

1 HOUSE BILL 149

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Susan K. Herrera and Patricia Roybal Caballero and Joy Garratt
5 and Roger Montoya
6
7
8
9

10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; CHANGING THE PERMITTED
12 PERCENTAGE RATES FOR LOANS PURSUANT TO THE NEW MEXICO BANK
13 INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT
14 OF 1955; REQUIRING A LICENSE FOR CERTAIN LENDERS; CHANGING
15 CERTAIN REPORTING REQUIREMENTS.
16

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

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

20 "58-7-3. LOANS COVERED BY ACT.--

21 A. The New Mexico Bank Installment Loan Act of 1959
22 applies to a loan that is a precomputed loan repayable in
23 installments and that is clearly identified on the loan
24 documents as being made under that act.

25 B. A loan in an amount equal to [~~five thousand~~

.219189.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~dollars (\$5,000)]~~ ten thousand dollars (\$10,000) or less shall
2 be made only pursuant to the New Mexico Bank Installment Loan
3 Act of 1959 or the New Mexico Small Loan Act of 1955. A loan
4 made pursuant to the New Mexico Bank Installment Loan Act of
5 1959 shall be identified in the loan documents as being made
6 pursuant to that act.

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

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

11 "58-7-6. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--

12 A. No amount, other than the total finance charge,
13 calculated pursuant to Subsections D, E and F of Section 58-7-7
14 NMSA 1978, which consists solely of interest and a fully earned
15 processing fee not to exceed the lesser of two hundred dollars
16 (\$200) or ten percent of the principal, shall be charged or
17 contracted for, directly or indirectly, on or in connection
18 with a precomputed loan transaction except as follows:

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

.219189.1

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

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

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

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

23 (5) if a loan under the New Mexico Bank
24 Installment Loan Act of 1959 is secured and if the borrower
25 fails to pay any governmental or other levy arising after the

.219189.1

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

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

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

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

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

.219189.1

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

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

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

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

8 "58-7-7. RESTRICTIONS.--

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

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

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

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

.219189.1

underscoring material = new
[bracketed material] = delete

1 Mexico Bank Installment Loan Act of 1959 that has ~~[an]~~ a
2 permitted annual percentage rate greater than ~~[one hundred~~
3 ~~seventy-five percent, calculated pursuant to 12 CFR Part 1026,~~
4 ~~known as "Regulation Z"]~~ thirty-six percent, calculated
5 pursuant to this subsection and Subsections E and F of this
6 section. The calculation of the permitted annual percentage
7 rate shall:

8 (1) include, as applicable to the extension of
9 consumer credit:

10 (a) finance charges as defined in 12 CFR
11 Part 1026, known as "Regulation Z"; and

12 (b) charges for any ancillary product or
13 service sold or any fee charged in connection or concurrent
14 with the extension of credit, including any credit insurance
15 premium or fee, any charge for single premium credit insurance
16 or any other fee related to insurance;

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

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

24 (4) follow the rules established for
25 calculating the disclosed annual percentage rate for credit

.219189.1

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

1 transactions pursuant to Regulation Z based on the charges set
2 forth in Paragraph (1) of this subsection.

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

7 F. If the prime rate of interest exceeds ten
8 percent for two consecutive months, then during the month
9 following the third consecutive month in which prime exceeded
10 ten percent, the maximum allowable permitted annual percentage
11 rate set forth in this section shall increase to thirty-six
12 percent plus each percentage point or fraction of a percentage
13 point by which the prime rate of interest exceeded ten percent
14 in the most recent month. When the prime rate of interest
15 falls below ten percent for two consecutive months, the maximum
16 allowable permitted annual percentage rate shall return to
17 thirty-six percent.

18 ~~[E.]~~ G. The provisions of Subsections B and C of
19 this section shall not apply to refund anticipation loans. As
20 used in this subsection, "refund anticipation loan" means a
21 loan that is secured by or that the creditor arranges or
22 expects to be repaid, directly or indirectly, from the proceeds
23 of the consumer's federal or state personal income tax refunds
24 or tax credits, including any sale, assignment or purchase of a
25 tax refund or tax credit at a discount or for a fee.

.219189.1

underscored material = new
[bracketed material] = delete

1 [F-] H. Except as provided by Section 58-7-3.2 NMSA
2 1978, any rollover, renewal, refinance or modification of an
3 existing loan agreement with a lender, except a modification
4 without any additional cost to the consumer, shall constitute a
5 new loan and shall require new disclosures pursuant to the
6 federal Truth in Lending Act."

7 **SECTION 4.** Section 58-15-2 NMSA 1978 (being Laws 1955,
8 Chapter 128, Section 2, as amended) is amended to read:

9 "58-15-2. DEFINITIONS.--The following words and terms
10 when used in the New Mexico Small Loan Act of 1955 have the
11 following meanings unless the context clearly requires a
12 different meaning. The meaning ascribed to the singular form
13 applies also to the plural:

14 A. "consumer" means a person who resides in New
15 Mexico or who enters into a loan agreement in New Mexico;

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

- 23 (1) public record information; or
24 (2) credit account information from persons
25 who furnish that information regularly and in the ordinary

underscoring material = new
[bracketed material] = delete

1 course of business;

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

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

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

9 F. "installment loan" means a loan in an amount
10 less than or equal to [~~five thousand dollars (\$5,000)~~] ten
11 thousand dollars (\$10,000) that is to be repaid in a minimum of
12 four substantially equal payments of principal and interest to
13 pay off a loan in its entirety with an initial stated maturity
14 of not less than one hundred twenty days to maturity.

15 "Installment loan" does not mean a refund anticipation loan;

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

25 H. "licensee" means a person to whom one or more

.219189.1

underscored material = new
[bracketed material] = delete

1 licenses have been issued pursuant to the New Mexico Small Loan
2 Act of 1955 upon the person's written application electing to
3 become a licensee and consenting to exercise the privilege of a
4 licensee solely in conformity with the New Mexico Small Loan
5 Act of 1955 and the lawful regulations promulgated by the
6 director under that act and whose name appears on the face of
7 the license;

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

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

15 K. "prime rate of interest" means the United States
16 prime rate of interest as listed in the online internet edition
17 of the Wall Street Journal as of the last business day of the
18 preceding month;

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

25 [~~L.~~] M. "simple interest" means a method of

underscored material = new
[bracketed material] = delete

1 calculating interest in which the amount of interest is
2 calculated based on the annual percentage rate disclosed in the
3 loan agreement and is computed only on the outstanding
4 principal balance of the loan."

5 SECTION 5. Section 58-15-3 NMSA 1978 (being Laws 1955,
6 Chapter 128, Section 3, as amended) is amended to read:

7 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
8 PENALTY.--

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

17 B. Nothing in the New Mexico Small Loan Act of 1955
18 shall apply to a person making individual advances of [~~five~~
19 ~~thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000) or
20 less under a written agreement providing for a total loan or
21 line of credit in excess of [~~five thousand dollars (\$5,000)~~]
22 ten thousand dollars (\$10,000).

23 C. A banking corporation, savings and loan
24 association or credit union operating under the laws of the
25 United States or of a state shall be exempt from the licensing

.219189.1

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

1 requirements of the New Mexico Small Loan Act of 1955, nor
2 shall that act apply to business transacted by any person under
3 the authority of and as permitted by any such law nor to any
4 bona fide pawnbroking business transacted under a pawnbroker's
5 license nor to bona fide commercial loans made to dealers upon
6 personal property held for resale. Nothing contained in the
7 New Mexico Small Loan Act of 1955 shall be construed as
8 abridging the rights of any of those exempted from the
9 operations of that act from contracting for or receiving
10 interest or charges not in violation of an existing applicable
11 statute of this state.

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

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

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

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

25 (b) the use of collateral or related

.219189.1

underscored material = new
[bracketed material] = delete

1 sales or purchases of goods or services or agreements to sell
2 or purchase, whether real or pretended;

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

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

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

11 (f) disguising loan proceeds as a cash
12 rebate for the pretextual installment sale of goods or
13 services; and

14 (g) making, offering, assisting or
15 arranging a debtor to obtain a loan with a greater rate or
16 interest, consideration or charge than is permitted by Chapter
17 58 NMSA 1978 through any method, including mail, telephone,
18 internet or any electronic means, regardless of whether the
19 person has a physical location in the state; and

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

24 (a) the person holds, acquires or
25 maintains, directly or indirectly, the predominant economic

.219189.1

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

1 interest in the loan;

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

6 (c) the totality of the circumstances
7 indicate that the person is the lender and the transaction is
8 structured to evade the requirements of the New Mexico Small
9 Loan Act of 1955. In deciding whether the totality of the
10 circumstances indicate that the person is a lender and a
11 transaction is structured to evade the requirements of the New
12 Mexico Small Loan Act of 1955, a court shall consider all
13 factors relevant, including where the person: 1) indemnifies,
14 insures or protects an exempt entity for any costs or risks
15 related to the loan; 2) predominantly designs, controls or
16 operates the loan program; or 3) purports to act as an agent,
17 service provider or in another capacity for an exempt entity
18 while acting directly as a lender in other states.

19 E. A person, copartnership, trust or a trustee or
20 beneficiary thereof or an association or corporation or a
21 member, officer, director, agent or employee thereof who
22 violates or participates in the violation of a provision of
23 Subsection A of this section is guilty of a petty misdemeanor
24 and upon conviction shall be sentenced pursuant to the
25 provisions of Subsection B of Section 31-19-1 NMSA 1978. A

.219189.1

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

1 contract or loan in the making or collection of which an act is
2 done that violates Subsection A or D of this section or Section
3 58-15-17 or 58-15-20 NMSA 1978 is void and the lender has no
4 right to collect, receive or retain any principal, interest or
5 charges whatsoever.

6 F. A loan in an amount equal to [~~five thousand~~
7 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less shall
8 be made only pursuant to the New Mexico Bank Installment Loan
9 Act of 1959 or the New Mexico Small Loan Act of 1955.

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

15 SECTION 6. Section 58-15-9 NMSA 1978 (being Laws 1955,
16 Chapter 128, Section 9, as amended) is amended to read:

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

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

.219189.1

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

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

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

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

17 (1) any licensee;

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

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

.219189.1

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

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

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

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

.219189.1

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

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

.219189.1

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

1 as for contempt of court.

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

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

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

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

.219189.1

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

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

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

.219189.1

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

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

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

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

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

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

17 (a) whether the loan product was secured
18 or unsecured;

19 (b) whether the loan product was made
20 pursuant to the New Mexico Small Loan Act of 1955 or the New
21 Mexico Bank Installment Loan Act of 1959;

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

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

.219189.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

14 (3) for each loan product, the number of loans
15 made and the total dollar amount of interest and fees charged
16 on the contracts for loans made within the following categories
17 of annual percentage rate calculated pursuant to 12 CFR Part
18 1026, known as "Regulation Z":

19 (a) less than or equal to [~~thirty-six~~]
20 ten percent;

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

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

25 (d) [~~more than one hundred fifty percent~~]

underscoring material = new
[bracketed material] = delete

1 ~~through one hundred seventy-five percent]~~ more than thirty-six
2 percent if a permitted annual percentage rate is subject to an
3 elevated calculation pursuant to Subsection L of Section
4 58-15-17 NMSA 1978 or Subsection F of Section 58-7-7 NMSA 1978;

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

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

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

12 (c) the total dollar amount of interest
13 charged by the lender and paid by the borrower;

14 (5) for each loan product:

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

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

24 (c) for each item set forth in
25 Subparagraph (a) of this paragraph, the number of loans for

.219189.1

1 which payments were due: 1) every two weeks; 2) every four
2 weeks; and 3) monthly;

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

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

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

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

.219189.1

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

1 of repaying that loan;

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

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

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

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

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

21 (15) the total number of loans secured by a
22 motor vehicle and the number of those loans for which the motor
23 vehicle was repossessed;

24 (16) the total number of loans secured by
25 non-motor vehicle personal property and the number of those

.219189.1

1 loans for which the non-motor vehicle personal property was
2 repossessed;

3 (17) the total number and percentage of
4 borrowers of all loan products whose sources of income, as
5 provided by borrowers in the loan origination process, included
6 a means-tested public benefit as defined by 8 U.S.C. Section
7 1613(c);

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

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

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

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

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

24 D. A licensee that fails to timely submit complete
25 and accurate reports as required pursuant to Subsection A of

.219189.1

underscored material = new
[bracketed material] = delete

1 this section on or before the fifteenth day of April may:

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

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

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

11 "58-15-12. ADVERTISING.--A licensee or other person
12 subject to the New Mexico Small Loan Act of 1955 shall not
13 advertise, display, distribute or broadcast or cause or permit
14 to be advertised, displayed, distributed or broadcast in any
15 manner whatsoever a false, misleading or deceptive statement or
16 representation with regard to the charges, terms or conditions
17 for loans in the amount or of the value of [~~five thousand~~
18 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less. The
19 director may require that charges or rates of charge, if stated
20 by a licensee, be stated fully and clearly in such manner as
21 the director deems necessary to prevent misunderstanding by
22 prospective borrowers. The director may permit or require
23 licensees to refer in their advertising to the fact that their
24 business is under state supervision, subject to conditions
25 imposed by the director to prevent erroneous impressions as to

.219189.1

underscored material = new
[bracketed material] = delete

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

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

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

8 A. Every licensee shall:

9 (1) at the time a consumer becomes
10 contractually obligated on a loan pursuant to the New Mexico
11 Small Loan Act of 1955, deliver to the borrower or, if there
12 are two or more borrowers on the same obligation, to one of
13 them, a statement on which shall be printed a copy of Section
14 58-15-14.1 NMSA 1978 and which shall disclose in clear and
15 distinct terms:

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

.219189.1

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

1 (g) the amount of principal;

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

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

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

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

.219189.1

1 licensee as a part of the licensee's records; and

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

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

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

20 D. A loan made pursuant to the New Mexico Small
21 Loan Act of 1955 that is filed and approved as a claim in any
22 bankruptcy proceeding shall bear interest at the rate of ten
23 percent per year beginning on the ninetieth day following the
24 date of adjudication. This limitation shall not apply when the
25 bankrupt is not discharged in bankruptcy or to any obligation

.219189.1

underscoring material = new
[bracketed material] = delete

1 not dischargeable under the provisions of the United States
2 Bankruptcy Code presently in force.

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

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

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

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

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

24 J. A lender shall not make a loan pursuant to the
25 New Mexico Small Loan Act of 1955 that has ~~[an]~~ a permitted

.219189.1

underscoring material = new
[bracketed material] = delete

1 annual percentage rate greater than [~~one hundred seventy-five~~
2 ~~percent, calculated pursuant to 12 CFR Part 1026, known as~~
3 ~~"Regulation Z"~~] thirty-six percent, calculated pursuant to this
4 subsection and Subsections K and L of this section. The
5 calculation of the permitted annual percentage rate shall:

6 (1) include, as applicable to the extension of
7 consumer credit:

8 (a) finance charges as defined in 12 CFR
9 Part 1026, known as "Regulation Z"; and

10 (b) charges for any ancillary product or
11 service sold or any fee charged in connection or concurrent
12 with the extension of credit, including any credit insurance
13 premium or fee, any charge for single premium credit insurance
14 or any other fee related to insurance;

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

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

22 (4) follow the rules established for
23 calculating the disclosed annual percentage rate for credit
24 transactions pursuant to Regulation Z based on the charges set
25 forth in Paragraph (1) of this subsection.

.219189.1

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

1 K. Nothing in Subsection J of this section shall
2 permit the imposition of fees, interest or charges of any kind
3 not otherwise permitted by the New Mexico Small Loan Act of
4 1955.

5 L. If the prime rate of interest exceeds ten
6 percent for two consecutive months, then during the month
7 following the third consecutive month in which prime exceeded
8 ten percent, the maximum allowable permitted annual percentage
9 rate set forth in this section shall increase to thirty-six
10 percent plus each percentage point or fraction of a percentage
11 point by which the prime rate of interest exceeded ten percent
12 in the most recent month. When the prime rate of interest
13 falls below ten percent for two consecutive months, the maximum
14 allowable permitted annual percentage rate shall return to
15 thirty-six percent.

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

.219189.1

underscored material = new
[bracketed material] = delete

1 or loan payoff, whichever is the later, the documentation
2 specified in this subsection.

3 [~~E.~~] N. Any rollover, renewal, refinance or
4 modification of an existing loan agreement with a licensee,
5 except a modification without any additional cost to the
6 borrower, shall constitute a new loan and shall require new
7 disclosures pursuant to the federal Truth in Lending Act."

8 SECTION 10. Section 58-15-24 NMSA 1978 (being Laws 1955,
9 Chapter 128, Section 22, as amended) is amended to read:

10 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside
11 this state to a resident of New Mexico in the amount or of the
12 value of [~~five thousand dollars (\$5,000)~~] ten thousand dollars
13 (\$10,000) or less for which a greater rate of interest,
14 consideration, charge or compensation to the lender than is
15 permitted by the general laws of New Mexico in force governing
16 money, interest and usury has been charged, contracted for or
17 received shall be enforced in this state. Every person in any
18 way participating in such a loan in this state is subject to
19 the provisions of the New Mexico Small Loan Act of 1955. Any
20 loan made to a nonresident of New Mexico in conformity with the
21 law of the state where made may be enforced in this state."

22 SECTION 11. SEVERABILITY.--If any part or application of
23 New Mexico Bank Installment Loan Act of 1959 is held invalid,
24 the remainder or its application to other situations or persons
25 shall not be affected.

.219189.1

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION 12. SEVERABILITY.--If any part or application of
New Mexico Small Loan Act of 1955 is held invalid, the
remainder or its application to other situations or persons
shall not be affected.