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, limited liability corporation or other business entity 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 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.

D. In addition to the maximum interest or discount that 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, "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 equal to five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955."

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

"58-7-1. SHORT TITLE.--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 equal to five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

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

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.--In a precomputed loan transaction, the interest charge shall 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. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--
A. No amount, other than the total finance charge, which consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars ($200) or ten percent of the principal, shall be charged or contracted for, directly or indirectly, on or in connection with any such installment loan except as follows:

(1) delinquency charges not to exceed five cents ($.05) 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) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid;

(2) the lender may charge for only the actual cost of any insurance; provided, however, all insurance shall be written by 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 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 shall, at the borrower's option, permit the insurance to be procured from any reputable insurer or through any reputable agent authorized by law to provide it;

(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 that insurance shall be added to the loan and may accrue interest as provided for in the New Mexico Bank Installment Loan Act of 1959;

(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;

(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 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 the levy and add the amount so paid to the balance due from the borrower;

(6) the actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect any such installment loan; provided, however, that no 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; and

(7) the actual cost of charges incurred in making a real estate loan secured by a mortgage on real
estate, including 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.

B. If there are insufficient funds to pay a check
or other type of debit on the date of presentment by the
lender, 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.

C. 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 that 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 other than a federally insured
depository institution 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 other than a federally insured depository institution 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 substantially equal installment payments of principal and interest.

D. No lender, other than a federally insured depository institution, shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

E. The provisions of Subsections B and C of this section shall not apply to refund anticipation loans. As used in this subsection, "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.

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

"58-7-8. PENALTIES AND FORFEITURES.--
A. Any person, corporation or association willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100) or more than five thousand dollars ($5,000) or imprisoned for not more than six months or both, in the discretion of the court.

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

C. A violation of the provisions of the New Mexico Bank Installment Loan Act of 1959, which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the
extension of credit is made, constitutes an unfair or
deceptive trade practice pursuant to the Unfair Practices
Act."

SECTION 8. 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. 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

C. 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.

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

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

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

(3) "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:

(a) public record information; or

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

E. 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 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.

F. 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."

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

"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 consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms."

SECTION 10. A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"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 11. 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. "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:

(1) public record information; or

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

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

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

F. "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 substantially equal payments of principal and interest to pay off a loan in its entirety with an initial stated maturity of not less than one hundred twenty days to maturity. "Installment loan" does not mean a refund anticipation loan;

G. "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;

H. "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;

   I. "person" includes an individual, copartner,
association, trust, corporation and any other legal entity;
   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;
   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 12. 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 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 five thousand dollars ($5,000) or less under a written agreement providing for a total loan or line of credit in excess of 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 equal to five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

G. A violation of the provisions of the New Mexico Small Loan Act of 1955, which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made, constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act."

SECTION 13. 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 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 ($500) as a minimum, plus an additional seventy-five cents ($.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.

M. 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 14. 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
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 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."

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

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

A. Licensees shall file with the director each
year a report containing at least the following information
for the preceding calendar year in an aggregated,
nonidentifying consumer manner:

(1) as of December 31 of each calendar year,
aggregated for loans of one thousand dollars ($1,000) or
less, for loans more than one thousand dollars ($1,000) but
not more than three thousand dollars ($3,000) and for loans
more than three thousand dollars ($3,000) but not more than
five thousand dollars ($5,000):

(a) the total number of outstanding
loans;
(b) the dollar value of outstanding
loans net of unearned charges;
(c) the total number of loans that are
more than sixty days delinquent; and
(d) the dollar value of loans that are
more than sixty days delinquent net of unearned charges;
(2) for the calendar year ending December
31, the total aggregate number of customers of licensees and
of secured and unsecured loans made by licensees and the
total dollar value of those loans net of unearned charges;
(3) the total amount of finance charges
collected during the calendar year ending December 31;
(4) the total number of vehicles repossessed
during the calendar year ending December 31; and
(5) the total bad debt expense incurred
during the calendar year ending December 31.

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

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

D. A licensee that fails to timely submit a
complete and accurate report as required pursuant to Subsection A of this section may:

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

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

SECTION 16. Section 58-15-12 NMSA 1978 (being Laws 1955, 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 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 17. 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 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,
(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 annual interest rate as disclosed pursuant to 12 CFR Part 1026, 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 Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days unless the loan 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, other than a refund anticipation loan, unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.
J. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

SECTION 18. 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 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 compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and subject to the provisions of the New Mexico Small Loan Act of 1955."

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

"INSTALLMENT LOANS--REFUND ANTICIPATION LOANS--INSUFFICIENT FUNDS--PERMITTED CHARGES.--

A. If there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, 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.


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

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

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

"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."

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

(1) as of December 31 of each calendar year,
aggregated for loans of one thousand dollars ($1,000) or
less, for loans more than one thousand dollars ($1,000) but
not more than three thousand dollars ($3,000) and for loans
more than three thousand dollars ($3,000) but not more than
five thousand dollars ($5,000):
   (a) the total number of outstanding
loans;
   (b) the dollar value of outstanding
loans net of unearned charges;
   (c) the total number of loans that are
more than sixty days delinquent; and
   (d) the dollar value of loans that are
more than sixty days delinquent net of unearned charges;
(2) for the calendar year ending December
31, the total aggregate number of customers of licensees and
secured and unsecured loans made by licensees and the total
dollar value of those loans net of unearned charges;
(3) the total amount of finance charges
collected during the calendar year ending December 31;
(4) the total number of vehicles repossessed
during the calendar year ending December 31; and
(5) the total bad debt expense incurred
during the calendar year ending December 31.
C. 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 and refund anticipation 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 24. A new section of the New Mexico Small Loan
Act of 1955 is enacted to read:

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

through 58-15-38 NMSA 1978 (being Laws 1955, Chapter 128,
Section 16 and Laws 2007, Chapter 86, Sections 14 through 20,
as amended) are repealed.

SECTION 26. 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 January 1, 2018.

SECTION 27. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2018.