

1 HOUSE BILL 347

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Patricia A. Lundstrom and Debbie A. Rodella and Yvette Herrell
5 and Jane E. Powdrell-Culbert
6
7
8
9
10

11 AN ACT

12 RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES
13 FOR CERTAIN INSTALLMENT LOANS; PROVIDING FOR REPORTING TO
14 CREDIT AGENCIES; AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE
15 NEW MEXICO SMALL LOAN ACT OF 1955 AND THE NEW MEXICO BANK
16 INSTALLMENT LOAN ACT OF 1959; REPEALING SECTIONS OF THE NEW
17 MEXICO SMALL LOAN ACT OF 1955; CREATING THE FINANCIAL LITERACY
18 FUND; MAKING AN APPROPRIATION.
19

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

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

23 "56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
24 MAXIMUM RATES--DEFINITION.--

25 A. Unless otherwise provided by law, no person,

.205760.5

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material] = delete~~

1 corporation or association, directly or indirectly, shall take,
2 reserve, receive or charge any interest, discount or other
3 advantage for the loan of money or credit or the forbearance or
4 postponement of the right to receive money or credit except at
5 the rates permitted in Sections 56-8-1 through 56-8-21 NMSA
6 1978.

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

21 C. A lender may, in the case of business or
22 commercial loans for business or commercial purposes in the
23 amount of five hundred thousand dollars (\$500,000) or more,
24 take, receive, reserve or charge on any loan or discount made,
25 or upon any note, bill of exchange or other evidence of debt,

.205760.5

underscored material = new
[bracketed material] = delete

1 interest at a rate agreed to by the parties [~~even if the rate~~
2 ~~exceeds the rate set forth in Section 56-8-11 NMSA 1978~~].

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

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

.205760.5

underscored material = new
[bracketed material] = delete

1 charge to the borrower than permitted by law.

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

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

8 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
9 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
10 Installment Loan Act of 1959"."

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

13 "58-7-3. LOANS COVERED BY ACT.--

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

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

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

24 "58-7-3.1. PRECOMPUTED LOAN.--~~[If the loan is]~~ In a
25 precomputed loan transaction, the interest charge [may] shall

underscored material = new
[bracketed material] = delete

1 be calculated on the assumption that all scheduled payments
2 will be made when due, and the effect of prepayment is governed
3 by the provisions of rebate upon prepayment in Section 58-7-5
4 NMSA 1978."

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

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

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

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

19 ~~[B.]~~ (2) the lender may charge for only the
20 actual cost of any insurance; provided, however, all insurance
21 shall be written by ~~[a company or]~~ companies licensed to
22 operate within the state and at rates no higher than those
23 approved by the superintendent of insurance; and provided
24 further that the lender ~~[must]~~ shall not require any insurance
25 to be written or provided by or through any particular agent,

.205760.5

underscored material = new
[bracketed material] = delete

1 broker or insurer as a condition to making the loan but ~~[must]~~
2 shall, at the borrower's option, permit the ~~[same]~~ insurance to
3 be procured from any reputable insurer or through any reputable
4 agent authorized by law to provide it;

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

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

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

23 ~~[F.]~~ (6) the actual expenditures, including
24 reasonable ~~[attorneys']~~ attorney fees, for legal process or
25 proceedings to collect any such installment loan; provided,

.205760.5

underscored material = new
[bracketed material] = delete

1 however, that no [~~attorneys~~] attorney fees are permitted where
2 the loan is referred for collection to an attorney who is a
3 salaried employee of the holder of the contract;

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

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

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

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

.205760.5

underscored material = new
[bracketed material] = delete

1 loan; and

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

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

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

16 "58-7-7. RESTRICTIONS.--

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

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

.205760.5

underscored material = new
[bracketed material] = delete

1 C. No lender shall make a loan pursuant to the New
2 Mexico Bank Installment Loan Act of 1959 unless the loan is
3 repayable in a minimum of four installments of substantially
4 equal payments of principal and interest."

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

7 "58-7-9. CONSTRUCTION.--

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

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

16 ~~G.]~~ B. None of the provisions of the New Mexico
17 Bank Installment Loan Act of 1959 apply to the assignment or
18 purchase of retail installment contracts originated under the
19 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
20 originated under the provisions of Sections 56-1-1 through
21 56-1-15 NMSA 1978.

22 ~~[D.]~~ C. In the event of a conflict between a
23 requirement of the New Mexico Bank Installment Loan Act of 1959
24 and a requirement of the Home Loan Protection Act, the
25 requirement of the Home Loan Protection Act shall control.

.205760.5

underscored material = new
[bracketed material] = delete

1 ~~[E-]~~ D. As used in the New Mexico Bank Installment
2 Loan Act of 1959:

3 (1) "year" means three hundred sixty-five
4 days; ~~and~~

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

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

14 (a) public record information; or

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

18 ~~[F-]~~ E. The director of the financial institutions
19 division of the regulation and licensing department shall issue
20 and file as required by law interpretive regulations to
21 effectuate the purposes of the New Mexico Bank Installment Loan
22 Act of 1959. In issuing, amending or repealing interpretive
23 regulations, the director shall issue the regulation amendment
24 or repeal of the regulation as a proposed regulation amendment
25 or repeal of a regulation and file it for public inspection in

.205760.5

underscored material = new
[bracketed material] = delete

1 the office of the director of the financial institutions
2 division. Distribution thereof shall be made to interested
3 persons, and their comments shall be invited. After the
4 proposed regulation has been on file for not less than two
5 months, the director may issue it as a final regulation by
6 filing as required by law. Any person who is or may be
7 adversely affected by the adoption, amendment or repeal of a
8 regulation under this section may file an appeal of that action
9 in the district court in Santa Fe county within thirty days
10 after the filing of the adopted regulation, amendment or repeal
11 as required by law.

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

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

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

23 "[NEW MATERIAL] REPORTING OF CREDIT REQUIRED.--For each
24 installment loan made pursuant to the New Mexico Bank
25 Installment Loan Act of 1959, a lender shall report to a

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 nationally recognized consumer reporting agency the terms of
2 the loan and the borrower's performance pursuant to those
3 terms."

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

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

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

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

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

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

.205760.5

underscored material = new
[bracketed material] = delete

1 C. [~~"department" or~~] "division" means the financial
2 institutions division of the regulation and licensing
3 department;

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

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

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

25 G. "licensee" means a person to whom one or more

.205760.5

underscored material = new
[bracketed material] = delete

1 licenses have been issued pursuant to the New Mexico Small Loan
2 Act of 1955 upon the person's written application electing to
3 become a licensee and consenting to exercise the privilege of a
4 licensee solely in conformity with the New Mexico Small Loan
5 Act of 1955 and the lawful regulations promulgated by the
6 director under that act and whose name appears on the face of
7 the license;

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

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

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

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

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

.205760.5

underscored material = new
[bracketed material] = delete

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

3 ~~(2) does not include:~~

4 ~~(a) an overdraft product or service~~
5 ~~offered by a banking corporation, savings and loan association~~
6 ~~or credit union; and~~

7 ~~(b) installment loans;~~

8 ~~I. "payday loan product" means a payday loan or a~~
9 ~~payment plan pursuant to Section 58-15-35 NMSA 1978;]~~

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

18 (1) public record information; or

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

22 ~~[J.]~~ I. "person" includes an individual, copartner,
23 association, trust, corporation and any other legal entity;

24 ~~[K. "renewed payday loan" means a loan in which a~~
25 ~~consumer pays in cash the administrative fee payable under a~~

.205760.5

underscored material = new
[bracketed material] = delete

1 ~~payday loan agreement and refinances all or part of the unpaid~~
2 ~~principal balance of an existing payday loan with a new payday~~
3 ~~loan from the same licensee. A "renewed payday loan" includes~~
4 ~~a transaction in which a consumer pays off all or part of an~~
5 ~~existing payday loan with the proceeds of a payday loan from~~
6 ~~the same licensee; and]~~

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

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

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

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

22 A. A person shall not engage in the business of
23 lending in amounts of [~~two thousand five hundred dollars~~
24 ~~(\$2,500)] five thousand dollars (\$5,000) or less for a loan
25 without first having obtained a license from the director.~~

.205760.5

underscoring material = new
[bracketed material] = delete

1 Nothing contained in this subsection shall restrict or prohibit
2 a licensee under the New Mexico Small Loan Act of 1955 from
3 making loans in any amount under the New Mexico Bank
4 Installment Loan Act of 1959 in accordance with the provisions
5 of Section 58-7-2 NMSA 1978.

6 B. Nothing in the New Mexico Small Loan Act of 1955
7 shall apply to a person making individual advances of [~~two~~
8 ~~thousand five hundred dollars (\$2,500)] five thousand dollars
9 (\$5,000) or less under a written agreement providing for a
10 total loan or line of credit in excess of [~~two thousand five~~
11 ~~hundred dollars (\$2,500)] five thousand dollars (\$5,000).~~~~

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

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 D. The provisions of Subsection A of this section
2 apply to:

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

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

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

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

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

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

23 E. A person, copartnership, trust or a trustee or
24 beneficiary thereof or an association or corporation or a
25 member, officer, director, agent or employee thereof who

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

23 B. An applicant for license, upon written notice to
24 do so by the director, shall, within twenty days after service
25 of the notice, furnish in writing, under oath, to the director

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 all additional information required by the director that may be
2 relevant or, in the opinion of the director, helpful in
3 conducting the investigation.

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

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

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

18 F. In the event the director finds that:

19 (1) the financial responsibility, character
20 and general fitness of the applicant for an original license
21 and of the individual members and beneficiaries thereof, if the
22 applicant is a copartnership, association or trust, and of the
23 officers and directors thereof, if the applicant is a
24 corporation, are such as to command the confidence of the
25 public and to warrant belief that the business will be operated

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 lawfully, honestly, fairly and efficiently within the declared
2 purposes and spirit of the New Mexico Small Loan Act of 1955;

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

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

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

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

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

17 I. If the director does not make the findings
18 enumerated in Subsection H of this section, the director may
19 grant a temporary extension of the license not exceeding sixty
20 days pending a hearing; shall enter an order fixing a date for
21 hearing upon the application; shall notify the licensee
22 thereof, specifying the particular complaints, violations or
23 abuses or other reasons for the director's contemplated refusal
24 to renew the license; and shall afford to the applicant an
25 opportunity to be heard. At the hearing, the director shall

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 produce evidence to establish the truth of the charges of
2 violation or other grounds specified in the notice, and the
3 applicant shall be accorded the right to produce evidence or
4 other matters of defense. If after the hearing the director
5 finds that the complaints of violations or other grounds
6 specified in the notice are not well-founded, the director
7 shall issue the renewal license. If the director finds that
8 the complaints of violations or other grounds are well-founded,
9 the director shall enter an order denying the renewal
10 application and notify the applicant of the denial, returning
11 the renewal license fee tendered with the application. Within
12 thirty days after the entry of such an order, the director
13 shall prepare written findings and shall deliver a copy of the
14 findings to the applicant. The order shall be subject to
15 review as provided in Section 58-15-25 NMSA 1978. The court in
16 its discretion and upon proper showing may order a temporary
17 extension of the license pending disposition of the review
18 proceedings.

19 J. In connection with the determination of fitness
20 and character of an applicant pursuant to the provisions of
21 this section, the fact that the applicant or licensee is a
22 member of or interested financially in, connected or affiliated
23 with, controls or is controlled by or owns or is owned by other
24 corporations, partnerships, trusts, associations or other legal
25 entities engaged in the lending of money whose policies and

.205760.5

underscored material = new
[bracketed material] = delete

1 practices as to rates of interest, charges and fees and general
2 dealing with borrowers are questionable or would constitute
3 violation of the general usury statutes of this state or of the
4 declared purposes and spirit of the New Mexico Small Loan Act
5 of 1955 shall be given such consideration and weight as the
6 director determines.

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

19 L. In addition to the fees provided for in
20 Subsection K of this section, at the time of issuance of
21 original license and each annual renewal thereof, the licensee
22 for each licensed office shall pay to the director as an
23 additional fee for the period covered by the license the sum of
24 two hundred dollars (\$200), which fee shall be deposited into
25 the financial literacy fund.

.205760.5

underscored material = new
[bracketed material] = delete

1 [~~E.~~] M. A licensee by accepting a license that is
2 issued or renewed or by continuing to operate a licensed office
3 under the New Mexico Small Loan Act of 1955 shall by such
4 action be deemed to have consented to be bound by the lawful
5 provisions of that act and all lawful requirements, regulations
6 and orders of the director promulgated or issued pursuant to
7 any authorization granted in that act."

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

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

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

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

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

10 (1) any licensee;

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

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

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

.205760.5

underscored material = new
[bracketed material] = delete

1 presumed to be engaged in the business described in Subsection
2 A of Section 58-15-3 NMSA 1978 as to any loans of [~~two thousand~~
3 ~~five hundred dollars (\$2,500)] five thousand dollars (\$5,000)
4 or less.~~

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

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

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

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

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

1 the New Mexico Small Loan Act of 1955 but may conduct hearings,
2 examinations and investigations in the manner best calculated
3 to ascertain the substantial rights of the parties interested.

4 H. The director has the power to administer oaths,
5 certify official acts and records of the director's office,
6 issue subpoenas for witnesses in the name of and under the seal
7 of the director's office and compel the production of papers,
8 books, accounts and documents. The director shall issue
9 subpoenas at the instance of any party to a hearing before the
10 division upon payment of a fee of two dollars fifty cents
11 (\$2.50) for each subpoena so issued.

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

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

25 K. Whenever the director has reasonable cause to

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

25 SECTION 14. Section 58-15-12 NMSA 1978 (being Laws 1955,

.205760.5

underscored material = new
[bracketed material] = delete

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

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

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

21 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
22 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
23 JUDGMENT AND INTEREST.--

24 A. Every licensee shall:

25 (1) at the time a loan is made within the

.205760.5

underscored material = new
[bracketed material] = delete

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

- 7 (a) the amount of the loan;
- 8 (b) the date the loan was made;
- 9 (c) a schedule or a description of the
10 payments;
- 11 (d) the type of the security, if any,
12 for the loan;
- 13 (e) the name and address of the licensed
14 office;
- 15 (f) the name of the person primarily
16 obligated for the loan;
- 17 (g) the amount of principal;
- 18 (h) the ~~[agreed rate of charge stated on~~
19 ~~a percent per year basis]~~ annual interest rate as disclosed
20 pursuant to 12 C.F.R. 226, known as "Regulation Z", and the
21 amount in dollars and cents;
- 22 (i) all other disclosures required
23 pursuant to state and federal law; and
- 24 (j) other items allowable pursuant to
25 that act, so stated as to clearly show the allocation of each

.205760.5

1 item included;

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

13 (3) upon payment of the loan in full, mark
14 plainly every note and promise to pay signed by any obligor
15 with the word "paid" or "canceled" and promptly file or record
16 a release of any mortgage if the mortgage has been recorded,
17 restore any pledge and cancel and return any note and any
18 assignment given to the licensee. A licensee may mark and
19 return a copy of the note, promise to pay or any assignment if
20 the copy accurately reproduces the complete 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 or
24 rate of charge or any instrument in which blanks are left to be
25 filled in after execution.

.205760.5

underscored material = new
[bracketed material] = delete

1 C. If judgment is obtained against a party on a
2 loan made pursuant to the provisions of the New Mexico Small
3 Loan Act of 1955, neither the judgment nor the loan shall
4 carry, from the date of the judgment, charges against a party
5 to the loan other than costs, attorney fees and post-judgment
6 interest as provided by law.

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

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

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

25 G. No lender shall make a loan pursuant to the New

.205760.5

underscored material = new
[bracketed material] = delete

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

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

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

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

13 "58-15-20. FEES AND COSTS.--

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

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

.205760.5

underscored material = new
[bracketed material] = delete

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

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

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

16 "58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE
17 PURCHASES.--The payment of [~~two thousand five hundred dollars~~
18 ~~(\$2,500)~~] five thousand dollars (\$5,000) or less in money,
19 credit, goods or things in action, as consideration for any
20 sale or assignment of or order for the payment of wages,
21 salary, commission or other compensation for services, whether
22 earned or to be earned, shall, for the purposes of regulation
23 under the New Mexico Small Loan Act of 1955, be deemed a loan
24 of money secured by such sale, assignment or order. The amount
25 by which [~~such~~] compensation so sold, assigned or ordered paid

.205760.5

underscored material = new
[bracketed material] = delete

1 exceeds the amount of [~~such~~] consideration actually paid shall
2 for the purpose of regulation under the New Mexico Small Loan
3 Act of 1955 be deemed interest or charges upon [~~such~~] the loan
4 from the date of [~~such~~] payment to the date [~~such~~] the
5 compensation is payable. Such transaction shall be governed by
6 and subject to the provisions of the New Mexico Small Loan Act
7 of 1955."

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

10 "58-15-24. LOANS MADE ELSEWHERE.--No loan made outside
11 this state to a resident of New Mexico in the amount or of the
12 value of [~~two thousand five hundred dollars (\$2,500)~~] five
13 thousand dollars (\$5,000) or less for which a greater rate of
14 interest, consideration, charge or compensation to the lender
15 than is permitted by the general laws of New Mexico [~~presently~~]
16 in force governing money, interest and usury has been charged,
17 contracted for or received shall be enforced in this state.
18 Every person in any way participating in such a loan in this
19 state [~~shall be~~] is subject to the provisions of the New Mexico
20 Small Loan Act of 1955. Any loan made to a nonresident of New
21 Mexico in conformity with the law of the state where made may
22 be enforced in this state."

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

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

.205760.5

underscoring material = new
[bracketed material] = delete

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

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

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

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

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

.205760.5

underscored material = new
[bracketed material] = delete

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

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

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

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

24 "58-15-39. DUTIES OF DIVISION.--

25 A. The division shall:

.205760.5

underscoring material = new
[bracketed material] = delete

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

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

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

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

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

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

.205760.5

underscoring material = new
[bracketed material] = delete

1 ~~calendar year ending December 31 of the previous year;~~

2 ~~(4) the number of payday loan products entered~~
3 ~~into in the amount of one hundred dollars (\$100) or less, the~~
4 ~~number of payday loan products entered into in the amount of~~
5 ~~one hundred one dollars (\$101) to five hundred dollars (\$500),~~
6 ~~the number of payday loan products entered into in the amount~~
7 ~~of five hundred one dollars (\$501) to one thousand dollars~~
8 ~~(\$1,000), the number of payday loan products entered into in~~
9 ~~the amount of one thousand one dollars (\$1,001) to one thousand~~
10 ~~five hundred dollars (\$1,500), the number of payday loan~~
11 ~~products in an amount greater than one thousand five hundred~~
12 ~~dollars (\$1,500) and the percentage of total payday loan~~
13 ~~products entered into in each of those ranges;~~

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

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

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

23 ~~(8) the average payday loan product amount,~~
24 ~~average number of transactions and average aggregate payday~~
25 ~~loan product amount entered into per consumer each year;~~

.205760.5

underscoring material = new
[bracketed material] = delete

1 ~~(9) the average number of days a consumer is~~
2 ~~engaged in a payday loan product each year;~~

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

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

8 ~~(12) the number of consumers who are subject~~
9 ~~to the restrictions of the waiting period pursuant to Section~~
10 ~~58-15-36 NMSA 1978.~~

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

.205760.5

underscoring material = new
[bracketed material] = delete

1 ~~consumer data from the preceding calendar year, including:~~

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

6 ~~(2) the number of loans entered into in the~~
7 ~~amount of five hundred dollars (\$500) or less, the number of~~
8 ~~loans entered into in the amount of five hundred one dollars~~
9 ~~(\$501) to one thousand dollars (\$1,000), the number of loans~~
10 ~~entered into in the amount of one thousand one dollars (\$1,001)~~
11 ~~to three thousand dollars (\$3,000), the number of loans entered~~
12 ~~into in the amount of three thousand one dollars (\$3,001) to~~
13 ~~five thousand dollars (\$5,000), the number of loans in an~~
14 ~~amount greater than five thousand dollars (\$5,000) and the~~
15 ~~number of loans listed by licensee entered into in each of~~
16 ~~those ranges;~~

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

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

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

24 ~~(6) the total dollar amount of loan principal~~
25 ~~repaid and of interest and fees received;~~

.205760.5

underscored material = new
[bracketed material] = delete

1 ~~(7) the total number of loans secured by~~
2 ~~collateral of some type and the total number of such loans in~~
3 ~~which the security was foreclosed upon or repossessed;~~

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

6 ~~(9) the percent of customers who were new~~
7 ~~customers;~~

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

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

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

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

24 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
25 jurisdiction and authority regarding the terms and conditions

.205760.5

underscoring material = new
~~[bracketed material] = delete~~

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

5 SECTION 24. REPEAL.--Sections 58-15-18 and 58-15-32
6 through 58-15-38 NMSA 1978 (being Laws 1955, Chapter 128,
7 Section 16 and Laws 2007, Chapter 86, Sections 14 through 20,
8 as amended) are repealed.

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

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

15 - 45 -
16
17
18
19
20
21
22
23
24
25