 payday loan agreement and refinances all or part of the unpaid
18 principal balance of an existing payday loan with a new payday
19 loan from the same licensee. A "renewed payday loan" includes
20 a transaction in which a consumer pays off all or part of an
21 existing payday loan with the proceeds of a payday loan from
22 the same licensee; and

23 [~~H~~] P. "simple interest" means a method of
24 calculating interest in which the amount of interest is
25 calculated based on the annual interest rate disclosed in the

.188347.2SA

underscored material = new
[bracketed material] = delete

1 loan agreement and is computed only on the outstanding
2 principal balance of the loan."

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

5 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
6 PENALTY.--

7 A. A person shall not engage in the business of
8 [~~lending in amounts of two thousand five hundred dollars~~
9 ~~(\$2,500) or less for a loan]~~ making loans without first having
10 obtained a license from the director. Nothing contained in
11 this subsection shall restrict or prohibit a licensee under the
12 New Mexico Small Loan Act of 1955 from making precomputed loans
13 in any amount under the New Mexico Bank Installment Loan Act of
14 1959 in accordance with the provisions of Section 58-7-2 NMSA
15 1978; provided, however, that loans in an amount of five
16 thousand dollars (\$5,000) or less shall be made only pursuant
17 to the New Mexico Small Loan Act of 1955.

18 B. Nothing in the New Mexico Small Loan Act of 1955
19 shall apply to a person making individual advances of [~~two~~
20 ~~thousand five hundred dollars (\$2,500) or less under]~~ five
21 thousand dollars (\$5,000) or less pursuant to a written
22 agreement providing for a total loan or line of credit in
23 excess of [~~two thousand five hundred dollars (\$2,500)]~~ five
24 thousand dollars (\$5,000).

25 C. A banking corporation, savings and loan

.188347.2SA

underscoring material = new
[bracketed material] = delete

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

14 D. The provisions of Subsection A of this section
15 apply to:

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

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

24 (a) the loan, forbearance, use or sale
25 of credit (as guarantor, surety, endorser, comaker or

.188347.2SA

underscored material = new
[bracketed material] = delete

1 otherwise), money, goods or things in action;

2 (b) the use of collateral or related
3 sales or purchases of goods or services or agreements to sell
4 or purchase, whether real or pretended;

5 (c) receiving or charging compensation
6 for goods or services, whether or not sold, delivered or
7 provided; and

8 (d) the real or pretended negotiation,
9 arrangement or procurement of a loan through any use or
10 activity of a third person, whether real or fictitious.

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

22 F. A person making a loan pursuant to the New
23 Mexico Small Loan Act of 1955 shall not use a device or
24 agreement that would have the effect of charging or collecting
25 more fees, charges or interest than that allowed by law by

.188347.2SA

1 entering into a different type of transaction with the borrower
2 that would have that effect."

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

5 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
6 WITNESSES.--

7 A. At least once each year, the director or the
8 director's authorized representative shall make an examination
9 of the place of business of each licensee and the loans,
10 transactions, books, papers and records of the licensee insofar
11 as they pertain to the business licensed under the New Mexico
12 Small Loan Act of 1955 as the director may deem necessary. The
13 licensee shall pay to the director for such annual examination
14 a fee of two hundred dollars (\$200).

15 B. Within a reasonable time after the completion of
16 an examination of a licensed office, the director shall mail to
17 the licensee a copy of the report of the examination, together
18 with any comments, exceptions, objections or criticisms of the
19 director concerning the conduct of the licensee and the
20 operation of the licensed office.

21 C. For the purpose of discovering violations of the
22 New Mexico Small Loan Act of 1955 or of securing information
23 lawfully required under that act, the director or the
24 director's authorized representative may at any time
25 investigate the business and examine the books, accounts,

.188347.2SA

underscored material = new
[bracketed material] = delete

1 papers and records used therein, including income tax returns
2 or other reports filed in the office of the director of the
3 revenue processing division of the taxation and revenue
4 department of:

5 (1) any licensee;

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

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

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

24 E. To facilitate the examinations and
25 investigations by the director and fully disclose the

.188347.2SA

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

1 operations and methods of operation of each licensed office,
2 the licensee shall, in each licensed office, keep on file as
3 part of the records of the office all office manuals,
4 communications or directives containing statements of loan
5 policy to office managers and employees. If the licensee is an
6 individual, corporation, trust or association, the licensee
7 shall keep in at least one office for information of the
8 director a record of the several individuals, firms,
9 beneficiaries of any trust and corporations deriving or
10 receiving any part of the benefits, net income or profits from
11 the operation of the licensee within New Mexico.

12 F. For the purposes of this section, the director
13 or the director's authorized representative shall have and be
14 given free access to the offices and places of business, files,
15 safes and vaults of all licensees and shall have authority to
16 require the attendance of any person and to examine the person
17 under oath relative to such loans or business or to the subject
18 matter of any examination, investigation or hearing as provided
19 in the New Mexico Small Loan Act of 1955. Notices to appear
20 before the director for examination under oath may be served by
21 registered mail. If the party notified to appear is the
22 licensee, any person named on the face of the license being
23 investigated or any agent, employee or manager participating in
24 the licensee's business and the party fails to appear for
25 examination or refuses to answer questions submitted, the

.188347.2SA

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

1 director may, forthwith and without further notice to the
2 licensee, suspend the license involved pending compliance with
3 the notice. Upon failure of any other person to appear or to
4 answer questions, the director may apply to and invoke the aid
5 of any district court of New Mexico in compelling the
6 attendance and testimony of any such person and the production
7 of books, records, written instruments and documents relating
8 to the business of the licensee. The district court whose aid
9 is so invoked by the director may, in case of contumacy or
10 refusal to obey any order of the district court issued to
11 compel the attendance of the person or the production of books,
12 records, written instruments and documents, punish the person
13 as for contempt of court.

14 G. The director shall prescribe rules of procedure
15 for all hearings, examinations or investigations provided for
16 in the New Mexico Small Loan Act of 1955. The director is not
17 bound by the usual common law or statutory rules of evidence or
18 by any technical or formal rules of procedure or pleading and
19 specification of charges other than as specifically provided in
20 the New Mexico Small Loan Act of 1955 but may conduct hearings,
21 examinations and investigations in the manner best calculated
22 to ascertain the substantial rights of the parties interested.

23 H. The director has the power to administer oaths,
24 certify official acts and records of the director's office,
25 issue subpoenas for witnesses in the name of and under the seal

.188347.2SA

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

1 of the director's office and compel the production of papers,
2 books, accounts and documents. The director shall issue
3 subpoenas at the instance of any party to a hearing before the
4 division upon payment of a fee of two dollars fifty cents
5 (\$2.50) for each subpoena so issued.

6 I. Depositions may be taken with or without a
7 commission, and written interrogatories may be submitted in the
8 same manner and on the same grounds provided by law for the
9 taking of depositions or submission of written interrogatories
10 in civil actions pending in the district courts of this state.

11 J. Each witness who appears before the director by
12 the director's order shall receive the fees and mileage
13 provided for witnesses in civil actions in the district court.
14 Fees and mileage shall be paid by the state, but no witness
15 subpoenaed at the instance of parties other than the director
16 is entitled to compensation from the state for attendance or
17 mileage unless the director certifies that the witness'
18 testimony is material.

19 K. Whenever the director has reasonable cause to
20 believe that a person is violating a provision of the New
21 Mexico Small Loan Act of 1955, the director may, in addition to
22 all actions provided for in that act and without prejudice
23 thereto, enter an order requiring the person to desist or to
24 refrain from the violation. An action may be brought on the
25 relation of the attorney general and the director to enjoin the

.188347.2SA

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

1 person from engaging in or continuing the violation or from
2 doing any act in furtherance of the violation. In any such
3 action, an order or judgment may be entered awarding a
4 preliminary or final injunction as may be deemed proper. In
5 addition to all other means provided by law for the enforcement
6 of a temporary restraining order, temporary injunction or final
7 injunction, the court in which such action is brought shall
8 have power and jurisdiction to impound and to appoint a
9 receiver for the property and business of the defendants,
10 including books, papers, documents and records pertaining
11 thereto or so much thereof as the court may deem reasonably
12 necessary to prevent further violations of the New Mexico Small
13 Loan Act of 1955 through or by means of the use of the property
14 and business. The receiver, when appointed and qualified,
15 shall have powers and duties as to custody, collection,
16 administration, winding up and liquidation of the property and
17 business as are from time to time conferred upon the receiver
18 by the court."

19 **SECTION 8.** Section 58-15-12 NMSA 1978 (being Laws 1955,
20 Chapter 128, Section 12, as amended) is amended to read:

21 "58-15-12. ADVERTISING.--A licensee or other person
22 subject to the New Mexico Small Loan Act of 1955 shall not
23 advertise, display, distribute or broadcast or cause or permit
24 to be advertised, displayed, distributed or broadcast in any
25 manner whatsoever a false, misleading or deceptive statement or

.188347.2SA

underscored material = new
[bracketed material] = delete

1 representation with regard to the charges, terms or conditions
2 for loans [~~in the amount or of the value of two thousand five~~
3 ~~hundred dollars (\$2,500) or less~~]. The director may require
4 that charges or rates of charge, if stated by a licensee, be
5 stated fully and clearly in such manner as the director deems
6 necessary to prevent misunderstanding by prospective borrowers.
7 The director may permit or require licensees to refer in their
8 advertising to the fact that their business is under state
9 supervision, subject to conditions imposed by the director to
10 prevent erroneous impressions as to the scope or degree of
11 protection provided by the New Mexico Small Loan Act of 1955."

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

14 "[NEW MATERIAL] LOANS--MAXIMUM INTEREST RATES--MINIMUM
15 LOAN PERIOD.--

16 A. The stated contract rate of interest for any
17 loan with a principal amount of five thousand dollars (\$5,000)
18 or less entered into pursuant to the New Mexico Small Loan Act
19 of 1955 shall be no greater than the prime rate plus thirty-six
20 percent per year. As used in this subsection, "prime rate"
21 means the United States prime rate of interest as listed in the
22 online internet edition of the *Wall Street Journal* as of the
23 last business day of the preceding month.

24 B. A person required to be a licensee pursuant to
25 the New Mexico Small Loan Act of 1955, when making a loan with

.188347.2SA

underscored material = new
[bracketed material] = delete

1 a principal amount of five thousand dollars (\$5,000) or less
2 pursuant to the New Mexico Small Loan Act of 1955, shall not
3 charge any interest or fees not provided for in Subsection A of
4 this section or in Section 58-15-20 NMSA 1978.

5 C. A loan made pursuant to the New Mexico Small
6 Loan Act of 1955 shall be an installment loan payable in
7 substantially equal monthly payments.

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

10 SECTION 10. A new section of the New Mexico Small Loan
11 Act of 1955 is enacted to read:

12 "[NEW MATERIAL] ABILITY TO REPAY.--

13 A. No licensee shall originate a loan that does not
14 require documentation and consideration of the consumer's
15 reasonable ability to repay that loan pursuant to its terms.

16 B. A consumer's ability to repay a loan shall be
17 demonstrated through reasonably reliable documentation of the
18 consumer's income, the consumer's monthly debt obligations, the
19 cost of the loan, including principal and interest for the full
20 term of the loan, and the consumer's debt-to-income ratio."

21 SECTION 11. A new section of the New Mexico Small Loan
22 Act of 1955 is enacted to read:

23 "[NEW MATERIAL] PROHIBITED PRACTICES.--

24 A. A lender shall not engage in any practice
25 whereby the lender communicates, through any means, in the form

.188347.2SA

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

1 of a direct, targeted solicitation to active borrowers to
2 inform them that they have additional credit available to them
3 or that otherwise has the purpose or effect of increasing the
4 amount of indebtedness of active borrowers owed to the lender
5 by encouraging them to increase the amount of their principal
6 debt obligation in an open loan product or by encouraging them
7 to take out a new loan or to roll over or refinance an existing
8 loan.

9 B. A lender shall not engage in any practice
10 whereby the lender communicates, through any means, in the form
11 of a direct, targeted solicitation to inactive borrowers for at
12 least sixty days after the inactive borrower's loan file
13 becomes inactive with the purpose, intent or effect of renewing
14 the inactive borrower's indebtedness to the lender by
15 encouraging the inactive borrower to take out a new loan or
16 otherwise extend or renew a dormant loan obligation.

17 C. Nontargeted communications or solicitations to a
18 general audience is permitted, but shall not contain quotes of
19 the cost of any loan product in any other amount than that
20 which is mandated by the federal Truth in Lending Act, and the
21 lender shall not advertise discounted or promotional rates
22 without also clearly and conspicuously disclosing any
23 limitations on the advertised discount or promotion."

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

.188347.2SA

underscored material = new
[bracketed material] = delete

1 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE
2 PURCHASES.--The payment of [~~two thousand five hundred dollars~~
3 ~~(\$2,500) or less in~~] money, credit, goods or things in action,
4 as consideration for any sale or assignment of or order for the
5 payment of wages, salary, commission or other compensation for
6 services, whether earned or to be earned, shall, for the
7 purposes of regulation under the New Mexico Small Loan Act of
8 1955, be deemed a loan of money secured by [~~such~~] the sale,
9 assignment or order. The amount by which [~~such~~] compensation
10 so sold, assigned or ordered paid exceeds the amount of [~~such~~]
11 consideration actually paid shall for the purpose of regulation
12 under the New Mexico Small Loan Act of 1955 be deemed interest
13 or charges upon [~~such~~] the loan from the date of [~~such~~] payment
14 to the date [~~such~~] the compensation is payable. [~~Such~~] The
15 transaction shall be governed by and subject to the provisions
16 of the New Mexico Small Loan Act of 1955."

17 **SECTION 13.** Section 58-15-24 NMSA 1978 (being Laws 1955,
18 Chapter 128, Section 22, as amended) is amended to read:

19 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside
20 this state to a resident of New Mexico [~~in the amount or of the~~
21 ~~value of two thousand five hundred dollars (\$2,500) or less~~]
22 for which a greater rate of interest, consideration, charge or
23 compensation to the lender than is permitted by the [~~general~~]
24 laws of New Mexico [~~presently in force governing money,~~
25 ~~interest and usury~~] has been charged, contracted for or

.188347.2SA

underscored material = new
[bracketed material] = delete

1 received shall be enforced in this state. Every person in any
2 way participating in such a loan in this state [~~shall be~~] is
3 subject to the provisions of the New Mexico Small Loan Act of
4 1955. Any loan made to a nonresident of New Mexico in
5 conformity with the law of the state where made may be enforced
6 in this state."

7 SECTION 14. Section 58-15-38 NMSA 1978 (being Laws 2007,
8 Chapter 86, Section 20) is amended to read:

9 "58-15-38. REQUIRED DISCLOSURES WHEN MAKING PAYDAY
10 LOANS--REQUIRED SIGNAGE.--

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

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

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

19 (3) A payday loan is a high-cost loan. You should
20 consider what other lower-cost loans are available
21 to you.

22 (4) If you cannot fully repay a payday loan when
23 due, you have a right to enter into a payment plan
24 requiring payment within a minimum of one hundred
25 thirty days, in relatively equal installments, based

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

1 upon your scheduled pay periods. If you enter into
2 a payment plan, you will not have to pay an
3 additional administrative fee or interest on the
4 outstanding principal balance or any unpaid
5 administrative fees.

6 (5) If you have had payment obligations under a
7 payment plan pursuant to Section 58-15-35 NMSA 1978,
8 you may not enter into a new payday loan until at
9 least ten calendar days have passed since you have
10 completed all payment obligations pursuant to all of
11 your outstanding payday loan products, including
12 that payment plan."

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

17 "If you cannot fully repay a payday loan when due,
18 you have a right to enter into a payment plan
19 requiring payment within a minimum of one hundred
20 thirty days, in relatively equal installments, based
21 upon your scheduled pay periods. If you enter into
22 a payment plan, you will not have to pay an
23 additional administrative fee or interest on the
24 outstanding principal balance or any unpaid
25 administrative fees."

underscored material = new
[bracketed material] = delete

1 SECTION 15. A new section of the New Mexico Small Loan
2 Act of 1955 is enacted to read:

3 "[NEW MATERIAL] UNFAIR PRACTICE.--A violation of the New
4 Mexico Small Loan Act of 1955 constitutes an unfair or
5 deceptive trade practice pursuant to the Unfair Practices Act."

6 SECTION 16. REPEAL.--Section 58-15-19 NMSA 1978 (being
7 Laws 1955, Chapter 128, Section 17) is repealed.

8 SECTION 17. APPLICABILITY.--The provisions of this act
9 apply to loans entered on or after July 1, 2012.

10 SECTION 18. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2012.