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HOUSE BILL 250

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Zachary J. Cook and Daniel A. Ivey-Soto

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE UNIFORM MONEY SERVICES ACT; CREATING A FRAMEWORK FOR THE LICENSURE OF PERSONS OR BUSINESSES TO ENGAGE IN MONEY TRANSMISSIONS, CHECK CASHING AND CURRENCY EXCHANGE; PROVIDING POWERS AND DUTIES FOR THE DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PRESCRIBING CIVIL AND CRIMINAL PENALTIES; CREATING A FUND; MAKING AN APPROPRIATION.

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

Article 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Money Services Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Money Services Act:

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1 A. "applicant" means a person that files an
2 application for a license pursuant to the Uniform Money
3 Services Act;

4 B. "authorized delegate" means a person that a
5 licensee designates to provide money services on behalf of the
6 licensee;

7 C. "bank" means an institution organized under
8 federal or state law that:

9 (1) accepts demand deposits or deposits that
10 the depositor may use for payment to third parties and engages
11 in the business of making commercial loans; or

12 (2) engages in credit card operations and
13 maintains only one office that accepts deposits, does not
14 accept demand deposits or deposits that the depositor may use
15 for payments to third parties, does not accept a savings or
16 time deposit less than one hundred thousand dollars (\$100,000)
17 and does not engage in the business of making commercial loans;

18 D. "check cashing" means receiving compensation for
19 taking payment instruments or stored value, other than
20 traveler's checks, in exchange for money, payment instruments
21 or stored value delivered to the person delivering the payment
22 instrument or stored value at the time and place of delivery
23 without an agreement specifying when the person taking the
24 payment instrument will present it for collection;

25 E. "control" means:

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1 (1) ownership of, or the power to vote,
2 directly or indirectly, at least twenty-five percent of a class
3 of voting securities or voting interests of a licensee or
4 person in control of a licensee;

5 (2) the power to elect, appoint, choose or
6 otherwise designate, directly or indirectly, a majority of
7 executive officers, managers, directors, trustees or other
8 persons exercising managerial authority of a licensee or person
9 in control of a licensee; or

10 (3) the power to exercise, directly or
11 indirectly, a controlling influence over the management or
12 policies of a licensee or person in control of a licensee;

13 F. "currency exchange" means receipt of revenues
14 from the exchange of money of one government for money of
15 another government;

16 G. "director" means the director of the financial
17 institutions division of the regulation and licensing
18 department;

19 H. "electronic" means relating to technology having
20 electrical, digital, magnetic, wireless, optical,
21 electromagnetic or similar capabilities;

22 I. "executive officer" means a president, chair of
23 the executive committee, chief financial officer, responsible
24 individual or other individual who performs similar functions;

25 J. "internet-based money services business" means a

1 business that provides money transmission, check cashing or
2 currency exchange services to residents of New Mexico through
3 the internet;

4 K. "licensee" means a person licensed pursuant to
5 the Uniform Money Services Act;

6 L. "limited station" means private premises where a
7 check casher is authorized to engage in check cashing solely
8 for the employees of the particular employer or group of
9 employers specified in the check casher's license application;

10 M. "mobile location" means a vehicle or a movable
11 facility where check cashing occurs;

12 N. "monetary value" means a medium of exchange,
13 whether or not redeemable in money;

14 O. "money" means a medium of exchange that is
15 authorized or adopted by the United States or a foreign
16 government. "Money" includes a monetary unit of account
17 established by an intergovernmental organization or by
18 agreement between two or more governments;

19 P. "money services" means money transmission, check
20 cashing or currency exchange;

21 Q. "money transmission" means selling or issuing
22 payment instruments, stored value or receiving money or
23 monetary value for transmission. "Money transmission" does not
24 include the provision solely of delivery, online or
25 telecommunications services or network access;

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1 R. "nationwide mortgage licensing system and
2 registry" means a licensing system developed and maintained by
3 the conference of state bank supervisors and the American
4 association of residential mortgage regulators pursuant to the
5 federal Secure and Fair Enforcement for Mortgage Licensing Act
6 of 2008 to manage mortgage licenses and other financial
7 services licenses, or a successor registry;

8 S. "outstanding", with respect to a payment
9 instrument, means issued or sold by or for the licensee and
10 reported as sold but not yet paid by or for the licensee;

11 T. "payment instrument" means a check, draft, money
12 order, traveler's check or other instrument for the
13 transmission or payment of money or monetary value, whether or
14 not negotiable. "Payment instrument" does not include a credit
15 card voucher, letter of credit or instrument that is redeemable
16 by the issuer in goods or services;

17 U. "person" means an individual, corporation,
18 business trust, estate, trust, partnership, limited liability
19 company, association, joint venture, government, governmental
20 subdivision, agency or instrumentality, public corporation or
21 any other legal or commercial entity;

22 V. "record", when used as a noun, means information
23 that is inscribed on a tangible medium or that is stored in an
24 electronic or other medium and is retrievable in perceivable
25 form;

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1 W. "responsible individual" means an individual who
2 is employed by a licensee and has principal managerial
3 authority over the provision of money services by the licensee
4 in New Mexico;

5 X. "sign" means, with present intent to
6 authenticate or adopt a record:

7 (1) to execute or adopt a tangible symbol; or

8 (2) to attach to or logically associate with
9 the record an electronic sound, symbol or process;

10 Y. "state" means a state of the United States, the
11 District of Columbia, Puerto Rico, the United States Virgin
12 Islands or any territory or insular possession subject to the
13 jurisdiction of the United States;

14 Z. "stored value" means monetary value that is
15 evidenced by an electronic record;

16 AA. "unique identifier" means a number or other
17 identifier assigned by protocols established by the nationwide
18 mortgage licensing system and registry; and

19 BB. "unsafe or unsound practice" means a practice
20 or conduct by a person licensed to engage in money transmission
21 or an authorized delegate of such a person that creates the
22 likelihood of material loss, insolvency or dissipation of the
23 licensee's assets, or otherwise materially prejudices the
24 interests of its customers.

25 SECTION 103. [NEW MATERIAL] EXCLUSIONS.--The Uniform

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1 Money Services Act does not apply to:

2 A. the United States or a department, agency or
3 instrumentality thereof;

4 B. money transmission by the United States postal
5 service or by a contractor on behalf of the United States
6 postal service;

7 C. a state, county, city or any other governmental
8 agency or governmental subdivision of a state;

9 D. a bank, bank holding company, office of an
10 international banking corporation, branch of a foreign bank,
11 corporation organized pursuant to the federal Bank Service
12 Company Act or corporation organized pursuant to the federal
13 Edge Act;

14 E. electronic funds transfer of governmental
15 benefits for a federal, state, county or governmental agency by
16 a contractor on behalf of the United States or a department,
17 agency or instrumentality thereof, or a state or governmental
18 subdivision, agency or instrumentality thereof;

19 F. a board of trade designated as a contract market
20 pursuant to the federal Commodity Exchange Act or a person
21 that, in the ordinary course of business, provides clearance
22 and settlement services for a board of trade to the extent of
23 its operation as or for such a board;

24 G. a registered futures commission merchant under
25 the federal commodities laws to the extent of its operation as

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1 such a merchant;

2 H. a person that provides clearance or settlement
3 services pursuant to a registration as a clearing agency or an
4 exemption from such registration granted under the federal
5 securities laws to the extent of its operation as such a
6 provider;

7 I. an operator of a payment system to the extent
8 that it provides processing, clearing or settlement services,
9 between or among persons excluded by this section, in
10 connection with wire transfers, credit card transactions, debit
11 card transactions, stored-value transactions, automated
12 clearinghouse transfers or similar funds transfers;

13 J. a person registered as a securities
14 broker-dealer under federal or state securities laws to the
15 extent of its operation as such a broker-dealer;

16 K. an attorney or title company that, in connection
17 with a real property transaction, receives and disburses
18 domestic currency or issues an escrow or trust fund check only
19 on behalf of a party to the transaction;

20 L. a credit union regulated and insured by the
21 national credit union association; or

22 M. any other person, transaction or class of
23 persons or transactions exempted by the director's rule or any
24 other person or transaction exempted by the director's order
25 pursuant to a finding that the licensing of the person or

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1 transaction is not necessary to achieve the purposes of the
2 Uniform Money Services Act.

3 Article 2

4 MONEY TRANSMISSION LICENSES

5 SECTION 201. [NEW MATERIAL] LICENSE REQUIRED.--

6 A. A person shall not engage in the business of
7 money transmission or advertise, solicit or hold itself out as
8 providing money transmission unless the person:

9 (1) is licensed pursuant to Article 2 of the
10 Uniform Money Services Act; or

11 (2) is an authorized delegate of a person
12 licensed pursuant to Article 2 of the Uniform Money Services
13 Act.

14 B. A license pursuant to Article 2 of the Uniform
15 Money Services Act is not transferable or assignable.

16 SECTION 202. [NEW MATERIAL] APPLICATION FOR LICENSE.--

17 A. A person applying for a license pursuant to
18 Article 2 of the Uniform Money Services Act shall apply in a
19 record signed under penalty of perjury that shall be in a form
20 and in a medium required by the director. Each form shall
21 contain content as set forth by rule, instruction or procedure
22 of the director. The form shall include the following
23 information:

24 (1) the legal name and residential and
25 business addresses of the applicant and any fictitious or trade

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1 name used by the applicant in conducting its business;

2 (2) a list of any criminal convictions of the
3 applicant and any material litigation in which the applicant
4 has been involved in the ten-year period next preceding the
5 submission of the application;

6 (3) a description of any money services
7 previously provided by the applicant and the money services
8 that the applicant seeks to provide in New Mexico;

9 (4) a list of the applicant's proposed
10 authorized delegates and the locations in New Mexico where the
11 applicant and its authorized delegates propose to engage in
12 money transmission or provide other money services;

13 (5) a list of other states in which the
14 applicant is licensed to engage in money transmission or
15 provide other money services and any license revocations,
16 suspensions or other disciplinary action taken against the
17 applicant in another state;

18 (6) information concerning any bankruptcy or
19 receivership proceedings affecting the applicant;

20 (7) a sample form of contract for authorized
21 delegates, if applicable, and a sample form of payment
22 instrument or instrument upon which stored value is recorded,
23 if applicable;

24 (8) the name and address of any bank through
25 which the applicant's payment instruments and stored value will

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1 be paid;

2 (9) a description of the source of money and
3 credit to be used by the applicant to provide money services;
4 and

5 (10) any other information the director
6 reasonably requires with respect to the applicant.

7 B. In order to fulfill the purposes of the Uniform
8 Money Services Act, the director may establish relationships or
9 contracts with the nationwide mortgage licensing system and
10 registry or other entities designated by the nationwide
11 mortgage licensing system and registry to collect and maintain
12 records and process transaction fees or other fees related to
13 applicants or other individuals subject to that act.

14 C. In connection with an application for licensing
15 pursuant to Article 2 of the Uniform Money Services Act, the
16 applicant shall, at a minimum, furnish to the nationwide
17 mortgage licensing system and registry the following
18 information in a form and medium prescribed by the nationwide
19 mortgage licensing system and registry:

20 (1) the applicant's history and experience;
21 and

22 (2) an authorization for the nationwide
23 mortgage licensing system and registry and the director to
24 obtain:

25 (a) an independent credit report; and

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1 (b) information related to any
2 administrative, civil or criminal findings by any governmental
3 jurisdiction.

4 D. If an applicant is a corporation, limited
5 liability company, partnership or other entity, the applicant
6 shall also provide:

7 (1) the date of the applicant's incorporation
8 or formation and the state or country of incorporation or
9 formation;

10 (2) if applicable, a certificate of good
11 standing from the state or country in which the applicant is
12 incorporated or formed;

13 (3) a brief description of the structure or
14 organization of the applicant, including any parent or
15 subsidiary of the applicant, and whether any parent or
16 subsidiary is publicly traded;

17 (4) the legal name, any fictitious or trade
18 name, all business and residential addresses and the employment
19 in the ten-year period next preceding the submission of the
20 application of each executive officer, manager, director or
21 person that has control of the applicant;

22 (5) a list of any criminal convictions and
23 material litigation in which any executive officer, manager,
24 director or person in control of the applicant has been
25 involved in the ten-year period next preceding the submission

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1 of the application;

2 (6) a copy of the applicant's audited
3 financial statements for the most recent fiscal year and, if
4 available, for the two-year period next preceding the
5 submission of the application;

6 (7) a copy of the applicant's unconsolidated
7 financial statements for the current fiscal year, whether
8 audited or not, and, if available, for the two-year period next
9 preceding the submission of the application;

10 (8) if the applicant is publicly traded, a
11 copy of the most recent report filed with the United States
12 securities and exchange commission pursuant to Section 13 of
13 the federal Securities Exchange Act of 1934;

14 (9) if the applicant is a wholly owned
15 subsidiary of:

16 (a) a corporation publicly traded in the
17 United States, a copy of audited financial statements for the
18 parent corporation for the most recent fiscal year or a copy of
19 the parent corporation's most recent report filed pursuant to
20 Section 13 of the federal Securities Exchange Act of 1934; or

21 (b) a corporation publicly traded
22 outside the United States, a copy of similar documentation
23 filed with the regulator of the parent corporation's domicile
24 outside the United States;

25 (10) if the applicant has a registered agent

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1 in New Mexico, the name and address of the applicant's
2 registered agent in New Mexico; and

3 (11) any other information the director
4 reasonably requires with respect to the applicant.

5 E. A nonrefundable application fee of two thousand
6 dollars (\$2,000) and a nonrefundable license fee of two
7 thousand dollars (\$2,000) shall accompany an application for a
8 license pursuant to Article 2 of the Uniform Money Services
9 Act. The application shall also be accompanied by the surety
10 bond or other security required by Section 203 of the Uniform
11 Money Services Act.

12 F. The director may waive one or more requirements
13 of Subsection C or D of this section or permit an applicant to
14 submit other information in lieu of the required information.

15 G. As used in this section, "material litigation"
16 means litigation that, according to generally accepted
17 accounting principles, is significant to an applicant's or a
18 licensee's financial health and would be required to be
19 disclosed in the applicant's or licensee's annual audited
20 financial statements, report to shareholders or similar
21 records.

22 SECTION 203. [NEW MATERIAL] SECURITY.--

23 A. Except as otherwise provided in Subsection B of
24 this section, a surety bond, letter of credit, or other similar
25 security acceptable to the director shall accompany an

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1 application for a license pursuant to Article 2 of the Uniform
2 Money Services Act. Except as otherwise provided in
3 Subsections D and F of this section, the required security
4 shall be in the amount of three hundred thousand dollars
5 (\$300,000) or an amount equal to one percent of the licensee's
6 total yearly dollar volume of money transmission business in
7 this state or the applicant's projected total volume of
8 business in this state for the first year of licensure,
9 whichever is greater, up to a maximum of two million dollars
10 (\$2,000,000).

11 B. The security shall be in form and substance and
12 from an issuer satisfactory to the director and payable to New
13 Mexico for the benefit of any claimant against the licensee to
14 secure the faithful performance of the obligations of the
15 licensee with respect to money transmission.

16 C. The aggregate liability on a surety bond shall
17 not exceed the principal sum of the bond. A claimant against a
18 licensee may maintain an action on the bond or the director may
19 maintain an action on behalf of the claimant.

20 D. A surety bond shall cover claims for so long as
21 the director specifies, but for at least five years after the
22 licensee ceases to provide money services in New Mexico.
23 However, the director may permit the amount of security to be
24 reduced or eliminated before the expiration of that time to the
25 extent the amount of the licensee's payment instruments or

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1 stored-value obligations outstanding in New Mexico is reduced.
2 The director may permit a licensee to substitute another form
3 of security acceptable to the director for the security
4 effective at the time the licensee ceases to provide money
5 services in New Mexico.

6 E. In lieu of the security prescribed in this
7 section, an applicant for a license or a licensee may provide
8 security in form and substance and from an issuer prescribed by
9 the director.

10 F. The director may increase the amount of security
11 required to a maximum of five million dollars (\$5,000,000) if
12 the financial condition of a licensee so requires, as evidenced
13 by reduction of net worth, financial losses or other relevant
14 criteria.

15 SECTION 204. [NEW MATERIAL] ISSUANCE OF LICENSE.--

16 A. When an application is filed pursuant to Article
17 2 of the Uniform Money Services Act, the director shall
18 investigate the applicant's financial condition and
19 responsibility, financial and business experience, character
20 and general fitness. The director may conduct an onsite
21 investigation of the applicant, in New Mexico or in any other
22 state or country, the reasonable cost of which the applicant
23 shall pay. The director shall issue a license to an applicant
24 pursuant to Article 2 of the Uniform Money Services Act if the
25 director finds that all of the following conditions have been

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1 fulfilled:

2 (1) the applicant has complied with Sections
3 202, 203 and 206 of the Uniform Money Services Act; and

4 (2) the financial condition and
5 responsibility, financial and business experience, competence,
6 character and general fitness of the applicant and the
7 competence, experience, character and general fitness of the
8 executive officers, managers, directors and persons in control
9 of the applicant indicate that it is in the interest of the
10 public to permit the applicant to engage in money transmission.

11 B. When an application for an original license
12 pursuant to Article 2 of the Uniform Money Services Act is
13 complete, the director shall promptly notify the applicant in a
14 record of the date on which the application was determined to
15 be complete and:

16 (1) the director shall approve or deny the
17 application within one hundred twenty days after that date; or

18 (2) if the application is not approved or
19 denied within one hundred twenty days after that date:

20 (a) the application is deemed approved;

21 and

22 (b) the license takes effect as of the
23 first business day after expiration of the one-hundred-twenty-
24 day period.

25 C. The director may for good cause extend the

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1 application period.

2 D. An applicant whose application is denied by the
3 director pursuant to Article 2 of the Uniform Money Services
4 Act may appeal the denial, within thirty days after receipt of
5 the notice of the denial, and request a hearing.

6 SECTION 205. [NEW MATERIAL] RENEWAL OF LICENSE.--

7 A. A license issued pursuant to Article 2 of the
8 Uniform Money Services Act shall expire on December 31 each
9 year. A licensee pursuant to Article 2 of the Uniform Money
10 Services Act shall pay an annual renewal fee of one thousand
11 dollars (\$1,000) and twenty-five dollars (\$25.00) for each
12 authorized delegate before November 1 of each year or, if
13 November 1 is not a business day, on the next business day.

14 B. A licensee pursuant to Article 2 of the Uniform
15 Money Services Act shall submit a renewal report with the
16 renewal fee, in a record signed under penalty of perjury that
17 shall be in a form and in a medium prescribed by the director.
18 The renewal report shall state or contain:

- 19 (1) a copy of the licensee's most recent
20 audited annual financial statement or, if the licensee is a
21 wholly owned subsidiary of another corporation, the most recent
22 audited consolidated annual financial statement of the parent
23 corporation or the licensee's most recent audited consolidated
24 annual financial statement;

- 25 (2) the number and monetary amount of payment

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1 instruments and stored value sold by the licensee in New Mexico
2 that have not been included in a renewal report and the
3 monetary amount of payment instruments and stored value
4 currently outstanding;

5 (3) a description of each material change in
6 information submitted by the licensee in its original license
7 application that has not been reported to the director on any
8 required report;

9 (4) a list of the licensee's permissible
10 investments and a certification that the licensee continues to
11 maintain permissible investments according to the requirements
12 set forth in Sections 701 and 702 of the Uniform Money Services
13 Act;

14 (5) proof that the licensee continues to
15 maintain adequate security as required by Section 203 of the
16 Uniform Money Services Act; and

17 (6) a list of the locations in New Mexico
18 where the licensee or an authorized delegate of the licensee
19 engages in money transmission or provides other money services.

20 C. If a licensee does not file a renewal report or
21 pay its renewal fee by the renewal date or any extension of
22 time granted by the director, the director shall send the
23 licensee a notice of suspension. Unless the licensee files the
24 report and pays the renewal fee before expiration of ten days
25 after the notice is sent, the licensee's license is suspended

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1 ten days after the director sends the notice of suspension.
2 The suspension shall be lifted if, within twenty days after its
3 license is suspended, the licensee:

4 (1) files the report and pays the renewal fee;
5 and

6 (2) pays one hundred dollars (\$100) for each
7 day after suspension that the director did not receive the
8 renewal report and the renewal fee.

9 D. The director for good cause may grant an
10 extension of the renewal date.

11 SECTION 206. [NEW MATERIAL] NET WORTH.--A licensee
12 pursuant to Article 2 of the Uniform Money Services Act shall
13 maintain a net worth of at least the following amounts
14 determined in accordance with generally accepted accounting
15 principles:

16 A. for one to four locations of the licensee and
17 authorized delegates in New Mexico, one hundred thousand
18 dollars (\$100,000); and

19 B. for five or more locations of the licensee and
20 authorized delegates in New Mexico or for an internet-based
21 money services business, five hundred thousand dollars
22 (\$500,000).

23 Article 3

24 CHECK CASHING LICENSES

25 SECTION 301. [NEW MATERIAL] LICENSE REQUIRED.--

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1 A. A person shall not engage in check cashing or
2 advertise, solicit or hold itself out as providing check
3 cashing for which the person receives at least five hundred
4 dollars (\$500) within a thirty-day period unless the person:

5 (1) is licensed pursuant to Article 3 of the
6 Uniform Money Services Act;

7 (2) is licensed for money transmission
8 pursuant to Article 2 of the Uniform Money Services Act;

9 (3) is licensed for currency exchange pursuant
10 to Article 4 of the Uniform Money Services Act; or

11 (4) is an authorized delegate of a person
12 licensed pursuant to Article 2 of the Uniform Money Services
13 Act.

14 B. A license pursuant to Article 3 of the Uniform
15 Money Services Act is not transferable or assignable.

16 **SECTION 302. [NEW MATERIAL] APPLICATION FOR LICENSE.--**

17 A. A person applying for a license pursuant to
18 Article 3 of the Uniform Money Services Act shall apply in a
19 record signed under penalty of perjury that shall be in a form
20 and in a medium required by the director. Each form shall
21 contain content as set forth by rule, instruction or procedure
22 of the director. The form shall include the following
23 information:

24 (1) the legal name and residential and
25 business addresses of the applicant if the applicant is an

1 individual or, if the applicant is not an individual, the name
2 of each partner, executive officer, manager and director;

3 (2) the location of the principal office of
4 the applicant;

5 (3) complete addresses of other locations in
6 New Mexico where the applicant proposes to engage in check
7 cashing or currency exchange, including all limited stations
8 and mobile locations;

9 (4) a description of the source of money and
10 credit to be used by the applicant to engage in check cashing
11 and currency exchange; and

12 (5) other information the director reasonably
13 requires with respect to the applicant, but not more than the
14 director may require pursuant to Article 2 of the Uniform Money
15 Services Act.

16 B. In connection with an application for licensing
17 pursuant to Article 3 of the Uniform Money Services Act, the
18 applicant shall, at a minimum, furnish to the nationwide
19 mortgage licensing system and registry the following
20 information in a form and medium prescribed by the nationwide
21 mortgage licensing system and registry:

22 (1) the applicant's history and experience;
23 and

24 (2) an authorization for the nationwide
25 mortgage licensing system and registry and the director to

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1 obtain:

2 (a) an independent credit report; and

3 (b) information related to any

4 administrative, civil or criminal findings by any governmental
5 jurisdiction.

6 C. A nonrefundable application fee of two thousand
7 dollars (\$2,000) and a nonrefundable license fee of two
8 thousand dollars (\$2,000) shall accompany an application for a
9 license pursuant to Article 3 of the Uniform Money Services
10 Act.

11 SECTION 303. [NEW MATERIAL] ISSUANCE OF LICENSE.--

12 A. When an application is filed pursuant to Article
13 3 of the Uniform Money Services Act, the director shall
14 investigate the applicant's financial condition and
15 responsibility, financial and business experience, character
16 and general fitness. The director may conduct an onsite
17 investigation of the applicant, in New Mexico or in any other
18 state or country, the reasonable cost of which the applicant
19 shall pay. The director shall issue a license to an applicant
20 pursuant to Article 3 of the Uniform Money Services Act if the
21 director finds that all of the following conditions have been
22 fulfilled:

23 (1) the applicant has complied with Section
24 302 of the Uniform Money Services Act; and

25 (2) the financial condition and

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1 responsibility, financial and business experience, competence,
2 character and general fitness of the applicant and the
3 competence, experience, character and general fitness of the
4 executive officers, managers, directors and persons in control
5 of the applicant indicate that it is in the interest of the
6 public to permit the applicant to engage in check cashing.

7 B. When an application for an original license
8 pursuant to Article 3 of the Uniform Money Services Act is
9 complete, the director shall promptly notify the applicant in a
10 record of the date on which the application was determined to
11 be complete and:

12 (1) the director shall approve or deny the
13 application within one hundred twenty days after that date; or

14 (2) if the application is not approved or
15 denied within one hundred twenty days after that date:

16 (a) the application is deemed approved;

17 and

18 (b) the director shall issue the
19 license, pursuant to Article 3 of the Uniform Money Services
20 Act, to take effect as of the first business day after
21 expiration of the one-hundred-twenty-day period.

22 C. The director may for good cause extend the
23 application period.

24 D. An applicant whose application is denied by the
25 director pursuant to Article 3 of the Uniform Money Services

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1 Act may appeal the denial, within thirty days after receipt of
2 the notice of the denial, and request a hearing.

3 SECTION 304. [NEW MATERIAL] RENEWAL OF LICENSE.--

4 A. A license issued pursuant to Article 3 of the
5 Uniform Money Services Act shall expire on December 31 each
6 year. A licensee pursuant to Article 3 of the Uniform Money
7 Services Act shall pay an annual renewal fee of one thousand
8 dollars (\$1,000) before November 1 of each year or, if November
9 1 is not a business day, on the next business day.

10 B. A licensee pursuant to Article 3 of the Uniform
11 Money Services Act shall submit a renewal report with the
12 renewal fee in a record signed under penalty of perjury that
13 shall be in a form and in a medium prescribed by the director.
14 The renewal report shall state or contain:

15 (1) a description of each material change in
16 information submitted by the licensee in its original license
17 application that has not been reported to the director on any
18 required report; and

19 (2) a list of the locations in New Mexico
20 where the licensee or an authorized delegate of the licensee
21 engages in check cashing or currency exchange, including
22 limited stations and mobile locations.

23 C. If a licensee does not file a renewal report or
24 pay its renewal fee by the renewal date or any extension of
25 time granted by the director, the director shall send the

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1 licensee a notice of suspension. Unless the licensee files the
2 report and pays the renewal fee before expiration of ten days
3 after the notice is sent, the licensee's license is suspended
4 ten days after the director sends the notice of suspension.
5 The suspension shall be lifted if, within twenty days after its
6 license is suspended, the licensee:

7 (1) files the report and pays the renewal fee;
8 and

9 (2) pays one hundred dollars (\$100) for each
10 day after suspension that the director did not receive the
11 renewal report and the renewal fee.

12 D. The director for good cause may grant an
13 extension of the renewal date.

14 Article 4

15 CURRENCY EXCHANGE LICENSES

16 SECTION 401. [NEW MATERIAL] LICENSE REQUIRED.--

17 A. A person shall not engage in currency exchange
18 or advertise, solicit or hold itself out as providing currency
19 exchange for which the person receives revenues equal or
20 greater than five percent of total revenues unless the person:

21 (1) is licensed pursuant to Article 4 of the
22 Uniform Money Services Act;

23 (2) is licensed for money transmission
24 pursuant to Article 2 of the Uniform Money Services Act;

25 (3) is licensed for check cashing pursuant to

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1 Article 3 of the Uniform Money Services Act; or

2 (4) is an authorized delegate of a person
3 licensed pursuant to Article 2 of the Uniform Money Services
4 Act.

5 B. A license pursuant to Article 4 of the Uniform
6 Money Services Act is not transferable or assignable.

7 SECTION 402. [NEW MATERIAL] APPLICATION FOR LICENSE.--

8 A. A person applying for a license pursuant to
9 Article 4 of the Uniform Money Services Act shall apply in a
10 record signed under penalty of perjury that shall be in a form
11 and in a medium required by the director. Each form shall
12 contain content as set forth by rule, instruction or procedure
13 of the director. The form shall include the following
14 information:

15 (1) the legal name and residential and
16 business addresses of the applicant if the applicant is an
17 individual or, if the applicant is not an individual, the name
18 of each partner, executive officer, manager and director;

19 (2) the location of the principal office of
20 the applicant;

21 (3) complete addresses of other locations in
22 New Mexico where the applicant proposes to engage in currency
23 exchange or check cashing, including all limited stations and
24 mobile locations;

25 (4) a description of the source of money and

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1 credit to be used by the applicant to engage in check cashing
2 and currency exchange; and

3 (5) other information the director reasonably
4 requires with respect to the applicant, but not more than the
5 director may require pursuant to Article 2 of the Uniform Money
6 Services Act.

7 B. In connection with an application for licensing
8 pursuant to Article 4 of the Uniform Money Services Act, the
9 applicant shall, at a minimum, furnish to the nationwide
10 mortgage licensing system and registry the following
11 information in a form and medium prescribed by the nationwide
12 mortgage licensing system and registry:

13 (1) the applicant's history and experience;
14 and

15 (2) an authorization for the nationwide
16 mortgage licensing system and registry and the director to
17 obtain:

18 (a) an independent credit report; and

19 (b) information related to any
20 administrative, civil or criminal findings by any governmental
21 jurisdiction.

22 C. A nonrefundable application fee of two thousand
23 dollars (\$2,000) and a nonrefundable license fee of two
24 thousand dollars (\$2,000) shall accompany an application for a
25 license pursuant to Article 4 of the Uniform Money Services

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1 Act.

2 SECTION 403. [NEW MATERIAL] ISSUANCE OF LICENSE.--

3 A. When an application is filed pursuant to Article
4 of the Uniform Money Services Act, the director shall
5 investigate the applicant's financial condition and
6 responsibility, financial and business experience, character
7 and general fitness. The director may conduct an onsite
8 investigation of the applicant, in New Mexico or in any other
9 state or country, the reasonable cost of which the applicant
10 shall pay. The director shall issue a license to an applicant
11 pursuant to Article 4 of the Uniform Money Services Act if the
12 director finds that all of the following conditions have been
13 fulfilled:

14 (1) the applicant has complied with Section
15 402 of the Uniform Money Services Act; and

16 (2) the financial condition and
17 responsibility, financial and business experience, competence,
18 character and general fitness of the applicant and the
19 competence, experience, character and general fitness of the
20 executive officers, managers, directors and persons in control
21 of the applicant indicate that it is in the interest of the
22 public to permit the applicant to engage in currency exchange.

23 B. When an application for an original license
24 pursuant to Article 4 of the Uniform Money Services Act is
25 complete, the director shall promptly notify the applicant in a

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1 record of the date on which the application was determined to
2 be complete and:

3 (1) the director shall approve or deny the
4 application within one hundred twenty days after that date; or

5 (2) if the application is not approved or
6 denied within one hundred twenty days after that date:

7 (a) the application is deemed approved;

8 and

9 (b) the director shall issue the
10 license, pursuant to Article 4 of the Uniform Money Services
11 Act, to take effect as of the first business day after
12 expiration of the one-hundred-twenty-day period.

13 C. The director may for good cause extend the
14 application period.

15 D. An applicant whose application is denied a
16 license by the director pursuant to Article 4 of the Uniform
17 Money Services Act may appeal the denial, within thirty days
18 after receipt of the notice of the denial, and request a
19 hearing.

20 SECTION 404. [NEW MATERIAL] RENEWAL OF LICENSE.--

21 A. A license issued pursuant to Article 4 of the
22 Uniform Money Services Act shall expire on December 31 each
23 year. A licensee pursuant to Article 4 of the Uniform Money
24 Services Act shall pay an annual renewal fee of one thousand
25 dollars (\$1,000) before November 1 of each year or, if November

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1 is not a business day, on the next business day.

2 B. A licensee pursuant to Article 4 of the Uniform
3 Money Services Act shall submit a renewal report with the
4 renewal fee in a record signed under penalty of perjury that
5 shall be in a form and in a medium prescribed by the director.
6 The renewal report shall state or contain:

7 (1) a description of each material change in
8 information submitted by the licensee in its original license
9 application that has not been reported to the director on any
10 required report; and

11 (2) a list of the locations in New Mexico
12 where the licensee or an authorized delegate of the licensee
13 engages in currency exchange or check cashing, including
14 limited stations and mobile locations.

15 C. If a licensee does not file a renewal report and
16 pay its renewal fee by the renewal date or any extension of
17 time granted by the director, the director shall send the
18 licensee a notice of suspension. Unless the licensee files the
19 report and pays the renewal fee before expiration of ten days
20 after the notice is sent, the licensee's license is suspended
21 ten days after the director sends the notice of suspension.
22 The suspension shall be lifted if, within twenty days after its
23 license is suspended, the licensee:

24 (1) files the report and pays the renewal fee;
25 and

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1 (2) pays one hundred dollars (\$100) for each
2 day after suspension that the director did not receive the
3 renewal report and the renewal fee.

4 D. The director for good cause may grant an
5 extension of the renewal date.

6 Article 5

7 AUTHORIZED DELEGATES

8 SECTION 501. [NEW MATERIAL] RELATIONSHIP BETWEEN LICENSEE
9 AND AUTHORIZED DELEGATE.--

10 A. As used in this section, "remit" means:

11 (1) to make direct payments of money to a
12 licensee or its representative authorized to receive money; or

13 (2) to deposit money in a bank in an account
14 specified by the licensee.

15 B. A contract between a licensee and an authorized
16 delegate shall require the authorized delegate to operate in
17 full compliance with the Uniform Money Services Act. The
18 licensee shall furnish in a record to each authorized delegate
19 policies and procedures sufficient for compliance with the
20 Uniform Money Services Act.

21 C. For each authorized delegate, the licensee shall
22 maintain records that demonstrate the licensee conducted a
23 reasonable background investigation of each authorized
24 delegate. A licensee shall preserve those records for at least
25 five years after the authorized delegate's most recent

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1 designation by the licensee.

2 D. An authorized delegate shall remit all money
3 owing to the licensee in accordance with the terms of the
4 contract between the licensee and the authorized delegate.

5 E. If a license is suspended or revoked or a
6 licensee does not renew its license, the director shall notify
7 all authorized delegates of the licensee whose names are in a
8 record filed with the director of the suspension, revocation or
9 nonrenewal. After notice is sent or publication is made, an
10 authorized delegate shall immediately cease to provide money
11 services as a delegate of the licensee.

12 F. An authorized delegate shall not provide money
13 services outside the scope of activity permissible pursuant to
14 the contract between the authorized delegate and the licensee,
15 except activity in which the authorized delegate is authorized
16 to engage pursuant to Article 2, 3 or 4 of the Uniform Money
17 Services Act. An authorized delegate of a licensee holds in
18 trust for the benefit of the licensee all money net of fees
19 received from money transmission.

20 G. An authorized delegate shall not use a
21 subdelegate to conduct money services on behalf of a licensee.

22 H. Whenever a licensee first advises the director
23 of the identity of a proposed delegate, the licensee shall pay
24 a nonrefundable fee of twenty-five dollars (\$25.00) for each
25 proposed delegate.

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1 SECTION 502. [NEW MATERIAL] UNAUTHORIZED ACTIVITY.--A

2 person shall only act as a delegate for a licensee. A person
3 that provides money services on behalf of a person not licensed
4 pursuant to the Uniform Money Services Act is considered to act
5 in its own capacity and may be subject to civil and criminal
6 penalties for providing money services without a license.

7 Article 6

8 EXAMINATIONS; REPORTS; RECORDS

9 SECTION 601. [NEW MATERIAL] AUTHORITY TO CONDUCT

10 EXAMINATIONS.--

11 A. The director may conduct an annual examination
12 of a licensee or of any of its authorized delegates upon forty-
13 five days' notice in a record to the licensee.

14 B. The director may examine a licensee or its
15 authorized delegate at any time, without notice, if the
16 director has reason to believe that the licensee or authorized
17 delegate is engaging in an unsafe or unsound practice or has
18 violated or is violating the Uniform Money Services Act or a
19 rule adopted or an order issued pursuant to that act.

20 C. If the director concludes that an onsite
21 examination is necessary pursuant to Subsection A of this
22 section, in New Mexico or in any other state or country, the
23 licensee shall pay the reasonable cost of the examination.

24 D. Information obtained during an examination
25 pursuant to the Uniform Money Services Act may be disclosed

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1 only as provided in Section 607 of that act.

2 SECTION 602. [NEW MATERIAL] COOPERATION.--The director
3 may consult and cooperate with other state agencies, agencies
4 of another state or of the United States or the nationwide
5 mortgage licensing system and registry in enforcing and
6 administering the Uniform Money Services Act. They may jointly
7 pursue examinations and take other official action that they
8 are otherwise empowered to take.

9 SECTION 603. [NEW MATERIAL] REPORTS.--

10 A. A licensee shall file with the director a record
11 signed under penalty of perjury that shall be in a form and in
12 a medium prescribed by the director and that shall contain any
13 material change in information provided in the licensee's
14 application or the information provided by the licensee to the
15 nationwide mortgage licensing system and registry. The record
16 shall be filed within fifteen business days after the licensee
17 has reason to know of the change.

18 B. A licensee shall file with the director within
19 forty-five days after the end of each fiscal quarter a record
20 signed under penalty of perjury that shall be in a form and in
21 a medium prescribed by the director and that shall contain a
22 current list of all authorized delegates and locations in New
23 Mexico where the licensee or an authorized delegate of the
24 licensee provides money services, including limited stations
25 and mobile locations. The licensee shall state the name and

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1 street address of each location and authorized delegate.

2 C. A licensee shall file a report with the director
3 within one business day after the licensee has reason to know
4 of the occurrence of any of the following events:

5 (1) the filing of a petition by or against the
6 licensee pursuant to the United States Bankruptcy Code for
7 bankruptcy or reorganization;

8 (2) the filing of a petition by or against the
9 licensee for receivership, the commencement of any other
10 judicial or administrative proceeding for its dissolution or
11 reorganization or the making of a general assignment for the
12 benefit of its creditors;

13 (3) the commencement of a proceeding to revoke
14 or suspend its license in a state or country in which the
15 licensee engages in business or is licensed;

16 (4) the cancellation or other impairment of
17 the licensee's bond or other security;

18 (5) a charge or conviction of the licensee or
19 of an executive officer, manager, director or person in control
20 of the licensee for a felony; or

21 (6) a charge or conviction of an authorized
22 delegate for a felony.

23 D. The report required pursuant to Subsection C of
24 this section shall be a record signed under penalty of perjury
25 and in a form and in a medium prescribed by the director and

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1 shall describe the event requiring the report.

2 SECTION 604. [NEW MATERIAL] CHANGE OF CONTROL.--

3 A. A licensee shall:

4 (1) give the director notice in a record
5 signed under penalty of perjury in a form and in a medium
6 prescribed by the director of a proposed change of control
7 within fifteen days after learning of the proposed change of
8 control;

9 (2) request approval by the director of the
10 proposed change of control; and

11 (3) submit a nonrefundable fee of two thousand
12 dollars (\$2,000) with the notice.

13 B. After review of a request for approval pursuant
14 to Subsection A of this section, the director may require the
15 licensee to provide in a record signed under penalty of perjury
16 in a form and in a medium prescribed by the director additional
17 information concerning the proposed persons in control of the
18 licensee. The additional information shall be limited to the
19 same types required of the licensee or persons in control of
20 the licensee as part of its original license or renewal
21 application.

22 C. The director shall approve a request for change
23 of control pursuant to Subsection A of this section if, after
24 investigation, the director determines that the person or group
25 of persons requesting approval has the competence, experience,

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1 character and general fitness to operate the licensee or person
2 in control of the licensee in a lawful and proper manner and
3 that the public interest will not be jeopardized by the change
4 of control.

5 D. When an application for a change of control
6 pursuant to Article 6 of the Uniform Money Services Act is
7 complete, the director shall notify the licensee in a record of
8 the date on which the request was determined to be complete
9 and:

10 (1) the director shall approve or deny the
11 request within one hundred twenty days after that date; or

12 (2) if the request is not approved or denied
13 within one hundred twenty days after that date:

14 (a) the request is deemed approved; and

15 (b) the director shall permit the change
16 of control, pursuant to this section, to take effect as of the
17 first business day after expiration of the one-hundred-twenty-
18 day period.

19 E. The director, by rule or order, may exempt a
20 person from any of the requirements of Paragraphs (2) and (3)
21 of Subsection A of this section if it is in the public interest
22 to do so.

23 F. Subsection A of this section does not apply to a
24 public offering of securities.

25 G. Before filing a request for approval to acquire

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1 control of a licensee or person in control of a licensee, a
2 person may request in a record a determination from the
3 director as to whether the person would be considered a person
4 in control of a licensee upon consummation of a proposed
5 transaction. If the director determines that the person would
6 not be a person in control of a licensee, the director shall
7 enter an order to that effect and the proposed person and
8 transaction is not subject to the requirements of Subsections A
9 through C of this section.

10 SECTION 605. [NEW MATERIAL] RECORDS.--

11 A. A licensee shall maintain the following records
12 for determining its compliance with the Uniform Money Services
13 Act for at least three years:

14 (1) a record of each payment instrument or
15 stored-value obligation sold;

16 (2) a general ledger posted at least monthly
17 containing all asset, liability, capital, income and expense
18 accounts;

19 (3) bank statements and bank reconciliation
20 records;

21 (4) records of outstanding payment instruments
22 and stored-value obligations;

23 (5) records of each payment instrument and
24 stored-value obligation paid within the three-year period;

25 (6) a list of the last known names and

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1 addresses of all of the licensee's authorized delegates; and
2 (7) any other records the director reasonably
3 requires by rule.

4 B. The items specified in Subsection A of this
5 section may be maintained in writing, electronically or in any
6 other form of record that is permitted by the director.

7 C. Records may be maintained outside New Mexico if
8 they are made accessible to the director on seven business-
9 days' notice that is sent in a record.

10 D. All records maintained by the licensee as
11 required in Subsections A through C of this section are open to
12 inspection by the director pursuant to Section 601 of the
13 Uniform Money Services Act.

14 SECTION 606. [NEW MATERIAL] MONEY LAUNDERING REPORTS.--

15 A. A licensee and an authorized delegate shall file
16 with the New Mexico attorney general all reports required by
17 federal currency reporting, recordkeeping and suspicious
18 transaction reporting requirements as set forth in 31 U.S.C.
19 Section 5311 et seq. (1994) or any successor law; and other
20 federal and state laws pertaining to money laundering.

21 B. The timely filing of a complete and accurate
22 report required under Subsection A of this section with the
23 appropriate federal agency is compliance with the requirements
24 of that subsection, unless the director notifies the licensee
25 that the New Mexico attorney general has notified the director

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1 that reports of this type are not being regularly and
2 comprehensively made available by the federal agency to the New
3 Mexico attorney general.

4 C. In connection with each transaction that
5 involves transmitting money in an amount of one thousand
6 dollars (\$1,000) or more, whether sending or receiving, a
7 licensee or, for a transaction conducted through an authorized
8 delegate, an authorized delegate, shall retain a record of each
9 of the following:

10 (1) the name and social security or taxpayer
11 identification number, if any, of the individual presenting the
12 transaction and of the person and the entity on whose behalf
13 the transaction is to be effected;

14 (2) the type and number of the customer's
15 verified photographic identification as described in 31 Code of
16 Federal Regulations Section 1010.312 or any successor
17 regulations;

18 (3) the customer's current occupation;

19 (4) the customer's current residential
20 address; and

21 (5) the customer's signature.

22 D. The provisions of Subsection C of this section
23 shall not apply to transactions by which a licensee's customer
24 is making a bill payment to:

25 (1) a commercial creditor pursuant to a

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1 contract between the licensee and the commercial creditor; or
2 (2) a utility company.

3 SECTION 607. [NEW MATERIAL] CONFIDENTIALITY.--

4 A. Except as otherwise provided in Subsection B of
5 this section, all information or reports obtained by the
6 director from an applicant, licensee or authorized delegate and
7 all information contained in or related to examination,
8 investigation, operating or condition reports prepared by, on
9 behalf of or for the use of the director, or financial
10 statements, balance sheets or authorized delegate information,
11 are confidential and are not subject to disclosure pursuant to
12 the Public Records Act or any similar law.

13 B. The director may disclose information not
14 otherwise subject to disclosure pursuant to Subsection A of
15 this section to representatives of state or federal agencies
16 who promise in a record signed under penalty of perjury in a
17 form and in a medium prescribed by the director that they will
18 maintain the confidentiality of the information or if the
19 director finds that the release is reasonably necessary for the
20 protection of the public and is in the interests of justice and
21 the licensee has been given not fewer than ten days' notice in
22 a record by the director of the director's intent to release
23 the information.

24 C. This section does not prohibit the director from
25 disclosing to the public a list of persons licensed pursuant to

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1 the Uniform Money Services Act or the aggregated financial data
2 concerning those licensees.

3 Article 7

4 PERMISSIBLE INVESTMENTS

5 SECTION 701. [NEW MATERIAL] MAINTENANCE OF PERMISSIBLE
6 INVESTMENTS.--

7 A. A licensee shall maintain at all times
8 permissible investments that have a market value computed in
9 accordance with generally accepted accounting principles of not
10 less than the aggregate amount of all of its outstanding
11 payment instruments and stored-value obligations issued or sold
12 in all states and money transmitted from all states by the
13 licensee.

14 B. The director, with respect to any licensees, may
15 limit the extent to which a type of investment within a class
16 of permissible investments may be considered a permissible
17 investment, except for money and certificates of deposit issued
18 by a bank. The director by rule may prescribe or by order
19 allow other types of investments that the director determines
20 to have a safety substantially equivalent to other permissible
21 investments.

22 C. Permissible investments, even if commingled with
23 other assets of the licensee, are held in trust for the benefit
24 of the purchasers and holders of the licensee's outstanding
25 payment instruments and stored-value obligations in the event

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1 of bankruptcy or receivership of the licensee.

2 SECTION 702. [NEW MATERIAL] TYPES OF PERMISSIBLE
3 INVESTMENTS.--

4 A. Except to the extent otherwise limited by the
5 director pursuant to Section 701 of the Uniform Money Services
6 Act, the following investments are permissible pursuant to
7 Section 701 of that act:

8 (1) cash, a certificate of deposit or senior
9 debt obligation of an insured depository institution as defined
10 in Section 3 of the Federal Deposit Insurance Act;

11 (2) a banker's acceptance or bill of exchange
12 that is eligible for purchase upon endorsement by a member bank
13 of the federal reserve system and is eligible for purchase by a
14 federal reserve bank;

15 (3) an investment bearing a rating of one of
16 the three highest grades as defined by a nationally recognized
17 organization that rates securities;

18 (4) an investment security that is an
19 obligation of the United States or a department, agency or
20 instrumentality thereof; an investment in an obligation that is
21 guaranteed fully as to principal and interest by the United
22 States; or an investment in an obligation of a state or a
23 governmental subdivision, agency or instrumentality thereof;

24 (5) receivables that are payable to a licensee
25 from its authorized delegates, in the ordinary course of

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1 business, pursuant to contracts that are not more than ten days
2 past due or doubtful of collection if the aggregate amount of
3 receivables pursuant to this paragraph does not exceed fifty
4 percent of the total permissible investments of a licensee and
5 the licensee does not hold at one time receivables pursuant to
6 this paragraph in any one person aggregating more than ten
7 percent of the licensee's total permissible investments; and

8 (6) a share or a certificate issued by an
9 open-end management investment company that is registered with
10 the United States securities and exchange commission pursuant
11 to the federal Investment Company Act of 1940 and whose
12 portfolio is restricted by the management company's investment
13 policy to investments specified in Paragraphs (1) through (4)
14 of this subsection.

15 B. The following investments are permissible
16 pursuant to Section 701 of the Uniform Money Services Act, but
17 only to the extent specified:

18 (1) an interest-bearing bill, note, bond or
19 debenture of a person whose equity shares are traded on a
20 national securities exchange or on a national over-the-counter
21 market, if the aggregate of investments pursuant to this
22 paragraph does not exceed twenty percent of the total
23 permissible investments of a licensee and the licensee does not
24 at one time hold investments pursuant to this paragraph in any
25 one person aggregating more than ten percent of the licensee's

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1 total permissible investments;

2 (2) a share of a person traded on a national
3 securities exchange or a national over-the-counter market or a
4 share or a certificate issued by an open-end management
5 investment company that is registered with the United States
6 securities and exchange commission pursuant to the federal
7 Investment Company Act of 1940 and whose portfolio is
8 restricted by the management company's investment policy to
9 shares of a person traded on a national securities exchange or
10 a national over-the-counter market, if the aggregate of
11 investments pursuant to this paragraph does not exceed twenty
12 percent of the total permissible investments of a licensee and
13 the licensee does not at one time hold investments in any one
14 person aggregating more than ten percent of the licensee's
15 total permissible investments;

16 (3) a demand-borrowing agreement made to a
17 corporation or a subsidiary of a corporation whose securities
18 are traded on a national securities exchange, if the aggregate
19 of the amount of principal and interest outstanding pursuant to
20 demand-borrowing agreements pursuant to this paragraph does not
21 exceed twenty percent of the total permissible investments of a
22 licensee and the licensee does not at one time hold principal
23 and interest outstanding pursuant to demand-borrowing
24 agreements pursuant to this paragraph with any one person
25 aggregating more than ten percent of the licensee's total

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1 permissible investments; and

2 (4) any other investment the director
3 designates, to the extent specified by the director.

4 C. The aggregate of investments pursuant to
5 Subsection B of this section shall not exceed fifty percent of
6 the total permissible investments of a licensee calculated in
7 accordance with Section 701 of the Uniform Money Services Act.

8 Article 8

9 ENFORCEMENT

10 SECTION 801. [NEW MATERIAL] SUSPENSION AND REVOCATION--
11 RECEIVERSHIP.--

12 A. The director may suspend or revoke a license,
13 place a licensee in receivership or order a licensee to revoke
14 the designation of an authorized delegate if:

15 (1) the licensee violates the Uniform Money
16 Services Act or a rule adopted or an order issued pursuant to
17 that act;

18 (2) the licensee does not cooperate with an
19 examination or investigation by the director;

20 (3) the licensee engages in fraud, intentional
21 misrepresentation or gross negligence;

22 (4) an authorized delegate is convicted of a
23 violation of a state or federal anti-money laundering statute,
24 or violates a rule adopted or an order issued pursuant to the
25 Uniform Money Services Act, as a result of the licensee's

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1 willful misconduct or willful blindness;

2 (5) the competence, experience, character or
3 general fitness of the licensee, authorized delegate, person in
4 control of a licensee or responsible person of the licensee or
5 authorized delegate indicates that it is not in the public
6 interest to permit the person to provide money services;

7 (6) the licensee engages in an unsafe or
8 unsound practice;

9 (7) the licensee is insolvent, suspends
10 payment of its obligations or makes a general assignment for
11 the benefit of its creditors; or

12 (8) the licensee does not remove an authorized
13 delegate after the director issues and serves upon the licensee
14 a final order, including a finding that the authorized delegate
15 has violated the Uniform Money Services Act.

16 B. In determining whether a licensee is engaging in
17 an unsafe or unsound practice, the director may consider the
18 size and condition of the licensee's money transmission, the
19 magnitude of the loss, the gravity of the violation of the
20 Uniform Money Services Act and the previous conduct of the
21 person involved.

22 SECTION 802. [NEW MATERIAL] SUSPENSION AND REVOCATION OF
23 AUTHORIZED DELEGATES.--

24 A. The director may issue an order suspending or
25 revoking the designation of an authorized delegate if the

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1 director finds that:

2 (1) the authorized delegate violated the
3 Uniform Money Services Act or a rule adopted or an order issued
4 pursuant to that act;

5 (2) the authorized delegate did not cooperate
6 with an examination or investigation by the director;

7 (3) the authorized delegate engaged in fraud,
8 intentional misrepresentation or gross negligence;

9 (4) the authorized delegate is convicted of a
10 violation of a state or federal anti-money laundering statute;

11 (5) the competence, experience, character or
12 general fitness of the authorized delegate or a person in
13 control of the authorized delegate indicates that it is not in
14 the public interest to permit the authorized delegate to
15 provide money services; or

16 (6) the authorized delegate is engaging in an
17 unsafe or unsound practice.

18 B. In determining whether an authorized delegate is
19 engaging in an unsafe or unsound practice, the director may
20 consider the size and condition of the authorized delegate's
21 provision of money services, the magnitude of the loss, the
22 gravity of the violation of the Uniform Money Services Act or a
23 rule adopted or order issued pursuant to that act and the
24 previous conduct of the authorized delegate.

25 C. An authorized delegate may apply for relief from

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1 a suspension or revocation of designation as an authorized
2 delegate according to procedures prescribed by the director.

3 SECTION 803. [NEW MATERIAL] ORDERS TO CEASE AND DESIST.--

4 A. If the director determines that a violation of
5 the Uniform Money Services Act, or of a rule adopted or an
6 order issued pursuant to that act, by a licensee or authorized
7 delegate is likely to cause immediate and irreparable harm to
8 the licensee, its customers or the public as a result of the
9 violation, or causes insolvency or significant dissipation of
10 assets of the licensee, the director may issue an order
11 requiring the licensee or authorized delegate to cease and
12 desist from the violation. The order becomes effective upon
13 service of it upon the licensee or authorized delegate.

14 B. The director may issue an order against a
15 licensee to cease and desist from providing money services
16 through an authorized delegate that is the subject of a
17 separate order by the director.

18 C. An order to cease and desist remains effective
19 and enforceable pending the completion of an administrative
20 proceeding pursuant to Section 801 or 802 of the Uniform Money
21 Services Act.

22 D. A licensee or an authorized delegate that is
23 served with an order to cease and desist may petition the
24 district court for a judicial order setting aside, limiting or
25 suspending the enforcement, operation or effectiveness of the

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1 order pending the completion of an administrative proceeding
2 pursuant to Section 801 or 802 of the Uniform Money Services
3 Act.

4 E. An order to cease and desist expires unless the
5 director commences an administrative proceeding pursuant to
6 Section 801 or 802 of the Uniform Money Services Act within ten
7 days after it is issued.

8 SECTION 804. [NEW MATERIAL] CONSENT ORDERS.--The director
9 may enter into a consent order at any time with a person to
10 resolve a matter arising pursuant to the Uniform Money Services
11 Act or a rule adopted or order issued pursuant to that act. A
12 consent order shall be signed by the person to whom it is
13 issued or by the person's authorized representative and shall
14 indicate agreement with the terms contained in the order. A
15 consent order may provide that it does not constitute an
16 admission by a person that the Uniform Money Services Act or a
17 rule adopted or an order issued pursuant to that act has been
18 violated.

19 SECTION 805. [NEW MATERIAL] EMERGENCY ORDERS.--

20 A. The director may issue an emergency order,
21 without prior notice and an opportunity for hearing, if the
22 director finds that:

23 (1) the action, violation or condition that is
24 the basis for the order:

25 (a) has caused or is likely to cause the

1 insolvency of the licensee;

2 (b) has caused or is likely to cause the
3 substantial dissipation of the licensee's assets or earnings;

4 (c) has seriously weakened or is likely
5 to seriously weaken the condition of the licensee; or

6 (d) has seriously prejudiced or is
7 likely to seriously prejudice the interests of the licensee, a
8 purchaser of the licensee's money services or the public; and

9 (2) immediate action is necessary to protect
10 the interests of the licensee, a purchaser of the licensee's
11 money services or the public.

12 B. In connection with and as directed by an
13 emergency order, the director may secure the records and assets
14 of a licensee or authorized delegate that relate to the
15 licensee's money services business.

16 C. An emergency order shall:

17 (1) state the grounds on which the order is
18 based;

19 (2) advise the person against whom the order
20 is directed that the order takes effect immediately, and, to
21 the extent applicable, require the person to immediately cease
22 and desist from the conduct or violation that is the subject of
23 the order or to take the affirmative action stated in the order
24 as necessary to correct a condition resulting from the conduct
25 or violation or as otherwise appropriate;

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1 (3) be delivered by personal delivery or sent
2 by certified mail, return receipt requested, to the person
3 against whom the order is directed at the person's last known
4 address; and

5 (4) include a notice that a person may request
6 a hearing on the order by filing a written request for a
7 hearing with the director not later than the fifteenth day
8 after the date the order is delivered or mailed.

9 D. An emergency order takes effect as soon as the
10 order is served on the person against whom the order is
11 directed.

12 E. A licensee or authorized delegate against whom
13 an emergency order is directed must submit a written
14 certification to the director, signed by the licensee or
15 authorized delegate, and their principals and responsible
16 individuals, as applicable, and each person named in the order,
17 stating that each person has received a copy of and has read
18 and understands the order.

19 F. Unless the director receives a written request
20 for a hearing from a person against whom an emergency order is
21 directed not later than the fifteenth day after the date the
22 order is delivered or mailed, the order is final as to that
23 person on the sixteenth day after the date the order is
24 delivered or mailed.

25 G. A request for a hearing does not stay an

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1 emergency order.

2 H. A hearing on an emergency order takes precedence
3 over any other matter pending before the director and must be
4 held not later than the tenth day after the date the director
5 receives the written request for hearing unless a hearing
6 officer extends the period for good cause or the parties agree
7 to a later hearing date.

8 I. A final emergency order may be appealed to the
9 district court as provided in Section 39-3-1.1 NMSA 1978.

10 SECTION 806. [NEW MATERIAL] CIVIL PENALTIES.--The
11 director may assess a civil penalty against a person that
12 violates the Uniform Money Services Act or a rule adopted or an
13 order issued pursuant to that act in an amount not to exceed
14 one thousand dollars (\$1,000) per day for each day the
15 violation is outstanding.

16 SECTION 807. [NEW MATERIAL] CRIMINAL PENALTIES.--

17 A. A person who intentionally makes a false
18 statement, misrepresentation or false certification in a record
19 filed or required to be maintained pursuant to the Uniform
20 Money Services Act or who intentionally makes a false entry or
21 omits a material entry in such a record is guilty of a fourth
22 degree felony.

23 B. A person who knowingly engages in an activity
24 for which a license is required pursuant to the Uniform Money
25 Services Act without being licensed pursuant to that act and

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1 who receives more than two thousand five hundred dollars
2 (\$2,500) in compensation within a thirty-day period from this
3 activity is guilty of a fourth degree felony.

4 C. A person who knowingly engages in an activity
5 for which a license is required pursuant to the Uniform Money
6 Services Act without being licensed pursuant to that act and
7 who receives two thousand five hundred dollars (\$2,500) or less
8 in compensation within a thirty-day period from this activity
9 is guilty of a misdemeanor.

10 SECTION 808. [NEW MATERIAL] UNLICENSED PERSONS.--

11 A. If the director has reason to believe that a
12 person has violated or is violating Section 201, 301 or 401 of
13 the Uniform Money Services Act, the director may issue an order
14 to show cause why an order to cease and desist should not issue
15 requiring that the person cease and desist from the violation
16 of Section 201, 301 or 401 of that act.

17 B. In an emergency, the director may petition the
18 district court for the issuance of a temporary restraining
19 order ex parte pursuant to the rules of civil procedure.

20 C. An order to cease and desist becomes effective
21 upon service of it upon the person.

22 D. An order to cease and desist remains effective
23 and enforceable pending the completion of an administrative
24 proceeding pursuant to Sections 901 and 902 of the Uniform
25 Money Services Act.

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1 E. A person that is served with an order to cease
2 and desist for violating Section 201, 301 or 401 of the Uniform
3 Money Services Act may petition the district court for a
4 judicial order setting aside, limiting or suspending the
5 enforcement, operation or effectiveness of the order pending
6 the completion of an administrative proceeding pursuant to
7 Sections 901 and 902 of that act.

8 F. An order to cease and desist expires unless the
9 director commences an administrative proceeding within ten days
10 after it is issued.

11 Article 9

12 ADMINISTRATIVE PROCEDURES

13 SECTION 901. [NEW MATERIAL] POWERS OF DIRECTOR.--

14 A. The director may act on the director's own
15 initiative or in response to complaints and may receive
16 complaints, take action to obtain voluntary compliance with the
17 Uniform Money Services Act, refer cases to the office of the
18 attorney general or any other state agency or agency of another
19 state or the United States and seek or provide remedies as
20 provided in the Uniform Money Services Act.

21 B. The director may investigate and examine, in New
22 Mexico or in any other state or country, by subpoena or
23 otherwise, the activities, books, accounts and records of a
24 person that provides or offers to provide money services, or a
25 person to which a licensee has delegated its obligations

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1 pursuant to an agreement or the Uniform Money Services Act, to
2 determine compliance with the Uniform Money Services Act.

3 Information that identifies individuals who have agreements
4 with the licensee shall not be disclosed to the public. In
5 connection with the investigation, the director may:

6 (1) charge the person the reasonable expenses
7 necessarily incurred to conduct the examination; and

8 (2) require or permit a person to file a
9 statement under oath as to all the facts and circumstances of a
10 matter to be investigated.

11 C. The director may enter into cooperative
12 arrangements with other state agencies or agencies of another
13 state or of the United States, or the nationwide mortgage
14 licensing system and registry, and may exchange with any of
15 those entities information about a licensee, including
16 information obtained during an examination of the licensee.

17 D. The director may bring an action to enforce the
18 Uniform Money Services Act in New Mexico or in any other state
19 or country.

20 E. The director may recover the reasonable expenses
21 of enforcing the Uniform Money Services Act pursuant to Article
22 8 of that act, including nongovernmental attorney and expert
23 witness fees based on the hours reasonably expended and the
24 hourly rates for attorneys and expert witnesses of comparable
25 experience in the community.

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1 **SECTION 902.** [NEW MATERIAL] HEARINGS.--Except as
2 otherwise provided in Subsection C of Section 205, Subsection C
3 of Section 304, Subsection C of Section 404 and Sections 803,
4 805 and 808 of the Uniform Money Services Act, the director
5 shall not suspend or revoke a license, place a licensee in
6 receivership, issue an order to cease and desist, suspend or
7 revoke the designation of an authorized delegate or assess a
8 civil penalty without notice and an opportunity to be heard.
9 The director shall also hold a hearing when requested to do so
10 by an applicant whose application for a license is denied.

11 Article 10

12 MISCELLANEOUS PROVISIONS

13 **SECTION 1001.** [NEW MATERIAL] UNIFORMITY OF APPLICATION
14 AND CONSTRUCTION.--In applying and construing the Uniform Money
15 Services Act, consideration shall be given to the need to
16 promote uniformity of the law with respect to its subject
17 matter among states that enact it.

18 **SECTION 1002.** [NEW MATERIAL] RULES.--The director may
19 promulgate rules to administer and enforce the Uniform Money
20 Services Act, including rules necessary or appropriate to:

- 21 A. implement and clarify the Uniform Money Services
22 Act;
- 23 B. preserve and protect the safety and soundness of
24 money services businesses;
- 25 C. protect the interests of purchasers of money

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1 services and of the public;

2 D. protect against drug trafficking, terrorist
3 funding and money laundering, structuring or a related
4 financial crime; and

5 E. recover the cost of administering and enforcing
6 the Uniform Money Services Act and other applicable law by
7 imposing and collecting proportionate and equitable fees and
8 costs for notices, applications, examinations, investigations
9 and other actions required to achieve the purposes of that act.

10 SECTION 1003. [NEW MATERIAL] APPOINTMENT OF SECRETARY OF
11 STATE AS AGENT FOR SERVICE OF PROCESS--FORWARDING OF PROCESS--
12 CONSENT TO JURISDICTION.--

13 A. A licensee, an authorized delegate or a person
14 who knowingly engages in activities that are regulated by the
15 Uniform Money Services Act and require a license, with or
16 without filing an application or holding a license, is deemed
17 to have:

18 (1) consented to the jurisdiction of the
19 courts of this state over the licensee, authorized delegate or
20 person for all actions arising pursuant to the Uniform Money
21 Services Act;

22 (2) consented to the venue in New Mexico for
23 all actions arising pursuant to the Uniform Money Services Act,
24 as venue is provided pursuant to Chapter 38, Article 3 NMSA
25 1978, and to the convenient forum of the courts in any such

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1 venue; and

2 (3) appointed the secretary of state as the
3 lawful agent of the licensee, authorized delegate or person for
4 the purpose of accepting service of process in all actions
5 arising pursuant to the Uniform Money Services Act.

6 B. Within three business days after service of
7 process upon the secretary of state, the secretary of state
8 shall transmit by certified mail copies of all lawful process
9 accepted by the secretary of state as an agent to that person
10 at the person's last known address. Service of process shall
11 be deemed complete three business days after the secretary of
12 state deposits the copies of the documents in the United States
13 mail.

14 C. The provisions of this section are cumulative
15 and do not diminish the provisions of any other law that:

16 (1) provide for the New Mexico courts to have
17 jurisdiction over a person;

18 (2) provide for venue in New Mexico of any
19 action; or

20 (3) provide for any other method of serving
21 process upon a person.

22 SECTION 1004. [NEW MATERIAL] MONEY SERVICES REGULATORY
23 FUND--CREATED--PURPOSE--APPROPRIATION.--

24 A. The "money services regulatory fund" is created
25 as a nonreverting fund in the state treasury and shall be

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1 administered by the financial institutions division of the
2 regulation and licensing department. The fund shall consist of
3 application, licensing, renewal, investigation and any other
4 fees received that are associated with the costs of
5 administering the Uniform Money Services Act and any money that
6 is appropriated or donated or that otherwise accrues to the
7 fund. Money in the fund shall be invested by the state
8 investment officer in the manner that land grant permanent
9 funds are invested pursuant to Chapter 6, Article 8 NMSA 1978.
10 Income from investment of the fund shall be credited to the
11 fund.

12 B. Money in the money services regulatory fund is
13 appropriated to the financial institutions division of the
14 regulation and licensing department to carry out the provisions
15 of the Uniform Money Services Act.

16 C. Money shall be disbursed from the money services
17 regulatory fund only on warrant of the secretary of finance and
18 administration upon vouchers signed by the director of the
19 financial institutions division or the director's authorized
20 representative. Any unexpended or unencumbered balance
21 remaining at the end of a fiscal year shall not revert to the
22 general fund.

23 SECTION 1005. TEMPORARY PROVISION--LICENSEE TRANSITION.--

24 The director of the financial institutions division of the
25 regulation and licensing department shall promulgate such rules

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1 as are necessary to transition licensees pursuant to Section
2 58-20-1 NMSA 1978 to the licensing provisions of the Uniform
3 Money Services Act.

4 SECTION 1006. DELAYED REPEAL.--Section 58-20-1 NMSA 1978
5 (being Laws 1965, Chapter 293, Section 1, as amended) is
6 repealed effective July 1, 2017.

7 SECTION 1007. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is January 1, 2017.

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