

1 HOUSE BILL 150

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Georgene Louis

5
6
7
8
9
10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO
12 BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN
13 ACT OF 1955; ADDING DEFINITIONS; EXPANDING VIOLATIONS DEEMED A
14 VIOLATION OF THE UNFAIR PRACTICES ACT; EXPANDING LENDER
15 REPORTING REQUIREMENTS; CLARIFYING LOAN INSURANCE REQUIREMENTS;
16 EXPANDING DISCLOSURE REQUIREMENTS; LIMITING INTEREST AND OTHER
17 CHARGES; GRANTING RIGHTS OF RESCISSION; PROVIDING FOR
18 PENALTIES.

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

21 SECTION 1. Section 58-7-3 NMSA 1978 (being Laws 1995,
22 Chapter 190, Section 15, as amended) is amended to read:

23 "58-7-3. LOANS COVERED BY ACT.--

24 A. The New Mexico Bank Installment Loan Act of 1959
25 applies to a loan that is a precomputed loan repayable in

.211426.4

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 installments and that is clearly identified on the loan
2 documents as being made under that act.

3 B. A loan in an amount equal to five thousand
4 dollars (\$5,000) or less shall be made only pursuant to the New
5 Mexico Bank Installment Loan Act of 1959 or the New Mexico
6 Small Loan Act of 1955. A loan made pursuant to the New Mexico
7 Bank Installment Loan Act of 1959 shall be identified in the
8 loan documents as being made pursuant to that act.

9 C. The provisions of Subsection B of this section
10 shall not apply to a federally insured depository institution."

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

13 "58-7-6. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--

14 A. No amount, other than the total finance charge,
15 which consists solely of interest and a fully earned processing
16 fee not to exceed the lesser of two hundred dollars (\$200) or
17 ten percent of the principal, shall be charged or contracted
18 for, directly or indirectly, on or in connection with [~~any such~~
19 ~~installment loan~~] a precomputed loan transaction except as
20 follows:

21 (1) delinquency charges not to exceed five
22 cents (\$.05) for each one dollar (\$1.00) of each installment
23 more than ten days in arrears may be charged; provided that the
24 total of delinquency charges on any such installment shall not
25 exceed ten dollars (\$10.00) and that only one delinquency

.211426.4

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

1 charge shall be made on any one installment regardless of the
2 period during which the installment remains unpaid;

3 (2) the lender may charge for only the actual
4 cost of any insurance; provided, however, all insurance shall
5 be written by companies licensed to operate within the state
6 and at rates no higher than those approved by the
7 superintendent of insurance; and provided further that the
8 lender shall not require any insurance to be written or
9 provided by or through any particular agent, broker or insurer
10 as a condition to making the loan but shall, at the borrower's
11 option, permit the insurance to be procured from any reputable
12 insurer or through any reputable agent authorized by law to
13 provide it;

14 (3) in the event that a borrower fails to
15 maintain in effect any insurance required in connection with a
16 loan transaction, the lender may purchase the required
17 insurance or lender's single interest insurance covering the
18 lender's interest in the property, and the cost of that
19 insurance shall be added to the loan and may accrue interest as
20 provided for in the New Mexico Bank Installment Loan Act of
21 1959;

22 (4) such amounts as are necessary to reimburse
23 the lender for fees paid to a public officer for filing,
24 recording or releasing any instrument or lien;

25 (5) if a loan under the New Mexico Bank

.211426.4

underscored material = new
[bracketed material] = delete

1 Installment Loan Act of 1959 is secured and if the borrower
2 fails to pay any governmental or other levy arising after the
3 date of the loan that would create a lien superior to the lien
4 of the lender on the property standing as security, the lender,
5 at the lender's option, may pay the levy and add the amount so
6 paid to the balance due from the borrower;

7 (6) the actual expenditures, including
8 reasonable attorney fees, for legal process or proceedings to
9 collect ~~[any such installment]~~ on a precomputed loan; provided,
10 however, that no attorney fees are permitted where the loan is
11 referred for collection to an attorney who is a salaried
12 employee of the holder of the contract; and further provided
13 that attorney fees shall not be charged or collected unless the
14 note or other contract has been submitted in good faith to an
15 attorney for collection after the lender has made a diligent
16 and good faith effort to collect and has failed; and

17 (7) the actual cost of charges incurred in
18 making a real estate loan secured by a mortgage on real estate,
19 including the charges for an abstract of title, title
20 examination, title insurance premiums, property survey,
21 appraisal fees, notary fees, preparation of deeds, mortgages or
22 other documents, escrow charges, credit reports and filing and
23 recording fees.

24 B. If there are insufficient funds to pay a check
25 or other type of debit on the date of presentment by the

.211426.4

underscored material = new
[bracketed material] = delete

1 lender, a check or debit authorization request shall not be
2 presented to a financial institution by a lender for payment
3 more than one time unless the consumer agrees in writing, after
4 a check or other type of debit has been dishonored, to one
5 additional presentment or deposit.

6 C. The charges permitted under this section may be
7 added to the balance due from the borrower.

8 D. A lender shall not charge a consumer a fee,
9 interest or any other kind of charge not specifically permitted
10 pursuant to this section."

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

13 "58-7-7. RESTRICTIONS.--

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

20 B. 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 if a loan has an
23 initial stated maturity of less than one hundred twenty days.

24 C. No lender other than a federally insured
25 depository institution shall make a loan pursuant to the New

.211426.4

underscored material = new
[bracketed material] = delete

1 Mexico Bank Installment Loan Act of 1959 unless the loan is
2 repayable in a minimum of four substantially equal installment
3 payments of principal and interest.

4 D. No lender, other than a federally insured
5 depository institution, shall make a loan pursuant to the New
6 Mexico Bank Installment Loan Act of 1959 that has an annual
7 percentage rate greater than one hundred seventy-five percent,
8 calculated pursuant to 12 CFR Part 1026, known as "Regulation
9 Z".

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

18 F. Except as provided by Section 58-7-3.2 NMSA
19 1978, any rollover, renewal, refinance or modification of an
20 existing loan agreement with a lender shall constitute a new
21 loan and shall require new disclosures pursuant to the federal
22 Truth in Lending Act."

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

25 "58-7-8. PENALTIES AND FORFEITURES.--

.211426.4

underscored material = new
[bracketed material] = delete

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

8 B. The taking, receiving or reserving of a rate of
9 charge, discount or advantage greater than allowed by the New
10 Mexico Bank Installment Loan Act of 1959, when knowingly done,
11 is deemed a forfeiture of the entire amount of the rate of
12 charge or advantage that the note, bill or other evidence of
13 debt carries with it or that has been agreed to be paid on it.
14 In case the greater rate of charge has been paid, the person by
15 whom it has been paid or the person's legal representatives may
16 recover by civil action twice the amount of the rate of charge
17 paid from the person [~~corporation or association~~] taking or
18 receiving it, provided that the action is commenced within two
19 years from the time the transaction occurred.

20 C. A violation of the provisions of the New Mexico
21 Bank Installment Loan Act of 1959 [~~which violation consists of~~
22 ~~a false or misleading oral or written representation of any~~
23 ~~kind knowingly made in the extension of credit that may, tends~~
24 ~~to or does deceive or mislead any person to whom the extension~~
25 ~~of credit is made]~~ constitutes [~~an unfair or deceptive trade~~

.211426.4

underscored material = new
[bracketed material] = delete

1 ~~practice pursuant to~~ a violation of the Unfair Practices Act."

2 SECTION 5. Section 58-7-9 NMSA 1978 (being Laws 1959,
3 Chapter 327, Section 10, as amended) is amended to read:

4 "58-7-9. CONSTRUCTION--DEFINITIONS--

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

8 B. None of the provisions of the New Mexico Bank
9 Installment Loan Act of 1959 apply to the assignment or
10 purchase of retail installment contracts originated under the
11 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
12 originated under the provisions of Sections 56-1-1 through
13 56-1-15 NMSA 1978.

14 C. In the event of a conflict between a requirement
15 of the New Mexico Bank Installment Loan Act of 1959 and a
16 requirement of the Home Loan Protection Act, the requirement of
17 the Home Loan Protection Act shall control.

18 D. As used in the New Mexico Bank Installment Loan
19 Act of 1959:

20 [~~(1) "year" means three hundred sixty-five~~
21 ~~days;~~

22 ~~(2) "month" means one-twelfth of a year; and]~~

23 (1) "consumer" means a person who enters into
24 a loan agreement subject to the New Mexico Bank Installment
25 Loan Act of 1959;

.211426.4

underscored material = new
[bracketed material] = delete

1 [~~3~~] (2) "consumer reporting agency" means
2 any person that, for monetary fees or dues or on a cooperative
3 nonprofit basis, regularly engages in the practice of
4 assembling or evaluating, and maintaining, for the purpose of
5 furnishing consumer reports to third parties bearing on a
6 consumer's creditworthiness, credit standing or credit
7 capacity, each of the following regarding consumers:

8 (a) public record information; or

9 (b) credit account information from
10 persons who furnish that information regularly and in the
11 ordinary course of business;

12 (3) "make a loan" means to originate a new
13 loan agreement or to make any change to the terms of an
14 existing loan agreement, including the principal amount
15 financed, the annual interest percentage rate, finance charge,
16 fees or payment schedule, if the change is made by the lender
17 that originated the existing loan agreement;

18 (4) "month" means one-twelfth of a year;

19 (5) "person" includes an individual,
20 copartner, association, trust, corporation and any other legal
21 entity; and

22 (6) "year" means three hundred sixty-five
23 days.

24 E. The director of the financial institutions
25 division of the regulation and licensing department shall issue

.211426.4

underscored material = new
[bracketed material] = delete

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

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

23 SECTION 6. A new section of the New Mexico Bank
24 Installment Loan Act of 1959 is enacted to read:

25 "[NEW MATERIAL] REQUIREMENTS FOR MAKING AND PAYING LOANS--

.211426.4

1 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
2 AND INTEREST.--

3 A. Every lender shall:

4 (1) at the time a consumer becomes
5 contractually obligated on a precomputed loan transaction,
6 deliver to the borrower or, if there are two or more borrowers
7 on the same obligation, to one of the borrowers, a written
8 statement in the language in which the loan was primarily
9 negotiated, on which shall be printed a copy of Section 58-7-3
10 NMSA 1978, and which shall disclose in clear and distinct
11 terms:

- 12 (a) the amount of the loan;
13 (b) the date the loan was consummated;
14 (c) a schedule or a description of the
15 payments;
16 (d) the type of the security, if any,
17 securing the loan;
18 (e) the name and address of the lender;
19 (f) the name of the person primarily
20 obligated for the loan;
21 (g) the amount of principal;
22 (h) the annual percentage rate as
23 calculated pursuant to 12 CFR Part 1026, known as "Regulation
24 Z", and the amount of interest payable in dollars and cents;
25 (i) all other disclosures required

.211426.4

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

1 pursuant to state and federal law; and

2 (j) the charge for any other item
3 allowable and included pursuant to the New Mexico Bank
4 Installment Loan Act of 1959, stated so as to clearly show the
5 allocation of each item included;

6 (2) for each payment made on account of a
7 loan, give to the person making the payment a plain and
8 complete receipt specifying the date and amount of the payment,
9 the amount applied to interest and principal and the balance
10 unpaid. When a payment is made in a manner other than by the
11 borrower in person, by an agent of the borrower or by check or
12 money order, the licensee shall mail the receipt to the
13 borrower's last known address or retain and deliver the receipt
14 upon request of the borrower. The licensee shall maintain a
15 copy of each receipt in the office of the licensee as a part of
16 the licensee's records; and

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

25 B. A judgment obtained against a party on a loan

.211426.4

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

1 made pursuant to the New Mexico Bank Installment Loan Act of
2 1959, shall not include, and the loan shall not include, from
3 the date of the judgment, charges against a party to the loan
4 other than costs, attorney fees and post-judgment interest as
5 provided by law.

6 C. A loan made pursuant to the New Mexico Bank
7 Installment Loan Act of 1959 that is filed and approved as a
8 claim in any bankruptcy proceeding shall bear interest at the
9 rate of ten percent per year beginning on the ninetieth day
10 following the date of adjudication. This limitation shall not
11 apply when the bankrupt is not discharged in bankruptcy or to
12 any obligation not dischargeable under the provisions of the
13 United States Bankruptcy Code presently in force.

14 D. A loan made pursuant to the New Mexico Bank
15 Installment Loan Act of 1959 shall not bear interest in excess
16 of ten percent per year on the unpaid principal balance of a
17 loan after ninety days following the date of the death of the
18 borrower; provided that the deceased borrower is the sole
19 obligor to the loan agreement.

20 E. A loan made pursuant to the New Mexico Bank
21 Installment Loan Act of 1959 shall not bear interest in excess
22 of ten percent per year upon the unpaid principal balance of
23 the loan after twelve months following the date of maturity of
24 the loan."

25 SECTION 7. A new section of the New Mexico Bank

.211426.4

underscored material = new
[bracketed material] = delete

1 Installment Loan Act of 1959 is enacted to read:

2 "[NEW MATERIAL] RIGHT OF RESCISSION.--All agreements for
3 precomputed loan transactions shall include a provision
4 granting the borrower the right to rescind the transaction by
5 returning in cash, or through certified funds, one hundred
6 percent of the amount advanced by the lender pursuant to the
7 New Mexico Bank Installment Loan Act of 1959 no later than 5:00
8 p.m. on the first day of business conducted by the lender
9 following the date of execution of the loan agreement. If a
10 borrower exercises the right of rescission pursuant to this
11 section, no fee for the rescinded transaction shall be charged
12 to the borrower, and the lender shall not charge or impose on
13 the borrower a fee for exercising the right of rescission
14 pursuant to this section. If a borrower exercises the right of
15 rescission pursuant to this section, any fee collected by the
16 lender shall be returned in full to the borrower."

17 SECTION 8. Section 58-15-2 NMSA 1978 (being Laws 1955,
18 Chapter 128, Section 2, as amended) is amended to read:

19 "58-15-2. DEFINITIONS.--The following words and terms
20 when used in the New Mexico Small Loan Act of 1955 have the
21 following meanings unless the context clearly requires a
22 different meaning. The meaning ascribed to the singular form
23 applies also to the plural:

24 A. "consumer" means a person who resides in New
25 Mexico or who enters into a loan agreement [~~and receives the~~

1 ~~loan proceeds~~] in New Mexico;

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

9 (1) public record information; or

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

13 C. "debit authorization" means an authorization
14 signed by a consumer to electronically transfer or withdraw
15 funds from the consumer's account for the specific purpose of
16 repaying a loan;

17 D. "division" means the financial institutions
18 division of the regulation and licensing department;

19 E. "director" means the director of the division;

20 F. "installment loan" means a loan in an amount
21 less than or equal to five thousand dollars (\$5,000) that is to
22 be repaid in a minimum of four substantially equal payments of
23 principal and interest to pay off a loan in its entirety with
24 an initial stated maturity of not less than one hundred twenty
25 days to maturity. "Installment loan" does not mean a refund

.211426.4

underscored material = new
[bracketed material] = delete

1 anticipation loan;

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

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

19 I. "make a loan" means to originate a new loan
20 agreement or to make any change to the terms of an existing
21 loan agreement, including the principal amount financed, the
22 annual interest percentage rate, finance charge, fees or
23 payment schedule, if the change is made by the licensee that
24 originated the existing loan agreement;

25 [~~F.~~] J. "person" includes an individual, copartner,

.211426.4

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

1 association, trust, corporation and any other legal entity;

2 ~~[J-]~~ K. "refund anticipation loan" means a loan
3 that is secured by or that the creditor arranges or expects to
4 be repaid, directly or indirectly, from the proceeds of the
5 consumer's federal or state personal income tax refunds or tax
6 credits, including any sale, assignment or purchase of a tax
7 refund or tax credit at a discount or for a fee; and

8 ~~[K-]~~ L. "simple interest" means a method of
9 calculating interest in which the amount of interest is
10 calculated based on the annual interest rate disclosed in the
11 loan agreement and is computed only on the outstanding
12 principal balance of the loan."

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

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

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

25 B. Nothing in the New Mexico Small Loan Act of 1955

.211426.4

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

1 shall apply to a person making individual advances of five
2 thousand dollars (\$5,000) or less under a written agreement
3 providing for a total loan or line of credit in excess of five
4 thousand dollars (\$5,000).

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

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

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

25 (2) a person who seeks to evade its

.211426.4

underscored material = new
[bracketed material] = delete

1 application by any device, subterfuge or pretense whatsoever,
2 including but not thereby limiting the generality of the
3 foregoing:

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

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

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

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

16 E. A person, copartnership, trust or a trustee or
17 beneficiary thereof or an association or corporation or a
18 member, officer, director, agent or employee thereof who
19 violates or participates in the violation of a provision of
20 Subsection A of this section is guilty of a petty misdemeanor
21 and upon conviction shall be sentenced pursuant to the
22 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
23 contract or loan in the making or collection of which an act is
24 done that violates [~~Subsection A or D of this section~~] the New
25 Mexico Small Loan Act of 1955 is void and the lender has no

.211426.4

underscored material = new
[bracketed material] = delete

1 right to collect, receive or retain any principal, interest or
2 charges whatsoever.

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

7 G. A violation of [~~the provisions~~] a provision of
8 the New Mexico Small Loan Act of 1955 [~~which violation consists~~
9 ~~of a false or misleading oral or written representation of any~~
10 ~~kind knowingly made in the extension of credit that may, tends~~
11 ~~to or does deceive or mislead any person to whom the extension~~
12 ~~of credit is made, constitutes an unfair or deceptive trade~~
13 ~~practice pursuant to~~] constitutes a violation of the Unfair
14 Practices Act.

15 H. The taking, receiving or reserving of a rate of
16 charge, discount or advantage greater than allowed by the New
17 Mexico Small Loan Act of 1955, when knowingly done, is deemed a
18 forfeiture of the entire amount of the rate of charge or
19 advantage that the note, bill or other evidence of debt carries
20 with it or that has been agreed to be paid on it. In case the
21 greater rate of charge has been paid, the person by whom it has
22 been paid or the person's legal representatives may recover by
23 civil action twice the amount of the rate of charge paid from
24 the person taking or receiving it; provided that the action is
25 commenced within two years from the time the transaction

.211426.4

underscored material = new
[bracketed material] = delete

1 occurred."

2 SECTION 10. Section 58-15-10.1 NMSA 1978 (being Laws
3 2011, Chapter 105, Section 1, as amended) is amended to read:

4 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
5 PENALTIES.--

6 A. Licensees shall file with the director each year
7 [~~a report~~] reports containing at least the following
8 information for the preceding calendar year ending December 31
9 in [~~an aggregated~~] a nonidentifying consumer manner as
10 specified below:

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

17 (a) ~~the total number of outstanding~~
18 ~~loans;~~

19 (b) ~~the dollar value of outstanding~~
20 ~~loans net of unearned charges;~~

21 (c) ~~the total number of loans that are~~
22 ~~more than sixty days delinquent; and~~

23 (d) ~~the dollar value of loans that are~~
24 ~~more than sixty days delinquent net of unearned charges;~~

25 (2) ~~for the calendar year ending December 31,~~

.211426.4

underscored material = new
[bracketed material] = delete

1 ~~the total aggregate number of customers of licensees and of~~
2 ~~secured and unsecured loans made by licensees and the total~~
3 ~~dollar value of those loans net of unearned charges;~~

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

6 ~~(4) the total number of vehicles repossessed~~
7 ~~during the calendar year ending December 31; and~~

8 ~~(5) the total bad debt expense incurred during~~
9 ~~the calendar year ending December 31.]~~

10 (1) a description of each loan product offered
11 by the licensee, including:

12 (a) whether the loan product was secured
13 or unsecured;

14 (b) whether the loan product was made
15 pursuant to the New Mexico Small Loan Act of 1955 or the New
16 Mexico Bank Installment Loan Act of 1959;

17 (c) the total dollar amount of principal
18 loaned for that product;

19 (d) the percentage of the total dollar
20 amount of all principal for that product that was repaid;

21 (e) the total number of discrete
22 borrowers who took out this type of loan product; and

23 (f) whether the loan product is
24 originated in person at a storefront or online;

25 (2) the total number of loan transactions

.211426.4

underscored material = new
[bracketed material] = delete

1 entered 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) for each loan product, the number of loans
12 made and the total dollar amount of interest and fees charged
13 on the contracts for loans made within the following categories
14 of annual percentage rate calculated pursuant to 12 CFR Part
15 1026, known as "Regulation Z":

16 (a) twenty-five percent through seventy-
17 five percent;

18 (b) more than seventy-five percent
19 through one hundred percent;

20 (c) more than one hundred percent
21 through one hundred fifty percent; and

22 (d) more than one hundred fifty percent
23 through one hundred seventy-five percent;

24 (4) for each loan product, the following
25 aggregate amounts of fees and interest:

.211426.4

1 (a) a list of each fee charged by the
2 lender and a description of each fee product or type, including
3 fees charged for loan origination and credit insurance;

4 (b) the aggregate dollar amount of each
5 fee product charged by the lender and paid by the borrower;

6 (c) the aggregate dollar amount of
7 interest charged by the lender and paid by the borrower; and

8 (d) the percentage of the total dollar
9 amount of each fee product charged that was paid by the
10 borrower;

11 (5) for each loan product:

12 (a) the number of loans for which the
13 original term of the loan was: 1) less than one hundred twenty
14 days; 2) between one hundred twenty and one hundred eighty-
15 three days; 3) between one hundred eighty-three days and three
16 hundred sixty-five days; 4) between three hundred sixty-five
17 days and seven hundred thirty-one days; 5) between seven
18 hundred thirty-one days and five years; and 6) longer than five
19 years;

20 (b) for each item set forth in
21 Subparagraph (a) of this paragraph, the average actual
22 repayment time for the given loan product and loan term; and

23 (c) for each item set forth in
24 Subparagraph (a) of this paragraph, the number of loans for
25 which payments were due: 1) every two weeks; 2) every four

underscored material = new
[bracketed material] = delete

1 weeks; and 3) monthly;

2 (6) the number of borrowers who took out only
3 one loan with the lender in the previous calendar year, and the
4 percentage of all borrowers who took out only one loan with the
5 lender in the previous calendar year;

6 (7) the number of borrowers who took out two
7 or three loans with the lender in the previous calendar year,
8 and the percentage of all borrowers who took out two or three
9 loans with the lender in the previous calendar year;

10 (8) the number of borrowers who took out four
11 or more loans with the lender in the previous calendar year,
12 and the percentage of all borrowers who took out four or more
13 loans with the lender in the previous calendar year;

14 (9) for each loan product, the number of loans
15 that were initiated for borrowers who did not have a loan with
16 the licensee in the previous calendar year;

17 (10) for each loan product, the number of
18 loans that have been repaid in full without an extension,
19 renewal, refinance, rollover or new loan within thirty days of
20 repaying that loan, and for each loan product, the percentage
21 of all borrowers who have repaid their loans in full without an
22 extension, renewal, refinance, rollover or new loan within
23 thirty days of repaying that loan;

24 (11) for each loan product, the number of
25 borrowers who extended, renewed, refinanced or rolled over

.211426.4

underscoring material = new
[bracketed material] = delete

1 their loans prior to or at the same time as paying their loan
2 balance in full, or took out a new loan within thirty days of
3 repaying that loan, and for each loan product, the percentage
4 of all borrowers who extended, renewed, refinanced or rolled
5 over their loans prior to or at the same time as paying the
6 loan balance in full, or took out a new loan within thirty days
7 of repaying that loan;

8 (12) for each loan product, the total number
9 of loans for which a late payment fee was charged and the
10 percentage of the total loans for which a late payment fee was
11 charged;

12 (13) for each loan product, the total number
13 of loans for which a late payment fee was charged more than
14 once over the term of the contract, and the percentage of the
15 total loans for which a late payment fee was charged more than
16 once over the term of the contract;

17 (14) for each loan product, the number of
18 loans for which a borrower has missed a payment, made a late
19 payment or defaulted on a loan, and for each loan product, the
20 percentage of total loans of that product for which the
21 borrower has missed a payment, made a late payment or defaulted
22 on a loan;

23 (15) for each loan product, the dollar amount
24 of loan principal and accrued interest that was charged-off or
25 written-off, and the number of borrowers for which the lender

.211426.4

underscored material = new
[bracketed material] = delete

1 charged-off or wrote-off loan principal and accrued interest;

2 (16) the number of loans and percentage of all
3 borrowers the lender filed action against for default;

4 (17) the total number of loans secured by a
5 motor vehicle and the number of those loans for which the motor
6 vehicle was repossessed;

7 (18) the total number of loans secured by
8 non-motor vehicle personal property and the number of those
9 loans for which the non-motor vehicle personal property was
10 repossessed;

11 (19) the total number and percentage of
12 borrowers of all loan products whose only source of income was
13 a means-tested public benefit as defined by 8 U.S.C. Section
14 1613(c);

15 (20) the total number and percentage of
16 borrowers of all loan products who are aged sixty-five or
17 older;

18 (21) the total number of loans of all loan
19 products that were made to borrowers in each county in New
20 Mexico;

21 (22) the percentage of all borrowers who took
22 out a refund anticipation loan who were eligible for a federal
23 earned income tax credit;

24 (23) the number of refund anticipation loans
25 that the lender made for a loan term of seven days or less; the

.211426.4

underscored material = new
[bracketed material] = delete

1 percentage of all refund anticipation loans the lender made
2 that had a loan term of seven days or less; and the average
3 annual interest percentage rate for all refund anticipation
4 loans offered by the lender that had a loan term of seven days
5 or less;

6 (24) the number of refund anticipation loans
7 that the lender made with a loan term between eight and
8 fourteen days; the percentage of all refund anticipation loans
9 made by the lender that had a loan term between eight and
10 fourteen days; and the average annual interest percentage rate
11 for all refund anticipation loans made by the lender that had a
12 loan term between eight and fourteen days;

13 (25) the number of refund anticipation loans
14 that the lender made with a loan term between fifteen and
15 thirty-one days; the percentage of all refund anticipation
16 loans made by the lender that had a loan term between fifteen
17 and thirty-one days; and the average annual interest percentage
18 rate for all refund anticipation loans made by the lender that
19 had a loan term between fifteen and thirty-one days; and

20 (26) the number of refund anticipation loans
21 that the lender made with a loan term greater than thirty-one
22 days; the percentage of all refund anticipation loans made by
23 the lender that had a loan term greater than thirty-one days;
24 and the average annual interest percentage rate for all refund
25 anticipation loans made by the lender that had a loan term

.211426.4

underscored material = new
[bracketed material] = delete

1 greater than thirty-one days.

2 B. The [~~report~~] reports required pursuant to
3 Subsection A of this section shall be submitted to the director
4 on or before the fifteenth day of April each year.

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

9 D. A licensee that fails to timely submit [~~a~~]
10 complete and accurate [~~report~~] reports as required pursuant to
11 Subsection A of this section on or before the fifteenth day of
12 April may:

13 (1) be fined an amount not to exceed one
14 thousand five hundred dollars (\$1,500) per day for each day
15 after the fifteenth day of April, a complete and accurate
16 report is not filed; and

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

21 SECTION 11. Section 58-15-16 NMSA 1978 (being Laws 1969,
22 Chapter 58, Section 1, as amended) is amended to read:

23 "58-15-16. LOAN INSURANCE ALLOWABLE--FINANCING CERTAIN
24 PREMIUMS PROHIBITED.--

25 A. It [~~shall be~~] is unlawful for any person

underscored material = new
[bracketed material] = delete

1 licensed under the New Mexico Small Loan Act of 1955, in
2 connection with the making of a loan under that act:

3 [A-] (1) to sell life insurance other than a
4 term policy or credit life insurance on the principal
5 borrowers;

6 [B-] (2) to sell term or credit life insurance
7 the coverage of which exceeds the amount of the loan or extends
8 beyond the term for which the loan is made;

9 [C-] (3) after having made a loan, to finance
10 any premiums of any life insurance policies, other than credit
11 life insurance, sold to the borrower by the licensee or [~~his~~]
12 the licensee's agent in any manner for a period of ninety days;

13 [D-] (4) after having made a loan, to finance
14 any premium of any single-interest property insurance policy
15 sold to the borrower by the licensee or [~~his~~] the licensee's
16 agent whereby the premium would be charged to the borrower in
17 any manner. [~~Except that~~] Nothing [~~contained~~] in this section
18 shall preclude the sale and purchase of an insurance policy
19 covering the dual interest of borrower and lien holder; or

20 [E-] (5) to sell property insurance on
21 unsecured loans.

22 B. A lender may charge for only the actual cost of
23 any insurance; provided that all insurance shall be written by
24 a company licensed to operate within the state and at a rate
25 not higher than those approved by the superintendent of

.211426.4

underscored material = new
[bracketed material] = delete

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

7 SECTION 12. Section 58-15-17 NMSA 1978 (being Laws 1955,
8 Chapter 128, Section 15, as amended) is amended to read:

9 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
10 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
11 AND INTEREST.--

12 A. Every licensee shall:

13 (1) at the time a [~~loan is made within the~~
14 ~~provisions of~~] consumer becomes contractually obligated on a
15 loan pursuant to the New Mexico Small Loan Act of 1955, deliver
16 to the borrower or, if there are two or more borrowers on the
17 same obligation, to one of them, a statement in [~~English or~~
18 Spanish, as required by federal law] the language in which the
19 loan was primarily negotiated, on which shall be printed a copy
20 of Section 58-15-14.1 NMSA 1978 and [~~that discloses~~] which
21 shall disclose in clear and distinct terms:

- 22 (a) the amount of the loan;
23 (b) the date the loan was made;
24 (c) a schedule or a description of the
25 payments;

.211426.4

underscored material = new
[bracketed material] = delete

1 (d) the type of the security, if any,
2 for the loan;

3 (e) the name and address of the
4 [~~licensed office~~] licensee;

5 (f) the name of the person primarily
6 obligated for the loan;

7 (g) the amount of principal;

8 (h) the annual interest percentage rate
9 as disclosed pursuant to 12 CFR Part 1026, known as "Regulation
10 Z", and the amount in dollars and cents;

11 (i) all other disclosures required
12 pursuant to state and federal law; and

13 (j) [~~other items allowable pursuant to~~
14 ~~that act~~] the charge for any other item allowable and included
15 pursuant to the New Mexico Small Loan Act of 1955, so stated as
16 to clearly show the allocation of each item included;

17 (2) for each payment made on account of [~~any~~
18 ~~such~~] a loan, give to the person making [~~it~~] the payment a
19 plain and complete receipt specifying the date and amount of
20 the payment, the amount applied to interest and principal and
21 the balance unpaid. When payment is made in any other manner
22 than by the borrower in person, by an agent of the borrower or
23 by check or money order, the licensee shall mail the receipt to
24 the borrower's last known address or [~~hold the receipt for~~
25 ~~delivery~~] retain and deliver the receipt upon request of the

.211426.4

underscored material = new
[bracketed material] = delete

1 borrower. [~~A copy of all receipts shall be kept on file~~] The
2 licensee shall maintain a copy of each receipt in the office of
3 the licensee as a part of the licensee's records; and

4 (3) upon [~~payment~~] repayment of the loan in
5 full, mark plainly every note and promise to pay signed by any
6 [~~obligor~~] borrower with the word "paid" or "canceled" and
7 promptly file or record a release of any mortgage if the
8 mortgage has been recorded, restore any pledge and cancel and
9 return any note and any assignment given to the licensee. A
10 licensee may mark and return a copy of the note, promise to pay
11 or any assignment if the copy accurately reproduces the
12 complete original.

13 [~~B. A licensee shall not take a note or promise to~~
14 ~~pay that does not disclose the amount of the loan, a schedule~~
15 ~~of payments, or a description thereof, and the agreed charge or~~
16 ~~rate of charge or any instrument in which blanks are left to be~~
17 ~~filled in after execution.~~

18 G. ~~If~~ B. A judgment [~~is obtained~~] against a party
19 on a loan made pursuant to [~~the provisions of~~] the New Mexico
20 Small Loan Act of 1955 [~~neither the judgment nor the loan shall~~
21 ~~carry~~] shall not include, and the loan shall not include, from
22 the date of the judgment, charges against a party to the loan
23 other than costs, attorney fees and post-judgment interest as
24 provided by law.

25 [~~D. Any~~] C. A loan made [~~under the provisions of~~]

.211426.4

underscored material = new
[bracketed material] = delete

1 pursuant to the New Mexico Small Loan Act of 1955 that is filed
2 and approved as a claim in any bankruptcy proceeding shall
3 ~~[from a date ninety days subsequent to the]~~ bear interest at
4 the rate of ten percent per year beginning on the ninetieth day
5 following the date of adjudication ~~[bear interest at the rate~~
6 ~~of ten percent a year only]~~. This limitation shall not apply
7 when the bankrupt is not discharged in bankruptcy or to any
8 obligation not dischargeable under the provisions of the United
9 States Bankruptcy Code presently in force. ~~[or as hereafter~~
10 ~~amended.~~

11 ~~E.—No]~~ D. A loan made ~~[under]~~ pursuant to the
12 provisions of the New Mexico Small Loan Act of 1955 shall not
13 bear interest ~~[after ninety days from the date of the death of~~
14 ~~the borrower in excess of a rate of ten percent a year on the~~
15 ~~unpaid principal balance of the loan]~~ in excess of ten percent
16 per year on the unpaid principal balance of a loan after ninety
17 days following the date of the death of the borrower.

18 ~~[F.—No]~~ E. A loan made ~~[under the provisions of]~~
19 pursuant to the New Mexico Small Loan Act of 1955 shall not
20 bear interest in excess of ten percent per year upon the unpaid
21 principal balance of the loan after twelve months ~~[from]~~
22 following the date of maturity of the loan. ~~[in excess of ten~~
23 ~~percent a year upon the unpaid principal balance of the loan.~~

24 ~~G.—No]~~ F. A lender shall not make a loan pursuant
25 to the New Mexico Small Loan Act of 1955 if a loan has an

.211426.4

underscored material = new
[bracketed material] = delete

1 initial stated maturity of less than one hundred twenty days
2 unless the loan is a refund anticipation loan.

3 ~~[H.—No]~~ G. A lender shall not make a loan pursuant
4 to the New Mexico Small Loan Act of 1955 unless the loan is an
5 installment loan or a refund anticipation loan.

6 ~~[I.—No]~~ H. A lender shall not make a loan pursuant
7 to the New Mexico Small Loan Act of 1955, other than a refund
8 anticipation loan, unless the loan is repayable in a minimum of
9 four substantially equal installment payments of principal and
10 interest.

11 ~~[J.—No]~~ I. A lender shall not make a loan pursuant
12 to the New Mexico Small Loan Act of 1955 that has an annual
13 percentage rate greater than one hundred seventy-five percent,
14 calculated pursuant to 12 CFR Part 1026, known as "Regulation
15 Z".

16 J. Upon request from the borrower, all lenders
17 licensed pursuant to the New Mexico Small Loan Act of 1955
18 shall give or forward to the borrower copies of all loan
19 agreements concerning that borrower, a copy of all receipts
20 maintained in that borrower's loan file and a written statement
21 of that borrower's loan history, including all fees charged,
22 amortization schedules, that borrower's payment history,
23 including the dates and amounts of payments made, and the total
24 amount unpaid pursuant to each contract.

25 K. Any rollover, renewal, refinance or modification

.211426.4

underscored material = new
[bracketed material] = delete

1 of an existing loan agreement with a licensee shall constitute
2 a new loan and shall require new disclosures pursuant to the
3 Truth in Lending Act."

4 SECTION 13. Section 58-15-20 NMSA 1978 (being Laws 1955,
5 Chapter 128, Section 18, as amended) is amended to read:

6 "58-15-20. FEES AND COSTS.--

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

12 B. Notwithstanding any provision in a note or other
13 loan contract taken or received [~~pursuant to the provisions of~~]
14 under the New Mexico Small Loan Act of 1955, attorney fees
15 shall not be charged or collected [~~except when~~] unless the note
16 or other contract has been submitted in good faith to an
17 attorney for collection who is not a salaried employee of the
18 holder of the contract, [and] after the licensee has made a
19 diligent and good faith effort to collect [on the part of the
20 licensee] and has failed.

21 C. Notary fees incident to the taking of a lien to
22 secure a small loan or releasing such a lien shall not be
23 charged or collected by a licensee, an officer, agent or
24 employee of a licensee or anyone within an office, room or
25 place of business in which a small loan office is conducted.

.211426.4

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

8 **SECTION 14.** A new section of the New Mexico Small Loan
9 Act of 1955 is enacted to read:

10 "[NEW MATERIAL] RIGHT OF RESCISSION.--All loan agreements
11 shall include a provision granting the borrower the right to
12 rescind the transaction by returning in cash, or through
13 certified funds, one hundred percent of the amount advanced by
14 the lender under the New Mexico Small Loan Act of 1955 no later
15 than 5:00 p.m. on the first day of business conducted by the
16 lender following the date of execution of the loan agreement.
17 If a borrower exercises the right of rescission pursuant to
18 this section, no fee for the rescinded transaction shall be
19 charged to the borrower, and the lender shall not charge or
20 impose on the borrower a fee for exercising the right of
21 rescission pursuant to this section. If a borrower exercises
22 the right of rescission pursuant to this section, any fee
23 collected by the lender shall be returned in full to the
24 borrower."

25 **SECTION 15.** APPLICABILITY.--The provisions of this act

.211426.4

1 apply to loans subject to the New Mexico Small Loan Act of 1955
2 and the New Mexico Bank Installment Loan Act of 1959 that are
3 executed on or after July 1, 2019.

4 SECTION 16. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2019.

6 - 38 -
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25