

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 66

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; CHANGING THE PERMITTED PERCENTAGE RATES FOR LOANS PURSUANT TO THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING A LICENSE FOR CERTAIN LENDERS; CHANGING CERTAIN REPORTING REQUIREMENTS; REQUIRING NOTICE.

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

SECTION 1. Section 58-7-3 NMSA 1978 (being Laws 1995,

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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)~~] ten thousand dollars (\$10,000) 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, calculated pursuant to Subsections D, E and F of Section 58-7-7 NMSA 1978, 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 HJC→that shall be charged no more than once per individual consumer within a twelve-month period←HJC , shall be charged or contracted for,

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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 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

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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,

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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

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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. Hf11→~~HJC→No←HJC HJC→Except as provided in Subsection K of this section, no←HJC←Hf11~~ Hf11→No←Hf11 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] a permitted annual percentage rate greater than [~~one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z"~~

Hf11→thirty-six percent←Hf11 Hf11→:

(1) ninety-nine percent for a loan in an amount of one thousand one hundred dollars (\$1,100) or less, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", this subsection and Subsection E of this section; provided that the loan shall not have a loan term longer than twenty-four months, the loan shall not be refinanced by the lender and the calculation of the permitted annual percentage rate shall include finance charges as defined in 12 CFR Part 1026, known as "Regulation Z"; or

(2) thirty-six percent for a loan in an amount

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greater than one thousand one hundred dollars (\$1,100) ←Hf11 ,
 calculated pursuant to HCEDC→12 CFR Part 1026, known as
 "Regulation Z", ←HCEDC this subsection and Subsections E and F
 of this section Hf11→. ~~The~~ ←Hf11 Hf11→; provided that
 the ←Hf11 calculation of the permitted annual percentage
 HCEDC→ ~~rate shall:~~

~~(1) include finance charges as defined in 12
 CFR Part 1026, known as "Regulation Z", charges for any
 ancillary product or service sold or any fee charged in
 connection or concurrent with the extension of credit, any
 credit insurance premium or fee and any charge for single
 premium credit insurance or any other fee related to insurance;~~

~~(2) include any charge as provided in
 Paragraph (1) of this subsection even if that charge would be
 excluded from the calculation of finance charges pursuant to
 Regulation Z;~~

~~(3) not include any amount paid to a public
 official in relation to the extension of credit, including fees
 to record liens; and~~

~~(4) follow the rules established for
 calculating the disclosed annual percentage rate for credit
 transactions pursuant to Regulation Z based on the charges set
 forth in Paragraph (1) of this subsection.~~ ←HCEDC HCEDC→rate
 shall include finance charges as defined in 12 CFR Part 1026,
 known as "Regulation Z". ←HCEDC

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E. Nothing in Subsection D of this section shall permit the imposition of fees, interest or charges of any kind not otherwise permitted by the New Mexico Bank Installment Loan Act of 1959.

F. Hf11→If←Hf11 Hf11→For a loan in an amount greater than one thousand one hundred dollars (\$1,100), if←Hf11 the prime rate of interest exceeds ten percent for three consecutive months, then during the month following the third consecutive month in which prime exceeded ten percent, the maximum allowable permitted annual percentage rate set forth in this section shall increase to thirty-six percent plus each percentage point or fraction of a percentage point by which the prime rate of interest exceeded ten percent in the most recent month. When the prime rate of interest falls below ten percent for three consecutive months, the maximum allowable permitted annual percentage rate shall return to thirty-six percent.

G. The director of the financial institutions division of the regulation and licensing department shall post a notice on the division's website within ten days after the provisions of Subsection F of this section become applicable. The notice shall state the date on which any increase or decrease in the maximum allowable permitted annual percentage rate is effective.

H. The maximum allowable permitted annual percentage rate for a loan to a consumer shall be determined as

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of the date that the loan is made.

[E-] I. 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-] J. 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. Hf11→HJC→"←HJC

~~HJC→K. If a borrower is denied a loan at thirty-six percent or less, calculated pursuant to Subsections D, E and F of this section, by a credit union or other lender that regularly offers such loans to the public, that borrower may apply for a loan at a rate of up to ninety-nine calculated percent, pursuant to 12 CFR Part 1026, known as "Regulation Z"; provided that the borrower submits written or electronic proof to the lender that within the previous thirty days, the borrower applied for and was denied a loan at a rate not to exceed thirty-six percent. Notwithstanding the provisions of~~

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~~this subsection, a lender shall not offer a loan product within the state at a rate higher than thirty-six calculated percent, pursuant to the provisions of this subsection, unless such rate has been approved by the financial institutions division of the regulation and licensing department. In considering approval of a loan product with rates higher than thirty-six calculated percent, the financial institutions division shall consider the cost to the lender of making the loan at the proposed rate and the risks to the lender of nonpayment. The financial institutions division shall issue rules implementing the provisions of this subsection no later than January 1, 2022.~~

~~L. All loans made pursuant to this section shall comply with the following:~~

~~(1) a loan shall not:~~

~~(a) be made for a term of greater than twenty-four months, not including any refinancing term;~~

~~(b) accrue late fees, non-sufficient funds bank fees, origination fees, prepayment penalties or charges for any ancillary product;~~

~~(c) accrue interest after ninety days of nonpayment;~~

~~(d) be recoverable through wage garnishment or assignment; or~~

~~(e) be eligible for refinance of the loan by the lender, unless the borrower is not in default on~~

~~the current loan and has made at least thirty percent of the payments and paid at least thirty percent of the principal;~~

~~(2) a loan shall be subject to underwriting and shall be reported on to at least one consumer credit reporting agency; and~~

~~(3) a lender shall provide a clear disclosure that complies with the federal Truth in Lending Act, including an amortization schedule."~~ ←HJC ←Hf11 Hf11 →" ←Hf11

SECTION 4. 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

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Act of 1959:

(1) "consumer" means a person who resides in New Mexico or who enters into a loan agreement [~~subject to the~~] in 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) "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;

[~~(3)~~] (4) "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)~~] (5) "month" means one-twelfth of a year;

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~~[(5)]~~ (6) "person" includes an individual, copartner, association, trust, corporation and any other legal entity;

(7) "prime rate of interest" means the bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the preceding month; and

~~[(6)]~~ (8) "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 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

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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 5. 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

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(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]~~ that is not a refund anticipation loan and is in an amount less than or equal to ten thousand dollars (\$10,000) that is to be repaid:

(1) 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; or

(2) in any number of payments and with any initial stated days to maturity that bears no finance charge as

disclosed pursuant to 12 C.F.R. Part 1026, known as "Regulation Z", and with respect to which no other fees or charges of any kind are imposed at any time;

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;

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

K. "prime rate of interest" means the bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the preceding month;

[K-] L. "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-] M. "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 6. 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)~~] ten thousand dollars (\$10,000) 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 [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less under a written agreement providing for a total loan or line of credit in excess of [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000).

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:

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(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~~]

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(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) making loans disguised as a personal property sale and leaseback transaction;

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(f) disguising loan proceeds as a cash

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rebate for the pretextual installment sale of goods or services

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Hf11→HJC→(g) making, offering,
assisting or arranging a debtor to obtain a loan with a greater
rate or interest, consideration or charge than is permitted by
Chapter 58 NMSA 1978 through any method, including mail,
telephone, internet or any electronic means, regardless of
whether the person has a physical location in the state; and

(3) a person purporting to act as an agent,
service provider or in another capacity for another entity that
is exempt from the New Mexico Small Loan Act of 1955, if, among
other things:

(a) the person holds, acquires or
maintains, directly or indirectly, the predominant economic
interest in the loan;

(b) the person markets, brokers,
arranges or facilitates the loan and holds the right,
requirement or first right of refusal to purchase loans,
receivables or interests in the loans; or

(c) the totality of the circumstances
indicate that the person is the lender and the transaction is
structured to evade the requirements of the New Mexico Small
Loan Act of 1955. In deciding whether the totality of the
circumstances indicate that the person is a lender and a
transaction is structured to evade the requirements of the New

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~~Mexico Small Loan Act of 1955, all relevant factors may be considered, including where the person: 1) indemnifies, insures or protects an exempt entity for any costs or risks related to the loan; 2) predominantly designs, controls or operates the loan program; or 3) purports to act as an agent, service provider or in another capacity for an exempt entity while acting directly as a lender in other states~~ ←HJC←Hf11

Hf11→(g) making, offering, assisting or arranging a debtor to obtain a loan with a greater rate or interest, consideration or charge than is permitted by Chapter 58 NMSA 1978 through any method, including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state; and

(3) Hf11→if the loan exceeds the rate permitted by Chapter 58 NMSA 1978, ←Hf11 a person purporting to act as an agent, service provider or in another capacity for another entity that is exempt from the New Mexico Small Loan Act of 1955, if, among other things:

(a) the person holds, acquires or maintains, directly or indirectly, the predominant economic interest in the loan;

(b) the person markets, brokers, arranges or facilitates the loan and holds the right, requirement or first right of refusal to purchase loans, receivables or interests in the loans; or

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(c) the totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of the New Mexico Small Loan Act of 1955. In deciding whether the totality of the circumstances indicate that the person is a lender and a transaction is structured to evade the requirements of the New Mexico Small Loan Act of 1955, all relevant factors may be considered, including where the person: 1) indemnifies, insures or protects an exempt entity for any costs or risks related to the loan; 2) predominantly designs, controls or operates the loan program; or 3) purports to act as an agent, service provider or in another capacity for an exempt entity while acting directly as a lender in other states←Hf11 .

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.

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F. A loan in an amount equal to [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000) 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 7. Section 58-15-9 NMSA 1978 (being Laws 1955, Chapter 128, Section 9, as amended) is amended to read:

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

A. At least once each year, the director or the director's authorized representative shall make an examination of the place of business of each licensee and the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 as the director may deem necessary. The licensee shall pay to the director for such annual examination a fee of two hundred dollars (\$200).

B. Within a reasonable time after the completion of an examination of a licensed office, the director shall mail to the licensee a copy of the report of the examination, together with any comments, exceptions, objections or criticisms of the

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director concerning the conduct of the licensee and the operation of the licensed office.

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

(1) any licensee;

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

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

D. For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or licenses issued by a state or federal agency

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or under any special statute, shall be subject to investigation under the New Mexico Small Loan Act of 1955 and shall be presumed to be engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 as to any loans of [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less.

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

F. For the purposes of this section, the director or the director's authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine the person under oath relative to such loans or business or to the subject

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matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear before the director for examination under oath may be served by registered mail. If the party notified to appear is the licensee, any person named on the face of the license being investigated or any agent, employee or manager participating in the licensee's business and the party fails to appear for examination or refuses to answer questions submitted, the director may, forthwith and without further notice to the licensee, suspend the license involved pending compliance with the notice. Upon failure of any other person to appear or to answer questions, the director may apply to and invoke the aid of any district court of New Mexico in compelling the attendance and testimony of any such person and the production of books, records, written instruments and documents relating to the business of the licensee. The district court whose aid is so invoked by the director may, in case of contumacy or refusal to obey any order of the district court issued to compel the attendance of the person or the production of books, records, written instruments and documents, punish the person as for contempt of court.

G. The director shall prescribe rules of procedure for all hearings, examinations or investigations provided for in the New Mexico Small Loan Act of 1955. The director is not bound by the usual common law or statutory rules of evidence or

by any technical or formal rules of procedure or pleading and specification of charges other than as specifically provided in the New Mexico Small Loan Act of 1955 but may conduct hearings, examinations and investigations in the manner best calculated to ascertain the substantial rights of the parties interested.

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

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

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

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testimony is material.

K. Whenever the director has reasonable cause to believe that a person is violating a provision of the New Mexico Small Loan Act of 1955, the director may, in addition to all actions provided for in that act and without prejudice thereto, enter an order requiring the person to desist or to refrain from the violation. An action may be brought on the relation of the attorney general and the director to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction or final injunction, the court in which such action is brought shall have power and jurisdiction to impound and to appoint a receiver for the property and business of the defendants, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of the New Mexico Small Loan Act of 1955 through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as are from time to time conferred upon the receiver

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by the court."

SECTION 8. 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;

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(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); and

(e) five thousand one dollars (\$5,001) to ten thousand dollars (\$10,000);

(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]~~ ten percent;

(b) more than ~~[thirty-six]~~ ten percent through ~~[one hundred]~~ eighteen percent;

(c) more than ~~[one hundred]~~ eighteen percent through ~~[one hundred fifty]~~ thirty-six percent;

Hf11→~~and~~←Hf11

(d) ~~[more than one hundred fifty percent through one hundred seventy-five percent]~~ more than thirty-six percent if a permitted annual percentage rate is subject to an elevated calculation pursuant to Subsection L of Section 58-15-17 NMSA 1978 or Subsection F of Section 58-7-7 NMSA 1978;

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Hf11→and

(e) less than or equal to ninety-nine percent for a loan in an amount of one thousand one hundred dollars (\$1,100) or less pursuant to Subsection J of Section 58-15-17 NMSA 1978 or Subsection D of Section 58-7-7 NMSA 1978;←Hf11

(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

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(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

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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;

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(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.

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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 9. Section 58-15-10.2 NMSA 1978 (being Laws 2017, Chapter 110, Section 21) is amended to read:

"58-15-10.2. REPORTING OF CREDIT REQUIRED.--

A. For each installment loan issued pursuant to Paragraph (1) of Subsection F of Section 58-15-2 NMSA 1978 and refund anticipation loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

B. For each installment loan issued pursuant to Paragraph (2) of Subsection F of Section 58-15-2 NMSA 1978, a lender may report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

C. Any lender making a report to a consumer

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reporting agency pursuant to this section shall report both positive and negative performance by the borrower."

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

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

SECTION 11. Section 58-15-17 NMSA 1978 (being Laws 1955, Chapter 128, Section 15, as amended) is amended to read:

"58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER

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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

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(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

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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. Hf11→~~HJC→A←HJC HJC→~~Except as provided in ~~Subsection Q of this section, a←HJC←~~Hf11 Hf11→~~A←~~Hf11 lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 that has [~~an~~] a permitted annual percentage rate greater than [~~one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z"~~]

Hf11→~~thirty-six percent←~~Hf11 Hf11→:

(1) ninety-nine percent for a loan in an

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amount of one thousand one hundred dollars (\$1,100) or less, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", this subsection and Subsection K of this section; provided that the loan shall not have a loan term longer than twenty-four months, the loan shall not be refinanced by the lender and the calculation of the permitted annual percentage rate shall include finance charges as defined in 12 CFR Part 1026, known as "Regulation Z"; or

(2) thirty-six percent for a loan in an amount greater than one thousand one hundred dollars (\$1,100) calculated pursuant to HCEDC 12 CFR Part 1026, known as "Regulation Z", this subsection and Subsections K and L of this section. The; provided that the calculation of the permitted annual percentage rate shall HCEDC:

~~(1) include finance charges as defined in 12 CFR Part 1026, known as "Regulation Z", charges for any ancillary product or service sold or any fee charged in connection or concurrent with the extension of credit, any credit insurance premium or fee and any charge for single premium credit insurance or any other fee related to insurance;~~

~~(2) include any charge as provided in Paragraph (1) of this subsection even if that charge would be excluded from the calculation of finance charges pursuant to Regulation Z;~~

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~~(3) not include any amount paid to a public official in relation to the extension of credit, including fees to record liens; and~~

~~(4) follow the rules established for calculating the disclosed annual percentage rate for credit transactions pursuant to Regulation Z based on the charges set forth in Paragraph (1) of this subsection.~~ ←HCEDC HCEDC→ include any finance charges as defined in 12 CFR Part 1026, known as "Regulation Z". ←HCEDC

K. Nothing in Subsection J of this section shall permit the imposition of fees, interest or charges of any kind not otherwise permitted by the New Mexico Small Loan Act of 1955.

L. Hf11→If←Hf11 Hf11→For a loan in an amount greater than one thousand one hundred dollars (\$1,100), if←Hf11 the prime rate of interest exceeds ten percent for three consecutive months, then during the month following the third consecutive month in which prime exceeded ten percent, the maximum allowable permitted annual percentage rate set forth in this section shall increase to thirty-six percent plus each percentage point or fraction of a percentage point by which the prime rate of interest exceeded ten percent in the most recent month. When the prime rate of interest falls below ten percent for three consecutive months, the maximum allowable permitted annual percentage rate shall return to thirty-six percent.

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M. The director of the division shall post a notice on the division's website within ten days after the provisions of Subsection L of this section become applicable. The notice shall state the date on which any increase or decrease in the maximum allowable permitted annual percentage rate is effective.

N. The maximum allowable permitted annual percentage rate for a loan to a consumer shall be determined as of the date that the loan is made.

~~[K.]~~ O. 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.]~~ P. 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

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disclosures pursuant to the federal Truth in Lending Act.

Hf11→HJC→"←HJC

~~HJC→Q. If a borrower is denied a loan at thirty-six percent or less, calculated pursuant to Subsections J, K and L of this section, by a credit union or other lender that regularly offers such loans to the public, that borrower may apply for a loan at a rate of up to ninety-nine calculated percent, pursuant to 12 CFR Part 1026, known as "Regulation Z"; provided that the borrower submits written or electronic proof to the licensee that within the previous thirty days, the borrower applied for and was denied a loan at a rate not to exceed thirty-six percent. Notwithstanding the provisions of this subsection, a licensee shall not offer a loan product within the state at a rate higher than thirty-six calculated percent, pursuant to the provisions of this subsection, unless such rate has been approved by the division. In considering approval of a loan product with rates higher than thirty-six calculated percent, the division shall consider the cost to the licensee of making the loan at the proposed rate and the risks to the licensee of nonpayment. The division shall issue rules implementing the provisions of this subsection no later than January 1, 2022.~~

~~R. All loans made pursuant to this section shall comply with the following:~~

~~(1) a loan shall not:~~

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~~(a) be made for a term of greater than twenty-four months, not including any refinancing term;~~

~~(b) accrue late fees, non-sufficient funds bank fees, origination fees, prepayment penalties or charges for any ancillary product;~~

~~(c) accrue interest after ninety days of nonpayment;~~

~~(d) be recoverable through wage garnishment or assignment; or~~

~~(e) be eligible for refinance of the loan by the licensee, unless the consumer is not in default on the current loan and has made at least thirty percent of the payments and paid at least thirty percent of the principal;~~

~~(2) a loan shall be subject to underwriting;~~

~~and~~

~~(3) a licensee shall provide a clear disclosure that complies with the federal Truth in Lending Act, including an amortization schedule."~~~~HJC~~~~Hf11~~ ~~Hf11~~~~"~~~~Hf11~~

SECTION 12. Section 58-15-21 NMSA 1978 (being Laws 1955, Chapter 128, Section 19, as amended) is amended to read:

"58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE PURCHASES.--The payment of ten thousand dollars (\$10,000) or less in money, credit, goods or things in action, as consideration for any sale or assignment of or order for the payment of wages, salary, commission or

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other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under the New Mexico Small Loan Act of 1955, be deemed a loan of money secured by such sale, assignment or order. The amount by which compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and subject to the provisions of the New Mexico Small Loan Act of 1955."

SECTION 13. Section 58-15-24 NMSA 1978 (being Laws 1955, Chapter 128, Section 22, as amended) is amended to read:

"58-15-24. LOANS MADE ELSEWHERE.--No loan made outside this state to a resident of New Mexico in the amount or of the value of [~~five thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less for which a greater rate of interest, consideration, charge or compensation to the lender than is permitted by the general laws of New Mexico in force governing money, interest and usury has been charged, contracted for or received shall be enforced in this state. Every person in any way participating in such a loan in this state is subject to the provisions of the New Mexico Small Loan Act of 1955. Any loan made to a nonresident of New Mexico in conformity with the law of the state where made may be enforced in this state."

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HJC→SECTION 14. EFFECTIVE DATE.--The effective date of
the provisions of this act is July 1, 2022.←HJC

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