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HOUSE BILL 172

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Micaela Lara Cadena and Patricia A. Lundstrom and
Dayan Hochman-Vigil

AN ACT

RELATING TO LENDING; IMPOSING A CAP ON INTEREST RATES; VOIDING
CONTRACTS THAT EXCEED THE INTEREST RATE CAP; LOWERING THE
MAXIMUM ANNUAL PERCENTAGE RATE FOR LOANS PURSUANT TO THE NEW
MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO
SMALL LOAN ACT OF 1955; MAKING AN APPROPRIATION.

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

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

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

A. Unless otherwise provided by law, no person,
corporation or association, directly or indirectly, shall take,
reserve, receive or charge any interest, discount or other
advantage for the loan of money or credit or the forbearance or

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1 postponement of the right to receive money or credit except at
2 the rates permitted in Sections 56-8-1 through 56-8-21 NMSA
3 1978.

4 B. Except as provided for in this section, the
5 maximum lawful rate of interest charged or received for the
6 extension of credit shall not exceed thirty-six percent per
7 year for amounts in excess of one thousand one hundred dollars
8 (\$1,100). The maximum lawful rate of interest charged or
9 received for the extension of credit shall not exceed
10 ninety-nine percent per year for amounts up to and including
11 one thousand one hundred dollars (\$1,100).

12 C. The calculation of interest shall include any
13 periodic or nonperiodic interest, any periodic or nonperiodic
14 finance charge, any ancillary products or services and any
15 other charges or fees incident to the extension of credit.

16 D. Any contract for the extension of credit entered
17 into on or after October 1, 2022 having a rate of interest in
18 excess of the maximum lawful rate shall be void as to principal
19 and interest.

20 E. The limitation on interest for the extension of
21 credit shall not apply to any federally insured depository
22 institution or government-issued bonds.

23 F. In the event the United States prime lending
24 rate exceeds ten percent, the maximum lawful rate of interest
25 charged or received for amounts in excess of one thousand one

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1 hundred dollars (\$1,100) may exceed thirty-six percent per year
2 but shall not exceed thirty percentage points in excess of the
3 United States prime lending rate.

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

19 ~~[G. A lender may, in the case of business or~~
20 ~~commercial loans for business or commercial purposes in the~~
21 ~~amount of five hundred thousand dollars (\$500,000) or more,~~
22 ~~take, receive, reserve or charge on any loan or discount made,~~
23 ~~or upon any note, bill of exchange or other evidence of debt,~~
24 ~~interest at a rate agreed to by the parties.~~

25 D.] H. In addition to the maximum interest or

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

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

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1 provided in Subsections B through F of this section.

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

6 SECTION 2. Section 56-8-13 NMSA 1978 (being Laws 1957,
7 Chapter 209, Section 4) is amended to read:

8 "56-8-13. PENALTIES AND FORFEITURES.--

9 A. The taking, receiving, reserving or charging of
10 a rate of interest greater than allowed by ~~[this act]~~ Section
11 56-8-9 NMSA 1978, when knowingly done, shall be deemed a
12 forfeiture of the entire amount of such interest ~~[which]~~ that
13 the note, bill or other evidence of debt carries with it or
14 which has been agreed to be paid thereon. In case the greater
15 rate of interest has been paid, the person by whom it has been
16 paid or ~~[his]~~ the person's legal representatives may recover
17 ~~[back]~~ by civil action twice the amount of the interest thus
18 paid from the person, corporation or association taking or
19 receiving the same; provided that such action is commenced
20 within two ~~[+2]~~ years from the time the usurious transaction
21 occurred.

22 B. Any contract for the extension of credit entered
23 into on or after October 1, 2022 having a rate of interest in
24 excess of the maximum lawful rate shall be void as to principal
25 and interest."

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

3 "58-7-7. RESTRICTIONS.--

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

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

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

19 D. No lender, other than a federally insured
20 depository institution, shall make a loan pursuant to the New
21 Mexico Bank Installment Loan Act of 1959 that has an annual
22 percentage rate greater than ~~[one hundred seventy-five]~~ thirty-
23 six percent for a loan in an amount in excess of one thousand
24 one hundred dollars (\$1,100) or ninety-nine percent for a loan
25 in an amount up to and including one thousand one hundred

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1 dollars (\$1,100), calculated pursuant to 12 CFR Part 1026,
2 known as "Regulation Z", except as provided in Subsection I of
3 this section.

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

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

18 G. Any contract for the extension of credit entered
19 into on or after October 1, 2022 having a rate of interest in
20 excess of the maximum lawful rate shall be void as to principal
21 and interest.

22 H. The limitation on interest for the extension of
23 credit shall not apply to any federally insured depository
24 institution or government-issued bonds.

25 I. In the event the United States prime lending

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1 rate exceeds ten percent, the maximum lawful rate of interest
2 charged or received for amounts in excess of one thousand one
3 hundred dollars (\$1,100) may exceed thirty-six percent per year
4 but shall not exceed thirty percentage points in excess of the
5 United States prime lending rate."

6 SECTION 4. Section 58-15-10.1 NMSA 1978 (being Laws 2011,
7 Chapter 105, Section 1, as amended) is amended to read:

8 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
9 PENALTIES.--

10 A. Licensees shall file with the director each year
11 reports containing at least the following information for the
12 preceding calendar year ending December 31 in an aggregated,
13 nonidentifying consumer manner as specified below:

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

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

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

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

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

25 (e) the total number of individual

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1 borrowers who took out this type of loan product;

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

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

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

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

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

11 (3) for each loan product, the number of loans
12 made and the total dollar amount of interest and fees charged
13 on the contracts for loans made within the following categories
14 of annual percentage rate calculated pursuant to 12 CFR Part
15 1026, known as "Regulation Z":

16 (a) less than or equal to [~~thirty-six~~]
17 ten percent;

18 (b) more than [~~thirty-six~~] ten percent
19 through [~~one hundred~~] eighteen percent;

20 (c) more than [~~one hundred~~] eighteen
21 percent through [~~one hundred fifty~~] thirty-six percent; and

22 (d) more than [~~one hundred fifty percent~~
23 ~~through one hundred seventy-five~~] thirty-six percent;

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

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

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

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

8 (5) for each loan product:

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

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

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

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

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

5 (8) for each loan product, the number of loans
6 that have been repaid in full without an extension, renewal,
7 refinance, rollover or new loan within thirty days of repaying
8 that loan, and for each loan product, the percentage of all
9 borrowers who have repaid their loans in full without an
10 extension, renewal, refinance, rollover or new loan within
11 thirty days of repaying that loan;

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

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

25 (11) for each loan product, the total number

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1 of loans for which a late payment fee was charged more than
2 once over the term of the contract, and the percentage of the
3 total loans for which a late payment fee was charged more than
4 once over the term of the contract;

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

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

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

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

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

22 (17) the total number and percentage of
23 borrowers of all loan products whose sources of income, as
24 provided by borrowers in the loan origination process, included
25 a means-tested public benefit as defined by 8 U.S.C. Section

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1 1613(c);

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

5 (19) the total number of loans of all loan
6 products that were made to borrowers in each county in New
7 Mexico; and

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

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

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

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

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

25 (2) have a license required pursuant to the

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1 New Mexico Small Loan Act of 1955 suspended pursuant to Section
2 58-15-8 NMSA 1978."

3 SECTION 5. Section 58-15-17 NMSA 1978 (being Laws 1955,
4 Chapter 128, Section 15, as amended) is amended to read:

5 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
6 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
7 AND INTEREST.--

8 A. Every licensee shall:

9 (1) at the time a consumer becomes
10 contractually obligated on a loan pursuant to the New Mexico
11 Small Loan Act of 1955, deliver to the borrower or, if there
12 are two or more borrowers on the same obligation, to one of
13 them, a statement on which shall be printed a copy of Section
14 58-15-14.1 NMSA 1978 and which shall disclose in clear and
15 distinct terms:

- 16 (a) the amount of the loan;
- 17 (b) the date the loan was made;
- 18 (c) a schedule or a description of the
19 payments;
- 20 (d) the type of the security, if any,
21 for the loan;
- 22 (e) the name and address of the
23 licensee;
- 24 (f) the name of the person primarily
25 obligated for the loan;

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1 (g) the amount of principal;

2 (h) the annual percentage rate as
3 disclosed pursuant to 12 CFR Part 1026, known as "Regulation
4 Z", and the amount in dollars and cents;

5 (i) all other disclosures required
6 pursuant to state and federal law; and

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

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

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1 licensee as a part of the licensee's records; and

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

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

15 C. A judgment against a party on a loan made
16 pursuant to the New Mexico Small Loan Act of 1955 shall not
17 include, and the loan shall not include, from the date of the
18 judgment, charges against a party to the loan other than costs,
19 attorney fees and post-judgment interest as provided 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 the
25 bankrupt is not discharged in bankruptcy or to any obligation

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1 not dischargeable under the provisions of the United States
2 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 balance
6 of a loan after ninety days following the date of the death of
7 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 loan
11 after twelve months following the date of maturity of the loan.

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

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

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

24 J. A lender shall not make a loan pursuant to the
25 New Mexico Small Loan Act of 1955 that has an annual percentage
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1 rate greater than [~~one hundred seventy-five~~] thirty-six percent
2 for a loan in an amount in excess of one thousand one hundred
3 dollars (\$1,100) or ninety-nine percent for a loan in an amount
4 up to and including one thousand one hundred dollars (\$1,100),
5 calculated pursuant to 12 CFR Part 1026, known as "Regulation
6 Z", except as provided in Subsection O of this section.

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

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

24 M. Any contract for the extension of credit entered
25 into on or after October 1, 2022 having a rate of interest in

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1 excess of the maximum lawful rate shall be void as to principal
2 and interest.

3 N. The limitation on interest for the extension of
4 credit shall not apply to any federally insured depository
5 institution or government-issued bonds.

6 O. In the event the United States prime lending
7 rate exceeds ten percent, the maximum lawful rate of interest
8 charged or received for amounts in excess of one thousand one
9 hundred dollars (\$1,100) may exceed thirty-six percent per year
10 but shall not exceed thirty percentage points in excess of the
11 United States prime lending rate."

12 SECTION 6. APPROPRIATION.--One hundred thousand dollars
13 (\$100,000) is appropriated from the general fund to the
14 financial institutions division of the regulation and licensing
15 department for expenditure in fiscal year 2023 to hire,
16 contract with or retain expert consultants and other resources
17 to assist in the development of a recommendation to the
18 legislature prior to January 1, 2023 for the appropriate
19 interest rates or other regulations for loans in an amount of
20 five thousand dollars (\$5,000) or less that are subject to the
21 New Mexico Small Loan Act of 1955 or the New Mexico Bank
22 Installment Loan Act of 1959 and for such other regulatory
23 measures as the division deems appropriate to prohibit
24 predatory practices by lenders and to assure the continued
25 access to credit by New Mexicans, including those with low or

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1 poor credit ratings. Recommendations shall be developed after
2 consideration of input from all interested parties, including
3 representatives from the office of the attorney general,
4 lending institutions, tribes and pueblos and consumer
5 protection organizations. Any unexpended or unencumbered
6 balance remaining at the end of fiscal year 2023 shall revert
7 to the general fund.

8 SECTION 7. EFFECTIVE DATE.--The effective date of the
9 provisions of Sections 1 through 5 of this act is October 1,
10 2022.