

1 SENATE BILL 129

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Gregg Schmedes

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10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 E. Nothing in Subsection D of this section shall

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1 permit the imposition of fees, interest or charges of any kind
2 not otherwise permitted by the New Mexico Bank Installment Loan
3 Act of 1959.

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

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

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

25 ~~[E.]~~ I. The provisions of Subsections B and C of

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1 this section shall not apply to refund anticipation loans. As
2 used in this subsection, "refund anticipation loan" means a
3 loan that is secured by or that the creditor arranges or
4 expects to be repaid, directly or indirectly, from the proceeds
5 of the consumer's federal or state personal income tax refunds
6 or tax credits, including any sale, assignment or purchase of a
7 tax refund or tax credit at a discount or for a fee.

8 ~~[F-]~~ J. Except as provided by Section 58-7-3.2 NMSA
9 1978, any rollover, renewal, refinance or modification of an
10 existing loan agreement with a lender, except a modification
11 without any additional cost to the consumer, shall constitute a
12 new loan and shall require new disclosures pursuant to the
13 federal Truth in Lending Act."

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

16 "58-7-9. CONSTRUCTION--DEFINITIONS.--

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

20 B. None of the provisions of the New Mexico Bank
21 Installment Loan Act of 1959 apply to the assignment or
22 purchase of retail installment contracts originated under the
23 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
24 originated under the provisions of Sections 56-1-1 through
25 56-1-15 NMSA 1978.

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

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

7 (1) "consumer" means a person who resides in
8 New Mexico or who enters into a loan agreement [~~subject to the~~]
9 in New Mexico [~~Bank Installment Loan Act of 1959~~];

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

17 (a) public record information; or

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

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

25 [~~3~~] (4) "make a loan" means to originate a

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

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

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

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

13 [~~(6)~~] (8) "year" means three hundred
14 sixty-five days.

15 E. The director of the financial institutions
16 division of the regulation and licensing department shall issue
17 and file as required by law interpretive regulations to
18 effectuate the purposes of the New Mexico Bank Installment Loan
19 Act of 1959. In issuing, amending or repealing interpretive
20 regulations, the director shall issue the regulation amendment
21 or repeal of the regulation as a proposed regulation amendment
22 or repeal of a regulation and file it for public inspection in
23 the office of the director of the financial institutions
24 division. Distribution thereof shall be made to interested
25 persons, and their comments shall be invited. After the

1 proposed regulation has been on file for not less than two
2 months, the director may issue it as a final regulation by
3 filing as required by law. Any person who is or may be
4 adversely affected by the adoption, amendment or repeal of a
5 regulation under this section may file an appeal of that action
6 in the district court in Santa Fe county within thirty days
7 after the filing of the adopted regulation, amendment or repeal
8 as required by law.

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

14 SECTION 5. Section 58-15-2 NMSA 1978 (being Laws 1955,
15 Chapter 128, Section 2, as amended) is amended to read:

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

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

23 B. "consumer reporting agency" means any person
24 that, for monetary fees or dues or on a cooperative nonprofit
25 basis, regularly engages in the practice of assembling or

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1 evaluating, and maintaining, for the purpose of furnishing
2 consumer reports to third parties bearing on a consumer's
3 creditworthiness, credit standing or credit capacity, each of
4 the following regarding consumers:

5 (1) public record information; or

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

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

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

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

16 F. "installment loan" means a loan ~~[in an amount~~
17 ~~less than or equal to five thousand dollars (\$5,000) that is to~~
18 ~~be repaid in a minimum of four substantially equal payments of~~
19 ~~principal and interest to pay off a loan in its entirety with~~
20 ~~an initial stated maturity of not less than one hundred twenty~~
21 ~~days to maturity. "Installment loan" does not mean a refund~~
22 ~~anticipation loan]~~ that is not a refund anticipation loan and
23 is in an amount less than or equal to ten thousand dollars
24 (\$10,000) that is to be repaid:

25 (1) in a minimum of four substantially equal

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1 payments of principal and interest to pay off a loan in its
2 entirety with an initial stated maturity of not less than one
3 hundred twenty days to maturity; or

4 (2) in any number of payments and with any
5 initial stated days to maturity that bears no finance charge as
6 disclosed pursuant to 12 C.F.R. Part 1026, known as "Regulation
7 Z", and with respect to which no other fees or charges of any
8 kind are imposed at any time;

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

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

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

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

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

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

17 [~~L.~~] M. "simple interest" means a method of
18 calculating interest in which the amount of interest is
19 calculated based on the annual percentage rate disclosed in the
20 loan agreement and is computed only on the outstanding
21 principal balance of the loan."

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

24 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
25 PENALTY.--

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

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

15 C. A banking corporation, savings and loan
16 association or credit union operating under the laws of the
17 United States or of a state shall be exempt from the licensing
18 requirements of the New Mexico Small Loan Act of 1955, nor
19 shall that act apply to business transacted by any person under
20 the authority of and as permitted by any such law nor to any
21 bona fide pawnbroking business transacted under a pawnbroker's
22 license nor to bona fide commercial loans made to dealers upon
23 personal property held for resale. Nothing contained in the
24 New Mexico Small Loan Act of 1955 shall be construed as
25 abridging the rights of any of those exempted from the

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1 operations of that act from contracting for or receiving
2 interest or charges not in violation of an existing applicable
3 statute of this state.

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

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

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

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

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

20 (c) receiving or charging compensation
21 for goods or services, whether or not sold, delivered or
22 provided; ~~[and]~~

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

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

3 (f) disguising loan proceeds as a cash
4 rebate for the pretextual installment sale of goods or
5 services; and

6 (g) making, offering, assisting or
7 arranging a debtor to obtain a loan with a greater rate or
8 interest, consideration or charge than is permitted by Chapter
9 58 NMSA 1978 through any method, including mail, telephone,
10 internet or any electronic means, regardless of whether the
11 person has a physical location in the state; and

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

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

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

23 (c) the totality of the circumstances
24 indicate that the person is the lender and the transaction is
25 structured to evade the requirements of the New Mexico Small

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

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

23 F. A loan in an amount equal to [~~five thousand~~
24 ~~dollars (\$5,000)] ten thousand dollars (\$10,000) or less shall
25 be made only pursuant to the New Mexico Bank Installment Loan~~

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1 Act of 1959 or the New Mexico Small Loan Act of 1955.

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

7 SECTION 7. Section 58-15-9 NMSA 1978 (being Laws 1955,
8 Chapter 128, Section 9, as amended) is amended to read:

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

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

19 B. Within a reasonable time after the completion of
20 an examination of a licensed office, the director shall mail to
21 the licensee a copy of the report of the examination, together
22 with any comments, exceptions, objections or criticisms of the
23 director concerning the conduct of the licensee and the
24 operation of the licensed office.

25 C. For the purpose of discovering violations of the

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1 New Mexico Small Loan Act of 1955 or of securing information
2 lawfully required under that act, the director or the
3 director's authorized representative may at any time
4 investigate the business and examine the books, accounts,
5 papers and records used therein, including income tax returns
6 or other reports filed in the office of the director of the
7 revenue processing division of the taxation and revenue
8 department of:

9 (1) any licensee;

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

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

18 D. For the purposes of this section, a person who
19 advertises, solicits or makes any representation as being
20 willing to make loan transactions in any amount, except
21 persons, financial institutions or lending agencies operating
22 under charters or licenses issued by a state or federal agency
23 or under any special statute, shall be subject to investigation
24 under the New Mexico Small Loan Act of 1955 and shall be
25 presumed to be engaged in the business described in Subsection

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1 A of Section 58-15-3 NMSA 1978 as to any loans of [~~five~~
2 ~~thousand dollars (\$5,000)] ten thousand dollars (\$10,000) or
3 less.~~

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

17 F. For the purposes of this section, the director
18 or the director's authorized representative shall have and be
19 given free access to the offices and places of business, files,
20 safes and vaults of all licensees and shall have authority to
21 require the attendance of any person and to examine the person
22 under oath relative to such loans or business or to the subject
23 matter of any examination, investigation or hearing as provided
24 in the New Mexico Small Loan Act of 1955. Notices to appear
25 before the director for examination under oath may be served by

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1 registered mail. If the party notified to appear is the
2 licensee, any person named on the face of the license being
3 investigated or any agent, employee or manager participating in
4 the licensee's business and the party fails to appear for
5 examination or refuses to answer questions submitted, the
6 director may, forthwith and without further notice to the
7 licensee, suspend the license involved pending compliance with
8 the notice. Upon failure of any other person to appear or to
9 answer questions, the director may apply to and invoke the aid
10 of any district court of New Mexico in compelling the
11 attendance and testimony of any such person and the production
12 of books, records, written instruments and documents relating
13 to the business of the licensee. The district court whose aid
14 is so invoked by the director may, in case of contumacy or
15 refusal to obey any order of the district court issued to
16 compel the attendance of the person or the production of books,
17 records, written instruments and documents, punish the person
18 as for contempt of court.

19 G. The director shall prescribe rules of procedure
20 for all hearings, examinations or investigations provided for
21 in the New Mexico Small Loan Act of 1955. The director is not
22 bound by the usual common law or statutory rules of evidence or
23 by any technical or formal rules of procedure or pleading and
24 specification of charges other than as specifically provided in
25 the New Mexico Small Loan Act of 1955 but may conduct hearings,

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1 examinations and investigations in the manner best calculated
2 to ascertain the substantial rights of the parties interested.

3 H. The director has the power to administer oaths,
4 certify official acts and records of the director's office,
5 issue subpoenas for witnesses in the name of and under the seal
6 of the director's office and compel the production of papers,
7 books, accounts and documents. The director shall issue
8 subpoenas at the instance of any party to a hearing before the
9 division upon payment of a fee of two dollars fifty cents
10 (\$2.50) for each subpoena so issued.

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

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

24 K. Whenever the director has reasonable cause to
25 believe that a person is violating a provision of the New

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1 Mexico Small Loan Act of 1955, the director may, in addition to
2 all actions provided for in that act and without prejudice
3 thereto, enter an order requiring the person to desist or to
4 refrain from the violation. An action may be brought on the
5 relation of the attorney general and the director to enjoin the
6 person from engaging in or continuing the violation or from
7 doing any act in furtherance of the violation. In any such
8 action, an order or judgment may be entered awarding a
9 preliminary or final injunction as may be deemed proper. In
10 addition to all other means provided by law for the enforcement
11 of a temporary restraining order, temporary injunction or final
12 injunction, the court in which such action is brought shall
13 have power and jurisdiction to impound and to appoint a
14 receiver for the property and business of the defendants,
15 including books, papers, documents and records pertaining
16 thereto or so much thereof as the court may deem reasonably
17 necessary to prevent further violations of the New Mexico Small
18 Loan Act of 1955 through or by means of the use of the property
19 and business. The receiver, when appointed and qualified,
20 shall have powers and duties as to custody, collection,
21 administration, winding up and liquidation of the property and
22 business as are from time to time conferred upon the receiver
23 by the court."

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

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1 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--

2 PENALTIES.--

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

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

9 (a) whether the loan product was secured
10 or unsecured;

11 (b) whether the loan product was made
12 pursuant to the New Mexico Small Loan Act of 1955 or the New
13 Mexico Bank Installment Loan Act of 1959;

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

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

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

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

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

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

25 (c) one thousand one dollars (\$1,001) to

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1 three thousand dollars (\$3,000); ~~and~~

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

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

6 (3) for each loan product, the number of loans
7 made and the total dollar amount of interest and fees charged
8 on the contracts for loans made within the following categories
9 of annual percentage rate calculated pursuant to 12 CFR Part
10 1026, known as "Regulation Z":

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

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

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

17 (d) ~~[more than one hundred fifty percent~~
18 ~~through one hundred seventy-five percent]~~ more than thirty-six
19 percent if a permitted annual percentage rate is subject to an
20 elevated calculation pursuant to Subsection L of Section
21 58-15-17 NMSA 1978 or Subsection F of Section 58-7-7 NMSA 1978;

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

24 (a) a list of each fee charged by the
25 lender and a description of each fee product or type, including

1 fees charged for loan origination and credit insurance;

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

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

6 (5) for each loan product:

7 (a) the number of loans for which the
8 original term of the loan was: 1) less than one hundred twenty
9 days; 2) between one hundred twenty days and three hundred
10 sixty-five days; 3) between three hundred sixty-five days and
11 seven hundred thirty-one days; 4) between seven hundred thirty-
12 one days and five years; and 5) longer than five years;

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

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

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

24 (7) the number of borrowers who took out three
25 or more loans with the lender in the previous calendar year,

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1 and the percentage of all borrowers who took out three or more
2 loans with the lender in the previous calendar year;

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

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

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

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

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1 total loans for which a late payment fee was charged more than
2 once over the term of the contract;

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

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

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

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

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

20 (17) the total number and percentage of
21 borrowers of all loan products whose sources of income, as
22 provided by borrowers in the loan origination process, included
23 a means-tested public benefit as defined by 8 U.S.C. Section
24 1613(c);

25 (18) the total number and percentage of

1 borrowers of all loan products who are aged sixty-five or
2 older;

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

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

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

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

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

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

23 (2) have a license required pursuant to the
24 New Mexico Small Loan Act of 1955 suspended pursuant to Section
25 58-15-8 NMSA 1978."

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

3 "58-15-10.2. REPORTING OF CREDIT REQUIRED.--

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

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

15 C. Any lender making a report to a consumer
16 reporting agency pursuant to this section shall report both
17 positive and negative performance by the borrower."

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

20 "58-15-12. ADVERTISING.--A licensee or other person
21 subject to the New Mexico Small Loan Act of 1955 shall not
22 advertise, display, distribute or broadcast or cause or permit
23 to be advertised, displayed, distributed or broadcast in any
24 manner whatsoever a false, misleading or deceptive statement or
25 representation with regard to the charges, terms or conditions

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1 for loans in the amount or of the value of [~~five thousand~~
2 ~~dollars (\$5,000)~~] ten thousand dollars (\$10,000) or less. The
3 director may require that charges or rates of charge, if stated
4 by a licensee, be stated fully and clearly in such manner as
5 the director deems necessary to prevent misunderstanding by
6 prospective borrowers. The director may permit or require
7 licensees to refer in their advertising to the fact that their
8 business is under state supervision, subject to conditions
9 imposed by the director to prevent erroneous impressions as to
10 the scope or degree of protection provided by the New Mexico
11 Small Loan Act of 1955."

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

14 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
15 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
16 JUDGMENT AND INTEREST.--

17 A. Every licensee shall:

18 (1) at the time a consumer becomes
19 contractually obligated on a loan pursuant to the New Mexico
20 Small Loan Act of 1955, deliver to the borrower or, if there
21 are two or more borrowers on the same obligation, to one of
22 them, a statement on which shall be printed a copy of Section
23 58-15-14.1 NMSA 1978 and which shall disclose in clear and
24 distinct terms:

25 (a) the amount of the loan;

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- 1 (b) the date the loan was made;
2 (c) a schedule or a description of the
3 payments;
4 (d) the type of the security, if any,
5 for the loan;
6 (e) the name and address of the
7 licensee;
8 (f) the name of the person primarily
9 obligated for the loan;
10 (g) the amount of principal;
11 (h) the annual percentage rate as
12 disclosed pursuant to 12 CFR Part 1026, known as "Regulation
13 Z", and the amount in dollars and cents;
14 (i) all other disclosures required
15 pursuant to state and federal law; and
16 (j) the charge for any other item
17 allowable and included pursuant to the New Mexico Small Loan
18 Act of 1955, so stated as to clearly show the allocation of
19 each item included;
20 (2) for each payment made on account of a
21 loan, give to the person making the payment a plain and
22 complete receipt specifying the date and amount of the payment,
23 the amount applied to interest and principal and the balance
24 unpaid. When payment is made in any other manner than by the
25 borrower in person, by an agent of the borrower or by check or

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1 money order, the licensee shall mail the receipt to the
2 borrower's last known address or retain and deliver the receipt
3 upon request of the borrower. A licensee may deliver the
4 receipt electronically to the borrower via text message or
5 email, if requested to do so in writing by the borrower. A
6 borrower may withdraw authorization for electronic delivery of
7 receipts in writing at any time. A licensee shall not require
8 a borrower to receive receipts electronically. The licensee
9 shall maintain a copy of each receipt in the office of the
10 licensee as a part of the licensee's records; and

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

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

24 C. A judgment against a party on a loan made
25 pursuant to the New Mexico Small Loan Act of 1955 shall not

1 include, and the loan shall not include, from the date of the
2 judgment, charges against a party to the loan other than costs,
3 attorney fees and post-judgment interest as provided by law.

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

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

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

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

25 H. A lender shall not make a loan pursuant to the

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1 New Mexico Small Loan Act of 1955 unless the loan is an
2 installment loan or a refund anticipation loan.

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

8 J. A lender shall not make a loan pursuant to the
9 New Mexico Small Loan Act of 1955 that has [~~an~~] a permitted
10 annual percentage rate greater than [one hundred seventy-five
11 percent, calculated pursuant to 12 CFR Part 1026, known as
12 "Regulation Z"] thirty-six percent, calculated pursuant to this
13 subsection and Subsections K and L of this section. The
14 calculation of the permitted annual percentage rate shall:

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

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

25 (3) not include any amount paid to a public

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1 official in relation to the extension of credit, including fees
2 to record liens; and

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

7 K. Nothing in Subsection J of this section shall
8 permit the imposition of fees, interest or charges of any kind
9 not otherwise permitted by the New Mexico Small Loan Act of
10 1955.

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

22 M. The director of the division shall post a notice
23 on the division's website within ten days after the provisions
24 of Subsection L of this section become applicable. The notice
25 shall state the date on which any increase or decrease in the

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1 maximum allowable permitted annual percentage rate is
2 effective.

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

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

18 [~~L.~~] P. Any rollover, renewal, refinance or
19 modification of an existing loan agreement with a licensee,
20 except a modification without any additional cost to the
21 borrower, shall constitute a new loan and shall require new
22 disclosures pursuant to the federal Truth in Lending Act."

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

25 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE

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1 PURCHASES.--The payment of [~~five thousand dollars (\$5,000)~~] ten
2 thousand dollars (\$10,000) or less in money, credit, goods or
3 things in action, as consideration for any sale or assignment
4 of or order for the payment of wages, salary, commission or
5 other compensation for services, whether earned or to be
6 earned, shall, for the purposes of regulation under the New
7 Mexico Small Loan Act of 1955, be deemed a loan of money
8 secured by such sale, assignment or order. The amount by which
9 compensation so sold, assigned or ordered paid exceeds the
10 amount of consideration actually paid shall for the purpose of
11 regulation under the New Mexico Small Loan Act of 1955 be
12 deemed interest or charges upon the loan from the date of
13 payment to the date the compensation is payable. Such
14 transaction shall be governed by and subject to the provisions
15 of the New Mexico Small Loan Act of 1955."

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

18 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside
19 this state to a resident of New Mexico in the amount or of the
20 value of [~~five thousand dollars (\$5,000)~~] ten thousand dollars
21 (\$10,000) or less for which a greater rate of interest,
22 consideration, charge or compensation to the lender than is
23 permitted by the general laws of New Mexico in force governing
24 money, interest and usury has been charged, contracted for or
25 received shall be enforced in this state. Every person in any

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1 way participating in such a loan in this state is subject to
2 the provisions of the New Mexico Small Loan Act of 1955. Any
3 loan made to a nonresident of New Mexico in conformity with the
4 law of the state where made may be enforced in this state."

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