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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:

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

1 shall not apply to a federally insured depository  
2 institution."

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

5 "58-7-6. PERMITTED CHARGES--LIMITATION ON  
6 PRESENTMENT.--

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

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

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

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

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

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

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

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

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

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

25                   C. The charges permitted under this section may be

1 added to the balance due from the borrower."

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

4 "58-7-7. RESTRICTIONS.--

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

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

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

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

1           E. The provisions of Subsections B and C of this  
2 section shall not apply to refund anticipation loans. As  
3 used in this subsection, "refund anticipation loan" means a  
4 loan that is secured by or that the creditor arranges or  
5 expects to be repaid, directly or indirectly, from the  
6 proceeds of the consumer's federal or state personal income  
7 tax refunds or tax credits, including any sale, assignment or  
8 purchase of a tax refund or tax credit at a discount or for a  
9 fee.

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

16           **SECTION 4.** Section 58-7-8 NMSA 1978 (being Laws 1959,  
17 Chapter 327, Section 9, as amended) is amended to read:

18           "58-7-8. PENALTIES AND FORFEITURES.--

19           A. Any person willfully violating any of the  
20 provisions of the New Mexico Bank Installment Loan Act of  
21 1959 is guilty of a misdemeanor and upon conviction shall be  
22 fined not less than one hundred dollars (\$100) or more than  
23 five thousand dollars (\$5,000) or imprisoned for not more  
24 than six months or both, in the discretion of the court. A  
25 contract or loan in the making or collection of which an act

1 is done that violates Section 58-7-6 or 58-7-7 NMSA 1978 is  
2 void and the lender has no right to collect, receive or  
3 retain any interest or charges whatsoever. A lender may not  
4 collect the principal of a loan if the lender has violated  
5 Subsection A of Section 58-15-3 NMSA 1978, or knowingly  
6 violated the provisions of Section 58-7-6 or 58-7-7 NMSA  
7 1978.

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

20 C. A violation of a provision of the New Mexico  
21 Bank Installment Loan Act of 1959 that constitutes either an  
22 unfair or deceptive trade practice or an unconscionable trade  
23 practice pursuant to Section 57-12-2 NMSA 1978 is actionable  
24 pursuant to the Unfair Practices Act."

25 SECTION 5. Section 58-7-9 NMSA 1978 (being Laws 1959,

1 Chapter 327, Section 10, as amended) is amended to read:

2 "58-7-9. CONSTRUCTION--DEFINITIONS.--

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

6 B. None of the provisions of the New Mexico Bank  
7 Installment Loan Act of 1959 apply to the assignment or  
8 purchase of retail installment contracts originated under the  
9 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or  
10 originated under the provisions of Sections 56-1-1 through  
11 56-1-15 NMSA 1978.

12 C. In the event of a conflict between a  
13 requirement of the New Mexico Bank Installment Loan Act of  
14 1959 and a requirement of the Home Loan Protection Act, the  
15 requirement of the Home Loan Protection Act shall control.

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

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

21 (2) "consumer reporting agency" means any  
22 person that, for monetary fees or dues or on a cooperative  
23 nonprofit basis, regularly engages in the practice of  
24 assembling or evaluating, and maintaining, for the purpose of  
25 furnishing consumer reports to third parties bearing on a

1 consumer's creditworthiness, credit standing or credit  
2 capacity, each of the following regarding consumers:

3 (a) public record information; or

4 (b) credit account information from  
5 persons who furnish that information regularly and in the  
6 ordinary course of business;

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

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

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

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

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

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

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

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

19 "REQUIREMENTS FOR MAKING AND PAYING LOANS--INCOMPLETE  
20 INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT AND  
21 INTEREST.--

22 A. Every lender shall:

23 (1) at the time a consumer becomes  
24 contractually obligated on a precomputed loan transaction,  
25 deliver to the borrower or, if there are two or more

1 borrowers on the same obligation, to one of the borrowers, a  
2 written statement on which shall be printed a copy of Section  
3 58-7-3 NMSA 1978, and which shall disclose in clear and  
4 distinct terms:

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

24 (2) for each payment made on account of a  
25 loan, give to the person making the payment a plain and

1 complete receipt specifying the date and amount of the  
2 payment, the amount applied to interest and principal and the  
3 balance unpaid. When a payment is made in a manner other  
4 than by the borrower in person, by an agent of the borrower  
5 or by check or money order, the licensee shall mail the  
6 receipt to the borrower's last known address or retain and  
7 deliver the receipt upon request of the borrower. A licensee  
8 may deliver the receipt electronically to the borrower via  
9 text message or email, if requested to do so in writing by  
10 the borrower. A borrower may withdraw authorization for  
11 electronic delivery of receipts in writing at any time. A  
12 licensee shall not require a borrower to receive receipts  
13 electronically. The licensee shall maintain a copy of each  
14 receipt in the office of the licensee as a part of the  
15 licensee's records; and

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

25 B. A judgment obtained against a party on a loan

1 made pursuant to the New Mexico Bank Installment Loan Act of  
2 1959, shall not include, and the loan shall not include, from  
3 the date of the judgment, charges against a party to the loan  
4 other than costs, attorney fees and post-judgment interest as  
5 provided by law.

6 C. A loan made pursuant to the New Mexico Bank  
7 Installment Loan Act of 1959 that is filed and approved as a  
8 claim in any bankruptcy proceeding shall bear interest at the  
9 rate of ten percent per year beginning on the ninetieth day  
10 following the date of adjudication. This limitation shall  
11 not apply when the bankrupt is not discharged in bankruptcy  
12 or to any obligation not dischargeable under the provisions  
13 of the United States Bankruptcy Code presently in force.

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

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

25 SECTION 7. A new section of the New Mexico Bank

1 Installment Loan Act of 1959 is enacted to read:

2 "RIGHT OF RESCISSION.--All agreements for precomputed  
3 loan transactions shall include a provision granting the  
4 borrower the right to rescind the transaction by returning in  
5 cash, or through certified funds, one hundred percent of the  
6 amount advanced by the lender pursuant to the New Mexico Bank  
7 Installment Loan Act of 1959 no later than the close of  
8 business New Mexico time or, if the loan was made online, no  
9 later than midnight New Mexico time on the first day of  
10 business conducted by the lender following the date of  
11 execution of the loan agreement. If a borrower exercises the  
12 right of rescission pursuant to this section, no fee for the  
13 rescinded transaction shall be charged to the borrower, and  
14 the lender shall not charge or impose on the borrower a fee  
15 for exercising the right of rescission pursuant to this  
16 section. If a borrower exercises the right of rescission  
17 pursuant to this section, any fee collected by the lender  
18 shall be returned in full to the borrower."

19 **SECTION 8.** Section 58-15-2 NMSA 1978 (being Laws 1955,  
20 Chapter 128, Section 2, as amended) is amended to read:

21 "58-15-2. DEFINITIONS.--The following words and terms  
22 when used in the New Mexico Small Loan Act of 1955 have the  
23 following meanings unless the context clearly requires a  
24 different meaning. The meaning ascribed to the singular form  
25 applies also to the plural:

1           A. "consumer" means a person who resides in New  
2 Mexico or who enters into a loan agreement in New Mexico;

3           B. "consumer reporting agency" means any person  
4 that, for monetary fees or dues or on a cooperative nonprofit  
5 basis, regularly engages in the practice of assembling or  
6 evaluating, and maintaining, for the purpose of furnishing  
7 consumer reports to third parties bearing on a consumer's  
8 creditworthiness, credit standing or credit capacity, each of  
9 the following regarding consumers:

10                   (1) public record information; or

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

14           C. "debit authorization" means an authorization  
15 signed by a consumer to electronically transfer or withdraw  
16 funds from the consumer's account for the specific purpose of  
17 repaying a loan;

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

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

21           F. "installment loan" means a loan in an amount  
22 less than or equal to five thousand dollars (\$5,000) that is  
23 to be repaid in a minimum of four substantially equal  
24 payments of principal and interest to pay off a loan in its  
25 entirety with an initial stated maturity of not less than one

1 hundred twenty days to maturity. "Installment loan" does not  
2 mean a refund anticipation loan;

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

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

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

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

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

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

8 L. "simple interest" means a method of calculating  
9 interest in which the amount of interest is calculated based  
10 on the annual percentage rate disclosed in the loan agreement  
11 and is computed only on the outstanding principal balance of  
12 the loan."

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

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

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

25 B. Nothing in the New Mexico Small Loan Act of

1 1955 shall apply to a person making individual advances of  
2 five thousand dollars (\$5,000) or less under a written  
3 agreement providing for a total loan or line of credit in  
4 excess of five thousand dollars (\$5,000).

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

19 D. The provisions of Subsection A of this section  
20 apply to:

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

25 (2) a person who seeks to evade its

1 application by any device, subterfuge or pretense whatsoever,  
2 including but not thereby limiting the generality of the  
3 foregoing:

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

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

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

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

16 E. A person, copartnership, trust or a trustee or  
17 beneficiary thereof or an association or corporation or a  
18 member, officer, director, agent or employee thereof who  
19 violates or participates in the violation of a provision of  
20 Subsection A of this section is guilty of a petty misdemeanor  
21 and upon conviction shall be sentenced pursuant to the  
22 provisions of Subsection B of Section 31-19-1 NMSA 1978. A  
23 contract or loan in the making or collection of which an act  
24 is done that violates Subsection A or D of this section or  
25 Section 58-15-17 or 58-15-20 NMSA 1978 is void and the lender

1 has no right to collect, receive or retain any principal,  
2 interest or charges whatsoever.

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

7 G. A violation of a provision of the New Mexico  
8 Small Loan Act of 1955 that constitutes either an unfair or  
9 deceptive trade practice or an unconscionable trade practice  
10 pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant  
11 to the Unfair Practices Act."

12 **SECTION 10.** Section 58-15-10.1 NMSA 1978 (being Laws  
13 2011, Chapter 105, Section 1, as amended) is amended to read:

14 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--  
15 PENALTIES.--

16 A. Licensees shall file with the director each  
17 year reports containing at least the following information  
18 for the preceding calendar year ending December 31 in an  
19 aggregated, nonidentifying consumer manner as specified  
20 below:

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

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

25 (b) whether the loan product was made

1 pursuant to the New Mexico Small Loan Act of 1955 or the New  
2 Mexico Bank Installment Loan Act of 1959;

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

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

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

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

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

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

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

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

19 (3) for each loan product, the number of  
20 loans made and the total dollar amount of interest and fees  
21 charged on the contracts for loans made within the following  
22 categories of annual percentage rate calculated pursuant to  
23 12 CFR Part 1026, known as "Regulation Z":

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

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

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

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

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

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

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

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

17 (5) for each loan product:

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

25 (b) for each item set forth in

1 Subparagraph (a) of this paragraph, the average actual  
2 repayment time for the given loan product and loan term; and

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

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

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

15 (8) for each loan product, the number of  
16 loans that have been repaid in full without an extension,  
17 renewal, refinance, rollover or new loan within thirty days  
18 of repaying that loan, and for each loan product, the  
19 percentage of all borrowers who have repaid their loans in  
20 full without an extension, renewal, refinance, rollover or  
21 new loan within thirty days of repaying that loan;

22 (9) for each loan product, the number of  
23 borrowers who extended, renewed, refinanced or rolled over  
24 their loans prior to or at the same time as paying their loan  
25 balance in full, or took out a new loan within thirty days of

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

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

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

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

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

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

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

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

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

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

16 (19) the total number of loans of all loan  
17 products that were made to borrowers in each county in New  
18 Mexico; and

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

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

25 C. The reports required pursuant to Subsection A

1 of this section shall be accompanied by a sworn statement by  
2 the licensee under penalty of perjury that the report is  
3 complete and accurate.

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

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

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

14 **SECTION 11.** Section 58-15-16 NMSA 1978 (being Laws  
15 1969, Chapter 58, Section 1, as amended) is amended to read:

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

18 A. It is unlawful for any person licensed under  
19 the New Mexico Small Loan Act of 1955, in connection with the  
20 making of a loan under that act:

21 (1) to sell life insurance other than a term  
22 policy or credit life insurance on the principal borrowers;

23 (2) to sell term or credit life insurance  
24 the coverage of which exceeds the amount of the loan or  
25 extends beyond the term for which the loan is made;

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

5 (4) after having made a loan, to finance any  
6 premium of any single-interest property insurance policy sold  
7 to the borrower by the licensee or the licensee's agent  
8 whereby the premium would be charged to the borrower in any  
9 manner. Nothing in this section shall preclude the sale and  
10 purchase of an insurance policy covering the dual interest of  
11 borrower and lien holder; or

12 (5) to sell property insurance on unsecured  
13 loans.

14 B. A lender may charge for only the actual cost of  
15 any insurance; provided that all insurance shall be written  
16 by a company licensed to operate within the state and at a  
17 rate not higher than those approved by the superintendent of  
18 insurance; and provided further that the lender shall not  
19 require any insurance to be written or provided by or through  
20 a particular agent, broker or insurer as a condition to  
21 making the loan, but shall, at the borrower's option, permit  
22 the insurance to be procured from any insurer or agent  
23 authorized by law to provide the insurance."

24 SECTION 12. Section 58-15-17 NMSA 1978 (being Laws  
25 1955, Chapter 128, Section 15, as amended) is amended to

1 read:

2 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF  
3 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER  
4 JUDGMENT AND INTEREST.--

5 A. Every licensee shall:

6 (1) at the time a consumer becomes  
7 contractually obligated on a loan pursuant to the New Mexico  
8 Small Loan Act of 1955, deliver to the borrower or, if there  
9 are two or more borrowers on the same obligation, to one of  
10 them, a statement on which shall be printed a copy of Section  
11 58-15-14.1 NMSA 1978 and which shall disclose in clear and  
12 distinct terms:

- 13 (a) the amount of the loan;  
14 (b) the date the loan was made;  
15 (c) a schedule or a description of the  
16 payments;  
17 (d) the type of the security, if any,  
18 for the loan;  
19 (e) the name and address of the  
20 licensee;  
21 (f) the name of the person primarily  
22 obligated for the loan;  
23 (g) the amount of principal;  
24 (h) the annual percentage rate as  
25 disclosed pursuant to 12 CFR Part 1026, known as "Regulation

1 Z", and the amount in dollars and cents;

2 (i) all other disclosures required  
3 pursuant to state and federal law; and

4 (j) the charge for any other item  
5 allowable and included pursuant to the New Mexico Small Loan  
6 Act of 1955, so stated as to clearly show the allocation of  
7 each item included;

8 (2) for each payment made on account of a  
9 loan, give to the person making the payment a plain and  
10 complete receipt specifying the date and amount of the  
11 payment, the amount applied to interest and principal and the  
12 balance unpaid. When payment is made in any other manner  
13 than by the borrower in person, by an agent of the borrower  
14 or by check or money order, the licensee shall mail the  
15 receipt to the borrower's last known address or retain and  
16 deliver the receipt upon request of the borrower. A licensee  
17 may deliver the receipt electronically to the borrower via  
18 text message or email, if requested to do so in writing by  
19 the borrower. A borrower may withdraw authorization for  
20 electronic delivery of receipts in writing at any time. A  
21 licensee shall not require a borrower to receive receipts  
22 electronically. The licensee shall maintain a copy of each  
23 receipt in the office of the licensee as a part of the  
24 licensee's records; and

25 (3) upon repayment of the loan in full, mark

1 plainly every note and promise to pay signed by any borrower  
2 with the word "paid" or "canceled" and promptly file or  
3 record a release of any mortgage if the mortgage has been  
4 recorded, restore any pledge and cancel and return any note  
5 and any assignment given to the licensee. A licensee may  
6 mark and return a copy of the note, promise to pay or any  
7 assignment if the copy accurately reproduces the complete  
8 original.

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

14 C. A judgment against a party on a loan made  
15 pursuant to the New Mexico Small Loan Act of 1955 shall not  
16 include, and the loan shall not include, from the date of the  
17 judgment, charges against a party to the loan other than  
18 costs, attorney fees and post-judgment interest as provided  
19 by law.

20 D. A loan made pursuant to the New Mexico Small  
21 Loan Act of 1955 that is filed and approved as a claim in any  
22 bankruptcy proceeding shall bear interest at the rate of ten  
23 percent per year beginning on the ninetieth day following the  
24 date of adjudication. This limitation shall not apply when  
25 the bankrupt is not discharged in bankruptcy or to any

1 obligation not dischargeable under the provisions of the  
2 United States Bankruptcy Code presently in force.

3 E. A loan made pursuant to the provisions of the  
4 New Mexico Small Loan Act of 1955 shall not bear interest in  
5 excess of ten percent per year on the unpaid principal  
6 balance of a loan after ninety days following the date of the  
7 death of the borrower.

8 F. A loan made pursuant to the New Mexico Small  
9 Loan Act of 1955 shall not bear interest in excess of ten  
10 percent per year upon the unpaid principal balance of the  
11 loan after twelve months following the date of maturity of  
12 the loan.

13 G. A lender shall not make a loan pursuant to the  
14 New Mexico Small Loan Act of 1955 if a loan has an initial  
15 stated maturity of less than one hundred twenty days unless  
16 the loan is a refund anticipation loan.

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

20 I. A lender shall not make a loan pursuant to the  
21 New Mexico Small Loan Act of 1955, other than a refund  
22 anticipation loan, unless the loan is repayable in a minimum  
23 of four substantially equal installment payments of principal  
24 and interest.

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

1 New Mexico Small Loan Act of 1955 that has an annual  
2 percentage rate greater than one hundred seventy-five  
3 percent, calculated pursuant to 12 CFR Part 1026, known as  
4 "Regulation Z".

5 K. Upon request from the borrower, all lenders  
6 licensed pursuant to the New Mexico Small Loan Act of 1955  
7 shall give or forward to the borrower copies of all loan  
8 agreements concerning that borrower, a copy of all receipts  
9 maintained in that borrower's loan file and a written  
10 statement of that borrower's loan history, including all fees  
11 charged, amortization schedules, that borrower's payment  
12 history, including the dates and amounts of payments made,  
13 and the total amount unpaid pursuant to each contract. All  
14 lenders shall retain for seven years from the date of loan  
15 file origination or loan payoff, whichever is the later, the  
16 documentation specified in this subsection.

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

22 SECTION 13. Section 58-15-20 NMSA 1978 (being Laws  
23 1955, Chapter 128, Section 18, as amended) is amended to  
24 read:

25 "58-15-20. FEES AND COSTS.--

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

6           B. Notwithstanding any provision in a note or  
7 other loan contract taken or received under the New Mexico  
8 Small Loan Act of 1955, attorney fees shall not be charged or  
9 collected unless the note or other contract has been  
10 submitted in good faith to an attorney for collection who is  
11 not a salaried employee of the holder of the contract, after  
12 the licensee has made a diligent and good faith effort to  
13 collect and has failed.

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

19           D. Delinquency fees shall not exceed five cents  
20 (\$.05) for each one dollar (\$1.00) of each installment more  
21 than ten days in arrears; provided that the total of  
22 delinquency charges on any such installment shall not exceed  
23 ten dollars (\$10.00) and that only one delinquency charge  
24 shall be made on any one installment regardless of the period  
25 during which the installment remains unpaid."

1           **SECTION 14.** Section 58-15-20.1 NMSA 1978 (being Laws  
2 2017, Chapter 110, Section 20) is amended to read:

3           "58-15-20.1. INSTALLMENT LOANS--REFUND ANTICIPATION  
4 LOANS--INSUFFICIENT FUNDS--PERMITTED CHARGES.--

5           A. If there are insufficient funds to pay a check  
6 or other type of debit on the date of presentment by the  
7 licensee, a check or debit authorization request shall not be  
8 presented to a financial institution by a licensee for  
9 payment more than one time per payment due unless the  
10 consumer agrees in writing, after a check or other type of  
11 debit has been dishonored, to one additional presentment or  
12 deposit.

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

17           **SECTION 15.** Section 58-15-39 NMSA 1978 (being Laws  
18 2007, Chapter 86, Section 21, as amended) is amended to read:

19           "58-15-39. DUTIES OF DIVISION.--

20           A. The division shall:

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

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

1           B. The division shall compile from reports filed  
2 by licensees pursuant to Section 58-15-10.1 NMSA 1978 an  
3 annual report by July 1 of each year containing data  
4 regarding loans entered into by licensees, which data shall  
5 be aggregated for all licensees and non-identifiable by  
6 licensee. Annual reports shall be made available to  
7 interested parties and the general public and published on  
8 the division's website. Consistent with state law, the  
9 report shall include, at a minimum, nonidentifying consumer  
10 data from the preceding calendar year, including each of the  
11 specific categories of information set forth in Subsection A  
12 of Section 58-15-10.1 NMSA 1978.

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

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

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

17 SECTION 17. APPLICABILITY.--The provisions of this act  
18 apply to loans subject to the New Mexico Small Loan Act of  
19 1955 and the New Mexico Bank Installment Loan Act of 1959  
20 that are executed on or after January 1, 2020.

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

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