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SENATE BILL 305

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Peter Wirth

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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; REQUIRING A DATABASE FOR CERTAIN LOANS; 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, .184140.3SA

Chapter	190.	Section	15)	is	amended	to	read:
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"58-7-3. LOANS COVERED BY ACT.--The New Mexico Bank
Installment Loan Act of 1959 applies to a loan that is a
precomputed loan repayable in installments [or that is clearly
identified on the loan documents as being made under that
act]."

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

"58-7-3.1. <u>LOAN DEFINITIONS</u>--PRECOMPUTED LOAN <u>INTEREST</u>
CALCULATION.--

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

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

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

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

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

None of the provisions of the New Mexico Small Loan Act of 1955 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

- With the exception of precomputed loan transactions, a lender is not bound by the provisions of the New Mexico Bank Installment Loan Act of 1959 in making loans where the loan is made in accordance with the provisions of Sections 56-8-9 through 56-8-14 NMSA 1978.
- None of the provisions of the New Mexico Bank Installment Loan Act of 1959 apply to the assignment or purchase of retail installment contracts originated under the provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or originated under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.
- In the event of a conflict between a requirement of the New Mexico Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection Act, the requirement of the Home Loan Protection Act shall control.
- As used in the New Mexico Bank Installment Loan Act of 1959:
- "year" means three hundred sixty-five (1) days; and

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- (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.

- H. [All loans other than precomputed] \underline{A} loan [transactions] transaction made [under] pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan documents as being made [under] pursuant to that act."
- SECTION 5. Section 58-15-2 NMSA 1978 (being Laws 1955, Chapter 128, Section 2, as amended) is amended to read:
- "58-15-2. DEFINITIONS.--The following words and terms when used in the New Mexico Small Loan Act of 1955 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:
- A. "consumer" means a person who enters into a loan agreement and receives the loan proceeds in New Mexico;
- B. "debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from the consumer's account for the specific purpose of repaying a loan;
- C. "debt-to-income ratio" means the percentage of the borrower's monthly income used for payment of monthly debt obligations, including rent or mortgage, credit card payments and other monthly debt obligations compared to the borrower's gross monthly income;
- [$\overline{\text{C.}}$] $\overline{\text{D.}}$ "department" or "division" means the financial institutions division of the regulation and licensing .184140.3SA

1	department;
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 $[\frac{\mathbf{D}_{\bullet}}]$ $\underline{\mathbf{E}_{\bullet}}$ "director" means the director of the division;

[£.] <u>F.</u> "installment loan" means a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off [a] that loan in its entirety with a period of [no] not less than one hundred twenty days to maturity, except as otherwise provided in Subsection C of Section 58-15-20.1 NMSA 1978. "Installment loan" does not mean a loan in which a licensee requires, as a condition of making the loan, the use of postdated checks or debit authorizations for repayment of that loan;

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

[G.] $\underline{\text{H.}}$ "licensee" means a person to whom one or more licenses have been issued pursuant to the New Mexico Small Loan Act of 1955 upon the person's written application electing to become a licensee and consenting to exercise the privilege

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of a licensee solely in conformity with the New Mexico Small Loan Act of 1955 and the lawful regulations promulgated by the director under that act and whose name appears on the face of the license;

"payday loan" means a loan in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees [in writing] to defer presentment of that check or use of the debit authorization until the consumer's next payday or another date agreed to by the licensee and the consumer and:

- includes any advance of money or (1) arrangement or extension of credit whereby the licensee, for a fee, finance charge or other consideration:
- (a) accepts a dated personal check or debit authorization from a consumer for the specific purpose of repaying a payday loan;
- agrees to hold a dated personal (b) check or debit authorization from a consumer for a period of time prior to negotiating or depositing the personal check or debit authorization; or
- (c) pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer the amount of an instrument actually paid or to be paid pursuant to the New Mexico Small Loan Act of 1955; but
 - does not include: (2)

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

installment loans; (b)

- "payday loan product" means a payday loan or a payment plan pursuant to Section 58-15-35 NMSA 1978;
- [J.] K. "person" includes an individual, copartner, association, trust, corporation and any other legal entity;
- L. "precomputed loan" means an installment loan in which the loan principal and interest owed are computed and scheduled for payment over the life of the loan;
- [K.] M. "renewed payday loan" means a loan in which a consumer pays in cash the administrative fee payable under a payday loan agreement and refinances all or part of the unpaid principal balance of an existing payday loan with a new payday loan from the same licensee. A "renewed payday loan" includes a transaction in which a consumer pays off all or part of an existing payday loan with the proceeds of a payday loan from the same licensee; and
- $[\underbrace{\text{H.}}]$ $\underline{\text{N.}}$ "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual interest rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan."
- **SECTION 6.** Section 58-15-3 NMSA 1978 (being Laws 1955, .184140.3SA

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Chapter 128, Section 3, as amended) is amended to read: "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--PENALTY. --

- A person shall not engage in the business of [lending in amounts of two thousand five hundred dollars (\$2,500) or less for a loan] making loans without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making precomputed loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in accordance with the provisions of Section 58-7-2 NMSA 1978; provided, however, that loans in an amount of ten thousand dollars (\$10,000) or less shall be made only pursuant to the New Mexico Small Loan Act of 1955.
- Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of [two thousand five hundred dollars (\$2,500) or less under] ten thousand dollars (\$10,000) or less pursuant to a written agreement providing for a total loan or line of credit in excess of [two thousand five hundred dollars (\$2,500)] ten thousand dollars (\$10,000).
- C. A banking corporation, savings and loan association or credit union operating under the laws of the United States or of a state shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor .184140.3SA

shall that act apply to business transacted by any person under the authority of and as permitted by any such law nor to any bona fide pawnbroking business transacted under a pawnbroker's license nor to bona fide commercial loans made to dealers upon personal property held for resale. Nothing contained in the New Mexico Small Loan Act of 1955 shall be construed as abridging the rights of any of those exempted from the operations of that act from contracting for or receiving interest or charges not in violation of an existing applicable statute of this state.

- D. The provisions of Subsection A of this section apply to:
- (1) a person who owns an interest, legal or equitable, in the business or profits of a licensee and whose name does not specifically appear on the face of the license, except a stockholder in a corporate licensee; and
- (2) a person who seeks to evade its application by any device, subterfuge or pretense whatsoever, including but not thereby limiting the generality of the foregoing:
- (a) the loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, goods or things in action;
- (b) the use of collateral or related sales or purchases of goods or services or agreements to sell .184140.3SA

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or purchase, whether real or pretended;

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

- (d) the real or pretended negotiation, arrangement or procurement of a loan through any use or activity of a third person, whether real or fictitious.
- A person, copartnership, trust or a trustee or beneficiary thereof, or an association or corporation or a member, officer, director, agent or employee thereof who violates or participates in the violation of a provision of Subsection A of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978. A contract or loan in the making or collection of which an act is done that violates Subsection A or D of this section is void, and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever.
- F. A person making a loan pursuant to the New Mexico Small Loan Act of 1955 shall not use a device or agreement that would have the effect of charging or collecting more fees, charges or interest than that allowed by law by entering into a different type of transaction with the borrower that would have that effect."

SECTION 7. Section 58-15-9 NMSA 1978 (being Laws 1955, .184140.3SA

Chapter 128, Section 9, as amended) is amended to read:

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

- A. At least once each year, the director or the director's authorized representative shall make an examination of the place of business of each licensee and the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 as the director may deem necessary. The licensee shall pay to the director for such annual examination a fee of two hundred dollars (\$200).
- B. Within a reasonable time after the completion of an examination of a licensed office, the director shall mail to the licensee a copy of the report of the examination, together with any comments, exceptions, objections or criticisms of the director concerning the conduct of the licensee and the operation of the licensed office.
- C. For the purpose of discovering violations of the New Mexico Small Loan Act of 1955 or of securing information lawfully required under that act, the director or the director's authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, including income tax returns or other reports filed in the office of the director of the revenue processing division of the taxation and revenue

department of:

- (1) any licensee;
- (2) any other person engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 or participating in such business as principal, agent, broker or otherwise; and
- (3) any person whom the director has reasonable cause to believe is violating any provision of the New Mexico Small Loan Act of 1955, whether the person claims to be within the authority or beyond the scope of that act.
- D. For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or licenses issued by a state or federal agency or under any special statute, shall be subject to investigation under the New Mexico Small Loan Act of 1955 and shall be presumed to be engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 as to any loans [of two thousand five hundred dollars (\$2,500) or less].
- E. To facilitate the examinations and investigations by the director and fully disclose the operations and methods of operation of each licensed office, the licensee shall, in each licensed office, keep on file as part of the records of the office all office manuals,

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communications or directives containing statements of loan policy to office managers and employees. If the licensee is an individual, corporation, trust or association, the licensee shall keep in at least one office for information of the director a record of the several individuals, firms, beneficiaries of any trust and corporations deriving or receiving any part of the benefits, net income or profits from the operation of the licensee within New Mexico.

For the purposes of this section, the director or the director's authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine the person under oath relative to such loans or business or to the subject matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear before the director for examination under oath may be served by registered mail. If the party notified to appear is the licensee, any person named on the face of the license being investigated or any agent, employee or manager participating in the licensee's business and the party fails to appear for examination or refuses to answer questions submitted, the director may, forthwith and without further notice to the licensee, suspend the license involved pending compliance with the notice. Upon failure of any other person to appear or to

answer questions, the director may apply to and invoke the aid of any district court of New Mexico in compelling the attendance and testimony of any such person and the production of books, records, written instruments and documents relating to the business of the licensee. The district court whose aid is so invoked by the director may, in case of contumacy or refusal to obey any order of the district court issued to compel the attendance of the person or the production of books, records, written instruments and documents, punish the person as for contempt of court.

- G. The director shall prescribe rules of procedure for all hearings, examinations or investigations provided for in the New Mexico Small Loan Act of 1955. The director is not bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure or pleading and specification of charges other than as specifically provided in the New Mexico Small Loan Act of 1955 but may conduct hearings, examinations and investigations in the manner best calculated to ascertain the substantial rights of the parties interested.
- H. The director has the power to administer oaths, certify official acts and records of the director's office, issue subpoenas for witnesses in the name of and under the seal of the director's office and compel the production of papers, books, accounts and documents. The director shall issue subpoenas at the instance of any party to a hearing before the

division upon payment of a fee of two dollars fifty cents (\$2.50) for each subpoena so issued.

- I. Depositions may be taken with or without a commission, and written interrogatories may be submitted in the same manner and on the same grounds provided by law for the taking of depositions or submission of written interrogatories in civil actions pending in the district courts of this state.
- J. Each witness who appears before the director by the director's order shall receive the fees and mileage provided for witnesses in civil actions in the district court. Fees and mileage shall be paid by the state, but no witness subpoenaed at the instance of parties other than the director is entitled to compensation from the state for attendance or mileage unless the director certifies that the witness' testimony is material.
- K. Whenever the director has reasonable cause to believe that a person is violating a provision of the New Mexico Small Loan Act of 1955, the director may, in addition to all actions provided for in that act and without prejudice thereto, enter an order requiring the person to desist or to refrain from the violation. An action may be brought on the relation of the attorney general and the director to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In any such action, an order or judgment may be entered awarding a

preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction or final injunction, the court in which such action is brought shall have power and jurisdiction to impound and to appoint a receiver for the property and business of the defendants, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of the New Mexico Small Loan Act of 1955 through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as are from time to time conferred upon the receiver by the court."

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

"58-15-12. ADVERTISING.--A licensee or other person subject to the New Mexico Small Loan Act of 1955 shall not advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast in any manner whatsoever a false, misleading or deceptive statement or representation with regard to the charges, terms or conditions for loans [in the amount or of the value of two thousand five hundred dollars (\$2,500) or less]. The director may require

that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems necessary to prevent misunderstanding by prospective borrowers. The director may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by the director to prevent erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955."

SECTION 9. Section 58-15-20 NMSA 1978 (being Laws 1955, Chapter 128, Section 18, as amended) is amended to read:

"58-15-20. FEES AND COSTS.--

- A. Notwithstanding any provision of the New Mexico Small Loan Act of 1955, lawful fees, if any, actually and necessarily paid out by the licensee to a public officer for the filing, recording or releasing in a public office of an instrument securing the loan may be charged to the borrower.
- B. Notwithstanding any provision in a note or other loan contract taken or received pursuant to the provisions of the New Mexico Small Loan Act of 1955, attorney fees shall not be charged or collected except when the note or other contract has been submitted in good faith to an attorney for collection and after diligent and good faith effort to collect on the part of the licensee has failed.
- C. Notary fees incident to the taking of a lien to secure a small loan or releasing such a lien shall not be .184140.3SA

charged or collected by a licensee, an officer, agent or employee of a licensee or anyone within an office, room or place of business in which a small loan office is conducted.

D. Delinquency fees shall not exceed five cents (\$.05) for each one dollar (\$1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed ten dollars (\$10.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid.

E. Notwithstanding any provision of the New Mexico

Small Loan Act of 1955, upon the execution of a loan agreement,

the licensee may impose an administrative fee not to exceed the

amount necessary to cover the fee for submitting information

regarding the consumer and the loan to a database reporting

service if required pursuant to the New Mexico Small Loan Act

of 1955."

SECTION 10. A new section of the New Mexico Small Loan

Act of 1955, Section 58-15-20.1 NMSA 1978, is enacted to read:

"58-15-20.1. [NEW MATERIAL] LOANS--MAXIMUM INTEREST

RATES--MINIMUM LOAN PERIOD.--

A. The stated contract rate of interest for any loan with a principal amount of ten thousand dollars (\$10,000) or less entered into pursuant to the New Mexico Small Loan Act of 1955 shall be no greater than prime rate plus thirty-six .184140.3SA

percent per year. As used in this subsection, "prime rate" means the United States prime rate of interest as listed in the online internet edition of the Wall Street Journal as of the last business day of the preceding month.

- B. A person required to be a licensee pursuant to the New Mexico Small Loan Act of 1955, when making a loan with a principal amount of ten thousand dollars (\$10,000) or less pursuant to the New Mexico Small Loan Act of 1955, shall not charge any interest or fees not provided for in Subsection A of this section or in Section 58-15-20 NMSA 1978.
- C. A loan made pursuant to the New Mexico Small Loan Act of 1955 shall be an installment loan payable in substantially equal monthly payments and have the following minimum loan periods:
- (1) sixty days for a loan with a principal amount of two thousand five hundred dollars (\$2,500) or less; and
- (2) one hundred twenty days for a loan with a principal amount greater than two thousand five hundred dollars (\$2,500) but not greater than ten thousand dollars (\$10,000).
- D. The provisions of this section do not apply to payday loans."

SECTION 11. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-20.2 NMSA 1978, is enacted to read:

"58-15-20.2 [NEW MATERIAL] ABILITY TO REPAY.--

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B. A borrower's ability to repay a loan shall be demonstrated through reasonably reliable documentation of the borrower's income, the cost of the loan, including principal and interest for the full term of the loan and the borrower's debt-to-income ratio."

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

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

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of the New Mexico Small Loan Act of 1955."

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

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

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

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

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

"(1) A payday loan is not intended to meet .184140.3SA

long-term financial needs.

- (2) You should use a payday loan only to meet short-term cash needs.
- (3) A payday loan is a high-cost loan. You should consider what other lower-cost loans are available to you.
- (4) If you cannot fully repay a payday loan when due, you have a right to enter into a payment plan requiring payment within a minimum of one hundred thirty days, in relatively equal installments, based upon your scheduled pay periods. If you enter into a payment plan, you will not have to pay an additional administrative fee or interest on the outstanding principal balance or any unpaid administrative fees.
- (5) If you have had payment obligations under a payment plan pursuant to Section 58-15-35 NMSA 1978, you may not enter into a new payday loan until at least ten calendar days have passed since you have completed all payment obligations pursuant to all of your outstanding payday loan products, including that payment plan.".
- B. Each licensee shall <u>prominently</u> display in each licensed place of business, in a place where it will be readily legible by consumers, a sign <u>in at least sixty-point bold type</u> containing the following notice in both English and Spanish:

 "If you cannot fully repay a payday loan when due, you have a
 .184140.3SA

right to enter into a payment plan requiring payment within a minimum of one hundred thirty days, in relatively equal installments, based upon your scheduled pay periods. If you enter into a payment plan, you will not have to pay an additional administrative fee or interest on the outstanding principal balance or any unpaid administrative fees."

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

"[NEW MATERIAL] LOAN DATABASE. --

A. Within five business days of executing a loan agreement with a consumer, receiving a payment on behalf of a consumer, a default by a consumer or any collection effort by a licensee, a licensee shall provide to one or more database reporting services the information set forth in Paragraph (1) of Subsection C of this section. Licensees shall comply with the provisions of this section for all loans executed on or after November 1, 2011.

B. No later than November 1, 2011, the director shall certify that one or more database reporting services are commercially reasonable methods of collecting and reporting information regarding loans made pursuant to the New Mexico Small Loan Act of 1955. The list of database reporting services that the director has certified as providing commercially reasonable methods of collecting and reporting information regarding loans made pursuant to the New Mexico

	2	site and shall be mailed to each licensee by first class mail
	3	at the address of record as shown on the division's licensing
	4	files.
	5	C. In certifying a commercially reasonable method
	6	of collecting and reporting information regarding loans made
	7	pursuant to the New Mexico Small Loan Act of 1955, the director
	8	shall ensure that the database reporting service:
	9	(1) requires licensees to enter the following
	10	information in a manner provided by rule adopted pursuant to
	11	the New Mexico Small Loan Act of 1955:
	12	(a) the consumer's unique identifier;
	13	(b) whether the loan is a new loan, a
	14	renewal of an existing loan or an extension of an existing
	15	loan;
	16	(c) information on any security or
	17	collateral for the loan;
	18	(d) the amount of the loan;
ı	19	(e) the contract rate of interest
	20	charged and the annual percentage rate;
	21	(f) the nature and amount of all fees
	22	charged other than interest;
	23	(g) the maturity of the loan;
	24	(h) the repayment terms of the loan;
	25	(i) the dates on which loan repayments
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Small Loan Act of 1955 shall be posted on the division's web

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were made, the nature and amount of each repayment, the date on which the loan was paid in full and the total amount of interest collected;

- the date of a notice of default;
- the nature and amount of fees to be (k) collected in the event of default;
- (1)the amount recovered through collection; and
- (m) the amount of principal, interest and fees charged off;
- contains a regulator interface that allows (2) the division access to the database reporting service for the required monitoring and reporting function, including the ability to generate reports for licensee examinations, regulatory reporting and program monitoring;
- (3) provides adequate safeguards to ensure that consumer information contained in the database is kept strictly confidential;
- (4) ensures that information submitted to the database is kept confidential and shall not be released or otherwise made available to the public;
- (5) demonstrates a working system to the division prior to the certification of the database; and
- is generated by a registered consumer reporting service that is subject to the applicable rules and .184140.3SA

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regulations applied by the federal trade commission under the federal Fair Credit Reporting Act.

- In determining whether a database reporting service should be certified as a commercially reasonable method of collecting and reporting information regarding loans made pursuant to the New Mexico Small Loan Act of 1955, the director shall consider whether the database reporting service is adequately capitalized, demonstrates the resources and the ability to perform the services required pursuant to this section and has appropriate surety to ensure performance of its obligations pursuant to this section and to protect claimants reasonably in the event that actions or inactions on the part of the database reporting service result in damages to licensees or consumers.
- The provisions of Section 14-7-1 NMSA 1978 shall not apply to access by the division to information for purposes of compliance monitoring or preparation of reports contained in a certified database established pursuant to this section.
- The provisions of this section do not apply to payday loans."
- SECTION 16. Section 58-15-39 NMSA 1978 (being Laws 2007, Chapter 86, Section 21) is amended to read:
 - "58-15-39. DUTIES OF DIVISION. --
 - The division shall:
 - maintain a list of licensees, which list

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shall be available to interested persons and the public; and

- establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee.
- The division shall annually provide a report to the legislature detailing statistics, including data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state. The division shall compile an annual report by October 1 of each year containing, at a minimum, data regarding all payday loan products entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding year, including:
- the total number and dollar amount of payday loan products entered into in the calendar year ending December 31 of the previous year;
- the total number and dollar amount of (2) payday loan products outstanding as of December 31 of the previous year;
- the effective annualized percentage rate (3) and the average number of days of a payday loan during the calendar year ending December 31 of the previous year;

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- the number of payday loan products entered (4) into in the amount of one hundred dollars (\$100) or less, the number of payday loan products entered into in the amount of one hundred one dollars (\$101) to five hundred dollars (\$500), the number of payday loan products entered into in the amount of five hundred one dollars (\$501) to one thousand dollars (\$1,000), the number of payday loan products entered into in the amount of one thousand one dollars (\$1,001) to one thousand five hundred dollars (\$1,500), the number of payday loan products in the amount of greater than one thousand five hundred dollars (\$1,500) and the percentage of total payday loan products entered into in each of those ranges;
- an estimate of the total dollar amount of (5) fees collected for payday loan products;
- the total number of payday loan products entered into and the total dollar amount of the net charge-offs or write-offs and of the net recoveries of licensees;
- the minimum, maximum and average dollar amounts of payday loan products entered into in the calendar year ending December 31 of the previous year;
- the average payday loan product amount, average number of transactions and average aggregate payday loan product amount entered into per consumer each year;
- the average number of days a consumer is (9) engaged in a payday loan product each year;

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- (11)the number of consumers who are eligible for payment plans and the number of consumers who enter into payment plans pursuant to Section 58-15-35 NMSA 1978; and
- the number of consumers who are subject to the restrictions of the waiting period pursuant to Section 58-15-36 NMSA 1978.
- C. The division shall compile, on an aggregate basis, an annual report by October 1 of each year containing, at a minimum, data regarding all loans other than payday loans made pursuant to the New Mexico Small Loan Act of 1955 entered into in the preceding calendar year. Annual reports shall be made available to interested parties and the general public and published on the department's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding calendar year for loans entered into during that year, including:
- (1) the total number and dollar amount of loans;
- (2) the total number and dollar amount of loans outstanding as of December 31 of the preceding year;
- (3) by licensee, a description of the types of loan products offered to consumers during the preceding calendar year, the annual interest rate applicable for each .184140.3SA

1	toan product as disclosed according to 12 GFR 220, known as
2	"Regulation Z", and the loan term of each such loan product;
3	(4) the average effective annualized
4	percentage rate and the average number of days in which loans
5	were repaid;
6	(5) the number of loans entered into by each
7	licensee in the amount of:
8	(a) five hundred dollars (\$500) or less;
9	(b) more than five hundred dollars
10	(\$500) and not greater than one thousand dollars (\$1,000);
11	(c) more than one thousand dollars
12	(\$1,000) and not greater than three thousand dollars (\$3,000);
13	(d) more than three thousand dollars
14	(\$3,000) and not greater than five thousand dollars (\$5,000);
15	<u>and</u>
16	(e) more than five thousand dollars
17	(\$5,000) and not greater than ten thousand dollars (\$10,000);
18	(6) the total dollar amount of interest and
19	fees collected for loans;
20	(7) the total dollar amount of the net
21	charge-offs or write-offs for loans;
22	(8) the total dollar amount of net recoveries
23	of licensees for loans;
24	(9) the minimum, maximum and average dollar
25	amounts of loans entered into in the aggregate and by loan
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product in the preceding calendar year;
(10) the average loan amount, average number
of transactions and average aggregate loan amount entered into
per consumer each year;
(11) the number of loans made to renew an
existing account, the number of loans made to former customers
and the number of loans made to new customers;
(12) the number of loans made with security or
collateral for the loan and a listing of the types of security
reported by licensees; and
(13) the number of loans for which security
was foreclosed upon or collateral repossessed."
SECTION 17. A new section of the New Mexico Small Loan
Act of 1955 is enacted to read:
"[NEW MATERIAL] UNFAIR PRACTICEA violation of the New
Mexico Small Loan Act of 1955 constitutes an unfair or
deceptive trade practice pursuant to the Unfair Practices Act."
SECTION 18. REPEALSection 58-15-19 NMSA 1978 (being
Laws 1955, Chapter 128, Section 17) is repealed.
SECTION 19. APPLICABILITYThe provisions of this act
shall not apply to loans entered into before November 1, 2011.
SECTION 20. EFFECTIVE DATE The effective date of the

provisions of this act is November 1, 2011.