

1 AN ACT

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

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "58-19-2. DEFINITIONS.--As used in the Motor Vehicle
14 Sales Finance Act:

15 A. "motor vehicles" means automobiles,
16 recreational vehicles, recreational travel trailers,
17 trailers, motorcycles, trucks, semi-trailers, truck tractors
18 and buses designed and used primarily to transport persons or
19 property on a public highway, farm machinery and all vehicles
20 new or used, with any power other than muscular power except
21 boat trailers, aircraft or any vehicle that runs only on
22 rails or tracks, but does not include any motor vehicle
23 having a gross vehicle weight of ten thousand pounds or more
24 purchased primarily for business or commercial purposes;

25 B. "retail buyer" or "buyer" means a person who

1 buys a motor vehicle primarily for personal, family or
2 household purposes from a retail seller and who executes a
3 retail installment contract in connection therewith;

4 C. "retail seller" or "seller" means a person who
5 sells a motor vehicle to a retail buyer or subject to a
6 retail installment contract;

7 D. "holder" of a retail installment contract means
8 the retail seller of the motor vehicle under or subject to
9 the contract or, if the contract is purchased by a sales
10 finance company or other assignee, the sales finance company
11 or other assignee;

12 E. "retail installment transaction" means any
13 transaction evidenced by a retail installment contract
14 entered into between a retail buyer and a retail seller
15 wherein the retail buyer buys a motor vehicle from the retail
16 seller at a time price payable in one or more deferred
17 installments. The cash sale price of the motor vehicle, the
18 amount included for insurance and other benefits if a
19 separate charge is made therefor, official fees and the
20 finance charge together constitute the time price;

21 F. "retail installment contract" or "contract"
22 means an agreement, entered into in this state or made
23 subject to the laws of this state, pursuant to which the
24 title to or a lien upon the motor vehicle that is the subject
25 matter of a retail installment transaction is retained or

1 taken by a retail seller from a retail buyer as security for
2 the buyer's obligation. The term includes a chattel
3 mortgage, a conditional sales contract and a contract for the
4 bailment or leasing of a motor vehicle by which the bailee or
5 lessee contracts to pay as compensation for its use a sum
6 substantially equivalent to or in excess of its value and by
7 which it is agreed that the bailee or lessee is bound to
8 become or has the option of becoming the owner of the motor
9 vehicle upon full compliance with the provisions of the
10 contract;

11 G. "cash sale price" means the price stated in a
12 retail installment contract for which the seller would have
13 sold to the buyer, and the buyer would have bought from the
14 seller, the motor vehicle that is the subject matter of the
15 retail installment contract, if the sale had been a sale for
16 cash instead of a retail installment transaction. Cash sale
17 price may include any taxes, registration fee, certificate of
18 title fee, license and other fees and charges for accessories
19 and their installation and for delivery, servicing, repairing
20 or improving the motor vehicle;

21 H. "official fees" means the fee prescribed by law
22 for filing, recording or otherwise perfecting and releasing
23 or satisfying a retained title or a lien created by a retail
24 installment contract;

25 I. "finance charge" means the amount agreed upon

1 between the buyer and the seller to be added to the aggregate
2 of the cash sale price, the amount, if any, included for
3 insurance and other benefits and official fees, in
4 determining the time price;

5 J. "person" means an individual, partnership,
6 corporation, association and any other group however
7 organized;

8 K. "sales finance company" means a person engaged
9 in whole or in part in the business of purchasing retail
10 installment contracts from one or more retail sellers. The
11 term includes a bank, trust company, private banker, small
12 loan licensee, industrial bank or investment company, if so
13 engaged; the term also includes a retail seller engaged in
14 whole or in part in the business of creating and holding
15 retail installment contracts that exceed a total aggregate
16 outstanding indebtedness of one hundred thousand dollars
17 (\$100,000);

18 L. "director" means the director of the financial
19 institutions division of the regulation and licensing
20 department or a duly authorized agent designated by the
21 director;

22 M. "year" means a period of three hundred sixty-
23 five days; "month" means one-twelfth of a year; and "day"
24 means one three-hundred-sixty-fifth of a year; and

25 N. "nationwide multistate licensing system and

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

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

9 "58-19-3. LICENSING OF SALES FINANCE COMPANIES
10 REQUIRED--DENIAL OF LICENSE--PROVISION FOR OUT-OF-STATE
11 LICENSES.--

12 A. A person shall not engage in the business of a
13 sales finance company in this state without a license as
14 provided in the Motor Vehicle Sales Finance Act; provided,
15 however, that a state or national bank authorized to do
16 business in this state shall not be required to obtain a
17 license under that act but shall comply with all of its other
18 provisions.

19 B. The application for a license shall be in
20 writing, under oath and in the form prescribed by the
21 director. The application shall contain the name of the
22 applicant; date of incorporation, if incorporated; the
23 address where the business is or is to be conducted and
24 similar information as to any branch office of the applicant;
25 the name and resident address of the owner or partners or, if

1 a corporation or association, of the directors, trustees and
2 principal officers; and such other pertinent information as
3 the director may require.

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

13 D. Each license shall specify the location of the
14 office or branch. In case a location is changed, the
15 director shall endorse the change of location on the license
16 upon payment to the director by the licensee of a duplicate
17 license fee of twenty-five dollars (\$25.00).

18 E. Applicants for a license issued pursuant to the
19 Motor Vehicle Sales Finance Act shall apply using a form
20 prescribed by the director. Information required on the form
21 shall be set forth by rule, instruction or procedure of the
22 director, and may be changed or updated as necessary by the
23 director in order to carry out the purposes of the Motor
24 Vehicle Sales Finance Act.

25 F. The director may establish relationships or

1 contracts with the nationwide multistate licensing system and
2 registry or other entities designated by the nationwide
3 multistate licensing system and registry to collect and
4 maintain records and process transaction fees or other fees
5 related to licenses issued pursuant to the Motor Vehicle
6 Sales Finance Act.

7 G. In an application for a license issued pursuant
8 to the Motor Vehicle Sales Finance Act, the applicant shall,
9 at a minimum, furnish to the nationwide multistate licensing
10 system and registry information concerning the applicant's
11 identity, including:

12 (1) the applicant's personal history and
13 experience in a form prescribed by the nationwide multistate
14 licensing system and registry; and

15 (2) authorization for the nationwide
16 multistate licensing system and registry and the director to
17 obtain information related to any administrative, civil or
18 criminal findings by any governmental jurisdiction regarding
19 the applicant.

20 H. The director may use the nationwide multistate
21 licensing system and registry as a channeling agent for
22 requesting and distributing information provided pursuant to
23 Paragraphs (1) and (2) of Subsection G of this section to and
24 from any source as deemed appropriate by the director.

25 I. Upon the filing of an application and the

1 payment of the fee, the director shall issue to the applicant
2 a license to engage in the business of a sales finance
3 company under and in accordance with the provisions of the
4 Motor Vehicle Sales Finance Act for a period that shall
5 expire on December 31 next following the date of its
6 issuance. The license shall not be transferable or
7 assignable. A licensee shall not transact any business
8 provided for by the Motor Vehicle Sales Finance Act under any
9 other name.

10 J. The director shall deny a license under the
11 Motor Vehicle Sales Finance Act if the director finds that:

12 (1) the applicant has failed to pay the
13 required fee;

14 (2) the applicant has willfully furnished
15 the director with false or misleading information in the
16 application; or

17 (3) there is reason to believe that the
18 financial responsibility, character and general fitness of
19 the applicant for an original license and of the individual
20 members and beneficiaries thereof, if the applicant is a
21 copartnership, association or trust, and of the officers and
22 directors thereof, if the applicant is a corporation, are
23 such as to warrant belief that the business will not be
24 operated lawfully, honestly, fairly and efficiently within
25 the declared purposes and spirit of that act.

1 If an original license is denied by the director, the
2 director shall immediately notify the applicant in writing
3 setting forth the reasons for denial.

4 K. The director may issue a motor vehicle sales
5 finance company license to an applicant who applies for such
6 a license to be located outside the state, if the applicant:

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

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

13 (3) complies with all sections of the Motor
14 Vehicle Sales Finance Act and any rules and regulations that
15 may be promulgated by the director and complies with all
16 statutes relating to money, interest and usury that are
17 applicable to motor vehicle sales finance companies.

18 A motor vehicle sales finance company license may be
19 granted to an applicant anywhere in the United States. Local
20 situs is not a requirement for the granting of a license to
21 an out-of-state applicant."

22 **SECTION 3.** Section 58-21-32 NMSA 1978 (being Laws 2009,
23 Chapter 122, Section 53) is amended to read:

24 "58-21-32. MORTGAGE CALL REPORTS.--Each licensee shall
25 submit to the nationwide multistate licensing system and

1 registry reports of condition, which shall be in such form
2 and shall contain such information as the nationwide
3 multistate licensing system and registry may require."

4 SECTION 4. Section 58-21B-3 NMSA 1978 (being Laws 2009,
5 Chapter 122, Section 3) is amended to read:

6 "58-21B-3. DEFINITIONS.--As used in the New Mexico
7 Mortgage Loan Originator Licensing Act:

8 A. "clerical or support duties" may include,
9 subsequent to the receipt of an application:

10 (1) the receipt, collection, distribution
11 and analysis of information common for the processing or
12 underwriting of a residential mortgage loan; and

13 (2) communicating with a consumer to obtain
14 the information necessary for the processing or underwriting
15 of a loan, to the extent that such communication does not
16 include offering or negotiating loan rates or terms or
17 counseling consumers about residential mortgage loan rates or
18 terms;

19 B. "depository institution" has the same meaning
20 as the definition of depository institution in Section 3 of
21 the Federal Deposit Insurance Act and includes any credit
22 union;

23 C. "director" means the director of the financial
24 institutions division of the regulation and licensing
25 department;

1 D. "dwelling" means a residential structure that
2 contains one to four units whether or not that structure is
3 attached to real property. "Dwelling" includes an individual
4 condominium unit, an individual cooperative unit, a mobile
5 home and a trailer if used as a residence;

6 E. "federal banking agencies" means the board of
7 governors of the federal reserve system, the comptroller of
8 the currency, the national credit union administration and
9 the federal deposit insurance corporation;

10 F. "immediate family member" means a spouse,
11 child, sibling, parent, grandparent or grandchild, and
12 "immediate family member" includes a stepparent, a stepchild,
13 a stepsibling and an adoptive relationship;

14 G. "individual" means a natural person;

15 H. "license" means a license issued pursuant to
16 Section 58-21B-6 NMSA 1978;

17 I. "loan processor or underwriter" means an
18 individual who performs clerical or support duties as an
19 employee at the direction of and subject to the supervision
20 and instruction of a person licensed, or exempt from
21 licensing, pursuant to the Mortgage Loan Company Act;

22 J. "mortgage loan company" means any person
23 defined as such in the Mortgage Loan Company Act;

24 K. "mortgage loan originator" means an individual
25 who for compensation or gain or in the expectation of

1 compensation or gain takes a residential mortgage loan
2 application or offers or negotiates terms of a residential
3 mortgage loan. "Mortgage loan originator" does not include:

4 (1) an individual engaged solely as a loan
5 processor or underwriter except as otherwise provided in
6 Subsection I of this section;

7 (2) a person that only performs real estate
8 brokerage activities and is licensed or registered in
9 accordance with New Mexico law, unless the person is
10 compensated by a lender, a mortgage loan company or other
11 mortgage loan originator or by any agent of such lender,
12 mortgage loan company or other mortgage loan originator; and

13 (3) a person solely involved in extensions
14 of credit relating to timeshare plans, as that term is
15 defined in Section 101(53D) of Title 11 of the United States
16 Code;

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

24 M. "nontraditional mortgage product" means any
25 mortgage product other than a thirty-year fixed rate

1 mortgage;

2 N. "person" means a natural person, corporation,
3 company, limited liability company, partnership or
4 association;

5 O. "real estate brokerage activity" means any
6 activity that involves offering or providing real estate
7 brokerage services to the public, including:

8 (1) acting as a real estate agent or real
9 estate broker for a buyer, seller, lessor or lessee of real
10 property;

11 (2) bringing together parties interested in
12 the sale, purchase, lease, rental or exchange of real
13 property;

14 (3) negotiating, on behalf of any party, any
15 portion of a contract relating to the sale, purchase, lease,
16 rental or exchange of real property, other than in connection
17 with providing financing with respect to any such
18 transaction;

19 (4) engaging in any activity for which a
20 person engaged in the activity is required to be registered
21 or licensed as a real estate agent or real estate broker
22 pursuant to any applicable law; and

23 (5) offering to engage in any activity or to
24 act in any capacity described in Paragraphs (1) through (4)
25 of this subsection;

1 P. "registered mortgage loan originator" means any
2 individual who:

3 (1) meets the definition of mortgage loan
4 originator and is an employee of:

5 (a) a depository institution;

6 (b) a subsidiary that is: 1) owned and
7 controlled by a depository institution; and 2) regulated by a
8 federal banking agency; or

9 (c) an institution regulated by the
10 farm credit administration; and

11 (2) is registered with, and maintains a
12 unique identifier through, the nationwide multistate
13 licensing system and registry;

14 Q. "residential mortgage loan" means any loan
15 primarily for personal, family or household use that is
16 secured by a mortgage, deed of trust or other equivalent
17 consensual security interest on a dwelling or on residential
18 real estate upon which is constructed or is intended to be
19 constructed a dwelling as so defined;

20 R. "residential real estate" means any real
21 property located in New Mexico upon which is constructed or
22 intended to be constructed a dwelling;

23 S. "servicer" means a person that collects or
24 receives payments, including principal, interest and trust
25 items such as hazard insurance, property taxes and other

1 amounts due, on behalf of a note holder or investor in
2 accordance with the terms of a residential mortgage loan, and
3 includes working with a borrower on behalf of a note holder
4 or investor, when the borrower is in financial hardship or
5 default, to modify either temporarily or permanently the
6 terms of an existing residential mortgage loan; and

7 T. "unique identifier" means a number or other
8 identifier assigned by protocols established by the
9 nationwide multistate licensing system and registry."

10 SECTION 5. Section 58-21B-4 NMSA 1978 (being Laws 2009,
11 Chapter 122, Section 4) is amended to read:

12 "58-21B-4. LICENSE AND REGISTRATION REQUIRED TO
13 ORIGINATE MORTGAGE LOANS.--

14 A. Unless specifically exempted from the New
15 Mexico Mortgage Loan Originator Licensing Act pursuant to
16 Subsection B of this section, an individual shall not engage
17 in the business of a mortgage loan originator with respect to
18 any dwelling located in New Mexico without first obtaining
19 and maintaining annually a license pursuant to that act.
20 Each licensed mortgage loan originator must register with and
21 maintain a valid unique identifier issued by the nationwide
22 multistate licensing system and registry. All new licenses
23 and license renewals shall expire on December 31 of each
24 year. All license renewal applications shall be submitted on
25 or before November 1 of each year.

1 B. The following are exempt from the provisions of
2 the New Mexico Mortgage Loan Originator Licensing Act:

3 (1) registered mortgage loan originators
4 when acting for an entity defined in Subparagraphs (a)
5 through (c) of Paragraph (1) of Subsection P of Section
6 58-21B-3 NMSA 1978;

7 (2) an individual who offers or negotiates
8 terms of a residential mortgage loan with or on behalf of an
9 immediate family member of the individual;

10 (3) an individual who offers or negotiates
11 terms of a real property sale financed in whole or in part by
12 the seller and secured by the seller's real property; or

13 (4) a licensed attorney who negotiates the
14 terms of a residential mortgage loan on behalf of a client as
15 an ancillary matter to the attorney's representation of the
16 client, unless the attorney is compensated by a lender, a
17 mortgage loan company or other mortgage loan originator or by
18 any agent of such lender, mortgage loan company or other
19 mortgage loan originator.

20 C. A loan processor or underwriter who is an
21 independent contractor shall not engage in the activities of
22 a loan processor or underwriter unless the independent
23 contractor loan processor or underwriter obtains and
24 maintains a license pursuant to Subsection A of this section.

25 Each contractor loan processor or underwriter licensed as a

1 mortgage loan originator shall have and maintain a valid
2 unique identifier issued by the nationwide multistate
3 licensing system and registry.

4 D. A mortgage loan originator who is currently
5 licensed in another state through the nationwide multistate
6 licensing system and registry may be granted a temporary
7 mortgage loan originator license valid for ninety days while
8 the mortgage loan originator completes the education and
9 testing requirements of the New Mexico Mortgage Loan
10 Originator Licensing Act. The mortgage loan originator's
11 current license in another state must be valid for more than
12 ninety days beyond the date of application for a temporary
13 license in order to receive a temporary license in New
14 Mexico."

15 SECTION 6. Section 58-21B-5 NMSA 1978 (being Laws 2009,
16 Chapter 122, Section 5) is amended to read:

17 "58-21B-5. STATE LICENSE AND REGISTRATION APPLICATION
18 AND ISSUANCE.--

19 A. Applicants for a license shall apply in a form
20 as prescribed by the director. Each form shall contain
21 content as set forth by rule, instruction or procedure of the
22 director and may be changed or updated as necessary by the
23 director in order to carry out the purposes of the New Mexico
24 Mortgage Loan Originator Licensing Act.

25 B. In order to fulfill the purposes of the New

1 Mexico Mortgage Loan Originator Licensing Act, the director
2 may establish relationships or contracts with the nationwide
3 multistate licensing system and registry or other entities
4 designated by the nationwide multistate licensing system and
5 registry to collect and maintain records and process
6 transaction fees or other fees related to licensed mortgage
7 loan originators or other individuals subject to that act.

8 C. In connection with an application for licensing
9 as a mortgage loan originator, the applicant shall, at a
10 minimum, furnish to the nationwide multistate licensing
11 system and registry information concerning the applicant's
12 identity, including:

13 (1) fingerprints for submission to the
14 federal bureau of investigation and any governmental agency
15 or entity authorized to receive such information for a state,
16 national and international criminal history background check;
17 and

18 (2) personal history and experience in a
19 form prescribed by the nationwide multistate licensing system
20 and registry, including the submission of authorization for
21 the nationwide multistate licensing system and registry and
22 the director to obtain:

23 (a) an independent credit report
24 obtained from a consumer reporting agency described in
25 Section 603(p) of the federal Fair Credit Reporting Act; and

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

4 D. For the purposes of this section and in order
5 to reduce the points of contact that the federal bureau of
6 investigation may have to maintain for purposes of Paragraph
7 (1) of Subsection C of this section and Subparagraph (b) of
8 Paragraph (2) of Subsection C of this section, the director
9 may use the nationwide multistate licensing system and
10 registry as a channeling agent for requesting information
11 from and distributing information to the federal department
12 of justice or any governmental agency with mortgage industry
13 oversight authority.

14 E. For the purposes of this section and in order
15 to reduce the points of contact that the director may have to
16 maintain for purposes of Subparagraphs (a) and (b) of
17 Paragraph (2) of Subsection C of this section, the director
18 may use the nationwide multistate licensing system and
19 registry as a channeling agent for requesting and
20 distributing information to and from any source as directed
21 by the director."

22 **SECTION 7.** Section 58-21B-7 NMSA 1978 (being Laws 2009,
23 Chapter 122, Section 7) is amended to read:

24 "58-21B-7. PRE-LICENSING EDUCATION OF MORTGAGE LOAN
25 ORIGINATORS.--

1 A. In order to meet the pre-licensing education
2 requirement referred to in Subsection D of Section 58-21B-6
3 NMSA 1978, an individual shall complete at least twenty hours
4 of education approved in accordance with Subsection B of this
5 section, which shall include at least:

6 (1) three hours of federal law and
7 regulations;

8 (2) three hours of ethics, including
9 instruction on fraud, consumer protection and fair lending
10 issues;

11 (3) two hours of training related to lending
12 standards for the nontraditional mortgage product
13 marketplace; and

14 (4) three hours of New Mexico law and
15 administrative rules.

16 B. For the purposes of Subsection A of this
17 section, pre-licensing education courses shall be reviewed
18 and approved by the nationwide multistate licensing system
19 and registry based upon reasonable standards. Review and
20 approval of a pre-licensing education course shall include
21 review and approval of the course provider.

22 C. Nothing in this section shall preclude any
23 pre-licensing education course, as approved by the nationwide
24 multistate licensing system and registry, that is provided by
25 the employer of the applicant or by an entity that is

1 affiliated with the applicant by an agency contract, or by
2 any subsidiary or affiliate of the employer or entity.

3 D. Pre-licensing education may be offered in a
4 classroom, online or by any other means approved by the
5 nationwide multistate licensing system and registry.

6 E. The pre-licensing education requirements
7 approved by the nationwide multistate licensing system and
8 registry in Paragraphs (1) through (4) of Subsection A of
9 this section for any state shall be accepted as credit toward
10 completion of pre-licensing education requirements in New
11 Mexico.

12 F. An individual previously licensed pursuant to
13 the New Mexico Mortgage Loan Originator Licensing Act
14 subsequent to the effective date of that act applying to be
15 licensed again shall prove that the individual has completed
16 all of the continuing education requirements for the year in
17 which the license was last held."

18 **SECTION 8.** Section 58-21B-8 NMSA 1978 (being Laws 2009,
19 Chapter 122, Section 8) is amended to read:

20 "58-21B-8. TESTING OF MORTGAGE LOAN ORIGINATORS.--

21 A. In order to meet the written test requirement
22 referred to in Subsection E of Section 58-21B-6 NMSA 1978, an
23 individual shall pass, in accordance with the standards
24 established pursuant to this section, a qualified written
25 test developed by the nationwide multistate licensing system

1 and registry and administered by a test provider approved by
2 the nationwide multistate licensing system and registry based
3 upon reasonable standards.

4 B. A written test shall not be treated as a
5 qualified written test for purposes of Subsection A of this
6 section unless the test adequately measures the applicant's
7 knowledge and comprehension in appropriate subject areas,
8 including:

9 (1) ethics;

10 (2) federal law and regulations pertaining
11 to mortgage origination;

12 (3) New Mexico law and rules pertaining to
13 mortgage origination; and

14 (4) federal and New Mexico law and
15 regulations and rules, including those concerning fraud,
16 consumer protection, the nontraditional mortgage product
17 marketplace and fair lending issues.

18 C. Nothing in this section shall prohibit a test
19 provider approved by the nationwide multistate licensing
20 system and registry from providing a test at the location of
21 the employer of the applicant or the location of any
22 subsidiary or affiliate of the employer of the applicant, or
23 at the location of any entity with which the applicant holds
24 an exclusive arrangement to conduct the business of a
25 mortgage loan originator.

1 D. An individual shall not be considered to have
2 passed a qualified written test unless the individual
3 achieves a test score of not less than seventy-five percent
4 correct answers to questions.

5 E. An individual may retake a test two consecutive
6 times, provided that each retake occurs at least thirty days
7 after the preceding test. After failing three consecutive
8 tests, an individual shall wait at least six months before
9 taking the test again.

10 F. A licensed mortgage loan originator who fails
11 to maintain a valid license for a period of five years or
12 longer shall retake the test, not taking into account any
13 time during which the individual is a registered mortgage
14 loan originator."

15 **SECTION 9.** Section 58-21B-9 NMSA 1978 (being Laws 2009,
16 Chapter 122, Section 9) is amended to read:

17 "58-21B-9. STANDARDS FOR LICENSE RENEWAL.--

18 A. The minimum standards for license renewal for
19 mortgage loan originators shall include the following:

20 (1) the mortgage loan originator continues
21 to meet the minimum standards for license issuance pursuant
22 to Section 58-21B-6 NMSA 1978;

23 (2) the mortgage loan originator has
24 satisfied the annual continuing education requirements set
25 forth in Section 58-21B-10 NMSA 1978; and

1 (3) the mortgage loan originator has paid
2 all required fees for renewal of the license.

3 B. The license of a mortgage loan originator who
4 fails to satisfy the minimum standards for license renewal
5 shall expire. The director may adopt rules for the
6 reinstatement of expired licenses consistent with the
7 standards established by the nationwide multistate licensing
8 system and registry."

9 **SECTION 10.** Section 58-21B-10 NMSA 1978 (being Laws
10 2009, Chapter 122, Section 10) is amended to read:

11 "58-21B-10. CONTINUING EDUCATION FOR MORTGAGE LOAN
12 ORIGINATORS.--

13 A. In order to meet the annual continuing
14 education requirements set forth in Paragraph (2) of
15 Subsection A of Section 58-21B-9 NMSA 1978, a licensed
16 mortgage loan originator shall complete at least eight hours
17 of education approved in accordance with Subsection B of this
18 section, which shall include at least:

19 (1) three hours of federal law and
20 regulations;

21 (2) two hours of ethics, including
22 instruction on fraud, consumer protection and fair lending
23 issues;

24 (3) two hours of training related to lending
25 standards for the nontraditional mortgage product

1 marketplace; and

2 (4) one hour of New Mexico law and
3 administrative rules.

4 B. For the purposes of Subsection A of this
5 section, continuing education courses shall be reviewed and
6 approved by the nationwide multistate licensing system and
7 registry based upon reasonable standards. Review and
8 approval of a continuing education course shall include
9 review and approval of the course provider.

10 C. Nothing in this section shall preclude any
11 education course, as approved by the nationwide multistate
12 licensing system and registry, that is provided by the
13 employer of the mortgage loan originator or by an entity that
14 is affiliated with the mortgage loan originator by an agency
15 contract, or any subsidiary or affiliate of such employer or
16 entity.

17 D. Continuing education may be offered in a
18 classroom, online or by any other means approved by the
19 nationwide multistate licensing system and registry.

20 E. A licensed mortgage loan originator:

21 (1) except for the provisions of Subsection
22 B of Section 58-21B-9 NMSA 1978 and Subsection I of this
23 section, may only receive credit for a continuing education
24 course in the year in which the course is taken; and

25 (2) may not take the same approved course in

1 the same or successive years to meet the annual requirements
2 for continuing education.

3 F. A licensed mortgage loan originator who is an
4 approved instructor of an approved continuing education
5 course may receive credit for the licensed mortgage loan
6 originator's own annual continuing education requirement at
7 the rate of two hours' credit for every one hour taught.

8 G. An individual who has successfully completed
9 the education requirements approved by the nationwide
10 multistate licensing system and registry and as set forth in
11 Subsection A of this section for any state shall be accepted
12 as credit toward completion of continuing education
13 requirements in New Mexico.

14 H. A licensed mortgage loan originator who
15 subsequently becomes unlicensed shall complete the continuing
16 education requirements for the last year in which the license
17 was held prior to issuance of a new or renewed license.

18 I. An individual who meets the requirements set
19 forth in Paragraphs (1) and (3) of Subsection A of Section
20 58-21B-9 NMSA 1978 may make up any deficiency in continuing
21 education as established by rule promulgated by the
22 director."

23 **SECTION 11.** Section 58-21B-11 NMSA 1978 (being Laws
24 2009, Chapter 122, Section 11) is amended to read:

25 "58-21B-11. AUTHORITY TO REQUIRE LICENSE AND TO SET

1 FEES.--

2 A. In addition to any other duties imposed upon
3 the director by law, the director shall require mortgage loan
4 originators to be licensed and registered through the
5 nationwide multistate licensing system and registry. In
6 order to carry out this requirement, the director may
7 participate in the nationwide multistate licensing system and
8 registry. For this purpose, the director may establish
9 requirements as necessary, including:

10 (1) background checks for:

11 (a) criminal history through
12 fingerprint or other databases;

13 (b) civil or administrative records;

14 (c) credit history; or

15 (d) any other information deemed
16 necessary by the nationwide multistate licensing system and
17 registry;

18 (2) payment of fees to apply for or renew
19 licenses through the nationwide multistate licensing system
20 and registry;

21 (3) setting or resetting as necessary
22 renewal or reporting dates; and

23 (4) requirements for amending or
24 surrendering a license or any other activities the director
25 deems necessary for participation in the nationwide

1 multistate licensing system and registry.

2 B. The director shall establish by rule fees
3 sufficient to cover the costs of administering the New Mexico
4 Mortgage Loan Originator Licensing Act. These fees may
5 include:

6 (1) an original and renewal license fee paid
7 by each licensed mortgage loan originator;

8 (2) an application fee to cover the costs of
9 processing applications;

10 (3) an examination or investigation fee to
11 cover the costs of any examination or investigation of the
12 books and records of a licensed mortgage loan originator or
13 other person subject to the New Mexico Mortgage Loan
14 Originator Licensing Act; and

15 (4) late fees, license amendment fees and
16 any other fees associated with the costs of administering the
17 New Mexico Mortgage Loan Originator Licensing Act.

18 C. Mortgage loan originators shall not be charged
19 investigation fees for the processing of complaints when the
20 investigation determines that no violation of the New Mexico
21 Mortgage Loan Originator Licensing Act occurred or when the
22 mortgage loan originator provides a remedy satisfactory to
23 the complainant and the director and no order of the director
24 is issued. All money, fees and penalties collected pursuant
25 to the New Mexico Mortgage Loan Originator Licensing Act

1 shall be deposited into the mortgage regulatory fund.

2 D. For the purposes of implementing an orderly and
3 efficient licensing process, the director may establish
4 licensing rules and interim procedures for licensing and
5 acceptance of applications. For individuals previously
6 registered or licensed pursuant to the Mortgage Loan Company
7 Act, the director may establish expedited review and
8 licensing procedures."

9 SECTION 12. Section 58-21B-12 NMSA 1978 (being Laws
10 2009, Chapter 122, Section 12) is amended to read:

11 "58-21B-12. NATIONWIDE MULTISTATE LICENSING SYSTEM AND
12 REGISTRY INFORMATION CHALLENGE PROCESS.--The director shall
13 establish rules whereby mortgage loan originators may
14 challenge information entered into the nationwide multistate
15 licensing system and registry by the director."

16 SECTION 13. Section 58-21B-13 NMSA 1978 (being Laws
17 2009, Chapter 122, Section 13) is amended to read:

18 "58-21B-13. ENFORCEMENT--VIOLATIONS--PENALTIES.--

19 A. In order to ensure the effective supervision
20 and enforcement of the New Mexico Mortgage Loan Originator
21 Licensing Act, the director may:

22 (1) deny, suspend, revoke or decline to
23 renew a license for a violation of the New Mexico Mortgage
24 Loan Originator Licensing Act or rules issued pursuant to
25 that act or an order or a directive entered pursuant to that

1 act;

2 (2) deny, suspend, revoke or decline to
3 renew a license if an applicant or licensed mortgage loan
4 originator:

5 (a) fails at any time to meet the
6 requirements of Section 58-21B-6 or 58-21B-9 NMSA 1978; or

7 (b) withholds information or makes a
8 material misstatement in an application for a license or
9 renewal of a license;

10 (3) order restitution against mortgage loan
11 originators for violations of that act;

12 (4) impose fines on mortgage loan
13 originators pursuant to Subsections C through E of this
14 section;

15 (5) order or direct such other affirmative
16 action as the director deems necessary;

17 (6) bar or suspend a mortgage loan
18 originator from licensure in New Mexico as a mortgage loan
19 originator; and

20 (7) issue orders or directives pursuant to
21 the New Mexico Mortgage Loan Originator Licensing Act as
22 follows:

23 (a) order or direct mortgage loan
24 originators to cease and desist from conducting business,
25 including issuing an immediate temporary order to cease and

1 desist;

2 (b) order or direct mortgage loan
3 originators to cease any harmful activities or violations of
4 that act, including issuing an immediate temporary order to
5 cease and desist; and

6 (c) enter immediate temporary orders to
7 cease business pursuant to a license issued pursuant to the
8 authority granted pursuant to Section 58-21B-4 NMSA 1978 if
9 the director determines that the license was erroneously
10 granted or the licensed mortgage loan originator is currently
11 in violation of that act.

12 B. The director may initiate one or more of the
13 actions set forth in Section 58-21B-15 NMSA 1978.

14 C. It is a violation of the New Mexico Mortgage
15 Loan Originator Licensing Act for a mortgage loan originator
16 to:

17 (1) directly or indirectly employ any
18 scheme, device or artifice to defraud or mislead borrowers or
19 lenders or to defraud any person;

20 (2) engage in any unfair or deceptive
21 practice toward any person;

22 (3) obtain property by fraud or
23 misrepresentation;

24 (4) solicit or enter into a contract with a
25 borrower that provides in substance that the mortgage loan

1 originator may earn a fee or commission through "best
2 efforts" to obtain a loan even though no loan is actually
3 obtained for the borrower;

4 (5) solicit, advertise or enter into a
5 contract for specific interest rates, points or other
6 financing terms unless the terms are actually available at
7 the time of soliciting, advertising or contracting;

8 (6) conduct any business covered by the New
9 Mexico Mortgage Loan Originator Licensing Act without holding
10 a valid license as required pursuant to that act, or assist
11 or aid and abet any person in the conduct of business
12 pursuant to that act without a valid license as required
13 pursuant to that act;

14 (7) fail to make disclosures as required by
15 the New Mexico Mortgage Loan Originator Licensing Act and any
16 other applicable state or federal law, including rules and
17 regulations thereunder;

18 (8) fail to comply with the provisions of
19 the New Mexico Mortgage Loan Originator Licensing Act or
20 rules or regulations promulgated pursuant to that act, or
21 fail to comply with any other state or federal law, including
22 rules and regulations thereunder, applicable to any business
23 authorized or conducted pursuant to the New Mexico Mortgage
24 Loan Originator Licensing Act;

25 (9) make, in any manner, a false or

1 deceptive statement or representation, including, with regard
2 to the rates, points or other financing terms or conditions
3 for a residential mortgage loan, engaging in bait-and-switch
4 advertising;

5 (10) negligently make any false statement or
6 knowingly and willfully make any omission of material fact in
7 connection with any information or reports filed with a
8 governmental agency or the nationwide multistate licensing
9 system and registry or in connection with any investigation
10 conducted by the director or another governmental agency;

11 (11) make any payment, threat or promise,
12 directly or indirectly, to any person for the purposes of
13 influencing the independent judgment of the person in
14 connection with a residential mortgage loan or make any
15 payment, threat or promise, directly or indirectly, to any
16 appraiser of a property for the purposes of influencing the
17 independent judgment of the appraiser with respect to the
18 value of the property. Nothing in this paragraph shall be
19 construed to prohibit a mortgage loan originator from asking
20 the appraiser to consider additional appropriate property
21 information or provide further detail, substantiation or
22 explanation for the appraiser's value conclusion;

23 (12) collect, charge, attempt to collect or
24 charge, or to use or propose any agreement purporting to
25 collect or charge, any fee prohibited by the New Mexico

1 Mortgage Loan Originator Licensing Act;

2 (13) cause or require a borrower to obtain
3 property insurance coverage in an amount that exceeds the
4 replacement cost of the improvements as established by the
5 director and the property insurer;

6 (14) fail to account truthfully for money
7 belonging to a party to a residential mortgage loan
8 transaction;

9 (15) engage in mortgage loan origination on
10 behalf of more than one mortgage loan company;

11 (16) pay, receive or collect in whole or in
12 part any commission, fee or other compensation for
13 originating a mortgage loan in violation of the New Mexico
14 Mortgage Loan Originator Licensing Act, including a mortgage
15 loan originated by any unlicensed person other than an exempt
16 person;

17 (17) charge or collect any fee, commission
18 or rate of interest or make or originate any mortgage loan
19 with terms or conditions or in a manner contrary to other
20 applicable federal and state laws;

21 (18) advertise mortgage loans, including
22 rates, margins, discounts, points, fees, commission or other
23 material information, including material limitations on the
24 loans, unless the person is able to make the mortgage loans
25 available to a reasonable number of qualified applicants;

1 (19) coerce, extort, induce, bribe or
2 intimidate or attempt to coerce, extort, induce, bribe or
3 intimidate an appraiser to value property in excess of its
4 fair market value;

5 (20) originate a mortgage loan that contains
6 a pre-payment penalty;

7 (21) misrepresent a borrower's credit
8 rating;

9 (22) misrepresent, inflate or fabricate, or
10 encourage a borrower to misrepresent, inflate or fabricate,
11 the source or amount of a borrower's actual income or assets,
12 other than allowable grossed-up income not to exceed twenty-
13 five percent per current agency guidelines as set by the
14 director, in the application or underwriting process for a
15 residential mortgage loan;

16 (23) originate a residential mortgage loan
17 when the terms of that loan are in violation of the Home Loan
18 Protection Act;

19 (24) originate a residential mortgage loan
20 that does not require documentation and consideration of the
21 borrower's reasonable ability to repay that loan pursuant to
22 its terms. The borrower's ability to repay shall be
23 demonstrated through reasonably reliable documentation that
24 may include payroll receipts, tax returns, bank records,
25 asset and credit evaluations, mortgage payment history or

1 other similar reliable documentation. The provisions of this
2 paragraph shall not apply to a residential mortgage loan
3 originated pursuant to a government streamline program or a
4 streamline program administered by a government-sponsored
5 enterprise, to a reverse mortgage insured as part of a
6 government program or to loss mitigation activities of a
7 mortgage loan servicer or lender with which the borrower has
8 a current relationship, so long as each of these exceptions,
9 as applicable, provides the borrower with a reasonable,
10 tangible net benefit; or

11 (25) originate a residential mortgage loan
12 that does not require a determination of the borrower's
13 reasonable ability to pay the costs set forth in this
14 paragraph. In the case of an adjustable rate residential
15 mortgage loan, the reasonable ability to pay shall be
16 determined based on a fully indexed rate and repayment
17 schedule that achieves full amortization over the life of the
18 mortgage loan. The costs, as applicable, to be used in
19 determining the borrower's reasonable ability to pay include
20 principal, interest, real estate taxes, property insurance,
21 property assessments, mortgage insurance premiums and other
22 scheduled long-term monthly debt payments.

23 D. The director may impose a civil penalty on a
24 mortgage loan originator if the director finds, on the record
25 after notice and opportunity for hearing, that the mortgage

1 loan originator has violated or failed to comply with any
2 requirement of the New Mexico Mortgage Loan Originator
3 Licensing Act or any rule promulgated by the director
4 pursuant to that act or any order issued pursuant to
5 authority of that act.

6 E. The maximum amount of penalty for each act or
7 omission described in Subsection C of this section shall be
8 twenty-five thousand dollars (\$25,000).

9 F. Each violation or failure to comply with any
10 directive or order of the director is a separate and distinct
11 violation or failure."

12 **SECTION 14.** Section 58-21B-18 NMSA 1978 (being Laws
13 2009, Chapter 122, Section 18) is amended to read:

14 "58-21B-18. CONFIDENTIALITY.--In order to promote more
15 effective regulation and reduce regulatory burden through
16 supervisory information-sharing, except as otherwise provided
17 in Public Law 110-289, Section 1512, the requirements
18 pursuant to any federal law or pursuant to the Inspection of
19 Public Records Act regarding the privacy or confidentiality
20 of any information or material provided to the nationwide
21 multistate licensing system and registry, and any privilege
22 arising pursuant to federal or state law, including the rules
23 of any federal or state court, with respect to such
24 information or material, shall continue to apply to such
25 information or material after the information or material has

1 been disclosed to the nationwide multistate licensing system
2 and registry. Such information and material may be shared
3 with all state and federal regulatory officials with mortgage
4 industry oversight authority without the loss of privilege or
5 the loss of confidentiality protections provided by federal
6 law or the Inspection of Public Records Act, and the director
7 may enter into agreements or sharing arrangements with other
8 governmental agencies, the conference of state bank
9 supervisors, the American association of residential mortgage
10 regulators or other associations representing governmental
11 agencies as established by rule or order of the director."

12 **SECTION 15.** Section 58-21B-22 NMSA 1978 (being Laws
13 2009, Chapter 122, Section 22) is amended to read:

14 "58-21B-22. MORTGAGE CALL REPORTS.--A mortgage loan
15 originator shall submit to the nationwide multistate
16 licensing system and registry reports of condition, which
17 shall be in such form and shall contain such information as
18 the nationwide multistate licensing system and registry may
19 require."

20 **SECTION 16.** Section 58-21B-23 NMSA 1978 (being Laws
21 2009, Chapter 122, Section 23) is amended to read:

22 "58-21B-23. REPORT TO NATIONWIDE MULTISTATE LICENSING
23 SYSTEM AND REGISTRY.--Subject to state privacy laws, the
24 director shall report regularly violations of the New Mexico
25 Mortgage Loan Originator Licensing Act, as well as

1 enforcement actions and other relevant information, to the
2 nationwide multistate licensing system and registry subject
3 to the provisions set forth in Section 58-21B-18 NMSA 1978."

4 SECTION 17. Section 58-32-102 NMSA 1978 (being Laws
5 2016, Chapter 88, Section 102) is amended to read:

6 "58-32-102. DEFINITIONS.--As used in the Uniform Money
7 Services Act:

8 A. "applicant" means a person that files an
9 application for a license pursuant to the Uniform Money
10 Services Act;

11 B. "authorized delegate" means a person that a
12 licensee designates to provide money services on behalf of
13 the licensee;

14 C. "bank" means an institution organized under
15 federal or state law that:

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

19 (2) engages in credit card operations and
20 maintains only one office that accepts deposits, does not
21 accept demand deposits or deposits that the depositor may use
22 for payments to third parties, does not accept a savings or
23 time deposit less than one hundred thousand dollars
24 (\$100,000) and does not engage in the business of making
25 commercial loans;

1 D. "check cashing" means receiving compensation
2 for taking payment instruments or stored value, other than
3 traveler's checks, in exchange for money, payment instruments
4 or stored value delivered to the person delivering the
5 payment instrument or stored value at the time and place of
6 delivery without an agreement specifying when the person
7 taking the payment instrument will present it for collection;

8 E. "control" means:

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

13 (2) the power to elect, appoint, choose or
14 otherwise designate, directly or indirectly, a majority of
15 executive officers, managers, directors, trustees or other
16 persons exercising managerial authority of a licensee or
17 person in control of a licensee; or

18 (3) the power to exercise, directly or
19 indirectly, a controlling influence over the management or
20 policies of a licensee or person in control of a licensee;

21 F. "currency exchange" means receipt of revenues
22 from the exchange of money of one government for money of
23 another government;

24 G. "director" means the director of the financial
25 institutions division of the regulation and licensing

1 department;

2 H. "electronic" means relating to technology
3 having electrical, digital, magnetic, wireless, optical,
4 electromagnetic or similar capabilities;

5 I. "executive officer" means a president, chair of
6 the executive committee, chief financial officer, responsible
7 individual or other individual who performs similar
8 functions;

9 J. "internet-based money services business" means
10 a business that provides money transmission, check cashing or
11 currency exchange services to residents of New Mexico through
12 the internet;

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

15 L. "limited station" means private premises where
16 a check casher is authorized to engage in check cashing
17 solely for the employees of the particular employer or group
18 of employers specified in the check casher's license
19 application;

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

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

24 O. "money" means a medium of exchange that is
25 authorized or adopted by the United States or a foreign

1 government. "Money" includes a monetary unit of account
2 established by an intergovernmental organization or by
3 agreement between two or more governments;

4 P. "money services" means money transmission,
5 check cashing or currency exchange;

6 Q. "money transmission" means selling or issuing
7 payment instruments, stored value or receiving money or
8 monetary value for transmission. "Money transmission" does
9 not include the provision solely of delivery, online or
10 telecommunications services or network access;

11 R. "nationwide multistate licensing system and
12 registry" means a licensing system developed and maintained
13 by the conference of state bank supervisors and the American
14 association of residential mortgage regulators pursuant to
15 the federal Secure and Fair Enforcement for Mortgage
16 Licensing Act of 2008 to manage mortgage licenses and other
17 financial services licenses, or a successor registry;

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

21 T. "payment instrument" means a check, draft,
22 money order, traveler's check or other instrument for the
23 transmission or payment of money or monetary value, whether
24 or not negotiable. "Payment instrument" does not include a
25 credit card voucher, letter of credit or instrument that is

1 redeemable by the issuer in goods or services;

2 U. "person" means an individual, corporation,
3 business trust, estate, trust, partnership, limited liability
4 company, association, joint venture, government, governmental
5 subdivision, agency or instrumentality, public corporation or
6 any other legal or commercial entity;

7 V. "record", when used as a noun, means
8 information that is inscribed on a tangible medium or that is
9 stored in an electronic or other medium and is retrievable in
10 perceivable form;

11 W. "responsible individual" means an individual
12 who is employed by a licensee and has principal managerial
13 authority over the provision of money services by the
14 licensee in New Mexico;

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

17 (1) to execute or adopt a tangible symbol;
18 or

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

21 Y. "state" means a state of the United States, the
22 District of Columbia, Puerto Rico, the United States Virgin
23 Islands or any territory or insular possession subject to the
24 jurisdiction of the United States;

25 Z. "stored value" means monetary value that is

1 evidenced by an electronic record;

2 AA. "unique identifier" means a number or other
3 identifier assigned by protocols established by the
4 nationwide multistate licensing system and registry; and

5 BB. "unsafe or unsound practice" means a practice
6 or conduct by a person licensed to engage in money
7 transmission or an authorized delegate of such a person that
8 creates the likelihood of material loss, insolvency or
9 dissipation of the licensee's assets, or otherwise materially
10 prejudices the interests of its customers."

11 SECTION 18. Section 58-32-202 NMSA 1978 (being Laws
12 2016, Chapter 88, Section 202) is amended to read:

13 "58-32-202. APPLICATION FOR LICENSE.--

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

21 (1) the legal name and residential and
22 business addresses of the applicant and any fictitious or
23 trade name used by the applicant in conducting its business;

24 (2) a list of any criminal convictions of
25 the applicant and any material litigation in which the

1 applicant has been involved in the ten-year period next
2 preceding the submission of the application;

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

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

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

15 (6) information concerning any bankruptcy or
16 receivership proceedings affecting the applicant;

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

21 (8) the name and address of any bank through
22 which the applicant's payment instruments and stored value
23 will be paid;

24 (9) a description of the source of money and
25 credit to be used by the applicant to provide money services;

1 and

2 (10) any other information the director
3 reasonably requires with respect to the applicant.

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

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

18 (1) the applicant's history and experience;
19 and

20 (2) an authorization for the nationwide
21 multistate licensing system and registry and the director to
22 obtain:

23 (a) an independent credit report; and

24 (b) information related to any

25 administrative, civil or criminal findings by any

1 governmental jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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
8 a 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 58-32-203 NMSA
11 1978.

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

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

23 **SECTION 19.** Section 58-32-302 NMSA 1978 (being Laws
24 2016, Chapter 88, Section 302) is amended to read:

25 "58-32-302. APPLICATION FOR LICENSE.--

1 A. A person applying for a license pursuant to
2 Article 3 of the Uniform Money Services Act shall apply in a
3 record signed under penalty of perjury that shall be in a
4 form and in a medium required by the director. Each form
5 shall contain content as set forth by rule, instruction or
6 procedure of the director. The form shall include the
7 following information:

8 (1) the legal name and residential and
9 business addresses of the applicant if the applicant is an
10 individual or, if the applicant is not an individual, the
11 name of each partner, executive officer, manager and
12 director;

13 (2) the location of the principal office of
14 the applicant;

15 (3) complete addresses of other locations in
16 New Mexico where the applicant proposes to engage in check
17 cashing or currency exchange, including all limited stations
18 and mobile locations;

19 (4) a description of the source of money and
20 credit to be used by the applicant to engage in check cashing
21 and currency exchange; and

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

1 B. In connection with an application for licensing
2 pursuant to Article 3 of the Uniform Money Services Act, the
3 applicant shall, at a minimum, furnish to the nationwide
4 multistate licensing system and registry the following
5 information in a form and medium prescribed by the nationwide
6 multistate licensing system and registry:

7 (1) the applicant's history and experience;
8 and

9 (2) an authorization for the nationwide
10 multistate licensing system and registry and the director to
11 obtain:

12 (a) an independent credit report; and

13 (b) information related to any
14 administrative, civil or criminal findings by any
15 governmental jurisdiction.

16 C. A nonrefundable application fee of two thousand
17 dollars (\$2,000) and a nonrefundable license fee of two
18 thousand dollars (\$2,000) shall accompany an application for
19 a license pursuant to Article 3 of the Uniform Money Services
20 Act."

21 **SECTION 20.** Section 58-32-402 NMSA 1978 (being Laws
22 2016, Chapter 88, Section 402) is amended to read:

23 "58-32-402. APPLICATION FOR LICENSE.--

24 A. A person applying for a license pursuant to
25 Article 4 of the Uniform Money Services Act shall apply in a

1 record signed under penalty of perjury that shall be in a
2 form and in a medium required by the director. Each form
3 shall contain content as set forth by rule, instruction or
4 procedure of the director. The form shall include the
5 following information:

6 (1) the legal name and residential and
7 business addresses of the applicant if the applicant is an
8 individual or, if the applicant is not an individual, the
9 name of each partner, executive officer, manager and
10 director;

11 (2) the location of the principal office of
12 the applicant;

13 (3) complete addresses of other locations in
14 New Mexico where the applicant proposes to engage in currency
15 exchange or check cashing, including all limited stations and
16 mobile locations;

17 (4) a description of the source of money and
18 credit to be used by the applicant to engage in check cashing
19 and currency exchange; and

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

24 B. In connection with an application for licensing
25 pursuant to Article 4 of the Uniform Money Services Act, the

1 applicant shall, at a minimum, furnish to the nationwide
2 multistate licensing system and registry the following
3 information in a form and medium prescribed by the nationwide
4 multistate licensing system and registry:

5 (1) the applicant's history and experience;
6 and

7 (2) an authorization for the nationwide
8 multistate licensing system and registry and the director to
9 obtain:

10 (a) an independent credit report; and

11 (b) information related to any
12 administrative, civil or criminal findings by any
13 governmental jurisdiction.

14 C. A nonrefundable application fee of two thousand
15 dollars (\$2,000) and a nonrefundable license fee of two
16 thousand dollars (\$2,000) shall accompany an application for
17 a license pursuant to Article 4 of the Uniform Money Services
18 Act."

19 **SECTION 21.** Section 58-32-602 NMSA 1978 (being Laws
20 2016, Chapter 88, Section 602) is amended to read:

21 "58-32-602. COOPERATION.--The director may consult and
22 cooperate with other state agencies, agencies of another
23 state or of the United States or the nationwide multistate
24 licensing system and registry in enforcing and administering
25 the Uniform Money Services Act. They may jointly pursue

1 examinations and take other official action that they are
2 otherwise empowered to take."

3 SECTION 22. Section 58-32-603 NMSA 1978 (being Laws
4 2016, Chapter 88, Section 603) is amended to read:

5 "58-32-603. REPORTS.--

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

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

24 C. A licensee shall file a report with the
25 director within one business day after the licensee has

1 reason to know of the occurrence of any of the following
2 events:

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

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

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

14 (4) the cancellation or other impairment of
15 the licensee's bond or other security;

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

19 (6) a charge or conviction of an authorized
20 delegate for a felony.

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

25 **SECTION 23.** Section 58-32-901 NMSA 1978 (being Laws

1 2016, Chapter 88, Section 901) is amended to read:

2 "58-32-901. POWERS OF DIRECTOR.--

3 A. The director may act on the director's own
4 initiative or in response to complaints and may receive
5 complaints, take action to obtain voluntary compliance with
6 the Uniform Money Services Act, refer cases to the office of
7 the attorney general or any other state agency or agency of
8 another state or the United States and seek or provide
9 remedies as provided in the Uniform Money Services Act.

10 B. The director may investigate and examine, in
11 New Mexico or in any other state or country, by subpoena or
12 otherwise, the activities, books, accounts and records of a
13 person that provides or offers to provide money services, or
14 a person to which a licensee has delegated its obligations
15 pursuant to an agreement or the Uniform Money Services Act,
16 to determine compliance with the Uniform Money Services Act.
17 Information that identifies individuals who have agreements
18 with the licensee shall not be disclosed to the public. In
19 connection with the investigation, the director may:

20 (1) charge the person the reasonable
21 expenses necessarily incurred to conduct the examination; and

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

25 C. The director may enter into cooperative

1 arrangements with other state agencies or agencies of another
2 state or of the United States, or the nationwide multistate
3 licensing system and registry, and may exchange with any of
4 those entities information about a licensee, including
5 information obtained during an examination of the licensee.

6 D. The director may bring an action to enforce the
7 Uniform Money Services Act in New Mexico or in any other
8 state or country.

9 E. The director may recover the reasonable
10 expenses of enforcing the Uniform Money Services Act pursuant
11 to Article 8 of that act, including nongovernmental attorney
12 and expert witness fees based on the hours reasonably
13 expended and the hourly rates for attorneys and expert
14 witnesses of comparable experience in the community."

15 **SECTION 24.** Section 61-18A-1 NMSA 1978 (being Laws
16 1987, Chapter 252, Section 1) is amended to read:

17 "61-18A-1. SHORT TITLE.--Chapter 61, Article 18A NMSA
18 1978 may be cited as the "Collection Agency Regulatory Act"."

19 **SECTION 25.** Section 61-18A-2 NMSA 1978 (being Laws
20 1987, Chapter 252, Section 2) is amended to read:

21 "61-18A-2. DEFINITIONS.--As used in the Collection
22 Agency Regulatory Act:

23 A. "division" means the financial institutions
24 division of the regulation and licensing department;

25 B. "director" means the director of the division

1 or a duly authorized agent designated by the director;

2 C. "collection agency" means a person engaging in
3 business for the purpose of collecting or attempting to
4 collect, directly or indirectly, debts owed or due or
5 asserted to be owed or due another, where such person is so
6 engaged by two or more creditors. The term also includes a
7 creditor who, in the process of collecting the creditor's own
8 debts, uses any name other than the creditor's own that would
9 indicate that a third person is collecting or attempting to
10 collect the debts. The term does not include:

11 (1) an officer or employee of a creditor
12 while, in the name of the creditor, collecting debts for such
13 creditor;

14 (2) a person while collecting debts for
15 another person, both of whom are related by common ownership
16 or affiliated by corporate control, if the person collects
17 debts only for persons to whom it is so related or affiliated
18 and if the principal business of such person is not the
19 collection of debts;

20 (3) an officer or employee of the United
21 States, a state or a political subdivision thereof to the
22 extent that collecting or attempting to collect a debt is in
23 the performance of official duties;

24 (4) a person while serving or attempting to
25 serve legal process on any other person in connection with

1 the judicial enforcement of a debt;

2 (5) a nonprofit organization that, at the
3 request of debtors, performs bona fide consumer credit
4 counseling and assists debtors in the liquidation of their
5 debts by receiving payments from such debtors and
6 distributing such amounts to creditors;

7 (6) an attorney-at-law collecting a debt as
8 an attorney on behalf of and in the name of a client; or

9 (7) a person collecting or attempting to
10 collect a debt owed or due or asserted to be owed or due to
11 another to the extent such activity:

12 (a) is incidental to a bona fide
13 fiduciary obligation or a bona fide escrow arrangement;

14 (b) concerns a debt that was originated
15 by such person;

16 (c) concerns a debt that was not in
17 default at the time it was obtained by such person; or

18 (d) concerns a debt obtained by such
19 person as a secured party in a commercial credit transaction
20 involving the creditor;

21 D. "communication" means the conveying of
22 information regarding a debt directly or indirectly to a
23 person through any medium;

24 E. "creditor" means a person who offers or extends
25 credit creating a debt or to whom a debt is owed, but the

1 term does not include a person to the extent that the person
2 receives an assignment or transfer of a debt in default
3 solely for the purpose of facilitating collection of such
4 debt for another;

5 F. "debt" means an obligation or alleged
6 obligation of a debtor to pay money arising out of a
7 transaction in which the money, property, insurance or
8 services that are the subject of the transaction are
9 primarily for personal, family or household purposes, whether
10 or not such obligation has been reduced to judgment;

11 G. "debt collector" means a collection agency, a
12 reposessor, a manager, a solicitor and an attorney-at-law
13 collecting a debt as an attorney on behalf of and in the name
14 of a client;

15 H. "debtor" means a natural person obligated or
16 allegedly obligated to pay a debt;

17 I. "location information" means a debtor's place
18 of abode and the telephone number at such place or the
19 debtor's place of employment;

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

24 K. "nationwide multistate licensing system and
25 registry" means a licensing system developed and maintained

1 by the conference of state bank supervisors and the American
2 association of residential mortgage regulators pursuant to
3 the federal Secure and Fair Enforcement for Mortgage
4 Licensing Act of 2008 to manage mortgage licenses and other
5 financial services licenses, or a successor registry;

6 L. "person" means an individual, corporation,
7 partnership, association, joint-stock company, trust where
8 the interests of the beneficiaries are evidenced by a
9 security, unincorporated organization, government or
10 political subdivision of a government;

11 M. "repossessor" means a person engaged solely in
12 the business of repossessing personal property for others for
13 a fee. The term does not include a duly licensed collection
14 agency; and

15 N. "solicitor" means a natural person who, through
16 lawful means, communicates with debtors or solicits the
17 payment of debts for a collection agency licensee by the use
18 of telephone, personal contact, letters or other methods of
19 collection conducted from and within the licensee's office."

20 **SECTION 26.** Section 61-18A-3 NMSA 1978 (being Laws
21 1987, Chapter 252, Section 3) is amended to read:

22 "61-18A-3. ADMINISTRATION AND ENFORCEMENT.--

23 A. The administration and enforcement of the
24 Collection Agency Regulatory Act shall be vested in the
25 office of the director as set forth in that act.

1 B. The director shall investigate violations or
2 alleged violations of the Collection Agency Regulatory Act by
3 persons engaged in business as collection agencies or
4 reposseors who fail to obtain licenses.

5 C. The director may examine the business and the
6 books, accounts, records and files used therein by a
7 collection agency licensee, and for such purpose, the
8 director shall have free access to the offices, places of
9 business, books, accounts, records, papers, files, safes and
10 vaults of all licensees and other persons engaging or
11 attempting to engage in business as a collection agency.

12 D. Any examination reports or other documents or
13 information developed in administration of this section are
14 confidential and not subject to subpoena.

15 E. Applicants for a license issued pursuant to the
16 Collection Agency Regulatory Act shall apply on a form
17 prescribed by the director. Information required on the form
18 shall be set forth by rule, instruction or procedure of the
19 director and may be changed or updated as necessary by the
20 director in order to carry out the purposes of the Collection
21 Agency Regulatory Act.

22 F. In order to fulfill the purposes of the
23 Collection Agency Regulatory Act, the director may establish
24 relationships or contracts with the nationwide multistate
25 licensing system and registry or other entities designated by

1 the nationwide multistate licensing system and registry to
2 collect and maintain records and process transaction fees or
3 other fees related to licenses issued pursuant to the
4 Collection Agency Regulatory Act.

5 G. An applicant for a license pursuant to the
6 Collection Agency Regulatory Act shall, at a minimum, furnish
7 to the nationwide multistate licensing system and registry
8 information concerning the applicants identity, including:

9 (1) the applicant's personal history and
10 experience in a form prescribed by the nationwide multistate
11 licensing system and registry; and

12 (2) authorization for the nationwide
13 multistate licensing system and registry and the director to
14 obtain information related to any administrative, civil or
15 criminal findings by any governmental jurisdiction regarding
16 the applicant.

17 H. The director may use the nationwide multistate
18 licensing system and registry as a channeling agent for
19 requesting and distributing information provided pursuant to
20 Paragraphs (1) and (2) of Subsection G of this section to and
21 from any source as deemed appropriate by the director."

22 **SECTION 27.** Section 61-18A-7 NMSA 1978 (being Laws
23 1987, Chapter 252, Section 7, as amended) is amended to read:

24 "61-18A-7. APPLICATION FOR LICENSE.--

25 A. Application for a collection agency license,

1 reposessor's license or manager's license shall be made to
2 the director in such form as may be required by the director.

3 B. Applicants for an original license issued
4 pursuant to the Collection Agency Regulatory Act for the
5 period beginning July 1, 2020 and ending December 31, 2020
6 shall pay an amount equal to one-half of the original license
7 fee for the applicable license as established pursuant to
8 Section 61-18A-30 NMSA 1978.

9 C. Applicants for renewal of a license issued
10 pursuant to the Collection Agency Regulatory Act with an
11 expiration date of June 30, 2020 may apply for renewal of the
12 license for the period beginning July 1, 2020 and ending
13 December 31, 2020 and shall pay an amount equal to one-half
14 of the renewal license fee for the applicable license as
15 established pursuant to Section 61-18A-30 NMSA 1978.

16 D. Applicants for all licenses issued pursuant to
17 the Collection Agency Regulatory Act beginning on or after
18 January 1, 2021, and ending at the conclusion of the calendar
19 year for which the license may be issued, shall pay an amount
20 equal to the applicable original or renewal license fee as
21 established pursuant to Section 61-18A-30 NMSA 1978."

22 **SECTION 28.** Section 61-18A-8 NMSA 1978 (being Laws
23 1987, Chapter 252, Section 8) is amended to read:

24 "61-18A-8. APPLICATIONS--REQUIRED INFORMATION.--

25 A. The application for a collection agency license HB 584
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1 shall state, among other things that may be required, the
2 name of the applicant together with the name under which the
3 applicant will do business and the location by street number
4 and city in this state of the office of the business for
5 which the license is sought.

6 B. The application shall state:

7 (1) in the case of an individual, the full
8 residence address of the applicant;

9 (2) in the case of a partnership, the true
10 names and complete residence addresses of all partners;

11 (3) in the case of a corporation, the true
12 names and complete residence addresses of all directors and
13 officers and the true names and residence addresses of all
14 holders of ten percent or more of the corporation's
15 outstanding stock and other securities and the number of
16 shares or units of each and of all classes held by each and
17 the total number of shares or units of each class issued and
18 outstanding; and

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

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

25 D. The director may establish, by rule, regulation HB 584
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1 or order, requirements for a license application as
2 necessary, including:

- 3 (1) background checks for criminal history
4 through fingerprint or other databases;
- 5 (2) civil or administrative records;
- 6 (3) credit history; and
- 7 (4) other information as deemed relevant and
8 necessary by the director."

9 **SECTION 29.** Section 61-18A-22 NMSA 1978 (being Laws
10 1987, Chapter 252, Section 22) is amended to read:

11 "61-18A-22. OFFICE MANAGEMENT--LICENSE.--

12 A. Every licensed office of a collection agency,
13 whether a principal or branch office, shall be under the
14 active charge of a licensed manager. Each manager's license
15 shall be issued by the director upon qualification by the
16 applicant and shall be renewed annually upon application
17 accompanied by the manager's renewal license fee, which
18 application is to be filed with the division on or before
19 November 30 of each year. Unless so renewed, each manager's
20 license shall expire on January 1 unless previously revoked
21 or canceled.

22 B. As used in this section, "under the active
23 charge of a licensed manager" means that a licensed manager
24 shall be physically present at the licensee's office at least
25 seventy-five percent of the time during which the office is

1 open for business."

2 SECTION 30. Section 61-18A-27 NMSA 1978 (being Laws
3 1987, Chapter 252, Section 27) is amended to read:

4 "61-18A-27. RENEWAL OF LICENSE--FEE.--

5 A. A licensee desiring renewal of the licensee's
6 license shall, on or before November 30 of each year, file
7 with the director an application for renewal on forms as may
8 be designated by the director. The application shall be
9 accompanied by the renewal fee.

10 B. The director shall issue a renewal license that
11 shall be dated January 1 next ensuing and shall bear the date
12 to and including which the license is renewed."

13 SECTION 31. REPEAL.--Section 61-18A-18 NMSA 1978 (being
14 Laws 1987, Chapter 252, Section 18) is repealed.

15 SECTION 32. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2019._____

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