

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 636

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

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE  
LIMITATION OF FEES AND REGULATION OF PAYDAY LOANS; AMENDING AND  
ENACTING CERTAIN PROVISIONS OF THE NEW MEXICO SMALL LOAN ACT OF  
1955.

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

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

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

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

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

3           B. "debit authorization" means an authorization  
4 signed by a consumer to electronically transfer or withdraw  
5 funds from an account for the specific purpose of repaying a  
6 payday loan;

7           C. "department" or "division" means the financial  
8 institutions division of the regulation and licensing  
9 department;

10           D. "director" means the director of the division;

11           E. "installment loan" means a loan repayable in  
12 substantially equal installments of principal and interest for  
13 a period of no less than one hundred twenty days to maturity;

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

25           [~~G.~~] G. "licensee" [~~shall mean~~] means a person to

1 whom one or more licenses have been issued [~~hereunder~~] pursuant  
 2 to the New Mexico Small Loan Act of 1955 upon [~~their~~] the  
 3 person's written application electing to become a licensee and  
 4 consenting to exercise the privilege of a licensee solely in  
 5 conformity with the New Mexico Small Loan Act of 1955 and the  
 6 lawful regulations promulgated by the director [~~of the~~  
 7 ~~financial institutions division hereunder~~] under that act and  
 8 whose name [~~or names appear~~] appears on the face of the  
 9 license;

10 ~~D. "director" means the director of the financial~~  
 11 ~~institutions division of the commerce and industry and~~  
 12 ~~licensing department;~~

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

15 H. "payday loan" means a loan in which the licensee  
 16 accepts a personal check or debit authorization tendered by the  
 17 consumer and agrees in writing to defer presentment of that  
 18 check or use of the debit authorization until the consumer's  
 19 next payday or another date agreed to by the licensee and the  
 20 consumer and:

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

24 (a) accepts a dated personal check or  
 25 debit authorization for the specific purpose of repaying a

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1 payday loan;

2 (b) agrees to hold a dated personal  
3 check or debit authorization for a period of time prior to  
4 negotiating or depositing the personal check or debit  
5 authorization; or

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

10 (2) does not include:

11 (a) an overdraft product or service  
12 offered by a banking corporation, savings and loan association  
13 or credit union; and

14 (b) installment loans;

15 I. "payday loan product" means a payday loan, a  
16 renewed payday loan and a payment plan pursuant to Section  
17 58-15-36 NMSA 1978;

18 J. "person" includes an individual, copartner,  
19 association, trust, corporation and any other legal entity;

20 K. "renewed payday loan" means a transaction in  
21 which a consumer pays in cash the administrative fee payable  
22 under a payday loan agreement and refinances all or part of the  
23 unpaid principal balance of a payday loan with a new payday  
24 loan from the same licensee. A "renewed payday loan" includes  
25 a transaction in which a consumer pays off all or part of an

1 existing payday loan with the proceeds of a payday loan from  
 2 the same licensee; and

3 L. "simple interest" means a method of calculating  
 4 interest in which the amount of interest is calculated based on  
 5 the annual interest rate disclosed in the loan agreement and is  
 6 computed only on the outstanding principal balance of the  
 7 loan."

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

10 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--  
 11 PENALTY.--

12 A. ~~[Nø]~~ A person shall not engage in the business  
 13 of lending in amounts of two thousand five hundred dollars  
 14 (\$2,500) or less for a loan without first having obtained a  
 15 license from the director. Nothing contained in this  
 16 subsection shall restrict or prohibit a licensee under the New  
 17 Mexico Small Loan Act of 1955 from making loans in any amount  
 18 under the New Mexico Bank Installment Loan Act of 1959 in  
 19 accordance with the provisions of Section 58-7-2 NMSA 1978.

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

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underscored material = new  
 [bracketed material] = delete

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

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

17                       (1) a person ~~[owning any]~~ who owns an  
18 interest, legal or equitable, in the business or profits of  
19 ~~[any]~~ a licensee and whose name does not specifically appear on  
20 the face of the license, except a stockholder in a corporate  
21 licensee; and

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

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

4                   (b) the use of collateral or related  
 5 sales or purchases of goods or services or agreements to sell  
 6 or purchase, whether real or pretended;

7                   (c) receiving or charging compensation  
 8 for goods or services, whether or not sold, delivered or  
 9 provided; and

10                  (d) the real or pretended negotiation,  
 11 arrangement or procurement of a loan through any use or  
 12 activity of a third person, whether real or fictitious.

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

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1 or retain any principal, interest or charges whatsoever."

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

4 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--  
5 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF  
6 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE  
7 FEES--LICENSEE BOUND BY ACT.--

8 A. Upon the filing of an application, whether it is  
9 an original or a renewal, the director shall investigate the  
10 facts concerning the application and the requirements provided  
11 in this section.

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

19 C. Failure to comply with the director's  
20 requirement for supplemental information or the willful  
21 furnishing of false information is sufficient [~~ground~~] grounds  
22 for denial of license.

23 D. False or misleading information willfully and  
24 intentionally furnished to the director prior to the issuance  
25 of any license is [~~ground~~] grounds for suspension or revocation

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1 of any license in accordance with the procedures for suspension  
2 or revocation of license in the New Mexico Small Loan Act of  
3 1955.

4 E. The director shall grant or deny each  
5 application for an original license within sixty days from the  
6 filing of the application with the required information and  
7 fees, unless the period is extended by written agreement  
8 between the applicant and the director.

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

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

20 (2) ~~[that]~~ allowing the applicant to engage in  
21 business will promote the convenience and advantage of the  
22 community in which the business of the applicant is to be  
23 conducted; and

24 (3) ~~[that]~~ the applicant has available for  
25 operation of the business at the specified location cash or its

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1 equivalent, convertible securities or receivables of thirty  
2 thousand dollars (\$30,000) or any combination thereof;  
3 ~~[he]~~ the director shall enter an order granting the  
4 application, file ~~[his]~~ the director's findings and, upon  
5 payment of the license fee of ~~[five hundred dollars (\$500)]~~  
6 seven hundred fifty dollars (\$750), issue and deliver a license  
7 to the applicant.

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

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

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

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

5 (3) [~~that~~] the financial responsibility,  
6 experience and general fitness and character of the applicant  
7 remain such as to command the confidence of the public and to  
8 warrant the belief that the business will continue to be  
9 operated lawfully and efficiently within the purposes and  
10 spirit of the New Mexico Small Loan Act of 1955. [~~he shall~~  
11 ~~deliver a renewal license to the applicant.~~

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

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1 other grounds specified in the notice are not well-founded,  
2 [~~he~~] the director shall issue the renewal license. If [~~he~~] the  
3 director finds that the complaints of violations or other  
4 grounds are well-founded, [~~he~~] the director shall enter an  
5 order denying the renewal application and notify the applicant  
6 of the denial, returning the renewal license fee tendered with  
7 the application. Within thirty days after the entry of such an  
8 order, [~~he~~] the director shall prepare written findings and  
9 shall deliver a copy of the findings to the applicant. The  
10 order shall be subject to review as provided in Section  
11 58-15-25 NMSA 1978. The court in its discretion and upon  
12 proper showing may order a temporary extension of the license  
13 pending disposition of the review proceedings.

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

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1 and weight as the director determines.

2           ~~[G.]~~ K. At the time of issuance of original license  
3 and each annual renewal thereof, the licensee for each licensed  
4 office shall pay to the director as a license fee for the  
5 period covered by the license the sum of [~~five hundred dollars~~  
6 ~~(\$500)~~] seven hundred fifty dollars (\$750) as a minimum, plus  
7 an additional seventy-five cents (\$.75) for each one thousand  
8 dollars (\$1,000) or fraction thereof of loans outstanding as of  
9 December 31 next preceding, as shown on the applicant's annual  
10 report. In the event that the application for annual renewal  
11 of the license is delinquent, the licensee shall also pay a  
12 delinquency fee of ten dollars (\$10.00) per day for each day  
13 the licensee is delinquent in filing the application for  
14 renewal.

15           ~~[H. Each]~~ L. A licensee by accepting [~~any~~] a  
16 license that is issued or renewed or by continuing to operate  
17 [~~any~~] a licensed office under the New Mexico Small Loan Act of  
18 1955 shall by such action be deemed to have consented to be  
19 bound by the lawful provisions of that act and all lawful  
20 requirements, regulations and orders of the director  
21 promulgated or issued pursuant to any authorization granted in  
22 that act."

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

25           "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--

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1 WITNESSES.--

2 A. At least once each year, the director or [~~his~~  
3 ~~duly~~] the director's authorized representative shall make an  
4 examination of the place of business of each licensee and [~~such~~  
5 ~~of~~] the loans, transactions, books, papers and records of the  
6 licensee insofar as they pertain to the business licensed under  
7 the New Mexico Small Loan Act of 1955 as [~~he~~] the director may  
8 deem necessary. The licensee shall pay to the [~~commissioner~~  
9 director] for such annual examination a fee of [~~two hundred~~  
10 ~~dollars (\$200)~~] four hundred dollars (\$400).

11 B. Within a reasonable time after the completion of  
12 an examination of a licensed office, the director shall mail to  
13 the licensee a copy of the report of the examination, together  
14 with any comments, exceptions, objections or criticisms of the  
15 director concerning the conduct of the licensee and the  
16 operation of the licensed office.

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

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

6 (3) any person whom the director has

7 reasonable cause to believe is violating any provision of [~~that~~

8 ~~act~~] the New Mexico Small Loan Act of 1955, whether the person

9 claims to be within the authority or beyond the scope of that

10 act.

11 D. For the purposes of this section, [~~any~~] a person

12 who advertises, solicits or [~~holds himself out~~] makes any

13 representation as being willing to make loan transactions in

14 any amount, except persons, financial institutions or lending

15 agencies operating under charters or licenses issued by [~~any~~] a

16 state or federal agency or under any special statute, shall be

17 subject to investigation under the New Mexico Small Loan Act of

18 1955 and shall be presumed to be engaged in the business

19 described in Subsection A of Section 58-15-3 NMSA 1978 as to

20 any loans of two thousand five hundred dollars (\$2,500) or

21 less.

22 [~~G.~~] E. To facilitate the examinations and

23 investigations by the director and fully disclose the

24 operations and methods of operation of each licensed office,

25 the licensee shall, in each licensed office, keep on file as

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 [bracketed material] = delete

1 part of the records of the office all office manuals,  
2 communications or directives containing statements of loan  
3 policy to office managers and employees. If the licensee is an  
4 individual, corporation, trust or association, the licensee  
5 shall keep in at least one office for information of the  
6 director a record of the several individuals, firms,  
7 beneficiaries of any trust and corporations deriving or  
8 receiving any part of the benefits, net income or profits from  
9 the operation of the licensee within New Mexico.

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

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1 involved pending compliance with the notice. Upon failure of  
2 any other person to appear or to answer questions, the director  
3 may apply to and invoke the aid of any district court of New  
4 Mexico in compelling the attendance and testimony of any such  
5 person and the production of books, records, written  
6 instruments and documents relating to the business of the  
7 licensee. [~~Any~~] The district court whose aid is so invoked by  
8 the director may, in case of contumacy or refusal to obey any  
9 order of the district court issued to compel the attendance of  
10 the person or the production of books, records, written  
11 instruments and documents, punish the person as for contempt of  
12 court.

13 [~~E.~~] G. The director shall prescribe rules of  
14 procedure for all hearings, examinations or investigations  
15 provided for in the New Mexico Small Loan Act of 1955. The  
16 director is not bound by the usual common law or statutory  
17 rules of evidence or by any technical or formal rules of  
18 procedure or pleading and specification of charges other than  
19 as specifically provided in the New Mexico Small Loan Act of  
20 1955 but may conduct hearings, examinations and investigations  
21 in the manner best calculated to ascertain the substantial  
22 rights of the parties interested.

23 [~~F.~~] H. The director has the power to administer  
24 oaths, certify official acts and records of [~~his~~] the  
25 director's office, issue subpoenas for witnesses in the name of

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1 and under the seal of [~~his~~] the director's office and compel  
2 the production of papers, books, accounts and documents. [~~He~~]  
3 The director shall issue subpoenas at the instance of any party  
4 to a hearing before the division upon payment of a fee of two  
5 dollars [~~and~~] fifty cents (\$2.50) for each subpoena so issued.

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

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

19 [~~I.~~] K. Whenever the director has reasonable cause  
20 to believe that [~~any~~] a person is violating [~~any~~] a provision  
21 of the New Mexico Small Loan Act of 1955, [~~he~~] the director  
22 may, in addition to all actions provided for in that act and  
23 without prejudice thereto, enter an order requiring the person  
24 to desist or to refrain from the violation. An action may be  
25 brought on the relation of the attorney general and the

1 director to enjoin the person from engaging in or continuing  
 2 the violation or from doing any act in furtherance of the  
 3 violation. In any such action, an order or judgment may be  
 4 entered awarding a preliminary or final injunction as may be  
 5 deemed proper. In addition to all other means provided by law  
 6 for the enforcement of a temporary restraining order, temporary  
 7 injunction or final injunction, the court in which such action  
 8 is brought shall have power and jurisdiction to impound and to  
 9 appoint a receiver for the property and business of the  
 10 defendants, including books, papers, documents and records  
 11 pertaining thereto or so much thereof as the court may deem  
 12 reasonably necessary to prevent further violations of the New  
 13 Mexico Small Loan Act of 1955 through or by means of the use of  
 14 the property and business. The receiver, when appointed and  
 15 qualified, shall have powers and duties as to custody,  
 16 collection, administration, winding up and liquidation of the  
 17 property and business as are from time to time conferred upon  
 18 ~~[him]~~ the receiver by the court."

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

21 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL  
 22 INFORMATION.--

23 A. Each licensee shall keep and use in ~~[his]~~ the  
 24 business such books, accounts and records in accordance with  
 25 sound accounting practices ~~[as in the director's opinion]~~ that

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1 will enable [~~him~~] the director to determine whether the  
2 licensee is complying with the provisions of the New Mexico  
3 Small Loan Act of 1955 and with the orders and regulations  
4 lawfully made by the director [~~under~~] pursuant to provisions of  
5 that act. Each licensee shall preserve the books, accounts and  
6 records for at least two years after making the final entry on  
7 [~~any~~] a loan recorded therein.

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

18 C. At the time of filing each annual report, at the  
19 time of the annual examination or at any other time when [~~any~~]  
20 a license is in effect, the director may, upon written notice,  
21 require [~~any~~] a licensee to furnish within twenty days in  
22 writing, and under oath if so specified by any written notice  
23 issued and served by the director upon the licensee, [~~any and~~  
24 ~~all~~] additional information as to ownership of any office;  
25 operation of any office; books, records, files and papers; and

1 affiliation or relationship with any other person, firm, trust,  
 2 association or corporation as, in the opinion of the director,  
 3 may be helpful [~~to him~~] in the discharge of [~~his~~] the  
 4 director's official duties.

5 D. False or misleading information willfully  
 6 furnished to the director by [~~any~~] a licensee in [~~any~~] an  
 7 annual report or pursuant to [~~any~~] a notice or requirement of  
 8 the director is sufficient [~~ground~~] grounds for suspension and  
 9 revocation of license in accordance with the procedures for  
 10 suspension or revocation of license set forth in the New Mexico  
 11 Small Loan Act of 1955."

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

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

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1 borrowers. The director may permit or require licensees to  
2 refer in their advertising to the fact that their business is  
3 under state supervision, subject to conditions imposed by ~~[him]~~  
4 the director to prevent ~~[any]~~ erroneous impressions as to the  
5 scope or degree of protection provided by the New Mexico Small  
6 Loan Act of 1955.

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

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

15 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--~~[Charges~~  
16 ~~on]~~ The simple interest method shall be used for loans made  
17 under the New Mexico Small Loan Act of 1955. Simple interest  
18 charges are recomputed whenever a payment is received by a  
19 licensee. Interest charges shall not be paid, deducted or  
20 received in advance. ~~[Such]~~ Interest charges shall not be  
21 compounded. However, if part or all of the consideration for a  
22 loan contract is the unpaid principal balance of a prior loan,  
23 then the principal amount payable under the loan contract may  
24 include any unpaid charges ~~[which]~~ that have accrued within  
25 sixty days on the prior loan. Such charges shall be computed

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1 on the basis of the number of days actually elapsed. [~~For the~~  
 2 ~~purpose of computing charges, whether at the maximum rate or~~  
 3 ~~less, a month shall be any period of thirty consecutive days~~  
 4 ~~and the rate of charge for each day shall be one-thirtieth of~~  
 5 ~~the monthly rate.]"~~

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

8 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--  
 9 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT  
 10 AND INTEREST.--

11 A. Every licensee shall:

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

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

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1 office;

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

4 (g) the amount of principal;

5 (h) the agreed rate of charge stated on  
6 ~~[a percent per month and]~~ a percent per year basis and the  
7 amount in dollars and cents; ~~[and]~~

8 (i) all other disclosures required  
9 pursuant to state and federal law; and

10 (j) other items allowable pursuant to  
11 that act, so stated as to clearly show the allocation of each  
12 item included;

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

24 (3) upon payment of the loan in full, mark  
25 plainly every note and promise to pay signed by any obligor



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

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

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

20 D. Any loan made under the provisions of the New  
 21 Mexico Small Loan Act of 1955 that is filed and approved as a  
 22 claim in any bankruptcy proceeding shall, from a date ninety  
 23 days subsequent to the date of adjudication, bear interest at  
 24 the rate of ten percent a year only. This limitation shall not  
 25 apply when the bankrupt is not discharged in bankruptcy or to

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1 any obligation not dischargeable under the provisions of the  
2 Bankruptcy Act presently in force or as hereafter amended.

3 E. No loan made under the provisions of the New  
4 Mexico Small Loan Act of 1955 shall bear interest after ninety  
5 days from the date of the death of the borrower in excess of a  
6 rate of ten percent a year on the unpaid principal balance of  
7 the loan.

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

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

14 "58-15-20. FEES AND COSTS.--

15 [~~(a) FILING OR RECORDING FEES~~] A. Notwithstanding  
16 any provision of [~~this Act~~] the New Mexico Small Loan Act of  
17 1955, lawful fees, if any, actually and necessarily paid out by  
18 the licensee to [~~any~~] a public officer for the filing,  
19 recording or releasing in [~~any~~] a public office [~~any~~] of an  
20 instrument securing the loan may be charged to the borrower.

21 [~~(b) ATTORNEY FEES~~] B. Notwithstanding any  
22 provision in [~~any~~] a note or other loan contract taken or  
23 received [~~under this act~~] pursuant to the New Mexico Small Loan  
24 Act of 1955, attorney fees shall not be charged or collected  
25 except [~~where such~~] when the note or other contract has been

1 ~~[turned]~~ submitted in good faith to an attorney for collection  
 2 and after diligent and good faith effort to collect [~~has~~  
 3 ~~failed~~] on the part of the licensee has failed.

4 ~~[(c) COURTS COSTS Where suit is filed in any court~~  
 5 ~~of competent jurisdiction, court costs shall be collectable in~~  
 6 ~~accordance with the laws of New Mexico applicable thereto.~~

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

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

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

22 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The [~~wilful~~]  
 23 violation by [~~any~~] a licensee or by [~~any~~] an officer, manager,  
 24 director, trustee, executive or employee directly engaged in  
 25 operating a small loan office under the provisions of [~~this~~

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1 ~~Act]~~ the New Mexico Small Loan Act of 1955 of any usury statute  
2 of this state within [~~any~~] an office, room or place of business  
3 in which the making of loans as a licensee is solicited or  
4 engaged or in association or conjunction therewith [~~shall be~~  
5 ~~ground~~] is grounds for suspension and revocation of license in  
6 accordance with the applicable procedures [~~applicable thereto~~  
7 ~~as~~] set forth [~~herein~~] in that act."

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

10 "58-15-30. PENALTIES--GENERAL.--Any person,  
11 copartnership, trust, association or corporation and the  
12 several members, beneficiaries, officers, directors, agents and  
13 employees thereof who [~~shall~~] violate or participate in the  
14 violation of any provision of the [~~sections of this Act shall~~  
15 ~~be~~] New Mexico Small Loan Act of 1955 are guilty of a  
16 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]  
17 punished by a fine of not less than [~~one hundred (\$100.00)~~  
18 ~~dollars and not more than three hundred (\$300.00) dollars~~] five  
19 hundred dollars (\$500) or more than one thousand dollars  
20 (\$1,000) or by imprisonment of not more than [~~ninety (90) days~~]  
21 six months or [~~by~~] both [~~such fine and imprisonment~~] in the  
22 discretion of the court."

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

25 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY

1 LOANS.--

2 A. No licensee shall make a payday loan to a  
3 consumer if:

4 (1) the total principal amount of the loan,  
5 when combined with the principal amount of all of the  
6 consumer's other outstanding payday loan products, exceeds one  
7 thousand five hundred dollars (\$1,500) or thirty percent of the  
8 consumer's gross monthly income, whichever is less; or

9 (2) the consumer has an outstanding balance on  
10 two or more payday loan products.

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

14 C. Without affecting the rights of a consumer to  
15 prepay a payday loan product at any time without additional  
16 cost or penalty:

17 (1) no payday loan or renewed payday loan  
18 shall have a stated maturity greater than thirty-five days;

19 (2) no payday loan or renewed payday loan  
20 shall have a stated minimum term less than fourteen days unless  
21 the consumer and the licensee agree in writing to a shorter  
22 term; and

23 (3) there shall be a scheduled pay date for  
24 the consumer within the term of the payday loan or renewed  
25 payday loan.

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1           D. A consumer shall not have more than two payday  
2 loan products outstanding at any time, nor shall a consumer  
3 have more than one payday loan outstanding with any licensee  
4 operating under a single trade name.

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

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

23           G. After each payment is made, in full or in part,  
24 on a payday loan product, the licensee shall give to the person  
25 making the payment a signed, dated receipt showing the amount

1 paid and the balance due on the loan.

2 H. A check written by a consumer for a payday loan  
3 product shall be payable to the order of the licensee.

4 I. Prior to the consummation of a payday loan, the  
5 licensee shall provide the consumer, or each consumer if there  
6 is more than one, with copies of the payday loan product  
7 agreement in Spanish, English or other language as determined  
8 by the director.

9 J. A payday loan product agreement shall not be  
10 renewed, refinanced or extended without the written consent of  
11 the consumer.

12 K. Licensees making payday loans shall provide the  
13 consumer with an information brochure in English, Spanish or  
14 other language as determined by the director.

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

21 M. A licensee shall collect on payday loan products  
22 in default in a professional, fair and lawful manner, in  
23 accordance with the applicable provisions of the federal Fair  
24 Debt Collection Practices Act."

25 Section 13. A new section of the New Mexico Small Loan

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1 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

2 "58-15-33. [NEW MATERIAL] PAYDAY LOAN PRODUCTS--PERMITTED  
3 CHARGES.--The following provisions apply only to payday loan  
4 products:

5 A. a licensee may not charge or receive from a  
6 consumer, directly or indirectly, fees or charges except as  
7 provided in this section;

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

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

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

24 (3) for payday loans with a principal amount  
25 of one thousand five hundred dollars (\$1,500) or less, an

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1 additional fee at a rate not exceeding thirteen dollars  
2 (\$13.00) per one hundred dollars (\$100) of principal in excess  
3 of five hundred dollars (\$500);

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

12 (1) for the first three hundred dollars (\$300)  
13 in principal of a renewed payday loan, at a rate not exceeding  
14 fifteen dollars (\$15.00) per one hundred dollars (\$100) in  
15 principal;

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

21 (3) for a renewed payday loan with a principal  
22 amount of one thousand five hundred dollars (\$1,500) or less,  
23 an additional fee at a rate not exceeding eleven dollars  
24 (\$11.00) per one hundred dollars (\$100) of principal in excess  
25 of five hundred dollars (\$500);

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1           D. the dollar amounts set forth in Subsections B  
2 and C of this section shall be adjusted for inflation pursuant  
3 to rules promulgated by the director, at no more than three-  
4 year intervals, to the nearest dollar amounts as indicated by  
5 changes in the consumer price index for the United States for  
6 all items as published by the United States department of  
7 labor;

8           E. upon the execution of a new payday loan product,  
9 the licensee may charge a consumer an electronic verification  
10 fee as determined by the director for the services required  
11 pursuant to Section 58-15-38 NMSA 1978;

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

16           G. if there are insufficient funds to pay a check  
17 or other type of debit on the date of presentment by the  
18 licensee, a licensee may charge a borrower a fee not to exceed  
19 fifteen dollars (\$15.00). Only one fee may be collected by a  
20 licensee on a declined consumer's personal check or debit  
21 authorization. Once declined, a consumer's personal check may  
22 not be redeposited and a consumer's debit authorization may not  
23 be repeated unless the consumer agrees in writing after the  
24 term of the payday loan product to allow one redeposit of a  
25 personal check or one repeat debit authorization. Late fees or

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1 delinquency charges shall not be allowed."

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

4 "58-15-34. [NEW MATERIAL] PAYDAY LOAN PRODUCTS--  
5 PROHIBITED ACTS.--A licensee shall not:

6 A. threaten to use or request the use of criminal  
7 process in this or another state to collect on a payday loan  
8 product;

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

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

19 D. charge a fee to cash a check representing the  
20 proceeds of a payday loan product;

21 E. assign or attempt to assign a consumer's  
22 personal check to a third party unless for collection purposes;

23 F. use or attempt to use the check written by the  
24 consumer for a payday loan product as security for purposes of  
25 a state or federal law;

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1           G. have more than one payday loan product  
2 outstanding with a consumer at a time for all licenses operated  
3 under the same trade name;

4           H. accept collateral for a payday loan product  
5 other than the consumer's check or debit authorization or  
6 require a consumer to provide a guaranty from another person  
7 for a payday loan product;

8           I. include any of the following provisions in a  
9 payday loan product agreement:

10                   (1) a hold harmless clause;

11                   (2) a confession of judgment clause or power  
12 of attorney;

13                   (3) an assignment of or order for payment of  
14 wages or other compensation for services;

15                   (4) a waiver of claims for punitive damages;

16                   (5) a provision in which the consumer agrees  
17 not to assert a claim or defense arising out of the contract;  
18 or

19                   (6) a waiver of a provision of the New Mexico  
20 Small Loan Act of 1955;

21           J. make a payday loan product contingent on the  
22 purchase of insurance or other goods or services;

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

1 L. offer, arrange, act as an agent for or assist a  
2 third party in any way in the making of a payday loan product  
3 unless the third party complies with all applicable federal and  
4 state laws and regulations;

5 M. knowingly enter into a payday loan product with  
6 a consumer who lacks the capacity to consent; or

7 N. use an agency agreement or partnership agreement  
8 as a scheme or contrivance to circumvent the application of the  
9 provisions of the New Mexico Small Loan Act of 1955 to a  
10 consumer's payday loan product. For the purposes of this  
11 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 or renewed payday loan made to New Mexico  
18 residents; and

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

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

3 "58-15-35. [NEW MATERIAL] RENEWED PAYDAY LOANS.--A  
4 consumer may renew a payday loan one time at the discretion of  
5 the licensee, and the term of the renewed payday loan shall  
6 include a scheduled pay date for the consumer."

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

9 "58-15-36. [NEW MATERIAL] PAYDAY LOANS--PAYMENT PLANS.--

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

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

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

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

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

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

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1 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--WAITING PERIOD.--

2 A. A licensee shall not make a payday loan to a  
 3 consumer qualifying pursuant to the provisions of Subsection B  
 4 of this section until at least seven calendar days have passed  
 5 since the consumer completed all payment obligations pursuant  
 6 to a payday loan product.

7 B. The provisions of Subsection A of this section  
 8 shall apply to a consumer who within the prior twelve months:

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

11 (2) has had payment obligations under one or  
 12 more payday loan products for sixty or more consecutive days;  
 13 or

14 (3) has had payment obligations under one or  
 15 more payday loan products for ninety or more days in the  
 16 aggregate."

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

19 "58-15-38. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

20 A. Before entering into a payday loan agreement  
 21 with a consumer, a licensee must use a commercially reasonable  
 22 method to verify that the proposed loan agreement is  
 23 permissible under the provisions of the New Mexico Small Loan  
 24 Act of 1955.

25 B. No later than November 1, 2006, the division

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1 shall certify that one or more consumer reporting service  
2 databases are commercially reasonable methods of verification.  
3 Upon certifying that a consumer reporting service database is a  
4 commercially reasonable method of verification, the division  
5 shall:

6 (1) provide reasonable notice to all licensees  
7 identifying the commercially reasonable methods of verification  
8 that are available; and

9 (2) immediately upon certification, require  
10 each licensee to use a commercially reasonable method of  
11 verification as a means of complying with Subsection A of this  
12 section.

13 C. Except as otherwise provided in this section,  
14 all personally identifiable information regarding a consumer  
15 obtained by way of the certified database and maintained by the  
16 division is strictly confidential.

17 D. Notwithstanding any other provision of law to  
18 the contrary, a consumer seeking a payday loan may make a  
19 direct inquiry to the consumer reporting service to request a  
20 more detailed explanation of the basis for a consumer reporting  
21 service's determination that the consumer is ineligible for a  
22 new payday loan, and the consumer reporting service shall  
23 provide a reasonable response to the consumer.

24 E. In certifying a commercially reasonable method  
25 of verification, the division shall ensure the certified

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1 database:

2 (1) provides real-time access through an  
 3 internet connection or, if real-time access through an internet  
 4 connection becomes unavailable to licensees due to a consumer  
 5 reporting service's technical problems incurred by the consumer  
 6 reporting service, through alternative verification mechanisms,  
 7 including verification by telephone;

8 (2) is accessible to the division and to  
 9 licensees in order to ensure compliance with the New Mexico  
 10 Small Loan Act of 1955 and in order to provide any other  
 11 information the division deems necessary;

12 (3) requires licensees to input whatever  
 13 information is required by the division;

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

17 (5) provides licensees with no more than a  
 18 statement that a consumer is eligible or ineligible for a new  
 19 payday loan and a description of the reason for the  
 20 determination; and

21 (6) ensures that all information contained in  
 22 the database regarding consumers is kept strictly confidential.

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

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underscored material = new  
 [bracketed material] = delete

- 1 (1) a payday loan is made;  
2 (2) a payday loan is renewed;  
3 (3) a consumer elects to enter into a  
4 repayment plan;  
5 (4) a consumer's payday loan is paid in full;  
6 or  
7 (5) a licensee determines a payday loan  
8 product is in default.

9 G. A licensee may rely on the information contained  
10 in the certified database as accurate and is not subject to any  
11 penalty or liability as a result of relying on inaccurate  
12 information contained in the database.

13 H. The director shall promulgate rules necessary to  
14 ensure that a credit reporting service shall be adequately  
15 capitalized, demonstrate the resources and ability to perform  
16 the services required pursuant to this section and have  
17 appropriate surety to ensure performance of its obligation  
18 pursuant to this section and reasonably protect claimants in  
19 the event that actions or inactions on the part of the credit  
20 reporting service results in damages to licensees or consumers.

21 I. The director shall promulgate rules necessary to  
22 implement the requirements of the New Mexico Small Loan Act of  
23 1955 regarding the establishment of certified consumer  
24 reporting services."

25 Section 19. A new section of the New Mexico Small Loan

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1 Act of 1955, Section 58-15-39 NMSA 1978, is enacted to read:

2 "58-15-39. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN  
 3 MAKING PAYDAY LOANS.--A licensee making payday loans shall  
 4 provide a notice immediately above the borrower's signature on  
 5 each payday loan agreement in at least ten-point bold type  
 6 using the following language:

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

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

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

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

16 (5) If you renew a payday loan and cannot fully  
 17 repay that loan when due, you have a right to enter into a  
 18 payment plan requiring payment within ninety-eight days, in  
 19 relatively equal installments, based upon your scheduled pay  
 20 periods. If you enter into a payment plan, you will not have  
 21 to pay an additional administrative fee or interest on the  
 22 outstanding principal balance.

23 (6) If within the prior twelve months you have had  
 24 payment obligations under a payday loan, renewed payday loan or  
 25 payment plan for sixty consecutive days or ninety days in the

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underscored material = new  
 [bracketed material] = delete

1 aggregate or you have entered into a payment plan, you may not  
2 enter into a new payday loan until after seven days have passed  
3 since you completed all payment obligations under a payday loan  
4 product."."

5 Section 20. SEVERABILITY.--If any part or application of  
6 this act is held invalid, the remainder or its application to  
7 other situations or persons shall not be affected.

8 Section 21. APPLICABILITY.--The provisions of Sections 12  
9 through 19 of this act shall not apply to payday loans entered  
10 into before November 1, 2006.

11 Section 22. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is November 1, 2006.