

CHAPTER 73
HB 644-FN – FINAL VERSION

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HOUSE BILL **644-FN**

AN ACT relative to regulation of small loans, title loans, and payday loans.

SPONSORS: Rep. Jones, Straf 24

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes certain changes to the regulation of small loans, title loans, and payday loans.

This bill is a request of the banking department.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 2 -

1 IX. "Engaged in the business of making title loans" means that at least 10 percent of all
2 loans made by the lender are title loans.

3 X. "Financial institution" means a bank, savings institution, credit union, or trust company.

4 XI. "Indirect owner" means:

5 (a) In the case of an owner that is a corporation, each of its shareholders that
6 beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or
7 more of that corporation.

8 (b) In the case of an owner that is a partnership, all general partners and those limited
9 and special partners that have the right to receive upon dissolution, or have contributed, 25 percent
10 or more of the partnership's capital.

11 (c) In the case of an owner that is a trust, the trust, each trustee and each beneficiary of
12 25 percent or more of the trust.

13 (d) In the case of an owner that is a limited liability company ("LLC"):

14 (1) Those members that have the right to receive upon dissolution, or have
15 contributed, 25 percent or more of the LLC's capital; and

16 (2) If managed by elected managers, all elected managers.

17 (e) In the case of an indirect owner, the parent owners of 25 percent or more of their
18 subsidiary.

19 XII. "Lender" means an individual, corporation, association, firm, partnership, limited
20 liability company, joint stock company, or other form of organization that lend money or give credit
21 temporarily on condition that the amount borrowed be returned, usually with an interest fee.
22 "Lender" shall not include a financial institution. "Lender" shall include a person who for
23 compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

24 (a) Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of
25 negotiating, arranging, finding, or procuring loans, or commitments for loans.

26 (b) Offers to serve as an agent for any person in an attempt to obtain a loan.

27 (c) Offers to serve as an agent for any person who has money to lend for a loan.

28 (d) Performs services or any of the business functions auxiliary or supplemental to the
29 production, distribution or maintenance of loans for a lender.

30 (e) Acts as a credit services organization as defined in RSA 359-D:2, II.

31 (f) Advertises for, solicits, or holds himself out as willing to make or procure
32 small loans, payday loans, or title loans.

33 (g) Holds the servicing rights to a small loan or records small loan payments on its books
34 and records and performs such other administrative functions as may be necessary to properly carry
35 out the debt holders' obligations under a loan agreement.

36 XIII. "Payday loan" means a short term, secured or unsecured loan, other than a title loan.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 3 -

1 XIV. “Payday loan lender” means a person engaged in the business of making payday loans.

2 XV. “Person” means any individual, firm, voluntary association, joint stock company,
3 incorporated society, partnership, association, trust, corporation, limited liability company, or legal
4 or commercial entity or group of individuals however organized.

5 XVI. “Principal” of the applicant or licensee means an owner with 10 percent or more
6 ownership interest, corporate officer, director, member, general or limited liability partner, limited
7 partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the
8 trust that owns the applicant or licensee, indirect owner, senior manager, New Hampshire branch
9 manager, and any person occupying similar status or performing similar functions.

10 XVII. “Principal office” means the main office location of a person required to be licensed
11 under this chapter.

12 XVIII. “Publicly traded” means a company whose securities are traded on a securities
13 exchange system approved and supervised by the Securities and Exchange Commission, including
14 but not limited to the NYSE, AMEX, BSE, and NASDAQ. The term also includes a public reporting
15 company that is subject to sections 12 or 15(d) of the Securities Exchange Act of 1934.

16 XIX. “Senior manager” means any officer of record, assistant vice president or higher, office
17 or branch manager, director of operations, or other position the responsibilities of which provide such
18 employee with the discretion or ability to set policy or manage or direct affairs of the licensee as a
19 whole, or of any division or department or unit of the licensee.

20 XX. “Small loan” means a title loan, payday loan, open-end loan, or closed-end loan that:

21 (a) Is \$10,000 or less; and

22 (b) Has an annual percentage rate of 10 percent or more except for the lawful fees, if
23 any, actually and necessarily paid out by the lender to any public officer, for filing or recording in
24 any public office any instrument securing such loan and except for the reasonable costs, charges, and
25 expenses, including court costs actually incurred in connection with a repossession of the security or
26 an actual sale of the security.

27 XXI. “Title loan” means a loan, other than a purchase money loan:

28 (a)(1) Secured by the title to a motor vehicle;

29 (2) Made for a period of 60 days or less;

30 (3) With a single payment payback; and

31 (4) Made by a lender in the business of making title loans; or

32 (b) That is secured, substantially equivalent to a title loan, and designated as a title loan
33 by rule or order of the commissioner.

34 XXII. “Title loan lender” means a person engaged in the business of making title loans.

35 399-A:2 License Required.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 4 -

1 I. No person shall engage in the business of a small loan lender in this state or with
2 consumers located in this state without first obtaining a license from the commissioner as provided
3 in this chapter.

4 II. Each such license shall terminate on December 31 of each year. Each license shall
5 remain in full force and effect until surrendered, revoked, suspended, or terminated.

6 III. The provisions of this chapter shall apply to any person who seeks to evade its
7 application by any device, subterfuge, or pretense, including, without limitation:

8 (a) Calling a loan by any other name;

9 (b) Using any agents, affiliates, or subsidiaries in an attempt to avoid the application of
10 the provisions of this chapter; or

11 (c) Having any affiliation or other business arrangement with an entity that is exempt
12 from the provisions of this chapter, the effect of which is to evade the provisions of this chapter,
13 including, without limitation, making a loan, while purporting to be the agent of such an exempt
14 entity where the purported agent holds, acquires, or maintains a preponderant economic interest in
15 the revenues generated by the loan.

16 IV. The fact that a person is licensed or registered in the state of New Hampshire under this
17 chapter shall not constitute a finding that the commissioner has passed in any way upon the merits
18 or qualifications of such person or that the commissioner has recommended or given approval to any
19 person. No person shall make, or cause to be made, to any prospective purchaser, customer, or client
20 any representation inconsistent with the provisions of this paragraph.

21 399-A:3 Exemptions. This chapter shall not apply to:

22 I. Any person lawfully engaged in business as permitted by the laws of this state or of the
23 United States relative to banks, trust companies, insurance companies, savings or building and loan
24 associations, or credit unions, or to loans made by them.

25 II. Any person engaged solely in the business of making loans for educational purposes or to
26 the loans made by such persons.

27 III. Any other person not within the intent of this chapter as the commissioner may
28 designate by rule or order.

29 399-A:4 Application and Fees.

30 I. Every applicant for licensing under this chapter shall file with the commissioner a written
31 verified application, on a form prescribed by the commissioner. The application shall contain:

32 (a) The name of the applicant;

33 (b) The applicant's tax identification number;

34 (c) The address where the business is or is to be conducted and similar information for
35 any branch office of the applicant;

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 5 -

1 (d) The trade name, if any, under which the applicant proposes to conduct such business
2 and evidence of authority to use the trade name in New Hampshire;

3 (e) The articles of incorporation or organization or partnership agreement;

4 (f) The name and address of the New Hampshire resident agent if the applicant is a
5 foreign entity;

6 (g) A financial statement as described in paragraph IV;

7 (h) The names and social security number of the applicant's principal;

8 (i) Authorization for the department to conduct a background check of the applicant's
9 principals;

10 (j) Any injunction or administrative order that has been issued against the applicant or
11 any of its principals and whether the applicant or any of its principals have been convicted of a
12 misdemeanor involving the lending industry or any aspect of the lending business or of any felony;
13 and

14 (k) Any other information that the commissioner may require including, but not limited
15 to, the applicant's form and place of organization, the applicant's proposed method of doing business,
16 the qualifications and business history of the applicant and its principals, and the applicant's
17 financial condition and history.

18 II. Each initial and renewal license application shall be accompanied by a nonrefundable
19 application fee of \$450 for the principal place of business of the licensee and the sum of \$450 for each
20 branch of such licensee maintained in this state.

21 III.(a) Unless the applicant is a publicly traded corporation, the department shall complete a
22 background investigation and criminal history records check on the applicant's principals. If the
23 applicant is a subsidiary, the department shall complete a background investigation and criminal
24 history records check on individuals who are indirect owners.

25 (b) The persons described in subparagraph (a) shall submit to the department a
26 notarized criminal history records release form, as provided by the New Hampshire division of state
27 police, which authorizes the release of the person's criminal records, if any. The person shall submit
28 with the release form a complete set of fingerprints taken by a qualified law enforcement agency or
29 an authorized employee of the banking department. In the event that the first set of fingerprints is
30 invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the
31 criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient
32 pattern, the department may, in lieu of the criminal history records check, accept police clearances
33 from every city, town, or county where the person has lived during the past 5 years.

34 (c) The department shall submit the criminal history records release form to the New
35 Hampshire division of state police which shall conduct a criminal history records check through its
36 records and through the Federal Bureau of Investigation. Upon completion of the background

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 6 -

1 investigation, the division of state police shall release copies of the criminal conviction records to the
2 department. The department shall maintain the confidentiality of all criminal history records
3 information received pursuant to this paragraph.

4 (d) The department may require the applicant or licensee to pay the actual costs of each
5 background investigation and criminal history records check.

6 (e) The department may conduct a pre-licensing examination of the applicant.

7 (f) The department may rely on criminal records checks reported through a national
8 licensing system in lieu of subparagraphs (b) and (c).

9 IV.(a) Every applicant for licensing shall be required to submit to the banking department
10 detailed financial information sufficient for the commissioner to determine the applicant's ability to
11 conduct the business of a small loan lender, payday lender, or title loan lender with financial
12 integrity.

13 (b) The application shall include a financial statement that shall be prepared in
14 accordance with generally accepted accounting principles and shall include a balance sheet, income
15 statement, statement of changes in owner's equity, a cash flow statement, and note disclosures. If
16 the financial statement is not audited, a certification statement shall be attached and signed by a
17 duly authorized officer of the licensee. The certification statement shall state that the financial
18 statement is true and accurate to the best of the officer's belief and knowledge. If the financial
19 statement is more than 6 months old, the applicant shall also submit an interim balance sheet and
20 income statement not more than 3 months old. Financial statements provided in connection with a
21 license application under this section shall be subject to review and verification during the course of
22 any examination or investigation conducted under this chapter.

23 (c) Each applicant and licensee shall maintain a positive net worth at all times.

24 V.(a) Each applicant shall post a continuous surety bond in amount of \$25,000. The surety
25 bond shall be payable to the state of New Hampshire and the bank commissioner of the state of
26 New Hampshire for the benefit of any person who is damaged by any violation of this chapter and
27 shall be conditioned upon the licensee's compliance with each provision of this chapter.

28 (b) Surety bonds shall include a provision requiring the surety to give written notice to
29 the commissioner 30 days in advance of the cancellation or termination of the bond.

30 (c) Every bond shall provide that no recovery shall be made against the bond unless the
31 state makes a claim for recovery or the person brings suit naming the licensee within 6 years after
32 the act upon which the recovery or suit is based. The obligations of the surety shall survive the
33 bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation,
34 any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee
35 under any applicable state or federal law, including the United State Bankruptcy Code.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 7 -

1 (d) When an action is commenced on a licensee's bond, the licensee shall immediately file
2 a new bond. Immediately upon recovery upon any action on the bond the licensee shall file a new
3 bond.

4 VI. Every applicant for licensing under this chapter shall file with the commissioner, in such
5 form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to
6 receive service of any lawful process in any non-criminal suit, action, or proceeding against the
7 applicant or the applicant's successor, executor, or administrator which arises under this chapter or
8 any rule or order under this chapter after the consent has been filed, with the same force and
9 validity as if served personally on the person filing the consent. A person who has filed such a
10 consent in connection with a previous application need not file another. When any person, including
11 any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or
12 any rule or order under this chapter, and such person has not filed a consent to service of process
13 under this section and personal jurisdiction over such person cannot otherwise be obtained in this
14 state, that conduct shall be considered equivalent to such person's appointment of the commissioner
15 to receive service of any lawful process. Service may be made by leaving a copy of the process in the
16 office of the commissioner along with \$5, but shall not be effective unless:

17 (a) The plaintiff, who may be the attorney general in a suit, action, or proceeding
18 instituted by him or her, sends a notice of the service and a copy of the process by registered mail to
19 the defendant or respondent at such person's last address on file with the commissioner, and

20 (b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or
21 before the return day of the process, if any, or within such further time as the court allows.

22 VII. The commissioner may license or register individuals or firms by means of or through
23 the facilities of a national organization which facilitates registration and licensing on a nationwide
24 basis.

25 399-A:5 License Grant and Renewal.

26 I. Upon the filing of the complete application, payment of the required application fee, and
27 completion of a pre-licensing investigation by the department, the commissioner shall issue a license
28 to the applicant and to the applicant's branches to engage in the business of a small loan lender if
29 the commissioner determines that:

30 (a) The applicant's financial resources and responsibility, experience, character and
31 general fitness, personnel, and record of past or proposed conduct warrant the public's confidence;
32 and that

33 (b) The business will be operated lawfully, honestly, and fairly within the provisions of
34 this chapter.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 8 -

1 II. A licensee may renew its license by paying the required annual fee of \$450 for the
2 principal license and \$450 for each branch office license to the banking department on or before
3 December 31 for the ensuing year that begins on January 1 if the licensee:

4 (a) Holds a valid license under this section; and

5 (b) Is in compliance with this chapter and the rules adopted pursuant to this chapter.

6 III. Failure to renew the license shall result in the license terminating on December 31.

7 IV. No license shall be issued to any person whose principal place of business is located
8 outside of this state unless that person designates an agent residing within this state for service of
9 process.

10 399-A:6 License Denial; Abandonment.

11 I. If the commissioner determines that an applicant fails to meet the requirements of this
12 chapter, the commissioner shall notify the applicant of that determination in writing immediately.

13 II. The commissioner may deny a license application if it is in the public interest and the
14 applicant or the applicant's principal:

15 (a) Has filed an application for licensing which was incomplete in any material respect;

16 (b) Is the subject of an order entered within the past 5 years by this state, any other
17 state, or federal regulator denying, suspending, or revoking a license or registration;

18 (c) Is permanently, preliminarily, or temporarily enjoined by any court of competent
19 jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or
20 collection activities;

21 (d) Is not qualified on the basis of such factors as experience, knowledge, and financial
22 integrity; or

23 (e) Should not be licensed for other good cause shown.

24 III. Applicants may appeal a license denial in accordance with RSA 541-A and rules of the
25 commissioner.

26 IV. Applicants may petition the banking department for a rehearing in accordance with
27 RSA 541 if the decision in an appeal conducted pursuant to paragraph II affirms a denial of a license
28 application.

29 V. The commissioner may deem abandoned and withdraw any application for licensure
30 made pursuant to this chapter if the applicant fails to respond in writing within 180 calendar days to
31 a written request from the commissioner requesting a response. Such request shall be sent via
32 certified mail to the last known address of the applicant that is on file with the commissioner.

33 399-A:7 License Posting. No licensee shall engage in the business of a small loan lender without
34 a conspicuously posted license in the licensee's principal place of business within this state and in
35 each of the licensee's licensed branch offices.

36 399-A:8 License Surrender.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 9 -

1 I. A licensee who ceases to engage in the business of a lender at any time for any cause shall
2 surrender such license and file an annual report pursuant to RSA 399-A:10 within 15 calendar days
3 of such cessation.

4 II. Surrender of a license shall not take effect until the commissioner deems the surrender
5 process complete.

6 III. Failure to comply with the provisions of this section and rules adopted under this section
7 shall be cause for denial of future license applications and the imposition of penalties under
8 RSA 399-A:23.

9 399-A:9 Continuing Obligation to Update.

10 I. Licensees shall update information on file with the commissioner. If any information filed
11 with the commissioner becomes materially inaccurate, the licensee shall, within 30 days of the event
12 necessitating the update, submit an amendment to its application records that will correct the
13 information on file with the commissioner.

14 II.(a) A licensee shall submit written notification to the department of the addition or
15 deletion of a principal, and shall provide the name and address of each new principal no later than
16 30 days after such change.

17 (b) Each new principal shall authorize the commissioner to conduct a background
18 investigation and a criminal history records check.

19 (c) The commissioner shall investigate management and ownership changes including,
20 but not limited to, each principal's qualifications and business history.

21 (d) The licensee shall investigate and disclose any injunction or administrative order
22 that has been issued against the principal and whether the principal has been convicted of a
23 misdemeanor involving the lending industry or any aspect of the lending business or convicted of any
24 felony, prior to the commissioner's approval of such change.

25 III. Licensees shall notify the department of any change of address and the commissioner
26 shall endorse such change of address on the person's license.

27 IV. No licensee shall transact any business provided for by this chapter under a trade name
28 or any other name different from the name stated in its license or branch office license without
29 immediately notifying the commissioner, who shall then amend the license accordingly.

30 V. As defined by rule, certain significant events shall be reported to the department in
31 writing within 10 calendar days.

32 VI. Any officer, owner, manager, or agent of any licensee, and any person controlling or
33 having a contract under which he or she has a right to control such a licensee, whether exclusively or
34 otherwise, and any person with executive authority over or in charge of any segment of such a
35 licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 10 -

1 from the commissioner requesting a reply. The commissioner may require that any communication
2 made to him or her under this section be verified.

3 399-A:10 Reporting and Filing Requirements.

4 I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or
5 before March 31 each year concerning its business and operations for the preceding calendar year or
6 license period ending December 31 in the form prescribed by the commissioner.

7 (b) Each licensee shall also file, under oath, its financial statement with the
8 commissioner within 90 days from the date of its fiscal year end. The financial statement shall be
9 prepared in accordance with generally accepted accounting principles and shall include a balance
10 sheet, income statement, statement of changes in owners' equity, a cash flow statement, and note
11 disclosures. If the financial statement is not audited, a certification statement shall be attached and
12 signed by a duly authorized officer of the licensee. The certification statement shall state that the
13 financial statement is true and accurate to the best of the officer's belief and knowledge.

14 II. The commissioner shall publish an analysis of the information required in the licensee's
15 annual report as part of the commissioner's annual report.

16 III. Any licensee or person failing to file either the annual report or the financial statement
17 required by this section within the time prescribed shall pay to the commissioner a penalty of \$25 for
18 each calendar day the annual report or financial statement is overdue to a maximum penalty of
19 \$2,500 per report or statement and shall be subject to suspension or revocation of its license.

20 IV. In addition to the annual report and financial statement required by this section, the
21 commissioner may require such regular or special reports as the commissioner deems necessary to
22 the proper supervision of licensees under this chapter.

23 V. A document is filed when it is received by the commissioner. If any filing deadline date
24 falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be
25 automatically extended to the next business day following such weekend or holiday.

26 399-A:11 Record Keeping Requirements.

27 I. The licensee shall maintain such books and records in accordance with sound business
28 and accepted accounting practices as will enable the department to determine whether the licensee's
29 business is in compliance with the provisions of this chapter and the rules adopted pursuant to it.
30 Such records shall be maintained in a readily accessible location and made available for examination
31 at the licensee's New Hampshire principal office or its New Hampshire branch office location or the
32 office of its New Hampshire agent for a period of at least 3 years after the licensee's final transaction
33 on a loan or application file.

34 II. A licensee may maintain its records in electronic format if, upon request, the licensee
35 provides the commissioner with:

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 11 -

1 (a) A full explanation of the programming of any data storage or communications
2 systems in use; and

3 (b) Information from any books, records, electronic data processing systems, computers,
4 or any other information storage system in the form requested by the commissioner.

5 399-A:12 Consumer Inquiries.

6 I. Consumer complaints naming licensees under this chapter, which are filed in writing with
7 the office of the commissioner, shall be forwarded via certified or registered mail to the licensee for
8 response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt
9 of such complaint, send a written acknowledgment thereof to the consumer and the banking
10 department. Not later than 60 days following receipt of such complaint, the licensee shall conduct
11 an investigation of the complaint and either:

12 (a) Make appropriate corrections in the account of the consumer and transmit to the
13 consumer and the banking department written notification of such corrections, including
14 documentary evidence thereof; or

15 (b) Transmit a written explanation or clarification to the consumer and the banking
16 department which sets forth, to the extent applicable, the reasons why the licensee believes its
17 actions are correct, including copies of documentary evidence thereof.

18 II. A licensee who fails to respond to consumer complaints as required by this section within
19 the time prescribed shall pay to the commissioner a penalty of \$50 for each day such response is
20 overdue. For purposes of this section, the date of transmission shall be the date such response is
21 received by the commissioner.

22 III.(a) Licensees which, because of extenuating circumstances beyond the control of the
23 licensee, are unable to comply with the time frames prescribed in this section, may make written
24 request to the commissioner for a waiver of such time frames. Waivers shall not be granted or
25 considered unless the request for the waiver:

26 (1) Is received by the banking department within 50 calendar days following the
27 licensee's receipt of the complaint;

28 (2) Specifies the reason for the request; and

29 (3) Specifies a date certain by which the licensee shall comply with the provisions of
30 this section.

31 (b) Requests for waivers shall be either granted or denied within 5 calendar days of
32 receipt by the banking department.

33 399-A:13 Examinations and Investigations.

34 I. The commissioner or the commissioner's duly authorized representative shall, in
35 accordance with RSA 383:9 and, with or without notice to the licensee or person, examine the
36 business affairs of any licensee or any other person subject to this chapter, whether licensed or not,

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 12 -

1 or more often when necessary, as the commissioner deems necessary to determine compliance with
2 this chapter and the rules adopted pursuant to it. In determining compliance, the commissioner or
3 the duly authorized representative may examine the books, accounts, records, files, and other
4 documents, whether electronically stored or otherwise, and any other matters of any licensee or
5 person. The commissioner or the duly authorized representative shall have and be given free access
6 to the office and places of business, files, safes, and vaults of all such persons, and may require the
7 attendance of any person and to examine him or her under oath relative to such loans or such
8 business or to the subject matter of any examination or investigation and may require the production
9 of books, accounts, papers, and records of such persons.

10 II. The commissioner may, in his or her discretion, accept all or part of a report of
11 examination of a small loan lender, certified to by the regulatory supervisory official of another state.
12 To avoid unnecessary duplication of examinations, the commissioner, insofar as he or she deems it
13 practicable in administering this section, may cooperate with the regulators of other states, the
14 Federal Trade Commission, other federal regulators, or their successors in conducting examinations
15 and investigations.

16 III. The department may subpoena witnesses and administer oaths and to compel, by
17 subpoena duces tecum, the production of all books, records, files, and other documents and materials
18 whether electronically stored or otherwise relevant to its investigation at any time in any matter
19 over which the department has jurisdiction, control, or supervision pertaining to the provisions of
20 this chapter.

21 IV. Every person being examined, and all of the officers, directors, employees, agents, and
22 representatives of such person shall make freely available to the commissioner or the commissioner's
23 examiners the accounts, records, documents, files, information, assets, and matters in their
24 possession or control relating to the subject of the examination and shall facilitate the examination.

25 V. The expense of such examination shall be chargeable to and paid by the licensee or person
26 being examined. The payment shall be calculated by the same method as for payments by
27 institutions for cost of examinations under RSA 383:11, except when the principal office of the
28 licensee or person is located outside of this state and the department has determined that the
29 examination shall be conducted at that out-of-state location, the actual cost of travel, lodging, meals,
30 and other expenses of examination personnel making the examination, shall be chargeable to and
31 paid by such licensee or person in addition to the per diem charge for examination personnel set
32 forth in RSA 383:11.

33 VI.(a) Those licensees or persons that maintain their files and business documents in
34 another state shall appoint a New Hampshire agent and shall return such files and documents to
35 their principal New Hampshire office, the banking department, or the office of their New Hampshire
36 agent for examination no later than 21 calendar days after being requested to do so by the

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 13 -

1 department. When the commissioner requests a list of New Hampshire consumers who have
2 contracted with the licensee or other similar summary document from a licensee from which to select
3 particular files for review, the licensee shall ensure that the list is received by the commissioner
4 within 7 calendar days and return the files selected by the commissioner to the commissioner within
5 14 calendar days to ensure compliance with the 21-day requirement.

6 (b) Failure to provide files and documents within the time established by this paragraph
7 shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and
8 documents are not produced. Failure to provide files and documents within 60 days after being
9 requested to do so by the department shall be sufficient cause for license revocation, suspension, or
10 denial, or other penalties under this chapter.

11 VII. The commissioner or the commissioner's duly authorized representative may
12 investigate at any time any person that the commissioner reasonably believes is engaged in the
13 business of making small loans, payday loans, or title loans, or participating in such business as
14 principal, agent, broker, or otherwise; or any person who the commissioner has reasonable cause to
15 believe is violating or is about to violate any provision of this chapter, or any rule or order under this
16 chapter, whether such person shall claim to be within the authority or beyond the scope of this
17 chapter.

18 VIII. In any investigation to determine whether any person has violated or is about to
19 violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the
20 person violated this chapter or a rule or order under this chapter, or the person charged with the
21 violation defaults, the commissioner may recover the cost of the investigation, in addition to any
22 other penalty provided for under this chapter.

23 IX. If the commissioner or examiner finds any accounts or records to be inadequate, or kept
24 or posted in a manner not in accordance with generally accepted accounting principles, the
25 commissioner may employ experts to reconstruct, rewrite, post, or balance them at the expense of the
26 person being examined if such person has failed to maintain, complete, or correct such records or
27 accounting after the commissioner or examiner has given him or her written notice and a reasonable
28 opportunity to do so.

29 X.(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such
30 additional reasonable period as the commissioner for good cause may allow, within which to review
31 the report, recommend any changes, and set forth in writing the remedial course of action the
32 licensee will pursue to correct any reported deficiencies outlined in the report.

33 (b) If so requested by the person examined, within the period allowed in subparagraph
34 (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a
35 closed hearing relative to the report and shall not file the report in the department until after such
36 closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 14 -

1 or held, the examination report, with such modifications, if any, thereto as the commissioner deems
2 proper, shall be accepted by the commissioner and filed upon expiration of the review period
3 provided for in subparagraph (a). The report shall in any event be so accepted and filed within 6
4 months after final hearing thereon.

5 (c) All reports pursuant to this section shall be confidential and shall not be available for
6 public inspection. The comments and recommendations of the examiner shall also be confidential
7 information and shall not be available for public inspection.

8 399-A:14 Prohibitions; Fraud and Dishonesty.

9 I. No person in connection with engaging in the business of a small loan lender, directly or
10 indirectly shall:

11 (a) Employ any device, scheme, or artifice to defraud;

12 (b) Make any untrue statement of a material fact or to omit to state a material fact
13 necessary in order to make the statements made, in light of the circumstances under which they are
14 made, not misleading;

15 (c) Engage in any act, practice, or course of business which operates or would operate as
16 a fraud or deceit upon any person;

17 (d) Make fraudulent misrepresentations or circumvent or conceal any material
18 information required to be provided to a borrower under the provisions of this chapter; or

19 (e) Engage in dishonest or unethical practices in conducting the business of making or
20 collecting small loans.

21 II. No person shall make or cause to be made in any document filed under this chapter or in
22 any proceeding under this chapter:

23 (a) Any statement which is, at the time and in the light of the circumstances under
24 which it is made, false or misleading in any material respect; or

25 (b) In connection with such statement, to omit to state a material fact necessary in order
26 to make the statements made, in light of the circumstances under which they are made, not
27 misleading.

28 399-A:15 Provisions Applicable to All Persons Under This Chapter.

29 I. Any loan made outside this state, as permitted by the laws of the state in which the loan
30 was made, may be collected in this state in accordance with its terms.

31 II. No person making a small loan, shall advertise, print, display, publish, distribute, or
32 broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or
33 broadcast, in any manner whatsoever, any statement or representation with regard to the rates,
34 terms, or conditions which is false, misleading, or deceptive.

35 III. This chapter, or any part thereof may be modified, amended, or repealed so as to effect a
36 cancellation or alteration of any license, or right of a licensee hereunder, provided that such

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 15 -

1 modification, amendment, or repeal shall not impair or affect the obligation of any pre-existing
2 lawful contracts between any licensee and any borrowers.

3 IV. No interest shall be paid, deducted, or received in advance. Interest shall not be
4 compounded and interest shall be computed only on unpaid principal balances. For the purpose of
5 computing interest, whether at the maximum rate or less, a month shall be considered a calendar
6 month and, where a fraction of a month is involved, a day shall be considered 1/30 of a month.
7 However, if all or any part of the consideration for a loan contract is the unpaid principal balance of
8 the prior loan with the same lender then the loan contract may include unpaid interest of such prior
9 loan which has accrued within 60 days of the making of the loan contract.

10 V. If charges in excess of those permitted by this chapter are charged, contracted for, or
11 received, except as a result of an accidental or bona fide error, the loan contract shall be void and the
12 lender shall have no right to collect or receive any principal, charges, or recompense.

13 VI. No licensee shall take any confession of judgment or any power of attorney running to
14 himself, herself, or any third person to confess judgment or to appear for the borrower in a judicial
15 proceeding.

16 VII. No person shall take any note, agreement, or promise to pay which does not disclose the
17 date and amount or maximum credit line of the note or agreement, a schedule or description of the
18 payments to be made thereon, and the agreed charges or rates of charge; nor take any instrument in
19 which blanks are left to be filled in after the loan is made.

20 VIII. No person shall include any of the following provisions in a small loan contract:

21 (a) A hold-harmless clause;

22 (b) A confession of judgment or other waiver of the right to notice and the opportunity to
23 be heard in an action;

24 (c) An agreement by the consumer not to assert any claim or defense arising out of the
25 contract against the lender or any holder in due course;

26 (d) An executory waiver or a limitation of exemption from attachment, execution, or
27 other process on real or personal property held by, owned by, or due to the consumer, unless the
28 waiver or limitation applies only to property subject to a security interest executed in connection
29 with the loan; or

30 (e) A clause permitting the continuation of interest after repossession of the consumer's
31 motor vehicle.

32 IX. No person shall be permitted to accept as collateral on a loan under this chapter:

33 (a) Real estate; or

34 (b) Household furniture presently in use on loans of \$2,000 or less.

35 X. Any agreement purporting to convey to a lender a security interest in the property listed
36 in paragraph IX shall be null and void.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 16 -

1 XI. No charge for any examination, service, brokerage, commission, or other fee shall be
2 directly or indirectly made or contracted for on closed-end loans, payday loans, or title loans except
3 the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing
4 or recording in any public office any instrument securing such loan, which fees may be collected
5 when such loan is made, or at any time thereafter and except the reasonable costs, charges, and
6 expenses, including court costs actually incurred in connection with a repossession of the security or
7 an actual sale of the security in foreclosure proceedings or upon entry of judgment.

8 XII. Credit life insurance, credit accident and health insurance, and credit involuntary
9 unemployment insurance may be issued in connection with a loan or other credit transaction
10 authorized by this chapter in compliance with the provisions of RSA 408:15, II and the cost of such
11 insurance and any commission, benefit, or return to the lender therefrom shall not be deemed a
12 violation of any provision of this chapter; provided, however, that if there is more than one borrower
13 or obligor on any such loan or credit transaction, credit life insurance providing a single benefit may
14 cover both borrowers or obligors.

15 XIII. The lender may require a borrower to insure tangible personal property given to secure
16 the loan against any substantial risk of loss, damage, or destruction for an amount not to exceed the
17 reasonable value of the property insured or the amount of the loan, whichever is less, and for the
18 customary insurance term approximating the term of the loan. The borrower shall not be required to
19 insure against unusual or exceptional risks not ordinarily insured against in policies issued to
20 nonborrowers. The premium for such insurance may be included in the principal amount of the loan.
21 Such insurance shall be written by or through a duly licensed insurance agent or broker with a
22 company qualified to do business in New Hampshire. Such insurance shall name the borrower as
23 insured but may include the lender as co-insured or protect the interest of the lender under a loss-
24 payable clause. No lender shall require a borrower to duplicate or cancel existing insurance or to
25 purchase insurance from a lender or any employee, affiliate, or associate of the lender or from any
26 agent, broker, or insurance company designated by the lender, as a condition precedent to the
27 making of the loan.

28 XIV. A lender shall include in every loan contract a notice, printed in type size equal to at
29 least 12-point type, stating that the consumer or the consumer's attorney may file a complaint with
30 the commissioner.

31 XV. If the contract so provides, the lender may collect a single late fee on each installment in
32 default for a period not less than 10 days in an amount not in excess of 5 percent of the installment
33 in default. In addition to such late fee, the contract may provide for the payment of reasonable
34 attorneys' fees where such contract is referred for collection to an attorney not a salaried employee of
35 the holder of the contract plus the court costs and the licensee's out-of-pocket collection expenses.

36 XVI. Every lender shall:

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 17 -

1 (a) At the time of the making a loan, mail or deliver to the borrower, or if more than one,
2 to one of them, a payment book in which space shall be provided for the record of all payments
3 showing principal, interest, and balance. The payment book shall contain statements showing the
4 date of such loan, the amount of the principal of such loan, the total interest charged for the period of
5 such loan, the nature of the security, if any, for such loan, the name and address of the borrower and
6 of the lender, and the description of schedule of payments on such loans. The payment book shall
7 also contain an interest calculation such as the following:

8 “Interpretation of Interest Charges in the Event Payments are Made when Due.

9 2% per month = 24% per year or \$13.47 per year on \$100

10 1 1/2% per month = 18% per year or \$10.01 per year on \$100”

11 Provided, however, a lender may provide a borrower with a monthly billing statement in lieu of a
12 payment book and the information required above.

13 (b) Give to the person making any cash payment on account of any closed end loan a
14 receipt at the time such payment is made.

15 (c) Permit payment in advance in an amount equal to one or more full installments at
16 any time during the regular business hours of the lender.

17 (d) Upon repayment of a loan in full, mark plainly every note, agreement, or assignment
18 or other evidence of the indebtedness or assignment signed by an obligor or a copy of any of the
19 foregoing documents with the words “PAID IN FULL” or “CANCELLED” and release or provide the
20 borrower evidence to release any mortgage or security instrument no longer securing any
21 indebtedness to the lender. If the original note, agreement, or assignment is retained by the lender,
22 the original shall be returned within a reasonable period of time upon the written request of the
23 borrower. In the case of open-ended credit, as defined in 12 C.F.R. section 1026.2(a)(20), the
24 borrower shall provide written notice to the lender terminating such loan and surrender any checks
25 or other device used to obtain such credit.

26 XVII. No lender shall conduct the business of making loans under this chapter at any office,
27 suite, room, or place of business where liquor or lottery tickets are sold.

28 XVIII. A lender shall include a provision in the loan agreement that the borrower shall have
29 the right to cancel the loan transaction at any time before the close of business of the next business
30 day following the date of the transaction by paying to the lender the amount advanced to the
31 borrower in the form of cash or other funds instrument.

32 XIX. Persons subject to this chapter shall be responsible for the supervision of their
33 employees, agents, and branch offices.

34 XX. Each licensee shall maintain a positive net worth at all times.

35 XXI. Persons subject to or licensed under this chapter shall abide by applicable federal laws,
36 and regulations adopted thereunder, including the Federal Truth in Lending Act, and the laws,

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 18 -

1 orders, and rules of this state. Any violation of such law, rule, or order shall be a violation of this
2 chapter.

3 XXII. Examination expenses and fees, fines, penalties, and other moneys obliged to be paid
4 to the department shall be paid within 14 days of receipt of notice by the licensee or other person or
5 such later time as determined by the commissioner.

6 XXIII. No revocation, suspension, or surrender of any license shall impair or affect the
7 obligation of any preexisting lawful contract between the licensee and any obligors, and such
8 contracts and all lawful charges thereon may be collected by the licensee, its successors, and assigns.

9 XXIV. All persons subject to or licensed under this chapter shall be qualified on the basis of
10 such factors as experience, knowledge, and financial integrity to conduct business under this
11 chapter.

12 399-A:16 Small Loans Other Than Payday Loans or Title Loans. The following provisions are
13 applicable only to small loans other than payday loans or title loans:

14 I. The annual percentage rate for small loans shall not exceed 36 percent. Notwithstanding
15 the federal definition of annual percentage rate, for purposes of calculating annual percentage rate,
16 the finance charge shall exclude one application fee per borrower per year and one participation or
17 membership fee per borrower per year.

18 II. A lender may lend in money, goods, or things of value upon such security not prohibited
19 by RSA 399-A:15, IX as may be agreed upon, and in connection with any such loan, may contract for,
20 exact, or receive, directly or indirectly, charges, whether for interest, compensation, brokerage,
21 endorsement fees, consideration, expense, or otherwise, on the entire principal of the loan.

22 III. No small loan lender shall permit any person to be obligated to him or her on one or
23 more contracts of loan the total principal balance of which is more than \$10,000.

24 IV. For the purpose of applying paragraphs II and III of this section only, small loan lender
25 shall mean any single small loan lender, except that in the event any person or affiliated group of
26 persons holds more than one small loan lender license, such person or affiliated group of persons
27 shall be considered a single small loan lender.

28 V. No small loan lender shall induce any potential borrower who is not a loan customer of
29 the lender to enter into a closed-end loan agreement, by delivering in the first instance a negotiable
30 check for such loan to such potential borrower, without including the following information clearly
31 printed on the endorsement side of the check:

32 (a) A statement which reads, "By endorsing this check, you become legally liable for
33 repaying all moneys, including interest, as specified in the following loan agreement/disclosure
34 statement";

35 (b) The amount financed;

36 (c) The annual percentage rate;

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 19 -

1 (d) The number of installments; and

2 (e) The amount of each installment payment.

3 VI. If a borrower desires to renew an existing small loan for obtaining additional cash a new
4 contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds
5 of the new loan. All legal papers in connection with such prior loan shall be stamped "PAID IN
6 FULL" and returned to such borrower.

7 399-A:17 Payday Loan Lenders.

8 I. The annual percentage rate for payday loans shall not exceed 36 percent.

9 II. Each payday loan lender shall conspicuously post in its licensed location a schedule of
10 interest charges, with examples using a \$300 loan payable in 14 days and 30 days. Payday loans
11 shall incur interest only. No other charges or fees shall apply to or be collected on payday loans.

12 III. Each payday loan shall be evidenced by a written loan agreement, which shall be signed
13 by the borrower and a person authorized by the lender to sign such agreements and dated the same
14 day the loan is made and disbursed. The lender shall give a duplicate original of the loan agreement
15 to the borrower at the time of the transaction. The loan agreement shall set forth, at a minimum:

16 (a) The principal amount of the loan.

17 (b) The interest charged.

18 (c) The annual percentage rate, which shall be stated using that term, applicable to the
19 transaction

20 (d) Evidence of receipt from the borrower of a check or other account debit authorization,
21 dated the same date, as security for the loan, stating the amount of the check, if a check or other
22 account debit authorization was given by the borrower.

23 (e) An agreement by the lender not to present the check or other account debit
24 authorization for payment or deposit until a specified maturity date, which date shall be at least 7
25 days and not more than 30 days after the date the loan is made and after which date interest shall
26 not accrue at a greater rate than 6 percent per year, if a check or other account debit authorization
27 was given by the borrower.

28 (f) An agreement by the lender that the borrower shall have the right to cancel the loan
29 transaction at any time before the close of business of the next business day following the date of the
30 transaction by paying to the lender, in the form of cash or other funds instrument, the amount
31 advanced to the borrower.

32 (g) An agreement that the borrower shall have the right to prepay the loan in full or in
33 part prior to maturity by paying the lender the principal amount advanced and any accrued and
34 unpaid interest.

35 IV. A payday loan lender shall not obtain any agreement from the borrower:

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 20 -

1 (a) Giving the lender or any third person power of attorney or authority to confess
2 judgment for the borrower;

3 (b) Authorizing the lender or any third party to bring suit against the borrower in a
4 court outside the state; or

5 (c) Waiving any right the borrower has under this chapter.

6 V. A payday loan lender shall not require, or accept, more than one check from the borrower
7 as security for any loan at any one time.

8 VI. A payday loan lender shall not cause any person to be obligated to the lender in any
9 capacity at any time in the principal amount of more than \$500.

10 VII. A payday loan lender shall not refinance, renew, or extend any loan.

11 VIII. A payday loan lender shall not cause a borrower to be obligated upon more than one
12 loan at any time for the purpose of increasing charges payable by the borrower.

13 IX. A payday loan lender shall not require or accept a post-dated check as security for, or in
14 payment of, a loan.

15 X. A payday loan lender shall not threaten, or cause to be instigated, criminal proceedings
16 against a borrower if a check given as security for a payday loan is dishonored.

17 XI. A payday loan lender shall not take an interest in any property other than a check
18 payable to the payday loan lender as security for a payday loan.

19 XII. A payday loan lender shall not make a loan to a borrower to enable the borrower to pay
20 for any other product or service sold at the payday loan lender's business location.

21 XIII. Loan proceeds shall be disbursed in cash or by the payday loan lender's business check.
22 No fee shall be charged by the payday loan lender or an affiliated check cashier for cashing a loan
23 proceeds check.

24 XIV. A check given as security for a loan shall not be endorsed to a third party.

25 XV. Upon receipt of a check given as security for a loan, the payday loan lender shall stamp
26 the check with an endorsement stating "This check is being negotiated as part of a payday loan
27 pursuant to RSA 399-A, and any holder of this check takes it subject to all claims and defenses of the
28 maker."

29 XVI. Before entering into a payday loan, the payday loan lender shall provide each borrower
30 with a pamphlet, in form consistent with regulations adopted by the commissioner, explaining in
31 plain language the rights and responsibilities of the borrower and providing a toll-free number in the
32 banking department for assistance with complaints.

33 XVII. Before disbursing funds pursuant to a payday loan, a payday loan lender shall provide
34 a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended
35 to meet long-term financial needs and that the borrower should use a payday loan only to meet
36 short-term cash needs.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 21 -

1 XVIII. A borrower shall be permitted to make partial payments, in increments of not less
2 than \$50 on the loan at any time prior to maturity without charge. The payday loan lender shall
3 give the borrower signed, dated receipts for each payment made, which shall state the balance due
4 on the loan.

5 XIX. A payday loan lender shall not make a loan to a borrower who currently has an
6 outstanding or who has had an outstanding payday or title loan within the previous 60-day period.
7 As part of its application process for such a loan, a payday loan lender shall obtain a written
8 statement under oath from the borrower certifying the borrower does not currently have an
9 outstanding and has not had an outstanding payday loan or title loan within the previous 60-day
10 period.

11 XX. Each payday loan lender shall maintain an office in this state that is accessible to
12 consumers.

13 399-A:18 Title Loan Lenders.

14 I. No title loan lender shall:

15 (a) Charge the consumer more than one fee for dishonored checks when the consumer
16 issues more than one check to the title loan lender. However, the title loan lender may recover from
17 the consumer any fee charged to the lender by an unaffiliated financial institution for each
18 dishonored check.

19 (b) Make more than one outstanding title loan that is secured by one title.

20 (c) Make a title loan without providing the borrower within the title loan agreement the
21 right to cancel the title loan at any time before the close of business of the next business day
22 following the date of the transaction by repaying to the title loan lender in cash the amount
23 advanced to the borrower.

24 (d) Offer, advertise, or make a title loan with a rate of interest that is lower in the
25 original period than in subsequent renewals.

26 (e) Make a title loan to a borrower who currently has or had an outstanding payday or
27 title loan within the previous 60 day period. As part of its application process for such a title loan, a
28 title loan lender shall obtain a written statement under oath from the borrower certifying the
29 borrower does not currently have an outstanding and has not had an outstanding payday loan or
30 title loan within the previous 60-day period.

31 (f) Charge interest at higher than 25 percent per month, however actual costs incurred
32 by the title loan lender pursuant to RSA 399-A:15, XI may be passed through to the borrower.

33 II. Each title loan lender shall maintain an office in this state that is accessible to
34 consumers.

35 399-A:19 Title Loan Renewals.

36 I. A title loan shall be for an original term of no more than one month.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 22 -

1 II. A title loan lender may allow such loan to be renewed no more than 10 additional periods
2 each equal to the original term, provided however, that at each such renewal the borrower shall pay
3 at least 10 percent of the title loan's original principal balance in addition to any finance charge
4 owed, to reduce the principal balance outstanding.

5 III. If the borrower cannot pay this principal reduction at any renewal, the title loan lender
6 may either: (a) declare the borrower in default; or (b) allow the loan to be renewed, provided that the
7 lender shall reduce the current principal amount of the loan by 10 percent of the original principal
8 amount for the purposes of calculating interest thereafter. This reduction in principal shall continue
9 to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter.

10 IV. No accrued interest shall be capitalized or added to the principal of the title loan at the
11 time of any renewal.

12 399-A:20 Powers of the Commissioner.

13 I. The commissioner shall have the power to subpoena witnesses and administer oaths in
14 any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents,
15 papers, books, records, files, and other evidence, whether electronically stored or otherwise, before
16 the commissioner in any matter over which the commissioner has jurisdiction, control, or supervision
17 pertaining to the provisions of this chapter. The commissioner shall have the power to administer
18 oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey
19 any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the
20 superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or
21 subpoena duces tecum, out of the superior court, for the witness to appear before the superior court
22 to give testimony, and to produce evidence as required thereby. Upon filing such order in the office
23 of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the
24 person to whom it is directed to appear at the time and place therein designated. If any person
25 served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce
26 evidence as required thereby, the commissioner may apply to any justice of the superior court who,
27 after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such
28 person, and, upon such person's being brought before such justice, proceed to a hearing of the case.
29 Any person who refuses to comply with a subpoena shall be subject to a fine not exceeding \$10,000 or
30 by imprisonment, or both.

31 II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the
32 administration and enforcement of this chapter.

33 III. The commissioner may prepare, alter, or withdraw such forms as are necessary to
34 comply with the provisions of this chapter, including personal disclosure statements and
35 authorizations to meet the requirements of this chapter.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 23 -

1 IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary
2 to carry out the provisions of this chapter.

3 V. The commissioner may, for good cause shown, abate all or a portion of delinquency
4 penalties assessed under this chapter.

5 VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when
6 the commissioner finds such action necessary or appropriate to the public interest or for the
7 protection of consumers and consistent with the purposes fairly intended by the policy and provisions
8 of this chapter.

9 VII. In adopting rules, preparing forms, setting standards, and performing examinations,
10 investigations, and other regulatory functions authorized by the provisions of this chapter, the
11 commissioner may cooperate, and share information pursuant to confidentiality agreements, with
12 regulators in this state and with regulators in other states and with federal regulators in order to
13 implement the policy of this chapter in an efficient and effective manner and to achieve maximum
14 uniformity in the form and content of applications, reports, and requirements for small loan lenders,
15 where practicable.

16 VIII. The commissioner may set fees to be charged to cover the reasonable costs of copying
17 documents and producing reports.

18 399-A:21 Order to Show Cause.

19 I. The commissioner may issue an order requiring a person to whom any license has been
20 granted or any person under the commissioner's jurisdiction to show cause why the license should
21 not be revoked, suspended, or penalties imposed, or both, for violations of this chapter.

22 II.(a) The order shall give reasonable notice of the opportunity for a hearing and shall state
23 the reasons for the issuance of the order.

24 (b) Valid delivery of such order shall be by hand or certified mail at the last known
25 principal office of the licensee or respondent or to a principal, control person, or legal representative
26 of the licensee or respondent.

27 (c) A hearing, if requested, shall be scheduled not later than 10 calendar days after the
28 written request for such hearing is received by the commissioner.

29 (d) Within 20 calendar days from the date of the hearing the commissioner shall enter an
30 order making such disposition of the matter as the facts require.

31 (e) If the person to whom an order to show cause is issued fails to appear at a hearing
32 after being duly notified, such person shall be deemed in default, and the proceeding may be
33 determined against him or her upon consideration of the order to show cause, the allegations of
34 which may be deemed to be true.

35 (f) If the person to whom an order to show cause or other order is issued fails to request
36 a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 24 -

1 by the commissioner, then such person shall be deemed in default, and the order shall, on the 31st
2 day, become permanent, and shall remain in full force and effect until and unless later modified or
3 vacated by the commissioner, for good cause shown.

4 III. The department may take action for immediate suspension of a license, pursuant to
5 RSA 541-A:30, III.

6 IV. If a licensee is a partnership, association, corporation, or entity however organized, it
7 shall be sufficient cause for the suspension or revocation of a license that any officer, director, or
8 trustee of a licensed association or corporation or any member of a licensed partnership has so acted
9 or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to
10 such party as an individual.

11 399-A:22 Cease and Desist Orders.

12 I. The department may issue a cease and desist order against any person who it has
13 reasonable cause to believe has violated or is about to violate the provisions of this chapter or any
14 rule or order under this chapter.

15 II.(a) The order shall be calculated to give reasonable notice of the opportunity for a hearing
16 and shall state the reasons for the issuance of the order.

17 (b) Valid delivery of such order shall be by hand or certified mail at the last known
18 principal office of the person.

19 (c) A hearing, if requested, shall be held not later than 10 days after the written request
20 for such hearing is received by the commissioner.

21 (d) Within 20 days of the date of the hearing the commissioner shall issue a further
22 order vacating the cease and desist order or making it permanent as issued or as amended by the
23 commissioner.

24 (e) If the person to whom a cease and desist order is issued fails to appear at the hearing
25 after being duly notified, such person shall be deemed in default, and the proceeding may be
26 determined against him or her upon consideration of the cease and desist order, the allegations of
27 which may be deemed to be true.

28 (f) If the person to whom a cease and desist order is issued fails to request a hearing
29 within 30 calendar days of receipt or valid delivery of such order and no hearing is ordered by the
30 commissioner, then such person shall likewise be deemed in default, and the order shall, on the 31st
31 day, become permanent, and shall remain in full force and effect until and unless later modified or
32 vacated by the commissioner, for good cause shown.

33 III. If any person refuses to obey the commissioner's order, an action may be brought by the
34 attorney general on the commissioner's behalf in any superior court in this state to enjoin such
35 person from engaging in or continuing such violation or from doing any act or acts in furtherance of
36 such violation. In any such action, an order or judgment may be entered awarding a temporary or

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 25 -

1 permanent injunction, and awarding the commissioner or the attorney general or both costs in
2 bringing such action. Any person who fails to comply with such injunction shall be subject to a fine
3 not exceeding \$10,000 or imprisonment, or both.

4 399-A:23 Penalty.

5 I. Any person or the members, officers, directors, agents, and employees thereof who
6 knowingly violate any provision of this chapter shall be guilty of a misdemeanor if a natural person,
7 or a felony if any other person.

8 II. Any person violating the provisions of RSA 399-A:15 through RSA 399-A:19 or engaging
9 in the business of a small loan lender, payday loan lender, or title loan lender without first obtaining
10 a license, if a license is required under this chapter, shall be prohibited from recovering any finance
11 charge, delinquency, or collection charge on the contract.

12 III. Any person who knowingly violates any provision of this chapter, or rule or order of the
13 commissioner may, upon notice and opportunity for hearing, except where another penalty is
14 expressly provided, be subject to suspension or revocation of any registration or license, or an
15 administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension
16 or revocation as may be applicable under this chapter for violation of the provision to which such
17 rule or order relates. Each of the acts specified shall constitute a separate violation and each such
18 administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

19 IV. Any person who negligently violates any provision of this chapter, or rule or order of the
20 commissioner may, upon notice and opportunity for hearing, except where another penalty is
21 expressly provided, be subject to suspension, revocation, or denial of any registration or license,
22 including the forfeiture of any application fee, or the imposition of an administrative fine not to
23 exceed \$1,500 for each violation, in lieu of or in addition to suspension or revocation as may be
24 applicable under this chapter for violation of the provision to which such rule or order relates. Each
25 of the acts specified shall constitute a separate violation and each such administrative action or fine
26 may be imposed in addition to any criminal or civil penalties imposed.

27 V. Every person who directly or indirectly controls a person liable under this section, every
28 partner, principal executive officer, or director of such person, every person occupying a similar
29 status or performing a similar function, every employee of such person who materially aids in any
30 act constituting a violation of this chapter, and every licensee or person acting as a common law
31 agent who materially aids in any act constituting a violation of this chapter, either knowingly or
32 negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty
33 provided for by law, be subject to suspension, revocation, or denial of any registration or license,
34 including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both.
35 Each of the acts specified shall constitute a separate violation, and such administrative action or fine
36 may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 26 -

1 under this paragraph who sustains the burden of proof that such person did not know, and in the
2 exercise of reasonable care could not have known, of the existence of facts by reason of which the
3 liability is alleged to exist.

4 VI. Any person who refuses without just cause to be examined under oath or who willfully
5 obstructs or interferes with the examiners in the exercise of their authority shall be guilty of a
6 misdemeanor.

7 VII. Any person who engages in the business of a small loan lender in this state or with
8 consumers located in this state without first obtaining a license, shall have no right to collect,
9 receive, or retain any principal, interest, or charges whatsoever on any purported small loan contract
10 and any such contract shall be null and void.

11 VIII. If charges in excess of those permitted by this chapter shall be charged, contracted for,
12 or received, except as a result of an accidental or bona fide error, the contract of loan shall be void
13 and the lender shall have no right to collect or receive any charges, interest, or recompense
14 whatsoever.

15 IX. Failure to comply with the provisions of RSA 399-A:4 and rules adopted under that
16 section shall be cause for denial of future license applications.

17 X. If the commissioner finds that any licensee is no longer in existence or has ceased to do
18 business as a small loan lender or cannot be located after reasonable search, the commissioner may
19 by order revoke the license or impose penalties.

20 XI. The attorney general on the commissioner's behalf, may, with or without prior
21 administrative action by the commissioner, bring an action against any person in any superior court
22 in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or
23 order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining
24 order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or
25 the defendant's assets. The court shall not require the commissioner or attorney general to post a
26 bond. Any person who fails to comply with an injunction, restraining order, or writ of mandamus
27 shall be subject to a fine not exceeding \$10,000 or imprisonment, or both. In a proceeding in superior
28 court under this paragraph where the state prevails, the commissioner and the attorney general
29 shall be entitled to recover all costs and expenses of investigation, and the court shall include the
30 costs in its final judgment.

31 399-A:24 Consumer Credit Administration License Fund. The balance in the consumer credit
32 administration license fund shall be transferred and shall be payable to the state treasurer as
33 restricted revenue and credited to the appropriation for the commissioner, consumer credit
34 administration division. Sums collected under this chapter shall be payable to the state treasurer as
35 restricted revenue and credited to the appropriation for the commissioner, consumer credit
36 administration division.

CHAPTER 73
HB 644-FN - FINAL VERSION
- Page 27 -

1 73:2 Consumer Credit Administration License Fund. Amend RSA 6:12, I(b)(142) to read as
2 follows:

3 (142) Moneys deposited in the consumer credit administration license fund under
4 ~~[RSA 399-A:5]~~ ***RSA 399-A:24.***

5 73:3 Effective Date. This act shall take effect January 1, 2016.

6

7 Approved: June 2, 2015

8 Effective Date: January 1, 2016