

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 150

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; ADDING DEFINITIONS; CLARIFYING VIOLATIONS DEEMED A VIOLATION OF THE UNFAIR PRACTICES ACT; EXPANDING LENDER REPORTING REQUIREMENTS; CLARIFYING LOAN INSURANCE REQUIREMENTS; EXPANDING DISCLOSURE REQUIREMENTS; GRANTING RIGHTS OF RESCISSION; PROVIDING FOR PENALTIES.

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

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

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

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

B. A loan in an amount equal to 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. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be identified in the loan documents as being made pursuant to that act.

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

SECTION 2. 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]~~ a precomputed loan transaction except as follows:

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(1) delinquency charges not to exceed five cents (\$.05) for each one dollar (\$1.00) of each installment more than ten days in arrears may be charged; 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,

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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]~~ on a precomputed 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 further provided that attorney fees shall not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed; 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.

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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 per payment due 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 3.** 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~~] pursuant to the New Mexico Small Loan Act of 1955 unless the loan made [~~under~~] pursuant to 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

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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.

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

SECTION 4. Section 58-7-8 NMSA 1978 (being Laws 1959, Chapter 327, Section 9, as amended) 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

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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. A contract or loan in the making or collection of which an act is done that violates Section 58-7-6 or 58-7-7 NMSA 1978 is void and the lender has no right to collect, receive or retain any interest or charges whatsoever. A lender may not collect the principal of a loan if the lender has violated Subsection A of Section 58-15-3 NMSA 1978, or knowingly violated the provisions of Section 58-7-6 or 58-7-7 NMSA 1978.

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~~] a provision 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~~

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~~to whom the extension of credit is made]~~ that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act."

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

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

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 56-1-15 NMSA 1978.

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]~~

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(1) "consumer" means a person who enters into a loan agreement subject to the New Mexico Bank Installment Loan Act of 1959;

[~~(3)~~] (2) "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;

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

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

(5) "person" includes an individual, copartner, association, trust, corporation and any other legal entity; and

(6) "year" means three hundred sixty-five days.

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

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

"[NEW MATERIAL] REQUIREMENTS FOR MAKING AND PAYING LOANS--  
INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT

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AND INTEREST.--

A. Every lender shall:

(1) at the time a consumer becomes contractually obligated on a precomputed loan transaction, deliver to the borrower or, if there are two or more borrowers on the same obligation, to one of the borrowers, a written statement on which shall be printed a copy of Section 58-7-3 NMSA 1978, and which shall disclose in clear and distinct terms:

- (a) the amount of the loan;
- (b) the date the loan was consummated;
- (c) a schedule or a description of the payments;
- (d) the type of the security, if any, securing the loan;
- (e) the name and address of the lender;
- (f) the name of the person primarily obligated for the loan;
- (g) the amount of principal;
- (h) the annual percentage rate as calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", and the amount of interest payable in dollars and cents;
- (i) all other disclosures required pursuant to state and federal law; and
- (j) the charge for any other item allowable and included pursuant to the New Mexico Bank Installment Loan Act of 1959, stated so as to clearly show the allocation of each item included;

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(2) for each payment made on account of a loan, give to the person making the payment 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 a payment is made in a manner other 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 retain and deliver the receipt upon request of the borrower. A licensee may deliver the receipt electronically to the borrower via text message or email, if requested to do so in writing by the borrower. A borrower may withdraw authorization for electronic delivery of receipts in writing at any time. A licensee shall not require a borrower to receive receipts electronically. The licensee shall maintain a copy of each receipt in the office of the licensee as a part of the licensee's records; and

(3) upon repayment of the loan in full, plainly mark every note and promise to pay signed by any borrower 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 judgment obtained against a party on a loan

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made pursuant to the New Mexico Bank Installment Loan Act of 1959, shall not include, and the loan shall not include, 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.

C. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 that is filed and approved as a claim in any bankruptcy proceeding shall bear interest at the rate of ten percent per year beginning on the ninetieth day following the date of adjudication. 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.

D. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall not bear interest in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower; provided that the deceased borrower is the sole obligor to the loan agreement.

E. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall not bear interest in excess of ten percent per year upon the unpaid principal balance of the loan after twelve months following the date of maturity of the loan."

**SECTION 7.** A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"[NEW MATERIAL] RIGHT OF RESCISSION.--All agreements for precomputed loan transactions shall include a provision

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granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender pursuant to the New Mexico Bank Installment Loan Act of 1959 no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower."

SECTION 8. 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 resides in New Mexico or who enters into a loan agreement [~~and receives the loan proceeds~~] in New Mexico;

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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

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

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

~~[J.]~~ K. "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

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credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee; and

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

**SECTION 9.** 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

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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

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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 or Section 58-15-17 or 58-15-20 NMSA 1978 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~~] a provision 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~~

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~~of credit is made~~] that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act."

SECTION 10. 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--  
PENALTIES.--

A. Licensees shall file with the director each year [~~a report~~] reports containing at least the following information for the preceding calendar year ending December 31 in an aggregated, nonidentifying consumer manner as specified below:

~~[(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~~

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~~(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.]~~

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

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

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

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

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

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

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

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

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

(c) one thousand one dollars (\$1,001) to three thousand dollars (\$3,000); and

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

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

(a) less than or equal to thirty-six percent;

(b) more than thirty-six percent through one hundred percent;

(c) more than one hundred percent through one hundred fifty percent; and

(d) more than one hundred fifty percent through one hundred seventy-five percent;

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

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

(b) the total dollar amount of each fee

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product charged by the lender and paid by the borrower; and

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

(5) for each loan product:

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

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

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

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

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

(8) for each loan product, the number of loans that have been repaid in full without an extension, renewal, refinance, rollover or new loan within thirty days of repaying

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

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

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

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

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

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product for which the borrower has defaulted on a loan;

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

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

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

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

Hf1→~~(17) the total number and percentage of borrowers of all loan products whose source of income was a means-tested public benefit as defined by 8 U.S.C. Section 1613(c);~~←Hf1

Hf1→(17) the total number and percentage of borrowers of all loan products whose sources of income, as provided by borrowers in the loan origination process, included a means-tested public benefit as defined by 8 U.S.C. Section 1613(c);←Hf1

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

(19) the total number of loans of all loan products that were made to borrowers in each county in New

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Mexico; and

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

B. The ~~[report]~~ reports 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]~~ reports 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]~~ reports as required pursuant to Subsection A of this section on or before the fifteenth day of April 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 11. Section 58-15-16 NMSA 1978 (being Laws 1969, Chapter 58, Section 1, as amended) is amended to read:

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"58-15-16. LOAN INSURANCE ALLOWABLE--FINANCING CERTAIN  
PREMIUMS PROHIBITED.--

A. It [~~shall be~~] is unlawful for any person licensed under the New Mexico Small Loan Act of 1955, in connection with the making of a loan under that act:

[~~A.~~] (1) to sell life insurance other than a term policy or credit life insurance on the principal borrowers;

[~~B.~~] (2) to sell term or credit life insurance the coverage of which exceeds the amount of the loan or extends beyond the term for which the loan is made;

[~~C.~~] (3) after having made a loan, to finance any premiums of any life insurance policies, other than credit life insurance, sold to the borrower by the licensee or [~~his~~] the licensee's agent in any manner for a period of ninety days;

[~~D.~~] (4) after having made a loan, to finance any premium of any single-interest property insurance policy sold to the borrower by the licensee or [~~his~~] the licensee's agent whereby the premium would be charged to the borrower in any manner. [~~Except that~~] Nothing [~~contained~~] in this section shall preclude the sale and purchase of an insurance policy covering the dual interest of borrower and lien holder; or

[~~E.~~] (5) to sell property insurance on unsecured loans.

B. A lender may charge for only the actual cost of any insurance; provided that all insurance shall be written by a company licensed to operate within the state and at a rate not higher than those approved by the superintendent of

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insurance; and provided further that the lender shall not require any insurance to be written or provided by or through a 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 insurer or agent authorized by law to provide the insurance."

SECTION 12. 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~~] consumer becomes contractually obligated on a loan pursuant to 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~~] which shall disclose 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,

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for the loan;

(e) the name and address of the  
~~[licensed office]~~ licensee;

(f) the name of the person primarily  
obligated for the loan;

(g) the amount of principal;

(h) the annual ~~[interest]~~ percentage  
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]~~ the charge for any other item allowable and included  
pursuant to the New Mexico Small Loan Act of 1955, so stated as  
to clearly show the allocation of each item included;

(2) for each payment made on account of ~~[any  
such]~~ a loan, give to the person making ~~[it]~~ the payment 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]~~ retain and deliver the receipt upon request of the  
borrower. ~~[A copy of all receipts shall be kept on file]~~ A  
licensee may deliver the receipt electronically to the borrower  
via text message or email, if requested to do so in writing by  
the borrower. A borrower may withdraw authorization for

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electronic delivery of receipts in writing at any time. A licensee shall not require a borrower to receive receipts electronically. The licensee shall maintain a copy of each receipt in the office of the licensee as a part of the licensee's records; and

(3) upon ~~[payment]~~ repayment of the loan in full, mark plainly every note and promise to pay signed by any ~~[obligor]~~ borrower 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]~~ A 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]~~ shall not include, and the loan shall not include, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as

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provided by law.

D. ~~[Any]~~ A loan made ~~[under the provisions of]~~ pursuant to 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]~~ bear interest at the rate of ten percent per year beginning on the ninetieth day following 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]~~ A loan made ~~[under]~~ pursuant to the provisions of the New Mexico Small Loan Act of 1955 shall not 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]~~ in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower.

F. ~~[No]~~ A loan made ~~[under the provisions of]~~ pursuant to the New Mexico Small Loan Act of 1955 shall not bear interest in excess of ten percent per year upon the unpaid principal balance of the loan after twelve months ~~[from]~~ following the date of maturity of the loan. ~~[in excess of ten percent a year upon the unpaid principal balance of the loan.]~~

G. ~~[No]~~ A lender shall not 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

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loan is a refund anticipation loan.

H. ~~[No]~~ A lender shall not 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]~~ A lender shall not 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]~~ A lender shall not 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".

K. Upon request from the borrower, all lenders licensed pursuant to the New Mexico Small Loan Act of 1955 shall give or forward to the borrower copies of all loan agreements concerning that borrower, a copy of all receipts maintained in that borrower's loan file and a written statement of that borrower's loan history, including all fees charged, amortization schedules, that borrower's payment history, including the dates and amounts of payments made, and the total amount unpaid pursuant to each contract. All lenders shall retain for seven years from the date of Hf1→generation loan file origination or loan payoff, whichever is the later,←Hf1

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the documentation specified in this subsection.

L. Any rollover, renewal, refinance or modification of an existing loan agreement with a licensee Hfl→, except a modification without any additional cost to the borrower, ←Hfl shall constitute a new loan and shall require new disclosures pursuant to the Truth in Lending Act."

SECTION 13. Section 58-15-20 NMSA 1978 (being Laws 1955, Chapter 128, Section 18, as amended) is amended to read:

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

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

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

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

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D. Delinquency fees shall not 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."

**SECTION 14.** Section 58-15-20.1 NMSA 1978 (being Laws 2017, Chapter 110, Section 20) is amended to read:

"58-15-20.1. **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 per payment due unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

B. A licensee shall not charge a consumer for fees, interest or charges of any kind other than those permitted pursuant to Sections 58-15-16, 58-15-17 and 58-15-20 NMSA 1978."

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

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

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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 Hfl→and non-identifiable by licensee←Hfl.

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~~

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~~(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]~~ each of the specific categories of information set forth in Subsection A of Section 58-15-10.1 NMSA 1978.

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]~~ through the adult basic education division of the higher education department and nonprofit public interest organizations."

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SECTION 16. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"[NEW MATERIAL] RIGHT OF RESCISSION.--All loan agreements shall include a provision granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender under the New Mexico Small Loan Act of 1955 no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower."

SECTION 17. APPLICABILITY.--The provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

SECTION 18. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2020.