

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 475

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
LIMITATION OF FEES AND THE REGULATION OF PAYDAY LOANS;
PROVIDING PENALTIES; 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;~~]

underscored material = new
[bracketed material] = delete

1 A. "balloon payment" means a provision in a loan
2 agreement that requires the consumer to pay, at a specified
3 time or upon demand, a final installment with an amount that is
4 greater than the prior installments and includes the remaining
5 loan principal;

6 B. "consumer" means a borrower who enters into a
7 loan agreement with a licensee pursuant to the New Mexico Small
8 Loan Act of 1955;

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

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

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

24 [~~C.~~] F. "licensee" [shall mean] means a person to
25 whom one or more licenses have been issued [~~hereunder~~] pursuant

.158871.4

underscored material = new
[bracketed material] = delete

1 to the New Mexico Small Loan Act of 1955 upon ~~[their]~~ the
2 person's written application electing to become a licensee and
3 consenting to exercise the privilege of a licensee solely in
4 conformity with the New Mexico Small Loan Act of 1955 and the
5 lawful regulations promulgated by the director ~~[of the~~
6 ~~financial institutions division hereunder]~~ under that act and
7 whose name ~~[or names appear]~~ appears on the face of the
8 license;

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

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

14 G. "payday loan" means a loan in which the licensee
15 negotiates a personal check tendered by the consumer and agrees
16 in writing to defer presentment of that check until the next
17 scheduled payment or thirty days, whichever is greater, and
18 includes any advance of money or arrangement or extension of
19 credit whereby the licensee, for a fee, finance charge or other
20 consideration:

21 (1) accepts a dated instrument from a consumer
22 or an authorization signed by a consumer to transfer or
23 withdraw funds from an account for the specific purpose of
24 repaying a payday loan;

25 (2) agrees to hold a dated instrument for a

underscored material = new
[bracketed material] = delete

1 period of time prior to negotiating or depositing the
2 instrument; or

3 (3) pays to the consumer, credits to the
4 consumer's account or pays another person on behalf of the
5 consumer the amount of an instrument actually paid or to be
6 paid pursuant to the New Mexico Small Loan Act of 1955;

7 H. "person" includes an individual, copartner,
8 association, trust, corporation and any other legal entity; and

9 I. "simple interest" means a method of calculating
10 interest in which the amount of interest is calculated based on
11 the annual interest rate disclosed in the loan agreement and is
12 computed only on the outstanding principal balance of the
13 loan."

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

16 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
17 PENALTY.--

18 A. ~~[Nø]~~ A person shall not engage in the business
19 of lending in amounts of two thousand five hundred dollars
20 (\$2,500) or less for a loan without first having obtained a
21 license from the director. Nothing contained in this
22 subsection shall restrict or prohibit a licensee under the New
23 Mexico Small Loan Act of 1955 from making loans in any amount
24 under the New Mexico Bank Installment Loan Act of 1959 in
25 accordance with the provisions of Section 58-7-2 NMSA 1978.

.158871.4

underscored material = new
[bracketed material] = delete

1 B. Nothing in the New Mexico Small Loan Act of 1955
2 shall apply to a person making individual advances of two
3 thousand five hundred dollars (\$2,500) or less under a written
4 agreement providing for a total loan or line of credit in
5 excess of two thousand five hundred dollars (\$2,500) for which
6 real estate is pledged as collateral.

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

21 D. The provisions of Subsection A of this section
22 apply to ~~any~~:

23 (1) a person ~~owning any~~ who owns an
24 interest, legal or equitable, in the business or profits of
25 ~~any~~ a licensee and whose name does not specifically appear on

.158871.4

underscored material = new
[bracketed material] = delete

1 the face of the license, except a stockholder in a corporate
2 licensee; and

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

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

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

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

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

19 E. ~~[Any]~~ A person, copartnership, trust
20 ~~[and the trustees or beneficiaries thereof]~~ or a trustee or
21 beneficiary thereof or an association or corporation ~~[and the~~
22 ~~several members, officers, directors, agents and employees~~
23 ~~thereof who violate or participate]~~ or a member, officer,
24 director, agent or employee thereof who violates or
25 participates in the violation of ~~[any]~~ a provision of

.158871.4

underscoring material = new
[bracketed material] = delete

1 Subsection A of this section is guilty of a petty misdemeanor
2 and upon conviction shall be sentenced pursuant to the
3 provisions of Subsection B of Section 31-19-1 [~~(B)~~] NMSA 1978.
4 [~~Any~~] A contract or loan in the making or collection of which
5 [~~any~~] an act is done that violates Subsection A or D of this
6 section is void and the lender has no right to collect, receive
7 or retain any principal, interest or charges whatsoever."

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

10 "58-15-5. LICENSES--INVESTIGATION OF APPLICATION--
11 ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF
12 RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE
13 FEES--LICENSEE BOUND BY ACT.--

14 A. Upon the filing of an application, whether it is
15 an original or a renewal, the director shall investigate the
16 facts concerning the application and the requirements provided
17 in this section.

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

25 C. Failure to comply with the director's

.158871.4

underscored material = new
[bracketed material] = delete

1 requirement for supplemental information or the willful
2 furnishing of false information is sufficient [~~ground~~] grounds
3 for denial of license.

4 D. False or misleading information willfully and
5 intentionally furnished to the director prior to the issuance
6 of any license is [~~ground~~] grounds for suspension or revocation
7 of any license in accordance with the procedures for suspension
8 or revocation of license in the New Mexico Small Loan Act of
9 1955.

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

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

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

.158871.4

underscored material = new
[bracketed material] = delete

1 (2) ~~[that]~~ allowing the applicant to engage in
2 business will promote the convenience and advantage of the
3 community in which the business of the applicant is to be
4 conducted; and

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

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

21 ~~[D.]~~ H. A written application for license renewal
22 ~~[licenses]~~ shall be filed on or before March 31 of each year,
23 and thereupon the director shall investigate the facts and
24 review ~~[his]~~ the files of examinations of the applicant made by
25 ~~[his]~~ the director's office and of complaints filed by

.158871.4

underscored material = new
[bracketed material] = delete

1 borrowers, if any. The director shall deliver a renewal
2 license to the applicant if ~~[he]~~ the director finds that:

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

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

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

18 E.] I. If the director does not make the findings
19 enumerated in Subsection ~~[D]~~ H of this section, ~~[he]~~ the
20 director may grant a temporary extension of the license not
21 exceeding sixty days pending a hearing; shall enter an order
22 fixing a date for hearing upon the application; shall notify
23 the licensee thereof, specifying the particular complaints,
24 violations or abuses or other reasons for ~~[his]~~ the director's
25 contemplated refusal to renew the license; and shall afford to

.158871.4

underscored material = new
[bracketed material] = delete

1 the applicant an opportunity to be heard. At the hearing, the
2 director shall produce [~~his~~] evidence to establish the truth of
3 the charges of violation or other grounds specified in the
4 notice, and the applicant shall be accorded the right to
5 produce evidence or other matters of defense. If after the
6 hearing the director finds that the complaints of violations or
7 other grounds specified in the notice are not well-founded,
8 [~~he~~] the director shall issue the renewal license. If [~~he~~] the
9 director finds that the complaints of violations or other
10 grounds are well-founded, [~~he~~] the director shall enter an
11 order denying the renewal application and notify the applicant
12 of the denial, returning the renewal license fee tendered with
13 the application. Within thirty days after the entry of such an
14 order, [~~he~~] the director shall prepare written findings and
15 shall deliver a copy of the findings to the applicant. The
16 order shall be subject to review as provided in Section
17 58-15-25 NMSA 1978. The court in its discretion and upon
18 proper showing may order a temporary extension of the license
19 pending disposition of the review proceedings.

20 [F.] J. In connection with the determination of
21 fitness and character of an applicant [~~under~~] pursuant to
22 provisions of this section, the fact that the applicant or
23 licensee is a member of or interested financially in, connected
24 or affiliated with, controls or is controlled by or owns or is
25 owned by other corporations, partnerships, trusts, associations

.158871.4

underscored material = new
[bracketed material] = delete

1 or other legal entities engaged in the lending of money whose
2 policies and practices as to rates of interest, charges and
3 fees and general dealing with borrowers are questionable or
4 would constitute violation of the general usury statutes of
5 this state or of the declared purposes and spirit of the New
6 Mexico Small Loan Act of 1955 shall be given such consideration
7 and weight as the director determines.

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

21 [~~H. Each~~] L. A licensee by accepting [~~any~~] a
22 license that is issued or renewed or by continuing to operate
23 [~~any~~] a licensed office under the New Mexico Small Loan Act of
24 1955 shall by such action be deemed to have consented to be
25 bound by the lawful provisions of that act and all lawful

.158871.4

underscored material = new
[bracketed material] = delete

1 requirements, regulations and orders of the director
2 promulgated or issued pursuant to any authorization granted in
3 that act."

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

6 "58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--
7 WITNESSES.--

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

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

23 [~~B.~~] C. For the purpose of discovering violations
24 of the New Mexico Small Loan Act of 1955 or of securing
25 information lawfully required under that act, the director or

.158871.4

underscoring material = new
[bracketed material] = delete

1 ~~[his duty]~~ the director's authorized representative may at any
2 time investigate the business and examine the books, accounts,
3 papers and records used therein, including income tax returns
4 or other reports filed in the office of the director of the
5 revenue processing division of the taxation and revenue
6 department of:

7 (1) any licensee;

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

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

17 D. For the purposes of this section, [~~any~~] a person
18 who advertises, solicits or [~~holds himself out~~] makes any
19 representation as being willing to make loan transactions in
20 any amount, except persons, financial institutions or lending
21 agencies operating under charters or licenses issued by [~~any~~] a
22 state or federal agency or under any special statute, shall be
23 subject to investigation under the New Mexico Small Loan Act of
24 1955 and shall be presumed to be engaged in the business
25 described in Subsection A of Section 58-15-3 NMSA 1978 as to

.158871.4

underscoring material = new
[bracketed material] = delete

1 any loans of two thousand five hundred dollars (\$2,500) or
2 less.

3 ~~[G.]~~ E. To facilitate the examinations and
4 investigations by the director and fully disclose the
5 operations and methods of operation of each licensed office,
6 the licensee shall, in each licensed office, keep on file as
7 part of the records of the office all office manuals,
8 communications or directives containing statements of loan
9 policy to office managers and employees. If the licensee is an
10 individual, corporation, trust or association, the licensee
11 shall keep in at least one office for information of the
12 director a record of the several individuals, firms,
13 beneficiaries of any trust and corporations deriving or
14 receiving any part of the benefits, net income or profits from
15 the operation of the licensee within New Mexico.

16 ~~[D.]~~ F. For the purposes of this section, the
17 director or ~~[his duty]~~ the director's authorized representative
18 shall have and be given free access to the offices and places
19 of business, files, safes and vaults of all licensees and shall
20 have authority to require the attendance of any person and to
21 examine ~~[him]~~ the person under oath relative to such loans or
22 business or to the subject matter of any examination,
23 investigation or hearing as provided in the New Mexico Small
24 Loan Act of 1955. Notices to appear before the director for
25 examination under oath may be served by registered mail. If

.158871.4

underscored material = new
[bracketed material] = delete

1 the party notified to appear is the licensee, any person named
2 on the face of the license being investigated or any agent,
3 employee or manager participating in the licensee's business
4 and [~~he~~] the party fails to appear for examination or refuses
5 to answer questions submitted, the director may, forthwith and
6 without further notice to the licensee, suspend the license
7 involved pending compliance with the notice. Upon failure of
8 any other person to appear or to answer questions, the director
9 may apply to and invoke the aid of any district court of New
10 Mexico in compelling the attendance and testimony of any such
11 person and the production of books, records, written
12 instruments and documents relating to the business of the
13 licensee. [~~Any~~] The district court whose aid is so invoked by
14 the director may, in case of contumacy or refusal to obey any
15 order of the district court issued to compel the attendance of
16 the person or the production of books, records, written
17 instruments and documents, punish the person as for contempt of
18 court.

19 [~~E.~~] G. The director shall prescribe rules of
20 procedure for all hearings, examinations or investigations
21 provided for in the New Mexico Small Loan Act of 1955. The
22 director is not bound by the usual common law or statutory
23 rules of evidence or by any technical or formal rules of
24 procedure or pleading and specification of charges other than
25 as specifically provided in the New Mexico Small Loan Act of

.158871.4

underscoring material = new
[bracketed material] = delete

1 1955 but may conduct hearings, examinations and investigations
2 in the manner best calculated to ascertain the substantial
3 rights of the parties interested.

4 ~~[F.]~~ H. The director has the power to administer
5 oaths, certify official acts and records of ~~[his]~~ the
6 director's office, issue subpoenas for witnesses in the name of
7 and under the seal of ~~[his]~~ the director's office and compel
8 the production of papers, books, accounts and documents. ~~[He]~~
9 The director shall issue subpoenas at the instance of any party
10 to a hearing before the division upon payment of a fee of two
11 dollars ~~and~~ fifty cents (\$2.50) for each subpoena so issued.

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

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

25 ~~[I.]~~ K. Whenever the director has reasonable cause

.158871.4

underscoring material = new
[bracketed material] = delete

1 to believe that [~~any~~] a person is violating [~~any~~] a provision
2 of the New Mexico Small Loan Act of 1955, [~~he~~] the director
3 may, in addition to all actions provided for in that act and
4 without prejudice thereto, enter an order requiring the person
5 to desist or to refrain from the violation. An action may be
6 brought on the relation of the attorney general and the
7 director to enjoin the person from engaging in or continuing
8 the violation or from doing any act in furtherance of the
9 violation. In any such action, an order or judgment may be
10 entered awarding a preliminary or final injunction as may be
11 deemed proper. In addition to all other means provided by law
12 for the enforcement of a temporary restraining order, temporary
13 injunction or final injunction, the court in which such action
14 is brought shall have power and jurisdiction to impound and to
15 appoint a receiver for the property and business of the
16 defendants, including books, papers, documents and records
17 pertaining thereto or so much thereof as the court may deem
18 reasonably necessary to prevent further violations of the New
19 Mexico Small Loan Act of 1955 through or by means of the use of
20 the property and business. The receiver, when appointed and
21 qualified, shall have powers and duties as to custody,
22 collection, administration, winding up and liquidation of the
23 property and business as are from time to time conferred upon
24 [~~him~~] the receiver by the court."

25 Section 5. Section 58-15-10 NMSA 1978 (being Laws 1955,

.158871.4

underscored material = new
[bracketed material] = delete

1 Chapter 128, Section 10, as amended) is amended to read:

2 "58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL
3 INFORMATION.--

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

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

24 C. At the time of filing each annual report, at the
25 time of the annual examination or at any other time when [~~any~~]

.158871.4

underscoring material = new
[bracketed material] = delete

1 a license is in effect, the director may, upon written notice,
2 require [~~any~~] a licensee to furnish within twenty days in
3 writing, and under oath if so specified by any written notice
4 issued and served by the director upon the licensee, [~~any and~~
5 ~~all~~] additional information as to ownership of any office;
6 operation of any office; books, records, files and papers; and
7 affiliation or relationship with any other person, firm, trust,
8 association or corporation as, in the opinion of the director,
9 may be helpful [~~to him~~] in the discharge of [~~his~~] the
10 director's official duties.

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

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

20 "58-15-12. ADVERTISING--SCHEDULE OF CHARGES.--

21 A. [~~No~~] A licensee or other person subject to the
22 New Mexico Small Loan Act of 1955 shall not advertise, display,
23 distribute or broadcast or cause or permit to be advertised,
24 displayed, distributed or broadcast in any manner whatsoever
25 [~~any~~] a false, misleading or deceptive statement or

.158871.4

underscored material = new
[bracketed material] = delete

1 representation with regard to the charges, terms or conditions
2 for loans in the amount or of the value of two thousand five
3 hundred dollars (\$2,500) or less. The director may require
4 that charges or rates of charge, if stated by a licensee, be
5 stated fully and clearly in such manner as [~~he may deem~~] the
6 director deems necessary to prevent misunderstanding [~~thereof~~]
7 by prospective borrowers. The director may permit or require
8 licensees to refer in their advertising to the fact that their
9 business is under state supervision, subject to conditions
10 imposed by [~~him~~] the director to prevent [~~any~~] erroneous
11 impressions as to the scope or degree of protection provided by
12 the New Mexico Small Loan Act of 1955.

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

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

21 "58-15-14.1. CHARGES--METHOD OF COMPUTATION.--[Charges
22 ~~on~~] The simple interest method shall be used for loans made
23 under the New Mexico Small Loan Act of 1955. Simple interest
24 charges are recomputed whenever a payment is received by a
25 licensee. Interest charges shall not be paid, deducted or

.158871.4

underscored material = new
[bracketed material] = delete

1 received in advance. [~~Such~~] Interest charges shall not be
2 compounded. [~~However, if part or all of the consideration for~~
3 ~~a loan contract is the unpaid principal balance of a prior~~
4 ~~loan, then the principal amount payable under the loan contract~~
5 ~~may include any unpaid charges which have accrued within sixty~~
6 ~~days on the prior loan. Such charges shall be computed on the~~
7 ~~basis of the number of days actually elapsed. For the purpose~~
8 ~~of computing charges, whether at the maximum rate or less, a~~
9 ~~month shall be any period of thirty consecutive days and the~~
10 ~~rate of charge for each day shall be one-thirtieth of the~~
11 ~~monthly rate.]"~~

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

14 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
15 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
16 AND INTEREST.--

17 A. Every licensee shall:

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

25 (a) the amount of the loan;

.158871.4

underscoring material = new
[bracketed material] = delete

- 1 (b) the date the loan was made;
- 2 (c) a schedule or a description of the
- 3 payments;
- 4 (d) the type of the security, if any,
- 5 for the loan;
- 6 (e) the name and address of the licensed
- 7 office;
- 8 (f) the name of the person primarily
- 9 obligated for the loan;
- 10 (g) the amount of principal;
- 11 (h) the agreed rate of charge stated on
- 12 [~~a percent per month and~~] a percent per year basis and the
- 13 amount in dollars and cents; [~~and~~]
- 14 (i) all other disclosures required
- 15 pursuant to state and federal law; and
- 16 (j) other items allowable pursuant to
- 17 that act, so stated as to clearly show the allocation of each
- 18 item included;
- 19 (2) for each payment made on account of any
- 20 such loan, give to the person making it a plain and complete
- 21 receipt specifying the date and amount of the payment, the
- 22 amount applied to interest and principal and the balance
- 23 unpaid. When payment is made in any other manner than by the
- 24 borrower in person, by an agent of the borrower or by check or
- 25 money order, the licensee shall mail the receipt to the

.158871.4

underscored material = new
[bracketed material] = delete

1 borrower's last known address or hold the receipt for delivery
2 upon request of the borrower. A copy of all receipts shall be
3 kept on file in the office of the licensee as a part of [~~his~~]
4 the licensee's records; and

5 (3) upon payment of the loan in full, mark
6 plainly every note and promise to pay signed by any obligor
7 with the word "paid" or "canceled" and promptly file or record
8 a release of any mortgage if the mortgage has been recorded,
9 restore any pledge and cancel and return any note and any
10 assignment given to the licensee. A licensee may mark and
11 return a copy of the note, promise to pay or any assignment if
12 the copy accurately reproduces the complete original.

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

18 C. If judgment is obtained against [~~any~~] a party
19 [~~or any~~] on a loan made [~~under~~] pursuant to the provisions of
20 the New Mexico Small Loan Act of 1955, neither the judgment nor
21 the loan shall carry, from the date of the judgment, [~~any~~]
22 charges against [~~any~~] a party to the loan other than [~~court~~]
23 costs, [~~attorneys'~~] attorney fees and post-judgment interest
24 [~~on the amount of the judgment at ten percent a year~~] as
25 provided by law.

.158871.4

underscored material = new
[bracketed material] = delete

1 ~~[D. Any loan made under the provisions of the New~~
2 ~~Mexico Small Loan Act of 1955 that is filed and approved as a~~
3 ~~claim in any bankruptcy proceeding shall, from a date ninety~~
4 ~~days subsequent to the date of adjudication, bear interest at~~
5 ~~the rate of ten percent a year only. This limitation shall not~~
6 ~~apply when the bankrupt is not discharged in bankruptcy or to~~
7 ~~any obligation not dischargeable under the provisions of the~~
8 ~~Bankruptcy Act presently in force or as hereafter amended.~~

9 ~~E. No loan made under the provisions of the New~~
10 ~~Mexico Small Loan Act of 1955 shall bear interest after ninety~~
11 ~~days from the date of the death of the borrower in excess of a~~
12 ~~rate of ten percent a year on the unpaid principal balance of~~
13 ~~the loan.~~

14 ~~F. No loan made under the provisions of the New~~
15 ~~Mexico Small Loan Act of 1955 shall bear interest after twelve~~
16 ~~months from the date of maturity of the loan in excess of ten~~
17 ~~percent a year upon the unpaid principal balance of the loan.]"~~

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

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

21 ~~[(a) FILING OR RECORDING FEES]~~ A. Notwithstanding
22 any provision of ~~[this Act]~~ the New Mexico Small Loan Act of
23 1955, lawful fees, if any, actually and necessarily paid out by
24 the licensee to ~~[any]~~ a public officer for the filing,
25 recording or releasing in ~~[any]~~ a public office ~~[any]~~ of an

.158871.4

underscored material = new
[bracketed material] = delete

1 instrument securing the loan may be charged to the borrower.

2 [~~(b) ATTORNEY FEES~~] B. Notwithstanding any
3 provision in [~~any~~] a note or other loan contract taken or
4 received [~~under this act~~] pursuant to the New Mexico Small Loan
5 Act of 1955, attorney fees shall not be charged or collected
6 except [~~where such~~] when the note or other contract has been
7 [~~turned~~] submitted in good faith to an attorney for collection
8 and after diligent and good faith effort to collect [~~has~~
9 ~~failed~~] on the part of the licensee has failed. Attorney fees
10 are available to the prevailing party in a dispute pursuant to
11 the New Mexico Small Loan Act of 1955.

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

15 [~~(d) NOTARY FEES PROHIBITED~~] C. Notary fees
16 incident to the taking of [~~any~~] a lien to secure a small loan
17 or releasing such a lien shall not be charged or collected by
18 [~~any~~] a licensee, [~~nor by any~~] an officer, agent or employee of
19 a licensee [~~nor by~~] or anyone within [~~any~~] an office, room or
20 place of business in which a small loan office is conducted.

21 D. Delinquency fees shall not exceed five cents
22 (\$.05) for each one dollar (\$1.00) of each installment more
23 than ten days in arrears; provided that the total of
24 delinquency charges on any such installment shall not exceed
25 ten dollars (\$10.00) and that only one delinquency charge shall

.158871.4

underscored material = new
[bracketed material] = delete

1 be made on any one installment regardless of the period during
2 which the installment remains unpaid."

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

5 "58-15-23. VIOLATION OF GENERAL USURY LAWS.--The [~~wilful~~]
6 violation by [~~any~~] a licensee or by [~~any~~] an officer, manager,
7 director, trustee, executive or employee directly engaged in
8 operating a small loan office under the provisions of [~~this Act~~
9 ~~of any usury statute of this state~~] the New Mexico Small Loan
10 Act of 1955 within [~~any~~] an office, room or place of business
11 in which the making of loans as a licensee is solicited or
12 engaged or in association or conjunction therewith [~~shall be~~
13 ~~ground~~] is grounds for suspension and revocation of license in
14 accordance with the applicable procedures [~~applicable thereto~~
15 ~~as~~] set forth [~~herein~~] in that act."

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

18 "58-15-30. PENALTIES--GENERAL.--Any person,
19 copartnership, trust, association or corporation and the
20 several members, beneficiaries, officers, directors, agents and
21 employees thereof who [~~shall~~] violate or participate in the
22 violation of any provision of the [~~sections of this Act shall~~
23 ~~be~~] New Mexico Small Loan Act of 1955 are guilty of a
24 misdemeanor and upon conviction [~~thereof~~] shall be [~~punishable~~]
25 punished by a fine of not less than [~~one hundred (\$100.00)~~

.158871.4

underscored material = new
[bracketed material] = delete

1 ~~dollars and not more than three hundred (\$300.00) dollars]~~ five
2 hundred dollars (\$500) or more than one thousand dollars
3 (\$1,000) or by imprisonment of not more than [ninety (90) days]
4 six months or [by] both [~~such fine and imprisonment~~] in the
5 discretion of the court."

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

8 "58-15-32. [NEW MATERIAL] REQUIREMENTS FOR PAYDAY
9 LOANS.--

10 A. No licensee shall make a payday loan to a
11 consumer if:

12 (1) the total principal amount of the loan,
13 when combined with the principal amount of all of the
14 consumer's other outstanding payday loans, exceeds one thousand
15 dollars (\$1,000) or twenty-five percent of the consumer's net
16 monthly income, whichever is less; or

17 (2) the consumer has an outstanding balance on
18 two or more payday loans.

19 B. The dollar amount set forth in Paragraph (1) of
20 Subsection A of this section shall be adjusted for inflation
21 pursuant to rules promulgated by the director, at no less than
22 three-year intervals, to the nearest dollar amount as indicated
23 by changes in the consumer price index for the United States
24 for all items as published by the United States department of
25 labor.

.158871.4

underscoring material = new
[bracketed material] = delete

1 C. Without affecting the rights of a consumer to
2 prepay a payday loan at any time without additional cost or
3 penalty:

4 (1) no payday loan shall have a stated minimum
5 term of less than one hundred twenty days; and

6 (2) there shall be a minimum of thirty days
7 between each scheduled payment by the consumer within the term
8 of the payday loan.

9 D. A consumer shall not have more than two payday
10 loans outstanding at any time, nor shall a consumer have more
11 than one payday loan outstanding with any licensee operating
12 under a single trade name.

13 E. 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 agreement or payment plan. If a consumer exercises the
20 right of rescission pursuant to this subsection, no fee for the
21 rescinded transaction shall be charged to the consumer, and the
22 licensee shall not charge or impose on the consumer a fee for
23 exercising the right of rescission pursuant to this subsection.

24 F. A consumer shall be permitted to make payments
25 in any amount on a payday loan at any time before maturity

.158871.4

underscoring material = new
[bracketed material] = delete

1 without additional fees.

2 G. Payments against principal shall be equally
3 divided through the term of the payday loan. Balloon payments
4 are prohibited.

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

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

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

16 K. A payday loan agreement shall not be renewed,
17 refinanced or extended without the written consent of the
18 consumer.

19 L. Licensees making payday loans shall provide the
20 consumer with an information brochure in English, Spanish or
21 other language as determined by the director.

22 M. The disclosure of the credit terms of a payday
23 loan shall be according to and governed by the requirements of
24 12 CFR 226, known as "Regulation Z". The definitions and
25 requirements of that regulation and commentary shall apply to

.158871.4

underscored material = new
[bracketed material] = delete

1 payday loans as if those provisions are fully set out in this
2 section.

3 N. A licensee shall collect on payday loans in
4 default in a professional, fair and lawful manner, in
5 accordance with the federal Fair Debt Collection Practices Act,
6 15 USCA, Chapter 41, Subchapter V."

7 Section 13. A new section of the New Mexico Small Loan
8 Act of 1955, Section 58-15-33 NMSA 1978, is enacted to read:

9 "58-15-33. [NEW MATERIAL] PAYDAY LOANS--PERMITTED
10 CHARGES.--The following provisions apply only to payday loans:

11 A. a licensee may not charge or receive from a
12 consumer, directly or indirectly, fees or charges except as
13 provided in this section;

14 B. upon the execution of a new payday loan, the
15 licensee may charge interest that is payable during the term of
16 the payday loan at a rate:

17 (1) not exceeding five dollars fifty cents
18 (\$5.50) per one hundred dollars (\$100) in principal during the
19 first four months of the loan; and

20 (2) not exceeding four dollars (\$4.00) per one
21 hundred dollars (\$100) in principal in any subsequent month of
22 the loan term;

23 C. the dollar amounts set forth in Subsection B of
24 this section shall be adjusted for inflation pursuant to rules
25 promulgated by the director, at no less than three-year

.158871.4

underscored material = new
[bracketed material] = delete

1 intervals, to the nearest dollar amounts as indicated by
2 changes in the consumer price index for the United States for
3 all items as published by the United States department of
4 labor;

5 D. a licensee shall not charge a consumer interest
6 on the outstanding principal owed on a payday loan other than
7 the administrative fees as set forth in this section; and

8 E. if there are insufficient funds to pay a check
9 or other type of debit on the date of presentment by the
10 licensee, a licensee may charge a borrower a fee not to exceed
11 fifteen dollars (\$15.00). Only one fee may be collected by a
12 licensee on a declined check or debit. Once declined, checks
13 may not be redeposited and electronic debits may not be
14 repeated."

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

17 "58-15-34. [NEW MATERIAL] PAYDAY LOANS--PROHIBITED

18 ACTS.--A licensee shall not:

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

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

24 C. use a device or agreement that would have the
25 effect of charging or collecting more fees, charges or interest

.158871.4

underscored material = new
[bracketed material] = delete

1 than allowed by law by entering into a different type of
2 transaction with the consumer that has that effect except as
3 specifically permitted by the New Mexico Small Loan Act of
4 1955;

5 D. engage in unfair, deceptive or fraudulent
6 practices in making, renewing or collecting a payday loan;

7 E. require a consumer to enter into a new payday
8 loan if the consumer has an existing payday loan with that
9 licensee that can be renewed;

10 F. charge a fee to cash a check representing the
11 proceeds of the payday loan;

12 G. use or attempt to use the check written by the
13 consumer for a payday loan as security for purposes of a state
14 or federal law;

15 H. have more than one payday loan outstanding with
16 a consumer at a time for all licenses operated under the same
17 trade name;

18 I. accept collateral for a payday loan other than
19 the consumer's check or authorization to transfer or withdraw
20 funds from an account or require a consumer to provide a
21 guaranty from another person for a payday loan;

22 J. charge interest, fees or charges other than
23 those specifically authorized, including:

24 (1) charges for insurance; or

25 (2) collection costs;

.158871.4

underscoring material = new
[bracketed material] = delete

1 K. threaten to take any action against a consumer
2 that is prohibited by the New Mexico Small Loan Act of 1955;

3 L. include any of the following provisions in a
4 payday loan agreement:

5 (1) a hold harmless clause;

6 (2) a confession of judgment clause or power
7 of attorney;

8 (3) an assignment of or order for payment of
9 wages or other compensation for services;

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

12 (5) a waiver of claims for punitive damages or
13 class action relief; or

14 (6) a waiver of a provision of the New Mexico
15 Small Loan Act of 1955;

16 M. make a payday loan contingent on the purchase of
17 insurance or other goods or services;

18 N. advertise, display, distribute or broadcast or
19 cause or permit to be advertised, displayed, distributed or
20 broadcast, in any manner, a false, misleading or deceptive
21 statement or representation with regard to the charges, terms
22 or conditions for payday loans;

23 O. take a check, instrument or form in which blanks
24 are left to be filled in after execution of the check,
25 instrument or form;

.158871.4

underscored material = new
[bracketed material] = delete

1 P. offer, arrange, act as an agent for or assist a
2 third party in any way in the making of a payday loan unless
3 the third party complies with all applicable federal and state
4 laws and regulations;

5 Q. enter into a payday loan with a consumer who
6 lacks the capacity to consent;

7 R. use provisions in documents associated with a
8 payday loan that are deceptive or misleading; or

9 S. use an agency agreement or partnership agreement
10 as a scheme or contrivance to circumvent the application of the
11 provisions of the New Mexico Small Loan Act of 1955 to a
12 consumer's payday loan. For the purposes of this subsection:

13 (1) "agency agreement" means any agreement
14 between in-state entities and a banking corporation, savings
15 and loan association or credit union operating under the laws
16 of the United States or of any state whereby the in-state agent
17 holds a predominant economic interest in the revenues generated
18 by a payday loan made to New Mexico residents; and

19 (2) "partnership agreement" means any
20 agreement between in-state entities and a banking corporation,
21 savings and loan association or credit union operating under
22 the laws of the United States or of any state whereby the
23 in-state partner holds a predominant economic interest in the
24 revenues generated by a payday loan made to New Mexico
25 residents."

.158871.4

underscored material = new
[bracketed material] = delete

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

3 "58-15-35. [NEW MATERIAL] RENEWED PAYDAY LOANS.--A
4 consumer is entitled to renew a payday loan one time at the
5 discretion of the lender, and the maturity of the payday loan
6 renewal shall not be shorter than the term of the original
7 payday loan."

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

10 "58-15-36. [NEW MATERIAL] PAYDAY LOANS--VERIFICATION.--

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

16 B. No later than October 1, 2006, the division
17 shall certify that one or more consumer reporting service
18 databases are commercially reasonable methods of verification.
19 Upon certifying that a consumer reporting service database is a
20 commercially reasonable method of verification, the division
21 shall:

22 (1) provide reasonable notice to all licensees
23 identifying the commercially reasonable methods of verification
24 that are available; and

25 (2) immediately upon certification, require

.158871.4

underscored material = new
[bracketed material] = delete

1 each licensee to use a commercially reasonable method of
2 verification as a means of complying with Subsection A of this
3 section.

4 C. Except as otherwise provided in this section,
5 all personally identifiable information regarding a consumer
6 obtained by way of the certified database and maintained by the
7 division is strictly confidential and shall be exempt from
8 disclosure under the Inspection of Public Records Act.

9 D. Notwithstanding any other provision of law to
10 the contrary, a consumer seeking a payday loan may make a
11 direct inquiry to the consumer reporting service to request a
12 more detailed explanation of the basis for a consumer reporting
13 service's determination that the consumer is ineligible for a
14 new payday loan.

15 E. In certifying a commercially reasonable method
16 of verification, the division shall ensure the certified
17 database:

18 (1) provides real-time access through an
19 internet connection or, if real-time access through an internet
20 connection becomes unavailable to lenders due to a consumer
21 reporting service's technical problems incurred by the consumer
22 reporting service, through alternative verification mechanisms,
23 including verification by telephone;

24 (2) is accessible to the division and to
25 licensees in order to ensure compliance with the New Mexico

.158871.4

1 Small Loan Act of 1955 and in order to provide any other
2 information the division deems necessary;

3 (3) requires licensees to input whatever
4 information is required by the division;

5 (4) maintains a real-time copy of the required
6 reporting information that is available to the division at all
7 times and is the property of the division;

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 a description of the reason for the
11 determination; and

12 (6) contains safeguards to ensure that all
13 information contained in the database regarding consumers is
14 kept strictly confidential.

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

18 (1) a payday loan is made;

19 (2) a payday loan is renewed;

20 (3) a consumer's payday loan is paid in full;

21 or

22 (4) a licensee determines a payday loan or
23 payment plan is in default.

24 G. A licensee may rely on the information contained
25 in the certified database as accurate and is not subject to any

underscoring material = new
[bracketed material] = delete

1 penalty or liability as a result of relying on inaccurate
2 information contained in the database.

3 H. A certified consumer reporting service shall
4 indemnify the licensee against all claims and actions arising
5 from illegal or willful or wanton acts on the part of the
6 certified consumer reporting service.

7 I. The director shall promulgate rules necessary to
8 implement the requirements of the New Mexico Small Loan Act of
9 1955 regarding the establishment of certified consumer
10 reporting services."

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

13 "58-15-37. [NEW MATERIAL] PAYDAY LOANS--MILITARY
14 MEMBERS.--

15 A. A licensee shall not garnish the wages or
16 salaries of a consumer who is a member of the military.

17 B. In addition to any rights and obligations
18 provided under the federal Servicemembers Civil Relief Act, a
19 licensee shall suspend and defer collection activity against a
20 consumer who is a member of the military and who has been
21 deployed to a combat or combat support posting for the duration
22 of the deployment.

23 C. A licensee shall not knowingly contact the
24 military chain of command of a consumer who is a member of the
25 military in an effort to collect on a payday loan."

.158871.4

