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HOUSE BILL 65
47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005
INTRODUCED BY
Patricia A. Lundstrom

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND
TELECOMMUNICATIONS COMMITTEE

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

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

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

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

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

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1 B. "license" [~~shall mean~~] means a permit issued
2 under the authority of the New Mexico Small Loan Act of 1955 to
3 make loans and collect charges therefor strictly in accordance
4 with the provisions of [~~the New Mexico Small Loan Act of 1955~~]
5 that act at a single place of business. It shall constitute
6 and shall be construed as a grant of a [~~revokable~~] revocable
7 privilege only to be held and enjoyed subject to all the
8 conditions, restrictions and limitations contained in the New
9 Mexico Small Loan Act of 1955 and lawful regulations
10 promulgated by the director [~~of the financial institutions~~
11 ~~division~~] and not otherwise;

12 C. "licensee" [~~shall mean~~] means a person to whom
13 one or more licenses have been issued [~~hereunder~~] pursuant to
14 the New Mexico Small Loan Act of 1955 upon [~~their~~] the person's
15 written application electing to become a licensee and
16 consenting to exercise the privilege of a licensee solely in
17 conformity with the New Mexico Small Loan Act of 1955 and the
18 lawful regulations promulgated by the director [~~of the~~
19 ~~financial institutions division hereunder~~] under that act and
20 whose name [~~or names appear~~] appears on the face of the
21 license;

22 D. "director" means the director of the financial
23 institutions division of the [~~commerce and industry~~] regulation
24 and licensing department;

25 E. "department" or "division" means the financial

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1 institutions division of the [~~commerce and industry~~] regulation
2 and licensing department;

3 F. "deferred deposit loan":

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

7 (a) accepts a dated instrument from a
8 consumer or an authorization signed by a consumer to transfer
9 or withdraw funds from an account for the specific purpose of
10 repaying a payday or deferred deposit loan;

11 (b) agrees to hold a dated instrument for
12 a period of time prior to negotiating or depositing the
13 instrument; or

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

18 (2) does not include:

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

22 (b) installment loans made under the New
23 Mexico Bank Installment Loan Act of 1959;

24 G. "installment loan" means a loan repayable in
25 substantially equal installments of principal and interest for

1 a period of no less than one hundred twenty days to maturity;

2 H. "payday loan" means a loan in which the business
3 operator cashes a personal check tendered by the consumer and
4 agrees in writing to defer presentment of that check until the
5 consumer's next payday or another date agreed to by the
6 business operator and the consumer, and includes a "deferred
7 deposit loan"; and

8 I. "simple interest" means a method of calculating
9 interest in which the amount of interest is computed on the
10 outstanding principal balance of a loan for each given period."

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

13 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
14 PENALTY.--

15 A. ~~No~~ A person shall not engage in the business
16 of lending in amounts of two thousand five hundred dollars
17 (\$2,500) or less without first having obtained a license from
18 the director. Nothing contained in this subsection shall
19 restrict or prohibit a licensee under the New Mexico Small Loan
20 Act of 1955 from making loans in any amount under the New
21 Mexico Bank Installment Loan Act of 1959 in accordance with the
22 provisions of Section 58-7-2 NMSA 1978 or the general laws of
23 this state governing money interest and usury.

24 B. Nothing in the New Mexico Small Loan Act of 1955
25 shall apply to a person making individual advances of two

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1 thousand five hundred dollars (\$2,500) or less under a written
2 agreement providing for a total loan or line of credit in
3 excess of two thousand five hundred dollars (\$2,500) [~~for which~~
4 ~~real estate is pledged as collateral~~].

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

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

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

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

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

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

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

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

17 E. [~~Any~~] A person, copartnership, trust and the
18 trustees or beneficiaries thereof or association or corporation
19 and the several members, officers, directors, agents and
20 employees thereof who violate or participate in the violation
21 of [~~any~~] a provision of Subsection A of this section is guilty
22 of a petty misdemeanor and upon conviction shall be sentenced
23 pursuant to the provisions of Subsection B of Section 31-19-1
24 [~~(B)~~] NMSA 1978. [~~Any~~] A contract or loan in the making or
25 collection of which [~~any~~] an act is done that violates

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

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

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

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

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

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

25 D. False or misleading information willfully and

. 152403. 4

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1 intentionally furnished to the director prior to the issuance
2 of any license is [~~ground~~] grounds for suspension or revocation
3 of any license in accordance with the procedures for suspension
4 or revocation of license in the New Mexico Small Loan Act of
5 1955.

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

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

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

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

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

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

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

24 (1) [~~that~~] no valid complaints of violations
25 or abuses of the New Mexico Small Loan Act of 1955 or of the

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1 regulations of the director promulgated under that act have
2 been filed by borrowers;

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

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

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

. 152403. 4

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

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

. 152403. 4

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1 this state or of the declared purposes and spirit of the New
2 Mexico Small Loan Act of 1955 shall be given such consideration
3 and weight as the director determines.

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

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

25 Section 4. Section 58-15-9 NMSA 1978 (being Laws 1955,

. 152403. 4

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1 Chapter 128, Section 9, as amended) is amended to read:

2 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--

3 WITNESSES. --

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

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

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

. 152403. 4

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1 revenue processing division of the taxation and revenue
2 department of:

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

- 8 (3) any person whom the director has
9 reasonable cause to believe is violating any provision of [~~that~~
10 ~~act~~] the New Mexico Small Loan Act of 1955, whether the person
11 claims to be within the authority or beyond the scope of that
12 act.

13 D. For the purposes of this section, [~~any~~] a person
14 who advertises, solicits or holds himself out as willing to
15 make loan transactions in any amount, except persons, financial
16 institutions or lending agencies operating under charters or
17 licenses issued by [~~any~~] a state or federal agency or under any
18 special statute, shall be subject to investigation under the
19 New Mexico Small Loan Act of 1955 and shall be presumed to be
20 engaged in the business described in Subsection A of Section
21 58-15-3 NMSA 1978 as to any loans of two thousand five hundred
22 dollars (\$2,500) or less.

23 [~~E.~~] E. To facilitate the examinations and
24 investigations by the director and fully disclose the
25 operations and methods of operation of each licensed office,

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

11 ~~[D-]~~ F. For the purposes of this section, the
12 director or ~~[his duty]~~ the director's authorized representative
13 shall have and be given free access to the offices and places
14 of business, files, safes and vaults of all licensees and shall
15 have authority to require the attendance of any person and to
16 examine ~~[him]~~ the person under oath relative to such loans or
17 business or to the subject matter of any examination,
18 investigation or hearing as provided in the New Mexico Small
19 Loan Act of 1955. Notices to appear before the director for
20 examination under oath may be served by registered mail. If
21 the party notified to appear is the licensee, any person named
22 on the face of the license being investigated or any agent,
23 employee or manager participating in the licensee's business
24 and ~~[he]~~ the party fails to appear for examination or refuses
25 to answer questions submitted, the director may, forthwith and

. 152403. 4

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1 without further notice to the licensee, suspend the license
2 involved pending compliance with the notice. Upon failure of
3 any other person to appear or to answer questions, the director
4 may apply to and invoke the aid of any district court of New
5 Mexico in compelling the attendance and testimony of any such
6 person and the production of books, records, written
7 instruments and documents relating to the business of the
8 licensee. [~~Any~~] The district court whose aid is so invoked by
9 the director may, in case of contumacy or refusal to obey any
10 order of the district court issued to compel the attendance of
11 the person or the production of books, records, written
12 instruments and documents, punish the person as for contempt of
13 court.

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

24 [~~F.-~~] H. The director has the power to administer
25 oaths, certify official acts and records of [~~his~~] the

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

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

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

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

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

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

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

24 A. Each licensee shall keep and use in ~~his~~
25 business such books, accounts and records in accordance with

. 152403. 4

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

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

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

. 152403. 4

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

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

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

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

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

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

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

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

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

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

7 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
8 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
9 AND INTEREST.--

10 A. Every licensee shall:

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

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

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1 obligated for the loan;

2 (g) the amount of principal;

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

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

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

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

. 152403. 4

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1 return a copy of the note, promise to pay or any assignment if
2 the copy accurately reproduces the complete original.

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

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

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

24 E. ~~[No]~~ A loan made under the provisions of the New
25 Mexico Small Loan Act of 1955 shall not bear interest after

1 ninety days from the date of the death of the borrower in
2 excess of a rate of ten percent a year on the unpaid principal
3 balance of the loan.

4 F. ~~[No]~~ A loan made under the provisions of the New
5 Mexico Small Loan Act of 1955 shall not bear interest after
6 twelve months from the date of maturity of the loan in excess
7 of ten percent a year upon the unpaid principal balance of the
8 loan. "

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

11 "58-15-20. FEES AND COSTS. --

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

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

. 152403. 4

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1 [~~(c) COURTS COSTS Where~~] C. When suit is filed in
2 [any] a court of competent jurisdiction, court costs shall be
3 [~~collectable~~] collectible in accordance with the laws of New
4 Mexico applicable thereto.

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

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

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

20 "58-15-23. VIOLATION OF GENERAL USURY LAWS. -- The [~~willful~~]
21 willful violation by [any] a licensee or by [any] an officer,
22 manager, director, trustee, executive or employee directly
23 engaged in operating a small loan office under the provisions
24 of [~~this Act~~] the New Mexico Small Loan Act of 1955 of any
25 usury statute of this state within [any] an office, room or

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1 place of business in which the making of loans as a licensee is
2 solicited or engaged in or in association or conjunction
3 therewith [~~shall be ground~~] is grounds for suspension and
4 revocation of license in accordance with the applicable
5 procedures [~~applicable thereto as~~] set forth [~~herein~~] in that
6 act. "

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

9 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
10 LOANS. --

11 A. A payday loan shall not exceed one thousand
12 dollars (\$1,000).

13 B. A payday loan agreement shall include a
14 provision granting the consumer the right to rescind the
15 transaction by returning in cash, or through certified funds,
16 one hundred percent of the amount advanced by a licensee for a
17 payday loan no later than 5:00 p.m. on the first day of
18 business conducted by the licensee following the execution of
19 the payday loan agreement. Unless the provisions of this
20 subsection are followed, a payday loan shall not be subject to
21 the consumer's right of rescission unless both the consumer and
22 the licensee agree to the rescission. If a consumer exercises
23 the right of rescission pursuant to this subsection, no fee for
24 the rescinded transaction shall be charged to the consumer, and
25 the licensee shall not charge or impose on the consumer a fee

. 152403. 4

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1 for exercising the right of rescission pursuant to this
2 subsection.

3 C. A consumer shall be permitted to make partial
4 payments in any amount on a payday loan at any time prior to
5 maturity.

6 D. After each payment is made, in full or in part,
7 on a payday loan, the licensee shall give to the person making
8 the payment a signed, dated receipt showing the amount paid,
9 amount credited toward interest and principal and the balance
10 due on the loan.

11 E. A check written by a consumer for a payday loan
12 shall be payable to the order of the licensee.

13 F. The licensee shall provide the consumer, or each
14 consumer if there is more than one, with copies of the payday
15 loan agreement in Spanish or English prior to the consummation
16 of the loan.

17 G. The holder or assignee of a check written by a
18 consumer in connection with a payday loan takes the instrument
19 subject to all claims and defenses of the consumer. A payday
20 loan agreement may not be renewed, refinanced or extended
21 without the mutual written consent of the licensee and the
22 consumer.

23 H. Small loan companies making payday loans shall
24 have available a consumer information brochure in English and
25 Spanish as determined by the director. "

. 152403. 4

underscored material = new
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1 Section 12. A new section of the New Mexico Small Loan
2 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

3 "58-15-33. [NEW MATERIAL] PAYDAY LOANS-- PERMITTED
4 CHARGES. --

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

8 B. A licensee may charge an administrative fee of
9 not more than five dollars (\$5.00) for each new payday loan
10 entered into with a consumer.

11 C. In addition to the administrative fee, the
12 licensee shall only charge simple interest on the amount of
13 loan proceeds delivered to the consumer in a payday loan. The
14 aggregate amount of interest received by the licensee for a
15 payday loan includes all interest received on the loan,
16 including interest received after any renewals, refinance or
17 extensions. The total aggregate amount may not exceed two
18 times the amount of the original loan agreement principal
19 balance. Once the licensee has received in total aggregate
20 interest equal to two times the original loan agreement
21 principal balance, the payday loan shall be terminated and
22 considered paid in full by the consumer. The interest rate
23 charged on the outstanding balance after initial maturity shall
24 not be greater than the interest rate charged during the
25 initial loan term. Interest on loans shall be computed and

. 152403. 4

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1 paid only as a percentage of the unpaid principal balance.

2 D. If there are insufficient funds to pay a check
3 or other type of debit on the date of presentment, a licensee
4 may charge a fee not to exceed fifteen dollars (\$15.00). Only
5 one fee may be collected on a check or debit even if it has
6 been redeposited and returned more than once. A fee charged
7 pursuant to this subsection is a licensee's only charge for a
8 late payment. "

9 Section 13. A new section of the New Mexico Small Loan
10 Act of 1955, Section 58-15-34 NMSA 1978, is enacted to read:

11 "58-15-34. [NEW MATERIAL] PAYDAY LOANS-- PROHIBITED
12 ACTS.--A licensee shall not:

13 A. use or threaten to use a criminal process in
14 this or another state to collect on a payday loan;

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

17 C. use a device or agreement that would have the
18 effect of charging or collecting more fees, charges or interest
19 than allowed by law by entering into a different type of
20 transaction with the consumer that has that effect except as
21 specifically permitted by the New Mexico Small Loan Act of
22 1955;

23 D. engage in unfair, deceptive or fraudulent
24 practices in the making or collecting of a payday loan;

25 E. charge a fee to cash a check representing the

. 152403. 4

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1 proceeds of the payday loan;

2 F. use or attempt to use the check written by the
3 consumer for a payday loan as security for purposes of a state
4 or federal law;

5 G. make more than one payday loan to a consumer at
6 a time;

7 H. accept collateral for a payday loan other than
8 the consumer's check;

9 I. charge interest, fees or charges other than
10 those specifically authorized, including:

11 (1) charges for insurance; or

12 (2) collection costs;

13 J. threaten to take any action against a consumer
14 that is prohibited by the New Mexico Small Loan Act of 1955;

15 K. include any of the following provisions in a
16 payday loan agreement:

17 (1) a hold harmless clause;

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

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

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

25 (5) a waiver of a provision of the New Mexico

. 152403. 4

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1 Small Loan Act of 1955;

2 L. make a payday loan contingent on the purchase of
3 insurance or other goods or services;

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

9 N. take a check, instrument or form in which blanks
10 are left to be filled in after execution of the check,
11 instrument or form;

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

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

18 Q. use provisions in documents associated with a
19 payday loan that are deceptive or misleading. "

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

22 "58-15-35. [NEW MATERIAL] SMALL LOAN COMPANIES MAKING
23 PAYDAY LOANS. -- Effective January 1, 2006, a licensee that
24 issues payday loans shall file an annual report with the
25 division for data collection purposes on or before the last day

. 152403. 4

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1 of March for the preceding calendar year on forms prescribed by
2 the director. The report shall disclose in detail and under
3 appropriate headings all information that the director requests
4 to determine if the licensee is complying with the provisions
5 of the New Mexico Small Loan Act of 1955. "

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

8 "58-15-36. [NEW MATERIAL] REQUIRED DISCLOSURES WHEN
9 MAKING PAYDAY LOANS. --A licensee making payday loans shall
10 provide a notice immediately above the borrower's signature on
11 each payday loan agreement in at least ten-point bold type
12 using the following language:

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

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

17 (3) You will be required to pay additional interest
18 if you renew the payday loan rather than pay the debt in full
19 when due.

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

23 Section 16. REPEAL. --Sections 58-15-15 and 58-15-19 NMSA
24 1978 (being Laws 1959, Chapter 201, Section 1 and Laws 1955,
25 Chapter 128, Section 17, as amended) are repealed.