

1 SENATE BILL 548

2 **47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

3 INTRODUCED BY

4 Cisco McSorley

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9  
10 AN ACT

11 RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE  
12 LIMITATION OF FEES AND REGULATION OF PAYDAY LOANS; PROVIDING  
13 PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN PROVISIONS  
14 OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 58-15-2 NMSA 1978 (being Laws 1955,  
18 Chapter 128, Section 2, as amended) is amended to read:

19 "58-15-2. DEFINITIONS.--The following words and terms  
20 when used in the New Mexico Small Loan Act of 1955 [~~shall~~] have  
21 the following meanings unless the context clearly requires a  
22 different meaning. The meaning ascribed to the singular form  
23 [~~shall apply~~] applies also to the plural:

24 [A. ~~"person" shall include individuals, copartners,~~  
25 ~~associations, trusts, corporations and any other legal entity;~~]

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1           A. "consumer" means a resident of New Mexico who  
2 enters into a loan agreement and receives the loan proceeds in  
3 New Mexico;

4           B. "department" or "division" means the financial  
5 institutions division of the regulation and licensing  
6 department;

7           C. "director" means the director of the division;

8           D. "installment loan" means a loan repayable in  
9 substantially equal installments of principal and interest for  
10 a period of no less than one hundred twenty days to maturity;

11           [~~B.~~] E. "license" [shall mean] means a permit  
12 issued under the authority of the New Mexico Small Loan Act of  
13 1955 to make loans and collect charges therefor strictly in  
14 accordance with the provisions of [~~the New Mexico Small Loan~~  
15 ~~Act of 1955~~] that act at a single place of business. It shall  
16 constitute and shall be construed as a grant of a [~~revokable~~]  
17 revocable privilege only to be held and enjoyed subject to all  
18 the conditions, restrictions and limitations contained in the  
19 New Mexico Small Loan Act of 1955 and lawful regulations  
20 promulgated by the director [~~of the financial institutions~~  
21 ~~division~~] and not otherwise;

22           [~~C.~~] F. "licensee" [shall mean] means a person to  
23 whom one or more licenses have been issued [~~hereunder~~] pursuant  
24 to the New Mexico Small Loan Act of 1955 upon [~~their~~] the  
25 person's written application electing to become a licensee and

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1 consenting to exercise the privilege of a licensee solely in  
2 conformity with the New Mexico Small Loan Act of 1955 and the  
3 lawful regulations promulgated by the director [~~of the~~  
4 ~~financial institutions division hereunder~~] under that act and  
5 whose name [~~or names appear~~] appears on the face of the  
6 license;

7 ~~[D. "director" means the director of the financial~~  
8 ~~institutions division of the commerce and industry and~~  
9 ~~licensing department;~~

10 ~~E. "department" means the financial institutions~~  
11 ~~division of the commerce and industry department;]~~

12 G. "payday loan" means a loan in which the licensee  
13 negotiates a personal check tendered by the consumer and agrees  
14 in writing to defer presentment of that check until the  
15 consumer's next payday or another date agreed to by the  
16 licensee and the consumer and:

17 (1) includes any advance of money or  
18 arrangement or extension of credit whereby the licensee, for a  
19 fee, finance charge or other consideration:

20 (a) accepts a dated instrument from a  
21 consumer or an authorization signed by a consumer to transfer  
22 or withdraw funds from an account for the specific purpose of  
23 repaying a payday loan;

24 (b) agrees to hold a dated instrument  
25 for a period of time prior to negotiating or depositing the

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1 instrument; or

2 (c) pays to the consumer, credits to the  
3 consumer's account or pays another person on behalf of the  
4 consumer the amount of an instrument actually paid or to be  
5 paid pursuant to the New Mexico Small Loan Act of 1955; but

6 (2) does not include:

7 (a) an overdraft product or service  
8 offered by a banking corporation, savings and loan association  
9 or credit union; and

10 (b) installment loans;

11 H. "person" includes an individual, copartner,  
12 association, trust, corporation and any other legal entity; and

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

18 Section 2. Section 58-15-3 NMSA 1978 (being Laws 1955,  
19 Chapter 128, Section 3, as amended) is amended to read:

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

22 A. ~~[No]~~ A person shall not engage in the business  
23 of lending in amounts of two thousand five hundred dollars  
24 (\$2,500) or less for a loan without first having obtained a  
25 license from the director. Nothing contained in this

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1 subsection shall restrict or prohibit a licensee under the New  
2 Mexico Small Loan Act of 1955 from making loans in any amount  
3 under the New Mexico Bank Installment Loan Act of 1959 in  
4 accordance with the provisions of Section 58-7-2 NMSA 1978 or  
5 the general laws of this state governing money, interest and  
6 usury.

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

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

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1 an existing applicable statute of this state.

2 D. The provisions of Subsection A of this section  
3 apply to ~~[any]~~:

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

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

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

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

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

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

25 E. ~~[Any]~~ A person, copartnership, trust

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1 ~~[and the trustees or beneficiaries thereof]~~ or a trustee or  
2 beneficiary thereof or an association or corporation ~~[and the~~  
3 ~~several members, officers, directors, agents and employees~~  
4 ~~thereof who violate or participate]~~ or a member, officer,  
5 director, agent or employee thereof who violates or  
6 participates in the violation of ~~[any]~~ a provision of  
7 Subsection A of this section is guilty of a petty misdemeanor  
8 and upon conviction shall be sentenced pursuant to the  
9 provisions of Subsection B of Section 31-19-1 ~~[(B)]~~ NMSA 1978.  
10 ~~[Any]~~ A contract or loan in the making or collection of which  
11 ~~[any]~~ an act is done that violates Subsection A or D of this  
12 section is void and the lender has no right to collect, receive  
13 or retain any principal, interest or charges whatsoever."

14 Section 3. Section 58-15-5 NMSA 1978 (being Laws 1978,  
15 Chapter 6, Section 1, as amended) is amended to read:

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

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

24 ~~[Any]~~ B. An applicant for license, upon written  
25 notice to do so by the director, shall, within twenty days

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1 after service of the notice, furnish in writing, under oath, to  
2 the director [~~any and~~] all additional information required by  
3 the director that may be relevant or, in the opinion of the  
4 director, helpful [~~to him~~] in conducting [~~his~~] the  
5 investigation.

6 C. Failure to comply with the director's  
7 requirement for supplemental information or the willful  
8 furnishing of false information is sufficient [~~ground~~] grounds  
9 for denial of license.

10 D. False or misleading information willfully and  
11 intentionally furnished to the director prior to the issuance  
12 of any license is [~~ground~~] grounds for suspension or revocation  
13 of any license in accordance with the procedures for suspension  
14 or revocation of license in the New Mexico Small Loan Act of  
15 1955.

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

21 [~~B.~~] F. In the event the director finds that:

22 (1) [~~that~~] the financial responsibility,  
23 character and general fitness of the applicant for an original  
24 license and of the individual members and beneficiaries  
25 thereof, if the applicant is a copartnership, association or

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1 trust, and of the officers and directors thereof, if the  
2 applicant is a corporation, are such as to command the  
3 confidence of the public and to warrant belief that the  
4 business will be operated lawfully, honestly, fairly and  
5 efficiently within the declared purposes and spirit of the New  
6 Mexico Small Loan Act of 1955;

7 (2) [~~that~~] allowing the applicant to engage in  
8 business will promote the convenience and advantage of the  
9 community in which the business of the applicant is to be  
10 conducted; and

11 (3) [~~that~~] the applicant has available for  
12 operation of the business at the specified location cash or its  
13 equivalent, convertible securities or receivables of thirty  
14 thousand dollars (\$30,000) or any combination thereof;  
15 [~~he~~] the director shall enter an order granting the  
16 application, file [~~his~~] the director's findings and, upon  
17 payment of the license fee of [~~five hundred dollars (\$500)~~]  
18 seven hundred fifty dollars (\$750), issue and deliver a license  
19 to the applicant.

20 [~~G.~~] G. If the director does not make the findings  
21 enumerated in Subsection [~~B~~] F of this section, [~~he~~] the  
22 director shall enter an order denying the application, notify  
23 the applicant of the denial and retain the application fee.  
24 Within thirty days after the entry of such an order, [~~he~~] the  
25 director shall prepare written findings and shall deliver a

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1 copy to the applicant.

2           ~~[D.]~~ H. A written application for license renewal  
3 [~~licenses~~] shall be filed on or before March 31 of each year,  
4 and thereupon the director shall investigate the facts and  
5 review [~~his~~] the files of examinations of the applicant made by  
6 [~~his~~] the director's office and of complaints filed by  
7 borrowers, if any. The director shall deliver a renewal  
8 license to the applicant if [~~he~~] the director finds that:

9                   (1) [~~that~~] no valid complaints of violations  
10 or abuses of the New Mexico Small Loan Act of 1955 or of the  
11 regulations of the director promulgated under that act have  
12 been filed by borrowers;

13                   (2) [~~that his~~] examinations of the affairs of  
14 the applicant indicate that the business has been conducted and  
15 operated lawfully and efficiently within the declared purposes  
16 and spirit of the New Mexico Small Loan Act of 1955; and

17                   (3) [~~that~~] the financial responsibility,  
18 experience and general fitness and character of the applicant  
19 remain such as to command the confidence of the public and to  
20 warrant the belief that the business will continue to be  
21 operated lawfully and efficiently within the purposes and  
22 spirit of the New Mexico Small Loan Act of 1955. [~~he shall~~  
23 ~~deliver a renewal license to the applicant.~~

24           ~~E.]~~ I. If the director does not make the findings  
25 enumerated in Subsection ~~[D]~~ H of this section, [~~he~~] the

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1 director may grant a temporary extension of the license not  
2 exceeding sixty days pending a hearing; shall enter an order  
3 fixing a date for hearing upon the application; shall notify  
4 the licensee thereof, specifying the particular complaints,  
5 violations or abuses or other reasons for [~~his~~] the director's  
6 contemplated refusal to renew the license; and shall afford to  
7 the applicant an opportunity to be heard. At the hearing, the  
8 director shall produce [~~his~~] evidence to establish the truth of  
9 the charges of violation or other grounds specified in the  
10 notice, and the applicant shall be accorded the right to  
11 produce evidence or other matters of defense. If after the  
12 hearing the director finds that the complaints of violations or  
13 other grounds specified in the notice are not well-founded,  
14 [~~he~~] the director shall issue the renewal license. If [~~he~~] the  
15 director finds that the complaints of violations or other  
16 grounds are well-founded, [~~he~~] the director shall enter an  
17 order denying the renewal application and notify the applicant  
18 of the denial, returning the renewal license fee tendered with  
19 the application. Within thirty days after the entry of such an  
20 order, [~~he~~] the director shall prepare written findings and  
21 shall deliver a copy of the findings to the applicant. The  
22 order shall be subject to review as provided in Section  
23 58-15-25 NMSA 1978. The court in its discretion and upon  
24 proper showing may order a temporary extension of the license  
25 pending disposition of the review proceedings.

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1           [F-] J. In connection with the determination of  
2 fitness and character of an applicant [~~under~~] pursuant to  
3 provisions of this section, the fact that the applicant or  
4 licensee is a member of or interested financially in, connected  
5 or affiliated with, controls or is controlled by or owns or is  
6 owned by other corporations, partnerships, trusts, associations  
7 or other legal entities engaged in the lending of money whose  
8 policies and practices as to rates of interest, charges and  
9 fees and general dealing with borrowers are questionable or  
10 would constitute violation of the general usury statutes of  
11 this state or of the declared purposes and spirit of the New  
12 Mexico Small Loan Act of 1955 shall be given such consideration  
13 and weight as the director determines.

14           [G-] K. At the time of issuance of original license  
15 and each annual renewal thereof, the licensee for each licensed  
16 office shall pay to the director as a license fee for the  
17 period covered by the license the sum of [~~five hundred dollars~~  
18 ~~(\$500)~~] seven hundred fifty dollars (\$750) as a minimum, plus  
19 an additional seventy-five cents (\$.75) for each one thousand  
20 dollars (\$1,000) or fraction thereof of loans outstanding as of  
21 December 31 next preceding, as shown on the applicant's annual  
22 report. In the event that the application for annual renewal  
23 of the license is delinquent, the licensee shall also pay a  
24 delinquency fee of ten dollars (\$10.00) per day for each day  
25 the licensee is delinquent in filing the application for

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1 renewal.

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

10 Section 4. Section 58-15-9 NMSA 1978 (being Laws 1955,  
11 Chapter 128, Section 9, as amended) is amended to read:

12 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
13 WITNESSES.--

14 A. At least once each year, the director or [~~his~~  
15 ~~duly~~] the director's authorized representative shall make an  
16 examination of the place of business of each licensee and [~~such~~  
17 ~~of~~] the loans, transactions, books, papers and records of the  
18 licensee insofar as they pertain to the business licensed under  
19 the New Mexico Small Loan Act of 1955 as [~~he~~] the director may  
20 deem necessary. The licensee shall pay to the [~~commissioner~~  
21 director] for such annual examination a fee of [~~two hundred~~  
22 ~~dollars~~ (~~\$200~~)] four hundred dollars (\$400).

23 B. Within a reasonable time after the completion of  
24 an examination of a licensed office, the director shall mail to  
25 the licensee a copy of the report of the examination, together

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1 with any comments, exceptions, objections or criticisms of the  
2 director concerning the conduct of the licensee and the  
3 operation of the licensed office.

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

13 (1) any licensee;

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

18 (3) any person whom the director has  
19 reasonable cause to believe is violating any provision of ~~[that~~  
20 ~~act]~~ the New Mexico Small Loan Act of 1955, whether the person  
21 claims to be within the authority or beyond the scope of that  
22 act.

23 D. For the purposes of this section, ~~[any]~~ a person  
24 who advertises, solicits or ~~[holds himself out]~~ makes any  
25 representation as being willing to make loan transactions in

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1 any amount, except persons, financial institutions or lending  
2 agencies operating under charters or licenses issued by ~~[any]~~ a  
3 state or federal agency or under any special statute, shall be  
4 subject to investigation under the New Mexico Small Loan Act of  
5 1955 and shall be presumed to be engaged in the business  
6 described in Subsection A of Section 58-15-3 NMSA 1978 as to  
7 any loans of two thousand five hundred dollars (\$2,500) or  
8 less.

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

22 ~~[D.]~~ F. For the purposes of this section, the  
23 director or ~~[his duty]~~ the director's authorized representative  
24 shall have and be given free access to the offices and places  
25 of business, files, safes and vaults of all licensees and shall

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1 have authority to require the attendance of any person and to  
2 examine ~~[him]~~ the person under oath relative to such loans or  
3 business or to the subject matter of any examination,  
4 investigation or hearing as provided in the New Mexico Small  
5 Loan Act of 1955. Notices to appear before the director for  
6 examination under oath may be served by registered mail. If  
7 the party notified to appear is the licensee, any person named  
8 on the face of the license being investigated or any agent,  
9 employee or manager participating in the licensee's business  
10 and ~~[he]~~ the party fails to appear for examination or refuses  
11 to answer questions submitted, the director may, forthwith and  
12 without further notice to the licensee, suspend the license  
13 involved pending compliance with the notice. Upon failure of  
14 any other person to appear or to answer questions, the director  
15 may apply to and invoke the aid of any district court of New  
16 Mexico in compelling the attendance and testimony of any such  
17 person and the production of books, records, written  
18 instruments and documents relating to the business of the  
19 licensee. ~~[Any]~~ The district court whose aid is so invoked by  
20 the director may, in case of contumacy or refusal to obey any  
21 order of the district court issued to compel the attendance of  
22 the person or the production of books, records, written  
23 instruments and documents, punish the person as for contempt of  
24 court.

25 ~~[E.]~~ G. The director shall prescribe rules of

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1 procedure for all hearings, examinations or investigations  
2 provided for in the New Mexico Small Loan Act of 1955. The  
3 director is not bound by the usual common law or statutory  
4 rules of evidence or by any technical or formal rules of  
5 procedure or pleading and specification of charges other than  
6 as specifically provided in the New Mexico Small Loan Act of  
7 1955 but may conduct hearings, examinations and investigations  
8 in the manner best calculated to ascertain the substantial  
9 rights of the parties interested.

10 [F-] H. The director has the power to administer  
11 oaths, certify official acts and records of [~~his~~] the  
12 director's office, issue subpoenas for witnesses in the name of  
13 and under the seal of [~~his~~] the director's office and compel  
14 the production of papers, books, accounts and documents. [~~He~~]  
15 The director shall issue subpoenas at the instance of any party  
16 to a hearing before the division upon payment of a fee of two  
17 dollars [~~and~~] fifty cents (\$2.50) for each subpoena so issued.

18 [G-] I. Depositions may be taken with or without a  
19 commission, and written interrogatories may be submitted in the  
20 same manner and on the same grounds provided by law for the  
21 taking of depositions or submission of written interrogatories  
22 in civil actions pending in the district courts of this state.

23 [H-] J. Each witness who appears before the  
24 director by [~~his~~] the director's order shall receive the fees  
25 and mileage provided for witnesses in civil actions in the

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1 district court. Fees and mileage shall be paid by the state,  
2 but no witness subpoenaed at the instance of parties other than  
3 the director is entitled to compensation from the state for  
4 attendance or mileage unless the director certifies that ~~[his]~~  
5 the witness's testimony is material.

6 ~~[F.]~~ K. Whenever the director has reasonable cause  
7 to believe that ~~[any]~~ a person is violating ~~[any]~~ a provision  
8 of the New Mexico Small Loan Act of 1955, ~~[he]~~ the director  
9 may, in addition to all actions provided for in that act and  
10 without prejudice thereto, enter an order requiring the person  
11 to desist or to refrain from the violation. An action may be  
12 brought on the relation of the attorney general and the  
13 director to enjoin the person from engaging in or continuing  
14 the violation or from doing any act in furtherance of the  
15 violation. In any such action, an order or judgment may be  
16 entered awarding a preliminary or final injunction as may be  
17 deemed proper. In addition to all other means provided by law  
18 for the enforcement of a temporary restraining order, temporary  
19 injunction or final injunction, the court in which such action  
20 is brought shall have power and jurisdiction to impound and to  
21 appoint a receiver for the property and business of the  
22 defendants, including books, papers, documents and records  
23 pertaining thereto or so much thereof as the court may deem  
24 reasonably necessary to prevent further violations of the New  
25 Mexico Small Loan Act of 1955 through or by means of the use of

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1 the property and business. The receiver, when appointed and  
2 qualified, shall have powers and duties as to custody,  
3 collection, administration, winding up and liquidation of the  
4 property and business as are from time to time conferred upon  
5 ~~[him]~~ the receiver by the court."

6 Section 5. Section 58-15-10 NMSA 1978 (being Laws 1955,  
7 Chapter 128, Section 10, as amended) is amended to read:

8 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL  
9 INFORMATION.--

10 A. Each licensee shall keep and use in ~~[his]~~ the  
11 business such books, accounts and records in accordance with  
12 sound accounting practices ~~[as in the director's opinion]~~ that  
13 will enable ~~[him]~~ the director to determine whether the  
14 licensee is complying with the provisions of the New Mexico  
15 Small Loan Act of 1955 and with the orders and regulations  
16 lawfully made by the director ~~[under]~~ pursuant to provisions of  
17 that act. Each licensee shall preserve the books, accounts and  
18 records for at least two years after making the final entry on  
19 ~~[any]~~ a loan recorded therein.

20 B. Each licensee shall, annually on or before March  
21 31, file a report with the director giving such relevant  
22 information as ~~[he]~~ the director may reasonably require  
23 concerning the business and operations during the preceding  
24 calendar year for each licensed place of business conducted by  
25 the licensee within the state pursuant to the provisions of the

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1 New Mexico Small Loan Act of 1955. The report shall be made  
2 under oath and shall be in the form prescribed by the director.  
3 A summary of the reports shall be included in the published  
4 annual report of the director.

5 C. At the time of filing each annual report, at the  
6 time of the annual examination or at any other time when [~~any~~]  
7 a license is in effect, the director may, upon written notice,  
8 require [~~any~~] a licensee to furnish within twenty days in  
9 writing, and under oath if so specified by any written notice  
10 issued and served by the director upon the licensee, [~~any and~~  
11 ~~all~~] additional information as to ownership of any office;  
12 operation of any office; books, records, files and papers; and  
13 affiliation or relationship with any other person, firm, trust,  
14 association or corporation as, in the opinion of the director,  
15 may be helpful [~~to him~~] in the discharge of [~~his~~] the  
16 director's official duties.

17 D. False or misleading information willfully  
18 furnished to the director by [~~any~~] a licensee in [~~any~~] an  
19 annual report or pursuant to [~~any~~] a notice or requirement of  
20 the director is sufficient [~~ground~~] grounds for suspension and  
21 revocation of license in accordance with the procedures for  
22 suspension or revocation of license set forth in the New Mexico  
23 Small Loan Act of 1955."

24 Section 6. Section 58-15-12 NMSA 1978 (being Laws 1955,  
25 Chapter 128, Section 12, as amended) is amended to read:

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1           "58-15-12. ADVERTISING [~~SCHEDULE OF CHARGES~~].--~~[A. No]~~ A  
2 licensee or other person subject to the New Mexico Small Loan  
3 Act of 1955 shall not advertise, display, distribute or  
4 broadcast or cause or permit to be advertised, displayed,  
5 distributed or broadcast in any manner whatsoever [~~any~~] a  
6 false, misleading or deceptive statement or representation with  
7 regard to the charges, terms or conditions for loans in the  
8 amount or of the value of two thousand five hundred dollars  
9 (\$2,500) or less. The director may require that charges or  
10 rates of charge, if stated by a licensee, be stated fully and  
11 clearly in such manner as [~~he may deem~~] the director deems  
12 necessary to prevent misunderstanding [~~thereof~~] by prospective  
13 borrowers. The director may permit or require licensees to  
14 refer in their advertising to the fact that their business is  
15 under state supervision, subject to conditions imposed by [~~him~~]  
16 the director to prevent [~~any~~] erroneous impressions as to the  
17 scope or degree of protection provided by the New Mexico Small  
18 Loan Act of 1955.

19           ~~[B. Each licensee shall display in each licensed~~  
20 ~~place of business, in a place where it will be readily visible~~  
21 ~~by borrowers, a full and accurate schedule of the rates of~~  
22 ~~charges upon all classes of loans currently to be made by him,~~  
23 ~~stated on a percent per annum basis and also on a percent per~~  
24 ~~month basis.]"~~

25           Section 7. Section 58-15-14.1 NMSA 1978 (being Laws 1983,  
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1 Chapter 95, Section 2) is amended to read:

2 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--~~[Charges~~  
3 ~~on]~~ The simple interest method shall be used for loans made  
4 under the New Mexico Small Loan Act of 1955. Simple interest  
5 charges are recomputed whenever a payment is received by a  
6 licensee. Interest charges shall not be paid, deducted or  
7 received in advance. [~~Such~~] Interest charges shall not be  
8 compounded. However, if part or all of the consideration for a  
9 loan contract is the unpaid principal balance of a prior loan,  
10 then the principal amount payable under the loan contract may  
11 include any unpaid charges [~~which~~] that have accrued within  
12 sixty days on the prior loan. Such charges shall be computed  
13 on the basis of the number of days actually elapsed. [~~For the~~  
14 ~~purpose of computing charges, whether at the maximum rate or~~  
15 ~~less, a month shall be any period of thirty consecutive days~~  
16 ~~and the rate of charge for each day shall be one-thirtieth of~~  
17 ~~the monthly rate.]"~~

18 Section 8. Section 58-15-17 NMSA 1978 (being Laws 1955,  
19 Chapter 128, Section 15, as amended) is amended to read:

20 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--  
21 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT  
22 AND INTEREST.--

23 A. Every licensee shall:

24 (1) at the time [~~any~~] a loan is made within  
25 the provisions of the New Mexico Small Loan Act of 1955,

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

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

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

11 (3) upon payment of the loan in full, mark  
12 plainly every note and promise to pay signed by any obligor  
13 with the word "paid" or "canceled" and promptly file or record  
14 a release of any mortgage if the mortgage has been recorded,  
15 restore any pledge and cancel and return any note and any  
16 assignment given to the licensee. A licensee may mark and  
17 return a copy of the note, promise to pay or any assignment if  
18 the copy accurately reproduces the complete original.

19 B. [~~No~~] A licensee shall not take [~~any~~] a note or  
20 promise to pay that does not disclose the amount of the loan, a  
21 schedule of payments, or a description thereof, and the agreed  
22 charge or rate of charge or any instrument in which blanks are  
23 left to be filled in after execution.

24 C. If judgment is obtained against [~~any~~] a party  
25 [~~or any~~] on a loan made [~~under~~] pursuant to the provisions of

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1 the New Mexico Small Loan Act of 1955, neither the judgment nor  
2 the loan shall carry, from the date of the judgment, [~~any~~]  
3 charges against [~~any~~] a party to the loan other than [~~court~~]  
4 costs, [~~attorneys'~~] attorney fees and post-judgment interest on  
5 the amount of the judgment at ten percent a year.

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

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

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

23 Section 9. Section 58-15-20 NMSA 1978 (being Laws 1955,  
24 Chapter 128, Section 18) is amended to read:

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

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

7                    [~~(b) ATTORNEY FEES~~] B. Notwithstanding any  
8 provision in [~~any~~] a note or other loan contract taken or  
9 received [~~under this act~~] pursuant to the New Mexico Small Loan  
10 Act of 1955, attorney fees shall not be charged or collected  
11 except [~~where such~~] when the note or other contract has been  
12 [~~turned~~] submitted in good faith to an attorney for collection  
13 and after diligent and good faith effort to collect [~~has~~  
14 ~~failed~~] on the part of the licensee has failed.

15                    [~~(c) COURTS COSTS~~] C. Where suit is filed in any  
16 court of competent jurisdiction, court costs shall be  
17 collectable in accordance with the laws of New Mexico  
18 applicable thereto.

19                    [~~(d) NOTARY FEES PROHIBITED~~] D. Notary fees  
20 incident to the taking of [~~any~~] a lien to secure a small loan  
21 or releasing such a lien shall not be charged or collected by  
22 [~~any~~] a licensee, [~~nor by any~~] an officer, agent or employee of  
23 a licensee [~~nor by~~] or anyone within [~~any~~] an office, room or  
24 place of business in which a small loan office is conducted.

25                    E. Delinquency fees shall not exceed five cents

1  (\$.05) for each one dollar (\$1.00) of each installment more  
2  than ten days in arrears; provided that the total of  
3  delinquency charges on any such installment shall not exceed  
4  ten dollars (\$10.00) and that only one delinquency charge shall  
5  be made on any one installment regardless of the period during  
6  which the installment remains unpaid."

7 Section 10. Section 58-15-23 NMSA 1978 (being Laws 1955,  
8 Chapter 128, Section 21) is amended to read:

9 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The [~~wilful~~]  
10 violation by [~~any~~] a licensee or by [~~any~~] an officer, manager,  
11 director, trustee, executive or employee directly engaged in  
12 operating a small loan office under the provisions of [~~this~~  
13 ~~Act~~] the New Mexico Small Loan Act of 1955 of any usury statute  
14 of this state within [~~any~~] an office, room or place of business  
15 in which the making of loans as a licensee is solicited or  
16 engaged or in association or conjunction therewith [~~shall be~~  
17 ~~ground~~] is grounds for suspension and revocation of license in  
18 accordance with the applicable procedures [~~applicable thereto~~  
19 ~~as~~] set forth [~~herein~~] in that act."

20 Section 11. Section 58-15-30 NMSA 1978 (being Laws 1955,  
21 Chapter 128, Section 28) is amended to read:

22 "58-15-30. PENALTIES--GENERAL.--Any person,  
23 copartnership, trust, association or corporation and the  
24 several members, beneficiaries, officers, directors, agents and  
25 employees thereof who [~~shall~~] violate or participate in the

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1 violation of any provision of the [~~sections of this Act shall~~  
2 ~~be~~] New Mexico Small Loan Act of 1955 are guilty of a  
3 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]  
4 punished by a fine of not less than [~~one hundred (\$100.00)~~  
5 ~~dollars and not more than three hundred (\$300.00) dollars~~] five  
6 hundred dollars (\$500) or more than one thousand dollars  
7 (\$1,000) or by imprisonment of not more than [~~ninety (90) days~~]  
8 six months or [~~by~~] both [~~such fine and imprisonment~~] in the  
9 discretion of the court."

10 Section 12. A new section of the New Mexico Small Loan  
11 Act of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

12 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY  
13 LOANS.--

14 A. No licensee shall make a payday loan to a  
15 consumer if:

16 (1) the total principal amount of the loan,  
17 when combined with the principal amount of all of the  
18 consumer's other outstanding payday loans, exceeds one thousand  
19 dollars (\$1,000) or twenty percent of the consumer's net  
20 monthly income, whichever is less; or

21 (2) the consumer has an outstanding balance on  
22 one or more payday loans.

23 B. Without affecting the rights of a consumer to  
24 prepay a payday loan at any time without additional cost or  
25 penalty, no payday loan shall have a stated minimum term of

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1 less than ninety days.

2 C. A payday loan shall be repayable in equal  
3 monthly payments of principal and administrative fees. There  
4 must be a minimum of three payments, and the first payment  
5 shall come due no sooner than one month after the distribution  
6 date of the loan proceeds.

7 D. A consumer shall not have more than one payday  
8 loan outstanding at any time, nor shall a consumer have more  
9 than one payday loan outstanding with any licensee operating  
10 under a single trade name.

11 E. A payday loan agreement shall include a  
12 provision granting the consumer the right to rescind the  
13 transaction by returning in cash, or through certified funds,  
14 one hundred percent of the amount advanced by a licensee for a  
15 payday loan no later than 5:00 p.m. on the first day of  
16 business conducted by the licensee following the execution of  
17 the agreement or payment plan. If a consumer exercises the  
18 right of rescission pursuant to this subsection, no fee for the  
19 rescinded transaction shall be charged to the consumer, and the  
20 licensee shall not charge or impose on the consumer a fee for  
21 exercising the right of rescission pursuant to this subsection.

22 F. A consumer shall be permitted to make payments  
23 in any amount on a payday loan at any time before maturity  
24 without additional fees. When a payday loan is repaid before  
25 its maturity date, unearned interest charges shall be rebated

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1 to the consumer based upon a method at least as favorable to  
2 the consumer as the actuarial method.

3 G. After each payment is made, in full or in part,  
4 on a payday loan, the licensee shall give to the person making  
5 the payment a signed, dated receipt showing the amount paid,  
6 amount credited toward administrative fees and principal and  
7 the balance due on the loan.

8 H. A check written by a consumer for a payday loan  
9 shall be payable to the order of the licensee.

10 I. The licensee shall provide the consumer, or each  
11 consumer if there is more than one, with copies of the payday  
12 loan agreement in Spanish or English prior to the consummation  
13 of the loan.

14 J. A payday loan agreement shall not be refinanced  
15 or extended without the written consent of the consumer.

16 K. Licensees making payday loans shall provide the  
17 consumer with an information brochure in English or Spanish as  
18 determined by the director.

19 L. The disclosure of the credit terms of a payday  
20 loan shall be according to and governed by the requirements of  
21 12 CFR 226, known as "Regulation Z". The definitions and  
22 requirements of that regulation and commentary shall apply to  
23 payday loans as if those provisions are fully set out in this  
24 section.

25 M. A licensee shall collect on payday loans in

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1 default in a professional, fair and lawful manner, in  
2 accordance with the federal Fair Debt Collection Practices Act,  
3 15 USCA, Chapter 41, Subchapter V."

4 Section 13. A new section of the New Mexico Small Loan  
5 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

6 "58-15-33. [NEW MATERIAL] PAYDAY LOANS--PERMITTED  
7 CHARGES.--The following provisions apply only to payday loans:

8 A. a licensee may not charge or receive from a  
9 consumer, directly or indirectly, fees or charges except as  
10 provided in this section;

11 B. upon the execution of a new payday loan, the  
12 licensee may impose an administrative fee, which fee is fully  
13 earned and nonrefundable at the time a payday loan agreement is  
14 executed unless a payday loan is rescinded pursuant to  
15 Subsection E of Section 58-15-32 NMSA 1978 and which is payable  
16 in full at the end of the term of the payday loan, in  
17 accordance with the following schedule:

18 (1) for the first three hundred dollars (\$300)  
19 in principal of a payday loan, at a rate not exceeding  
20 seventeen dollars (\$17.00) per one hundred dollars (\$100) in  
21 principal;

22 (2) for payday loans with a principal amount  
23 of five hundred dollars (\$500) or less, an additional fee at a  
24 rate not exceeding fifteen dollars (\$15.00) per one hundred  
25 dollars (\$100) of principal in excess of three hundred dollars

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1 (\$300); and

2 (3) for payday loans with a principal amount  
3 of one thousand dollars (\$1,000) or less, an additional fee at  
4 a rate not exceeding thirteen dollars (\$13.00) per one hundred  
5 dollars (\$100) of principal in excess of five hundred dollars  
6 (\$500);

7 C. the dollar amounts set forth in Subsection B of  
8 this section shall be adjusted for inflation pursuant to rules  
9 promulgated by the director, at no less than three-year  
10 intervals, to the nearest dollar amounts as indicated by  
11 changes in the consumer price index for the United States for  
12 all items as published by the United States department of  
13 labor;

14 D. a licensee shall not charge a consumer interest  
15 on the outstanding principal owed on a payday loan other than  
16 the administrative fees as set forth in this section; and

17 E. if there are insufficient funds to pay a check  
18 or other type of debit on the date of presentment by the  
19 licensee, a licensee may charge a borrower a fee not to exceed  
20 fifteen dollars (\$15.00). Only one fee may be collected by a  
21 licensee on a check or debit. Checks may not be redeposited,  
22 and electronic debits may not be repeated once dishonored.  
23 Late fees or delinquency charges shall not be allowed."

24 Section 14. A new section of the New Mexico Small Loan  
25 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

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1 "58-15-34. [NEW MATERIAL] PAYDAY LOANS--PROHIBITED  
2 ACTS.--

3 A. A licensee shall not:

4 (1) threaten or intimidate a consumer or  
5 threaten to use or request the use of criminal process in this  
6 or another state to collect on a payday loan;

7 (2) alter the date or other information on a  
8 check drawn by a consumer in a payday loan transaction;

9 (3) use a device or agreement that would have  
10 the effect of charging or collecting more fees, charges or  
11 interest than allowed by law by entering into a different type  
12 of transaction with the consumer that has that effect except as  
13 specifically permitted by the New Mexico Small Loan Act of  
14 1955;

15 (4) engage in unfair, deceptive or fraudulent  
16 practices in making, renewing or collecting a payday loan;

17 (5) charge a fee to cash a check representing  
18 the proceeds of the payday loan;

19 (6) use or attempt to use the check written by  
20 the consumer for a payday loan as security for purposes of a  
21 state or federal law;

22 (7) have more than one payday loan outstanding  
23 with a consumer at a time for all licenses operated under the  
24 same trade name;

25 (8) accept collateral for a payday loan other

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1 than the consumer's check or authorization to transfer or  
2 withdraw funds from an account or require a consumer to provide  
3 a guaranty from another person for a payday loan;

4 (9) charge interest, fees or charges other  
5 than those specifically authorized, including:

6 (a) charges for insurance; or

7 (b) collection costs;

8 (10) threaten to take any action against a  
9 consumer that is prohibited by the New Mexico Small Loan Act of  
10 1955;

11 (11) include any of the following provisions  
12 in a payday loan agreement:

13 (a) a hold harmless clause;

14 (b) a confession of judgment clause or  
15 power of attorney;

16 (c) an assignment of or order for  
17 payment of wages or other compensation for services;

18 (d) a waiver of the right to a jury  
19 trial, if applicable, in any action brought by or against a  
20 consumer;

21 (e) a provision in which the consumer  
22 agrees not to assert a claim or defense arising out of the  
23 contract; or

24 (f) a waiver of a provision of the New  
25 Mexico Small Loan Act of 1955;

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1 (12) make a payday loan contingent on the  
2 purchase of insurance or other goods or services;

3 (13) advertise, display, distribute or  
4 broadcast or cause or permit to be advertised, displayed,  
5 distributed or broadcast, in any manner, a false, misleading or  
6 deceptive statement or representation with regard to the  
7 charges, terms or conditions for payday loans;

8 (14) take a check, instrument or form in which  
9 blanks are left to be filled in after execution of the check,  
10 instrument or form;

11 (15) offer, arrange, act as an agent for or  
12 assist a third party in any way in the making of a payday loan  
13 unless the third party complies with all applicable federal and  
14 state laws and regulations;

15 (16) enter into a payday loan with a consumer  
16 who lacks the capacity to consent;

17 (17) use provisions in documents associated  
18 with a payday loan that are deceptive or misleading;

19 (18) use an agency agreement or partnership  
20 agreement as a scheme or contrivance to circumvent the  
21 application of the provisions of the New Mexico Small Loan Act  
22 of 1955 to a consumer's payday loan. For the purposes of this  
23 paragraph:

24 (a) "agency agreement" means any  
25 agreement between in-state entities and a banking corporation,

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1 savings and loan association or credit union operating under  
2 the laws of the United States or of any state whereby the  
3 in-state agent holds a predominant economic interest in the  
4 revenues generated by a payday loan made to New Mexico  
5 residents; and

6 (b) "partnership agreement" means any  
7 agreement between in-state entities and a banking corporation,  
8 savings and loan association or credit union operating under  
9 the laws of the United States or of any state whereby the  
10 in-state partner holds a predominant economic interest in the  
11 revenues generated by a payday loan made to New Mexico  
12 residents; or

13 (19) operate a business making payday loans  
14 where the licensed premises would be within one and one-half  
15 miles of any gambling facilities in any direction measured from  
16 the exterior boundaries of the licensed premises. For the  
17 purposes of this paragraph, all measurements taken in order to  
18 determine the location of licensed premises in relation to  
19 gambling facilities shall be the straight line distance from  
20 the property line of the licensed premises to the property line  
21 of gambling facilities. No business licensed to make payday  
22 loans that is located within one and one-half miles of any  
23 gambling facilities on October 1, 2006 shall have its license  
24 renewed if a renewal would violate the restrictions of this  
25 paragraph. For the purposes of this paragraph, "gambling

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1 facilities" means racetracks, casinos, gaming establishments as  
2 defined in Section 60-2E-3 NMSA 1978 and gaming facilities as  
3 defined in Section 11-13-1 NMSA 1978.

4 B. Without regard to whether a consumer is acting  
5 individually or on behalf of others similarly situated, any  
6 provision of a contract that allows a person to require a  
7 consumer to a less convenient, more costly or more dilatory  
8 forum for the resolution of a dispute than a judicial forum  
9 established in this state where the borrower may otherwise  
10 properly bring a claim or defense or limits in any way any  
11 claim or defense the consumer may have is unconscionable and  
12 void."

13 Section 15. A new section of the New Mexico Small Loan  
14 Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

15 "58-15-35. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

16 A. Before entering into a payday loan agreement  
17 with a consumer, a licensee must use a commercially reasonable  
18 method of verification to verify that the proposed loan  
19 agreement is permissible under the provisions of the New Mexico  
20 Small Loan Act of 1955.

21 B. No later than October 1, 2006, the division  
22 shall certify that one or more consumer reporting service  
23 databases are commercially reasonable methods of verification.  
24 Upon certifying that a consumer reporting service database is a  
25 commercially reasonable method of verification, the division

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1 shall:

2 (1) provide reasonable notice to all licensees  
3 identifying the commercially reasonable methods of verification  
4 that are available; and

5 (2) immediately upon certification, require  
6 each licensee to use a commercially reasonable method of  
7 verification as a means of complying with Subsection A of this  
8 section.

9 C. Except as otherwise provided in this section,  
10 all personally identifiable information regarding a consumer  
11 obtained by way of the certified database and maintained by the  
12 division is strictly confidential and shall be exempt from  
13 disclosure under the Inspection of Public Records Act.

14 D. Notwithstanding any other provision of law to  
15 the contrary, a consumer seeking a payday loan may make a  
16 direct inquiry to the consumer reporting service to request a  
17 more detailed explanation of the basis for a consumer reporting  
18 service's determination that the consumer is ineligible for a  
19 new payday loan.

20 E. In certifying a commercially reasonable method  
21 of verification, the division shall ensure the certified  
22 database:

23 (1) provides real-time access through an  
24 internet connection or, if real-time access through an internet  
25 connection becomes unavailable to lenders due to a consumer

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1 reporting service's technical problems incurred by the consumer  
2 reporting service, through alternative verification mechanisms,  
3 including verification by telephone;

4 (2) is accessible to the division and to  
5 licensees in order to ensure compliance with the New Mexico  
6 Small Loan Act of 1955 and in order to provide any other  
7 information the division deems necessary;

8 (3) requires licensees to input whatever  
9 information is required by the division;

10 (4) maintains a real-time copy of the required  
11 reporting information that is available to the division at all  
12 times and is the property of the division;

13 (5) provides licensees with no more than a  
14 statement that a consumer is eligible or ineligible for a new  
15 payday loan and a description of the reason for the  
16 determination; and

17 (6) contains safeguards to ensure that all  
18 information contained in the database regarding consumers is  
19 kept strictly confidential.

20 F. A licensee shall update the certified database  
21 by inputting all information required under Paragraph (3) of  
22 Subsection E of this section at the time that:

23 (1) a payday loan is made;

24 (2) a consumer's payday loan is paid in full;

25 or

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1 (3) a licensee determines a payday loan or  
2 payment plan is in default.

3 G. A licensee may rely on the information contained  
4 in the certified database as accurate and is not subject to any  
5 penalty or liability as a result of relying on inaccurate  
6 information contained in the database.

7 H. A certified consumer reporting service shall  
8 indemnify the licensee against all claims and actions arising  
9 from illegal or willful or wanton acts on the part of the  
10 certified consumer reporting service.

11 I. The director shall promulgate rules necessary to  
12 implement the requirements of the New Mexico Small Loan Act of  
13 1955 regarding the establishment of certified consumer  
14 reporting services."

15 Section 16. A new section of the New Mexico Small Loan  
16 Act of 1955, Section 58-15-36 NMSA 1978, is enacted to read:

17 "58-15-36. [NEW MATERIAL] DUTIES OF DIVISION.--

18 A. The division shall:

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

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

24 B. The division shall annually provide a report to  
25 the legislature detailing statistics and trends of licensees,

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1 including data adequate to obtain an accurate understanding of  
2 the practices, demographics, legal compliance and profitability  
3 of all licensees licensed in the state. The division shall  
4 compile an annual report by April 1 of each year containing, at  
5 a minimum, data regarding all payday loans made in the  
6 preceding calendar year, both by licensee and on an aggregate  
7 basis. Annual reports shall be made available to interested  
8 parties and the general public. Consistent with state law, the  
9 report shall include, at a minimum, nonidentifying consumer  
10 data from the preceding year, including:

11 (1) the total number and dollar amount of  
12 payday loans made in the calendar year ending December 31 of  
13 the previous year;

14 (2) the total number and dollar amount of  
15 payday loans outstanding as of December 31 of the previous  
16 year;

17 (3) the average annual percentage rate and the  
18 average number of days of a payday loan during the calendar  
19 year ending December 31 of the previous year;

20 (4) the number of payday loans made in the  
21 amount of one hundred dollars (\$100) or less, the number of  
22 payday loans made in the amount of one hundred one dollars  
23 (\$101) to five hundred dollars (\$500), the number of payday  
24 loans made in the amount of five hundred one dollars (\$501) to  
25 one thousand dollars (\$1,000) and the percentage of total

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1 payday loans made in each of those ranges;

2 (5) the total dollar amount of fees collected  
3 for payday loans;

4 (6) the total number of payday loans and the  
5 total dollar amount of the net charge-offs or write-offs and of  
6 the net recoveries of licensees;

7 (7) the minimum, maximum and average dollar  
8 amounts of payday loans in the calendar year ending December 31  
9 of the previous year;

10 (8) the average payday loan amount, average  
11 number of transactions and average aggregate payday loan amount  
12 per consumer per year;

13 (9) the average length of time between payday  
14 loan transactions indebted to any given licensee;

15 (10) the average number of days a consumer is  
16 engaged in a payday loan agreement per year; and

17 (11) the average total fees paid by a payday  
18 loan consumer.

19 C. The division may promulgate rules to carry out  
20 the provisions of the New Mexico Small Loan Act of 1955."

21 Section 17. A new section of the New Mexico Small Loan  
22 Act of 1955, Section 58-15-37 NMSA 1978, is enacted to read:

23 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--MILITARY  
24 MEMBERS.--

25 A. A licensee shall not garnish the wages or

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1 salaries of a consumer who is a member of the military.

2 B. In addition to any rights and obligations  
3 provided under the federal Servicemembers Civil Relief Act, a  
4 licensee shall suspend and defer collection activity against a  
5 consumer who is a member of the military and who has been  
6 deployed to a combat or combat support posting for the duration  
7 of the deployment.

8 C. A licensee shall not knowingly contact the  
9 military chain of command of a consumer who is a member of the  
10 military in an effort to collect on a payday loan."

11 Section 18. A new section of the New Mexico Small Loan  
12 Act of 1955, Section 58-15-38 NMSA 1978, is enacted to read:

13 "58-15-38. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN  
14 MAKING PAYDAY LOANS.--A licensee making payday loans shall  
15 provide a notice immediately above the borrower's signature on  
16 each payday loan agreement in at least ten-point bold type  
17 using the following language:

18 "(1) A payday loan is not intended to meet long-  
19 term financial needs.

20 (2) You should use a payday loan only to meet  
21 short-term cash needs.

22 (3) A payday loan is a high-cost loan. You should  
23 consider what other lower-cost loans are available to you."."

24 Section 19. A new section of the New Mexico Small Loan  
25 Act of 1955, Section 58-15-39 NMSA 1978, is enacted to read:

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1 "58-15-39. [NEW MATERIAL] PAYDAY LOANS--PENALTIES.--

2 A. A failure of a licensee to comply with the  
3 provisions of Sections 58-15-32 through 58-15-38 NMSA 1978  
4 shall constitute an unfair or deceptive trade practice and an  
5 unconscionable trade practice pursuant to the Unfair Practices  
6 Act and is subject to all of the provisions and remedies of  
7 that act.

8 B. A violation of the New Mexico Small Loan Act of  
9 1955, except as the result of accidental or bona fide error of  
10 computation, renders the payday loan void and the licensee  
11 shall have no right to collect, receive or retain any  
12 principal, administrative fees or other charges with respect to  
13 that payday loan.

14 C. The remedies provided in this section are not  
15 intended to be exclusive remedies available to a consumer nor  
16 shall the consumer be required to exhaust any administrative  
17 remedies provided pursuant to the New Mexico Small Loan Act of  
18 1955 or any other applicable law."

19 Section 20. A new section of the New Mexico Small Loan  
20 Act of 1955, Section 58-15-40 NMSA 1978, is enacted to read:

21 "58-15-40. [NEW MATERIAL] EFFECTIVE STATE LAW  
22 ENFORCEMENT.--All payday loans made by licensees to New Mexico  
23 state residents, including payday loans transacted over the  
24 internet, regardless of the location of the licensee, are  
25 governed by New Mexico law. To the extent that federal law

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1 preempts the applicability of any part of this section, all  
2 other parts of this section remain in effect."

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

5 "[NEW MATERIAL] SMALL LOAN INCENTIVES.--The director shall  
6 establish and implement rules that create incentives for  
7 banking institutions to offer small loan products that meet the  
8 needs of low- to moderate-income borrowers."

9 Section 22. REPEAL.--Sections 58-15-15 and 58-15-19 NMSA  
10 1978 (being Laws 1959, Chapter 201, Section 1 and Laws 1955,  
11 Chapter 128, Section 17, as amended) are repealed.

12 Section 23. SEVERABILITY.--If any part or application of  
13 this act is held invalid, the remainder or its application to  
14 other situations or persons shall not be affected.

15 Section 24. APPLICABILITY.--The provisions of Sections 12  
16 through 21 of this act shall not apply to payday loans entered  
17 into before October 1, 2006.

18 Section 25. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is October 1, 2006.