

HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 425

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES  
FOR CERTAIN INSTALLMENT AND SHORT-TERM INSTALLMENT LOANS;  
AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE NEW MEXICO SMALL  
LOAN ACT OF 1955 AND THE NEW MEXICO BANK INSTALLMENT LOAN ACT  
OF 1959.

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

SECTION 1. Section 56-8-9 NMSA 1978 (being Laws 1957,  
Chapter 209, Section 1, as amended) is amended to read:

"56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF  
MAXIMUM RATES--DEFINITION.--

A. Unless otherwise provided by law, no person,  
corporation or association, directly or indirectly, shall take,  
reserve, receive or charge any interest, discount or other  
advantage for the loan of money or credit or the forbearance or

.200583.3

underscored material = new  
[bracketed material] = delete

1 postponement of the right to receive money or credit except at  
2 the rates permitted in Sections 56-8-1 through 56-8-21 NMSA  
3 1978.

4 B. No provision of law prescribing maximum rates of  
5 interest that may be charged in any transaction shall apply to  
6 a transaction in which a corporation is a debtor, regardless of  
7 the purpose for which the corporation was formed and regardless  
8 of the fact that an individual is codebtor, endorser,  
9 guarantor, surety or accommodation party. No corporation or  
10 its codebtor, endorser, guarantor, surety or accommodation  
11 party shall have a cause of action or affirmatively plead,  
12 counterclaim, set off or set up the defense of usury in any  
13 action to recover damages or enforce a remedy on any obligation  
14 executed by the corporation, and no civil or criminal penalty  
15 [~~which~~] that would otherwise be applicable except as provided  
16 in Sections 30-43-1 through 30-43-5 NMSA 1978 shall apply on  
17 any obligation executed by the corporation.

18 C. A lender may, in the case of business or  
19 commercial loans for business or commercial purposes in the  
20 amount of five hundred thousand dollars (\$500,000) or more,  
21 take, receive, reserve or charge on any loan or discount made,  
22 or upon any note, bill of exchange or other evidence of debt,  
23 interest at a rate agreed to by the parties [~~even if the rate~~  
24 ~~exceeds the rate set forth in Section 56-8-11 NMSA 1978~~].

25 D. In addition to the maximum interest or discount

.200583.3

1 [which] that a lender is permitted to charge by law, the lender  
2 may charge, take, reserve or receive a premium or points in an  
3 amount up to but not exceeding three percent of the face amount  
4 of the loan on interim construction loans. The lender may  
5 charge and require the borrower to pay the premium upon  
6 execution of the loan agreement, whether the proceeds are  
7 delivered to the borrower immediately or whether there are to  
8 be obligatory or permissive future advances. The lender shall  
9 not be required to refund this charge in the event of  
10 prepayment of the obligation. For the purposes of this  
11 section, ~~[an]~~ "interim construction loan" means a loan secured  
12 by a first mortgage and used by the borrower primarily for  
13 financing the construction of buildings, structures or  
14 improvements on or to the real property on which the first  
15 mortgage has been taken.

16 E. A lender may charge, take, reserve or receive  
17 points or a premium on any loan secured by real property,  
18 provided the points or premium together with the interest or  
19 discount charged, taken, reserved or received do not exceed the  
20 maximum interest or discount permitted by law. The lender  
21 shall not be required to refund this charge in the event of  
22 prepayment even if the prepayment would result in a higher  
23 charge to the borrower than permitted by law.

24 F. A loan in an amount less than or equal to two  
25 thousand five hundred dollars (\$2,500) shall be made only

.200583.3

1 pursuant to the New Mexico Bank Installment Loan Act of 1959 or  
2 the New Mexico Small Loan Act of 1955."

3 SECTION 2. Section 58-7-1 NMSA 1978 (being Laws 1959,  
4 Chapter 327, Section 1) is amended to read:

5 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter  
6 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank  
7 Installment Loan Act of 1959"."

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

10 "58-7-3. LOANS COVERED BY ACT.--

11 A. The New Mexico Bank Installment Loan Act of 1959  
12 applies to a loan that is a precomputed loan repayable in  
13 installments ~~[or]~~ and that is clearly identified on the loan  
14 documents as being made under that act.

15 B. A loan in an amount less than or equal to two  
16 thousand five hundred dollars (\$2,500) shall be made only  
17 pursuant to the New Mexico Bank Installment Loan Act of 1959 or  
18 the New Mexico Small Loan Act of 1955."

19 SECTION 4. Section 58-7-3.1 NMSA 1978 (being Laws 1983,  
20 Chapter 96, Section 1) is amended to read:

21 "58-7-3.1. PRECOMPUTED LOAN.--~~[If the loan is]~~ In a  
22 precomputed loan transaction, the interest charge ~~[may]~~ shall  
23 be calculated on the assumption that all scheduled payments  
24 will be made when due, and the effect of prepayment is governed  
25 by the provisions of rebate upon prepayment in Section 58-7-5

1 NMSA 1978."

2 SECTION 5. Section 58-7-6 NMSA 1978 (being Laws 1959,  
3 Chapter 327, Section 6, as amended) is amended to read:

4 "58-7-6. ADDITIONAL CHARGES.--

5 A. No additional amount shall be charged or  
6 contracted for, directly or indirectly, on or in connection  
7 with any such installment loan except as follows:

8 [~~A.~~] (1) delinquency charges not to exceed  
9 [~~five cents (\$.05)]~~ ten cents (\$.10) for each one dollar  
10 (\$1.00) of each installment more than ten days in arrears,  
11 provided that the total of delinquency charges on any such  
12 installment shall not exceed [~~ten dollars (\$10.00)]~~ twenty-five  
13 dollars (\$25.00) and that only one delinquency charge shall be  
14 made on any one installment regardless of the period during  
15 which the installment remains unpaid;

16 [~~B.~~] (2) the lender may charge for only the  
17 actual cost of any insurance; provided, however, all insurance  
18 shall be written by [~~a company or~~] companies licensed to  
19 operate within the state and at rates no higher than those  
20 approved by the superintendent of insurance; and provided  
21 further that the lender [~~must~~] shall not require any insurance  
22 to be written or provided by or through any particular agent,  
23 broker or insurer as a condition to making the loan but [~~must~~]  
24 shall, at the borrower's option, permit the [~~same~~] insurance to  
25 be procured from any reputable insurer or through any reputable

.200583.3

1 agent authorized by law to provide it;

2 ~~[G.]~~ (3) in the event that a borrower fails to  
3 maintain in effect any insurance required in connection with a  
4 loan transaction, the lender may purchase the required  
5 insurance or lender's single interest insurance covering the  
6 lender's interest in the property, and the cost of ~~[such]~~ that  
7 insurance shall be added to the loan and may accrue interest as  
8 provided for ~~[herein]~~ in the New Mexico Bank Installment Loan  
9 Act of 1959;

10 ~~[D.]~~ (4) such amounts as are necessary to  
11 reimburse the lender for fees paid to a public officer for  
12 filing, recording or releasing any instrument or lien;

13 ~~[E.]~~ (5) if a loan under the New Mexico Bank  
14 Installment Loan Act of 1959 is secured and if the borrower  
15 fails to pay any governmental or other levy arising after the  
16 date of the loan ~~[which]~~ that would create a lien superior to  
17 the lien of the lender on the property standing as security,  
18 the lender, at the lender's option, may pay ~~[such]~~ the levy and  
19 add the amount so paid to the balance due from the borrower;

20 ~~[F.]~~ (6) the actual expenditures, including  
21 reasonable ~~[attorneys']~~ attorney fees, for legal process or  
22 proceedings to collect any such installment loan; provided,  
23 however, that no ~~[attorneys']~~ attorney fees are permitted where  
24 the loan is referred for collection to an attorney who is a  
25 salaried employee of the holder of the contract;

.200583.3

1           ~~[6.]~~ (7) the actual cost of charges incurred  
2 in making a real estate loan secured by a mortgage on real  
3 estate, including but not limited to the charges for an  
4 abstract of title, title examination, title insurance premiums,  
5 property survey, appraisal fees, notary fees, preparation of  
6 deeds, mortgages or other documents, escrow charges, credit  
7 reports and filing and recording fees; ~~[and~~

8           ~~H. a one-time charge of an amount not to exceed~~  
9 ~~twenty-five dollars (\$25.00) in an installment loan repayable~~  
10 ~~in two or more installments when the loan is made to a natural~~  
11 ~~person primarily for personal, family or household purposes to~~  
12 ~~help defray the actual costs of preparing truth-in-lending~~  
13 ~~disclosure statements, equal credit opportunity disclosure~~  
14 ~~statements and other disclosures required by federal law]~~

15           (8) a processing fee of not more than ten  
16 percent of the principal amount of the loan, which fee is fully  
17 earned and nonrefundable at the time a loan agreement is  
18 executed;

19           (9) upon the execution of an installment loan,  
20 the lender may impose a handling fee of not more than seven and  
21 three-fourths percent of the initial principal amount of the  
22 loan, calculated per each month for the scheduled term of the  
23 loan; and

24           (10) if there are insufficient funds to pay a  
25 check or other type of debit on the date of presentment by the

.200583.3

1 lender, a lender may charge a consumer a fee not to exceed  
2 thirty-five dollars (\$35.00). Only one fee may be collected by  
3 a lender on a check or debit authorization. A check or debit  
4 authorization request shall not be presented to a financial  
5 institution by a lender for payment more than one time unless  
6 the consumer agrees in writing, after a check or other type of  
7 debit has been dishonored, to one additional presentment or  
8 deposit.

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

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

13           "58-7-7. RESTRICTIONS.--

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

20           B. No lender shall make a loan pursuant to the New  
21 Mexico Bank Installment Loan Act of 1959 if a loan has an  
22 initial stated maturity of less than one hundred twenty days."

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

25           "58-7-9. CONSTRUCTION.--

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

4           ~~[B. With the exception of precomputed loan~~  
5 ~~transactions, a lender is not bound by the provisions of the~~  
6 ~~New Mexico Bank Installment Loan Act of 1959 in making loans~~  
7 ~~where the loan is made in accordance with the provisions of~~  
8 ~~Sections 56-8-9 through 56-8-14 NMSA 1978.~~

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

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

19           ~~[E.]~~ D. As used in the New Mexico Bank Installment  
20 Loan Act of 1959:

21                   (1) "year" means three hundred sixty-five  
22 days; and

23                   (2) "month" means one-twelfth of a year.

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

.200583.3

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

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

23 ~~[H. All loans other than precomputed loan~~  
24 ~~transactions made under the New Mexico Bank Installment Loan~~  
25 ~~Act of 1959 shall be clearly identified on the loan documents~~

1 ~~as being made under that act.]"~~

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

4 "[NEW MATERIAL] PREEMPTION.--The state has exclusive  
5 jurisdiction and authority regarding the terms and conditions  
6 of loans to which the New Mexico Bank Installment Loan Act of  
7 1959 is applicable, and counties, municipalities and other  
8 political subdivisions of the state are preempted from any  
9 regulation of terms and conditions of such loans by ordinance,  
10 resolution or otherwise."

11 SECTION 9. Section 58-15-2 NMSA 1978 (being Laws 1955,  
12 Chapter 128, Section 2, as amended) is amended to read:

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

18 A. "consumer" means a person who enters into a loan  
19 agreement and receives the loan proceeds in New Mexico;

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

24 C. "department" or "division" means the financial  
25 institutions division of the regulation and licensing

.200583.3

1 department;

2 D. "director" means the director of the division;

3 E. "installment loan" means a loan in an amount  
4 less than or equal to two thousand five hundred dollars  
5 (\$2,500) that is to be repaid in a minimum of [~~four~~] six  
6 successive substantially equal payment amounts to pay off a  
7 loan in its entirety with [~~a period of no~~] an initial stated  
8 maturity of not less than [~~one hundred twenty~~] one hundred  
9 eighty days to maturity. "Installment loan" does not mean a  
10 loan in which a licensee requires, as a condition of making the  
11 loan, the use of postdated checks or debit authorizations for  
12 repayment of that loan or a refund anticipation loan;

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

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

1 licensee solely in conformity with the New Mexico Small Loan  
2 Act of 1955 and the lawful regulations promulgated by the  
3 director under that act and whose name appears on the face of  
4 the license;

5 H. "payday loan" means a loan in which the licensee  
6 accepts a personal check or debit authorization tendered by the  
7 consumer and agrees in writing to defer presentment of that  
8 check or use of the debit authorization until the consumer's  
9 next payday or another date agreed to by the licensee and the  
10 consumer and:

11 (1) includes any advance of money or  
12 arrangement or extension of credit whereby the licensee, for a  
13 fee, finance charge or other consideration:

14 (a) accepts a dated personal check or  
15 debit authorization from a consumer for the specific purpose of  
16 repaying a payday loan;

17 (b) agrees to hold a dated personal  
18 check or debit authorization from a consumer for a period of  
19 time prior to negotiating or depositing the personal check or  
20 debit authorization; or

21 (c) pays to the consumer, credits to the  
22 consumer's account or pays another person on behalf of the  
23 consumer the amount of an instrument actually paid or to be  
24 paid pursuant to the New Mexico Small Loan Act of 1955; but

25 (2) does not include:

.200583.3

1 (a) an overdraft product or service  
2 offered by a banking corporation, savings and loan association  
3 or credit union; and

4 (b) installment loans;

5 I. "payday loan product" means a payday loan or a  
6 payment plan pursuant to Section 58-15-35 NMSA 1978;

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

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

15 [~~K-~~] L. "renewed payday loan" means a loan in which  
16 a consumer pays in cash the administrative fee payable under a  
17 payday loan agreement and refinances all or part of the unpaid  
18 principal balance of an existing payday loan with a new payday  
19 loan from the same licensee. A "renewed payday loan" includes  
20 a transaction in which a consumer pays off all or part of an  
21 existing payday loan with the proceeds of a payday loan from  
22 the same licensee; [and]

23 M. "short-term installment loan" means a loan in an  
24 amount less than or equal to two thousand five hundred dollars  
25 (\$2,500) that is to be repaid in a minimum of three successive

1 substantially equal payment amounts to pay off a loan in its  
 2 entirety with an initial stated maturity of not less than  
 3 ninety days to maturity and less than one hundred eighty days  
 4 to maturity. "Short-term installment loan" does not mean a  
 5 loan in which a licensee requires, as a condition of making the  
 6 loan, the use of postdated checks or debit authorizations for  
 7 repayment of that loan or a refund anticipation loan; and

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

13 SECTION 10. Section 58-15-3 NMSA 1978 (being Laws 1955,  
 14 Chapter 128, Section 3, as amended) is amended to read:

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

17 A. A person shall not engage in the business of  
 18 lending in amounts of two thousand five hundred dollars  
 19 (\$2,500) or less for a loan without first having obtained a  
 20 license from the director. Nothing contained in this  
 21 subsection shall restrict or prohibit a licensee under the New  
 22 Mexico Small Loan Act of 1955 from making loans in any amount  
 23 under the New Mexico Bank Installment Loan Act of 1959 in  
 24 accordance with the provisions of Section 58-7-2 NMSA 1978.

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

.200583.3

1 shall apply to a person making individual advances of two  
2 thousand five hundred dollars (\$2,500) or less under a written  
3 agreement providing for a total loan or line of credit in  
4 excess of two thousand five hundred dollars (\$2,500).

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

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

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

25 (2) a person who seeks to evade its

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

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

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

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

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

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

.200583.3

1 principal, interest or charges whatsoever.

2 F. A loan in an amount less than or equal to two  
3 thousand five hundred dollars (\$2,500) shall be made only  
4 pursuant to the New Mexico Bank Installment Loan Act of 1959 or  
5 the New Mexico Small Loan Act of 1955."

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

8 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF  
9 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER  
10 JUDGMENT AND INTEREST.--

11 A. Every licensee shall:

12 (1) at the time a loan is made within the  
13 provisions of the New Mexico Small Loan Act of 1955, deliver to  
14 the borrower or, if there are two or more borrowers on the same  
15 obligation, to one of them, a statement in English or Spanish  
16 as requested by the borrower, on which shall be printed a copy  
17 of Section 58-15-14.1 NMSA 1978 and that discloses in clear and  
18 distinct terms:

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

1 office;

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

4 (g) the amount of principal;

5 (h) the agreed rate of charge stated on  
6 a percent per year basis and the amount in dollars and cents;

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

9 (j) other items allowable pursuant to  
10 that act, so stated as to clearly show the allocation of each  
11 item included;

12 (2) for each payment made on account of any  
13 such loan, give to the person making it a plain and complete  
14 receipt specifying the date and amount of the payment, the  
15 amount applied to interest and principal and the balance  
16 unpaid. When payment is made in any other manner than by the  
17 borrower in person, by an agent of the borrower or by check or  
18 money order, the licensee shall mail the receipt to the  
19 borrower's last known address or hold the receipt for delivery  
20 upon request of the borrower. A copy of all receipts shall be  
21 kept on file in the office of the licensee as a part of the  
22 licensee's records; and

23 (3) upon payment of the loan in full, mark  
24 plainly every note and promise to pay signed by any obligor  
25 with the word "paid" or "canceled" and promptly file or record

.200583.3

1 a release of any mortgage if the mortgage has been recorded,  
2 restore any pledge and cancel and return any note and any  
3 assignment given to the licensee. A licensee may mark and  
4 return a copy of the note, promise to pay or any assignment if  
5 the copy accurately reproduces the complete original.

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

11 C. If judgment is obtained against a party on a  
12 loan made pursuant to the provisions of the New Mexico Small  
13 Loan Act of 1955, neither the judgment nor the loan shall  
14 carry, from the date of the judgment, charges against a party  
15 to the loan other than costs, attorney fees and post-judgment  
16 interest as provided by law.

17 D. Any loan made under the provisions of the New  
18 Mexico Small Loan Act of 1955 that is filed and approved as a  
19 claim in any bankruptcy proceeding shall, from a date ninety  
20 days subsequent to the date of adjudication, bear interest at  
21 the rate of ten percent a year only. This limitation shall not  
22 apply when the bankrupt is not discharged in bankruptcy or to  
23 any obligation not dischargeable under the provisions of the  
24 Bankruptcy Act presently in force or as hereafter amended.

25 E. No loan made under the provisions of the New

1 Mexico Small Loan Act of 1955 shall bear interest after ninety  
 2 days from the date of the death of the borrower in excess of a  
 3 rate of ten percent a year on the unpaid principal balance of  
 4 the loan.

5 F. No loan made under the provisions of the New  
 6 Mexico Small Loan Act of 1955 shall bear interest after twelve  
 7 months from the date of maturity of the loan in excess of ten  
 8 percent a year upon the unpaid principal balance of the loan.

9 G. No lender shall make a loan pursuant to the New  
 10 Mexico Small Loan Act of 1955 if a loan has an initial stated  
 11 maturity of less than ninety days, unless it is a payday loan  
 12 or a refund anticipation loan.

13 H. No lender shall make a loan pursuant to the New  
 14 Mexico Small Loan Act of 1955 unless the loan is an installment  
 15 loan, short-term installment loan, payday loan or refund  
 16 anticipation loan."

17 SECTION 12. Section 58-15-20 NMSA 1978 (being Laws 1955,  
 18 Chapter 128, Section 18, as amended) is amended to read:

19 "58-15-20. FEES AND COSTS.--

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

25 B. Notwithstanding any provision in a note or other

.200583.3

1 loan contract taken or received pursuant to the provisions of  
2 the New Mexico Small Loan Act of 1955, attorney fees shall not  
3 be charged or collected except when the note or other contract  
4 has been submitted in good faith to an attorney for collection  
5 and after diligent and good faith effort to collect on the part  
6 of the licensee has failed.

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

12 D. Delinquency fees shall not exceed [~~five cents~~  
13 ~~(\$ .05)~~] ten cents (\$ .10) for each one dollar (\$1.00) of each  
14 installment more than ten days in arrears; provided that the  
15 total of delinquency charges on any such installment shall not  
16 exceed [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00) and  
17 that only one delinquency charge shall be made on any one  
18 installment regardless of the period during which the  
19 installment remains unpaid."

20 SECTION 13. A new section of the New Mexico Small Loan  
21 Act of 1955 is enacted to read:

22 "[NEW MATERIAL] INSTALLMENT LOANS--PERMITTED CHARGES.--

23 A. Upon the execution of an installment loan, the  
24 licensee may impose and collect a processing fee of not more  
25 than ten percent of the principal amount of the loan, which fee

1 is fully earned and nonrefundable at the time a loan agreement  
2 is executed.

3 B. Upon the execution of an installment loan, the  
4 licensee may impose a handling fee of not more than seven and  
5 three-fourths percent of the initial principal amount of the  
6 loan, calculated per each month for the scheduled term of the  
7 loan.

8 C. If there are insufficient funds to pay a check  
9 or other type of debit on the date of presentment by the  
10 licensee, a licensee may charge a consumer a fee not to exceed  
11 thirty-five dollars (\$35.00). Only one fee may be collected by  
12 a licensee on a check or debit authorization. A check or debit  
13 authorization request shall not be presented to a financial  
14 institution by a licensee for payment more than one time unless  
15 the consumer agrees in writing, after a check or other type of  
16 debit has been dishonored, to one additional presentment or  
17 deposit.

18 D. A licensee shall not charge a consumer for fees,  
19 interest or charges of any kind other than those permitted  
20 pursuant to Subsections A, B and C of this section and Sections  
21 58-15-16 and 58-15-20 NMSA 1978."

22 SECTION 14. A new section of the New Mexico Small Loan  
23 Act of 1955 is enacted to read:

24 "[NEW MATERIAL] SHORT-TERM INSTALLMENT LOANS--PERMITTED  
25 CHARGES.--

.200583.3

1           A. Upon the execution of a short-term installment  
2 loan, the licensee may impose and collect a processing fee of  
3 not more than ten percent of the principal amount of the loan,  
4 which fee is fully earned and nonrefundable at the time a loan  
5 agreement is executed.

6           B. In addition to the processing fee set forth in  
7 Subsection A of this section, a licensee shall only charge  
8 simple interest on the amount of loan proceeds delivered to the  
9 consumer in a short-term installment loan, subject to the  
10 following conditions:

11                   (1) the aggregate amount of interest and fees  
12 received by the licensee for a short-term installment loan  
13 includes all interest and fees, other than a processing fee,  
14 received on the loan, including interest and fees received  
15 after any renewals, refinance, extensions or default;

16                   (2) unless a short-term installment loan is  
17 repaid in full with cash, certified funds or a check or debit  
18 having cleared the drawee institution, a short-term installment  
19 loan remains outstanding as a renewal, refinance or extension  
20 for the purpose of capping the total aggregate amount of  
21 interest and fees paid by the borrower;

22                   (3) once the licensee has received an  
23 aggregate amount of interest and fees, other than a processing  
24 fee, equal to the original principal amount of the short-term  
25 installment loan, in addition to the original principal amount

1 of the loan and processing fee, the short-term installment loan  
2 shall be deemed satisfied and considered paid in full by the  
3 consumer;

4 (4) the aggregate amount of interest and fees,  
5 other than a processing fee, received by a licensee shall not  
6 exceed the original principal amount of the short-term  
7 installment loan. The maximum aggregate amount of interest and  
8 fees, other than a processing fee, shall be prorated by  
9 multiplying the number of days in the stated term of the loan  
10 by fifty-five hundredths percent;

11 (5) the interest rate charged on the  
12 outstanding balance of a short-term installment loan shall be  
13 at a constant rate that is applicable throughout the initial  
14 term of the short-term installment loan; and

15 (6) the interest rate charged on the  
16 outstanding balance after initial maturity shall be capped at a  
17 rate not greater than the interest rate charged during the  
18 initial term of the short-term installment loan.

19 C. If there are insufficient funds to pay a check  
20 or other type of debit on the date of presentment by the  
21 licensee, a licensee may charge a consumer a fee not to exceed  
22 thirty-five dollars (\$35.00). Only one fee may be collected by  
23 a licensee on a check or debit authorization. A check or debit  
24 authorization request shall not be presented to a financial  
25 institution by a licensee for payment more than one time unless

.200583.3

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

4 D. In addition to the fees permitted pursuant to  
5 Subsections A, B and C of this section, a licensee may charge  
6 the fees permitted pursuant to Sections 58-15-16 and 58-15-20  
7 NMSA 1978."

8 SECTION 15. A new section of the New Mexico Small Loan  
9 Act of 1955 is enacted to read:

10 "[NEW MATERIAL] UNDERWRITING PRACTICES--EXEMPTION.--

11 A. No licensee shall make an installment loan or  
12 short-term installment loan without documenting and considering  
13 the consumer's reasonable ability to repay the principal and  
14 all fees associated with that loan pursuant to its terms.

15 B. In documenting and considering the consumer's  
16 reasonable ability to repay a loan, a licensee shall use a form  
17 approved by the director. The form shall include at a minimum  
18 entries for the consumer's share of rent or mortgage payments,  
19 telephone and cellular telephone service, motor vehicle  
20 payments, credit card payments, loan repayments and  
21 garnishments. The form shall include an entry for the  
22 consumer's disposable income. The form shall have a self-  
23 attestation statement regarding the completeness and accuracy  
24 of the information provided by the consumer.

25 C. A licensee shall not make a loan to a consumer

1 in which monthly payments exceed thirty-five percent of the  
 2 consumer's disposable income as stated on the form required  
 3 pursuant to Subsection B of this section.

4 D. A licensee shall retain all documentation  
 5 required by this section as part of the licensee's loan  
 6 records, which records shall be retained as required by the  
 7 division for examination pursuant to Section 58-15-9 NMSA 1978.

8 E. The requirements of this section shall apply to  
 9 all loans pursuant to the New Mexico Small Loan Act of 1955  
 10 except payday loans and refund anticipation loans.

11 F. As used in this section:

12 (1) "consumer's average monthly financial  
 13 obligations" includes the consumer's share of financial  
 14 obligations that are joint with a spouse or domestic partner;

15 (2) "consumer's average monthly income" shall  
 16 not include income of a spouse or domestic partner; and

17 (3) "disposable income" means the consumer's  
 18 average monthly income over the term of the proposed loan less  
 19 the consumer's average monthly financial obligations over the  
 20 course of the proposed loan."

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

23 "[NEW MATERIAL] PREEMPTION.--The state has exclusive  
 24 jurisdiction and authority regarding the terms and conditions  
 25 of permitted installment loans, short-term installment loans or

.200583.3

1 payday loans, and counties, municipalities and other political  
2 subdivisions of the state are preempted from any regulation of  
3 terms and conditions of permitted installment loans, short-term  
4 installment loans or payday loans by ordinance, resolution or  
5 otherwise."

6 SECTION 17. REPEAL.--Section 58-15-18 NMSA 1978 (being  
7 Laws 1955, Chapter 128, Section 16, as amended) is repealed.

8 SECTION 18. APPLICABILITY.--The provisions of this act  
9 shall apply to loans subject to the New Mexico Small Loan Act  
10 of 1955 and the New Mexico Bank Installment Loan Act of 1959  
11 executed on or after July 1, 2015.

12 SECTION 19. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2015.