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HOUSE BILL 647

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

**RELATING TO FINANCIAL TRANSACTIONS; ENACTING THE DEFERRED
DEPOSIT LOAN ACT; REGULATING THE TERMS OF DEFERRED DEPOSIT
LOANS; PROVIDING FOR LICENSING OF PERSONS PROVIDING DEFERRED
DEPOSIT LOANS.**

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

**Section 1. SHORT TITLE.--This act may be cited as the
"Deferred Deposit Loan Act".**

**Section 2. DEFINITIONS.--As used in the Deferred Deposit
Loan Act:**

- A. "branch" means an office or location operated by
a licensee to provide loans;**
- B. "consumer" means an individual to whom credit is
granted in a loan;**
- C. "director" means the director of the financial**

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1 institutions division of the regulation and licensing
2 department or a person in the division acting under his
3 lawfully delegated authority;

4 D. "division" means the financial institutions
5 division of the regulation and licensing department;

6 E. "engage in business" means:

7 (1) advertising to or any other solicitation
8 of a resident of this state that offers deferred deposit loans
9 and that occurs within this state; or

10 (2) providing three or more loans within a
11 calendar year to residents of this state;

12 F. "instrument" or "check" means a personal check or
13 draft, unless otherwise stated, drawn upon a bank and payable
14 on demand, signed by the maker or drawer, containing an
15 unconditional promise to pay a sum certain in money to the
16 order of the payee;

17 G. "lender" means any person who offers, originates
18 or makes a loan; arranges a loan for a third party; assists a
19 third party in the origination of a loan; or acts as an agent
20 for a third party, regardless of whether the third party is
21 exempt pursuant to the provisions of the Deferred Deposit Loan
22 Act or whether approval, acceptance or ratification by the
23 third party is necessary to create a legal obligation for the
24 third party;

25 H. "licensee" means a lender licensed by the

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1 director pursuant to provisions of the Deferred Deposit Loan
2 Act to engage in the business of providing loans; and

3 I. "deferred deposit loan" includes any advance of
4 money or arrangement or extension of credit whereby the lender,
5 for a fee, finance charge or any other consideration, does the
6 following:

7 (1) accepts a dated instrument from a consumer
8 or any authorization signed by the consumer to transfer or
9 withdraw funds from an account;

10 (2) agrees to hold the instrument for a period
11 of time prior to the negotiation or deposit of the instrument;

12 (3) pays to the consumer, credits to the
13 consumer's account or pays to another person on the consumer's
14 behalf the amount of the instrument actually paid or to be paid
15 pursuant to the Deferred Deposit Loan Act; and

16 (4) an overdraft product or service offered by
17 a financial institution shall not be considered a deferred
18 deposit loan.

19 Section 3. EXEMPTIONS. -- The Deferred Deposit Loan Act
20 does not apply to the activities of federal, state and local
21 governments; a retail seller selling tangible consumer goods,
22 including consumables; a retail buyer that cashes checks or
23 issues money orders as a service to its consumers, which
24 service is incidental to its main purpose or business; or a
25 federally chartered or state-chartered bank, savings and loan

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1 association, credit union or trust company. The Deferred
2 Deposit Loan Act does not, however, exempt individuals that
3 originate, broker or service deferred deposit loans for third
4 parties, or by participation in or pools in deferred deposit
5 loans for third parties. A product offered by a federally
6 insured depository institution that provides overdraft
7 protection to depositors shall not be considered a deferred
8 deposit loan.

9 Section 4. LICENSING. --

10 A. Unless exempt pursuant to Section 3 of the
11 Deferred Deposit Loan Act, a person shall not engage in or
12 offer to engage in the business of providing deferred deposit
13 loans unless the person has been issued a license by the
14 director. The director shall not issue or renew a license
15 until an applicant meets all the requirements for licensing and
16 licensee conduct required pursuant to the Deferred Deposit Loan
17 Act. A license shall:

18 (1) if the licensee is an individual, state
19 the address at which the business is to be conducted and the
20 name of the licensee; if the licensee is a corporation, state
21 the name, date and place of incorporation; and if the licensee
22 is a partnership, trust or association or other legal entity,
23 state the names of all the partners and all the members and
24 beneficiaries thereof and the trade name under which the
25 licensee desires to conduct such business;

1 (2) be kept conspicuously posted in the
2 licensed place of business and shall not be transferable or
3 assignable;

4 (3) remain in full force until June 30 next
5 following its date of issue, unless sooner surrendered, revoked
6 or suspended as provided in the Deferred Deposit Loan Act, but
7 shall terminate on June 30 following its issue unless renewed;
8 and

9 (4) entitle the person whose name appears on
10 the face of the license to enjoy and exercise the revocable
11 privileges and immunities provided for in the Deferred Deposit
12 Loan Act.

13 B. Application for a license and any annual license
14 renewal shall be in writing under oath and in the form
15 prescribed by the director, and shall contain at least the
16 following:

17 (1) the name and address of the applicant;

18 (2) the name of the business;

19 (3) the exact location where the business is
20 to be conducted; and

21 (4) identification of all parties in interest
22 and the names and addresses of all the partners, officers,
23 directors, trustees and beneficiaries of any trust and of such
24 principal owners and members as will provide the basis for an
25 investigation and findings necessary.

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1 C. The application shall also include a statement
2 accepting the license, if granted, as a privilege to be enjoyed
3 and exercised only under the terms and conditions of the
4 Deferred Deposit Loan Act and under all lawful regulations
5 promulgated by the director under that act.

6 D. The applicant shall pay to the director at the
7 time of making application an original application fee of one
8 thousand dollars (\$1,000).

9 E. The application shall be accompanied by, and the
10 licensee shall at all times maintain on file with the director,
11 a written power of attorney appointing some person, a resident
12 of this state, as the licensee's agent for service of all
13 judicial or other process or legal notice and notices provided
14 for by the Deferred Deposit Loan Act, unless the licensee has
15 appointed an agent for service of process under another statute
16 of this state. In case of noncompliance with this subsection,
17 the service, including service of all notices provided for in
18 the Deferred Deposit Loan Act, may be made on an employee of
19 the registered office or place of business of the licensee, and
20 the director may by order suspend the license pending
21 compliance with this section.

22 F. Upon the filing of an application for an
23 original license or the renewal of a licence, the director
24 shall investigate the facts concerning the application.

25 G. At the time of application, the applicant shall

1 furnish a twenty-five thousand dollar (\$25,000) surety bond per
2 location, not to exceed two hundred fifty thousand dollars
3 (\$250,000), issued by a bonding company or insurance company
4 authorized in this state and in a form satisfactory to the
5 director, to secure the performance of the obligations of the
6 applicant with respect to the receipt of money in connection
7 with the cashing of checks.

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

14 I. Failure to comply with the director's
15 requirement for supplemental information or the willful
16 furnishing of false information is sufficient ground for denial
17 of a license. False or misleading information willfully
18 furnished to the director prior to the issuance of a license is
19 ground for suspension or revocation of the license.

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

25 K. By accepting a license that is issued or by

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1 continuing to operate any licensed branch under the Deferred
2 Deposit Loan Act, the licensee shall be deemed to have
3 consented to be bound by the lawful provisions of the Deferred
4 Deposit Loan Act and all lawful rules of the director
5 promulgated or issued pursuant to any authorization granted in
6 that act.

7 L. The director shall enter an order granting the
8 application, file his findings and, upon payment of the
9 original license fee of seven hundred fifty dollars (\$750), in
10 addition to five hundred dollars (\$500) for each branch
11 license, issue and deliver a license and branch license or
12 licenses, if applicable, to the applicant if the director finds
13 that:

14 (1) the financial responsibility, character
15 and general fitness of the applicant for an original license
16 and of the individual members and beneficiaries thereof, if the
17 applicant is a partnership, association or trust, and of the
18 officers and directors thereof, if the applicant is a
19 corporation, are such as to command the confidence of the
20 public and to warrant belief that the business will be operated
21 lawfully, honestly and fairly within the declared purposes and
22 spirit of the Deferred Deposit Loan Act;

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

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1 conducted; and

2 (3) the applicant has available for operation
3 of the business at the specified location cash or its
4 equivalent, convertible securities or receivables of thirty
5 thousand dollars (\$30,000) or any combination thereof.

6 M If the director does not make the findings
7 enumerated in Subsection L of this section, he shall enter an
8 order denying the license, notify the applicant of the denial
9 and retain the application fee. Within thirty days after the
10 entry of the order, he shall prepare written findings and
11 deliver a copy to the applicant.

12 N. Written application for renewal licenses shall
13 be filed on or before March 31 of each year, and upon receipt
14 of an application the director shall investigate the facts and
15 review files of examinations of the applicant made by the
16 division and of complaints filed by borrowers, if any.

17 Thereafter, the director shall deliver a renewal license upon
18 payment of the renewal license fee of seven hundred fifty
19 dollars (\$750) in addition to five hundred dollars (\$500) for
20 each branch applying to receive a renewal license, if the
21 director finds that:

22 (1) no valid complaints reflecting a pattern
23 or practice of willful conduct of violations or abuses of the
24 Deferred Deposit Loan Act or of the rules of the director
25 promulgated pursuant to that act have been filed by borrowers;

. 143474. 1

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1 (2) examinations of the affairs of the
2 applicant indicate that the business has been conducted and
3 operated lawfully within the declared purposes and spirit of
4 the Deferred Deposit Loan Act; and

5 (3) the financial responsibility, experience
6 and general fitness and character of the applicant command the
7 confidence of the public and warrant the belief that the
8 business will continue to be operated lawfully within the
9 purposes and spirit of the Deferred Deposit Loan Act.

10 0. If the findings enumerated in Paragraphs (1),
11 (2) and (3) of Subsection N of this section are not made, the
12 director may grant a temporary extension of the license not
13 exceeding sixty days pending a hearing. If the extension is
14 granted, the director shall:

15 (1) enter an order fixing a date for hearing
16 upon the application;

17 (2) notify the licensee, specifying the
18 particular complaints, violations or abuses or other reasons
19 for his contemplated refusal to renew the license; and

20 (3) afford to the applicant an opportunity to
21 be heard.

22 P. At the hearing, the director shall produce
23 evidence to establish the truth of the charges of violation or
24 other grounds specified in the notice, and the applicant shall
25 have the right to produce evidence or other matters of defense.

. 143474. 1

1 If after the hearing the director finds that the complaints of
2 violations or other grounds specified in the notice are not
3 well-founded, he shall issue the renewal license. If the
4 director finds that the complaints of violations or other
5 grounds are well founded, he shall:

6 (1) enter an order denying the renewal
7 application;

8 (2) notify the applicant of the denial;

9 (3) return the renewal license fee tendered
10 with the application; and

11 (4) within thirty days after the entry of the
12 order, prepare written findings and deliver a copy of the
13 findings to the applicant.

14 Q. In the event that an application for annual
15 renewal of the license is delinquent, the licensee shall also
16 pay a delinquency fee of fifty dollars (\$50.00) per location or
17 branch for each day the licensee is delinquent in filing the
18 application for renewal.

19 R. The licensee or a person aggrieved by an act or
20 order of the director pursuant to the Deferred Deposit Loan Act
21 may file an appeal in district court in the first judicial
22 district pursuant to the provisions of Section 39-3-1.1 NMSA
23 1978. The court in its discretion and upon proper showing may
24 order a temporary extension of the license pending disposition
25 of the review proceedings.

1 Section 5. REVOCATION OF LICENSES-- EMERGENCY

2 REVOCATION. --

3 A. The director shall not revoke a license unless
4 the licensee is first served with a written notice that states
5 the grounds for revocation with the time and place of the
6 hearing, which shall be held not less than fifteen days after
7 the mailing of the notice to the licensee by certified mail.

8 B. After the hearing, the director shall revoke any
9 license issued pursuant to the Deferred Deposit Loan Act if he
10 finds that:

11 (1) the licensee has violated a provision of
12 the Deferred Deposit Loan Act or a rule made pursuant to that
13 act either knowingly or without the exercise of due care to
14 prevent the violation; or

15 (2) a fact or condition exists at the time of
16 the proposed revocation that, if it had existed at the time of
17 the original application for the license or any application for
18 renewal of the license, would have justified the director in
19 refusing to issue or renew the license.

20 C. If the director finds that probable cause for
21 revocation of any license exists and that enforcement of the
22 Deferred Deposit Loan Act requires immediate suspension of the
23 license pending investigation, he may, upon three days' written
24 notice by certified mail and after hearing, enter an order
25 suspending the license for a period not exceeding thirty days.

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1 D. When revoking or suspending a license, the
2 director shall enter an order to that effect and notify the
3 licensee in writing of the revocation or suspension by
4 certified mail. The notice shall state the grounds for the
5 revocation or suspension.

6 E. Any licensee may surrender any license by
7 delivering it to the director with written notice of its
8 surrender, but the surrender shall not affect his civil or
9 criminal liability for acts committed prior to the surrender.

10 F. No revocation, suspension or surrender of a
11 license shall impair or affect the obligation of a party to a
12 preexisting lawful contract between the licensee and another.

13 G. The director may reinstate any suspended license
14 or issue a new license to a person whose license or licenses
15 have been revoked if no fact or condition then exists that
16 would have justified the director in refusing originally to
17 issue such license under the Deferred Deposit Loan Act.

18 H. Wherever in the Deferred Deposit Loan Act
19 provision is made for service of any notice by certified mail,
20 such service shall be deemed complete upon deposit of such
21 notice in the post office. For the purpose of this section,
22 mailing of notice addressed to the person designated as the
23 agent for service of process under Section 4 of the Deferred
24 Deposit Loan Act or an employee of the licensed office shall be
25 sufficient.

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1 Section 6. ADMINISTRATION AND OPERATIONS. --

2 A. On application of any person and payment of the
3 cost for the service, the director shall furnish, under his
4 seal and signed by him or his deputy, a certified copy of any
5 license, rule or order.

6 B. At least once each year, the director or his
7 designee shall make an examination of the place of business of
8 each licensee and the loans, transactions, books, papers and
9 records of the licensee insofar as they pertain to the business
10 licensed under the Deferred Deposit Loan Act as he may deem
11 necessary.

12 C. A licensee shall pay to the director an
13 assessment reflecting costs and expenses reasonably incurred in
14 the administration of the Deferred Deposit Loan Act, as
15 estimated by the director based on comparable assessments for
16 banks, savings and loans associations and credit unions not to
17 exceed two thousand five hundred dollars (\$2,500) per location,
18 for the ensuing year and any deficit actually incurred or
19 anticipated in the administration of the program in the year in
20 which the assessment is made. The assessment shall be based on
21 the number of locations of the licensee.

22 D. On or before March 31 in each year in which a
23 licensee holds a license, the director shall notify each
24 licensee by mail of the amount assessed and levied against it
25 and that amount shall be paid within thirty days thereafter.

. 143474. 1

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1 If payment is not made within thirty days, the director may
2 assess and collect a penalty, in addition to the assessment, of
3 one percent of the assessment for each month or part of a month
4 that the payment is delayed or withheld.

5 E. If a licensee fails to pay the assessment on or
6 before June 30 following the date upon which payment is due,
7 the director may consider this alone sufficient grounds to
8 revoke the license.

9 Section 7. INFORMATION REQUIRED AND ANNUAL REPORTS--
10 PROHIBITED ACTS. --

11 A. False or misleading information willfully
12 furnished to the director by a licensee in any annual report or
13 pursuant to any notice or requirement of the director is
14 sufficient grounds for suspension and revocation of a license
15 in accordance with the procedures for suspension or revocation
16 of a license in the Deferred Deposit Loan Act.

17 B. A licensee shall not transact the business or
18 make any loan provided for by the Deferred Deposit Loan Act
19 under any other name or at any other place of business than
20 that named in the license except pursuant to a currently
21 effective written order of the director authorizing the other
22 name or place of business.

23 C. A licensee shall keep and use books, accounts
24 and records that will enable the director to determine if the
25 licensee is complying with the provisions of the Deferred

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1 Deposit Loan Act and with the rules promulgated by the
2 director. A licensee shall maintain any other records
3 required by the director. The director or a designee of the
4 director may examine such records at any time. All records
5 shall be kept for two years following the last entry on a
6 deferred deposit loan and shall be maintained according to
7 generally accepted accounting procedures, so that an examiner
8 may review the record keeping and reconcile each deferred
9 deposit loan with documentation maintained in the consumer's
10 loan file records.

11 D. The director shall maintain a toll-free
12 telephone number for consumers to make complaints and express
13 concerns regarding the product or a specific licensee.

14 E. On or before March 31 of each year beginning in
15 2005, a licensee shall file an annual report with the director
16 for the preceding twelve-month period on forms prescribed by
17 the director. These reports shall include the following:

- 18 (1) the licensee's resources, assets and
19 liabilities at the beginning and end of the period;
20 (2) the income, expense, gain, loss and a
21 reconciliation of surplus or net worth with the balance sheets,
22 and the ratios of the profits to the assets reported, provided
23 the director shall ensure that this information shall be
24 treated as proprietary information;
25 (3) the total number and dollar amount of

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1 deferred deposit loans made by the licensee;

2 (4) the minimum, maximum and average amount of
3 loans;

4 (5) the average annual percentage rate of
5 loans;

6 (6) the average number of days of loans;

7 (7) the total number and dollar amount of
8 returned checks;

9 (8) the total number and dollar amount of
10 checks recovered;

11 (9) the total number and dollar amount of
12 loans charged off; and

13 (10) information as required by the director
14 about other business conducted:

15 (a) on the same premises; and

16 (b) by a licensee or an affiliation with
17 another licensee under the Deferred Deposit Loan Act, or any
18 other situation that exists in which allocations of expense are
19 necessary.

20 F. The director shall prepare an annual
21 consolidated report and make the report available to interested
22 parties and to the general public.

23 G. The director may:

24 (1) require that schedules of charges,
25 interest or fees and other information about loans be stated

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1 fully and clearly and in the manner that the director deems
2 necessary to give adequate information to consumers;

3 (2) require that each licensee post complete,
4 detailed and unambiguous schedules of charges, interest or fees
5 in a form to be determined by the director in a clear,
6 conspicuous and legible manner, and in a conspicuous location
7 in the unobstructed view of the public within the licensee's
8 location;

9 (3) require that schedules of charges,
10 interest or fees and notice information be approved and
11 submitted for filing with the director prior to the date of
12 commencement of business at each location;

13 (4) require each licensee to maintain a file
14 of all advertising material for a specific period, to be made
15 available to the director upon request; or

16 (5) upon written notice to the licensee,
17 prohibit the use of advertising material that is false,
18 misleading or deceptive.

19 Section 8. CONDITIONS OF LOANS. --

20 A. The following notices shall be clearly and
21 conspicuously posted in the unobstructed view of the public by
22 a licensee in each location of a business providing loans:

23 (1) a notice that the licensee cannot use the
24 criminal process against a consumer to collect any loan;

25 (2) the schedule of all charges, interest and

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1 fees to be charged on loans, with an example of all charges,
2 interest and fees that would be charged on at least a one
3 hundred dollar (\$100) and a two hundred dollar (\$200) loan,
4 payable in fourteen days and sixty days respectively, and
5 giving the corresponding annual percentage rate; and

6 (3) a notice that any consumer entering into a
7 deferred deposit loan has the right of rescission with no
8 charge if the amount borrowed is returned no later than
9 5:00 p.m. on the first day of business conducted by the
10 licensee following the execution of the deferred deposit loan.

11 B. Before entering into a deferred deposit loan, a
12 licensee shall:

13 (1) deliver to the consumer a pamphlet, in a
14 form to be approved by the director that is written and
15 available in English and Spanish that, explains in simple
16 language all of the consumer's rights and responsibilities in a
17 loan transaction, that includes a toll-free telephone number to
18 the director for consumer concerns or complaints and that
19 informs the consumer that the director can provide information
20 about whether a lender is licensed, whether complaints have
21 been filed with the division and how any complaints were
22 resolved;

23 (2) distribute a plainly worded notice in
24 English and Spanish that shall include the following
25 disclosures, which shall be more prominently displayed and

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1 segregated from other information contained in the notice:

2 (a) schedule information about all
3 charges and fees associated with making a deferred deposit
4 loan;

5 (b) that if the consumer's check is
6 returned unpaid, the consumer may be charged an additional fee
7 of up to but never more than thirty dollars (\$30.00) per
8 instance of unpaid check, and not more than two times per loan,
9 excluding collection actions that may seek no more than the
10 face amount of the check;

11 (c) that the consumer cannot be
12 prosecuted in a criminal action in conjunction with a loan for
13 a returned check or be threatened with prosecution or legal
14 action;

15 (d) the toll-free telephone number
16 established by Subsection D of Section 7 of the Deferred
17 Deposit Loan Act;

18 (e) that the licensee may not accept or
19 require any collateral in conjunction with a loan;

20 (f) that a loan may not be rolled over,
21 refinanced or renewed on the same unpaid balance more than
22 three times; and

23 (g) that a consumer shall be permitted
24 to make partial payments or prepayments in any amount on the
25 loan at any time prior to maturity, without charge. A receipt

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1 shall be given to the consumer for any partial payments or
2 prepayments made. A new check and loan agreement in writing
3 shall be required for the outstanding balance of the loan for
4 each payment made; however, such action does not constitute a
5 rollover, refinance or renewal.

6 C. An agreement to enter into a deferred deposit
7 loan shall be in writing and shall be provided by the licensee
8 to the consumer. The agreement shall:

9 (1) authorize the licensee to accept and defer
10 presentment of the consumer's check issued for the loan;

11 (2) be signed by the consumer; and

12 (3) include all of the following information,
13 which shall be more prominently displayed and segregated from
14 other terms contained in the agreement:

15 (a) a full disclosure of the total
16 amount of charges, interest or fees charged for the loan,
17 expressed in both United States currency and as an annual
18 percentage rate as required under the federal Truth In Lending
19 Act and regulations promulgated under that act;

20 (b) a clear description of the
21 consumer's payment obligations as required under the federal
22 Truth In Lending Act and regulations promulgated under that
23 act;

24 (c) the name, address and telephone
25 number of the licensee;

. 143474. 1

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1 (d) the consumer's name and address;

2 (e) the due date, the date to which

3 deposit of check has been deferred;

4 (f) the payment plan, rollover,

5 refinance, renewal or extension, if applicable, allowed under

6 this section;

7 (g) an itemization of the amount

8 financed as required under the federal Truth In Lending Act and

9 regulations promulgated under that act;

10 (h) disclosure of any returned check

11 charges, which shall not exceed amounts permitted by the

12 Deferred Deposit Loan Act;

13 (i) that the consumer cannot be

14 prosecuted or threatened with prosecution to collect;

15 (j) that the licensee cannot accept or

16 require collateral in connection with the transaction;

17 (k) that a licensee may not charge or

18 receive from a consumer, directly or indirectly, interest, fees

19 or charges to exceed twenty-five percent of the principal loan

20 amount per loan, excluding any returned check fees or fees for

21 the collection of the loan;

22 (l) that the licensee cannot make a loan

23 contingent on the purchase of another product or service;

24 (m) spaces for signatures of the

25 consumer and the licensee or authorized representative of the

1 licensee and the date of the transaction;

2 (n) that a consumer shall be permitted
3 to make partial payments or prepayments in any amount on the
4 loan at any time prior to maturity, without charge;

5 (o) that a receipt shall be given to the
6 consumer for any partial payments or prepayments made and a new
7 check and loan agreement in writing shall be required for the
8 outstanding balance of the loan for each payment made; however,
9 such action does not constitute a rollover, refinance or
10 renewal;

11 (p) that a loan may not be rolled over
12 refinanced or renewed on the same unpaid balance more than
13 three times;

14 (q) that each rollover, refinance or
15 renewal requires a new and separate check and loan agreement in
16 writing;

17 (r) that the consumer may incur fees for
18 each loan rollover, refinance or renewal;

19 (s) that the consumer has a right to
20 rescind the transaction by returning in cash, or through
21 certified funds, one hundred percent of the amount advanced by
22 a licensee for a deferred deposit agreement no later than 5:00
23 p.m. on the first day of business conducted by the licensee
24 following the execution of the deferred deposit agreement.

25 Unless the provisions of this subsection are followed, a

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1 deferred deposit loan shall not be subject to the consumer's
2 right of rescission unless both the consumer and the licensee
3 agree to the rescission. If a consumer exercises the right of
4 rescission under this subparagraph, no fee for the rescinded
5 transaction shall be charged to the consumer, nor shall any
6 licensee charge or impose on any consumer a fee for exercising
7 the right of rescission pursuant to this subparagraph;

8 (t) any other limitations or
9 requirements set by the lender to enter into a deferred deposit
10 loan; and

11 (u) any other information that the
12 director shall deem necessary by rule.

13 D. The notices required pursuant to Subsection A of
14 this section shall be written and available in English and
15 Spanish.

16 E. The agreement required by Subsection C of this
17 section shall be written in English and Spanish and shall not
18 be vague, unclear or misleading.

19 F. The aggregate amount for any interest, charges
20 or fees received by the licensee for a deferred deposit loan
21 shall not exceed twenty-five percent of the principal loan
22 amount, excluding any returned check fees or fees for
23 collection of the loan.

24 G. A licensee, for a fee not to exceed amounts set
25 forth in Subsection F of this section, may rollover, refinance

. 143474. 1

1 or renew a deferred deposit loan no more than three consecutive
2 times and shall require a new check and loan agreement in
3 writing for each rollover.

4 H. A licensee may allow an extension or payment
5 plan for repayment of an existing deferred deposit loan but may
6 not charge any additional interest, fee or charge of any kind
7 in conjunction with the extension or payment plan.

8 Section 9. PROHIBITED ACTS. --

9 A. No person shall:

10 (1) use or threaten to use criminal process in
11 this or any other state to collect on a deferred deposit loan;

12 (2) accept or use the same check for a
13 subsequent transaction or loan, or permit a consumer to pay off
14 all or a portion of one loan with the proceeds of another loan
15 made between that licensee, regardless of location, and the
16 same individual;

17 (3) accept or require any collateral for a
18 deferred deposit loan;

19 (4) make any deferred deposit loan contingent
20 on the purchase of insurance or any other goods or services;

21 (5) enter into a deferred deposit loan with a
22 consumer lacking the capacity to consent;

23 (6) alter the date or any other information on
24 a check;

25 (7) charge an additional charge or fee for

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1 cashing the lender's business check representing the proceeds
2 of the deferred deposit loan;

3 (8) engage in any unfair, deceptive or
4 fraudulent practices or make any statement that is likely to
5 mislead consumers in offering, making or collecting loans;

6 (9) advertise, display, distribute or
7 broadcast or cause or permit to be advertised, displayed,
8 distributed or broadcast, in any manner whatsoever, any false,
9 misleading or deceptive statement or representation with regard
10 to the charges, terms or conditions for deferred deposit loans;

11 (10) take any check, instrument or form in
12 which blanks are left to be filled in after execution;

13 (11) prevent a consumer from making partial
14 payments or prepayments in any amount on the deferred deposit
15 loan at any time prior to maturity, without charge;

16 (12) offer, arrange, act as an agent for or
17 assist a third party in any way in the making of a deferred
18 deposit loan unless the third party complies with all
19 applicable federal and state laws and regulations, including
20 the provisions of the Deferred Deposit Loan Act;

21 (13) accept deposits or issue certificates of
22 deposit, provided, however, that the foregoing prohibition
23 shall not limit the right of any licensee to borrow money or to
24 issue notes, bonds, debentures or similar evidences of
25 indebtedness labeled as such for the purpose of obtaining

. 143474. 1

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1 capital for use in its business;

2 (14) provide a deferred deposit loan of three
3 hundred dollars (\$300) or more for a period of less than sixty
4 days;

5 (15) charge or receive from a consumer,
6 directly or indirectly, any charges, interest or fees other
7 than those authorized in the Deferred Deposit Loan Act;

8 (16) use a device or agreement that would have
9 the effect of charging or collecting more fees, charges or
10 interest than allowed by entering into a different type of
11 transaction with the consumer that has that effect, except as
12 permitted by the Deferred Deposit Loan Act; or

13 (17) fail to maintain cash or its equivalent,
14 convertible securities or receivables of less than thirty
15 thousand dollars (\$30,000), or any combination thereof, at any
16 single branch.

17 B. No deferred deposit loan shall exceed five
18 hundred dollars (\$500).

19 C. No deferred deposit loan shall be continued in a
20 manner that results in the original principal balance of the
21 loan being rolled over or continued more than three times.

22 D. A consumer who enters into a deferred deposit
23 loan and offers a check to a licensee pursuant to an agreement
24 shall not be subject to any criminal penalty for the failure to
25 comply with the terms of that agreement.

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1 E. Under no circumstances shall a deferred deposit
2 loan agreement include any of the following:

- 3 (1) a hold harmless clause;
- 4 (2) a confession of judgment clause or power
5 of attorney;
- 6 (3) an assignment of or order for payment of
7 wages or other compensation for services;
- 8 (4) an acceleration provision;
- 9 (5) a prohibition on, or penalty for, partial
10 payments or prepayments;
- 11 (6) a waiver of the right to a jury trial, if
12 applicable, in an action brought by or against a consumer;
- 13 (7) a mandatory arbitration clause;
- 14 (8) a provision in which the consumer agrees
15 not to assert a claim or defense arising out of the contract;
- 16 (9) a waiver of a provision of the Deferred
17 Deposit Loan Act; or
- 18 (10) any deceptive or unconscionable
19 provision.

20 F. A licensee shall not enter into an agreement for
21 a deferred deposit loan with a consumer during the period of
22 time that an earlier agreement for a loan for the same consumer
23 is in effect.

24 G. No amount in excess of the amounts authorized by
25 the Deferred Deposit Loan Act shall be directly or indirectly

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1 charged by a licensee pursuant to a deferred deposit loan.

2 H. Not more than one place of business shall be
3 maintained under the same license, but the director may issue
4 additional licenses to the same licensee upon compliance with
5 all the provisions of the Deferred Deposit Loan Act governing
6 issuance of a single license, but when more than one license is
7 issued to a person, each licensed branch of the person shall be
8 operated under the same trade name.

9 I. A change in the place of business of a licensee
10 to a location outside of the municipality for which the license
11 was issued shall not be permitted under the same license. When
12 a licensee wishes to change his place of business within the
13 same municipality, he shall give written notice thereof to the
14 director who shall investigate the facts. The director shall
15 enter an order permitting the change and amend the license
16 accordingly if:

17 (1) allowing the licensee to engage in
18 business in the proposed location is not detrimental to the
19 convenience and advantage of the community; and

20 (2) the proposed location is reasonably
21 accessible to borrowers under existing loan contracts.

22 J. A licensee shall not engage in the business of
23 making loans provided for by the Deferred Deposit Loan Act
24 under any name or at any place of business within this state
25 other than that stated in the license.

. 143474. 1

1 Section 10. **ENFORCEMENT AND REMEDIES.** --

2 A. The remedies provided in this section apply to
3 licenses and to persons to whom the Deferred Deposit Loan Act
4 applies and who are not licensed.

5 B. The violation of a provision of the Deferred
6 Deposit Loan Act or a rule adopted pursuant to that act, except
7 as the result of an accidental or bona fide error in
8 computation, to be determined using a preponderance of the
9 evidence standard, renders the loan void, and the person
10 attempting to enforce the loan shall not have a right to
11 collect, receive or retain principal, interest or other charges
12 whatsoever with respect to the loan.

13 C. A person found to have violated the Deferred
14 Deposit Loan Act shall be liable to the consumer for actual,
15 consequential and punitive damages, plus statutory damages of
16 five thousand dollars (\$5,000) for each violation, plus costs
17 and attorney fees.

18 D. The remedies provided in this section are not
19 the exclusive remedies available to a consumer, and the
20 consumer is not required to exhaust any administrative remedies
21 provided pursuant to the Deferred Deposit Loan Act or any other
22 applicable law before resorting to the remedies provided in
23 this section.

24 Section 11. **FUND CREATED.** -- There is created in the state
25 treasury the "financial literacy and consumer lending education

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1 and training fund" to be administered by the director. All or
2 any portion of civil penalties, costs of investigation and
3 other administrative assessments collected by the division
4 pursuant to enforcement actions under the Deferred Deposit Loan
5 Act shall be credited to the fund. Money deposited in the fund
6 is appropriated to the division and shall be used solely for
7 education and training of New Mexico residents in matters
8 concerning financial literacy and consumer lending issues.
9 Disbursements from the fund shall be made pursuant to vouchers
10 executed by the director on warrants issued by the secretary of
11 finance and administration. All interest earned on the money
12 in the fund shall be credited to the fund. No part of the fund
13 shall revert at the end of a fiscal year.

14 Section 12. RULES.--The director may promulgate rules for
15 administration and enforcement of the Deferred Deposit Loan
16 Act.

17 Section 13. CONSTRUCTION OF ACT.--Meeting the
18 requirements of the Deferred Deposit Loan Act shall be
19 sufficient to meet the requirements of the New Mexico Small
20 Loan Act of 1955; however, meeting the requirements of the New
21 Mexico Small Loan Act of 1955 shall not be sufficient to meet
22 the requirements of the Deferred Deposit Loan Act.

23 Section 14. LIBERAL INTERPRETATION.--The Deferred Deposit
24 Loan Act shall be liberally construed as a consumer protection
25 statute.

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Section 15. SEVERABILITY. --If any part or application of the Deferred Deposit Loan Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 16. APPLICABILITY. --The provisions of the Deferred Deposit Loan Act apply to a person who seeks to evade its applicability by any device, subterfuge or pretense.

Section 17. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2003.

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