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HOUSE BILL 710

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Donald L. Whitaker

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; CHANGING CERTAIN
PROVISIONS OF THE BANKING ACT AND OTHER LAWS REGULATING BANKS
AND OTHER FINANCIAL INSTITUTIONS; AMENDING AND REPEALING
SECTIONS OF THE NMSA 1978.

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

Section 1. Section 58-1-3 NMSA 1978 (being Laws 1963,
Chapter 305, Section 3, as amended) is amended to read:

"58-1-3. DEFINITIONS. -- As used in the Banking Act,
unless the context otherwise requires:

A. "action" in the sense of a judicial proceeding
means any proceeding in which rights are determined;

B. "allowances for loan and lease losses" means
the difference between:

(1) the balance of the valuation reserve on

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1 the date of the most recent federal financial institutions
2 examination council report of condition or income plus
3 additions to the reserve charged to operations since that
4 date; and

5 (2) losses charged against the allowance, net
6 of recoveries;

7 ~~[B.]~~ C. "board" means the board of directors of
8 any given bank;

9 D. "capital" or "capital stock" means the amount
10 of common stock outstanding and unimpaired plus the amount of
11 perpetual preferred stock outstanding and unimpaired;

12 E. "capital surplus" means the total of those
13 accounts reflecting:

14 (1) amounts paid in excess of the par or
15 stated value of capital stock;

16 (2) amounts contributed to the bank other
17 than for capital stock;

18 (3) amounts transferred from undivided
19 profits pursuant to Section 58-1-55 NMSA 1978; and

20 (4) other amounts transferred from undivided
21 profits;

22 ~~[E.]~~ F. "commissioner" or "director" means the
23 director of the financial institutions division of the
24 regulation and licensing department;

25 ~~[D.]~~ G. "community" means a city, town or village

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1 in this state;

2 [E-] H. "county" means any of the political
3 subdivisions of this state as defined in Chapter 4 NMSA 1978,
4 except that when applied to locations within the exterior
5 boundaries of a federally recognized Indian reservation or
6 pueblo, "county" means all lands within the exterior
7 boundaries of that reservation or pueblo without regard to the
8 county boundaries established in Chapter 4 NMSA 1978. For
9 purposes of the Banking Act, the Indian reservation or pueblo
10 lands defined as a "county" by this subsection shall be
11 considered to be adjoining any of the counties, as defined by
12 Chapter 4 NMSA 1978, which are adjoining the county or
13 counties in which that Indian reservation or pueblo is
14 located;

15 [F-] I. "court" means a court of competent
16 jurisdiction;

17 [G-] J. "cumulative voting" means, in all
18 elections of directors, each shareholder shall have the right
19 to vote the number of shares owned by him for as many persons
20 as there are directors to be elected or to cumulate such
21 shares and give one candidate as many votes as the number of
22 directors, multiplied by the number of his shares, shall equal
23 or to distribute them on the same principle among as many
24 candidates as he thinks fit. In deciding all other questions
25 at meetings of shareholders, each shareholder shall be

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1 entitled to one vote on each share of stock held by him,
2 except that this shall not be construed as limiting the voting
3 rights of holders of preferred stock under the terms and
4 provisions of articles of association or amendments thereto;

5 ~~[H.]~~ K. "department" or "division" means the
6 financial institutions division of the regulation and
7 licensing department;

8 ~~[I.]~~ L. "executive officer", when referring to a
9 bank, means any person designated as such in the bylaws and
10 includes, whether or not so designated, the president, any
11 vice president, the treasurer, the cashier and the comptroller
12 or auditor, or any person who performs the duties appropriate
13 to those offices;

14 ~~[J.]~~ M. "fiduciary" means a trustee, agent,
15 executor, administrator, committee, guardian or conservator
16 for a minor or other incompetent person, receiver, trustee in
17 bankruptcy, assignee for creditors or any holder of a similar
18 position of trust;

19 ~~[K.]~~ N. "good faith" means honesty in fact in the
20 conduct or transaction concerned;

21 O. "intangible assets" means those purchased
22 assets that are required to be reported as intangible assets
23 by the federal deposit insurance corporation;

24 ~~[L.]~~ P. "item" means any instrument for the
25 payment of money, even though it is not negotiable, but does

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1 not include money;

2 [M-] Q. "legal tender" means coins and currency;

3 R. "lessee" means a person contracting with a
4 lessor for the use of a safe deposit box;

5 S. "lessor" means a bank or subsidiary renting
6 safe deposit facilities and includes a safe deposit company
7 organized and operating under the jurisdiction of the division
8 solely for the purpose of leasing safe deposit facilities;

9 T. "limited life preferred stock" means preferred
10 stock that has a stated maturity date or may be redeemed at
11 the option of the holder;

12 U. "mandatory convertible debt" means a
13 subordinated debt instrument that:

14 (1) unqualifiedly requires the issuer to
15 exchange either common or perpetual preferred stock for the
16 instrument by a date on or before the expiration of twelve
17 years; and

18 (2) meets the requirements of Subparagraph
19 (b) of Paragraph (2) of Subsection CC of this section or other
20 requirements adopted by the division;

21 V. "minority interest in consolidated
22 subsidiaries" means the portion of equity capital accounts of
23 all consolidated subsidiaries of the bank that is allocated to
24 minority shareholders of those subsidiaries;

25 W. "mortgage servicing rights" means the rights

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1 owned by the bank to service for a fee mortgage loans that are
2 owned by others;

3 [N.] X. "officer", when referring to a bank, means
4 any person designated as such in the bylaws and includes,
5 whether or not so designated, any executive officer, the
6 chairman of the board of directors, the chairman of the
7 executive committee and any trust officer, assistant vice
8 president, assistant treasurer, assistant cashier, assistant
9 comptroller or any person who performs the duties appropriate
10 to those offices;

11 Y. "perpetual preferred stock" means preferred
12 stock that does not have a stated maturity date and cannot be
13 redeemed at the option of the holder;

14 [O.] Z. "person" means an individual, corporation,
15 partnership, joint venture, trust estate or unincorporated
16 association;

17 [P.] AA. "reason to know" means that, to a person
18 of ordinary intelligence, the fact in question exists or has a
19 substantial chance of existing and that the exercise of
20 reasonable care would predicate conduct upon the assumption of
21 its existence;

22 [~~Q.~~] "~~lessee~~" means ~~a person contracting with a~~
23 ~~lessor for the use of a safe deposit box;~~

24 ~~R.~~ "~~lessor~~" means ~~a bank or subsidiary renting~~
25 ~~safe deposit facilities and includes a safe deposit company~~

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1 ~~organized and operating under the jurisdiction of the division~~
2 ~~solely for the purpose of leasing safe deposit facilities; and~~

3 ~~S-]~~ BB. "safe deposit box" means a safe deposit
4 box, vault or other safe deposit receptacle maintained by a
5 lessor, and the rules relating thereto apply to property or
6 documents kept in safekeeping in the bank's vault; and

7 CC. "surplus" or "unimpaired surplus fund":

8 (1) means:

9 (a) the difference between: 1) the sum
10 of capital surplus; undivided profits; reserves for
11 contingencies and other capital reserves, excluding accrued
12 dividends on perpetual and limited life preferred stock;
13 minority interests in consolidated subsidiaries; and
14 allowances for loan and lease losses; and 2) intangible
15 assets, including those, other than mortgage servicing rights,
16 purchased prior to April 15, 1985, but not to exceed twenty-
17 five percent of Item 1) of this subparagraph;

18 (b) purchased mortgage servicing
19 rights;

20 (c) mandatory convertible debt to the
21 extent of twenty percent of the sum of Subparagraph (d) and
22 Subparagraphs (a) and (b) of this paragraph; and

23 (d) other mandatory convertible debt,
24 limited preferred stock and subordinated notes and debentures;
25 and

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1 (2) is subject to the following limitations:

2 (a) issues of limited life preferred
3 stock and subordinated notes and debentures, except mandatory
4 convertible debt, must have original weighted average
5 maturities of at least five years to be included in surplus;

6 (b) a subordinated note or debenture
7 must also: 1) be subordinated to the claims of depositors; 2)
8 state on the instrument that it is not a deposit and is not
9 insured by the federal deposit insurance corporation; 3) be
10 approved as capital by the division; 4) be unsecured; 5) be
11 ineligible as collateral for a loan by the issuing bank; 6)
12 provide that once any scheduled payments of principal begin,
13 all scheduled payments shall be made at least annually and the
14 amount repaid in each year shall be no less than in the prior
15 year; and 7) provide that no accelerated payment by reason of
16 default or otherwise may be made without the prior written
17 approval of the division; and

18 (c) the total amount of mandatory
19 convertible debt included in Subparagraph (d) of Paragraph (1)
20 of this subsection considered as surplus is limited to fifty
21 percent of the sum of Subparagraphs (a) and (c) of Paragraph
22 (1) of this subsection. "

23 Section 2. Section 58-1-21 NMSA 1978 (being Laws 1963,
24 Chapter 305, Section 21, as amended) is amended to read:

25 "58-1-21. LOANS. --

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1 A. A state bank may lend on the security of the
2 personal obligation of the borrower.

3 B. A state bank may lend on the security of
4 personal property but shall not make any loan on the security
5 of its own stock, of stock of another bank where the borrower
6 owns, controls or holds with the power to vote ten percent or
7 more of the outstanding voting securities of both that bank
8 and the lending bank or of its obligation subordinate to
9 deposits.

10 C. As used in this subsection, "improved farm
11 land" means any land used for crop or livestock production. A
12 state bank may make real estate loans secured by liens upon
13 unimproved real estate, upon improved real estate, including
14 improved farmland and improved business and residential
15 properties, and upon real estate to be improved by a building
16 to be constructed or in the process of construction in an
17 amount that when added to the amount unpaid upon prior
18 mortgages, liens and encumbrances, if any, upon the real
19 estate does not exceed the respective proportions of appraised
20 value as provided in this section. A loan secured by real
21 estate within the meaning of this section shall be in the form
22 of an obligation secured by a mortgage, trust deed or other
23 instrument, which shall constitute a lien on real estate in
24 fee or under such rules and regulations as may be prescribed
25 by the director, on a leasehold under a lease that does not

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1 expire for at least ten years beyond the maturity date of both
2 and [~~any~~] a state bank may purchase or sell [~~any~~] obligations
3 so secured in whole or in part. The amount of any such loan
4 made shall not exceed sixty-six and two-thirds percent of the
5 appraised value if the real estate is unimproved; eighty
6 percent of the appraised value if the real estate is improved
7 by off-site improvements such as streets, water, sewers or
8 other utilities; seventy-five percent of the appraised value
9 if the real estate is in the process of being improved by a
10 building to be constructed or in the process of construction;
11 or ninety percent of the appraised value if the real estate is
12 improved by a building. If any such loan exceeds sixty-six
13 and two-thirds percent of the appraised value of the real
14 estate or if the real estate is improved with a one- to
15 four-family dwelling, installment payments shall be required
16 that are sufficient to amortize the entire principal of the
17 loan within a period of not more than thirty years. However:

18 (1) the limitations and restrictions set
19 forth in this subsection shall not prevent the renewal or
20 extension of loans and shall not apply to real estate loans
21 that are guaranteed or insured by the United States or an
22 agency thereof or by a state or agency or instrumentality
23 thereof; and

24 (2) loans that are guaranteed or insured as
25 described in Paragraph (1) of this subsection shall not be

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1 taken into account in determining the amount of real estate
2 loans that a state bank may make in relation to its capital
3 and surplus or its time and savings deposits or in determining
4 the amount of real estate loans secured by other than first
5 liens. Where the collateral for [~~any~~] a loan consists partly
6 of real estate and partly of other security, only the amount
7 by which the loan exceeds the value as collateral of such
8 other security shall be considered a loan upon the security of
9 real estate. In no event shall a loan be considered as a real
10 estate loan where there is a valid and binding agreement that
11 is entered into by a financially responsible lender or other
12 party directly with the bank that is either for the benefit of
13 or has been assigned to the bank and pursuant to which
14 agreement the lender or other party is required to advance to
15 the bank within sixty months from the date of the making of
16 the loan the full amount of the loan to be made by the bank
17 upon the security of real estate. The amount unpaid upon any
18 real estate loan secured by other than a first lien, when
19 added to the amount unpaid upon prior mortgages, liens and
20 encumbrances, shall not exceed in an aggregate sum twenty
21 percent of the amount of the capital stock of the bank paid in
22 and unimpaired plus twenty percent of the amount of its
23 unimpaired surplus fund.

24 D. A state bank may make real estate loans secured
25 by liens upon forest tracts that are properly managed in all

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1 respects. The loans shall be in the form of an obligation
2 secured by mortgage, trust deed or other such instrument, and
3 a state bank may purchase or sell [~~any~~] obligations so secured
4 in whole or in part. The amount of any such loan, when added
5 to the amount unpaid upon prior mortgages, liens and
6 encumbrances, if any, shall not exceed sixty-six and two-
7 thirds percent of the appraised fair market value of the
8 growing timber, lands and improvements thereon offered as
9 security. The loan shall be made upon such terms and
10 conditions as to assure that at no time shall the loan
11 balance, when added to the amount unpaid upon prior mortgages,
12 liens and encumbrances, if any, exceed sixty-six and two-
13 thirds percent of the original appraised total value of the
14 property then remaining. No such loan shall be made for a
15 longer term than three years, except that a loan may be made
16 for a term not longer than fifteen years if the loan is
17 secured by an amortized mortgage, deed of trust or other such
18 instrument under the terms of which the installment payments
19 are sufficient to amortize the principal of the loan within a
20 period of not more than fifteen years and at a rate of at
21 least six and two-thirds percent per year. All such loans
22 secured by liens upon forest tracts shall be included in the
23 permissible aggregate of all real estate loans and, when
24 secured by other than first liens, in the permissible
25 aggregate of all real estate loans secured by other than first

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1 liens prescribed in Paragraph (2) of Subsection C of this
2 section, but no state bank shall make forest tract loans in an
3 aggregate sum in excess of fifty percent of its capital stock
4 paid in and unimpaired plus fifty percent of its unimpaired
5 surplus fund.

6 E. Loans made to finance the construction of a
7 building and having maturities of not to exceed sixty months
8 where there is a valid and binding agreement entered into by a
9 financially responsible lender or other party to advance the
10 full amount of the bank's loan upon completion of the building
11 and loans made to finance the construction of residential or
12 farm buildings and having maturities of not to exceed forty-
13 two months may be considered as real estate loans if the loans
14 qualify under this section, or such loans may be classed as
15 commercial loans whether or not secured by a mortgage or
16 similar lien on the real estate upon which the building is
17 being constructed, at the option of each state bank that may
18 have an interest in the loan. No state bank shall invest in
19 or be liable on any such loans classed as commercial loans
20 under this subsection in an aggregate amount in excess of one
21 hundred percent of its actually paid-in and unimpaired capital
22 plus one hundred percent of its unimpaired surplus fund.

23 F. Notes representing loans made pursuant to
24 provisions of this section to finance the construction of
25 residential or farm buildings and having maturities of not to

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1 exceed nine months shall be eligible for discount as
2 commercial paper if accompanied by a valid and binding
3 agreement to advance the full amount of the loan upon the
4 completion of the building, entered into by an individual,
5 partnership, association or corporation acceptable to the
6 discounting bank.

7 G. Loans made to any borrower where the bank looks
8 for repayment by relying primarily on the borrower's general
9 credit standing and forecast of income, with or without other
10 security, or loans secured by an assignment of rents under a
11 lease and where the bank wishes to take a mortgage, deed of
12 trust or other instrument upon real estate, whether or not
13 constituting a first lien, as a precaution against
14 contingencies and loans in which the small business
15 administration cooperates through agreements to participate in
16 an immediate or deferred or guaranteed basis under the federal
17 Small Business Act shall not be considered as real estate
18 loans within the meaning of this section but shall be classed
19 as commercial loans.

20 H. A state bank may make loans upon the security
21 of real estate that do not comply with the limitations and
22 restrictions in this section if the total unpaid amount
23 loaned, exclusive of loans that subsequently comply with those
24 limitations and restrictions, does not exceed five percent of
25 the amount that a state bank may invest in real estate loans.

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1 The total unpaid amount so loaned shall be included in the
2 aggregate sum that the bank may invest in real estate loans.

3 I. A loan made by a state bank as a noncomplying
4 loan pursuant to Subsection H of this section may be evidenced
5 by a debt instrument and a security instrument consisting of a
6 mortgage, deed of trust or similar instrument that contain the
7 following provisions:

8 (1) either fixed rate or adjustable rate
9 interest accrual on the debt;

10 (2) an authorization for the borrower to make
11 unscheduled payments to reduce the principal amount of the
12 loan without relieving the borrower from continuing to make
13 payments of installments in the amounts specified in the
14 original debt and security instruments;

15 (3) the frequency of unscheduled payments
16 shall not exceed the frequency of scheduled payments; and

17 (4) authorization for the borrower to
18 retrieve by withdrawal part or all of the amount of an
19 unscheduled payment previously made.

20 J. Loans made pursuant to this section shall be
21 subject to such conditions and limitations as the director may
22 prescribe by rule or regulation. "

23 Section 3. Section 58-1-24 NMSA 1978 (being Laws 1963,
24 Chapter 305, Section 24, as amended) is amended to read:

25 "58-1-24. DIVERSIFICATION OF LOANS AND INVESTMENTS. --

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1 A. A state bank shall not extend credit directly
2 by means of discount notes, issuance of letters of credit,
3 acceptance of drafts or otherwise, or purchase any bond, note,
4 bill of exchange or any evidence of indebtedness, when by
5 reason of such extension of credit or purchase, the totals of
6 [~~such~~] the obligations so acquired which are held by the state
7 bank will exceed:

8 (1) [~~thirty~~] sixty percent of total deposits
9 or seventy-five percent of savings, whichever is greater, for
10 obligations secured by real estate, together with the current
11 market value of any real estate owned by the bank and not used
12 in its banking business; or

13 (2) twenty percent of capital and surplus for
14 obligations of the same obligor.

15 B. The limitations of Paragraph (2) of Subsection
16 A of this section shall not apply to loans and investments
17 otherwise authorized by the Banking Act if the obligations
18 are:

19 (1) obligations of the United States, general
20 obligations of a state or a political subdivision thereof or
21 of a federal reserve bank;

22 (2) secured as to principal and interest by
23 the guarantee, insurance or other like ~~commitment~~ of the
24 United States, an agency of the United States or a federal
25 reserve bank, whether the ~~commitment~~ provides for payment in

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1 cash or in obligations of the United States;

2 (3) secured by obligations of the United
3 States, a state or a political subdivision thereof having a
4 value of one hundred percent of the amount thereof;

5 (4) upon notes or drafts having a maturity of
6 not more than twelve months exclusive of days of grace, drawn
7 in good faith against actually existing values and secured by
8 an instrument transferring or securing title to goods in
9 process of shipment or to livestock, or creating a lien on
10 livestock to the amount of the value of the security, but the
11 limitation on such obligations shall be thirty percent of
12 capital and surplus;

13 (5) upon notes or drafts secured by trust
14 receipts, shipping documents or receipts of a licensed or
15 bonded warehouse or elevator transferring or securing title to
16 readily marketable, nonperishable staples to the amount of
17 eighty percent of the value of the security, and this
18 exemption shall not apply:

19 (a) unless [~~such~~] the staples are
20 insured, if it is customary to insure them; or

21 (b) for more than ten months to
22 obligations of the same obligor arising from the same
23 transaction or secured by the same staples;

24 (6) secured by the assignment of accounts
25 receivable to the extent of eighty percent of the amount of

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1 such accounts not overdue, but the limitation of these
2 obligations shall be thirty percent of capital and surplus;

3 (7) those arising out of the daily
4 transaction of the business of any clearinghouse association;
5 or

6 (8) obligations that are fully secured by a
7 pledge of a time certificate of deposit issued by the same
8 state-chartered bank in an amount equal to or exceeding the
9 amount of the obligation.

10 C. In calculating, for the purposes of this
11 section, the obligations of a single obligor or the
12 obligations of a specified class, there shall be included:

13 (1) the direct liability of the maker; the
14 amount of a loan made to a corporation to the extent that the
15 proceeds of [~~such~~] the loan directly or indirectly are to be
16 loaned to the individual;

17 (2) in the case of obligations of a
18 partnership or association, the obligations of each general
19 partner or of each member of the association; the amount of a
20 loan made to a corporation to the extent that the proceeds of
21 [~~such~~] the loan directly or indirectly are to be loaned to the
22 partnership or association;

23 (3) in the case of obligations of a general
24 partner or a member of an association, the obligations of the
25 partnership or association;

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1 (4) in the case of obligations of a
2 corporation, the obligations of any subsidiaries in which it
3 owns, directly or indirectly, a majority of the outstanding
4 voting stock;

5 (5) in the case of obligations of a
6 corporation, the amount of a loan made to any other person to
7 the extent that the proceeds of [~~such~~] the loan directly or
8 indirectly are to be:

9 (a) loaned to the corporation;

10 (b) used for the acquisition from the
11 corporation of any securities issued by the corporation, other
12 than securities acquired by an underwriter for public
13 offering; or

14 (c) transferred to the corporation
15 without fair and adequate consideration; and

16 (6) the discharge of an equivalent amount of
17 debt previously incurred in good faith or value shall be
18 deemed fair and adequate consideration. "

19 Section 4. Section 58-1-25 NMSA 1978 (being Laws 1963,
20 Chapter 305, Section 25, as amended) is amended to read:

21 "58-1-25. ACQUISITION OF PROPERTY TO SATISFY OR PROTECT
22 PREVIOUS LOAN.--A state bank may take property of any kind to
23 satisfy or protect a loan previously made in good faith and in
24 the ordinary course of business. Property acquired in
25 satisfaction of a loan shall be held subject to the

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1 limitations in this section.

2 A. Stock shall be sold within one hundred eighty
3 days or such [~~additional~~] period as the director may allow.

4 B. Real estate may be used in the banking
5 business, subject to the conditions prescribed by the Banking
6 Act for property purchased for such use, or may be rented.
7 Real estate may be improved to facilitate its sale. Unless
8 used in the banking business, [~~it~~] real estate shall be sold
9 within five years or such [~~longer~~] period as the director may
10 allow.

11 C. Other property, the acquisition of which is not
12 otherwise authorized by the Banking Act, shall be sold within
13 one hundred eighty days or such longer period as the director
14 may allow.

15 D. The property shall be entered on the books at
16 cost or fair market value, whichever is less. Upon transfer
17 to other real estate owned, fair value shall be substantiated
18 by a current appraisal prepared by an independent, qualified
19 appraiser. All instructions from the bank to the appraiser
20 shall be in writing. The appraisal shall recite all of the
21 bank's instructions to the appraiser. If the property remains
22 unsold, bank records shall be documented reflecting the bank's
23 diligent efforts to effect sale. On or before each annual
24 anniversary from the date of acquisition while the property
25 remains unsold, the bank shall obtain, from an independent

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1 qualified appraiser, a current appraisal or, in letter form,
2 certification that the fair market value has not declined.

3 E. The requirements for an appraisal upon transfer
4 to other real estate owned, subsequent annual anniversary
5 appraisal or letter certification are waived if the entire
6 property is recorded at or below the lower of five percent of
7 the bank's equity capital exclusive of valuation reserves or
8 seventy-five thousand dollars (\$75,000). The director may
9 require an appraisal on a property of lesser value at his
10 discretion.

11 F. For other real estate owned, recorded at or
12 below two hundred fifty thousand dollars (\$250,000), the
13 appraisal requirements prescribed will be waived at the option
14 of the bank if the original book value of the property is
15 charged off at a rate of ten percent for the first year,
16 fifteen percent for the second year, twenty percent for the
17 third year, twenty-five percent for the fourth year and thirty
18 percent for the fifth year. "

19 Section 5. Section 58-1-34 NMSA 1978 (being Laws 1963,
20 Chapter 305, Section 33) is amended to read:

21 "58-1-34. POWERS OF [~~COMMISSIONER~~] DIRECTOR. --

22 A. In addition to other powers conferred by law,
23 the [~~commissioner shall have~~] director has power to:

24 (1) restrict the withdrawal of deposits from
25 all or one or more state banks where he finds that

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1 extraordinary circumstances make such restriction necessary
2 for the property protection of depositors in the affected
3 institution;

4 (2) authorize a state bank to:

5 (a) participate in a public agency
6 [hereafter] created under the laws of this state or of the
7 United States the purpose of which is to afford advantages or
8 safeguards to banks or to depositors and to comply with all
9 requirements and conditions imposed upon such participants;
10 [and]

11 (b) engage in any banking activity in
12 which [banks] insured depository institutions subject to the
13 jurisdiction of the federal government may [hereafter] be
14 authorized by federal legislation to engage, provided he finds
15 state banks or their depositors may be injured or liable to
16 injury if the authorization is not given; and

17 (c) offer any product or service that
18 is at the time authorized or permitted to any insured
19 depository institution, provided that powers conferred by this
20 subparagraph shall always be subject to the same limitations
21 and restrictions that are applicable to the insured depository
22 institution offering the product or service;

23 (3) order the holder of shares in a bank to
24 refrain from voting [said] the shares on any matter if he
25 finds that [such] an order is necessary to protect the

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1 institution against reckless, incompetent or careless
2 management, to safeguard the funds of depositors or to prevent
3 the ~~[wilful]~~ willful violation of the Banking Act or of any
4 lawful rule or order issued ~~[thereunder]~~ pursuant to that act,
5 in which case the shares of such a holder shall not be counted
6 in determining the existence of a quorum or a percentage of
7 the outstanding shares necessary to take any corporate action;
8 and

9 (4) order any person to cease violating a
10 provision of the Banking Act or a lawful regulation issued
11 ~~[thereunder]~~ pursuant to that act or to cease engaging in any
12 unsound banking practice.

13 B. The ~~[commissioner]~~ director may remove or
14 suspend, for a period of not more than three years, a
15 director, trustee, officer or employee of a state bank who
16 becomes ineligible to hold his position or who, after receipt
17 of an order to cease ~~[under the preceding]~~ pursuant to
18 Subsection A of this section, violates the Banking Act or a
19 lawful regulation or order issued ~~[thereunder]~~ pursuant to
20 that act or ~~[or]~~ who is dishonest or who is reckless or
21 grossly incompetent in the conduct of banking business. It is
22 unlawful for any such person after receipt of a removal or
23 suspension order to perform any duty or exercise any power of
24 any state bank for a period of three years or the period of
25 suspension. A removal or suspension order shall specify the

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1 grounds thereof, and a copy of the order shall be sent to the
2 bank concerned.

3 C. Notice and hearing shall be provided in advance
4 of any action taken by the [~~commissioner~~] director under the
5 authority of this section. The notice shall specify the time
6 and place of the hearing.

7 D. The [~~commissioner shall have~~] director has
8 power to require a state bank to:

9 (1) maintain its records in accordance with
10 standard banking practices;

11 (2) observe generally recognized methods and
12 standards which he may prescribe for determining the value of
13 various types of assets;

14 (3) charge off the whole or any part of an
15 asset which cannot lawfully be held;

16 (4) write down an asset to its market value;

17 (5) file or record liens and other interests
18 in property;

19 (6) obtain a financial statement from a
20 borrower;

21 (7) obtain insurance against damage to real
22 estate taken as security;

23 (8) search or obtain insurance of the title
24 to real estate taken as security; and

25 (9) maintain adequate insurance against such

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1 other risks as the [~~commissioner~~] director may determine to be
2 necessary and appropriate for the protection of depositors and
3 the public.

4 E. The [~~commissioner shall have~~] director has the
5 power to subpoena witnesses, compel their attendance, require
6 the production of evidence, administer an oath and examine any
7 person under oath in connection with any subject relating to
8 duty imposed upon or a power vested in the [~~commissioner~~]
9 director. These powers shall be enforced by the district
10 court of the district in which the hearing is held.

11 F. The [~~commissioner~~] director may, on petition of
12 any interested person and after hearing, issue a declaratory
13 order with respect to the applicability of the Banking Act or
14 a rule issued [~~hereunder~~] pursuant to that act to any person,
15 property or state of facts. The order shall bind the
16 [~~commissioner~~] director and all parties to the proceeding on
17 the state of facts declared unless it is modified or reversed
18 by a court. A declaratory order may be reviewed and enforced
19 in the same manner as other orders of the [~~commissioner~~]
20 director, but the refusal to issue a declaratory order shall
21 be reviewable.

22 G. No person shall be subjected to any civil or
23 criminal liability for any act or omission to act in good
24 faith in reliance upon an existing order, regulation or
25 definition of the [~~commissioner~~] director, notwithstanding a

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1 subsequent decision by a court invalidating the order,
2 regulation or definition. "

3 Section 6. Section 58-1-39 NMSA 1978 (being Laws 1975,
4 Chapter 330, Section 23) is amended to read:

5 "58-1-39. BANK RECORDS--PRESCRIBING MANNER OF KEEPING. --

6 A. The [~~commissioner shall have~~] director has the
7 power to require banks under his supervision to keep their
8 records in such manner and form that they will at all times
9 reflect the true condition of the bank and permit [~~the same~~]
10 it to be readily and thoroughly audited.

11 B. Every state bank shall retain its business
12 records for such periods as are or may be prescribed by or in
13 accordance with the [~~terms~~] provisions of this section.

14 C. Each state bank shall retain permanently the
15 minute books of meetings of its stockholders and directors,
16 its capital stock ledger and capital stock certificate ledger
17 or stubs, its general ledger, its daily statements of
18 condition, its general journal, its investment ledger, its
19 copies of bank examination reports and all records which the
20 [~~commissioner shall~~] director in accordance with the [~~terms~~]
21 provisions of this section [~~require~~] requires to be retained
22 permanently.

23 D. All other bank records shall be retained for
24 such periods as the [~~commissioner shall~~] director in
25 accordance with the [~~terms~~] provisions of this section

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1 ~~[prescribe]~~ prescribes.

2 E. The ~~[commissioner]~~ director shall from time to
3 time issue regulations classifying all records kept by the
4 state banks and prescribing the period for which records of
5 each class shall be retained. Periods may be permanent or for
6 a lesser term of years. Regulations may from time to time be
7 amended or repealed. Prior to issuing any such regulation,
8 the ~~[commissioner]~~ director shall consider:

9 (1) actions at law and administrative
10 proceedings in which the production of bank records might be
11 necessary or desirable;

12 (2) state and federal statutes of limitation
13 applicable to such actions or proceedings;

14 (3) the availability of information contained
15 in bank records from other sources; and

16 (4) such other matters as the ~~[commissioner]~~
17 ~~shall deem~~ director deems pertinent in order that his
18 regulations will require banks to retain their records for as
19 short a period as is commensurate with the interests of bank
20 customers and shareholders and of the people of this state in
21 having bank records available.

22 F. Any state bank may dispose of any record which
23 has been retained for the period prescribed by or in
24 accordance with the ~~[terms]~~ provisions of this section for
25 retention of records of its class and shall thereafter be

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1 under no duty to produce [~~such~~] that record in any action or
2 proceeding.

3 G. Any state bank may cause any or all records at
4 any time in its custody to be converted into electronic images
5 or be reproduced by the microphotographic process, and [~~any~~]
6 an image or reproduction [~~so made shall have~~] has the same
7 force and effect as the original [~~thereof~~] and may be admitted
8 in evidence equally with the original.

9 H. To the extent that they are not in
10 contravention of any law of the United States, the provisions
11 of this section [~~shall~~] apply to all banks doing business in
12 this state. "

13 Section 7. Section 58-1-54 NMSA 1978 (being Laws 1973,
14 Chapter 130, Section 1, as amended) is amended to read:

15 "58-1-54. POWERS OF DIRECTOR AND OF STATE BANKS. -- In
16 addition to other powers provided for the director and for
17 state banks in the Banking Act [~~and~~] notwithstanding [~~anything~~
18 ~~to the contrary in that act~~] any other provision of laws, the
19 director may grant to state banks any of the powers and
20 authority that national banks or federally chartered or
21 insured depository institutions are or may be authorized,
22 empowered, permitted or otherwise allowed to exercise. As
23 used in this section and in Section 58-1-34 NMSA 1978,
24 "federally chartered or insured depository institution" means
25 a bank, savings bank, savings and loan association or credit

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1 union. "

2 Section 8. Section 58-5-7 NMSA 1978 (being Laws 1975,
3 Chapter 330, Section 3, as amended) is amended to read:

4 "58-5-7. LEGAL HOLIDAYS FOR BANKS. --

5 A. The following legal holidays [~~shall~~] may be
6 observed by banks, notwithstanding the provisions of Sections
7 12-5-1 through [~~12-5-7~~] 12-5-9 NMSA 1978:

8 New Year's Day January 1

9 Martin Luther King, Jr.'s Birthday 3rd Monday in
10 January

11 Washington's Birthday 3rd Monday in
12 February

13 Memorial Day the date
14 determined by the director to be the date recognized by the
15 majority of the federal reserve districts in New Mexico

16 Independence Day July 4

17 Labor Day 1st Monday in
18 September

19 Columbus Day 2nd Monday in
20 October

21 Armistice Day and Veterans' Day November 11

22 Thanksgiving Day 4th Thursday in
23 November

24 Christmas Day December 25.

25 Whenever one of these bank holidays falls on a Sunday,

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1 the following Monday is a legal bank holiday. Whenever one of
2 these bank holidays falls on a Saturday, that Saturday and the
3 preceding Friday are legal bank holidays.

4 B. Nothing in this section shall be deemed to
5 require a bank to close or cease operating any remote
6 financial service unit installed pursuant to the Remote
7 Financial Service Unit Act or any automated teller machines
8 located on the bank premises during all or any part of a legal
9 bank holiday. "

10 Section 9. Section 58-6-5 NMSA 1978 (being Laws 1990,
11 Chapter 45, Section 1) is amended to read:

12 "58-6-5. CREDIT AGREEMENTS--REQUIREMENTS. --

13 A. As used in this section, "financial
14 institution" means a bank, savings and loan association or
15 credit union authorized to transact business in the state.

16 B. A contract, promise or commitment to loan money
17 or to grant, extend or renew credit or any modification
18 thereof, in an amount greater than twenty-five thousand
19 dollars (\$25,000), not primarily for personal, family or
20 household purposes, made by a financial institution shall not
21 be enforceable unless in writing and signed by the party to be
22 charged or that party's authorized representative [provided,
23 however, that the provisions of this section shall not apply
24 unless the financial institution is able to produce a
25 statement signed by the borrower or recipient of loan monies

1 ~~on credit that he or she is aware of the provisions of this~~
2 ~~section]. "~~

3 Section 10. REPEAL. -- Sections 58-1-42, 58-6-1 and 58-6-2
4 NMSA 1978 (being Laws 1975, Chapter 330, Section 26 and Laws
5 1945, Chapter 122, Sections 1 and 2, as amended) are repealed.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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4
5
6 March 11, 1999

7
8 Mr. President:

9
10 Your FINANCE COMMITTEE, to whom has been referred

11
12 HOUSE BILL 710, as amended

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

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18 Respectfully submitted,

19
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23 _____
24 Ben D. Altamirano, Chairman

25 . 127309. 1

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Adopted _____ Not

1 Adopted _____

2 (Chief Clerk)

(Chief Clerk)

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6 Date _____

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9 The roll call vote was 10 For 0 Against

10 Yes: 10

11 No: 0

12 Excused: Campos, Ingle, Rodriguez

13 Absent: None

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