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SENATE BILL 296

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO LENDING; ENACTING NEW SECTIONS OF THE COLLECTION AGENCY REGULATORY ACT AND THE MOTOR VEHICLE SALES FINANCE ACT; PROVIDING FOR THE DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT TO UTILIZE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO RECEIVE AND PROCESS APPLICATIONS FOR LICENSES; REPEALING A SECTION OF THE COLLECTION AGENCY REGULATORY ACT.

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

SECTION 1. Section 58-19-2 NMSA 1978 (being Laws 1959, Chapter 204, Section 2, as amended) is amended to read:

"58-19-2. DEFINITIONS.--As used in the Motor Vehicle Sales Finance Act:

A. "motor vehicles" means automobiles, recreational vehicles, recreational travel trailers, trailers, motorcycles,

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1 trucks, semi-trailers, truck tractors and buses designed and
2 used primarily to transport persons or property on a public
3 highway, farm machinery and all vehicles new or used, with any
4 power other than muscular power except boat trailers, aircraft
5 or any vehicle that runs only on rails or tracks, but does not
6 include any motor vehicle having a gross vehicle weight of ten
7 thousand pounds or more purchased primarily for business or
8 commercial purposes;

9 B. "retail buyer" or "buyer" means a person who
10 buys a motor vehicle primarily for personal, family or
11 household purposes from a retail seller and who executes a
12 retail installment contract in connection therewith;

13 C. "retail seller" or "seller" means a person who
14 sells a motor vehicle to a retail buyer or subject to a retail
15 installment contract;

16 D. "holder" of a retail installment contract means
17 the retail seller of the motor vehicle under or subject to the
18 contract or, if the contract is purchased by a sales finance
19 company or other assignee, the sales finance company or other
20 assignee;

21 E. "retail installment transaction" means any
22 transaction evidenced by a retail installment contract entered
23 into between a retail buyer and a retail seller wherein the
24 retail buyer buys a motor vehicle from the retail seller at a
25 time price payable in one or more deferred installments. The

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1 cash sale price of the motor vehicle, the amount included for
2 insurance and other benefits if a separate charge is made
3 therefor, official fees and the finance charge together
4 constitute the time price;

5 F. "retail installment contract" or "contract"
6 means an agreement, entered into in this state or made subject
7 to the laws of this state, pursuant to which the title to or a
8 lien upon the motor vehicle that is the subject matter of a
9 retail installment transaction is retained or taken by a retail
10 seller from a retail buyer as security for the buyer's
11 obligation. The term includes a chattel mortgage, a
12 conditional sales contract and a contract for the bailment or
13 leasing of a motor vehicle by which the bailee or lessee
14 contracts to pay as compensation for its use a sum
15 substantially equivalent to or in excess of its value and by
16 which it is agreed that the bailee or lessee is bound to become
17 or has the option of becoming the owner of the motor vehicle
18 upon full compliance with the provisions of the contract;

19 G. "cash sale price" means the price stated in a
20 retail installment contract for which the seller would have
21 sold to the buyer, and the buyer would have bought from the
22 seller, the motor vehicle that is the subject matter of the
23 retail installment contract, if the sale had been a sale for
24 cash instead of a retail installment transaction. Cash sale
25 price may include any taxes, registration fee, certificate of

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1 title fee, license and other fees and charges for accessories
2 and their installation and for delivery, servicing, repairing
3 or improving the motor vehicle;

4 H. "official fees" means the fee prescribed by law
5 for filing, recording or otherwise perfecting and releasing or
6 satisfying a retained title or a lien created by a retail
7 installment contract;

8 I. "finance charge" means the amount agreed upon
9 between the buyer and the seller to be added to the aggregate
10 of the cash sale price, the amount, if any, included for
11 insurance and other benefits and official fees, in determining
12 the time price;

13 J. "person" means an individual, partnership,
14 corporation, association and any other group however organized;

15 K. "sales finance company" means a person engaged
16 in whole or in part in the business of purchasing retail
17 installment contracts from one or more retail sellers. The
18 term includes but is not limited to a bank, trust company,
19 private banker, small loan licensee, industrial bank or
20 investment company, if so engaged; the term also includes a
21 retail seller engaged in whole or in part in the business of
22 creating and holding retail installment contracts that exceed a
23 total aggregate outstanding indebtedness of one hundred
24 thousand dollars (\$100,000);

25 L. "director" means the director of the financial

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1 institutions division of the regulation and licensing
2 department or a duly authorized agent designated by the
3 director; [~~and~~]

4 M. "year" means a period of three hundred sixty-
5 five days; "month" means one-twelfth of a year; and "day" means
6 one three-hundred-sixty-fifth of a year; and

7 N. "nationwide mortgage licensing system and
8 registry" means a licensing system developed and maintained by
9 the conference of state bank supervisors and the American
10 association of residential mortgage regulators pursuant to the
11 federal Secure and Fair Enforcement for Mortgage Licensing Act
12 of 2008 to manage mortgage licenses and other financial
13 services licenses, or a successor registry."

14 SECTION 2. Section 58-19-3 NMSA 1978 (being Laws 1959,
15 Chapter 204, Section 3, as amended) is amended to read:

16 "58-19-3. LICENSING OF SALES FINANCE COMPANIES REQUIRED--
17 DENIAL OF LICENSE--PROVISION FOR OUT-OF-STATE LICENSES.--

18 A. [~~No~~] A person shall not engage in the business
19 of a sales finance company in this state without a license
20 [~~therefor~~] as provided in the Motor Vehicle Sales Finance Act;
21 provided, however, that a state or national bank authorized to
22 do business in this state shall not be required to obtain a
23 license under that act but shall comply with all of its other
24 provisions.

25 B. The application for a license shall be in

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1 writing, under oath and in the form prescribed by the director.
2 The application shall contain the name of the applicant; date
3 of incorporation, if incorporated; the address where the
4 business is or is to be conducted and similar information as to
5 any branch office of the applicant; the name and resident
6 address of the owner or partners or, if a corporation or
7 association, of the directors, trustees and principal officers;
8 and such other pertinent information as the director may
9 require.

10 C. The license fee for each calendar year or part
11 thereof shall be four hundred dollars (\$400) for the principal
12 place of business of the licensee and four hundred dollars
13 (\$400) for each branch of the licensee maintained in this
14 state. For a license maintained out of this state, the license
15 fee shall be five hundred dollars (\$500) for each office. All
16 fees shall be deposited with the state treasurer for deposit
17 and transfer as provided in Section 9-16-14 NMSA 1978.

18 D. Each license shall specify the location of the
19 office or branch [~~and the license shall be conspicuously~~
20 ~~displayed in the office or branch~~]. In case a location is
21 changed, the director shall endorse the change of location on
22 the license upon payment to the director by the licensee of a
23 duplicate license fee of twenty-five dollars (\$25.00).

24 E. Applicants for a license issued pursuant to the
25 Motor Vehicle Sales Finance Act shall apply using a form

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1 prescribed by the director. Information required on the form
2 shall be set forth by rule, instruction or procedure of the
3 director, and may be changed or updated as necessary by the
4 director in order to carry out the purposes of the Motor
5 Vehicle Sales Finance Act.

6 F. The director may establish relationships or
7 contracts with the nationwide mortgage licensing system and
8 registry or other entities designated by the nationwide
9 mortgage licensing system and registry to collect and maintain
10 records and process transaction fees or other fees related to
11 licenses issued pursuant to the Motor Vehicle Sales Finance
12 Act.

13 G. In an application for a license issued pursuant
14 to the Motor Vehicle Sales Finance Act, the applicant shall, at
15 a minimum, furnish to the nationwide mortgage licensing system
16 and registry information concerning the applicant's identity,
17 including:

18 (1) the applicant's personal history and
19 experience in a form prescribed by the nationwide mortgage
20 licensing system and registry; and

21 (2) authorization for the nationwide mortgage
22 licensing system and registry and the director to obtain
23 information related to any administrative, civil or criminal
24 findings by any governmental jurisdiction regarding the
25 applicant.

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1 H. The director may use the nationwide mortgage
2 licensing system and registry as a channeling agent for
3 requesting and distributing information provided pursuant to
4 Paragraphs (1) and (2) of Subsection G of this section to and
5 from any source as deemed appropriate by the director.

6 [~~E.~~] I. Upon the filing of an application and the
7 payment of the fee, the director shall issue to the applicant a
8 license to engage in the business of a sales finance company
9 under and in accordance with the provisions of the Motor
10 Vehicle Sales Finance Act for a period [~~which~~] that shall
11 expire on December 31 next following the date of its issuance.
12 The license shall not be transferable or assignable. [~~No~~] A
13 licensee shall not transact any business provided for by the
14 Motor Vehicle Sales Finance Act under any other name.

15 [~~F.~~] J. The director shall deny a license under the
16 Motor Vehicle Sales Finance Act if [~~he~~] the director finds
17 that:

- 18 (1) the applicant has failed to pay the
19 required fee;
- 20 (2) the applicant has willfully furnished the
21 director with false or misleading information in the
22 application; or
- 23 (3) there is reason to believe that the
24 financial responsibility, character and general fitness of the
25 applicant for an original license and of the individual members

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1 and beneficiaries thereof, if the applicant is a copartnership,
2 association or trust, and of the officers and directors
3 thereof, if the applicant is a corporation, are such as to
4 warrant belief that the business will not be operated lawfully,
5 honestly, fairly and efficiently within the declared purposes
6 and spirit of that act.

7 If an original license is denied by the director, [~~he~~] the
8 director shall immediately notify the applicant in writing
9 setting forth the reasons for denial.

10 [~~G.~~] K. The director may issue a motor vehicle
11 sales finance company license to an applicant who applies for
12 such a license to be located outside the state, if the
13 applicant:

14 (1) files an application on a form prescribed
15 by the director enclosing a license fee of five hundred dollars
16 (\$500);

17 (2) maintains, at all times, an agent for
18 service of process, who shall be a resident of New Mexico; and

19 (3) complies with all sections of the Motor
20 Vehicle Sales Finance Act and any rules and regulations that
21 may be promulgated by the director and complies with all
22 statutes relating to money, interest and usury [~~which~~] that are
23 applicable to motor vehicle sales finance companies.

24 A motor vehicle sales finance company license may be
25 granted to an applicant anywhere in the United States. Local

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1 situs is not a requirement for the granting of a license to an
2 out-of-state applicant."

3 SECTION 3. Section 61-18A-1 NMSA 1978 (being Laws 1987,
4 Chapter 252, Section 1) is amended to read:

5 "61-18A-1. SHORT TITLE.--~~[This act]~~ Chapter 61, Article
6 18A NMSA 1978 may be cited as the "Collection Agency Regulatory
7 Act"."

8 SECTION 4. Section 61-18A-2 NMSA 1978 (being Laws 1987,
9 Chapter 252, Section 2) is amended to read:

10 "61-18A-2. DEFINITIONS.--As used in the Collection Agency
11 Regulatory Act:

12 A. "division" means the financial institutions
13 division of the regulation and licensing department;

14 B. "director" means the director of the ~~[financial~~
15 ~~institutions]~~ division ~~[of the regulation and licensing~~
16 ~~department]~~ or a duly authorized agent designated by the
17 director;

18 C. "collection agency" means ~~[any]~~ a person
19 engaging in business for the purpose of collecting or
20 attempting to collect, directly or indirectly, debts owed or
21 due or asserted to be owed or due another, where such person is
22 so engaged by two or more creditors. The term also includes
23 ~~[any]~~ a creditor who, in the process of collecting ~~[his]~~ the
24 creditor's own debts, uses any name other than ~~[his]~~ the
25 creditor's own ~~[which]~~ that would indicate that a third person

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1 is collecting or attempting to collect [~~such~~] the debts. The
2 term does not include:

3 (1) [~~any~~] an officer or employee of a creditor
4 while, in the name of the creditor, collecting debts for such
5 creditor;

6 (2) [~~any~~] a person while collecting debts for
7 another person, both of whom are related by common ownership or
8 affiliated by corporate control, if the person collects debts
9 only for persons to whom it is so related or affiliated and if
10 the principal business of such person is not the collection of
11 debts;

12 (3) [~~any~~] an officer or employee of the United
13 States, [~~any~~] a state or [~~any~~] a political subdivision thereof
14 to the extent that collecting or attempting to collect [~~any~~] a
15 debt is in the performance of [~~his~~] official duties;

16 (4) [~~any~~] a person while serving or attempting
17 to serve legal process on any other person in connection with
18 the judicial enforcement of [~~any~~] a debt;

19 (5) [~~any~~] a nonprofit organization [~~which~~]
20 that, at the request of debtors, performs bona fide consumer
21 credit counseling and assists debtors in the liquidation of
22 their debts by receiving payments from such debtors and
23 distributing such amounts to creditors;

24 (6) [~~any~~] an attorney-at-law collecting a debt
25 as an attorney on behalf of and in the name of a client; [~~and~~]

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1 or

2 (7) [~~any~~] a person collecting or attempting to
3 collect [~~any~~] a debt owed or due or asserted to be owed or due
4 to another to the extent such activity:

5 (a) is incidental to a bona fide
6 fiduciary obligation or a bona fide escrow arrangement;

7 (b) concerns a debt [~~which~~] that was
8 originated by such person;

9 (c) concerns a debt [~~which~~] that was not
10 in default at the time it was obtained by such person; or

11 (d) concerns a debt obtained by such
12 person as a secured party in a commercial credit transaction
13 involving the creditor;

14 D. "communication" means the conveying of
15 information regarding a debt directly or indirectly to [~~any~~] a
16 person through any medium;

17 E. "creditor" means [~~any~~] a person who offers or
18 extends credit creating a debt or to whom a debt is owed, but
19 [~~such~~] the term does not include [~~any~~] a person to the extent
20 that [~~he~~] the person receives an assignment or transfer of a
21 debt in default solely for the purpose of facilitating
22 collection of such debt for another;

23 F. "debt" means [~~any~~] an obligation or alleged
24 obligation of a debtor to pay money arising out of a
25 transaction in which the money, property, insurance or services

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1 ~~[which]~~ that are the subject of the transaction are primarily
2 for personal, family or household purposes, whether or not such
3 obligation has been reduced to judgment;

4 G. "debt collector" means a collection agency, a
5 repossessor, a manager, a solicitor and ~~[any]~~ an attorney-at-
6 law collecting a debt as an attorney on behalf of and in the
7 name of a client;

8 H. "debtor" means ~~[any]~~ a natural person obligated
9 or allegedly obligated to pay ~~[any]~~ a debt;

10 I. "location information" means a debtor's place of
11 abode and ~~[his]~~ the telephone number at such place or ~~[his]~~ the
12 debtor's place of employment;

13 J. "manager" means a natural person who qualifies
14 under the Collection Agency Regulatory Act to be in full-time
15 charge of a licensed collection agency and to whom a manager's
16 license has been issued by the director;

17 K. "nationwide mortgage licensing system and
18 registry" means a licensing system developed and maintained by
19 the conference of state bank supervisors and the American
20 association of residential mortgage regulators pursuant to the
21 federal Secure and Fair Enforcement for Mortgage Licensing Act
22 of 2008 to manage mortgage licenses and other financial
23 services licenses, or a successor registry;

24 ~~[K-]~~ L. "person" means an individual, corporation,
25 partnership, association, joint-stock company, trust where the

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1 interests of the beneficiaries are evidenced by a security,
2 unincorporated organization, government or political
3 subdivision of a government;

4 ~~[H.]~~ M. "repossessor" means a person engaged solely
5 in the business of repossessing personal property for others
6 for a fee. The term does not include a duly licensed
7 collection agency; and

8 ~~[M.]~~ N. "solicitor" means a natural person who,
9 through lawful means, communicates with debtors or solicits the
10 payment of debts for a collection agency licensee by the use of
11 telephone, personal contact, letters or other methods of
12 collection conducted from and within the licensee's office."

13 SECTION 5. Section 61-18A-3 NMSA 1978 (being Laws 1987,
14 Chapter 252, Section 3) is amended to read:

15 "61-18A-3. ADMINISTRATION AND ENFORCEMENT.--

16 A. The administration and enforcement of the
17 Collection Agency Regulatory Act shall be vested in the office
18 of the director as ~~[hereinafter]~~ set forth in that act.

19 ~~[A.]~~ B. The director shall investigate violations
20 or alleged ~~[violation]~~ violations of the Collection Agency
21 Regulatory Act by persons engaged in business as collection
22 agencies or repossessors who fail to obtain licenses.

23 ~~[B.]~~ C. The director may examine the business and
24 the books, accounts, records and files used therein by a
25 collection agency licensee, and for such purpose, the director

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1 shall have free access to the offices, places of business,
2 books, accounts, records, papers, files, safes and vaults of
3 all licensees and other persons engaging or attempting to
4 engage in business as a collection agency.

5 ~~[G.]~~ D. Any examination reports or other documents
6 or information developed in administration of this section are
7 confidential and not subject to subpoena.

8 E. Applicants for a license issued pursuant to the
9 Collection Agency Regulatory Act shall apply on a form
10 prescribed by the director. Information required on the form
11 shall be set forth by rule, instruction or procedure of the
12 director and may be changed or updated as necessary by the
13 director in order to carry out the purposes of the Collection
14 Agency Regulatory Act.

15 F. In order to fulfill the purposes of the
16 Collection Agency Regulatory Act, the director may establish
17 relationships or contracts with the nationwide mortgage
18 licensing system and registry or other entities designated by
19 the nationwide mortgage licensing system and registry to
20 collect and maintain records and process transaction fees or
21 other fees related to licenses issued pursuant to the
22 Collection Agency Regulatory Act.

23 G. An applicant for a license pursuant to the
24 Collection Agency Regulatory Act shall, at a minimum, furnish
25 to the nationwide mortgage licensing system and registry

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1 information concerning the applicants identity, including:

2 (1) the applicant's personal history and
3 experience in a form prescribed by the nationwide mortgage
4 licensing system and registry; and

5 (2) authorization for the nationwide mortgage
6 licensing system and registry and the director to obtain
7 information related to any administrative, civil or criminal
8 findings by any governmental jurisdiction regarding the
9 applicant.

10 H. The director may use the nationwide mortgage
11 licensing system and registry as a channeling agent for
12 requesting and distributing information provided pursuant to
13 Paragraphs (1) and (2) of Subsection G of this section to and
14 from any source as deemed appropriate by the director."

15 SECTION 6. Section 61-18A-7 NMSA 1978 (being Laws 1987,
16 Chapter 252, Section 7, as amended) is amended to read:

17 "61-18A-7. APPLICATION FOR LICENSE.--

18 A. Application for a collection agency license,
19 repossessor's license or manager's license shall be made to the
20 director in such form as may be required by the director.

21 B. Applicants for an original license issued
22 pursuant to the Collection Agency Regulatory Act for the period
23 beginning July 1, 2018 and ending December 31, 2018 shall pay
24 an amount equal to one-half of the original license fee for the
25 applicable license as established pursuant to Section 61-18A-30

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1 NMSA 1978.

2 C. Applicants for renewal of a license issued
3 pursuant to the Collection Agency Regulatory Act with an
4 expiration date of June 30, 2018 may apply for renewal of the
5 license for the period beginning July 1, 2018 and ending
6 December 31, 2018 and shall pay an amount equal to one-half of
7 the renewal license fee for the applicable license as
8 established pursuant to Section 61-18A-30 NMSA 1978.

9 D. Applicants for all licenses issued pursuant to
10 the Collection Agency Regulatory Act beginning on or after
11 January 1, 2019, and ending at the conclusion of the calendar
12 year for which the license may be issued, shall pay an amount
13 equal to the applicable original or renewal license fee as
14 established pursuant to Section 61-18A-30 NMSA 1978."

15 SECTION 7. Section 61-18A-8 NMSA 1978 (being Laws 1987,
16 Chapter 252, Section 8) is amended to read:

17 "61-18A-8. APPLICATIONS--REQUIRED INFORMATION.--

18 A. The application for a collection agency license
19 shall state, among other things that may be required, the name
20 of the applicant together with the name under which the
21 applicant will do business and the location by street number
22 and city in this state of the office of the business for which
23 the license is sought.

24 B. The application shall state:

25 (1) in the case of an individual, [~~the~~

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1 ~~application shall state~~] the full residence address of the
2 applicant;

3 (2) in the case of a partnership, [~~the~~
4 ~~application shall state~~] the true names and complete residence
5 addresses of all partners;

6 (3) in the case of a corporation, [~~the~~
7 ~~application shall state~~] the true names and complete residence
8 addresses of all directors and officers and the true names and
9 residence addresses of all holders of ten percent or more of
10 the corporation's outstanding stock and other securities and
11 the number of shares or units of each and of all classes held
12 by each and the total number of shares or units of each class
13 issued and outstanding; and

14 (4) in the case of a nonstock corporation or
15 an unincorporated association, the true names and complete
16 residence addresses of all officers, directors and trustees.

17 C. The application shall state the name of the
18 licensed manager who will be actively in charge of the
19 collection agency for which the license is sought.

20 D. The director may establish, by rule, regulation
21 or order, requirements for a license application as necessary,
22 including:

23 (1) background checks for criminal history
24 through fingerprint or other databases;

25 (2) civil or administrative records;

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1 (3) credit history; and
2 (4) other information as deemed relevant and
3 necessary by the director."

4 SECTION 8. Section 61-18A-22 NMSA 1978 (being Laws 1987,
5 Chapter 252, Section 22) is amended to read:

6 "61-18A-22. OFFICE MANAGEMENT--LICENSE.--

7 A. Every licensed office of a collection agency,
8 whether a principal or branch office, shall be under the active
9 charge of a licensed manager. Each manager's license shall be
10 issued by the director upon qualification by the applicant [~~for~~
11 ~~same~~] and shall be renewed annually upon application [~~therefor~~]
12 accompanied by the manager's renewal license fee, which
13 application is to be filed with the division on or before [~~May~~
14 ~~31~~] November 30 of each year. Unless so renewed, each
15 manager's license shall expire on [~~June 30~~] January 1 unless
16 previously revoked or canceled.

17 B. As used in this section, "under the active
18 charge of a licensed manager" means that a licensed manager
19 [~~must~~] shall be physically present at the licensee's office at
20 least seventy-five percent of the time during which the office
21 is open for business."

22 SECTION 9. Section 61-18A-27 NMSA 1978 (being Laws 1987,
23 Chapter 252, Section 27) is amended to read:

24 "61-18A-27. RENEWAL OF LICENSE--FEE.--

25 A. A licensee desiring renewal of [~~his~~] the

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1 licensee's license shall, on or before [~~May 31~~] November 30 of
2 each year, file with the director an application for renewal on
3 [~~such~~] forms as may be designated by the director. The
4 application shall be accompanied by the renewal fee.

5 B. The director shall issue a renewal license
6 [~~which~~] that shall be dated [~~July 1~~] January 1 next ensuing and
7 shall bear the date to and including which the license is
8 renewed."

9 **SECTION 10. REPEAL.**--Section 61-18A-18 NMSA 1978 (being
10 Laws 1987, Chapter 252, Section 18) is repealed.

11 **SECTION 11. EFFECTIVE DATE.**--The effective date of the
12 provisions of this act is July 1, 2017.