

1 SENATE BILL 567

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Benny Shendo

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10 AN ACT

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

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "58-7-3. LOANS COVERED BY ACT.--

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

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1 documents as being made under that act.

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

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

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

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

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

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

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1 period during which the installment remains unpaid;

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

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

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

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

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

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

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

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

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

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

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

9 "58-7-7. RESTRICTIONS.--

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

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

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

25 D. No lender, other than a federally insured

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1 depository institution, shall make a loan pursuant to the New
2 Mexico Bank Installment Loan Act of 1959 that has an annual
3 percentage rate greater than one hundred seventy-five percent,
4 calculated pursuant to 12 CFR Part 1026, known as "Regulation
5 Z".

6 E. The provisions of Subsections B and C of this
7 section shall not apply to refund anticipation loans. As used
8 in this subsection, "refund anticipation loan" means a loan
9 that is secured by or that the creditor arranges or expects to
10 be repaid, directly or indirectly, from the proceeds of the
11 consumer's federal or state personal income tax refunds or tax
12 credits, including any sale, assignment or purchase of a tax
13 refund or tax credit at a discount or for a fee.

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

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

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

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

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

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

20 C. A violation of [~~the provisions~~] a provision of
21 the New Mexico Bank Installment Loan Act of 1959 [~~which~~
22 ~~violation consists of a false or misleading oral or written~~
23 ~~representation of any kind knowingly made in the extension of~~
24 ~~credit that may, tends to or does deceive or mislead any person~~
25 ~~to whom the extension of credit is made] that constitutes an~~

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1 unfair or deceptive trade practice or an unconscionable trade
2 practice pursuant to Section 57-12-2 NMSA 1978 is actionable
3 pursuant to the Unfair Practices Act."

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

6 "58-7-9. CONSTRUCTION--DEFINITIONS--

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

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

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

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

22 [~~(1) "year" means three hundred sixty-five~~
23 ~~days;~~

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

25 (1) "consumer" means a person who enters into

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1 a loan agreement subject to the New Mexico Bank Installment
2 Loan Act of 1959;

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

10 (a) public record information; or
11 (b) credit account information from
12 persons who furnish that information regularly and in the
13 ordinary course of business;

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

19 (4) "month" means one-twelfth of a year;
20 (5) "person" includes an individual,
21 copartner, association, trust, corporation and any other legal
22 entity; and

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

25 E. The director of the financial institutions

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

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

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

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1 "[NEW MATERIAL] REQUIREMENTS FOR MAKING AND PAYING LOANS--
2 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
3 AND INTEREST.--

4 A. Every lender shall:

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

- 12 (a) the amount of the loan;
13 (b) the date the loan was consummated;
14 (c) a schedule or a description of the
15 payments;
16 (d) the type of the security, if any,
17 securing the loan;
18 (e) the name and address of the lender;
19 (f) the name of the person primarily
20 obligated for the loan;
21 (g) the amount of principal;
22 (h) the annual percentage rate as
23 calculated pursuant to 12 CFR Part 1026, known as "Regulation
24 Z", and the amount of interest payable in dollars and cents;
25 (i) all other disclosures required

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1 pursuant to state and federal law; and

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

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

22 (3) upon repayment of the loan in full,
23 plainly mark every note and promise to pay signed by any
24 borrower with the word "paid" or "canceled" and promptly file
25 or record a release of any mortgage if the mortgage has been

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

5 B. A judgment obtained against a party on a loan
6 made pursuant to the New Mexico Bank Installment Loan Act of
7 1959, shall not include, and the loan shall not include, from
8 the date of the judgment, charges against a party to the loan
9 other than costs, attorney fees and post-judgment interest as
10 provided by law.

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

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

25 E. A loan made pursuant to the New Mexico Bank

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1 Installment Loan Act of 1959 shall not bear interest in excess
2 of ten percent per year upon the unpaid principal balance of
3 the loan after twelve months following the date of maturity of
4 the loan."

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

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

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

25 "58-15-2. DEFINITIONS.--The following words and terms

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1 when used in the New Mexico Small Loan Act of 1955 have the
2 following meanings unless the context clearly requires a
3 different meaning. The meaning ascribed to the singular form
4 applies also to the plural:

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

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

15 (1) public record information; or

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

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

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

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

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

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

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

25 I. "make a loan" means to originate a new loan

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1 agreement or to make any change to the terms of an existing
2 loan agreement, including the principal amount financed, the
3 annual interest percentage rate, finance charge, fees or
4 payment schedule;

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

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

13 ~~[K.]~~ L. "simple interest" means a method of
14 calculating interest in which the amount of interest is
15 calculated based on the annual interest rate disclosed in the
16 loan agreement and is computed only on the outstanding
17 principal balance of the loan."

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

20 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
21 PENALTY.--

22 A. A person shall not engage in the business of
23 lending in amounts of five thousand dollars (\$5,000) or less
24 for a loan without first having obtained a license from the
25 director. Nothing contained in this subsection shall restrict

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1 or prohibit a licensee under the New Mexico Small Loan Act of
2 1955 from making loans in any amount under the New Mexico Bank
3 Installment Loan Act of 1959 in accordance with the provisions
4 of Section 58-7-2 NMSA 1978.

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

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

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

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

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

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

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

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

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

21 E. A person, copartnership, trust or a trustee or
22 beneficiary thereof or an association or corporation or a
23 member, officer, director, agent or employee thereof who
24 violates or participates in the violation of a provision of
25 Subsection A of this section is guilty of a petty misdemeanor

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1 and upon conviction shall be sentenced pursuant to the
2 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
3 contract or loan in the making or collection of which an act is
4 done that violates Subsection A or D of this section or Section
5 58-15-17 or 58-15-20 NMSA 1978 is void and the lender has no
6 right to collect, receive or retain any principal, interest or
7 charges whatsoever.

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

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

21 SECTION 10. Section 58-15-10.1 NMSA 1978 (being Laws
22 2011, Chapter 105, Section 1, as amended) is amended to read:

23 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
24 PENALTIES.--

25 A. Licensees shall file with the director each year

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1 [a report] reports containing at least the following
2 information for the preceding calendar year ending December 31
3 in an aggregated, nonidentifying consumer manner as specified
4 below:

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

11 ~~(a) the total number of outstanding~~
12 ~~loans;~~

13 ~~(b) the dollar value of outstanding~~
14 ~~loans net of unearned charges;~~

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

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

19 ~~(2) for the calendar year ending December 31,~~
20 ~~the total aggregate number of customers of licensees and of~~
21 ~~secured and unsecured loans made by licensees and the total~~
22 ~~dollar value of those loans net of unearned charges;~~

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

25 ~~(4) the total number of vehicles repossessed~~

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1 ~~during the calendar year ending December 31; and~~

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

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

6 (a) whether the loan product was secured
7 or unsecured;

8 (b) whether the loan product was made
9 pursuant to the New Mexico Small Loan Act of 1955 or the New
10 Mexico Bank Installment Loan Act of 1959;

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

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

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

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

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

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

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

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

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

6 (a) less than or equal to thirty-six
7 percent;

8 (b) more than thirty-six percent through
9 one hundred percent;

10 (c) more than one hundred percent
11 through one hundred fifty percent; and

12 (d) more than one hundred fifty percent
13 through one hundred seventy-five percent;

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

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

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

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

23 (5) for each loan product:

24 (a) the number of loans for which the
25 original term of the loan was: 1) less than one hundred twenty

1 days; 2) between one hundred twenty days and three hundred
2 sixty-five days; 3) between three hundred sixty-five days and
3 seven hundred thirty-one days; 4) between seven hundred thirty-
4 one days and five years; and 5) longer than five years;

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

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

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

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

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

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1 thirty days of repaying that loan;

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

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

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

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

24 (13) for each loan product, the dollar amount
25 of loan principal and accrued interest that was charged-off or

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1 written-off, and the number of borrowers for which the lender
2 charged-off or wrote-off loan principal and accrued interest;

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

5 (15) the total number of loans secured by a
6 motor vehicle and the number of those loans for which the motor
7 vehicle was repossessed;

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

12 (17) the total number and percentage of
13 borrowers of all loan products whose source of income was a
14 means-tested public benefit as defined by 8 U.S.C. Section
15 1613(c);

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

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

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

25 B. The [~~report~~] reports required pursuant to

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1 Subsection A of this section shall be submitted to the director
2 on or before the fifteenth day of April each year.

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

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

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

15 (2) have a license required pursuant to the
16 New Mexico Small Loan Act of 1955 suspended pursuant to Section
17 58-15-8 NMSA 1978 ~~[if a complete and accurate report has not~~
18 ~~been filed by the fifteenth day of April]."~~

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

21 "58-15-16. LOAN INSURANCE ALLOWABLE--FINANCING CERTAIN
22 PREMIUMS PROHIBITED.--

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

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1 [A-] (1) to sell life insurance other than a
2 term policy or credit life insurance on the principal
3 borrowers;

4 [B-] (2) to sell term or credit life insurance
5 the coverage of which exceeds the amount of the loan or extends
6 beyond the term for which the loan is made;

7 [G-] (3) after having made a loan, to finance
8 any premiums of any life insurance policies, other than credit
9 life insurance, sold to the borrower by the licensee or [~~his~~]
10 the licensee's agent in any manner for a period of ninety days;

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

18 [E-] (5) to sell property insurance on
19 unsecured loans.

20 B. A lender may charge for only the actual cost of
21 any insurance; provided that all insurance shall be written by
22 a company licensed to operate within the state and at a rate
23 not higher than those approved by the superintendent of
24 insurance; and provided further that the lender shall not
25 require any insurance to be written or provided by or through a

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1 particular agent, broker or insurer as a condition to making
2 the loan, but shall, at the borrower's option, permit the
3 insurance to be procured from any insurer or agent authorized
4 by law to provide the insurance."

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

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

10 A. Every licensee shall:

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

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1 ~~[licensed office]~~ licensee;

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

4 (g) the amount of principal;

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

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

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

14 (2) for each payment made on account of ~~[any~~
15 ~~such]~~ a loan, give to the person making ~~[it]~~ the payment a
16 plain and complete receipt specifying the date and amount of
17 the payment, the amount applied to interest and principal and
18 the balance unpaid. When payment is made in any other manner
19 than by the borrower in person, by an agent of the borrower or
20 by check or money order, the licensee shall mail the receipt to
21 the borrower's last known address or ~~[hold the receipt for~~
22 ~~delivery]~~ retain and deliver the receipt upon request of the
23 borrower. ~~[A copy of all receipts shall be kept on file]~~ A
24 licensee may deliver the receipt electronically to the borrower
25 via text message or email, if requested to do so in writing by

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1 the borrower. A borrower may withdraw authorization for
2 electronic delivery of receipts in writing at any time. A
3 licensee shall not require a borrower to receive receipts
4 electronically. The licensee shall maintain a copy of each
5 receipt in the office of the licensee as a part of the
6 licensee's records; and

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

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

21 C. [~~If~~] A judgment [~~is obtained~~] against a party on
22 a loan made pursuant to [~~the provisions of~~] the New Mexico
23 Small Loan Act of 1955 [~~neither the judgment nor the loan shall~~
24 ~~carry~~] shall not include, and the loan shall not include, from
25 the date of the judgment, charges against a party to the loan

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1 other than costs, attorney fees and post-judgment interest as
2 provided by law.

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

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

21 F. ~~[No]~~ A loan made ~~[under the provisions of]~~
22 pursuant to the New Mexico Small Loan Act of 1955 shall not
23 bear interest in excess of ten percent per year upon the unpaid
24 principal balance of the loan after twelve months ~~[from]~~
25 following the date of maturity of the loan. ~~[in excess of ten~~

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1 ~~percent a year upon the unpaid principal balance of the loan.]~~

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

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

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

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

19 Upon request from the borrower, all lenders
20 licensed pursuant to the New Mexico Small Loan Act of 1955
21 shall give or forward to the borrower copies of all loan
22 agreements concerning that borrower, a copy of all receipts
23 maintained in that borrower's loan file and a written statement
24 of that borrower's loan history, including all fees charged,
25 amortization schedules, that borrower's payment history,

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1 including the dates and amounts of payments made, and the total
2 amount unpaid pursuant to each contract.

3 L. Any rollover, renewal, refinance or modification
4 of an existing loan agreement with a licensee shall constitute
5 a new loan and shall require new disclosures pursuant to the
6 Truth in Lending Act."

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

9 "58-15-20. FEES AND COSTS.--

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

15 B. Notwithstanding any provision in a note or other
16 loan contract taken or received [~~pursuant to the provisions of~~]
17 under the New Mexico Small Loan Act of 1955, attorney fees
18 shall not be charged or collected [~~except when~~] unless the note
19 or other contract has been submitted in good faith to an
20 attorney for collection [~~and~~] who is not a salaried employee of
21 the holder of the contract, after the licensee has made a
22 diligent and good faith effort to collect [~~on the part of the~~
23 ~~licensee~~] and has failed.

24 C. Notary fees incident to the taking of a lien to
25 secure a small loan or releasing such a lien shall not be

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1 charged or collected by a licensee, an officer, agent or
2 employee of a licensee or anyone within an office, room or
3 place of business in which a small loan office is conducted.

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

11 SECTION 14. Section 58-15-20.1 NMSA 1978 (being Laws
12 2017, Chapter 110, Section 20) is amended to read:

13 "58-15-20.1. INSTALLMENT LOANS--REFUND ANTICIPATION
14 LOANS--INSUFFICIENT FUNDS--PERMITTED CHARGES.--

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

22 B. A licensee shall not charge a consumer for fees,
23 interest or charges of any kind other than those permitted
24 pursuant to Sections 58-15-16, 58-15-17 and 58-15-20 NMSA
25 1978."

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

3 "58-15-39. DUTIES OF DIVISION.--

4 A. The division shall:

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

7 (2) establish a complaint process whereby an
8 aggrieved consumer or other person may file a complaint against
9 a licensee.

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

19 ~~[(1) as of December 31 of each calendar year,~~
20 ~~aggregated for loans of one thousand dollars (\$1,000) or less,~~
21 ~~for loans more than one thousand dollars (\$1,000) but not more~~
22 ~~than three thousand dollars (\$3,000) and for loans more than~~
23 ~~three thousand dollars (\$3,000) but not more than five thousand~~
24 ~~dollars (\$5,000):~~

25 ~~(a) the total number of outstanding~~

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1 ~~loans;~~

2 ~~(b) the dollar value of outstanding~~
3 ~~loans net of unearned charges;~~

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

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

8 ~~(2) for the calendar year ending December 31,~~
9 ~~the total aggregate number of customers of licensees and~~
10 ~~secured and unsecured loans made by licensees and the total~~
11 ~~dollar value of those loans net of unearned charges;~~

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

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

16 ~~(5) the total bad debt expense incurred during~~
17 ~~the calendar year ending December 31] each of the specific~~
18 ~~categories of information set forth in Subsection A of Section~~
19 ~~58-15-10.1 NMSA 1978.~~

20 C. The division shall, in cooperation with the
21 office of the attorney general, develop and implement
22 curriculum for a financial literacy program with elements that
23 shall include a basic understanding of budgets, checking and
24 savings accounts, credit and interest and considerations in
25 deciding how and when to use financial services, including

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1 installment loans and refund anticipation loans. The financial
2 literacy program developed pursuant to this subsection may be
3 implemented [~~though~~] through the adult basic education division
4 of the higher education department and nonprofit public
5 interest organizations."

6 SECTION 16. A new section of the New Mexico Small Loan
7 Act of 1955 is enacted to read:

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

23 SECTION 17. APPLICABILITY.--The provisions of this act
24 apply to loans subject to the New Mexico Small Loan Act of 1955
25 and the New Mexico Bank Installment Loan Act of 1959 that are

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1 executed on or after January 1, 2020.

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

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