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
documents as being made under that act.

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

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

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

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

A. No amount, other than the total finance charge,
which consists solely of interest and a fully earned
processing fee not to exceed the lesser of two hundred
dollars ($200) or ten percent of the principal, shall be
charged or contracted for, directly or indirectly, on or in
connection with a precomputed loan transaction except as
follows:

(1) delinquency charges not to exceed five
cents ($.05) for each one dollar ($1.00) of each installment
more than ten days in arrears may be charged; provided that
the total of delinquency charges on any such installment
shall not exceed ten dollars ($10.00) and that only one
delinquency charge shall be made on any one installment
regardless of the period during which the installment remains
unpaid;

(2) the lender may charge for only the
actual cost of any insurance; provided, however, all
insurance shall be written by companies licensed to operate
within the state and at rates no higher than those approved

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by the superintendent of insurance; and provided further that
the lender shall not require any insurance to be written or
provided by or through any particular agent, broker or
insurer as a condition to making the loan but shall, at the
borrower's option, permit the insurance to be procured from
any reputable insurer or through any reputable agent
authorized by law to provide it;

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

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

(5) if a loan under the New Mexico Bank
Installment Loan Act of 1959 is secured and if the borrower
fails to pay any governmental or other levy arising after the
date of the loan that would create a lien superior to the
lien of the lender on the property standing as security, the
lender, at the lender's option, may pay the levy and add the
amount so paid to the balance due from the borrower;
(6) the actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect on a precomputed loan; provided, however, that no attorney fees are permitted where the loan is referred for collection to an attorney who is a salaried employee of the holder of the contract; and further provided that attorney fees shall not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed; and

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

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

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

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

A. No lender shall make a loan pursuant to the New
Mexico Bank Installment Loan Act of 1959 to a borrower who is
also indebted to that lender pursuant to the New Mexico Small
Loan Act of 1955 unless the loan made pursuant to the New
Mexico Small Loan Act of 1955 is paid and released at the
time the loan is made.

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

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

D. No lender, other than a federally insured
depository institution, shall make a loan pursuant to the New
Mexico Bank Installment Loan Act of 1959 that has an annual
percentage rate greater than one hundred seventy-five
percent, calculated pursuant to 12 CFR Part 1026, known as
"Regulation Z".
E. The provisions of Subsections B and C of this section shall not apply to refund anticipation loans. As used in this subsection, "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee.

F. Except as provided by Section 58-7-3.2 NMSA 1978, any rollover, renewal, refinance or modification of an existing loan agreement with a lender, except a modification without any additional cost to the consumer, shall constitute a new loan and shall require new disclosures pursuant to the federal Truth in Lending Act."

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

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

A. Any person willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100) or more than five thousand dollars ($5,000) or imprisoned for not more than six months or both, in the discretion of the court. A contract or loan in the making or collection of which an act
is done that violates Section 58-7-6 or 58-7-7 NMSA 1978 is void and the lender has no right to collect, receive or retain any interest or charges whatsoever. A lender may not collect the principal of a loan if the lender has violated Subsection A of Section 58-15-3 NMSA 1978, or knowingly violated the provisions of Section 58-7-6 or 58-7-7 NMSA 1978.

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

C. A violation of a provision of the New Mexico Bank Installment Loan Act of 1959 that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act."

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

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

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

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

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

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

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

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

(a) public record information; or

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

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

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

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

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

E. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and

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

F. Any person complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959."

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

"REQUIREMENTS FOR MAKING AND PAYING LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT AND INTEREST.--

A. Every lender shall:

(1) at the time a consumer becomes contractually obligated on a precomputed loan transaction, deliver to the borrower or, if there are two or more
borrowers on the same obligation, to one of the borrowers, a
written statement on which shall be printed a copy of Section
58-7-3 NMSA 1978, and which shall disclose in clear and
distinct terms:
(a) the amount of the loan;
(b) the date the loan was consummated;
(c) a schedule or a description of the
payments;
(d) the type of the security, if any,
securing the loan;
(e) the name and address of the lender;
(f) the name of the person primarily
obligated for the loan;
(g) the amount of principal;
(h) the annual percentage rate as
calculated pursuant to 12 CFR Part 1026, known as "Regulation
Z", and the amount of interest payable in dollars and cents;
(i) all other disclosures required
pursuant to state and federal law; and
(j) the charge for any other item
allowable and included pursuant to the New Mexico Bank
Installment Loan Act of 1959, stated so as to clearly show
the allocation of each item included;
(2) for each payment made on account of a
loan, give to the person making the payment a plain and
complete receipt specifying the date and amount of the
payment, the amount applied to interest and principal and the
balance unpaid. When a payment is made in a manner other
than by the borrower in person, by an agent of the borrower
or by check or money order, the licensee shall mail the
receipt to the borrower's last known address or retain and
deliver the receipt upon request of the borrower. A licensee
may deliver the receipt electronically to the borrower via
text message or email, if requested to do so in writing by
the borrower. A borrower may withdraw authorization for
electronic delivery of receipts in writing at any time. A
licensee shall not require a borrower to receive receipts
electronically. The licensee shall maintain a copy of each
receipt in the office of the licensee as a part of the
licensee's records; and

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

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

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

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

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

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

"RIGHT OF RESCISSION.--All agreements for precomputed loan transactions shall include a provision granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender pursuant to the New Mexico Bank Installment Loan Act of 1959 no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower."

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

"58-15-2. DEFINITIONS.--The following words and terms when used in the New Mexico Small Loan Act of 1955 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:
A. "consumer" means a person who resides in New Mexico or who enters into a loan agreement in New Mexico;

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

(1) public record information; or

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

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

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

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

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

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

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

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

    J. "person" includes an individual, copartner,
association, trust, corporation and any other legal entity;

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

L. "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual percentage rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. A violation of a provision of the New Mexico Small Loan Act of 1955 that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act."

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

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

A. Licensees shall file with the director each year reports containing at least the following information for the preceding calendar year ending December 31 in an aggregated, nonidentifying consumer manner as specified below:

1. A description of each loan product offered by the licensee, including:
   (a) whether the loan product was secured or unsecured;
   (b) whether the loan product was made
pursuant to the New Mexico Small Loan Act of 1955 or the New
Mexico Bank Installment Loan Act of 1959;

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

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

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

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

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

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

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

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

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

(a) less than or equal to thirty-six
percent;
(b) more than thirty-six percent through one hundred percent;
(c) more than one hundred percent through one hundred fifty percent; and
(d) more than one hundred fifty percent through one hundred seventy-five percent;

(4) for each loan product, the following aggregate amounts of fees and interest:
(a) a list of each fee charged by the lender and a description of each fee product or type, including fees charged for loan origination and credit insurance;
(b) the total dollar amount of each fee product charged by the lender and paid by the borrower; and
(c) the total dollar amount of interest charged by the lender and paid by the borrower;

(5) for each loan product:
(a) the number of loans for which the original term of the loan was: 1) less than one hundred twenty days; 2) between one hundred twenty days and three hundred sixty-five days; 3) between three hundred sixty-five days and seven hundred thirty-one days; 4) between seven hundred thirty-one days and five years; and 5) longer than five years;
(b) for each item set forth in
Subparagraph (a) of this paragraph, the average actual
repayment time for the given loan product and loan term; and

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

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

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

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

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

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

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

(12) for each loan product, the number of loans for which a borrower has defaulted on a loan, and for each loan product, the percentage of total loans of that product for which the borrower has defaulted on a loan;

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

(14) the number of loans and percentage of all borrowers the lender filed action against for default;
(15) the total number of loans secured by a motor vehicle and the number of those loans for which the motor vehicle was repossessed;

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

(17) the total number and percentage of borrowers of all loan products whose sources of income, as provided by borrowers in the loan origination process, included a means-tested public benefit as defined by 8 U.S.C. Section 1613(c);

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

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

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

B. The reports required pursuant to Subsection A of this section shall be submitted to the director on or before the fifteenth day of April each year.

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

D. A licensee that fails to timely submit complete
and accurate reports as required pursuant to Subsection A of
this section on or before the fifteenth day of April may:

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

(2) have a license required pursuant to the
New Mexico Small Loan Act of 1955 suspended pursuant to
Section 58-15-8 NMSA 1978."

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

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

A. It is unlawful for any person licensed under
the New Mexico Small Loan Act of 1955, in connection with the
making of a loan under that act:

(1) to sell life insurance other than a term
policy or credit life insurance on the principal borrowers;

(2) to sell term or credit life insurance
the coverage of which exceeds the amount of the loan or
extends beyond the term for which the loan is made;
(3) after having made a loan, to finance any premiums of any life insurance policies, other than credit life insurance, sold to the borrower by the licensee or the licensee's agent in any manner for a period of ninety days;

(4) after having made a loan, to finance any premium of any single-interest property insurance policy sold to the borrower by the licensee or the licensee's agent whereby the premium would be charged to the borrower in any manner. Nothing in this section shall preclude the sale and purchase of an insurance policy covering the dual interest of borrower and lien holder; or

(5) to sell property insurance on unsecured loans.

B. A lender may charge for only the actual cost of any insurance; provided that all insurance shall be written by a company licensed to operate within the state and at a rate not higher than those approved by the superintendent of insurance; and provided further that the lender shall not require any insurance to be written or provided by or through a particular agent, broker or insurer as a condition to making the loan, but shall, at the borrower's option, permit the insurance to be procured from any insurer or agent authorized by law to provide the insurance."

SECTION 12. Section 58-15-17 NMSA 1978 (being Laws 1955, Chapter 128, Section 15, as amended) is amended to
"58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
JUDGMENT AND INTEREST.---

A. Every licensee shall:

   (1) at the time a consumer becomes
contractually obligated on a loan pursuant to the New Mexico
Small Loan Act of 1955, deliver to the borrower or, if there
are two or more borrowers on the same obligation, to one of
them, a statement on which shall be printed a copy of Section
58-15-14.1 NMSA 1978 and which shall disclose in clear and
distinct terms:

       (a) the amount of the loan;

       (b) the date the loan was made;

       (c) a schedule or a description of the
payments;

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

       (e) the name and address of the
licensee;

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

       (g) the amount of principal;

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

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

   (j) the charge for any other item
allowable and included pursuant to the New Mexico Small Loan
Act of 1955, so stated as to clearly show the allocation of
each item included;

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

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

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

C. A judgment against a party on a loan made
pursuant to the New Mexico Small Loan Act of 1955 shall not
include, and the loan shall not include, from the date of the
judgment, charges against a party to the loan other than
costs, attorney fees and post-judgment interest as provided
by law.

D. A loan made pursuant to the New Mexico Small
Loan Act of 1955 that is filed and approved as a claim in any
bankruptcy proceeding shall bear interest at the rate of ten
percent per year beginning on the ninetieth day following the
date of adjudication. This limitation shall not apply when
the bankrupt is not discharged in bankruptcy or to any
obligation not dischargeable under the provisions of the United States Bankruptcy Code presently in force.

E. A loan made pursuant to the provisions of the New Mexico Small Loan Act of 1955 shall not bear interest in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower.

F. A loan made pursuant to the New Mexico Small Loan Act of 1955 shall not bear interest in excess of ten percent per year upon the unpaid principal balance of the loan after twelve months following the date of maturity of the loan.

G. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days unless the loan is a refund anticipation loan.

H. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is an installment loan or a refund anticipation loan.

I. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955, other than a refund anticipation loan, unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

J. A lender shall not make a loan pursuant to the
New Mexico Small Loan Act of 1955 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

K. Upon request from the borrower, all lenders licensed pursuant to the New Mexico Small Loan Act of 1955 shall give or forward to the borrower copies of all loan agreements concerning that borrower, a copy of all receipts maintained in that borrower's loan file and a written statement of that borrower's loan history, including all fees charged, amortization schedules, that borrower's payment history, including the dates and amounts of payments made, and the total amount unpaid pursuant to each contract. All lenders shall retain for seven years from the date of loan file origination or loan payoff, whichever is the later, the documentation specified in this subsection.

L. Any rollover, renewal, refinance or modification of an existing loan agreement with a licensee, except a modification without any additional cost to the borrower, shall constitute a new loan and shall require new disclosures pursuant to the Truth in Lending Act."

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

"58-15-20. FEES AND COSTS.--"
A. Notwithstanding any provision of the New Mexico Small Loan Act of 1955, lawful fees, if any, actually and necessarily paid out by the licensee to a public officer for the filing, recording or releasing in a public office of an instrument securing the loan may be charged to the borrower.

B. Notwithstanding any provision in a note or other loan contract taken or received under the New Mexico Small Loan Act of 1955, attorney fees shall not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection who is not a salaried employee of the holder of the contract, after the licensee has made a diligent and good faith effort to collect and has failed.

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

D. Delinquency fees shall not exceed five cents ($0.05) for each one dollar ($1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed ten dollars ($10.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid."
SECTION 14. Section 58-15-20.1 NMSA 1978 (being Laws 2017, Chapter 110, Section 20) is amended to read:

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

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

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

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

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

A. The division shall:

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

(2) establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee."
B. The division shall compile from reports filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an annual report by July 1 of each year containing data regarding loans entered into by licensees, which data shall be aggregated for all licensees and non-identifiable by licensee. Annual reports shall be made available to interested parties and the general public and published on the division's website. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding calendar year, including each of the specific categories of information set forth in Subsection A of Section 58-15-10.1 NMSA 1978.

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

SECTION 16. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:
"RIGHT OF RESCISSION.--All loan agreements shall include a provision granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender under the New Mexico Small Loan Act of 1955 no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower."

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

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