

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 347

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES
FOR CERTAIN INSTALLMENT LOANS; PROVIDING FOR REPORTING TO
CREDIT AGENCIES; AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE
NEW MEXICO SMALL LOAN ACT OF 1955 AND THE NEW MEXICO BANK
INSTALLMENT LOAN ACT OF 1959; REPEALING SECTIONS OF THE NEW
MEXICO SMALL LOAN ACT OF 1955; CREATING THE FINANCIAL LITERACY
FUND; MAKING AN APPROPRIATION.

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

SECTION 1. Section 56-8-9 NMSA 1978 (being Laws 1957,
Chapter 209, Section 1, as amended) is amended to read:

"56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
MAXIMUM RATES--DEFINITION.--

A. Unless otherwise provided by law, no person,
corporation or association, directly or indirectly, shall take,

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underscoring material = new
[bracketed material] = delete

1 reserve, receive or charge any interest, discount or other
2 advantage for the loan of money or credit or the forbearance or
3 postponement of the right to receive money or credit except at
4 the rates permitted in Sections 56-8-1 through 56-8-21 NMSA
5 1978.

6 B. No provision of law prescribing maximum rates of
7 interest that may be charged in any transaction shall apply to
8 a transaction in which a corporation, limited liability
9 corporation or other business entity is a debtor, regardless of
10 the purpose for which the corporation was formed and regardless
11 of the fact that an individual is codebtor, endorser,
12 guarantor, surety or accommodation party. No corporation or
13 its codebtor, endorser, guarantor, surety or accommodation
14 party shall have a cause of action or affirmatively plead,
15 counterclaim, set off or set up the defense of usury in any
16 action to recover damages or enforce a remedy on any obligation
17 executed by the corporation, and no civil or criminal penalty
18 [~~which~~] that would otherwise be applicable except as provided
19 in Sections 30-43-1 through 30-43-5 NMSA 1978 shall apply on
20 any obligation executed by the corporation.

21 C. A lender may, in the case of business or
22 commercial loans for business or commercial purposes in the
23 amount of five hundred thousand dollars (\$500,000) or more,
24 take, receive, reserve or charge on any loan or discount made,
25 or upon any note, bill of exchange or other evidence of debt,

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1 interest at a rate agreed to by the parties [~~even if the rate~~
2 ~~exceeds the rate set forth in Section 56-8-11 NMSA 1978~~].

3 D. In addition to the maximum interest or discount
4 [~~which~~] that a lender is permitted to charge by law, the lender
5 may charge, take, reserve or receive a premium or points in an
6 amount up to but not exceeding three percent of the face amount
7 of the loan on interim construction loans. The lender may
8 charge and require the borrower to pay the premium upon
9 execution of the loan agreement, whether the proceeds are
10 delivered to the borrower immediately or whether there are to
11 be obligatory or permissive future advances. The lender shall
12 not be required to refund this charge in the event of
13 prepayment of the obligation. For the purposes of this
14 section, [~~an~~] "interim construction loan" means a loan secured
15 by a first mortgage and used by the borrower primarily for
16 financing the construction of buildings, structures or
17 improvements on or to the real property on which the first
18 mortgage has been taken.

19 E. A lender may charge, take, reserve or receive
20 points or a premium on any loan secured by real property;
21 provided the points or premium together with the interest or
22 discount charged, taken, reserved or received do not exceed the
23 maximum interest or discount permitted by law. The lender
24 shall not be required to refund this charge in the event of
25 prepayment even if the prepayment would result in a higher

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1 charge to the borrower than permitted by law.

2 F. A loan in an amount equal to five thousand
3 dollars (\$5,000) or less shall be made only pursuant to the New
4 Mexico Bank Installment Loan Act of 1959 or the New Mexico
5 Small Loan Act of 1955."

6 SECTION 2. Section 58-7-1 NMSA 1978 (being Laws 1959,
7 Chapter 327, Section 1) is amended to read:

8 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
9 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
10 Installment Loan Act of 1959"."

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

13 "58-7-3. LOANS COVERED BY ACT.--

14 A. The New Mexico Bank Installment Loan Act of 1959
15 applies to a loan that is a precomputed loan repayable in
16 installments ~~[or]~~ and that is clearly identified on the loan
17 documents as being made under that act.

18 B. A loan in an amount equal to five thousand
19 dollars (\$5,000) or less shall be made only pursuant to the New
20 Mexico Bank Installment Loan Act of 1959 or the New Mexico
21 Small Loan Act of 1955.

22 C. The provisions of this section shall not apply
23 to a federally insured depository institution."

24 SECTION 4. Section 58-7-3.1 NMSA 1978 (being Laws 1983,
25 Chapter 96, Section 1) is amended to read:

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1 "58-7-3.1. PRECOMPUTED LOAN.--~~[If the loan is]~~ In a
 2 precomputed loan transaction, the interest charge ~~[may]~~ shall
 3 be calculated on the assumption that all scheduled payments
 4 will be made when due, and the effect of prepayment is governed
 5 by the provisions of rebate upon prepayment in Section 58-7-5
 6 NMSA 1978."

7 SECTION 5. Section 58-7-6 NMSA 1978 (being Laws 1959,
 8 Chapter 327, Section 6, as amended) is amended to read:

9 "58-7-6. ~~[ADDITIONAL]~~ PERMITTED CHARGES--LIMITATION ON
 10 PRESENTMENT.--

11 A. No ~~[additional]~~ amount shall be charged or
 12 contracted for, directly or indirectly, on or in connection
 13 with any such installment loan except as follows:

14 ~~[A.]~~ (1) delinquency charges not to exceed
 15 five cents (\$.05) for each one dollar (\$1.00) of each
 16 installment more than ten days in arrears; provided that the
 17 total of delinquency charges on any such installment shall not
 18 exceed ten dollars (\$10.00) and that only one delinquency
 19 charge shall be made on any one installment regardless of the
 20 period during which the installment remains unpaid;

21 ~~[B.]~~ (2) the lender may charge for only the
 22 actual cost of any insurance; provided, however, all insurance
 23 shall be written by ~~[a company or]~~ companies licensed to
 24 operate within the state and at rates no higher than those
 25 approved by the superintendent of insurance; and provided

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1 further that the lender [~~must~~] shall not require any insurance
2 to be written or provided by or through any particular agent,
3 broker or insurer as a condition to making the loan but [~~must~~]
4 shall, at the borrower's option, permit the [~~same~~] insurance to
5 be procured from any reputable insurer or through any reputable
6 agent authorized by law to provide it;

7 [~~G.~~] (3) in the event that a borrower fails to
8 maintain in effect any insurance required in connection with a
9 loan transaction, the lender may purchase the required
10 insurance or lender's single interest insurance covering the
11 lender's interest in the property, and the cost of [~~such~~] that
12 insurance shall be added to the loan and may accrue interest as
13 provided for [~~herein~~] in the New Mexico Bank Installment Loan
14 Act of 1959;

15 [~~D.~~] (4) such amounts as are necessary to
16 reimburse the lender for fees paid to a public officer for
17 filing, recording or releasing any instrument or lien;

18 [~~E.~~] (5) if a loan under the New Mexico Bank
19 Installment Loan Act of 1959 is secured and if the borrower
20 fails to pay any governmental or other levy arising after the
21 date of the loan [~~which~~] that would create a lien superior to
22 the lien of the lender on the property standing as security,
23 the lender, at the lender's option, may pay [~~such~~] the levy and
24 add the amount so paid to the balance due from the borrower;

25 [~~F.~~] (6) the actual expenditures, including

1 reasonable [~~attorneys~~¹] attorney fees, for legal process or
 2 proceedings to collect any such installment loan; provided,
 3 however, that no [~~attorneys~~¹] attorney fees are permitted where
 4 the loan is referred for collection to an attorney who is a
 5 salaried employee of the holder of the contract; and

6 [~~G.~~] (7) the actual cost of charges incurred
 7 in making a real estate loan secured by a mortgage on real
 8 estate, including [~~but not limited to~~] the charges for an
 9 abstract of title, title examination, title insurance premiums,
 10 property survey, appraisal fees, notary fees, preparation of
 11 deeds, mortgages or other documents, escrow charges, credit
 12 reports and filing and recording fees. [~~and~~

13 ~~H. a one-time charge of an amount not to exceed~~
 14 ~~twenty-five dollars (\$25.00) in an installment loan repayable~~
 15 ~~in two or more installments when the loan is made to a natural~~
 16 ~~person primarily for personal, family or household purposes to~~
 17 ~~help defray the actual costs of preparing truth-in-lending~~
 18 ~~disclosure statements, equal credit opportunity disclosure~~
 19 ~~statements and other disclosures required by federal law;]~~

20 B. If there are insufficient funds to pay a check
 21 or other type of debit on the date of presentment by the
 22 lender, a check or debit authorization request shall not be
 23 presented to a financial institution by a lender for payment
 24 more than one time unless the consumer agrees in writing, after
 25 a check or other type of debit has been dishonored, to one

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1 additional presentment or deposit.

2 C. The charges permitted under this section may be
3 added to the balance due from the borrower."

4 **SECTION 6.** Section 58-7-7 NMSA 1978 (being Laws 1959,
5 Chapter 327, Section 8, as amended) is amended to read:

6 "58-7-7. RESTRICTIONS.--

7 A. No lender shall make a loan [~~under~~] pursuant to
8 the New Mexico Bank Installment Loan Act of 1959 to a borrower
9 who is also indebted to [~~such~~] that lender under the New Mexico
10 Small Loan Act of 1955 unless the loan made under the New
11 Mexico Small Loan Act of 1955 is paid and released at the time
12 the loan is made.

13 B. No lender other than a federally insured
14 depository institution shall make a loan pursuant to the New
15 Mexico Bank Installment Loan Act of 1959 if a loan has an
16 initial stated maturity of less than one hundred twenty days.

17 C. No lender other than a federally insured
18 depository institution shall make a loan pursuant to the New
19 Mexico Bank Installment Loan Act of 1959 unless the loan is
20 repayable in a minimum of four substantially equal installment
21 payments of principal and interest.

22 D. No lender, other than a federally insured
23 depository institution, shall make a loan pursuant to the New
24 Mexico Bank Installment Loan Act of 1959 that has an annual
25 percentage rate greater than one hundred seventy-five percent,

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1 calculated pursuant to 12 CFR Part 1026, known as "Regulation
 2 Z"."

3 SECTION 7. Section 58-7-8 NMSA 1978 (being Laws 1959,
 4 Chapter 327, Section 9) is amended to read:

5 "58-7-8. PENALTIES AND FORFEITURES.--

6 A. Any person, corporation or association
 7 [~~wilfully~~] willfully violating any of the provisions of the New
 8 Mexico Bank Installment Loan Act of 1959 [~~shall be~~] is guilty
 9 of a misdemeanor and upon conviction [~~thereof~~] shall be fined
 10 not less than one hundred dollars (\$100) or more than five
 11 thousand dollars (\$5,000) or imprisoned for not more than six
 12 months or both, [~~such fine and imprisonment~~] in the discretion
 13 of the court.

14 B. The taking, receiving or reserving of a rate of
 15 charge, discount or advantage greater than allowed by the New
 16 Mexico Bank Installment Loan Act of 1959, when knowingly done,
 17 [~~shall be~~] is deemed a forfeiture of the entire amount of
 18 [~~such~~] the rate of charge or advantage [~~which~~] that the note,
 19 bill or other evidence of debt carries with it or [~~which~~] that
 20 has been agreed to be paid [~~thereon~~] on it. In case the
 21 greater rate of charge has been paid, the person by whom it has
 22 been paid or [~~his~~] the person's legal representatives may
 23 recover [~~back~~] by civil action twice the amount of the rate of
 24 charge [~~thus~~] paid from the person, corporation or association
 25 taking or receiving [~~the same~~] it, provided that [~~such~~] the

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1 action is commenced within two years from the time the
2 transaction occurred.

3 C. A violation of the New Mexico Bank Installment
4 Loan Act of 1959 constitutes an unfair or deceptive trade
5 practice pursuant to the Unfair Practices Act."

6 SECTION 8. 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 ~~G.]~~ B. None of the provisions of the New Mexico
18 Bank 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.]~~ C. In the event of a conflict between a
24 requirement of the New Mexico Bank Installment Loan Act of 1959
25 and a requirement of the Home Loan Protection Act, the

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1 requirement of the Home Loan Protection Act shall control.

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

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

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

7 (3) "consumer reporting agency" means any
8 person that, for monetary fees or dues or on a cooperative
9 nonprofit basis, regularly engages in the practice of
10 assembling or evaluating, and maintaining, for the purpose of
11 furnishing consumer reports to third parties bearing on a
12 consumer's creditworthiness, credit standing or credit
13 capacity, each of the following regarding consumers:

14 (a) public record information; or

15 (b) credit account information from
16 persons who furnish that information regularly and in the
17 ordinary course of business.

18 ~~[F.]~~ E. The director of the financial institutions
19 division of the regulation and licensing department shall issue
20 and file as required by law interpretive regulations to
21 effectuate the purposes of the New Mexico Bank Installment Loan
22 Act of 1959. In issuing, amending or repealing interpretive
23 regulations, the director shall issue the regulation amendment
24 or repeal of the regulation as a proposed regulation amendment
25 or repeal of a regulation and file it for public inspection in

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1 the office of the director of the financial institutions
2 division. Distribution thereof shall be made to interested
3 persons, and their comments shall be invited. After the
4 proposed regulation has been on file for not less than two
5 months, the director may issue it as a final regulation by
6 filing as required by law. Any person who is or may be
7 adversely affected by the adoption, amendment or repeal of a
8 regulation under this section may file an appeal of that action
9 in the district court in Santa Fe county within thirty days
10 after the filing of the adopted regulation, amendment or repeal
11 as required by law.

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

17 ~~[H. All loans other than precomputed loan~~
18 ~~transactions made under the New Mexico Bank Installment Loan~~
19 ~~Act of 1959 shall be clearly identified on the loan documents~~
20 ~~as being made under that act.]"~~

21 SECTION 9. A new section of the New Mexico Bank
22 Installment Loan Act of 1959 is enacted to read:

23 "[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each
24 installment loan made pursuant to the New Mexico Bank
25 Installment Loan Act of 1959, a lender shall report to a

1 consumer reporting agency the terms of the loan and the
2 borrower's performance pursuant to those terms."

3 SECTION 10. A new section of the New Mexico Bank
4 Installment Loan Act of 1959 is enacted to read:

5 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
6 jurisdiction and authority regarding the terms and conditions
7 of loans to which the New Mexico Bank Installment Loan Act of
8 1959 is applicable, and counties, municipalities and other
9 political subdivisions of the state are preempted from any
10 regulation of terms and conditions of such loans by ordinance,
11 resolution or otherwise."

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

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

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

21 B. "consumer reporting agency" means any person
22 that, for monetary fees or dues or on a cooperative nonprofit
23 basis, regularly engages in the practice of assembling or
24 evaluating, and maintaining, for the purpose of furnishing
25 consumer reports to third parties bearing on a consumer's

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1 creditworthiness, credit standing or credit capacity, each of
2 the following regarding consumers:

3 (1) public record information; or

4 (2) credit account information from persons
5 who furnish that information regularly and in the ordinary
6 course of business;

7 ~~[B.]~~ C. "debit authorization" means an
8 authorization signed by a consumer to electronically transfer
9 or withdraw funds from the consumer's account for the specific
10 purpose of repaying a loan;

11 ~~[G.]~~ D. ~~["department" or]~~ "division" means the
12 financial institutions division of the regulation and licensing
13 department;

14 ~~[D.]~~ E. "director" means the director of the
15 division;

16 ~~[E.]~~ F. "installment loan" means a loan in an
17 amount equal to five thousand dollars (\$5,000) or less that is
18 to be repaid in a minimum of four ~~[successive substantially~~
19 ~~equal payment amounts]~~ substantially equal installment payments
20 of principal and interest to pay off a loan in its entirety
21 with ~~[a period of no]~~ an initial stated maturity of not less
22 than one hundred twenty days to maturity ~~["Installment loan"~~
23 ~~does not mean a loan in which a licensee requires, as a~~
24 ~~condition of making the loan, the use of postdated checks or~~
25 ~~debit authorizations for repayment of that loan];~~

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

10 ~~[G-]~~ H. "licensee" means a person to whom one or
 11 more licenses have been issued pursuant to the New Mexico Small
 12 Loan Act of 1955 upon the person's written application electing
 13 to become a licensee and consenting to exercise the privilege
 14 of a licensee solely in conformity with the New Mexico Small
 15 Loan Act of 1955 and the lawful regulations promulgated by the
 16 director under that act and whose name appears on the face of
 17 the license;

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

24 ~~(1) includes any advance of money or~~
 25 ~~arrangement or extension of credit whereby the licensee, for a~~

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1 ~~fee, finance charge or other consideration:~~

2 ~~(a) accepts a dated personal check or~~
3 ~~debit authorization from a consumer for the specific purpose of~~
4 ~~repaying a payday loan;~~

5 ~~(b) agrees to hold a dated personal~~
6 ~~check or debit authorization from a consumer for a period of~~
7 ~~time prior to negotiating or depositing the personal check or~~
8 ~~debit authorization; or~~

9 ~~(c) pays to the consumer, credits to the~~
10 ~~consumer's account or pays another person on behalf of the~~
11 ~~consumer the amount of an instrument actually paid or to be~~
12 ~~paid pursuant to the New Mexico Small Loan Act of 1955; but~~

13 ~~(2) does not include:~~

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

17 ~~(b) installment loans;~~

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

20 ~~J.] I. "person" includes an individual, copartner,~~
21 ~~association, trust, corporation and any other legal entity;~~

22 ~~[K. "renewed payday loan" means a loan in which a~~
23 ~~consumer pays in cash the administrative fee payable under a~~
24 ~~payday loan agreement and refinances all or part of the unpaid~~
25 ~~principal balance of an existing payday loan with a new payday~~

1 ~~loan from the same licensee. A "renewed payday loan" includes~~
 2 ~~a transaction in which a consumer pays off all or part of an~~
 3 ~~existing payday loan with the proceeds of a payday loan from~~
 4 ~~the same licensee;]~~ and

5 ~~[E.]~~ J. "simple interest" means a method of
 6 calculating interest in which the amount of interest is
 7 calculated based on the annual interest rate disclosed in the
 8 loan agreement and is computed only on the outstanding
 9 principal balance of the loan."

10 SECTION 12. Section 58-15-3 NMSA 1978 (being Laws 1955,
 11 Chapter 128, Section 3, as amended) is amended to read:

12 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
 13 PENALTY.--

14 A. A person shall not engage in the business of
 15 lending in amounts of [~~two thousand five hundred dollars~~
 16 ~~(\$2,500)] five thousand dollars (\$5,000) or less for a loan
 17 without first having obtained a license from the director.
 18 Nothing contained in this subsection shall restrict or prohibit
 19 a licensee under the New Mexico Small Loan Act of 1955 from
 20 making loans in any amount under the New Mexico Bank
 21 Installment Loan Act of 1959 in accordance with the provisions
 22 of Section 58-7-2 NMSA 1978.~~

23 B. Nothing in the New Mexico Small Loan Act of 1955
 24 shall apply to a person making individual advances of [~~two~~
 25 ~~thousand five hundred dollars (\$2,500)] five thousand dollars~~

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1 (\$5,000) or less under a written agreement providing for a
2 total loan or line of credit in excess of [~~two thousand five~~
3 ~~hundred dollars (\$2,500)~~] five thousand dollars (\$5,000).

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

18 D. The provisions of Subsection A of this section
19 apply to:

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

24 (2) a person who seeks to evade its
25 application by any device, subterfuge or pretense whatsoever,

1 including but not thereby limiting the generality of the
2 foregoing:

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

6 (b) the use of collateral or related
7 sales or purchases of goods or services or agreements to sell
8 or purchase, whether real or pretended;

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

12 (d) the real or pretended negotiation,
13 arrangement or procurement of a loan through any use or
14 activity of a third person, whether real or fictitious.

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

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1 F. A loan in an amount equal to five thousand
2 dollars (\$5,000) or less shall be made only pursuant to the New
3 Mexico Bank Installment Loan Act of 1959 or the New Mexico
4 Small Loan Act of 1955.

5 G. A violation of the New Mexico Small Loan Act of
6 1955 constitutes an unfair or deceptive trade practice pursuant
7 to the Unfair Practices Act."

8 **SECTION 13.** Section 58-15-5 NMSA 1978 (being Laws 1978,
9 Chapter 6, Section 1, as amended) is amended to read:

10 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
11 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF
12 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
13 FEES--LICENSEE BOUND BY ACT.--

14 A. Upon the filing of an application, whether it is
15 an original or a renewal, the director shall investigate the
16 facts concerning the application and the requirements provided
17 in this section.

18 B. An applicant for license, upon written notice to
19 do so by the director, shall, within twenty days after service
20 of the notice, furnish in writing, under oath, to the director
21 all additional information required by the director that may be
22 relevant or, in the opinion of the director, helpful in
23 conducting the investigation.

24 C. Failure to comply with the director's
25 requirement for supplemental information or the willful

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1 furnishing of false information is sufficient grounds for
2 denial of license.

3 D. False or misleading information willfully and
4 intentionally furnished to the director prior to the issuance
5 of any license is grounds for suspension or revocation of any
6 license in accordance with the procedures for suspension or
7 revocation of license in the New Mexico Small Loan Act of 1955.

8 E. The director shall grant or deny each
9 application for an original license within sixty days from the
10 filing of the application with the required information and
11 fees, unless the period is extended by written agreement
12 between the applicant and the director.

13 F. In the event the director finds that:

14 (1) the financial responsibility, character
15 and general fitness of the applicant for an original license
16 and of the individual members and beneficiaries thereof, if the
17 applicant is a copartnership, association or trust, and of the
18 officers and directors thereof, if the applicant is a
19 corporation, are such as to command the confidence of the
20 public and to warrant belief that the business will be operated
21 lawfully, honestly, fairly and efficiently within the declared
22 purposes and spirit of the New Mexico Small Loan Act of 1955;

23 (2) allowing the applicant to engage in
24 business will promote the convenience and advantage of the
25 community in which the business of the applicant is to be

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1 conducted; and

2 (3) the applicant has available for operation
3 of the business at the specified location cash or its
4 equivalent, convertible securities or receivables of thirty
5 thousand dollars (\$30,000) or any combination thereof; the
6 director shall enter an order granting the application, file
7 the director's findings and, upon payment of the license fee of
8 five hundred dollars (\$500), issue and deliver a license to the
9 applicant.

10 G. If the director does not make the findings
11 enumerated in Subsection F of this section, the director shall
12 enter an order denying the application, notify the applicant of
13 the denial and retain the application fee. Within thirty days
14 after the entry of such an order, the director shall prepare
15 written findings and shall deliver a copy to the applicant.

16 H. A written application for license renewal shall
17 be filed on or before March 31 of each year, and thereupon the
18 director shall investigate the facts and review the files of
19 examinations of the applicant made by the director's office and
20 of complaints filed by borrowers, if any. The director shall
21 deliver a renewal license to the applicant if the director
22 finds that:

23 (1) no valid complaints of violations or
24 abuses of the New Mexico Small Loan Act of 1955 or of the
25 regulations of the director promulgated under that act have

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1 been filed by borrowers;

2 (2) examinations of the affairs of the
3 applicant indicate that the business has been conducted and
4 operated lawfully and efficiently within the declared purposes
5 and spirit of the New Mexico Small Loan Act of 1955; and

6 (3) the financial responsibility, experience
7 and general fitness and character of the applicant remain such
8 as to command the confidence of the public and to warrant the
9 belief that the business will continue to be operated lawfully
10 and efficiently within the purposes and spirit of the New
11 Mexico Small Loan Act of 1955.

12 I. If the director does not make the findings
13 enumerated in Subsection H of this section, the director may
14 grant a temporary extension of the license not exceeding sixty
15 days pending a hearing; shall enter an order fixing a date for
16 hearing upon the application; shall notify the licensee
17 thereof, specifying the particular complaints, violations or
18 abuses or other reasons for the director's contemplated refusal
19 to renew the license; and shall afford to the applicant an
20 opportunity to be heard. At the hearing, the director shall
21 produce evidence to establish the truth of the charges of
22 violation or other grounds specified in the notice, and the
23 applicant shall be accorded the right to produce evidence or
24 other matters of defense. If after the hearing the director
25 finds that the complaints of violations or other grounds

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1 specified in the notice are not well-founded, the director
2 shall issue the renewal license. If the director finds that
3 the complaints of violations or other grounds are well-founded,
4 the director shall enter an order denying the renewal
5 application and notify the applicant of the denial, returning
6 the renewal license fee tendered with the application. Within
7 thirty days after the entry of such an order, the director
8 shall prepare written findings and shall deliver a copy of the
9 findings to the applicant. The order shall be subject to
10 review as provided in Section 58-15-25 NMSA 1978. The court in
11 its discretion and upon proper showing may order a temporary
12 extension of the license pending disposition of the review
13 proceedings.

14 J. In connection with the determination of fitness
15 and character of an applicant pursuant to the provisions of
16 this section, the fact that the applicant or licensee is a
17 member of or interested financially in, connected or affiliated
18 with, controls or is controlled by or owns or is owned by other
19 corporations, partnerships, trusts, associations or other legal
20 entities engaged in the lending of money whose policies and
21 practices as to rates of interest, charges and fees and general
22 dealing with borrowers are questionable or would constitute
23 violation of the general usury statutes of this state or of the
24 declared purposes and spirit of the New Mexico Small Loan Act
25 of 1955 shall be given such consideration and weight as the

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1 director determines.

2 K. At the time of issuance of original license and
3 each annual renewal thereof, the licensee for each licensed
4 office shall pay to the director as a license fee for the
5 period covered by the license the sum of five hundred dollars
6 (\$500) as a minimum, plus an additional seventy-five cents
7 (\$.75) for each one thousand dollars (\$1,000) or fraction
8 thereof of loans outstanding as of December 31 next preceding,
9 as shown on the applicant's annual report. In the event that
10 the application for annual renewal of the license is
11 delinquent, the licensee shall also pay a delinquency fee of
12 ten dollars (\$10.00) per day for each day the licensee is
13 delinquent in filing the application for renewal.

14 L. In addition to the fees provided for in
15 Subsection K of this section, at the time of issuance of
16 original license and each annual renewal thereof, the licensee
17 for each licensed office shall pay to the director as an
18 additional fee for the period covered by the license the sum of
19 two hundred dollars (\$200), which fee shall be deposited into
20 the financial literacy fund.

21 [~~L.~~] M. A licensee by accepting a license that is
22 issued or renewed or by continuing to operate a licensed office
23 under the New Mexico Small Loan Act of 1955 shall by such
24 action be deemed to have consented to be bound by the lawful
25 provisions of that act and all lawful requirements, regulations

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1 and orders of the director promulgated or issued pursuant to
2 any authorization granted in that act."

3 SECTION 14. 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,

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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)~~] five thousand dollars (\$5,000)
24 or less.

25 E. To facilitate the examinations and

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

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

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

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

24 H. The director has the power to administer oaths,
25 certify official acts and records of the director's office,

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1 issue subpoenas for witnesses in the name of and under the seal
2 of the director's office and compel the production of papers,
3 books, accounts and documents. The director shall issue
4 subpoenas at the instance of any party to a hearing before the
5 division upon payment of a fee of two dollars fifty cents
6 (\$2.50) for each subpoena so issued.

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

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

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

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

20 SECTION 15. Section 58-15-10.1 NMSA 1978 (being Laws
21 2011, Chapter 105, Section 1, as amended) is amended to read:

22 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
23 PENALTIES.--

24 A. Licensees shall file with the director each year
25 a report containing at least the following information for the

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1 preceding calendar year in an aggregated, nonidentifying
2 consumer manner:

3 ~~[(1) a description of each loan product~~
4 ~~offered by the licensee, including:~~

- 5 ~~(a) all fees;~~
- 6 ~~(b) the minimum, maximum and average~~
7 ~~annual interest rate as disclosed pursuant to 12 C.F.R. 226,~~
8 ~~known as "Regulation Z";~~
- 9 ~~(c) the frequency of periodic payments;~~
- 10 ~~(d) the term of the loan; and~~
- 11 ~~(e) any other standard conditions of the~~
12 ~~loan product;~~

13 ~~(2) the total number of transactions entered~~
14 ~~into for each loan product in the following amounts:~~

- 15 ~~(a) five hundred dollars (\$500) or less;~~
- 16 ~~(b) five hundred one dollars (\$501) to~~
17 ~~one thousand dollars (\$1,000);~~
- 18 ~~(c) one thousand one dollars (\$1,001) to~~
19 ~~three thousand dollars (\$3,000);~~
- 20 ~~(d) three thousand one dollars (\$3,001)~~
21 ~~to five thousand dollars (\$5,000); and~~
- 22 ~~(e) greater than five thousand dollars~~
23 ~~(\$5,000);~~

24 ~~(3) the total number of loans and the total~~
25 ~~dollar amount of loan principal for each loan product;~~

1 ~~(4) the average principal loan amount for each~~
2 ~~loan product;~~

3 ~~(5) the total number of loans for which the~~
4 ~~loan principal and accrued interest was not paid in full;~~

5 ~~(6) the total dollar amount of principal~~
6 ~~loaned;~~

7 ~~(7) the total dollar amount of loan principal~~
8 ~~repaid;~~

9 ~~(8) the total dollar amount of interest~~
10 ~~received;~~

11 ~~(9) the total dollar amount and description of~~
12 ~~fees received;~~

13 ~~(10) the total number of loans that were~~
14 ~~secured by collateral of some type and the total number of such~~
15 ~~loans in which the security was foreclosed upon or repossessed;~~

16 ~~(11) the total amount of loan principal and~~
17 ~~the total amount of accrued interest written off or charged~~
18 ~~off;~~

19 ~~(12) the percent of consumers who were new~~
20 ~~consumers;~~

21 ~~(13) the number of loans that were renewed,~~
22 ~~refinanced or extended prior to being repaid in full; and~~

23 ~~(14) procedures the licensee follows as a~~
24 ~~standard practice to establish each consumer's ability to repay~~
25 ~~a loan]~~

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1 (1) as of December 31 of each calendar year,
2 aggregated for loans of one thousand dollars (\$1,000) or less,
3 for loans more than one thousand dollars (\$1,000) but not more
4 than three thousand dollars (\$3,000) and for loans more than
5 three thousand dollars (\$3,000) but not more than five thousand
6 dollars (\$5,000):

7 (a) the total number of outstanding
8 loans;

9 (b) the dollar value of outstanding
10 loans net of unearned charges;

11 (c) the total number of loans that are
12 more than sixty days delinquent; and

13 (d) the dollar value of loans that are
14 more than sixty days delinquent net of unearned charges;

15 (2) for the calendar year ending December 31,
16 the total aggregate number of customers of licensees and of
17 secured and unsecured loans made by licensees and the total
18 dollar value of those loans net of unearned charges;

19 (3) the total amount of finance charges
20 collected during the calendar year ending December 31;

21 (4) the total number of vehicles repossessed
22 during the calendar year ending December 31; and

23 (5) the total bad debt expense incurred during
24 the calendar year ending December 31.

25 B. The report required pursuant to Subsection A of

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underscored material = new
[bracketed material] = delete

1 this section shall be submitted to the director on or before
2 the [~~thirty-first day of March~~] fifteenth day of April each
3 year.

4 C. The report required pursuant to Subsection A of
5 this section shall be accompanied by a sworn statement by the
6 licensee under penalty of perjury that the report is complete
7 and accurate.

8 D. A licensee that fails to timely submit a
9 complete and accurate report as required pursuant to Subsection
10 A of this section may:

11 (1) be fined an amount not to exceed one
12 thousand five hundred dollars (\$1,500) per day for each day
13 after the [~~thirty-first day of March~~] fifteenth day of April, a
14 complete and accurate report is not filed; and

15 (2) have a license required pursuant to the
16 New Mexico Small Loan Act of 1955 suspended pursuant to Section
17 58-15-8 NMSA 1978, if a complete and accurate report has not
18 been filed by the [~~thirty-first day of March~~] fifteenth day of
19 April.

20 [~~E. The information required to be submitted by~~
21 ~~licensees pursuant to the provisions of this section shall not~~
22 ~~include information concerning payday loans or loans or loan~~
23 ~~products with an annual interest rate of one hundred seventy-~~
24 ~~five percent or less as disclosed pursuant to 12 C.F.R. 226,~~
25 ~~known as "Regulation Z".]~~"

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1 SECTION 16. Section 58-15-12 NMSA 1978 (being Laws 1955,
2 Chapter 128, Section 12, as amended) is amended to read:

3 "58-15-12. ADVERTISING.--A licensee or other person
4 subject to the New Mexico Small Loan Act of 1955 shall not
5 advertise, display, distribute or broadcast or cause or permit
6 to be advertised, displayed, distributed or broadcast in any
7 manner whatsoever a false, misleading or deceptive statement or
8 representation with regard to the charges, terms or conditions
9 for loans in the amount or of the value of [~~two thousand five~~
10 ~~hundred dollars (\$2,500)] five thousand dollars (\$5,000) or
11 less. The director may require that charges or rates of
12 charge, if stated by a licensee, be stated fully and clearly in
13 such manner as the director deems necessary to prevent
14 misunderstanding by prospective borrowers. The director may
15 permit or require licensees to refer in their advertising to
16 the fact that their business is under state supervision,
17 subject to conditions imposed by the director to prevent
18 erroneous impressions as to the scope or degree of protection
19 provided by the New Mexico Small Loan Act of 1955."~~

20 SECTION 17. Section 58-15-17 NMSA 1978 (being Laws 1955,
21 Chapter 128, Section 15, as amended) is amended to read:

22 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
23 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
24 JUDGMENT AND INTEREST.--

25 A. Every licensee shall:

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1 (1) at the time a loan is made within the
2 provisions of the New Mexico Small Loan Act of 1955, deliver to
3 the borrower or, if there are two or more borrowers on the same
4 obligation, to one of them, a statement in English or Spanish,
5 as ~~[requested by the borrower]~~ required by federal law, on
6 which shall be printed a copy of Section 58-15-14.1 NMSA 1978
7 and that discloses in clear and distinct terms:

- 8 (a) the amount of the loan;
9 (b) the date the loan was made;
10 (c) a schedule or a description of the
11 payments;
12 (d) the type of the security, if any,
13 for the loan;
14 (e) the name and address of the licensed
15 office;
16 (f) the name of the person primarily
17 obligated for the loan;
18 (g) the amount of principal;
19 (h) the ~~[agreed rate of charge stated on~~
20 ~~a percent per year basis]~~ annual interest rate as disclosed
21 pursuant to 12 CFR Part 1026, known as "Regulation Z", and the
22 amount in dollars and cents;
23 (i) all other disclosures required
24 pursuant to state and federal law; and
25 (j) other items allowable pursuant to

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1 that act, so stated as to clearly show the allocation of each
2 item included;

3 (2) for each payment made on account of any
4 such loan, give to the person making it a plain and complete
5 receipt specifying the date and amount of the payment, the
6 amount applied to interest and principal and the balance
7 unpaid. When payment is made in any other manner than by the
8 borrower in person, by an agent of the borrower or by check or
9 money order, the licensee shall mail the receipt to the
10 borrower's last known address or hold the receipt for delivery
11 upon request of the borrower. A copy of all receipts shall be
12 kept on file in the office of the licensee as a part of the
13 licensee's records; and

14 (3) upon payment of the loan in full, mark
15 plainly every note and promise to pay signed by any obligor
16 with the word "paid" or "canceled" and promptly file or record
17 a release of any mortgage if the mortgage has been recorded,
18 restore any pledge and cancel and return any note and any
19 assignment given to the licensee. A licensee may mark and
20 return a copy of the note, promise to pay or any assignment if
21 the copy accurately reproduces the complete original.

22 B. A licensee shall not take a note or promise to
23 pay that does not disclose the amount of the loan, a schedule
24 of payments, or a description thereof, and the agreed charge or
25 rate of charge or any instrument in which blanks are left to be

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1 filled in after execution.

2 C. If judgment is obtained against a party on a
3 loan made pursuant to the provisions of the New Mexico Small
4 Loan Act of 1955, neither the judgment nor the loan shall
5 carry, from the date of the judgment, charges against a party
6 to the loan other than costs, attorney fees and post-judgment
7 interest as provided by law.

8 D. Any loan made under the provisions of the New
9 Mexico Small Loan Act of 1955 that is filed and approved as a
10 claim in any bankruptcy proceeding shall, from a date ninety
11 days subsequent to the date of adjudication, bear interest at
12 the rate of ten percent a year only. This limitation shall not
13 apply when the bankrupt is not discharged in bankruptcy or to
14 any obligation not dischargeable under the provisions of the
15 United States Bankruptcy [~~Act~~] Code presently in force or as
16 hereafter amended.

17 E. No loan made under the provisions of the New
18 Mexico Small Loan Act of 1955 shall bear interest after ninety
19 days from the date of the death of the borrower in excess of a
20 rate of ten percent a year on the unpaid principal balance of
21 the loan.

22 F. No loan made under the provisions of the New
23 Mexico Small Loan Act of 1955 shall bear interest after twelve
24 months from the date of maturity of the loan in excess of ten
25 percent a year upon the unpaid principal balance of the loan.

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1 G. No lender shall make a loan pursuant to the New
2 Mexico Small Loan Act of 1955 if a loan has an initial stated
3 maturity of less than one hundred twenty days.

4 H. No lender shall make a loan pursuant to the New
5 Mexico Small Loan Act of 1955 unless the loan is an installment
6 loan.

7 I. No lender shall make a loan pursuant to the New
8 Mexico Small Loan Act of 1955 unless the loan is repayable in a
9 minimum of four substantially equal installment payments of
10 principal and interest.

11 J. No lender shall make a loan pursuant to the New
12 Mexico Small Loan Act of 1955 that has an annual percentage
13 rate greater than one hundred seventy-five percent, calculated
14 pursuant to 12 CFR Part 1026, known as "Regulation Z".

15 SECTION 18. Section 58-15-21 NMSA 1978 (being Laws 1955,
16 Chapter 128, Section 19, as amended) is amended to read:

17 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE
18 PURCHASES.--The payment of [~~two thousand five hundred dollars~~
19 ~~(\$2,500)~~] five thousand dollars (\$5,000) or less in money,
20 credit, goods or things in action, as consideration for any
21 sale or assignment of or order for the payment of wages,
22 salary, commission or other compensation for services, whether
23 earned or to be earned, shall, for the purposes of regulation
24 under the New Mexico Small Loan Act of 1955, be deemed a loan
25 of money secured by such sale, assignment or order. The amount

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underscored material = new
[bracketed material] = delete

1 by which [~~such~~] compensation so sold, assigned or ordered paid
 2 exceeds the amount of [~~such~~] consideration actually paid shall
 3 for the purpose of regulation under the New Mexico Small Loan
 4 Act of 1955 be deemed interest or charges upon [~~such~~] the loan
 5 from the date of [~~such~~] payment to the date [~~such~~] the
 6 compensation is payable. Such transaction shall be governed by
 7 and subject to the provisions of the New Mexico Small Loan Act
 8 of 1955."

9 SECTION 19. Section 58-15-24 NMSA 1978 (being Laws 1955,
 10 Chapter 128, Section 22, as amended) is amended to read:

11 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside
 12 this state to a resident of New Mexico in the amount or of the
 13 value of [~~two thousand five hundred dollars (\$2,500)~~] five
 14 thousand dollars (\$5,000) or less for which a greater rate of
 15 interest, consideration, charge or compensation to the lender
 16 than is permitted by the general laws of New Mexico [~~presently~~]
 17 in force governing money, interest and usury has been charged,
 18 contracted for or received shall be enforced in this state.
 19 Every person in any way participating in such a loan in this
 20 state [~~shall be~~] is subject to the provisions of the New Mexico
 21 Small Loan Act of 1955. Any loan made to a nonresident of New
 22 Mexico in conformity with the law of the state where made may
 23 be enforced in this state."

24 SECTION 20. A new section of the New Mexico Small Loan
 25 Act of 1955 is enacted to read:

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1 "[NEW MATERIAL] INSTALLMENT LOANS--INSUFFICIENT FUNDS--
2 PERMITTED CHARGES.--

3 A. If there are insufficient funds to pay a check
4 or other type of debit on the date of presentment by the
5 licensee, a check or debit authorization request shall not be
6 presented to a financial institution by a licensee for payment
7 more than one time unless the consumer agrees in writing, after
8 a check or other type of debit has been dishonored, to one
9 additional presentment or deposit.

10 B. A licensee shall not charge a consumer for fees,
11 interest or charges of any kind other than those permitted
12 pursuant to Sections 58-15-16 and 58-15-20 NMSA 1978."

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

15 "[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each
16 installment loan made pursuant to the New Mexico Small Loan Act
17 of 1955, a lender shall report to a consumer reporting agency
18 the terms of the loan and the borrower's performance pursuant
19 to those terms."

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

22 "[NEW MATERIAL] FINANCIAL LITERACY FUND.--The "financial
23 literacy fund" is created in the state treasury. The fund
24 shall consist of appropriations, gifts, grants, donations and
25 bequests made to the fund and fees received pursuant to

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1 Subsection L of Section 58-15-5 NMSA 1978. Income from the
 2 fund shall be credited to the fund, and money in the fund shall
 3 not revert or be transferred to any other fund at the end of a
 4 fiscal year. Money in the fund is appropriated to the
 5 regulation and licensing department for the purposes of
 6 developing and implementing financial literacy programs as
 7 provided for in Subsection C of Section 58-15-39 NMSA 1978.
 8 Expenditures from the fund shall be made on warrant of the
 9 secretary of finance and administration pursuant to vouchers
 10 signed by the superintendent of regulation and licensing."

11 SECTION 23. Section 58-15-39 NMSA 1978 (being Laws 2007,
 12 Chapter 86, Section 21, as amended) is amended to read:

13 "58-15-39. DUTIES OF DIVISION.--

14 A. The division shall:

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

17 (2) establish a complaint process whereby an
 18 aggrieved consumer or other person may file a complaint against
 19 a licensee.

20 ~~[B. The division shall annually provide a report to~~
 21 ~~the legislature detailing statistics, including data adequate~~
 22 ~~to obtain an accurate understanding of the practices,~~
 23 ~~demographics and legal compliance of all licensees licensed in~~
 24 ~~the state. The division shall compile an annual report by~~
 25 ~~October 1 of each year containing, at a minimum, data regarding~~

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1 ~~all payday loan products entered into in the preceding calendar~~
2 ~~year on an aggregate basis. Annual reports shall be made~~
3 ~~available to interested parties and the general public and~~
4 ~~published on the division's web site. Consistent with state~~
5 ~~law, the report shall include, at a minimum, nonidentifying~~
6 ~~consumer data from the preceding year, including:~~

7 ~~(1) the total number and dollar amount of~~
8 ~~payday loan products entered into in the calendar year ending~~
9 ~~December 31 of the previous year;~~

10 ~~(2) the total number and dollar amount of~~
11 ~~payday loan products outstanding as of December 31 of the~~
12 ~~previous year;~~

13 ~~(3) the effective annualized percentage rate~~
14 ~~and the average number of days of a payday loan during the~~
15 ~~calendar year ending December 31 of the previous year;~~

16 ~~(4) the number of payday loan products entered~~
17 ~~into in the amount of one hundred dollars (\$100) or less, the~~
18 ~~number of payday loan products entered into in the amount of~~
19 ~~one hundred one dollars (\$101) to five hundred dollars (\$500),~~
20 ~~the number of payday loan products entered into in the amount~~
21 ~~of five hundred one dollars (\$501) to one thousand dollars~~
22 ~~(\$1,000), the number of payday loan products entered into in~~
23 ~~the amount of one thousand one dollars (\$1,001) to one thousand~~
24 ~~five hundred dollars (\$1,500), the number of payday loan~~
25 ~~products in an amount greater than one thousand five hundred~~

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1 ~~dollars (\$1,500) and the percentage of total payday loan~~
 2 ~~products entered into in each of those ranges;~~

3 ~~(5) an estimate of the total dollar amount of~~
 4 ~~fees collected for payday loan products;~~

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

8 ~~(7) the minimum, maximum and average dollar~~
 9 ~~amounts of payday loan products entered into in the calendar~~
 10 ~~year ending December 31 of the previous year;~~

11 ~~(8) the average payday loan product amount,~~
 12 ~~average number of transactions and average aggregate payday~~
 13 ~~loan product amount entered into per consumer each year;~~

14 ~~(9) the average number of days a consumer is~~
 15 ~~engaged in a payday loan product each year;~~

16 ~~(10) an estimate of the average total fees~~
 17 ~~paid by a payday loan product consumer;~~

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

21 ~~(12) the number of consumers who are subject~~
 22 ~~to the restrictions of the waiting period pursuant to Section~~
 23 ~~58-15-36 NMSA 1978.~~

24 ~~G.] B.~~ The division shall compile from reports
 25 filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an

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underscored material = new
 [bracketed material] = delete

1 annual report by ~~[October]~~ July 1 of each year containing data
2 regarding ~~[only loans exceeding an annual interest rate of one~~
3 ~~hundred seventy-five percent as disclosed pursuant to 12 C.F.R.~~
4 ~~226, known as "Regulation Z", entered into in the preceding~~
5 ~~calendar year on an aggregate basis. Excluded from the~~
6 ~~reporting requirements of this subsection are payday loan~~
7 ~~products or loans or loan products with an annual interest rate~~
8 ~~of one hundred seventy-five percent or less as disclosed~~
9 ~~pursuant to 12 C.F.R. 226, known as "Regulation Z", entered~~
10 ~~into in the preceding calendar year on an aggregate basis]~~
11 loans entered into by licensees, which data shall be aggregated
12 for all licensees. Annual reports shall be made available to
13 interested parties and the general public and published on the
14 division's ~~[web site]~~ website. Consistent with state law, the
15 report shall include, at a minimum, nonidentifying consumer
16 data from the preceding calendar year, including:

17 ~~[(1) a general description of loan products~~
18 ~~offered by licensees during the preceding calendar year and the~~
19 ~~minimum, maximum and average annual interest rate for each loan~~
20 ~~product;~~

21 ~~(2) the number of loans entered into in the~~
22 ~~amount of five hundred dollars (\$500) or less, the number of~~
23 ~~loans entered into in the amount of five hundred one dollars~~
24 ~~(\$501) to one thousand dollars (\$1,000), the number of loans~~
25 ~~entered into in the amount of one thousand one dollars (\$1,001)~~

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underscored material = new
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1 to three thousand dollars (\$3,000), the number of loans entered
2 into in the amount of three thousand one dollars (\$3,001) to
3 five thousand dollars (\$5,000), the number of loans in an
4 amount greater than five thousand dollars (\$5,000) and the
5 number of loans listed by licensee entered into in each of
6 those ranges;

7 (3) ~~the total number and dollar amount of~~
8 ~~loans entered into in the previous calendar year for each loan~~
9 ~~product;~~

10 (4) ~~the average principal loan amount for each~~
11 ~~loan product;~~

12 (5) ~~the total number of loans for which the~~
13 ~~loan principal and accrued interest was not paid in full;~~

14 (6) ~~the total dollar amount of loan principal~~
15 ~~repaid and of interest and fees received;~~

16 (7) ~~the total number of loans secured by~~
17 ~~collateral of some type and the total number of such loans in~~
18 ~~which the security was foreclosed upon or repossessed;~~

19 (8) ~~the total amount of loan principal and the~~
20 ~~total amount of accrued interest written off or charged off;~~

21 (9) ~~the percent of customers who were new~~
22 ~~customers;~~

23 (10) ~~the number of loans renewed, refinanced~~
24 ~~or extended prior to being repaid in full; and~~

25 (11) ~~procedures followed by licensees to~~

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1 ~~establish consumers' ability to repay loans]~~

2 (1) as of December 31 of each calendar year,
3 aggregated for loans of one thousand dollars (\$1,000) or less,
4 for loans more than one thousand dollars (\$1,000) but not more
5 than three thousand dollars (\$3,000) and for loans more than
6 three thousand dollars (\$3,000) but not more than five thousand
7 dollars (\$5,000):

8 (a) the total number of outstanding
9 loans;

10 (b) the dollar value of outstanding
11 loans net of unearned charges;

12 (c) the total number of loans that are
13 more than sixty days delinquent; and

14 (d) the dollar value of loans that are
15 more than sixty days delinquent net of unearned charges;

16 (2) for the calendar year ending December 31,
17 the total aggregate number of customers of licensees and
18 secured and unsecured loans made by licensees and the total
19 dollar value of those loans net of unearned charges;

20 (3) the total amount of finance charges
21 collected during the calendar year ending December 31;

22 (4) the total number of vehicles repossessed
23 during the calendar year ending December 31; and

24 (5) the total bad debt expense incurred during
25 the calendar year ending December 31.

underscored material = new
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1 C. The division shall, in cooperation with the
 2 office of the attorney general, develop and implement
 3 curriculum for a financial literacy program with elements that
 4 shall include a basic understanding of budgets, checking and
 5 savings accounts, credit and interest and considerations in
 6 deciding how and when to use financial services, including
 7 installment loans. The financial literacy program developed
 8 pursuant to this subsection may be implemented through the adult
 9 basic education division of the higher education department and
 10 nonprofit public interest organizations."

11 SECTION 24. A new section of the New Mexico Small Loan
 12 Act of 1955 is enacted to read:

13 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
 14 jurisdiction and authority regarding the terms and conditions
 15 of permitted installment loans, and counties, municipalities
 16 and other political subdivisions of the state are preempted
 17 from any regulation of terms and conditions of permitted
 18 installment loans by ordinance, resolution or otherwise."

19 SECTION 25. REPEAL.--Sections 58-15-18 and 58-15-32
 20 through 58-15-38 NMSA 1978 (being Laws 1955, Chapter 128,
 21 Section 16 and Laws 2007, Chapter 86, Sections 14 through 20,
 22 as amended) are repealed.

23 SECTION 26. APPLICABILITY.--The provisions of this act
 24 shall apply to loans subject to the New Mexico Small Loan Act
 25 of 1955 and the New Mexico Bank Installment Loan Act of 1959

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1 executed on or after January 1, 2018.

2 SECTION 27. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is January 1, 2018.

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underscoring material = new
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