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SENATE BILL 189

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

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING THAT CONSUMER LOANS FOR LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) BE MADE UNDER THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING A DATABASE AND REPORTING FOR CERTAIN LOANS.

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:

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

8 "58-7-9. CONSTRUCTION.--

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10 Loan Act of 1955 are amended or repealed by the New Mexico Bank  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

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

17 C. None of the provisions of the New Mexico Bank  
18 Installment Loan Act of 1959 apply to the assignment or  
19 purchase of retail installment contracts originated under the  
20 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or  
21 originated under the provisions of Sections 56-1-1 through  
22 56-1-15 NMSA 1978.

23 D. In the event of a conflict between a requirement  
24 of the New Mexico Bank Installment Loan Act of 1959 and a  
25 requirement of the Home Loan Protection Act, the requirement of

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1 the Home Loan Protection Act shall control.

2 E. As used in the New Mexico Bank Installment Loan  
3 Act of 1959:

4 (1) "year" means three hundred sixty-five  
5 days; and

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

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

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

6           H. ~~[All loans other than precomputed]~~ A loan  
7 ~~[transactions]~~ transaction made ~~[under]~~ pursuant to the New  
8 Mexico Bank Installment Loan Act of 1959 shall be clearly  
9 identified on the loan documents as being made ~~[under]~~ pursuant  
10 to that act."

11           Section 4. Section 58-15-2 NMSA 1978 (being Laws 1955,  
12 Chapter 128, Section 2, as amended) is amended to read:

13           "58-15-2. DEFINITIONS.--The following words and terms  
14 when used in the New Mexico Small Loan Act of 1955 have the  
15 following meanings unless the context clearly requires a  
16 different meaning. The meaning ascribed to the singular form  
17 applies also to the plural:

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

20           B. "consumer loan" means a loan to a consumer for  
21 personal, family or household purposes, but "consumer loan"  
22 does not include a loan secured by a lien on real property, a  
23 loan for educational, commercial or business purposes of the  
24 consumer or a loan made pursuant to the Motor Vehicle Sales  
25 Finance Act;

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

5           ~~[G-]~~ D. "department" or "division" means the  
6 financial institutions division of the regulation and licensing  
7 department;

8           ~~[D-]~~ E. "director" means the director of the  
9 division;

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

18          ~~[F-]~~ G. "license" means a permit issued under the  
19 authority of the New Mexico Small Loan Act of 1955 to make  
20 loans and collect charges therefor strictly in accordance with  
21 the provisions of that act at a single place of business. It  
22 shall constitute and shall be construed as a grant of a  
23 revocable privilege only to be held and enjoyed subject to all  
24 the conditions, restrictions and limitations contained in the  
25 New Mexico Small Loan Act of 1955 and lawful regulations

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1 promulgated by the director and not otherwise;

2 [~~G-~~] H. "licensee" means a person to whom one or  
3 more licenses have been issued pursuant to the New Mexico Small  
4 Loan Act of 1955 upon the person's written application electing  
5 to become a licensee and consenting to exercise the privilege  
6 of a licensee solely in conformity with the New Mexico Small  
7 Loan Act of 1955 and the lawful regulations promulgated by the  
8 director under that act and whose name appears on the face of  
9 the license;

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

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

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

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

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

5 (2) does not include:

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

9 (b) installment loans;

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

12 ~~[J.]~~ K. "person" includes an individual, copartner,  
13 association, trust, corporation and any other legal entity;

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

22 ~~[L.]~~ M. "simple interest" means a method of  
23 calculating interest in which the amount of interest is  
24 calculated based on the annual interest rate disclosed in the  
25 loan agreement and is computed only on the outstanding

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1 principal balance of the loan."

2 Section 5. Section 58-15-3 NMSA 1978 (being Laws 1955,  
3 Chapter 128, Section 3, as amended) is amended to read:

4 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
5 PENALTY.--

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

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

22 C. A banking corporation, savings and loan  
23 association or credit union operating under the laws of the  
24 United States or of a state shall be exempt from the licensing  
25 requirements of the New Mexico Small Loan Act of 1955, nor

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

11 D. The provisions of Subsection A of this section  
12 apply to:

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

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

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

24 (b) the use of collateral or related  
25 sales or purchases of goods or services or agreements to sell

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1 or purchase, whether real or pretended;

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

5 (d) the real or pretended negotiation,  
6 arrangement or procurement of a loan through any use or  
7 activity of a third person, whether real or fictitious.

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

19 Section 6. Section 58-15-20 NMSA 1978 (being Laws 1955,  
20 Chapter 128, Section 18, as amended) is amended to read:

21 "58-15-20. FEES AND COSTS.--

22 A. Notwithstanding any provision of the New Mexico  
23 Small Loan Act of 1955, lawful fees, if any, actually and  
24 necessarily paid out by the licensee to a public officer for  
25 the filing, recording or releasing in a public office of an

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1 instrument securing the loan may be charged to the borrower.

2 B. Notwithstanding any provision in a note or other  
3 loan contract taken or received pursuant to the provisions of  
4 the New Mexico Small Loan Act of 1955, attorney fees shall not  
5 be charged or collected except when the note or other contract  
6 has been submitted in good faith to an attorney for collection  
7 and after diligent and good faith effort to collect on the part  
8 of the licensee has failed.

9 C. Notary fees incident to the taking of a lien to  
10 secure a small loan or releasing such a lien shall not be  
11 charged or collected by a licensee, an officer, agent or  
12 employee of a licensee or anyone within an office, room or  
13 place of business in which a small loan office is conducted.

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

21 E. Upon the execution of a consumer loan agreement,  
22 the licensee may impose an administrative fee not to exceed the  
23 amount necessary to cover the fee for submitting information  
24 regarding the consumer and the consumer loan to a database  
25 reporting service required pursuant to the New Mexico Small

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1 Loan Act of 1955."

2 Section 7. Section 58-15-39 NMSA 1978 (being Laws 2007,  
3 Chapter 86, Section 21) is amended to read:

4 "58-15-39. DUTIES OF DIVISION.--

5 A. The division shall:

6 (1) maintain a list of licensees, which list  
7 shall be available to interested persons and the public; and

8 (2) establish a complaint process whereby an  
9 aggrieved consumer or other person may file a complaint against  
10 a licensee.

11 B. The division shall annually provide a report to  
12 the legislature detailing statistics, including data adequate  
13 to obtain an accurate understanding of the practices,  
14 demographics and legal compliance of all licensees licensed in  
15 the state. The division shall compile an annual report by  
16 October 1 of each year containing, at a minimum, data regarding  
17 all payday loan products entered into in the preceding calendar  
18 year on an aggregate basis. Annual reports shall be made  
19 available to interested parties and the general public and  
20 published on the division's web site. Consistent with state  
21 law, the report shall include, at a minimum, nonidentifying  
22 consumer data from the preceding year, including:

23 (1) the total number and dollar amount of  
24 payday loan products entered into in the calendar year ending  
25 December 31 of the previous year;

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1 (2) the total number and dollar amount of  
2 payday loan products outstanding as of December 31 of the  
3 previous year;

4 (3) the effective annualized percentage rate  
5 and the average number of days of a payday loan during the  
6 calendar year ending December 31 of the previous year;

7 (4) the number of payday loan products entered  
8 into in the amount of one hundred dollars (\$100) or less, the  
9 number of payday loan products entered into in the amount of  
10 one hundred one dollars (\$101) to five hundred dollars (\$500),  
11 the number of payday loan products entered into in the amount  
12 of five hundred one dollars (\$501) to one thousand dollars  
13 (\$1,000), the number of payday loan products entered into in  
14 the amount of one thousand one dollars (\$1,001) to one thousand  
15 five hundred dollars (\$1,500), the number of payday loan  
16 products in [~~the~~] an amount [~~of~~] greater than one thousand five  
17 hundred dollars (\$1,500) and the percentage of total payday  
18 loan products entered into in each of those ranges;

19 (5) an estimate of the total dollar amount of  
20 fees collected for payday loan products;

21 (6) the total number of payday loan products  
22 entered into and the total dollar amount of the net charge-offs  
23 or write-offs and of the net recoveries of licensees;

24 (7) the minimum, maximum and average dollar  
25 amounts of payday loan products entered into in the calendar

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1 year ending December 31 of the previous year;

2 (8) the average payday loan product amount,  
3 average number of transactions and average aggregate payday  
4 loan product amount entered into per consumer each year;

5 (9) the average number of days a consumer is  
6 engaged in a payday loan product each year;

7 (10) an estimate of the average total fees  
8 paid by a payday loan product consumer;

9 (11) the number of consumers who are eligible  
10 for payment plans and the number of consumers who enter into  
11 payment plans pursuant to Section 58-15-35 NMSA 1978; and

12 (12) the number of consumers who are subject  
13 to the restrictions of the waiting period pursuant to Section  
14 [~~58-17-36~~] 58-15-36 NMSA 1978.

15 C. The division shall compile an annual report by  
16 October 1 of each year containing, at a minimum, data regarding  
17 all loans made pursuant to the New Mexico Small Loan Act of  
18 1955 other than payday loan products entered into in the  
19 preceding calendar year on an aggregate basis. Annual reports  
20 shall be made available to interested parties and the general  
21 public and published on the department's web site. Consistent  
22 with state law, the report shall include, at a minimum,  
23 nonidentifying consumer data from the preceding year,  
24 including:

25 (1) the total number and dollar amount of

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1 loans entered into in the calendar year ending December 31 of  
2 the previous year;

3 (2) the total number and dollar amount of  
4 loans outstanding as of December 31 of the previous year;

5 (3) the effective annualized percentage rate  
6 and the average number of days of a loan during the calendar  
7 year ending December 31 of the previous year;

8 (4) the number of loans entered into in the  
9 amount of five hundred dollars (\$500) or less, the number of  
10 loans entered into in the amount of five hundred one dollars  
11 (\$501) to one thousand dollars (\$1,000), the number of loans  
12 entered into in the amount of one thousand one dollars (\$1,001)  
13 to three thousand dollars (\$3,000), the number of loans entered  
14 into in the amount of three thousand one dollars (\$3,001) to  
15 five thousand dollars (\$5,000), the number of loans in an  
16 amount greater than five thousand dollars (\$5,000) and the  
17 number of loans listed by licensee entered into in each of  
18 those ranges;

19 (5) the total dollar amount of interest and  
20 fees collected for loans;

21 (6) the total dollar amount of the net  
22 charge-offs or write-offs and of the net recoveries of  
23 licensees;

24 (7) the minimum, maximum and average dollar  
25 amounts of loans entered into in the calendar year ending

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1 December 31 of the previous year;

2 (8) the average loan amount, average number of  
3 transactions and average aggregate loan amount entered into per  
4 consumer each year; and

5 (9) the number of loans made to renew existing  
6 accounts, the number of loans made to former customers and the  
7 number of loans made to new customers."

8 Section 8. A new section of the New Mexico Small Loan Act  
9 of 1955 is enacted to read:

10 "[NEW MATERIAL] LOAN DATABASE.--

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

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

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

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

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

13 (a) the consumer's unique identifier;

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

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

19 (d) the amount of the loan;

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

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

24 (g) the maturity of the loan;

25 (h) the repayment terms of the loan;

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1 (i) the dates on which loan repayments  
2 were made, the nature and amount of each repayment, the date on  
3 which the loan was paid in full and the total amount of  
4 interest collected;

5 (j) the date of a notice of default;

6 (k) the nature and amount of fees to be  
7 collected in the event of default;

8 (l) the amount recovered through  
9 collection; and

10 (m) the amount of principal, interest  
11 and fees charged off;

12 (2) contains a regulator interface that allows  
13 the division access to the database reporting service for the  
14 required monitoring and reporting function, including the  
15 ability to generate reports for licensee examinations,  
16 regulatory reporting and program monitoring;

17 (3) provides adequate safeguards to ensure  
18 that consumer information contained in the database is kept  
19 strictly confidential;

20 (4) ensures that information submitted to the  
21 database is kept confidential and shall not be released or  
22 otherwise made available to the public;

23 (5) demonstrates a working system to the  
24 division prior to the certification of the database; and

25 (6) is generated by a registered consumer

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1 reporting service that is subject to the applicable rules and  
2 regulations applied by the federal trade commission under the  
3 federal Fair Credit Reporting Act.

4 D. In determining whether a database reporting  
5 service should be certified as 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 consider whether the database reporting service is  
9 adequately capitalized, demonstrates the resources and the  
10 ability to perform the services required pursuant to this  
11 section and has appropriate surety to ensure performance of its  
12 obligations pursuant to this section and to protect claimants  
13 reasonably in the event that actions or inactions on the part  
14 of the database reporting service result in damages to  
15 licensees or consumers.

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

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

22 Section 9. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is November 1, 2010.