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SENATE BILL 674

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

James G. Taylor

AN ACT

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

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

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

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

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

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

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

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

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

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

3 F. "deferred deposit loan":

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

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

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

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

18 (2) does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 D. False or misleading information willfully and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 WITNESSES. --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. Every licensee shall:

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

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

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1 obligated for the loan;

2 (g) the amount of principal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 proceeds of the payday loan;

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

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

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

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

11 (1) charges for insurance; or

12 (2) collection costs;

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

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

17 (1) a hold harmless clause;

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

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

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

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

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1 Small Loan Act of 1955;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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