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AN ACT

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

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

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

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

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

B. A loan in an amount equal to ten thousand  
dollars (\$10,000) or less shall be made only pursuant to the  
New Mexico Bank Installment Loan Act of 1959 or the New  
Mexico Small Loan Act of 1955. A loan made pursuant to the  
New Mexico Bank Installment Loan Act of 1959 shall be  
identified in the loan documents as being made pursuant to  
that act.

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

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

3           "58-7-6. PERMITTED CHARGES--LIMITATION ON  
4 PRESENTMENT.--

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

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

21                       (2) the lender may charge for only the  
22 actual cost of any insurance; provided, however, all  
23 insurance shall be written by companies licensed to operate  
24 within the state and at rates no higher than those approved  
25 by the superintendent of insurance; and provided further that

1 the lender shall not require any insurance to be written or  
2 provided by or through any particular agent, broker or  
3 insurer as a condition to making the loan but shall, at the  
4 borrower's option, permit the insurance to be procured from  
5 any reputable insurer or through any reputable agent  
6 authorized by law to provide it;

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

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

18 (5) if a loan under the New Mexico Bank  
19 Installment Loan Act of 1959 is secured and if the borrower  
20 fails to pay any governmental or other levy arising after the  
21 date of the loan that would create a lien superior to the  
22 lien of the lender on the property standing as security, the  
23 lender, at the lender's option, may pay the levy and add the  
24 amount so paid to the balance due from the borrower;

25 (6) the actual expenditures, including

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

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

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

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

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

3           "58-7-7. RESTRICTIONS.--

4           A. No lender shall make a loan pursuant to the New  
5 Mexico Bank Installment Loan Act of 1959 to a borrower who is  
6 also indebted to that lender pursuant to the New Mexico Small  
7 Loan Act of 1955 unless the loan made pursuant to the New  
8 Mexico Small Loan Act of 1955 is paid and released at the  
9 time the loan is made.

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

14           C. No lender other than a federally insured  
15 depository institution shall make a loan pursuant to the New  
16 Mexico Bank Installment Loan Act of 1959 unless the loan is  
17 repayable in a minimum of four substantially equal  
18 installment payments of principal and interest.

19           D. 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 that has a permitted  
22 annual percentage rate greater than thirty-six percent,  
23 calculated pursuant to 12 CFR Part 1026, known as "Regulation  
24 Z", this subsection and Subsections E and F of this section;  
25 provided that the calculation of the permitted annual

1 percentage rate shall:

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

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

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

16 (4) not include a fee on a loan of five  
17 hundred dollars (\$500) or less; provided further that the fee  
18 shall not exceed five percent of the total principal of the  
19 loan and shall not be imposed on any borrower more than one  
20 time per twelve-month period; and

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

25 E. Nothing in Subsection D of this section shall

1 permit the imposition of fees, interest or charges of any  
2 kind not otherwise permitted by the New Mexico Bank  
3 Installment Loan 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  
8 percentage rate set forth in this section shall increase to  
9 thirty-six percent plus each percentage point or fraction of  
10 a percentage point by which the prime rate of interest  
11 exceeded ten percent in the most recent month. When the  
12 prime rate of interest falls below ten percent for three  
13 consecutive months, the maximum allowable permitted annual  
14 percentage rate shall return to thirty-six percent.

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

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

25 I. The provisions of Subsections B and C of this

1 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  
5 proceeds of the consumer's federal or state personal income  
6 tax refunds or tax credits, including any sale, assignment or  
7 purchase of a tax refund or tax credit at a discount or for a  
8 fee.

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

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

17 "58-7-9. CONSTRUCTION--DEFINITIONS.--

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

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



1 56-1-15 NMSA 1978.

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

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

8 (1) "consumer" means a person who resides in  
9 New Mexico or who enters into a loan agreement in New Mexico;

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  
24 specific purpose of repaying a loan;

25 (4) "make a loan" means to originate a new

1 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 (5) "month" means one-twelfth of a year;

6 (6) "person" includes an individual,  
7 copartner, association, trust, corporation and any other  
8 legal 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 (8) "year" means three hundred sixty-five  
14 days.

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

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

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

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

19 (1) in a minimum of four substantially equal  
20 payments of principal and interest to pay off a loan in its  
21 entirety with an initial stated maturity of not less than one  
22 hundred twenty days to maturity; or

23 (2) in any number of payments and with any  
24 initial stated days to maturity that bears no finance charge  
25 as disclosed pursuant to 12 CFR Part 1026, known as

1 "Regulation Z", and with respect to which no other fees or  
2 charges of any kind are imposed at any time;

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

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

20 I. "make a loan" means to originate a new loan  
21 agreement or to make any change to the terms of an existing  
22 loan agreement, including the principal amount financed, the  
23 annual percentage rate, finance charge, fees or payment  
24 schedule;

25 J. "person" includes an individual, copartner,

1 association, trust, corporation and any other legal entity;

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

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

12 M. "simple interest" means a method of calculating  
13 interest in which the amount of interest is calculated based  
14 on the annual percentage rate disclosed in the loan agreement  
15 and is computed only on the outstanding principal balance of  
16 the loan."

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

19 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
20 PENALTY.--

21 A. A person shall not engage in the business of  
22 lending in amounts of ten thousand dollars (\$10,000) or less  
23 for a loan without first having obtained a license from the  
24 director. Nothing contained in this subsection shall  
25 restrict or prohibit a licensee under the New Mexico Small

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

4 B. Nothing in the New Mexico Small Loan Act of  
5 1955 shall apply to a person making individual advances of  
6 ten thousand dollars (\$10,000) or less under a written  
7 agreement providing for a total loan or line of credit in  
8 excess of ten thousand dollars (\$10,000).

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

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

- 25 (1) a person who owns an interest, legal or

1 equitable, in the business or profits of a licensee and whose  
2 name does not specifically appear on the face of the license,  
3 except a stockholder in a corporate licensee;

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

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

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

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

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

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

22 (f) disguising loan proceeds as a cash  
23 rebate for the pretextual installment sale of goods or  
24 services; and

25 (g) making, offering, assisting or



1 arranging a debtor to obtain a loan with a greater rate of  
2 interest, consideration or charge than is permitted by  
3 Chapter 58 NMSA 1978 through any method, including mail,  
4 telephone, internet or any electronic means, regardless of  
5 whether the person has a physical location in the state; and

6 (3) if the loan exceeds the rate permitted  
7 by Chapter 58 NMSA 1978, a person purporting to act as an  
8 agent, service provider or in another capacity for another  
9 entity that is exempt from the New Mexico Small Loan Act of  
10 1955, if, among other things:

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

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

18 (c) the totality of the circumstances  
19 indicate that the person is the lender and the transaction is  
20 structured to evade the requirements of the New Mexico Small  
21 Loan Act of 1955. In deciding whether the totality of the  
22 circumstances indicate that the person is a lender and a  
23 transaction is structured to evade the requirements of the  
24 New Mexico Small Loan Act of 1955, all relevant factors may  
25 be considered, including where the person: 1) indemnifies,

1 insures or protects an exempt entity for any costs or risks  
2 related to the loan; 2) predominantly designs, controls or  
3 operates the loan program; or 3) purports to act as an agent,  
4 service provider or in another capacity for an exempt entity  
5 while acting directly as a lender in other states.

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

18 F. A loan in an amount equal to ten thousand  
19 dollars (\$10,000) or less shall be made only pursuant to the  
20 New Mexico Bank Installment Loan Act of 1959 or the New  
21 Mexico Small Loan Act of 1955.

22 G. A violation of a provision of the New Mexico  
23 Small Loan Act of 1955 that constitutes either an unfair or  
24 deceptive trade practice or an unconscionable trade practice  
25 pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant

1 to the Unfair Practices Act."

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

4 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
5 WITNESSES.--

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

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

21 C. For the purpose of discovering violations of  
22 the New Mexico Small Loan Act of 1955 or of securing  
23 information lawfully required under that act, the director or  
24 the director's authorized representative may at any time  
25 investigate the business and examine the books, accounts,

1 papers and records used therein, including income tax returns  
2 or other reports filed in the office of the director of the  
3 revenue processing division of the taxation and revenue  
4 department of:

5 (1) any licensee;

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

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

14 D. For the purposes of this section, a person who  
15 advertises, solicits or makes any representation as being  
16 willing to make loan transactions in any amount, except  
17 persons, financial institutions or lending agencies operating  
18 under charters or licenses issued by a state or federal  
19 agency or under any special statute, shall be subject to  
20 investigation under the New Mexico Small Loan Act of 1955 and  
21 shall be presumed to be engaged in the business described in  
22 Subsection A of Section 58-15-3 NMSA 1978 as to any loans of  
23 ten thousand dollars (\$10,000) or less.

24 E. To facilitate the examinations and  
25 investigations by the director and fully disclose the

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

12 F. For the purposes of this section, the director  
13 or the director's authorized representative shall have and be  
14 given free access to the offices and places of business,  
15 files, safes and vaults of all licensees and shall have  
16 authority to require the attendance of any person and to  
17 examine the person under oath relative to such loans or  
18 business or to the subject matter of any examination,  
19 investigation or hearing as provided in the New Mexico Small  
20 Loan Act of 1955. Notices to appear before the director for  
21 examination under oath may be served by registered mail. If  
22 the party notified to appear is the licensee, any person  
23 named on the face of the license being investigated or any  
24 agent, employee or manager participating in the licensee's  
25 business and the party fails to appear for examination or

1 refuses to answer questions submitted, the director may,  
2 forthwith and without further notice to the licensee, suspend  
3 the license involved pending compliance with the notice.  
4 Upon failure of any other person to appear or to answer  
5 questions, the director may apply to and invoke the aid of  
6 any district court of New Mexico in compelling the attendance  
7 and testimony of any such person and the production of books,  
8 records, written instruments and documents relating to the  
9 business of the licensee. The district court whose aid is so  
10 invoked by the director may, in case of contumacy or refusal  
11 to obey any order of the district court issued to compel the  
12 attendance of the person or the production of books, records,  
13 written instruments and documents, punish the person as for  
14 contempt of court.

15 G. The director shall prescribe rules of procedure  
16 for all hearings, examinations or investigations provided for  
17 in the New Mexico Small Loan Act of 1955. The director is  
18 not bound by the usual common law or statutory rules of  
19 evidence or by any technical or formal rules of procedure or  
20 pleading and specification of charges other than as  
21 specifically provided in the New Mexico Small Loan Act of  
22 1955 but may conduct hearings, examinations and  
23 investigations in the manner best calculated to ascertain the  
24 substantial rights of the parties interested.

25 H. The director has the power to administer oaths, HB 132/a  
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1 certify official acts and records of the director's office,  
2 issue subpoenas for witnesses in the name of and under the  
3 seal of the director's office and compel the production of  
4 papers, books, accounts and documents. The director shall  
5 issue subpoenas at the instance of any party to a hearing  
6 before the division upon payment of a fee of two dollars  
7 fifty cents (\$2.50) for each subpoena so issued.

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

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

22 K. Whenever the director has reasonable cause to  
23 believe that a person is violating a provision of the New  
24 Mexico Small Loan Act of 1955, the director may, in addition  
25 to all actions provided for in that act and without prejudice

1 thereto, enter an order requiring the person to desist or to  
2 refrain from the violation. An action may be brought on the  
3 relation of the attorney general and the director to enjoin  
4 the person from engaging in or continuing the violation or  
5 from doing any act in furtherance of the violation. In any  
6 such action, an order or judgment may be entered awarding a  
7 preliminary or final injunction as may be deemed proper. In  
8 addition to all other means provided by law for the  
9 enforcement of a temporary restraining order, temporary  
10 injunction or final injunction, the court in which such  
11 action is brought shall have power and jurisdiction to  
12 impound and to appoint a receiver for the property and  
13 business of the defendants, including books, papers,  
14 documents and records pertaining thereto or so much thereof  
15 as the court may deem reasonably necessary to prevent further  
16 violations of the New Mexico Small Loan Act of 1955 through  
17 or by means of the use of the property and business. The  
18 receiver, when appointed and qualified, shall have powers and  
19 duties as to custody, collection, administration, winding up  
20 and liquidation of the property and business as are from time  
21 to time conferred upon the receiver by the court."

22 SECTION 8. Section 58-15-10.1 NMSA 1978 (being Laws  
23 2011, Chapter 105, Section 1, as amended) is amended to read:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

11 (a) less than or equal to ten percent;

12 (b) more than ten percent through  
13 eighteen percent;

14 (c) more than eighteen percent through  
15 thirty-six percent; and

16 (d) more than thirty-six percent;

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

19 (a) a list of each fee charged by the  
20 lender and a description of each fee product or type,  
21 including fees charged for loan origination and credit  
22 insurance;

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

25 (c) the total dollar amount of interest

1 charged by the lender and paid by the borrower;

2 (5) for each loan product:

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

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

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

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

21 (7) the number of borrowers who took out  
22 three or more loans with the lender in the previous calendar  
23 year, and the percentage of all borrowers who took out three  
24 or more loans with the lender in the previous calendar year;

25 (8) for each loan product, the number of

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

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

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

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

25 (12) for each loan product, the number of

1 loans for which a borrower has defaulted on a loan, and for  
2 each loan product, the percentage of total loans of that  
3 product for which the borrower has defaulted on a loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 9.** Section 58-15-10.2 NMSA 1978 (being Laws  
25 2017, Chapter 110, Section 21) is amended to read:

1 "58-15-10.2. REPORTING OF CREDIT REQUIRED.--

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

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

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

16 **SECTION 10.** Section 58-15-12 NMSA 1978 (being Laws  
17 1955, Chapter 128, Section 12, as amended) is amended to  
18 read:

19 "58-15-12. ADVERTISING.--A licensee or other person  
20 subject to the New Mexico Small Loan Act of 1955 shall not  
21 advertise, display, distribute or broadcast or cause or  
22 permit to be advertised, displayed, distributed or broadcast  
23 in any manner whatsoever a false, misleading or deceptive  
24 statement or representation with regard to the charges, terms  
25 or conditions for loans in the amount or of the value of ten

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

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



- 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
- 23 payment, the amount applied to interest and principal and the
- 24 balance unpaid. When payment is made in any other manner
- 25 than by the borrower in person, by an agent of the borrower

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

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

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

1 C. A judgment against a party on a loan made  
2 pursuant to the New Mexico Small Loan Act of 1955 shall not  
3 include, and the loan shall not include, from the date of the  
4 judgment, charges against a party to the loan other than  
5 costs, attorney fees and post-judgment interest as provided  
6 by law.

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

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

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

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

1 New Mexico Small Loan Act of 1955 if a loan has an initial  
2 stated maturity of less than one hundred twenty days unless  
3 the loan is a refund anticipation loan.

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

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

12 J. A lender shall not make a loan pursuant to the  
13 New Mexico Small Loan Act of 1955 that has a permitted annual  
14 percentage rate greater than thirty-six percent, calculated  
15 pursuant to 12 CFR Part 1026, known as "Regulation Z", this  
16 subsection and Subsections K and L of this section; provided  
17 that the calculation of the permitted annual percentage rate  
18 shall:

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

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

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

8 (4) not include a fee on a loan of five  
9 hundred dollars (\$500) or less; provided further that the fee  
10 shall not exceed five percent of the total principal of the  
11 loan and shall not be imposed on any borrower more than one  
12 time per twelve-month period; and

13 (5) follow the rules established for  
14 calculating the disclosed annual percentage rate for credit  
15 transactions pursuant to Regulation Z based on the charges  
16 set forth in Paragraphs (1) and (4) of this subsection.

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

21 L. If the prime rate of interest exceeds ten  
22 percent for three consecutive months, then during the month  
23 following the third consecutive month in which prime exceeded  
24 ten percent, the maximum allowable permitted annual  
25 percentage rate set forth in this section shall increase to

1 thirty-six percent plus each percentage point or fraction of  
2 a percentage point by which the prime rate of interest  
3 exceeded ten percent in the most recent month. When the  
4 prime rate of interest falls below ten percent for three  
5 consecutive months, the maximum allowable permitted annual  
6 percentage rate shall return to thirty-six percent.

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

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

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

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

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

8 SECTION 12. Section 58-15-21 NMSA 1978 (being Laws  
9 1955, Chapter 128, Section 19, as amended) is amended to  
10 read:

11 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE  
12 PURCHASES.--The payment of ten thousand dollars (\$10,000) or  
13 less in money, credit, goods or things in action, as  
14 consideration for any sale or assignment of or order for the  
15 payment of wages, salary, commission or other compensation  
16 for services, whether earned or to be earned, shall, for the  
17 purposes of regulation under the New Mexico Small Loan Act of  
18 1955, be deemed a loan of money secured by such sale,  
19 assignment or order. The amount by which compensation so  
20 sold, assigned or ordered paid exceeds the amount of  
21 consideration actually paid shall for the purpose of  
22 regulation under the New Mexico Small Loan Act of 1955 be  
23 deemed interest or charges upon the loan from the date of  
24 payment to the date the compensation is payable. Such  
25 transaction shall be governed by and subject to the

1 provisions of the New Mexico Small Loan Act of 1955."

2 SECTION 13. Section 58-15-24 NMSA 1978 (being Laws  
3 1955, Chapter 128, Section 22, as amended) is amended to  
4 read:

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

18 SECTION 14. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is January 1, 2023. \_\_\_\_\_

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