

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 388

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

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10 AN ACT

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

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

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

22 "56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
23 MAXIMUM RATES--DEFINITION.--

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

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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.--

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

13 ~~[A.]~~ (1) delinquency charges not to exceed
 14 ~~[five cents (\$.05)]~~ ten cents (\$.10) for each one dollar
 15 (\$1.00) of each installment more than ten days in arrears;
 16 provided that the total of delinquency charges on any such
 17 installment shall not exceed ~~[ten dollars (\$10.00)]~~ twenty-five
 18 dollars (\$25.00) and that only one delinquency charge shall be
 19 made on any one installment regardless of the period during
 20 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;

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 (8) if there are insufficient funds to pay a
 21 check or other type of debit on the date of presentment by the
 22 lender, a lender may charge a consumer a fee not to exceed
 23 thirty-five dollars (\$35.00). Only one fee may be collected by
 24 a lender on a check or debit authorization. A check or debit
 25 authorization request shall not be presented to a financial

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1 institution by a lender for payment more than one time unless
2 the consumer agrees in writing, after a check or other type of
3 debit has been dishonored, to one additional presentment or
4 deposit.

5 B. The charges permitted under this section may be
6 added to the balance due from the borrower."

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

9 "58-7-7. RESTRICTIONS.--

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

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

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

25 D. No lender, other than a federally insured

1 depository institution, shall make a loan pursuant to the New
 2 Mexico Bank Installment Loan Act of 1959 that has an annual
 3 percentage rate greater than one hundred seventy-five percent,
 4 calculated pursuant to 12 CFR Part 1026, known as "Regulation
 5 Z".

6 E. The provisions of Subsections B, C and D of this
 7 section shall not apply to refund anticipation loans. As used
 8 in this subsection, "refund anticipation loan" means a loan
 9 that is secured by or that the creditor arranges or expects to
 10 be repaid, directly or indirectly, from the proceeds of the
 11 consumer's federal or state personal income tax refunds or tax
 12 credits, including any sale, assignment or purchase of a tax
 13 refund or tax credit at a discount or for a fee."

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

16 "58-7-9. CONSTRUCTION.--

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

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

25 ~~G.]~~ B. None of the provisions of the New Mexico

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1 Bank Installment Loan Act of 1959 apply to the assignment or
2 purchase of retail installment contracts originated under the
3 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
4 originated under the provisions of Sections 56-1-1 through
5 56-1-15 NMSA 1978.

6 ~~[D-]~~ C. In the event of a conflict between a
7 requirement of the New Mexico Bank Installment Loan Act of 1959
8 and a requirement of the Home Loan Protection Act, the
9 requirement of the Home Loan Protection Act shall control.

10 ~~[E-]~~ D. As used in the New Mexico Bank Installment
11 Loan Act of 1959:

12 (1) "year" means three hundred sixty-five
13 days; ~~and~~

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

15 (3) "consumer reporting agency" means any
16 person that, for monetary fees or dues or on a cooperative
17 nonprofit basis, regularly engages in the practice of
18 assembling or evaluating, and maintaining, for the purpose of
19 furnishing consumer reports to third parties bearing on a
20 consumer's creditworthiness, credit standing or credit
21 capacity, each of the following regarding consumers:

22 (a) public record information; or

23 (b) credit account information from
24 persons who furnish that information regularly and in the
25 ordinary course of business.

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

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

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

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

4 SECTION 8. A new section of the New Mexico Bank
5 Installment Loan Act of 1959 is enacted to read:

6 "[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each
7 installment loan made pursuant to the New Mexico Bank
8 Installment Loan Act of 1959, a lender shall report to a
9 consumer reporting agency the terms of the loan and the
10 borrower's performance pursuant to those terms."

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

13 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
14 jurisdiction and authority regarding the terms and conditions
15 of loans to which the New Mexico Bank Installment Loan Act of
16 1959 is applicable, and counties, municipalities and other
17 political subdivisions of the state are preempted from any
18 regulation of terms and conditions of such loans by ordinance,
19 resolution or otherwise."

20 SECTION 10. Section 58-15-2 NMSA 1978 (being Laws 1955,
21 Chapter 128, Section 2, as amended) is amended to read:

22 "58-15-2. DEFINITIONS.--The following words and terms
23 when used in the New Mexico Small Loan Act of 1955 have the
24 following meanings unless the context clearly requires a
25 different meaning. The meaning ascribed to the singular form

1 applies also to the plural:

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

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

11 (1) public record information; or

12 (2) credit account information from persons
13 who furnish that information regularly and in the ordinary
14 course of business;

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

19 [~~C.~~] D. [~~"department" or~~] "division" means the
20 financial institutions division of the regulation and licensing
21 department;

22 [~~D.~~] E. "director" means the director of the
23 division;

24 [~~E.~~] F. "installment loan" means a loan in an
25 amount equal to five thousand dollars (\$5,000) or less that is

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1 to be repaid in a minimum of four [~~successive substantially~~
2 ~~equal payment amounts~~] installments of substantially equal
3 payments of principal and interest to pay off a loan in its
4 entirety with [~~a period of no~~] an initial stated maturity of
5 not less than one hundred twenty days to maturity.

6 "Installment loan" does not mean a [~~loan in which a licensee~~
7 ~~requires, as a condition of making the loan, the use of~~
8 ~~postdated checks or debit authorizations for repayment of that~~]
9 refund anticipation loan;

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

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

1 the license;

2 ~~[H. "payday loan" means a loan in which the~~
3 ~~licensee accepts a personal check or debit authorization~~
4 ~~tendered by the consumer and agrees in writing to defer~~
5 ~~presentment of that check or use of the debit authorization~~
6 ~~until the consumer's next payday or another date agreed to by~~
7 ~~the licensee and the consumer and:~~

8 ~~(1) includes any advance of money or~~
9 ~~arrangement or extension of credit whereby the licensee, for a~~
10 ~~fee, finance charge or other consideration:~~

11 ~~(a) accepts a dated personal check or~~
12 ~~debit authorization from a consumer for the specific purpose of~~
13 ~~repaying a payday loan;~~

14 ~~(b) agrees to hold a dated personal~~
15 ~~check or debit authorization from a consumer for a period of~~
16 ~~time prior to negotiating or depositing the personal check or~~
17 ~~debit authorization; or~~

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

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

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

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1 ~~(b) installment loans;~~

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

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

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

14 J. "refund anticipation loan" means a loan that is
15 secured by or that the creditor arranges or expects to be
16 repaid, directly or indirectly, from the proceeds of the
17 consumer's federal or state personal income tax refunds or tax
18 credits, including any sale, assignment or purchase of a tax
19 refund or tax credit at a discount or for a fee; and

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

25 SECTION 11. Section 58-15-3 NMSA 1978 (being Laws 1955,

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1 Chapter 128, Section 3, as amended) is amended to read:

2 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
3 PENALTY.--

4 A. A person shall not engage in the business of
5 lending in amounts of [~~two thousand five hundred dollars~~
6 ~~(\$2,500)~~] five thousand dollars (\$5,000) or less for a loan
7 without first having obtained a license from the director.
8 Nothing contained in this subsection shall restrict or prohibit
9 a licensee under the New Mexico Small Loan Act of 1955 from
10 making loans in any amount under the New Mexico Bank
11 Installment Loan Act of 1959 in accordance with the provisions
12 of Section 58-7-2 NMSA 1978.

13 B. Nothing in the New Mexico Small Loan Act of 1955
14 shall apply to a person making individual advances of [~~two~~
15 ~~thousand five hundred dollars (\$2,500)~~] five thousand dollars
16 (\$5,000) or less under a written agreement providing for a
17 total loan or line of credit in excess of [~~two thousand five~~
18 ~~hundred dollars (\$2,500)~~] five thousand dollars (\$5,000).

19 C. A banking corporation, savings and loan
20 association or credit union operating under the laws of the
21 United States or of a state shall be exempt from the licensing
22 requirements of the New Mexico Small Loan Act of 1955, nor
23 shall that act apply to business transacted by any person under
24 the authority of and as permitted by any such law nor to any
25 bona fide pawnbroking business transacted under a pawnbroker's

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1 license nor to bona fide commercial loans made to dealers upon
2 personal property held for resale. Nothing contained in the
3 New Mexico Small Loan Act of 1955 shall be construed as
4 abridging the rights of any of those exempted from the
5 operations of that act from contracting for or receiving
6 interest or charges not in violation of an existing applicable
7 statute of this state.

8 D. The provisions of Subsection A of this section
9 apply to:

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

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

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

21 (b) the use of collateral or related
22 sales or purchases of goods or services or agreements to sell
23 or purchase, whether real or pretended;

24 (c) receiving or charging compensation
25 for goods or services, whether or not sold, delivered or

1 provided; and

2 (d) the real or pretended negotiation,
 3 arrangement or procurement of a loan through any use or
 4 activity of a third person, whether real or fictitious.

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

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

20 SECTION 12. Section 58-15-5 NMSA 1978 (being Laws 1978,
 21 Chapter 6, Section 1, as amended) is amended to read:

22 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
 23 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF
 24 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
 25 FEES--LICENSEE BOUND BY ACT.--

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1 A. Upon the filing of an application, whether it is
2 an original or a renewal, the director shall investigate the
3 facts concerning the application and the requirements provided
4 in this section.

5 B. An applicant for license, upon written notice to
6 do so by the director, shall, within twenty days after service
7 of the notice, furnish in writing, under oath, to the director
8 all additional information required by the director that may be
9 relevant or, in the opinion of the director, helpful in
10 conducting the investigation.

11 C. Failure to comply with the director's
12 requirement for supplemental information or the willful
13 furnishing of false information is sufficient grounds for
14 denial of license.

15 D. False or misleading information willfully and
16 intentionally furnished to the director prior to the issuance
17 of any license is grounds for suspension or revocation of any
18 license in accordance with the procedures for suspension or
19 revocation of license in the New Mexico Small Loan Act of 1955.

20 E. The director shall grant or deny each
21 application for an original license within sixty days from the
22 filing of the application with the required information and
23 fees, unless the period is extended by written agreement
24 between the applicant and the director.

25 F. In the event the director finds that:

1 (1) the financial responsibility, character
 2 and general fitness of the applicant for an original license
 3 and of the individual members and beneficiaries thereof, if the
 4 applicant is a copartnership, association or trust, and of the
 5 officers and directors thereof, if the applicant is a
 6 corporation, are such as to command the confidence of the
 7 public and to warrant belief that the business will be operated
 8 lawfully, honestly, fairly and efficiently within the declared
 9 purposes and spirit of the New Mexico Small Loan Act of 1955;

10 (2) allowing the applicant to engage in
 11 business will promote the convenience and advantage of the
 12 community in which the business of the applicant is to be
 13 conducted; and

14 (3) the applicant has available for operation
 15 of the business at the specified location cash or its
 16 equivalent, convertible securities or receivables of thirty
 17 thousand dollars (\$30,000) or any combination thereof; the
 18 director shall enter an order granting the application, file
 19 the director's findings and, upon payment of the license fee of
 20 five hundred dollars (\$500), issue and deliver a license to the
 21 applicant.

22 G. If the director does not make the findings
 23 enumerated in Subsection F of this section, the director shall
 24 enter an order denying the application, notify the applicant of
 25 the denial and retain the application fee. Within thirty days

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1 after the entry of such an order, the director shall prepare
2 written findings and shall deliver a copy to the applicant.

3 H. A written application for license renewal shall
4 be filed on or before March 31 of each year, and thereupon the
5 director shall investigate the facts and review the files of
6 examinations of the applicant made by the director's office and
7 of complaints filed by borrowers, if any. The director shall
8 deliver a renewal license to the applicant if the director
9 finds that:

10 (1) no valid complaints of violations or
11 abuses of the New Mexico Small Loan Act of 1955 or of the
12 regulations of the director promulgated under that act have
13 been filed by borrowers;

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

18 (3) the financial responsibility, experience
19 and general fitness and character of the applicant remain such
20 as to command the confidence of the public and to warrant the
21 belief that the business will continue to be operated lawfully
22 and efficiently within the purposes and spirit of the New
23 Mexico Small Loan Act of 1955.

24 I. If the director does not make the findings
25 enumerated in Subsection H of this section, the director may

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1 grant a temporary extension of the license not exceeding sixty
2 days pending a hearing; shall enter an order fixing a date for
3 hearing upon the application; shall notify the licensee
4 thereof, specifying the particular complaints, violations or
5 abuses or other reasons for the director's contemplated refusal
6 to renew the license; and shall afford to the applicant an
7 opportunity to be heard. At the hearing, the director shall
8 produce evidence to establish the truth of the charges of
9 violation or other grounds specified in the notice, and the
10 applicant shall be accorded the right to produce evidence or
11 other matters of defense. If after the hearing the director
12 finds that the complaints of violations or other grounds
13 specified in the notice are not well-founded, the director
14 shall issue the renewal license. If the director finds that
15 the complaints of violations or other grounds are well-founded,
16 the director shall enter an order denying the renewal
17 application and notify the applicant of the denial, returning
18 the renewal license fee tendered with the application. Within
19 thirty days after the entry of such an order, the director
20 shall prepare written findings and shall deliver a copy of the
21 findings to the applicant. The order shall be subject to
22 review as provided in Section 58-15-25 NMSA 1978. The court in
23 its discretion and upon proper showing may order a temporary
24 extension of the license pending disposition of the review
25 proceedings.

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1 J. In connection with the determination of fitness
2 and character of an applicant pursuant to the provisions of
3 this section, the fact that the applicant or licensee is a
4 member of or interested financially in, connected or affiliated
5 with, controls or is controlled by or owns or is owned by other
6 corporations, partnerships, trusts, associations or other legal
7 entities engaged in the lending of money whose policies and
8 practices as to rates of interest, charges and fees and general
9 dealing with borrowers are questionable or would constitute
10 violation of the general usury statutes of this state or of the
11 declared purposes and spirit of the New Mexico Small Loan Act
12 of 1955 shall be given such consideration and weight as the
13 director determines.

14 K. At the time of issuance of original license and
15 each annual renewal thereof, the licensee for each licensed
16 office shall pay to the director as a license fee for the
17 period covered by the license the sum of five hundred dollars
18 (\$500) as a minimum, plus an additional seventy-five cents
19 (\$.75) for each one thousand dollars (\$1,000) or fraction
20 thereof of loans outstanding as of December 31 next preceding,
21 as shown on the applicant's annual report. In the event that
22 the application for annual renewal of the license is
23 delinquent, the licensee shall also pay a delinquency fee of
24 ten dollars (\$10.00) per day for each day the licensee is
25 delinquent in filing the application for renewal.

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1 L. In addition to the fees provided for in
 2 Subsection K of this section, at the time of issuance of
 3 original license and each annual renewal thereof, the licensee
 4 for each licensed office shall pay to the director as an
 5 additional fee for the period covered by the license the sum of
 6 two hundred dollars (\$200), which fee shall be deposited into
 7 the financial literacy fund.

8 ~~[L.]~~ M. A licensee by accepting a license that is
 9 issued or renewed or by continuing to operate a licensed office
 10 under the New Mexico Small Loan Act of 1955 shall by such
 11 action be deemed to have consented to be bound by the lawful
 12 provisions of that act and all lawful requirements, regulations
 13 and orders of the director promulgated or issued pursuant to
 14 any authorization granted in that act."

15 **SECTION 13.** Section 58-15-9 NMSA 1978 (being Laws 1955,
 16 Chapter 128, Section 9, as amended) is amended to read:

17 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
 18 WITNESSES.--

19 A. At least once each year, the director or the
 20 director's authorized representative shall make an examination
 21 of the place of business of each licensee and the loans,
 22 transactions, books, papers and records of the licensee insofar
 23 as they pertain to the business licensed under the New Mexico
 24 Small Loan Act of 1955 as the director may deem necessary. The
 25 licensee shall pay to the director for such annual examination

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1 a fee of two hundred dollars (\$200).

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

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

17 (1) any licensee;

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

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

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1 D. For the purposes of this section, a person who
2 advertises, solicits or makes any representation as being
3 willing to make loan transactions in any amount, except
4 persons, financial institutions or lending agencies operating
5 under charters or licenses issued by a state or federal agency
6 or under any special statute, shall be subject to investigation
7 under the New Mexico Small Loan Act of 1955 and shall be
8 presumed to be engaged in the business described in Subsection
9 A of Section 58-15-3 NMSA 1978 as to any loans of [~~two thousand~~
10 ~~five hundred dollars (\$2,500)~~] five thousand dollars (\$5,000)
11 or less.

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

25 F. For the purposes of this section, the director

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

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1 as for contempt of court.

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

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

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

24 J. Each witness who appears before the director by
25 the director's order shall receive the fees and mileage

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

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

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1 Loan Act of 1955 through or by means of the use of the property
 2 and business. The receiver, when appointed and qualified,
 3 shall have powers and duties as to custody, collection,
 4 administration, winding up and liquidation of the property and
 5 business as are from time to time conferred upon the receiver
 6 by the court."

7 SECTION 14. Section 58-15-10.1 NMSA 1978 (being Laws
 8 2011, Chapter 105, Section 1, as amended) is amended to read:

9 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
 10 PENALTIES.--

11 A. Licensees shall file with the director each year
 12 a confidential report containing at least the following
 13 information for the preceding calendar year in an aggregated,
 14 nonidentifying consumer manner:

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

17 ~~(a) all fees;~~

18 ~~(b) the minimum, maximum and average~~
 19 ~~annual interest rate as disclosed pursuant to 12 C.F.R. 226,~~
 20 ~~known as "Regulation Z";~~

21 ~~(c) the frequency of periodic payments;~~

22 ~~(d) the term of the loan; and~~

23 ~~(e) any other standard conditions of the~~
 24 ~~loan product;~~

25 ~~(2) the total number of transactions entered~~

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1 ~~into for each loan product in the following amounts:~~

2 ~~(a) five hundred dollars (\$500) or less;~~

3 ~~(b) five hundred one dollars (\$501) to~~
4 ~~one thousand dollars (\$1,000);~~

5 ~~(c) one thousand one dollars (\$1,001) to~~
6 ~~three thousand dollars (\$3,000);~~

7 ~~(d) three thousand one dollars (\$3,001)~~
8 ~~to five thousand dollars (\$5,000); and~~

9 ~~(e) greater than five thousand dollars~~
10 ~~(\$5,000);~~

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

13 ~~(4) the average principal loan amount for each~~
14 ~~loan product;~~

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

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

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

21 ~~(8) the total dollar amount of interest~~
22 ~~received;~~

23 ~~(9) the total dollar amount and description of~~
24 ~~fees received;~~

25 ~~(10) the total number of loans that were~~

underscored material = new
[bracketed material] = delete

1 ~~secured by collateral of some type and the total number of such~~
 2 ~~loans in which the security was foreclosed upon or repossessed;~~

3 ~~(11) the total amount of loan principal and~~
 4 ~~the total amount of accrued interest written off or charged~~
 5 ~~off;~~

6 ~~(12) the percent of consumers who were new~~
 7 ~~consumers;~~

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

10 ~~(14) procedures the licensee follows as a~~
 11 ~~standard practice to establish each consumer's ability to repay~~
 12 ~~a loan]~~

13 (1) as of December 31 of each calendar year,
 14 aggregated for loans of one thousand dollars (\$1,000) or less,
 15 for loans more than one thousand dollars (\$1,000) but not more
 16 than three thousand dollars (\$3,000) and for loans more than
 17 three thousand dollars (\$3,000) but not more than five thousand
 18 dollars (\$5,000):

19 (a) the total number of outstanding
 20 loans;

21 (b) the dollar value of outstanding
 22 loans net of unearned charges;

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

25 (d) the dollar value of loans that are

underscored material = new
 [bracketed material] = delete

1 more than sixty days delinquent net of unearned charges;

2 (2) for the calendar year ending December 31,
3 the total aggregate number of loans made by the licensee and
4 the total dollar value of those loans net of unearned charges;

5 (3) the total amount of finance charges
6 collected during the calendar year ending December 31; and

7 (4) the total bad debt expense incurred during
8 the calendar year ending December 31.

9 B. The report required pursuant to Subsection A of
10 this section shall be submitted to the director on or before
11 the [~~thirty-first day of March~~] fifteenth day of April each
12 year.

13 C. The report required pursuant to Subsection A of
14 this section shall be accompanied by a sworn statement by the
15 licensee under penalty of perjury that the report is complete
16 and accurate.

17 D. A licensee that fails to timely submit a
18 complete and accurate report as required pursuant to Subsection
19 A of this section may:

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

24 (2) have a license required pursuant to the
25 New Mexico Small Loan Act of 1955 suspended pursuant to Section

1 58-15-8 NMSA 1978, if a complete and accurate report has not
2 been filed by the thirty-first day of March.

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

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

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

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1 erroneous impressions as to the scope or degree of protection
2 provided by the New Mexico Small Loan Act of 1955."

3 SECTION 16. Section 58-15-17 NMSA 1978 (being Laws 1955,
4 Chapter 128, Section 15, as amended) is amended to read:

5 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
6 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
7 JUDGMENT AND INTEREST.--

8 A. Every licensee shall:

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

- 16 (a) the amount of the loan;
17 (b) the date the loan was made;
18 (c) a schedule or a description of the
19 payments;
20 (d) the type of the security, if any,
21 for the loan;
22 (e) the name and address of the licensed
23 office;
24 (f) the name of the person primarily
25 obligated for the loan;

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1 (g) the amount of principal;

2 (h) the ~~[agreed rate of charge stated on~~
3 ~~a percent per year basis]~~ annual interest rate as disclosed
4 pursuant to 12 CFR Part 1026, known as "Regulation Z", and the
5 amount in dollars and cents;

6 (i) all other disclosures required
7 pursuant to state and federal law; and

8 (j) other items allowable pursuant to
9 that act, so stated as to clearly show the allocation of each
10 item included;

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

22 (3) upon payment of the loan in full, mark
23 plainly every note and promise to pay signed by any obligor
24 with the word "paid" or "canceled" and promptly file or record
25 a release of any mortgage if the mortgage has been recorded,

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1 restore any pledge and cancel and return any note and any
2 assignment given to the licensee. A licensee may mark and
3 return a copy of the note, promise to pay or any assignment if
4 the copy accurately reproduces the complete original.

5 B. A licensee shall not take a note or promise to
6 pay that does not disclose the amount of the loan, a schedule
7 of payments, or a description thereof, and the agreed charge or
8 rate of charge or any instrument in which blanks are left to be
9 filled in after execution.

10 C. If judgment is obtained against a party on a
11 loan made pursuant to the provisions of the New Mexico Small
12 Loan Act of 1955, neither the judgment nor the loan shall
13 carry, from the date of the judgment, charges against a party
14 to the loan other than costs, attorney fees and post-judgment
15 interest as provided by law.

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

25 E. No loan made under the provisions of the New

1 Mexico Small Loan Act of 1955 shall bear interest after ninety
2 days from the date of the death of the borrower in excess of a
3 rate of ten percent a year on the unpaid principal balance of
4 the loan.

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

9 G. No lender shall make a loan pursuant to the New
10 Mexico Small Loan Act of 1955 if a loan has an initial stated
11 maturity of less than one hundred twenty days unless it is a
12 refund anticipation loan.

13 H. No lender shall make a loan pursuant to the New
14 Mexico Small Loan Act of 1955 unless the loan is an installment
15 loan or a refund anticipation loan.

16 I. No lender shall make a loan pursuant to the New
17 Mexico Small Loan Act of 1955, other than a refund anticipation
18 loan, unless the loan is repayable in a minimum of four
19 installments of substantially equal payments of principal and
20 interest.

21 J. No lender shall make a loan pursuant to the New
22 Mexico Small Loan Act of 1955 that has an annual percentage
23 rate greater than one hundred seventy-five percent, calculated
24 pursuant to 12 CFR Part 1026, known as "Regulation Z", unless
25 the loan is refund anticipation loan."

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1 SECTION 17. Section 58-15-20 NMSA 1978 (being Laws 1955,
2 Chapter 128, Section 18, as amended) is amended to read:

3 "58-15-20. FEES AND COSTS.--

4 A. Notwithstanding any provision of the New Mexico
5 Small Loan Act of 1955, lawful fees, if any, actually and
6 necessarily paid out by the licensee to a public officer for
7 the filing, recording or releasing in a public office of an
8 instrument securing the loan may be charged to the borrower.

9 B. Notwithstanding any provision in a note or other
10 loan contract taken or received pursuant to the provisions of
11 the New Mexico Small Loan Act of 1955, attorney fees shall not
12 be charged or collected except when the note or other contract
13 has been submitted in good faith to an attorney for collection
14 and after diligent and good faith effort to collect on the part
15 of the licensee has failed.

16 C. Notary fees incident to the taking of a lien to
17 secure a small loan or releasing such a lien shall not be
18 charged or collected by a licensee, an officer, agent or
19 employee of a licensee or anyone within an office, room or
20 place of business in which a small loan office is conducted.

21 D. Delinquency fees shall not exceed [~~five cents~~
22 ~~(\$.05)~~] ten cents (\$.10) for each one dollar (\$1.00) of each
23 installment more than ten days in arrears; provided that the
24 total of delinquency charges on any such installment shall not
25 exceed [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00) and

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1 that only one delinquency charge shall be made on any one
 2 installment regardless of the period during which the
 3 installment remains unpaid."

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

6 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE
 7 PURCHASES.--The payment of [~~two thousand five hundred dollars~~
 8 ~~(\$2,500)] five thousand dollars (\$5,000) or less in money,
 9 credit, goods or things in action, as consideration for any
 10 sale or assignment of or order for the payment of wages,
 11 salary, commission or other compensation for services, whether
 12 earned or to be earned, shall, for the purposes of regulation
 13 under the New Mexico Small Loan Act of 1955, be deemed a loan
 14 of money secured by such sale, assignment or order. The amount
 15 by which [~~such~~] compensation so sold, assigned or ordered paid
 16 exceeds the amount of [~~such~~] consideration actually paid shall
 17 for the purpose of regulation under the New Mexico Small Loan
 18 Act of 1955 be deemed interest or charges upon [~~such~~] the loan
 19 from the date of [~~such~~] payment to the date [~~such~~] the
 20 compensation is payable. Such transaction shall be governed by
 21 and subject to the provisions of the New Mexico Small Loan Act
 22 of 1955."~~

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

25 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside

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1 this state to a resident of New Mexico in the amount or of the
2 value of [~~two thousand five hundred dollars (\$2,500)~~] five
3 thousand dollars (\$5,000) or less for which a greater rate of
4 interest, consideration, charge or compensation to the lender
5 than is permitted by the general laws of New Mexico [~~presently~~]
6 in force governing money, interest and usury has been charged,
7 contracted for or received shall be enforced in this state.

8 Every person in any way participating in such a loan in this
9 state [~~shall be~~] is subject to the provisions of the New Mexico
10 Small Loan Act of 1955. Any loan made to a nonresident of New
11 Mexico in conformity with the law of the state where made may
12 be enforced in this state."

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

15 "[NEW MATERIAL] INSTALLMENT LOANS--PERMITTED CHARGES.--

16 A. If there are insufficient funds to pay a check
17 or other type of debit on the date of presentment by the
18 licensee, a licensee may charge a consumer a fee not to exceed
19 thirty-five dollars (\$35.00). Only one fee may be collected by
20 a licensee on a check or debit authorization. A check or debit
21 authorization request shall not be presented to a financial
22 institution by a licensee for payment more than one time unless
23 the consumer agrees in writing, after a check or other type of
24 debit has been dishonored, to one additional presentment or
25 deposit.

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1 B. A licensee shall not charge a consumer for fees,
2 interest or charges of any kind other than those permitted
3 pursuant to Subsection A of this section and Sections 58-15-16
4 and 58-15-20 NMSA 1978."

5 **SECTION 21.** A new section of the New Mexico Small Loan
6 Act of 1955 is enacted to read:

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

12 **SECTION 22.** A new section of the New Mexico Small Loan
13 Act of 1955 is enacted to read:

14 "[NEW MATERIAL] FINANCIAL LITERACY FUND.--The "financial
15 literacy fund" is created in the state treasury. The fund
16 shall consist of appropriations, gifts, grants, donations and
17 bequests made to the fund and fees received pursuant to
18 Subsection L of Section 58-15-5 NMSA 1978. Income from the
19 fund shall be credited to the fund, and money in the fund shall
20 not revert or be transferred to any other fund at the end of a
21 fiscal year. Money in the fund is appropriated to the
22 regulation and licensing department for the purposes of
23 developing and implementing financial literacy programs as
24 provided for in Subsection C of Section 58-15-39 NMSA 1978.
25 Expenditures from the fund shall be made on warrant of the

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1 secretary of finance and administration pursuant to vouchers
2 signed by the superintendent of regulation and licensing."

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

5 "58-15-39. DUTIES OF DIVISION.--

6 A. The division shall:

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

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

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

24 (1) ~~the total number and dollar amount of~~
25 ~~payday loan products entered into in the calendar year ending~~

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1 ~~December 31 of the previous year;~~

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

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

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

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

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

25 ~~(7) the minimum, maximum and average dollar~~

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1 ~~amounts of payday loan products entered into in the calendar~~
2 ~~year ending December 31 of the previous year;~~

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

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

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

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

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

16 G.] B. The division shall compile from reports
17 filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an
18 annual report by [~~October~~] July 1 of each year containing data
19 regarding [~~only loans exceeding an annual interest rate of one~~
20 ~~hundred seventy-five percent as disclosed pursuant to 12 C.F.R.~~
21 ~~226, known as "Regulation Z", entered into in the preceding~~
22 ~~calendar year on an aggregate basis. Excluded from the~~
23 ~~reporting requirements of this subsection are payday loan~~
24 ~~products or loans or loan products with an annual interest rate~~
25 ~~of one hundred seventy-five percent or less as disclosed~~

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1 ~~pursuant to 12 C.F.R. 226, known as "Regulation Z", entered~~
2 ~~into in the preceding calendar year on an aggregate basis]~~
3 installment loans entered into by licensees, which data shall
4 be aggregated for all licensees. Annual reports shall be made
5 available to interested parties and the general public and
6 published on the division's ~~[web site]~~ website. Consistent
7 with state law, the report shall include, at a minimum,
8 nonidentifying consumer data from the preceding calendar year,
9 including:

10 ~~[(1) a general description of loan products~~
11 ~~offered by licensees during the preceding calendar year and the~~
12 ~~minimum, maximum and average annual interest rate for each loan~~
13 ~~product;~~

14 ~~(2) the number of loans entered into in the~~
15 ~~amount of five hundred dollars (\$500) or less, the number of~~
16 ~~loans entered into in the amount of five hundred one dollars~~
17 ~~(\$501) to one thousand dollars (\$1,000), the number of loans~~
18 ~~entered into in the amount of one thousand one dollars (\$1,001)~~
19 ~~to three thousand dollars (\$3,000), the number of loans entered~~
20 ~~into in the amount of three thousand one dollars (\$3,001) to~~
21 ~~five thousand dollars (\$5,000), the number of loans in an~~
22 ~~amount greater than five thousand dollars (\$5,000) and the~~
23 ~~number of loans listed by licensee entered into in each of~~
24 ~~those ranges;~~

25 ~~(3) the total number and dollar amount of~~

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1 ~~loans entered into in the previous calendar year for each loan~~
2 ~~product;~~

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

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

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

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

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

14 ~~(9) the percent of customers who were new~~
15 ~~customers;~~

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

18 ~~(11) procedures followed by licensees to~~
19 ~~establish consumers' ability to repay loans]~~

20 (1) as of December 31 of each calendar year,
21 aggregated for loans of one thousand dollars (\$1,000) or less,
22 for loans more than one thousand dollars (\$1,000) but not more
23 than three thousand dollars (\$3,000) and for loans more than
24 three thousand dollars (\$3,000) but not more than five thousand
25 dollars (\$5,000):

1 (a) the total number of outstanding
2 loans;

3 (b) the dollar value of outstanding
4 loans net of unearned charges;

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

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

9 (2) for the calendar year ending December 31,
10 the total aggregate number of loans made by licensees and the
11 total dollar value of those loans net of unearned charges;

12 (3) the total amount of finance charges
13 collected during the calendar year ending December 31; and

14 (4) the total bad debt expense incurred during
15 the calendar year ending December 31.

16 C. The division shall, in cooperation with the
17 office of the attorney general, develop and implement
18 curriculum for a financial literacy program with elements that
19 shall include a basic understanding of budgets, checking and
20 savings accounts, credit and interest and considerations in
21 deciding how and when to use financial services, including
22 installment loans. The financial literacy program developed
23 pursuant to this subsection may be implemented through the adult
24 basic education division of the higher education department and
25 nonprofit public interest organizations."

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

3 "[~~NEW MATERIAL~~] PREEMPTION.--The state has exclusive
4 jurisdiction and authority regarding the terms and conditions
5 of permitted installment loans, and counties, municipalities
6 and other political subdivisions of the state are preempted
7 from any regulation of terms and conditions of permitted
8 installment loans by ordinance, resolution or otherwise."

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

13 SECTION 26. APPLICABILITY.--The provisions of this act
14 shall apply to loans subject to the New Mexico Small Loan Act
15 of 1955 and the New Mexico Bank Installment Loan Act of 1959
16 executed on or after January 1, 2018.

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

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