

Opinion No. 87-08

March 6, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Scott Spencer, Assistant Attorney General

TO: Ms. Marce Saykally, Chief, Consumer Credit Bureau, Financial Institutions Division, Regulation & Licensing Department, Bataan Memorial Building, Room 137, Santa Fe, New Mexico 87503

QUESTIONS

Whether a small loan licensee doing business under the Bank Installment Loan Act, section 58-7-1 et seq. NMSA 1978, may charge a "non-filing insurance" fee in lieu of charging fees for filing security agreements with county officials.

CONCLUSIONS

Yes, subject to the conditions contained in section 58-7-6B NMSA 1978.

ANALYSIS

Section 58-7-6 NMSA 1978 provides in part as follows:

No additional amount shall be charged or be contracted for, directly or indirectly, on or in connection with, any such installment loan except as follows:

... B. the lender may charge for only the actual cost of any insurance; provided, however, all insurance shall be written by a company or 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 must 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 must, at the borrower's option, permit the same to be procured from any reputable insurer or through any reputable agent authorized by law to provide it;...

D. 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;...

Apparently such insurance would provide coverage to the lender in the event of bankruptcy or the assertion of a superior security interest in the collateral for the installment loan. The section cited above does not place any limit on the insurance that may be required. As long as the lender complies with the specific conditions in section 58-7-6B NMSA 1978, it is our opinion that state law allows for the charging of a premium to purchases said insurance in connection with an installment loan.

Sincerely,

ATTORNEY GENERAL

HAL STRATTON Attorney General