HOUSE BILL 347
53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY
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AN ACT
RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES
FOR CERTAIN INSTALLMENT LOANS; PROVIDING FOR REPORTING TO
CREDIT AGENCIES; AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE
NEW MEXICO SMALL LOAN ACT OF 1955 AND THE NEW MEXICO BANK
INSTALLMENT LOAN ACT OF 1959; REPEALING SECTIONS OF THE NEW
MEXICO SMALL LOAN ACT OF 1955; CREATING THE FINANCIAL LITERACY
FUND; MAKING AN APPROPRIATION.

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

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

"56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
MAXIMUM RATES--DEFINITION.--
A. Unless otherwise provided by law, no person,
corporation or association, directly or indirectly, shall take, reserve, receive or charge any interest, discount or other advantage for the loan of money or credit or the forbearance or postponement of the right to receive money or credit except at the rates permitted in Sections 56-8-1 through 56-8-21 NMSA 1978.

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

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

D. In addition to the maximum interest or discount [which] a lender is permitted to charge by law, the lender may charge, take, reserve or receive a premium or points in an amount up to but not exceeding three percent of the face amount of the loan on interim construction loans. The lender may charge and require the borrower to pay the premium upon execution of the loan agreement, whether the proceeds are delivered to the borrower immediately or whether there are to be obligatory or permissive future advances. The lender shall not be required to refund this charge in the event of prepayment of the obligation. For the purposes of this section, [an] "interim construction loan" means a loan secured by a first mortgage and used by the borrower primarily for financing the construction of buildings, structures or improvements on or to the real property on which the first mortgage has been taken.

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

F. A loan in an amount less than or equal to five

thousand dollars ($5,000) shall be made only pursuant to the

New Mexico Bank Installment Loan Act of 1959 or the New Mexico
Small Loan Act of 1955."

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

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

SECTION 3. Section 58-7-3 NMSA 1978 (being Laws 1995,
Chapter 190, Section 15) 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 less than or equal to five
thousand dollars ($5,000) shall be made only pursuant to the
New Mexico Bank Installment Loan Act of 1959 or the New Mexico
Small Loan Act of 1955."

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

"58-7-3.1. PRECOMPUTED LOAN.--[If the loan is] In a
precomputed loan transaction, the interest charge [may] shall
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be calculated on the assumption that all scheduled payments
will be made when due, and the effect of prepayment is governed
by the provisions of rebate upon prepayment in Section 58-7-5
NMSA 1978."

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

"58-7-6. [ADDITIONAL] PERMITTED CHARGES.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"58-7-7. RESTRICTIONS.--

A. No lender shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 to a borrower who is also indebted to such lender under the New Mexico Small Loan Act of 1955 unless the loan made under the New Mexico Small Loan Act of 1955 is paid and released at the time the loan is made.

B. No lender shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 if a loan has an initial stated maturity of less than one hundred twenty days.
C. No lender shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 unless the loan is repayable in a minimum of four installments of substantially equal payments of principal and interest."

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

"58-7-9. CONSTRUCTION.--

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

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

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

[D. In the event of a conflict between a requirement of the New Mexico Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection Act, the requirement of the Home Loan Protection Act shall control.

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As used in the New Mexico Bank Installment Loan Act of 1959:

(1) "year" means three hundred sixty-five days; [and]

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

(3) "nationally recognized consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers residing nationwide:

   (a) public record information; or

   (b) credit account information from persons who furnish that information regularly and in the ordinary course of business.

The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in .205760.5
the office of the director of the financial institutions
division. Distribution thereof shall be made to interested
persons, and their comments shall be invited. After the
proposed regulation has been on file for not less than two
months, the director may issue it as a final regulation by
filing as required by law. Any person who is or may be
adversely affected by the adoption, amendment or repeal of a
regulation under this section may file an appeal of that action
in the district court in Santa Fe county within thirty days
after the filing of the adopted regulation, amendment or repeal
as required by law.

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

[H.] All loans other than precomputed loan
transactions made under the New Mexico Bank Installment Loan
Act of 1959 shall be clearly identified on the loan documents
as being made under that act."

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

"[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each
installment loan made pursuant to the New Mexico Bank
Installment Loan Act of 1959, a lender shall report to a
nationally recognized consumer reporting agency the terms of
the loan and the borrower's performance pursuant to those
terms."

SECTION 9. A new section of the New Mexico Bank
Installment Loan Act of 1959 is enacted to read:

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

SECTION 10. Section 58-15-2 NMSA 1978 (being Laws 1955,
Chapter 128, Section 2, as amended) is amended to read:

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

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

B. "debit authorization" means an authorization
signed by a consumer to electronically transfer or withdraw
funds from the consumer's account for the specific purpose of
repaying a loan;
C. ["department" or] "division" means the financial institutions division of the regulation and licensing department;

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

E. "installment loan" means a loan in an amount less than or equal to five thousand dollars ($5,000) that is to be repaid in a minimum of four [successive substantially equal payment amounts] installments of substantially equal payments of principal and interest to pay off a loan in its entirety with [a period of no] an initial stated maturity of not less than one hundred twenty days to maturity. "Installment loan" does not mean a [loan in which a licensee requires, as a condition of making the loan, the use of postdated checks or debit authorizations for repayment of that] refund anticipation loan;

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

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

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

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

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

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

(c) pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer.

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consumer the amount of an instrument actually paid or to be
paid pursuant to the New Mexico Small Loan Act of 1955; but

(2) does not include:

(a) an overdraft product or service

offered by a banking corporation, savings and loan association
or credit union; and

(b) installment loans;

I. "payday loan product" means a payday loan or a

payment plan pursuant to Section 58-15-35 NMSA 1978;]

H. "nationally recognized consumer reporting

agency" means any person that, for monetary fees or dues or on

a cooperative nonprofit basis, regularly engages in the

practice of assembling or evaluating, and maintaining, for the

purpose of furnishing consumer reports to third parties bearing

on a consumer's creditworthiness, credit standing or credit

capacity, each of the following regarding consumers residing

countrywide:

(1) public record information; or

(2) credit account information from persons

who furnish that information regularly and in the ordinary

course of business;

[Jr] I. "person" includes an individual, copartner,

association, trust, corporation and any other legal entity;

[K. "renewed payday loan" means a loan in which a

consumer pays in cash the administrative fee payable under a
payday loan agreement and refinances all or part of the unpaid
principal balance of an existing payday loan with a new payday
loan from the same licensee. A "renewed payday loan" includes
a transaction in which a consumer pays off all or part of an
existing payday loan with the proceeds of a payday loan from
the same licensee; and]

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

K. "simple interest" means a method of
calculating interest in which the amount of interest is
calculated based on the annual interest rate disclosed in the
loan agreement and is computed only on the outstanding
principal balance of the loan."

SECTION 11. Section 58-15-3 NMSA 1978 (being Laws 1955,
Chapter 128, Section 3, as amended) is amended to read:

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

A. A person shall not engage in the business of
lending in amounts of \[two thousand five hundred dollars
\(\$2,500\)\] five thousand dollars \(\$5,000\) or less for a loan
without first having obtained a license from the director.
Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in accordance with the provisions of Section 58-7-2 NMSA 1978.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000) or less under a written agreement providing for a total loan or line of credit in excess of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000).

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

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

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

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

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

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

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

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

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

SECTION 12. Section 58-15-5 NMSA 1978 (being Laws 1978, Chapter 6, Section 1, as amended) is amended to read:

"58-15-5. LICENSES--INVESTIGATION OF APPLICATION--ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE FEES--LICENSEE BOUND BY ACT.--

A. Upon the filing of an application, whether it is an original or a renewal, the director shall investigate the facts concerning the application and the requirements provided in this section.

B. An applicant for license, upon written notice to do so by the director, shall, within twenty days after service of the notice, furnish in writing, under oath, to the director
all additional information required by the director that may be
relevant or, in the opinion of the director, helpful in
conducting the investigation.

C. Failure to comply with the director's
requirement for supplemental information or the willful
furnishing of false information is sufficient grounds for
denial of license.

D. False or misleading information willfully and
intentionally furnished to the director prior to the issuance
of any license is grounds for suspension or revocation of any
license in accordance with the procedures for suspension or
revocation of license in the New Mexico Small Loan Act of 1955.

E. The director shall grant or deny each
application for an original license within sixty days from the
filing of the application with the required information and
fees, unless the period is extended by written agreement
between the applicant and the director.

F. In the event the director finds that:

   (1) the financial responsibility, character
and general fitness of the applicant for an original license
and of the individual members and beneficiaries thereof, if the
applicant is a copartnership, association or trust, and of the
officers and directors thereof, if the applicant is a
corporation, are such as to command the confidence of the
public and to warrant belief that the business will be operated
lawfully, honestly, fairly and efficiently within the declared
purposes and spirit of the New Mexico Small Loan Act of 1955;

(2) allowing the applicant to engage in
business will promote the convenience and advantage of the
community in which the business of the applicant is to be
conducted; and

(3) the applicant has available for operation
of the business at the specified location cash or its
equivalent, convertible securities or receivables of thirty
thousand dollars ($30,000) or any combination thereof; the
director shall enter an order granting the application, file
the director's findings and, upon payment of the license fee of
five hundred dollars ($500), issue and deliver a license to the
applicant.

G. If the director does not make the findings
enumerated in Subsection F of this section, the director shall
enter an order denying the application, notify the applicant of
the denial and retain the application fee. Within thirty days
after the entry of such an order, the director shall prepare
written findings and shall deliver a copy to the applicant.

H. A written application for license renewal shall
be filed on or before March 31 of each year, and thereupon the
director shall investigate the facts and review the files of
examinations of the applicant made by the director's office and
of complaints filed by borrowers, if any. The director shall

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deliver a renewal license to the applicant if the director finds that:

   (1) no valid complaints of violations or abuses of the New Mexico Small Loan Act of 1955 or of the regulations of the director promulgated under that act have been filed by borrowers;

   (2) examinations of the affairs of the applicant indicate that the business has been conducted and operated lawfully and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955; and

   (3) the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955.

I. If the director does not make the findings enumerated in Subsection H of this section, the director may grant a temporary extension of the license not exceeding sixty days pending a hearing; shall enter an order fixing a date for hearing upon the application; shall notify the licensee thereof, specifying the particular complaints, violations or abuses or other reasons for the director's contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall
produce evidence to establish the truth of the charges of violation or other grounds specified in the notice, and the applicant shall be accorded the right to produce evidence or other matters of defense. If after the hearing the director finds that the complaints of violations or other grounds specified in the notice are not well-founded, the director shall issue the renewal license. If the director finds that the complaints of violations or other grounds are well-founded, the director shall enter an order denying the renewal application and notify the applicant of the denial, returning the renewal license fee tendered with the application. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy of the findings to the applicant. The order shall be subject to review as provided in Section 58-15-25 NMSA 1978. The court in its discretion and upon proper showing may order a temporary extension of the license pending disposition of the review proceedings.

J. In connection with the determination of fitness and character of an applicant pursuant to the provisions of this section, the fact that the applicant or licensee is a member of or interested financially in, connected or affiliated with, controls or is controlled by or owns or is owned by other corporations, partnerships, trusts, associations or other legal entities engaged in the lending of money whose policies and
practices as to rates of interest, charges and fees and general
dealing with borrowers are questionable or would constitute
violation of the general usury statutes of this state or of the
declared purposes and spirit of the New Mexico Small Loan Act
of 1955 shall be given such consideration and weight as the
director determines.

K. At the time of issuance of original license and
each annual renewal thereof, the licensee for each licensed
office shall pay to the director as a license fee for the
period covered by the license the sum of five hundred dollars
($500) as a minimum, plus an additional seventy-five cents
($0.75) for each one thousand dollars ($1,000) or fraction
thereof of loans outstanding as of December 31 next preceding,
as shown on the applicant's annual report. In the event that
the application for annual renewal of the license is
delinquent, the licensee shall also pay a delinquency fee of
ten dollars ($10.00) per day for each day the licensee is
delinquent in filing the application for renewal.

L. In addition to the fees provided for in
Subsection K of this section, at the time of issuance of
original license and each annual renewal thereof, the licensee
for each licensed office shall pay to the director as an
additional fee for the period covered by the license the sum of
two hundred dollars ($200), which fee shall be deposited into
the financial literacy fund.
A licensee by accepting a license that is issued or renewed or by continuing to operate a licensed office under the New Mexico Small Loan Act of 1955 shall by such action be deemed to have consented to be bound by the lawful provisions of that act and all lawful requirements, regulations and orders of the director promulgated or issued pursuant to any authorization granted in that act."

SECTION 13. Section 58-15-9 NMSA 1978 (being Laws 1955, Chapter 128, Section 9, as amended) is amended to read:


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

B. Within a reasonable time after the completion of an examination of a licensed office, the director shall mail to the licensee a copy of the report of the examination, together with any comments, exceptions, objections or criticisms of the director concerning the conduct of the licensee and the operation of the licensed office.
C. For the purpose of discovering violations of the New Mexico Small Loan Act of 1955 or of securing information lawfully required under that act, the director or the director's authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, including income tax returns or other reports filed in the office of the director of the revenue processing division of the taxation and revenue department of:

(1) any licensee;

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

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

D. For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or licenses issued by a state or federal agency or under any special statute, shall be subject to investigation under the New Mexico Small Loan Act of 1955 and shall be
presumed to be engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 as to any loans of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000) or less.

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

F. For the purposes of this section, the director or the director's authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine the person under oath relative to such loans or business or to the subject matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear
before the director for examination under oath may be served by
registered mail. If the party notified to appear is the
licensee, any person named on the face of the license being
investigated or any agent, employee or manager participating in
the licensee's business and the party fails to appear for
examination or refuses to answer questions submitted, the
director may, forthwith and without further notice to the
licensee, suspend the license involved pending compliance with
the notice. Upon failure of any other person to appear or to
answer questions, the director may apply to and invoke the aid
of any district court of New Mexico in compelling the
attendance and testimony of any such person and the production
of books, records, written instruments and documents relating
to the business of the licensee. The district court whose aid
is so invoked by the director may, in case of contumacy or
refusal to obey any order of the district court issued to
compel the attendance of the person or the production of books,
records, written instruments and documents, punish the person
as for contempt of court.

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

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

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

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

K. Whenever the director has reasonable cause to
believe that a person is violating a provision of the New Mexico Small Loan Act of 1955, the director may, in addition to all actions provided for in that act and without prejudice thereto, enter an order requiring the person to desist or to refrain from the violation. An action may be brought on the relation of the attorney general and the director to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction or final injunction, the court in which such action is brought shall have power and jurisdiction to impound and to appoint a receiver for the property and business of the defendants, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of the New Mexico Small Loan Act of 1955 through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as are from time to time conferred upon the receiver by the court."

Chapter 128, Section 12, as amended) is amended to read:

"58-15-12. ADVERTISING.--A licensee or other person subject to the New Mexico Small Loan Act of 1955 shall not advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast in any manner whatsoever a false, misleading or deceptive statement or representation with regard to the charges, terms or conditions for loans in the amount or of the value of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000) or less. The director may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems necessary to prevent misunderstanding by prospective borrowers. The director may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by the director to prevent erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955."

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

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

A. Every licensee shall:

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

(a) the amount of the loan;
(b) the date the loan was made;
(c) a schedule or a description of the
payments;
(d) the type of the security, if any,
for the loan;
(e) the name and address of the licensed
office;
(f) the name of the person primarily
obligated for the loan;
(g) the amount of principal;
(h) the [agreed rate of charge stated on
a percent per year basis] annual interest rate as disclosed
pursuant to 12 C.F.R. 226, known as "Regulation Z", and the
amount in dollars and cents;
(i) all other disclosures required
pursuant to state and federal law; and
(j) other items allowable pursuant to
that act, so stated as to clearly show the allocation of each
item included;

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

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

B. A licensee shall not take a note or promise to pay that does not disclose the amount of the loan, a schedule of payments, or a description thereof, and the agreed charge or rate of charge or any instrument in which blanks are left to be filled in after execution.
C. If judgment is obtained against a party on a loan made pursuant to the provisions of the New Mexico Small Loan Act of 1955, neither the judgment nor the loan shall carry, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as provided by law.

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

E. No loan made under the provisions of the New Mexico Small Loan Act of 1955 shall bear interest after ninety days from the date of the death of the borrower in excess of a rate of ten percent a year on the unpaid principal balance of the loan.

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

G. No lender shall make a loan pursuant to the New Mexican Small Loan Act of 1955 unless such loan is made in a loan agreement that contains the following provisions:
Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days, unless it is a refund anticipation loan.

H. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is an installment loan or a refund anticipation loan.

I. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is repayable in a minimum of four installments of substantially equal payments of principal and interest."

SECTION 16. Section 58-15-20 NMSA 1978 (being Laws 1955, Chapter 128, Section 18, as amended) is amended to read:

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

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

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

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

D. Delinquency fees shall not exceed [five cents ($0.05)] ten cents ($0.10) for each one dollar ($1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed [ten dollars ($10.00)] twenty-five dollars ($25.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid."

SECTION 17. Section 58-15-21 NMSA 1978 (being Laws 1955, Chapter 128, Section 19, as amended) is amended to read:

"58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE PURCHASES.--The payment of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000) or less in money, credit, goods or things in action, as consideration for any sale or assignment of or order for the payment of wages, salary, commission or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under the New Mexico Small Loan Act of 1955, be deemed a loan of money secured by such sale, assignment or order. The amount by which [such] compensation so sold, assigned or ordered paid
exceeds the amount of [such] consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon [such] the loan from the date of [such] payment to the date [such] the compensation is payable. Such transaction shall be governed by and subject to the provisions of the New Mexico Small Loan Act of 1955."

SECTION 18. Section 58-15-24 NMSA 1978 (being Laws 1955, Chapter 128, Section 22, as amended) is amended to read:

"58-15-24. LOANS MADE ELSEWHERE.--No loan made outside this state to a resident of New Mexico in the amount or of the value of [two thousand five hundred dollars ($2,500)] five thousand dollars ($5,000) or less for which a greater rate of interest, consideration, charge or compensation to the lender than is permitted by the general laws of New Mexico [presently] in force governing money, interest and usury has been charged, contracted for or received shall be enforced in this state. Every person in any way participating in such a loan in this state [shall be] is subject to the provisions of the New Mexico Small Loan Act of 1955. Any loan made to a nonresident of New Mexico in conformity with the law of the state where made may be enforced in this state."

SECTION 19. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"[NEW MATERIAL] INSTALLMENT LOANS--PERMITTED CHARGES.--
A. Upon the execution of an installment loan, the licensee may impose and collect a processing fee of not more than ten percent of the principal amount of the loan, which fee is fully earned and nonrefundable at the time a loan agreement is executed.

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

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

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

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

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"[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each installment loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a nationally recognized consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms."

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

"[NEW MATERIAL] FINANCIAL LITERACY FUND.--The "financial literacy fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and fees received pursuant to Subsection L of Section 58-15-5 NMSA 1978. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the regulation and licensing department for the purposes of developing and implementing financial literacy programs as provided for in Subsection C of Section 58-15-39 NMSA 1978. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing."

SECTION 22. Section 58-15-39 NMSA 1978 (being Laws 2007, Chapter 86, Section 21, as amended) is amended to read:

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

    A. The division shall:
(1) maintain a list of licensees, which list shall be available to interested persons and the public; and

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

[B. The division shall annually provide a report to the legislature detailing statistics, including data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state. The division shall compile an annual report by October 1 of each year containing, at a minimum, data regarding all payday loan products entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public and published on the division's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding year, including:

(1) the total number and dollar amount of payday loan products entered into in the calendar year ending December 31 of the previous year;

(2) the total number and dollar amount of payday loan products outstanding as of December 31 of the previous year;

(3) the effective annualized percentage rate and the average number of days of a payday loan during the

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calendar year ending December 31 of the previous year;

(4) the number of payday loan products entered
into in the amount of one hundred dollars ($100) or less, the
number of payday loan products entered into in the amount of
one hundred one dollars ($101) to five hundred dollars ($500),
the number of payday loan products entered into in the amount
of five hundred one dollars ($501) to one thousand dollars
($1,000), the number of payday loan products entered into in
the amount of one thousand one dollars ($1,001) to one thousand
five hundred dollars ($1,500), the number of payday loan
products in an amount greater than one thousand five hundred
dollars ($1,500) and the percentage of total payday loan
products entered into in each of those ranges;

(5) an estimate of the total dollar amount of
fees collected for payday loan products;

(6) the total number of payday loan products
entered into and the total dollar amount of the net
charge-offs or write-offs and of the net recoveries of
licensees;

(7) the minimum, maximum and average dollar
amounts of payday loan products entered into in the calendar
year ending December 31 of the previous year;

(8) the average payday loan product amount,
average number of transactions and average aggregate payday
loan product amount entered into per consumer each year;
(9) the average number of days a consumer is engaged in a payday loan product each year;

(10) an estimate of the average total fees paid by a payday loan product consumer;

(11) the number of consumers who are eligible for payment plans and the number of consumers who enter into payment plans pursuant to Section 58-15-35 NMSA 1978; and

(12) the number of consumers who are subject to the restrictions of the waiting period pursuant to Section 58-15-36 NMSA 1978.

C. The division shall compile from reports filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an annual report by October 1 of each year containing data regarding only loans exceeding an annual interest rate of one hundred seventy-five percent as disclosed pursuant to 12 C.F.R. 226, known as "Regulation Z", entered into in the preceding calendar year on an aggregate basis. Excluded from the reporting requirements of this subsection are payday loan products or loans or loan products with an annual interest rate of one hundred seventy-five percent or less as disclosed pursuant to 12 C.F.R. 226, known as "Regulation Z", entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public and published on the division's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying
consumer data from the preceding calendar year, including:

(1) a general description of loan products offered by licensees during the preceding calendar year and the minimum, maximum and average annual interest rate for each loan product;

(2) the number of loans entered into in the amount of five hundred dollars ($500) or less, the number of loans entered into in the amount of five hundred one dollars ($501) to one thousand dollars ($1,000), the number of loans entered into in the amount of one thousand one dollars ($1,001) to three thousand dollars ($3,000), the number of loans entered into in the amount of three thousand one dollars ($3,001) to five thousand dollars ($5,000), the number of loans in an amount greater than five thousand dollars ($5,000) and the number of loans listed by licensee entered into in each of those ranges;

(3) the total number and dollar amount of loans entered into in the previous calendar year for each loan product;

(4) the average principal loan amount for each loan product;

(5) the total number of loans for which the loan principal and accrued interest was not paid in full;

(6) the total dollar amount of loan principal repaid and of interest and fees received;
(7) the total number of loans secured by collateral of some type and the total number of such loans in which the security was foreclosed upon or repossessed;

(8) the total amount of loan principal and the total amount of accrued interest written off or charged off;

(9) the percent of customers who were new customers;

(10) the number of loans renewed, refinanced or extended prior to being repaid in full; and

(11) procedures followed by licensees to establish consumers' ability to repay loans.)

B. The division shall, in cooperation with the office of the attorney general, develop and implement curriculum for a financial literacy program with elements that shall include a basic understanding of budgets, checking and savings accounts, credit and interest and considerations in deciding how and when to use financial services, including installment loans. The financial literacy program developed pursuant to this subsection may be implemented though the adult basic education division of the higher education department and nonprofit public interest organizations."

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

"[NEW MATERIAL] PREEMPTION.--The state has exclusive jurisdiction and authority regarding the terms and conditions
of permitted installment loans, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of permitted installment loans by ordinance, resolution or otherwise."


SECTION 25. APPLICABILITY.--The provisions of this act shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after July 1, 2017.

SECTION 26. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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