

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE  
LIMITATION OF FEES AND REGULATION OF PAYDAY LOANS; AMENDING,  
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 14-7-1 NMSA 1978 (being Laws 1977,  
Chapter 291, Section 1, as amended) is amended to read:

"14-7-1. REQUIRING NOTICE OF INTENT TO GAIN ACCESS TO  
RECORDS OF FINANCIAL INSTITUTIONS.--

A. At least seven days prior to a state agency,  
board or commission requesting or gaining access to or copies  
of the records of a person, corporation, company or  
organization maintained by a bank, savings and loan  
association, small loan company or other similar financial  
institution, the agency, board or commission shall notify by  
certified or registered mail the person, corporation, company  
or other organization of its intent to gain access or acquire  
such records.

B. The requirement of notice set forth in  
Subsection A of this section shall not apply to the audit of,  
compliance monitoring of or preparation of reports concerning  
any bank, savings and loan association, small loan company or  
other similar financial institution by a state agency, when  
conducted pursuant to the agency's statutory directive.

C. The provisions of Subsection A of this section shall not apply to requests for records made pursuant to an administrative subpoena. In such instances, at least twenty-four hours' notice shall be given to the person, corporation, company or organization."

Section 2. 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 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:

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

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

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

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

E. "installment loan" means a loan that is to be repaid in a minimum of four successive substantially equal payment amounts to pay off a loan in its entirety with a

period of no less than one hundred twenty days to maturity. "Installment loan" does not mean a loan in which a licensee requires, as a condition of making the loan, the use of post-dated checks or debit authorizations for repayment of that loan;

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

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

H. "payday loan" means a loan in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees in writing to defer

presentment of that check or use of the debit authorization until the consumer's next payday or another date agreed to by the licensee and the consumer and:

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

(a) accepts a dated personal check or debit authorization from a consumer for the specific purpose of repaying a payday loan;

(b) agrees to hold a dated personal check or debit authorization from a consumer for a period of time prior to negotiating or depositing the personal check or debit authorization; or

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

(2) does not include:

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

(b) installment loans;

I. "payday loan product" means a payday loan or a payment plan pursuant to Section 58-15-35 NMSA 1978;

J. "person" includes an individual, copartner,

association, trust, corporation and any other legal entity;

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

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

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

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

A. A person shall not engage in the business of lending in amounts of two thousand five hundred dollars (\$2,500) or less for a loan without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in

accordance with the provisions of Section 58-7-2 NMSA 1978.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of two thousand five hundred dollars (\$2,500) or less under a written agreement providing for a total loan or line of credit in excess of two thousand five hundred dollars (\$2,500).

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

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

(1) a person who owns an interest, legal or equitable, in the business or profits of a licensee and whose name does not specifically appear on the face of the license,

except a stockholder in a corporate licensee; and

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

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

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

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

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

E. A person, copartnership, trust or a trustee or beneficiary thereof or an association or corporation or a member, officer, director, agent or employee thereof who violates or participates in the violation of a provision of Subsection A of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978. A contract or loan in the making or collection of which an act

is done that violates Subsection A or D of this section is void and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever."

Section 4. Section 58-15-5 NMSA 1978 (being Laws 1978, Chapter 6, Section 1, as amended) is amended to read:

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

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

B. An applicant for license, upon written notice to do so by the director, shall, within twenty days after service of the notice, furnish in writing, under oath, to the director all additional information required by the director that may be relevant or, in the opinion of the director, helpful in conducting the investigation.

C. Failure to comply with the director's requirement for supplemental information or the willful furnishing of false information is sufficient grounds for denial of license.

D. False or misleading information willfully and intentionally furnished to the director prior to the issuance



of any license is grounds for suspension or revocation of any license in accordance with the procedures for suspension or revocation of license in the New Mexico Small Loan Act of 1955.

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

F. In the event the director finds that:

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

(2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted; and

(3) the applicant has available for

operation of the business at the specified location cash or its equivalent, convertible securities or receivables of thirty thousand dollars (\$30,000) or any combination thereof; the director shall enter an order granting the application, file the director's findings and, upon payment of the license fee of five hundred dollars (\$500), issue and deliver a license to the applicant.

G. If the director does not make the findings enumerated in Subsection F of this section, the director shall enter an order denying the application, notify the applicant of the denial and retain the application fee. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy to the applicant.

H. A written application for license renewal shall be filed on or before March 31 of each year, and thereupon the director shall investigate the facts and review the files of examinations of the applicant made by the director's office and of complaints filed by borrowers, if any. The director shall deliver a renewal license to the applicant if the director finds that:

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

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

(3) the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955.

I. If the director does not make the findings enumerated in Subsection H of this section, the director may grant a temporary extension of the license not exceeding sixty days pending a hearing; shall enter an order fixing a date for hearing upon the application; shall notify the licensee thereof, specifying the particular complaints, violations or abuses or other reasons for the director's contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall produce evidence to establish the truth of the charges of violation or other grounds specified in the notice, and the applicant shall be accorded the right to produce evidence or other matters of defense. If after the hearing the director finds that the complaints of violations or other grounds specified in the notice are not well-founded, the

director shall issue the renewal license. If the director finds that the complaints of violations or other grounds are well-founded, the director shall enter an order denying the renewal application and notify the applicant of the denial, returning the renewal license fee tendered with the application. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy of the findings to the applicant. The order shall be subject to review as provided in Section 58-15-25 NMSA 1978. The court in its discretion and upon proper showing may order a temporary extension of the license pending disposition of the review proceedings.

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

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

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

Section 5. Section 58-15-9 NMSA 1978 (being Laws 1955, Chapter 128, Section 9, as amended) is amended to read:

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

A. At least once each year, the director or the director's authorized representative shall make an examination

of the place of business of each licensee and the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 as the director may deem necessary. The licensee shall pay to the director for such annual examination a fee of two hundred dollars (\$200).

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

C. For the purpose of discovering violations of the New Mexico Small Loan Act of 1955 or of securing information lawfully required under that act, the director or the director's authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, including income tax returns or other reports filed in the office of the director of the revenue processing division of the taxation and revenue department of:

(1) any licensee;

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

otherwise; and

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

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

E. To facilitate the examinations and investigations by the director and fully disclose the operations and methods of operation of each licensed office, the licensee shall, in each licensed office, keep on file as part of the records of the office all office manuals, communications or directives containing statements of loan policy to office managers and employees. If the licensee is an individual, corporation, trust or association, the licensee shall keep in at least one office for information of the director a record of the several individuals, firms,

beneficiaries of any trust and corporations deriving or receiving any part of the benefits, net income or profits from the operation of the licensee within New Mexico.

F. For the purposes of this section, the director or the director's authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine the person under oath relative to such loans or business or to the subject matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear before the director for examination under oath may be served by registered mail. If the party notified to appear is the licensee, any person named on the face of the license being investigated or any agent, employee or manager participating in the licensee's business and the party fails to appear for examination or refuses to answer questions submitted, the director may, forthwith and without further notice to the licensee, suspend the license involved pending compliance with the notice. Upon failure of any other person to appear or to answer questions, the director may apply to and invoke the aid of any district court of New Mexico in compelling the attendance and testimony of any such person and the production of books, records, written instruments and documents relating to the business of the



licensee. The district court whose aid is so invoked by the director may, in case of contumacy or refusal to obey any order of the district court issued to compel the attendance of the person or the production of books, records, written instruments and documents, punish the person as for contempt of court.

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

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

I. Depositions may be taken with or without a

commission, and written interrogatories may be submitted in the same manner and on the same grounds provided by law for the taking of depositions or submission of written interrogatories in civil actions pending in the district courts of this state.

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

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

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

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

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

A. Each licensee shall keep and use in the business such books, accounts and records in accordance with sound accounting practices that will enable the director to determine whether the licensee is complying with the provisions of the New Mexico Small Loan Act of 1955 and with the orders and regulations lawfully made by the director pursuant to the provisions of that act. Each licensee shall preserve the books, accounts and records for at least two

years after making the final entry on a loan recorded therein.

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

C. At the time of filing each annual report, at the time of the annual examination or at any other time when a license is in effect, the director may, upon written notice, require a licensee to furnish within twenty days in writing, and under oath if so specified by any written notice issued and served by the director upon the licensee, additional information as to ownership of any office; operation of any office; books, records, files and papers; and affiliation or relationship with any other person, firm, trust, association or corporation as, in the opinion of the director, may be helpful in the discharge of the director's official duties.

D. False or misleading information willfully furnished to the director by a licensee in an annual report or pursuant to a notice or requirement of the director is

sufficient grounds for suspension and revocation of license in accordance with the procedures for suspension or revocation of license set forth in the New Mexico Small Loan Act of 1955."

Section 7. Section 58-15-11 NMSA 1978 (being Laws 1955, Chapter 128, Section 11, as amended) is amended to read:

"58-15-11. REGULATIONS AND ORDERS--CERTIFIED COPIES.--

A. The director has authority to make reasonable regulations and orders for the administration and enforcement of the New Mexico Small Loan Act of 1955 and is expressly authorized to make regulations and orders governing the conduct of all licensees' operations, including the method and manner of selling, handling and writing, in connection with any loan, any form of insurance by the licensee or any agent or employee in the office of the licensee or of any other firm, person or corporation associated or affiliated with the licensee or operating in the same building in which the business of the licensee is conducted. Every regulation shall be promulgated by an order, and any ruling, demand, requirement or similar administrative act may be promulgated by an order. Every order shall be in writing, referenced to the section under which it is issued, shall state its effective date and the date of its promulgation and shall be entered in an indexed permanent book that shall be a public record. A copy of every order promulgating a regulation and of every other order containing a requirement of general

application shall be mailed to each licensee at least fifteen days before the effective date of the order.

B. The director is expressly authorized to make regulations and orders, in accordance with the provisions of Subsection A of this section, governing the conduct of licensees in making loans to consumers. Such regulations may address, consistent with the provisions of Sections 58-15-32 through 58-15-38 NMSA 1978, all aspects of loans to consumers and shall specifically address:

(1) the cost of loans, including fees and interest rates;

(2) the terms of loans, including amount, length, renewals, rescission, payments and security;

(3) required disclosures to consumers;

(4) methods of collection on loans in default; and

(5) methods of verifying consumer eligibility for loans and licensee compliance with the New Mexico Small Loan Act of 1955 and regulations promulgated pursuant to that act.

C. On application of any person and payment of the cost thereof, the director shall furnish, under the director's seal and signed by the director or the director's deputy, a certified copy of any license, regulation or order. In any court or proceeding, the copy shall be prima facie evidence of

the fact of the issuance of a license, regulation or order."

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

"58-15-12. ADVERTISING.--A licensee or other person subject to the New Mexico Small Loan Act of 1955 shall not advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast in any manner whatsoever a false, misleading or deceptive statement or representation with regard to the charges, terms or conditions for loans in the amount or of the value of two thousand five hundred dollars (\$2,500) or less. The director may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems necessary to prevent misunderstanding by prospective borrowers. The director may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by the director to prevent erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955."

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

"58-15-14.1. CHARGES--METHOD OF COMPUTATION.--The simple interest method shall be used for loans made under the New Mexico Small Loan Act of 1955. Interest charges shall not

be paid, deducted or received in advance. Interest charges shall not be compounded. However, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid charges that have accrued within sixty days on the prior loan. Such charges shall be computed on the basis of the number of days actually elapsed."

Section 10. Section 58-15-17 NMSA 1978 (being Laws 1955, Chapter 128, Section 15, as amended) is amended to read:

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

A. Every licensee shall:

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

- (a) the amount of the loan;
- (b) the date the loan was made;
- (c) a schedule or a description of the payments;



- (d) the type of the security, if any,  
for the loan;
- (e) the name and address of the  
licensed office;
- (f) the name of the person primarily  
obligated for the loan;
- (g) the amount of principal;
- (h) the agreed rate of charge stated on  
a percent per year basis and the amount in dollars and cents;
- (i) all other disclosures required  
pursuant to state and federal law; and
- (j) other items allowable pursuant to  
that act, so stated as to clearly show the allocation of each  
item included;

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

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

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

C. If judgment is obtained against a party on a loan made pursuant to the provisions of the New Mexico Small Loan Act of 1955, neither the judgment nor the loan shall carry, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as provided by law.

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

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

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

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

Section 11. Section 58-15-20 NMSA 1978 (being Laws 1955, Chapter 128, Section 18) is amended to read:

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

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

B. Notwithstanding any provision in a note or other loan contract taken or received pursuant to the provisions of the New Mexico Small Loan Act of 1955, attorney fees shall not be charged or collected except when the note or other contract has been submitted in good faith to an attorney for collection and after diligent and good faith effort to

collect on the part of the licensee has failed.

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

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

Section 12. Section 58-15-23 NMSA 1978 (being Laws 1955, Chapter 128, Section 21) is amended to read:

"58-15-23. VIOLATION OF GENERAL USURY LAWS.--The violation by a licensee or by an officer, manager, director, trustee, executive or employee directly engaged in operating a small loan office under the provisions of the New Mexico Small Loan Act of 1955 of any usury statute of this state within an office, room or place of business in which the making of loans as a licensee is solicited or engaged or in association or conjunction therewith is grounds for suspension and revocation of license in accordance with the applicable procedures set forth in that act."

Section 13. Section 58-15-30 NMSA 1978 (being Laws 1955, Chapter 128, Section 28) is amended to read:

"58-15-30. PENALTIES--GENERAL.--Any person, copartnership, trust, association or corporation and the several members, beneficiaries, officers, directors, agents and employees thereof who violate or participate in the violation of any provision of the New Mexico Small Loan Act of 1955 are guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment of not more than six months or both in the discretion of the court."

Section 14. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-32 NMSA 1978, is enacted to read:

"58-15-32. REQUIREMENTS FOR PAYDAY LOANS.--

A. No licensee shall make a payday loan to a consumer if the total principal amount of the loan and fees, when combined with the principal amount and fees of all of the consumer's other outstanding payday loan products, exceeds twenty-five percent of the consumer's gross monthly income.

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

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

(2) no payday loan shall have a stated minimum term less than fourteen days unless agreed to in writing by the consumer; and

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

C. A payday loan agreement shall include a provision granting the consumer the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by a licensee for a payday loan no later than 5:00 p.m. on the first day of business conducted by the licensee following the execution of the payday loan agreement. If a consumer exercises the right of rescission pursuant to this subsection, no fee for the rescinded transaction shall be charged to the consumer and the licensee shall not charge or impose on the consumer a fee for exercising the right of rescission pursuant to this subsection. If this subsection is applicable, any fee collected by a licensee shall be returned in full to the consumer.

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

E. After each payment is made, in full or in part,

on a payday loan product, the licensee shall give to the person making the payment a signed, dated receipt showing the amount paid; the amount credited toward administrative fees and principal; and the balance due on the loan.

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

G. Prior to the consummation of a payday loan, the licensee shall provide the consumer, or each consumer if there is more than one, with copies of the payday loan product agreement in English, Spanish or other language as determined by the director. Consumers shall have the option to decide which language version of the agreement they wish to receive.

H. Licensees making payday loans shall provide the consumer with an information brochure in English, Spanish or other language as determined by the director. Consumers shall have the option to decide which language version of the brochure they wish to receive.

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

J. A licensee shall collect on payday loan products in default in a professional, fair and lawful manner.

A licensee that complies with the requirements and prohibitions set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt Collection Practices Act shall be deemed to have operated in a professional, fair and lawful manner."

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

"58-15-33. PAYDAY LOAN PRODUCTS--PERMITTED CHARGES.--

The following provisions apply only to payday loan products:

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

B. upon the execution of a new payday loan, the licensee may impose an administrative fee of not more than fifteen dollars fifty cents (\$15.50) per one hundred dollars (\$100) of principal, which fee is fully earned and nonrefundable at the time a payday loan agreement is executed and payable in full at the end of the term of the payday loan or upon prepayment of the payday loan unless a payday loan is rescinded pursuant to Subsection C of Section 58-15-32 NMSA 1978;

C. upon the execution of a new payday loan agreement, the licensee may impose an additional administrative fee of not more than fifty cents (\$.50) per executed new payday loan agreement as necessary to cover the cost to the licensee of verification pursuant to Section



58-15-37 NMSA 1978, which fee is fully earned and nonrefundable at the time a payday loan agreement is executed and payable in full at the end of the term of the payday loan or upon prepayment of the payday loan unless a payday loan is rescinded pursuant to Subsection C of Section 58-15-32 NMSA 1978;

D. a licensee shall not charge a consumer interest on the outstanding principal owed on a payday loan product; and

E. if there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, a licensee may charge a consumer a fee not to exceed fifteen dollars (\$15.00). Only one fee may be collected by a licensee on a check or debit authorization. A check or debit authorization request shall not be presented to a financial institution by a licensee for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit."

Section 16. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

"58-15-34. PAYDAY LOAN PRODUCTS--PROHIBITED ACTS.--A licensee shall not:

A. enter into an agreement for a renewed payday loan or otherwise refinance or extend the term of a payday

loan;

B. enter into an agreement for a payday loan with a consumer who is participating in a payment plan pursuant to Section 58-15-35 NMSA 1978;

C. threaten or intimidate a consumer or threaten to use or request the use of criminal process in this or another state to collect on a payday loan product;

D. use a device or agreement that would have the effect of charging or collecting more fees, charges or interest than that allowed by law by entering into a different type of transaction with the consumer that has that effect;

E. require a consumer to enter into a new payday loan to pay an existing payday loan in whole or in part when the existing loan is eligible for a payment plan pursuant to Section 58-15-35 NMSA 1978;

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

G. charge a late fee or delinquency charge if a consumer fails to repay a payday loan product on time;

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

I. use or attempt to use the check written by the consumer for a payday loan product as collateral for purposes other than repaying that payday loan product;

J. require a consumer to provide multiple checks or multiple debt authorizations;

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

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

(1) a hold harmless clause;

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

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

(4) a waiver of claims for punitive damages;

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

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

(7) a waiver of the right to enter into a payment plan pursuant to Section 58-15-35 NMSA 1978; or

(8) a waiver of any rights secured by New Mexico law;

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

N. take a check, instrument or form in which

blanks are left to be filled in after execution of the check, instrument or form;

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

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

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

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

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

residents."

Section 17. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-35 NMSA 1978, is enacted to read:

"58-15-35. PAYDAY LOANS--PAYMENT PLANS.--

A. At the time a consumer enters into a payday loan agreement, the licensee shall offer the consumer the opportunity to enter into an unsecured payment plan for any unpaid administrative fees and principal balance of the payday loan. The consumer may elect, and a licensee shall permit, entry into a payment plan for any unpaid administrative fees and principal balance of the payday loan.

B. No fees, charges or interest may be charged for a payment plan.

C. A payment plan shall provide for:

(1) a minimum of one hundred thirty days for the repayment of the unpaid principal balance of a payday loan; and

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

D. A payment plan entered into pursuant to the provisions of this section shall not be considered an installment loan.

E. A licensee that fails to offer a consumer the opportunity to enter into a payment plan for a payday loan pursuant to Subsection A of this section shall not commence a

legal proceeding against a consumer to collect on that payday loan if it has not been fully repaid."

Section 18. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-36 NMSA 1978, is enacted to read:

"58-15-36. PAYDAY LOANS--WAITING PERIOD.--

A licensee shall not make a payday loan to a consumer who has entered into a payment plan pursuant to Section 58-15-35 NMSA 1978 until at least ten calendar days have passed since the consumer completed all payment obligations pursuant to all of the consumer's outstanding payday loan products, including that payment plan."

Section 19. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-37 NMSA 1978, is enacted to read:

"58-15-37. PAYDAY LOANS--VERIFICATION.--

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

B. No later than November 1, 2007, the director shall certify that one or more consumer reporting service databases are commercially reasonable methods of verification. The list of consumer reporting services that the director has certified as providing commercially reasonable methods of verification shall be posted on the division's web site and

shall be mailed to each licensee by first class mail at the address of record as shown on the division's licensing files.

C. Each licensee who provides payday loan products shall comply with Subsection A of this section no later than November 30, 2007.

D. A consumer seeking a payday loan may make a direct inquiry to the consumer reporting service to request a more detailed explanation of the basis for a consumer reporting service's determination that the consumer is ineligible for a new payday loan, and the consumer reporting service shall provide a reasonable response to the consumer.

E. In certifying a commercially reasonable method of verification, the director shall ensure the certified database:

(1) provides real-time access through an internet connection or, if real-time access through an internet connection becomes unavailable due to technical problems incurred by the consumer reporting service, through alternative verification mechanisms, including verification by telephone;

(2) is accessible to the division and to licensees in real time in order to ensure compliance with the New Mexico Small Loan Act of 1955 regardless of where the consumer requests a payday loan in New Mexico and in order to provide any other information the director deems necessary;

(3) requires licensees to input whatever information is required by the New Mexico Small Loan Act of 1955;

(4) contains a real-time regulator interface that allows the division access to the consumer reporting service database for the required monitoring and reporting function, including the ability to determine consumer eligibility and to generate reports for licensee examinations, regulatory reporting and program monitoring;

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

(6) provides adequate safeguards to ensure that consumer information contained in the database is kept strictly confidential;

(7) provides sufficient information to enable a licensee to determine whether a proposed payday loan would meet the requirements for payday loans set forth in the New Mexico Small Loan Act of 1955;

(8) ensures that information submitted to the certified database is kept confidential and shall not be released or otherwise made available to the public;

(9) demonstrates a working system to the division prior to the certification of the database; and

(10) is generated by a registered consumer



reporting service that is subject to the applicable rules and regulations applied by the federal trade commission under the Fair Credit Reporting Act.

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

- (1) a payday loan is made;
- (2) a consumer elects to enter into a payment plan;
- (3) a consumer's payday loan is paid in full; or
- (4) a licensee determines a payday loan is in default.

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

H. In determining whether a consumer reporting service should be certified as a commercially reasonable method of verification, the director shall consider whether such consumer reporting service is adequately capitalized, demonstrates the resources and the ability to perform the services required pursuant to this section and has appropriate surety to ensure performance of its obligations pursuant to this section and to reasonably protect claimants in the event

that actions or inactions on the part of the consumer reporting service results in damages to licensees or consumers.

I. The provisions of Section 14-7-1 NMSA 1978 shall not apply to access by the division to information for purposes of compliance monitoring or preparation of reports contained in a certified database established pursuant to this section."

Section 20. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-38 NMSA 1978, is enacted to read:

"58-15-38. REQUIRED DISCLOSURES WHEN MAKING PAYDAY LOANS--REQUIRED SIGNAGE.--

A. A licensee making payday loans shall provide a notice immediately above the consumer's signature on each payday loan agreement in at least twelve-point bold type using the following language:

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

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

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

(4) If you cannot fully repay a payday loan when due, you have a right to enter into a payment plan

requiring payment within a minimum of one hundred thirty days, in relatively equal installments, based upon your scheduled pay periods. If you enter into a payment plan, you will not have to pay an additional administrative fee or interest on the outstanding principal balance or any unpaid administrative fees.

(5) If you have had payment obligations under a payment plan pursuant to Section 58-15-35 NMSA 1978, you may not enter into a new payday loan until at least ten calendar days have passed since you have completed all payment obligations pursuant to all of your outstanding payday loan products, including that payment plan.

B. Each licensee shall display in each licensed place of business in a place where it will be readily legible by consumers, a sign containing the following notice in both English and Spanish: "If you cannot fully repay a payday loan when due, you have a right to enter into a payment plan requiring payment within a minimum of one hundred thirty days, in relatively equal installments, based upon your scheduled pay periods. If you enter into a payment plan, you will not have to pay an additional administrative fee or interest on the outstanding principal balance or any unpaid administrative fees."

Section 21. A new section of the New Mexico Small Loan Act of 1955, Section 58-15-39 NMSA 1978, is enacted to read:

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

A. The division shall:

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

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

B. The division shall annually provide a report to the legislature detailing statistics, including data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state. The division shall compile an annual report by October 1 of each year containing, at a minimum, data regarding all payday loan products entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding year, including:

(1) the total number and dollar amount of payday loan products entered into in the calendar year ending December 31 of the previous year;

(2) the total number and dollar amount of payday loan products outstanding as of December 31 of the previous year;

(3) the effective annualized percentage rate and the average number of days of a payday loan during the calendar year ending December 31 of the previous year;

(4) the number of payday loan products entered into in the amount of one hundred dollars (\$100) or less, the number of payday loan products entered into in the amount of one hundred one dollars (\$101) to five hundred dollars (\$500), the number of payday loan products entered into in the amount of five hundred one dollars (\$501) to one thousand dollars (\$1,000), the number of payday loan products entered into in the amount of one thousand one dollars (\$1,001) to one thousand five hundred dollars (\$1,500), the number of payday loan products in the amount of greater than one thousand five hundred dollars (\$1,500) and the percentage of total payday loan products entered into in each of those ranges;

(5) an estimate of the total dollar amount of fees collected for payday loan products;

(6) the total number of payday loan products entered into and the total dollar amount of the net charge-offs or write-offs and of the net recoveries of licensees;

(7) the minimum, maximum and average dollar amounts of payday loan products entered into in the calendar year ending December 31 of the previous year;

(8) the average payday loan product amount,

average number of transactions and average aggregate payday loan product amount entered into per consumer each year;

(9) the average number of days a consumer is engaged in a payday loan product each year;

(10) an estimate of the average total fees paid by a payday loan product consumer;

(11) the number of consumers who are eligible for payment plans and the number of consumers who enter into payment plans pursuant to Section 58-15-35 NMSA 1978; and

(12) the number of consumers who are subject to the restrictions of the waiting period pursuant to Section 58-17-36 NMSA 1978."

Section 22. REPEAL.--Section 58-15-15 NMSA 1978 (being Laws 1959, Chapter 201, Section 1, as amended) is repealed.

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

Section 24. APPLICABILITY.--The provisions of Sections 14 through 21 of this act shall not apply to payday loans entered into before November 1, 2007 or to loans other than payday loans.

Section 25. EFFECTIVE DATE.--The effective date of the provisions of this act is November 1, 2007.