

1 SENATE BILL 636

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

3 INTRODUCED BY

4 James G. Taylor

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10 AN ACT

11 RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
12 LIMITATION OF FEES AND THE REGULATION OF PAYDAY LOANS;
13 PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN
14 PROVISIONS 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;

13 I. "renewed payday loan" means a transaction in
14 which a consumer pays in cash the administrative fee payable
15 under a payday loan agreement and refinances all or part of the
16 unpaid principal balance of a payday loan with a new payday
17 loan from the same licensee. A "renewed payday loan" includes
18 a transaction in which a consumer pays off all or part of an
19 existing payday loan with the proceeds of a payday loan from
20 the same licensee; and

21 J. "simple interest" means a method of calculating
22 interest in which the amount of interest is calculated based on
23 the annual interest rate disclosed in the loan agreement and is
24 computed only on the outstanding principal balance of the
25 loan."

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

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

5 A. [~~No~~] A person shall not engage in the business
6 of lending in amounts of two thousand five hundred dollars
7 (\$2,500) or less for a loan without first having obtained a
8 license from the director. Nothing contained in this
9 subsection shall restrict or prohibit a licensee under the New
10 Mexico Small Loan Act of 1955 from making loans in any amount
11 under the New Mexico Bank Installment Loan Act of 1959 in
12 accordance with the provisions of Section 58-7-2 NMSA 1978 or
13 the general laws of this state governing money, interest and
14 usury.

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

21 C. [~~Any~~] A banking corporation, savings and loan
22 association or credit union operating under the laws of the
23 United States or of [~~New Mexico~~] a state shall be exempt from
24 the licensing requirements of the New Mexico Small Loan Act of
25 1955, nor shall that act apply to [~~any~~] business transacted by

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1 any [~~such~~] person under the authority of and as permitted by
2 any such law nor to any bona fide pawnbroking business
3 transacted under a pawnbroker's license nor to bona fide
4 commercial loans made to dealers upon personal property held
5 for resale. Nothing contained in the New Mexico Small Loan Act
6 of 1955 shall be construed as abridging the rights of any of
7 those exempted from the operations of that act from contracting
8 for or receiving interest or charges not in violation of [~~any~~]
9 an existing applicable statute of this state.

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

12 (1) a person [~~owning any~~] who owns an
13 interest, legal or equitable, in the business or profits of
14 [~~any~~] a licensee and whose name does not specifically appear on
15 the face of the license, except a stockholder in a corporate
16 licensee; and

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

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

24 (b) the use of collateral or related
25 sales or purchases of goods or services or agreements to sell

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1 or purchase, whether real or pretended;

2 (c) receiving or charging compensation
3 for goods or services, whether or not sold, delivered or
4 provided; and

5 (d) the real or pretended negotiation,
6 arrangement or procurement of a loan through any use or
7 activity of a third person, whether real or fictitious.

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

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

24 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
25 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF

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1 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
2 FEES--LICENSEE BOUND BY ACT.--

3 A. Upon the filing of an application, whether it is
4 an original or a renewal, the director shall investigate the
5 facts concerning the application and the requirements provided
6 in this section.

7 ~~[Any]~~ B. An applicant for license, upon written
8 notice to do so by the director, shall, within twenty days
9 after service of the notice, furnish in writing, under oath, to
10 the director ~~[any and]~~ all additional information required by
11 the director that may be relevant or, in the opinion of the
12 director, helpful ~~[to him]~~ in conducting ~~[his]~~ the
13 investigation.

14 C. Failure to comply with the director's
15 requirement for supplemental information or the willful
16 furnishing of false information is sufficient ~~[ground]~~ grounds
17 for denial of license.

18 D. False or misleading information willfully and
19 intentionally furnished to the director prior to the issuance
20 of any license is ~~[ground]~~ grounds for suspension or revocation
21 of any license in accordance with the procedures for suspension
22 or revocation of license in the New Mexico Small Loan Act of
23 1955.

24 E. The director shall grant or deny each
25 application for an original license within sixty days from the

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1 filing of the application with the required information and
2 fees, unless the period is extended by written agreement
3 between the applicant and the director.

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

5 (1) [~~that~~] the financial responsibility,
6 character and general fitness of the applicant for an original
7 license and of the individual members and beneficiaries
8 thereof, if the applicant is a copartnership, association or
9 trust, and of the officers and directors thereof, if the
10 applicant is a corporation, are such as to command the
11 confidence of the public and to warrant belief that the
12 business will be operated lawfully, honestly, fairly and
13 efficiently within the declared purposes and spirit of the New
14 Mexico Small Loan Act of 1955;

15 (2) [~~that~~] allowing the applicant to engage in
16 business will promote the convenience and advantage of the
17 community in which the business of the applicant is to be
18 conducted; and

19 (3) [~~that~~] the applicant has available for
20 operation of the business at the specified location cash or its
21 equivalent, convertible securities or receivables of thirty
22 thousand dollars (\$30,000) or any combination thereof;
23 [~~he~~] the director shall enter an order granting the
24 application, file [~~his~~] the director's findings and, upon
25 payment of the license fee of [~~five hundred dollars (\$500)~~]

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1 seven hundred fifty dollars (\$750), issue and deliver a license
2 to the applicant.

3 ~~[G.]~~ G. If the director does not make the findings
4 enumerated in Subsection ~~[B]~~ F of this section, ~~[he]~~ the
5 director shall enter an order denying the application, notify
6 the applicant of the denial and retain the application fee.
7 Within thirty days after the entry of such an order, ~~[he]~~ the
8 director shall prepare written findings and shall deliver a
9 copy to the applicant.

10 ~~[D.]~~ H. A written application for license renewal
11 ~~[licenses]~~ shall be filed on or before March 31 of each year,
12 and thereupon the director shall investigate the facts and
13 review ~~[his]~~ the files of examinations of the applicant made by
14 ~~[his]~~ the director's office and of complaints filed by
15 borrowers, if any. The director shall deliver a renewal
16 license to the applicant if ~~[he]~~ the director finds that:

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

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

25 (3) ~~[that]~~ the financial responsibility,

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1 experience and general fitness and character of the applicant
2 remain such as to command the confidence of the public and to
3 warrant the belief that the business will continue to be
4 operated lawfully and efficiently within the purposes and
5 spirit of the New Mexico Small Loan Act of 1955. [~~he shall~~
6 ~~deliver a renewal license to the applicant.~~

7 ~~E.]~~ I. If the director does not make the findings
8 enumerated in Subsection [~~D~~] H of this section, [~~he~~] the
9 director may grant a temporary extension of the license not
10 exceeding sixty days pending a hearing; shall enter an order
11 fixing a date for hearing upon the application; shall notify
12 the licensee thereof, specifying the particular complaints,
13 violations or abuses or other reasons for [~~his~~] the director's
14 contemplated refusal to renew the license; and shall afford to
15 the applicant an opportunity to be heard. At the hearing, the
16 director shall produce [~~his~~] evidence to establish the truth of
17 the charges of violation or other grounds specified in the
18 notice, and the applicant shall be accorded the right to
19 produce evidence or other matters of defense. If after the
20 hearing the director finds that the complaints of violations or
21 other grounds specified in the notice are not well-founded,
22 [~~he~~] the director shall issue the renewal license. If [~~he~~] the
23 director finds that the complaints of violations or other
24 grounds are well-founded, [~~he~~] the director shall enter an
25 order denying the renewal application and notify the applicant

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1 of the denial, returning the renewal license fee tendered with
2 the application. Within thirty days after the entry of such an
3 order, [~~he~~] the director shall prepare written findings and
4 shall deliver a copy of the findings to the applicant. The
5 order shall be subject to review as provided in Section
6 58-15-25 NMSA 1978. The court in its discretion and upon
7 proper showing may order a temporary extension of the license
8 pending disposition of the review proceedings.

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

22 [G-] K. At the time of issuance of original license
23 and each annual renewal thereof, the licensee for each licensed
24 office shall pay to the director as a license fee for the
25 period covered by the license the sum of [~~five hundred dollars~~

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1 ~~(\$500)~~ seven hundred fifty dollars (\$750) as a minimum, plus
2 an additional seventy-five cents (\$.75) for each one thousand
3 dollars (\$1,000) or fraction thereof of loans outstanding as of
4 December 31 next preceding, as shown on the applicant's annual
5 report. In the event that the application for annual renewal
6 of the license is delinquent, the licensee shall also pay a
7 delinquency fee of ten dollars (\$10.00) per day for each day
8 the licensee is delinquent in filing the application for
9 renewal.

10 ~~[H.—Each]~~ L. A licensee by accepting ~~[any]~~ a
11 license that is issued or renewed or by continuing to operate
12 ~~[any]~~ a licensed office under the New Mexico Small Loan Act of
13 1955 shall by such action be deemed to have consented to be
14 bound by the lawful provisions of that act and all lawful
15 requirements, regulations and orders of the director
16 promulgated or issued pursuant to any authorization granted in
17 that act."

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

20 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
21 WITNESSES.--

22 A. At least once each year, the director or ~~[his~~
23 ~~duly]~~ the director's authorized representative shall make an
24 examination of the place of business of each licensee and ~~[such~~
25 ~~of]~~ the loans, transactions, books, papers and records of the

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1 licensee insofar as they pertain to the business licensed under
2 the New Mexico Small Loan Act of 1955 as [~~he~~] the director may
3 deem necessary. The licensee shall pay to the [~~commissioner~~]
4 director for such annual examination a fee of [~~two hundred~~
5 ~~dollars (\$200)~~] four hundred dollars (\$400).

6 B. Within a reasonable time after the completion of
7 an examination of a licensed office, the director shall mail to
8 the licensee a copy of the report of the examination, together
9 with any comments, exceptions, objections or criticisms of the
10 director concerning the conduct of the licensee and the
11 operation of the licensed office.

12 [~~B.~~] C. For the purpose of discovering violations
13 of the New Mexico Small Loan Act of 1955 or of securing
14 information lawfully required under that act, the director or
15 [~~his duly~~] the director's authorized representative may at any
16 time investigate the business and examine the books, accounts,
17 papers and records used therein, including income tax returns
18 or other reports filed in the office of the director of the
19 revenue processing division of the taxation and revenue
20 department of:

- 21 (1) any licensee;
- 22 (2) any other person engaged in the business
23 described in Subsection A of Section 58-15-3 NMSA 1978 or
24 participating in such business as principal, agent, broker or
25 otherwise; and

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

6 D. For the purposes of this section, [~~any~~] a person
7 who advertises, solicits or [~~holds himself out~~] makes any
8 representation as being willing to make loan transactions in
9 any amount, except persons, financial institutions or lending
10 agencies operating under charters or licenses issued by [~~any~~] a
11 state or federal agency or under any special statute, shall be
12 subject to investigation under the New Mexico Small Loan Act of
13 1955 and shall be presumed to be engaged in the business
14 described in Subsection A of Section 58-15-3 NMSA 1978 as to
15 any loans of two thousand five hundred dollars (\$2,500) or
16 less.

17 [~~G.~~] E. To facilitate the examinations and
18 investigations by the director and fully disclose the
19 operations and methods of operation of each licensed office,
20 the licensee shall, in each licensed office, keep on file as
21 part of the records of the office all office manuals,
22 communications or directives containing statements of loan
23 policy to office managers and employees. If the licensee is an
24 individual, corporation, trust or association, the licensee
25 shall keep in at least one office for information of the

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1 director a record of the several individuals, firms,
2 beneficiaries of any trust and corporations deriving or
3 receiving any part of the benefits, net income or profits from
4 the operation of the licensee within New Mexico.

5 ~~[D.]~~ F. For the purposes of this section, the
6 director or ~~[his duty]~~ the director's authorized representative
7 shall have and be given free access to the offices and places
8 of business, files, safes and vaults of all licensees and shall
9 have authority to require the attendance of any person and to
10 examine ~~[him]~~ the person under oath relative to such loans or
11 business or to the subject matter of any examination,
12 investigation or hearing as provided in the New Mexico Small
13 Loan Act of 1955. Notices to appear before the director for
14 examination under oath may be served by registered mail. If
15 the party notified to appear is the licensee, any person named
16 on the face of the license being investigated or any agent,
17 employee or manager participating in the licensee's business
18 and ~~[he]~~ the party fails to appear for examination or refuses
19 to answer questions submitted, the director may, forthwith and
20 without further notice to the licensee, suspend the license
21 involved pending compliance with the notice. Upon failure of
22 any other person to appear or to answer questions, the director
23 may apply to and invoke the aid of any district court of New
24 Mexico in compelling the attendance and testimony of any such
25 person and the production of books, records, written

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1 instruments and documents relating to the business of the
2 licensee. [~~Any~~] The district court whose aid is so invoked by
3 the director may, in case of contumacy or refusal to obey any
4 order of the district court issued to compel the attendance of
5 the person or the production of books, records, written
6 instruments and documents, punish the person as for contempt of
7 court.

8 [~~E.~~] G. The director shall prescribe rules of
9 procedure for all hearings, examinations or investigations
10 provided for in the New Mexico Small Loan Act of 1955. The
11 director is not bound by the usual common law or statutory
12 rules of evidence or by any technical or formal rules of
13 procedure or pleading and specification of charges other than
14 as specifically provided in the New Mexico Small Loan Act of
15 1955 but may conduct hearings, examinations and investigations
16 in the manner best calculated to ascertain the substantial
17 rights of the parties interested.

18 [~~F.~~] H. The director has the power to administer
19 oaths, certify official acts and records of [~~his~~] the
20 director's office, issue subpoenas for witnesses in the name of
21 and under the seal of [~~his~~] the director's office and compel
22 the production of papers, books, accounts and documents. [~~He~~]
23 The director shall issue subpoenas at the instance of any party
24 to a hearing before the division upon payment of a fee of two
25 dollars [~~and~~] fifty cents (\$2.50) for each subpoena so issued.

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1 ~~[G.]~~ I. Depositions may be taken with or without a
2 commission, and written interrogatories may be submitted in the
3 same manner and on the same grounds provided by law for the
4 taking of depositions or submission of written interrogatories
5 in civil actions pending in the district courts of this state.

6 ~~[H.]~~ J. Each witness who appears before the
7 director by ~~[his]~~ the director's order shall receive the fees
8 and mileage provided for witnesses in civil actions in the
9 district court. Fees and mileage shall be paid by the state,
10 but no witness subpoenaed at the instance of parties other than
11 the director is entitled to compensation from the state for
12 attendance or mileage unless the director certifies that ~~[his]~~
13 the witness's testimony is material.

14 ~~[I.]~~ K. Whenever the director has reasonable cause
15 to believe that ~~[any]~~ a person is violating ~~[any]~~ a provision
16 of the New Mexico Small Loan Act of 1955, ~~[he]~~ the director
17 may, in addition to all actions provided for in that act and
18 without prejudice thereto, enter an order requiring the person
19 to desist or to refrain from the violation. An action may be
20 brought on the relation of the attorney general and the
21 director to enjoin the person from engaging in or continuing
22 the violation or from doing any act in furtherance of the
23 violation. In any such action, an order or judgment may be
24 entered awarding a preliminary or final injunction as may be
25 deemed proper. In addition to all other means provided by law

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1 for the enforcement of a temporary restraining order, temporary
2 injunction or final injunction, the court in which such action
3 is brought shall have power and jurisdiction to impound and to
4 appoint a receiver for the property and business of the
5 defendants, including books, papers, documents and records
6 pertaining thereto or so much thereof as the court may deem
7 reasonably necessary to prevent further violations of the New
8 Mexico Small Loan Act of 1955 through or by means of the use of
9 the property and business. The receiver, when appointed and
10 qualified, shall have powers and duties as to custody,
11 collection, administration, winding up and liquidation of the
12 property and business as are from time to time conferred upon
13 ~~[him]~~ the receiver by the court."

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

16 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL
17 INFORMATION.--

18 A. Each licensee shall keep and use in ~~[his]~~ the
19 business such books, accounts and records in accordance with
20 sound accounting practices ~~[as in the director's opinion]~~ that
21 will enable ~~[him]~~ the director to determine whether the
22 licensee is complying with the provisions of the New Mexico
23 Small Loan Act of 1955 and with the orders and regulations
24 lawfully made by the director ~~[under]~~ pursuant to provisions of
25 that act. Each licensee shall preserve the books, accounts and

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1 records for at least two years after making the final entry on
2 [~~any~~] a loan recorded therein.

3 B. Each licensee shall, annually on or before March
4 31, file a report with the director giving such relevant
5 information as [~~he~~] the director may reasonably require
6 concerning the business and operations during the preceding
7 calendar year for each licensed place of business conducted by
8 the licensee within the state pursuant to the provisions of the
9 New Mexico Small Loan Act of 1955. The report shall be made
10 under oath and shall be in the form prescribed by the director.
11 A summary of the reports shall be included in the published
12 annual report of the director.

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

25 D. False or misleading information willfully

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1 furnished to the director by [~~any~~] a licensee in [~~any~~] an
2 annual report or pursuant to [~~any~~] a notice or requirement of
3 the director is sufficient [~~ground~~] grounds for suspension and
4 revocation of license in accordance with the procedures for
5 suspension or revocation of license set forth in the New Mexico
6 Small Loan Act of 1955."

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

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

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1 Loan Act of 1955.

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

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

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

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

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

6 A. Every licensee shall:

7 (1) at the time [~~any~~] a loan is made within
8 the provisions of the New Mexico Small Loan Act of 1955,
9 deliver to the borrower or, if there are two or more borrowers
10 on the same obligation, to one of them, a statement in English
11 or Spanish as requested by the borrower, on which shall be
12 printed a copy of Section 58-15-14.1 NMSA 1978 [~~disclosing~~] and
13 that discloses in clear and distinct terms:

- 14 (a) the amount of the loan;
- 15 (b) the date the loan was made;
- 16 (c) a schedule or a description of the
17 payments;
- 18 (d) the type of the security, if any,
19 for the loan;
- 20 (e) the name and address of the licensed
21 office;
- 22 (f) the name of the person primarily
23 obligated for the loan;
- 24 (g) the amount of principal;
- 25 (h) the agreed rate of charge stated on

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1 ~~[a percent per month and]~~ a percent per year basis and the
2 amount in dollars and cents; ~~[and]~~

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

5 (j) other items allowable pursuant to
6 that act, so stated as to clearly show the allocation of each
7 item included;

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

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

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1 the copy accurately reproduces the complete original.

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

7 C. If judgment is obtained against ~~[any]~~ a party
8 ~~[or any]~~ on a loan made ~~[under]~~ pursuant to the provisions of
9 the New Mexico Small Loan Act of 1955, neither the judgment nor
10 the loan shall carry, from the date of the judgment, ~~[any]~~
11 charges against ~~[any]~~ a party to the loan other than ~~[court]~~
12 costs, ~~[attorneys']~~ attorney fees and post-judgment interest
13 ~~[on the amount of the judgment at ten percent a year]~~ as
14 provided by law.

15 ~~[D. Any loan made under the provisions of the New~~
16 ~~Mexico Small Loan Act of 1955 that is filed and approved as a~~
17 ~~claim in any bankruptcy proceeding shall, from a date ninety~~
18 ~~days subsequent to the date of adjudication, bear interest at~~
19 ~~the rate of ten percent a year only. This limitation shall not~~
20 ~~apply when the bankrupt is not discharged in bankruptcy or to~~
21 ~~any obligation not dischargeable under the provisions of the~~
22 ~~Bankruptcy Act presently in force or as hereafter amended.~~

23 ~~E. No loan made under the provisions of the New~~
24 ~~Mexico Small Loan Act of 1955 shall bear interest after ninety~~
25 ~~days from the date of the death of the borrower in excess of a~~

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1 ~~rate of ten percent a year on the unpaid principal balance of~~
2 ~~the loan.~~

3 ~~F. No loan made under the provisions of the New~~
4 ~~Mexico Small Loan Act of 1955 shall bear interest after twelve~~
5 ~~months from the date of maturity of the loan in excess of ten~~
6 ~~percent a year upon the unpaid principal balance of the loan.]"~~

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

9 "58-15-20. FEES AND COSTS.--

10 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding
11 any provision of [~~this Act~~] the New Mexico Small Loan Act of
12 1955, lawful fees, if any, actually and necessarily paid out by
13 the licensee to [~~any~~] a public officer for the filing,
14 recording or releasing in [~~any~~] a public office [~~any~~] of an
15 instrument securing the loan may be charged to the borrower.

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

24 [~~(c) COURTS COSTS Where suit is filed in any court~~
25 ~~of competent jurisdiction, court costs shall be collectable in~~

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1 ~~accordance with the laws of New Mexico applicable thereto.~~

2 ~~(d) NOTARY FEES PROHIBITED]~~ C. Notary fees
3 incident to the taking of ~~[any]~~ a lien to secure a small loan
4 or releasing such a lien shall not be charged or collected by
5 ~~[any]~~ a licensee, ~~[nor by any]~~ an officer, agent or employee of
6 a licensee ~~[nor by]~~ or anyone within ~~[any]~~ an office, room or
7 place of business in which a small loan office is conducted.

8 D. Delinquency fees shall not exceed five cents
9 (\$.05) for each one dollar (\$1.00) of each installment more
10 than ten days in arrears; provided that the total of
11 delinquency charges on any such installment shall not exceed
12 ten dollars (\$10.00) and that only one delinquency charge shall
13 be made on any one installment regardless of the period during
14 which the installment remains unpaid."

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

17 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The ~~[wilful]~~
18 violation by ~~[any]~~ a licensee or by ~~[any]~~ an officer, manager,
19 director, trustee, executive or employee directly engaged in
20 operating a small loan office under the provisions of ~~[this~~
21 ~~Act]~~ the New Mexico Small Loan Act of 1955 of any usury statute
22 of this state within ~~[any]~~ an office, room or place of business
23 in which the making of loans as a licensee is solicited or
24 engaged or in association or conjunction therewith ~~[shall be~~
25 ~~ground]~~ is grounds for suspension and revocation of license in

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1 accordance with the applicable procedures [~~applicable thereto~~
2 as] set forth [~~herein~~] in that act."

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

5 "58-15-30. PENALTIES--GENERAL.--Any person,
6 copartnership, trust, association or corporation and the
7 several members, beneficiaries, officers, directors, agents and
8 employees thereof who [~~shall~~] violate or participate in the
9 violation of any provision of the [~~sections of this Act shall~~
10 be] New Mexico Small Loan Act of 1955 are guilty of a
11 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]
12 punished by a fine of not less than [~~one hundred (\$100.00)~~
13 ~~dollars and not more than three hundred (\$300.00) dollars~~] five
14 hundred dollars (\$500) or more than one thousand dollars
15 (\$1,000) or by imprisonment of not more than [~~ninety (90) days~~]
16 six months or [by] both [~~such fine and imprisonment~~] in the
17 discretion of the court."

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

20 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
21 LOANS.--

22 A. No licensee shall make a payday loan to a
23 consumer if:

24 (1) the total principal amount of the loan,
25 when combined with the principal amount of all of the

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1 consumer's other outstanding payday loans, exceeds one thousand
2 dollars (\$1,000) or twenty-five percent of the consumer's gross
3 monthly income, whichever is less; or

4 (2) the consumer has an outstanding balance on
5 two or more payday loans.

6 B. The dollar amount set forth in Paragraph (1) of
7 Subsection A of this section shall be adjusted for inflation
8 pursuant to rules promulgated by the director, at no less than
9 three-year intervals, to the nearest dollar amount as indicated
10 by changes in the consumer price index for the United States
11 for all items as published by the United States department of
12 labor.

13 C. No licensee shall make a payday loan to a
14 consumer who is making payments on a payday loan pursuant to a
15 payment plan pursuant to Section 58-15-36 NMSA 1978.

16 D. Without affecting the rights of a consumer to
17 prepay a payday loan at any time without additional cost or
18 penalty:

19 (1) no payday loan shall have a stated minimum
20 term of less than fourteen days nor more than thirty-five days;
21 and

22 (2) there shall be a scheduled pay date for
23 the consumer within the term of the payday loan.

24 E. A consumer shall not have more than two payday
25 loans outstanding at any time, nor shall a consumer have more

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1 than one payday loan outstanding with any licensee operating
2 under a single trade name.

3 F. A payday loan agreement, an agreement to renew a
4 payday loan and a payment plan pursuant to Section 58-15-36
5 NMSA 1978 shall include a provision granting the consumer the
6 right to rescind the transaction by returning in cash, or
7 through certified funds, one hundred percent of the amount
8 advanced by a licensee for a payday loan no later than 5:00
9 p.m. on the first day of business conducted by the licensee
10 following the execution of the agreement or payment plan. If a
11 consumer exercises the right of rescission pursuant to this
12 subsection, no fee for the rescinded transaction shall be
13 charged to the consumer, and the licensee shall not charge or
14 impose on the consumer a fee for exercising the right of
15 rescission pursuant to this subsection.

16 G. A consumer shall be permitted to make payments
17 in any amount on a payday loan at any time before maturity
18 without additional fees. A payment received by a licensee
19 shall first be applied to administrative fees owed with any
20 remaining amount to be applied to principal.

21 H. After each payment is made, in full or in part,
22 on a payday loan, the licensee shall give to the person making
23 the payment a signed, dated receipt showing the amount paid,
24 the amount credited toward administrative fees and principal
25 and the balance due on the loan.

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1 I. A check written by a consumer for a payday loan
2 shall be payable to the order of the licensee.

3 J. The licensee shall provide the consumer, or each
4 consumer if there is more than one, with copies of the payday
5 loan agreement in Spanish or English prior to the consummation
6 of the loan.

7 K. A payday loan agreement shall not be renewed,
8 refinanced or extended without the written consent of the
9 consumer.

10 L. Licensees making payday loans shall provide the
11 consumer with an information brochure in English or Spanish as
12 determined by the director.

13 M. The disclosure of the credit terms of a payday
14 loan shall be according to and governed by the requirements of
15 12 CFR 226, known as "Regulation Z". The definitions and
16 requirements of that regulation and commentary shall apply to
17 payday loans as if those provisions are fully set out in this
18 section.

19 N. A licensee shall collect on payday loans in
20 default in a professional, fair and lawful manner, in
21 accordance with the federal Fair Debt Collection Practices Act,
22 15 USCA, Chapter 41, Subchapter V."

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

25 "58-15-33. [NEW MATERIAL] PAYDAY LOANS--PERMITTED

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1 CHARGES.--The following provisions apply only to payday loans:

2 A. a licensee may not charge or receive from a
3 consumer, directly or indirectly, fees or charges except as
4 provided in this section;

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

12 (1) for the first three hundred dollars (\$300)
13 in principal of a payday loan, at a rate not exceeding
14 seventeen dollars (\$17.00) per one hundred dollars (\$100) in
15 principal;

16 (2) for payday loans with a principal amount
17 of five hundred dollars (\$500) or less, an additional fee at a
18 rate not exceeding fifteen dollars (\$15.00) per one hundred
19 dollars (\$100) of principal in excess of three hundred dollars
20 (\$300); and

21 (3) for payday loans with a principal amount
22 of one thousand dollars (\$1,000) or less, an additional fee at
23 a rate not exceeding thirteen dollars (\$13.00) per one hundred
24 dollars (\$100) of principal in excess of five hundred dollars
25 (\$500);

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1 C. upon the execution of an agreement to renew a
2 payday loan, the licensee may impose an administrative fee,
3 which fee is fully earned and payable at the end of the term of
4 the renewed payday loan and nonrefundable at the time a renewal
5 agreement for a payday loan is executed unless a renewed payday
6 loan is rescinded pursuant to Subsection E of Section 58-15-32
7 NMSA 1978, in accordance with the following schedule:

8 (1) for the first three hundred dollars (\$300)
9 in principal of a renewed payday loan, at a rate not exceeding
10 fifteen dollars (\$15.00) per one hundred dollars (\$100) in
11 principal;

12 (2) for a renewed payday loan with a principal
13 amount of five hundred dollars (\$500) or less, an additional
14 fee at a rate not exceeding thirteen dollars (\$13.00) per one
15 hundred dollars (\$100) of principal in excess of three hundred
16 dollars (\$300); and

17 (3) for a renewed payday loan with a principal
18 amount of one thousand dollars (\$1,000) or less, an additional
19 fee at a rate not exceeding eleven dollars (\$11.00) per one
20 hundred dollars (\$100) of principal in excess of five hundred
21 dollars (\$500);

22 D. the dollar amounts set forth in Subsections B
23 and C of this section shall be adjusted for inflation pursuant
24 to rules promulgated by the director, at no less than three-
25 year intervals, to the nearest dollar amounts as indicated by

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1 changes in the consumer price index for the United States for
2 all items as published by the United States department of
3 labor;

4 E. a licensee shall not charge a consumer interest
5 on the outstanding principal owed on a payday loan other than
6 the administrative fees as set forth in this section; and

7 F. if there are insufficient funds to pay a check
8 or other type of debit on the date of presentment by the
9 licensee, a licensee may charge a borrower a fee not to exceed
10 fifteen dollars (\$15.00). Only one fee may be collected by a
11 licensee on a check or debit even if it has been redeposited
12 and returned more than once. Late fees or delinquency charges
13 shall not be allowed."

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

16 "58-15-34. [NEW MATERIAL] PAYDAY LOANS--PROHIBITED
17 ACTS.--A licensee shall not:

18 A. threaten or intimidate a consumer or threaten to
19 use or request the use of criminal process in this or another
20 state to collect on a payday loan;

21 B. alter the date or other information on a check
22 drawn by a consumer in a payday loan transaction;

23 C. use a device or agreement that would have the
24 effect of charging or collecting more fees, charges or interest
25 than allowed by law by entering into a different type of

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1 transaction with the consumer that has that effect except as
2 specifically permitted by the New Mexico Small Loan Act of
3 1955;

4 D. engage in unfair, deceptive or fraudulent
5 practices in making, renewing or collecting a payday loan;

6 E. require a consumer to enter into a new payday
7 loan if the consumer has an existing payday loan with that
8 licensee that can be renewed or that may be eligible for a
9 payment plan pursuant to Section 58-15-36 NMSA 1978;

10 F. charge a fee to cash a check representing the
11 proceeds of the payday loan;

12 G. use or attempt to use the check written by the
13 consumer for a payday loan as security for purposes of a state
14 or federal law;

15 H. have more than one payday loan outstanding with
16 a consumer at a time for all licenses operated under the same
17 trade name;

18 I. accept collateral for a payday loan other than
19 the consumer's check or authorization to transfer or withdraw
20 funds from an account or require a consumer to provide a
21 guaranty from another person for a payday loan;

22 J. charge interest, fees or charges other than
23 those specifically authorized, including:

24 (1) charges for insurance; or

25 (2) collection costs;

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1 K. threaten to take any action against a consumer
2 that is prohibited by the New Mexico Small Loan Act of 1955;

3 L. include any of the following provisions in a
4 payday loan agreement:

5 (1) a hold harmless clause;

6 (2) a confession of judgment clause or power
7 of attorney;

8 (3) an assignment of or order for payment of
9 wages or other compensation for services;

10 (4) a provision in which the consumer agrees
11 not to assert a claim or defense arising out of the contract;
12 or

13 (5) a waiver of a provision of the New Mexico
14 Small Loan Act of 1955;

15 M. make a payday loan contingent on the purchase of
16 insurance or other goods or services;

17 N. advertise, display, distribute or broadcast or
18 cause or permit to be advertised, displayed, distributed or
19 broadcast, in any manner, a false, misleading or deceptive
20 statement or representation with regard to the charges, terms
21 or conditions for payday loans;

22 O. take a check, instrument or form in which blanks
23 are left to be filled in after execution of the check,
24 instrument or form;

25 P. offer, arrange, act as an agent for or assist a

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1 third party in any way in the making of a payday loan unless
2 the third party complies with all applicable federal and state
3 laws and regulations;

4 Q. enter into a payday loan with a consumer who
5 lacks the capacity to consent;

6 R. use provisions in documents associated with a
7 payday loan that are deceptive or misleading; or

8 S. use an agency agreement or partnership agreement
9 as a scheme or contrivance to circumvent the application of the
10 provisions of the New Mexico Small Loan Act of 1955 to a
11 consumer's payday loan. For the purposes of this subsection:

12 (1) "agency agreement" means any agreement
13 between in-state entities and a banking corporation, savings
14 and loan association or credit union operating under the laws
15 of the United States or of any state whereby the in-state agent
16 holds a predominant economic interest in the revenues generated
17 by a payday loan made to New Mexico residents; and

18 (2) "partnership agreement" means any
19 agreement between in-state entities and a banking corporation,
20 savings and loan association or credit union operating under
21 the laws of the United States or of any state whereby the
22 in-state partner holds a predominant economic interest in the
23 revenues generated by a payday loan made to New Mexico
24 residents."

25 Section 15. A new section of the New Mexico Small Loan

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1 Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

2 "58-15-35. [NEW MATERIAL] RENEWED PAYDAY LOANS.--A
3 consumer may renew a payday loan one time at the discretion of
4 the lender, and the maturity of the payday loan renewal shall
5 not be shorter than the term of the original payday loan."

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

8 "58-15-36. [NEW MATERIAL] PAYDAY LOANS--PAYMENT PLANS.--

9 A. Upon the expiration of a renewed payday loan, a
10 consumer may elect, and a licensee shall permit, entry into a
11 payment plan for the unpaid principal balance of that renewed
12 payday loan.

13 B. To be eligible to enter into a payment plan, a
14 consumer must first pay all administrative fees as set forth in
15 Subsections B and C of Section 58-15-33 NMSA 1978.

16 C. A payment plan must provide for all of the
17 following:

18 (1) a minimum of ninety-eight days for the
19 repayment of the unpaid principal balance of a renewed payday
20 loan; and

21 (2) relatively equal installment payments
22 based upon the consumer's schedule of pay periods."

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

25 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--WAITING PERIOD.--

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1 A. A licensee shall not make a payday loan to a
2 consumer qualifying pursuant to the provisions of Subsection C
3 of this section who has payment obligations pursuant to an
4 outstanding payday loan or a payment plan pursuant to Section
5 58-15-36 NMSA 1978.

6 B. A licensee shall not make a payday loan to a
7 consumer qualifying pursuant to the provisions of Subsection C
8 of this section until at least seven calendar days have passed
9 since the consumer completed all payment obligations pursuant
10 to any other payday loan or payment plan pursuant to Section
11 58-15-36 NMSA 1978.

12 C. The provisions of Subsections A and B of this
13 section shall apply to a consumer who within the prior twelve
14 months:

15 (1) has had payment obligations under a
16 payment plan pursuant to Section 58-15-36 NMSA 1978;

17 (2) has had payment obligations under one or
18 more payday loans or payment plans pursuant to Section 58-15-36
19 NMSA 1978 for sixty or more consecutive days; or

20 (3) has had payment obligations under one or
21 more payday loans or payment plans pursuant to Section 58-15-36
22 NMSA 1978 for ninety or more days in the aggregate."

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

25 "58-15-38. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

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1 A. Before entering into a payday loan agreement
2 with a consumer, a licensee must use a commercially reasonable
3 method of verification to verify that the proposed loan
4 agreement is permissible under the provisions of the New Mexico
5 Small Loan Act of 1955.

6 B. No later than October 1, 2006, the division
7 shall certify that one or more consumer reporting service
8 databases are commercially reasonable methods of verification.
9 Upon certifying that a consumer reporting service database is a
10 commercially reasonable method of verification, the division
11 shall:

12 (1) provide reasonable notice to all licensees
13 identifying the commercially reasonable methods of verification
14 that are available; and

15 (2) immediately upon certification, require
16 each licensee to use a commercially reasonable method of
17 verification as a means of complying with Subsection A of this
18 section.

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

24 D. Notwithstanding any other provision of law to
25 the contrary, a consumer seeking a payday loan may make a

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1 direct inquiry to the consumer reporting service to request a
2 more detailed explanation of the basis for a consumer reporting
3 service's determination that the consumer is ineligible for a
4 new payday loan.

5 E. In certifying a commercially reasonable method
6 of verification, the division shall ensure the certified
7 database:

8 (1) provides real-time access through an
9 internet connection or, if real-time access through an internet
10 connection becomes unavailable to lenders due to a consumer
11 reporting service's technical problems incurred by the consumer
12 reporting service, through alternative verification mechanisms,
13 including verification by telephone;

14 (2) is accessible to the division and to
15 licensees in order to ensure compliance with the New Mexico
16 Small Loan Act of 1955 and in order to provide any other
17 information the division deems necessary;

18 (3) requires licensees to input whatever
19 information is required by the division;

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

23 (5) provides licensees with no more than a
24 statement that a consumer is eligible or ineligible for a new
25 payday loan and a description of the reason for the

1 determination; and

2 (6) contains safeguards to ensure that all
3 information contained in the database regarding consumers is
4 kept strictly confidential.

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

- 8 (1) a payday loan is made;
9 (2) a payday loan is renewed;
10 (3) a consumer elects to enter into a
11 repayment plan;
12 (4) a consumer's payday loan is paid in full;
13 or
14 (5) a licensee determines a payday loan or
15 payment plan is in default.

16 G. A licensee may rely on the information contained
17 in the certified database as accurate and is not subject to any
18 penalty or liability as a result of relying on inaccurate
19 information contained in the database.

20 H. A certified consumer reporting service shall
21 indemnify the licensee against all claims and actions arising
22 from illegal or willful or wanton acts on the part of the
23 certified consumer reporting service.

24 I. The director shall promulgate rules necessary to
25 implement the requirements of the New Mexico Small Loan Act of
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underscored material = new
[bracketed material] = delete

1 1955 regarding the establishment of certified consumer
2 reporting services."

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

5 "58-15-39. [NEW MATERIAL] PAYDAY LOANS--MILITARY
6 MEMBERS.--

7 A. A licensee shall not garnish the wages or
8 salaries of a consumer who is a member of the military.

9 B. In addition to any rights and obligations
10 provided under the federal Servicemembers Civil Relief Act, a
11 licensee shall suspend and defer collection activity against a
12 consumer who is a member of the military and who has been
13 deployed to a combat or combat support posting for the duration
14 of the deployment.

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

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

20 "58-15-40. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN
21 MAKING PAYDAY LOANS.--A licensee making payday loans shall
22 provide a notice immediately above the borrower's signature on
23 each payday loan agreement in at least ten-point bold type
24 using the following language:

25 "(1) A payday loan is not intended to meet long-

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underscoring material = new
[bracketed material] = delete

1 term financial needs.

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

4 (3) You will be required to pay additional
5 administrative fees if you renew the payday loan rather than
6 pay the debt in full when due.

7 (4) A payday loan is a high-cost loan. You should
8 consider what other lower-cost loans are available to you.

9 (5) If you renew a payday loan and cannot fully
10 repay that loan when due, you have a right to enter into a
11 payment plan requiring payment within ninety-eight days, in
12 relatively equal installments, based upon your scheduled pay
13 periods. If you enter into a payment plan, you will not have
14 to pay an additional administrative fee or interest on the
15 outstanding principal balance.

16 (6) If within the prior twelve months you have had
17 payment obligations under a payday loan or payment plan for
18 sixty consecutive days or ninety days in the aggregate or you
19 have entered into a payment plan, you may not have more than
20 one outstanding payday loan at a time and may not enter into a
21 new payday loan until after seven days have passed since you
22 completed all payment obligations under any other payday
23 loan."."

24 Section 21. A new section of the New Mexico Small Loan
25 Act of 1955, Section 58-15-41 NMSA 1978, is enacted to read:

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underscored material = new
[bracketed material] = delete

1 "58-15-41. [NEW MATERIAL] PAYDAY LOANS--APPLICATION OF
2 UNFAIR PRACTICES ACT.--A failure of a licensee to comply with
3 the provisions of Sections 58-15-32 through 58-15-40 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 Section 22. REPEAL.--Sections 58-15-15 and 58-15-19 NMSA
9 1978 (being Laws 1959, Chapter 201, Section 1 and Laws 1955,
10 Chapter 128, Section 17, as amended) are repealed.

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

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

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