



New Mexico Bank Installment Loan Act of 1959

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58-7-1. Short title. (Effective January 1, 2018.)

Chapter [58](#), Article [7](#) NMSA 1978 may be cited as the "New Mexico Bank Installment Loan Act of 1959".

History: 1953 Comp., § 48-21-1, enacted by Laws 1959, ch. 327, § 1; 2017, ch. 110, § 2.

58-7-2. Persons to whom act applicable.

This act [[58-7-1](#) to [58-7-3](#), [58-7-5](#) to [58-7-9](#) NMSA 1978] shall apply to any state or national bank located in and authorized to do business in the state, to any licensee as defined in the New Mexico Small Loan Act of 1955 [[58-15-31](#) NMSA 1978] or to any sales finance company as defined in the Motor Vehicle Sales Finance Act and who hereafter makes a loan of money or credit, or forbearing or postponing [forbears or postpones] the right to receive money or credit in the state.

History: 1953 Comp., § 48-21-2, enacted by Laws 1959, ch. 327, § 2; 1967, ch. 106, § 1.

58-7-3. Loans covered by act. (Effective January 1, 2018.)

A. The New Mexico Bank Installment Loan Act of 1959 applies to a loan that is a pre-computed loan repayable in installments and that is clearly identified on the loan documents as being made under that act.

B. A loan in an amount equal to five thousand dollars (\$5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955 [Chapter [58](#), Article [15](#) NMSA 1978].

C. The provisions of this section shall not apply to a federally insured depository institution.

History: 1978 Comp., § 58-7-3, enacted by Laws 1995, ch. 190, § 15; 2017, ch. 110, § 3.

58-7-3.1. Pre-computed loan. (Effective January 1, 2018.)

In a pre-computed loan transaction, the interest charge shall be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by the provisions of rebate upon prepayment in Section [58-7-5](#) NMSA 1978.

History: 1978 Comp., § 58-7-3.1, enacted by Laws 1983, ch. 96, § 1; 2017, ch. 110, § 4.

58-7-3.2. Extension agreement.

In pre-computed loan transactions where the borrower and lender execute an extension agreement for the deferral of an installment payment, the lender may make an interest charge on the monthly installment that is deferred at a rate not exceeding that on the original loan for each month or portion of a month that the payment has been deferred.

History: 1978 Comp., § 58-7-3.2, enacted by Laws 1983, ch. 96, § 2.

58-7-5. Prepayment; pre-computed loan transactions.

If the entire unpaid balance outstanding on a pre-computed loan transaction is paid by cash, renewal or otherwise, at any time prior to maturity, the lender shall give a refund or credit of the unearned portion of such charge, according to the rule commonly known as "the rule of 78th" ["the rule of 78's"], which refund or credit shall represent at least as great a portion of the original charge as the sum of the consecutive monthly balances of the contract scheduled to be outstanding after the date of prepayment bears to the sum of all the consecutive monthly balances of the contract scheduled to be outstanding under the schedule of payments in the original instrument or instruments evidencing the loan; provided however, that if the contract is prepaid in cash rather than renewed or refinanced, the lender shall not be required to make a refund or credit, if the amount, computed as herein set forth, would be less than one dollar (\$1.00) for each loan paid prior to the maturity.

History: 1953 Comp., § 48-21-5, enacted by Laws 1959, ch. 327, § 5; 1975, ch. 252, § 3.

58-7-6. Permitted charges; limitation on presentment. (Effective January 1, 2018.)

A. No amount, other than the total finance charge, which consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars (\$200) or ten percent of the principal, shall be charged or contracted for, directly or indirectly, on or in connection with any such installment loan except as follows:

(1) delinquency charges not to exceed five cents (\$.05) for each one dollar (\$1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed ten dollars (\$10.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid;

(2) the lender may charge for only the actual cost of any insurance; provided, however, all insurance shall be written by companies licensed to operate within the state and at rates no higher than those approved by the superintendent of insurance; and provided further that the lender shall not require any insurance to be written or provided by or through any particular agent, broker or insurer as a condition to making the loan but shall, at the borrower's option, permit the insurance to be procured from any reputable insurer or through any reputable agent authorized by law to provide it;

(3) in the event that a borrower fails to maintain in effect any insurance required in connection with a loan transaction, the lender may purchase the required insurance or lender's single interest insurance covering the lender's interest in the property, and the cost of that insurance shall be added to the loan and may accrue interest as provided for in the New Mexico Bank Installment Loan Act of 1959;

(4) such amounts as are necessary to reimburse the lender for fees paid to a public officer for filing, recording or releasing any instrument or lien;

(5) if a loan under the New Mexico Bank Installment Loan Act of 1959 is secured and if the borrower fails to pay any governmental or other levy arising after the date of the loan that would create a lien superior to the lien of the lender on the property standing as security, the lender, at the lender's option, may pay the levy and add the amount so paid to the balance due from the borrower;

(6) the actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect any such installment loan; provided, however, that no attorney fees are permitted where the loan is referred for collection to an attorney who is a salaried employee of the holder of the contract; and

(7) the actual cost of charges incurred in making a real estate loan secured by a mortgage on real estate, including the charges for an abstract of title, title examination, title insurance premiums, property survey, appraisal fees, notary fees, preparation of deeds, mortgages or other documents, escrow charges, credit reports and filing and recording fees.

B. If there are insufficient funds to pay a check or other type of debit on the date of presentment by the lender, a check or debit authorization request shall not be presented to a financial institution by a lender for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

C. The charges permitted under this section may be added to the balance due from the borrower.

History: 1953 Comp., § 48-21-6, enacted by Laws 1959, ch. 327, § 6; 1975, ch. 252, § 4; 1977, ch. 362, § 1; 1983, ch. 96, § 3; 2017, ch. 110, § 5.

58-7-7. Restrictions. (Effective January 1, 2018.)

A. No lender shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 to a borrower who is also indebted to that lender under the New Mexico Small Loan Act of 1955 [Chapter 58, Article 15 NMSA 1978] unless the loan made under the New Mexico Small Loan Act of 1955 is paid and released at the time the loan is made.

B. No lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 if a loan has an initial stated maturity of less than one hundred twenty days.

C. No lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

D. No lender, other than a federally insured depository institution, shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

E. The provisions of Subsections B and C of this section shall not apply to refund anticipation loans. As used in this subsection, "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee.

History: 1953 Comp., § 48-21-8, enacted by Laws 1959, ch. 327, § 8; 1961, ch. 215, § 2; 1967, ch. 106, § 2; 2017, ch. 110, § 6.

58-7-8. Penalties and forfeitures. (Effective January 1, 2018.)

A. Any person, corporation or association willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) or imprisoned for not more than six months or both, in the discretion of the court.

B. The taking, receiving or reserving of a rate of charge, discount or advantage greater than allowed by the New Mexico Bank Installment Loan Act of 1959, when knowingly done, is deemed a forfeiture of the entire amount of the rate of charge or advantage that the note, bill or other evidence of debt carries with it or that has been agreed to be paid on it. In case the greater rate of charge has been paid, the person by whom it has been paid or the person's legal representatives may recover by civil action twice the amount of the rate of charge paid from the person, corporation or association taking or receiving it, provided that the action is commenced within two years from the time the transaction occurred.

C. A violation of the provisions of the New Mexico Bank Installment Loan Act of 1959, which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made, constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act [Chapter [57](#), Article [12](#) NMSA 1978].

History: 1953 Comp., § 48-21-9, enacted by Laws 1959, ch. 327, § 9; 2017, ch. 110, § 7.

58-7-9. Construction. (Effective January 1, 2018.)

A. None of the provisions of the New Mexico Small Loan Act of 1955 [Chapter [58](#), Article [15](#) NMSA 1978] are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

B. None of the provisions of the New Mexico Bank Installment Loan Act of 1959 apply to the assignment or purchase of retail installment contracts originated under the provisions of Sections [58-19-1](#) through [58-19-14](#) NMSA 1978 or originated under the provisions of Sections [56-1-1](#) through [56-1-15](#) NMSA 1978.

C. In the event of a conflict between a requirement of the New Mexico Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection Act [Chapter [58](#), Article [21A](#) NMSA 1978], the requirement of the Home Loan Protection Act shall control.

D. As used in the New Mexico Bank Installment Loan Act of 1959:

- (1) "year" means three hundred sixty-five days;
- (2) "month" means one-twelfth of a year; and
- (3) "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers:
 - (a) public record information; or
 - (b) credit account information from persons who furnish that information regularly and in the ordinary course of business.

E. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in

Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.

F. Any person, corporation or association complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959.

History: 1953 Comp., § 48-21-10, enacted by Laws 1959, ch. 327, § 10; 1975, ch. 252, § 5; 1977, ch. 245, § 118; 1983, ch. 96, § 4; 1995, ch. 190, § 16; 2003, ch. 436, § 15; 2017, ch. 110, § 8.

58-7-10. Reporting of credit required. (Effective January 1, 2018.)

For each installment loan made pursuant to the New Mexico Bank Installment Loan Act of 1959, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

History: Laws 2017, ch. 110, § 9.

58-7-11. Preemption. (Effective January 1, 2018.)

The state has exclusive jurisdiction and authority regarding the terms and conditions of loans to which the New Mexico Bank Installment Loan Act of 1959 is applicable, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of such loans by ordinance, resolution or otherwise.

History: Laws 2017, ch. 110, § 10.
