

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 150

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

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO
BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN
ACT OF 1955; ADDING DEFINITIONS; CLARIFYING VIOLATIONS DEEMED A
VIOLATION OF THE UNFAIR PRACTICES ACT; EXPANDING LENDER
REPORTING REQUIREMENTS; CLARIFYING LOAN INSURANCE REQUIREMENTS;
EXPANDING DISCLOSURE REQUIREMENTS; GRANTING RIGHTS OF
RESCISSION; PROVIDING FOR PENALTIES.

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

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

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

A. The New Mexico Bank Installment Loan Act of 1959
applies to a loan that is a precomputed loan repayable in
installments and that is clearly identified on the loan

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1 documents as being made under that act.

2 B. 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. A loan made pursuant to the New Mexico
6 Bank Installment Loan Act of 1959 shall be identified in the
7 loan documents as being made pursuant to that act.

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

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

12 "58-7-6. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--

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

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

1 period during which the installment remains unpaid;

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

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

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

24 (5) if a loan under the New Mexico Bank
25 Installment Loan Act of 1959 is secured and if the borrower

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

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

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

23 B. If there are insufficient funds to pay a check
24 or other type of debit on the date of presentment by the
25 lender, a check or debit authorization request shall not be

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

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

7 SECTION 3. 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 pursuant to the New
 11 Mexico Bank Installment Loan Act of 1959 to a borrower who is
 12 also indebted to that lender [~~under~~] pursuant to the New Mexico
 13 Small Loan Act of 1955 unless the loan made [~~under~~] pursuant to
 14 the New Mexico Small Loan Act of 1955 is paid and released at
 15 the time 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 substantially equal installment
 24 payments of principal and interest.

25 D. No lender, other than a federally insured

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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 and C 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 F. Except as provided by Section 58-7-3.2 NMSA
15 1978, any rollover, renewal, refinance or modification of an
16 existing loan agreement with a lender shall constitute a new
17 loan and shall require new disclosures pursuant to the federal
18 Truth in Lending Act."

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

21 "58-7-8. PENALTIES AND FORFEITURES.--

22 A. Any person [~~corporation or association~~]
23 willfully violating any of the provisions of the New Mexico
24 Bank Installment Loan Act of 1959 is guilty of a misdemeanor
25 and upon conviction shall be fined not less than one hundred

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1 dollars (\$100) or more than five thousand dollars (\$5,000) or
 2 imprisoned for not more than six months or both, in the
 3 discretion of the court. A contract or loan in the making or
 4 collection of which an act is done that violates Section 58-7-6
 5 or 58-7-7 NMSA 1978 is void and the lender has no right to
 6 collect, receive or retain any interest or charges whatsoever.
 7 A lender may not collect the principal of a loan if the lender
 8 has violated Subsection A of Section 58-15-3 NMSA 1978, or
 9 knowingly violated the provisions of Section 58-7-6 or 58-7-7
 10 NMSA 1978.

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

23 C. A violation of [~~the provisions~~] a provision of
 24 the New Mexico Bank Installment Loan Act of 1959 [~~which~~
 25 ~~violation consists of a false or misleading oral or written~~

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1 ~~representation of any kind knowingly made in the extension of~~
2 ~~credit that may, tends to or does deceive or mislead any person~~
3 ~~to whom the extension of credit is made] that constitutes~~
4 either an unfair or deceptive trade practice or an
5 unconscionable trade practice pursuant to Section 57-12-2 NMSA
6 1978 is actionable pursuant to the Unfair Practices Act."

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

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

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

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

19 C. In the event of a conflict between a requirement
20 of the New Mexico Bank Installment Loan Act of 1959 and a
21 requirement of the Home Loan Protection Act, the requirement of
22 the Home Loan Protection Act shall control.

23 D. As used in the New Mexico Bank Installment Loan
24 Act of 1959:

25 [~~(1) "year" means three hundred sixty-five~~

1 ~~days;~~

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

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

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

13 (a) public record information; or

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

17 (3) "make a loan" means to originate a new
18 loan agreement or to make any change to the terms of an
19 existing loan agreement, including the principal amount
20 financed, the annual percentage rate, finance charge, fees or
21 payment schedule;

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

23 (5) "person" includes an individual,
24 copartner, association, trust, corporation and any other legal
25 entity; and

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1 (6) "year" means three hundred sixty-five
2 days.

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

22 F. Any person [~~corporation or association~~]
23 complying with the regulations adopted by the director of the
24 financial institutions division of the regulation and licensing
25 department is deemed to have complied with the provisions of

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~~[bracketed material]~~ = delete

1 the New Mexico Bank Installment Loan Act of 1959."

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

4 "[NEW MATERIAL] REQUIREMENTS FOR MAKING AND PAYING LOANS--
5 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
6 AND INTEREST.--

7 A. Every lender shall:

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

- 15 (a) the amount of the loan;
16 (b) the date the loan was consummated;
17 (c) a schedule or a description of the
18 payments;
19 (d) the type of the security, if any,
20 securing the loan;
21 (e) the name and address of the lender;
22 (f) the name of the person primarily
23 obligated for the loan;
24 (g) the amount of principal;
25 (h) the annual percentage rate as

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1 calculated pursuant to 12 CFR Part 1026, known as "Regulation
2 Z", and the amount of interest payable in dollars and cents;

3 (i) all other disclosures required
4 pursuant to state and federal law; and

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

9 (2) for each payment made on account of a
10 loan, give to the person making the payment a plain and
11 complete receipt specifying the date and amount of the payment,
12 the amount applied to interest and principal and the balance
13 unpaid. When a payment is made in a manner other than by the
14 borrower in person, by an agent of the borrower or by check or
15 money order, the licensee shall mail the receipt to the
16 borrower's last known address or retain and deliver the receipt
17 upon request of the borrower. A licensee may deliver the
18 receipt electronically to the borrower via text message or
19 email, if requested to do so in writing by the borrower. A
20 borrower may withdraw authorization for electronic delivery of
21 receipts in writing at any time. A licensee shall not require
22 a borrower to receive receipts electronically. The licensee
23 shall maintain a copy of each receipt in the office of the
24 licensee as a part of the licensee's records; and

25 (3) upon repayment of the loan in full,

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1 plainly mark every note and promise to pay signed by any
2 borrower with the word "paid" or "canceled" and promptly file
3 or record a release of any mortgage if the mortgage has been
4 recorded, restore any pledge and cancel and return any note and
5 any assignment given to the licensee. A licensee may mark and
6 return a copy of the note, promise to pay or any assignment if
7 the copy accurately reproduces the complete original.

8 B. A judgment obtained against a party on a loan
9 made pursuant to the New Mexico Bank Installment Loan Act of
10 1959, shall not include, and the loan shall not include, from
11 the date of the judgment, charges against a party to the loan
12 other than costs, attorney fees and post-judgment interest as
13 provided by law.

14 C. A loan made pursuant to the New Mexico Bank
15 Installment Loan Act of 1959 that is filed and approved as a
16 claim in any bankruptcy proceeding shall bear interest at the
17 rate of ten percent per year beginning on the ninetieth day
18 following the date of adjudication. This limitation shall not
19 apply when the bankrupt is not discharged in bankruptcy or to
20 any obligation not dischargeable under the provisions of the
21 United States Bankruptcy Code presently in force.

22 D. A loan made pursuant to the New Mexico Bank
23 Installment Loan Act of 1959 shall not bear interest in excess
24 of ten percent per year on the unpaid principal balance of a
25 loan after ninety days following the date of the death of the

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1 borrower; provided that the deceased borrower is the sole
2 obligor to the loan agreement.

3 E. A loan made pursuant to the New Mexico Bank
4 Installment Loan Act of 1959 shall not bear interest in excess
5 of ten percent per year upon the unpaid principal balance of
6 the loan after twelve months following the date of maturity of
7 the loan."

8 SECTION 7. A new section of the New Mexico Bank
9 Installment Loan Act of 1959 is enacted to read:

10 "[NEW MATERIAL] RIGHT OF RESCISSION.--All agreements for
11 precomputed loan transactions shall include a provision
12 granting the borrower the right to rescind the transaction by
13 returning in cash, or through certified funds, one hundred
14 percent of the amount advanced by the lender pursuant to the
15 New Mexico Bank Installment Loan Act of 1959 no later than the
16 close of business New Mexico time or, if the loan was made
17 online, no later than midnight New Mexico time on the first day
18 of business conducted by the lender following the date of
19 execution of the loan agreement. If a borrower exercises the
20 right of rescission pursuant to this section, no fee for the
21 rescinded transaction shall be charged to the borrower, and the
22 lender shall not charge or impose on the borrower a fee for
23 exercising the right of rescission pursuant to this section.
24 If a borrower exercises the right of rescission pursuant to
25 this section, any fee collected by the lender shall be returned

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1 in full to the borrower."

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

4 "58-15-2. DEFINITIONS.--The following words and terms
5 when used in the New Mexico Small Loan Act of 1955 have the
6 following meanings unless the context clearly requires a
7 different meaning. The meaning ascribed to the singular form
8 applies also to the plural:

9 A. "consumer" means a person who resides in New
10 Mexico or who enters into a loan agreement [~~and receives the~~
11 ~~loan proceeds~~] in New Mexico;

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

19 (1) public record information; or

20 (2) credit account information from persons
21 who furnish that information regularly and in the ordinary
22 course of business;

23 C. "debit authorization" means an authorization
24 signed by a consumer to electronically transfer or withdraw
25 funds from the consumer's account for the specific purpose of

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1 repaying a loan;

2 D. "division" means the financial institutions
3 division of the regulation and licensing department;

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

5 F. "installment loan" means a loan in an amount
6 less than or equal to five thousand dollars (\$5,000) that is to
7 be repaid in a minimum of four substantially equal payments of
8 principal and interest to pay off a loan in its entirety with
9 an initial stated maturity of not less than one hundred twenty
10 days to maturity. "Installment loan" does not mean a refund
11 anticipation loan;

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

21 H. "licensee" means a person to whom one or more
22 licenses have been issued pursuant to the New Mexico Small Loan
23 Act of 1955 upon the person's written application electing to
24 become a licensee and consenting to exercise the privilege of a
25 licensee solely in conformity with the New Mexico Small Loan

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1 Act of 1955 and the lawful regulations promulgated by the
 2 director under that act and whose name appears on the face of
 3 the license;

4 I. "make a loan" means to originate a new loan
 5 agreement or to make any change to the terms of an existing
 6 loan agreement, including the principal amount financed, the
 7 annual percentage rate, finance charge, fees or payment
 8 schedule;

9 [~~F.~~] J. "person" includes an individual, copartner,
 10 association, trust, corporation and any other legal entity;

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

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

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

24 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
 25 PENALTY.--

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

9 B. Nothing in the New Mexico Small Loan Act of 1955
10 shall apply to a person making individual advances of five
11 thousand dollars (\$5,000) or less under a written agreement
12 providing for a total loan or line of credit in excess of five
13 thousand dollars (\$5,000).

14 C. A banking corporation, savings and loan
15 association or credit union operating under the laws of the
16 United States or of a state shall be exempt from the licensing
17 requirements of the New Mexico Small Loan Act of 1955, nor
18 shall that act apply to business transacted by any person under
19 the authority of and as permitted by any such law nor to any
20 bona fide pawnbroking business transacted under a pawnbroker's
21 license nor to bona fide commercial loans made to dealers upon
22 personal property held for resale. Nothing contained in the
23 New Mexico Small Loan Act of 1955 shall be construed as
24 abridging the rights of any of those exempted from the
25 operations of that act from contracting for or receiving

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1 interest or charges not in violation of an existing applicable
2 statute of this state.

3 D. The provisions of Subsection A of this section
4 apply to:

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

9 (2) a person who seeks to evade its
10 application by any device, subterfuge or pretense whatsoever,
11 including but not thereby limiting the generality of the
12 foregoing:

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

16 (b) the use of collateral or related
17 sales or purchases of goods or services or agreements to sell
18 or purchase, whether real or pretended;

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

22 (d) the real or pretended negotiation,
23 arrangement or procurement of a loan through any use or
24 activity of a third person, whether real or fictitious.

25 E. A person, copartnership, trust or a trustee or

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1 beneficiary thereof or an association or corporation or a
2 member, officer, director, agent or employee thereof who
3 violates or participates in the violation of a provision of
4 Subsection A of this section is guilty of a petty misdemeanor
5 and upon conviction shall be sentenced pursuant to the
6 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
7 contract or loan in the making or collection of which an act is
8 done that violates Subsection A or D of this section or Section
9 58-15-17 or 58-15-20 NMSA 1978 is void and the lender has no
10 right to collect, receive or retain any principal, interest or
11 charges whatsoever.

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

16 G. A violation of [~~the provisions~~] a provision of
17 the New Mexico Small Loan Act of 1955 [~~which violation consists~~
18 ~~of a false or misleading oral or written representation of any~~
19 ~~kind knowingly made in the extension of credit that may, tends~~
20 ~~to or does deceive or mislead any person to whom the extension~~
21 ~~of credit is made]~~ that constitutes either an unfair or
22 deceptive trade practice or an unconscionable trade practice
23 pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to
24 the Unfair Practices Act."

25 SECTION 10. Section 58-15-10.1 NMSA 1978 (being Laws

1 2011, Chapter 105, Section 1, as amended) is amended to read:

2 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
3 PENALTIES.--

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

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

15 (a) ~~the total number of outstanding~~
16 ~~loans;~~

17 (b) ~~the dollar value of outstanding~~
18 ~~loans net of unearned charges;~~

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

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

23 (2) ~~for the calendar year ending December 31,~~
24 ~~the total aggregate number of customers of licensees and of~~
25 ~~secured and unsecured loans made by licensees and the total~~

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1 ~~dollar value of those loans net of unearned charges;~~

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

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

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

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

10 (a) whether the loan product was secured
11 or unsecured;

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

15 (c) the total dollar amount of principal
16 loaned for that product;

17 (d) the percentage of the total dollar
18 amount of all principal for that product that was repaid; and

19 (e) the total number of individual
20 borrowers who took out this type of loan product;

21 (2) the total number of loan transactions
22 entered into for each loan product in the following amounts:

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

24 (b) five hundred one dollars (\$501) to
25 one thousand dollars (\$1,000);

underscored material = new
[bracketed material] = delete

1 (c) one thousand one dollars (\$1,001) to
2 three thousand dollars (\$3,000); and

3 (d) three thousand one dollars (\$3,001)
4 to five thousand dollars (\$5,000);

5 (3) for each loan product, the number of loans
6 made and the total dollar amount of interest and fees charged
7 on the contracts for loans made within the following categories
8 of annual percentage rate calculated pursuant to 12 CFR Part
9 1026, known as "Regulation Z":

10 (a) less than or equal to thirty-six
11 percent;

12 (b) more than thirty-six percent through
13 one hundred percent;

14 (c) more than one hundred percent
15 through one hundred fifty percent; and

16 (d) more than one hundred fifty percent
17 through one hundred seventy-five percent;

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

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

23 (b) the total dollar amount of each fee
24 product charged by the lender and paid by the borrower; and

25 (c) the total dollar amount of interest

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1 charged by the lender and paid by the borrower;

2 (5) for each loan product:

3 (a) the number of loans for which the
4 original term of the loan was: 1) less than one hundred twenty
5 days; 2) between one hundred twenty days and three hundred
6 sixty-five days; 3) between three hundred sixty-five days and
7 seven hundred thirty-one days; 4) between seven hundred thirty-
8 one days and five years; and 5) longer than five years;

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

12 (c) for each item set forth in
13 Subparagraph (a) of this paragraph, the number of loans for
14 which payments were due: 1) every two weeks; 2) every four
15 weeks; and 3) monthly;

16 (6) the number of borrowers who took out one
17 or two loans with the lender in the previous calendar year, and
18 the percentage of all borrowers who took out one or two loans
19 with the lender in the previous calendar year;

20 (7) the number of borrowers who took out three
21 or more loans with the lender in the previous calendar year,
22 and the percentage of all borrowers who took out three or more
23 loans with the lender in the previous calendar year;

24 (8) for each loan product, the number of loans
25 that have been repaid in full without an extension, renewal,

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1 refinance, rollover or new loan within thirty days of repaying
2 that loan, and for each loan product, the percentage of all
3 borrowers who have repaid their loans in full without an
4 extension, renewal, refinance, rollover or new loan within
5 thirty days of repaying that loan;

6 (9) for each loan product, the number of
7 borrowers who extended, renewed, refinanced or rolled over
8 their loans prior to or at the same time as paying their loan
9 balance in full, or took out a new loan within thirty days of
10 repaying that loan, and for each loan product, the percentage
11 of all borrowers who extended, renewed, refinanced or rolled
12 over their loans prior to or at the same time as paying the
13 loan balance in full, or took out a new loan within thirty days
14 of repaying that loan;

15 (10) for each loan product, the total number
16 of loans for which a late payment fee was charged and the
17 percentage of the total loans for which a late payment fee was
18 charged;

19 (11) for each loan product, the total number
20 of loans for which a late payment fee was charged more than
21 once over the term of the contract, and the percentage of the
22 total loans for which a late payment fee was charged more than
23 once over the term of the contract;

24 (12) for each loan product, the number of
25 loans for which a borrower has defaulted on a loan, and for

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1 each loan product, the percentage of total loans of that
2 product for which the borrower has defaulted on a loan;

3 (13) for each loan product, the dollar amount
4 of loan principal and accrued interest that was charged-off or
5 written-off, and the number of borrowers for which the lender
6 charged-off or wrote-off loan principal and accrued interest;

7 (14) the number of loans and percentage of all
8 borrowers the lender filed action against for default;

9 (15) the total number of loans secured by a
10 motor vehicle and the number of those loans for which the motor
11 vehicle was repossessed;

12 (16) the total number of loans secured by
13 non-motor vehicle personal property and the number of those
14 loans for which the non-motor vehicle personal property was
15 repossessed;

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

20 (18) the total number and percentage of
21 borrowers of all loan products who are aged sixty-five or
22 older;

23 (19) the total number of loans of all loan
24 products that were made to borrowers in each county in New
25 Mexico; and

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1 (20) the percentage of all borrowers who took
 2 out a refund anticipation loan who were eligible for a federal
 3 earned income tax credit.

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

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

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

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

19 (2) have a license required pursuant to the
 20 New Mexico Small Loan Act of 1955 suspended pursuant to Section
 21 58-15-8 NMSA 1978 ~~[if a complete and accurate report has not~~
 22 ~~been filed by the fifteenth day of April]."~~

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

25 "58-15-16. LOAN INSURANCE ALLOWABLE--FINANCING CERTAIN

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1 PREMIUMS PROHIBITED.--

2 A. It [~~shall be~~] is unlawful for any person
3 licensed under the New Mexico Small Loan Act of 1955, in
4 connection with the making of a loan under that act:

5 [~~A.~~] (1) to sell life insurance other than a
6 term policy or credit life insurance on the principal
7 borrowers;

8 [~~B.~~] (2) to sell term or credit life insurance
9 the coverage of which exceeds the amount of the loan or extends
10 beyond the term for which the loan is made;

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

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

22 [~~E.~~] (5) to sell property insurance on
23 unsecured loans.

24 B. A lender may charge for only the actual cost of
25 any insurance; provided that all insurance shall be written by

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1 a company licensed to operate within the state and at a rate
 2 not higher than those approved by the superintendent of
 3 insurance; and provided further that the lender shall not
 4 require any insurance to be written or provided by or through a
 5 particular agent, broker or insurer as a condition to making
 6 the loan, but shall, at the borrower's option, permit the
 7 insurance to be procured from any insurer or agent authorized
 8 by law to provide the insurance."

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

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

14 A. Every licensee shall:

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

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

1 payments;

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

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

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

8 (g) the amount of principal;

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

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

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

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

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1 ~~delivery]~~ retain and deliver the receipt upon request of the
2 borrower. [~~A copy of all receipts shall be kept on file]~~ A
3 licensee may deliver the receipt electronically to the borrower
4 via text message or email, if requested to do so in writing by
5 the borrower. A borrower may withdraw authorization for
6 electronic delivery of receipts in writing at any time. A
7 licensee shall not require a borrower to receive receipts
8 electronically. The licensee shall maintain a copy of each
9 receipt in the office of the licensee as a part of the
10 licensee's records; and

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

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

25 C. [~~If]~~ A judgment [~~is obtained]~~ against a party on

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1 a loan made pursuant to ~~[the provisions of]~~ the New Mexico
2 Small Loan Act of 1955 ~~[neither the judgment nor the loan shall~~
3 ~~carry]~~ shall not include, and the loan shall not include, from
4 the date of the judgment, charges against a party to the loan
5 other than costs, attorney fees and post-judgment interest as
6 provided by law.

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

18 E. ~~[No]~~ A loan made ~~[under]~~ pursuant to the
19 provisions of the New Mexico Small Loan Act of 1955 shall not
20 bear interest ~~[after ninety days from the date of the death of~~
21 ~~the borrower in excess of a rate of ten percent a year on the~~
22 ~~unpaid principal balance of the loan]~~ in excess of ten percent
23 per year on the unpaid principal balance of a loan after ninety
24 days following the date of the death of the borrower.

25 F. ~~[No]~~ A loan made ~~[under the provisions of]~~

1 pursuant to the New Mexico Small Loan Act of 1955 shall not
 2 bear interest in excess of ten percent per year upon the unpaid
 3 principal balance of the loan after twelve months [~~from~~]
 4 following the date of maturity of the loan. [~~in excess of ten~~
 5 ~~percent a year upon the unpaid principal balance of the loan.~~]

6 G. [~~No~~] A lender shall not make a loan pursuant to
 7 the New Mexico Small Loan Act of 1955 if a loan has an initial
 8 stated maturity of less than one hundred twenty days unless the
 9 loan is a refund anticipation loan.

10 H. [~~No~~] A lender shall not make a loan pursuant to
 11 the New Mexico Small Loan Act of 1955 unless the loan is an
 12 installment loan or a refund anticipation loan.

13 I. [~~No~~] A lender shall not make a loan pursuant to
 14 the New Mexico Small Loan Act of 1955, other than a refund
 15 anticipation loan, unless the loan is repayable in a minimum of
 16 four substantially equal installment payments of principal and
 17 interest.

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

23 Upon request from the borrower, all lenders
 24 licensed pursuant to the New Mexico Small Loan Act of 1955
 25 shall give or forward to the borrower copies of all loan

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1 agreements concerning that borrower, a copy of all receipts
2 maintained in that borrower's loan file and a written statement
3 of that borrower's loan history, including all fees charged,
4 amortization schedules, that borrower's payment history,
5 including the dates and amounts of payments made, and the total
6 amount unpaid pursuant to each contract. All lenders shall
7 retain for seven years from the date of generation the
8 documentation specified in this subsection.

9 L. Any rollover, renewal, refinance or modification
10 of an existing loan agreement with a licensee shall constitute
11 a new loan and shall require new disclosures pursuant to the
12 Truth in Lending Act."

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

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

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

21 B. Notwithstanding any provision in a note or other
22 loan contract taken or received [~~pursuant to the provisions of~~]
23 under the New Mexico Small Loan Act of 1955, attorney fees
24 shall not be charged or collected [~~except when~~] unless the note
25 or other contract has been submitted in good faith to an

1 attorney for collection [~~and~~] who is not a salaried employee of
 2 the holder of the contract, after the licensee has made a
 3 diligent and good faith effort to collect [~~on the part of the~~
 4 ~~licensee~~] and has failed.

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

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

17 **SECTION 14.** Section 58-15-20.1 NMSA 1978 (being Laws
 18 2017, Chapter 110, Section 20) is amended to read:

19 "58-15-20.1. INSTALLMENT LOANS--REFUND ANTICIPATION
 20 LOANS--INSUFFICIENT FUNDS--PERMITTED CHARGES.--

21 A. If there are insufficient funds to pay a check
 22 or other type of debit on the date of presentment by the
 23 licensee, a check or debit authorization request shall not be
 24 presented to a financial institution by a licensee for payment
 25 more than one time per payment due unless the consumer agrees

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1 in writing, after a check or other type of debit has been
2 dishonored, to one additional presentment or deposit.

3 B. A licensee shall not charge a consumer for fees,
4 interest or charges of any kind other than those permitted
5 pursuant to Sections 58-15-16, 58-15-17 and 58-15-20 NMSA
6 1978."

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

9 "58-15-39. DUTIES OF DIVISION.--

10 A. The division shall:

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

13 (2) establish a complaint process whereby an
14 aggrieved consumer or other person may file a complaint against
15 a licensee.

16 B. The division shall compile from reports filed by
17 licensees pursuant to Section 58-15-10.1 NMSA 1978 an annual
18 report by July 1 of each year containing data regarding loans
19 entered into by licensees, which data shall be aggregated for
20 all licensees. Annual reports shall be made available to
21 interested parties and the general public and published on the
22 division's website. Consistent with state law, the report
23 shall include, at a minimum, nonidentifying consumer data from
24 the preceding calendar year, including

25 [~~(1) as of December 31 of each calendar year,~~

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

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

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

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

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

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

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

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

22 (5) the total bad debt expense incurred during
 23 the calendar year ending December 31] each of the specific
 24 categories of information set forth in Subsection A of Section
 25 58-15-10.1 NMSA 1978.

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

12 **SECTION 16.** A new section of the New Mexico Small Loan
13 Act of 1955 is enacted to read:

14 "[NEW MATERIAL] RIGHT OF RESCISSION.--All loan agreements
15 shall include a provision granting the borrower the right to
16 rescind the transaction by returning in cash, or through
17 certified funds, one hundred percent of the amount advanced by
18 the lender under the New Mexico Small Loan Act of 1955 no later
19 than the close of business New Mexico time or, if the loan was
20 made online, no later than midnight New Mexico time on the
21 first day of business conducted by the lender following the
22 date of execution of the loan agreement. If a borrower
23 exercises the right of rescission pursuant to this section, no
24 fee for the rescinded transaction shall be charged to the
25 borrower, and the lender shall not charge or impose on the

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1 borrower a fee for exercising the right of rescission pursuant
2 to this section. If a borrower exercises the right of
3 rescission pursuant to this section, any fee collected by the
4 lender shall be returned in full to the borrower."

5 SECTION 17. APPLICABILITY.--The provisions of this act
6 apply to loans subject to the New Mexico Small Loan Act of 1955
7 and the New Mexico Bank Installment Loan Act of 1959 that are
8 executed on or after January 1, 2020.

9 SECTION 18. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is January 1, 2020.

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