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HOUSE BILL 92

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Patricia A. Lundstrom

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AND THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
LIMITATION OF FEES AND 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 individuals, copartners,
associations, trusts, corporations and any other legal entity;~~]

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

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

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

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

11 E. "installment loan" means a loan that is to be
12 repaid in a minimum of four successive substantially equal
13 payment amounts to pay off a loan in its entirety with a period
14 of no less than one hundred twenty days to maturity;

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

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

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

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

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

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

25 (a) accepts a dated personal check or

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1 debit authorization for the specific purpose of repaying a
2 payday loan;

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

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

11 (2) does not include:

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

15 (b) installment loans;

16 I. "payday loan product" means a payday loan, a
17 renewed payday loan and a payment plan pursuant to Section
18 58-15-36 NMSA 1978;

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

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

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1 a transaction in which a consumer pays off all or part of an
2 existing payday loan with the proceeds of a payday loan from
3 the same licensee; and

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

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

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

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

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

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1 ~~real estate is pledged as collateral].~~

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

16 D. The provisions of Subsection A of this section
17 apply to ~~any~~:

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

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

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1 foregoing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) [~~that~~] the applicant has available for

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

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

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

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

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

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

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

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

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

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1 and weight as the director determines.

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

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

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

24 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
25 WITNESSES.--

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

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

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

- 25 (1) any licensee;

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

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

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

21 [~~C.~~] E. To facilitate the examinations and
22 investigations by the director and fully disclose the
23 operations and methods of operation of each licensed office,
24 the licensee shall, in each licensed office, keep on file as
25 part of the records of the office all office manuals,

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

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

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

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

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

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

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

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

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

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

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

20 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL
21 INFORMATION.--

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

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

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

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

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1 association or corporation as, in the opinion of the director,
2 may be helpful [~~to him~~] in the discharge of [~~his~~] the
3 director's official duties.

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

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

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

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

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

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

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

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1 ~~period of thirty consecutive days and the rate of charge for~~
2 ~~each day shall be one thirtieth of the monthly rate.]"~~

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

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

8 A. Every licensee shall:

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

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

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1 (g) the amount of principal;

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

5 (i) all other disclosures required
6 pursuant to state and federal law; and

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

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

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

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1 assignment given to the licensee. A licensee may mark and
2 return a copy of the note, promise to pay or any assignment if
3 the copy accurately reproduces the complete original.

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

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

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

25 E. No loan made under the provisions of the New

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1 Mexico Small Loan Act of 1955 shall bear interest after ninety
2 days from the date of the death of the borrower in excess of a
3 rate of ten percent a year on the unpaid principal balance of
4 the loan.

5 F. No loan made under the provisions of the New
6 Mexico Small Loan Act of 1955 shall bear interest after twelve
7 months from the date of maturity of the loan in excess of ten
8 percent a year upon the unpaid principal balance of the 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 provisions of the New
21 Mexico Small Loan Act of 1955, attorney fees shall not be
22 charged or collected except [~~where such~~] when the note or other
23 contract has been [~~turned~~] submitted in good faith to an
24 attorney for collection and after diligent and good faith
25 effort to collect [~~has failed~~] on the part of the licensee has

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1 failed.

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

5 [~~(d) NOTARY FEES PROHIBITED~~] C. 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 D. 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 [wilful]
21 violation by [any] a licensee or by [any] an officer, manager,
22 director, trustee, executive or employee directly engaged in
23 operating a small loan office under the provisions of [this
24 Act] the New Mexico Small Loan Act of 1955 of any usury statute
25 of this state within [any] an office, room or place of business

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

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

8 "58-15-30. PENALTIES--GENERAL.--Any person,
9 copartnership, trust, association or corporation and the
10 several members, beneficiaries, officers, directors, agents and
11 employees thereof who [~~shall~~] violate or participate in the
12 violation of any provision of the [~~sections of this Act shall~~
13 ~~be~~] New Mexico Small Loan Act of 1955 are guilty of a
14 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]
15 punished by a fine of not less than [~~one hundred (\$100.00)~~
16 ~~dollars and not more than three hundred (\$300.00) dollars~~] five
17 hundred dollars (\$500) or more than one thousand dollars
18 (\$1,000) or by imprisonment of not more than [~~ninety (90) days~~]
19 six months or [~~by~~] both [~~such fine and imprisonment~~] in the
20 discretion of the court."

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

23 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
24 LOANS.--

25 A. No licensee shall make a payday loan to a

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1 consumer if the total principal amount of the loan and fees,
2 when combined with the principal amount and fees of all of the
3 consumer's other outstanding payday loan products, exceeds
4 twenty-five percent of the consumer's gross monthly income.

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

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

10 (2) no payday loan or renewed payday loan
11 shall have a stated minimum term less than fourteen days; and

12 (3) there shall be a scheduled pay date for
13 the consumer within the term of the payday loan or renewed
14 payday loan.

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

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1 impose on the consumer a fee for exercising the right of
2 rescission pursuant to this subsection. If this subsection is
3 applicable, any fee collected by a licensee shall be returned
4 in full to the consumer.

5 D. Any payday loan made within seven days of the
6 maturity date of a prior payday loan or renewed payday loan, by
7 the same licensee, shall automatically be treated as either:

8 (1) a renewed payday loan if the payday loan
9 has not been previously renewed; or

10 (2) a payment plan pursuant to Section
11 58-15-36 NMSA 1978 if the payday loan has been renewed.

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

17 F. After each payment is made, in full or in part,
18 on a payday loan product, the licensee shall give to the person
19 making the payment a signed, dated receipt showing the amount
20 paid; the amount credited toward administrative fees and
21 principal; and the balance due on the loan.

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

24 H. Prior to the consummation of a payday loan, the
25 licensee shall provide the consumer, or each consumer if there

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1 is more than one, with copies of the payday loan product
2 agreement in English, Spanish or other language as determined
3 by the director. Consumers shall have the option to decide
4 which language version of the agreement they wish to receive.

5 I. A payday loan product agreement shall not be
6 renewed, refinanced or extended without the written consent of
7 the consumer.

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

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

19 L. A licensee shall collect on payday loan products
20 in default in a professional, fair and lawful manner. A
21 licensee that complies with the requirements and prohibitions
22 set forth in 15 U.S.C. 1692c-1692f of the federal Fair Debt
23 Collection Practices Act shall be deemed to have operated in a
24 professional, fair and lawful manner."

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

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

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

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

8 B. upon the execution of a new payday loan, the
9 licensee may impose an administrative fee of not more than
10 fifteen dollars fifty cents (\$15.50) per one hundred dollars
11 (\$100) of principal, which fee is fully earned and
12 nonrefundable at the time a payday loan agreement is executed
13 and payable in full at the end of the term of the payday loan
14 or upon prepayment of the payday loan unless a payday loan is
15 rescinded pursuant to Subsection C of Section 58-15-32 NMSA
16 1978;

17 C. upon the execution of an agreement to renew a
18 payday loan, the licensee may impose an administrative fee of
19 fifteen dollars fifty cents (\$15.50) per one hundred dollars
20 (\$100) of principal, which fee is fully earned and
21 nonrefundable at the time a renewed payday loan agreement is
22 executed and payable in full at the end of the term of the
23 renewed payday loan or upon prepayment of a renewed payday loan
24 unless a renewed payday loan is rescinded pursuant to
25 Subsection C of Section 58-15-32 NMSA 1978;

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

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

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

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

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

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

24 C. require a consumer to enter into a new payday
25 loan to pay an existing payday loan in whole or in part when

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1 the existing loan can be renewed or is eligible for a payment
2 plan pursuant to Section 58-15-36 NMSA 1978;

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

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

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

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

12 H. require a consumer to provide multiple checks or
13 multiple debt authorizations;

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

18 J. include any of the following provisions in a
19 payday loan product agreement:

20 (1) a hold harmless clause;

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

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

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

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

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

5 (7) a waiver of the right to renew a payday
6 loan or enter into a payment plan pursuant to Section 58-15-36
7 NMSA 1978; or

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

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

12 L. take a check, instrument or form in which blanks
13 are left to be filled in after execution of the check,
14 instrument or form;

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

19 N. knowingly enter into a payday loan product with
20 a consumer who lacks the capacity to consent;

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

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

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

15 P. finance or refinance all or any portion of any
16 fees permitted by Section 58-15-33 NMSA 1978."

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

19 "58-15-35. [NEW MATERIAL] RENEWED PAYDAY LOANS.--A
20 consumer may renew a payday loan one time at the discretion of
21 the licensee, and the term of the renewed payday loan shall
22 include a scheduled pay date for the consumer. To be eligible
23 to renew a payday loan, a consumer must first pay the
24 administrative fee for the payday loan pursuant to Section
25 58-15-33 NMSA 1978."

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

3 "58-15-36. [NEW MATERIAL] PAYDAY LOANS--PAYMENT PLANS.--

4 A. During the term of a payday loan that has been
5 renewed, if the renewed payday loan has not been repaid in
6 full, the licensee must offer the consumer the opportunity to
7 enter into an unsecured payment plan. The consumer may elect,
8 and a licensee shall permit, entry into a payment plan for the
9 unpaid principal balance of the renewed payday loan.

10 B. To be eligible to enter into a payment plan, a
11 consumer must first pay the administrative fee for the renewed
12 payday loan pursuant to Section 58-15-33 NMSA 1978. No fees,
13 charges or interest may be charged for a payment plan.

14 C. A payment plan shall provide for:

15 (1) a minimum of ninety-eight days for the
16 repayment of the unpaid principal balance of a renewed payday
17 loan; and

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

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

22 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--WAITING PERIOD.--

23 A. A licensee shall not make a payday loan to a
24 consumer qualifying pursuant to the provisions of Subsection B
25 of this section until at least seven calendar days have passed

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1 since the consumer completed all payment obligations pursuant
2 to all of the consumer's outstanding payday loan products.

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

5 (1) has had payment obligations under one or
6 more payday loan products for sixty or more consecutive days;
7 or

8 (2) has had payment obligations under one or
9 more payday loan products for ninety or more days in the
10 aggregate."

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

13 "58-15-38. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

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

19 B. No later than November 1, 2007, the director
20 shall certify that one or more consumer reporting service
21 databases are commercially reasonable methods of verification.
22 The list of consumer reporting services that the director has
23 certified as providing commercially reasonable methods of
24 verification shall be posted on the division's web site and
25 shall be mailed to each licensee by first class mail at the

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1 address of record as shown on the division's licensing files.

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

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

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

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

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

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

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1 1955;

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

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

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

14 (7) does not allow the licensee to enter into
15 a payday loan that would be in violation of the New Mexico
16 Small Loan Act of 1955;

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

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

22 (10) is generated by a registered consumer
23 reporting service that is subject to the applicable rules and
24 regulations applied by the federal trade commission under the
25 Fair Credit Reporting Act.

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

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

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

16 H. In determining whether a credit reporting
17 service should be certified as a commercially reasonable method
18 of verification, the director will consider whether such credit
19 reporting service is adequately capitalized, demonstrates the
20 resources and the ability to perform the services required
21 pursuant to this section and has appropriate surety to ensure
22 performance of its obligations pursuant to this section and to
23 reasonably protect claimants in the event that actions or
24 inactions on the part of the credit reporting service results
25 in damages to licensees or consumers."

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

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

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

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

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

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

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

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1 balance.

2 (6) If within the prior twelve months you have had
3 payment obligations under a payday loan, renewed payday loan or
4 payment plan for sixty consecutive days or ninety days in the
5 aggregate, you may not enter into a new payday loan until after
6 seven days have passed since you completed all payment
7 obligations under all of your outstanding payday loans, renewed
8 payday loans or payment plans."."

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

11 "58-15-40. [NEW MATERIAL] DUTIES OF DIVISION.--

12 A. The division shall:

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

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

18 B. The division shall annually provide a report to
19 the legislature detailing statistics, including data adequate
20 to obtain an accurate understanding of the practices,
21 demographics and legal compliance of all licensees licensed in
22 the state. The division shall compile an annual report by
23 October 1 of each year containing, at a minimum, data regarding
24 all payday loan products entered into in the preceding calendar
25 year on an aggregate basis. Annual reports shall be made

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1 available to interested parties and the general public.
2 Consistent with state law, the report should include, at a
3 minimum, nonidentifying consumer data from the preceding year,
4 including:

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

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

11 (3) the average annual percentage rate and the
12 average number of days of a payday loan and a renewed payday
13 loan during the calendar year ending December 31 of the
14 previous year;

15 (4) the number of payday loan products entered
16 into in the amount of one hundred dollars (\$100) or less, the
17 number of payday loan products entered into in the amount of
18 one hundred one dollars (\$101) to five hundred dollars (\$500),
19 the number of payday loan products entered into in the amount
20 of five hundred one dollars (\$501) to one thousand dollars
21 (\$1,000), the number of payday loan products entered into in
22 the amount of one thousand one dollars (\$1,001) to one thousand
23 five hundred dollars (\$1,500), the number of payday loan
24 products in the amount of one thousand five hundred dollars
25 (\$1,500) or greater and the percentage of total payday loan

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1 products entered into in each of those ranges;

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

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

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

10 (8) the average payday loan product amount,
11 average number of transactions and average aggregate payday
12 loan product amount entered into per consumer each year;

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

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

17 (11) the average number of payday loan
18 renewals per consumer;

19 (12) the number of consumers who are eligible
20 for payment plans and the number of consumers who enter into
21 payment plans pursuant to Section 58-17-36 NMSA 1978; and

22 (13) the number of consumers who are subject
23 to the restrictions of the waiting period pursuant to Section
24 58-17-37 NMSA 1978."

25 Section 21. REPEAL.--Section 58-15-15 NMSA 1978 (being

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1 Laws 1959, Chapter 201, Section 1, as amended) is repealed.

2 Section 22. SEVERABILITY.--If any part or application of
3 this act is held invalid, the remainder or its application to
4 other situations or persons shall not be affected.

5 Section 23. APPLICABILITY.--The provisions of Sections 12
6 through 20 of this act shall not apply to payday loans entered
7 into before November 1, 2007.

8 Section 24. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is November 1, 2007.