CHAPTER 58
FINANCIAL INSTITUTIONS AND REGULATIONS

ARTICLE 1
BANKING GENERALLY

58-1-1. Short title.

This act, and all of Articles 2 through 6 and 8 of this chapter and 14-7-1 and 14-7-2 NMSA 1978, may be cited as the "Banking Act".

History: 1953 Comp., § 48-22-1, enacted by Laws 1963, ch. 305, § 1.

Cross-references. - For Trust Company Act, see 58-9-1 NMSA 1978.

As to disposition of unclaimed property, see 7-8-1 to 7-8-40 NMSA 1978.

Meaning of "this act". - The phrase "this act" in this section refers to Laws 1963, Chapter 305, which appears as 58-1-1, 58-1-2, 58-1-3 to 58-1-6, 58-1-8 to 58-1-28, 58-1-30 to 58-1-34, 58-1-45 to 58-1-53, and 58-1-55 to 58-1-85 NMSA 1978.

No due process violation by former banking act. - Former State Banking Act (Laws 1915, ch. 67, now repealed) did not violate due process of law where it prohibited engaging in banking business to all except those organized under its provisions. First Thrift & Loan Ass'n v. State ex rel. Robinson, 62 N.M. 61, 304 P.2d 582 (1956).

State constitution not violated by former banking act. - Title of former State Banking Act (Laws 1915, ch. 67) was broad and did not violate N.M. Const., art. IV, § 16. First Thrift & Loan Ass'n v. State ex rel. Robinson, 62 N.M. 61, 304 P.2d 582 (1956).

Reason for enactment of statute containing special provisions for incorporation of banks. - First Thrift & Loan Ass'n v. State ex rel. Robinson, 62 N.M. 61, 304 P.2d 582 (1956).

Banks chartered under Banking Act are limited to powers expressly conferred by the act. 1979 Op. Att'y Gen. No. 79-6.

Banking Act does not authorize issuance of preferred stock to raise equity capital. 1979 Op. Att'y Gen. No. 79-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Bank officer's or employee's misapplication of funds as state criminal offense, 34 A.L.R.4th 547.

Bank's liability for breach of implied contract of good faith and fair dealing, 55 A.L.R.4th 1026.

Exclusion from debtor status of banks and the like by § 109(b)(2) of Bankruptcy Code (11 USCS § 109(b)(2)), 87 A.L.R. Fed. 282.

Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 USCS §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)), 87 A.L.R. Fed. 797.

9 C.J.S. Banks and Banking § 44.

58-1-2. Definitions of banks.

As used in the Banking Act:

A. "bank" means:

(1) an "insured bank" as defined in Section 3(h) of the Federal Deposit Insurance Act;

(2) any institution that is eligible to make application to become an insured bank pursuant to Section 5 of the Federal Deposit Insurance Act; or

(3) any institution organized under the laws of this state, the laws of the United States, any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that accepts deposits that the depositor may withdraw by check or similar means for payment to third parties and is engaged in the business of making commercial loans. The term does not include any organization operating under Section 25 or Section 25a of the Federal Reserve Act or any organization that does not do business within the United States except as an incident to its activities outside the United States or any savings and loan association organized under the laws of this state, the laws of the United States, any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands;

B. "bank holding company" means any company which has control over any bank or over another company that is or becomes a bank holding company;

C. "company" means any corporation, partnership, trust other than a voting trust, association or similar organization but shall not include any corporation the majority of the shares of which are owned by the United States or by any state;

D. "control" means:

(1) any direct or indirect operation through one or more other persons which owns, directs or has power to vote twenty-five percent or more of any class of voting securities of the bank or company;

(2) the direction in any manner of the election of a majority of the directors or trustees of the bank or company; or

(3) the direct or indirect exercise of substantial influence over the management of policies of the bank or company, as determined by the director of the financial institutions division, after notice and opportunity for hearing; and

E. "state bank" means any bank authorized to do banking business by the laws of this state.

History: 1953 Comp., § 48-22-2, enacted by Laws 1963, ch. 305, § 2; 1985, ch. 56, § 1.

Cross-references. - As to public depositories, see 6-10-15 NMSA 1978.

As to exemption of director of financial institutions division, director of securities division and chief of savings and loan bureau from authority of superintendent of regulation and licensing, see 9-16-11 NMSA 1978.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Federal Deposit Insurance Act. - Section 3(h) of the Federal Deposit Insurance Act, referred to in Subsection A(1), and Section 5 of the Federal Deposit Insurance Act, referred to in Subsection A(2), appear as 12 U.S.C. §§ 1813(h) and 1815, respectively.

Federal Reserve Act. - Sections 25 and 25a of the Federal Reserve Act, referred to in Subsection A(3), appear as 12 U.S.C. §§ 601 to 604 and 611 to 631, respectively.

Checking accounts may be eliminated by savings banks. - A savings bank, as defined in this section, organized under the laws of New Mexico, may eliminate from its charter authority to accept checking accounts. 1957-58 Op. Att'y Gen. No. 57-22.

A savings bank, as defined by this section, organized under the laws of New Mexico, could not assume authority to issue investment certificates and invest resulting funds according to former 58-14-1 NMSA 1978 et seq. 1957-58 Op. Att'y Gen. No. 57-22 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 1.

Status of "Christmas club" deposits, 21 A.L.R. 1128.

What property may be the subject of special deposit in bank, 50 A.L.R. 247.

Commercial and savings departments, rights and preferences in respect of assets of insolvent bank as affected by its division into, 114 A.L.R. 680.

9 C.J.S. Banks and Banking § 2.

58-1-2.1. Prohibition.

No bank holding company may own an institution which is an "insured bank" as defined in Section 3 (h) of the Federal Deposit Insurance Act or is eligible to make application to become an insured bank pursuant to Section 5 of the Federal Deposit Insurance Act and accepts deposits that the depositor may withdraw by check or similar means for payment to third parties or is engaged in the business of making commercial loans but does not both accept such deposits and make commercial loans.

History: 1978 Comp., § 58-1-2.1, enacted by Laws 1987, ch. 190, § 1.

Federal Deposit Insurance Act. - Sections 3 (h) and 5 of the Federal Deposit Insurance Act, referred to in this section, appear as 12 U.S.C. §§ 1813 (h) and 1815, respectively.

58-1-3. Definitions.

As used in the Banking Act, unless the context otherwise requires:

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

B. "board" means the board of directors of any given bank;

C. "commissioner" or "director" means the director of the financial institutions division of the regulation and licensing department;

D. "community" means a city, town or village in this state;

E. "county" means any of the political subdivisions of this state as defined in Chapter 4 NMSA 1978, except that when applied to locations within the exterior boundaries of a federally recognized Indian reservation or pueblo, "county" means all lands within the exterior boundaries of that reservation or pueblo without regard to the county boundaries established in Chapter 4. For purposes of the Banking Act the Indian reservation or pueblo lands defined as a "county" by this subsection shall be considered to be adjoining any of the counties, as defined by Chapter 4 NMSA 1978, which are adjoining the county or counties in which that Indian reservation or pueblo is located;

F. "court" means a court of competent jurisdiction;

G. "cumulative voting" means, in all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors, multiplied by the number of his shares, shall equal or to distribute them on the same principle among as many candidates as he thinks fit. In deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him, except that this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association or amendments thereto;

H. "department" or "division" means the financial institutions division of the regulation and licensing department;

I. "executive officer", when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, the president, any vice president, the treasurer, the cashier and the comptroller or auditor, or any person who performs the duties appropriate to those offices;

J. "fiduciary" means a trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust;

K. "good faith" means honesty in fact in the conduct or transaction concerned;

L. "item" means any instrument for the payment of money, even though it is not negotiable, but does not include money;

M. "legal tender" means coins and currency;

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

O. "person" means an individual, corporation, partnership, joint venture, trust estate or unincorporated association;

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

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

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

S. "safe deposit box" means a safe deposit box, vault or other safe deposit receptacle maintained by a lessor, and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

History: 1953 Comp., § 48-22-3, enacted by Laws 1963, ch. 305, § 3; 1975, ch. 330, § 7; 1977, ch. 245, § 119; 1989, ch. 209, § 1; 1990, ch. 50, § 1.

The 1990 amendment, effective May 16, 1990, added present Subsection E, designated former Subsections E to R as present Subsections F to S, and made a minor stylistic change in present Subsection G.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 1.

58-1-4. Effect on existing banks.

The articles of incorporation of state banks existing at the time of the adoption of the Banking Act shall continue in full force and effect, but all state banks and, to the extent applicable, all banks shall thereafter be operated in accordance with the provisions of the Banking Act, and any state bank by filing an application for an amendment of its articles of incorporation, or for a merger, consolidation or sale of all, or substantially all, of its assets or the assets of any department under the Banking Act and its articles of incorporation, shall thereafter be subject to the Banking Act.

History: 1953 Comp., § 48-22-4, enacted by Laws 1963, ch. 305, § 4.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 7.

9 C.J.S. Banks and Banking § 5.

58-1-5. Deposit of minor; school or institutional deposits.

A. A bank may operate a deposit account in the name of a minor or in the name of two or more persons, one or more of whom are minors, with the same effect upon its liability as if such minors were of full age.

B. Subject to such regulations as the commissioner [director of the financial institutions division of the regulation and licensing department] may prescribe for the protection of depositors, a bank may contract with the proper authorities of any elementary or

secondary school, or of any institution caring for minors, for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such a school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purpose.

History: 1953 Comp., § 48-22-6, enacted by Laws 1963, ch. 305, § 6.

Bracketed material. - The bracketed material was inserted in this section by the compiler, as Laws 1977, ch. 245, § 4 abolished the department of banking, with § 3 of that act establishing the commerce and industry department consisting of five divisions, including the financial institutions division. Section 12 provided that all references in the law to the department of banking were to be construed to mean the financial institutions division of the commerce and industry department. Furthermore, the powers and duties of the commissioner of banking were transferred to the director of the financial institutions division, and all statutory references to the commissioner were to be construed to mean the director. See 58-1-32 NMSA 1978 and the general definitions of 58-1-3 NMSA 1978. However, Laws 1983, ch. 297, § 33, abolished the commerce and industry department, and § 20 of that act created the regulation and licensing department with a financial institutions division. Laws 1983, ch. 297, § 31, transfers the personnel, etc., of the financial institutions division of the commerce and industry department to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 359.

9 C.J.S. Banks and Banking §§ 440, 532.

58-1-6. Designating agent.

A. A bank may continue to recognize the authority of an agent authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

B. Knowledge of the death or adjudication of incapacity of such depositor shall constitute written notice of revocation of the authority of his agent.

C. Notwithstanding that a bank has received written notice of revocation of the authority of such agent, it may, until ten days after receipt of such notice, pay any item apparently made, drawn, accepted or indorsed by such agent prior to such revocation, provided that such item is otherwise properly payable.

D. No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

History: 1953 Comp., § 48-22-7, enacted by Laws 1963, ch. 305, § 7; 1975, ch. 257, § 8-122.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 287.

58-1-7. Adverse claim to deposit.

Notice to any bank of an adverse claim to a deposit with such bank need not be recognized, and shall not be deemed effective, unless and until either the person making the claim supplies indemnity deemed adequate by the bank or the bank is served with process or order issued by a court of competent jurisdiction in an action in which the adverse claimant and the person or persons nominally entitled to the deposit are parties, provided that the bureau of revenue [revenue division of the taxation and revenue department] may levy against a deposit in accordance with the provisions of Section 7-1-31 NMSA 1978.

History: 1953 Comp., § 48-22-7.1, enacted by Laws 1975, ch. 330, § 8.

Bracketed material. - The bracketed material was inserted in this section by the compiler, as the bureau of revenue was abolished by Laws 1977, ch. 249, § 5. Section 4 of that act establishes the taxation and revenue department, consisting of three divisions, including the revenue division. Section 41 provides that references to the bureau in the Tax Administration Act (Chapter 7, Article 1 NMSA 1978) mean the revenue division. See 7-1-3, 7-2-2 and 9-11-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Action not "adverse claim to a deposit". - This section did not apply to claims by third parties that the drawer had forged their endorsement on checks previously deposited into the drawer's checking account, because those claims were not "an adverse claim to a deposit" with the bank; rather, the claims were a claim of liability on the part of the bank and this claim of liability was not directed to a deposit. Landrum v. Security Nat'l Bank, 104 N.M. 55, 716 P.2d 246 (Ct. App. 1986).

Law reviews. - Annual Survey of New Mexico Commercial Law, see 17 N.M.L. Rev. 219 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 506.

Adverse claims, construction, application and effect of statute relating to notice to bank of, 62 A.L.R.2d 1116.

Special bank deposits as subject of attachment or garnishment to satisfy depositor's general obligations, 8 A.L.R.4th 998.

9 C.J.S. Banks and Banking §§ 285, 333, 342.

58-1-8. Payment from account when no executor or administrator has qualified.

A. Where no executor or administrator of a deceased depositor has qualified and given notice of his qualifications to the bank, it may in its discretion and at any time after the death of the depositor pay out of all accounts maintained with it by him in his individual capacity all sums which do not exceed two thousand dollars ($2,000) in the aggregate:

(1) to the surviving spouse; or

(2) if there is no surviving spouse then to the surviving next of kin, of the closest degree of lineal consanguinity.

B. A bank may in its discretion and at any time after sixty days from the death of a depositor, whose residence address according to the books of the bank is outside this state, pay the balance of his accounts, not exceeding two thousand dollars ($2,000) in the aggregate, to an executor or administrator who has qualified in another state unless the bank has received written notice of the appointment of an executor or administrator in this state.

C. No bank shall be liable for damage, penalty, tax or claims of creditors of the estate by reason of any payment or refusal to pay made pursuant to this section.

History: 1953 Comp., § 48-22-8, enacted by Laws 1963, ch. 305, § 8; 1975, ch. 330, § 9.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 537.

9 C.J.S. Banks and Banking § 304.

58-1-9. Transmitting money; foreign exchange.

A bank may accept money for transmission and may transmit money. A bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

History: 1953 Comp., § 48-22-9, enacted by Laws 1963, ch. 305, § 9.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 308.

Regulation of business of transmitting funds to foreign countries, 94 A.L.R.2d 496.

9 C.J.S. Banks and Banking § 172.

58-1-10. Authority to engage in leasing safe deposit facilities; subsidiary company.

A. Subject to such regulations as the commissioner [director of the financial institutions division of the commerce and industry department] may prescribe, a state bank or safe deposit company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

B. A state bank may own stock in safe deposit companies not exceeding in aggregate cost fifteen percent of its capital and surplus, but at least ninety percent of the stock in each such safe deposit company must be owned by banks.

History: 1953 Comp., § 48-22-10, enacted by Laws 1963, ch. 305, § 10; 1975, ch. 330, § 10.

Meaning of "commissioner". - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 469 to 492.

93 C.J.S. Warehousemen and Safe Depositaries § 93.

58-1-11. Access by fiduciaries.

A. Where access to a safe deposit box is requested by one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto and removal of the contents of the safe deposit box upon obtaining proper receipt from:

(1) any one or more of the persons acting as executors or administrators;

(2) any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting; or

(3) any agent authorized in writing signed by all of the persons acting as fiduciaries.

B. No lessor shall be liable for damages for allowing or refusing access or removal of the contents of the safety deposit box under the provisions of Subsection A of this section.

History: 1953 Comp., § 48-22-11, enacted by Laws 1963, ch. 305, § 11.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 482, 483.

93 C.J.S. Warehousemen and Safe Depositaries § 96.

58-1-12. Effect of lessee's death or incapacity.

Where a lessor, without knowledge of the death or of an adjudication of incapacity of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

History: 1953 Comp., § 48-22-12, enacted by Laws 1963, ch. 305, § 12; 1975, ch. 257, § 8-123.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 472, 473, 476, 484.

58-1-13. Lease to minor.

A lessor may lease a safe deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

History: 1953 Comp., § 48-22-13, enacted by Laws 1963, ch. 305, § 13.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 93 C.J.S. Warehousemen and Safe Depositaries § 51.

58-1-14. Search procedure on death.

A. A lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, may deliver upon execution of receipt therefor:

(1) any writing purporting to be a will of the decedent;

(2) any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.

B. No other contents shall be removed, pursuant to this section except at the lessor's liability, until a special administrator, an administrator or executor qualifies and makes claim to the contents.

History: 1953 Comp., § 48-22-14, enacted by Laws 1963, ch. 305, § 14.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 486 to 492.

9 C.J.S. Banks and Banking, § 69.

58-1-15. Adverse claims to contents of safe deposit box.

A. An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(1) the lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held; or

(2) the safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by an affidavit stating facts disclosing that it is made by or on behalf of a beneficiary and that there is a reason to believe that the fiduciary may misappropriate the trust property.

B. A claim is also adverse where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

History: 1953 Comp., § 48-22-15, enacted by Laws 1963, ch. 305, § 15.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 506.

Bank's or safe deposit company's liability for denying access to box, 4 A.L.R.3d 1462.

58-1-16. Special remedies for nonpayment of rent.

A. If the rental due on a safe deposit box has not been paid for six months, the lessor may send a notice by certified or registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

B. If the contents of the box are not claimed within the time prescribed by the Uniform Disposition of Unclaimed Property Act [Uniform Unclaimed Property Act, Chapter 7,

Article 8 NMSA 1978], they shall be disposed of as provided therein. Upon a sale of such contents by the state treasurer, the lessor shall be reimbursed for the accrued rental and storage charges from the proceeds of the sale.

History: 1953 Comp., § 48-22-16, enacted by Laws 1963, ch. 305, § 16; 1975, ch. 330, § 11.

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler to reflect a title change in the referenced act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 486 to 492.

93 C.J.S. Warehousemen and Safe Depositaries § 71.

58-1-17. Qualification and fiduciary powers.

No state bank shall act as fiduciary unless it is authorized by its articles of incorporation and has a permit from the commissioner [director of the financial institutions division of the regulation and licensing department]. The commissioner [director] shall not grant the permit unless he finds:

A. the bank has not less than five hundred thousand dollars ($500,000) capital and surplus;

B. the bank is in a sound financial condition and operated in a prudent and businesslike manner; and

C. qualified personnel are available to handle trust matters.

History: 1953 Comp., § 48-22-17, enacted by Laws 1963, ch. 305, § 17; 1975, ch. 330, § 12.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 303 to 307.

Interest or profits: liability for interest or profits on funds of estate deposited in bank or trust company which is itself executor, administrator, trustee or guardian, or in which executor, etc., is interested, 88 A.L.R. 205.

Dealings between bank or trust company and itself acting as executor, administrator or trustee, 112 A.L.R. 780.

Duty and obligation assumed by trust company or other person to which will is delivered for safekeeping, 141 A.L.R. 1277.

9 C.J.S. Banks and Banking § 157.

58-1-18. Fiduciary bond or oath excused.

No oath or bond shall be required of a bank to qualify upon appointment as a fiduciary, unless the instrument creating a fiduciary position expressly otherwise provides.

History: 1953 Comp., § 48-22-18, enacted by Laws 1963, ch. 305, § 18.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M.L. Rev. 213 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 304.

9 C.J.S. Banks and Banking § 6.

58-1-19. Identification and segregation of fiduciary assets; investment and deposit of cash.

A state bank holding any asset as a fiduciary shall:

A. segregate all such assets from any other assets of the bank and from the assets of other trusts, except as may be permitted by the Uniform Common Trust Fund Act [46-1-13 to 46-1-16 NMSA 1978] or by other provisions of law or by the writing creating the trust; and

B. record such assets in a separate set of books maintained for fiduciary activities.

History: 1953 Comp., § 48-22-19, enacted by Laws 1963, ch. 305, § 19.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 817.

9 C.J.S. Banks and Banking § 276.

58-1-20. Reserves against deposits.

A. A state bank shall maintain such reserves against deposits as may be required by the director or, if the state bank is a member of the federal reserve system, by the Federal Reserve Act or by the board of governors of the federal reserve system.

B. The reserve fund shall consist of legal tender on hand on the premises of the state bank and money due on demand from a federal reserve bank or other bank approved as a reserve depository by the director, in such amount as the director may prescribe, but shall not exceed at any time the reserve requirement ratios promulgated by the board of governors of the federal reserve system for national banks.

C. A state bank may invest up to fifty percent of the required cash reserves in direct obligations of the United States government, provided such are limited to not more than one hundred days maturity free from encumbrance or pledge.

History: 1953 Comp., § 48-22-20, enacted by Laws 1963, ch. 305, § 20; 1975, ch. 330, § 13; 1983, ch. 53, § 1; 1989, ch. 209, § 2.

Federal Reserve Act. - The Federal Reserve Act, referred to in Subsection A, appears as various sections throughout 12 U.S.C.

Law reviews. - For student symposium, "Constitutional Revision - State Aid to Private Enterprise in New Mexico," see 9 Nat. Resources J. 457 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 339, 419 to 427.

9 C.J.S. Banks and Banking §§ 13, 156.

58-1-21. Loans.

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

B. A state bank may lend on the security of personal property but shall not make any loan on the security of its own stock, of stock of a holding company of which the bank is a part, of stock of another bank where the borrower owns, controls or holds with the power to vote ten percent or more of the outstanding voting securities of both such bank and the lending bank or of its obligations subordinate to deposits.

C. Any state bank may make real estate loans secured by liens upon unimproved real estate, upon improved real estate, including improved farmland and improved business and residential properties, and upon real estate to be improved by a building or buildings to be constructed or in the process of construction in an amount which when added to the amount unpaid upon prior mortgages, liens, [or] encumbrances, if any, upon such real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed or other instrument, which shall constitute a lien on real estate in fee or under such rules and regulations as may be prescribed by the commissioner [director of the financial institutions division of the regulation and licensing department] on a leasehold under a lease which does not expire for at least ten years beyond maturity date of the loan, and any state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan hereafter made shall not exceed sixty-six and two-thirds percent of the appraised value if such real estate is unimproved, seventy-five percent of the appraised value if such real estate is improved by off-site improvements such as streets, water, sewers or other utilities, seventy-five percent of the appraised value if such real estate is in the process of being improved by a building or buildings to be constructed or in the process of construction or ninety percent of the appraised value if

such real estate is improved by a building or buildings. If any such loan exceeds sixty-six and two-thirds percent of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required which are sufficient to amortize the entire principal of the loan within a period of not more than thirty years. However:

(1) the limitations and restrictions set forth in Subsection C of this section shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are guaranteed or insured by the United States or an agency thereof, or by a state or agency or instrumentality thereof; and

(2) loans which are guaranteed or insured as described in Paragraph (1) of this subsection shall not be taken into account in determining the amount of real estate loans which a state bank may make in relation to its capital and surplus or its time and savings deposits or in determining the amount of real estate loans secured by other than first liens; and where the collateral for any loan consists partly of real estate security and partly or [of] other security, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate, and in no event shall a loan be considered as a real estate loan where there is a valid and binding agreement which is entered into by a financially responsible lender or other party either directly with the bank which is for the benefit of or has been assigned to the bank and pursuant to which agreement the lender or other party is required to advance to the bank within sixty months from the date of the making of such loan the full amount of the loan to be made by the bank upon the security of real estate. Except as otherwise provided, no such bank shall make real estate loans in an aggregate sum in excess of the amount of the capital stock of such bank paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of the amount of its time and savings deposits, whichever is greater; provided, that the amount unpaid upon any real estate loan secured by other than a first lien, when added to the amount unpaid upon prior mortgages, liens and encumbrances, shall not exceed in an aggregate sum twenty percent of the amount of the capital stock of such bank paid in an [and] unimpaired plus twenty percent of the amount of its unimpaired surplus fund.

D. Any state bank may make real estate loans secured by liens upon forest tracts which are properly managed in all respects. Such loans shall be in the form of an obligation or obligations secured by mortgage, trust deed or other such instrument; and any state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, shall not exceed sixty-six and two-thirds percent of the appraised fair market value of the growing timber, lands and improvements thereon offered as security and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, exceed sixty-six and two-thirds percent of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years; except that any such loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust

or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate of at least six and two-thirds percent per annum. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens prescribed in Paragraph (2) of Subsection C of this section, but no state bank shall make forest tract loans in an aggregate sum in excess of fifty percent of its capital stock paid in and unimpaired plus fifty percent of its unimpaired surplus fund.

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

F. Notes representing loans made under this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association or corporation acceptable to the discounting bank.

G. Loans made to any borrower (1) where the bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or (2) secured by an assignment of rents under a lease, and where, in either case described in (1) or (2) above, the bank wishes to take a mortgage, deed of trust or other instrument upon real estate (whether or not constituting a first lien) as a precaution against contingencies and loans in which the small business administration cooperates through agreements to participate in an immediate or deferred or guaranteed basis under the Small Business Act, shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.

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

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

I. Loans made pursuant to this section shall be subject to such conditions and limitations as the commissioner [director of the financial institutions division of the regulation and licensing department] may prescribe by rule or regulation.

History: 1953 Comp., § 48-22-21, enacted by Laws 1963, ch. 305, § 21; 1973, ch. 127, § 1; 1975, ch. 330, § 14.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Small Business Act. - The Small Business Act refers to 15 U.S.C. §§ 631 to 647.

Restrictions on length of loan period. - There is no legislative prohibition against the use of a variable interest rate clause on long term loans secured with realty. In the case where an increase in interest is achieved by lengthening the maturity date of the loan to allow more interest to be paid over the life of the loan, rather than by increasing the monthly payments, there are certain restrictions as to the maximum length of the loan period. 1976 Op. Att'y Gen. No. 76-22.

Redemption of leasehold in foreclosure. - A leasehold or a term for years is a chattel, not real property, no matter how long its term, and, thus, is not subject to redemption after a foreclosure sale. Western Sav. & Loan Ass'n v. CFS Portales Ethanol I, Ltd., 107 N.M. 143, 754 P.2d 520 (1988).

Law reviews. - For student symposium, "Constitutional Revision - State Aid to Private Enterprise in New Mexico," see 9 Nat. Resources J. 457 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 683.

Power of banking corporation to loan money for others, 33 A.L.R. 597.

Liability of guarantor of obligations to bank as affected by limitation of amount which bank may legally loan, 92 A.L.R. 341.

Financial statement by borrower as basis of loan or extension of credit, 104 A.L.R. 921.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security, 125 A.L.R. 1512.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of contract to lend money, 52 A.L.R.4th 826.

9 C.J.S. Banks and Banking §§ 383 to 385, 389.

58-1-22. Investments.

A. In addition to other investments expressly authorized by the Banking Act, a state bank may:

(1) purchase or discount obligations which satisfy the requirements of the Banking Act for loans;

(2) purchase or discount obligations of the United States or a state of the United States or bonds or debentures issued pursuant to the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1933, as amended;

(3) purchase or discount obligations in amounts not to exceed ten percent of its capital and surplus for each of the following: the inter-American development bank, the African development bank, the Asian development bank and the international bank for reconstruction and redevelopment;

(4) purchase or discount obligations of a territory of the United States, a subdivision or instrumentality of a state or territory of the United States or an authority organized under either state law, an interstate compact or by substantially identical legislation adopted by two or more states;

(5) purchase or discount obligations of a corporation chartered by the United States or a state thereof doing business in the United States which are approved by the director for investment;

(6) invest in industrial revenue bonds issued by the state or any of its political subdivisions up to twenty percent of its capital and surplus for any one issue, with a total in all such issues not to exceed fifty percent of its capital and surplus;

(7) invest an amount not exceeding twenty percent of its capital and surplus in any one issue for revenue obligations issued to provide, enlarge or improve electric power, gas, water, sewer facilities and other public facilities by any city or town located in the state; and

(8) invest in any obligation in which a national bank is authorized to invest at the time of making the investment, notwithstanding any provisions to the contrary in the Banking Act.

B. A state bank authorized to exercise trust powers may invest an amount not exceeding ten percent of its capital in the stock of a corporation owned entirely by banks and exclusively engaged in a trust company business and maintaining its offices on the premises used by the bank or another bank also owning part of its capital stock or adjacent to the premises of any bank owning part of its stock.

C. A state bank may invest an amount not exceeding twenty-five percent of its capital and surplus in the stock and obligations of a corporation owning the premises occupied by the bank for the transaction of its business.

D. A state bank may purchase or sell without recourse against it any security upon the order of a customer and for his account.

E. A state bank may invest an amount approved by the director in the stock of a corporation owned entirely by banks and engaged in providing record-keeping services using electronic or other similar machines.

History: 1953 Comp., § 48-22-22, enacted by Laws 1963, ch. 305, § 22; 1975, ch. 330, § 15; 1988, ch. 22, § 1.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Federal Farm Loan Act. - The Federal Farm Loan Act is compiled as 12 U.S.C. §§ 641, 642, 651, 656, 660 to 664, 672, 673 to 677a, 691 to 697, 701, 711 to 723, 731 to 734, 741 to 744, 745 to 747, 751 to 757, 761, 771, 772, 781, 791, 801 to 808, 811 to 824, 831, 841 to 844, 851 to 857, 861 to 864, 871 to 886, 891 to 899, 901 to 903, 911 to 915, 921, 931, 932, 933, 941 to 943, 951 to 953, 961 to 963, 964 to 967, 971 to 973, 991, 1011, 1012, 1021 to 1023, 1024 to 1026, 1031 to 1033, 1041 to 1045, 1051 to 1053, 1061, 1072, 1081, 1091 to 1095, 1101, 1111 and 1129.

Farm Credit Act. - The Farm Credit Act of 1933 is compiled as 7 U.S.C. § 610; and 12 U.S.C. §§ 639, 640, 744a, 771, 781, 791, 874, 880, 1022, 1031, 1131c to 1131e, 1131f, 1131g, 1131h, 1131i, 1134 to 1134m, 1138 to 1138c, 1138e, 1141c, 1141e, 1141f, 1141j, 1148a and 1151a.

State chartered banks and savings and loan associations are permitted to invest in mutual funds. 1987 Op. Att'y Gen. No. 87-4.

Mutual funds may not be pledged as collateral for depositions of public funds. 1987 Op. Att'y Gen. No. 87-4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 157.

Liability of bank for losses incurred on loans or investments made on recommendation of its officers or employees, 113 A.L.R. 246.

9 C.J.S. Banks and Banking § 184.

58-1-23. Acceptances.

A. A bank may accept:

(1) a draft which has not more than one hundred eighty days sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods, with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, nonperishable staples; and

(2) a draft which has no more than ninety days sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

B. A bank may issue a letter of credit, but unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.

History: 1953 Comp., § 48-22-23, enacted by Laws 1963, ch. 305, § 23; 1985, ch. 56, § 3.

Cross-references. - For letters of credit, see 55-5-101 to 55-5-117 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 577 to 586.

What amounts to acceptance extrinsic to check, 26 A.L.R. 312.

Duties of collecting bank with respect to presenting draft or bill of exchange for acceptance, 39 A.L.R.2d 1296.

9 C.J.S. Banks and Banking §§ 165, 531.

58-1-24. Diversification of loans and investments.

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

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

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

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

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

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

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

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

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

(a) unless such staples are insured, if it is customary to insure them; or

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

(6) secured by the assignment of accounts receivable to the extent of eighty percent of the amount of such accounts not overdue, but the limitation of these obligations shall be thirty percent of capital and surplus;

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

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

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

(1) the direct liability of the maker; the amount of a loan made to a corporation to the extent that the proceeds of such loan directly or indirectly are to be loaned to the individual;

(2) in the case of obligations of a partnership or association, the obligations of each general partner or of each member of the association; the amount of a loan made to a corporation to the extent that the proceeds of such loan directly or indirectly are to be loaned to the partnership or association;

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

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

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

(a) loaned to the corporation;

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

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

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

History: 1953 Comp., § 48-22-24, enacted by Laws 1963, ch. 305, § 24; 1975, ch. 330, § 16; 1983, ch. 102, § 1.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Powers of banking corporation to loan money for others, 33 A.L.R. 597.

Bad loans, liability of bank directors for losses on, 45 A.L.R. 678, 77 A.L.R. 543, 11 A.L.R. Fed. 606.

Liability of bank for losses incurred on loans or investments made on recommendation of its officers or employees, 113 A.L.R. 246.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security, 125 A.L.R. 1512.

Rights and liabilities of bank paying or giving credit for personal check of own officer whose account is not good, 171 A.L.R. 880.

9 C.J.S. Banks and Banking § 1058.

58-1-25. Acquisition of property to satisfy or protect previous loan.

A state bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business. Property acquired in satisfaction of a loan shall be held subject to the limitations in this section.

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

B. Real estate may be used in the banking business, subject to the conditions prescribed by the Banking Act for property purchased for such use, or may be rented. Real estate may be improved to facilitate its sale. Unless used in the banking business, it shall be sold within five years or such longer period as the director may allow.

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

D. The property shall be entered on the books at cost or fair market value, whichever is less. Upon transfer to other real estate owned, fair value shall be substantiated by a current appraisal prepared by an independent, qualified appraiser. All instructions from the bank to the appraiser shall be in writing. The appraisal shall recite all of the bank's instructions to the appraiser. If the property remains unsold, bank records shall be documented reflecting the bank's diligent efforts to effect sale. On or before each annual anniversary from the date of acquisition while the property remains unsold, the bank shall obtain, from an independent qualified appraiser, a current appraisal, or, in letter form, certification that the fair market value has not declined.

History: 1953 Comp., § 48-22-25, enacted by Laws 1963, ch. 305, § 25; 1975, ch. 330, § 17; 1989, ch. 209, § 3.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 280, 281.

Power of bank officer respecting security or collateral held by bank, 11 A.L.R.2d 1305.

9 C.J.S. Banks and Banking § 168.

58-1-26. Acquisition of banking premises and equipment.

A. A state bank may acquire real estate and equipment and improve real estate to be used in the transaction of its business and may rent to others any space so acquired in a building in excess of actual need. Unless a larger investment is authorized by the commissioner [director of the financial institutions division of the regulation and licensing department], no bank shall invest:

(1) more than sixty percent of capital and surplus in land, building and equipment (other than safe deposit equipment); nor

(2) more than ten percent of capital and surplus, in addition to the above, in safe deposit equipment.

B. A state bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

History: 1953 Comp., § 48-22-26, enacted by Laws 1963, ch. 305, § 26; 1975, ch. 330, § 18.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 279.

9 C.J.S. Banks and Banking § 163.

58-1-27. Sale of assets in ordinary course.

A bank may sell any asset in the ordinary course of business, or with the approval of the commissioner [director of the financial institutions division of the regulation and licensing department] in any other circumstance, but the sale of all or substantially all of the assets of a bank or of a department thereof is governed by Section 58-4-9 NMSA 1978.

History: 1953 Comp., § 48-22-27, enacted by Laws 1963, ch. 305, § 27.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

58-1-28. Borrowing.

A state bank may borrow money and issue evidence of indebtedness for a loan for temporary purposes in an amount not exceeding its capital and surplus or in such larger amount or for such other purposes as the commissioner [director of the financial institutions division of the regulation and licensing department] approves.

History: 1953 Comp., § 48-22-28, enacted by Laws 1963, ch. 305, § 28.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 289, 290.

9 C.J.S. Banks and Banking § 170.

58-1-29. Issuance of capital debentures or notes.

A. After obtaining approval of the commissioner [director of the financial institutions division of the regulation and licensing department] and the approval of the stockholders owning two-thirds of the issued and outstanding shares of stock of the bank entitled to vote, a bank may issue and sell its capital debentures or notes. Capital debentures or notes may be converted into shares of common or preferred stock in accordance with the provisions of the debentures or notes and under any terms or conditions prescribed or approved by the commissioner [director]. The principal amount of any capital debentures or notes outstanding at any time shall not exceed an amount equal to the sum of one hundred percent of the banks' [bank's] unimpaired paid-in capital stock and fifty percent of its unimpaired surplus fund.

B. Capital debentures or notes are an unsecured indebtedness of the bank and are subordinate to the claims of depositors and all other creditors of the bank, regardless of whether the claims of the depositors or other creditors arose before or after the issuance of the capital debentures or notes. In the event of liquidation of the bank, all depositors and other creditors of the bank are entitled to be paid in full before any payment is made of principal or interest on the outstanding capital debentures or notes. After payment to depositors and creditors, capital debentures or notes shall be paid pro rata regardless of the date of their issuance. No payment of the principal of outstanding capital debentures or notes shall be made unless, after the payment, the aggregate of the capital, surplus, undivided profits and capital debentures or notes then outstanding is equal to the aggregate of the foregoing items immediately after the original issue of the capital debentures or notes. Convertible debentures or notes may be issued without offering them to the existing stockholders of the bank if it is so provided in the articles of incorporation of the bank on its organization, or by later amendment to these articles.

C. The amounts of outstanding capital debentures or notes legally issued by any bank shall be treated as capital for the purpose of computing the loan limits prescribed in Section 58-1-24 NMSA 1978 and for determining the amount of money a state bank may borrow for temporary purposes as provided in Section 58-1-28 NMSA 1978, and for computing the amount that may be invested in banking premises under the provisions of Section 58-1-26 NMSA 1978.

History: 1953 Comp., § 48-22-28.1, enacted by Laws 1965, ch. 23, § 1; 1969, ch. 253, § 1.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Purpose of section is to provide restrictions on the accumulation of debt capital by a banking institution. 1979 Op. Att'y Gen. No. 79-6.

Limited right to issue preferred stock. - A bank chartered under the provisions of the New Mexico Banking Act may only issue preferred stock upon conversion of capital notes or debentures pursuant to this section. 1979 Op. Att'y Gen. No. 79-6.

Subsection A authorizes a state-chartered bank to issue preferred stock only in the circumstance of a conversion of a note or capital debenture of the bank, and then only under the terms and conditions prescribed by the director of the financial institutions division. It does not create a general grant of authority for state-chartered banks to issue preferred stock as a means of raising equity capital for the institution. 1979 Op. Att'y Gen. No. 79-6.

Capital debentures, notes not "capital stock". - Even though Subsection C of this section provides that capital debentures or notes may be treated as "capital" for the purposes of computing the loan limit as prescribed by 58-1-24 NMSA 1978, these debentures or notes are actually an indebtedness of the banks unless and until they are converted into shares of common or preferred stock. Since they represent indebtedness they are not capital stock within the meaning of 6-10-36 NMSA 1978. 1966 Op. Att'y Gen. No. 66-39.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 321.

Statutory added liability of holders of bank stock or other corporate stock the issue of which was ultra vires, invalid, or irregular, 86 A.L.R. 816.

9 C.J.S. Banks and Banking § 166.

58-1-30. Pledge of assets.

A bank may pledge its assets to:

A. enable it to act as agent for the sale of obligations of the United States;

B. secure borrowed funds; or

C. secure deposits when the depositor is required to obtain such security by the laws of the United States, the terms of any interstate compact or by the laws of any state.

History: 1953 Comp., § 48-22-29, enacted by Laws 1963, ch. 305, § 29.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 419 to 422.

Power of bank to pledge assets to secure general depositors, 65 A.L.R. 1412, 87 A.L.R. 1456, 101 A.L.R. 515, 112 A.L.R. 483.

9 C.J.S. Banks and Banking § 170.

58-1-31. Endorsement and signature guaranty and unauthorized assumption of liability.

A. A state bank may assume secondary liability as an endorser of a negotiable or nonnegotiable instrument, which it owns or has received for collection. A state bank may assume the liability of the guarantor of the genuineness of a signature.

B. Except as expressly permitted in the Banking Act, a state bank shall not assume liability as an insurer or as a guarantor or endorser of any security instrument or obligation.

History: 1953 Comp., § 48-22-30, enacted by Laws 1963, ch. 305, § 30.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 614, 634, 635.

Authority of officer or agent to bind bank as guarantor or surety, 34 A.L.R.2d 299.

58-1-32. Director of the financial institutions division; appointment and qualifications; salary.

Upon the effective date of the Commerce and Industry Department Act, the title of the commissioner of banking shall be changed to the "director of the financial institutions division." All powers and duties heretofore vested by law or otherwise in the state bank examiner or commissioner of banking are hereby transferred to the director of the financial institutions division and all statutory references to the state bank examiner or commissioner of banking shall be construed to mean the director of the financial institutions division. The director of the financial institutions division shall be appointed by the secretary of the commerce and industry department by and with the governor's approval and by and with the consent of the senate for a term of four years, which term shall expire when his successor is duly appointed and qualified. He shall not be interested as a stockholder in any bank, savings and loan association, small loan licensee in this state or any corporation qualified or qualifying under Section 48-18-19.6 NMSA 1953, and shall be fully qualified to perform the duties of the office. The director of the financial institutions division shall be the head of the financial institutions division and its bureaus. The director of the financial institutions division may appoint an examiner as deputy director to have all his powers and duties in the absence of the director and may delegate such of his authority and duties to other examiners as he sees fit.

History: 1953 Comp., § 48-22-31, enacted by Laws 1963, ch. 305, § 31; 1971, ch. 81, § 1; 1971, ch. 234, § 2; 1977, ch. 245, § 120.

Cross-references. - As to appointment of director, see 9-16-6B(10), 9-16-7 NMSA 1978.

Compiler's note. - Section 48-18-19.6, 1953 Comp., referred to in this section was repealed by Laws 1965, ch. 312, § 15. See now 58-13B-23 NMSA 1978 as to registration by qualification.

Commerce and industry department. - Laws 1983, ch. 297, § 33, abolishes the commerce and industry department, referred to in this section. Laws 1983, ch. 297, § 20 creates the regulation and licensing department with a financial institutions division. Laws 1983, ch. 297, § 31, transfers the personnel, etc., of the financial institutions division of the commerce and industry department to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 17.

9 C.J.S. Banks and Banking § 35.

58-1-33. Oath of secrecy; surety bond.

The commissioner [director of the financial institutions division of the regulation and licensing department] and all officers and employees of the department [financial institutions division] shall, before entering upon the discharge of their duties, in addition to any oath required by the constitution of the state, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, under the Banking Act, except as may be otherwise required by law. The commissioner [director] shall obtain a blanket bond in the penal sum of twenty thousand dollars ($20,000), executed by a surety company licensed to transact business in the state. The bond shall cover the commissioner [director] and all officers and employees of the department [financial institutions division] and shall be conditioned upon the faithful and impartial discharge of their duties and the proper accounting for all funds which may come into their hands as such officers and employees. The bond shall run to the state of New Mexico, and shall be in a form approved by the attorney general and shall be filed with the secretary of state. The cost of the bond shall be an expense of the department [financial institutions division]. Suits may be maintained on the bond in the name of the state of New Mexico for the use of any party injured by a breach of the conditions thereof.

History: 1953 Comp., § 48-22-32, enacted by Laws 1963, ch. 305, § 32.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 82 to 98.

9 C.J.S. Banks and Banking § 115.

58-1-34. Powers of commissioner.

A. In addition to other powers conferred by law, the commissioner [director of the financial institutions division of the regulation and licensing department] shall have power to:

(1) restrict the withdrawal of deposits from all or one or more state banks where he finds that extraordinary circumstances make such restriction necessary for the proper protection of depositors in the affected institution;

(2) authorize a state bank to:

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

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

(3) order the holder of shares in a bank to refrain from voting said shares on any matter if he finds that such order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard the funds of depositors or to prevent the willful violation of the Banking Act or of any lawful rule or order issued thereunder, in which case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action; and

(4) order any person to cease violating a provision of the Banking Act or a lawful regulation issued thereunder or to cease engaging in any unsound banking practice.

B. The commissioner [director] may remove or suspend, for a period of not more than three years, a director, trustee, officer or employee of a state bank who becomes ineligible to hold his position or, who, after receipt of an order to cease under the preceding subsection, violates the Banking Act or a lawful regulation or order issued thereunder, or who is dishonest, or who is reckless or grossly incompetent in the conduct of banking business. It is unlawful for any such person, after receipt of a removal or suspension order, to perform any duty or exercise any power of any state bank for a period of three years, or the period of suspension. A removal or suspension order shall specify the grounds thereof and a copy of the order shall be sent to the bank concerned.

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

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

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

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

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

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

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

(6) obtain a financial statement from a borrower;

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

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

(9) maintain adequate insurance against such other risks as the commissioner [director] may determine to be necessary and appropriate for the protection of depositors and the public.

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

F. The commissioner [director] may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability of the Banking Act or a rule issued hereunder to any person, property or state of facts. The order shall bind the commissioner [director] and all parties to the proceeding on the state of facts declared unless it is modified or reversed by a court. A declaratory order may be reviewed and enforced in the same manner as other orders of the commissioner [director], but the refusal to issue a declaratory order shall not be reviewable.

G. No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon an existing order, regulation or definition of the commissioner [director] notwithstanding a subsequent decision by a court invalidating the order, regulation or definition.

History: 1953 Comp., § 48-22-33, enacted by Laws 1963, ch. 305, § 33.

Cross-references. - As to examination of federal reserve banks, see 58-5-10 NMSA 1978.

For Trust Company Act, see 58-9-1 NMSA 1978.

For the Residential Home Loan Act, see 56-8-22 NMSA 1978 et seq.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Law reviews. - For article, "New Mexico Restraint of Trade Statutes - A Legislative Proposal," see 9 N.M.L. Rev. 1 (1978-79).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

9 C.J.S. Banks and Banking § 6.

58-1-35. Employees [Examiners] and clerks; designation of deputy.

The commissioner [director of the financial institutions division of the regulation and licensing department] may appoint and employ such examiners and clerks as the business of his office may require and as may be provided for by law at such salaries, payable out of the salary fund, as may be provided by law. In the event the business of the office shall require, the commissioner [director] may designate one or more of the examiners to act as his deputy with all the powers herein conferred upon the commissioner [director].

History: 1953 Comp., § 48-22-33.1, enacted by Laws 1975, ch. 330, § 19.

Meaning of "commissioner". - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking § 35.

58-1-36. Seal of the director.

The director shall have a seal of office containing the words "Director of the Financial Institutions Division of the Regulation and Licensing Department", in the form of a circle and containing the word "Seal" within the circle.

History: 1953 Comp., § 48-22-33.2, enacted by Laws 1975, ch. 330, § 20; 1977, ch. 245, § 121; 1991, ch. 120, § 1.

The 1991 amendment, effective June 14, 1991, deleted "of the financial institutions division" preceding "shall have", substituted "Regulation and Licensing Department" for "Commerce and Industry Department", and inserted "containing".

58-1-37. Office of the commissioner [director]; delegation of powers.

The commissioner [director of the financial institutions division of the regulation and licensing department] shall maintain an office at the state capitol in Santa Fe. He may delegate to his deputies such of his powers and authorities as he may see fit, and such deputy or deputies shall have and exercise only the powers and authorities so delegated.

History: 1953 Comp., § 48-22-33.3, enacted by Laws 1975, ch. 330, § 21.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

58-1-38. Divulging information prohibited; exchange of information with United States; violation a misdemeanor.

Neither the commissioner [director of the financial institutions division of the regulation and licensing department], nor his deputies or employees, nor the state corporation commission, nor any member thereof, nor any deputy, clerk or employee in its office shall divulge any information acquired by them in the discharge of their duties, except in so far as the same may be rendered necessary by law. The commissioner [director] may exchange information as to the conditions of banks with the United States comptroller of the currency, federal deposit insurance corporation, federal reserve banks, and banking departments of other states. Anyone who violates the provisions of this section shall be deemed guilty of a misdemeanor.

History: 1953 Comp., § 48-22-33.4, enacted by Laws 1975, ch. 330, § 22.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Furnishing information to state treasurer prohibited. - The financial institutions division is prohibited from furnishing information on the financial condition of New Mexico financial institutions to the state treasurer, absent express statutory authorization for such release. 1979 Op. Att'y Gen. No. 79-22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

Rights and remedies of financial institution customer in relation to subpoena duces tecum exception to general prohibitions of state right to financial privacy statute, 43 A.L.R.4th 1157.

Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

9 C.J.S. Banks and Banking §§ 35, 38.

58-1-39. Bank records; prescribing manner of keeping.

A. The commissioner [director of the financial institutions division of the regulation and licensing department] shall have the power to require banks under his supervision to keep their records in such manner and form that they will at all times reflect the true condition of the bank and permit the same to be readily and thoroughly audited.

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

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

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

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

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

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

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

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

F. Any state bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of

its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

G. Any state bank may cause any or all records at any time in its custody to be reproduced by the microphotographic process and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

H. To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in this state.

History: 1953 Comp., § 48-22-33.5, enacted by Laws 1975, ch. 330, § 23.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

Rights and remedies of financial institution customer in relation to subpoena duces tecum exception to general prohibitions of state right to financial privacy statute, 43 A.L.R.4th 1157.

9 C.J.S. Banks and Banking §§ 36, 120.

58-1-40. Reports of condition; publication; special reports; failure to make; penalty.

Every bank shall make and file with the director reports not to exceed five in number during the calendar year, according to the form which may be prescribed by the director, verified by the oath of the president or cashier of incorporated banks and attested by the signature of three or more directors. Each such report shall exhibit in detail and as may be required by the director the resources and liabilities of the bank at the close of business on a day past to be specified by the director in writing, the days past to be the days named by the comptroller of the currency in his official calls for reports of national banks. When the calls of the comptroller are less than five in number, the director may make additional calls on such dates as he deems advisable. The reports shall be transmitted to the director within thirty days after the call of the director, and the substance of the reports shall be published by the bank in such form as may be prescribed by the director in a newspaper of general circulation printed in the city or town where the bank is located or, if there is no newspaper of general circulation printed in the city or town, in the newspaper of general circulation published nearest to the city or town within New Mexico. Proof of the publication shall be filed with the director within thirty days from the date of the call and in such form as the director may prescribe. The director has power to call for special reports from any particular bank whenever, in his judgment, they are necessary to a full and complete understanding and knowledge of its condition; but no such special report or any summary of the report shall be required to be published. The reports required by and filed pursuant to this section shall be in lieu of

all others required by law from banks. Every bank failing to comply with the provisions of this section shall pay to the director a penalty of fifty dollars ($50.00) for each day's delay.

History: 1953 Comp., § 48-22-33.6, enacted by Laws 1975, ch. 330, § 24; 1983, ch. 83, § 1; 1989, ch. 209, § 4; 1991, ch. 120, § 2.

The 1991 amendment, effective June 14, 1991, in the first sentence, substituted "the director, verified by the oath of the president or cashier" for "him verified by the oath of the president or vice president and cashier or secretary", in the fourth sentence, substituted "thirty days after the call of the director, and the substance of the reports" for "twenty days after the call of the director therefor, and the substance thereof", and in the sixth sentence, substituted "or any summary of the report" for "nor any summary thereof".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking §§ 36, 133.

58-1-41. Supervision fees.

Each state bank shall annually pay to the director a supervision fee. The amount of the supervision fee paid by each state bank is computed as follows, based upon assets as of December 31:

If the bank's total assets are -		The assessment is -		
Over- (Thousand)	But not over - (Thousand)	This amount-	Plus-	Of excess over- (Thousand)
- 0 -	30,000	- 0 -	.000210	- 0 -
30,000	60,000	6,300	.000182	30,000
60,000	100,000	11,745	.000168	60,000
100,000	150,000	18,465	.000158	100,000
150,000	200,000	26,340	.000147	150,000
200,000		33,690	.000143	200,000

The fee shall be paid on or before the March 1 following the asset computation. For failure to pay the supervision fee when due, unless excused for cause by the director, the bank shall pay to the financial institutions division one hundred dollars ($100) for every day of its delinquency.

History: 1953 Comp., § 48-22-33.7, enacted by Laws 1975, ch. 330, § 25; 1985, ch. 30, § 1; 1989, ch. 209, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 19.

9 C.J.S. Banks and Banking § 35.

58-1-41.1. Trust department examination; fees.

At least once in each calendar year, the director of the financial institutions division of the regulation and licensing department shall cause to be examined the condition of the trust department of each state bank exercising trust powers. A report of examination shall be sent to the board of directors of the bank of which the trust department has been examined. There shall be paid to the director for each trust department examination a fee at the rate of one hundred fifty dollars ($150) per day, or fraction thereof, for each authorized representative engaged in the examination.

History: 1978 Comp., § 58-1-41.1, enacted by Laws 1985, ch. 30, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 35.

58-1-41.2. Additional examinations.

Whenever a bank is examined more than once in any calendar year as provided in Section 58-1-46 NMSA 1978, the bank shall pay to the financial institutions division of the regulation and licensing department an amount determined by the director to be sufficient to reimburse the division for its actual expenses in conducting the examination.

History: 1978 Comp., § 58-1-41.2, enacted by Laws 1985, ch. 30, § 3.

58-1-42. Fees for filing reports and certificates.

Except the reports prescribed in Section 58-1-40 NMSA 1978 which shall be filed without charge, on filing any certificate or other paper required by the provisions of the Banking Act, the bank filing such certificate or paper shall pay to the commissioner [director of the financial institutions division of the regulation and licensing department] a fee of one dollar ($1.00) for each certificate or paper so filed.

History: 1953 Comp., § 48-22-33.8, enacted by Laws 1975, ch. 330, § 26.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 19.

58-1-43. Fees and penalties; disposition.

The director shall keep a record of all fees and penalties collected by him and all expenses of his office. At the end of each month, unless otherwise provided by law, he shall turn over to the state treasurer all money collected during the month, together with a verified statement showing when and from what source the money was collected. The state treasurer shall deposit and transfer the money as provided in Section 9-16-14 NMSA 1978.

History: 1953 Comp., § 48-22-33.9, enacted by Laws 1975, ch. 330, § 27; 1987, ch. 298, § 2.

58-1-44. Copies of reports and records; evidence; fees.

Copies of all reports and records concerning banks and banking filed in the office of the commissioner [director of the financial institutions division of the regulation and licensing department] or in the office of the state corporation commission, certified by them or either of them, under the seal of office, shall be received in evidence in all action [actions] with like effect as the original thereof, and the commissioner [director] shall charge and collect such fees for said copies as are charged for similar papers by the state corporation commission.

History: 1953 Comp., § 48-22-33.10, enacted by Laws 1975, ch. 330, § 28.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 216, 266.

9 C.J.S. Banks and Banking §§ 412, 413.

58-1-45. Court review.

A. Any person aggrieved and directly affected by an order of the commissioner [director of the financial institutions division of the regulation and licensing department] may appeal to the district court in the county in which said person resides or maintains his principal office within thirty days after issuance of the order. The filing of a petition for review shall not stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

B. The court may affirm the order of the commissioner [director of the financial institutions division], may direct the commissioner [director] to take action as may be affirmatively required by law, or may reverse or modify the order of the commissioner [director] if the court finds the order:

(1) was issued pursuant to an unconstitutional statutory provision;

(2) was in excess of statutory authority;

(3) was issued upon unlawful procedure; or

(4) is not supported by substantial evidence in the record. Due weight shall be accorded the experience, technical competence and specialized knowledge of the commissioner [director] as well as the discretionary authority conferred upon him.

C. The decision of the district court shall be subject to appeal as in other civil cases.

History: 1953 Comp., § 48-22-34, enacted by Laws 1963, ch. 305, § 34.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Rejection of application for permission to file corporate papers appealable. - Appellee's rejection of appellants' application under 58-1-57 NMSA 1978 was an order within the ambit of this section and appellants were aggrieved and directly affected by it, since the rejection precluded appellants from filing articles of incorporation with the corporation commission and obtaining the certificate of authority under 58-1-61 A NMSA 1978 which certificate is required before a proposed state bank may perform any act other than perfect its organization. Therefore, the action of appellee in rejecting appellants' application was appealable. Holladay v. Upton, 79 N.M. 1, 438 P.2d 885 (1968).

58-1-46. Examinations and reports.

A. The commissioner [director of the financial institutions division of the regulation and licensing department] shall examine the condition of each state bank at least once in each calendar year. A report of examination shall be sent to the board of directors of the organization examined.

B. Whenever the commissioner [director] deems it necessary, he may examine any corporation, the majority of the stock of which is owned by a state bank or which he finds is controlled by a state bank.

History: 1953 Comp., § 48-22-35, enacted by Laws 1963, ch. 305, § 35.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

Examination and supervision of banks by public officers as impairment of charter rights, 8 A.L.R. 898.

9 C.J.S. Banks and Banking § 35.

58-1-47. Commissioner's [Director's] annual report.

A. The commissioner [director of the financial institutions division of the regulation and licensing department] shall report to the governor annually. His report shall include:

(1) the text of all rules of general application the department has adopted or altered since his last annual report;

(2) a statement of the status and remaining assets and liabilities of any organization which the commissioner [director] is managing or is in the process of liquidating;

(3) a summary of all changes occurring since his last annual report by reason of opening new state banks, mergers and conversions, increases and decreases in capital and the like;

(4) a condensed statement of condition of each state bank; and

(5) such other information concerning the conduct and affairs of his office as he shall see fit to report.

B. The report shall be a public document and shall be printed.

History: 1953 Comp., § 48-22-36, enacted by Laws 1963, ch. 305, § 36.

Commerce and industry department. - See 58-1-32 NMSA 1978 and notes thereto.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

58-1-48. Records of the department [division].

Information from the records of the department [financial institutions division of the regulation and licensing department] shall be revealed only with the consent of the commissioner [director of the financial institutions division]. The records of the department [financial institutions division] shall not be subject to subpoena and are not public records.

History: 1953 Comp., § 48-22-37, enacted by Laws 1963, ch. 305, § 37.

Bracketed material. - See 58-1-5 and 58-1-32 NMSA 1978 and notes thereto.

58-1-49. Banking interests of officers and employees of the department of banking [financial institutions division].

No officer or employee of the department [financial institutions division of the regulation and licensing department] shall be an officer, director, trustee, attorney, owner, shareholder or partner in any bank, nor receive, directly or indirectly, any payment or gratuity from any such organization, or be indebted to any state bank, or engage in the negotiation of loans for others with any state bank. This provision shall not prohibit being a depositor on the same terms as are available to the public generally, or being indebted to a state bank upon an installment debt transferred to a state bank in the regular course of business by a creditor. Any employee violating this section shall be subject to dismissal by the commissioner [director of the financial institutions division].

History: 1953 Comp., § 48-22-38, enacted by Laws 1963, ch. 305, § 38; 1975, ch. 330, § 29.

Bracketed material. - See 58-1-5 and 58-1-32 NMSA 1978 and notes thereto.

58-1-50. Limitation of personal liability.

No officer or employee of the department [financial institutions division of the regulation and licensing department] shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office.

History: 1953 Comp., § 48-22-39, enacted by Laws 1963, ch. 305, § 39.

Commerce and industry department. - See 58-1-32 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 424.

Personal liability of members of governmental banking department or their sureties, 38 A.L.R. 663, 90 A.L.R. 1423.

58-1-51. Standards in regulations.

The commissioner [director of the financial institutions division of the regulation and licensing department], in the exercise of the power to make rules and issue regulations pursuant to the Banking Act, shall act in the interests of promoting and maintaining a sound banking system, the security of deposits and depositors and other customers, the preservation of the liquid position of banks and in the interest of preventing injurious credit expansions and contractions.

History: 1953 Comp., § 48-22-40, enacted by Laws 1963, ch. 305, § 40.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 10 to 19.

9 C.J.S. Banks and Banking § 6.

58-1-52. Incorporators.

A state bank may be organized by five or more individual incorporators subject to the requirements of the Banking Act. A majority of the incorporators shall be residents of the state. Each incorporator shall subscribe and pay in full in cash for stock having a value of not less than one percent of the authorized capital structure.

History: 1953 Comp., § 48-22-41, enacted by Laws 1963, ch. 305, § 41.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 20.

9 C.J.S. Banks and Banking § 42.

58-1-53. General corporate powers.

State banks shall have:

A. all the powers provided and conferred on them in the Banking Act and such general corporate powers as are appropriate to its purpose;

B. the power to act as a fiduciary in any capacity, after proper qualifications under the Banking Act, and if authorized by its articles of incorporation or any amendment thereto;

C. perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

D. the power to sue and be sued in any court of law or equity;

E. the power to make and use a common seal, and alter the same at pleasure;

F. the power to appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation; and

G. the power to make contributions to the extent authorized, approved or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, or its bylaws, or by resolution duly adopted by its stockholders, or by statute.

History: 1953 Comp., § 48-22-42, enacted by Laws 1963, ch. 305, § 42; 1975, ch. 330, § 30.

Cross-references. - As to fiduciary or custodian depositing securities in clearing corporation, see 46-1-12 NMSA 1978.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

No claim of ultra vires act by pledging assets. - It was held under former law that the receiver of bank may not be heard to say that the pledging of the assets of the bank to secure a deposit of public funds was an ultra vires act. Melaven v. Hunker, 35 N.M. 408, 299 P. 1075 (1931).

A solvent bank has a right to pledge its securities to indemnify a surety who signs a bond in its behalf in order that the bank may obtain a deposit of public funds. Melaven v. Hunker, 35 N.M. 408, 299 P. 1075 (1931) (decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 270 et seq.

Forfeiture or expiration of corporate charter, powers after, 47 A.L.R. 1297, 97 A.L.R. 477.

Power of a business corporation to donate to a charitable or similar institution, 39 A.L.R.2d 1192.

Banking corporation's power to enter into partnership or joint venture, 60 A.L.R.2d 917.

9 C.J.S. Banks and Banking § 157.

58-1-54. Powers of commissioner of banking [director of financial institutions division] and of state banks.

In addition to other powers provided for the commissioner of banking [director of the financial institutions division of the commerce and industry department] and for state banks in the Banking Act and notwithstanding anything to the contrary in that act, the commissioner of banking [director] may adopt such rules and regulations as he deems necessary and proper, granting to state banks any of the powers and authority that national banks are or may hereafter be authorized, empowered, permitted or otherwise allowed to exercise under federal statutes, rules or regulations.

History: 1953 Comp., § 48-22-42.1, enacted by Laws 1973, ch. 130, § 1.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Issuance of preferred stock may be authorized by regulation. - Since the Banking Act does not expressly prohibit the issuance of preferred stock by state banks, such

authority may be conferred by regulation adopted by the director of the financial institutions division, in his discretion, pursuant to his power under this section. 1979 Op. Att'y Gen. No. 79-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 35.

58-1-55. Capital structure; impairment of capital.

A. A state bank shall have such capital structure as the commissioner [director of the financial institutions division of the regulation and licensing department] shall deem adequate, except that no bank hereafter organized shall do business unless it shall have a bona fide minimum paid-up capital stock structure of at least, five hundred thousand dollars ($500,000), divided one-half to common capital and the remaining one-half to surplus and undivided profits. No bank shall pay a dividend on its common stock unless its remaining surplus after payment of such dividend equals twenty percent of the minimum common capital requirement. All banks heretofore or hereafter organized shall transfer at least a one-fifth part of their net profits, for the preceding accounting period, to their surplus fund until the same equals fifty percent of their common capital stock. When the surplus fund of a bank equals fifty percent of their common capital stock, there shall be added to the surplus fund each accounting period, ten percent of the net profits of the bank until the surplus fund is equal to the common capital stock, and such surplus shall thereafter be maintained unless impaired by unavoidable losses. This section shall not be construed to apply to trust companies.

B. Whenever the capital of any bank shall be impaired, it shall make no new loans or discounts.

History: 1953 Comp., § 48-22-43, enacted by Laws 1963, ch. 305, § 43; 1975, ch. 330, § 31.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Equity capital. - Legislature intended that equity capital of banking corporation should be composed of common stock, and the issuance by such a corporation of preferred stock to raise equity capital was not expressly authorized. 1979 Op. Att'y Gen. No. 79-6.

Effect when authorized capital stock fully subscribed. - Where the authorized capital stock of a banking corporation is fully subscribed, it was held under former law that it has no power or authority to solicit additional subscriptions to its capital stock, and a note given for such subscription is without consideration. Morrill v. Harris, 23 N.M. 146, 167 P. 276 (1917), distinguished in American Hosp. & Life Ins. Co. v. Kunkel, 71 N.M. 164, 376 P.2d 956 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 30.

Reduction of capital stock and distribution of capital assets upon reduction, 44 A.L.R. 11, 35 A.L.R.2d 1149.

Validity, construction and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 A.L.R.3d 1190.

9 C.J.S. Banks and Banking §§ 58 to 60.

58-1-56. Notice of intention.

A. The organizers shall file with the director a notice of their intention to organize a state bank, signed by each of them. At the time of filing the notice of intention, the organizers shall pay an investigation fee of one-half of one percent of the proposed capital structure, not to exceed seven thousand five hundred dollars ($7,500). The notice shall be in duplicate and shall state and include:

(1) the name, residence and occupation of each organizer and the amount of stock to be subscribed and to be paid for by each;

(2) the name and address of an individual within the state who shall act as agent for the organizers;

(3) the total proposed capital structure, the number of shares, the par value of the shares of the proposed state bank and the proposed price per share;

(4) whether it is intended that the proposed state bank shall have trust powers;

(5) the community in which the proposed state bank is to be located;

(6) a feasibility study estimating the need for and benefits to be derived by the formation of the proposed bank;

(7) an annual projection for a five-year period of the expected condition and income of the proposed bank;

(8) a prospectus describing the stock offering in a form prescribed by the director and in compliance with the provisions of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-56 NMSA 1978];

(9) an executed copy of an escrow agreement that provides the name of a New Mexico bank that will act as an escrow agent to receive all funds raised by the stock subscription, and that further provides for retention of the funds by the escrow agent until their release is authorized by the director; and

(10) a financial report for each organizer, in a form prescribed by the director, provided all financial reports shall remain in the confidential files of the division, and, provided

further, proposed organizers appointed subsequent to the original notice of intention shall submit a financial report upon the date of their appointment.

B. If the notice of intention or any accompanying documents do not comply with the requirements of this section, the director shall within twenty days from the date of his receipt of the filing of the notice notify the organizers of the defect therein.

C. Upon approval of the notice of intention by the director, the effective date of the notice shall be the date the director received the filing of the notice.

D. After approval of the notice of intention by the director, the organizers shall:

(1) issue a subscription receipt to each subscriber and file a duplicate copy with the director, providing that all funds will be returned to the subscriber, with the exception of the organization expense, if the application is denied; and

(2) file with the escrow agent an executed copy of all subscription agreements, setting forth an accounting of all funds collected pursuant to the subscription agreements and providing for retention of the funds until their release is authorized by the director; and

(3) file with the director copies of all subscription agreements, and an accounting of all funds collected pursuant to the subscription agreements, immediately following execution of the subscription agreements and collection of the funds.

E. Each subscriber at the time he subscribes to the stock of a proposed state bank shall pay, in addition to his subscription in cash, such percentage of the selling price of the stock as the director determines is reasonable into a fund to be used to defray the expenses of organization. No organization expenses shall be paid out of any other funds of the bank. Upon the opening of the bank, any unexpended balance shall be transferred to undivided profit. If the application is finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The director may require an accounting of disbursements from the fund and may order the organizers to restore any sum which has been expended for other than proper organization expense. No payment shall be made from the organization expense fund or other proceeds of subscription for securing subscriptions to stock.

History: 1953 Comp., § 48-22-44, enacted by Laws 1963, ch. 305, § 44; 1973, ch. 226, § 2; 1989, ch. 209, § 6; 1991, ch. 120, § 3.

The 1991 amendment, effective June 14, 1991, in Subsection A, added Paragraphs (6) through (10); in Subsection B, inserted "from the date of his receipt of the filing of the notice"; in Subsection C, substituted "the effective date of the notice shall be the date the director received the filing of the notice" for "the organizers shall submit the names, addresses and the amount of stock each proposed subscriber intends to purchase should the approval of the sale be secured"; in Subsection D, deleted former Paragraph (1) pertaining to compliance with the state securities act, redesignated former

Subparagraphs (2) and (3) accordingly and added Paragraph (3), in present Paragraph (1), substituted "a subscription" for "an interim", in present Paragraph (2) substituted "escrow agent an executed copy of all subscription agreements, setting forth an accounting of all funds collected pursuant to the subscription agreements and" for "director an executed copy of an escrow agreement, setting forth the name of a bank in this state which will act as escrow agent to receive all funds raised from the stock subscription".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 22.

9 C.J.S. Banks and Banking §§ 7, 8.

58-1-57. Application for permission to file corporate papers.

A. After the capital structure has been fully subscribed, the organizers may apply to the director for permission to file with the state corporation commission. If no application for permission to file corporate papers is filed within one hundred eighty days following the filing of notice of intention, the application period may be extended for an additional one hundred eighty days, at the director's discretion. The agent for service shall submit a written request for extension prior to the expiration date of the original notice of intention and shall pay an extension fee of twenty-five hundred dollars ($2,500). The director shall respond to the written request for extension within five business days. All solicitation and collection activities concerning stock subscriptions shall be halted during the period following the expiration of the original notice of intention and shall resume only when the director approves the extension request. The organizers shall submit with the application:

(1) the proposed articles of incorporation in quadruplicate, in such form as the director prescribes, containing:

(a) the name of the state bank;

(b) if the state bank is to exercise trust powers, a statement to that effect;

(c) the community in which it is to be located;

(d) the amount of capital, the number of shares, the par value of the shares, the amount of surplus and undivided profits and organization expenses;

(e) a statement indicating whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of stockholders;

(f) the name and address of agent for service of process; and

(g) such other proper provisions to govern the business and affairs of the state bank as may be desired by the incorporators; and

(2) a copy of proposed bylaws.

B. The application shall be in such form and contain such information as the director may require, including:

(1) the name and residence of each subscriber and the number of shares for which he has subscribed; and

(2) the address at which it is proposed that the state bank do business or, if the address is not known, the area within the community in which it is proposed that the business be located.

C. If the proposed articles of incorporation, the application or any other accompanying documents do not comply with the requirements of the Banking Act, the director shall within twenty days after the receipt thereof notify the incorporators of the defect therein.

History: 1953 Comp., § 48-22-45, enacted by Laws 1963, ch. 305, § 45; 1975, ch. 330, § 32; 1991, ch. 120, § 4.

The 1991 amendment, effective June 14, 1991, substituted "director" for "commissioner" throughout the section; in Subsection A, in the first sentence, substituted "the application period may be extended for an additional one hundred eighty days, at the director's discretion" for "the entire application shall be cancelled" and added the second, third and fourth sentences; and made minor stylistic changes throughout the section.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Corporation organized under general corporation laws ousted from banking. - Where a corporation was organized under general incorporation laws and not the former banking act or the former so-called Mercantile Act, trial court was correct in concluding that it should be ousted from the conduct of banking business as an interloper or intruder. First Thrift & Loan Ass'n v. State ex rel. Robinson, 62 N.M. 61, 304 P.2d 582 (1956).

A corporation cannot organize under the general corporation laws and thereafter conduct a banking business whether or not said corporation has two departments. First Thrift & Loan Ass'n v. State ex rel. Robinson, 62 N.M. 61, 304 P.2d 582 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 22.

9 C.J.S. Banks and Banking § 44.

58-1-58. Determination on application for permission to file with the corporation commission.

A. When an application for permission to file with the corporation commission has been delivered to the commissioner [director of the financial institutions division of the regulation and licensing department], he shall make or cause to be made a careful investigation and examination relative to:

(1) the character, reputation and financial standing of the organizers or incorporators;

(2) the character, financial responsibility of proposed directors and banking or trust experience, and business qualifications of those proposed as officers;

(3) the ability of the community to support the proposed bank, giving consideration to:

(a) the services offered by existing banks and other financial institutions;

(b) the banking history of the community; and

(c) the opportunities for profitable employment of bank funds as indicated by the demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the community, with particular regard to their stability, diversification and size;

(4) whether or not the full amount of the authorized capital structure has been subscribed;

(5) whether or not the proposed capital structure is adequate in the light of current and prospective banking conditions;

(6) whether or not the name of the proposed bank resembles so closely, as to be likely to cause confusion, the name of any other banks transacting business in this state; and

(7) such other facts and circumstances bearing on the proposed bank and its relation to the community as in the opinion of the commissioner [director] may be relevant.

B. The commissioner [director] shall complete his investigation within sixty days after the completed application has been filed and may in his discretion approve or reject the application.

C. If the commissioner [director] approves the application to be filed with the corporation commission, he shall endorse his approval on the articles of incorporation.

D. The corporation commission shall not accept the articles of incorporation of a state bank for filing without such endorsement.

History: 1953 Comp., § 48-22-46, enacted by Laws 1963, ch. 305, § 46; 1975, ch. 330, § 33.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 44.

58-1-59. Subscription calls.

A. Immediately after the filing of the articles of incorporation with the corporation commission, the proposed directors shall call for the payment of the subscriptions in full, within thirty days from the date of the notice. No certificate of authority, or order, shall be issued by the commissioner [director of the financial institutions division of the regulation and licensing department] until the full amount of the authorized capital structure, specified in the articles of incorporation, has been paid in full, in cash, into the designated escrow account.

B. On or before expiration of thirty days after call for payment of the subscription, the incorporators shall deliver a statement to the commissioner [director] signed by an official of the escrowing bank, setting forth the amount paid into the escrow account by the subscribers, and a sworn statement signed by the proposed bank's president, and cashier or secretary, certifying the full amount of the entire authorized capital structure has been paid in cash into the escrow account and that such corporation will be fully prepared to transact the business for which it was organized within one year.

History: 1953 Comp., § 48-22-47, enacted by Laws 1963, ch. 305, § 47; 1975, ch. 330, § 34.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 32 to 35.

Applicability to banking corporation of constitutional or statutory provision precluding issuance of corporate stock in consideration of promissory note, 78 A.L.R.2d 859.

9 C.J.S. Banks and Banking § 61.

58-1-60. First meetings of stockholders and directors; adoption of bylaws.

A. After the capital structure has been fully paid, a meeting of the stockholders shall be called by the incorporators to elect directors, to adopt bylaws and to call the first meeting of directors for the election of officers.

B. Bylaws shall be adopted and may be amended by a vote of the holders of a majority of the outstanding voting shares voted at a meeting of the stockholders, but the bylaws may provide for amendment by the board of directors of any provisions other than those approved by the commissioner [director of the financial institutions division of the regulation and licensing department] and relating to the duties and term of office.

History: 1953 Comp., § 48-22-48, enacted by Laws 1963, ch. 305, § 48.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 330.

9 C.J.S. Banks and Banking §§ 56, 109.

58-1-61. Certificate of authority.

A. A request for a certificate of authority shall be made to the commissioner [director of the financial institutions division of the regulation and licensing department] after he has approved the application to file the articles of incorporation with the corporation commission and all requirements have been met. The request shall contain:

(1) the address at which the bank will operate;

(2) a statement that all of the bylaws adopted have been attached as an exhibit to the request;

(3) a statement that the full amount of the authorized capital structure has been paid to the escrow agent;

(4) the signed oaths of the directors; and

(5) such other information as the commissioner [director of the financial institutions division] may require to enable him to determine whether a certificate of authority should be issued.

B. The commissioner [director] shall approve the request for a certificate of authority within twenty days after the request has been accepted by him and he has been satisfied that all requirements have been complied with and he shall issue a certificate of authority for the bank to transact business. Before actually transacting any banking business or accepting any deposits, the applicant must file with the commissioner [director] satisfactory proof showing that insurance of deposits has been obtained through the federal deposit insurance corporation or other appropriate agency or instrumentality of the United States government.

C. It is unlawful for a proposed state bank to perform any act, other than to perfect its organization, before receiving a certificate of authority to operate.

D. If the commissioner [director] denies the request for a certificate of authority, he shall within twenty days of such action mail a notice to the incorporators, stating the reasons for denying the certificate of authority.

E. If no request for a certificate of authority is filed within one year following the grant of permission to organize, or if a certificate of authority has been finally denied, or if the bank fails to commence business within one year after the issuance of a certificate of authority, the proposed bank, or any money paid by subscribers to stock, shall be liquidated and distributed in accordance with the order of the commissioner [director of the financial institutions division]. If an improper expenditure has been made, the commissioner [director] may order the persons who were incorporators or directors at the time to restore the sum by equal contributions.

History: 1953 Comp., § 48-22-49, enacted by Laws 1963, ch. 305, § 49; 1975, ch. 330, § 35.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 22.

9 C.J.S. Banks and Banking § 44.

58-1-62. Amendment of articles of incorporation.

A. A state bank may apply to the commissioner [director of the financial institutions division of the regulation and licensing department] to amend its articles of incorporation or to change its location.

B. An application for an amendment of the articles of incorporation changing the authorized capital or the number and par value of the shares or to acquire or abandon trust powers or to change its location must be authorized by the vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders. Any other application may be authorized by the vote of a majority of the outstanding voting stock voted at a meeting of the stockholders.

C. Notice of the application shall be sent to such persons and organizations as the commissioner [director] may require.

D. The commissioner [director] shall approve an application:

(1) to change the name of the corporation, if the proposed name is not deceptive or misleading;

(2) to change the number and par value of the shares without altering the total capital, unless such change will inequitably affect the interest of any stockholders and the bank does not have sufficient surplus and undivided profits to pay dissenting shareholders the fair value of their shares;

(3) to increase the total capital by increasing the amount of common stock, when the new capital has been fully paid in cash.

E. The commissioner [director] may, in his discretion, permit other amendments if the public and interested parties would be served by granting the application and shall be guided by the standards prescribed for the approval of an application for permission to organize, insofar as they are reasonably applicable.

History: 1953 Comp., § 48-22-50, enacted by Laws 1963, ch. 305, § 50.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 26.

9 C.J.S. Banks and Banking § 42.

58-1-63. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 12, § 3 repeals 58-1-63 NMSA 1978, as enacted by Laws 1963, ch. 305, § 51, relating to county with branch bank, effective June 14, 1991. For provisions of former section, see 1986 Replacement Pamphlet.

58-1-64. Meetings of stockholders; voting; proxies; voting trusts; preemptive right; transfer of stock; report of holdings.

A. Regular meetings of stockholders shall be held annually and at such additional times as the bylaws direct at a place designated by the bylaws. A special meeting may be called at any time by the commissioner [director of the financial institutions division of the regulation and licensing department], or one-third of the directors, or the holder or holders of twenty-five percent of the outstanding voting shares. Notice shall be mailed at least ten days before a meeting to every person who was a stockholder of record twenty days before the date of the meeting or at such longer period as may be provided in the bylaws. No business shall be transacted at a special meeting which is not specified in the notice thereof or necessary or proper in connection with or incidental to the business specified. The holders of a majority of the outstanding voting shares or their authorized representatives shall constitute a quorum. In the absence of a quorum a meeting may be adjourned from time to time without notice to the stockholders.

B. Except on the election of directors each share of common stock shall have one vote which may be cast by the owner of record on the record date, or by his authorized representative, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares which it holds in any capacity other than as fiduciary.

C. A stockholder authorized to vote may by his proxy executed in writing appoint a representative to cast his vote. The board may promulgate rules governing proxies and the solicitation thereof.

D. No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the commissioner [director of the financial institutions division]. Approval shall be withheld, or if previously granted, revoked whenever it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures.

E. Unless otherwise provided in the articles of incorporation whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within thirty days of the offer. If the right is not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe.

F. Shares of stock shall be transferable in accordance with the bylaws but no transfer shall be effective with respect to the bank until it has been entered upon the transfer books. The stock book shall be available for examination by a stockholder of the corporation at the principal place of business during business hours.

History: 1953 Comp., § 48-22-52, enacted by Laws 1963, ch. 305, § 52.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 67.

Execution on, or attachment of, national bank stock, 1 A.L.R. 653.

President's or vice-president's representation as to stock, 1 A.L.R. 700, 67 A.L.R 970.

Debt of stockholder as ground for refusal to register transfer of stock where transfer is by operation of law, 65 A.L.R. 220.

Validity of restrictions by corporation on alienation or transfer of corporate stock, 65 A.L.R. 1159, 61 A.L.R.2d 1318.

President's or vice-president's authority to purchase stock, 67 A.L.R. 979.

Transfer of bank or other corporate stock to corporation issuing it, as releasing transferor from stockholders' statutory added liability, 86 A.L.R. 72.

Transfer of stock to qualify transferee as director or officer, validity of, 167 A.L.R. 387.

Validity of cancellation of accrued dividends on preferred stock, 8 A.L.R.2d 893.

Remedy for refusal of corporation or its agent to register or effectuate transfer of stock, 22 A.L.R.2d 12.

Construction, application and effect of constitutional provisions or statutes relating to cumulative voting of stock for bank directors, 43 A.L.R.2d 1328.

Rights of creditors of corporation with respect to its purchase or acquisition of own stock, 47 A.L.R.2d 758.

9 C.J.S. Banks and Banking §§ 64, 67, 70.

58-1-65. Directors and officers.

A. The affairs of a state bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three and not more than twenty-five, shall be fixed by the bylaws and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States, two-thirds shall be residents of the state and at least one-half shall reside within the county in which the principal place of business is located, or any county contiguous to that county. Each director shall have full record and beneficial ownership free of lien or encumbrance on common stock of the bank, or, when a bank is controlled by a bank holding company, either ownership of the common stock of the bank or ownership in a similar manner of shares of common stock of the bank holding company, of the book value of at least one thousand dollars ($1,000). Any director who becomes disqualified shall forthwith resign his office, but, upon removal of the disqualification, he shall be eligible for election. A director who is disqualified may be removed by the board of directors or by the director of the division. No action taken by a director prior to the resignation or removal shall be subject to attack on the ground of his disqualification.

B. Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

C. Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for that purpose. If the articles of incorporation provide for cumulative voting, the votes of each share may be cast for one person or divided among two or more as the stockholder may choose. The person or persons, according to the number of directors to be elected, having the largest number of votes shall be elected.

D. The term of office of directors shall be one year or, if the bylaws so provide, three years, in which case one-third of the directors, or as near to one-third as possible, shall be elected for each year following the first election of directors. Vacancies at any one time, to the number of one-third of the board, may be filled by vote of the board of directors until the next meeting of the stockholders. The director of the division may

designate a director to fill a vacancy which has continued for longer than three months, and a director so designated shall serve until a successor is elected and has qualified.

E. A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the articles of incorporation, no director shall be removed unless the votes cast against a motion for his removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

F. The officers designated by the bylaws shall be elected by the board of directors. A member of the board of directors shall be elected president. Officers shall be elected or a contract executed for their employment in accordance with the bylaws of the bank. An officer may be removed by the board of directors at any time, but removal shall not prejudice any rights that he may have to damages for breach of contract of employment.

G. A bank shall report promptly to the director of the division any changes among executive officers and directors, including in its report a statement of the business and professional affiliations of new executive officers and directors.

History: 1953 Comp., § 48-22-53, enacted by Laws 1963, ch. 305, § 53; 1971, ch. 42, § 1; 1981, ch. 56, § 1; 1983, ch. 13, § 1; 1989, ch. 190, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 77.

President or vice president, powers of, 1 A.L.R. 693, 67 A.L.R. 970.

Accommodation: authority of bank officer or employee to bind bank by indorsement or guaranty of paper for accommodation of third person, 37 A.L.R. 1373.

Constitutionality of statutes relating to personal liability of officers or directors of bank, 57 A.L.R. 888.

Power of bank president to have litigation instituted by bank where board of directors has failed or refused to grant permission, 10 A.L.R.2d 705.

Purposes for which officer may exercise right to examine corporate books and records, 15 A.L.R.2d 11.

Validity of contract between corporations as affected by directors or officers in common, 33 A.L.R.2d 1060.

Guarantor: authority of officer or agent to bind bank as guarantor or surety, 34 A.L.R.2d 299.

Commercial paper, authority of officer or agent of bank to indorse and transfer, 37 A.L.R.2d 505.

Construction, application and effect of constitutional provisions or statutes relating to cumulative voting of stock for bank directors, 43 A.L.R.2d 1328.

Authority of corporate officers to mortgage or pledge corporate personal property, 62 A.L.R.2d 712.

Power of secretary or treasurer of bank to institute litigation for it, 64 A.L.R.2d 900.

9 C.J.S. Banks and Banking §§ 108, 110, 111.

58-1-66. Directors; meetings and duties.

A. The board of directors shall meet at least once every month. The director of the financial institutions division [of the regulation and licensing department], a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and of all votes cast.

B. The board of directors or an executive committee of not less than one-third of the board shall review, at least monthly, the following transactions which have occurred since the last review:

(1) each loan, advance, discount, overdraft and purchase or sale of a security which exceeds in amount one-tenth of one percent of the capital and surplus of the corporation or twenty-five thousand dollars ($25,000), whichever is larger; and

(2) every increase in loans, advances, discounts and overdrafts which exceed this amount or with the increase will exceed it and every purchase or sale of a security which, together with other such transactions in the security during the preceding two months, involves such amount.

C. The board of directors shall examine, at least once in each calendar year at intervals of not more than fifteen months, all the affairs of the state bank including the character and value of investments and loans and the efficiency of operating procedures. A report of the examination shall be submitted to the director of the financial institutions division promptly. The board of directors may provide that the examination shall be conducted by a committee of not less than three directors, or may employ the services of qualified examiners or certified public accountants approved by the director of the financial institutions division. The examination shall be conducted in accordance with generally accepted auditing procedures or in accordance with regulations of the director of the financial institutions division.

D. In lieu of the directors' examination required by Subsection C of this section, the board of directors of a state bank may submit to the director of the financial institutions division at least once each calendar year at intervals of not more than fifteen months a certified audit report for the bank. The examination shall be conducted by a certified public accountant in accordance with generally accepted auditing procedures. The director of the financial institutions division may require the board of directors of a bank submitting a certified audit examination in lieu of a directors' examination to submit such other information as the director of the financial institutions division deems necessary, including information relating to the character and value of investments and loans and the efficiency of operating procedures of the bank.

E. A state bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee. At least once in every calendar year at intervals of not more than fifteen months the committee shall review all the assets of each fiduciary account and shall determine their current value, safety and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

History: 1953 Comp., § 48-22-54, enacted by Laws 1963, ch. 305, § 54; 1975, ch. 330, § 36; 1981, ch. 196, § 1.

Bracketed material. - The bracketed material in this section was inserted by the compiler, as the financial institutions division, referred to in this section, was originally part of the commerce and industry department, which was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the financial institutions division. See 9-16-4 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 100.

9 C.J.S. Banks and Banking § 109.

58-1-67. Fidelity bonds and other insurance.

A. The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

B. The said directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

C. The directors shall be responsible for prescribing at least once in each year the amount or penal sum of the bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. This action shall be recorded in the minutes of the board of directors and thereafter be reported to the commissioner [director of the financial institutions division of the regulation and licensing department] and be subject to his approval.

History: 1953 Comp., § 48-22-55, enacted by Laws 1963, ch. 305, § 55.

Cross-references. - As to surety companies, see 46-6-1 NMSA 1978 et seq.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 82.

Insurance of banks against forgeries, 52 A.L.R. 1379.

Insurance of bank against larceny and false pretenses, 15 A.L.R.2d 1006.

Defalcations by executive officer or employee, liability of directors for, 25 A.L.R.3d 941.

Construction and effect of arrangement under which insurance premiums are paid automatically via insurer's draft on insured's bank account, 45 A.L.R.3d 1349.

9 C.J.S. Banks and Banking § 114.

58-1-68. Authority to declare dividends.

The board of directors of a state bank may declare dividends not more than once in each calendar quarter from undivided profits if:

(1) the undivided profits account has been maintained in accordance with the Banking Act; and

(2) the reserve against deposits required by the Banking Act is not and will not thereby be impaired.

History: 1953 Comp., § 48-22-56, enacted by Laws 1963, ch. 305, § 56.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 69.

Validity of cancellation of accrued dividends on preferred bank stock, 8 A.L.R.2d 893.

9 C.J.S. Banks and Banking § 65.

58-1-69. Capital, surplus and undivided profits; accounting requirements.

A. No credit shall be entered in the undivided profits account founded upon an unrealized appreciation in the value of any type of asset except accretion of discounts on investments securities in accordance with generally accepted accounting principles. Before any net profits are credited to the undivided profits account, proper deduction shall be made for all expenditures, accrued expenses, accrued taxes, losses, bad debts and any write-offs or other deductions, including interest accrued and uncollected, required by the director.

B. No transfer shall be made from the surplus account to the undivided profits account or to any but the capital stock account if the surplus after the transfer would be less than the capital stock.

History: 1953 Comp., § 48-22-57, enacted by Laws 1963, ch. 305, § 57; 1971, ch. 80, § 1; 1991, ch. 120, § 5.

The 1991 amendment, effective June 14, 1991, in the second sentence in Subsection A, substituted "director" for "commissioner"; deleted former Subsection B pertaining to debit balances being charged to the surplus account; and redesignated former Subsection C as Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 69, 70.

9 C.J.S. Banks and Banking §§ 57 to 60, 65.

58-1-70. Deposit insurance; membership in federal reserve system.

A state bank shall obtain insurance of its deposits by the United States or any agency thereof, and may acquire and hold membership in the federal reserve system.

History: 1953 Comp., § 48-22-58, enacted by Laws 1963, ch. 305, § 58.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 437.

Right of Federal Deposit Insurance Corporation to injunctive relief in enforcement of its regulations, 22 A.L.R. Fed. 918.

9 C.J.S. Banks and Banking § 782.

58-1-71. Waivers; corporate action by unanimously signed writing.

When notice is required to be given to stockholders or directors under the Banking Act, or the articles of incorporation or bylaws of any state bank, a waiver of notice in writing, signed by the person or persons entitled to the notice, whether before or after the time stated in the notice, shall be deemed equivalent to notice. If the vote of stockholders or directors at a meeting is required or permitted in connection with any corporate action, by any section of the Banking Act, the meeting and vote of stockholders or directors may be dispensed with, if all of the stockholders or directors who would have been entitled to vote upon the action if the meeting were held, consent in writing to the corporate action. If the action consented to would have required the filing of a certificate under the Banking Act, if the action had been voted upon by the stockholders or directors at a meeting, the certificates filed shall state that written consent has been given under this section in lieu of stating that the stockholders or directors have voted upon the corporate action in question, if a statement of voting is required in the certificate.

History: 1953 Comp., § 48-22-59, enacted by Laws 1963, ch. 305, § 59.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking §§ 59, 1002.

58-1-72. Voluntary liquidation and dissolution.

A. A state bank may liquidate and dissolve with the approval of the commissioner [director of the financial institutions division of the regulation and licensing department]. The commissioner [director] shall grant approval to liquidate and dissolve if:

(1) the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for the purpose of considering that action; and

(2) the state bank is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

B. After approval by the commissioner [director], the bank shall:

(1) cease to do business forthwith;

(2) send by mail, within thirty days of the approval, a notice of liquidation to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box or bailor of property;

(3) include with the liquidation notices sent by mail:

(a) to all depositors or creditors, a statement of the amount on the books to be due the depositor or creditor, and that, if the amount claimed differs from that stated, a claim must be filed with the bank before a specified date, not earlier than sixty nor later than ninety days thereafter, in accordance with the procedure prescribed in the notice;

(b) to all bailors or lessees of safe deposit boxes, a demand that property held by the bank as bailee or in safe deposit boxes be withdrawn within thirty days by the person entitled thereto;

(c) to all persons interested in funds held as a fiduciary, a statement that the bank is going to take action to resign the fiduciary position and take action to settle its fiduciary accounts;

(4) post the liquidation notice in a conspicuous place on the premises of the bank, and make any publication required by the commissioner [director];

(5) resign all fiduciary positions and take necessary action to settle its fiduciary accounts as soon as practicable;

(6) open all safe deposit boxes from which the contents have not been removed within thirty days after demand, deal with the contents in the manner provided for boxes upon which the payment of rental is in default, and transfer the sealed packages containing the contents together with the certified inventories, to the commissioner [director];

(7) transfer to the commissioner [director] any other unclaimed property held by the bank as bailee, together with a certified inventory of such property;

(8) pay all lawful claims of creditors and depositors promptly; or

(a) if the amount due a creditor or depositor is unclaimed for ninety days after the final distribution, transmit it to the commissioner [director] with an accounting; and

(b) if there is a disputed claim, deposit with the commissioner [director] a sum adequate to meet any liability that may be judicially determined;

(9) deliver to the commissioner [director] any funds which cannot otherwise be disposed of in the settlement of its fiduciary accounts;

(10) return the unearned portion of the rental of all safe deposit boxes to the lessee, or if the lessee cannot be found, to the commissioner [director], with an accounting; and

(11) distribute to the stockholders, in accordance with their respective interests, any assets remaining after the discharge of all other obligations, or, if a stockholder cannot be found within ninety days of the final distribution, transmit his share to the commissioner [director].

C. The commissioner [director] shall:

(1) retain for one year all unclaimed contents of safe deposit boxes and all unclaimed property which was held by the bank as bailee, unless sooner claimed by the person entitled to it, then sell or otherwise dispose of the property, and transfer the proceeds of any sale or disposition to the state treasurer as abandoned funds;

(2) retain for five years any unclaimed distribution to a depositor, creditor, stockholder or person to whom the bank stood in a fiduciary position, unless sooner claimed by the person entitled thereto, and then transfer the funds to the state treasurer as abandoned funds.

D. If at any time during the liquidation the commissioner [director] finds that the assets will be insufficient for the full discharge of all obligations, or that completion of the liquidation has been unduly delayed, he may take possession and complete the liquidation in the manner provided in the Banking Act for involuntary liquidations.

E. The commissioner [director] may require reports of the progress of liquidation, and, whenever he is satisfied that the liquidation has been properly completed, he shall cancel the certificate of authority to do business and enter an order of dissolution.

History: 1953 Comp., § 48-22-60, enacted by Laws 1963, ch. 305, § 60.

Cross-references. - For Uniform Disposition of Unclaimed Property Act, see 7-8-1 NMSA 1978.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Court's power to appoint receiver not curtailed by legislative grant. - Rule that equity courts have inherent power to appoint receivers of corporations applies to bank, except where curtailed by valid statutes. In New Mexico, it was held that the legislature has never granted to any executive officer, administrative board, department or tribunal authority to wind up the affairs of an insolvent bank without the aid of a court. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 828.

Right of savings bank to liquidate voluntarily and close business, 69 A.L.R. 1255.

9 C.J.S. Banks and Banking §§ 469 to 471.

58-1-73. Director in possession.

A. The director may take possession of a state bank if, after a hearing or bank stipulation, he finds:

(1) its capital is impaired or it is otherwise in an unsound condition;

(2) its business is being conducted in an unlawful or unsound manner;

(3) it is unable to continue normal operations; or

(4) its examination has been obstructed or impeded.

B. The director shall take possession by posting upon the premises a notice reciting that he is assuming possession pursuant to the Banking Act and the time, not earlier than the posting of the notice, when his possession shall be deemed to commence. A copy of the notice shall be filed in the district court in the county in which the main office is located. The director shall notify the federal reserve bank of the district of his taking possession of any state bank which is a member of the federal reserve system.

C. When the director has taken possession of a state bank, he is vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, to execute any instrument in the name of the bank, to commence, defend and conduct in its name any action or proceeding in which it may be a party, to terminate his possession by restoring the bank to its board of directors and to reorganize or liquidate the bank in accordance with the Banking Act. As soon as practicable after taking possession, the director shall make an inventory of the assets and file a copy of the inventory with the court in which the notice of possession was filed.

D. When the director has taken possession, there shall be a postponement until six months after the commencement of his possession of the date upon which any period of limitation fixed by a statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which an appeal must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

E. Within thirty days after the director has taken possession, any interested party may file an application for an injunction with the district court of the county in which the principal office of that bank is located for an order vacating the possession.

F. If the director decides to liquidate the state bank, he shall give what he deems to be adequate notice to the directors, stockholders, depositors and creditors. Any objection to the liquidation shall be filed with the director within ten days after the notice. The

director shall proceed to liquidate the institution unless he finds the action unnecessary to protect depositors.

G. If the director decides to reorganize the state bank, after according a hearing to all interested parties he shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of his claim in full under the plan, together with notice that unless the plan is disapproved within fifteen days in writing by persons holding one-third or more of the aggregate amount of such claims, the director will proceed to effect the reorganization. A department, agency or political subdivision of this state holding a claim which will not be paid in full is authorized to participate as any other creditor.

H. No judgment, lien or attachment shall be executed upon any asset of the state bank while it is in the possession of the director. Upon the election of the director to liquidate or reorganize:

(1) any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the state bank during the director's possession or within four months prior to commencement thereof shall be vacated, except liens created by the director while in possession; and

(2) any transfer of an asset of the state bank made after or in contemplation of its insolvency with intent to effect a preference shall be voided.

I. The director may borrow money in the name of the state bank and may pledge its assets as security for the loan.

J. All necessary and reasonable expenses of the director's possession of a state bank and of its reorganization or liquidation shall be defrayed from the assets thereof.

History: 1953 Comp., § 48-22-61, enacted by Laws 1963, ch. 305, § 61; 1991, ch. 120, § 6.

Cross-references. - As to state funds in insolvent banks, see 6-10-48, 6-10-49 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "director" for "commissioner" in the catchline and throughout the section; inserted "or bank stipulation" near the beginning of Subsection A; and made minor stylistic changes throughout the section.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

"Insolvent bank" defined. - Formerly, it was held that an insolvent bank is one which the state bank inspector believes cannot resume business or liquidate its indebtedness

to the satisfaction of all its creditors. Maddison v. Bryan, 31 N.M. 404, 247 P. 275 (1925).

Insolvent bank's loss of power. - By Laws 1915, ch. 67, § 87, an insolvent bank is ousted of its power "to collect all debts, dues, claims and demands." Cooper v. Manning, 39 N.M. 206, 43 P.2d 1055 (1935).

Directions in decree appointing receiver. - Banks, unlike other corporations, are always subject to the supervisory and visitorial powers of the state. If thought to be in an insolvent condition, it must immediately suspend business. By operation of statute, it is ousted of the possession of all its property and assets, and the court assumes charge and appoints a receiver. Thus, under former law, it was held that it is consequently immaterial that a decree appointing a receiver does not also give full directions for the winding up of the business. Cooper v. Manning, 39 N.M. 206, 43 P.2d 1055 (1935).

Receiver vested with title. - Laws 1915, ch. 67 (now repealed), construed with former 51-8-6, 1953 Comp., vested title in a bank receiver with the powers enumerated in former 51-8-4, 1953 Comp. State v. Peoples Sav. Bank & Trust Co., 28 N.M. 282, 168 P. 526 (1917).

Construction of decree to wind up bank. - In a statutory proceeding to wind up an insolvent bank, it was held formerly that a decree which was inaccurately worded should not be subjected to a fine analysis, but should be taken with the purpose of the statute in view. Cooper v. Manning, 39 N.M. 206, 43 P.2d 1055 (1935).

Examiner's right to possession enforceable in court. - Since by Laws 1915, ch. 67, § 87, the state bank examiner, during the period he is in possession of a bank, has the power to collect all obligations due the bank, it was held under former law that it may be inferred that the courts are open to him to effectuate this power, and that § 80 of such act contemplates him as a proper party to assert his right to retain possession of a bank. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Examiner's right to retain possession. - Formerly, it was held that the bank examiner is a proper party to assert his right to retain possession of a bank, and the attorney general may represent him in court. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Right of examiner to sue. - Since the examiner, during the period he is in possession of the bank, has the power to collect demands due the bank, it may be inferred that the courts are open to him to effectuate this power. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 763.

Payment of depositor's check after insolvency of bank as an unlawful preference, 74 A.L.R. 937.

Power of receiver or liquidating officer of insolvent bank or trust company to borrow, and pledge assets, and power of court to authorize him to do so, 82 A.L.R. 1228, 91 A.L.R. 1119.

When bank deemed insolvent or "hopelessly" insolvent, in civil cases, 85 A.L.R. 811.

Judicial notice as to insolvency of bank, 89 A.L.R. 1352.

Conservator for bank, 91 A.L.R. 234, 92 A.L.R. 1258, 107 A.L.R. 1431.

Amount of compensation of attorney for services involving insolvent bank, in absence of contract or statute fixing amount, 57 A.L.R.3d 475.

9 C.J.S. Banks and Banking § 484.

58-1-74. Requirements of reorganization plan.

A. A plan of reorganization shall not be proposed under the Banking Act unless:

(1) the plan is feasible and fair to all classes of depositors, creditors and stockholders;

(2) the face amount of the interest accorded to any class of depositors, creditors or stockholders under the plan does not exceed the value of the assets upon liquidation less the full amount of the claim of all prior classes, subject, however, to any fair adjustment for new capital that any class will pay in under the plan;

(3) the plan provides for the issuance of common stock in an amount that will provide an adequate ratio to deposits;

(4) any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank, and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange;

(5) the plan assures the removal of any director, officer or employee responsible for any unsound or unlawful action, or the existence of an unsound condition; and

(6) any merger or consolidation provided by the plan conforms to the requirements of the Banking Act.

B. Whenever in the course of reorganization supervening conditions render the plan unfair, or its execution impractical, the commissioner [director of the financial institutions division of the regulation and licensing department] may modify the plan or liquidate the institution. Any such action shall be taken by order upon appropriate notice.

History: 1953 Comp., § 48-22-62, enacted by Laws 1963, ch. 305, § 62.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 821.

Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

Guarantor: liability of guarantor of or surety for bank deposit as affected by reorganization, merger or consolidation of bank, 78 A.L.R. 381.

Transfer of assets: novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

Dissenting stockholders: construction and effect of provisions for payment of dissenting stockholders in statutes relating to merger, consolidation or reorganization of banks or other corporations, 87 A.L.R. 597, 162 A.L.R. 1237, 174 A.L.R. 960.

Constitutionality of recent legislation relating to merger, consolidation or reorganization of banks as affected by rights of dissenting creditors or stockholders, 92 A.L.R. 1337, 96 A.L.R. 1445, 104 A.L.R. 1203.

Estoppel by acquiescence or delay to question validity of plan for reorganization of bank, 139 A.L.R. 659.

9 C.J.S. Banks and Banking § 466.

58-1-75. Liquidation by commissioner [director].

A. In liquidating a state bank, the commissioner [director of the financial institutions division of the regulation and licensing department] may exercise any power thereof but he shall not, without the approval of the court in which notice of possession has been filed:

(1) sell any asset of the organization having a value in excess of five hundred dollars ($500);

(2) compromise or release any claim if the amount of the claim exceeds five hundred dollars ($500), exclusive of interest; or

(3) make any payment on any claim, other than a claim upon an obligation incurred by the commissioner [director], before preparing and filing a schedule of his determinations in accordance with the Banking Act.

B. Within six months of the commencement of liquidation, the commissioner [director] may by his election terminate any contract for services or advertising to which the state bank is a party or any obligation of the bank as a lessee. A lessor who receives sixty days notice of the commissioner's [director's] election to terminate the lease shall have no claim for rent other than rent accrued to the date of termination nor for damages for such termination.

C. As soon after the commencement of liquidation as practicable, the commissioner [director] shall take the necessary steps to terminate all fiduciary positions held by the state bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

D. The right of any agency of the United States insuring deposits to be subrogated to the rights of the depositors upon payment of their claim shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payment.

E. As soon after the commencement of liquidation as practicable the commissioner [director] shall:

(1) send by mail, to the address shown on the books of the institution, a notice of the liquidation to each known depositor, creditor, lessee of a safe deposit box, bailor of property held by the bank or person interested in funds held as fiduciary by the bank;

(2) include with the liquidation notices sent by mail:

(a) to all depositors or creditors, a statement of the amount shown on the books of the institution to be due the depositor or creditor and that if the amount claimed differs from that stated, a claim must be filed with the commissioner [director] before a specified date, not earlier than sixty days nor later than ninety days thereafter, in accordance with the procedure prescribed in the notice;

(b) to all bailors or lessees of safe deposit boxes, a demand that property held by the bank as bailee or in safe deposit boxes be withdrawn within thirty days by the person entitled thereto; and

(c) to all persons interested in funds held as a fiduciary, a statement that the commissioner [director] is going to take action to resign the fiduciary position and take action to settle the fiduciary accounts;

(3) publish the notice in a newspaper of general circulation in the community once a week for three successive weeks;

(4) open all safe deposit boxes from which the contents have not been removed within thirty days after demand, deal with the contents in the manner provided for boxes upon which the payment of rental is in default, and hold the sealed packages containing the

contents, together with the certified inventories for one year, unless sooner claimed by the person entitled thereto, then sell or otherwise dispose of the property and transfer the proceeds of any sale or disposition to the state treasurer as abandoned funds;

(5) hold all unclaimed property held by the bank as bailee together with a certified inventory of the property for a year, unless sooner claimed by the person entitled thereto, then sell or otherwise dispose of the property, and transfer the proceeds of any sale or disposition to the state treasurer as abandoned funds.

F. Within six months after the last day specified in the notice for the filing of claims, or a longer period allowed by the court in which the notice of possession was filed, the commissioner [director] shall:

(1) reject any claim if he doubts the validity thereof;

(2) determine the amount, if any, owing to each known creditor or depositor and the priority class of his claim under the Banking Act;

(3) prepare a schedule of his determinations for filing in the court in which notice of possession was filed;

(4) notify each person whose claim has not been allowed in full, and publish once a week for three successive weeks a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the commissioner [director] will file his schedule in court.

G. Within twenty days after the filing of the commissioner's [director's] schedule, any creditor, depositor or stockholder may file an objection to any determination made. Any objections so filed shall be heard and determined by the court, upon such notice to the commissioner [director] and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing his schedule, the commissioner [director] may, from time to time, make partial distribution to the holders of claims which are undisputed or have been allowed by the court, if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the commissioner [director] shall make final distribution.

H. The following claims shall have priority in the order named:

(1) obligations incurred by the commissioner [director];

(2) wages and salaries of officers and employees earned during the three-month period preceding the commissioner's [director's] possession in an amount not exceeding six hundred dollars ($600) a month for any one person;

(3) fees and assessments due to the department [financial institutions division]; and

(4) deposits to the extent of one hundred dollars ($100) for each depositor.

I. After the payment of all other claims with interest at the maximum rate permitted on time deposits, the commissioner [director] shall pay claims otherwise proper which were not filed within the time prescribed. If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class pro rata.

J. Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

K. Unclaimed funds remaining after completion of the liquidation shall be retained for five years by the commissioner [director] unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the state treasurer as abandoned funds.

L. When the assets have been distributed in accordance with the Banking Act, the commissioner [director] shall file an account with the court. Upon approval of the report, the commissioner [director] shall be relieved of liability in connection with the liquidation and the charter shall be cancelled.

History: 1953 Comp., § 48-22-63, enacted by Laws 1963, ch. 305, § 63.

Cross-references. - For Uniform Unclaimed Property Act, see 7-8-1 NMSA 1978.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Purpose of article. - Laws 1915, ch. 67, § 86, was passed to obviate the cumbersome and expensive method formerly prevailing, under which creditors and not the receiver enforced the stockholders' liability. Melaven v. Schmidt, 34 N.M. 443, 283 P. 900 (1929); Clapp v. Smith, 22 N.M. 153, 159 P. 523 (1916); Maddison v. Bryan, 31 N.M. 404, 247 P. 275 (1926).

Laws 1933, ch. 32, § 1, is not a mandatory statute requiring the judicial department to appoint the state bank examiner receiver of an insolvent bank, or providing that no receiver shall be appointed by the court except upon application of the attorney general. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934) (decided under former law).

And therefore is only a recommendation to the judiciary. - Formerly, it was held that the provision of Laws 1933, ch. 32, § 1, that the court "shall appoint the state bank examiner as such receiver" amounts to no more in an equity proceeding than a recommendation to the judiciary to appoint him; otherwise the enactment would violate N.M. Const., art. VI, § 13. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Court aid to wind up affairs. - Under former law, it was held that no state officer has authority to wind up the affairs of an insolvent bank without the aid of a court. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Judge with discretion as to receiver appointment. - The district judge to whom application for appointment of receiver for insolvent bank was made under Laws 1921, ch. 134, was not bound to appoint the state bank examiner receiver, but could exercise discretion and appoint another as held under former law. State ex rel. Read v. Ryan, 27 N.M. 651, 204 P. 68 (1922).

Officer's power of possession only preliminary to court action. - In this state, under former law, it was held that power conferred upon the state banking officer to take possession of a state bank is only preliminary to court action, in order to give the state officer more than temporary standing. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Receiver of insolvent bank is not representative of creditors with power to institute a suit for the recovery of the added liability of stockholders as was formerly held. Clapp v. Smith, 22 N.M. 153, 159 P. 523 (1916).

Stockholders' liability enforceable by receiver. - Under Laws 1915, ch. 67, § 86, it was formerly held that statutory liability of stockholders of a bank which has failed is an asset in the hands of the receiver, who may enforce it in the course of liquidation without awaiting final determination of fact or amount of deficiency of assets. Maddison v. Bryan, 31 N.M. 404, 247 P. 275 (1926).

Person maintaining suit. - Laws 1933, ch. 32, § 1, contains no direction as to the name of the person in whose name the suit shall be maintained. Cooper v. Otero, 38 N.M. 164, 29 P.2d 341 (1934).

Winding up decree to be liberally construed. - It was held under former law that in a statutory proceeding to wind up an insolvent bank, a decree which was inaccurately worded should not be subjected to a fine analysis, but should be taken with the purpose of the statute in view. Cooper v. Manning, 39 N.M. 206, 43 P.2d 1055 (1935).

Distribution of assets of insolvent state bank is governed by general incorporation laws. State v. Bank of Magdalena, 33 N.M. 473, 270 P. 881 (1928), distinguished, State v. State Bank, 38 N.M. 338, 32 P.2d 1017 (1934) (decided under former law).

Preferences and setoffs are governed by the general incorporation laws for the winding up of insolvent corporations. State v. Bank of Magdalena, 33 N.M. 473, 270 P. 881 (1928), distinguished, State v. State Bank, 38 N.M. 338, 32 P.2d 1017 (1934) (decided under former law).

State preference lost after receiver appointed. - It was held under former law that where a receiver has been appointed for an insolvent state bank, the state is not entitled

to a preference over other creditors, as to money on deposit at the time the receiver was appointed. State v. First State Bank, 22 N.M. 661, 167 P. 3, 1918A L.R.A. 394, distinguished, State v. People's Sav. Bank & Trust Co., 23 N.M. 282, 168 P. 526 (1917).

Deposits of the state in an insolvent bank lose priority of payment when the assets of such bank are turned over to the hands of a receiver. State v. People's Sav. Bank & Trust Co., 23 N.M. 282, 168 P. 526 (1917)(decided under former law).

Subsequent purchaser cannot engage in savings and loan business when association liquidated. - When the assets of a savings and loan association are liquidated by a receiver pursuant to an order of the court, the association is terminated and its "charter" or authority to transact business is terminated as well. Therefore, no "charter" or valid franchise remains entitling a subsequent purchaser to engage in the savings and loan business. 1981 Op. Att'y Gen. No. 81-22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 765.

Right of owner of check which the drawer bank held for him at time it closed its doors to a preference, 17 A.L.R. 196.

Status of Christmas club deposits as savings or as general deposit, 21 A.L.R. 1128.

Trust or preference in respect of money placed in bank for purpose of transaction with third persons, 31 A.L.R. 472, 93 A.L.R. 881.

Specified obligations, preference in respect of deposits designated for payment of, 32 A.L.R. 967.

Prerogative right of county or other political subdivision to preference, 36 A.L.R. 640, 52 A.L.R. 755, 90 A.L.R. 208.

Taxes, preference in favor of individuals as to funds deposited by them to credit of public treasurer in attempt to pay, 37 A.L.R. 130.

Clearinghouse settlement, balance due other banks on, as preferred claim against insolvent bank, 44 A.L.R. 1535.

Securities deposited in bank, rights of owners of, upon its insolvency, 51 A.L.R. 914, 84 A.L.R. 1534, 126 A.L.R. 625.

Right of holder of certified check to preference out of assets of insolvent bank, 51 A.L.R. 1034.

Right in absence of statute to preference in respect of deposit of public funds in insolvent bank, 51 A.L.R. 1336, 65 A.L.R. 690, 103 A.L.R. 621.

Prerogative right of state to preference at common law, 65 A.L.R. 1331, 90 A.L.R. 184, 167 A.L.R. 640.

Estoppel as regards claim against insolvent bank, 69 A.L.R. 456.

Depositor's right to preference in assets of insolvent bank because dissuaded by bank officials or employees from withdrawing deposit after insolvency, 80 A.L.R. 795.

Veteran's compensation or war risk insurance proceeds or pension money, preference in respect of deposit of, 83 A.L.R. 1089, 84 A.L.R. 1530.

Paper of insolvent bank, issuance or receipt of, as converting trust relation into debtor and creditor relation so as to defeat preference, 92 A.L.R. 1244.

Depositor's right to priority as based upon fact of bank's pledge of his note rendered deposit unavailable as set off against note in hands of pledgee, 162 A.L.R. 1175.

9 C.J.S. Banks and Banking § 500.

58-1-76. Unauthorized conduct of banking business.

It is unlawful for any unauthorized person to engage in the business of receiving deposits, discounting evidences of indebtedness or receiving money for transmission, to represent that he is or is acting for a bank or to use an artificial or corporate name which purports to be or suggests that it is the name of a bank.

History: 1953 Comp., § 48-22-64, enacted by Laws 1963, ch. 305, § 64.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 25.

9 C.J.S. Banks and Banking § 9.

58-1-77. Receipt of deposits while insolvent.

It is unlawful for a bank to receive any deposit while insolvent or for an officer, director or employee who knows or, in the proper performance of his duty, should know of such insolvency to receive or authorize the receipt of such deposit.

History: 1953 Comp., § 48-22-65, enacted by Laws 1963, ch. 305, § 65.

Insolvency essential element of offense. - It was held under former law that insolvency of the bank at the time of receiving the deposit is the essential element of the offense. State v. Nance, 32 N.M. 158, 252 P. 1002 (1927).

Depositor's claim without preference. - While Laws 1915, ch. 67, § 41, gives a depositor a right of action to recover deposits accepted by an insolvent bank, it does not

give the depositor's claim preference over other claims. Jameson v. First Sav. Bank & Trust Co., 39 N.M. 545, 51 P.2d 607 (1935)(decided under former law).

Sufficiency of indictment. - It was held under former law that the indictment alleging that defendant received a deposit "then and there having knowledge of the fact that such bank was insolvent" is sufficient. State v. Nance, 32 N.M. 158, 252 P. 1002 (1927).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 198, 242.

Constitutionality of statute making failure of bank prima facie evidence of knowledge of insolvency at time of receipt of deposits, 51 A.L.R. 1154, 86 A.L.R. 179, 162 A.L.R. 495.

Constitutionality of statute rendering officers or directors of bank criminally liable for receiving deposit after insolvency, 76 A.L.R. 530.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 A.L.R. 1320.

When limitation commences to run against action to enforce personal liability of bank officers or directors for receiving deposits after knowledge of bank's unsafe condition, 78 A.L.R. 897.

Sufficiency of evidence to show defendant's knowledge of bank's insolvency in prosecution for receiving deposits knowing bank insolvent, 87 A.L.R. 504.

Civil liability of bank officer or director permitting deposit after insolvency of bank, 87 A.L.R. 1402.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, or substitute therefor, as regards criminal responsibility of bank officer or employee for receiving deposit after insolvency, 98 A.L.R. 615.

Statute as to taking deposit when insolvent as special or class legislation, or as denying equal protection of laws, 111 A.L.R. 144.

9 C.J.S. Banks and Banking § 156.

58-1-78. Unlawful service as officer or director.

It is unlawful for any person to serve as an officer or director of a bank, who:

A. is an officer, director or employee of a directly competitive bank in the same community;

B. has been convicted of an offense constituting, in the jurisdiction in which the judgment was rendered, a violation of the banking laws or a felony, or who has been found liable, either in a civil or criminal action, for a breach of trust; or

C. is indebted to the bank for more than thirty days upon a judgment that has become final.

History: 1953 Comp., § 48-22-66, enacted by Laws 1963, ch. 305, § 66.

Prosecutions under general fraud and conspiracy statutes not prohibited. - There is no basis for holding that the specific language of this section prohibits prosecutions under the general fraud and conspiracy statutes. State v. Thoreen, 91 N.M. 624, 578 P.2d 325 (Ct. App.), cert. denied, 91 N.M. 610, 577 P.2d 1256 (1978).

Bank cashier was guilty of embezzlement where he was unable to account for shrinkage in proceeds of sale of certain bonds entrusted to bank for sale. State v. Gaunt, 32 N.M. 17, 250 P. 634 (1926)(decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 180.

Officer or employee of depository or bailee as sustaining a criminal charge against him of embezzlement of property of depositor or bailor, 45 A.L.R. 933.

Liability of bank in respect to funds of third persons misappropriated by bank officer or employee and used to cover his own overdraft or defalcation, 48 A.L.R. 464.

Aiding and abetting misapplication of bank funds by officer or employee, criminal responsibility for, 74 A.L.R. 1112, 131 A.L.R. 1322.

Rights and liabilities of bank paying or giving credit for personal check of own officer whose account is not good, 171 A.L.R. 880.

9 C.J.S. Banks and Banking § 118.

58-1-79. Unlawful gratuity or compensation; transactions of persons connected with state bank.

A. It is unlawful for an affiliate of a bank or for an officer, director or employee of a bank, or affiliate of a bank:

(1) to solicit, accept or agree to accept, directly or indirectly, from any person other than the institution any gratuity, compensation or other personal benefit for any action taken by the institution or for endeavoring to procure any such action;

(2) to have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution;

(3) to require any borrower to purchase insurance from an affiliate of a bank, or from an officer, director or employee of a bank or affiliate of a bank, or through a particular insurance company, agent, solicitor or broker, as a condition precedent to the making of a loan or to decline adequate existing insurance where such existing insurance is provided by an insurance company licensed by this state. Provided, however, a bank may require a borrower to supply such insurance as may reasonably be necessary for the protection of the bank in making a loan.

B. In this section the term "affiliate" includes:

(1) any person who holds a majority of the stock of a bank or has been determined by the commissioner [director of the financial institutions division of the regulation and licensing department] to hold a controlling interest therein, any other corporation in which such person owns a majority of the stock and any partnership in which he has an interest;

(2) any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock and any partnership in which such person has an interest;

(3) any corporation of which a majority of the directors are officers, directors or employees of the institution or of which officers, directors, trustees or employees constitute a majority of the directors of the institution.

History: 1953 Comp., § 48-22-67, enacted by Laws 1963, ch. 305, § 67.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 222.

Fraud: responsibility of bank for fraud of officer or agent inducing customer or debtor of bank to enter into transaction with such officer or agent personally or with third person, 117 A.L.R. 389.

9 C.J.S. Banks and Banking § 121.

58-1-80. Unlawful concealment of transaction.

It is unlawful for an officer, director, employee, attorney or agent of a bank to conceal or endeavor to conceal any transaction of the bank from any officer, director or employee of the bank or any official or employee of the department [financial institutions division of the regulation and licensing department] to whom it should properly be disclosed.

History: 1953 Comp., § 48-22-68, enacted by Laws 1963, ch. 305, § 68.

Bracketed material. - See 58-1-32 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking §§ 118, 148.

58-1-81. Improper maintenance of accounts; false or deceptive entries and statements.

It is unlawful for an officer, director, employee or agent of a bank to:

A. maintain or authorize the maintenance of any account of the bank in a manner which, to his knowledge, does not conform to the requirements prescribed by the Banking Act or by the commissioner [director of the financial institutions division of the regulation and licensing department];

B. make, with intent to deceive, any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution;

C. obstruct or endeavor to obstruct a lawful examination of the institution by an officer or employee of the department [financial institutions division].

History: 1953 Comp., § 48-22-69, enacted by Laws 1963, ch. 305, § 69.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 231 et seq.

Construction and application of statutes relating to civil liability of directors, officers or employees of bank, in case of false reports or statements, 114 A.L.R. 472.

9 C.J.S. Banks and Banking §§ 149, 150.

58-1-82. Unlawful payment of penalties and judgments against others, including directors and officers.

It is unlawful for a state bank to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien.

History: 1953 Comp., § 48-22-70, enacted by Laws 1963, ch. 305, § 70.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 6.

58-1-83. Unlawful use of words "safe deposit."

It is unlawful for any person to use the words "safe deposit," "safety deposit" or other words deceptively similar thereto, in connection with the rental of storage space, or in the title or name under which business was done, unless he is:

A. a person subject to the jurisdiction of the banking department [financial institutions division of the regulation and licensing department] of this state;

B. a manufacturer or dealer in safe deposit facilities or equipment;

C. an association, the membership of which is composed of officers or institutions subject to the jurisdiction of the banking department [financial institutions division] of this or other states; or

D. a person who makes no charge for such space.

History: 1953 Comp., § 48-22-71, enacted by Laws 1963, ch. 305, § 71.

Bracketed material. - See 58-1-32 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 476.

9 C.J.S. Banks and Banking § 6.

58-1-84. Unlawful sanctions; violations of rules and orders.

A. Any person responsible for an act or omission expressly declared to be unlawful by the Banking Act is guilty:

(1) of a misdemeanor punishable by imprisonment for a term not exceeding one year or a fine not exceeding five thousand dollars ($5,000) or both;

(2) of a felony punishable by imprisonment not exceeding five years or a fine not exceeding ten thousand dollars ($10,000) or both, if the act or omission was done or made with intent to defraud.

B. An officer, director, employee, agent or attorney of a bank is responsible for an act or omission of the institution declared to be unlawful by the Banking Act whenever, knowing that such act or omission is unlawful, he participates in authorizing, executing, ratifying or concealing such act, or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

C. A director shall be deemed to participate in any action of which he has knowledge taken or omitted to be taken by the board of which he is a member unless he dissents

therefrom in writing and promptly notifies the commissioner [director of the financial institutions division of the regulation and licensing department] of his dissent.

D. It is unlawful to knowingly violate any lawful rule, regulation or order of the commissioner [director].

History: 1953 Comp., § 48-22-72, enacted by Laws 1963, ch. 305, § 72.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 221 et seq.

9 C.J.S. Banks and Banking § 38.

58-1-85. Injunction.

Whenever a violation of the Banking Act, by a bank or an officer, director or employee thereof, is threatened or impending and will cause substantial injury to the institution or to the depositors, creditors or stockholders thereof, the district court of Santa Fe county may, upon the suit of the commissioner [director of the financial institutions division of the regulation and licensing department], issue an injunction restraining such violation.

History: 1953 Comp., § 48-22-73, enacted by Laws 1963, ch. 305, § 73.

Severability clauses. - Laws 1963, ch. 305, § 76, provides for the severability of the act if any part or application thereof is invalid.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 409.

ARTICLE 2
INSURANCE OF BANK DEPOSITS

58-2-1. ["Banking institution" defined.]

The term "banking institution," as used in this act [58-2-1 to 58-2-8 NMSA 1978] shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

History: Laws 1935, ch. 16, § 1; 1941 Comp., § 50-1101; 1953 Comp., § 48-11-1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 1.

9 C.J.S. Banks and Banking § 1.

58-2-2. [Acceptance of federal laws.]

Any banking institution now or hereafter reorganized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or endure [enure] to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of Section 8, of the federal "Banking Act of 1933" (Sec. 12B of the Federal Reserve Act, as amended), which establish the federal deposit insurance corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the federal deposit insurance corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

History: Laws 1935, ch. 16, § 2; 1941 Comp., § 50-1102; 1953 Comp., § 48-11-2.

Federal Reserve Act. - Section 12B of the Federal Reserve Act, as amended, referred to in this section, relating to the federal deposit insurance corporations, was withdrawn from the Federal Reserve Act and made a separate act, known as the Federal Deposit Insurance Act by 64 Stat. 873, and now is compiled in the United States Code as 12 U.S.C. §§ 1811 to 1832.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 427.

Rights of owners of securities deposited in bank to payment out of guaranty fund, 51 A.L.R. 920, 84 A.L.R. 1534, 126 A.L.R. 625.

Insolvency of bank guaranty fund as affecting rights or obligations of member banks and their depositors, 78 A.L.R. 808.

Bank guaranty laws as special or class legislation, 111 A.L.R. 148.

Draft, cashier's check or certified check, purchaser or holder of, as a depositor within statutes relating to guaranty or insurance of deposit liability, 111 A.L.R. 228.

Federal Deposit Insurance Corporation Act, constitutionality and construction of criminal provision of, 114 A.L.R. 489.

Trust business, constitutionality, construction and application of federal statute relating to power of national bank to engage in, 153 A.L.R. 410.

Interest in respect of insured deposit, liability of federal deposit insurance corporation for, 153 A.L.R. 532.

9 C.J.S. Banks and Banking § 782.

58-2-3. [Liquidation of banks by federal deposit insurance corporation.]

The federal deposit insurance corporation created by Section eight of the federal "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors.

The appropriate state authority, having the right to appoint a receiver or liquidator of a banking institution, may in the event of such closing tender to said corporation the appointment as receiver or liquidator of such banking institution, and if the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator, except insofar as such powers, privileges or duties are in conflict with the provisions of Subsection (1) of Section 12B of the Federal Reserve Act, as amended (Section 8 of said "Banking Act of 1933").

History: Laws 1935, ch. 16, § 3; 1941 Comp., § 50-1103; 1953 Comp., § 48-11-3.

Cross-references. - As to possession of and title to assets of closed banks, see 58-2-7 NMSA 1978.

Federal Reserve Act. - See 58-2-2 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 272.

Construction and application of provisions of Federal Reserve Act regarding continuance of bank deposit insurance after termination of insured status of bank, 143 A.L.R. 1053.

9 C.J.S. Banks and Banking § 785.

58-2-4. [Subrogation of federal corporation.]

Whenever any banking institutions shall have been closed as aforesaid, and said federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institutions, as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for in Subsection (1) of Section 12B of said Federal Reserve Act, as amended (being Section 8 of said "Banking Act of 1933") in the case of the closing of a national bank: provided, that the rights of depositors and other creditors of such closed institutions shall be determined in accordance with the applicable provisions of the laws of this state.

History: Laws 1935, ch. 16, § 4; 1941 Comp., § 50-1104; 1953 Comp., § 48-11-4.

Federal Reserve Act. - See 58-2-2 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 777.

Liability of Federal Deposit Insurance Corporation for interest in respect of insured deposit, 153 A.L.R. 532.

9 C.J.S. Banks and Banking § 530.

58-2-5. Exchange of information.

The director of the financial institutions division is authorized to accept in his discretion in lieu of any examination authorized by the laws of this state to be conducted by the division of a banking institution the examination that may have been made of same within a reasonable period by the federal deposit insurance corporation provided a copy of said examination is furnished to him. The director of the financial institutions division, may, also, in his discretion accept any report relative to the condition of a banking institution which may have been obtained by said corporation within a reasonable period, in lieu of a report authorized by the laws of this state to be required of such institution by the division, provided a copy of such report is furnished to the director of the financial institutions division.

The director of the financial institutions division may furnish to said corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions and of any or all reports made by same, and shall give access to and disclose to said corporation or any official or examiner thereof any and all information possessed by him with reference to the conditions or affairs of any such insured institution.

Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of Section 8 of the "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended) or of any amendment of or substitution for the same, to comply with the provision of said act, its amendments or substitutions or the requirements of said corporation relative to examinations and reports, nor to limit the powers of the director of the financial institutions division with reference to examinations and reports under existing law.

History: Laws 1935, ch. 16, § 5; 1941 Comp., § 50-1105; 1953 Comp., § 48-11-5; Laws 1977, ch. 245, § 25.

Federal Reserve Act. - See 58-2-2 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking § 786.

58-2-6. Loans by and sale of assets to federal corporation.

With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the director of the financial institutions division or of a court or by action of its directors or in the event of its insolvency or suspension, the director of the financial institutions division and/or the receiver or liquidator of such institution with the permission of the court having jurisdiction may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, provided, that where said corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. The director of the financial institutions division upon the order of a court of record of competent jurisdiction, and the receiver or liquidator of any such institution may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the director of the financial institutions division or receivers or liquidators to pledge or sell assets in accordance with any existing law.

History: Laws 1935, ch. 16, § 6; 1941 Comp., § 50-1106; 1953 Comp., § 48-11-6; Laws 1977, ch. 245, § 26.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 222.

58-2-7. [Federal corporation as receiver or liquidator; possession of and title to assets.]

Upon the acceptance of the appointment of receiver or liquidator aforesaid by said corporation, the possession of and title to all the assets, business and property of such

banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

History: Laws 1935, ch. 16, § 7; 1941 Comp., § 50-1107; 1953 Comp., § 48-11-7.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 763 to 769.

9 C.J.S. Banks and Banking § 785.

58-2-8. [Enforcement of individual liability of stockholders and directors of closed banks.]

Among its other powers, said corporation, in the performance of its powers and duties as such receiver or liquidator, shall have the right and power upon the order of a court of record of competent jurisdiction to enforce the individual liability of the stockholders, and directors of any such banking institution.

History: Laws 1935, ch. 16, § 8; 1941 Comp., § 50-1108; 1953 Comp., § 48-11-8.

Severability clauses. - Laws 1935, ch. 16, § 9, provides for the severability of the act if any part or application thereof is invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 272.

9 C.J.S. Banks and Banking § 808.

ARTICLE 3
ACCOUNTS

58-3-1. Interest on accounts.

A. A state bank may maintain time and savings deposit accounts and pay interest on balances therein at rates which need not be uniform. The director of the financial institutions division may, by general regulation, fix maximum rates of interest.

B. Time or savings account deposits shall be repaid to depositors under regulations adopted by the board of directors from time to time. These shall be available at the bank for inspection by depositors upon request, and depositors shall be so informed.

History: 1953 Comp., § 48-4-2, enacted by Laws 1975, ch. 330, § 4; 1977, ch. 245, § 24.

National banks in New Mexico are subject to this section. - See 1959-60 Op. Att'y Gen. No. 60-141.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 415.

Construction of savings bank bylaw expressly assented to by depositor, relieving bank from liability for payment to unauthorized person, 52 A.L.R. 760.

Constitutionality of statute in relation to interest on bank deposit, 62 A.L.R. 489.

Passbook, validity and construction of agreement for, or condition of, indemnity to bank in event of payment to depositor who cannot produce, 81 A.L.R. 1150.

Effect, on bank depositor's rights and those of bank, of printed rules in passbook not expressly accepted, 60 A.L.R.2d 708.

Bank's liability to customer for imposing allegedly excessive service charges, 73 A.L.R.4th 1028.

Certificate of deposit as "security" under federal securities laws, 82 A.L.R. Fed. 553.

9 C.J.S. Banks and Banking § 207.

58-3-2. Refusal to accept signatures or endorsements.

A. A bank may refuse to pay any check, draft or order drawn upon it when the officers of the bank or national bank have reason to believe that the person signing or endorsing the instrument is or was so under the influence of alcohol or drug as to make it reasonably doubtful whether such person is or the person was at the time of signing or endorsing the check, draft or order capable of transacting business. No damages shall be awarded in any action against the bank or trust company or its officers for refusing in good faith to pay any such check, draft or order for such reason.

B. A bank, national bank or the principal officers of a bank or national bank are not liable for damages for refusing in good faith to pay any check, draft or order pursuant to Subsection A of this section.

History: 1953 Comp., § 48-10-10, enacted by Laws 1975, ch. 330, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 209.

58-3-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1978, ch. 122, §§ 1 and 2, repeal 48-10-3, 1953 Comp. (58-3-3 NMSA 1978), relating to joint accounts, effective March 6, 1978.

58-3-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 209, § 18 repeals 58-3-4 NMSA 1978, as amended by Laws 1987, ch. 331, § 1, relating to withdrawals from financial institutions, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

ARTICLE 4
MERGER AND CONSOLIDATION OF BANKS

58-4-1. Additional definitions.

As used in this title [58-4-1 to 58-4-12 NMSA 1978], unless the context otherwise requires:

A. "converting bank" means a bank converting from a state to a national bank, or the reverse;

B. "merger" includes consolidation;

C. "merging bank" means a party to a merger;

D. "resulting bank" means the bank resulting from a merger or conversion;

E. "dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this title.

History: 1941 Comp., § 50-1901, enacted by Laws 1951, ch. 37, § 1; 1953 Comp., § 48-13-1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 27 to 29.

Consolidation or merger of bank as affecting statutory superadded liability of stockholders, 154 A.L.R. 427.

9 C.J.S. Banks and Banking §§ 467, 468, 737, 738.

58-4-2. Resulting national bank.

A. Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of two-thirds of each class of voting stock of a state bank, at a meeting called in conformity with the provisions of Section 5 [58-4-5 NMSA 1978], shall be required for the merger or

conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in Section 10 [58-4-10 NMSA 1978].

B. Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate.

History: 1941 Comp., § 50-1902, enacted by Laws 1951, ch. 37, § 2; 1953 Comp., § 48-13-2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 739.

58-4-3. Resulting state bank.

Upon approval by the director of the financial institutions division, banks may be merged to result in a state bank or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders.

History: 1941 Comp., § 50-1903, enacted by Laws 1951, ch. 37, § 3; 1953 Comp., § 48-13-3; Laws 1977, ch. 245, § 28.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking §§ 468, 739.

58-4-4. Merger procedure; resulting state bank.

A. The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(1) a statement or recital that the agreement is subject to approval by the director of the financial institutions division and by the stockholders of each merging bank;

(2) the name of each merging bank and location of each office;

(3) with respect to the resulting bank:

(a) the name and location of the principal and the other offices;

(b) the name and residence of each director to serve until the next annual meeting of the stockholders;

(c) the name and residence of each officer;

(d) the amount of capital, the number of shares and the par value of each share;

(e) the amount, terms and preferences if preferred stock is to be issued; and

(f) the amendments to its charter and bylaws;

(4) provisions governing:

(a) the manner of converting the share of the merging banks into shares of the resulting state bank; and

(b) the manner of disposing of the shares of the resulting state bank not taken by the dissenting stockholders of each merging bank; and

(5) such other provisions as the director of the financial institutions division may require to enable him to discharge his duties with respect to the merger.

B. After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director of the financial institutions division for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board of each merging state bank and evidence of proper action by the board of directors of any merging national bank.

C. After receipt by the director of the financial institutions division of the papers specified in Subsection A, the director of the financial institutions division shall approve or disapprove the merger agreement. The director of the financial institutions division shall approve the agreement if he finds that:

(1) the resulting state bank meets the requirements as to the formation of a new state bank;

(2) the agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(3) the agreement is fair; and

(4) the merger is not contrary to the public interest.

D. If the director of the financial institutions division disapproves an agreement, the objections shall be stated in writing and the merging banks shall be given an opportunity to amend the merger agreement to obviate such objections.

History: 1941 Comp., § 50-1904, enacted by Laws 1951, ch. 37, § 4; 1953 Comp., § 48-13-4; Laws 1977, ch. 245, § 29.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 27.

Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 419.

58-4-5. Merger; approval by stockholders of state banks.

A. To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

B. Notice of the meeting of stockholders of each state bank shall be given by publication in a newspaper of general circulation in the place where its principal office is located at least once a week for four successive weeks, and by mail at least fifteen days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of Section 10 [58-4-10

NMSA 1978] and shall state that the section sets forth the exclusive rights and remedies of dissenting stockholders.

History: 1941 Comp., § 50-1905, enacted by Laws 1951, ch. 37, § 5; 1953 Comp., § 48-13-5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, 48 A.L.R.3d 430.

9 C.J.S. Banks and Banking § 468.

58-4-6. Effective date of merger; filing of approved agreement; certificate of merger as evidence.

A. A merger or sale which is to result in a state bank shall, unless a late date is specified in the agreement, become effective upon the filing with the director of the financial institutions division of the executed agreement together with copies of the resolutions of the stockholders of each merging, purchasing and selling bank approving it and a list of the owners of the shares [who] voted against the merger or purchase, certified by the bank's president or vice president and a secretary or cashier. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

B. The director of the financial institutions division shall promptly issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held.

History: 1941 Comp., § 50-1906, enacted by Laws 1951, ch. 37, § 6; 1953 Comp., § 48-13-6; Laws 1977, ch. 245, § 30.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 27.

9 C.J.S. Banks and Banking § 468.

58-4-7. Conversion of national into state bank.

A. A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank, shall be granted a charter by the director of the financial institutions division unless he finds that the bank does not meet the standards as to location of offices, capital structure and business experience and character of officers and directors for the incorporation of a state bank.

B. The national bank may apply for each charter by filing with the director of the financial institutions division a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

History: 1941 Comp., § 48-13-7, enacted by Laws 1951, ch. 37, § 7; 1953 Comp., § 48-13-7; Laws 1977, ch. 245, § 31.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

Novation where bank transfers it assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 737.

58-4-8. Continuation of corporate entity; use of old name.

A. A resulting state or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers and duties of each merging bank or the converting bank, except as affected by the law of this state in the case of a resulting state bank or the laws of the United States in the case of a resulting national bank, and by the charter and bylaws of the resulting bank.

B. A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

C. Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing, except when the resulting bank is not authorized to or has not qualified to exercise the powers conferred or required by the writing.

History: 1941 Comp., § 50-1908, enacted by Laws 1951, ch. 37, § 8; 1953 Comp., § 48-13-8.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

9 C.J.S. Banks and Banking § 468.

58-4-9. Sale of all assets of bank or department.

A. Any state bank or trust company may sell to any other bank or trust company:

(1) all or substantially all of the selling bank assets and business; or

(2) all or substantially all of the assets and business of any department of the selling bank.

B. Any state bank or trust company may, upon assuming the liabilities relating thereto, purchase:

(1) all or substantially all of the assets and business of another bank or trust company; or

(2) all or substantially all of the assets and business of any department of another bank or trust company.

C. The agreement of purchase and sale shall be authorized, approved by the director of the financial institutions division, approved by the vote of a majority of the stockholders of the purchasing and selling bank at a meeting called for the purpose in like manner as meetings to approve mergers are called and filed with the director of the financial institutions division accompanied by evidence of such stockholders' approval in like manner as agreements of merger are filed. After such approval is given by the stockholders a notice of such sale shall be published once a week for three successive weeks in a newspaper of large general circulation in the county in which the selling bank has its principal office, and proof of such publication shall be filed with the director of the financial institutions division.

D. Notwithstanding any term of the agreement, or of his contract of deposit, any depositor whose business is thus sold has the right to withdraw his deposit in full on demand after such sale unless by dealing with purchasing bank with knowledge of the purchase he ratifies the transfer.

E. The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank subject to the right of the court, on petition of any interested party, to appoint another or succeeding fiduciary to the positions so transferred. Until the court appoints another or succeeding fiduciary the purchasing bank shall, if qualified to do so, exercise any fiduciary function vested in the selling bank.

F. No right against or obligation of the selling bank in respect of the assets or business sold shall be released or impaired by the sale until one year from the last date of publication of the notice pursuant to Subsection C of this section, but after the expiration of such year, no action can be brought against the selling bank on account of any

deposit, obligations, trust or asset transferred to or liability assumed by the purchasing bank.

History: 1941 Comp., § 48-13-9, enacted by Laws 1951, ch. 37, § 9; 1953 Comp., § 48-13-9; Laws 1977, ch. 245, § 32.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 468.

58-4-10. Dissenting stockholders.

A. A dissenting stockholder of a state bank shall be entitled to receive the value in each of only those shares which were voted against a merger to result in a state bank, against the conversion of a state bank into a national bank or against a sale of all or substantially all of the state bank's assets, and only if written demand thereupon is made to the resulting state or national bank at any time within thirty days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three appraisers, one to be selected by the vote of the owners of two-thirds of the shares involved at a meeting called by the director of the financial institutions division on 10 days notice, one by the board of directors of the resulting state or national bank and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If any necessary appraiser is not appointed within 60 days after the effective date of the merger or conversion, the director of the financial institutions division shall make the necessary appointment, or if the appraisal is not completed within 90 days after the merger or conversion becomes effective, the director of the financial institutions division shall cause an appraisal to be made.

B. The merger agreement may fix an amount which the merging banks consider to be the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which the resulting bank will pay dissenting stockholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

C. The expenses of appraisal shall be paid by the resulting state bank except where the value fixed by the appraisers does not exceed the value fixed by the merger agreement in which case one-half of the expenses shall be paid by the resulting bank and one-half by the dissenting stockholders requesting the appraisal in proportion to their respective holdings.

History: 1941 Comp., § 50-1910, enacted by Laws 1951, ch. 37, § 10; 1953 Comp., § 48-13-10; Laws 1977, ch. 245, § 33.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 29.

Construction and effect of provisions for payment of dissenting stockholders in statutes relating to merger, consolidation or reorganization of banks or other corporations, 87 A.L.R. 597, 162 A.L.R. 1237, 174 A.L.R. 960.

Constitutionality of recent legislation relating to merger, consolidation or reorganization of banks as affected by rights of dissenting creditors or stockholders, 92 A.L.R. 1337, 96 A.L.R. 1445, 104 A.L.R. 1203.

9 C.J.S. Banks and Banking § 468.

58-4-11. Nonconforming assets or business.

If a merging, converting or selling bank has assets which do not conform to the requirements of state law for the resulting or purchasing state bank or carries on business activities which are not authorized or permitted for the resulting or purchasing state bank, the director of the financial institutions division may permit a reasonable time to conform with the law of this state, and, in the case of a resulting or purchasing state bank that is not to exercise trust powers, shall require that prompt application be made to a court of competent jurisdiction for the appointment of a successor trustee.

History: 1941 Comp., § 50-1911, enacted by Laws 1951, ch. 37, § 11; 1953 Comp., § 48-13-11; Laws 1977, ch. 245, § 34.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 419.

58-4-12. Book value of assets.

Without approval by the director of the financial institutions division no asset shall be carried on the books of the resulting or purchasing state bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.

History: 1941 Comp., § 50-1912, enacted by Laws 1951, ch. 37, § 12; 1953 Comp., § 48-13-12; Laws 1977, ch. 245, § 35.

Compiler's note. - Laws 1951, ch. 37, § 13, provided where the act should be compiled in the 1941 Comp.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

9 C.J.S. Banks and Banking § 419.

ARTICLE 5
ORGANIZATION AND MANAGEMENT

58-5-1. Directors; oaths.

A. A director, when selected, shall take an oath that:

(1) he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such bank and will not knowingly violate, or willingly permit to be violated, any of the provisions of the Banking Act; and

(2) he is the owner, in good faith and in his own right, or jointly with his spouse, of the number of shares of stock required by law standing in his name on the books of the corporation, and that the same is not hypothecated or in any way pledged as security for any loan or debt.

B. Such oath, subscribed by the director making it and certified by the notary public before whom it was taken, shall be immediately transmitted to the director of the financial institutions division and shall be filed and preserved in his office.

History: 1953 Comp., § 48-2-10, enacted by Laws 1975, ch. 330, § 1; 1977, ch. 245, § 19.

Banking Act. - See 58-1-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 78, 79, 221.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against office or employee who discloses or refuses to commit banking irregularity, 101 A.L.R. Fed. 377.

9 C.J.S. Banks and Banking § 115.

58-5-2. Branch banks.

A. Banks duly authorized to transact business in New Mexico are authorized to conduct branches subject to the limitations of Section 58-5-3 NMSA 1978 with the powers and limitations provided in this article, after having first obtained written approval of the director, which approval may be given or withheld by the director in his discretion. The director, in exercising his discretion, shall take into account, but not by way of limitation, factors such as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects and the general character of its management. His approval shall not be given until he has ascertained to his satisfaction:

(1) that the establishment of the branch will meet the needs and promote the convenience of the community to be served by the branch; and

(2) that the probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch and of the existing banks in the same community. An investigation fee of one thousand dollars ($1,000) shall accompany each application for a branch.

B. Branch banks shall be operated as branches under the control and direction of the board of directors and executive officers of the parent bank. The name of each branch shall refer to the name of the parent bank or a registered trade name used by the parent bank.

C. As used in this section, "branch bank" includes any additional house, office, agency or place of business at which deposits are received, checks are paid or money is lent; except, where the additional house, office, agency or place of business is connected with the main banking premises by subterranean or overhead passageways through which bank personnel may pass, it shall not be considered as a branch.

History: 1953 Comp., § 48-2-16, enacted by Laws 1965, ch. 130, § 1; 1973, ch. 226, § 1; 1977, ch. 245, § 20; 1989, ch. 209, § 7; 1991, ch. 12, § 1.

The 1991 amendment, effective June 14, 1991, in Subsection B, deleted "of and under the name of the parent bank" following "branches" in the first sentence and added the second sentence.

Customer-bank communication terminal considered branch bank. - If used to receive deposits, a customer-bank communication terminal (CBCT) which is owned by a bank for the sole use of its own customers should be considered as a branch bank. It is not necessary that a CBCT also provide the other services mentioned in Subsection C of this section to be classified a branch bank. 1975 Op. Att'y Gen. No. 75-52.

When branch bank considered as parent bank. - A state bank branch manager does not transform a branch bank into a parent bank for the purposes of this section unless he wields the whole executive power of the corporation such that any wanton, malicious intent of his, in doing wrongful acts in behalf of the corporation to the injury of others,

may be treated as the intent of the corporation itself. Couillard v. Bank of N.M., 89 N.M. 179, 548 P.2d 459 (Ct. App. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 324.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

9 C.J.S. Banks and Banking § 55.

58-5-3. Branch banks; permit to open; powers; location.

Branches of banks authorized under the provisions of this article are authorized to accept deposits, cash checks, buy and sell exchange, make loans and do a general banking business. A permit to open the branch shall first be obtained from the director.

History: 1941 Comp., § 50-215b, enacted by Laws 1951, ch. 32, § 2; 1953 Comp., § 48-2-17; Laws 1977, ch. 245, § 21; 1991, ch. 12, § 2.

The 1991 amendment, effective June 14, 1991, in the first sentence, substituted "of banks authorized under the provisions of this article are" for "or banks authorized under the provisions hereof shall be," and deleted a proviso relating to the location of the branches and, in the second sentence deleted "of the financial institutions division" from the end and made a minor stylistic change.

Branch banks prohibited in counties with banks. - While this provision of the law now authorizes branch banks instead of banking agencies, they are still prohibited if there is a bank operating in the county in which the branch is proposed to be opened. Again, under present law, operation of a bank in the county is the criterion, not willingness to conduct branch banking operations in the area in question. 1959-60 Op. Att'y Gen. No. 59-35.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 324.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

9 C.J.S. Banks and Banking § 55.

58-5-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 30, § 5 repeals 58-5-4 NMSA 1978, as amended by Laws 1977, ch. 245, § 22, relating to fees for examination of a bank, effective January 1,

1986. For provisions of former section, see 1978 Original Pamphlet. For present comparable provisions, see 58-1-41, 58-1-41.1, and 58-1-41.2 NMSA 1978.

58-5-5. [Prior bank agencies; designation as branches.]

Any bank agency or agencies heretofore opened and conducted prior to the passage and approval hereof under the authorization contained in Chapter 50 Section 216 of the New Mexico Statutes Annotated, 1941 Compilation, are hereafter to be conducted and known as branches under the authorization hereof.

History: 1941 Comp., § 48-2-19, enacted by Laws 1951, ch. 32, § 4; 1953 Comp., § 48-2-19.

Compiler's note. - Section 50-216 of the 1941 Compilation referred to in this section was repealed by Laws 1951, ch. 32, § 5.

Unlawfully established agency not validated. - This section does not validate the prior action of the state bank examiner in granting the Otero county state bank a permit for its agency at White Sands since this section is not operative unless the agency previously established was done lawfully under the provisions of prior 50-216 of the 1941 Comp. 1959-60 Op. Att'y Gen. No. 59-35.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 324.

Power of national bank to establish branches or maintain separate banking offices, 30 A.L.R. 927, 50 A.L.R. 1340, 136 A.L.R. 471.

Branch banks, effect of maintenance of, on rights of creditors on insolvency of branch or parent bank, 50 A.L.R. 1353, 136 A.L.R. 471.

Judicial notice as to branch banks, 89 A.L.R. 1353.

9 C.J.S. Banks and Banking § 55.

58-5-6. Banking days; notice; closing.

A. A bank is authorized to fix from time to time the days and hours when each of its banking offices will be open to the public for its banking business. The days and hours need not be the same for each office. The bank shall notify the director of the financial institutions division of the days and hours of each banking office and of any change in the scheduled days and hours of each office. The bank shall give further notice by whatever means it selects as best calculated to advise the public of any change.

B. In an emergency or threat of an emergency or other circumstances beyond the control of the bank which would imperil persons or property or impede normal operations, all or any of its banking offices may be or remain closed. Notice of the

closing shall be given to the director of the financial institutions division as promptly as conditions will permit. The director of the financial institutions division may order the reopening of any office on his finding that conditions justifying the closing under this section do not then exist.

C. Any day on which a bank shall pursuant to this section be or remain closed shall with respect to the bank be deemed a legal holiday.

D. Any office of a bank may be closed under Subsection A or B of this section, even though other offices of the bank are open, but any day of such closing shall not be a legal holiday in respect to any acts to be performed by or at the bank on such day unless the act is to be performed only by or at the office which is closed.

E. Where pursuant to agreement or law any act is to be performed by or at a bank on any day when such bank shall pursuant to this section be or remain closed, the act may be performed on the next succeeding banking day with the effect as though performed on the appointed day.

F. Nothing in any law of this state shall in any manner whatsoever affect the validity of or render void or voidable the payment, satisfaction or acceptance of a check or other negotiable instrument or any other transaction by a bank because done or performed on any holiday or partial holiday.

History: 1953 Comp., § 48-2-20, enacted by Laws 1975, ch. 330, § 2; 1977, ch. 245, § 23.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 136, 429.

Banking hours, receipt of deposits after, as affecting right of depositor to reclaim it on bank's insolvency, 15 A.L.R. 429.

9 C.J.S. Banks and Banking § 158.

58-5-7. Legal holidays for banks.

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

New Year's Day ..... January 1
Martin Luther King, Jr.'s Birthday ..... 3rd Monday in January
Washington's Birthday ..... 3rd Monday in February

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

Independence Day ..... July 4

Labor Day ..... 1st Monday in September

Columbus Day ..... 2nd Monday in October

Armistice Day and Veterans' Day ..... November 11

Thanksgiving Day ..... 4th Thursday in November

Christmas Day ..... December 25.

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

B. Nothing in this section shall be deemed to require a bank to close or cease operating any remote financial service unit installed pursuant to the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978] or any automated teller machines located on the bank premises during all or any part of a legal bank holiday.

History: 1953 Comp., § 48-2-21, enacted by Laws 1975, ch. 330, § 3; 1977, ch. 340, § 1; 1977, ch. 359, § 19; 1981, ch. 42, § 1; 1991, ch. 75, § 1.

The 1991 amendment, effective July 1, 1991, inserted "Martin Luther King, Jr.'s Birthday" in the list of legal holidays and deleted "of the financial institutions division" following "director" in the provision on determination of the Memorial Day holiday.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 278, 710.

58-5-8. [Federal reserve; bank may become stockholder or member.]

Any incorporated bank may apply to the federal reserve board for the right to subscribe to the stock of the federal reserve bank organized within the federal reserve district where the applicant bank is located, and may become a stockholder of such bank and exercise all of the powers of member banks in accordance with the provisions of the act of congress entitled "Federal Reserve Act," approved December 23, 1913.

History: Laws 1915, ch. 67, § 96; 1919, ch. 120, § 35; C.S. 1929, § 13-701; 1941 Comp., § 50-222; 1953 Comp., § 48-2-27.

Compiler's note. - Laws 1915, ch. 67, § 97, which was renumbered as § 99 thereof by Laws 1919, ch. 120, § 36, and in which the only other changes were the insertions of the parenthetical references, read: "Sections 244 to 254 inclusive (sections 395 to 405 N.M. Statutes Annotated 1915), and sections 260 to 284 (sections 406 to 430 N.M. Statutes Annotated 1915) inclusive of the Compiled Laws of 1897, and all acts and parts of acts amendatory thereof, chapter 62 of the Laws of 1899 (sections 472 to 474 N.M. Statutes Annotated 1915), chapter 52 of the Laws of 1903 (sections 431 to 455 N.M. Statutes Annotated 1915), and all acts and parts of acts amendatory thereof, and all acts and parts of acts in conflict herewith are hereby repealed. Provided: That such repeal shall not abate or affect any suit, action or proceeding, civil or criminal, commenced under any of the laws so repealed prior to the taking of effect of this act, but all such suits, actions or proceedings may be prosecuted to final determination under the laws so repealed, and Provided further; that such repeal shall not affect, abridge, deny, divest or impair any right or cause of action, civil or criminal, accruing under the laws hereby repealed, but such right or cause of action so accruing or arising shall be brought and prosecuted under the laws so repealed."

Federal Reserve Act. - The Federal Reserve Act, referred to in this section, is compiled as 12 U.S.C. §§ 1, 35, 59, 82, 101a, 104, 121, 141, 142, 221, 222 to 226, 241 to 248, 261 to 263, 281 to 283, 285 to 290, 301 to 308, 321 to 329, 330 to 338, 341 to 347c, 348 to 351, 353 to 360, 371 to 372, 374 to 376, 391 to 393, 411 to 416, 418 to 421, 441 to 444, 446 to 448, 461, 462, 462a-1, 462b, 463 to 467, 481 to 486, 501a to 503, 521, 522, 601 to 604, and 611 to 632.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 5.

Interest in respect of insured deposit, liability of federal deposit insurance corporation for, 153 A.L.R. 532.

State laws regarding superadded liability of stockholders in state banks as affected by federal legislation, 169 A.L.R. 942.

9 C.J.S. Banks and Banking § 829.

58-5-9. [Compliance with federal reserve requirements satisfies state balance requirements.]

Compliance on the part of any bank or trust company exercising the right conferred by Section 96 [58-5-8 NMSA 1978] hereof with the reserve requirements of the Federal Reserve Act shall be held to be a full compliance with these [those] provisions of the laws of this state which require banks or trust companies to maintain cash balances in their vaults or with other banks, and no such bank or trust company shall be required to

carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act.

History: Laws 1915, ch. 67, § 97, enacted by Laws 1919, ch. 120, § 35; C.S. 1929, § 13-702; 1941 Comp., § 50-223; 1953 Comp., § 48-2-28.

Federal Reserve Act. - See 58-5-8 NMSA 1978 and notes thereto.

Law reviews. - For student symposium, "Constitutional Revision - State Aid to Private Enterprise in New Mexico," see 9 Nat. Resources J. 457 (1969).

58-5-10. [Federal reserve member banks; state examination.]

Such bank or trust company shall continue to be subject to the supervision and examination required by the laws of this state, except that the federal reserve board shall have the right, if it deems necessary, to make examinations; and the authorities of this state having supervision over such banks or trust companies may disclose to the federal reserve board, or to examiners duly appointed by it, all information in reference to the affairs of any bank or trust company which has become, or desires to become, a member of a federal reserve bank.

History: Laws 1915, ch. 67, § 98, enacted by Laws 1919, ch. 120, § 35; C.S. 1929, § 13-703; 1941 Comp., § 50-224; 1953 Comp., § 48-2-29.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking § 798.

58-5-11. Interstate acquisition; procedures.

A. A bank holding company which has control over a company operating as a bank in some jurisdiction, but not in this state, may acquire all, substantially all or such lesser portion as the director deems reasonable of the assets and liabilities of a bank operating in this state, but only if all the following conditions are met:

(1) the federal deposit insurance corporation has been appointed the receiver for the bank whose assets and liabilities are to be acquired;

(2) the federal deposit insurance corporation requests the bids for the assets and liabilities of the bank from institutions operating as banks in New Mexico or bank holding companies controlling an institution operating as a bank in New Mexico and the majority of which company's assets are located in New Mexico or from any qualified individuals and upon opening those bids finds none has met the minimum bid requirements set by the corporation; and

(3) after the federal deposit insurance corporation finds that the conditions of Paragraph (2) of this subsection have been met, it then requests and opens the bids of bank holding companies described at the beginning of this subsection and any supplemental bids of the bank holding companies, institutions and qualified individuals described in Paragraph (2) of this subsection, and finds that the bid of a bank holding company described at the beginning of this subsection is the highest bid.

B. Notwithstanding the provisions of Section 58-5-3 NMSA 1978, an institution operating as a bank in New Mexico may establish a branch or branches outside the county in which the institution is located for the purpose of acquiring assets and liabilities pursuant to this section. If these branches are approved, the institution shall be deemed located both in the county where the institution is located and in the county where the new branches are located for purposes of Section 58-5-3 NMSA 1978.

C. After the federal deposit insurance corporation has been appointed the receiver for a bank, the director may waive any procedural requirements, including any time periods but not including any fees, in the granting of permission to file articles of incorporation. The director may also temporarily waive any substantive requirement in the granting of permission to file articles of incorporation, other than those relating to financial or managerial capability, for a reasonable time as determined by the director. Failure to comply with any substantive requirement within the time set by the director shall make the applicant liable to the state at a rate of one thousand dollars ($1,000) per day of noncompliance. The director may institute a civil action in a court of competent jurisdiction to recover all or any portion of such sums owed.

History: 1978 Comp., § 58-5-11, enacted by Laws 1986, ch. 23, § 1.

ARTICLE 6
MISCELLANEOUS LOANS

58-6-1. [Power to make loans guaranteed under Servicemen's Readjustment Act.]

Without regard to any provision of law, banks, trust companies and building and loan associations organized under the laws of this state are authorized to make any loan guaranteed in whole or in part as provided by the Servicemen's Readjustment Act of 1944, and amendments thereto, or for which there is a commitment to so guarantee or for which a conditional guarantee has been issued.

History: 1941 Comp., § 50-309a, enacted by Laws 1945, ch. 122, § 1; 1953 Comp., § 48-3-10.

Compiler's note. - The Servicemen's Readjustment Act of 1944, referred to in this section, was repealed by Act of Sept. 2, 1958, Pub. L. No. 85-857 § 14, 72 Stat. 1268.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 684.

Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract, 29 A.L.R.4th 884.

9 C.J.S. Banks and Banking § 170.

58-6-2. Minor may contract for loan.

Any veteran of World War II otherwise eligible for a loan under the Servicemen's Readjustment Act of 1944, but who is a minor, is hereby empowered to contract and bind himself for a loan to be guaranteed under the said act. The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the Servicemen's Readjustment Act of 1944, as amended (38 U.S.C.A. 694 et seq.), and of the minor spouse of any eligible veteran, irrespective of his or her age, in connection with any transaction entered into pursuant to said act, as amended, is hereby removed for all purposes in connection with such transaction, including, but not limited to, incurring of indebtedness or obligations, and acquiring, encumbering, selling, releasing or conveying property or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of veterans affairs pursuant to such act; provided nevertheless that this act [58-6-1, 58-6-2 NMSA 1978] shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability.

History: 1941 Comp., § 50-309b, enacted by Laws 1945, ch. 122, § 2; 1947, ch. 186, § 1; 1953 Comp., § 48-3-11.

Compiler's note. - As to repeal of Servicemen's Readjustment Act of 1944, referred to in this section, see compiler's note under 58-6-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 118.

58-6-3. Legal disability of minors removed when borrowing money for educational purposes.

A. As used in this section:

(1) "person" means any individual, partnership, company, corporation, association, institution, department or agency; and

(2) "institution of higher learning" means any graduate or undergraduate junior college, college, university, technical and vocational institute or similar institution accredited or approved by the appropriate official, department or agency as provided by the laws of the state wherein the institution is located.

B. Any written promissory note, contract or other obligation entered into or executed by a minor sixteen years of age or over evidencing loans or other aid and assistance received by him from any person for the purpose of furthering his education at an institution of higher learning is enforceable against the minor with the same effect as if he had, at the time of its execution, reached the age of majority, provided that the person making the loan shall have in his records prior to making the loan a certification from the institution of higher learning that the minor is regularly enrolled in the institution of higher learning or has been accepted for regular enrollment in the institution of higher learning.

History: 1953 Comp., § 48-3-11.1, enacted by Laws 1967, ch. 159, § 1; 1973, ch. 138, § 18.

Cross-references. - For Student Loan Act, see 21-21-1 NMSA 1978 et seq.

For Medical Student Loan for Service Act, see 21-22-1 NMSA 1978 et seq.

58-6-4. [Mortgage loan sales to federal national mortgage association authorized.]

Notwithstanding any other provision of law, any institution, including a bank, trust company, building and loan association, insurance company or other banking, building or insuring organization, organized under the laws of this state, which has as one of its principal purposes the making or purchasing of loans secured by real estate mortgages, is authorized to sell such mortgage loans to the federal national mortgage association, a corporation chartered by an act of congress, or any successor thereof, and in connection therewith to make payments of any capital contributions, required pursuant to law, in the nature of subscriptions for stock of the federal national mortgage association or any successor thereof, to receive stock evidencing such capital contributions and to hold or dispose of such stock.

History: 1953 Comp., § 48-3-17, enacted by Laws 1955, ch. 109, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 683 et seq.

Power to mortgage as authorizing insertion of power of sale in mortgage, 72 A.L.R. 158.

10 C.J.S. Banks and Banking § 974.

58-6-5. Credit agreements; requirements.

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

B. A contract, promise or commitment to loan money or to grant, extend or renew credit or any modification thereof, in an amount greater than twenty-five thousand dollars

($25,000), not primarily for personal, family or household purposes, made by a financial institution shall not be enforceable unless in writing and signed by the party to be charged or that party's authorized representative provided however, that the provisions of this section shall not apply unless the financial institution is able to produce a statement signed by the borrower or recipient of loan monies on credit that he or she is aware of the provisions of this section.

History: Laws 1990, ch. 45, § 1.

Emergency clauses. - Laws 1990, ch. 45, § 2 makes the act effective immediately. Approved March 1, 1990.

ARTICLE 7
INSTALLMENT LOANS

58-7-1. Short title.

This act [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] shall be known as the "New Mexico Bank Installment Loan Act of 1959".

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract, 29 A.L.R.4th 884.

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 [Chapter 58, Article 15 NMSA 1978] or to any sales finance company as defined in the Motor Vehicle Sales Finance Act [58-19-1 to 58-19-14 NMSA 1978] 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 694.

What constitutes "business or commercial" purpose within meaning of § 104(1) of Truth in Lending Act (15 USCS § 1603(1)), exempting business or commercial credit transactions from act, 54 A.L.R. Fed. 491.

9 C.J.S. Banks and Banking § 6.

58-7-3. Loans covered by this act.

The New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] applies to any loan which:

A. under its terms is repayable in installments; or

B. under its terms is made under a credit card plan.

History: 1953 Comp., § 48-21-3, enacted by Laws 1959, ch. 327, § 3; 1961, ch. 215, § 1; 1967, ch. 41, § 1; 1975, ch. 252, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 684.

9 C.J.S. Banks and Banking § 1056.

58-7-3.1. Precomputed loan.

If the loan is a precomputed loan transaction, the interest charge may 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.

58-7-3.2. Extension agreement.

In precomputed 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.

58-7-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 263, § 4, repeals 58-7-4 NMSA 1978, relating to the rate of interest charge, effective July 1, 1981.

Compiler's note. - Laws 1981, ch. 263, § 6, revived 58-7-4 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repeals Laws 1981, ch. 263, § 6, effective June 30, 1983.

58-7-5. Prepayment; precomputed loan transactions.

If the entire unpaid balance outstanding on a precomputed 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 693.

Validity and construction of provision of mortgage or other real-estate financing contract prohibiting prepayment for a fixed period of time, 81 A.L.R.4th 423.

58-7-6. Additional charges.

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

A. 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;

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;

C. 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 such insurance shall be added to the loan and may accrue interest as provided for herein;

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;

E. if a loan under the New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] is secured and if the borrower fails to pay any governmental or other levy arising after the date of the loan which 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 such levy and add the amount so paid to the balance due from the borrower;

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

G. the actual cost of charges incurred in making a real estate loan secured by a mortgage on real estate, including but not limited to 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; and

H. a one-time charge of an amount not to exceed twenty-five dollars ($25.00) in an installment loan repayable in two or more installments when the loan is made to a natural person primarily for personal, family or household purposes to help defray the actual costs of preparing truth-in-lending disclosure statements, equal credit opportunity disclosure statements and other disclosures required by federal law.

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.

Credit card fee legal and not deemed finance charge. - An annual fee charged solely for the privilege of obtaining a credit card, regardless of whether the card is used in a loan transaction, is not to be considered a finance charge and is not, in itself, illegal in New Mexico. 1980 Op. Att'y Gen. No. 80-27.

Interest and other charges. - With the repeal of the interest ceiling, there are no limits on interest rates for installment loans, provided that the rate charged is agreed to in writing and that the lender fully complies with disclosure requirements; as to charges other than interest, the restrictions of this article apply to precomputed loans or those

loans which are identified on the loan documents as being made under this article. 1985 Op. Att'y Gen. No. 85-01.

"Non-filing insurance" fee. - A small loan licensee, doing business under this act may charge a "non-filing insurance" fee in lieu of charging fees for filing security agreements with county officials. 1987 Op. Att'y Gen. No. 87-8.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction, application and effect of provisions of small loan acts regarding fees, charges, etc., in addition to interest, 13 A.L.R. 1244.

58-7-7. Restrictions.

No lender shall make a loan under the New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] to a borrower who is also indebted to such lender under the New Mexico Small Loan Act of 1955 [Chapter 58, Article 15 NMSA 1978] unless the loan made under the Small Loan Act of 1955 is paid and released at the time the loan is made.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 684.

9 C.J.S. Banks and Banking § 170.

58-7-8. Penalties and forfeitures.

A. Any person, corporation or association willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] shall be guilty of a misdemeanor and upon conviction thereof 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, such fine and imprisonment 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, shall be deemed a forfeiture of the entire amount of such rate of charge or advantage which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of charge has been paid, the person by whom it has been paid, or his legal representatives, may recover back by civil action twice the amount of the rate of charge thus paid from the person, corporation or association taking or receiving the same, provided that such action is commenced within two years from the time the transaction occurred.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 38.

58-7-9. Construction.

A. None of the provisions of the New Mexico Small Loan Act of 1955 [Chapter 58, Article 15 NMSA 1978] is amended or repealed by the New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978].

B. With the exception of precomputed loan transactions, a lender is not bound by the provisions of the New Mexico Bank Installment Loan Act of 1959 in making loans where the loan is made in accordance with the provisions of Sections 56-8-9 through 56-8-14 NMSA 1978.

C. None of the provisions of the New Mexico Bank Installment Loan Act of 1959 applies to the assignment or purchase of retail installment contracts originated under the provisions of Chapter 58, Article 19 NMSA 1978 or originated under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.

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;

(3) "day" means one-three-hundred-sixty-fifth of a year;

(4) "credit card plan" means a card or device issued under an arrangement pursuant to which a card issuer or his agent gives to a cardholder the privilege of obtaining credit from the card issuer or other person in purchasing or leasing property or services, obtaining loans or otherwise. A transaction is pursuant to a credit card plan if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not pursuant to a credit card plan if the card or device is used solely to identify the cardholder, and credit is not obtained according to the terms of the arrangement;

(5) "cardholder" means a person or organization to whom a credit card is issued or who has agreed with the card issuer or his agent to pay obligations arising from the issuance to or use of the card by another person; and

(6) "card issuer" means a state or national bank who issues a credit card.

E. The director of the financial institutions division of the commerce and industry department [of the regulation and licensing department] is empowered and directed to issue and file as required by law interpretative regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing

interpretive regulations, the commissioner [director of the financial institutions division of the regulation and licensing department] 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 commerce and industry department [of the regulation and licensing department] shall be deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959.

G. All loans other than precomputed loan transactions made under the New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan documents as being made under that act.

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.

Bracketed material. - See 58-1-32 NMSA 1978 and notes thereto.

Interest and other charges. - With the repeal of the interest ceiling, there are no limits on interest rates for installment loans, provided that the rate charged is agreed to in writing and that the lender fully complies with disclosure requirements; as to charges other than interest, the restrictions of this article apply to precomputed loans or those loans which are identified on the loan documents as being made under this article. 1985 Op. Att'y Gen. No. 85-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 694.

9 C.J.S. Banks and Banking § 6.

ARTICLE 8
NATIONAL HOUSING ACT LOANS AND OBLIGATIONS

58-8-1. Powers of banks, financial institutions and lenders approved for loans by the National Housing Act.

Subject to such regulations as may be prescribed by the director of the financial institutions division, state and national banks, trust companies, savings banks, building and loan associations and savings and loan associations whose principal offices are located in this state and lenders approved for loans by the National Housing Act are authorized:

A. to make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance; and to make such loans, secured by real property or leasehold, as the veterans administrator guarantees or makes a commitment to guarantee, and to obtain such guarantee, and to invest in loans eligible for purchase by the federal national mortgage association, the government national mortgage association or the federal home loan mortgage corporation, or from any financial institution from which it could be purchased by the federal home loan mortgage corporation;

B. to make such loans and advances of credit, and purchases of obligations representing loans and advances of credit for the purpose of financing alterations, repairs and improvements upon real property, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance, and to make such loans and advances of credit, and purchase of obligations representing loans and advances of credit for the purpose of financing alterations, repairs and improvements upon real property, as the veterans administrator guarantees or makes a commitment to guarantee, and to obtain such guarantee, and to invest in loans eligible for purchase by the federal national mortgage association, the government national mortgage association or the federal home loan mortgage corporation, or from any financial institution from which it could be purchased by the federal home [loan] mortgage corporation; and

C. to invest their funds and the money in their custody or possession which is eligible for investment in mortgages insured and debentures issued by the federal housing administrator and in obligations of national mortgage associations, and in mortgages guaranteed by the veterans administrator.

History: Laws 1935, ch. 5, § 1; 1937, ch. 34, § 1; 1941 Comp., § 50-1201; 1953 Comp., § 48-12-1; Laws 1975, ch. 337, § 1; 1977, ch. 245, § 27.

National Housing Act. - The National Housing Act is compiled as 12 U.S.C. §§ 1701 to 1750.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 6.

9 C.J.S. Banks and Banking § 384.

58-8-2. State laws; exemption.

No law of this state prescribing or limiting the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans, advances of credit or purchases made pursuant to Section 58-8-1 NMSA 1978.

History: Laws 1935, ch. 5, § 2; 1941 Comp., § 50-1202; 1953 Comp., § 48-12-2; Laws 1975, ch. 337, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 2.

58-8-3. [Collateral as security for deposit of funds; investment of capital or surplus; eligible securities.]

Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities, notes and bonds secured by mortgages insured, and debentures issued, by the federal housing administrator, and obligations of national mortgage associations shall be considered eligible securities for such purposes.

History: Laws 1937, ch. 34, § 2; 1941 Comp., § 50-1203; 1953 Comp., § 48-12-3.

ARTICLE 9
TRUST COMPANIES

58-9-1. Short title.

Sections 1 through 13 of this act may be cited as the "Trust Company Act".

History: 1953 Comp., § 48-24-1, enacted by Laws 1973, ch. 191, § 1.

Cross-references. - For Banking Act, see 58-1-1 NMSA 1978 et seq.

As to fiduciaries, see 46-1-1 NMSA 1978 et seq.

Compiler's note. - "Sections 1 through 13 of this act," referred to in this section, are presently compiled as 58-9-1 to 58-9-6, 58-9-7, 58-9-8 and 58-9-9 to 58-9-13 NMSA 1978.

Corporation's stock all owned by out-of-state bank holding company. - The financial institutions division may issue a trust company certificate to a New Mexico Corporation if all of its common stock is owned by an out-of-state bank holding

company; provided that the corporation complies with all requirements of the Trust Company Act, 58-9-1 to 58-9-13 NMSA 1978. 1987 Op. Att'y Gen. No. 87-6.

Operation in banks owned by holding company. - If a trust company certificate is issued to a corporation whose common stock is owned by an out-of-state bank holding company, the resulting trust company may operate in the main office or branches of banks owned by the holding company. 1987 Op. Att'y Gen. No. 87-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Exclusion from debtor status of banks and the like by § 109(b)(2) of Bankruptcy Code (11 USCS § 109(b)(2)), 87 A.L.R. Fed. 282.

58-9-2. Definitions.

As used in the Trust Company Act:

A. "commissioner" or "director" means the director of the financial institutions division of the regulation and licensing department;

B. "trust business" means the holding out by a person, legal entity or corporation to the public at large by advertising, solicitation or other means that the person, legal entity or corporation is available to act as a fiduciary in this state or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business;

C. "trust company" means a corporation holding a certificate issued pursuant to the Trust Company Act;

D. "certificate" means a certificate of authority issued under the provisions of the Trust Company Act to engage in trust business;

E. "fiduciary" means executor, administrator, conservator or trustee; and

F. "nonprofit corporation" means a nonprofit corporation as defined in the Nonprofit Corporation Act that is funded by or contracts with a federal, state, county or other governmental entity to provide trust services.

History: 1953 Comp., § 48-24-2, enacted by Laws 1973, ch. 191, § 2; 1977, ch. 245, § 122; 1979, ch. 190, § 1; 1991, ch. 250, § 1.

The 1991 amendment, effective June 14, 1991, in Subsection A, inserted "or 'director'" and substituted "regulation and licensing" for "commerce and industry"; deleted "guardian" following "administrator" in Subsection E; added Subsection F; and made a related stylistic change and minor stylistic changes in Subsection B.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

58-9-3. Exemptions.

A. For the purposes of the Trust Company Act, a person, legal entity or corporation does not engage in the trust business by:

(1) rendering services as an attorney-at-law in the performance of duties as such;

(2) rendering services as a certified or registered public accountant in the performance of duties as such;

(3) acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(4) acting as a trustee in bankruptcy or as a receiver;

(5) holding trusts of real estate for the primary purpose of subdivision, development or sale, or to facilitate any business transaction with respect to such real estate;

(6) engaging in the business of an escrow agent;

(7) holding assets as trustee of a trust created for charitable purposes;

(8) receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal; or

(9) engaging in securities transactions as a dealer or salesman.

B. Insurance companies licensed to do business in New Mexico and subject to the regulation and control of the superintendent of insurance are excluded from the provisions of the Trust Company Act.

History: 1953 Comp., § 48-24-3, enacted by Laws 1973, ch. 191, § 3; 1979, ch. 190, § 2.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

58-9-4. Certificate required.

No person, legal entity or corporation shall engage in the trust business without first obtaining a certificate from the commissioner; provided, however, that a bank having its

principal office in this state or an out-of-state bank not having an established office in this state otherwise authorized under state or federal laws to engage in the trust business or a savings and loan association having its principal office in this state acting as trustee or custodian under the provisions of Section 58-10-35 NMSA 1978 may engage in such business to the extent permitted in that section without obtaining a certificate under the Trust Company Act.

History: 1953 Comp., § 48-24-4, enacted by Laws 1973, ch. 191, § 4; 1975, ch. 236, § 2; 1979, ch. 190, § 3.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

Law reviews. - For survey, "Article VII of the New Probate Code: In Pursuit of Uniform Trust Administration," see 6 N.M. L. Rev. 213 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 11.

9 C.J.S. Banks and Banking § 7.

58-9-5. Application for certificate; fee.

A. An application for a certificate shall be in writing, in such form as the commissioner [director of the financial institutions division of the regulation and licensing department] prescribes, verified under oath and supported by such information, data and records as the commissioner [director] may require.

B. Each application for a certificate shall be accompanied by an application fee of five hundred dollars ($500), made payable to the commissioner [director]. No portion of the application fee shall be refunded.

History: 1953 Comp., § 48-24-5, enacted by Laws 1973, ch. 191, § 5.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 7.

58-9-6. Minimum capital.

A certificate shall not be issued to an applicant having a paid-up capital of less than one hundred fifty thousand dollars ($150,000). The minimum capital requirement shall be waived for nonprofit corporations.

History: 1953 Comp., § 48-24-6, enacted by Laws 1973, ch. 191, § 6; 1991, ch. 250, § 2.

The 1991 amendment, effective June 14, 1991, added the second sentence and made a minor stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 1049.

58-9-6.1. State of incorporation.

A certificate shall not be issued to an applicant other than a corporation organized under the laws of this state.

History: 1978 Comp., § 58-9-6.1, enacted by Laws 1979, ch. 190, § 4.

58-9-7. Evidence of financial responsibility required.

A. No corporation shall obtain a certificate without securing and filing with the commissioner [director of the financial institutions division of the regulation and licensing department] a surety bond, or otherwise establishing to the commissioner's [director's] satisfaction such corporation's financial responsibility.

B. For a corporation organized and engaged in the trust business prior to the effective date of the Trust Company Act, the amount of the surety bond, if financial responsibility is not otherwise established to the commissioner's [director's] satisfaction, shall be not less than twenty-five percent of the aggregate value of the property, money or other valuables held in trust as of the first day of the month in which the application for a certificate is filed.

C. For a corporation not engaged in the trust business prior to the effective date of the Trust Company Act, the amount of the surety bond, if financial responsibility is not otherwise established to the commissioner's [director's] satisfaction, shall be one hundred thousand dollars ($100,000).

D. On or before the first day of March of each year beginning with the year 1974, every trust company shall increase its surety bond, if financial responsibility is not otherwise established to the commissioner's [director's] satisfaction, to an amount equal to twenty-five percent of the aggregate value of the property, money or other valuables held in trust as of the last day of the preceding year if the amount of its surety bond is less than twenty-five percent of the aggregate value of the property, money or other valuables held in trust.

E. In no event shall the amount of the surety bond, if financial responsibility is not otherwise established to the commissioner's [director's] satisfaction, be less than one hundred thousand dollars ($100,000) nor more than five hundred thousand dollars ($500,000).

F. The surety bond or other evidence of financial responsibility required by this section shall be for the benefit of:

(1) any person damaged as a result of a violation of the provisions of, or any regulation or rule promulgated pursuant to, the Trust Company Act;

(2) any person damaged by the negligence, fraud or embezzlement of a certified trust company or its directors, officers or employees; and

(3) any person damaged by any other breach of trust of any certified trust company.

G. The commissioner [director] shall revoke the certificate of any trust company which fails to maintain a bond or to otherwise supply evidence of financial responsibility as required by this section.

History: 1953 Comp., § 48-24-7, enacted by Laws 1973, ch. 191, § 7.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

"Effective date of the Trust Company Act". - The phrase "effective date of the Trust Company Act", referred to in Subsection B, means March 27, 1973, the effective date of Laws 1973, ch. 191, which enacted the Trust Company Act.

58-9-8. Procedure for granting or denying certificate.

A. Upon the filing of an application for a certificate, the director of the financial institutions division shall make or cause to be made a careful investigation and examination and shall issue a certificate if he finds:

(1) that the persons who will serve as directors or officers, other than directors and officers of nonprofit corporations, insofar as those persons are known, are qualified to be fiduciaries by character and experience and that the financial status of the stockholders, directors and officers, other than directors and officers of nonprofit corporations, is consistent with their responsibilities and duties as fiduciaries, except that for nonprofit corporations the employee responsible for trust management shall be qualified to be a fiduciary by character and experience;

(2) that the name of the proposed company is not deceptively similar to that of another trust company or bank or is not otherwise misleading;

(3) that the capital and surplus are not less than the required minimum, except that this requirement shall not apply to nonprofit corporations; and

(4) that there is a need for trust facilities or additional trust facilities, as the case may be, in the community where the proposed trust company is to be located.

B. The director of the financial institutions division may consider and inquire into such other facts and circumstances bearing on the proposed trust company and its relation to its locality as in his opinion may be relevant.

C. The certificate may be granted or denied without hearing, but the director of the financial institutions division may, and at the request of the applicant shall, fix a date for a hearing on the application. At the hearing, any person may be heard with reference to the facts to be investigated.

History: 1953 Comp., § 48-24-8, enacted by Laws 1973, ch. 191, § 8; 1991, ch. 250, § 3.

The 1991 amendment, effective June 14, 1991, substituted "director of the financial institutions division" for "commissioner" in Subsections A, B and C and, in Subsection A, inserted "other than directors and officers of nonprofit corporations" in two places, added the exception at the end and made a minor stylistic change in Paragraph (1), and added the exception at the end of Paragraph (3).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 7.

58-9-8.1. Principal and branch offices.

A. A trust company may establish its principal office in any county.

B. A trust company actively engaged in trust business may establish one or more branch offices subject to the restrictions in Subsection D of this section and after obtaining the approval of the director of the financial institutions division as provided in Subsection C of this section.

C. A trust company seeking to establish a branch office shall submit an application, together with an investigation fee of two hundred dollars ($200), to the director of the financial institutions division. After considering the financial condition of the trust company, the adequacy of its capital structure, its future earnings and prospects, the general character of its management and any other matter he deems relevant, the director may approve the application if he finds:

(1) that the establishment of the branch will meet the needs and promote the convenience of the community to be served; and

(2) that the probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch and the trust company.

D. Except as provided in Subsection G of this section, branch offices shall be:

(1) operated as branches of and under the name of the parent trust company and under the control and direction of the board of directors and executive officers of the parent trust company; and

(2) located in the same county in which the principal office is located.

E. The provisions of this section shall not apply to branch offices in existence on the effective date of this section.

F. For the purposes of this section, "branch office" means an office, other than a principal office, used for the conduct of trust business and includes any additional house, office, agency or place of business which is open to the public for the conduct of such business and further includes any office connected to the principal office by subterranean or overhead passageways through which trust company personnel may pass.

G. The furnishing of trust services by a trust company affiliate of a bank holding company in the building in which any banking subsidiary of the bank holding company has its principal office or a manned branch office shall not constitute the operation of a branch office as prohibited by this section. As used in this subsection:

(1) "banking subsidiary" means a bank eighty percent or more of the voting shares of which are owned by the bank holding company; and

(2) "affiliate", with respect to a bank holding company, means any company eighty percent or more of the voting shares of which are owned by the bank holding company.

H. Copies of all records of accounts may be maintained at the principal office of the trust company or may be maintained at a branch office of the trust company where the accounts are administered, if appropriate safety and security is provided.

I. Nonprofit corporations shall be exempt from the requirements of this section.

History: 1978 Comp., § 58-9-8.1, enacted by Laws 1979, ch. 190, § 5; 1984, ch. 63, § 2; 1987, ch. 82, § 1; 1991, ch. 250, § 4.

The 1991 amendment, effective June 14, 1991, substituted "approval of the director of the financial institutions division" for "director's approval" in Subsection B; added "of the financial institutions division" at the end of the first sentence in Subsection C; and added Subsection I.

58-9-9. Powers of director.

In addition to other powers conferred by the Trust Company Act, the director of the financial institutions division has power to:

A. examine the business and affairs of each trust company at least once each year and at such other times and to such extent as he may deem necessary or advisable. The expense of every examination shall be paid by the corporation examined, in such amount as the director certifies to be just and reasonable;

B. regulate the procedure and practice at hearings;

C. implement by order and regulation the provisions of the Trust Company Act and obtain restraining orders and injunctions to prevent violation of and enforce compliance with the orders and regulations issued pursuant to the provisions of the Trust Company Act. In making orders and regulations to implement the Trust Company Act, the director shall act in the interest of promoting and maintaining a sound trust company system, the security of assets and trust accounts and the protection of persons utilizing trust services;

D. order any person or trust company to cease violating orders and regulations issued pursuant to the provisions of the Trust Company Act or to cease engaging in breaches of trust. A copy of such orders shall be mailed to each director of the trust company involved;

E. suspend, after notice and hearing, any officer or director, or any employee of a nonprofit corporation, for fraud, embezzlement or failure to comply with orders or regulations issued pursuant to the Trust Company Act or any provision of that act; and

F. subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the director.

History: 1953 Comp., § 48-24-9, enacted by Laws 1973, ch. 191, § 9; 1991, ch. 250, § 5.

The 1991 amendment, effective June 14, 1991, substituted "director" for "commissioner" in the catchline and throughout the section; substituted "director of the financial institutions division has" for "commissioner shall have" in the introductory paragraph; inserted "or any employee of a nonprofit corporation" in Subsection E; and made minor stylistic changes in Subsections A and E.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

58-9-10. Impairment of capital; unsafe conditions; receivership.

If it appears to the director of the financial institutions division that the capital of a trust company is either reduced or impaired below one hundred fifty thousand dollars ($150,000), except for nonprofit corporations, or the affairs of the company are in an unsound condition, the director shall order the company to make good any deficit or to remedy the unsafe condition of its affairs within sixty days of the date of the order and may restrict and regulate the operation of the trust business until the capital is restored. If the deficiency in capital has not been made good and the unsafe condition remedied within the prescribed time, the director may apply to the district court in the county in which the principal office of the company is located to be appointed receiver for the liquidation or rehabilitation of the company. The expense of the receivership shall be paid out of the assets of the trust company.

History: 1953 Comp., § 48-24-10, enacted by Laws 1973, ch. 191, § 10; 1991, ch. 250, § 6.

The 1991 amendment, effective June 14, 1991, substituted "director of the financial institutions division" for "commissioner" near the beginning and "director" for "commissioner" in two places; inserted "except for nonprofit corporations" in the first sentence; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 763.

Power of receiver or liquidating officer of insolvent bank or trust company to borrow, and pledge assets, and power of court to authorize him to do so, 82 A.L.R. 1228, 91 A.L.R. 1119.

9 C.J.S. Banks and Banking § 1049.

58-9-11. Discontinuing business; continuing jurisdiction.

Whenever any corporation desires to discontinue doing a trust business and surrenders its certificate or if its certificate is suspended or revoked, the company shall nevertheless continue to be subject to the provisions of the Trust Company Act for so long as it acts as a fiduciary with respect to any trust business previously undertaken.

History: 1953 Comp., § 48-24-11, enacted by Laws 1973, ch. 191, § 11.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 1064.

58-9-12. Penalty for noncompliance.

It shall be unlawful for any corporation to carry on or conduct a trust company business or to advertise or hold itself as being engaged in or doing a trust company business, or to use in connection with its business the words "trust company" or words of similar import without first having complied with all the provisions of law relating to trust companies. All officers, directors or trustees of any corporation violating this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five thousand dollars ($5,000) or imprisonment in the county jail for a definite term not exceeding one year or both such fine and imprisonment.

History: 1953 Comp., § 48-24-12, enacted by Laws 1973, ch. 191, § 12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 38.

58-9-13. Effect on existing corporations.

Any corporation organized and lawfully engaged in the trust business in the state for a period of at least one year prior to the effective date of the Trust Company Act is entitled to receive a certificate within the provisions of the Trust Company Act upon written application to the commissioner [director of the financial institutions division of the regulation and licensing department]. The application shall be accompanied by a copy of the corporate articles and bylaws and by a sworn statement of the corporation that it has a paid-in capital stock of at least one hundred and fifty thousand dollars ($150,000). Upon receipt of the application and other required documents, the commissioner [director] shall issue the requested certificate and the corporation shall continue in business subject to the provisions of the Trust Company Act.

History: 1953 Comp., § 48-24-13, enacted by Laws 1973, ch. 191, § 13.

Bracketed material. - See 58-1-5 NMSA 1978 and notes thereto.

"Effective date of the Trust Company Act". - See note with same catchline under 58-9-7 NMSA 1978.

Trust Company Act. - See 58-9-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 6.

ARTICLE 10
SAVINGS AND LOAN ASSOCIATIONS

58-10-1. Short title.

This act may be cited as the "Savings and Loan Act".

History: 1953 Comp., § 48-15-45, enacted by Laws 1967, ch. 61, § 1.

Cross-references. - As to Corporate Income Tax Act and savings and loan associations, see 7-2A-2 NMSA 1978.

As to disposition of unclaimed property, see 7-8-1 to 7-8-40 NMSA 1978.

As to exemption of director of financial institutions division, director of securities division, and chief of savings and loan bureau from authority of superintendent of regulation and licensing, see 9-16-11 NMSA 1978.

Meaning of "this act". - The Savings and Loan Act was enacted by Laws 1967, ch. 61, §§ 1 to 101. The act is presently compiled as 58-10-1 to 58-10-51, 58-10-54 to 58-10-76, 58-10-78 to 58-10-81, 58-10-83 to 58-10-94 and 58-10-96 to 58-10-102 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Exclusion from debtor status of banks and the like by § 109(b)(2) of Bankruptcy Code (11 USCS § 109(b)(2)), 87 A.L.R. Fed. 282.

58-10-2. Definitions.

As used in the Savings and Loan Act:

A. "association" means a savings association or savings and loan association or building and loan association subject to the provisions of the Savings and Loan Act;

B. "dividends or interest on savings accounts" means that part of the income of an association which is declared payable on savings accounts from time to time by the board of directors and is the cost of savings-money to the association;

C. "federal association" means a savings and loan association incorporated pursuant to the Home Owners Loan Act of 1933, as amended, whose principal business office is located within this state;

D. "loss reserves" means the aggregate amount of the reserves allocated by an association for the sole purpose of absorbing losses;

E. "member" means a person holding a savings account in an association, or borrowing from, or assuming, or obligated upon a loan in which an association has an interest, or owning property which secures a loan in which an association has an interest;

F. "savings account" means that part of the savings liability of an association which is credited to a member by reason of the placement of funds in the association;

G. "savings and loan association" means an association whose primary purpose is to promote thrift and home financing and whose principal activity is the lending to its members of money accumulated in savings accounts of its members;

H. "savings liability" means the aggregate amount of the withdrawal value of the savings accounts of the members of an association at any particular time as shown by the books of the association;

I. "service corporation" means an organization, substantially all the activities of which consist of originating, purchasing, selling and servicing loans upon real estate and participating interests therein, or clerical, bookkeeping, accounting, statistical or similar functions performed primarily for financial institutions, plus such other activities as the supervisor may approve;

J. "supervisor" means the chief of the savings and loan bureau appointed by, and acting under supervision of the director of the financial institutions division of the commerce

and industry department [regulation and licensing department], or the director of the financial institutions division if the position is vacant;

K. "surplus" means the aggregate amount of the undistributed earnings of an association held as undivided profits or unallocated reserves for general corporate purposes and any paid-in surplus held by an association;

L. "withdrawal value of a savings account" means the credit balance of a savings account at any particular time as shown by the books of the association; and

M. "net worth" means the sum of all reserve accounts, undivided profits, surplus, capital stock and any other nonwithdrawable accounts.

History: 1953 Comp., § 48-15-46, enacted by Laws 1967, ch. 61, § 2; 1977, ch. 245, § 36.

Cross-references. - As to the creation of the savings and loan bureau and the chief thereof being the "savings and loan supervisor," see 58-10-71 NMSA 1978.

Bracketed material. - See 58-1-32 NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Home Owners Loan Act of 1933. - See 12 U.S.C. §§ 1461 to 1470.

Special reserves included in net worth. - The special reserves provided for in 58-10-28 NMSA 1978 are to be included in the net worth of a savings and loan association. 1968 Op. Att'y Gen. No. 68-56.

But not outstanding capital debentures or notes. - In the Savings and Loan Act, outstanding capital debentures or notes may not be included in the definition of the net worth of an association. 1975 Op. Att'y Gen. No. 75-53.

58-10-3. Application for charter.

A. Application for a charter for an association may be made by five or more citizens of this state by filing with the supervisor an application consisting of:

(1) four copies of the articles of incorporation for the proposed association stating:

(a) the name of the association;

(b) the site of the principal office; and

(c) the names and addresses of the initial directors;

(2) a statement as to:

(a) the amount, if any, of permanent reserve fund stock which has been subscribed and paid for at the time of filing;

(b) the names and addresses of such subscribers and the amount subscribed by each;

(c) the amount of savings liability, if any, with which the association will commence business; and

(d) the amount of paid-in surplus expense with which the association will commence business;

(3) four copies of the bylaws under which the association proposes to operate; and

(4) statements, exhibits, maps and other data sufficiently detailed and comprehensive to enable the supervisor to pass upon the matters set forth in the Savings and Loan Act, and such other information in regard to the proposed association and its operation as may be required by regulations of the supervisor.

B. The articles of incorporation and all statements of fact filed with the supervisor in connection with the application for charter shall be subscribed and sworn to under oath or affirmation.

C. A fee of two thousand five hundred dollars ($2,500) shall be paid to the supervisor for filing the application and investigation of each association to be organized under the Savings and Loan Act.

History: 1953 Comp., § 48-15-47, enacted by Laws 1967, ch. 61, § 3; 1973, ch. 189, § 1.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 7.

9 C.J.S. Banks and Banking §§ 1051, 1054; 12 C.J.S. Building and Loan Associations § 22.

58-10-4. Permanent capital stock.

A. The charter of an association may provide for the issuance of permanent capital stock. Except as provided in the Savings and Loan Act, no other form or type of stock or shares shall be issued by an association. When issued, permanent capital stock shall not be retired or withdrawn, except as provided in the Savings and Loan Act, until after

all liabilities of the association have been satisfied in full, including the withdrawal value of all savings accounts. Such stock must be fully paid for in cash in advance of issuance, and the association shall not make any loans against the shares of such stock. The shares may have a par value of not less than one dollar ($1.00) nor more than one hundred dollars ($100) each.

B. At the time of commencing business, an association authorized to issue permanent capital stock shall have issued and outstanding an amount thereof equal in par value to the following minimum amounts, based on the total population of the area in which its principal office is to be located:

Population of Area	Minimum Stock Required
Below 10,000	$ 75,000
10,001 to 25,000	100,000
25,001 to 50,000	200,000
50,001 to 100,000	250,000
100,001 to 200,000	350,000
200,001 to 350,000	425,000
Over 350,000	500,000

C. Any association may retire permanent capital stock in whole or part, and any association may provide for the issuance of such stock, upon being authorized to do so by a majority vote of the members entitled to vote at any annual meeting of its members or at any special meeting of its members called for the purpose. The basis of such retirement or issuance shall first be approved by the supervisor, who shall satisfy himself that all provisions of the Savings and Loan Act have been complied with and written consent to such retirement by the agency insuring the accounts of the association has been filed with the supervisor.

D. The provisions of this section are not retroactive with respect to associations established or approved by the director of the financial institutions division prior to the effective date of the Savings and Loan Act.

History: 1953 Comp., § 48-15-48, enacted by Laws 1967, ch. 61, § 4; 1977, ch. 245, § 37.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Permanent capital stock includes only permanent stock or similar certificates which represent investments of nonwithdrawable or permanent capital in an association. 1975 Op. Att'y Gen. No. 75-77.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 49 to 52, 63, 65.

Validity of restrictions on alienation of stock, 61 A.L.R.2d 1318.

Validity, construction and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 A.L.R.3d 1190.

9 C.J.S. Banks and Banking § 166.

58-10-5. Stock requirements for proposed permanent capital stock associations.

As a prerequisite to approval of an application for charter for an association with authority to issue permanent capital stock, the incorporators shall have subscribed and paid for in cash to the credit of the proposed association an aggregate amount of permanent capital stock as specified in Section 4 [58-10-4 NMSA 1978] of the Savings and Loan Act. The stock shall be issued within thirty days from the date of incorporation, or from the date of approval of insurance of withdrawable accounts, whichever occurs later.

History: 1953 Comp., § 48-15-49, enacted by Laws 1967, ch. 61, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 36 to 40.

9 C.J.S. Banks and Banking § 62; 12 C.J.S. Building and Loan Associations § 6.

58-10-6. Paid-in surplus and operating fund requirements for proposed permanent capital stock associations.

A. As a prerequisite to approval of an application for charter for an association with authority to issue permanent capital stock, the supervisor shall require that a paid-in

operating fund, which may be used in lieu of earnings to pay organization and operating expenses, be paid to the association in cash in the following amounts, based on the total population of the area in which its principal office is to be located:

Population of Area	Paid-in Surplus	Paid-in Operating Fund
Below 10,000	$ 50,000	$ 25,000
10,001 to 25,000	50,000	50,000
25,001 to 50,000	50,000	50,000
50,001 to 100,000	75,000	75,000
100,001 to 200,000	75,000	75,000
200,001 to 350,000	100,000	75,000
Over 350,000	125,000	75,000

B. If the application is not approved, or if the proposed association does not proceed to do business, the stock subscriptions for permanent capital stock, paid-in surplus and paid-in operating fund shall be returned pro rata to the subscribers, less any lawful expenditures.

C. The provisions of this section are not retroactive with respect to associations established or approved by the director of the financial institutions division prior to the effective date of the Savings and Loan Act.

History: 1953 Comp., § 48-15-50, enacted by Laws 1967, ch. 61, § 6; 1977, ch. 245, § 38.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 40.

9 C.J.S. Banks and Banking § 1049; 12 C.J.S. Building and Loan Associations § 6.

58-10-7. Savings account requirements for proposed permanent capital stock associations.

A. As a prerequisite to approval of an application for charter for an association with authority to issue permanent capital stock, the incorporators must show to the satisfaction of the supervisor subscribed and pledged savings accounts in the following aggregate amounts, based on the total population of the area in which the principal office of the association is to be located:

Population of Area	Minimum Paid-in Savings Accounts
Below 10,000	$ 225,000
10,001 to 25,000	300,000
25,001 to 50,000	375,000
50,001 to 100,000	400,000
100,001 to 200,000	450,000
200,001 to 350,000	525,000
Over 350,000	600,000

B. The population of the area shall be determined by the supervisor.

C. The provisions of this section are not retroactive with respect to associations established or approved by the director of the financial institutions division prior to the effective date of the Savings and Loan Act.

History: 1953 Comp., § 48-15-51, enacted by Laws 1967, ch. 61, § 7; 1977, ch. 245, § 39.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 456.

9 C.J.S. Banks and Banking § 965.

58-10-8. Savings account requirements for proposed associations without permanent capital stock.

A. As a prerequisite to approval of an application for charter for an association without permanent capital stock, the incorporators must show to the satisfaction of the supervisor subscribed and pledged savings accounts in the following aggregate amounts, based on the total population of the area in which the principal office of the association is to be located:

Population of Area	Minimum Paid-in Savings Accounts
Below 10,000	$ 300,000
10,001 to 25,000	400,000
25,001 to 50,000	500,000
50,001 to 100,000	550,000
100,001 to 200,000	600,000
200,001 to 350,000	700,000
Over 350,000	800,000

B. The provisions of this section are not retroactive with respect to associations established or approved by the director of the financial institutions division prior to the effective date of the Savings and Loan Act.

History: 1953 Comp., § 48-15-52, enacted by Laws 1967, ch. 61, § 8; 1977, ch. 245, § 40.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 456.

9 C.J.S. Banks and Banking § 13.

58-10-9. Expense fund requirements for proposed associations without permanent capital stock.

A. As a prerequisite to approval of an application for charter for an association without permanent capital stock, the incorporators must show to the satisfaction of the supervisor that an expense fund has been subscribed and pledged to the credit of the proposed association equal to not less than the following amounts, based on the total population of the area in which the principal office of the association is to be located:

Population of Area	Minimum Paid-in Expense Fund
Below 10,000	$ 75,000
10,001 to 25,000	100,000
25,001 to 50,000	125,000
50,001 to 100,000	137,500
100,001 to 200,000	150,000
200,001 to 350,000	175,000
Over 350,000	200,000

B. The expense fund shall be used to pay the expenses of organizing the association, its operating expenses and any dividends declared and paid or credited to its savings account holders until such time as its earnings are sufficient to pay them. The amounts contributed to the expense fund are not a liability of the association except as provided in the Savings and Loan Act. The contributions may be repaid pro rata to the contributors from the net earnings of the association after provision for required loss reserve allocations and payment or credit of dividends declared on savings accounts. In case of the liquidation of an association before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after payment of the expenses of liquidation, all creditors and the withdrawal value of all savings accounts, shall be paid to the contributors pro rata. The books of the association shall reflect the expense fund. Contributors to the expense fund shall be paid dividends on the amounts paid in by them and for this purpose the contributions shall in all respects be considered as savings accounts of the association.

C. The provisions of this section are not retroactive with respect to associations established or approved by the director

of the financial institutions division prior to the effective date of the Savings and Loan Act.

History: 1953 Comp., § 48-15-53, enacted by Laws 1967, ch. 61, § 9; 1977, ch. 245, § 41.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 40.

9 C.J.S. Banks and Banking § 1049.

58-10-10. Capital debentures or notes.

A. With approval of the supervisor and of the stockholders owning two-thirds of the issued and outstanding shares of the association entitled to vote, a permanent capital stock association may issue and sell its capital debentures or notes. With approval of the supervisor and of a majority of its members entitled to vote, an association without permanent capital stock may issue and sell its capital debentures or notes. The principal amount of any capital debentures or notes outstanding at any time shall not exceed seventy-five percent of an association's net worth.

B. Capital debentures or notes issued by a permanent capital stock association may be converted into shares of stock in accordance with the provisions of the debentures or notes and under any terms or conditions prescribed by, or approved by, the supervisor. Convertible debentures or notes may be issued without offering them to existing stockholders or members of the association if so provided in the articles of incorporation of the association at the time of its organization or by later amendment.

C. Capital debentures or notes are an unsecured indebtedness of the association and are subordinate to the claims of depositors and all other creditors of the association, regardless of whether the claims of the depositors or other creditors arose before or after the issuance of the capital debentures or notes. In the event of liquidation of the association, all depositors and other creditors of the association shall be paid in full before any payment is made of principal or interest on the outstanding capital debentures or notes. After payment to depositors and creditors, capital debentures or notes shall be paid pro rata regardless of the date of their issuance. No payment of the principal of outstanding capital debentures or notes shall be made unless, after the payment, the aggregate of the net worth and capital debentures or notes then outstanding is equal to the aggregate of the foregoing items immediately after the original issue of the capital debentures or notes.

D. The amounts of outstanding capital debentures or notes legally issued by any association shall be treated as capital for the purpose of computing reserve requirements, but for the purpose of computing the ad valorem tax, the capital debentures or notes shall be treated as an indebtedness and not as capital.

E. Every state-chartered association having capital debentures or notes outstanding shall accumulate and maintain from its earnings a reserve fund for the retirement of the capital debentures or notes. Amounts to be transferred to the reserve fund at each dividend or interest payment date shall be equal to the total principal amount of capital debentures or notes issued, divided by the number of dividend or interest payment periods anticipated during the period of time the debentures or notes are to be outstanding.

History: 1953 Comp., § 48-15-54, enacted by Laws 1967, ch. 61, § 10.

Compiler's note. - The ad valorem tax referred to in this section was apparently that imposed by Laws 1965, ch. 167, §§ 1 to 4, compiled as 48-15-13.1 to 48-15-13.4, 1953 Comp. These sections were repealed by Laws 1969, ch. 151, § 11. For corporate income tax provisions, see 7-2A-1 NMSA 1978 et seq.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 321.

9 C.J.S. Banks and Banking § 164; 12 C.J.S. Building and Loan Associations § 55.

58-10-11. Hearings on charter application.

When a proper application for a charter has been filed, the supervisor shall set a date for a public hearing on the application. At least thirty days before the date set for the hearing, he shall give written notice to all associations and federal associations within a radius of one hundred miles of the proposed principal office of the association, within this state, and to the federal home loan bank of Little Rock, or its successor.

History: 1953 Comp., § 48-15-55, enacted by Laws 1967, ch. 61, § 11.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 42.

58-10-12. Approval of application for charter.

A. The supervisor shall not approve any charter application unless he affirmatively finds from the data furnished with the application, the evidence adduced at the public hearing and his official records that:

(1) where applicable, the prerequisites set forth in Sections 3 through 9 [58-10-3 to 58-10-9 NMSA 1978] of the Savings and Loan Act have been complied with and that the articles of incorporation comply with all other provisions of the Savings and Loan Act;

(2) the character, responsibility and general fitness of the persons named in the articles of incorporation and the proposed board of directors command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purpose of the Savings and Loan Act and that the proposed association will have qualified full-time management;

(3) there is a public need for the proposed association and the volume of business in the area in which the proposed association will conduct its business indicates profitable operation;

(4) the operation of the proposed association will not unduly harm any existing association; and

(5) the association has applied for insurance of accounts with the federal savings and loan insurance corporation, an agency of this state or another federal agency established for the purpose of insuring savings accounts in associations or with any other insurer approved by the supervisor and meeting the qualifications prescribed in this paragraph. No association subject to the provisions of the Savings and Loan Act shall obtain insurance of accounts from, or represent in any way that its accounts are insured by, any insurer other than the federal savings and loan insurance corporation or other federal agency or a state agency unless the supervisor, upon application to him by the association and after reasonable notice and public hearing by the supervisor, issues his certificate approving the application after determining that:

(a) the contract of insurance contemplated is written upon substantially the same basis as to form, amount, coverage, maturity, voluntary and involuntary termination and other provisions as the insurance contract provided by the federal savings and loan insurance corporation, and complies with any further requirements for protection the supervisor deems reasonably necessary; and

(b) the contract is underwritten by an insurer having a net worth reasonably commensurate with the risks underwritten, but not less than twenty-five million dollars ($25,000,000), which is licensed in this state and authorized to do business in this state, and which is admitted and authorized by law to write such insurance in all of the states of the United States.

The requirements of this paragraph apply to all revisions or modifications of such contracts of insurance. Associations and foreign associations insured as provided in this paragraph may make representations as to insurance of savings accounts, but all representations shall set forth the name of the insurer. Except for banks, no association or foreign association or other person shall advertise or represent or accept or offer to accept any savings accounts in this state as insured or guaranteed accounts, or as the

savings accounts of an insured or guaranteed institution, unless they are insured as provided in this paragraph. Any person who violates any provision of this paragraph is guilty of a misdemeanor and shall be punished by a fine not to exceed ten thousand dollars ($10,000). Each day of any violation is a separate offense, and shall be enjoined upon application to the district court by the attorney general, the supervisor, the district attorney or by any association in this state. The requirements of this paragraph are in the exercise of the police power of this state and are enacted to protect the people of the state from misrepresentation, misunderstanding and from loss.

B. If the supervisor so finds, he shall state his findings in writing, endorse his approval on the articles of incorporation, issue under his official seal a certificate of authority for the association to transact business, deliver copies of the approved articles of incorporation and bylaws to the incorporators and to the state corporation commission and retain a copy as a permanent file of his office. Upon acceptance and approval by the state corporation commission of the articles of incorporation, the proposed association is a corporate body with perpetual existence unless terminated by law, and it may exercise the powers of an association as set forth in the Savings and Loan Act. Before actually transacting any savings and loan business, the association shall file with the supervisor satisfactory proof that insurance of accounts has been obtained.

History: 1953 Comp., § 48-15-56, enacted by Laws 1967, ch. 61, § 12.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Charter authorizes operation only of described institution. - Where a charter is actually issued, it has been held to constitute authority to operate only that institution which it describes. 1981 Op. Att'y Gen. No. 81-22.

And subsequent purchaser cannot engage in savings and loan business when association liquidated. - When the assets of a savings and loan association are liquidated by a receiver pursuant to an order of the court, the association is terminated and its "charter" or authority to transact business is terminated as well. Therefore, no "charter" or valid franchise remains entitling a subsequent purchaser to engage in the savings and loan business. 1981 Op. Att'y Gen. No. 81-22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 7.

9 C.J.S. Banks and Banking § 42.

58-10-13. Refusal of charter application; appeal.

A. Whenever the supervisor is unable to make the findings required by Section 12 [58-10-12 NMSA 1978] of the Savings and Loan Act, he shall serve upon each party of record and his attorney, if any, a written copy of his decision denying the application by

certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day following the mailing. The decision shall include:

(1) findings of fact made by the supervisor;

(2) conclusions of law reached by the supervisor; and

(3) the decision of the supervisor based upon the findings of fact and conclusions of law.

B. Any party aggrieved by the decision of the supervisor may appeal the decision to the district court of the county in which the principal office of the association is located by filing a notice of appeal with the clerk of the court within thirty days after service of the decision of the supervisor. Notice of the appeal shall be served on the supervisor and all parties of record in the manner provided by law for the service of a summons in civil actions. The notice of appeal shall contain a certification that arrangements have been made with the supervisor for preparation of the appellant's expense of a sufficient number of copies of the record of the hearing. The record of the hearing shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) any proposed findings submitted;

(6) the decision of the supervisor, and any decision, opinion or report by any hearing examiner conducting the hearing; and

(7) a transcript of the testimony presented.

C. Upon review, the district court shall not consider any errors in the decision of the supervisor which were not raised in the hearing before the supervisor. The review shall be upon the record of the hearing before the supervisor, and no new evidence shall be introduced upon appeal. The decision of the supervisor shall be sustained unless the court finds that the decision was:

(1) contrary to law;

(2) arbitrary or capricious; or

(3) against the clear weight of substantial evidence on the record.

History: 1953 Comp., § 48-15-57, enacted by Laws 1967, ch. 61, § 13.

Cross-references. - As to service of summons, see Rule 1-004.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 7.

9 C.J.S. Banks and Banking § 42.

58-10-14. Forfeiture of charter for failure to commence business.

Any association whose charter has been approved under the Savings and Loan Act shall commence business within six months after satisfactory proof has been filed with the supervisor showing that insurance of accounts has been obtained. If an association has not commenced business within this time, the incorporators may request a hearing before the supervisor, and, if good cause is shown for the failure, the supervisor may grant a reasonable extension of the time for commencing business to give the association an opportunity to overcome the cause for the delay in commencing business. Failure to commence business as required in this section constitutes grounds for forfeiture of the association's charter.

History: 1953 Comp., § 48-15-58, enacted by Laws 1967, ch. 61, § 14.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 826, 829, 830.

9 C.J.S. Banks and Banking §§ 472 to 485.

58-10-15. Amendment of charter and bylaws.

Any association may, by resolution adopted by a majority vote of its members or stockholders present or represented by proxy and entitled to vote at any annual meeting or any special meeting called for the purpose, amend its charter or bylaws in any manner not inconsistent with the provisions of the Savings and Loan Act. Before the amendments become effective, they shall be filed with, and approved by, the supervisor. A copy of any amendments to the charter shall be filed with the state corporation commission.

History: 1953 Comp., § 48-15-59, enacted by Laws 1967, ch. 61, § 15.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 26.

9 C.J.S. Banks and Banking § 1046; 12 C.J.S. Building and Loan Associations § 7.

58-10-16. Corporate name; exclusive use.

A. The name of every association incorporated after the effective date of the Savings and Loan Act shall include either the words "savings association," "savings and loan association" or "building and loan association." These words shall be preceded by an appropriate descriptive word or words approved by the supervisor. An ordinal number shall not be used as a single descriptive word preceding the required words unless the required words are followed by the name of the municipality or county in which the association has its principal office.

B. No certificate of incorporation of a proposed association having the same name as any other association authorized to do business in this state under the Savings and Loan Act, or a name so nearly resembling it as to be calculated to deceive, shall be issued by the supervisor except to an association formed by the reincorporation, reorganization or consolidation of other associations, or upon the sale of the property or franchise of an association.

C. No person, firm, company, fiduciary, partnership or corporation, either domestic or foreign, unless authorized to do business in this state under the provisions of the Savings and Loan Act, shall do business under any name or title which indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association, or which is calculated to lead any person to believe that the business is that of an association. Upon application by the supervisor or by any association, the district court shall enjoin any such entity from violating or continuing to violate any provision of this section.

History: 1953 Comp., § 48-15-60, enacted by Laws 1967, ch. 61, § 16.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Section impliedly authorizes sale of branch offices without hearing. - The legislature, by use of the words "sale of the property or franchise of an association," authorized, by implication, the sale or transfer of a branch office between savings and loan associations without holding a hearing prior to issuance of banking department's (now financial institutions division of the commerce and industry department) order

approving such sale or transfer. Equitable Bldg. & Loan Ass'n v. Davidson, 85 N.M. 621, 515 P.2d 140 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 7, 25.

9 C.J.S. Banks and Banking §§ 53, 960; 12 C.J.S. Building and Loan Associations § 6.

58-10-17. Branch offices.

A. Any association authorized to transact business in this state may conduct a branch or branches with the powers and limitations provided in the Savings and Loan Act. The association shall first file an application with the supervisor, accompanied by an investigation fee of five hundred dollars ($500). The supervisor shall conduct a hearing on the application after giving the same notice as provided for in Section 58-10-11 NMSA 1978. Opportunity shall be offered any interested person to present evidence and argument. After hearing, the supervisor shall, in his discretion, grant or deny the application in writing. In exercising his discretion, the supervisor shall take into account, but not by way of limitation, such factors as the financial history and conditions of the applicant association, the adequacy of its capital structure, its future earning prospects and the general character of its management. Approval shall not be given until he is satisfied that:

(1) establishment of the branch will meet the needs and promote the convenience and advantage of the community in which the business of the branch is to be conducted; and

(2) the probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch and of the existing association or associations in the community.

B. Branches of a parent association authorized under the Savings and Loan Act shall be opened for business within six months after the authorization has been issued or extended by the supervisor, or the authorization is void. Branches shall be operated as branches of, and under the name of, the parent association, and be under the control and discretion of the board of directors and executive officers of the parent association.

C. Except as provided in Subsection D of this section, branches of a parent association authorized under the Savings and Loan Act may do business the same as the parent association but branches must be located within a radius of one hundred statute air miles from the principal office of the parent association within the state of New Mexico. The provisions of this subsection are not retroactive with respect to branches established or approved by the director of the financial institutions division prior to the effective date of the Savings and Loan Act.

D. Notwithstanding the provisions of Subsection C of this section, upon the United States or any agency thereof changing the restrictions on branch offices of federally

chartered savings and loan associations which have their principal office in the state, the director of the financial institutions division of the commerce and industry department [regulation and licensing department] may promulgate regulations embodying restrictions for state-chartered savings and loan associations, which restrictions are substantially similar to those then applying to federally chartered savings and loan associations.

E. As used in this section, "branch" includes any additional house, office or place of business at which deposits are received and money lent except where the additional house, office or place of business is connected with the main association business premises by underground or overhead passageways, in which case it shall not be considered as a branch.

History: 1953 Comp., § 48-15-61, enacted by Laws 1967, ch. 61, § 17; 1973, ch. 189, § 2; 1977, ch. 38, § 1; 1977, ch. 245, § 42; 1977, ch. 329, § 1; 1978, ch. 8, § 1; 1979, ch. 198, § 1.

Bracketed material. - See 58-1-32 NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Purchase of one association's assets by another permitted. - A New Mexico state chartered savings and loan association may purchase the assets, which include branch offices located more than 100 miles from the purchasing association's principal office, and assume the liabilities, of another state chartered savings and loan association. 1982 Op. Att'y Gen. No. 82-13.

Hearing requirement does not apply to transfer of existing branches. - Subsection A applies only to an application for a new branch and the purpose of the hearing requirements is to have evidence presented that the factors and standards described in the statute can or cannot be met. Therefore, the hearing requirement of Subsection A does not apply to the transfer of existing branches from one savings and loan association to another. Equitable Bldg. & Loan Ass'n v. Davidson, 85 N.M. 621, 515 P.2d 140 (1973).

"Grandfather clause" branch offices transferred without meeting section's requirements. - Branch offices established under the "grandfather clause" of former Subsection D (present Subsection C) can be transferred without the requirement of notice and hearing, and without meeting the required conditions necessary for the establishment of a new branch office. Equitable Bldg. & Loan Ass'n v. Davidson, 85 N.M. 621, 515 P.2d 140 (1973).

Assertion of undue competitive injury by proposed branch gives standing. - To attain standing in a suit arguing the unlawfulness of governmental action, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise. Appellants had standing to seek review of the supervisor's order as associations "aggrieved and directly affected" by it where they asserted they would suffer from undue competitive injury if another branch was permitted in Santa Fe, and that another branch would not be to the advantage of the community; the protection of these interests is explicitly recognized in Subsection A. De Vargas Sav. & Loan Ass'n v. Campbell, 87 N.M. 469, 535 P.2d 1320 (1975).

Mileage limitation may not apply to federally insured associations. - Assuming that its application is satisfactory in all other respects and that the criterion prescribed by Subsections A and C (since deleted) of this section are satisfied, a state chartered savings and loan association, whose accounts are insured by the federal savings and loan insurance corporation, which is a member of the federal home loan bank and which maintains its principal office in Las Cruces, New Mexico, can establish and maintain a branch office in Truth or Consequences, New Mexico (a distance of approximately 62 miles) since the limitation imposed by this section is controlled by 58-10-50 NMSA 1978, which gives broader rights to an applicant insured by the federal savings and loan insurance corporation. 1971 Op. Att'y Gen. No. 71-77 (opinion rendered under prior version of present Subsection C, former Subsection D, which provided for a maximum distance of 50 miles). See also 1972 Op. Att'y Gen. No. 72-68.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 324 to 329.

9 C.J.S. Banks and Banking § 55.

58-10-18. Change of office.

When approval for a change of any office is applied for, the supervisor shall approve or disapprove the application at his discretion. The supervisor shall give any person who might be affected an opportunity to be heard on the action proposed to be taken for which approval is sought.

History: 1953 Comp., § 48-15-62, enacted by Laws 1967, ch. 61, § 18.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 17.

9 C.J.S. Banks and Banking § 978.

58-10-19. Board of directors.

A. The business of an association shall be directed by a board of directors, consisting of not less than five nor more than twenty-one persons elected by a majority vote at each

annual meeting of the members or stockholders present or represented by proxy. At least three-fourths of the directors shall be citizens of the United States, two-thirds shall be residents of this state and a majority shall reside within a one hundred mile radius of the location of the principal place of business. One director shall be designated chairman by majority vote of the board of directors.

B. The number of directors shall be fixed from time to time within the limits prescribed in this section by resolution adopted at any annual meeting or any special meeting called for the purpose.

History: 1953 Comp., § 48-15-63, enacted by Laws 1967, ch. 61, § 19; 1976, ch. 57, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 78, 79.

9 C.J.S. Banks and Banking § 970; 12 C.J.S. Building and Loan Associations § 911.

58-10-20. Organizational meeting.

Within thirty days after the corporate existence of an association begins, the initial board of directors shall hold an organizational meeting and, pursuant to the provisions of the Savings and Loan Act and the bylaws, shall elect officers and take other appropriate action in connection with beginning the transaction of business by the association. Upon good cause being shown, the supervisor may, by order, extend the time within which the organizational meeting shall be held.

History: 1953 Comp., § 48-15-64, enacted by Laws 1967, ch. 61, § 20.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 20 to 26.

9 C.J.S. Banks and Banking § 109.

58-10-21. Qualification of directors.

The bylaws of an association may prescribe other qualifications for directors, but no person is eligible for election as a director unless he is the owner in good faith and in his own right on the books of the association, either in the form of a savings account or permanent capital stock, or a combination of both, having a value on the books of at least one thousand dollars ($1,000) which shall not be reduced by withdrawal or pledge for a loan by the association so long as the person remains a director. Any director who, after his election as such, ceases to be the owner in his own right of the necessary qualifying interest, shall cease to be a director, but no action of the board of directors

shall be invalidated through the participation of such director in the action. If a director becomes ineligible under the terms of this section by reason of the exercise by the association of the right of redemption of savings accounts, he shall remain validly in office until the expiration of his term or until he otherwise becomes ineligible, whichever occurs first. Any vacancy among directors may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of members. In the event of a vacancy on the board of directors from any cause, the remaining directors have full power to continue direction of the association until the vacancy is filled.

History: 1953 Comp., § 48-15-65, enacted by Laws 1967, ch. 61, § 21.

Cross-references. - As to redemption of savings accounts, see 58-10-64 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks, §§ 78, 79.

9 C.J.S. Banks and Banking § 110; 12 C.J.S. Building and Loan Associations § 14.

58-10-22. Officers.

The officers of an association shall consist of a president, one or more vice presidents, a secretary and other officers as prescribed by the bylaws. Officers shall be elected by majority vote of the board of directors.

History: 1953 Comp., § 48-15-66, enacted by Laws 1967, ch. 61, § 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 77 to 79.

9 C.J.S. Banks and Banking §§ 108, 109; 12 C.J.S. Building and Loan Associations § 9.

58-10-23. Indemnity bonds of directors, officers and employees.

A. Each association shall maintain an effective blanket indemnity bond with an adequate corporate surety authorized to do business in this state protecting the association from loss by or through any fraud, dishonesty, forgery or alteration, larceny, embezzlement, robbery, burglary, misappropriation or any other dishonest or criminal action or omission by any officer or employee of the association and any director of the association when performing the duty of an officer or employee. The coverage shall be maintained in minimum amounts, computed on a base consisting of the total assets of the association plus the unpaid balance of loans which it has contracted to service for others, as follows:

Base	Coverage
Not over $300,000	$15,000 plus $7,500 for each $100,000 or fraction thereof over $100,000
$300,001 to $1,000,000.....	$45,000 plus $15,000 for each $100,000 or fraction thereof over $400,000
$1,000,001 to $10,000,000	$150,000 plus $30,000 for each $1,000,000 or fraction thereof over $2,000,000
$10,000,001 to $30,000,000	$450,000 plus $60,000 for each $5,000,000 or fraction thereof over $15,000,000
$30,000,001 to $60,000,000.....	$705,000 plus $75,000 for each $10,000,000 or fraction thereof over $40,000,000
$60,000,001 to $100,000,000.....	$945,000 plus $90,000 for each $15,000,000 or fraction thereof over $70,000,000
$100,000,001 and over.....	$1,230,000 plus $105,000 for each $25,000,000 or fraction thereof over $125,000,000

B. No association is required to maintain indemnity bond coverage in an amount greater than three million dollars ($3,000,000). The coverage may contain provision for a deductible amount from any loss which, except for the deductible provision, would be recoverable from the surety, but no deductible amount shall be in excess of five hundred dollars ($500) for all losses involving the same person in any case where the base for the coverage is ten million dollars ($10,000,000) or less, or in excess of one thousand dollars ($1,000) where the base is in excess of ten million dollars ($10,000,000). Associations which employ collection agents who, for any reason, are not covered by a bond required by this section, shall provide for the bonding of each unbonded agent in an amount equal to at least twice the average monthly collection of the agent. Such agents shall be required to make settlement with the association at least monthly. No bond coverage is

required for any agent which is an association insured by the federal savings and loan insurance corporation.

C. The amounts and form of the bonds and sufficiency of the surety shall be approved by the board of directors and the supervisor. All bonds shall provide that a cancellation, either by the surety or the insured, shall not become effective until thirty days after notice in writing has been received by the supervisor unless the supervisor approves the cancellation earlier.

D. Every association shall pay on behalf of, or reimburse, an officer, director or employee for the expenses of defending an action brought on behalf of the association or the savings account holders, other creditors or borrowers thereof, founded upon any acts performed or omitted by the person acting as an officer, director or employee if:

(1) the person is adjudicated to be not liable, in which case all reasonable expenses of litigation shall be paid by the association; or

(2) the person is held to be liable on certain items and not liable on others, in which case the association shall pay the proportion of the total reasonable expenses of litigation which the items on which he is held to be not liable bear to all the items alleged.

If, in the opinion of the association, the person is not liable upon the substantive issues alleged, the association may compromise and settle the claim or litigation in its discretion and pay the entire expense, including the compromise settlement, if the expense is reasonable. Any action taken by the association under this subsection requires approval by vote of at least two-thirds of the directors of the association, any interested director taking no part in the vote, or by vote of the members.

History: 1953 Comp., § 48-15-67, enacted by Laws 1967, ch. 61, § 23.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 424.

Insurance of bank against larceny and false pretenses, 15 A.L.R.2d 1006.

9 C.J.S. Banks and Banking § 114; 12 C.J.S. Building and Loan Associations § 15.

58-10-24. Meetings; voting.

The annual meeting of the members of each association shall be held each year at the time fixed in the bylaws of the association. Special meetings may be called as provided in the bylaws. Members entitled to vote at any meeting of the members are those who were members of record at the end of the calendar month next preceding the date of the meeting except those who have ceased to be members. The bylaws of an association having permanent capital stock may provide that only members who are holders of the stock are entitled to vote. In the absence of such bylaw [bylaws], in the determination of all questions requiring action by the members, each member is entitled to cast one vote by virtue of his membership, plus an additional vote for each share or fraction thereof of the permanent capital stock of the association, if any, owned by the member, plus an additional vote for each one hundred dollars ($100) or fraction thereof of the withdrawal value of savings accounts, if any, held by the member, but no member shall cast more than fifty votes based upon the withdrawal value of his savings account. A loan or a savings account creates a single membership for voting purposes even though more than one person is obligated on the loan or has an interest in the savings account. Voting may be in person or by proxy. Every proxy shall be in writing and signed by the member or his attorney in fact and, when filed with the secretary, unless otherwise specified in the proxy, continues in force from year to year until a revocation in writing is delivered to the secretary or until superseded by subsequent proxies. The bylaws of each association shall specify the quorum requirements and other voting requirements for conducting business at membership meetings.

History: 1953 Comp., § 48-15-68, enacted by Laws 1967, ch. 61, § 24.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 70; 12 C.J.S. Building and Loan Associations § 23.

58-10-25. Access to records.

A. Every member may inspect records of an association which pertain to his loan, permanent capital stock or savings account. Otherwise, the right of inspection and examination of the records is limited to the supervisor or his authorized representatives as provided in the Savings and Loan Act, to persons authorized to act for the association and to any state or federal instrumentality or agency authorized to inspect or examine the records of an association. Records pertaining to the accounts and loans of members shall be kept confidential by the supervisor and his representatives except where disclosure is compelled by a court of competent jurisdiction, and no member or other person shall have access to the records or be furnished or possess a partial or complete list of the members except upon express action and authority of the board of directors. Records of an association are not admissible as evidence in any proceeding concerning the validity of any tax assessment or the collection of delinquent taxes, penalties or interest except where:

(1) the owner of an account is a party to the proceeding, in which case the records pertaining to the account of the party are admissible; or

(2) the association itself is a party to the proceeding, in which case any record material to the proceeding is admissible.

B. If any member or members desire to communicate with the other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish, upon request, a statement of the approximate number of members of the association at the time of the request and an estimate of the cost of forwarding the communication. The requesting member or members shall then submit the communication to the supervisor who, if he finds it to be appropriate, truthful and in the best interests of the association and all its members, shall execute a certificate setting out such findings, forward the certificate and the communication to the association and direct that the communication be prepared and mailed by the association to the members upon the requesting member's or members' payment to it of the expenses of preparation and mailing.

History: 1953 Comp., § 48-15-69, enacted by Laws 1967, ch. 61, § 25.

Cross-references. - For requirement of confidentiality by the supervisor, see 58-10-74 NMSA 1978.

As to audits and examinations by the supervisor, see 58-10-76, 58-10-77 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 67, 68.

Purposes for which stockholder may exercise right to examine corporate books and records, 15 A.L.R.2d 11.

9 C.J.S. Banks and Banking § 69.

58-10-26. Records.

Every association shall keep correct and complete books of account and minutes of the meetings of members and directors.

History: 1953 Comp., § 48-15-70, enacted by Laws 1967, ch. 61, § 26.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking § 6.

58-10-27. Misdescription of assets.

No association shall, directly or indirectly, by any system of account or any device of bookkeeping, knowingly enter any of its assets upon its books in the name of any other person, partnership, association or corporation or under any title or designation that is not truly descriptive of the assets.

History: 1953 Comp., § 48-15-71, enacted by Laws 1967, ch. 61, § 27.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 232, 237.

9 C.J.S. Banks and Banking §§ 293 to 298.

58-10-28. Charging off or setting up reserves against bad assets.

After a determination of value, the supervisor may order that assets in the aggregate, to the extent that the assets exceed appraised value, be charged off, or that a special reserve or reserves equal to the depreciation in value be set up by transfers from surplus, undivided profits or reserves.

History: 1953 Comp., § 48-15-72, enacted by Laws 1967, ch. 61, § 28.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Special reserves included in net worth. - The special reserves provided for in this section are to be included in the net worth of a savings and loan association, as net worth is defined by 58-10-2 NMSA 1978. 1968 Op. Att'y Gen. No. 68-56.

Reserves are an appropriation or a segregation of surplus. 1968 Op. Att'y Gen. No. 68-56.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 404, 405, 411.

9 C.J.S. Banks and Banking § 284.

58-10-29. Membership records.

Every association shall maintain membership or stockholder records which show the name and address of each member, the status of each member as a savings account holder, a stockholder or an obligor and the date of his membership.

History: 1953 Comp., § 48-15-73, enacted by Laws 1967, ch. 61, § 29.

58-10-30. Financial statement.

Every association shall prepare and publish in January of each year, in a newspaper of general circulation in the county in which the principal office of the association is located, a statement of its financial condition in the form prescribed or approved by the supervisor as of the last business day of December of the preceding year.

History: 1953 Comp., § 48-15-74, enacted by Laws 1967, ch. 61, § 30.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 18.

9 C.J.S. Banks and Banking § 150.

58-10-31. Annual reports; other reports.

On or before January 31 each year, every association shall make a written report to the supervisor, upon a form prescribed and furnished by the supervisor, of its affairs and operations, including a complete statement of its financial condition along with a statement of income and expense since its last previous similar report, for the twelve months ending on the last business day of December of the previous year. The report shall be signed by the president, vice president or secretary.

History: 1953 Comp., § 48-15-75, enacted by Laws 1967, ch. 61, § 31.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 237.

9 C.J.S. Banks and Banking § 36.

58-10-32. Power to borrow.

No association shall borrow more money than an aggregate amount equal to fifty percent of its withdrawable savings on the date of borrowing, except that the supervisor may grant immediate authority to exceed this limit for the sole purpose of meeting withdrawals.

History: 1953 Comp., § 48-15-76, enacted by Laws 1967, ch. 61, § 32.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 289, 290.

9 C.J.S. Banks and Banking § 974; 12 C.J.S. Building and Loan Associations § 52.

58-10-33. General corporate powers.

Every association incorporated pursuant to, or operating under, the provisions of the Savings and Loan Act has all powers authorized by the corporation laws of this state, is a body corporate and politic, may sue and be sued, may have a common seal which it may alter at pleasure and has all other powers incident to, or necessary for, the purpose of properly carrying on its business.

History: 1953 Comp., § 48-15-77, enacted by Laws 1967, ch. 61, § 33.

Cross-references. - For the New Mexico general corporation laws, see 53-11-1 to 53-11-51, 53-12-1 to 53-12-5, 53-13-1 to 15-13-13, 53-14-1 to 53-14-7, 53-15-1 to 53-15-4, 53-16-1 to 53-16-24, 53-17-1 to 53-17-20 and 53-18-1 to 53-18-12 NMSA 1978.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Purchase of one association's assets by another permitted. - A New Mexico state chartered savings and loan association may purchase the assets, which include branch offices located more than 100 miles from the purchasing association's principal office, and assume the liabilities, of another state chartered savings and loan association. 1982 Op. Att'y Gen. No. 82-13.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 270 to 335.

9 C.J.S. Banks and Banking § 157; 12 C.J.S. Building and Loan Associations § 6.

58-10-34. Fiscal agent.

Any association may act as fiscal agent of the United States and, when so designated by the secretary of the treasury, shall perform under regulations he may require, and may act as agent for any instrumentality of the United States.

History: 1953 Comp., § 48-15-78, enacted by Laws 1967, ch. 61, § 34.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 890; 12 C.J.S. Building and Loan Associations § 9.

58-10-35. Powers under federal law.

A. Any association insured by the federal savings and loan insurance corporation, or any federal association, insofar as its charter and applicable state and federal laws, rules and regulations permit, may, upon application to and approval by the supervisor, act as trustee or custodian of any trust created or organized in the United States and forming part of a stock bonus, pension or profit-sharing plan which qualifies or qualified for specific tax treatment under Section 401(d) or Section 408(a) of the Internal Revenue Code of 1954, as amended.

B. Any association in relation to any funds held in a fiduciary capacity pursuant to this section:

(1) shall segregate such funds from its general assets;

(2) shall keep a separate set of books and records detailing all transactions involving such funds;

(3) may commingle such funds for appropriate investment purposes but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions; and

(4) shall invest such funds only in its savings accounts or deposits in the association. No association shall use in the conduct of its business any funds held in a fiduciary capacity pursuant to this section.

C. In considering any application made pursuant to this section, the supervisor shall examine the investment policies, amount, type and adequacy of reserves, fidelity bonds and any legally required deposits of the applicant, and other pertinent facts and circumstances, and may grant or refuse the application accordingly.

History: 1953 Comp., § 48-15-79, enacted by Laws 1967, ch. 61, § 35; 1971, ch. 242, § 1; 1975, ch. 236, § 1.

Internal Revenue Code. - Section 401(d) and 408(a) of the Internal Revenue Code of 1954 are compiled as 26 U.S.C. §§ 401(d) and 408(a).

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 220 to 231.

9 C.J.S. Banks and Banking §§ 941 to 955; 12 C.J.S. Building and Loan Associations § 49.

58-10-36. Original real estate loans.

Every association may make real estate loans to members, secured by a mortgage, deed of trust or other instrument creating or constituting a first and prior lien on the real estate, and may make additional real estate loans secured by liens subsequent to its own first lien upon the same property. Additional security may also be taken by the association in connection with any such loan.

History: 1953 Comp., § 48-15-80, enacted by Laws 1967, ch. 61, § 36.

Cross-references. - For provisions relating to money, interest and usury, see 56-8-1 to 56-8-30 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 282 to 284.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of contract to lend money, 52 A.L.R.4th 826.

9 C.J.S. Banks and Banking § 1009.

58-10-37. Dealing in real estate loans.

Every association may purchase real estate loans upon security of the same character against which the association may make an original loan and also may lend money on the security of such real estate loans.

History: 1953 Comp., § 48-15-81, enacted by Laws 1967, ch. 61, § 37.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 282 to 284.

9 C.J.S. Banks and Banking § 1009; 12 C.J.S. Building and Loan Associations § 65.

58-10-38. Participation with others in real estate loans.

A. Subject to the requirements of any regulations of the supervisor, every association may:

(1) participate with other lenders in real estate loans of any type that the association could originate;

(2) sell, but only without recourse, any real estate loan it holds or any participating interest therein; and

(3) service any real estate loans sold by it.

B. No association shall participate in the making of a loan pursuant to the approval granted in this section or purchase a participation in a loan beyond the association's regular lending area pursuant to this approval if the resulting aggregate amount of the institution's investments made pursuant to this approval would exceed forty percent of the association's assets. As used in this subsection, "loan" and "investments" do not include or apply to any loan as to which the institution has, with respect to such loan or its participation therein, the benefit of any insurance or guaranty or commitment for insurance or guaranty under any law of the United States.

History: 1953 Comp., § 48-15-82, enacted by Laws 1967, ch. 61, § 38.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 282 to 284.

9 C.J.S. Banks and Banking § 1009.

58-10-39. Requirements in lending transactions.

In no event shall an association make a loan, purchase or sell a note or lien or enter into any participation transaction authorized in the Savings and Loan Act in violation of any regulation promulgated by the supervisor, and no association shall:

A. make a real estate loan [on real estate] on which is located, or on which, from the proceeds of the loan, will be located a home, or homes, or combination of home and business property that exceeds eighty percent of the appraised valuation of the real estate plus the value of any savings account in the association or any first mortgage real estate loan pledged as additional collateral to secure the loan; provided that an association may make loans on single-family dwellings in an amount not to exceed ninety percent of the appraised valuation of the real estate plus the value of any savings account in the association or any first mortgage real estate loan pledged as additional collateral to secure the loan, if:

(1) the net worth of the association is not less than three percent of total assets; and

(2) the aggregate of the ninety percent loans does not exceed twenty percent of the total assets of the association; and

(3) the principal obligation of the ninety percent loans does not exceed the amount established by the supervisor. As used in this subsection, "home" means a dwelling for not more than four families, and "appraised valuation of the real estate" may include the value of any lease or contract on the real estate;

B. make a real estate loan other than the type described in Subsection A that exceeds seventy-five percent of the appraised valuation of the real estate plus the value of any additional collateral of the type described in Subsection A pledged to secure the loan;

C. make a real estate loan for a term in excess of thirty years;

D. make a real estate loan to an officer or director of the association unless the loan is first approved by its board of directors and the approval recorded in the minutes of the meeting of the board at which the loan was approved;

E. make a real estate loan unless the property has been appraised:

(1) by one or more qualified real estate appraisers designated by the board of directors. Each appraisal shall be in writing with a certificate signed by the appraisers stating that they have personally examined the described property, setting forth the value of the land and, separately the nature, condition and value of the improvements, or improvements to be made, if any. The appraisal shall be filed and preserved by the association;

(2) in the case of an insured or guaranteed loan, the appraisal may be made by any appraiser appointed by any lending, insuring or guaranteeing agency of the United States or of this state which insures or guarantees the loan, wholly or in part. A copy of any appraisal, or of the commitment or cerificate of the insuring or guaranteeing agency, shall be filed and preserved by the association;

(3) in any case in which a loan is secured by real estate with part or all of the loan being made in reliance upon the mortgage guaranty or insurance of a private mortgage guaranty firm licensed and qualified to do business in New Mexico, only that part of the loan, if any, which is not made in reliance upon the guaranty or insurance is subject to limitations with respect to the ratio of the amount of loan to the value of the property;

(4) the supervisor may, when good cause exists, cause an independent appraisal to be made of any property upon which a loan has been made, and the reasonable travel and subsistence expenses and compensation to the appraisers, not in excess of comparable fees paid for the same or similar appraisals in the same area, shall be paid by the association owning or holding the property as mortgagee;

F. make a real estate loan which is not secured by a first and prior lien upon the property described in the mortgage, deed of trust or other instrument creating or constituting the lien unless every prior lien of record thereon is owned by or subordinated to the association. The first and prior lien shall be evidenced by an attorney's title opinion or mortgagee's title insurance policy;

G. make a real estate loan unless the insurable improvements thereon are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in this state;

H. sell or transfer a prior lien held by the association while retaining a junior lien on the same security to secure an unsatisfied obligation due the association unless the junior lien or liens were created in connection with a loan made under Sections 38 [58-10-38 NMSA 1978] or 39 [58-10-39 NMSA 1978] of the Savings and Loan Act; or

I. make collateral loans secured by the assignment of other loans, except where:

(1) each assigned loan is one which the association could itself make or purchase at par under applicable law and regulations, based on a current association appraisal;

(2) the amount of the collateral loan does not exceed at any time ninety percent of the aggregate unpaid balance of the assigned loans;

(3) the assignment to the association provides that:

(a) all payments of principal and interest on the assigned loans shall be made directly to the association and applied to the outstanding unpaid balance of the collateral loan; and

(b) a default on any assigned loan constitutes a default on the collateral loan and permits acceleration of the maturity of the collateral loan; and

(4) the assignment is properly recorded and is prior to any other lien of record on the assignor's interest in the assigned loans.

History: 1953 Comp., § 48-15-83, enacted by Laws 1967, ch. 61, § 39.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 683 to 688, 692, 693.

What constitutes "business or commercial" purpose within meaning of § 104(1) of Truth in Lending Act (15 USCS § 1603(1)), exempting business or commercial credit transactions from act, 54 A.L.R. Fed. 491.

9 C.J.S. Banks and Banking §§ 1008, 1011, 1014; 12 C.J.S. Building and Loan Associations § 4.

58-10-40. Advances to protect security.

Any association may pay taxes, assessments, supplemental abstract or title search charges, insurance premiums and other similar charges for the protection of its interests in properties securing its real estate loans, which advances may be carried on its books as an asset of the association and for which it may charge and collect interest, or the advances may be added to the unpaid balance of the loan as of the first day of the month in which the advances are made. All such advances constitute a valid lien against the real estate securing the loan for which they were made. An association may require borrowers to pay monthly, in advance, in addition to interest or interest and principal, the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums and other charges upon the real estate securing any loan, or any of these charges, so as to enable the association to pay them as they become due from the funds so received. The amount of the monthly charges may be increased or decreased as necessary for their payment. An association may carry such funds in trust in an account or may credit them to the indebtedness and advance the money for taxes, insurance and other charges as they come due. Every association shall keep a record of the payment by the association of taxes, assessments and insurance premiums on all real estate securing its loans and on all real and personal property owned by it.

History: 1953 Comp., § 48-15-84, enacted by Laws 1967, ch. 61, § 40.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 693.

Power of bank officer respecting security or collateral held by bank, 11 A.L.R.2d 1305.

Rights in funds representing "escrow" payments made by mortgagor in advance to cover taxes or insurance, 50 A.L.R.3d 697.

9 C.J.S. Banks and Banking §§ 394, 996; 12 C.J.S. Building and Loan Associations § 65.

58-10-41. Charges for real estate loans.

Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, maintenance, closing, disbursing, extending, readjusting or renewing of real estate loans, which charges may be collected by the association from the borrower and retained by it or paid to any persons, including any director, officer or employee of the association rendering services in connection therewith, or paid directly by the borrower. In addition, any association may charge premiums for making such loans as well as penalties for prepayments or late payments. No director, officer or employee of an association shall receive any fee or other compensation of any kind in connection with procuring any loan for an association except for services actually rendered as provided in this section. A loan settlement statement shall be furnished by or on behalf of the association to each borrower upon the closing of every real estate loan, indicating in detail the expenses, fees and charges the borrower has paid or obligated himself to pay to the association or to any other person in connection with the loan. A copy of the statement shall be retained in the records of the association.

History: 1953 Comp., § 48-15-85, enacted by Laws 1967, ch. 61, § 41.

Cross-references. - For the limits on commissions for securing loans, see 56-8-7, 56-8-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 110 to 120.

Construction and application of 18 U.S.C.S. § 213 punishing acceptance of loan or gratuity by bank examiner, 19 A.L.R. Fed. 340.

9 C.J.S. Banks and Banking § 384.

58-10-42. Insured and guaranteed loans.

Any association may make, without regard to any loan limitations or restrictions otherwise imposed by the Savings and Loan Act, any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof.

History: 1953 Comp., § 48-15-86, enacted by Laws 1967, ch. 61, § 42.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 420.

9 C.J.S. Banks and Banking § 981.

58-10-43. Loans on security of savings accounts.

Any association may make loans on the sole security value of the accounts owned or otherwise pledged for or by the borrower. No such loan shall be made when an association has applications for withdrawal filed which have not been reached for payment.

History: 1953 Comp., § 48-15-87, enacted by Laws 1967, ch. 61, § 43.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 684, 686.

9 C.J.S. Banks and Banking § 389.

58-10-44. Property improvement, educational and manufactured home financing loans.

Any association may make or purchase loans without the security of a lien upon real property as follows:

A. simple interest, discount or gross charge loans for property alteration, repair, improvement or for the equipping of any residential real property, if:

(1) with respect to the same property alteration, repair or improvement, the net proceeds of any such loan investment made pursuant to this subsection do not exceed five thousand dollars ($5,000);

(2) with respect to any such loan investment for the equipping of any residential real property, the net proceeds of the loan investment plus the aggregate of the unpaid net proceeds of all other of the association's outstanding equipping loan investments relating to the same property, which are made pursuant to this subsection, do not exceed five thousand dollars ($5,000);

(3) the property is located in the association's regular lending area;

(4) the loan is evidenced by one or more notes, bonds or other written evidences of debt;

(5) the loan is repayable in equal weekly, biweekly, monthly, bimonthly or quarterly installments with the first installment due no later than one hundred twenty days from the date the loan is made and the final installment due no later than ten years and thirty-

two days from that date. However, the loan contract may provide for a first or final installment, or both, in an amount other than that of the regular installment but, in such instances, such installment shall not be less than one-half of nor more than one and one-half times the amount of the regular installment;

(6) investment in a loan for the equipping of residential real property will not cause the outstanding aggregate of all investments in loans for the equipping of such property to exceed five percent of an association's assets; and

(7) the resulting aggregate amount of all such loans made under this section does not exceed an amount equal to twenty percent of the association's assets;

B. loans made for the payment of expenses of college or university education, but no association shall make any investment in loans under this subsection if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured or unsecured, and the association may require a comaker, insurance, guaranty under a governmental student loan guarantee plan or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of college or university education. As used in this subsection:

(1) "loan" means any loan, obligation and advance of credit; and

(2) "college or university education" means education at an institution which provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit towards a bachelor's degree; and

C. loans made for manufactured home financing, subject to any limitation as to maximum loan amount or term which the supervisor may prescribe for all associations. As used in this section, "manufactured home" means a movable accommodation with not less than four hundred square feet floor space and used or designed for use as living quarters. Any loan pursuant to this subsection is subject to all provisions of the Motor Vehicle Sales Finance Act.

History: 1953 Comp., § 48-15-88, enacted by Laws 1967, ch. 61, § 44; 1971, ch. 242, § 2; 1973, ch. 224, § 1; 1983, ch. 295, § 6.

Cross-references. - As to the legal disability of minors being removed when borrowing money for educational purposes, see 58-6-3 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 279 to 284.

9 C.J.S. Banks and Banking § 1009; 12 C.J.S. Building and Loan Associations §§ 65, 66.

58-10-45. Investment in securities.

A. Every association may invest in:

(1) obligations of, or guaranteed as to principal and interest by, the United States or this state;

(2) stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks;

(3) stock or obligations of the federal savings and loan insurance corporation;

(4) stock or obligations of a federal national mortgage association or any successor or successors thereto;

(5) demand, time or savings deposits with any bank or trust company, the deposits of which are insured by the federal deposit insurance corporation;

(6) stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that the corporation or agency assists in furthering or facilitating the association's purposes or power;

(7) insured savings accounts of any association;

(8) bonds, notes or other evidences of indebtedness which are a general obligation of any municipality, county, school district or other political subdivision of this state; and

(9) capital stock obligations or other securities of any service corporation organized under the laws of this state, if the entire capital stock of the corporation is available for purchase only by financial institutions of this state, federal savings and loan associations and national banks having their home offices in this state. No association may make any such investment in this state if its aggregate outstanding investment, determined as prescribed by the supervisor, would thereupon exceed one percent of its assets.

B. Securities owned by an association shall be carried on its books at no more than the actual cost thereof.

C. Nothing in the Savings and Loan Act denies to an association the right to invest its funds, operate a business, manage or deal in property or take any other action over

whatever period of time may be reasonably necessary to avoid loss on a loan or investment made, or an obligation created, in good faith.

History: 1953 Comp., § 48-15-89, enacted by Laws 1967, ch. 61, § 45.

Cross-references. - For definition of "service corporation," see 58-10-2I NMSA 1978.

As to municipal housing bonds being legal investments, see 3-45-24 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

State chartered banks and savings and loan associations are permitted to invest in mutual funds. 1987 Op. Att'y Gen. No. 87-4.

Mutual funds may not be pledged as collateral for deposits of public funds. 1987 Op. Att'y Gen. No. 87-4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 296.

9 C.J.S. Banks and Banking § 1008.

58-10-46. Acquisition of real property.

A. An association may own real property upon which any facility used in connection with the operation of the association is or will be located. The supervisor may order that any property be sold which cannot reasonably be expected to be used as a future location.

B. An association may acquire or hold real property for the purpose of investment, development or improvement up to an aggregate value not to exceed five percent of its total assets.

History: 1953 Comp., § 48-15-90, enacted by Laws 1967, ch. 61, § 46.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 279 to 284.

9 C.J.S. Banks and Banking § 163; 12 C.J.S. Building and Loan Associations § 50.

58-10-47. Investment in office buildings.

An association shall not invest more in office buildings, sites and parking, than an amount equal to the net worth of the association.

History: 1953 Comp., § 48-15-91, enacted by Laws 1967, ch. 61, § 47.

Outstanding capital debentures not used to satisfy net worth requirements. - Outstanding capital debentures or notes may not be used to satisfy the net worth requirements of this section, or any other section of the Savings and Loan Act except for 58-10-68 NMSA 1978, which is for the purpose of computing an association's reserve requirements. In that event, they are to be treated as capital. 1975 Op. Att'y Gen. No. 75-53.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 71, 205.

9 C.J.S. Banks and Banking § 163; 12 C.J.S. Building and Loan Associations § 50.

58-10-48. Valuation of real property of an association.

No association shall carry any real estate on its books at a sum in excess of the total amount invested by the association on account of the real estate, including advances, costs and improvements. Any association selling real estate under a contract of sale may carry the amount due the association under terms of the contract as an asset upon its books, but at no time shall the contract be considered as having an asset value greater in amount than the remaining principal balance of the contract, or greater in amount than the value at which the property so sold was permitted to be carried upon the books of the association.

History: 1953 Comp., § 48-15-92, enacted by Laws 1967, ch. 61, § 48.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 102.

9 C.J.S. Banks and Banking § 156.

58-10-49. Appraisals of real estate owned.

Every association shall appraise every parcel of real estate at the time of acquisition and upon completion of any permanent improvements. The report of the appraisal shall be in writing and kept in the records of the association.

History: 1953 Comp., § 48-15-93, enacted by Laws 1967, ch. 61, § 49.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 102.

9 C.J.S. Banks and Banking § 156.

58-10-50. Powers and privileges of associations.

Notwithstanding any other provision of the Savings and Loan Act, every company, association or corporation licensed under the provisions of the savings and loan laws of

this state whose accounts are insured by the federal savings and loan insurance corporation or its successor, and which is a member of a federal home loan bank or its successor, shall possess in addition to the rights, powers, privileges, immunities and exceptions provided by the Savings and Loan Act, such additional rights, powers, privileges, immunities and exceptions which the supervisor may grant, extend and provide for by regulations promulgated pursuant to the provisions of Sections 58-10-72 and 58-10-73 NMSA 1978; provided, however, that every such additional right, power, privilege, immunity and exception so granted, extended and provided for by the supervisor are [is] also possessed by federally chartered associations at the time such regulation is promulgated. Provided, further, that the supervisor shall also adopt regulations controlling the aforesaid state associations to the same extent that federally chartered associations are controlled in those instances where state regulations are less restrictive than federal regulations.

History: 1953 Comp., § 48-15-94, enacted by Laws 1967, ch. 61, § 50; 1973, ch. 220, § 1.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Section controls limitations in 58-10-17 NMSA 1978. - The prefatory clause of this section "notwithstanding any other provision of the Savings and Loan Act" resolves any possible conflict between this section and 58-10-17 NMSA 1978 and accords primacy to this section. Thus, notwithstanding the limitations expressed by 58-10-17 NMSA 1978, the provisions of this section are controlling. 1971 Op. Att'y Gen. No. 71-77. See also 1972 Op. Att'y Gen. No. 72-68.

State and federal regulations need not be identical. - A state emergency regulation was not invalid, even though it sought to restrict state chartered savings and loan associations from making loans on timeshares at a time when similar loans were authorized by institutions chartered by the federal government. The regulatory provisions of the state and federal government need not be identical or in agreement with each other. State v. Grissom, 106 N.M. 555, 746 P.2d 661 (Ct. App. 1987).

State chartered banks and savings and loan associations are permitted to invest in mutual funds. 1987 Op. Att'y Gen. No. 87-4.

Mutual funds may not be pledged as collateral for deposits of public funds. 1987 Op. Att'y Gen. No. 87-4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 275, 282.

9 C.J.S. Banks and Banking §§ 928 to 940; 12 C.J.S. Building and Loan Associations § 49.

58-10-51. Limitation on savings accounts.

There is no limit on the number and value of savings accounts an association may accept unless limits are fixed by its board of directors or by Section 67 [58-10-68 NMSA 1978] of the Savings and Loan Act. Any association may refuse to accept deposits as it deems advisable.

History: 1953 Comp., § 48-15-95, enacted by Laws 1967, ch. 61, § 51.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 5.

58-10-52. Uninsured accounts; notice.

Within thirty days following the effective date of this section, each savings and loan association subject to the provisions of the Savings and Loan Act, including specifically those associations established or approved prior to the effective date of the Savings and Loan Act, whose accounts are not insured with the federal savings and loan insurance corporation, an agency of this state or another federal agency established for the purpose of insuring savings accounts in associations, or with any other insurer approved by the savings and loan supervisor and meeting the qualifications prescribed in Section 58-10-12 NMSA 1978, shall give a written notice to each new member opening a savings account prior to accepting the first deposit from said new member, that its accounts are not insured and shall continually maintain at each place of business at which deposits are received a sign in a conspicuous place giving notice that its accounts are not insured. The sign shall be in such form and of such size as the supervisor shall prescribe by regulation.

History: 1953 Comp., § 48-15-95.1, enacted by Laws 1972, ch. 62, § 1.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1976.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

58-10-53. Insurance of accounts; failure to obtain or maintain.

A. Any association subject to the provisions of the Savings and Loan Act, including specifically those associations established or approved prior to the effective date of the Savings and Loan Act, which on January 1, 1979, has not obtained insurance of its accounts with the federal savings and loan insurance corporation, an agency of this state or another federal agency established for the purpose of insuring accounts in associations, shall furnish proof to the supervisor prior to June 30, 1979, that it has:

(1) obtained insurance of its accounts in one of the manners specified above;

(2) become a federal savings and loan association;

(3) merged with an existing insured savings and loan association, state or federal; or

(4) entered into voluntary liquidation.

B. If it appears to the supervisor that any association, so uninsured as of January 1, 1979, has failed to accomplish one of the prescribed four steps in Subsection A of this section prior to June 30, 1979, the supervisor shall, after hearing, proceed to take possession of the association pursuant to the provisions of Section 58-10-85 NMSA 1978 and may liquidate the association pursuant to the provisions of Section 58-10-85 NMSA 1978. Likewise, if it appears at any time that any association, the accounts of which are insured, has failed to maintain its insurance, the supervisor shall, after hearing, proceed to take possesssion [possession] of the association pursuant to the provisions of Section 58-10-85 NMSA 1978 and may liquidate the association pursuant to the provisions of Section 58-10-85 NMSA 1978.

History: 1953 Comp., § 48-15-95.2, enacted by Laws 1976, ch. 57, § 2.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 230.

9 C.J.S. Banks and Banking §§ 941 to 955.

58-10-54. Who may open a savings account.

Investments in savings accounts may be made only in cash and may be made by any person in his own right or in a trust or other fiduciary capacity and by any partnership, association, corporation [or] federal entities which are authorized to open such savings accounts, subject to any limitation fixed by the board of directors or the association's refusal to accept deposits.

History: 1953 Comp., § 48-15-96, enacted by Laws 1967, ch. 61, § 52.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 987.

58-10-55. Savings contracts.

Each holder of a savings account shall execute a savings contract, the form of which is subject to approval of the supervisor, setting forth any special terms and provisions applicable to the account and the conditions upon which withdrawals may be made not inconsistent with the provisions of the Savings and Loan Act. The savings contract shall be held by the association as part of its records pertaining to the account.

History: 1953 Comp., § 48-15-97, enacted by Laws 1967, ch. 61, § 53.

Cross-references. - As to withdrawals from savings accounts, see 58-10-63 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 416.

Effect, on bank depositor's rights and those of bank, of printed rules in passbook not expressly accepted, 60 A.L.R.2d 708.

Effect, on bank depositor's rights and those of bank, of printed rule in passbook, not expressly accepted, releasing bank from liability for payment to impostor, 60 A.L.R.2d 721.

9 C.J.S. Banks and Banking § 982.

58-10-56. Evidence of account ownership.

As evidence of each savings account, the association shall issue to the holder of the account either an account book or a certificate.

History: 1953 Comp., § 48-15-98, enacted by Laws 1967, ch. 61, § 54.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 347 to 350.

Certificate of deposit as "security" under federal securities laws, 82 A.L.R. Fed. 553.

9 C.J.S. Banks and Banking § 156.

58-10-57. Transfer of savings accounts.

Savings accounts are transferable only on the books of the association upon presentation of evidence of transfer satisfactory to the association, accompanied by application for transfer by which the transferee agrees to accept the account subject to

the terms and conditions of the savings contract, the bylaws of the association and the provisions of its charter. The association may treat the holder of record of a savings account as the owner for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing that a pledge of the savings account has been made.

History: 1953 Comp., § 48-15-99, enacted by Laws 1967, ch. 61, § 55.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 531.

9 C.J.S. Banks and Banking § 288.

58-10-58. Lost or destroyed evidence of ownership.

A new account book or certificate may be issued in the name of the holder of record at any time when requested by the holder or his legal representative upon proof satisfactory to the association that the original book or certificate has been lost or destroyed. The new account book or certificate shall expressly state that it is issued in lieu of the one lost or destroyed, and the association shall in no way be liable thereafter on account of the original account book or certificate. The association may require indemnification against any loss that might result from the issuance of the new account book or certificate.

History: 1953 Comp., § 48-15-100, enacted by Laws 1967, ch. 61, § 56.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 350, 497, 531, 532.

Liability of savings bank for payment to person presenting lost or stolen passbook or savings account card, 68 A.L.R.3d 1080.

9 C.J.S. Banks and Banking § 356.

58-10-59. Savings accounts of minors.

Any association operating under the Savings and Loan Act, and any federal savings and loan association doing business in this state, may accept savings accounts in the name of a minor or in the name of two or more persons, one or more of whom are minors, and pay the account to the order of the minor or minors as if they were of full age.

History: 1953 Comp., § 48-15-101, enacted by Laws 1967, ch. 61, § 57.

Cross-references. - For rule of construction of "age of majority," see 12-2-2 NMSA 1978.

As to the age of majority and exceptions thereto, see 28-6-1 NMSA 1978.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 359.

58-10-60. Power of attorney on savings accounts.

Any association or federal association may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals, in whole or in part, from the savings account of a member, whether minor or adult, until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of the death or adjudication of incapacity of the member constitutes written notice of revocation of the authority of his attorney-in-fact. No association or federal association is liable for damages, penalty or tax by reason of any payment made pursuant to this section.

History: 1953 Comp., § 48-15-102, enacted by Laws 1967, ch. 61, § 58; 1975, ch. 257, § 8-120.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 498.

9 C.J.S. Banks and Banking § 160.

58-10-61. Pledge of savings account in joint tenancy.

The pledge or hypothecation to any association or federal association of all or part of a savings account in joint tenancy signed by any tenant or tenants, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account, unless the terms of the savings account provide specifically to the contrary, is a valid pledge and transfer to the association of that part of the account pledged or hypothecated, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

History: 1953 Comp., § 48-15-103, enacted by Laws 1967, ch. 61, § 59.

Cross-references. - As to joint savings accounts generally, see 58-10-63B NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 369 to 389.

Liability of bank to joint depositor for removal of name from account at request of other joint depositor, 39 A.L.R.4th 1112.

9 C.J.S. Banks and Banking §§ 994, 1002.

58-10-62. Accounts of fiduciaries.

Any association or federal association may accept savings accounts in the name of any administrator, executor, custodian, conservator, guardian, trustee or other fiduciary for a named beneficiary or beneficiaries. The fiduciary may vote as a member as if the membership were held absolutely, and he may open, make additions to and withdraw any such account in whole or in part. The withdrawal value of the account and earnings thereon or other rights relating thereto may be paid or delivered in whole or in part to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living. Payment or delivery to the fiduciary, or a receipt or acquittance signed by the fiduciary to whom the payment or delivery of rights is made, is a valid release and discharge of the association for the payment or delivery made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to the association, and the association has no written notice of any other disposition of the beneficial estate, the withdrawal value of the account and earnings thereon or other rights relating thereto may, at the option of the association, be paid and delivered in whole or in part to the beneficiary, beneficiaries or to a legally authorized successor fiduciary. Whenever an account is opened by any person describing himself in opening the account as trustee for another and no other notice of the existence and terms of a legal and valid trust than this description has been given in writing to the association, in the event of the death of the person described as trustee, the withdrawal value of the account or any part thereof, together with the earnings thereon, may be paid to the person for whom the account was thus described to have been opened or to a legally authorized successor trustee. Payment and delivery to any beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by any beneficiary, beneficiaries or designated person for any payment or delivery, is a valid release and discharge of the association for the payment or delivery made. No association paying any fiduciary, beneficiary or designated person in accordance with the provisions of this section is liable for any estate, inheritance or succession taxes which may be due to this state.

History: 1953 Comp., § 48-15-104, enacted by Laws 1967, ch. 61, § 60; 1971, ch. 242, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 275, 303 to 307.

58-10-63. Withdrawals from savings accounts.

A. Any savings account holder may, at any time, present a written application for withdrawal of all or any part of his savings account except to the extent it may be pledged to the association or to another person on the books of the association. The association may pay in full each withdrawal request as presented without requiring that written application be made. When an association is unable to pay all withdrawal requests within a period of thirty days from the date of receipt of written request, the association shall number and file all withdrawal requests in the order received and

proceed in the following manner while any withdrawal request remains unpaid for more than thirty days:

(1) withdrawal requests shall be paid in the order received and, if any holder of a savings account or accounts has requested the withdrawal of more than one thousand dollars ($1,000), he shall be paid one thousand dollars ($1,000) in order when reached and his withdrawal request shall be charged with that amount as paid and shall be renumbered and placed at the end of the list of withdrawal requests, and thereafter, upon again being reached, shall be paid a like amount but not exceeding the withdrawal value of his savings account, and until the withdrawal request has been paid in full shall continue to be so paid, renumbered and replaced at the end of the withdrawal requests on file. When any such request is reached for payment, the association shall advise the holder of the savings account by certified mail to his last address of record on the books of the association and, unless the holder applies in person or in writing for the payment of the withdrawal request within thirty days from the date of the mailing of the notice, no payment on account of the withdrawal request shall be made and the request shall be canceled. The board of directors may pay on an equitable basis an amount not exceeding two hundred dollars ($200) to any holder of a savings account or accounts in any calendar month without regard to any other provision of this section.

(2) when an association is unable to pay all withdrawal requests within a period not exceeding thirty days from the date of receipt of written request, it shall allot to the payment of such requests the remainder of the association's receipts from all sources after deducting from total receipts appropriate amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts and a fund for general corporate purposes equivalent to not more than twenty percent of the association's receipts from holders of its savings accounts and from its borrowers.

B. When a savings account is opened in any association or federal association in the names of two or more persons, whether minor or adult, in such form that the money in the account is payable to either, or the survivor or survivors, the account and all additions thereto is the property of the persons as joint tenants. The money in the account may be paid to, or on the order of any one of the persons during his lifetime or to, or on the order of any one of the survivors of them after the death of any one or more of them. The opening of the account in such form is, in the absence of fraud or undue influence, conclusive evidence in any action to which either the association or the surviving party or parties is a party of the intention of all of the parties to the account to vest title to the account and the additions thereto in the survivor or survivors. By written instructions given to the institution by all the parties to the account, the signature of more than one of the persons during their lifetimes or of more than one of the survivors after the death of any one of them may be required on any check, receipt or withdrawal order, in which case the institution shall pay the money in the account only in accordance with the instructions, but no such instructions shall limit the right of the survivor or survivors to receive the money in the account. Payment of all or any money in the account as provided in this subsection discharges the institution from liability with

respect to the money paid prior to receipt by the institution of written notice from any one of them directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice, an institution may refuse, without liability, to honor any check, receipt or withdrawal order on the account pending determination of the rights of the parties. No institution paying any survivor in accordance with the provisions of this subsection is liable for any estate, inheritance or succession taxes which may be due this state.

History: 1953 Comp., § 48-15-106, enacted by Laws 1967, ch. 61, § 62.

Cross-references. - As to pledges of savings accounts in joint tenancy, see 58-10-61 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 493 to 537.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook, 35 A.L.R.4th 1094.

9 C.J.S. Banks and Banking §§ 992, 1000 to 1007.

58-10-64. Redemption of savings accounts.

At any time funds are on hand for the purpose, an association may redeem, by lot or otherwise as determined by the board of directors, all or any part of any of its savings accounts on a dividend date by giving thirty days' notice by mail addressed to each affected account holder at his last address of record on the books of the association. No association shall redeem any of its savings accounts when the association is subject to receivership action or when it has applications for withdrawal which have been on file for more than thirty days and have not been reached for payment. The redemption price of savings accounts redeemed shall be the withdrawal value thereof. If the notice of redemption has been given, and if, on or before the redemption date, the funds necessary for the redemption have been set aside and continue to be available, dividends upon the accounts called for redemption shall cease to accrue from the dividend date specified as the redemption date, and all rights with respect to such accounts shall terminate after the redemption date except the right of the account holder of record to receive the redemption price.

History: 1953 Comp., § 48-15-107, enacted by Laws 1967, ch. 61, § 63.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 342, 785, 815.

9 C.J.S. Banks and Banking §§ 531, 896.

58-10-65. Lien on savings accounts.

Every association operating under the Savings and Loan Act, or any federal association doing business in this state, has a lien, without further agreement or pledge, upon all savings accounts owned by any member to whom, or on whose behalf, the association has made an advance of money by loan or otherwise and, the lien is a complete and perfected lien for the amount or amounts so advanced; upon the default in repayment or satisfaction thereof, the association may, without notice to, or consent of, the member, cancel on its books all or any part of the savings accounts owned by the member and apply the value of the accounts in payment on account of the obligation. An association may, by written instrument, waive its lien in whole or in part on any savings accounts. Any association may take the pledge of savings accounts of the association owned by a member other than the borrower as additional security for any loan secured by an account or by an account and real estate, or as additional security for any real estate loan.

History: 1953 Comp., § 48-15-108, enacted by Laws 1967, ch. 61, § 64.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 660 to 682.

9 C.J.S. Banks and Banking §§ 966, 1008.

58-10-66. Paying dividends on savings accounts.

After providing for payment of expenses of operation of the association and for the required minimum transfer to its loss reserves, the board of directors of an association may declare dividends or pay interest on savings accounts not to exceed four times a year. An association need not pay or credit a dividend or pay interest of less than one dollar ($1.00) on any account or any dividend or interest on short term accounts where the savings contract provides for closing the account within one year and waives dividend or interest participation. Dividends or interest shall be credited to savings accounts on the books of the association unless, upon written request of a savings account holder, the association agrees to pay dividends or interest in cash. Dividends or interest payable in cash may be paid by check or bank draft.

History: 1953 Comp., § 48-15-109, enacted by Laws 1967, ch. 61, § 65.

Cross-references. - As to dividends on permanent capital stock, see 58-10-69 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 352, 416.

Presumption of payment as applicable to bank deposit, 69 A.L.R.3d 1311.

9 C.J.S. Banks and Banking §§ 966, 971.

58-10-67. Computation of net income.

Each association shall close its books on the last business day of June and December each year, and at such other times as its bylaws may provide.

History: 1953 Comp., § 48-15-110, enacted by Laws 1967, ch. 61, § 66.

58-10-68. Transfers to loss reserves.

A. Every association without permanent capital stock shall accumulate from its earnings a reserve fund for protection against losses. The reserve fund shall be accumulated by setting aside to the fund at each dividend-paying period a sum equal to two percent of its net earnings before dividends until the reserve fund equals not less than five percent of its total savings liability. The reserve fund shall be maintained at this level, and upon any subsequent increase in total savings liability, the association shall make additional accumulations at the rate and times set forth in this section for initial accumulations. For the purposes of this subsection, any accumulation of loss reserves and undivided profits shall be considered to be part of the reserve fund required.

B. Every permanent capital stock association shall maintain a net worth totaling at least five percent of its total savings liability or at the discretion of the supervisor build up its federal insurance reserve, or loss reserve, and net worth accounts pursuant to regulations issued by the supervisor. If the net worth is less than the amounts specified by regulation of the supervisor, no association shall issue savings account or investment certificates except for savings account or investment certificates theretofore issued or in connection with loans, and no association shall receive additional funds on savings accounts or investment certificates, but the association may credit to savings accounts or investment certificates interest earned thereon. No association shall pay any dividends to permanent capital stockholders or distribute any profits to stockholders if its net worth is less than, or by such payment or distribution would be reduced below, the amount specified by regulation of the supervisor.

History: 1953 Comp., § 48-15-111, enacted by Laws 1967, ch. 61, § 67; 1975, ch. 250, § 1.

Cross-references. - For definition of loss reserves, see 58-10-2D NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Outstanding capital debentures not used to satisfy net worth requirements. - As to this section being an exception, see same catchline in notes to 58-10-47 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 186, 193, 216.

9 C.J.S. Banks and Banking § 13; 12 C.J.S. Building and Loan Associations § 50.

58-10-69. Dividends on permanent capital stock.

The balance of net income of an association, if any, may be credited to a surplus account from which the board of directors of any association with permanent capital stock may, at its discretion and at such times as it may determine, declare and pay dividends in cash or additional stock to the holders of record of the stock outstanding at the date the dividends are declared. The reserve fund shall, at all times, be maintained at not less than the minimum amounts required in the Savings and Loan Act.

History: 1953 Comp., § 48-15-112, enacted by Laws 1967, ch. 61, § 68.

Cross-references. - As to paying dividends on savings accounts, see 58-10-66 NMSA 1978.

For the permanent capital stock association reserve fund, see 58-10-68B NMSA 1978.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Capital stock building and loan association could pay quarterly dividends on its various classes of shares. 1961-62 Op. Att'y Gen. No. 62-58 (opinion rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 414 to 418.

9 C.J.S. Banks and Banking § 966; 12 C.J.S. Building and Loan Associations § 26.

58-10-70. Use of surplus accounts and expense fund contributions.

At any closing date, any association may use all or any part of any surplus accounts, whether earned or paid in, or any expense fund contributions on its books at the time, to meet all or any part of the expenses of operating the association for the period just closed, required transfers to loss reserves or the payment or credit of dividends declared on savings accounts.

History: 1953 Comp., § 48-15-113, enacted by Laws 1967, ch. 61, § 69.

Cross-references. - For the date when an association must close its books, see 58-10-67 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 40.

9 C.J.S. Banks and Banking § 389.

58-10-71. Savings and loan supervisor.

There is created the "savings and loan bureau" in the financial institutions division of the commerce and industry department. The chief of the bureau shall be the "savings and loan supervisor." The supervisor and any examiners shall not be interested in any association directly or indirectly, or be directors, officers, employees, borrowers, trustees or attorneys for any association, or received [receive], directly or indirectly, any payment or gratuity from any association.

History: 1953 Comp., § 48-15-114, enacted by Laws 1967, ch. 61, § 70; 1977, ch. 245, § 43.

Cross-references. - For provision that "supervisor" also means "director of the financial institutions division" if the position of chief of the savings and loan bureau is vacant, see 58-10-2J NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 17.

9 C.J.S. Banks and Banking § 35.

58-10-72. General powers of supervisor.

The supervisor has general supervision over all associations and corporations subject to the provisions of the Savings and Loan Act. He may promulgate general regulations for the administration and enforcement of the Savings and Loan Act. He shall enforce the purpose of the Savings and Loan Act by use of the powers therein conferred and by reference to the courts for injunctive or other relief whenever necessary. The regulation-making power of the supervisor shall not be exercised unless notice of the terms or substance of the proposed regulation or amendment to existing regulations has been given to all associations subject to regulation under the Savings and Loan Act, by mail, and if, within twenty days after issuance of the notice, as many as two associations request a hearing on the proposal, the supervisor shall call a hearing at which any interested party may present evidence or argument relating to the proposal. After consideration of any relevant matter available from the files and records of the supervisor or presented at the hearing, any regulation or amendment approved and adopted pursuant to the hearing shall be promulgated in written form and the effective date thereof fixed by order of adoption and promulgation. Within thirty days thereof, any party aggrieved may appeal from the ruling under the provisions of the Savings and Loan Act by giving notice of appeal, which shall be served on the supervisor and all parties of record in the manner provided by law for the service of summons in civil proceedings.

History: 1953 Comp., § 48-15-115, enacted by Laws 1967, ch. 61, § 71.

Cross-references. - As to appeals from the supervisor's orders or decisions, see 58-10-84B and 58-10-92 NMSA 1978.

As to service of summons, see Rule 1-004.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 17, 21, 26.

9 C.J.S. Banks and Banking §§ 422, 432.

58-10-73. Regulations.

In the exercise of his power to promulgate regulations under the Savings and Loan Act, the supervisor shall act in the interest of promoting and maintaining a sound savings and loan association system, the security of the savings account holders and other customers, the preservation of the liquid position of associations and in the interest of preventing injurious credit expansions and contractions.

History: 1953 Comp., § 48-15-116, enacted by Laws 1967, ch. 61, § 72.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 10 to 19.

9 C.J.S. Banks and Banking §§ 422, 432.

58-10-74. Confidential information.

The supervisor, deputy and his employees shall not divulge any information acquired by them in the discharge of their duties under the Savings and Loan Act except as necessary by law or under order of court. The supervisor may furnish information as to the condition of any association to the federal home loan bank board of Washington, D. C., or the federal savings and loan insurance corporation, any regional federal home loan bank or other savings and loan association department of any other state.

History: 1953 Comp., § 48-15-117, enacted by Laws 1967, ch. 61, § 73.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Furnishing information to state treasurer prohibited. - The financial institutions division is prohibited from furnishing information on the financial condition of New Mexico financial institutions to the state treasurer, absent express statutory authorization for such release. 1979 Op. Att'y Gen. No. 79-22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 216.

Bank's duty to customer or depositor not to disclose information as to financial condition, 92 A.L.R.2d 900.

9 C.J.S. Banks and Banking § 273.

58-10-75. Supervisor; disposition of fees.

All money collected by the supervisor shall be paid to the state treasurer for credit to the state general fund.

History: 1953 Comp., § 48-15-118, enacted by Laws 1967, ch. 61, § 74.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

58-10-76. Audits and examinations; fees.

The supervisor shall, at least once each year without previous notice, examine or cause an examination to be made into the affairs of each association subject to the Savings and Loan Act. If an association is not audited at least once each year in a manner satisfactory to the supervisor, he shall order an audit to be made by an independent public auditing firm at the expense of the association. Upon completion of any audit, two copies, signed and certified by the auditor making the audit, shall be filed with the supervisor. The supervisor, any deputy supervisor or his examiners or auditors shall have free access to all books and records of an association which relate to its business, and books and records kept by any officer, agent or employee relating to, or upon which, any record of its business is kept; and may summon witnesses and administer oaths or affirmations in examination of the directors, officers, agents or employees of any association, or any other person in relation to its affairs, transactions and condition, and may require and compel the production of records, books, papers, contracts or other documents by court order if not voluntarily produced. Every association examined shall pay a fee of two hundred dollars ($200) for each examination, together with a further fee for each examination in an amount equal to three-fourths of one-hundredth of one percent of the total assets of the association examined on the day of the examination. An additional fee of fifty dollars ($50.00) shall be added for each branch examined.

History: 1953 Comp., § 48-15-119, enacted by Laws 1967, ch. 61, § 75.

Cross-references. - As to records and access to them generally, see 58-10-25, 58-10-26 NMSA 1978.

As to subpoena for production of documentary evidence, see Rule 1-045.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 216, 266.

Purposes for which officer may exercise right to examine books and records, 15 A.L.R.2d 11.

9 C.J.S. Banks and Banking § 7.

58-10-77. Other examinations.

The supervisor may examine any service corporation in which an association has invested its funds, and any corporation owning twenty-five percent or more of the outstanding capital stock of an association, the same as if the corporation were an association.

History: 1953 Comp., § 48-15-119.1, enacted by Laws 1976, ch. 57, § 3.

Cross-references. - For definition of service corporation, see 58-10-2I NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 216, 266.

9 C.J.S. Banks and Banking § 7.

58-10-78. Federal examination.

The supervisor may accept the report of examination of any association by the federal home loan bank board or the federal savings and loan insurance corporation in lieu of any examination required by the Savings and Loan Act. If the supervisor examines or causes to be examined any association in conjunction with an examination by any of these federal agencies, the examination shall be deemed equivalent to two separate examinations.

History: 1953 Comp., § 48-15-120, enacted by Laws 1967, ch. 61, § 76.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 231, 238.

Right of federal deposit insurance corporation to injunctive relief in enforcement of its regulations, 22 A.L.R. Fed. 918.

9 C.J.S. Banks and Banking §§ 798, 878.

58-10-79. Additional examinations.

Whenever, in the judgment of the supervisor, the condition of any association renders it necessary or expedient to make an additional examination, or to devote any extraordinary attention to its affairs, the supervisor shall cause the work to be done at the expense of the association. A complete copy of the report of all examinations shall be furnished to the association examined. Every report of examination shall be presented to the board of directors at its next regular meeting, or at a special meeting called for the purpose, and noted in the minutes.

History: 1953 Comp., § 48-15-121, enacted by Laws 1967, ch. 61, § 77.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 216.

9 C.J.S. Banks and Banking § 7.

58-10-80. Order to discontinue violations.

As a result of any examination, or from any report made to him, if the supervisor finds that any association or any director, officer or employee of any association is violating the provisions of the charter or bylaws of the association, or the laws of this state or the United States or any lawful regulation promulgated by the supervisor, he shall deliver a formal written order to the board of directors of the association in which the facts known to the supervisor are set forth, demanding the discontinuance of the violation and conformance with all requirements of law. The association affected by the order may, within thirty days after the order has been delivered to the association, request a public or private hearing before the supervisor with regard to the order, at which hearing any pertinent evidence relating to the order or the facts stated therein may be presented. After the hearing, the supervisor, on the basis of the evidence presented, shall either continue the order in effect, modify it or set it aside. The hearing shall be on the record and the cost of a transcript of the hearing shall be paid by the association.

History: 1953 Comp., § 48-15-122, enacted by Laws 1967, ch. 61, § 78.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 17.

9 C.J.S. Banks and Banking § 416.

58-10-81. Removal of directors, officers and employees.

The supervisor may require that any director, officer or employee of an association who has participated in a violation, as described in Section 78 [58-10-80 NMSA 1978] of the Savings and Loan Act, be removed from the association if the action of the person or persons concerned was knowingly and willfully taken. Prior to entering an order of removal, the supervisor shall deliver a full statement of the acts and conduct to which he objects to the board of directors of the association and to the person or persons concerned, along with a statement of his intention to enter a removal order. If a hearing on the matter is requested within thirty days after the delivery, the supervisor shall hold a public or private hearing at which any pertinent evidence relating to the matters set forth in the statement may be presented. After the hearing, the supervisor, on the basis of the evidence presented at the hearing, may proceed to enter an order for the immediate removal of the director, officer or employee affected, a reprimand of the individuals and association concerned or a dismissal of the entire matter. If no hearing is requested within the time specified, the supervisor may proceed to enter an order of removal on the basis of the facts set forth in his original statement.

History: 1953 Comp., § 48-15-123, enacted by Laws 1967, ch. 61, § 79.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 197.

9 C.J.S. Banks and Banking § 110.

58-10-82. Order to refrain from voting shares.

In addition to other powers conferred by law, the supervisor may order any shareholder or person entitled to vote in an association to refrain from voting his shares or membership on any matter if he finds that such order is necessary to protect the association against reckless, incompetent or careless management, to safeguard the accounts of its members or to prevent the willful violation of the Savings and Loan Act or of any lawful rule or order issued thereunder, in which case the shares of such a shareholder or membership of such person entitled to vote shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares or membership necessary to take any corporate action. Prior to entering such an order, the supervisor shall deliver a full statement of the facts supporting such proposed order to the shareholder or person concerned and to the board of directors of the association, along with a statement of his intention to enter the order. If a hearing on the matter is requested within thirty days after the delivery, the supervisor shall hold a public or private hearing at which any pertinent evidence relating to the matters set forth in the statement may be presented. After the hearing the supervisor shall enter an appropriate order based on his findings from the evidence presented. If no hearing is requested within the time specified, the supervisor may proceed to enter an order on the basis of the facts set forth in his original statement.

History: 1953 Comp., § 48-15-123.1, enacted by Laws 1976, ch. 57, § 4.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 71.

Construction, application and effect of constitutional provisions or statutes relating to cumulative voting of stock for bank directors, 43 A.L.R.2d 1328.

9 C.J.S. Banks and Banking § 70.

58-10-83. Emergency power of supervisor.

Notwithstanding the procedures set forth in Sections 71, 78 and 79 [58-10-72, 58-10-80 and 58-10-81 NMSA 1978] of this act, should the supervisor determine that an emergency exists which requires him to exercise, without delay, any of his powers granted under Sections 71, 78 and 79, he may issue, without notice, hearing or delay, any regulations or orders authorized by said sections, to any association, officers or directors, and require immediate compliance therewith. Such emergency regulations or orders shall remain in effect until a hearing thereon has been held, within ten days after the effective date of said regulation or order, and final determination has been made thereon as provided in said Sections 71, 78 and 79.

History: 1953 Comp., § 48-15-124, enacted by Laws 1967, ch. 61, § 80.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

State and federal regulations need not be identical. - A state emergency regulation was not invalid, even though it sought to restrict state chartered savings and loan associations from making loans on timeshares at a time when similar loans were authorized by institutions chartered by the federal government. The regulatory provisions of the state and federal government need not be identical or in agreement with each other. State v. Grissom, 106 N.M. 555, 746 P.2d 661 (Ct. App. 1987).

Setting forth basis in writing prior to promulgation. - Paragraph B of 12-8-4 NMSA 1978, which requires that the basis for an agency action be set forth in writing prior to the promulgation of an emergency rule, does not apply to the Savings and Loan Act. State v. Grissom, 106 N.M. 555, 746 P.2d 661 (Ct. App. 1987).

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 17.

9 C.J.S. Banks and Banking § 6.

58-10-84. When order is final; appeal.

A. If a hearing has been held in regard to an order made under Sections 78 or 79 [58-10-80, 58-10-81 NMSA 1978] [of] the Savings and Loan Act and the supervisor's order is continued either in its original form or a modified form, the order is final when the supervisor enters in the record of the hearing his decision after the hearing. If no hearing is requested on the order, the order is final after the expiration of thirty days from the date the order is entered by the supervisor.

B. The supervisor's decision after any hearing under the Savings and Loan Act shall be served on each party of record and shall contain the same elements required in Section 13 [58-10-13 NMSA 1978] of the Savings and Loan Act. Any party aggrieved by the decision of the supervisor after hearing may appeal to the district court of the county in which the party resides or in which its principal office is located.

History: 1953 Comp., § 48-15-125, enacted by Laws 1967, ch. 61, § 81.

Cross-references. - As to procedure for appeal, see 58-10-92 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

58-10-85. Receivership.

If, in the judgment of the supervisor, the public interest requires it, he may apply to the district court of the county in which the principal office of any association is located for the appointment of a receiver for the association. The court shall appoint a receiver as applied for if it finds that either the association's assets in the aggregate do not have a fair value equal to the total liabilities of the association to its creditors and to all holders of savings accounts, or that the association is in violation of any final order of the supervisor and that the alleged violations cannot otherwise be corrected. All proceedings in regard to such applications shall be governed by the laws of this state applicable to receiverships generally. The supervisor, his deputy or an examiner shall not be disqualified from being appointed by the court as a receiver. The receiver, upon appointment by the court, shall immediately take charge of the affairs of the association, subject to direction of the court, and proceed to conduct the business of the association or to take steps as necessary to conserve the assets and protect the rights of the creditors of the association and its members as may be ordered by the court. If the association is insured by the federal savings and loan insurance corporation, the corporation may be tendered appointment as receiver or coreceiver. If it accepts the appointment, it may nevertheless make loans on the security of, or purchase at public or private sale, any part or all of the assets of the association of which it is receiver or coreceiver if the loan or purchase is approved by the court. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this section may contest the proceedings and shall be reimbursed for reasonable

expenses and attorney fees by the association or from its assets, the amount of which shall be fixed by the court.

History: 1953 Comp., § 48-15-126, enacted by Laws 1967, ch. 61, § 82.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Subsequent purchaser cannot engage in savings and loan business when association liquidated. - When the assets of a savings and loan association are liquidated by a receiver pursuant to an order of the court, the association is terminated and its "charter" or authority to transact business is terminated as well. Therefore, no "charter" or valid franchise remains entitling a subsequent purchaser to engage in the savings and loan business. 1981 Op. Att'y Gen. No. 81-22.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 763 to 769.

9 C.J.S. Banks and Banking § 491.

58-10-86. Communications from supervisor.

Every approval or rejection by the supervisor given pursuant to the provisions of the Savings and Loan Act, and every communication having the effect of an order or instruction to any association, shall be sent by mail to the association affected, addressed to its president at the principal office of the association, and shall be presented to the board of directors of the association at its next regular meeting, or at a special meeting called for the purpose, and noted in the minutes of the meeting.

History: 1953 Comp., § 48-15-127, enacted by Laws 1967, ch. 61, § 83.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

58-10-87. Reorganization; merger; consolidation.

Pursuant to a plan adopted by the board of directors and approved by the supervisors [supervisor] as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations in the same vicinity, an association may reorganize or merge or consolidate with another association or federal association. The plan of reorganization, merger or consolidation shall be approved by a majority of the total vote of the members or stockholders who are entitled to vote. Approval may be voted at either an annual meeting or at a special meeting called to consider the action. In all cases, the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with the Savings and Loan Act.

History: 1953 Comp., § 48-15-128, enacted by Laws 1967, ch. 61, § 84.

Cross-references. - As to meetings and voting generally, see 58-10-24 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Requirements not applicable to purchase of one association by another. - The board of directors of a savings and loan association is required to obtain both the savings and loan supervisor's approval and the vote of the association's stockholders on any plan for the reorganization, merger or consolidation of the association with another association. This is not required, however, if the entire transaction consists of a purchase of assets and assumption of liabilities. 1982 Op. Att'y Gen. No. 82-13.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 821 to 825.

9 C.J.S. Banks and Banking §§ 466, 468; 12 C.J.S. Building and Loan Associations § 117.

58-10-88. Voluntary liquidation.

At any annual meeting or any special meeting called for the purpose, any association may, by majority vote of its members or stockholders who are entitled to vote, resolve to liquidate and dissolve the association. Before the resolution takes effect, a copy certified by the president and the secretary of the association, together with an itemized statement of its assets and liabilities sworn to by a majority of its board of directors, shall be filed with, and approved by, the supervisor. When the supervisor has approved the resolution, it is thereafter unlawful for the association to accept any additional savings accounts or additions to savings accounts or to make any additional loans, but all its income and receipts in excess of actual expenses of liquidation of the association shall be applied to the discharge of its liabilities. The board of directors of the association, under the supervision of the supervisor and in accordance with a plan of liquidation approved by him, shall thereupon proceed to liquidate the affairs of the association and reduce its assets to cash for the purpose of paying, satisfying and discharging all existing liabilities and obligations of the association, including the withdrawal value of all savings accounts, the balance remaining, if any, to be distributed pro rata among the savings account holders of record on the date of adoption by the association of the resolution to liquidate; but if the association has outstanding permanent capital stock, any balance remaining after all liabilities and obligations have been fully paid and satisfied, including the withdrawal value of all savings accounts, shall be distributed among the holders of the stock in proportion to their stockholding. All expenses incurred by the supervisor or any of his representatives during the course of any liquidation shall be paid from the assets of the association. Upon completion of liquidation, the board of directors shall file with the supervisor a final report and accounting of the liquidation. Approval of the report by the supervisor is a complete and

final discharge of the board of directors and each member in connection with the liquidation of the association.

History: 1953 Comp., § 48-15-129, enacted by Laws 1967, ch. 61, § 85.

Cross-references. - As to dissolution of corporation generally, see 53-16-1 to 53-16-24 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Building and loan association could also dissolve under general corporation law. - A building and loan association could dissolve under 51-7-1, 1953 Comp. (former dissolution of corporation provision), as well as under 48-15-18, 1953 Comp. (former voluntary liquidation provision), this last being an operative provision of the Building and Loan Association Act. 1955-56 Op. Att'y Gen. No. 6482.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 45, 828, 829.

9 C.J.S. Banks and Banking §§ 469 to 471; 12 C.J.S. Building and Loan Associations § 105.

58-10-89. Exemption from securities laws.

Associations, their officers, employees and agents, savings accounts and the sale, issuance, transfer and offering of savings accounts of any association or federal association are exempt from laws of this state which provide for supervision, registration or regulation in connection with the sale, issuance, transfer or offering of securities, insofar as such savings accounts are concerned.

History: 1953 Comp., § 48-15-130, enacted by Laws 1967, ch. 61, § 86; 1978, ch. 135, § 1.

Cross-references. - As to investment securities, see Chapter 55, Article 8 NMSA 1978.

As to securities generally, see 58-13B-1 et seq. NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 303.

9 C.J.S. Banks and Banking § 161.

58-10-90. All businesses to conform.

Any association or corporation authorized to conduct a building and loan association, savings and loan association, building society or other similar business under prior law, by whatever name known, which has substantially the same purpose as an association, upon the effective date of the Savings and Loan Act, is subject to the provisions of the

Savings and Loan Act unless otherwise expressly exempted, and shall thereafter be deemed to exist by virtue of the Savings and Loan Act. The name, rights, powers, privileges and immunities of each such association or corporation shall be governed, controlled, construed, extended, limited and determined by the provisions of the Savings and Loan Act as if the corporation had been incorporated pursuant thereto, and the articles of association, certificate of incorporation or charter, however entitled, bylaws and constitutions or other rules of every corporation are amended to conform with the provisions of the Savings and Loan Act, with or without the issuance or approval by the supervisor of conformed copies of the documents, and the same are void to the extent that they are inconsistent with the provisions of the Savings and Loan Act except that obligations or any valid contract existing at the effective date of the Savings and Loan Act is not impaired by the provisions of the Savings and Loan Act and no association shall be required to change its name.

History: 1953 Comp., § 48-15-131, enacted by Laws 1967, ch. 61, § 87.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

58-10-91. Outstanding items considered as savings accounts.

From the effective date of the Savings and Loan Act, any shares, stock, share accounts and investment certificates, except permanent capital stock and except shares or share accounts not entitled to dividends, which an association subject to the Savings and Loan Act has outstanding shall be considered as savings accounts.

History: 1953 Comp., § 48-15-132, enacted by Laws 1967, ch. 61, § 88.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Money placed in a savings and loan association is not called a deposit. 1968 Op. Att'y Gen. No. 68-19.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 4.

58-10-92. Judicial review.

A. Except as to matters covered by, or appealable under, Section 13 [58-10-13 NMSA 1978] of the Savings and Loan Act, any association or person aggrieved and directly

affected by a decision, order or regulation of, or failure to act by, the supervisor, may appeal to the district court of the county in which the person [or association] resides or maintains its principal office within thirty days after issuance of the order or within thirty days after it becomes reviewable. The filing of an appeal does not stay enforcement of an order unless the court orders a stay upon terms it deems proper.

B. The district court may affirm the order of the supervisor, may direct the supervisor to take action as affirmatively required by law or may reverse or modify the order of the supervisor if the court finds the order was:

(1) issued pursuant to an unconstitutional statutory provision;

(2) in excess of statutory authority;

(3) arbitrary or capricious;

(4) issued upon unlawful procedure; or

(5) not supported by substantial evidence in the record.

C. The decision of the district court may be appealed to the court of appeals as in other civil cases.

History: 1953 Comp., § 48-15-133, enacted by Laws 1967, ch. 61, § 89.

Cross-references. - As to when order is final, see 58-10-84 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

There is no presumption against judicial review and in favor of administrative absolution unless that purpose is fairly discernible in the statutory scheme, and there is no evidence in the Savings and Loan Act (58-10-1 NMSA 1978 and notes thereto) indicating the legislature intended to preclude judicial review. Rather the act indicates the contrary. De Vargas Sav. & Loan Ass'n v. Campbell, 87 N.M. 469, 535 P.2d 1320 (1975).

Assertion of undue competitive injury grant, standing to combat branch. - To attain standing in a suit arguing the unlawfulness of governmental action, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise. Appellants had standing to seek review of the supervisor's order as associations "aggrieved and directly affected" by it where they asserted they would suffer from undue competitive injury if another branch was permitted in Santa Fe, and that another branch would not be to the advantage of the community; the protection of these interests is explicitly recognized in 58-10-17A NMSA 1978. De Vargas Sav. & Loan Ass'n v. Campbell, 87 N.M. 469, 535 P.2d 1320 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 834, 835.

9 C.J.S. Banks and Banking § 603; 12 C.J.S. Building and Loan Associations § 114.

58-10-93. Slander; felony.

Any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent, is guilty of a fourth degree felony.

History: 1953 Comp., § 48-15-134, enacted by Laws 1967, ch. 61, § 90.

Cross-references. - As to the penalty for a fourth degree felony, see 31-18-15 NMSA 1978.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

58-10-94. Violation of act; civil penalty.

Any association violating any provision of the Savings and Loan Act or any valid regulation made thereunder may be required by the supervisor to pay a civil penalty of not less than five dollars ($5.00) a day nor more than twenty-five [dollars] ($25.00) a day to the supervisor for each day after notice of the delinquency by the supervisor. The attorney general may file suit for collection of this penalty upon certification by the supervisor of the failure of the association to remit the penalty assessed by him. The civil penalty imposed by this section does not apply during any period during which the alleged violation is being litigated in a court.

History: 1953 Comp., § 48-15-135, enacted by Laws 1967, ch. 61, § 91.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 834.

9 C.J.S. Banks and Banking § 38.

58-10-95. Violations; criminal penalties.

It is unlawful for any person to knowingly violate any provision of the Savings and Loan Act or any lawful rule or regulation or order of the supervisor and any person responsible for such violation is guilty:

A. of a misdemeanor punishable by imprisonment for a term not exceeding one year or a fine not exceeding five thousand dollars ($5,000) or both; or

B. if the violation was committed with intent to defraud, of a felony punishable by imprisonment for a term not exceeding five years or a fine not exceeding ten thousand dollars ($10,000) or both.

History: 1953 Comp., § 48-15-135.1, enacted by Laws 1976, ch. 57, § 5.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 221 to 269.

9 C.J.S. Banks and Banking §§ 148 to 156.

58-10-96. Suppressing evidence; felony.

Any officer, director, employee or agent of any association subject to the Savings and Loan Act who, for the purpose of concealing any fact or suppressing any evidence against himself or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any association or of the supervisor, is guilty of a fourth degree felony.

History: 1953 Comp., § 48-15-136, enacted by Laws 1967, ch. 61, § 92.

Cross-references. - As to the penalty for a fourth degree felony, see 31-18-15 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 254, 263 to 269.

9 C.J.S. Banks and Banking §§ 148 to 156.

58-10-97. Disclosure of confidential information; felony; civil liability.

The supervisor or any examiner, inspector, deputy, assistant or clerk appointed or acting under the provisions of the Savings and Loan Act who fails to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the officer or employee requires him to report upon or take official action regarding the affairs of the

association examined, or who willfully makes a false official report as to the condition of an association, is guilty of a fourth degree felony and shall be removed from his office or position. Any officer or employee violating any provision of this section, in addition to the criminal penalties imposed, is liable with his bondsmen to the person or corporation injured by the disclosure of such secrets. This section does not apply to any facts or information, or to any reports of investigations, obtained or made by the supervisor or his staff in connection with any application for a charter under the Savings and Loan Act or in connection with any hearing held by the supervisor under the Savings and Loan Act, and any such facts, information or reports may be included in the records of the appropriate hearing.

History: 1953 Comp., § 48-15-137, enacted by Laws 1967, ch. 61, § 93.

Cross-references. - As to the penalty for a fourth degree felony, see 31-18-15 NMSA 1978.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 332.

Existence of fiduciary relationship between bank and depositor or customer so as to impose special duty of disclosure upon bank, 70 A.L.R.3d 1344.

9 C.J.S. Banks and Banking § 273.

58-10-98. Conversion into federal association.

Any association may convert itself into a federal association in accordance with the provisions of the Home Owners Loan Act of 1933, as amended, upon a vote of fifty-one percent or more of the votes of the members cast at an annual meeting or at any special meeting called for the purpose. A copy of the minutes of the proceedings of the meeting of the members, verified by the affidavit of the secretary or an assistant secretary, shall be filed with the supervisor within ten days after the meeting. A sworn copy of the proceedings of the meeting, when so filed, shall be presumptive evidence of the holding and action of the meeting. Within three months after the meeting, the association shall take action in the manner prescribed by the laws of the United States to make it a federal association. There shall be filed with the supervisor a copy of the charter issued to the federal association by the federal home loan bank board or a certificate showing the organization of the association as a federal association, certified by the secretary or assistant secretary of the federal home loan bank board. A similar copy of the charter or certificate shall be filed by the association with the state corporation commission. The failure to file these instruments, either with the supervisor or the secretary of state, does not affect the validity of the conversion. Upon the grant of any association of a charter by the federal home loan bank board, the association

receiving the charter ceases to be an association incorporated under the Savings and Loan Act and is no longer subject to the supervision and control of the supervisor. Upon the conversion of any association into a federal association, the corporate existence of the association does not terminate, but the federal association shall be deemed to be a continuation of the entity of the association converted and all property of the converted association, including its rights, titles and interests in and to all property of whatever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of value or benefit then existing or pertaining to it, or which would inure to it, shall immediately by operation of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue to be the property of the federal association into which the association has converted itself, and the federal association shall have, hold and enjoy them in its own right to the same extent as they were possessed, held and enjoyed by the converting association, and the federal association, as of the time of the taking effect of the conversion, shall continue to have and succeed to all the rights, obligations and relations of the converting association. All pending actions and other judicial proceedings to which the converting association is a party shall not abate or discontinue by reason of the conversion, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion had not been made and the federal association resulting from the conversion may continue the action in its corporate name as a federal association, and any judgment, order or decree may be rendered for or against it which might have been rendered for or against the converting association. Any association or corporation which has, prior to the effective date of the Savings and Loan Act, converted itself into a federal association under the provisions of the Home Owners Loan Act of 1933 and has received a charter from the federal home loan bank board shall be recognized by the courts of this state to the same extent as if the conversion had taken place under the provisions of this section if a copy of the federal charter or certificate showing the organization of the association as a federal association has been filed with the supervisor. All such conversions are confirmed, and all obligations of an association which has converted shall continue as valid obligations of the federal association, and the title to all of the property of the association shall be deemed to have continued and vested, as of the date of issuance of the federal charter, in the federal association as if the conversion had taken place pursuant to this section.

History: 1953 Comp., § 48-15-138, enacted by Laws 1967, ch. 61, § 94.

Effective date of Savings and Loan Act. - Laws 1967, ch. 61, § 101, makes the Savings and Loan Act effective on July 1, 1967.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Home Owners Loan Act of 1933. - See 12 U.S.C. §§ 1461 to 1470.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 275, 282.

9 C.J.S. Banks and Banking §§ 738, 928 to 940; 12 C.J.S. Building and Loan Associations § 117.

58-10-99. Conversion into state chartered association.

Any federal association may convert itself into an association under the Savings and Loan Act upon a vote of fifty-one percent or more of the votes of members of the federal association cast at an annual meeting or at a special meeting called for the purpose. Copies of the minutes of the proceedings of the meetings, verified by the affidavit of the secretary or an assistant secretary, shall be filed with the supervisor and mailed to the federal home loan bank board, Washington, D. C., within ten days after the meeting. When filed, these verified copies of the minutes shall be presumptive evidence of the holding and action of the meeting. At the meeting at which conversion is voted upon, the members shall also vote upon the directors to be directors of the association after conversion takes effect. Such directors then shall execute four copies of the petition for certificate of incorporation and four copies of the bylaws provided for in the Savings and Loan Act. The supervisor shall insert in the certificate of incorporation a statement that "This association is incorporated by conversion from a federal association." Each of the directors chosen for the association shall sign and acknowledge the petition for certificate of incorporation as subscribers thereto and the proposed bylaws as incorporators of the association. All provisions of the Savings and Loan Act, so far as applicable, apply to conversion under this section. The supervisor may provide by regulation for the procedure to be followed by any federal association converting into an association. All provisions regarding property and other rights prescribed in the case of conversion of an association into a federal association apply in reverse order to the conversion of a federal association into an association so that the association is a continuation of the corporate entity of the converting federal association and continues to have all of its property and rights.

History: 1953 Comp., § 48-15-139, enacted by Laws 1967, ch. 61, § 95.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 28.

9 C.J.S. Banks and Banking §§ 737, 739.

58-10-100. Conversion of association without permanent stock into permanent capital stock association.

Any association without permanent capital stock may convert itself into a permanent capital stock association upon a vote of fifty-one percent or more of the votes of members of the association without permanent capital stock cast at an annual meeting or at any special meeting called for the purpose. Copies of the minutes of the

proceedings of the meeting, verified by the affidavit of the secretary or an assistant secretary shall be filed with the supervisor and mailed to the federal home loan bank board, Washington, D. C., within ten days after the meeting. When filed, the verified copies of the minutes of the meeting shall be presumptive evidence of the holding and action of the meeting. At the meeting in which conversion is voted upon, the members shall vote upon the directors to be the directors of the permanent capital stock association after conversion takes effect. Such directors then shall execute four copies of the petition for certificate of incorporation and four copies of the bylaws provided for in the Savings and Loan Act. The supervisor shall insert in the certificate of incorporation a statement that "This association is incorporated as a permanent capital stock association by conversion from an association without permanent capital stock." Each of the directors chosen for the association shall sign and acknowledge the petition for certificate of incorporation as subscribers thereto and the proposed bylaws as incorporators of the association. All provisions of the Savings and Loan Act, so far as applicable, apply to conversion under this section. The supervisor may provide by regulation for the procedure to be followed by any association without permanent capital stock converting into a permanent capital stock association under this section. All provisions regarding property and other rights prescribed in the case of conversion of an association into a federal association apply in reverse order to the conversion of an association without permanent capital stock into a permanent capital stock association incorporated under this section, so that the permanent capital stock association is a continuation of the corporate entity of the converting association without permanent capital stock and continues to have all of its property and rights.

History: 1953 Comp., § 48-15-140, enacted by Laws 1967, ch. 61, § 96.

Cross-references. - As to permanent capital stock, see 58-10-4 NMSA 1978.

For conversion of an association into a federal association, see 58-10-98.

Meaning of "supervisor". - See 58-10-2J NMSA 1978 and notes thereto.

Savings and Loan Act. - See 58-10-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 27, 29.

9 C.J.S. Banks and Banking §§ 468, 1027.

58-10-101. Foreign associations.

A. No foreign corporation or foreign association shall transact the business of an association within this state beyond a radius of one hundred miles from its principal office.

B. Any foreign corporation or foreign association seeking to transact business within this state shall:

(1) comply with all laws of this state pertaining to the admission of foreign corporations to do business within this state; and

(2) after receiving permission to do business in New Mexico by complying with all requirements set forth in Subsection B(1) of this section, apply to the supervisor for final approval before doing any business within New Mexico, submitting to the supervisor all information concerning the business of the foreign corporation or foreign association he may require by regulation. The supervisor may approve the admission to do business upon a reciprocity basis if he determines that the state containing the principal office of the foreign corporation or foreign association provides equal consideration to New Mexico corporations and associations.

C. This section does not limit participation in real estate loans with New Mexico associations.

D. The district court shall enjoin any person, firm, association or corporation from violating or continuing to violate the provisions of this section.

E. Any person, firm, association or corporation violating any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) for each violation.

History: 1953 Comp., § 48-15-141, enacted by Laws 1967, ch. 61, § 97.

Cross-references. - As to licensing of foreign corporations, see N.M. Const., art. XI, § 6.

As to corporation acquiring security interest in real property being excepted from foreign admission requirements, see 53-17-1 NMSA 1978.

Compliance with section not required if loaning money on mortgages. - A foreign savings and loan association wishing only to make real estate loans as set forth in 38-1-18 NMSA 1978 and not doing any other business of a savings and loan association within this state would have to comply only with the requirements set forth in the above section and would not have to comply with the requirements for "transacting business of an association" as enumerated in this section. 1969 Op. Att'y Gen. No. 69-13.

Law reviews. - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 9.

9 C.J.S. Banks and Banking § 37; 12 C.J.S. Building and Loan Associations § 122.

58-10-102. Federal associations; applicability.

Any federal association whose principal office is located in New Mexico is not a foreign corporation. Unless federal laws or regulations provide otherwise, such federal association and its members possesses [possess] all rights, powers, privileges, benefits, immunities and exceptions now or hereafter provided by the laws of this state for associations and for the members and savings account holders thereof. This section is additional and supplemental to any provision which, by specific reference, is applicable to federal associations and their members.

History: 1953 Comp., § 48-15-142, enacted by Laws 1967, ch. 61, § 98.

Severability clauses. - Laws 1967, ch. 61, § 99, provides for the severability of the Savings and Loan Act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 8.

9 C.J.S. Banks and Banking § 552; 12 C.J.S. Building and Loan Associations § 5.

58-10-103. Payment from savings account of decedent.

A. Where no executor or administrator of a deceased savings account depositor has qualified and given notice of his qualification to a savings and loan association, it may pay out of all savings accounts maintained with it by the deceased in his individual capacity all sums which do not exceed two thousand dollars ($2,000) in the aggregate:

(1) to the surviving spouse; or

(2) to the next of kin, in the above order of priority in case of conflicting claims.

B. A savings and loan association may, at any time after sixty days from the death of a depositor whose residence address, according to the books of the association, is outside this state, pay the balance of his accounts not exceeding two thousand dollars ($2,000) in the aggregate to an executor or administrator who has qualified in another state unless the association has received written notice of the appointment of an executor or administrator in this state.

C. No savings and loan association shall be liable for damage, penalty, tax or claims of creditors of the estate by reason of any payment or refusal to pay made pursuant to this section.

D. Payment under this section releases a savings and loan association from all liability for the amount paid.

History: 1953 Comp., § 48-15-143, enacted by Laws 1967, ch. 83, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 551.

Death of beneficiary as terminating or revoking trust of savings bank account over which settlor retains right of withdrawal or revocation, 64 A.L.R.3d 221.

9 C.J.S. Banks and Banking §§ 996, 1004.

58-10-104. Authority to engage in leasing safe deposit facilities; subsidiary company.

A. Subject to any regulations the supervisor may prescribe, an association may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, with the exception of night depositories, it issues a receipt for each transaction.

B. An association may own stock in safe deposit companies not exceeding in aggregate cost fifteen percent of its capital and surplus, but at least ninety percent of the stock in each such safe deposit company must be owned by associations, banks or trust companies.

History: 1953 Comp., § 48-15-144, enacted by Laws 1971, ch. 242, § 4.

Meaning of "supervisor". - See 58-10-2J NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 469 to 492.

Liability of bank or safe-deposit company for its employee's theft or misappropriation of contents of safe-deposit box, 39 A.L.R.4th 543.

58-10-105. Access by fiduciaries.

A. Where access to a safe deposit box is requested by one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access to, and removal of, the contents of the safe deposit box upon obtaining proper receipt from:

(1) any one or more of the persons acting as executors or administrators;

(2) any one or more of the persons otherwise acting as fiduciaries when authorized in a writing signed by all other persons so acting; or

(3) any agent authorized in a writing signed by all of the persons acting as fiduciaries.

B. No lessor shall be liable for damages for allowing or refusing access to, or removal of, the contents of the safe deposit box under the provisions of Subsection A of this section.

History: 1953 Comp., § 48-15-145, enacted by Laws 1971, ch. 242, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 482, 483.

58-10-106. Effect of lessee's death or incapacity.

When a lessor, without knowledge of a lessee's death or of an adjudication of his incapacity, deals with a lessee's agent pursuant to a written power of attorney signed by the lessee, the transaction binds the lessee's estate and the lessee.

History: 1953 Comp., § 48-15-146, enacted by Laws 1971, ch. 242, § 6; 1975, ch. 257, § 8-121.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 472, 473.

58-10-107. Lease to minor.

A lessor may lease a safe deposit box to, and in this connection deal with, a minor with the same effect as if leasing to, and dealing with, a person of full legal capacity.

History: 1953 Comp., § 48-15-147, enacted by Laws 1971, ch. 242, § 7.

Cross-references. - As to the age of majority and exceptions thereto, see 28-6-1 NMSA 1978.

For rule of construction of "age of majority," see 12-2-2 NMSA 1978.

58-10-108. Search procedure on death.

A. A lessor shall permit the person named in a court order for the purpose or, if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor. The lessor, if so requested by such person and upon execution of a receipt, may deliver:

(1) to the person making the request, any writing purporting to be a will of the decedent;

(2) to the person making the request, any writing purporting to be a deed to a burial plot or to give burial instructions; and

(3) to the beneficiary named in the policy, any document purporting to be an insurance policy on the decedent's life.

B. No other contents shall be removed pursuant to this section except at the lessor's liability until a special administrator, an administrator or executor qualifies and makes claim to the contents.

History: 1953 Comp., § 48-15-148, enacted by Laws 1971, ch. 242, § 8.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 484.

58-10-109. Adverse claims to contents of safe deposit box.

A. An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(1) the lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held; or

(2) the safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by an affidavit stating facts disclosing that it is made by, or on behalf of, a beneficiary and that there is a reason to believe that the fiduciary may misappropriate the trust property.

B. A claim is also adverse when one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or when it is claimed that a lessee is the same person as one using another name.

History: 1953 Comp., § 48-15-149, enacted by Laws 1971, ch. 242, § 9.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 475 to 485.

58-10-110. Special remedies for nonpayment of rent.

A. If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by certified or registered mail to the lessee's last known address stating that the safe deposit box will be opened and its contents stored at the lessee's expense unless payment of rental due is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the lessee's name and the date the box was opened. The notary public shall execute a certificate reciting the lessee's name, the date the box was opened and a list of its contents. The certificate shall be included in the package and a copy of it sent by certified or registered mail to the lessee's last known address. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

B. If the contents of the box are not claimed within the time prescribed by the Uniform Disposition of Unclaimed Property Act [Uniform Unclaimed Property Act, Chapter 7,

Article 8 NMSA 1978], they shall be disposed of as provided in that act. Upon sale of the contents, the lessor shall be reimbursed for the accrued rental and storage charges from the sale proceeds.

History: 1953 Comp., § 48-15-150, enacted by Laws 1971, ch. 242, § 10.

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler to reflect a title change in the referenced act. The bracketed material was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 486 to 492.

Bank's right to apply or set off deposit against debt of depositor not due at time of his death, 7 A.L.R.3d 908.

58-10-111. Limitation of liability on construction loans.

Any association which makes a loan whose proceeds the borrower uses, or may use, to finance the design, manufacture, construction, repair, modification or improvement of real or personal property for sale or lease to others is not liable to third persons for:

A. any loss or damage resulting from any defect in the property; or

B. any loss or damage resulting from the borrower's failure to use due care in any of the work for or on the property, unless the loss or damage results from an act of the association outside the scope of its business as an association or unless the association has knowingly been a party to any misrepresentation concerning the property.

History: 1953 Comp., § 48-15-151, enacted by Laws 1971, ch. 242, § 11.

Severability clauses. - Laws 1971, ch. 242, § 12, provides for the severability of the act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 9 C.J.S. Banks and Banking § 118.

ARTICLE 11
CREDIT UNION REGULATORY ACT

58-11-1. Short title. (Effective until July 1, 1997.)

Section 1 through 65 [58-11-1 to 58-11-65 NMSA 1978] of this act may be cited as the "Credit Union Regulatory Act".

History: Laws 1987, ch. 311, § 1.

Delayed repeals. - Laws 1987, ch. 311, § 68 repeals the Credit Union Regulatory Act, effective July 1, 1997.

Cross-references. - For credit union share insurance corporations, see 58-12-1 NMSA 1978 et seq.

As to disposition of unclaimed property, see 7-8-1 NMSA 1978 et seq.

As to exemption of director of financial institutions division, director of securities division, and chief of savings and loan bureau from authority of superintendent of regulation and licensing, see 9-16-11 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-1 NMSA 1978, as amended by Laws 1977, ch. 245, § 113, relating to organization and definition of credit unions, effective June 19, 1987, and enacts the present section.

Act patterned after Federal Credit Union Act. - The New Mexico Credit Union Act is patterned closely after the Federal Credit Union Act, which Act's interpretations may be persuasive before the New Mexico courts. Op. Att'y Gen. No. 82-3.

Large credit union is a "public figure" within the law of libel where the credit union has suspended the payments of dividends and circulates data to its members indicating that it has experienced management and investment problems (decided under prior law). Coronado Credit Union v. KOAT Television, Inc., 99 N.M. 233, 656 P.2d 896 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Loan Associations § 1 et seq.

12 C.J.S. Building and Loan Associations § 1 et seq.

58-11-2. Definitions. (Effective until July 1, 1997.)

As used in the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978]:

A. "board member" means a member of the board of directors of a credit union;

B. "capital" means share accounts, membership shares, reserves and undivided earnings;

C. "credit union" means a cooperative, nonprofit, financial institution organized under or subject to the Credit Union Regulatory Act for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition;

D. "deposit account" means a balance held by a credit union and established by a person in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not confer membership or voting rights and does not represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution;

E. "director" means the director of the financial institutions division of the regulation and licensing department;

F. "division" means the financial institutions division of the regulation and licensing department;

G. "executive officer" means any person other than a member of the board of directors who performs duties in the management of the credit union as provided in the bylaws of the credit union and includes the chief executive officer, the president, any vice president, the manager, any assistant manager or any person who performs the duties appropriate to those offices;

H. "governmental unit" means any board, agency, department, authority, instrumentality or other unit or organization of the United States, this state or any political subdivision thereof;

I. "immediate family" includes persons related by blood or marriage as well as foster and adopted children;

J. "insolvent" means the condition that results when the cash value of assets is less than the liabilities and members' share and deposit accounts;

K. "insuring organization" means the national credit union administration or any other insurer which has been approved by the director to provide aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in credit unions shall be protected or guaranteed against loss without limit or up to a specified level for each account;

L. "membership share" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution;

M. "organization" means any corporation, association, partnership, society, firm, syndicate, trust or other legal entity;

N. "person" means any individual, organization or governmental unit;

O. "risk assets" means all assets except:

(1) cash on hand;

(2) deposits or shares in federally insured banks, savings and loan associations and credit unions;

(3) assets which are insured by, fully guaranteed as to principal and interest by or due from the United States or an agency thereof, this state or any political subdivision thereof, the federal national mortgage association or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provisions of Title IV, part B of the Higher Education Act of 1965 (20 U.S.C. 1701 et seq.) or similar insurance programs of this state;

(6) loans that are fully or partially insured or guaranteed by the United States, this state or any agency of either;

(7) common trust investments which deal in investments authorized by rules, regulations or the Credit Union Regulatory Act;

(8) prepaid expenses;

(9) accrued interest on nonrisk investments;

(10) furniture and equipment less depreciation;

(11) land and buildings less depreciation;

(12) loans fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(13) loans which are purchased from liquidating credit unions and guaranteed by the national credit union administration;

(14) national credit union share insurance fund guaranty accounts established with the authorization of the national credit union administration under the authority of Section 208(a)(1) of the Federal Credit Union Act; and

(15) investments in shares of the national credit union administration central liquidity facility; and

P. "share account" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts or other similar names. Ownership of a share account confers membership and voting rights and represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

History: Laws 1987, ch. 311, § 2; 1991, ch. 51, § 1.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-2 NMSA 1978, as enacted by Laws 1975, ch. 344, § 1, relating to short title of the Credit Union Act, effective June 19, 1987, and enacted a new 58-11-2 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in Subsection B, substituted "share" for "shared"; added Subsection G and redesignated the subsequent subsections accordingly; and, in Subsection O, substituted "students" for "student" in Paragraph (5) and added "less depreciation" in Paragraphs (10) and (11).

Federal Credit Union Act. - Section 208(a)(1) of the Federal Credit Union Act, referred to in Subsection O(14), appears as 12 U.S.C. § 1788(a)(1).

58-11-3. Supervision and regulation. (Effective until July 1, 1997.)

A. The director shall be responsible for the supervision and regulation of credit unions organized under the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] or previously organized under the Credit Union Act.

B. The director may delegate to any officer or employee of the division the power to perform any of his duties, except those authorized under Subsection D, E, F, G, H, I, K or L of this section.

C. The director may prescribe rules or regulations to implement any provision of the Credit Union Regulatory Act and to define any term not defined in that act. Such rules or regulations shall serve to foster and maintain an effective level of credit union services and the security of member accounts. Prior to establishment of any rule or regulation, the director shall give written notice to all credit unions affected by the terms and general contents of any proposed rule or regulation. If within twenty days after such notice is given at least two credit unions so request, a public hearing will be held with respect to the proposal.

D. The director may restrict withdrawals from share accounts or deposit accounts or both from any credit union when he finds circumstances make that restriction necessary for the proper protection of shareholders or depositors.

E. The director may, after providing at least thirty days prior notice and a hearing, issue cease and desist orders whenever it appears to him upon competent and substantial evidence that a credit union is engaged or has engaged in an unsafe or unsound practice or is violating or has violated a material provision of the credit union's bylaws, any law, rule or regulation or any condition imposed in writing by the director or any written agreement made with the director.

F. The director may remove from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any board member, executive officer or committee member if the director determines that the board member, executive officer or committee member:

(1) has violated any law, rule, regulation or final cease and desist order;

(2) has engaged or participated in an unsafe or unsound practice in connection with the credit union; or

(3) has committed or engaged in any act, omission or practice that constitutes a breach of such party's fiduciary responsibility, and:

(a) the credit union has suffered or will probably suffer financial loss or other damage;

(b) the interest of the credit union's members have been or could be prejudiced; or

(c) such party has received financial gain or other benefit by reason of such violation, practice or breach, and: 1) involves personal dishonesty on the part of such party; or 2) demonstrates such party's unfitness to serve as a board member, executive officer or committee member or to otherwise participate in the conduct of the affairs of a credit union.

G. Whenever the director makes the determination to remove any board member, executive officer or committee member from office or to prohibit any further participation in the conduct of the affairs of the credit union, he shall give notice of his intention in writing, stating the grounds for such removal or prohibition from participation and providing for a hearing no earlier than thirty days or later than sixty days after such notice has been served on the board member, executive officer or committee member.

H. If the director determines that, pending the hearing for removal or prohibition from participating in the conduct of the affairs of the credit union, it is in the best interest of the credit union, he may suspend the board member, executive officer or committee member. Any suspension order shall be in writing and shall become effective upon service.

I. Unless a suspension order is stayed by a district court in the judicial district where the principal office of the credit union is located or in the first judicial district court of the state of New Mexico within ten days after the service of such order on the party

suspended, it shall remain in force and effect until a final order is issued after the hearing for removal. The district courts named in this paragraph shall have jurisdiction to stay such suspension or prohibition.

J. The director has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the director.

K. If it appears that any credit union has willfully violated the Credit Union Regulatory Act or its bylaws or is operating in an unsafe and unsound manner, the director may issue an order temporarily suspending the credit union's operations. The following provisions shall then apply:

(1) the board of directors of the credit union shall be given notice by certified mail of such suspension, which notice shall include a list of the reasons for such suspension and a list of the specific violation of the Credit Union Regulatory Act or the credit union's bylaws, if any. The director shall also notify the insuring organization of the credit union of any such suspension;

(2) upon receipt of such suspension notice, the credit union shall cease all operations except those authorized by the director. The board of directors shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if the board desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed;

(3) upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice, permit the credit union to resume normal operations and notify the insuring organization of such action;

(4) if the director, after issuing notice of suspension and providing for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union, within thirty days of issuance of such notice, may apply to the court of appeals for an order to stay execution of such action;

(5) if within the suspension period the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union; and

(6) in the event of liquidation, the assets of the credit union or the proceeds from any disposition of the assets shall be applied and distributed in the following sequence:

(a) costs and expenses of liquidation;

(b) secured creditors up to the value of their collateral;

(c) wages due the employees of the credit union;

(d) costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the director or liquidating agent;

(e) taxes owed to the United States or any other governmental units;

(f) debts owed to the United States or other governmental units;

(g) general creditors, secured creditors to the extent their claims exceed the value of their collateral and owners of deposit accounts to the extent such accounts are uninsured; and

(h) members, to the extent of uninsured share accounts and the organization that insured the accounts of the credit union.

L. The director has the following authority with respect to the liquidation or conservatorship of any credit union:

(1) the director may, at his sole discretion and without notice, appoint himself, the insuring organization or any other person as conservator to immediately take possession and control of the business and assets of any credit union in any case in which the director determines that such action is necessary to conserve the assets of the credit union or to protect the interests of the members of that credit union. Any credit union may, by a resolution of its board of directors, consent to any such action by the director;

(2) not later than ten days after the date of which the director or his designee takes possession and control of the business and assets of a credit union pursuant to Paragraph (1) of this subsection, the credit union may apply to the court of appeals for an order requiring the director to show cause why he or his designee should not be enjoined from continuing such possession and control;

(3) except as provided in Paragraph (2) of this subsection, the director or his designee may maintain possession and control of the business and assets of the credit union and may operate the credit union until such time as:

(a) the director permits the credit union to continue business subject to such terms and conditions as he imposes; or

(b) the credit union is liquidated in accordance with this section;

(4) the director may appoint such agents as he considers necessary in order to assist in carrying out the duties of the conservator under this section; and

(5) all expenses incurred by the director in exercising his authority under this section with respect to the liquidation or conservatorship of any credit union shall be paid out of the assets of that credit union.

History: Laws 1987, ch. 311, § 3; 1991, ch. 51, § 2.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-3 NMSA 1978, as amended by Laws 1975, ch. 344, § 3, relating to amendments, effective June 19, 1987, and enacted a new 58-11-3 NMSA 1978.

The 1991 amendment, effective July 1, 1991 in Subsection B added the reference to Subsections G, K, or L; in the second sentence of Subsection C, inserted "or regulations"; in Subsection D, substituted "withdrawals from" for "the withdrawal of"; in Subsection E, inserted "after providing at least 30 days prior notice and a hearing"; rewrote Subsection F; added Subsections G to I and renumbered the subsequent subsections accordingly; in Subsection K substituted "the Credit Union Regulatory Act" for "this Act" in the introductory paragraph; and, in paragraph (3)(a) of Subsection L, substituted "permits" for "shall permit".

Credit Union Act. - The Credit Union Act, referred to in Subsection A, means former 58-11-1 to 58-11-33 NMSA 1978, which were repealed by Laws 1987, Chapter 311. For the provisions of the Credit Union Act, see the 1986 Replacement Pamphlet.

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

Determinations commissioner must make relating to applications. - The commissioner (now director) should make an independent determination whether an association's activities develop the common loyalties, mutual benefits and mutual interests that unify the potential members of a credit union in a characteristic that is more than an unfocused generalized agreement on a given topic or a common belief or philosophy on matters of general concern. The mere fact that an association is legally organized into a corporation or similar organization would not per se qualify the association within the membership limitation of the Credit Union Act. 1982 Op. Att'y Gen. No. 82-3 (rendered under prior law).

In the case of an application because of a common association, it would appear that the commissioner could consider the solvency of a formally organized association, such as a corporation, or of the membership of an informally organized association, such as a club. The commissioner could also consider the stability of the organization itself including such factors as its length of existence, performance toward established goals and purposes, its membership stability and its financial stability. 1982 Op. Att'y Gen. No. 82-3 (rendered under prior law).

58-11-4. Appeal rights and court review. (Effective until July 1, 1997.)

Any person aggrieved or directly affected by an order, rule or regulation of the director may appeal to the court of appeals within thirty days after issuance of the order.

History: Laws 1987, ch. 311, § 4.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-4 NMSA 1978, as amended by Laws 1975, ch. 344, § 4, relating to use of words "credit union", effective June 19, 1987, and enacts the present section.

58-11-5. Examinations; supervision fees. (Effective until July 1, 1997.)

A. The director shall examine or cause to be examined each credit union. A credit union and any of its board members, executive officers, agents and employees shall give the director or his representatives full access to all books, papers, securities, records and other desired sources of information under their control.

B. A copy of the report of any such examination shall be forwarded to the board of directors of the credit union examined within thirty days after completion of the report. The report shall contain comments relative to the management of the affairs of the credit union and its general financial condition. The board of directors shall meet to consider matters contained in the report and shall respond to the director in writing, acknowledging receipt of the report and setting forth corrective measures taken or contemplated with respect to any adverse comments by the examiner.

C. In lieu of examination, the director may accept an audit report of the condition of a credit union, conducted by a certified public accountant or other qualified person or firm approved by the director. The cost of the audit shall be borne by the credit union.

D. Each credit union shall annually pay to the director a supervision fee in accordance with the following schedule:

If the credit union's total assets are -		The fee is -		
Not Over	But This Over	Amount	Of Excess Plus	Per
-0-	49,999	400.00		
50,000	100,000	400.00	1.7227	1,000
Over 50,000				

100,001	250,000	400.00	1.1021	1,000
100,000				
250,001	500,000	400.00	0.9095	1,000
250,000				
500,001	1,000,000	575.13	0.5136	1,000
500,000				
1,000,001	2,000,000	833.42	0.3959	1,000
1,000,000				
2,000,001	5,000,000	1,226.04	0.3470	1,000
2,000,000				
5,000,001	20,000,000	2,267.21	0.1800	1,000
5,000,000				
20,000,001	50,000,000	4,898.96	0.1680	1,000
20,000,000				
50,000,001	100,000,000	9,854.85	0.1551	1,000
50,000,000				
100,000,001		17,642.07	0.1423	1,000
100,000,000				

plus one hundred dollars ($100) for each branch office in operation.

The supervision fee shall be calculated as of December 31. The fee shall be paid on or before the March 1 following the asset computation. For failure to pay the supervision fee when due, unless excused for cause by the director, the credit union shall pay to the division fifty dollars ($50.00) for each day of its delinquency.

E. If at any time the director deems it necessary to examine a credit union more than once in any calendar year, the credit union shall pay to the director reimbursement of the actual costs of that examination or those examinations.

History: Laws 1987, ch. 311, § 5; 1989, ch. 209, § 8; 1991, ch. 51, § 3.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-5 NMSA 1978, as amended by Laws 1975, ch. 344, § 5, relating to powers generally, effective June 19, 1987, and enacted a new 58-11-5 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the second sentence of Subsection A, inserted "executive".

Service charges, late fees or similar charges may be assessed by a credit union provided the statutory disclosure provisions are followed. 1985 Op. Att'y Gen. No. 85-01.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Loan Associations § 42.

12 C.J.S. Building and Loan Associations §§ 49, 51, 52.

58-11-6. Records. (Effective until July 1, 1997.)

A. A credit union shall maintain all books, records, accounting systems and procedures in accordance with the rules, regulations and orders the director from time to time establishes or issues. In establishing and issuing such rules, regulations and orders, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

B. A credit union is not liable for destroying records after the expiration of the record retention time prescribed by regulation, except for any records involved in an official investigation or examination about which the credit union has received notice.

C. A photostatic, photographic or xerographic reproduction of any credit union records shall be admissible as evidence of transaction with the credit union.

History: Laws 1987, ch. 311, § 6.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-6 NMSA 1978, as amended by Laws 1975, ch. 344, § 6, relating to powers of commissioner and state credit unions, effective June 19, 1987, and enacts the present section.

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Loan Associations § 38.

12 C.J.S. Building and Loan Associations § 7.

58-11-7. Reports. (Effective until July 1, 1997.)

A. Credit unions shall report to the director semiannually on or before July 30 and January 30. Reports shall be on forms supplied by the director. The director may require additional reports.

B. A charge of twenty-five dollars ($25.00) shall be levied for each day a credit union fails to provide a required report, unless that charge is by the director excused for cause.

History: Laws 1987, ch. 311, § 7; 1989, ch. 209, § 9.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-7 NMSA 1978, as amended by Laws 1975, ch. 344, § 7, relating to membership, effective June 19, 1987, and enacted a new 58-11-7 NMSA 1978.

58-11-8. Records of the division. (Effective until July 1, 1997.)

A. Information from the records of the division, including division examination reports of which a credit union has possession, is not public records, shall be revealed only with the consent of the director and is not subject to subpoena.

B. Reports of examinations made by the division shall be retained for five years.

C. A copy of any document on file with the division which is certified by the director as being a true copy may be introduced in court as if it were the original.

History: Laws 1987, ch. 311, § 8.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-8 NMSA 1978, as amended by Laws 1985, ch. 30, § 4, relating to reports, examinations and fees, effective June 19, 1987, and enacts the present section.

Severability clauses. - Laws 1953, ch. 97, § 3, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

Director has supervisory control over credit unions and may revoke or suspend charters after hearing for a violation of any of the provisions of 58-11-1 NMSA 1978 et seq. 1959-60 Op. Att'y Gen. No. 60-165.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Loan Associations § 106.

12 C.J.S. Building and Loan Associations § 4.

58-11-9. Conflicts of interest. (Effective until July 1, 1997.)

No officer or employee of the division having supervisory authority over credit unions shall be a member, executive officer, director, attorney or employee of any credit union incorporated under or subject to the provisions of the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978]; receive, directly or indirectly, any payment of gratuity from any such credit union; or be indebted to or engage in the negotiation of loans for others with any such credit union.

History: Laws 1987, ch. 311, § 9; 1991, ch. 51, § 4.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-9 NMSA 1978, as amended by Laws 1975, ch. 344, § 9, relating to disposition of fees, effective June 19, 1987, and enacted a new 58-11-9 NMSA 1978.

Laws 1987, ch. 298, § 3, purported to amend former 58-11-9 NMSA 1978 but could not be given effect because of the subsequent repeal by laws 1987, ch. 311, § 9.

The 1991 amendment, effective July 1, 1991, inserted "executive" and substituted "attorney or employee" for "or attorney".

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

58-11-10. Formation of credit union. (Effective until July 1, 1997.)

A. Any seven or more residents of this state of legal age, who share the common bond referred to in Section 21 [58-11-21 NMSA 1978] of the Credit Union Regulatory Act may organize a credit union and become charter members thereof by complying with this section.

B. The organizers shall prepare, adopt and execute in triplicate articles of organization and agree to the terms thereof. The articles shall state:

(1) the credit union's name and the location of the proposed credit union's principal place of business;

(2) that the existence of the credit union shall be perpetual; and

(3) the names and addresses of the organizers, and the number of shares subscribed to by each.

C. The organizers shall prepare, adopt and execute in duplicate bylaws consistent with the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] for the general governance of the credit union.

D. The organizers shall select at least five persons who are eligible for membership and who agree to become members and serve on the board of directors, and at least three other persons who are eligible for membership and who agree to become members and serve on the supervisory committee. The persons selected to serve on the board of directors and supervisory committee shall execute an agreement to serve in these capacities until the first annual meeting or until the election of their respective successors, whichever is later.

E. The organizers shall forward the triplicate articles of organization, the duplicate bylaws and the agreements to serve to the director, who shall act upon the application within sixty days. The director shall issue a certificate of approval if the articles and bylaws are in conformity with applicable provisions of the Credit Union Regulatory Act and he is satisfied that:

(1) the characteristics of the common bond set forth in the proposed bylaws are favorable to the economic viability of the proposed credit union;

(2) the reputation and character of the initial board of directors and supervisory committee provide assurance that the credit union's affairs will be properly administered; and

(3) the share and deposit insurance requirements of Section 48 [58-11-48 NMSA 1978] of the Credit Union Regulatory Act will be met.

F. The following providers apply to issuance and denial of certificate:

(1) if the director issues a certificate of approval, he shall return a copy of the bylaws to the organizers and, upon payment of the required fee, file the triplicate originals of the articles of organization with the state corporation commission; and

(2) if the director denies a certificate of approval, he shall notify the organizers and set forth his reasons for the denial. The incorporators may appeal his decision to the court of appeals within thirty days after receipt of the notice of denial.

G. The organizers shall not transact any credit union business until a certificate of approval has been received, and shall accept no payments on shares or deposit until insurance of accounts has been obtained as provided by Section 48 [58-11-48 NMSA 1978] of the Credit Union Regulatory Act.

H. Any credit union, the articles of organization of which have been approved by the director, shall commence business within six months after satisfactory proof has been filed with the director showing that insurance of share and deposit accounts has been obtained. Upon showing of good cause for failure to commence business within this time, the director may grant a reasonable extension to overcome the reason for delay. Failure to commence business as required in this section or failure to obtain insurance

of accounts within one year from the date of approval of the articles of organization constitutes grounds for forfeiture of the credit union's articles of organization.

History: Laws 1987, ch. 311, § 10.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-10 NMSA 1978, as amended by Laws 1975, ch. 344, § 10, relating to meetings and fiscal year, effective June 19, 1987, and enacts the present section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 12 C.J.S. Building and Loan Associations § 23.

58-11-11. Forms of articles and bylaws. (Effective until July 1, 1997.)

In order to simplify the organization of credit unions, the director shall cause to be prepared model articles of organization and bylaws, consistent with the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], which may be used by credit union organizers for their guidance. Such articles of organization and bylaws shall be available to persons desiring to organize a credit union.

History: Laws 1987, ch. 311, § 11.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-11 NMSA 1978, as amended by Laws 1975, ch. 344, § 11, relating to elections, effective June 19, 1987, and enacts the present section.

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

58-11-12. Amendments. (Effective until July 1, 1997.)

A. The articles of organization and the bylaws may be amended as provided in the articles and bylaws, respectively. Amendments to the articles of organization or bylaws shall be submitted to the director who shall approve or disapprove the proposed amendments within thirty days after submission.

B. The director shall not approve any amendment to articles or bylaws which he determines would be detrimental to any credit union's safety or soundness or to the welfare of a credit union's members. No amendment shall become effective until approved by the director. If the director disapproves any proposed amendment, the credit union may appeal the disapproval to the court of appeals within thirty days.

History: Laws 1987, ch. 311, § 12.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-12 NMSA 1978, as amended by Laws 1975, ch. 344, § 12, relating to directors and officers, effective June 19, 1987, and enacts the present section.

58-11-13. Use of name exclusive. (Effective until July 1, 1997.)

A. The name of every credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] shall include the phrase "credit union". No credit union shall adopt a name either identical to the name of any other credit union doing business in this state or so similar to the name of any other credit union doing business in this state as to be misleading or to cause confusion.

B. No person, other than a credit union organized under or subject to the Credit Union Regulatory Act, the Federal Credit Union Act or a credit union authorized to do business in this state under Section 16 [58-11-16 NMSA 1978] of the Credit Union Regulatory Act, an association of credit unions, or an organization, corporation, or association whose membership or ownership is primarily limited to credit unions or credit union organizations shall use a name or title containing the phrase "credit union" or any derivation thereof, represent itself as a credit union or conduct business as a credit union.

C. Violation of this section constitutes a fourth degree felony.

D. The director may petition the district court of Santa Fe county to enjoin a violation of this section.

History: Laws 1987, ch. 311, § 13.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-13 NMSA 1978, as amended by Laws 1975, ch. 344, § 13, relating to credit committee, effective June 19, 1987, and enacts the present section.

Federal Credit Union Act. - See 12 U.S.C. § 1751 et seq.

58-11-14. Office facilities. (Effective until July 1, 1997.)

A. A credit union may change its principal place of business within this state upon thirty days notice to the director.

B. A credit union may maintain other service facilities, including automated terminals pursuant to the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978], at

locations other than its principal office upon approval by the director. The maintenance of such facilities must be reasonably necessary to furnish service to its members.

C. A credit union may join with one or more other credit unions or other financial organizations in the operation of automated terminals or other service facilities.

History: Laws 1987, ch. 311, § 14.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-14 NMSA 1978, as amended by Laws 1975, ch. 344, § 14, relating to supervisory committee, effective June 19, 1987, and enacts the present section.

58-11-15. Fiscal year. (Effective until July 1, 1997.)

The fiscal year of each credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] shall end on the last day of December.

History: Laws 1987, ch. 311, § 15.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-15 NMSA 1978, as amended by Laws 1973, ch. 65, § 5, relating to capital, effective June 19, 1987, and enacts the present section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 13 Am. Jur. 2d Building and Loan Associations § 47.

12 C.J.S. Building and Loan Associations § 16.

58-11-16. Out-of-state credit unions. (Effective until July 1, 1997.)

A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the director. Before granting the approval, the supervisory authority of such credit union shall certify that the out-of-state credit union:

A. is a credit union organized under laws similar to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978];

B. is financially solvent;

C. has account insurance approved for credit unions incorporated under or subject to the Credit Union Regulatory Act; and

D. needs to conduct business in this state to adequately serve its members in this state.

History: Laws 1987, ch. 311, § 16.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-16 NMSA 1978, as amended by Laws 1975, ch. 344, § 15, relating to minors, effective June 19, 1987, and enacts the present section.

58-11-17. Doing business outside this state. (Effective until July 1, 1997.)

A credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] may do business outside this state, provided that it is legal for it to do so in the foreign state or territory involved. If the director deems necessary the examination of out-of-state offices of those credit unions, the actual expenses of the examinations shall be paid by the credit union examined.

History: Laws 1987, ch. 311, § 17.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Compiler's note. - Laws 1981, ch. 263, § 6, revived 58-11-17 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repeals Laws 1981, ch. 263, § 6, effective June 30, 1983.

Laws 1981, ch. 263, § 4 repealed former 58-11-17 NMSA 1978, relating to interest rates and charges on loans, effective July 1, 1981.

58-11-18. Powers of credit unions. (Effective until July 1, 1997.)

In addition to the powers authorized elsewhere in the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], a credit union may:

A. enter into contracts of any nature;

B. sue and be sued;

C. adopt, use and display a corporate seal;

D. acquire, lease, hold, assign, pledge, hypothecate, sell and discount or otherwise dispose of property or assets, either in whole or in part, necessary or incidental to its operations;

E. lend funds to members;

F. borrow from any source, provided that a credit union must have prior approval of the director before borrowing in excess of an aggregate of fifty percent of its capital;

G. purchase the assets of another credit union, subject to the approval of the director;

H. offer various financial services approved by the director;

I. hold membership in other credit unions organized under the Credit Union Regulatory Act, the Federal Credit Union Act or other acts and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law;

J. engage in activities and programs as requested by any governmental unit; and

K. act as fiscal agent and receive payments on deposit accounts from a governmental unit.

History: Laws 1987, ch. 311, § 18.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-18 NMSA 1978, as amended by Laws 1975, ch. 344, § 16, relating to power to borrow, effective June 19, 1987, and enacts the present section.

Federal Credit Union Act. - The Federal Credit Union Act, referred to in Subsection I, appears as 12 U.S.C. § 1751 et seq.

58-11-19. Incidental powers. (Effective until July 1, 1997.)

A credit union may exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes, as provided in the bylaws.

History: Laws 1987, ch. 311, § 19.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-19 NMSA 1978, as amended by Laws 1975, ch. 344, § 17, relating to loans, effective June 19, 1987, and enacts the present section.

58-11-20. Advantageous federal powers. (Effective until July 1, 1997.)

In addition to other powers provided for the director and for credit unions organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] and notwithstanding any law to the contrary, the director may adopt such rules and regulations as he deems necessary and proper, granting to state credit unions any of the powers and authority that federal credit unions are or may hereafter be authorized, empowered, permitted or otherwise allowed to exercise under federal statutes, rules or regulations.

History: Laws 1987, ch. 311, § 20.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-20 NMSA 1978, as amended by Laws 1975, ch. 344, § 18, relating to reserves, effective June 19, 1987, and enacts the present section.

Meaning of "director". - See 58-11-2E NMSA 1978.

58-11-21. Membership. (Effective until July 1, 1997.)

A. The membership of a credit union shall consist of those persons who share a common bond set forth in the bylaws, have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have paid for in cash or its equivalent one or more shares and have complied with such other requirements as the articles of organization and the bylaws specify.

B. Credit union membership may include persons within one or more groups having a common bond of similar occupation, association or interest, or persons who reside or belong to one or more groups that are based within an identifiable neighborhood, community or rural district, or employees of a common employer, or persons employed within a defined business district, industrial park or shopping center and members of the immediate family of such persons.

C. Organizations in which majority ownership or control is vested in persons eligible for membership in a credit union, may be admitted to membership in that credit union. Also, organizations one of whose principal functions is to provide services to persons who are eligible for membership in the credit union may be admitted to membership. Other organizations having a commonalty [commonality] of interest with the credit union may be admitted to membership with the approval of the director.

History: Laws 1987, ch. 311, § 21.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-21 NMSA 1978, as amended by Laws 1975, ch. 344, § 3, relating to special reserve, effective June 19, 1987, and enacts the present section.

Meaning of "director". - See 58-11-2E NMSA 1978 and notes thereto.

58-11-22. Central credit unions. (Effective until July 1, 1997.)

Central credit unions may be organized under the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], and such credit unions organized under prior law are subject to that act. In addition to the members referred to in Section 58-11-21 NMSA 1978, the membership of a central credit union may include:

A. executive officers, board members, committee members and employees of credit unions organized under any credit union act or the executive officers, directors and employees of an employer with insufficient numbers or with executive officers, directors and employees who do not desire to form or conduct the affairs of a separate credit union;

B. persons in the field of membership of liquidated credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; and

C. members of the immediate families of members qualified pursuant to Subsection A or B of this section.

History: Laws 1987, ch. 311, § 22; 1991, ch. 51, § 5.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-22 NMSA 1978, as amended by Laws 1975, ch. 344, § 20, relating to dividends, effective June 19, 1987, and enacted a new 58-11-22 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the second sentence of the introductory paragraph, substituted "Section 58-11-21 NMSA 1978" for "Section 21 of the Credit Union Regulatory Act", in Subsection A, inserted "executive" in three places, and, in Subsection C, substituted "pursuant to Subsection A or B of this section" for "above".

58-11-23. Other credit unions. (Effective until July 1, 1997.)

Any credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] may accept as a member any other credit union organized under or subject to that act or any other act.

History: Laws 1987, ch. 311, § 23.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-23 NMSA 1978, as amended by Laws 1975, ch. 344, § 21, relating to withdrawal, effective June 19, 1987, and enacts the present section.

58-11-24. Member eligibility. (Effective until July 1, 1997.)

Members who cease to be eligible for membership may be permitted to retain their membership in the credit unions subject to any restrictions which may be established by the board of directors.

History: Laws 1987, ch. 311, § 24.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-24 NMSA 1978, as amended by Laws 1975, ch. 344, § 22, relating to dissolution, effective June 19, 1987, and enacts the present section.

58-11-25. Liability of members. (Effective until July 1, 1997.)

The members of a credit union shall not be personally or individually liable for the payments of its debts solely by virtue of holding membership.

History: Laws 1987, ch. 311, § 25.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-25 NMSA 1978, as amended by Laws 1975, ch. 344, § 23, relating to conversion, effective June 19, 1987, and enacts the present section.

58-11-26. Meetings of members. (Effective until July 1, 1997.)

A. The annual meeting and any special meetings of the members shall be held in accordance with the bylaws.

B. At all meetings a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot, mail or other method if the bylaws of the credit union so provide.

C. An organization having membership in a credit union, may be represented and have its vote cast by one of its members or shareholders, provided that person has been so authorized by the organization's governing body.

History: Laws 1987, ch. 311, § 26.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-26 NMSA 1978, as amended by Laws 1975, ch. 344, § 24, relating to merger, effective June 19, 1987, and enacts the present section.

58-11-27. Direction of affairs. (Effective until July 1, 1997.)

A. A credit union shall be directed by a board of directors consisting of an odd number of members, as provided in the bylaws, but not less than five in number, to be elected annually by and from the members. The election shall be held at the annual meeting or in such other manner as the bylaws provide. All members of the board shall hold office for such terms as the bylaws provide.

B. The board of directors shall appoint, or the members shall elect, whichever is prescribed in the bylaws, a supervisory committee of not less than three persons at the organization meeting held within thirty days following each annual election for such terms as the bylaws provide.

C. The board of directors shall appoint or the members shall elect a credit committee consisting of an odd number, not less than three, for such terms as the bylaws provide. If a credit committee is not appointed or elected, it shall be the duty of the board of directors or a credit manager appointed by the board to assume the duties of the credit committee hereinafter specified. If a credit manager is appointed, he shall serve at the pleasure and under the direction and supervision of the board of directors.

History: Laws 1987, ch. 311, § 27.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-27 NMSA 1978, as amended by Laws 1977, ch. 245, § 114, relating to change in price of business, effective June 19, 1987, and enacts the present section.

58-11-28. Record of officials. (Effective until July 1, 1997.)

Within thirty days after election or appointment, a record of the names, addresses and titles of the members of the board, committees and all executive officers of the credit union shall be filed with the division on forms provided by the director.

History: Laws 1987, ch. 311, § 28; 1991, ch. 51, § 6.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-28 NMSA 1978, as amended by Laws 1981, ch. 37, § 55, relating to taxation, effective June 19, 1987, and enacted a new 58-11-28 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "30 days" for "20 days" and "addresses and titles" for "and addresses" and inserted "executive".

58-11-29. Vacancies. (Effective until July 1, 1997.)

The board of directors of a credit union shall fill any vacancies occurring in the board until successors elected at the next annual election have qualified. If more than fifty percent of the board positions become vacant at any one time, a special meeting of the members shall be called to fill all vacancies. The board shall also fill vacancies in the credit committee, if any. The supervisory committee shall fill all vacancies in its own membership as they occur. If all of the committee positions become vacant at any one time, the board of directors shall fill all vacancies.

History: Laws 1987, ch. 311, § 29.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-29 NMSA 1978, as amended by Laws 1969, ch. 268, § 9, relating to payment from account where no executor or administrator has qualified, effective June 19, 1987, and enacts the present section.

58-11-30. Compensation of officials. (Effective until July 1, 1997.)

No board or committee member may be compensated for his services. Reasonable life, health, accident and similar insurance protection shall not be considered compensation. Board and committee members may be reimbursed for reasonable and necessary expenses incidental to the performance of official business of the credit union, provided that such expenses are documented.

History: Laws 1987, ch. 311, § 30; 1991, ch. 51, § 7.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-30 NMSA 1978, as enacted by Laws 1967, ch. 210, § 2, relating to proof of debt, effective June 19, 1987, and enacted a new 58-11-30 NMSA 1978.

The 1991 amendment, effective July 1, 1991, rewrote the first sentence which formerly read "No officer, board member or committee member other than an employee may be compensated for his services except that a board member in attendance at regular

board meetings may be compensated up to a maximum of twenty dollars ($20.00) per month for such attendance" and in the last sentence inserted "reasonable and".

58-11-31. Conflicts of interest. (Effective until July 1, 1997.)

No board member, committee member, executive officer, agent or employee of a credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any organization, other than the credit union, in which he is directly or indirectly interested.

History: Laws 1987, ch. 311, § 31; 1991, ch. 51, § 8.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-31 NMSA 1978, as amended by Laws 1975, ch. 344, § 25, relating to penalty for false affidavit, effective June 19, 1987, and enacted a new 58-11-31 NMSA 1978.

The 1991 amendment, effective July 1, 1991, inserted "executive" near the beginning and "the" preceding "pecuniary".

58-11-32. Officers. (Effective until July 1, 1997.)

A. At its organization meeting held within thirty days following each annual election, the board of directors shall elect from its own number a chairman, a vice chairman and a secretary. It shall also elect any other board officers that are specified in the bylaws.

B. The terms of the board officers shall be one year, or until their successors are chosen and have been duly qualified.

C. The duties of the board officers shall be prescribed in the bylaws.

D. The board of directors shall appoint a general manager of the credit union to be in active charge of its operations.

E. The board of directors may provide for other executive officers and prescribe their duties and authority in the bylaws.

F. Notwithstanding any other provisions of the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], a credit union may use any titles it chooses for the officials holding the positions described in this section, provided those titles are not misleading.

History: Laws 1987, ch. 311, § 32; 1991, ch. 51, § 9.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repealed former 58-11-32 NMSA 1978, as amended by Laws 1985, ch. 20, § 1, relating to insurance of share and deposit balances, effective June 19, 1987, and enacted a new 58-11-32 NMSA 1978.

The 1991 amendment, effective July 1, 1991, inserted "board" in Subsections A through C, added Subsection E, redesignated former Subsection E as Subsection F, and made minor stylistic changes.

58-11-32.1, 58-11-32.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, Chapter 311, § 67 repeals 58-11-32.1 and 58-11-32.2 NMSA 1978, as enacted by Laws 1985, ch. 20, §§ 2, 3, relating to share insurance corporations, effective June 19, 1987.

58-11-33. Authority and responsibility of board members. (Effective until July 1, 1997.)

The board of directors shall have the authority and responsibility for providing the general direction of the business affairs, funds and records of the credit union.

History: Laws 1987, ch. 311, § 33.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Repeals and reenactments. - Laws 1987, Chapter 311 repeals 58-11-33 NMSA 1978, as amended by Laws 1985, ch. 20, § 3, relating to nonrequirement of notice of payment, effective June 19, 1987, and enacts the present section.

58-11-34. Executive committee. (Effective until July 1, 1997.)

The board of directors may appoint an executive committee, consisting of not less than three board members, which may be authorized to act for the board in all respects subject to any conditions or limitations prescribed by the board and any limitations prescribed in the bylaws.

History: Laws 1987, ch. 311, § 34.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-35. Meetings of board members. (Effective until July 1, 1997.)

Each month either the board of directors or the executive committee shall meet. These bodies shall meet on other occasions as necessary.

History: Laws 1987, ch. 311, § 35.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-36. Duties of board members. (Effective until July 1, 1997.)

It shall be the duty of the board of directors to:

A. act upon applications for membership or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. A person denied membership by a membership officer may appeal denial to the board, and the person shall be informed by the membership officer of that right of appeal;

B. purchase adequate fidelity coverage as it determines to be necessary for the board members, committee members, executive officers or employees of the credit union. The director may, by rule, regulation or order, establish which credit union personnel shall be covered by a fidelity bond and in what amounts;

C. determine from time to time the interest rates which shall be charged on loans to members and authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

D. establish written policies with respect to the granting of loans and the extending of lines of credit, including the maximum amount which may be loaned to any one member;

E. declare dividends on share accounts in the manner and form as provided in the bylaws, which dividends shall not exceed the credit union's net earnings including undivided earnings, and determine the interest rates which shall be paid on deposit accounts;

F. if deemed desirable, limit the dollar amount of share and deposit accounts which may be owned by a member, provided any such limitation shall apply equally to all members;

G. have charge of the investment of funds, except that the board may designate an investment committee or investment officer under written investment policies established by the board;

H. authorize the employment of persons to carry on the business of the credit union and fix the compensation of the general manager;

I. approve an annual operating budget for the credit union;

J. authorize the conveyance of property;

K. authorize contributions to any nonprofit civic, charitable or service organization;

L. designate depositories for the funds of the credit union;

M. appoint any special committees deemed necessary; and

N. perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] and not specifically reserved by the bylaws to the members.

History: Laws 1987, ch. 311, § 36; 1991, ch. 51, § 10.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in Subsection B, substituted "committee members, executive officers" for "general manager and any other officers"; in Subsection F, substituted "of" for "or"; and made stylistic changes in Subsections B, C and L.

58-11-37. Credit committee. (Effective until July 1, 1997.)

A. A credit committee shall have the general supervision of all loans to members and may approve or disapprove those loans, subject to written policies established by the board of directors, unless the credit committee is dispensed with as provided in Subsection C of this section.

B. The credit committee shall meet as often as the business of the credit union requires to consider applications for loans and review loans approved by loan officers, if any. No loan shall be made unless it is approved by all members of the committee who are present at the meeting at which the application is considered or by a duly appointed loan officer as provided in Subsection D of this section. A majority of the committee shall constitute a quorum necessary for transaction of business of the committee.

C. The credit committee may be dispensed with, if so provided in the bylaws, and a credit manager under the general supervision of the general manager may be empowered by the board of directors to approve or disapprove loans, subject to the written policies prescribed by the board of directors. The general manager may serve as the credit manager.

D. If the bylaws provide for a credit committee, all applications not approved by a loan officer shall be reviewed by a quorum of the credit committee. Approval by a majority of the credit committee members present shall be required to reverse a loan officer's decision, provided that a quorum exists.

E. If the credit committee is dispensed with, as provided in Subsection C of this section, a member may submit a written request to the board of directors for review of a loan application that has been denied.

F. No person shall have the authority to disburse credit union funds with respect to any loan or line of credit when the application for the loan or line of credit has been approved by him in his capacity as a loan officer.

History: Laws 1987, ch. 311, § 37; 1991, ch. 51, § 11.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, rewrote Subsection D which formerly pertained to appointment powers of loan officers and added Subsections E and F.

58-11-38. Supervisory committee. (Effective until July 1, 1997.)

A. The supervisory committee shall make or cause to be made by a certified public accountant or other qualified person or firm a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and to the division and a summary of the report to the members at the next annual meeting of the credit union.

B. The supervisory committee shall make or cause to be made such supplementary audits, examinations and verifications of members' share and loan accounts as it deems necessary or as are required by the board of directors and submit reports of those audits to the board of directors. A complete verification of members' share and loan accounts shall be performed at least once every two years.

C. The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

D. The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the board of directors until the next members' meeting, which shall be held not less than seven or more than twenty-one days after such suspension. At that meeting, the suspension shall be acted upon by the members and the board member removed from or restored to his position.

E. Any member of the supervisory committee or of the credit committee may be suspended or removed by the board of directors by a two-thirds vote of those present for failure to perform his duties in accordance with the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], the articles of organization or the bylaws and for no other reason. That suspension or removal of a supervisory committee member shall be acted upon by the members at a meeting to be held not less than seven or more than twenty-one days after such suspension or removal.

F. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of the Credit Union Regulatory Act, the credit union's articles of organization or bylaws or any practice of the credit union deemed by the supervisory committee to be unsafe, unsound or unauthorized. The bylaws shall prescribe the manner in which a special meeting of the members may be called by the members or by the board of directors.

History: Laws 1987, ch. 311, § 38; 1991, ch. 51, § 12.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the first sentence of Subsection D substituted "vote of the entire committee may suspend any member" for "vote may suspend any officer or member" and in the second sentence deleted "officer or" preceding "board".

58-11-39. Members' accounts. (Effective until July 1, 1997.)

A. The bylaws of a credit union shall require the members to subscribe to and make payments on membership shares.

B. Share accounts, membership shares and deposit accounts shall be subscribed to and paid for in such manner as the bylaws prescribe.

C. The par value of shares and membership shares shall be as prescribed in the bylaws.

D. Membership shares may not be pledged as security on any loan.

History: Laws 1987, ch. 311, § 39.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-40. Dividends and interest. (Effective until July 1, 1997.)

A. At intervals and for periods, the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid on share accounts and membership shares. Dividends may be paid from the credit union's undivided earnings; provided, no such payment shall result in or increase a debit balance in the undivided earnings account.

B. Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

C. Dividends need not be paid on membership shares but if such a dividend is paid it shall be added to the membership share held by each member.

D. A credit union may receive payments on deposit accounts from its members and other credit unions subject to such terms, rates and conditions as the board of directors establishes.

E. Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

History: Laws 1987, ch. 311, § 40.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-41. Withdrawals. (Effective until July 1, 1997.)

A. Funds in share accounts and deposit accounts may be withdrawn for payment to the account holder or to third parties, in a manner and in accordance with procedures established by the board of directors subject to any regulations or orders the director prescribes.

B. Share accounts and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws; however, in the case of shares, not more than sixty days, and in the case of deposits, not more than thirty days notice may be required.

C. A membership share may not be redeemed or withdrawn except upon termination of membership in the credit union.

History: Laws 1987, ch. 311, § 41.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-42. Accounts of minors. (Effective until July 1, 1997.)

Payments on share accounts and deposit accounts may be received from a minor who may withdraw funds from those accounts, including the dividends and interest thereon. Payments on share accounts and deposit accounts by a minor and withdrawal by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

History: Laws 1987, ch. 311, § 42.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-43. Joint accounts. (Effective until July 1, 1997.)

A. A member may designate any person to own a share account or deposit account with him in joint tenancy with the right of survivorship, as a tenant in common or under any

other form of joint ownership permitted by law, but no co-owner, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

B. Payment of part or all of those accounts to any of the co-owners shall, to the extent of such payment, discharge the liability to all unless the account agreement contains a prohibition.

History: Laws 1987, ch. 311, § 43.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-44. Trust accounts. (Effective until July 1, 1997.)

A. Share accounts and deposit accounts may be owned by a member in trust for a beneficiary or owned by a non-member in trust for a beneficiary who is a member.

B. Beneficiaries may be minors, but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

C. Payment of part or all of a trust account to the party in whose name the account is held shall, to the extent of that payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of that payment.

D. In the event of the death of the party who owns a trust account, if the credit union has been given no other written notice of the existence or terms of any trust and has not received a court order as to disposition of the account, account funds and any dividends or interest thereon shall be paid to the beneficiary.

History: Laws 1987, ch. 311, § 44; 1991, ch. 51, § 13.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "or all" for "of all" in Subsection C.

58-11-45. Payable-on-death accounts. (Effective until July 1, 1997.)

Notwithstanding any other provision of law, a credit union may establish share accounts and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable-on-death payees. Any transfer to a payable-on-death payee is effective by reason of the account contract and shall not be considered to be a testamentary transfer.

History: Laws 1987, ch. 311, § 45.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-46. Liens. (Effective until July 1, 1997.)

A credit union shall have a lien on the membership shares, share accounts and deposit accounts and accumulated dividends and interest of a member in his individual, joint or trust account for any sum owed the credit union from that member or for any loan endorsed or guaranteed by him. A credit union may refuse to allow withdrawals and shall have a right of immediate set-off with respect to every such account. The credit committee, credit manager or loan officer may waive the credit union's rights to a lien, to immediate set-off, to restrict withdrawals or to any combination of those rights with respect to any share or deposit account or groups of those accounts.

History: Laws 1987, ch. 311, § 46.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-47. Dormant accounts. (Effective until July 1, 1997.)

A. If there has been no activity in a share or deposit account for one year, except for the posting of dividends or interest, the credit union may impose a reasonable maintenance fee as provided in the bylaws.

B. Any account presumed abandoned shall be disposed of in accordance with the Uniform Disposition of Unclaimed Property Act [Uniform Unclaimed Property Act, Chapter 7, Article 8 NMSA 1978].

History: Laws 1987, ch. 311, § 47.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Bracketed material. - The bracketed material in Subsection B was inserted by the compiler to reflect a title change in the referenced act.

58-11-48. Share and deposit insurance. (Effective until July 1, 1997.)

A. Before the organizers of a credit union submit the organizational documents to the director under Section 10 [58-11-10 NMSA 1978] of the Credit Union Regulatory Act, they shall apply for insurance of share accounts and deposit accounts by the national credit union administration share insurance fund or, alternatively, for insurance from an insuring organization approved by the director. Any membership share issued by a credit union shall be excluded from the requirement for insurance.

B. A credit union which has been denied or lost its commitment for that insurance or which has been notified of cancellation of that insurance shall within thirty days commence steps to either liquidate or merge with an insured credit union.

C. No credit union shall commence business unless such credit union has obtained insurance of its share accounts and deposit accounts.

D. The director shall make available reports of condition and examination findings to the national credit union administration or to the appropriate insuring organization and may accept any report of examination made on behalf of such organization.

History: Laws 1987, ch. 311, § 48.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-49. Loan policies. (Effective until July 1, 1997.)

A. A credit union may lend to members for such purposes and upon such conditions as the bylaws may provide.

B. The interest rates on loans shall be determined by the board of directors, subject to the provisions of Sections 56-8-11.1 and 56-8-11.2 NMSA 1978.

C. A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner.

D. Except as provided in Subsection H of this section, every application for a loan shall be made in writing upon a form prescribed by the board of directors. Each loan shall be evidenced by a written document.

E. No loan shall be made to any member in an aggregate amount in excess of ten percent of the credit union's total assets.

F. Security, within the meaning of the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978], may include, without limitation because of enumeration, the endorsement of a note by a surety or guarantor, assignment of an interest in real or personal property or any other collateral deemed acceptable by the board of directors. The types of security acceptable shall be determined by the written lending policies established by the board of directors under Section 58-11-36 NMSA 1978.

G. A member may receive a loan in installments or in one sum and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

H. Upon written application by a member, the credit committee, credit manager or loan officer may approve a self-replenishing line of credit, and loan advances may be

granted to the member within the limit of such line of credit. Whenever a line of credit has been approved, no additional credit application is required as long as the aggregate indebtedness does not exceed the approved limit; provided, however, each line of credit shall be reviewed in accordance with the credit union's loan policy.

I. A credit union may participate in loans to credit union members jointly with other credit unions or other financial organizations pursuant to written policies established by the board of directors. A credit union which originates such a loan shall retain an interest of at least ten percent of the face amount of the loan.

J. A credit union may:

(1) participate in any guaranteed loan program of the federal government or of this state under the terms and conditions specified by the law under which such a program is provided; and

(2) purchase the conditional sales contracts, notes and similar instruments of its members.

K. A credit union may make loans to its executive officers, board members and members of its supervisory and credit committees, provided that:

(1) the loan complies with all lawful requirements under the Credit Union Regulatory Act with respect to loans to other members and is not on terms more favorable than those extended to other borrowers; and

(2) the following provisions have been met:

(a) the loan is approved by the credit committee, credit manager or loan officer and by the board of directors after the submission to them of a detailed current financial statement or loan application form signed by the applicant; and

(b) the applicant takes no part in the consideration of his application and does not attend any committee or board meeting while his application is under consideration.

L. A credit union may permit executive officers, board members and members of its supervisory and credit committees to act as co-makers, guarantors or endorsers of loans to other members, subject to the requirements of Subsection K of this section.

History: Laws 1987, ch. 311, § 49; 1991, ch. 51, § 14.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the first sentence of Subsection F substituted "the Credit Union Regulatory Act" for "this Act" and in the second sentence substituted "Section 58-11-36 NMSA 1978" for "Section 36 of the Credit Union

Regulatory Act"; in Subsection K inserted "executive" in the introductory paragraph and substituted "or loan application forms signed by the applicant" for "signed by and truly reflecting all assets, liabilities and net worth of the applicant" in Paragraph (2)(a); and in Subsection L inserted "executive".

Compiler's note. - Sections 56-8-11.1 and 56-8-11.2 NMSA 1978, referred to in Subsection B, were repealed by Laws 1991, ch. 120, § 10, effective June 14, 1991.

58-11-50. Insurance for members. (Effective until July 1, 1997.)

A credit union may purchase or make available insurance for its members either on an individual or group basis, subject to the insurance laws of this state and the rules and regulations established by the superintendent of insurance.

History: Laws 1987, ch. 311, § 50.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-51. Liability insurance for officials. (Effective until July 1, 1997.)

A credit union may purchase and maintain insurance on behalf of any person who is or was a board member, committee member, executive officer, employee or agent of the credit union or who is or was serving at the request of the credit union as a director, committee member, executive officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against that person and incurred by that person in any such capacity or arising out of that person's status whether or not the credit union would have the power to indemnify that person against such liability; provided, a credit union shall not provide for the indemnification of personnel who are adjudged guilty of or liable for willful misconduct, gross neglect of duty or criminal acts.

History: Laws 1987, ch. 311, § 51; 1991, ch. 51, § 15.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, inserted "committee member, executive" twice near the beginning of the section.

58-11-52. Group purchasing. (Effective until July 1, 1997.)

A credit union may enter into arrangements and joint ventures with other credit unions, organizations or financial institutions to facilitate its members' voluntary purchase of goods, insurance and other services from third parties consistent with the purposes of

the credit union, and in accordance with any applicable laws. A credit union may be compensated for services so provided.

History: Laws 1987, ch. 311, § 52.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-53. Money-type instruments. (Effective until July 1, 1997.)

A credit union may collect, receive and disburse money in connection with the providing of negotiable checks, money orders, travelers checks and other money-type instruments for its members and the providing of services through automated terminal machines and for such other purposes as may provide benefit or convenience to its members. A credit union may charge reasonable fees for those services.

History: Laws 1987, ch. 311, § 53; 1991, ch. 51, § 16.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the first sentence inserted "for its members".

58-11-54. Retirement accounts. (Effective until July 1, 1997.)

A credit union may act as custodian of any form of self-directed retirement, pension, profit-sharing or deferred income accounts authorized under federal law or the laws of this state, including but not limited to individual retirement accounts, pension funds of self-employed individuals and pension funds of a company or organization whose employees or members are eligible for membership in the credit union.

History: Laws 1987, ch. 311, § 54.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-55. Trust authority. (Effective until July 1, 1997.)

A credit union may accept, administer and execute trusts pursuant to prior approval by the director.

History: Laws 1987, ch. 311, § 55.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-56. Investments. (Effective until July 1, 1997.)

Funds not required to satisfy member loan demands may be invested in:

A. securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States or any agency of the United States or in any trust investing solely, directly or indirectly in the same;

B. securities, obligations or other instruments of this state or any political subdivision of this state;

C. deposits or other accounts of state or federally chartered financial institutions the accounts of which are insured by an agency of the United States;

D. loans to or shares or deposits of other credit unions, central credit unions or corporate credit unions, the accounts of which are insured by the national credit union share insurance fund;

E. deposits in, loans to or shares of any federal reserve bank or of any central liquidity facility established under federal law;

F. shares, stocks, loans to or other obligations of any organization, corporation or association providing services which are associated with the general purposes of the credit union or which engages in activities incidental to the operations of a credit union. Those investments in the aggregate shall not exceed five percent of the credit union's capital;

G. shares of a cooperative society organized under the laws of this state or of the laws of the United States in a total amount not exceeding ten percent of the capital of the credit union, subject to prior approval by the director; and

H. fixed assets, not to exceed six percent of the credit union's capital and deposits, unless with the written approval of the director. For the purpose of this subsection, "fixed assets" means structures, land, computer hardware and software and heating and cooling equipment that are affixed to the premises.

History: Laws 1987, ch. 311, § 56; 1991, ch. 51, § 17.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, deleted former Subsection H pertaining to stocks and bonds of other states and territories and redesignated former Subsection I as Subsection H.

58-11-57. Reserve requirements. (Effective until July 1, 1997.)

A. Immediately before the payment of dividends and at the end of each accounting period, the gross earnings of a credit union shall be determined. From this amount, there shall be set aside as a regular reserve in accordance with the following schedule:

(1) a credit union in operation for more than four years and having assets of five hundred thousand dollars ($500,000) or more shall set aside ten percent of gross income until the regular reserve equals four percent of the total risk assets, then five percent of gross income until the regular reserve equals six percent of the total risk assets;

(2) a credit union in operation less than four years or having assets of less than five hundred thousand dollars ($500,000) shall set aside ten percent of gross income until the regular reserve equals seven and one-half percent of the total risk assets, then five percent of gross income until the regular reserve equals ten percent of the total risk assets; and

(3) whenever the regular reserve falls below the stated percent of total risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve requirements.

B. When the regular reserve is not established as required and dividends are paid by a credit union, the director may suspend the operation of the credit union or take other appropriate lawful action until the reserve requirements are met.

C. The director may decrease or waive entirely the reserve requirements for an individual credit union in one or more accounting periods when in his judgment such action is necessary or desirable.

D. The regular reserve shall belong to the credit union and shall be used to meet losses on loans and other risk assets, including the principal, and to meet such other classes of losses as are approved by the director. The reserve shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director.

E. Any one-time or periodic membership fees established by the board of directors shall be credited, after payment of organization expenses, to a reserve for contingencies account, undivided earnings or regular reserve.

History: Laws 1987, ch. 311, § 57; 1991, ch. 51, § 18.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, deleted former Subsection B pertaining to special reserve for delinquent loans and redesignated the subsequent subsections accordingly; in Subsection B substituted "reserve is" for "or special reserves are"; in Subsection D substituted "reserve" for "and special reserves" in the first sentence and

deleted "and any earnings due on same" following "principal"; and made minor stylistic changes in Subsections A and D.

58-11-58. Dissolution. (Effective until July 1, 1997.)

A. A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

B. If it decides to begin the procedure, the board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

C. Within ten days after the board of directors decides to submit the questions [question] of liquidation to the members, the chairman of the board or president shall notify the director and the insuring organization in writing, setting forth the reasons for the proposed liquidation. Within ten days after such notice, a special meeting of the members shall be called to vote on whether or not to liquidate the credit union. Within ten days after the members act on the question of liquidation, the chairman of the board or president shall notify the director and the insuring organization in writing as to the action of the members on the proposal.

D. When the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of and making any transfer of share and deposit accounts to loans and interest, making investments of any kind and granting loans may be restricted or suspended pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions shall be permanently discontinued. Necessary expenses of operations shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

E. For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a meeting of the members is required. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten days prior to that meeting.

F. A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets and doing all acts required in order to wind up its business and it may sue and be sued for the purpose of enforcing those debts and obligations until its affairs are fully concluded.

G. The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in Section 3 [58-11-3 NMSA 1978] of the Credit Union Regulatory Act.

H. When the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of recovery have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the director and file the same, together with all pertinent books and records of the liquidating credit union, with the director, whereupon the credit union shall be dissolved.

History: Laws 1987, ch. 311, § 58.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-59. Merger of credit unions. (Effective until July 1, 1997.)

A. A credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] may, with the approval of the director and regardless of common bond, merge with one or more other credit unions subject to that act, the laws of another state or territory of the United States or the laws of the United States.

B. When two or more credit unions merge, they shall either designate one of them as the continuing credit union or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under Section 58-11-10 NMSA 1978. All participating credit unions other than the continuing credit union shall be designated as merging credit unions.

C. Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the director for preliminary approval. If the plan includes the creation of a new credit union, all documents required by Section 58-11-10 NMSA 1978 shall be submitted as part of the plan. In addition, each participating credit union shall submit:

(1) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) the vote of the board of directors in favor of the adoption of the plan; and

(3) a copy of the resolution or other action by which the plan was agreed upon.

The director shall grant preliminary approval if the plan has been properly approved by each board of directors and if the documentation required to form a new credit union, if any, complies with Section 58-11-10 NMSA 1978.

D. After the director grants preliminary approval, each merging credit union shall, unless waived by the director, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special membership meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union

shall submit a record of that fact to the director, indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

E. The director may waive the membership vote described in Subsection D of this section in the case of a given credit union if he determines that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

F. The director shall grant final approval of the plan of merger after determining that the requirements of Subsection D of this section in the case of each merging credit union have been met. If the plan of merger includes the creation of a new credit union, the director shall approve the organization of the new credit union under Section 58-11-10 NMSA 1978 as part of the approval of the plan of merger. The director shall notify all participating credit unions of the approval of the plan.

G. Upon final approval of the plan by the director, all property, property rights and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

H. If the continuing or new credit union is chartered by another state or territory of the United States, it shall be subject to the requirement of Section 58-11-16 NMSA 1978.

I. Notwithstanding any other provision of law, the director may authorize a merger or consolidation of a credit union which is insolvent or is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union which is insolvent or in danger of insolvency if the director is satisfied that:

(1) an emergency requiring expeditious action exists with respect to that other credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval by that merger, consolidation, purchase or assumption.

J. Notwithstanding any other provision of law, the director may authorize an institution whose deposits or accounts are insured by an agency of the federal government to purchase any of the assets of or assume any of the liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority, the

director shall attempt to effect a merger or consolidation with, or purchase and assumption by, another credit union as provided in Subsection I of this section.

For purposes of the authority contained in this subsection, insured share and deposit accounts of the credit union may, upon consummation of the purchase and assumption, be converted to insured deposits or other comparable accounts in the acquiring institution.

History: Laws 1987, ch. 311, § 59; 1991, ch. 51, § 19.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "Section 58-11-10 NMSA 1978" for "Section 10 of the Credit Union Regulatory Act" in Subsections B, C and F; and in the second sentence of Subsection F substituted "shall" for "must"; in Subsection H substituted "Section 58-11-16 NMSA 1978" for "Section 16 of the Credit Union Regulatory Act"; in the first paragraph of Subsection J substituted "an agency of the federal government" for "the federal deposit and insurance corporation or the federal savings and loan insurance corporation" and "shall" for "must".

58-11-60. Conversion. (Effective until July 1, 1997.)

A. A credit union organized under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States, subject to regulations issued by the director.

B. A credit union organized under the laws of the United States or of any other state may convert to a credit union organized under the laws of this state. To effect such a conversion, a credit union shall comply with all of the requirements of the jurisdiction under which it was originally organized and file proof of such compliance with the director.

History: Laws 1987, ch. 311, § 60.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-61. Taxation. (Effective until July 1, 1997.)

A. A credit union organized under or subject to the Credit Union Regulatory Act [58-11-1 to 58-11-65 NMSA 1978] is exempt from taxation to the extent that a credit union chartered under federal law is exempt.

B. The shares of a credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

C. The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the tax exemptions hereby granted.

History: Laws 1987, ch. 311, § 61.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-62. Criminal liability. (Effective until July 1, 1997.)

Any credit union executive officer, director, committee member, employee or agent who willfully does any of the following is guilty of a fourth degree felony:

A. with intent to deceive, falsifies any books of account, report, statement, record or other document of a credit union whether by alteration, false entry, omission or otherwise;

B. signs, issues, publishes or transmits to a government agency any book of account, report, statement, record or other document which he knows to be false;

C. by means of deceit, obtains a signature to a writing which is a subject of forgery;

D. with intent to deceive, destroys any credit union book of account, statement, record or other document; or

E. divulges any information not lawfully required or specifically permitted concerning the affairs of the credit union or any member thereof which he has obtained solely by virtue of his position with the credit union and which information causes harm to the credit union or member.

History: Laws 1987, ch. 311, § 62; 1991, ch. 51, § 20.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in the introductory paragraph substituted "executive officer, director, committee member" for "officer, director" and corrected a misspelling in Subsection D.

58-11-63. Slander; libel. (Effective until July 1, 1997.)

Whoever maliciously and knowingly spreads false reports or utters false statements about the management or finances of any credit union is guilty of a third degree felony.

History: Laws 1987, ch. 311, § 63.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-64. Payment from account of deceased member. (Effective until July 1, 1997.)

Upon receiving a certified copy of a death certificate and an affidavit from the person applying for money stating that a member is dead and the affiant is a surviving spouse or next of kin and that the entire amount that the applicant wishes to withdraw does not exceed the sum of two thousand dollars ($2,000), the credit union may pay to the affiant the amount so held by the credit union, not in excess of two thousand dollars ($2,000), and the affiant's receipt shall release the credit union from all liability thereof.

History: Laws 1987, ch. 311, § 64.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

58-11-65. False affidavit; penalty. (Effective until July 1, 1997.)

Any person who makes a false statement in writing for the purpose of obtaining credit union funds is guilty of a third degree felony.

History: Laws 1987, ch. 311, § 65.

Delayed repeals. - See note under 58-11-1 NMSA 1978.

Severability clauses. - Laws 1987, ch. 311, § 66 provides for the severability of the Credit Union Regulatory Act if any part or application thereof is held invalid.

ARTICLE 11A
LEASING OF SAFE DEPOSIT FACILITIES

58-11A-1. Authority to engage in leasing safe deposit facilities; subsidiary company.

A. Subject to such regulations as the director may prescribe, a credit union may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt for them.

B. A credit union may own stock in safe deposit box companies not exceeding in aggregate cost fifteen percent of its regular reserve and undivided earnings, but at least ninety percent of the stock in each safe deposit box company must be owned by credit unions, banks or trust companies.

History: Laws 1991, ch. 51, § 21.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

58-11A-2. Effect of lessee's death or incapacity.

Unless otherwise provided in a written agreement, where a lessor, without knowledge of the death of or an adjudication of incapacity of the lessee, deals with his agent pursuant to a written power of attorney signed by the lessee, the transaction binds the lessee's estate and the lessee.

History: Laws 1991, ch. 51, § 22.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

58-11A-3. Lease to minor.

A lessor may lease a safe deposit box and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

History: Laws 1991, ch. 51, § 23.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

58-11A-4. Search procedure upon death of lessee.

A. A lessor shall permit the person named in a court order, or if no order has been served upon the lessor, the spouse, parent, an adult descendant or a person named as a personal representative in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor. The lessor, if so requested by that person, may deliver upon execution of a receipt:

(1) any writing purported to be a will of the decedent;

(2) any writing purported to be a deed to a burial plot or burial instructions to the person making the request for a search; or

(3) any document purported to be an insurance policy on the life of the decedent to the person named as a beneficiary in the policy.

B. No other contents of a safe deposit box shall be removed pursuant to this section, except as provided in the Probate Code.

History: Laws 1991, ch. 51, § 24.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

Probate Code. - See 45-1-101 NMSA 1978 and notes thereto.

58-11A-5. Adverse claims to contents of a safe deposit box.

A. An adverse claim to the contents of a safe deposit box or to property held in safekeeping is not sufficient to require the lessor to deny access to its lessee unless the lessor is directed to do so by court order.

B. An adverse claim includes, but is not limited to, the following:

(1) one of several lessees claims, contrary to the terms of the lease, an exclusive right of access;

(2) a person claims a right of access as an officer or agent of a lessee to the exclusion of others as agents or officers; or

(3) it is claimed that a lessee is the same person as one using another name.

History: Laws 1991, ch. 51, § 25.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

58-11A-6. Special remedies for nonpayment of rent.

A. Unless otherwise provided in a written agreement, if the rental due on a safe deposit box has not been paid for six months, the lessor may send a notice by certified or registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment is made within thirty days. If the rental is not paid within thirty days from the mailing of the notice, the safe deposit box may be opened in the presence of an executive officer of the lessor and of a notary public. The contents of the box shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the safe deposit box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental charged for the safe deposit box.

B. If the contents of the safe deposit box are not claimed within the time prescribed by the Uniform Unclaimed Property Act [Chapter 7, Article 8 NMSA 1978], they shall be disposed of as provided in that act.

History: Laws 1991, ch. 51, § 26.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

58-11A-7. Disposition of contents of safe deposit box when a credit union is liquidated; duty of conservator.

A. In the event a credit union is liquidated or placed under conservatorship by the director, as authorized by Subsection I [L] of Section 58-11-3 NMSA 1978 of the Credit Union Regulatory Act, the conservator or receiver shall send a notice by certified or registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless claimed within thirty days. If the contents are not claimed within thirty days from the mailing of the notice, the safe deposit box may be opened in the presence of an agent of the conservator or receiver and of a notary public. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the safe deposit box and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The conservator or receiver shall then provide for storage of the package at a rental not exceeding the rental previously charged for the safe deposit box.

B. If the package is not claimed, it will be disposed of as provided in the Uniform Unclaimed Property Act [Chapter 7, Article 8 NMSA 1978].

History: Laws 1991, ch. 51, § 27.

Bracketed material. - The bracketed reference to Subsection L of 58-11-3 NMSA 1978 in the first sentence in Subsection A of this section was inserted by the compiler to correct an erroneous reference, in light of the 1991 amendment of 58-11-3 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Effective dates. - Laws 1991, ch. 51, § 28 makes the act effective on July 1, 1991.

ARTICLE 12
CREDIT UNION SHARE INSURANCE CORPORATIONS

58-12-1. Short title.

This act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978] may be cited as the "Credit Union Share Insurance Corporation Act".

History: 1953 Comp., § 48-19A-1, enacted by Laws 1973, ch. 114, § 1.

Cross-references. - As to credit unions, see 58-11-1 NMSA 1978 et seq.

58-12-2. Definitions.

As used in the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978]:

A. "corporation" means the credit union share insurance corporation of this state;

B. "board" means the board of directors of the corporation;

C. "commissioner" means the director of the financial institutions division;

D. "directors" means the directors of the corporation;

E. "member" means a credit union which has become a member of the corporation;

F. "delegate" means a person designated by a member's board of directors to represent the member in the organization and operation of the corporation; and

G. "fund" means the share insurance fund.

H. "supervisory agency" means any state governmental agency statutorily responsible for the supervision and regulation of any member not chartered in the state of New Mexico.

History: 1953 Comp., § 48-19A-2, enacted by Laws 1973, ch. 114, § 2; 1977, ch. 245, § 17; 1979, ch. 95, § 1.

Compiler's note. - The department of banking headed by a commissioner, was abolished by Laws 1977, ch. 245, § 4. Section 3 of that act established the commerce and industry department, which included a financial institutions division headed by a director. Section 120 of the act transferred to the director of the financial institutions division all powers and duties heretofore vested in the commissioner of banking. However, Laws 1983, ch. 297, § 33 abolished the commerce and industry department, and § 20 of that act created the regulation and licensing department with a financial institutions division. Laws 1983, ch. 297, § 31 transferred the personnel, etc., of the financial institutions division of the commerce and industry department to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978.

58-12-3. Formation of corporation; purpose.

Any seven or more credit unions in this state or in any other state, organized and existing under the provisions of Sections 58-11-1 through 58-11-33 NMSA 1978, or under other substantially similar state laws, may, subject to the prior approval of the commissioner, form a corporation under the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978] to be known as the "New Mexico credit union share insurance corporation", for the purpose of creating and maintaining a fund for the insurance of shares and deposits of those credit unions which become members. Each of said credit unions participating in the formation of the

corporation shall execute articles of incorporation therefor, which shall be submitted for filing to the state corporation commission with a filing fee of five dollars ($5.00), after same has been approved by the commissioner. In the event that credit unions chartered in other states join this corporation, the corporate name may be changed by the board of directors to reflect such multistate membership. Any contract or agreement or amendment thereto for the purposes of joining this corporation to which a credit union chartered in another state is a party shall be subject to prior review and approval by the commissioner.

History: 1953 Comp., § 48-19A-3, enacted by Laws 1973, ch. 114, § 3; 1979, ch. 95, § 2.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-3.1. Out-of-state members.

Notwithstanding any language herein to the contrary, any member not chartered in New Mexico shall only be subject to the statutes, rules and regulations enacted or issued by the member's chartering state or applicable supervisory agency. As a condition of participation in the New Mexico credit union share insurance corporation, the member not chartered in the state of New Mexico shall appoint the New Mexico secretary of state as agent for service of process. Provided, however, nothing herein shall be construed to limit the powers of the corporation over its members, whether chartered by the state of New Mexico or by any other state.

History: 1978 Comp., § 58-12-3.1, enacted by Laws 1979, ch. 95, § 3.

58-12-4. Corporation organization and bylaws.

A. Except as otherwise provided, each delegate shall have one vote in the election of directors and in voting in any matter legally coming before a meeting. However, delegates shall not vote by proxy nor shall any one delegate represent more than one member.

B. A quorum shall consist of a majority of the delegates entitled to vote, or eleven delegates, whichever is less.

C. Subject to the approval of the commissioner and any applicable supervisory agency, the delegates may make such bylaws as they deem necessary to carry out the provisions of the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978].

D. Subject to Section 58-12-6 NMSA 1978, bylaws may be amended or repealed if thirty days' written notice is given to all members containing the time and place of the meeting and if the proposed amendment or repeal is approved by a vote of two-thirds of the delegates present and voting at the meeting.

History: 1953 Comp., § 48-19A-4, enacted by Laws 1973, ch. 114, § 4; 1979, ch. 95, § 4.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-5. Corporation directors and officers.

A. The corporation shall have a board of directors consisting of seven persons, six of whom shall be elected by the delegates from among their members, with the remaining director to be elected by the other six directors and to be the chief administrative officer of the corporation. In addition, the commissioner or the director of any supervisory agency or a representative designated by the commissioner and such supervisory agency or agencies shall be an ex-officio member of the board. The articles of incorporation shall, however, designate six directors, other than the chief administrative officer, to serve until the first annual meeting of the corporation. At the first annual meeting, two directors will be elected for a term of one year, two directors for a term of two years and two directors for a term of three years, and thereafter at each annual meeting, two directors will be elected for a term of three years. The chief administrative officer shall be elected annually for a term of one year. All directors shall be sworn and hold office until their successors are qualified. If a person elected does not take the oath of office within thirty days, his office shall become vacant. The director shall fill any vacancies on the board until the next annual meeting. The directors shall from time to time adopt such rules and regulations as they may deem necessary to effect the purposes of the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978].

B. There shall be a president, vice president, treasurer and secretary of the corporation and an administrator who shall serve as the chief administrative officer and shall function as the seventh director, and such other officers as the board may deem necessary. Officers shall be elected annually by the directors, at a meeting held not more than fifteen days following the adjournment of the annual delegates' meeting. The president and vice president shall be elected from the board. The secretary of the corporation shall be the secretary of the board. The directors may fill any vacancies until the next annual meeting and for cause shown may remove an officer by a two-thirds vote of all directors of the board.

History: 1953 Comp., § 48-19A-5, enacted by Laws 1973, ch. 114, § 5; 1979, ch. 95, § 5.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-6. Corporation; board meetings.

The annual meeting of the corporation shall be held in the month of April and shall be called by the secretary at a time and place to be designated by the board. Special meetings of the corporation may be called by request either of a majority of the

members of the board or the commissioner or any supervisory agency. The request shall be signed by the directors, shall state the purposes and date of the meeting and shall be given to the secretary of the corporation at least forty-five days before the date of the meeting. The call for such meeting shall state the time, place and purpose thereof and shall be mailed to each member at least thirty days before the date of the meeting. If a purpose of the meeting is to adopt an amendment to the bylaws, the request and the call of the meeting shall contain notice and a copy of the proposed amendment. The board shall meet at least quarterly, once in the months of October, January, April and July. A quorum of the board shall consist of not less than a majority of the directors.

History: 1953 Comp., § 48-19A-6, enacted by Laws 1973, ch. 114, § 6; 1979, ch. 95, § 6.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-7. Corporation; powers and duties of the board.

A. To the extent authorized by the commissioner or any supervisory agency, the board may review the financial condition of any member as it relates to share insurance and, after the review, submit a report of the review to the commissioner and the supervisory agency accompanied with the recommendations of the board.

B. Upon request of the board, the commissioner or the supervisory agency may furnish to the board such factual information in his possession as the commissioner or the supervisory agency may deem to be of assistance to the corporation in determining the financial condition of any member.

C. If the board determines that a special examination and audit, including a current appraisal of the assets, of any member would be in the interests of its shareholders or in the interests of the sound and effective operation of the corporation, the board, by vote of at least two-thirds of its directors, may request the commissioner or any supervisory agency to provide for a special examination, audit and appraisal. If the commissioner or any supervisory agency determines the examination, audit and appraisal advisable, he or it shall provide for an examination, together with a current appraisal of the member's assets by a qualified person, and the board may furnish to the commissioner or any supervisory agency such evidence of current values of any or all of such member's assets that it considers material to the appraisal.

D. After receiving the reports of the examination and appraisal, the commissioner or any supervisory agency shall furnish to the board, and to the member, copies of the reports. The board shall have authority to make recommendations to any member designed to correct practices or policies of the member in conducting its business, including loan or dividend policies, which the board considers unsafe or unsound, or having a tendency to impair the financial condition of the member. If such member fails to follow such recommendations, the board shall give notice to the commissioner and any supervisory agency.

E. If it appears to the board that such practices or policies have impaired or are likely to impair the solvency of the member, or are unreasonably increasing the insurance risk of the corporation with respect to the member, they shall include a statement to this effect, together with a report of the facts and circumstances, in the notice to the commissioner and the supervisory agency. If the commissioner or the supervisory agency determines from the report, notice and from other available information that the member is in unsafe or unsound condition to transact the business for which it was created, then, the commissioner or the supervisory agency may so certify to the corporation. Nothing contained in this section shall be construed to abridge any power conferred upon the commissioner or supervisory agency by any law.

F. Whenever it appears to the commissioner or the supervisory agency that it is inadvisable or inexpedient for any member to continue to transact the business for which it is organized without receiving assistance, he or it may, in his or its discretion, notify the board and thereupon the board may take any action it considers necessary to reduce the risk or avert a threatened loss to the corporation, and, notwithstanding any other provision of law, may require a merger or consolidation of such member with other financial institutions or may facilitate the sale of assets of such member to, and the assumption of its liabilities by, one or more members or other financial institutions. The board may with the approval of the commissioner or any supervisory agency do any of the following:

(1) purchase from such member any equitable or other interest in, its assets at book value, or at some other value mutually agreed upon by such member and the board, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board may determine;

(2) make loans to such member, and upon such terms and conditions, as the board may determine;

(3) pay to the member, in accordance with an agreement entered into between the member and the corporation, an amount not in excess of the difference between the book value of some or all its assets and the fair value as determined by the agreement, in consideration for which such member shall agree to write down the assets to the fair value and to pay over to the corporation so much of any net proceeds realized from the sale or other disposition of the assets as are in excess of the fair value, the payment to be made in such amounts, at such times and upon such terms and conditions as the board may determine. Any amount paid by the corporation to such member and the agreement of the member to repay the excess shall constitute liabilities of the member only to the extent of any such excess from time to time actually realized; or

(4) deposit a sum of money into the reserve accounts of the member in accordance with an agreement entered into between the member and the corporation, such member being hereby authorized and empowered, notwithstanding any other provision of law, to repay the amount to the corporation at such time or times and in such manner as the agreement may prescribe, provided that, any such payment made by the corporation to

the member, and any agreement of the member to repay the same shall constitute liabilities of the member only to the extent provided by the agreement. The member, by vote of at least two-thirds of its directors, may take any action necessary or advisable to enable it to carry out any or all provisions of this section.

G. At any time after ten years from the date financial assistance has been granted to a member under any provision of this section, any unpaid balance may be compromised or settled for cash payment or other consideration as the board and the member, with the approval of the commissioner and supervisory agency, may agree upon. Upon such compromise or settlement the member shall be released and discharged from any further obligation to repay the unpaid balance of such financial assistance except to the extent provided by such agreement.

H. If a member authorized by a vote of at least two-thirds of the member's directors chooses to be liquidated, the corporation shall be fully authorized to proceed with the liquidation, merger or consolidation of the member.

I. Whenever it appears to the commissioner or the supervisory agency that any member is in unsound or unsafe condition to transact the business for which it is organized, the commissioner or the supervisory agency may so certify to the board and, upon receipt of the certificate, the board shall, by notice in writing to the commissioner, supervisory agency and to the member, take possession and control of the property and the business of the member and operate the business of the member, subject to such rules and regulations as the commissioner or supervisory agency may prescribe until the member resumes business or until its affairs are finally liquidated. While operating such business, the corporation may pay to the member out of the share insurance fund such sums as the board considers necessary for the protection of the member's shareholders and depositors, and may order these sums to be repaid when no longer required for that purpose, or may purchase assets from the member to effect the purposes of the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978] on such terms and conditions and at such valuations as the board may determine.

J. At any time after the board has taken over the control, possession and operation of any member, they may with the approval of the commissioner or supervisory agency turn back the control, possession and operation to the member. The member may resume business free from any control by the corporation, subject to such conditions as the commissioner or supervisory agency may approve. The board shall not turn back the control, possession and operation of any member until there has been repaid into the share insurance fund all sums paid out from the fund to the member or its shareholders or depositors or until security for repayment is received which is satisfactory to the board.

K. The board may, and at the request of the commissioner or supervisory agency shall, at any time after they have taken over the control, possession and operation of any member, discontinue the business of the member and proceed to liquidate its affairs.

The corporation shall in such event pay to the shareholders and depositors of such member the full amount of their shares or deposits permitted by law at the date of the discontinuance of the business of the member with interest from the last dividend date to the date of discontinuance at such rate, not exceeding three percent, as the board shall determine. The payments shall be made as soon as possible after the date of discontinuance. For such purpose the board shall use in addition to the assets of the member such sums as may be required from the share insurance fund. In case of liquidation the corporation shall be subject to such rules and regulations as may be prescribed by the commissioner or the supervisory agency. Rules and regulations prescribed by the commissioner shall apply only to the liquidation of New Mexico-chartered credit unions. In the event of the liquidation of a member chartered in a state other than New Mexico, the corporation shall be subject only to such rules and regulations prescribed by the applicable supervisory agency. The corporation shall take steps to collect all debts due and claims belonging to such members and may sell or compound all bad or doubtful debts, and may sell all or any part of the real or personal property or other assets of the member on such terms and conditions and at such valuation as the board shall determine, and the corporation may itself be the purchaser at any or all such sales. To execute and perform the powers and duties conferred upon the corporation, it may, in the name of any such member, prosecute and defend all suits and other legal proceedings and may, in the name of the member, execute, acknowledge and deliver all deeds, assignments, leases and other instruments necessary and proper to effectuate any sale of real or personal property or other assets. Any deed or other instrument executed pursuant to the authority hereby given shall be valid and effectual for all purposes to the same extent as though executed by the officers of the member by authority of its board of directors. The compensation of employees, counsel and other assistants employed by the board to liquidate the affairs of any member under this section, and all expenses incurred in connection with the liquidation of any such member shall be fixed by the directors of the corporation. The officers of the corporation and any other persons employed by its directors to liquidate the affairs of any member under this section shall give bond to the directors of the corporation for the faithful performance of their duties in relation to such liquidation in such amount and with such surety or sureties as the commissioner or supervisory agency may approve. The persons appointed for the purpose of liquidating the affairs of any such member shall be subject to all the penalties to which agents appointed by the commissioner or supervisory agency for the purpose of liquidating the affairs of a member are now or may hereafter be subject. All accounts for which no claimant can be found after six years following the discontinuance of the business of any such member shall be disposed of in accordance with the Uniform Disposition of Unclaimed Property Act [Uniform Unclaimed Property Act, Chapter 7, Article 8 NMSA 1978].

L. With the approval of the commissioner or supervisory agency, and subject to such rules and regulations as he or it may prescribe, the board may appoint conservators or agents to assist it in the operation, management and liquidation of assets purchased or otherwise acquired from members by the corporation. The original location of the assets purchased or otherwise acquired shall determine whether such rules and regulations may be prescribed by the commissioner or supervisory agency. Certificates of

appointment of such conservators and agents shall be filed with the commissioner or supervisory agency. Notwithstanding any other provisions of law, all members are hereby authorized to act as such conservators and agents and to exercise the powers and perform the duties contemplated by this section.

M. The corporation may exercise all the powers, rights and franchises of any member, the control, possession and operation of which has been taken over by the corporation. Notwithstanding any other provisions of law:

(1) with the approval of the commissioner or supervisory agency, any member may advance or loan upon, or purchase, the whole or any part of the assets of any other member which is in possession of the corporation or which has been the subject of a notice from the commissioner or supervisory agency to the corporation as provided herein, at such valuations and upon such terms and conditions as such member or members, by authorization of their boards of directors, may agree upon. The member making such an advance, loan or purchase, for the purpose of effecting the same, may assume and agree to pay the whole or any part of the share, deposit and other liabilities of such other member, subject to such terms and conditions and subject to such adjustments as may be approved by the commissioner or supervisory agency; and

(2) with the approval of the commissioner or the supervisory agency, any member may advance or loan upon, or purchase the whole or any part of the assets acquired or held by the corporation, and may participate in such an advance, loan or purchase with one or more other members, at such valuation and upon such terms and conditions as the corporation, and such member or members with authorization of their boards of directors, may agree upon. With like approval, the corporation may do any and all things and may take any and all action which the board considers necessary or advisable to give effect to this paragraph; provided, that the approval of the commissioner or supervisory agency shall not be required in the case of the purchase hereunder by a member from the corporation of any mortgage for a sum equal to the unpaid balance thereof.

History: 1953 Comp., § 48-19A-7, enacted by Laws 1973, ch. 114, § 7; 1979, ch. 95, § 7.

Bracketed material. - The bracketed material at the end of Subsection K was inserted by the compiler to reflect a title change in the referenced act. The bracketed material was not enacted by the legislature and is not part of the law.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-8. Corporation; termination of membership; penalty.

A. Whenever it shall appear to the board and the commissioner or supervisory agency that a member has conducted its business in an unsafe or unsound manner or has knowingly or negligently permitted any of its officers or agents to violate any provision of

any law or regulation to which the member is subject, or has failed to pay any required assessment, the board and the commissioner or the supervisory agency shall give notice of their intention to terminate its insurance after a hearing before the commissioner or supervisory agency, which hearing shall be held within thirty days of such notice. The board and the commissioner or supervisory agency shall by order make such disposition of the matter as may be necessary to protect the stability and solvency of the corporation.

B. In the event the order provides for termination of insurance, the commissioner or the supervisory agency shall order the member to give notice of such termination to its shareholders and depositors within such time and in such manner as he or it may require. In the event of failure to give the notice required to insured members as herein provided, the commissioner or supervisory agency is authorized to give such notice in such manner as he or it may determine, and for such purpose the member shall provide a list of its depositors and shareholders to the commissioner or supervisory agency. The termination of insurance shall be effective six months after the date the required notice is given.

C. If any member shall fail to pay any assessment required under the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978], the treasurer of the corporation shall notify the commissioner and the supervisory agency of such failure and the commissioner or the supervisory agency shall forthwith notify the member in writing.

History: 1953 Comp., § 48-19A-8, enacted by Laws 1973, ch. 114, § 8; 1979, ch. 95, § 8.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-9. Corporation; membership.

A. Any membership applicant shall first give notice in writing to the corporation of its intention to become a member and shall submit such preliminary financial statements and other information concerning its assets, liabilities and affairs as the commissioner or supervisory agency and the board may determine.

B. An applicant, before admission to the corporation, shall also be subject to such audit, if any, as the commissioner or supervisory agency and the board determine to be necessary. If the board and the commissioner or supervisory agency find that the applicant is solvent, has adequate management and is conducting its business in a safe and sound manner, or in the case of a newly organized credit union, proposes to conduct its business in a safe and sound manner, the application shall be granted.

History: 1953 Comp., § 48-19A-9, enacted by Laws 1973, ch. 114, § 9; 1979, ch. 95, § 9.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-10. Corporation; assessments.

A. As a basic assessment for the purpose of establishing the "share insurance fund," the board shall require the original members and each new member to pay over in cash to the corporation an amount equal to one percent of its total member share and deposit balances as shown by its latest June 30 or December 31 statement. This assessment shall be made within ten days after the acceptance of a member by the corporation. Such assessments may be charged by the member to its undivided earnings, or established as an asset.

B. Semiannually, to ensure that the share insurance fund equals at least one percent of the total share and deposit balances of all members, the board shall declare an additional assessment against any member whose share and deposit balances have increased since the previous assessment, for such appropriate amounts as may be necessary to bring the total contribution by such member to the share insurance fund up to one percent of its total share and deposit balances, then outstanding.

C. In addition, in the event the share insurance fund is depleted through any expenditure therefrom made by the board in accordance with the provisions of the Credit Union Share Insurance Corporation Act [58-12-1 to 58-12-3, 58-12-4 to 58-12-15 NMSA 1978], a special assessment shall be made against all members, proratably on the basis of their respective share and deposit balances, for such total amount as may be necessary to cover such deficiency in the fund. Any amounts paid by way of such special assessment shall not be credited toward any assessment due under Subsection B of this section.

D. The board may pay to the members a dividend computed on the aggregate of assessments paid by each member pursuant to this section.

E. The corporation shall be subject to such examinations or audits to such extent and manner and at such times as the commissioner or supervisory agency may determine. The cost of any such examination or audit as well as the cost of administration of the fund shall be borne by the corporation.

F. Sums derived pursuant to this section and all increments thereof shall constitute the share insurance fund.

History: 1953 Comp., § 48-19A-10, enacted by Laws 1973, ch. 114, § 10; 1979, ch. 95, § 10.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-11. Assessments; for operational purposes.

In or within thirty days after June 30 or December 31 of each year except as hereinbefore provided, while a member, such member shall pay to the corporation an assessment equal to one-fourth of one percent of its share and deposit liabilities payable as shown on its financial statement as of said dates, to be used for operational purposes; provided, however, that the board may, prior to the semiannual assessment date, reduce uniformly the rate of the semiannual operational assessment or waive such assessment entirely. The assessment referred to herein may be charged to undivided earnings or operating expense.

History: 1953 Comp., § 48-19A-11, enacted by Laws 1973, ch. 114, § 11.

58-12-12. Financial assistance.

The board may by resolution borrow money for the purposes of the share insurance fund and may pledge any assets in which such fund is invested as security for such loans. The board may have the right to buy reinsurance and bonds or participate in the capital structure of a business for the purpose of protecting and strengthening the share insurance fund itself, or make purchases of stock in a business formed for the purpose of reinsuring share insurance corporations. The corporation may evaluate and transfer funds to a regional or national share insurance corporation whose primary function is for the insurance of shares or the reinsurance of share insurance corporations.

History: 1953 Comp., § 48-19A-12, enacted by Laws 1973, ch. 114, § 12.

58-12-13. Dissolution of the corporation.

The directors of the corporation, at a special meeting called for the purpose of dissolution of the corporation and held in accordance with the bylaws and Section 58-12-6 NMSA 1978, may determine by vote of four-fifths of all directors that as a fact the corporation is no longer needed for the insurance of shares and deposits of members. If such fact also is determined by the commissioner, and the supervisory agency then, by like vote of such member delegates present, with the approval of the commissioner and the supervisory agency, the delegates may vote to dissolve and liquidate the corporation. When voting for dissolution, each such member, through its delegate, shall have one vote. Upon any dissolution and liquidation of the corporation, the board shall proceed to distribute to the then members the proceeds of the fund after payment of all losses, expenses and obligations of the corporation, in the following priority: first, in payment pro rata of the assessment referred to in Section 58-12-8 NMSA 1978; second, in payment pro rata of all assessments paid by the then members under Section 58-12-10 NMSA 1978; third, the balance, if any, of the proceeds from such dissolution and liquidation shall be distributed pro rata to the then members on the basis of the total payments described in first and second payment priorities.

History: 1953 Comp., § 48-19A-13, enacted by Laws 1973, ch. 114, § 13; 1979, ch. 95, § 11.

Meaning of "commissioner". - See 58-12-2C NMSA 1978 and notes thereto.

58-12-14. Applicability of certain laws.

The corporation shall be exempt from all state and local taxation except in respect to any real estate owned and used by it for its corporate purposes.

History: 1953 Comp., § 48-19A-14, enacted by Laws 1973, ch. 114, § 14.

58-12-15. Corporation; investments.

Except as herein provided, any or all of the corporation funds may be invested by the board only in cash, securities or investments which are legal.

History: 1953 Comp., § 48-19A-15, enacted by Laws 1973, ch. 114, § 15.

ARTICLE 13
SECURITY DEALERS

58-13-1 to 58-13-47. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 7, § 59 repeals former 58-13-1 to 58-13-11 and 58-13-13 to 58-13-46 NMSA 1978, relating to security dealers, effective July 1, 1986. For provisions of the former sections, see the 1984 Replacement Pamphlet and the 1985 Cumulative Supplement. For present comparable provisions, see Appendix A in 1986 Replacement Pamphlet.

Laws 1979, ch. 124, § 6 repeals 58-13-12 NMSA 1978, as enacted by Laws 1959, ch. 171, § 11, relating to fees for registration by notification, coordination or qualification. For provisions of former section, see original pamphlet. For present comparable provisions, see 58-13B-20 and 58-13B-24 NMSA 1978.

Laws 1981, ch. 263, § 4 repeals 58-13-47 NMSA 1978, as enacted by Laws 1975, ch. 216, § 1, relating to the interest rate on margin accounts, effective July 1, 1981. For provisions of former section, see original pamphlet.

ARTICLE 13A
MODEL STATE COMMODITY CODE

58-13A-1. Short title.

This act [58-13A-1 to 58-13A-22 NMSA 1978] may be cited as the "Model State Commodity Code".

History: Laws 1985, ch. 163, § 1.

58-13A-2. Definitions.

As used in the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978]:

A. "director" means the chief of the securities bureau of the financial institutions division of the regulation and licensing department;

B. "Commodity Exchange Act" means the act of congress known as the Commodity Exchange Act, as amended to the effective date of the Model State Commodity Code;

C. "commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act;

D. "CFTC rule" means any rule, regulation or order of the commodity futures trading commission in effect on the effective date of the Model State Commodity Code;

E. "commodity" means, except as otherwise specified by the director by rule, regulation or order, any agricultural, grain or livestock product or by-product, any metal or mineral including a precious metal set forth in Subsection F of this section, any gem or gemstone whether characterized as precious, semi-precious or otherwise, any fuel whether liquid, gaseous or otherwise, any foreign currency and all other goods, articles, products or items of any kind; provided that the term commodity shall not include:

(1) a numismatic coin whose fair market value is at least twenty percent higher than the value of the metal it contains;

(2) real property or any agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property; or

(3) any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner thereof;

F. "precious metal" means the following:

(1) silver, in either coin, bullion or other form;

(2) gold, in either coin, bullion or other form;

(3) platinum, in either coin, bullion or other form; and

(4) such other items as the director may specify by rule, regulation or order;

G. "commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement;

H. "commodity option" means any account, agreement or contract giving a party thereto the right to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include a commodity option traded on a national securities exchange registered with the United States securities and exchange commission;

I. "commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by CFTC rule:

(1) futures commission merchant;

(2) commodity pool operator;

(3) commodity trading advisor;

(4) introducing broker;

(5) leverage transaction merchant;

(6) an associated person of any of the foregoing;

(7) floor broker; and

(8) any other person, other than a futures association, required to register with the commodity futures trading commission;

J. "board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange or other form of marketplace;

K. "offer" or "offer to sell" includes every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase or to acquire, for value;

L. "sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value;

M. "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government, but shall not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission, or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity; and

N. "financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

History: Laws 1985, ch. 163, § 2.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsections B, C, and I, appears as 7 U.S.C. § 1 et seq.

Effective date of the Model State Commodity Code. - The effective date of the Model State Commodity Code, referred to in Subsections B and D, is June 14, 1985.

58-13A-3. Unlawful commodity transactions.

A. Except as otherwise provided in Paragraph (1) of Subsection A of Section 5 [58-13A-5 NMSA 1978] of the Model State Commodity Code, no person shall offer to enter into, enter into or confirm the execution of any transaction for the delivery of any commodity under a commodity contract commonly known as a margin account, margin contract, leverage account or leverage contract, or under any contract, account, arrangement, scheme or device that serves the same function or functions or is marketed or managed in substantially the same manner as such account or contract.

B. No person shall sell or purchase or offer to sell or purchase any commodity under any other commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any other commodity contract or any commodity option.

History: Laws 1985, ch. 163, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 67 Am. Jur. 2d Sales § 101.

58 C.J.S. Monopolies, §§ 29, 36-39, 45.

58-13A-4. Exempt persons.

The prohibition in Subsection B of Section 3 [58-13A-3 NMSA 1978] of the Model State Commodity Code shall not apply to any of the following persons, or any employee, officer or director thereof acting solely in that capacity:

A. a person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

B. a person registered with the securities and exchange commission as a broker-dealer whose activities require such registration;

C. a person affiliated with, and whose obligations and liabilities are guaranteed by, a person referred to in Subsection A or B of this section;

D. a person who is a member of a contract market designated by the commodity futures trading commission or any clearinghouse thereof;

E. a financial institution; or

F. a person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

History: Laws 1985, ch. 163, § 4.

58-13A-5. Exempt transactions.

A. The prohibitions in Section 3 [58-13A-3 NMSA 1978] of the Model State Commodity Code shall not apply to the following:

(1) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(2) a commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within seven calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within such seven-day period, such quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository other than the seller which is either:

(a) a financial institution;

(b) a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;

(c) a storage facility licensed or regulated by the United States or any agency thereof; or

(d) a depository designated by the director, and such depository, or other person which itself qualifies as a depository as aforesaid, issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(3) a commodity contract for the sale of a cash commodity for deferred shipment or delivery entered into solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any by-product thereof; or

(4) a commodity contract under which the offeree or the purchaser is a person referred to in Section 4 [58-13A-4 NMSA 1978] of the Model State Commodity Code, an insurance company, an investment company as defined in the Investment Company Act of 1940 or an employee pension and profit-sharing or benefit plan, other than a self-employed individual retirement plan or individual retirement account.

B. The director may issue rules, regulations or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of the Model State Commodity Code conditionally or unconditionally and otherwise implementing the provisions of that code for the protection of purchasers and sellers of commodities.

History: Laws 1985, ch. 163, § 5.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsections A(1) and B, appears as 7 U.S.C. § 1 et seq.

Investment Company Act of 1940. - The federal Investment Company Act of 1940, referred to in Subsection A(4), appears as 15 U.S.C. § 80a-51 et seq.

58-13A-6. Unlawful commodity activities.

A. No person shall engage in a trade or business or otherwise act as a commodity merchant unless such person:

(1) is registered or temporarily licensed with the commodity futures trading commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or

(2) is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

B. No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, nor suspended nor revoked.

History: Laws 1985, ch. 163, § 6.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsection A(2), appears as 7 U.S.C. § 1 et seq.

58-13A-7. Fraudulent conduct.

No person shall, directly or indirectly:

A. cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;

B. make any false report, enter any false record or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

C. engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation which operates or would operate as a fraud or deceit upon any person; or

D. misappropriate or convert the funds, security or property of any other person, in or in connection with the purchase or sale of, the offer to sell, the offer to enter into or the entry into of, any commodity contract or commodity option subject to the provisions of Section 3 [58-13A-3 NMSA 1978] and Paragraphs (2), (3) and (4) of Subsection A of Section 5 [58-13A-5 NMSA 1978] of the Model State Commodity Code, except that the provisions of Subsection B of this section shall not apply to a commodity contract covered by Paragraph (3) of Subsection A of Section 5 [58-13A-5 NMSA 1978] of the Model State Commodity Code.

History: Laws 1985, ch. 163, § 7.

58-13A-8. Liability of principals, controlling persons and others.

A. The act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation or trust, as well as of such official, agent or other person.

B. Every person who directly or indirectly controls another person liable under any provision of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978], every partner, officer or director of such other person, every person occupying a similar status or performing similar functions, and every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

History: Laws 1985, ch. 163, § 8.

58-13A-9. Securities laws unaffected.

Nothing in the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] shall impair, derogate or otherwise affect the authority or powers of the director under the Securities Act of New Mexico [58-13B-1 to 58-13B-57 NMSA 1978] or the application of any provision thereof to any person or transaction subject thereto.

History: Laws 1985, ch. 163, § 9.

58-13A-10. Purpose.

The Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodities and to maximize coordination with federal and other states' law and the administration and enforcement thereof.

History: Laws 1985, ch. 163, § 10.

58-13A-11. Investigations.

A. The director may make investigations, within or without this state, as he finds necessary or appropriate to:

(1) determine whether any person has violated, or is about to violate, any provision of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] or any rule or order of the director; or

(2) aid in enforcement of that code.

B. The director may publish information concerning any violation of the Model State Commodity Code or any rule or order of the director.

C. For purposes of any investigation or proceeding under the Model State Commodity Code, the director or any officer or employee designated by rule or order may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the director finds to be relevant or material to the inquiry.

D. (1) If a person does not give testimony or produce the documents required by the director or a designated employee pursuant to an administrative subpoena, the director or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

(2) The request for order of compliance may be addressed to either:

(a) the district court for the county of Santa Fe or the district court where service may be obtained on the person refusing to testify or produce, if the person is within this state; or

(b) the appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

History: Laws 1985, ch. 163, § 11.

58-13A-12. Enforcement.

A. If the director believes, whether or not based upon an investigation conducted under Section 11 [58-13A-11 NMSA 1978] of the Model State Commodity Code, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of that code or any rule or order under that code, the director may:

(1) issue a cease and desist order;

(2) take disciplinary action against a licensed person as specified in that code;

(3) issue an order imposing a civil penalty in amount which may not exceed ten thousand dollars ($10,000) for any single violation or one hundred thousand dollars ($100,000) for multiple violations in a single proceeding or a series of related proceedings; or

(4) initiate any of the actions specified in Subsection B of this section.

B. The director may institute any of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

(1) a declaratory judgment;

(2) an action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] or any rule or order of the director;

(3) an action for disgorgement;

(4) an action for restitution; or

(5) an action for appointment of a receiver or conservator for the defendant or the defendant's assets.

History: Laws 1985, ch. 163, § 12.

58-13A-13. Power of court to grant relief.

A. (1) Upon a proper showing by the director that a person has violated, or is about to violate, any provision of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] or any rule or order of the director, the district court may grant appropriate legal or equitable remedies.

(2) Upon showing of violation of the Model State Commodity Code or a rule or order of the director, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:

(a) imposition of a civil penalty in amount which may not exceed ten thousand dollars ($10,000) for any single violation or one hundred thousand dollars ($100,000) for multiple violations in a single proceeding or a series of related proceedings;

(b) disgorgement;

(c) declaratory judgment;

(d) restitution to investors wishing restitution; and

(e) appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate the Model State Commodity Code or a rule or order of the director shall be limited to:

(a) a temporary restraining order;

(b) a temporary or permanent injunction;

(c) a writ of prohibition or mandamus; or

(d) an order appointing a receiver or conservator for the defendant or the defendant's assets.

B. The court shall not require the director to post a bond in any official action under the Model State Commodity Code.

C. (1) Upon a proper showing by the director or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or securities or commodity agency of that state, the district court may grant appropriate legal and equitable remedies.

(2) Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:

(a) disgorgement; and

(b) appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state shall be limited to:

(a) a temporary restraining order;

(b) a temporary or permanent injunction;

(c) a writ of prohibition or mandamus; or

(d) an order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

History: Laws 1985, ch. 163, § 13.

58-13A-14. Criminal penalties.

A. Any person who willfully violates any provision of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] is guilty of a third degree felony.

B. Any person who willfully and knowingly violates any rule or order of the director under the Model State Commodity Code is guilty of a third degree felony.

C. The director may refer such evidence as is available concerning violations of the Model State Commodity Code or any rule or order of the department of [to] the attorney general or the proper district attorney, who may, with or without such a reference from the director, institute the appropriate criminal proceedings under that code.

History: Laws 1985, ch. 163, § 14.

Cross-references. - As to sentencing for felonies, see 31-18-15 NMSA 1978.

58-13A-15. Administration.

A. The Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] shall be administered by the director.

B. Neither the director nor any employees of the director shall use any information which is filed with or obtained by the director which is not public information for personal gain or benefit, nor shall the director nor any employees of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

C. (1) Except as provided in Paragraph (2) of this subsection, all information collected, assembled or maintained by the director is public information and is available for the examination of the public as provided by the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978].

(2) The following are exceptions to Paragraph (1) of this subsection, which are deemed to be confidential:

(a) information obtained in private investigations pursuant to Section 11 [58-13A-11 NMSA 1978] of the Model State Commodity Code;

(b) information made confidential by the provisions of the Public Records Act; and

(c) information obtained from federal agencies which may not be disclosed under federal law.

(3) The director, in his discretion, may disclose any information made confidential under Subparagraph (a) of Paragraph (2) of this subsection to persons identified in Section 16 [58-13A-16 NMSA 1978] of the Model State Commodity Code.

(4) No provision of the Model State Commodity Code either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director.

History: Laws 1985, ch. 163, § 15.

58-13A-16. Cooperation with other agencies.

A. To encourage uniform application and interpretation of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] and securities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering that code, the commodity futures trading commission, the securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law enforcement agency.

B. The cooperation authorized by Subsection A of this section shall include, but need not be limited to, the following:

(1) making joint examinations or investigations;

(2) holding joint administrative hearings;

(3) filing and prosecuting joint litigation;

(4) sharing and exchanging personnel;

(5) sharing and exchanging information and documents;

(6) formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

(7) issuing and enforcing subpoenas at the request of the agency administering the Model State Commodity Code in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

History: Laws 1985, ch. 163, § 16.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsection A, appears as 7 U.S.C. § 1 et seq.

Securities Exchange Act of 1934. - The federal Securities Exchange Act of 1934, referred to in Subsection A, appears as 15 U.S.C. § 78a et seq.

58-13A-17. General authority to adopt rules, forms and orders.

A. In addition to specific authority granted elsewhere in the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978], the director may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of that code. Such rules or forms shall include, but need not be limited to, the following: rules defining any terms, whether or not used in that code, insofar as the definitions are not inconsistent with the provisions of that code. For the purpose of rules or forms, the director may classify commodities and commodity contracts, persons and matters within the director's jurisdiction.

B. Unless specifically provided in the Model State Commodity Code, no rule, form or order may be adopted, amended or rescinded unless the director finds that the action is:

(1) necessary or appropriate in the public interest or for the protection of investors; and

(2) consistent with the purposes fairly intended by the policy and provisions of that code.

C. All rules and forms of the director shall be filed pursuant to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

D. No provision of the Model State Commodity Code imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the director, notwithstanding that the rule, order or form may later be amended or rescinded, or be determined by judicial or other authority to be invalid for any reason.

History: Laws 1985, ch. 163, § 17.

58-13A-18. Consent to service of process.

A. Every applicant for registration under the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] shall file with the director, in such form as he by rule prescribes, an irrevocable consent appointing the director or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action or proceeding against him or his successor executor or administrator which arises under that code or any rule or order under that code after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service

may be made by leaving a copy of the process in the office of the director, but it is not effective unless:

(1) the plaintiff, who may be the director in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the director; and

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

B. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by the Model State Commodity Code or any rule or order of the director, the engaging in the conduct shall constitute the appointment of the director as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought under that code or any rule or order of the director with the same force and validity as if served personally.

C. Service under Subsection A of this section may be made by leaving a copy of the process in the office of the director, but it is not effective unless:

(1) the plaintiff, who may be the director in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address known to the director; and

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

History: Laws 1985, ch. 163, § 18.

58-13A-19. Scope of the code.

A. (1) Sections 3, 6 and 7 [58-13A-3, 58-13A-6 and 58-13A-7 NMSA 1978] of the Model State Commodity Code apply to persons who sell or offer to sell when:

(a) an offer to sell is made in this state; or

(b) an offer to buy is made and accepted in this state.

(2) Sections 3, 6 and 7 [58-13A-3, 58-13A-6 and 58-13A-7 NMSA 1978] of the Model State Commodity Code apply to persons who buy or offer to buy when:

(a) an offer to buy is made in this state; or

(b) an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(a) originates from this state; or

(b) is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance:

(a) is communicated to the offeror in this state; and

(b) has not previously been communicated to the offeror, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

B. (1) For the purpose of Subsection A of this section, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation:

(a) which is not published in this state; or

(b) which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

(2) For the purpose of Paragraph (1) of this subsection, when a publication is published in editions, each edition shall be considered a separate publication except for material common to all editions.

C. (1) For the purpose of Subsection A of this section, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating outside this state is received in this state.

(2) For the purpose of Paragraph (1) of this subsection, a radio or television program or other electronic communication shall be considered having originated from this state if either the broadcast studio or means of transmission are located within this state, unless:

(a) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(b) the program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(c) the program or communication is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable radio, television or other electronic system; or

(d) the program or communication consists of an electronic signal which originates from within this state but which is not intended for redistribution to the general public in this state.

(3) Paragraph (2) of this subsection shall not apply to any changes, alterations or additions made locally to a radio or television program or other electronic communication.

History: Laws 1985, ch. 163, § 19.

58-13A-20. Procedure for entry of an order.

A. The director shall commence an administrative proceeding under the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

B. Upon entry of a notice of intent or summary order, the director shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the director shall inform all interested parties of the date, time and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the director shall inform all interested parties that they have thirty business days from the entry of the order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request.

C. If the proceeding is pursuant to a summary order, the director, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the director's own motion.

D. If no hearing is requested and none is ordered by the director, the summary order will automatically become a final order after thirty business days.

E. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

F. No final order or order after hearing may be returned without:

(1) appropriate notice to all interested persons;

(2) opportunity for hearing by all interested persons; and

(3) entry of written findings of fact and conclusions of law.

G. Every hearing in an administrative proceeding under the Model State Commodity Code shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately.

History: Laws 1985, ch. 163, § 20.

58-13A-21. Judicial review of orders.

A. Any person aggrieved by a final order of the director may obtain a review of the order in the court of appeals by filing in court, within thirty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

B. Upon the filing of a petition for review, except where the taking of additional evidence is ordered by the court pursuant to Subsection E or F of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order, in whole or part.

C. The filing of a petition for review under Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

D. Upon receipt of the petition for review, the director shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under Subsection D of Section 20 [58-13A-20 NMSA 1978] of the Model State Commodity Code, the director shall certify and file in court the summary order, evidence of its service upon the parties to it and an affidavit certifying that no hearing has been held and the order became final pursuant to Subsection D of Section 20 [58-13A-20 NMSA 1978] of the Model State Commodity Code.

E. If either the aggrieved party or the director applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

F. If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

G. The court shall review the petition based upon the original record before the director as amended under Subsections E and F of this section. The findings of the director as to the facts, if supported by competent, material and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce or set aside the order, in whole or in part.

H. The judgment of the court is subject to review by the supreme court.

History: Laws 1985, ch. 163, § 21.

58-13A-22. Pleading exemptions.

It shall not be necessary to negate any of the exemptions of the Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] in any complaint, information or indictment, or any writ or proceeding brought under that code; and the burden of proof of any such exemption shall be upon the party claiming the same.

History: Laws 1985, ch. 163, § 22.

ARTICLE 13B
SECURITIES ACT OF 1986

Part 1
General Provisions.

Part 2
Licensing of Broker-Dealers, Sales Representatives, Investment Advisers and Investment Adviser Representatives.

Part 3
Registration of Securities.

Part 4
Exemptions from Registration.

Part 5
Fraudulent and Other Prohibited Practices.

Part 6
Enforcement and Civil Liability.

Part 7
Administration.

Part 8
Miscellaneous Provisions.

PART 1
GENERAL PROVISIONS

58-13B-1. Short title.

Sections 1 through 56 [58-13B-1 to 58-13B-56 NMSA 1978] of this act may be cited as the "New Mexico Securities Act of 1986".

History: Laws 1986, ch. 7, § 1.

Cross-references. - As to disposition of unclaimed property, see Chapter 7, Article 8 NMSA 1978.

As to exemption of New Mexico business development corporation from Securities Act, see 53-7-40 NMSA 1978.

For uniform jury instructions for securities offenses, see UJI 14-4301 et seq.

New Mexico Securities Act of 1986. - The phrase "Sections 1 through 56 of this act" means Laws 1986, ch. 7, §§ 1 to 56 which appear as 58-13B-1 to 58-13B-56 NMSA 1978. Additionally, 58-13B-57 NMSA 1978 was enacted by Laws 1989, ch. 176, § 9 as part of the New Mexico Securities Act of 1986.

Corporate stock sold to employees subject to registration. - Sales of corporate stock, either for cash or on credit, to employees of the issuing corporation, are subject to the registration provisions of this article. 1959-60 Op. Att'y Gen. No. 59-49.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

For note, "State Securities Law: A Valuable Tool for Regulating Investment Land Sales," see 7 N.M.L. Rev. 265 (1977).

For case note, "The Paper Trail to Jail. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980)," see 11 N.M.L. Rev. 254 (1981).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 1 to 10.

Commodities broker's state-law duties to customers, 55 A.L.R.4th 394.

Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 USCS §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)), 87 A.L.R. Fed. 797.

58-13B-2. Definitions.

As used in the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978]:

A. "affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person;

B. "broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. Broker-dealer does not include:

(1) a sales representative;

(2) an issuer, except when effecting transactions other than with respect to its own securities;

(3) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for such depository institutions under applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of such depository institution; or

(4) any other person as the director by rule or order designates;

C. "control person" means an officer, director, managing partner or trustee, or person of similar status or function or any security holder who owns beneficially or of record ten percent or more of any class of securities of an issuer;

D. "depository institution" means:

(1) a person which is organized, chartered or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to receive deposits, including a savings, share, certificate or deposit account, and which is regulated, supervised and examined for the protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund; and

(2) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is regulated, supervised and examined by an official or agency of a state or the United States.

Depository institution does not include an insurance company or other organization primarily engaged in the insurance business or a Morris plan bank, industrial loan company or a similar bank or company;

E. "director" means the director of the securities division of the regulation and licensing department;

F. "division" means the securities division of the regulation and licensing department;

G. "filed" means the receipt of a document or application by the director or by the authorized representative of the director at the principal office of the director;

H. "financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity, other than as an agent:

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the Investment Company Act of 1940;

(5) an employee pension, profit-sharing or benefit plan:

(a) if the plan has total assets in excess of five million dollars ($5,000,000); or

(b) if investment decisions are made by a plan fiduciary, as defined in the Employee Retirement Income Security Act of 1974, which is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution or an insurance company;

(6) a business development company as defined by the Investment Company Act of 1940;

(7) a small business investment company licensed by the United States small business administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or

(8) any other financial or institutional investor as the director by rule or order designates;

I. "fraud", "deceit" and "defraud" are not limited to common-law fraud or deceit;

J. "guaranteed" means guaranteed as to payment of principal, interest and dividends;

K. "insured" means insured as to payment of principal, interest and dividends;

L. "investment adviser" means any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Investment adviser does not include:

(1) an investment adviser representative;

(2) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for such depository institutions under applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of such depository institution;

(3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the person's profession;

(4) a broker-dealer whose performance of the investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;

(5) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or

business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; or

(6) any other person as the director by rule or order designates;

M. "investment adviser representative" means a natural person other than an investment adviser who, whether as an employee or in the form of a professional corporation is under the direct supervision of an investment adviser and engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;

N. "issuer" means a person that issues or proposes to issue a security, except that:

(1) the issuer of a collateral trust certificate, voting trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or persons performing similar functions, means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(2) the issuer of an equipment trust certificate, including a conditional sales contract, or similar security serving the same purpose, means the person to whom the equipment or property is or is to be leased or conditionally sold; and

(3) the issuer of an interest in oil, gas or other mineral rights means the owner of an interest in such a right, whether whole or fractional, who creates interests for the purposes of sale;

O. "non-issuer transaction" means a transaction not directly or indirectly for the benefit of the issuer;

P. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency or any other legal or commercial entity;

Q. "price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if no amendment is filed, the prospectus or prospectus supplement filed under the Securities Act of 1933, which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

R. "promoter" includes:

(1) a person who, acting alone or in concert with one or more other persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(2) an officer or director or person of similar status or function owning any securities of an issuer or any security holder who owns, beneficially or of record, ten percent or more of any class of securities of the issuer if the officer, director, person of similar status or security holder acquires any of those securities in a transaction which does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer; or

(3) a member of the immediate family of a person within Paragraph (1) or (2) of this subsection if the family member received the securities in a transaction which does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer;

S. (1) "sale" or "sell" includes every contract of sale, contract to sell or other disposition of a security or interest in a security for value;

(2) "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value;

(3) "offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value;

(4) a security given or delivered with, or as a bonus on account of, a purchase of securities or other item is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(5) a gift of assessable stock is deemed to involve an offer and sale;

(6) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, or a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is deemed to include an offer of the other security; and

(7) the terms defined in this subsection do not include the creation of a security interest or a loan of a security; a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend and each stockholder may elect to take the dividend in cash, property or stock; or an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in exchange and partly for cash. Provided, however, that the terms contained in this paragraph are within the meaning of this subsection for the purpose of Section 30 [58-13B-30 NMSA 1978] of the New Mexico Securities Act of 1986;

T. "sales representative" means an individual other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within the definition;

U. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Investment Advisers Act of 1940", "Employees Retirement Income Security Act of 1974", "National Housing Act" and "Commodity Exchange Act" mean the federal statutes of those names as amended before or after the effective date of the New Mexico Securities Act of 1986;

V. unless the context requires otherwise, "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest in oil, gas or other mineral rights; any put, call, straddle or option entered into on a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. Security does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

W. "self-regulatory organization" means a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a national securities association of brokers and dealers registered under Section 15A of the Securities Exchange Act of 1934, a clearing agency registered under Section 17A of the Securities Exchange Act of 1934 and the municipal securities rulemaking board established under Section 15B(b)(1) of the Securities Exchange Act of 1934;

X. "state" means a state, commonwealth, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico; and

Y. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from a underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, the term "issuer" shall include, in addition to an issuer, any person directly

or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

History: Laws 1986, ch. 7, § 2.

I. General Consideration.
II. Decisions Under Former Law.

ANNOTATIONS

I. GENERAL CONSIDERATION.

Cross-references. - As to the securities division, see 9-16-4 NMSA 1978.

As to exemption of director of securities division and the savings and loan bureau from the authority of the superintendent of regulation and licensing, see 9-16-11 NMSA 1978.

For additional definitions for securities offenses, see UJI 14-4310 et seq.

Investment Company Act of 1940. - The federal Investment Company Act of 1940, referred to in Subsections H(4), H(6), and U, appears as 15 U.S.C. § 80a-51 et seq.

Employee Retirement Income Security Act of 1974. - The federal Employee Retirement Income Security Act of 1974, referred to in Subsections H(5)(b) and U, appears dispersed primarily throughout Titles 5, 18, and 29 of the United States Code.

Securities Exchange Act of 1934. - The federal Securities Exchange Act of 1934, referred to in Subsections H(5)(b) and U appears as 15 U.S.C. § 78a et seq. Sections 6, 15A, 15B(b)(1), and 17A of that act, referred to in Subsection W, appear respectively as 15 U.S.C. §§ 78f, 78o-3, 78o-4(b)(1), and 78q-1.

Investment Advisers Act of 1940. - The federal Investment Advisers Act of 1940, referred to in Subsections H(5)(b) and U, appears as 15 U.S.C. § 80b-1 et seq.

Section 301(c) or (d) of the Small Business Investment Act of 1958. - Section 301(c) or (d) of the federal Small Business Investment Act of 1958, referred to in Subsection H(7), appears as 15 U.S.C. § 681(c) or (d).

Securities Act of 1933. - The federal Securities Act of 1933, referred to in Subsections Q and U, appears as 15 U.S.C. § 77a et seq.

Public Utility Holding Company Act of 1935. - The federal Public Utility Holding Company Act of 1935, referred to in Subsection U, appears as 15 U.S.C. § 79 et seq.

National Housing Act. - The federal National Housing Act, referred to in Subsection U, appears as 12 U.S.C. § 1701 et seq.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsection U, appears generally dispersed throughout Title 7, Chapter 1 of the United States Code.

Effective date of the New Mexico Securities Act of 1986. - The effective date of the New Mexico Securities Act of 1986, referred to in Subsection U, is July 1, 1986.

"Security" not narrowly applied. - Neither federal statutory definition nor state definition of "security" should be given narrow application. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

"Security" need not involve profit sharing or risk. - To be a "security," an instrument involved need not be an investment of the type that involves profit sharing or risk. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

There is no ambiguity in words "note" and "evidence of indebtedness"; their usual, ordinary meanings apply because there is no legislative intent to the contrary. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

Definition of "security" does include commercial notes. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

For note, "State Securities Law: A Valuable Tool for Regulating Investment Land Sales," see 7 N.M.L. Rev. 265 (1977).

For annual survey of commercial law in New Mexico, see 18 N.M.L. Rev. 313 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State § 16.

Blue sky laws, 87 A.L.R. 42.

Sale of memberships in club or similar organization as sale of securities within provisions of securities acts, 87 A.L.R.2d 1140.

Who is "dealer" under state securities acts exempting sales by owners other than issuers not made in course of successive transactions, and the like, 6 A.L.R.3d 1425.

Promissory notes as securities under § 2(1) of Securities Act of 1933 (15 USCS § 77b(1)), and § 3(a)(10) of Securities Exchange Act of 1934 (15 USCS § 78c(a)(10)), 39 A.L.R. Fed. 357.

Certificate of deposit as "security" under federal securities laws, 82 A.L.R. Fed. 553.

"Common enterprise" element of Howey test to determine existence of investment contract regulatable as "security" within meaning of federal Securities Act of 1933 (15 USCS §§ 77a et seq.) and Securities Exchange Act of 1934 (15 USCS §§ 78a et seq.), 90 A.L.R. Fed. 825.

II. DECISIONS UNDER FORMER LAW.

Compiler's notes. - The cases below were decided under former § 58-13-2 NMSA 1978 which was repealed by Laws 1986, ch. 7, § 59.

"Investment contract" means a contract: (1) Where an individual invests his money in a common enterprise; (2) with an expectation of profits; (3) based solely on the efforts of a promoter or third party. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

"Common enterprise" is one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment of third parties. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

Fostering of expectation of profits found. - Promises of present and future amenities, the representations about the strength of condominium company, the description of the surrounding area as a growing recreational community, and the representations that time-share units would increase in value over the years, indicated that the management and sales personnel of the company sought to foster an expectation of profits. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

Critical inquiry for the third prong of the test for an investment contract is whether the managerial efforts are functionally essential or undeniably significant to the profit. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

Subsection H defined "any note" as security; whether or not the parties considered a note to be a "security" was not relevant to the statutory definition. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

Securities Act does not require registration of persons who sell exempt securities. 1969 Op. Att'y Gen. No. 69-97.

Superintendent of insurance regulates sale of insurance securities. - An analysis of the Securities Act and the Sale of Insurance Securities Act leads to the conclusion that the legislature intended for the superintendent of insurance to have complete regulation over the sale of insurance company securities. 1969 Op. Att'y Gen. No. 69-97.

But chief of securities bureau regulates variable annuities. - Variable annuities are subject to regulation by the commissioner of securities (now chief of the securities bureau) rather than by the superintendent of insurance inasmuch as they are not "insurance" within the meaning of 59A-1-5 NMSA 1978, but rather are "securities" within the meaning of this section. 1959-60 Op. Att'y Gen. No. 60-137.

Sale of foreign corporation stock. - The New Mexico law does not provide that stock of a foreign corporation sold within the state shall be void or voidable, but only that it shall be unlawful for anyone to sell or offer it for sale within the state without the permit so that the sale is voidable for contravention of the statute (Laws 1921, ch. 44). New Mexico Potash & Chem. Co. v. Independent Potash & Chem. Co., 115 F.2d 544 (10th Cir. 1940).

PART 2
LICENSING OF BROKER-DEALERS, SALES REPRESENTATIVES, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

58-13B-3. Broker-dealer and sales representative licensing.

A. It is unlawful for any person to transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978].

B. It is unlawful for any issuer or any broker-dealer licensed under the New Mexico Securities Act of 1986 to employ or contract with a person as a sales representative within this state unless the sales representative is licensed or exempt from licensing under that act.

C. It is unlawful for a broker-dealer or an issuer engaged in offering securities in this state to employ or contract with, in connection with any of the broker-dealer's or issuer's securities activities in this state, any person who is suspended or barred from association with a broker-dealer or investment adviser by the director. Upon request from a broker-dealer or issuer and for good cause shown, the director by order may

waive the prohibition of this subsection with respect to a particular person who has been suspended or barred.

History: Laws 1986, ch. 7, § 3.

Securities Act does not require registration of persons who sell exempt securities. 1969 Op. Att'y Gen. No. 69-97.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 15, 16.

Who is "dealer" under state securities acts exempting sales by owners other than issuers not made in course of successive transactions, and the like, 6 A.L.R.3d 1425.

Commodities broker's state-law duties to customers, 55 A.L.R.4th 394.

58-13B-4. Exempt broker-dealers and sales representatives.

A. The following broker-dealers are exempt from the licensing requirements of Section 58-13B-3 NMSA 1978:

(1) a broker-dealer who is registered under the Securities Exchange Act of 1934 and who has no place of business in this state if:

(a) the transactions effected by the broker-dealer in this state are exclusively with the issuer of the securities involved in the transactions, other broker-dealers licensed or exempt under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or financial or institutional investors; or

(b) the broker-dealer is licensed under the securities act of a state in which the broker-dealer maintains a place of business and the broker-dealer offers and sells in this state to persons who are existing customers of the broker-dealer and whose principal place of residence is not in this state; or

(2) other broker-dealers the director by rule or order exempts.

B. The following sales representatives are exempt from the licensing requirements of Section 58-13B-3 NMSA 1978:

(1) a sales representative acting for a broker-dealer exempt under Subsection A of this section;

(2) a sales representative acting for an issuer effecting offers or sales of securities exempted by Section 58-13B-26 NMSA 1978 or transactions exempted by Sections [Section] 58-13B-27 or 58-13B-28 NMSA 1978 if no commissions or other similar compensation are paid or given directly or indirectly to that person for effecting such transactions;

(3) a sales representative acting for an issuer effecting transactions with employees, partners, officers or directors of the issuer, a parent or wholly owned subsidiary of the issuer, if no commissions or other similar compensation are paid or given directly or indirectly to that person for soliciting any employee, partner, officer or director in this state; and

(4) other sales representatives the director by rule or order exempts.

History: Laws 1986, ch. 7, § 4; 1989, ch. 176, § 1.

Securities Exchange Act of 1934. - The federal Securities Exchange Act of 1934, referred to in Subsection A(1), appears as 15 U.S.C. § 78a et seq.

Law reviews. - Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

58-13B-5. Investment adviser and investment adviser representative licensing.

A. It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless licensed or exempt from licensing under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978].

B. It is unlawful for an investment adviser to employ or contract with, in connection with any of the investment adviser's investment adviser activities in this state, any person who is suspended or barred from association with a broker-dealer or investment adviser by the director. Upon request from an investment adviser and for good cause shown, the director by order may waive the prohibition of this subsection with respect to a person who has been suspended or barred.

History: Laws 1986, ch. 7, § 5.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 15, 16.

58-13B-6. Exempt investment advisers and investment adviser representatives.

The following investment advisers and investment adviser representatives are exempt from the licensing requirements of Section 5 [58-13B-5 NMSA 1978] of the New Mexico Securities Act of 1986:

A. an investment adviser who is registered as an investment adviser under the Investment Advisers Act of 1940 if:

(1) its only clients in this state are other investment advisers, broker-dealers or financial or institutional investors; or

(2) the investment adviser has no place of business in this state and the investment adviser during any twelve consecutive months does not direct business communications in this state to more than five present or prospective clients other than those specified in Paragraph (1) of this subsection, whether or not the person or client to whom the communication is directed is present in this state;

B. investment adviser representatives if the investment adviser by whom they are employed is exempt under Subsection A of this section; and

C. other investment advisers and investment adviser representatives the director by rule or order exempts.

History: Laws 1986, ch. 7, § 6.

Investment Advisers Act of 1940. - The federal Investment Advisers Act of 1940, referred to in Subsection A, appears as 15 U.S.C. § 80b-1 et seq.

58-13B-7. Proof of exemption.

A. If, at any time, the director has reason to believe that any person claiming to be exempt from licensing as a broker-dealer, sales representative, investment adviser or investment adviser representative under Section 4 or 6 [58-13B-4 or 58-13B-6 NMSA 1978] of the New Mexico Securities Act of 1986 is not entitled to that exemption, the director may, by written notice, require that person to:

(1) file a consent to service of process in accordance with Section 50 [58-13B-50 NMSA 1978] of that act; and

(2) furnish evidence satisfactory to the director confirming that the person is exempt under Section 4 or 6 [58-13B-4 or 58-13B-6 NMSA 1978] of that act or, if satisfactory

evidence is not or cannot be furnished, the director may require that person to be licensed as a broker-dealer, sales representative, investment adviser or investment adviser representative.

B. It is unlawful for any person notified pursuant to Subsection A of this section to initiate any further business transactions in this state as a broker-dealer, sales representative, investment adviser or investment adviser representative until evidence satisfactory to the director is furnished or the person becomes licensed as a broker-dealer, sales representative, investment adviser or investment adviser representative. The provisions of Section 53 [58-13B-53 NMSA 1978] of the New Mexico Securities Act of 1986 shall govern all subsequent proceedings pursuant to this subsection.

C. The director may examine the records or require copies to be provided to him of any broker-dealer, sales representative, investment adviser or investment adviser representative to whom the director proposes to issue or has issued a notice pursuant to Subsection A of this section.

History: Laws 1986, ch. 7, § 7.

58-13B-8. Application.

A. An applicant for licensing as a broker-dealer, sales representative, investment adviser or investment adviser representative shall file with the director or the designee of the director an application for licensing together with a consent to service of process pursuant to Section 50 [58-13B-50 NMSA 1978] of the New Mexico Securities Act of 1986 and the fee required by Subsection A of Section 9 [58-13B-9 NMSA 1978] of that act. The application for licensing shall contain the information the director determines by rule to be necessary and appropriate to facilitate the administration of that act.

B. The requirements of Subsection A of this section are satisfied by applicants who have filed and maintain a completed and current registration with the securities and exchange commission or a self-regulatory organization registered with the securities and exchange commission if that registration information is readily available to the director through a central registration depository system approved by the director; provided that such applicants file a notice with the director in the form and content determined by the director by rule together with a consent to service of process pursuant to Section 50 [58-13B-50 NMSA 1978] of the New Mexico Securities Act of 1986 and the fee required by Subsection A of Section 9 [58-13B-9 NMSA 1978] of that act, no later than thirty days prior to commencing business in this state. The director may require the submission of additional information and documents by an applicant.

History: Laws 1986, ch. 7, § 8.

Securities and Exchange Commission. - As to the federal Securities and Exchange Commission, see 15 U.S.C. § 78d.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 15 to 17.

58-13B-9. Fees.

A. An applicant for licensing shall pay a registration fee, due annually, in the following amounts:

(1) broker-dealer, three hundred dollars ($300);

(2) sales representative, thirty-five dollars ($35.00);

(3) investment adviser, three hundred dollars ($300); and

(4) investment adviser representative, thirty-five dollars ($35.00).

B. Failure to pay the annual registration fee required by Subsection A of this section by December 31 of any year shall result in automatic expiration of a license. The director may reinstate an expired license upon payment of delinquent fees.

C. The director by rule may require registration of branch offices and may impose a fee for processing such registrations as well as an annual fee. For the purpose of this section, a "branch office" means any place of business in this state, other than the principal office in this state of the broker-dealer, from which one or more sales representatives transact business.

D. If an application is denied or withdrawn or the license is revoked, suspended or withdrawn, the director shall retain the fee paid.

History: Laws 1986, ch. 7, § 9.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 17.

58-13B-10. Examinations.

A. The director shall by rule or order impose an examination requirement upon:

(1) an applicant applying for licensing under Part II [58-13B-3 to 58-13B-19 NMSA 1978] of the New Mexico Securities Act of 1986; or

(2) any class of applicants.

B. Any examination required shall be administered by the director or a designee of the director. Examinations may be oral, written or both and may differ for each class of applicants.

C. The director may by order waive any examination requirement imposed pursuant to Subsection A of this section as to any person or class of persons if the director determines that such examination is not necessary for the protection of investors by reason of the training and experience of the applicant.

History: Laws 1986, ch. 7, § 10.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 15 to 20.

58-13B-11. Licensing.

A. Unless a proceeding under Section 16 [58-13B-16 NMSA 1978] of the New Mexico Securities Act of 1986 has been instituted, the license of any broker-dealer, sales representative, investment adviser or investment adviser representative becomes effective thirty days after an application for licensing and the last of any additional information requested by the director or the director's designee has been filed and provided that all examination requirements imposed pursuant to Section 10 [58-13B-10 NMSA 1978] of that act have been satisfied. The director may by order authorize an earlier effective date of licensing.

B. The license of a broker-dealer, sales representative, investment adviser or investment adviser representative is effective until terminated by revocation, expiration or withdrawal.

C. The license of a sales representative is only effective with respect to transactions effected as an employee or agent on behalf of the broker-dealer or issuer for whom the sales representative is licensed.

D. No person shall at any one time act as a sales representative for more than one broker-dealer or for more than one issuer, or at any one time act for both a broker-dealer and an issuer, unless the director by rule or order authorizes multiple licenses as consistent with the public interest and protection of investors.

E. If a person licensed as a sales representative terminates association with a broker-dealer or issuer or terminates activities that make the person a sales representative, the sales representative and the broker-dealer or issuer on whose behalf the sales representative was acting shall promptly notify the director.

F. The license of an investment adviser representative is only effective with respect to transactions effected as an employee or agent on behalf of the investment adviser for whom the investment adviser representative is licensed.

G. If a person licensed as an investment adviser representative terminates association with an investment adviser or terminates activities that make the person an investment adviser representative, the investment adviser and the investment adviser on whose behalf the investment adviser representative was acting shall promptly notify the director.

H. The director by rule may authorize one or more special classifications of licenses as a broker-dealer, sales representative, investment adviser or investment adviser representative to be issued to applicants subject to limitations and conditions on the nature of the activities that may be conducted by persons so licensed.

History: Laws 1986, ch. 7, § 11.

58-13B-12. Annual report and fee.

For as long as a broker-dealer, sales representative, investment adviser or investment adviser representative is licensed under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978], he shall file an annual report, together with the fee specified in Subsection A of Section 9 [58-13B-9 NMSA 1978] of that act, with the director or his designee, at a time and including that information which the director determines by rule or order is necessary or appropriate.

History: Laws 1986, ch. 7, § 12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 18.

58-13B-13. Post-licensing requirements.

A. The director shall by rule require:

(1) a licensed broker-dealer to maintain:

(a) minimum net capital; and

(b) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital to aggregate indebtedness ratio may vary with type or class of broker-dealer; and

(2) a licensed investment adviser to maintain a minimum net worth.

B. If a licensed broker-dealer or investment adviser knows or has reasonable cause to know that any requirement imposed on it under Subsection A of this section is not being met, it shall promptly notify the director of its current financial condition.

C. The director may by rule require the furnishing of a fidelity bond from a broker-dealer, sales representative, investment adviser or investment adviser representative.

D. A licensed broker-dealer or investment adviser shall file financial and other reports as the director determines by rule or order are necessary.

E. Unless the director adopts by rule a special reporting requirement, compliance with the financial reporting requirements of the Securities Exchange Act of 1934, in the case of a broker-dealer, or the Investment Advisers Act of 1940, in the case of an investment adviser, shall satisfy the requirements with regard to the filing of financial reports pursuant to Subsection D of this section.

F. A licensed broker-dealer, sales representative, investment adviser or investment adviser representative shall make and maintain records as the director determines by rule are necessary or appropriate.

G. Unless the director adopts by rule a special record-keeping requirement, compliance with the record-keeping requirements of the Securities Exchange Act of 1934, in the case of a broker-dealer, or the Investment Advisers Act of 1940, in the case of an investment adviser, shall satisfy the requirements of Subsection F of this section.

H. Required records may be maintained in computer or microfilm format or any other form of data storage, provided that the records are readily accessible to the director.

I. Required records shall be preserved for five years unless the director by rule specifies either a longer or shorter period for a particular type or class of records.

J. If the information contained in a document filed with the director as part of the application for licensing or under this section, except information the director by rule or order excludes, is or becomes inaccurate or incomplete in a material respect, the licensed person shall promptly file correcting information, unless notification of termination has been given under Subsection E or G of Section 11 [58-13B-11 NMSA 1978] of the New Mexico Securities Act of 1986.

History: Laws 1986, ch. 7, § 13.

Securities Exchange Act of 1934. - The federal Securities Exchange Act of 1934, referred to in Subsections E and G, appears as 15 U.S.C. § 78a et seq.

Investment Advisers Act of 1940. - The federal Investment Advisers Act of 1940, referred to in Subsections E and G, appears as 15 U.S.C. § 80b-1 et seq.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 17 and 18.

58-13B-14. Licensing of successor firms.

A. A licensed broker-dealer or investment adviser may file an application for licensing of a successor, whether or not the successor is then in existence, if the fee the director prescribes for the application is submitted with the application.

B. Licensing of the sales representatives of the broker-dealer or the investment adviser representatives of an investment adviser filing the application pursuant to Subsection A of this section shall continue upon licensing of the successor. The director may by rule require the payment of a fee to cover administrative costs of licensing representatives to successor firms.

History: Laws 1986, ch. 7, § 14.

58-13B-15. Inspection power.

A. The director, without previous notice, may examine in a manner reasonable under the circumstances the records, within or without this state, of a licensed broker-dealer, sales representative, investment adviser or investment adviser representative in order to determine compliance with the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978]. Broker-dealers, sales representatives, investment advisers and investment adviser representatives shall make their records available to the director in legible form.

B. The director may copy records or require a licensed person to copy records and provide the copies to the director to the extent and in a manner reasonable under the circumstances.

C. The director may by rule impose a reasonable fee for the expense of conducting an examination under this section.

History: Law 1986, ch. 7, § 15.

58-13B-16. Grounds for denial, revocation and suspension.

A. The director may by order deny, suspend or revoke any license, limit the investment advisory activities that an applicant or licensed person may perform in this state, bar an applicant or licensed person from association with a licensed broker-dealer or investment adviser or bar a person who is a partner, officer, director or a person

occupying a similar status or performing a similar function for an applicant or licensed person if the director finds that:

(1) the order is in the public interest; and

(2) the applicant or licensed person or, in the case of a broker-dealer or investment adviser, any partner, officer, director or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for licensing with the director which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(b) has violated or failed to comply with a provision of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978], a predecessor act or a rule or order under that act or the predecessor act;

(c) is the subject of an adjudication or determination after notice and opportunity for hearing, within the last five years by a securities agency or administrator of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 or the Commodity Exchange Act, or the securities law of any other state, but only if the acts constituting the violation of that state's law would constitute a violation of the New Mexico Securities Act of 1986 or the New Mexico Model State Commodity Code [58-13A-1 to 58-13A-22 NMSA 1978] had the acts taken place in this state;

(d) within the last six years has pleaded guilty or nolo contendere to or been convicted of a felony or misdemeanor which the director finds: 1) involves the purchase or sale of a security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, robbery, fraud or conspiracy to commit any of the foregoing offenses; 2) arises out of the conduct of business as a broker-dealer, sales representative, investment adviser, investment adviser representative, depository institution, insurance company or fiduciary; or 3) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds, property or securities or conspiracy to commit any of the foregoing offenses;

(e) is permanently or temporarily enjoined by any court of competent jurisdiction from violating any state or federal securities or commodities law or regulation or from acting as an investment adviser, underwriter, broker-dealer or as an affiliated person or employee of an investment company, depository institution or insurance company or from engaging in or continuing any conduct or practice indicating a lack of fitness to engage in the securities business or any investment-related activity;

(f) is the subject of an order of the director denying, suspending or revoking the person's license as a broker-dealer, sales representative, investment adviser or investment adviser representative;

(g) is the subject of any of the following orders which are currently effective and were issued within the last five years: 1) an order by the securities agency or administrator of another state, Canadian province or territory or by the securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending or revoking the person's license as a broker-dealer, sales representative, investment adviser, investment adviser representative or the substantial equivalent of those terms as defined in the New Mexico Securities Act of 1986; 2) a suspension or expulsion from membership in or association with a member of a self-regulatory organization registered under the Securities and Exchange Act of 1934 or the Commodity Exchange Act; 3) a United States Postal Service fraud order; 4) a cease and desist order entered after notice and opportunity for hearing by the director, the securities agency or administrator of another state, Canadian province or territory, the securities and exchange commission or the commodity futures trading commission; or 5) an order by the commodities futures trading commission denying, suspending or revoking registration under the Commodity Exchange Act;

(h) has engaged in any unethical or dishonest conduct or practice in the securities business or any investment-related activity;

(i) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, but the director may not enter an order against a broker-dealer or investment adviser under this subparagraph without a finding of insolvency as to the broker-dealer or investment adviser;

(j) is determined by the director in compliance with Section 17 [58-13B-17 NMSA 1978] of the New Mexico Securities Act of 1986 not to be qualified on the basis of the lack of training, experience and knowledge of the securities business;

(k) has failed reasonably to supervise sales representatives or investment adviser representatives; or

(l) has failed to pay the proper registration fee.

B. The director may not institute a proceeding on the basis of a fact or transaction known to the director when the license became effective unless the proceeding is instituted within the next one hundred eighty days following issuance of the license.

C. If the director finds that any applicant or licensed person is no longer in existence or has ceased to do business as a broker-dealer, sales representative, investment adviser or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian or cannot be

located after reasonable search, the director may by order deny the application or cancel the license.

History: Laws 1986, ch. 7, § 16.

Cross-references. - As to the definition of "felony" and "misdemeanor," see 30-1-6 NMSA 1978.

Securities Act of 1933. - The federal Securities Act of 1933, referred to in Subsection A(2)(c), appears as 15 U.S.C. § 77a et seq.

Securities Exchange Act of 1934. - The federal Securities Exchange Act of 1934, referred to in Subsection A(2)(c), appears as 15 U.S.C. § 78a et seq.

Investment Advisers Act of 1940. - The federal Investment Advisers Act of 1940, referred to in Subsection A(2)(c), appears as 15 U.S.C. § 80b-1 et seq.

Investment Company Act of 1940. - The federal Investment Company Act of 1940, referred to in Subsection A(2)(c), appears as 15 U.S.C. § 80a-51 et seq.

Commodity Exchange Act. - The federal Commodity Exchange Act, referred to in Subsections A(2)(c) and A(2)(g), appears generally dispersed throughout Title 7, Chapter 1 of the United States Code.

Securities and exchange commission. - As to the federal securities and exchange commission, referred to in Subsection A(2)(g), see 15 U.S.C. § 78d.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 20 to 22.

58-13B-17. Denial, suspension or revocation on grounds of lack of qualification.

The director's determination that an applicant or licensed person lacks qualification under Section 16 [58-13B-16 NMSA 1978] of the New Mexico Securities Act of 1986 shall be limited by the following provisions:

A. the director may not enter an order against a broker-dealer on the basis of the lack of qualification of:

(1) a person other than the broker-dealer if the broker-dealer is an individual; or

(2) a sales representative of the broker-dealer;

B. the director may not enter an order against an investment adviser on the basis of the lack of qualification of:

(1) a person other than the investment adviser, if the investment adviser is an individual; or

(2) any other person who represents the investment adviser in doing an act that makes the person an investment adviser or an investment adviser representative of the investment adviser;

C. the director may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

D. the director shall consider that a sales representative who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer;

E. the director shall consider that an investment adviser representative who will work under the supervision of a licensed investment adviser need not have the same qualifications as an investment adviser;

F. the director shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or sales representative; and

G. successful completion of an examination required by Section 10 [58-13B-10 NMSA 1978] of the New Mexico Securities Act of 1986 shall be sufficient to show adequate knowledge of the securities business.

History: Laws 1986, ch. 7, § 17.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 19, 20.

58-13B-18. Withdrawal.

A. An application for a license may be withdrawn by the applicant without prejudice before the license becomes effective.

B. Withdrawal from licensing as a broker-dealer, sales representative, investment adviser or investment adviser representative becomes effective thirty days after receipt by the director of an application to withdraw or within such shorter period of time as the director may determine, unless:

(1) a revocation or suspension proceeding is pending when the application is filed;

(2) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed; or

(3) additional information is requested by the director regarding the withdrawal application.

C. If a proceeding is pending or instituted under Subsection B of this section, withdrawal becomes effective at the time and upon the conditions the director by order determines. If additional information is requested, withdrawal is effective thirty days after the additional information is filed. Although no proceeding is pending or instituted and withdrawal becomes effective, the director may institute a proceeding under Section 16 [58-13B-16 NMSA 1978] of the New Mexico Securities Act of 1986 within one year after withdrawal became effective and enter an order as of the last date on which licensing was effective.

History: Laws 1986, ch. 7, § 18.

58-13B-19. Custody of clients' securities and funds.

A. Unless prohibited by rule or order of the director, an investment adviser registered under the Investment Advisers Act of 1940 and the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] may take or retain custody of securities or funds of a client.

B. If permitted by rule or order of the director, an investment adviser exempt from registration under the Investment Advisers Act of 1940 but licensed as an investment adviser under the New Mexico Securities Act of 1986 may take or have custody of securities or funds of a client.

History: Laws 1986, ch. 7, § 19.

Investment Advisers Act of 1940. - The Investment Advisers Act of 1940 appears as 15 U.S.C. § 80b-1 et seq.

PART 3
REGISTRATION OF SECURITIES

58-13B-20. Registration requirement.

It is unlawful for a person to offer to sell or sell any security in this state unless the security is registered under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or the security or transaction is exempt under that act.

History: Laws 1986, ch. 7, § 20.

Knowledge not requisite for conviction for violation of this section. - The wording of former § 58-13-43A NMSA 1978 showed that knowledge that an item was a security was not a requisite for a conviction for violating this section. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Scienter is not element of crime of offering to sell or selling unregistered securities. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Reliance on attorney's advice is not defense to the crime of selling or offering to sell unregistered securities. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

"Sale". - Former § 58-13-2F NMSA 1978 was controlling as to the proper definition of "sale" in a prosecution for the sale of unregistered securities under Subsection A of former § 58-13-4 NMSA 1978. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Fourth-degree felony. - Because a violation of Subsection A of former § 58-13-4 NMSA 1978 was declared to be a felony without degree, the offense was construed to constitute a fourth-degree felony under former § 31-18-13C NMSA 1978. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 25, 32.

Application of blue sky laws to preincorporation subscriptions, 50 A.L.R.2d 1103.

What acts in connection with sale of unauthorized securities will render a person, other than officer or director of corporation, civilly liable under state securities acts (blue sky laws) for purchase price, 59 A.L.R.2d 1030.

Purchaser's right to set up invalidity of contract because of violation of state securities regulation as affected by doctrine of estoppel, 84 A.L.R.2d 479.

58-13B-21. Registration by filing.

A. Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by filing, whether or not they are also eligible for registration under Section 22 or 23 [58-13B-22 or 58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986 if the following conditions are satisfied:

(1) the issuer is organized under the laws of the United States or a state or, if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process;

(2) the issuer has actively engaged in business operations in the United States for a period of at least thirty-six consecutive calendar months immediately before the filing of the federal registration statement;

(3) the issuer has registered a class of equity securities under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, which class of securities is held of record by five hundred or more persons;

(4) the issuer has:

(a) a total net worth of four million dollars ($4,000,000), or a total net worth of two million dollars ($2,000,000) and net pretax income from operations before allowances for extraordinary items, for at least two of the three preceding fiscal years;

(b) not less than four hundred thousand units of the class of security registered under Section 12 of the Securities Exchange Act of 1934 held by the public, excluding securities held by officers and directors of the issuer, underwriters and persons beneficially owning ten percent or more of the class of security being registered; and

(c) outstanding warrants and options held by the underwriters and executive officers and directors of the issuer in an amount not exceeding ten percent of the total number of shares to be outstanding after completion of the offering of the securities being registered;

(5) the issuer has been subject to the requirements of Section 12 of the Securities Exchange Act of 1934 and has filed all the material required to be filed under Sections 13 and 14 of that act for at least thirty-six calendar months immediately before the filing of the federal registration statement and the issuer has filed in a timely manner all reports required to be filed during the twelve calendar months immediately before the filing of the federal registration statement;

(6) for a period of at least thirty days during the three months preceding the offering of the securities registered, there have been at least four market makers for the class of equity securities registered under Section 12 of the Securities Exchange Act of 1934;

(7) each of the underwriters participating in the offering of the security and each broker-dealer who will offer the security in this state is a member of or is subject to the rules of fair practice of a national association of securities dealers with respect to the offering and the underwriters have contracted to purchase the securities offered in a principal capacity;

(8) the aggregate commissions or discounts to be received by the underwriters will not exceed ten percent of the aggregate price at which the securities being registered are offered to the public;

(9) neither the issuer nor any of its subsidiaries, during the last three fiscal years preceding the filing of the registration statement, have:

(a) failed to pay a dividend or sinking fund installment on preferred stock;

(b) defaulted on indebtedness for borrowed money; or

(c) defaulted on the rental on one or more long-term leases;

which defaults in the aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole; and

(10) in the case of an equity security, the price at which the security will be offered to the public is not less than five dollars ($5.00) per share; or

(11) the issuer is an investment company registered under Section 8 of the Investment Company Act of 1940; provided that the director may impose requirements as a condition of use of the registration provided by this paragraph if he feels such requirements are necessary for the protection of investors.

B. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection E of Section 24 [58-13B-24 NMSA 1978] of the New Mexico Securities Act of 1986 and the consent to service of process required by Section 50 [58-13B-50 NMSA 1978] of that act:

(1) a statement demonstrating eligibility for registration by filing;

(2) the name, address and form of organization of the issuer;

(3) with respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(4) a copy, specimen or description of the security being registered; and

(5) a copy of the latest prospectus filed with the registration statement under and satisfying the requirements of Section 10 of the Securities Act of 1933.

C. If the information and documents required to be filed by Subsection B of this section have been on file with the director for at least five business days and if the applicable registration fee has been paid prior to the effectiveness of the federal registration statement and no stop order is in effect and no proceeding is pending under Section 25 [58-13B-25 NMSA 1978] of the New Mexico Securities Act of 1986, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before the conditions in this subsection are satisfied and they are not waived, the registration statement becomes effective as soon as the conditions are satisfied. The registrant shall promptly notify the director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file promptly a post-effective amendment containing the information and documents in the price amendment. The director shall promptly acknowledge receipt of notification and effectiveness of the registration statement as of the date and time the registration statement became effective with the securities and exchange commission.

History: Laws 1986, ch. 7, § 21.

Securities Act of 1933. - The federal Securities Act of 1933, referred to in the introductory paragraph of Subsection A, appears as 15 U.S.C. § 77a et seq. Section 10 of that act, referred to in Subsection B(5), appears as 15 U.S.C. § 77j.

Investment Company Act of 1940. - Section 8 of the Investment Company Act of 1940, referred to in Subsection A(11), appears as 15 U.S.C. § 80a-8.

Securities Exchange Act of 1934. - Section 12 of the Securities Exchange Act of 1934, referred to in Subsections A(3), A(4)(b), A(5), and A(6), appears as 15 U.S.C. § 78j. Sections 13 and 14, referred to in Subsection A(5), appear as 15 U.S.C. §§ 78k and 78l.

58-13B-22. Registration by coordination.

A. Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by coordination.

B. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection D of Section 58-13B-24 NMSA 1978 and the consent to service of process required by Section 58-13B-50 NMSA 1978:

(1) one copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) if the director by rule or order requires:

(a) a copy of the articles of incorporation and by-laws, or their substantial equivalents, currently in effect;

(b) a copy of any agreement with or among underwriters;

(c) a copy of any indenture or other instrument governing the issuance of the security to be registered; and

(d) a copy, specimen or description of the security;

(3) if the director requests and subject to the provisions of Paragraph (2) of Subsection B of Section 58-13B-46 NMSA 1978, any other information or copies of any other documents filed under the Securities Act of 1933;

(4) an undertaking to forward promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, all future amendments to the federal prospectus, other than an amendment that delays the effective date of the registration statement, whichever occurs first; and

(5) any other information the director may require.

C. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending under Section 58-13B-25 NMSA 1978;

(2) the registration statement has been on file with the director for at least ten days but if the registration statement is not filed with the director within five days of the initial filing under the Securities Act of 1933, the registration statement must have been on file with the director for thirty days or any shorter period as the director by rule or order specifies; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or any shorter period the director by rule or order permits and the offering is made within those limitations.

D. The registrant shall promptly notify the director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment.

E. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with Subsection D of this section. The director shall promptly notify the registrant of the issuance of the order. If the registrant proves compliance with the requirements of Subsection D of this section as to notice and post-effective amendment, the stop order is void as of its entry.

F. The director by rule or order may waive either or both of the conditions specified in Paragraphs (2) and (3) of Subsection C of this section.

G. If the federal registration statement becomes effective before all the conditions in Subsection C of this section are satisfied and they are not waived, the registration statement automatically becomes effective when all the conditions are satisfied. If the registrant advises the director of the date when the federal registration statement is expected to become effective, the director shall promptly advise the registrant, at the registrant's expense, whether all conditions are satisfied and whether the director then contemplates the institution of a proceeding under Section 58-13B-25 NMSA 1978; but the advice by the director does not preclude the institution of a proceeding for a stop order suspending the effectiveness of the registration statement after the effective time.

H. The director by rule or order may waive or modify the application of a requirement of this section if a provision or an amendment, repeal or other alteration of the securities registration provisions of the Securities Act of 1933 or the rules adopted under that act render the waiver or modification appropriate for further coordination of state and federal registration.

History: Laws 1986, ch. 7, § 22; 1989, ch. 176, § 2.

Securities Act of 1933. - The federal Securities Act of 1933, referred to in Subsections A, B(1), B(3), C(2), and H, appears as 15 U.S.C. §§ 77a to 77aa.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

For note, "State Securities Law: A Valuable Tool for Regulating Investment Land Sales," see 7 N.M.L. Rev. 265 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 43 to 45.

58-13B-23. Registration by qualification.

A. A security may be registered by qualification.

B. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection D of Section 58-13B-24 NMSA 1978 and the consent to service of process required by Section 58-13B-50 NMSA 1978:

(1) with respect to the issuer and any significant subsidiary: its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical property and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: name, address and principal occupation for the last five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by Paragraph (2) of this subsection: the compensation paid or given, directly or indirectly, during the last twelve months and estimated to be paid during the next twelve months by the issuer together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of a class of equity security of the issuer: the information specified in Paragraph (2) of this subsection other than occupation;

(5) with respect to a promoter, control person or affiliate if the issuer was organized within the last three years: the information specified in Paragraph (2) of this subsection, the amount paid to the person within that period or intended to be paid and the consideration for the payment;

(6) with respect to a person on whose behalf a part of the offering is to be made in a non-issuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or a subsidiary has issued its securities within the last two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of the agreement whose terms have not yet been determined; and a description of the plan of distribution of securities that are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order of priority in which the proceeds will be used for the purposes stated; the amounts of funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of the persons who have received commissions in connection with the acquisition and the amounts of commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of the stock options or other security options outstanding or to be created in connection with the offering and the amount of the options held or to be held by every person required to be named in Paragraph (2), (4), (5), (6) or (8) of this subsection and by a person who holds or will hold ten percent or more in the aggregate of the options;

(11) the dates of, parties to and general effect, concisely stated, of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the last two years, a copy of the contract; and a description of pending litigation or proceedings to which the issuer is a party and that

materially affect its business or assets, including any litigation or proceeding known to be contemplated by a governmental authority;

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a copy, specimen or description of the security being registered; a copy of the issuer's articles of incorporation and by-laws or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which states whether the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

(15) the written consent of an accountant, engineer, appraiser or other person whose profession gives authority to a statement made by the person, if the person named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(16) a statement of financial condition of the issuer certified by a certified public accountant as of a date within four months before the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the statement of financial condition, or for the period of the issuer's and any predecessor's existence if less than three years; if part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements which would be required if that business were the registrant;

(17) in connection with mining or oil securities, a geological analysis, a statement showing the location of the gas or oil properties, the mine, plant or other property owned or operated by the issuer, with development plans of the properties, the amount of work done on the properties, the amount of cash expended for improvements and the condition of the plant and machinery connected with the properties; and

(18) any additional information the director requires.

C. A registration statement under this section becomes effective thirty calendar days, or any shorter period as the director by rule or order specifies, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) no stop order is in effect and no proceeding is pending under Section 58-13B-25 NMSA 1978;

(2) the director has not, under Subsection D or E of this section, ordered that effectiveness be delayed; and

(3) the registrant has not requested that effectiveness be delayed.

D. The director may delay effectiveness for a single period of not more than ninety days if the director determines the registration statement is not complete in all material respects and promptly notifies the registrant of that determination.

E. The director may delay effectiveness for a single period of not more than thirty days if the director determines that the delay is necessary, whether or not the director previously delayed effectiveness under Subsection D of this section.

History: Laws 1986, ch. 7, § 23; 1989, ch. 176, § 3.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For note, "State Securities Law: A Valuable Tool for Regulating Investment Land Sales," see 7 N.M.L. Rev. 265 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 46 to 58.

Construction and effect of § 12 of the Securities Act of 1933 (15 U.S.C. § 77l) relating to civil liabilities arising in connection with prospectuses and communications in selling of securities, 50 A.L.R.2d 1228.

58-13B-24. Provisions applicable to registration generally.

A. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer.

B. Except as provided in Subsection C of this section, a person filing a registration statement shall pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but not less than three hundred fifty dollars ($350) or more than two thousand five hundred dollars ($2,500). If a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under Section 25 [58-13B-25 NMSA 1978] of the New Mexico Securities Act of 1986, the director shall retain the fee.

C. An open-end management company or a face amount certificate company as defined in the Investment Company Act of 1940 may register an indefinite amount of securities under a registration statement. The registrant shall pay:

(1) a fee of five hundred dollars ($500) at the time of filing; and

(2) within sixty days after the registrant's fiscal year during which its registration statement is effective, a fee of two thousand dollars ($2,000) or file a report on a form the director by rule adopts, specifying its sale of securities to persons in this state during the fiscal year and pay a fee of one-tenth of one percent of the aggregate sale price of the securities sold to persons in the state, but the latter fee shall not be less than three hundred fifty dollars ($350) or more than two thousand five hundred dollars ($2,500).

D. Except as permitted otherwise by Subsection C of this section, a registration statement must specify the amount of securities to be offered in this state and:

(1) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(2) any adverse order, judgment or decree entered by the securities agency or administrator in any state or by a court or the securities and exchange commission in connection with the offering.

E. A document filed under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or a predecessor act, within five years before the filing of a registration statement, may be incorporated by reference in the registration statement if the document is currently accurate.

F. The director by rule or order may permit the omission of an item of information or document from a registration statement.

G. In the case of a nonissuer offering, the director may not require information under Section 23 [58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986 or Subsection M of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the offering is to be made, or can be furnished by them without unreasonable effort or expense.

H. In the case of a registration under Section 22 or 23 [58-13B-22 or 58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986 by an issuer who has no public market for its shares and no significant earnings from continuing operations during the last five years or any shorter period of its existence, the director by rule or order may require as a condition of registration that the following securities be deposited in escrow for not more than three years:

(1) a security issued to a promoter, control person or affiliate within the three years immediately before the offering or to be issued to such persons for a consideration substantially less than the offering price; and

(2) a security issued to a promoter, control person or affiliate for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

The director by rule or order may determine the conditions of an escrow required under this subsection, but the director may not reject a depository solely because of location in another state.

I. The director by rule or order may require as a condition of registration under Section 22 or 23 [58-13B-22 or 58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986 that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security. The director by rule or order may determine the conditions of an impoundment arrangement required under this subsection, but the director may not reject a depository solely because of its location in another state.

J. If a security is registered pursuant to Section 21 or 22 [58-13B-21 or 58-13B-22 NMSA 1978] of the New Mexico Securities Act of 1986, the prospectus filed under the Securities Act of 1933 shall be delivered to each purchaser in accordance with the prospectus delivery requirements of the Securities Act of 1933. With respect to a security registered under Section 21 or 22 [58-13B-21 or 58-13B-22 NMSA 1978] of the New Mexico Securities Act of 1986, the director by rule or order may require the delivery of other material documents or information to each purchaser concurrent with or prior to the delivery of the prospectus.

K. If a security is registered pursuant to Section 23 [58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986, an offering document containing information the director by rule or order designates shall be delivered to each purchaser with or before the earliest of:

(1) the first written offer made to the purchaser by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by it as a participant in the distribution;

(2) confirmation of a sale made by or for the account of a person named in Paragraph (1) of this subsection;

(3) payment pursuant to a sale; or

(4) delivery pursuant to a sale.

L. A registration statement remains effective for one year after its effective date unless the director by rule or order extends the period of effectiveness. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction while the registration statement is effective, unless the director by rule or order provides otherwise. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this state, unless the director by rule or order provides otherwise. No registration statement is effective while a stop order is in effect under Subsection A of Section 25 [58-13B-25 NMSA 1978] of the New Mexico Securities Act of 1986.

M. During the period that an offering is being made pursuant to an effective registration statement, the director by rule or order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

N. A registration statement filed under Section 21 or 22 [58-13B-21 or 58-13B-22 NMSA 1978] of the New Mexico Securities Act of 1986 may be amended after its effective date to increase the securities specified to be offered and sold. The amendment becomes effective upon filing of the amendment and payment of an additional filing fee which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold. The effectiveness of the amendment relates back to the date or dates of sale of the additional securities being registered.

O. A registration statement filed under Section 23 [58-13B-23 NMSA 1978] of the New Mexico Securities Act of 1986 may be amended after its effective date to increase the securities specified to be offered and sold, provided that the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the director was informed. The amendment becomes effective when the director so orders and relates back to the date of sale of the additional securities being registered. A person filing an amendment shall pay an additional filing fee which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold.

P. Pursuant to Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, any securities which are offered and sold pursuant to Section 4 (5) of the Securities Act of 1933 or that are mortgage-related securities, as that term is defined in Section 3 (a) (41) of the Securities Exchange Act of 1934, being 15 U.S.C. 78c (a) (41), are required to comply with all applicable registration and qualification requirements of the New Mexico Securities Act of 1986 and the rules under that act and shall not be treated as obligations issued by the United States for purposes of that act.

History: Laws 1986, ch. 7, § 24.

Securities Act of 1933. - The federal Securities Act of 1933, referred to in Subsection J, appears as 15 U.S.C. §§ 77a to 77aa. Section 4 (5) of the Securities Act of 1933, referred to in Subsection P, appears as 15 U.S.C. § 77d(5).

Secondary Mortgage Market Enhancement Act of 1984. - Section 106(c) of The Secondary Mortgage Market Enhancement Act of 1984, referred to in Subsection P, appears as 15 U.S.C. § 77r-1(C).

Knowledge not requisite for conviction for violation of this section. - The wording of former 58-13-43A NMSA 1978 shows that knowledge that an item was a security was not a requisite for a conviction for violating former 58-13-4 NMSA 1978. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Scienter is not element of crime of offering to sell or selling unregistered securities. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Reliance on attorney's advice is not defense to the crime of selling or offering to sell unregistered securities. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

"Sale". - Former § 58-13-2F NMSA 1978 was controlling as to the proper definition of "sale" in a prosecution for the sale of unregistered securities under Subsection A of former § 58-13-4 NMSA 1978. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Fourth-degree felony. - Because a violation of Subsection A of former 58-13-4 NMSA 1978 was declared to be a felony without degree, the offense was construed to constitute a fourth-degree felony under former 31-18-13C NMSA 1978. State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 25, 32.

Application of blue sky laws to preincorporation subscriptions, 50 A.L.R.2d 1103.

What acts in connection with sale of unauthorized securities will render a person, other than officer or director of corporation, civilly liable under state securities acts (blue sky laws) for purchase price, 59 A.L.R.2d 1030.

Purchaser's right to set up invalidity of contract because of violation of state securities regulation as affected by doctrine of estoppel, 84 A.L.R.2d 479.

58-13B-25. Denial, suspension and revocation of registration.

A. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the director finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or as of the proposed effective date in the case of an order denying effectiveness, an amendment under Subsections N or O of Section 24 [58-13B-24 NMSA 1978] of the New Mexico Securities Act of 1986, as of its effective date, or a report under Subsection M of Section 24 [58-13B-24 NMSA 1978] of that act, is incomplete in any material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or a rule, order or condition lawfully imposed under that act has been violated, in connection with the offering by:

(a) the person filing the registration statement;

(b) the issuer, a partner, officer or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(c) an underwriter;

(3) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of a court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(a) the director may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction relied on; and

(b) the director may not enter an order under this paragraph on the basis of an order or injunction entered under the securities act of another state unless the order or injunction was based on facts that currently would constitute a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(5) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options or at unreasonable price to the public;

(7) a security sought to be registered pursuant to Section 21 [58-13B-21 NMSA 1978] of the New Mexico Securities Act of 1986 is not eligible for such registration;

(8) with respect to a security sought to be registered pursuant to Section 22 [58-13B-22 NMSA 1978] of that act, there has been a failure to comply with the undertaking required by Paragraph (4) of Subsection B of that section; or

(9) the applicant or registrant has failed to pay the proper filing fee, but the director may enter only a denial order under this paragraph and shall vacate the order when the deficiency is corrected.

B. The director may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to the director when the registration statement became effective unless the proceeding is instituted within the next thirty days after the registration statement became effective.

C. The director may vacate or modify a stop order entered under this section if the director finds that the conditions which prompted entry have changed or that it is otherwise in the public interest.

D. The director by order may summarily postpone or suspend the effectiveness of the registration statement pending final determination of an administrative proceeding. Upon the entry of the order, the director shall promptly notify each person specified in Subsection E of this section that the order has been entered and of the reasons for the postponement or suspension and that within fifteen days after the receipt of a written request from the person the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order remains in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of an opportunity for hearing to each person specified in Subsection E of this section, may modify or vacate the order or extend it until final determination. If a hearing is requested, it shall be conducted pursuant to Section 53 [58-13B-53 NMSA 1978] of the New Mexico Securities Act of 1986.

E. No stop order may be entered under any part of this section except the first sentence of Subsection D of this section without:

(1) appropriate prior notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered;

(2) opportunity for hearing; and

(3) written findings of fact and conclusions of law.

History: Laws 1986, ch. 7, § 25.

Securities bureau not constitutionally precluded from issuing sales permits. - N.M. Const., art. XI, § 6, does not preclude the legislature from designating the securities bureau as the body to issue permits for the sale of securities. 1981 Op. Att'y Gen. No. 81-20.

And corporation commission not authorized to issue permits. - With the repeal of 48-18-18, 1953 Comp., the authority of the corporation commission to issue permits for the sale of securities was cancelled. 1981 Op. Att'y Gen. No. 81-20.

Nothing in former 58-13-37 NMSA 1978 suggested that the authority of the corporation commission to review decisions conferred on the commission the authority to issue permits. 1981 Op. Att'y Gen. No. 81-20.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 59 and 67.

PART 4
EXEMPTIONS FROM REGISTRATION

58-13B-26. Exempt securities.

The following securities are exempt from Sections 58-13B-20 and 58-13B-29 NMSA 1978:

A. a security, including a revenue obligation, issued, insured or guaranteed by the United States, an agency or corporate or other instrumentality of the United States, an international agency or corporate or other instrumentality of which the United States and one or more foreign governments are members, a state, political subdivision of a state or an agency or corporate or other instrumentality, including the New Mexico mortgage finance authority, of one or more states or their political subdivisions; or a certificate of

deposit for any of the foregoing, but this exemption does not include a security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such security is directly or indirectly insured or guaranteed by, or such revenues are derived from, a person whose securities are exempt from registration by this subsection or Subsection B, C, D or E of this section; for purposes of this subsection, a nongovernmental industrial or commercial enterprise does not include the financing of student loans or single-family residential mortgage loans;

B. a security issued or guaranteed by Canada, a Canadian province or territory, a political subdivision of Canada or a Canadian province or territory, an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental combination or entity with which the United States maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

C. a security issued by and representing an interest in or a direct obligation of or a guarantee of a depository institution if the deposit or share accounts of the depository institution are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, the national credit union share insurance fund or a successor to the applicable agency created by federal law;

D. a security issued by and representing an interest in or direct obligation of or a guarantee of an insurance company organized under the laws of any state and authorized to do insurance business in this state;

E. a security issued or guaranteed by a public utility or holding company which is:

(1) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;

(2) regulated in respect to its rates and charges by a governmental authority of the United States or a state; or

(3) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada or a Canadian province or territory;

F. certificates of participation in real property leases or equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by the person would be exempt under this section;

G. an option issued by a clearing agency registered under the Securities Exchange Act of 1934, other than an off-exchange futures contract or substantially similar arrangement, if the security, currency, commodity or other interest underlying the option:

(1) is registered under Section 58-13B-21, 58-13B-22 or 58-13B-23 NMSA 1978;

(2) is exempt under this section; or

(3) is not otherwise required to be registered under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978];

H. a security issued by a person organized and operated not for private profit but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purpose, or a chamber of commerce or trade or professional association. The director may require by rule or order that a notice setting forth the material terms of the proposed sale and copies of any sales and advertising literature to be used be filed ten days prior to the sale of the security;

I. a promissory note, draft, bill of exchange or banker's acceptance that evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, is issued in denominations of at least fifty thousand dollars ($50,000) and receives a rating in one of the three highest rating categories from a nationally recognized securities rating organization; or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation or of a renewal;

J. an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

K. a security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan;

L. a membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of any state if not traded to the public;

M. a security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:

(1) (a) the issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Advisers Act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least three years preceding an offer or sale of a security claimed to be exempt under this paragraph; and

(b) the issuer has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years preceding an offer or sale of a security claimed to be exempt under this paragraph; or

(2) the issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars ($100,000,000); and

(3) in addition to Paragraphs [Paragraph] (1) or (2) of this subsection, the division has received prior to any sale exempted herein:

(a) a notice of intention to sell executed by the issuer setting forth the name and address of the issuer and the title of the securities to be offered in this state; and

(b) a filing fee of seven hundred dollars ($700) for open-end management companies or a filing fee of two hundred dollars ($200) for unit investment trusts;

In the event any offer or sale of an open-end management investment company is to be made more than twelve months after the date notice, pursuant to this subsection, is received by the director, another notice and payment of the applicable fee shall be required.

For the purpose of this subsection, an investment adviser is affiliated with another investment adviser if it controls, is controlled by or is under common control of another investment adviser; and

N. a security listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated or approved for designation upon issuance for inclusion on the national market system by the National Association of Securities Dealers, Inc., provided that such exchange or national marketing system shall be approved by rule or order of the director and subject to any additional requirements or conditions imposed by the director.

History: Laws 1986, ch. 7, § 26; 1989, ch. 176, § 4.

Cross-references. - As to the New Mexico mortgage finance authority, see 58-18-4 NMSA 1978.

Public Utility Holding Company Act. - The federal Public Utility Holding Company Act of 1935, referred to in Subsection E(1), appears as 15 U.S.C. §§ 79 to 79z-6.

Employee Retirement Income Security Act of 1974. - The federal Employee Retirement Income Security Act of 1974, referred to in Subsection J, appears dispersed primarily throughout Titles 5, 18 and 29 of the United States Code.

Securities Exchange Act of 1934. - The Securities Exchange Act of 1934, referred to in Subsection G, appears as 15 U.S.C. § 77a et seq. Section 6 of that act, referred to in Subsection N, appears as 15 U.S.C. § 77f.

Investment Company Act of 1940. - Section 8 of the federal Investment Company Act of 1940, referred to in Subsection M, appears as 15 U.S.C. § 80a-8.

Investment Advisers Act of 1940. - The Investment Advisers Act of 1940, referred to in Subsection M(1)(a), appears as 15 U.S.C. § 80b-1 et seq.

Former Subsection A exempted inter-tribal Indian council bonds from registration. - Any bond issued by the inter-tribal Indian council as authorized under 28-12-1 NMSA 1978 was exempt from registration under the State Securities Act by virtue of the provisions of Subsection A of former 58-13-29. 1969 Op. Att'y Gen. No. 69-32 (decided under former law).

"Commercial paper". - "Commercial paper," as used in Subsection H of former 58-13-29 NMSA 1978 was descriptive of the kind of paper and not of the mode in which it was issued or used in a particular situation. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Its ordinary meaning applies. - There being nothing indicating the New Mexico legislature intended a special meaning for "commercial paper," the ordinary meaning of "commercial paper" applies. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Not same meaning as used in U.C.C. - "Commercial paper," in Subsection H of former 58-13-29 NMSA 1978 did not have a meaning identical to "commercial paper" under New Mexico's U.C.C.; although a document might be commercial paper under both acts, the purposes of the two acts were not the same. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Obligation to pay cash within nine months of date of issuance in Subsection H of former 58-13-29 NMSA 1978 meant an obligation for payment in full within nine months of the date of issuance. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980) (decided under former law).

Scope of Sale of Insurance Security Act. - The Sale of Insurance Security Act covers more than just securities exempt under the Securities Act because it covers securities of all insurance companies whether or not authorized to do any business of insurance in this state. 1969 Op. Att'y Gen. No. 69-97 (decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 69 to 78.

58-13B-27. Exempt transactions.

The following transactions are exempted from Section 58-13B-20 NMSA 1978 and, unless otherwise noted, Section 58-13B-29 NMSA 1978:

A. an isolated non-issuer transaction, whether or not effected through a broker-dealer;

B. a non-issuer transaction in a security by a registered broker-dealer if:

(1) the issuer of the security has a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934;

(2) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety-day period immediately preceding the date of the offer or sale or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of that 1934 act;

(3) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Securities Exchange Act of 1934 or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

(4) the broker-dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Securities Exchange Act of 1934 or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(G)(2)(G) thereof, together with any other reports required to be filed at regular intervals under the Securities Exchange Act of 1934 by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this paragraph, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

(5) the issuer has filed and maintained with the director, for not less than ninety days before the transaction, information in such form as the director by rule specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under Section 12 of the Securities

Exchange Act of 1934, and under either Subparagraph (1) or (2), the issuer has paid a fee of five hundred dollars ($500);

C. a non-issuer transaction in a security:

(1) of a class outstanding in the hands of the public for not less than one hundred eighty days before the transaction if a nationally recognized securities manual designated by the director by rule or order contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within the last eighteen months and a statement of income or operations for either the last fiscal year before the date or the most recent year of operation; or

(2) if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; provided that the director may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption;

D. any non-issuer transaction effected by or through a registered broker-dealer registered in this state pursuant to an unsolicited order or offer to buy; provided that the director by rule shall require that the broker-dealer have the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of that form be preserved by the broker-dealer for a specified period;

E. a transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or a transaction among underwriters;

F. a transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

H. a transaction executed by a bona fide secured party without a purpose of evading the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978];

I. an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer;

J. the issuance and offer and sale of securities by any corporation organized under the laws of this state or any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state if:

(1) in the case of a corporation, its principal office and a majority of its full-time employees are located in this state or, in the case of a limited partnership, its principal place of business and eighty percent of its assets are located in this state;

(2) at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in this state;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986;

(4) an offering document is delivered to each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed one million five hundred thousand dollars ($1,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars ($350).

The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates who by reason of prior misconduct will not be eligible to utilize this exemption;

K. the issuance and offer and sale of securities by any corporation organized under the laws of this state or any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state if:

(1) in the case of a corporation, the total number of security holders does not and will not in consequence of the sale exceed twenty-five or, in the case of a limited partnership, the number of limited partners does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale; and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986.

The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Subsection C of Section 58-13B-28 NMSA 1978 shall not be deemed a condition of this exemption;

L. any offer or sale of a preorganization certificate or subscription if:

(1) such sale or offer is made by an agent, the agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

M. an offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of any state or of the United States which has and exercises the authority to regulate and supervise the depository institution. For the purpose of this subsection, supervision of an organization by an official or agency means that the official or agency by law has authority to:

(1) require disclosures to prospective investors similar to that required under Section 58-13B-23 NMSA 1978;

(2) impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) require a refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency except that the official or agency with the authority to require a refund need not include such amounts as the official or agency has by law determined to be proper organizational expenditures;

N. a transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than ninety days of their issuance, convertible securities or nontransferable warrants, if:

(1) no commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(2) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

O. a transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(1) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed but is not effective;

(2) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(3) no stop order has been entered by the director, the securities and exchange commission or other state's securities agency, and no proceeding or examination that may culminate in that kind of order is pending;

P. a transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(1) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(2) no stop order has been entered by the director, other state securities agencies or the securities and exchange commission and no proceeding or examination that may culminate in that kind of order being issued by the director is pending;

Q. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent and subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) the securities to be distributed are registered under the Securities Act of 1933 and written notice of the transaction is given to the director prior to the consummation of the transaction; or

(2) if the securities to be distributed are not required to be registered under the Securities Act of 1933, and written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the director at least ten days before the consummation of the transaction and the director does not disallow by order the exemption within the next ten days;

R. (1) a transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a

transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser may not be less than two hundred fifty thousand dollars ($250,000);

(b) each purchaser must pay cash either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) a transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development under Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association;

(3) a transaction between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection who may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

S. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, a party "engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, partnership or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of his work time in the daily management of a business entity that is directly engaged in and derives

at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, partnership or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars ($5,000,000) of annual gross income from such business; and

T. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or offer of such interests, wherever located, made by an entity principally operating in New Mexico where:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title or contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act.

For the purposes of this subsection, "principally operating in New Mexico" means a corporation organized under the law of this state, a corporation a majority in interest of whose shareholders are residents of this state, a partnership in which a majority in interest of the partners are residents of this state, a trust in which a majority in interest of the beneficiaries are residents of this state or a sole proprietorship in which the owner is a resident of this state.

History: Laws 1986, ch. 7, § 27; 1989, ch. 176, § 5.

National Housing Act. - Sections 203 and 211 of the National Housing Act, referred to in Subsection R(2), appear as 12 U.S.C. §§ 1709 and 1715b, respectively.

Securities Act of 1933. - The federal Securities Act of 1933, referred to in Subsections O, P, and Q, appears as 15 U.S.C. § 77a et seq.

Securities Exchange Act of 1934. - The Securities Exchange Act of 1934, referred to throughout this section, appears as 15 U.S.C. § 78a et seq. Sections 12, 13 and 15 of the act appear as 15 U.S.C. §§ 78l, 78m, and 78o, respectively.

Section's exemption not limited in application to close corporations. - The exemption of former 58-13-30 NMSA 1978 was not limited in application to the small close corporation where additional capital was to be raised by sales to friends and relatives familiar with the business. Bills v. All-Western Bowling Corp., 74 N.M. 430, 394 P.2d 274 (1964)(decided under former law).

Isolated transaction exemption, in Subsection A, of former 58-13-30 NMSA 1978 did not depend on whether offering was public. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

"Isolated" transactions. - Not being defined in the statutes, "isolated" is to be given its ordinary meaning; an ordinary meaning of "isolated" is "unique, occurring alone or once, sporadic, not likely to recur." State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980); State v. Shafer, 102 N.M. 629, 698 P.2d 902 (Ct. App. 1985)(both decided under former law).

An isolated transaction is one that is "unique; occurring alone or once, sporadic; not likely to recur." For the securities act to apply, the transactions must have some tangible connection to one another, more than just the same seller. White v. Solomon, 105 N.M. 366, 732 P.2d 1389 (Ct. App. 1986) modifying State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App. 1980) (decided under former law).

The term "isolated transaction" is not equivalent to "single transaction." The mere fact that defendants sold two incorporated businesses in separate transactions would not require a determination that they have brought themselves within the requirements of the New Mexico Securities Act. White v. Solomon, 105 N.M. 366, 732 P.2d 1389 (Ct. App. 1986)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 79 to 85.

Sales as "isolated" or "successive," or the like, under state securities acts, 1 A.L.R.3d 614.

58-13B-28. Provisions applicable to exemptions generally.

A. The director by order may deny or revoke an exemption specified in Section 58-13B-26 or 58-13B-27 NMSA 1978 with respect to a specific security or transaction if the director reasonably believes, after inquiry, that there is about to be or has been a violation of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] and that the action is necessary or appropriate for the protection of investors. Following entry of any such order, the procedures set forth in Section 58-13B-53 NMSA 1978 shall be followed. No order under this subsection may operate retroactively.

B. In any civil, criminal or administrative proceeding under that act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

C. The director may by rule require notice of filing for any exemption contained in Section 58-13B-26 or 58-13B-27 NMSA 1978, and may require payment of a fee not to exceed three hundred fifty dollars ($350) for any such notice of filing except that no fee shall be required for filing a notice of exemption pursuant to Subsection K of Section 58-13B-27 NMSA 1978 of that act.

D. The director is authorized to promulgate by rule a limited offering transactional exemption which shall further the objectives of compatibility with the exemptions from securities registration authorized by Section 19(c)(3)(C) of the Securities Act of 1933 and uniformity among the states. Such exemption shall be subject to such restrictions as to number of purchasers, investor suitability, disclosure of investment information and other restrictions as the director may determine are necessary for the protection of investors. The director may impose conditions with respect to persons or issuers who by reason of prior misconduct will not be eligible to utilize this exemption. Any person claiming this exemption shall file notice with the director of such claim and shall pay a fee of three hundred fifty dollars ($350).

E. The director by rule may exempt any other class of securities or transactions from Sections 58-13B-20 and 58-13B-29 NMSA 1978. Exemptions shall be subject to restrictions and conditions imposed by rule as the director may determine are necessary for the protection of investors.

History: Laws 1986, ch. 7, § 28; 1989, ch. 176, § 6.

Securities Act of 1933. - Section 19(c)(3)(C) of the Securities Act of 1933, referred to in Subsection D, appears as 15 U.S.C. § 77s(c)(3)(C).

Law reviews. - Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 78, 85.

58-13B-29. Filing of sales and advertising literature.

The director by rule or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser.

History: Laws 1986, ch. 7, § 29.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For note, "State Securities Law: A Valuable Tool for Regulating Investment Land Sales," see 7 N.M.L. Rev. 265 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 58.

Construction and effect of § 12 of the Securities Act of 1933 (15 U.S.C. § 77l) relating to civil liabilities arising in connection with prospectuses and communications in selling of securities, 50 A.L.R.2d 1228.

PART 5
FRAUDULENT AND OTHER PROHIBITED PRACTICES

58-13B-30. Offers, sales and purchases.

In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:

A. employ any device, scheme or artifice to defraud;

B. make an untrue statement of a material fact or fail to state a necessary material fact where such an omission would be misleading; or

C. engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

History: Laws 1986, ch. 7, § 30.

Cross-references. - For uniform jury instructions for fraudulent practices, see UJI 14-4302.

Fraud essential element of securities fraud. - It is necessary to prove conduct that would constitute the crime of fraud before one can be found guilty of securities fraud. State v. McCall, 101 N.M. 616, 686 P.2d 958 (Ct. App. 1983), rev'd on other grounds, 101 N.M. 32, 677 P.2d 1068 (1984).

Fraud and fraudulent securities practice separate offenses. - An analysis of the offense of fraud and the crime of fraudulent securities practice reveals that the two offenses have different elements; therefore, a defendant may be convicted and sentenced for both general fraud and securities fraud. State v. Ross, 104 N.M. 23, 715 P.2d 471 (Ct. App. 1986).

This offense does not require proof of the same elements of general fraud, as general fraud is defined under 30-16-6 NMSA 1978. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

Defendant's intent in making fraudulent statement irrelevant under section. - Although in common-law fraud the plaintiff must prove that the defendant intentionally deceived him, the intent with which the defendant makes the statement is irrelevant under the terms of this section, which requires only that the statement made be false and material or that the omission be of a material fact necessary to make true the statement made. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Under the former law, embodied in 58-13-39A NMSA 1978, defendants need not have had specific intent to defraud purchasers in order to be guilty of securities fraud. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986).

Standard of proof. - Since the term "fraud," as used in this section, is not the equivalent of actual fraud or conscious deceit, the quantum of proof requirements as to actual fraud are not controlling, and the trial court correctly instructed the jury that the standard of proof was by a preponderance of the evidence. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Sufficient evidence to establish requisite fraudulent intent. - See State v. Gardner, 103 N.M. 320, 706 P.2d 862 (Ct. App. 1985)(decided under former law).

By failing to object, defendant waives not requiring jury finding on security's presence. - There was no reversible error where the jury instructions failed to require the jury to make a finding that the essential element of a security was present in the case, and further failed to set forth the legal test of a security for jury deliberation, because defendant failed to object or to tender his own instruction. State v. Shade, 104 N.M. 710, 726 P.2d 864 (Ct. App. 1986)(decided under former law).

False statement that securities sold would be registered. - Defendants violated the New Mexico Securities Act in making a false statement to plaintiff that securities sold to plaintiff would be registered, when in fact defendants had no intention of registering plaintiff's stock, and one defendant knew that his representation to that effect was false at the time he made the statement to plaintiff. Stone v. Fossil Oil & Gas, 657 F. Supp. 1449 (D.N.M. 1987)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State §§ 12, 13, 97 to 106.

Corporate insiders nondisclosure of information to seller or purchaser of corporation's stock as manipulative or deceptive device prohibited by § 10(b) of the Securities Exchange Act of 1934 (15 U.S.C., § 78j(b)), 22 A.L.R.3d 793.

When is it unnecessary to show direct reliance on misrepresentation or omission in civil securities fraud action under § 10(b) of the Securities Exchange Act of 1934 (15 USCS § 78j(b)) and SEC Rule 10b-5 (17 CFR § 240.10b, § 240.10b-5), 93 A.L.R. Fed. 444.

58-13B-31. Market manipulation.

Without limiting the general applicability of Section 30 [58-13B-30 NMSA 1978] of the New Mexico Securities Act of 1986, a person shall not, directly or indirectly:

A. quote a fictitious price with respect to a security;

B. effect a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

C. enter an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price, for the sale of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

D. enter an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been or will be entered by or for the same or affiliated person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

E. effect, alone or with one or more other persons, a series of transactions in a security to:

(1) create active trading, actual or apparent, in that security; or

(2) raise or depress the price of the security, in each case for the purpose of inducing the purchase or sale of that security or of other securities of the same or another issuer by others; or

F. employ any other deceptive or fraudulent device, scheme or artifice to manipulate the market in a security.

History: Laws 1986, ch. 7, § 31.

Fraud essential element of securities fraud. - It is necessary to prove conduct that would constitute the crime of fraud before one can be found guilty of securities fraud. State v. McCall, 101 N.M. 616, 686 P.2d 958 (Ct. App. 1983), rev'd on other grounds, 101 N.M. 32, 677 P.2d 1068 (1984) (decided under former law).

Defendant's intent in making fraudulent statement irrelevant under section. - Although in common-law fraud the plaintiff must prove that the defendant intentionally deceived him, the intent with which the defendant makes the statement is irrelevant under the terms of this section, which requires only that the statement made be false and material or that the omission be of a material fact necessary to make true the statement made. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Standard of proof. - Since the term "fraud," as used in this section, is not the equivalent of actual fraud or conscious deceit, the quantum of proof requirements as to actual fraud are not controlling, and the trial court correctly instructed the jury that the standard of proof was by a preponderance of the evidence. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Sufficient evidence to establish requisite fraudulent intent. - See State v. Gardner, 103 N.M. 320, 706 P.2d 862 (Ct. App. 1985)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State §§ 12, 13, 97 to 106.

Corporate insiders nondisclosure of information to seller or purchaser of corporation's stock as manipulative or deceptive device prohibited by § 10(b) of the Securities Exchange Act of 1934 (15 U.S.C., § 78j(b)), 22 A.L.R.3d 793.

58-13B-32. Inside information.

It is unlawful for an issuer or any person who is an officer, director or affiliate of an issuer or any other person whose relationship to the issuer gives him access, directly or indirectly, to material information about the issuer not generally available to the public, to purchase or sell any security of the issuer in this state at a time when he knows material information about the issuer gained from such relationship, which information:

A. would significantly affect the market price of that security;

B. is not generally available to the public; and

C. is not intended to be available to the public unless he has reason to believe and believes that the person selling to or buying from him is also in possession of the information.

Provided that activities permitted under the Securities Exchange Act of 1934, its rules and regulations shall not constitute a violation of this section.

History: Laws 1986, ch. 7, § 32.

Securities Exchange Act of 1934. - The Securities Exchange Act of 1934, referred to in the last paragraph, appears as 15 U.S.C. § 78a et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Proper measure and elements of recovery for insider shortswing transaction, 86 A.L.R. Fed. 16.

58-13B-33. Prohibited transactions by investment advisers and investment adviser representatives.

A. It is unlawful for an investment adviser or an investment adviser representative to, directly or indirectly:

(1) employ a device, scheme or artifice to defraud a client; or

(2) engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon a client.

B. It is unlawful for any investment adviser or investment adviser representative to enter into, extend or renew any written investment advisory contract unless it provides that:

(1) no share of capital gain upon or capital appreciation of the funds or portion of the funds of the client shall be used as a basis for the determination of the compensation of the investment adviser;

(2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

C. Paragraph (1) of Subsection B of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. As used in Paragraph (2) of Subsection B of this section, "assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

History: Laws 1986, ch. 7, § 33.

Fraud essential element of securities fraud. - It is necessary to prove conduct that would constitute the crime of fraud before one can be found guilty of securities fraud. State v. McCall, 101 N.M. 616, 686 P.2d 958 (Ct. App. 1983), rev'd on other grounds, 101 N.M. 32, 677 P.2d 1068 (1984) (decided under former law).

Defendant's intent in making fraudulent statement irrelevant under section. - Although in common-law fraud the plaintiff must prove that the defendant intentionally deceived him, the intent with which the defendant makes the statement is irrelevant under the terms of this section, which requires only that the statement made be false and material or that the omission be of a material fact necessary to make true the statement made. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Standard of proof. - Since the term "fraud," as used in this section, is not the equivalent of actual fraud or conscious deceit, the quantum of proof requirements as to actual fraud are not controlling, and the trial court correctly instructed the jury that the standard of proof was by a preponderance of the evidence. Treider v. Doherty & Co., 86

N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Sufficient evidence to establish requisite fraudulent intent. - See State v. Gardner, 103 N.M. 320, 706 P.2d 862 (Ct. App. 1985)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State §§ 12, 13, 97 to 106.

Corporate insiders nondisclosure of information to seller or purchaser of corporation's stock as manipulative or deceptive device prohibited by § 10(b) of the Securities Exchange Act of 1934 (15 U.S.C., § 78j(b)), 22 A.L.R.3d 793.

58-13B-34. Misleading filings.

No person may make or cause to be made, in a document filed with the director or in a proceeding under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978], a statement that the person knows or has reasonable grounds to know is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect.

History: Laws 1986, ch. 7, § 34.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State § 60.

Effect, as between stockbroker and customer, of broker's mistaken sale of stock or other security other than that intended by customer, 48 A.L.R.3d 513.

58-13B-35. Unlawful representations concerning licensing, registration or exemption.

A. Neither the fact that an application for licensing or a registration statement has been filed under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] nor the fact that a person is licensed or a security is registered under that act constitutes a finding by the director that any document filed under that act is true, complete and not misleading. Neither of those facts nor the fact that an exemption or exception is

available for a security or a transaction means that the director has passed upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

B. It is unlawful to make, or cause to be made, to a purchaser, customer or client, a representation inconsistent with Subsection A of this section.

History: Laws 1986, ch. 7, § 35.

PART 6
ENFORCEMENT AND CIVIL LIABILITY

58-13B-36. Investigations; subpoena power.

A. The director may make any public or private investigation, within or without this state, as he finds necessary to determine whether a person has violated or is about to violate the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or any rule or order of the director under that act or to aid in enforcement of that act or in the rules under that act.

B. The director may publish information concerning a violation of the New Mexico Securities Act of 1986 or a rule or order of the director under that act or concerning types of securities or acts or practices in the offer, sale or purchase of types of securities which may operate as a fraud or deceit.

C. For purposes of an investigation or proceeding under the New Mexico Securities Act of 1986, the director or any officer or employee designated by the director by rule or order may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production, by subpoena or otherwise, of books, papers, correspondence, memoranda, agreements or other documents or records which the director determines to be relevant or material to the investigation or proceeding.

D. The director may require or permit a person to file a statement, under oath or otherwise as the director determines, as to the facts and circumstances concerning the matter to be investigated.

E. The director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the New Mexico Securities Act of 1986 if the activities had occurred in this state.

F. If a person does not testify or produce the documents required by the director or a designated officer or employee pursuant to subpoena, the director or designated officer

or employee may apply to the court for an order compelling compliance. A request for order of compliance may be addressed to either:

(1) the district court located in Santa Fe county or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is subject to service of process by this state; or

(2) a court of another state having jurisdiction over the person refusing to testify or produce, if the person is not subject to service of process in this state.

G. Not later than the time the director requests an order for compliance, the director shall either send notice of the request by registered or certified mail, return receipt requested, to the respondent at the last known address or take other steps which are reasonably calculated to give the respondent actual notice.

History: Laws 1986, ch. 7, § 36.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "New Mexico Restraint of Trade Statutes - A Legislative Proposal," see 9 N.M.L. Rev. 1 (1978-79).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulations - State § 89.

Civil liability of one making false or fraudulent return of process, 31 A.L.R.3d 1393.

58-13B-37. Enforcement.

A. If the director reasonably believes, whether or not based upon an investigation conducted under Section 36 [58-13B-36 NMSA 1978] of the New Mexico Securities Act of 1986, that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of that act or any rule or order under that act, the director may, subject to the right of that person to obtain a subsequent hearing pursuant to Section 53 [58-13B-53 NMSA 1978] of that act, in addition to any specific powers granted under that act, issue a cease and desist order, without a prior hearing, against the person engaged in the prohibited activities, directing him to desist and refrain from further illegal activity.

B. When it appears to the director, whether or not based upon an investigation conducted under Section 36 [58-13B-36 NMSA 1978] of the New Mexico Securities Act of 1986, that a person has violated that act or a rule or order of the director under that act, the director, in addition to any specific power granted under that act may, after

notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

(1) issue a cease and desist order against the person;

(2) censure the person if that person is a licensed broker-dealer, sales representative, investment adviser or investment adviser representative;

(3) bar or suspend that person from association with a licensed broker-dealer or investment adviser in this state;

(4) issue an order against an applicant, licensed person or other person who violates that act, imposing a civil penalty up to a maximum of two thousand five hundred dollars ($2,500) for a single violation or of twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; or

(5) initiate one or more of the actions specified in Section 38 [58-13B-38 NMSA 1978] of that act as applicable.

C. For purposes of determining the amount of civil penalty imposed pursuant to Paragraph (4) of Subsection B of this section, the director shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or a rule or order of the director under that act, the number of persons adversely affected by the conduct and the resources of the person committing the violation.

History: Laws 1986, ch. 7, § 37.

58-13B-38. Power of court to grant relief.

A. Upon a showing by the director that a person has violated or is about to violate the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or any rule or order of the director under that act, the district court of Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of two thousand five hundred dollars ($2,500) for a single violation or of twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or series of related proceedings;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to investors;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

B. Upon a showing that the defendant is about to violate the New Mexico Securities Act of 1986 or a rule or order of the director under that act, a court may issue:

(1) a temporary restraining order;

(2) a temporary or permanent injunction;

(3) a writ of prohibition or mandamus; or

(4) an order for costs and expenses.

C. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 35 [58-13B-35 NMSA 1978] of the New Mexico Securities Act of 1986 in connection with the transactions constituting violations of that act.

D. The court shall not require the director to post a bond in an action under this section.

E. Upon a showing by the administrator or securities agency of another state that a person has violated the securities act of that state or a rule or order of the administrator or securities agency of that state, the district court of Santa Fe county or other appropriate district court may grant, in addition to any other legal or equitable remedies, one or more of the following remedies:

(1) appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state; or

(2) other relief as the court deems just.

History: Laws 1986, ch. 7, § 38.

58-13B-39. Criminal penalties.

A. A person who willfully violates a provision of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or a rule or order under that act is guilty of a third

degree felony and may, upon conviction, be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years or both for each violation.

B. The director may refer such evidence as is available concerning violations of the New Mexico Securities Act of 1986 or any rule or order under that act to the attorney general or the proper district attorney, who may, with or without such a reference from the director, institute the appropriate criminal proceedings.

C. The attorney general or district attorney may request assistance from the director or employees of the division.

D. No indictment or information may be brought under this section more than five years after the alleged violation.

E. Nothing in the New Mexico Securities Act of 1986 limits the power of the state to punish a person for conduct which constitutes a crime under other law.

History: Laws 1986, ch. 7, § 39.

Cross-references. - For uniform jury instructions for securities offenses, see UJI 14-4301 et seq.

Knowledge not requisite for conviction for violation of former 58-13-4 NMSA 1978. - The wording of Subsection A of former 58-13-43 NMSA 1978 showed that knowledge that an item was a security was not a requisite for a conviction for violating former 58-13-4 NMSA 1978. State v. Sheets, 94 N.M. 356, 610 P.2d 760 (Ct. App.), cert. denied, 94 N.M. 675, 615 P.2d 992 (1980).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Annual Survey of New Mexico Securities Law, see 17 N.M.L. Rev. 311 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 110.

58-13B-40. Civil liability.

A. A person who offers or sells a security in violation of Subsection A of Section 58-13B-3, Subsection A of Section 58-13B-5, Section 58-13B-20, Subsections K and L of Section 58-13B-24, Section 58-13B-30, Section 58-13B-32, Section 58-13B-33, Subsection B of Section 58-13B-35 NMSA 1978 or of a condition imposed under Subsection H, I or J of Section 58-13B-24 NMSA 1978 or any rule of the director relating to any of those sections is liable to the person purchasing the security except that no such liability will exist in the case of failure to file any notice of claim of exemption pursuant to Subsection K of Section 58-13B-27 NMSA 1978. Upon tender of

the security, the purchaser shall recover the consideration paid for the security and interest at the legal rate of this state from the date of payment, costs and reasonable attorneys' fees, less the amount of income received on the security. If the purchaser no longer owns the security, he shall recover damages. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate of this state from the date of disposition of the security. Tender requires only notice of willingness to exchange the security for the amount specified.

B. A person who offers or sells a security in violation of Subsection B of Section 58-13B-30 NMSA 1978 is not liable under Subsection A of this section if the purchaser knew that a statement of a material fact was untrue or that there was an omission of a statement of a material fact.

C. Any person who purchases a security in violation of Section 58-13B-30, 58-13B-32 or 58-13B-33 NMSA 1978 is liable to the person selling the security. The person selling the security may sue to recover the security, plus any income received by the purchaser on the security upon tender of the consideration received, costs and reasonable attorneys' fees, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser acquired it or disposed of it, whichever is greater, over the consideration paid for the security, plus interest at the legal rate from the date of disposition. Tender requires only notice of willingness to pay the amount specified in exchange for the security.

D. A person who purchases a security in violation of Subsection B of Section 58-13B-30 NMSA 1978 is not liable under Subsection C of this section if the seller knew that a statement of a material fact was untrue or that there was an omission of a statement of a material fact.

E. A person who willfully participates in any act or transaction in violation of Section 58-13B-31 NMSA 1978 is liable to a person who purchases or sells a security, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction. Damages are the difference between the price at which the securities were purchased or sold and the market value the securities would have had at the time of the person's purchases or sale in the absence of the act or transaction, plus interest at the legal rate of this state from the date of the act or transaction and reasonable attorneys' fees.

F. A person who directly or indirectly controls another person who is liable under Subsection A, B, C, D or E of this section, a partner, officer or director of the person liable, a person occupying a similar status or performing similar functions, any agent of the person liable, an employee of the person liable if the employee materially aids in the act, omission or transaction constituting the violation and a broker-dealer or sales representative who materially aids in the act, omission or transaction constituting the violation, are also liable jointly and severally with and to the same extent as the other person, but it is a defense that they did not know, and in the exercise of reasonable care

could not have known, of the existence of the facts by which the liability exists. Contribution among the several persons liable is the same as in cases arising out of breach of contract.

G. The legal rate of interest as used in the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] shall be the rate set by Subsection A of Section 56-8-4 NMSA 1978 or its successor statutes.

H. In any action brought pursuant to the New Mexico Securities Act of 1986, other than one brought by the state of New Mexico, if it appears to the court that the suit was groundless or brought for purposes of harassment, the plaintiffs may be liable for court costs and reasonable attorneys' fees incurred by the defendant.

History: Laws 1986, ch. 7, § 40; 1989, ch. 176, § 7.

As no special relationship between purchasers and land developers, no constructive fraud arises. - Constructive fraud arises only when there exists a special confidential or fiduciary relationship between the parties to a transaction or contract; it is not actual fraud in the sense of actual evil design or contrivance. No such confidential or fiduciary relationship exists between purchasers and land developers. Baum v. Great W. Cities, Inc., 703 F.2d 1197 (10th Cir. 1983)(decided under former law).

Section affords plaintiff remedy of voiding fraudulent transaction notwithstanding plaintiff's later delay in disposing of the stock. Treider v. Doherty & Co., 86 N.M. 735, 527 P.2d 498 (Ct. App.), cert. denied, 86 N.M. 730, 527 P.2d 493 (1974) (decided under former law).

Fraud allegations in summary judgment motion. - Allegations of common-law and security fraud must be construed most favorably to the plaintiff in his opposition to a motion for summary judgment. Jones v. Ford Motor Co., 599 F.2d 394 (10th Cir. 1979)(decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M.L. Rev. 251 (1973).

For comment, "Securities: Private Placements in New Mexico," see 7 N.M.L. Rev. 105 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 95 to 110.

What acts in connection with sale of unauthorized securities will render a person, other than officer or director of a corporation, civilly liable under state securities acts (blue sky laws) for purchase price, 59 A.L.R.2d 1030.

Waiver of rights or release of liability in advance of controversy, under state securities act or blue sky law, 61 A.L.R.2d 1308.

When is it unnecessary to show direct reliance on misrepresentation or omission in civil securities fraud action under § 10(b) of the Securities Exchange Act of 1934 (15 USCS § 78j(b)) and SEC Rule 10b-5 (17 CFR § 240.10b, § 240.10b-5), 93 A.L.R. Fed. 444.

58-13B-41. Civil statute of limitations.

No person may sue under Section 40 [58-13B-40 NMSA 1978] of the New Mexico Securities Act of 1986 unless suit is brought:

A. within two years after the discovery of the violation or after discovery should have been made by the exercise of reasonable diligence; and

B. within five years after the act or transaction constituting the violation.

History: Laws 1986, ch. 7, § 41.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 90.

43A C.J.S. Injunctions § 133.

58-13B-42. Rescission and settlement offers.

A. No purchaser may commence an action under Subsection A of Section 40 [58-13B-40 NMSA 1978] of the New Mexico Securities Act of 1986 if, before suit is commenced, the purchaser:

(1) receives a written offer:

(a) stating the respect in which liability under Section 40 of that act may have arisen and fairly advising the purchaser of the purchaser's rights of rescission;

(b) if the basis for relief under Subsection A of Section 40 [58-13B-40 NMSA 1978] of that act is a violation of Subsection B of Section 30 [58-13B-30 NMSA 1978] of that act, including financial and other information necessary to correct all material misstatements

or omissions in the information which was required by that act to be furnished to the purchaser as of the time of the sale of the security to the purchaser;

(c) offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, plus interest at the legal rate of this state from the date of payment, less income received thereon, or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed under Subsection A of Section 40 [58-13B-40 NMSA 1978] of that act plus attorneys' fees; and

(d) stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of its receipt by the purchaser or such shorter or longer time as the director by order prescribes; and

(2) fails to accept the offer in writing within the period specified under Subparagraph (d) of Paragraph (1) of this subsection.

B. No seller may commence an action under Subsection C of Section 40 [58-13B-40 NMSA 1978] of the New Mexico Securities Act of 1986 if, before suit is commenced, the seller receives a written offer:

(1) stating the respect in which liability under Section 40 [58-13B-40 NMSA 1978] of that act may have arisen and fairly advising the seller of the seller's rights of rescission;

(2) offering to return the security, plus the amount of any income received thereon, upon payment of the consideration received, or if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with Subsection C of Section 40 [58-13B-40 NMSA 1978] of that act plus attorneys' fees; and

(3) providing that the offer may be accepted by the seller at any time within a specified period of not less than thirty days after the date of its receipt by the seller or such shorter or longer time as the director by order may prescribe, and the seller has failed to accept the offer in writing within the specified period.

C. The director by rule may prescribe the form in which the information specified in Subsections A and B of this section must be contained in any offer made pursuant to those subsections.

D. Every offer under Subsection A or B of this section shall be delivered to the offeree or sent in a manner which assures actual receipt by the offeree.

E. If, after acceptance, a rescission offer is not performed in accordance with either its terms or this section, the offeree may obtain relief under Section 40 [58-13B-40 NMSA 1978] of the New Mexico Securities Act of 1986 without regard to this section.

History: Laws 1986, ch. 7, § 42.

58-13B-43. General liability provisions.

A. Except as provided in Section 42 [58-13B-42 NMSA 1978] of the New Mexico Securities Act of 1986, a tender required under that act may be made before entry of judgment.

B. The rights and remedies provided by the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] are in addition to any other rights or remedies that may exist at law or in equity, but that act does not create any claim for relief not specified in Part VI [58-13B-36 to 58-13B-43 NMSA 1978] of that act.

C. A claim for relief under the New Mexico Securities Act of 1986 survives the death of a person who might have obtained relief as a plaintiff or defendant.

History: Laws 1986, ch. 7, § 43.

PART 7
ADMINISTRATION

58-13B-44. Administration of act.

A. The New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] shall be administered by the director. The director shall be appointed by the superintendent of regulation and licensing subject to confirmation by the senate. He shall be chosen solely on the basis of fitness to perform the duties of the office and shall have a minimum of five years' experience in the financial or securities field at the time of his appointment. The division is a division of the regulation and licensing department under the supervision and control of the superintendent of regulation and licensing, subject, however, to the exemptions set forth in Section 9-16-11 NMSA 1978. The director shall, with the approval of the superintendent of regulation and licensing, hire under the Personnel Act and assign duties to employees necessary to assist him in his duties.

B. The director may by rule impose fees as necessary for examination, claims of exemptions, requests for advisory opinions and other miscellaneous filings for which no fees are specified elsewhere in the New Mexico Securities Act of 1986 and may also require payment of administrative assessments including reasonable costs of investigation resulting from enforcement actions taken pursuant to Sections 58-13B-36 through 58-13B-38 NMSA 1978.

C. All fees collected by the director shall be paid to the state treasurer for deposit and transfer as provided in Section 9-16-14 NMSA 1978.

History: Laws 1986, ch. 7, § 44; 1987, ch. 298, § 4; 1989, ch. 176, § 8.

Cross-references. - For filing of rules and regulations with the records center, see 14-4-3 NMSA 1978.

For transfers by the supreme court librarian to the records center, see 14-4-7 NMSA 1978.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

Corporation commission's authority to issue security permits was cancelled by the legislature with the repeal of 48-18-18, 1953 Comp. 1981 Op. Att'y Gen. No. 81-20 (decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 86.

58-13B-45. Prohibitions on use of information.

The director and employees of the division shall not use information filed with or obtained by the division for their personal gain or benefit or the gain or benefit of a third party. The director and employees of the division shall not conduct securities dealings based upon public information filed with the division before there has been a sufficient period for the securities markets to assimilate the information.

History: Laws 1986, ch. 7, § 45.

58-13B-46. Public information; confidentiality.

A. Except as provided in Subsection B of this section, information and documents filed with or obtained by the director are public information and are available for public examination under the Public Records Act.

B. The following information and documents do not constitute public information under Subsection A of this section and are confidential:

(1) information obtained by the director in connection with an investigation pursuant to Section 36 [58-13B-36 NMSA 1978] of the New Mexico Securities Act of 1986 except that information which is introduced at hearing constitutes public information unless otherwise ordered by the director; and

(2) information or documents filed with the director in connection with a registration statement filed under Part III [58-13B-20 to 58-13B-25 NMSA 1978] of the New Mexico Securities Act of 1986 or a report under Section 13 [58-13B-13 NMSA 1978] of that act which constitute trade secrets or commercial or financial information of a person for

which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law. Any person claiming a privilege under this subsection must specifically designate the items being filed for which a privilege is claimed and the basis on which a privilege is asserted.

C. Notwithstanding Subsection B of this section, the director may disclose any information obtained in connection with an investigation pursuant to Section 36 [58-13B-36 NMSA 1978] of the New Mexico Securities Act of 1986 to the agencies and administrators specified in Subsection A of Section 47 [58-13B-47 NMSA 1978] of that act, but only if disclosure is provided for the purpose of a civil, administrative or criminal enforcement investigation or proceeding.

D. The New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] does not create or derogate any privilege existing at common law, by statute, rule or otherwise.

History: Laws 1986, ch. 7, § 46.

Public Records Act. - See 14-13-1 to 14-3-16, and 14-3-18 NMSA 1978.

58-13B-47. Cooperation with other agencies.

A. To encourage uniform interpretation and administration of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] and effective securities regulation and enforcement, the director and the employees of the division may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of one or more states, Canadian provinces or territories, or another country, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies and any governmental law enforcement or regulatory agency.

B. The cooperation authorized by Subsection A of this section includes but is not limited to the following:

(1) establishing a central depository for licensing or registration under the New Mexico Securities Act of 1986 and for documents or records required or allowed to be maintained under that act;

(2) making a joint license or registration, examination or investigation;

(3) holding a joint administrative hearing;

(4) filing and prosecuting a joint civil or administrative proceeding;

(5) sharing and exchanging personnel;

(6) sharing and exchanging information and documents subject to the restrictions of Subsections B and C of Section 46 [58-13B-46 NMSA 1978] of the New Mexico Securities Act of 1986 and the Public Records Act; and

(7) formulating, in accordance with the New Mexico Securities Act of 1986, rules or proposed rules on matters, statements of policy, guidelines and interpretative opinions and releases.

History: Laws 1986, ch. 7, § 47.

Commodity futures trading commission. - The federal commodity futures trading commission, referred to in Subsection A, appears as 7 U.S.C. § 4a.

Public Records Act. - See 14-3-1 to 14-3-16, 14-3-18 NMSA 1978.

Securities and exchange commission. - The federal securities and exchange commission, referred to in Subsection A, appears as 15 U.S.C. § 78d.

Securities investor protection corporation. - Establishment of the federal securities investor protection corporation, referred to in Subsection A, appears as 15 U.S.C. § 78ccc.

58-13B-48. Rules, forms and orders.

A. In addition to specific authority otherwise granted by the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978], the director may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of that act. Such rules or forms shall include but need not be limited to the following:

(1) rules or forms governing registration statements, applications and reports; and

(2) rules defining any terms, whether or not used in that act, insofar as the definitions are not inconsistent with the provisions of that act. For the purpose of rules or forms, the director may classify securities, persons and matter within the director's jurisdiction and prescribe different requirements for different classes.

B. Unless specifically provided in the New Mexico Securities Act of 1986 to the contrary, no rule, form or order may be adopted, amended or rescinded unless the director finds that the action is:

(1) in the public interest and appropriate for the protection of investors; and

(2) consistent with the purposes fairly intended by the policy and provisions of that act.

Where a particular section of that act provides any additional standard, that standard shall be applicable in addition to this subsection.

C. The director may use his own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

D. The director by rule or order may prescribe:

(1) the form and content of financial statements required under the New Mexico Securities Act of 1986;

(2) the circumstances under which consolidated financial statements must be filed; and

(3) whether a required financial statement must be certified by an independent certified public accountant. Unless provided otherwise by rule or order, all financial statements shall be prepared in accordance with generally accepted accounting practices.

E. All rules, forms and orders of the director shall be published.

History: Laws 1986, ch. 7, § 48.

Cross-references. - For filing of rules and regulations with the records center, see 14-4-3 NMSA 1978.

For transfers by the supreme court librarian to the records center, see 14-4-7 NMSA 1978.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Corporation commission's authority to issue security permits was cancelled by the legislature with the repeal of 48-18-18, 1953 Comp. 1981 Op. Att'y Gen. No. 81-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 86.

58-13B-49. Good faith reliance.

No provision of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] imposing liability applies to an act done or omitted in good faith in conformity with a rule, order or form adopted by the director, notwithstanding that the rule, order or form may later be amended, repealed or determined by judicial or other authority to be invalid.

History: Laws 1986, ch. 7, § 49.

58-13B-50. Consent to service of process.

A. An applicant for licensing or registration under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] or an issuer who proposes to offer a security in this state through a person acting on an agency basis in the common-law sense shall file with the director, in the form the director prescribes by rule, an irrevocable consent appointing the director the person's attorney to receive service of lawful process in a noncriminal proceeding against the person, a successor or personal representative which arises under that act or rule or order of the director under that act after the consent is filed, with the same force and validity as if served personally on the person filing the consent.

B. A person who has filed a consent complying with Subsection A of this section in connection with a previous application for registration need not file an additional consent.

C. If a person, including a nonresident of this state, engages in conduct prohibited or made actionable by the New Mexico Securities Act of 1986 or a rule or order of the director under that act and the person has not filed a consent to service of process under Subsection A of this section and personal jurisdiction over the person cannot otherwise be obtained in this state, the engaging in the conduct constitutes the appointment of the director as the person's attorney to receive service of lawful process in a noncriminal proceeding against the person, a successor or personal representative which grows out of the conduct.

D. A consent to service filed on behalf of an issuer organized or domiciled under the laws of a foreign country whose securities are being offered in this state otherwise than by or through underwriters licensed in this state must be accompanied by an opinion of counsel stating that judgments of United States courts will be recognized by the courts of the country in which the issuer was organized or is domiciled.

E. Service under Subsections A and C of this section may be made by leaving a copy of the process in the office of the director, but it is not effective unless:

(1) the plaintiff, who may be the director, sends notice within ten days of the service and a copy of the process by registered or certified mail, return receipt requested, to the defendant or respondent at the last known address or takes other steps which are reasonably calculated to give actual notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the proceeding on or before the return day of the process, if any, or within such further time as the court, or the director in a proceeding before the director, allows.

F. Service as provided in Subsection E of this section may be used in a proceeding before the director or by the director in a proceeding in which the director is the moving party.

G. If the process is served under Subsection E of this section, the court, or the director in a proceeding before the director, shall order continuances as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

History: Laws 1986, ch. 7, § 50.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 92.

58-13B-51. Interpretative opinions.

The director may honor requests from interested persons for interpretative opinions as to the application of the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] to any transaction.

History: Laws 1986, ch. 7, § 51.

58-13B-52. Administrative files and records.

A. The director shall keep a register of:

(1) all applications for licensing and registration under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978];

(2) all licenses and registration statements that become effective under that act;

(3) all disciplinary and enforcement orders issued and reports of investigation made under that act;

(4) all interpretative opinions rendered; and

(5) all other orders issued under that act.

B. The director shall maintain records consistent with applicable law and shall by rule set the periods of time for which particular files and records shall be retained.

C. All records required to be maintained by Subsections A and B of this section may be maintained in computer or microfilm format or any other form of data storage.

D. Upon request, the director shall certify under the seal of office a copy as being a true and correct copy of the records maintained by the office. The director by rule may make reasonable charges for the furnishing or certifying of copies. In an investigation or proceeding under the New Mexico Securities Act of 1986, a copy so certified is prima facie evidence of the contents of the records certified.

History: Laws 1986, ch. 7, § 52.

Cross-references. - For filing of rules and regulations with the records center, see 14-4-3 NMSA 1978.

For transfers by the supreme court librarian to the records center, see 14-4-7 NMSA 1978.

Corporation commission's authority to issue security permits was cancelled by the legislature with the repeal of 48-18-18, 1953 Comp. 1981 Op. Att'y Gen. No. 81-20 (decided under former law).

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 86.

58-13B-53. Administrative proceeding.

A. The director may commence an administrative proceeding under the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

B. Upon entry of a notice of intent or summary order the director shall promptly notify in writing all parties against whom action is taken or contemplated that the notice or summary order has been entered and the reasons therefor. The director shall send all parties against whom action is taken or contemplated a notice of opportunity for hearing on the matters set forth in the order or notice of intent. The notice shall state that the parties have fifteen days from receipt of the notice to mail a written request for a hearing to the director. The director shall set the matter for hearing no more than sixty nor less than fifteen days from the receipt of the request for hearing and shall promptly notify the parties of the time and place for hearing.

C. The director, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the director's own motion.

D. The director may by order take the action contemplated in the notice of intent or make a summary order final:

(1) fifteen days after the parties against whom action is taken or contemplated receive notice of the right to request a hearing if that person fails to request a hearing; or

(2) one day following the date set for a hearing requested by a party if the party fails to appear at the hearing.

E. If a hearing is requested or ordered, the director, after notice of the opportunity for hearing to all persons against whom action is taken or contemplated, may modify or vacate the order or extend it until final determination.

F. For the purpose of conducting any hearing as provided in this section, the director shall have the power to call any party to testify under oath at such hearings, to require the attendance of witnesses, the production of books, records and papers and to take the depositions of witnesses; and for that purpose the director is authorized, at the request of the person requesting such hearing or upon his own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of the county where such witness resides or is found.

G. (1) A party entitled to a hearing under this section may appear on his own behalf or may be represented by an attorney. A party has the right to present all relevant evidence and to examine all opposing witnesses who appear on any matter relevant to the issues.

(2) Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

H. The director shall pass upon the admissibility of evidence and may exclude evidence which is incompetent, irrelevant, immaterial and unduly repetitious.

I. The director may conduct the hearing, or the director may appoint a hearing officer to conduct the hearing. A hearing officer shall have the same powers and authority in conducting a hearing as the director. The hearing officer shall be admitted to the practice of law in this state and be possessed of such additional qualifications as the director may require. The director may direct the hearing officer to submit to the director a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the director. The director may order additional testimony to be taken or permit the introduction of further documentary evidence.

J. A final order or order after hearing shall include entry of written findings of fact and conclusions of law.

History: Laws 1986, ch. 7, § 53.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State §§ 24, 67.

PART 8
MISCELLANEOUS PROVISIONS

58-13B-54. Scope of act.

A. Sections 3, 30, 31, 35 and 40 [58-13B-3, 58-13B-30, 58-13B-31, 58-13B-35 and 58-13B-40 NMSA 1978] of the New Mexico Securities Act of 1986 apply to a person who sells or offers to sell a security if:

(1) an offer to sell is made in this state; or

(2) an offer to purchase is made and accepted in this state.

B. Sections 3, 30, 31 and 35 [58-13B-3, 58-13B-30, 58-13B-31 and 58-13B-35 NMSA 1978] of the New Mexico Securities Act of 1986 apply to a person who purchases or offers to purchase a security if:

(1) an offer to purchase is made in this state; or

(2) an offer to sell is made and accepted in this state.

C. For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is present in this state, if the offer:

(1) originates in the state; or

(2) is directed by the offeror to a destination in this state and received where it is directed, or at a post office in this state if the offer is mailed.

D. For the purpose of this section, an offer to purchase or to sell is accepted in this state if acceptance:

(1) is communicated to the offeror in this state; and

(2) has not previously been communicated to the offeror, orally or in writing, outside this state.

Acceptance is communicated to the offeror in this state whether or not either party is present in this state, if the offeree directs it to the offeror in this state reasonably

believing the offeror to be in this state and it is received at the place which it is directed, or at any post office in this state in the case of a mailed acceptance.

E. For the purpose of Subsections A through D of this section, an offer to sell or to purchase is not made in this state if the publisher circulates or there is circulated on behalf of the publisher, in this state, a bona fide newspaper or other publication of general, regular and paid circulation:

(1) which is not published in this state; or

(2) which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

F. For the purpose of Subsection E of this section, if a publication is published in editions, each edition shall be considered a separate publication except for material common to all editions.

G. For the purpose of Subsections A through D of this section, an offer to sell or purchase is not made in this state if a radio or television program originating outside this state is received in this state.

H. For the purpose of Subsection G of this section, a radio or television program is considered having originated in this state if either the broadcast studio or originating source of transmission is located within the state, unless:

(1) the program is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program is supplied by a radio or television with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable radio or television; or

(4) the program consists of an electronic signal which originates from within this state, but which is not intended for redistribution to the general public in this state.

History: Laws 1986, ch. 7, § 54.

58-13B-55. Contract provisions.

A. No person subject to the New Mexico Securities Act of 1986 [58-13B-1 to 58-13B-57 NMSA 1978] who makes or engages in the performance of a contract in violation of that act or a rule or order of the director under that act, or who acquires a right under a

contract with knowledge of the facts by which its making or performance is in violation, may obtain relief on the contract.

B. A provision in a contract entered into or effective in this state, binding a person acquiring a security to waive compliance with the New Mexico Securities Act of 1986 or a rule or order of the director under that act is nonenforceable. A provision in a contract containing:

(1) an agreement to arbitrate; or

(2) a choice of law provision in a contract between persons all of whom are engaged in the securities business;

shall not be deemed to be a provision waiving compliance with that act and shall be enforceable in accordance with its terms.

History: Laws 1986, ch. 7, § 55.

58-13B-56. Judicial review of orders.

A. Any person aggrieved by a final order of the director may obtain a review of the order in the court of appeals by filing in court, within thirty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

B. Upon the filing of a petition for review, except where the taking of additional evidence is ordered by the court pursuant to Subsection E or F of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order, in whole or part.

C. The filing of a petition for review under Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

D. Upon receipt of the petition for review, the director shall certify and file in the court:

(1) a copy of the order; and

(2) if the order was issued following a hearing, the transcript or record of the evidence upon which the order was based or, if the order became final by operation of law pursuant to Subsection D of Section 53 [58-13B-53 NMSA 1978] of the New Mexico Securities Act of 1986, record of notification to all parties against whom action is taken or contemplated of the entry of the order and an affidavit certifying that no hearing was held because the party requesting a hearing did not appear or the time period for requesting such hearing has expired.

E. If either the aggrieved party or the director applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence at the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

F. If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

G. The court shall review the petition based upon the original record before the director as amended under Subsections E and F of this section. The findings of the director as to the facts, if supported by competent, material and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce or set aside the order, in whole or in part.

H. The judgment of the court is subject to review by the supreme court.

History: Laws 1986, ch. 7, § 56.

Saving clauses. - Laws 1986, ch. 7, § 58 provides that prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of that act, July 1, 1986, but must be brought within any period of limitation which applied when the cause of action accrued and in any event within four years after July 1, 1986; that all effective registrations or exemptions under prior law, all administrative orders relating to such registrations and exemptions and all conditions imposed upon such registrations or exemptions remain in effect so long as they would have remained in effect if that act had not been passed and are considered to have been filed, entered or imposed under that act but are governed by prior law; and that judicial review of all administrative orders as to which review proceedings have not been instituted by July 1, 1986, are governed by 58-13B-56 NMSA 1978, but the petition for any such review proceeding must have been filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within thirty days after July 1, 1986.

Severability clauses. - Laws 1986, ch. 7, § 60 provides for the severability of the act if any part or application thereof is held invalid.

Corporation commission not authorized to issue sales permit. - The authority of the corporation commission to review a decision of the chief as to the issuance of a permit to sell securities did not constitute authorization for the corporation commission to issue a permit which had been approved by the chief pursuant to former 58-13-10 NMSA 1978. Unless an aggrieved party appealed, the corporation commission had no basis for exercising any authority with respect to a decision of the chief. 1981 Op. Att'y Gen. No. 81-20.

Law reviews. - For article, "A Survey of the Securities Act of New Mexico," see 2 N.M.L. Rev. 1 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 69 Am. Jur. 2d Securities Regulation - State § 94.

58-13B-57. Fund created.

There is created in the state treasury the "Securities Education and Training Fund" to be administered by the director. All or any portion of civil penalties, costs of investigation and other administrative assessments collected by the division pursuant to enforcement actions and Sections 58-13B-36 through 58-13B-38 NMSA 1978 shall be credited to the fund. Money deposited in the fund shall be used solely for education and training of New Mexico residents in matters concerning securities laws and investment issues. Disbursements from the fund shall be made by the director. All interest earned on the money in the fund shall be credited to the fund. No part of the fund shall revert at the end of any fiscal year.

History: 1978 Comp., § 58-13B-57, enacted by Laws 1989, ch. 176, § 9.

Compiler's note. - This section was enacted by Laws 1989, ch. 176, § 9 as part of the New Mexico Securities Act of 1986.

ARTICLE 14
INSTALLMENT SAVINGS AND INVESTMENT CERTIFICATES

58-14-1 to 58-14-21. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 101, § 1, repeals 58-14-1 to 58-14-21 NMSA 1978, relating to installment savings and investment certificates and to face amount investment certificate companies. For provisions of former sections, see original pamphlet.

ARTICLE 15
SMALL LOAN BUSINESS

58-15-1. Objects and purposes of act.

The following are hereby declared to be the objects and purposes of this act:

A. there exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces;

B. the expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage earners, salaried employees and other persons of relatively low incomes is necessarily high in relation to the amounts lent;

C. experience has proven that such loans cannot be made profitably except under special permissive laws and that without such laws many legitimate enterprises are excluded from the small loan field; that without laws regulating the making of small loans interest charges are often disguised by the use of complicated and technical subterfuge to evade the usury law; that without regulations, borrowers of small sums are often exploited by charges generally exorbitant in relation to those necessary to conduct a small loan business;

D. it is intent of the legislature in enacting this statute to bring up to date the law pertaining to small loans; to insure more rigid public regulation and supervision of those engaging in the business of making small loans, and selling insurance in connection therewith; to facilitate the elimination of abuse of borrowers; and to establish a system which will more adequately provide honest and efficient small loan service and stimulate competitive reductions in charges.

The legislature expressly declares: that the charges which licensee [licensees] may collect under the provisions of this act, while inclusive of pure interest, are recognized as inclusive also of adequate service fees to the licensees.

The legislature further declares: that the charges established by this act are limiting maximums, fixed after careful study of modernized, adequate and efficiently functioning small loan statutes of other states, which will permit licensees hereunder to meet the expense and loss hazard incident to the making and servicing of small loans, to the end that licensees may be encouraged to establish and maintain supervised and regulated loan agencies, whose competitive operations, while stimulating reductions from maximum allowable charges, will provide legitimate sources of loan credit to a large class of borrowers throughout the state, who cannot otherwise obtain honest and lawful loan accommodations under the general laws of New Mexico governing money, interest and usury.

History: 1953 Comp., § 48-17-30, enacted by Laws 1955, ch. 128, § 1.

Meaning of "this act". - The term "this act," referred to in this section means Laws 1955, ch. 128, as amended by Laws 1959, ch. 201, § 1, Laws 1980, ch. 73, § 3 and Laws 1983, ch. 95, § 2, which is presently compiled as 58-15-1 to 58-15-3, 58-15-6 to 58-15-13, 58-15-14.1 to 58-15-15.1 and 58-15-17 to 58-15-31 NMSA 1978.

Generally. - Small Loan Act of 1947 (Laws 1947, ch. 174, since repealed) was not rendered invalid under the "enrolled bill rule" merely because of a failure of the legislative journals to show that the bill was read publicly in full in each legislative house and properly signed by officers of both houses in open session. Thompson v. Saunders, 52 N.M. 1, 189 P.2d 87 (1947).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 2, 7, 9, 15, 17, 23.

Insurance, when one insured as a money lender deemed to be totally and continuously unable to transact all business duties, 24 A.L.R. 212, 37 A.L.R. 151, 41 A.L.R. 1376, 51 A.L.R. 1048, 79 A.L.R. 857, 98 A.L.R. 788.

Constitutionality of statutes regulating the business of making small loans, 69 A.L.R. 581, 125 A.L.R. 743, 149 A.L.R. 1424.

Construction and application of provisions of "small loan" acts as regards maximum amount of loan, 99 A.L.R. 923.

Building and loan association as within statute relating to lenders of money, 99 A.L.R. 1027.

58 C.J.S. Money Lenders §§ 2, 3.

58-15-2. Definitions.

The following words and terms when used in the New Mexico Small Loan Act of 1955 [this article] shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall apply also to the plural:

A. "person" shall include individuals, copartners, associations, trusts, corporations and any other legal entity;

B. "license" shall mean a permit issued under the authority of the New Mexico Small Loan Act of 1955, to make loans and collect charges therefor strictly in accordance with the provisions of the New Mexico Small Loan Act of 1955 at a single place of business. It shall constitute and be construed as a grant of a revokable privilege only to be held and enjoyed subject to all the conditions, restrictions and limitations contained in the New Mexico Small Loan Act of 1955 and lawful regulations promulgated by the director of the financial institutions division and not otherwise;

C. "licensee" shall mean a person to whom one or more licenses have been issued hereunder upon their written application electing to become a licensee and consenting to exercise the privilege of a licensee solely in conformity with the New Mexico Small Loan Act of 1955 and the lawful regulations promulgated by the director of the financial

institutions division hereunder, and whose name or names appear on the face of the license;

D. "director" means the director of the financial institutions division of the commerce and industry department;

E. "department" means the financial institutions division of the commerce and industry department.

History: 1953 Comp., § 48-17-31, enacted by Laws 1955, ch. 128, § 2; 1977, ch. 245, § 60.

Commerce and industry department. - Laws 1983, ch. 297, § 33, abolishes the commerce and industry department, referred to in Subsections D and E. Laws 1983, ch. 297, § 20 creates the regulation and licensing department with a financial institutions division. Laws 1983, ch. 297, § 31, transfers the personnel, etc., of the financial institutions division of the commerce and industry department to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978.

58-15-3. Applicability of act; exemptions; evasions; penalty.

A. No person shall engage in the business of lending in amounts of two thousand five hundred dollars ($2,500) or less without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 [this article] from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 [58-7-1 to 58-7-3, 58-7-5 to 58-7-9 NMSA 1978] in accordance with the provisions of Section 58-7-2 NMSA 1978.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of two thousand five hundred dollars ($2,500) or less under a written agreement providing for a total loan or line of credit in excess of two thousand five hundred dollars ($2,500) for which real estate is pledged as collateral.

C. Any banking corporation, savings and loan association or credit union operating under the laws of the United States or of New Mexico shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor shall that act apply to any business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license, nor to bona fide commercial loans made to dealers upon personal property held for resale. Nothing contained in the New Mexico Small Loan Act of 1955 shall be construed as abridging the rights of any of those exempted from the operations of that act from contracting for or receiving interest or charges not in violation of any existing applicable statute of this state.

D. The provisions of Subsection A of this section apply to any person owning any interest, legal or equitable, in the business or profits of any licensee whose name does

not specifically appear on the face of the license, except a stockholder in a corporate licensee, and to any person who seeks to evade its application by any device, subterfuge or pretense whatsoever, including but not thereby limiting the generality of the foregoing: the loan, forbearance, use or sale of credit (as guarantor, surety, endorser, co-maker or otherwise), money, goods or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered or provided; and the real or pretended negotiation, arrangement or procurement of a loan through any use or activity of a third person, whether real or fictitious.

E. Any person, copartnership, trust and the trustees or beneficiaries thereof, association or corporation and the several members, officers, directors, agents and employees thereof who violate or participate in the violation of any provision of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than one hundred dollars ($100) and not more than three hundred dollars ($300) or by imprisonment of not more than ninety days or by both fine and imprisonment. Any contract or loan in the making or collection of which any act is done which violates Subsection A or D of this section is void and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever.

History: 1953 Comp., § 48-17-32, enacted by Laws 1955, ch. 128, § 3; 1973, ch. 18, § 1; 1977, ch. 245, § 61; 1983, ch. 95, § 1; 1987, ch. 127, § 1.

Generally. - Fact that one was licensed as a small loan operator under Laws 1947, ch. 174 (now repealed), did not preclude it from making loans for more than $500, provided it did not charge more than 10% interest per annum. Spain Mgt. Co. v. Packs' Auto Sales, 54 N.M. 64, 213 P.2d 433 (1950).

Acts constituting "engaging in the business" of lending. - Occasional isolated acts of loaning money to accommodate one's customers and friends do not constitute "engaging in the business" of loaning money; yet one act can be sufficient to support a finding that one was engaged in business. Hammond v. Reeves, 89 N.M. 389, 552 P.2d 1237 (Ct. App. 1976).

Where the lender made a relatively small number of loans and had another business from which he presumably obtained the majority of his income, it cannot be said that the trial court erred in the conclusion that he was not engaged in the business of lending. Hammond v. Reeves, 89 N.M. 389, 552 P.2d 1237 (Ct. App. 1976).

Business establishments dealing with Indians not exempt. - Business establishments, not specially licensed as pawnbrokers, located outside of Indian reservations which charged in excess of 12% per annum when loaning money or extending credit to Indians are not exempt from the provisions of the Small Loan Act. 1970 Op. Att'y Gen. No. 70-60.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 10, 17.

58 C.J.S. Money Lenders § 4.

58-15-4. Application, investigation and fee; agent for service of process.

A. Application for a license and any annual license renewal shall be in writing under oath and in the form prescribed by the director, shall give the exact location where the business is to be conducted and shall contain such other relevant information as the director may require, including identification of all parties in interest and the names and addresses of all the partners, officers, directors, trustees and beneficiaries of any trust and of such principal owners and members as will provide the basis for an investigation and findings necessary under Section 58-15-5 NMSA 1978. The application shall also include a statement accepting the license, if granted, as a privilege to be enjoyed and exercised only under all the terms and conditions of the New Mexico Small Loan Act of 1955 [this article] and under all lawful regulations of the director promulgated in that act. The applicant shall pay to the director at the time of making application for an original license the sum of one thousand dollars ($1,000).

B. The application shall be accompanied by, and every licensee shall at all times maintain on file with the director, a written power of attorney appointing some person, a resident of this state, as the licensee's agent for service of all judicial or other process or legal notice and notices provided for by the New Mexico Small Loan Act of 1955, unless the licensee has appointed an agent for service of process under another statute of this state. In case of noncompliance with this subsection, such service, including service of all notices provided for in the New Mexico Small Loan Act of 1955, may by made on the manager or person in charge of the registered office or place of business of the licensee, and the director may by order suspend the license pending compliance with this section.

History: Laws 1978, ch. 7, § 1; 1987, ch. 292, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 10.

58 C.J.S. Money Lenders §§ 4, 8.

58-15-5. Licenses; investigation of application; issuance; denial; issuance of renewal license; denial of renewal license; fitness and character of applicant; license fees; licensee bound by act.

A. Upon the filing of an application, whether it is an original or a renewal, the director shall investigate the facts concerning the application and the requirements provided in this section.

Any applicant for license, upon written notice to do so by the director, shall within twenty days after service of the notice furnish in writing, under oath, to the director any and all additional information required by the director which may be relevant or, in the opinion of the director, helpful to him in conducting his investigation.

Failure to comply with the director's requirement for supplemental information or the willful furnishing of false information is sufficient ground for denial of license.

False or misleading information willfully and intentionally furnished to the director prior to the issuance of any license is ground for suspension or revocation of any license in accordance with the procedures for suspension or revocation of license in the New Mexico Small Loan Act of 1955 [this article].

If the application is for an original license under the New Mexico Small Loan Act of 1955, the director shall fix a date for hearing and, at least twenty days before the hearing, shall mail a notice of the receipt of the application and date of hearing to each licensee having a place of business in the community where the applicant proposes to do business. The director may mail the notice to such other persons, associations or institutions as he sees fit and shall publish a copy of the notice one time in a legal newspaper published in or of general circulation in the county where the applicant proposes to do business. The director shall grant or deny each application for an original license within sixty days from the filing of the application with the required information and fees unless the period is extended by written agreement between the applicant and the director.

B. In the event the director finds:

(1) that the financial responsibility, character and general fitness of the applicant for an original license and of the individual members and beneficiaries thereof, if the applicant is a copartnership, association or trust, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955;

(2) that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted; and

(3) that the applicant has available for operation of the business at the specified location cash or its equivalent, convertible securities or receivables of thirty thousand dollars ($30,000) or any combination thereof; he shall enter an order granting the application,

file his findings and upon payment of the license fee of five hundred dollars ($500), forthwith issue and deliver a license to the applicant.

C. If the director does not make the findings enumerated in Subsection B of this section, he shall enter an order denying the application, forthwith notify the applicant of the denial and retain the application fee. Within thirty days after the entry of such an order, he shall prepare written findings and shall forthwith deliver a copy to the applicant.

D. Written application for renewal licenses shall be filed on or before May 1 of each year, and thereupon the director shall investigate the facts and review his files of examinations of the applicant made by his office and of complaints filed by borrowers, if any. If he finds:

(1) that no valid complaints of violations or abuses of the New Mexico Small Loan Act of 1955 or of the regulations of the director promulgated under that act have been filed by borrowers;

(2) that his examinations of the affairs of the applicant indicate that the business has been conducted and operated lawfully and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955; and

(3) that the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955;

he shall deliver a renewal license to the applicant.

E. If the director does not make the findings enumerated in Subsection D of this section, he may grant a temporary extension of the license not exceeding sixty days pending a hearing; shall enter an order fixing a date for hearing upon the application; shall notify the licensee thereof, specifying the particular complaints, violations or abuses or other reasons for his contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall produce his evidence to establish the truth of the charges of violation or other grounds specified in the notice, and the applicant shall be accorded the right to produce evidence or other matters of defense. If, after the hearing, the director finds that the complaints of violations or other grounds specified in the notice are not well founded, he shall forthwith issue the renewal license. If he finds that the complaints of violations or other grounds are well founded, he shall enter an order denying the renewal application and forthwith notify the applicant of the denial, returning the renewal license fee tendered with the application. Within thirty days after the entry of such an order, he shall prepare written findings and shall forthwith deliver a copy of the findings to the applicant. The order shall be subject to review as provided in Section 58-15-25 NMSA 1978. The court in its discretion and upon proper showing may order a temporary extension of the license pending disposition of the review proceedings.

F. In connection with the determination of fitness and character of an applicant under this section, the fact that the applicant or licensee is a member of or interested financially in, connected or affiliated with, controls or is controlled by or owns or is owned by other corporations, partnerships, trusts, associations or other legal entities engaged in the lending of money whose policies and practices as to rates of interest, charges and fees and general dealing with borrowers are questionable or would constitute violation of the general usury statutes of this state or of the declared purposes and spirit of the New Mexico Small Loan Act of 1955 shall be given such consideration and weight as the director determines.

G. At the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as a license fee for the period covered by the license the sum of five hundred dollars ($500) as a minimum, plus an additional seventy-five cents ($.75) for each one thousand dollars ($1,000) or fraction thereof of loans outstanding as of December 31 next preceding, as shown on the applicant's annual report.

H. Each licensee by accepting any license which is issued or renewed or by continuing to operate any licensed office under the New Mexico Small Loan Act of 1955 shall by such action be deemed to have consented to be bound by the lawful provisions of that act and all lawful requirements, regulations and orders of the director promulgated or issued pursuant to any authorization granted in that act.

History: 1978 Comp., § 58-15-5, enacted by Laws 1978, ch. 6, § 1; 1987, ch. 292, § 2.

Cross-references. - As to exemption of banks, saving and loan associations, and credit unions from licensing requirement, see 58-15-3 NMSA 1978.

Courts not to consider certain matters regarding small loan companies. - Whether small loan companies serve the public interest and, if so, whether experience justifies a restriction on the number licensed may be debatable, but these are not considerations for the courts. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

License issuance or denial deemed administrative. - The general welfare of the public is the primary concern of the legislature in providing for the regulation and control of small loan businesses, and to that end the issuance or denial of an application for a small loan license is an administrative act and not a judicial function. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Purpose of "convenience and advantage" clause. - The "convenience and advantage" clause of this section was adopted to make sure that the needs of the community to be served by small loan businesses were not outrun by the number of such establishments at the risk of defeating the beneficent purposes of the Small Loan Act. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Physical accessibility not controlling factor in licensing. - While physical accessibility is one factor to be taken into consideration under this section, it is not controlling. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Other factors to be considered in licensing are the needs of the general public in the community as a whole and in the particular area to be served, the number and location of other small loan licensees and the effect upon them and, in turn, on the service and costs to the public of an additional licensee. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Facts justifying denial of license. - Where facts showed that the presently existing small loan licensees were adequately serving the small loan needs of the community; that the general economy of the area was leveling off; that, of the 18 small loan licensees in the city, two were not presently operating, and several showed decreases in loans outstanding; that delinquencies in payments of loans, suits and repossessions showed an increase and that the general indices and criteria measuring factors of economic advancement did not indicate such growth at the present or in the immediate future as would give rise to the conclusion that allowing the applicant to engage in business would promote the convenience and advantage of the community in which the business of the applicant was to be conducted, the denial of a license to open a small loan business was justified. Nationwide Fin. Co. v. State Bank Exmr., 76 N.M. 191, 413 P.2d 471 (1966).

Applicant to show convenience and advantage to community. - Under this section, the burden is on the applicant to establish the fact that the granting of a license would promote the convenience and advantage of the community. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Discretion of director. - Under this section, the examiner or commissioner (now director) is given fact-finding powers, the exercise of which permits certain discretion in determining the conditions in the community where the business is to be conducted. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Fees. - The financial institutions division may not charge a fee based upon loans made pursuant to the Installment Loan Act. 1988 Op. Att'y Gen. No. 88-29.

Scope of review in supreme court. - On appeal from an administrative body, the review of the supreme court, like that of the district court, is limited to determining whether the facts found by the commissioner (now director) have substantial support in the evidence, and if so, whether the law was properly applied. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

Factors reviewing court to consider. - In determining whether the commissioner's (now director's) findings are supported by substantial evidence and whether the conclusions based thereon are arbitrary and unreasonable, attention should first be

directed to the necessity for regulation of small loan businesses and for the inclusion in the majority of small loan acts of the "convenience and advantage" clause. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966)See also catchline, "Purpose of 'convenience and advantage' clause" in notes to this section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 10, 17.

58 C.J.S. Money Lenders §§ 4, 5.

58-15-6. Contents and posting of license; limitation of authority granted by license; effective date of license; minimum assets.

A. Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee if an individual, and if a corporation the name, date and place of incorporation, and if a copartnership, trust or association or other legal entity, the names of all the copartners and all the members and beneficiaries thereof, and the trade name under which the licensee may desire to conduct such business. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable.

B. No licensee hereunder, except a national or state banking corporation, shall use the words "bank", "banker" or "banking" in its name or refer to itself as a bank or banker in any of its advertising.

No licensee hereunder, except a national or state banking corporation, shall accept deposits or issue certificates of deposit, provided, however, that the foregoing prohibition shall not limit the right of any licensee to borrow money or to issue notes, bonds, debentures or similar evidences of indebtedness labeled as such for the purpose of obtaining capital for use in its business.

Except as a stockholder in a licensed corporation, no person whose name does not specifically appear on the face of the license shall have or hold any interest direct or otherwise in any license and shall not be deemed a licensee hereunder.

C. Each license shall remain in full force until June 30 next following its date of issue, unless sooner surrendered, revoked or suspended as herein provided, but shall expire and terminate on June 30 following its issue unless renewed and reissued as herein provided. Such license shall entitle the person or persons whose names appear on the face of the license, and no others, to enjoy and exercise the revocable privileges and immunities provided for in the New Mexico Small Loan Act of 1955 [this article], but only in the manner and subject to the restrictions herein provided for.

D. Every licensee shall maintain at all times cash or its equivalent, convertible securities or receivables of thirty thousand dollars ($30,000), or any combination thereof, as set forth in Subsection B of Section 58-15-5 NMSA 1978.

History: 1953 Comp., § 48-17-35, enacted by Laws 1955, ch. 128, § 6; 1977, ch. 307, § 3.

Effect of death of licensee. - Since both the general law and the statutes of New Mexico make it clear that a license to only one person is a personal privilege to that person alone, it must follow that the privilege dies with the named person. Therefore, the business cannot continue to operate. This, of course, does not mean that the loans outstanding at the time of death may not be collected at the small loan rate. All contracts prior to the death of the licensee are valid contracts if legally made in the first instance. 1966 Op. Att'y Gen. No. 66-70.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 10.

58 C.J.S. Money Lenders §§ 4, 6.

58-15-7. Place of business; change; residence of borrower.

A. Not more than one place of business shall be maintained under the same license, but the director may issue additional licenses to the same licensee upon compliance with all the provisions of the New Mexico Small Loan Act of 1955 [this article] governing issuance of a single license, provided that when more than one license is issued to any person, each licensed office of such person shall be operated under the same trade name.

B. No change in the place of business of a licensee to a location outside of the municipality for which such license was issued shall be permitted under the same license. When a licensee wishes to change his place of business within the same municipality, he shall give written notice thereof to the director who shall investigate the facts and, if he shall find:

(1) that allowing the licensee to engage in business in the proposed location is not detrimental to the convenience and advantage of the community; and

(2) that the proposed location is reasonably accessible to borrowers under existing loan contracts, he shall enter an order permitting the change and shall amend the license accordingly. If the director shall not so find he shall enter an order denying the licensee such permission in the manner specified in and subject to the provisions of Section 58-15-5 NMSA 1978.

C. Nothing in this act shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is located; nor to prohibit accommodations to individual borrowers in sickness or in connection with hours of employment or other such situations; nor to prohibit making loans by mail to residents of New Mexico.

History: 1953 Comp., § 48-17-36, enacted by Laws 1955, ch. 128, § 7; 1977, ch. 245, § 64.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 5, 10.

58 C.J.S. Money Lenders § 5.

58-15-8. Revocation, suspension and reinstatement of licenses.

A. The director shall revoke no license issued hereunder unless he shall first serve upon the licensee a written notice which states in general the grounds therefor, together with the time and place of hearing, which shall be held not less than fifteen days after the mailing of such notice to the licensee by registered mail as provided in Subsection G of this section. Upon such hearing the director shall revoke any license issued hereunder if he finds that:

(1) the licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of the New Mexico Small Loan Act of 1955 [this article] or any regulation or order made pursuant to and within the authority of the New Mexico Small Loan Act of 1955; or

(2) any fact or condition exists at the time of the proposed revocation which if it had existed at the time of the original application for such license, or any renewal thereof, clearly would have justified the director in refusing originally to issue such license.

B. If the director finds that probable cause for revocation of any license exists and that enforcement of the act requires immediate suspension of such license pending investigation, he may, upon three days' written notice by registered mail and a hearing, enter an order suspending such license for a period not exceeding thirty days.

C. Whenever the director shall revoke or suspend a license issued pursuant to the New Mexico Small Loan Act of 1955, he shall enter an order to that effect and forthwith in writing notify the licensee of such revocation or suspension by registered mail, which notice shall state the grounds therefor.

D. Any licensee may surrender any license by delivering it to the director with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

E. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor thereon.

F. The director may reinstate any suspended license or issue a new license to a person whose license or licenses have been revoked if no fact or condition then exists which

clearly would have justified the director in refusing originally to issue such license under the New Mexico Small Loan Act of 1955.

G. Wherever in the New Mexico Small Loan Act of 1955 provision is made for service of any notice by registered mail, such service shall be deemed complete upon deposit of such notice in the post office. For the purpose of this section, mailing of notice addressed to the person designated as the agent for service of process under Section 58-15-4 NMSA 1978 or the manager or person in charge of the licensed office shall be sufficient.

History: 1953 Comp., § 48-17-37, enacted by Laws 1955, ch. 128, § 8; 1977, ch. 245, § 65.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 10, 17.

58 C.J.S. Money Lenders § 4.

58-15-9. Examination of licensee's books and records; witnesses.

A. At least once each year, the director or his duly authorized representative shall make an examination of the place of business of each licensee and such of the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 [this article] as he may deem necessary. The licensee shall pay to the commissioner for such annual examination a fee of two hundred dollars ($200).

Within a reasonable time after the completion of an examination of a licensed office, the director shall mail to the licensee a copy of the report of the examination, together with any comments, exceptions, objections or criticisms of the director concerning the conduct of the licensee and the operation of the licensed office.

B. For the purpose of discovering violations of the New Mexico Small Loan Act of 1955 or of securing information lawfully required under that act, the director or his duly authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, including income tax returns or other reports filed in the office of the director of the revenue division of the taxation and revenue department of:

(1) any licensee;

(2) any other person engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 or participating in such business as principal, agent, broker or otherwise; and

(3) any person whom the director has reasonable cause to believe is violating any provision of that act, whether the person claims to be within the authority or beyond the scope of that act.

For the purposes of this section, any person who advertises, solicits or holds himself out as willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or licenses issued by any state or federal agency or under any special statute, shall be subject to investigation under the New Mexico Small Loan Act of 1955 and shall be presumed to be engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 as to any loans of two thousand five hundred dollars ($2,500) or less.

C. To facilitate the examinations and investigations by the director and fully disclose the operations and methods of operation of each licensed office, the licensee shall, in each licensed office, keep on file as part of the records of the office all office manuals, communications or directives containing statements of loan policy to office managers and employees.

If the licensee is an individual, corporation, trust or association, the licensee shall keep in at least one office for information of the director a record of the several individuals, firms, beneficiaries of any trust and corporations deriving or receiving any part of the benefits, net income or profits from the operation of the licensee within New Mexico.

D. For the purposes of this section, the director or his duly authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine him under oath relative to such loans or business or to the subject matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear before the director for examination under oath may be served by registered mail. If the party notified to appear is the licensee, any person named on the face of the license being investigated or any agent, employee or manager participating in the business and he fails to appear for examination or refuses to answer questions submitted, the director may forthwith and without further notice to the licensee suspend the license involved pending compliance with the notice. Upon failure of any other person to appear or to answer questions, the director may apply to and invoke the aid of any district court of New Mexico in compelling the attendance and testimony of any such person and the production of books, records, written instruments and documents relating to the business of the licensee. Any district court whose aid is so invoked by the director may, in case of contumacy or refusal to obey any order of the district court issued to compel the attendance of the person or the production of books, records, written instruments and documents, punish the person as for contempt of court.

E. The director shall prescribe rules of procedure for all hearings, examinations or investigations provided for in the New Mexico Small Loan Act of 1955. The director is not bound by the usual common law or statutory rules of evidence or by any technical or

formal rules of procedure or pleading and specification of charges other than as specifically provided in the New Mexico Small Loan Act of 1955 but may conduct hearings, examinations and investigations in the manner best calculated to ascertain the substantial rights of the parties interested.

F. The director has the power to administer oaths, certify official acts and records of his office, issue subpoenas for witnesses in the name of and under the seal of his office and compel the production of papers, books, accounts and documents. He shall issue subpoenas at the instance of any party to a hearing before the division upon payment of a fee of two dollars and fifty cents ($2.50) for each subpoena so issued.

G. Depositions may be taken with or without a commission, and written interrogatories may be submitted in the same manner and on the same grounds provided for by law for the taking of depositions or submission of written interrogatories in civil action pending in the district courts of this state.

H. Each witness who appears before the director by his order shall receive the fees and mileage provided for witnesses in civil actions in the district court. Fees and mileage shall be paid by the state, but no witness subpoenaed at the instance of parties other than the director is entitled to compensation from the state for attendance or mileage unless the director certifies that his testimony is material.

I. Whenever the director has reasonable cause to believe that any person is violating any provision of the New Mexico Small Loan Act of 1955, he may, in addition to all actions provided for in that act and without prejudice thereto, enter an order requiring the person to desist or to refrain from the violation. An action may be brought on the relation of the attorney general and the director to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction or final injunction, the court in which such action is brought shall have power and jurisdiction to impound and to appoint a receiver for the property and business of the defendants, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of the New Mexico Small Loan Act of 1955 through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as are from time to time conferred upon him by the court.

History: 1953 Comp., § 48-17-38, enacted by Laws 1955, ch. 128, § 9; 1973, ch. 18, § 2; 1977, ch. 245, § 66; 1977, ch. 307, § 4; 1987, ch. 292, § 3.

Director of financial institutions division. - The department of banking, headed by a commissioner, was abolished by Laws 1977, ch. 245, § 4. Section 3 of that act established the commerce and industry department, consisting of several divisions,

including the financial institutions division, headed by a director. Section 58-1-32 NMSA 1978 provides that all statutory references to the commissioner of banking shall be construed to mean the director of the financial institutions division. However, the commerce and industry department was abolished by Laws 1983, ch. 297, § 33, and the regulation and licensing department was created by § 20 of that act. Laws 1983, ch. 297, § 31 transfers the personnel, etc., of the financial institutions division of the commerce and industry department to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978.

Examination. - The financial institutions division must examine all loans that "pertain" to a licensee's status as a "small loan licensee." The division must examine installment loans made by small loan licensees even though it does not include them in the calculation of the license fee. 1988 Op. Att'y Gen. No. 88-29.

Law reviews. - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 9.

58 C.J.S. Money Lenders §§ 2, 4, 9.

58-15-10. Books and records; annual reports; additional information.

A. Each licensee shall keep and use in his business such books, accounts and records in accordance with sound accounting practices as in the director's opinion will enable him to determine whether such licensee is complying with the provisions of the New Mexico Small Loan Act of 1955 [this article] and with the orders and regulations lawfully made by the director hereunder. Each licensee shall preserve such books, accounts and records for at least two years after making the final entry on any loan recorded therein.

B. Each licensee shall annually, on or before the first day of February file a report with the director giving such relevant information as he may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the state pursuant to the provisions of the New Mexico Small Loan Act of 1955. Such report shall be made under oath and shall be in the form prescribed by the director. A summary of such reports shall be included in the published annual report of the director.

C. At the time of filing each annual report, at the time of the annual examination or at any other time when any license shall be in effect, the director may, upon written notice, require any licensee to furnish within twenty days in writing, and under oath if so specified by any written notice issued and served by the director upon such licensee, any and all additional information as to ownership of any office or offices; operation of

any office or offices; books, records, files, papers; [or] affiliation or relationship with any other person, firm, trust, association or corporation as, in the opinion of the director, may be helpful to him in the discharge of his official duties.

False or misleading information willfully furnished to the director by any licensee in any annual report or pursuant to any notice or requirement of the director shall be sufficient ground for suspension and revocation of license in accordance with the procedures for suspension or revocation of license in the New Mexico Small Loan Act of 1955 set forth.

History: 1953 Comp., § 48-17-39, enacted by Laws 1955, ch. 128, § 10; 1977, ch. 245, § 67.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 5, 15.

58 C.J.S. Money Lenders §§ 3, 4.

58-15-11. Regulations and orders; certified copies.

A. The director shall have authority to make reasonable regulations and orders for the administration and enforcement of the New Mexico Small Loan Act of 1955 [this article], in addition hereto and consistent herewith, and is expressly authorized to make regulations and orders governing the conduct of all licensee's operations, including the method and manner of selling, handling and writing, in connection with any loan, any form of insurance by the licensee, or any agent or employee in the office of the licensee or of any other firm, person or corporation associated or affiliated with the licensee or operating in the same building in which the business of licensee is conducted. Every regulation shall be promulgated by an order, and any ruling, demand, requirement or similar administrative act may be promulgated by an order. Every order shall be in writing, and referenced to the section or sections under which it is issued, shall state its effective date and the date of its promulgation, and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every other order containing a requirement of general application shall be mailed to each licensee at least fifteen days before the effective date thereof.

B. On application of any person and payment of the cost thereof, the director shall furnish, under his seal and signed by him or his deputy, a certified copy of any license, regulation or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation or order.

History: 1953 Comp., § 48-17-40, enacted by Laws 1955, ch. 128, § 11; 1977, ch. 245, § 68.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Money Lenders § 2.

58-15-12. Advertising; schedule of charges.

A. No licensee or other person subject to the New Mexico Small Loan Act of 1955 [this article] shall advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the charges, terms or conditions for loans in the amount or of the value of two thousand five hundred dollars ($2,500) or less. The director may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The director may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by him to prevent any erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955.

B. Each licensee shall display in each licensed place of business in a place where it will be readily visible by borrowers, a full and accurate schedule of the rates of charges upon all classes of loans currently to be made by him, stated on a percent per annum basis and also on a percent per month basis.

History: 1953 Comp., § 48-17-41, enacted by Laws 1955, ch. 128, § 12; 1973, ch. 18, § 3; 1977, ch. 245, § 69.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Money Lenders § 5.

58-15-13. Licensed offices; other business.

A. No licensee shall conduct the business of making loans provided for by the New Mexico Small Loan Act of 1955 [this article] under any name, or at any place of business within this state, other than that stated in the license.

B. No licensee shall conduct the business of making loans under the New Mexico Small Loan Act of 1955 within any building, office, suite, room or place of business in which any other business is solicited, or engaged in, by the licensee or any employee, agent or associate, or in association or conjunction with any other business, unless authority to do so is specifically given in writing by the director upon written application for such authority submitted by the licensee.

Upon receipt of written application for such authority which shall be accompanied by or have included therein, if the other business is the sale of insurance in connection with loans made under the New Mexico Small Loan Act of 1955, the written consent of the licensee to abide by and be bound by all regulations then in effect or thereafter promulgated by the director relating to tie-in sales of such insurance and small loans, the director shall investigate the facts and circumstances and if he finds that the character of the licensee and the nature of the other business warrants the belief that the conduct of such business would not tend to conceal violation or evasion of the New Mexico Small Loan Act of 1955, or of regulations lawfully made hereunder, including regulations relating to tie-in sales of insurance, he shall enter an order granting such

authority. If he shall not so find he shall enter an order denying such authority in the manner specified in and subject to the provisions of Section 58-15-5 NMSA 1978.

History: 1953 Comp., § 48-17-42, enacted by Laws 1955, ch. 128, § 13; 1977, ch. 245, § 70.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 9, 10.

58 C.J.S. Money Lenders § 5.

58-15-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 263, § 4, repeals 58-15-14 NMSA 1978, relating to the rates of charges on loans, effective July 1, 1983. For present provisions, see 58-15-14.1 NMSA 1978.

Compiler's note. - Laws 1981, ch. 263, § 6, revived 58-15-14 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repeals Laws 1981, ch. 263, § 6, effective June 30, 1983.

58-15-14.1. Charges; method of computation.

Charges on loans made under the New Mexico Small Loan Act of 1955 [this article] shall not be paid, deducted or received in advance. Such charges shall not be compounded. However, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid charges which have accrued within sixty days on the prior loan. Such charges shall be computed on the basis of the number of days actually elapsed. For the purpose of computing charges, whether at the maximum rate or less, a month shall be any period of thirty consecutive days and the rate of charge for each day shall be one-thirtieth of the monthly rate.

History: Laws 1983, ch. 95, § 2.

Allowable charges for loans. - Apart from interest charges on loans, only those fees described in 58-15-20 NMSA 1978 may be charged for loans made under the Small Loan Act. Neither charges nor interest can be received in advance or compounded. 1985 Op. Att'y Gen. No. 85-01.

Opinions rendered under former law. - See 1961-62 Op. Att'y Gen. No. 62-44; 1961-62 Op. Att'y Gen. No. 62-48; 1967 Op. Att'y Gen. No. 67-11; 1973 Op. Att'y Gen. No. 73-74.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 5, 10, 20 to 24.

Maximum amount: construction and application of provisions of small loan acts as regards maximum amount of loan, 99 A.L.R. 923.

Time: construction and application of provision of small loan statute limiting time period for loan contracts, 58 A.L.R.2d 1263.

Compound interest: what is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 A.L.R.3d 421.

Disclosure: construction and effect of disclosure statutes requiring one extending credit or making loan to give statement showing terms as to amounts involved and charges made, 14 A.L.R.3d 330.

58 C.J.S. Money Lenders §§ 2, 3, 5, 6, 8.

58-15-15. Precomputation of charges permitted.

A licensee, after first obtaining approval from the director of a formula or method of calculation, may, when the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, precompute at the agreed monthly rate, not in excess of that provided for in Section 58-15-14 NMSA 1978, on scheduled unpaid principal balances according to the terms of the contract and add such precomputed charges to the principal amount of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid and the acceptance or payment of charges on loans made under the provisions of this subsection shall not be deemed to constitute payment, deduction or receipt thereof in advance nor compounding under Section 58-15-14 NMSA 1978. Such precomputed charges shall be subject to the following adjustments:

A. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a refund of that portion of the total precomputed charges applicable to the monthly payments as originally scheduled or as deferred, following the installment date nearest the date of prepayment in full computed by the annual percentage rate method. For this purpose, that portion of charges applicable to each monthly payment by the annual percentage rate method shall be charges that would apply to each payment if the charges had not been precomputed, but had been computed by the simple interest actuarial method on unpaid principal balances at the annual percentage rate disclosed on that particular loan pursuant to the federal truth in lending law based on the assumption that all payments would be made exactly on schedule. If such prepayment occurs before the first installment date, an additional refund of one-thirtieth of the portion of precomputed charges which could be retained if the first installment period is one month, and the loan is prepaid on the first installment due date shall be made for each day from the date of

prepayment in full to the first scheduled installment date. Any prepayment made on or before the fifteenth day following an installment date shall be deemed to have been made on the preceding installment date. If judgment is obtained before the final installment date, the contract balance shall be reduced by the refund of precomputed charges which will be required for prepayment in full on the date judgment is obtained.

B. In the event of default of more than seven days in the payment in full of any scheduled installment, the licensee may charge and collect a default charge not exceeding an amount equal to the refund that would be required for prepayment in full one full month prior to the final due date. Said charge may not be collected more than once for the same default and may be collected at the time of such default or at any time thereafter.

C. If payment of all unpaid installments on which no default charge has been charged and collected is deferred one or more full months, the licensee may charge and collect an amount which shall be equal to the difference between the refund that would be required for prepayment in full as of the scheduled due date of the first deferred installment and the amount which would be required for prepayment in full as of one month prior to said date, multiplied by the sum of the number of months in which no scheduled payment has been made and in which no payment is to be required by reason of the deferment. Such charge may be collected at the time of deferment or may be collected at any time thereafter. If a refund of precomputed charges is required during a period in which no scheduled payment is required by reason of a deferment, the borrower shall also receive a pro rata refund of the deferment charge, computed to the nearest number of full months.

History: 1953 Comp., § 48-17-43.1, enacted by Laws 1959, ch. 201, § 1; 1977, ch. 245, § 72; 1980, ch. 73, § 2.

Compiler's note. - Laws 1959, ch. 201, § 1, expressly added this section to Laws 1955, ch. 128, which enacted the New Mexico Small Loan Act of 1955.

Laws 1980, ch. 73, § 5, repealed the act as of July 1, 1982, and provided that the law as it existed prior to the 1980 act would be revived on that date. However, Laws 1981, ch. 263, § 5, repeals Laws 1980, ch. 73, § 5, effective July 1, 1981.

Section 58-15-14 NMSA 1978, referred to in the first and second sentences in the introductory paragraph, was repealed by Laws 1981, ch. 263, § 4. Present comparable provisions now appear in 58-15-14.1 NMSA 1978.

Purpose of section is to obviate the necessity of multiple interest calculations on small loans. 1973 Op. Att'y Gen. No. 73-74.

New loan or renewal constitutes full payment. - The legislature intended that a new loan or renewal of an existing loan would constitute payment in full of an existing loan.

1961-62 Op. Att'y Gen. No. 62-50. See also 58-15-17 A(3) NMSA 1978 and notes thereto.

Release to be filed where loan paid by renewal or new loan. - The legislature intended that a new loan or renewal of an existing loan would constitute payment in full of an existing loan. Therefore, a release, now termed a termination statement by the Uniform Commercial Code, must be filed even though the parties will undoubtedly enter into another agreement which also will be filed in instances of renewal or refinancing. 1961-62 Op. Att'y Gen. No. 62-50.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 10.

Interest: construction and application of provision of "small loan" statute against payment of interest in advance, 166 A.L.R. 433.

58 C.J.S. Money Lenders §§ 2, 5.

58-15-15.1. No prepayment penalty on small loans.

No provision in a loan or the evidence of indebtedness of a loan made under the New Mexico Small Loan Act of 1955 [this article] requiring a penalty or premium for prepayment of the balance of the indebtedness is enforceable.

History: 1978 Comp., § 58-15-15.1, enacted by Laws 1980, ch. 73, § 3.

Compiler's note. - Laws 1980, ch. 73, § 5, repealed the act as of July 1, 1982, and provided that the law as it existed prior to the 1980 act would be revived on that date.

Laws 1981, ch. 263, § 5, repeals Laws 1980, ch. 73, § 5, effective July 1, 1981.

58-15-16. Loan insurance allowable; financing certain premiums prohibited.

It shall be unlawful for any person licensed under the New Mexico Small Loan Act of 1955 [this article], in connection with the making of a loan under that act:

A. to sell life insurance, other than a term policy or credit life insurance on the principal borrowers;

B. to sell term or credit life insurance, the coverage of which exceeds the amount of the loan or extends beyond the term for which the loan is made;

C. after having made a loan, to finance any premiums of any life insurance policies, other than credit life insurance, sold to the borrower by the licensee or his agent in any manner for a period of ninety days;

D. after having made a loan, to finance any premium of any single-interest property insurance policy sold to the borrower by the licensee or his agent whereby the premium would be charged to the borrower in any manner. Except that nothing contained in this section shall preclude the sale and purchase of an insurance policy covering the dual interest of borrower and lien holder; or

E. to sell property insurance on unsecured loans.

History: 1953 Comp., § 48-17-43.2, enacted by Laws 1969, ch. 58, § 1; 1977, ch. 272, § 1; 1979, ch. 367, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 23.

58 C.J.S. Money Lenders §§ 2, 5.

58-15-17. [Requirements for making and payment of loans; incomplete instruments; limitations on charges after judgment and interest.]

A. Requirements for making and payment of loans. Every licensee shall:

(1) at the time any loan is made within the provisions of this act deliver to the borrower, or if there are two or more borrowers on the same obligation to one of them, a statement in the English language, on which shall be printed a copy of Section 14 [58-15-14 NMSA 1978] of this act, disclosing in clear and distinct terms the amount of the loan; the date the loan was made; a schedule or a description of the payments; the type of the security, if any, for the loan; the name and address of the licensed office; the name of the person primarily obligated for the loan; the amount of principal; the agreed rate of charge stated on a percent per month and a percent per annum basis and the amount in dollars and cents; and other items allowable hereunder, so stated as to clearly show the allocation of each item included;

(2) for each payment made on account of any such loan, give to the person making it a plain and complete receipt specifying the date and amount of the payment, the amount applied to interest and principal and the balance unpaid. When payment is made in any other manner than by the borrower in person, or by an agent of the borrower, or by check or money order, the licensee shall mail such receipt to the borrower's last known address, or hold same for delivery upon request of the borrower. A copy of all such receipts shall be kept on file in the office of the licensee as a part of his records;

(3) upon payment of the loan in full, mark plainly every note and promise to pay signed by any obligor with the word "paid" or "canceled" and promptly file or record a release of any mortgage if the same has been filed or recorded; restore any pledge and cancel and return any note and any assignment given to the licensee.

B. Incomplete instruments. No licensee shall take any note or promise to pay which does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed charge or rate of charge, nor any instrument in which blanks are left to be filled in after execution.

C. Limitation of charges after judgment. If judgment be obtained against any party or any loan made under the provisions of this law neither the judgment nor the loan shall carry, from the date of the judgment, any charges against any party to the loan other than court costs, attorney's fees and interest on the amount of the judgment at ten (10%) percent per annum.

D. Limitation of interest in bankruptcy. Any loan made under the provisions of this law which is filed and approved as a claim in any bankruptcy proceeding shall, from a date ninety (90) days subsequent to the date of adjudication, bear interest at the rate of ten (10%) percent per annum only. This limitation shall not apply when the bankrupt is not discharged in bankruptcy or to any obligation not dischargeable under the provisions of the Bankruptcy Act presently in force or as the same may hereafter be amended.

E. Limitation of interest upon death of borrower. No loan made under the provisions of this act shall bear interest after ninety (90) days from the date of the death of the borrower in excess of a rate of ten (10%) percent per annum on the unpaid principal balance of the loan.

F. Limitation of interest after maturity of loan. No loan under the provisions of this act shall bear interest after twelve (12) months from the date of maturity of any said loan in excess of ten (10%) percent per annum upon the unpaid principal balance of said loan.

History: 1953 Comp., § 48-17-44, enacted by Laws 1955, ch. 128, § 15.

Compiler's note. - "Section 14 of this act", (i.e., 58-15-14 NMSA 1978), referred to in subsection A(1), was repealed by Laws 1981, ch. 263, § 4. Present comparable provisions now appear in 58-15-14.1 NMSA 1978.

Bankruptcy Act. - The Bankruptcy Act, referred to in Subsection D, has been generally superseded by the Bankruptcy Code, codified as 11 U.S.C. § 101 et seq.

Financing statement tantamount to mortgage. - A chattel mortgage is commonly accepted as being a pledge of particular property for the payment of a debt. The financing statements required to be filed under the Uniform Commercial Code are, in effect, mortgages because they create a lien on the property pledged. Concluding, then, that financing statements are tantamount to mortgages, a release of such a lien must be filed whenever a note is paid in full, as provided for in Subsection A(3) of this section. 1961-62 Op. Att'y Gen. No. 62-50.

But not where mere refinancing. - Small loan companies are no longer required to file termination statements and new financing statements merely because a loan has been refinanced. 1970 Op. Att'y Gen. No. 70-78.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 5, 20 to 24.

58 C.J.S. Money Lenders §§ 2 to 8.

58-15-18. Lenders' exchange.

In order to preclude the burdening of a small loan borrower or borrowers with multiple loans, in any municipality in this state where more than two licenses shall at any time be in effect, the director may by a proper regulation and order require that the licensees therein shall form and maintain membership in a lenders' exchange through which said licensees may be kept fully informed as to outstanding loans in force under the New Mexico Small Loan Act of 1955 [this article] to any one borrower in other licensed offices in such municipality.

The director's regulation and order affecting licensees in such municipalities may provide that where one loan to the same borrower or borrowers is in effect in one licensed office, a second loan shall not intentionally or without due care be made by a licensee in such municipality under the New Mexico Small Loan Act of 1955, until the outstanding loan has been paid or otherwise discharged, out of the proceeds of the second loan.

History: 1953 Comp., § 48-17-45, enacted by Laws 1955, ch. 128, § 16; 1977, ch. 245, § 73.

58-15-19. Loans under other laws.

Any licensee hereunder may make loans in accordance with and not in violation of the general laws of this state governing money and usury to any borrower not having a loan with the lender under this act, provided no charge authorized to be made under the provisions hereof shall be made, collected or received by the lender in connection with any such loan; and provided further, that any such loan shall not be converted into a loan under this act after once made or after it is reduced to a sum less than the maximum herein provided for.

History: 1953 Comp., § 48-17-46, enacted by Laws 1955, ch. 128, § 17.

Conventional loan prohibited where small loan already. - This section clearly prohibits the making of a conventional loan by a small loan licensee where the borrower has already taken out a small loan. 1961-62 Op. Att'y Gen. No. 62-50.

But small loan not barred by existing conventional loan. - The statutes permit the granting of a small loan where a conventional loan to the same borrower is already on the books. 1961-62 Op. Att'y Gen. No. 62-50.

Time sales transactions not "loans." - By the vast weight of authority, time sales transactions are not "loans" within the ordinary meaning of that word. 1961-62 Op. Att'y Gen. No. 61-23.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Money Lenders §§ 3, 5.

58-15-20. [Fees and costs; filing or recording fees; attorney fees; court costs; notary fees prohibited.]

A. Filing or recording fees. Notwithstanding any provision of this act, lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for the filing, recording or releasing in any public office [of] any instrument securing the loan may be charged to the borrower.

B. Attorney fees. Notwithstanding any provision in any note or other loan contract taken or received under this act, attorney fees shall not be charged or collected except where such note or other contract has been turned in good faith to an attorney for collection, and after diligent effort to collect has failed on the part of the licensee.

C. Court costs. Where suit is filed in any court of competent jurisdiction, court costs shall be collectible in accordance with the laws of New Mexico applicable thereto.

D. Notary fees prohibited. Notary fees incident to the taking of any lien to secure a small loan or releasing such lien shall not be charged or collected by any licensee nor by any officer, agent or employee of a licensee nor by anyone within any office, room or place of business in which a small loan office is conducted.

History: 1953 Comp., § 48-17-47, enacted by Laws 1955, ch. 128, § 18.

Allowable charges for loans. - See same catchline in notes to 58-15-14.1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 10, 16, 24.

Fees and charges: construction, application and effect of provisions of small loan acts regarding fees, charges, etc., in addition to interest, 143 A.L.R. 1323.

58 C.J.S. Money Lenders §§ 2, 5.

58-15-21. What constitutes loan of money; wage purchases.

The payment of two thousand five hundred dollars ($2,500) or less in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under the New Mexico Small Loan Act of 1955 [this article], be deemed a loan of money secured by such sale, assignment or order. The amount by which such compensation so sold, assigned or ordered paid exceeds the amount of such consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of the New Mexico Small Loan Act of 1955.

History: 1953 Comp., § 48-17-48, enacted by Laws 1955, ch. 128, § 19; 1973, ch. 18, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 1.

58 C.J.S. Money Lenders § 1.

58-15-22. [Assignments; validity; amount collectible.]

A. Validity and payment of assignment. No assignment of or order for payment of any salary, wages, commissions or other compensation for services earned or to be earned, given to secure any loan made by any licensee, shall be valid unless the amount of such loan is paid to the borrower, simultaneously with its execution, nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least two months prior to the making of such assignment, order, mortgage or lien.

B. Amount collectible under assignment. A valid assignment or order for the payment of future salary, wages, commissions or other compensation for services, may be given as security for a loan made by any licensee or licensees and under such assignment or order, a sum not to exceed ten (10%) percent of the borrower's salary, wages, commissions or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan and a printed copy of this section, is served upon the employer. Not more than one such assignment of wages shall be valid hereunder or acceptable by an employer.

History: 1953 Comp., § 48-17-49, enacted by Laws 1955, ch. 128, § 20.

Law reviews. - For symposium, "The Effects of an Equal Rights Amendment on the New Mexico System of Community Property: Problems of Characterization, Management and Control," see 3 N.M. L. Rev. 11 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Money Lenders §§ 3, 5, 7.

58-15-23. Violation of general usury laws.

The wilful violation by any licensee or by any officer, manager, director, trustee, executive or employee directly engaged in operating a small loan office under the provisions of this act of any usury statute of this state within any office, room or place of business in which the making of loans as a licensee is solicited or engaged [in] or in association or conjunction therewith shall be ground for suspension and revocation of license in accordance with the procedures applicable thereto as set forth herein.

History: 1953 Comp., § 48-17-50, enacted by Laws 1955, ch. 128, § 21.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 21.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

58 C.J.S. Money Lenders §§ 6, 9.

58-15-24. Loans made elsewhere.

No loan made outside this state to a resident of New Mexico in the amount or of the value of two thousand five hundred dollars ($2,500) or less for which a greater rate of interest, consideration, charge or compensation to the lender than is permitted by the general laws of New Mexico presently in force governing money, interest and usury has been charged, contracted for or received, shall be enforced in this state. Every person in any way participating in such loan in this state shall be subject to the provisions of the New Mexico Small Loan Act of 1955 [this article]. Any loan made to a nonresident of New Mexico in conformity with the law of the state where made, may be enforced in this state.

History: 1953 Comp., § 48-17-51, enacted by Laws 1955, ch. 128, § 22; 1973, ch. 18, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 9, 17.

58-15-25. Review.

A. Any interested party to a formal hearing before the director, may, within twenty days after written notice of his decision, file an application before the director for a rehearing.

B. Within twenty days after notice of the director's decision or of notice that the application for a rehearing is denied, or if the application is granted within twenty days after notice of the rendition of a decision on the rehearing, any interested party may apply to the district court of Santa Fe county for a writ of certiorari or review for the purpose of having the lawfulness of the original order inquired into and determined. Such writ shall be made returnable not later than twenty days after the date of the issuance thereof and shall direct the director to certify his record, which shall include all the proceedings and the evidence taken in the case, to the court. No new or additional evidence may be introduced in such court, except such as may have been wrongfully excluded by the director and the cause shall be heard de novo on the law and the facts as disclosed by the record of the director and such additional evidence.

C. The director, the attorney general and any party to the hearing or proceeding before the director and any other person the court shall determine to be necessary to a complete adjudication shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming the director's order or directing what order the director shall issue.

D. The provisions of the Code of Civil Procedure relating to writs of certiorari or writ of review shall, so far as applicable and not in conflict with the New Mexico Small Loan Act of 1955 [this article], apply to proceedings in the courts under the provisions of the New Mexico Small Loan Act of 1955.

E. The writ of injunction shall not be available to any person to suspend or delay the director from conducting hearings relating to the granting or denial of applications for licenses hereunder, or revocation or suspension proceedings unless and until the director shall have entered a final order thereon, it being intended that review proceedings hereinabove provided for shall be the exclusive remedy in such matters. No court except the district court of Santa Fe county and the supreme court shall have jurisdiction to review, reverse or annul or to suspend or delay the operation or execution of any order of the director relating to the granting or denial, revocation or suspension of licenses hereunder; but as regards to [sic] any other matter any person aggrieved by any order or act of the director shall not be limited in his manner or method of proceeding, but may proceed by any applicable proceeding provided or recognized by law, and any licensee or any person considering himself aggrieved, by any act or order of the director hereunder other than as above specified may within thirty days from the entry of the order complained of, or within sixty days of the act complained of if there is no order, bring an action in the district court to review such order or act.

History: 1953 Comp., § 48-17-52, enacted by Laws 1955, ch. 128, § 23; 1977, ch. 245, § 74.

Scope. - While this section appears to be a departure from the general rule requiring a reviewing court either to affirm an administrative decision or to find it unreasonable and arbitrary and set it aside, it does not change, in any sense, the scope of review of administrative decisions previously established in New Mexico. S.I.C. Finance-Loans of Menaul, Inc. v. Upton, 75 N.M. 780, 411 P.2d 755 (1966).

58-15-26. Status of preexisting licensees.

Notwithstanding the repeal thereof by the New Mexico Small Loan Act of 1955 [this article], any licensee having a license under Chapter 174, New Mexico Session Laws of 1947, which is valid and in force and against which no revocation or suspension proceedings are pending on the date of the passage and approval of the New Mexico Small Loan Act of 1955, may within thirty days after the effective date of the New Mexico Small Loan Act of 1955 file with the director an application pursuant to Section 58-15-4 NMSA 1978 for an original license under the New Mexico Small Loan Act of 1955 and such applicants so filing shall be deemed to have a temporary license under the New Mexico Small Loan Act of 1955 for a period expiring sixty days after the filing of such application, and such additional period as the director by order may provide. All such existing licenses except as in this section provided shall terminate on the effective date of the New Mexico Small Loan Act of 1955. One-half of the amount of any license fees paid under Chapter 174, New Mexico Session Laws of 1947, by licensees thereunder for the calendar year 1955 shall be credited upon the application fee payable under the New Mexico Small Loan Act of 1955.

History: 1953 Comp., § 48-17-53, enacted by Laws 1955, ch. 128, § 24; 1977, ch. 245, § 75.

Compiler's note. - The effective date of the New Mexico Small Loan Act of 1955, referred to in this section, is March 16, 1955.

Laws 1947, ch. 174, referred to in this section, was repealed by Laws 1955, ch. 128, § 30.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 9 to 11.

58 C.J.S. Money Lenders § 4.

58-15-27. Amendment.

This act, or any part thereof, may be modified, amended or repealed so as to effect a cancellation or alteration of any license or right of a license hereunder; provided, that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any borrower.

History: 1953 Comp., § 48-17-54, enacted by Laws 1955, ch. 128, § 25.

Meaning of "this act". - See note under same catchline following 58-15-1 NMSA 1978.

58-15-28. Status of preexisting obligations.

Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee, under Chapter 174, New Mexico Session Laws of 1947 (Article 17, Chapter 48, New Mexico Statutes Annotated 1953), and any borrower, which was lawfully entered into prior to the effective date of this act.

History: 1953 Comp., § 48-17-55, enacted by Laws 1955, ch. 128, § 26.

Compiler's note. - Laws 1947, ch. 174, referred to in this section, was repealed by Laws 1955, ch. 128, § 30.

58-15-29. Director to keep record of fees, expenses and disposition of money.

The director shall keep a detailed record of all fees, expenses and costs collected by him and a detailed record of all expenses and disbursements of his office in the administration of laws regulating the small loan business. He shall, at the end of each month, turn over to the state treasurer all such money for deposit and transfer as provided in Section 9-16-14 NMSA 1978. The director may incur such expense, pay mileage and per diem and employ and fix the compensation of such employees as may be necessary for the enforcement of laws regulating the small loan business.

The record in the director's office of all receipts and disbursements shall be a public record.

History: 1953 Comp., § 48-17-56, enacted by Laws 1955, ch. 128, § 27; 1957, ch. 9, § 1; 1977, ch. 245, § 76; 1987, ch. 298, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers §§ 16, 24.

58-15-30. Penalties; general.

Any person, copartnership, trust, association or corporation and the several members, beneficiaries, officers, directors, agents and employees thereof who shall violate or participate in the violation of any of the sections of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred ($100) dollars and not more than three hundred ($300) dollars or by imprisonment of not more than ninety (90) days or by both such fine and imprisonment in the discretion of the court.

History: 1953 Comp., § 48-17-57, enacted by Laws 1955, ch. 128, § 28.

Meaning of "this act". - See note under same catchline following 58-15-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Money Lenders and Pawnbrokers § 21.

58 C.J.S. Money Lenders §§ 6, 9.

58-15-31. Short title.

Chapter 58, Article 15 NMSA 1978 may be cited as the "New Mexico Small Loan Act of 1955".

History: 1953 Comp., § 48-17-58, enacted by Laws 1955, ch. 128, § 29; 1987, ch. 292, § 4.

Severability clauses. - Laws 1955, ch. 128, § 31, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 16
REMOTE FINANCIAL SERVICE UNITS

58-16-1. Short title.

This act [58-16-1 to 58-16-17 NMSA 1978] may be cited as the "Remote Financial Service Unit Act".

History: 1978 Comp., § 58-16-1, enacted by Laws 1990, ch. 123, § 1.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-1 NMSA 1978, as enacted by Laws 1977, ch. 359, § 1, effective May 16, 1990. Laws 1990, ch. 123, § 1 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-2. Purpose of act.

The purposes of the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978] are:

A. to provide greater convenience for the consumer by authorizing financial institutions and merchants to offer certain financial services in convenient ways and locations;

B. to enable the use of remote financial service units at business locations for purposes of authorizing debit and certain credit transactions and verifying or guaranteeing payment of negotiable instruments or nonnegotiable share drafts to reduce the loss exposure of businesses;

C. to permit certain electronic transfers of funds to reduce the number of negotiable instruments processed and relieve the burden on the overall clearinghouse system;

D. to permit financial institutions and merchants to share the use of remote financial service units through networks; and

E. to maintain equal competitive opportunities for merchants and for financial institutions.

History: 1978 Comp., § 58-16-2, enacted by Laws 1990, ch. 123, § 2.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-2 NMSA 1978, as enacted by Laws 1977, ch. 359, § 2, effective May 16, 1990. Laws 1990, ch. 123, § 2 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-3. Definitions.

A. As used in the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978]:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share draft or other consumer or asset accounts or pre-authorized credit card accounts;

(2) "account transfer" means a transaction that enables movement of funds by a cardholder from one account to another account within the same financial institution;

(3) "acquirer" means the intercept processor that acquires financial data relating to a transaction from a card acceptor or a merchant and puts the data into a network system, and means "agent acquirer" unless specifically indicated otherwise;

(4) "agent acquirer" means any financial institution acting as an authorized agent of the acquirer in enabling financial data relating to a POS transaction to be acquired by the acquirer from a card acceptor or merchant, and means "acquirer" unless specifically indicated otherwise;

(5) "ATM transaction" means any one or more of the following transactions undertaken at an automated teller machine (ATM):

(a) a cash advance from an account;

(b) a cash advance from an authorized line of credit;

(c) a deposit to an account;

(d) a balance inquiry;

(e) an account transfer; and

(f) a normal financial transaction for a cardholder involving the issuance of non-cash or cash-equivalent items; provided, however, that normal financial transactions at an ATM will expressly exclude any POS transaction;

(6) "authorization" means the issuance of approval, by or on behalf of the financial institution holding the cardholder's account, to complete a transaction initiated or authorized by the cardholder;

(7) "automated teller machine" or "ATM" means an unmanned device that is activated by the cardholder through a specially prepared card or by the transmission of a code via a keyboard or keyset or both and is capable of one or more of the following transactions:

(a) dispensing cash to any cardholder from an account or against a preauthorized line of credit;

(b) accepting deposits;

(c) account transfers;

(d) satisfying a balance inquiry in the cardholder's account or accounts; and

(e) conducting normal financial transactions involving the issuance of non-cash or cash-equivalent items. Provided, however, that normal financial transactions at an ATM will expressly exclude a transaction that can only be initiated and completed at a POS terminal;

(8) "balance inquiry" means a transaction that permits a cardholder to obtain the current balance of the cardholder's account or accounts;

(9) "card" means a plastic card or other instrument or any other access device issued by a financial institution to a cardholder that enables the cardholder to have access to and that processes transactions against one or more accounts, and the term shall be used when referring either to an ATM access card, a debit card or a credit card identifying a cardholder who has established a pre-approved credit line with the issuer of the credit card;

(10) "card acceptor" means the party accepting the card and presenting transaction data to an acquirer;

(11) "cardholder" means a person to whom a card has been issued by a financial institution or who is authorized to use the card;

(12) "cash advance" means any transaction resulting in a cardholder receiving cash, whether initiated through an ATM or a POS terminal;

(13) "chargeback" means the credit of all or a portion of an amount previously posted to a cardholder's account;

(14) "clearing account" means an account or several accounts maintained for the purpose of settlement and payment of fees to the network manager;

(15) "credit" means a claim for funds by the cardholder for the credit of the cardholder's account and provides details of funds acknowledged as payable by the acquirer or card acceptor to the issuer for credit to the cardholder's account;

(16) "credit card cash advance" means a cash loan obtained by a cardholder against a pre-authorized line of credit through presentation of a card;

(17) "data interchange" means the exchange of transaction data, authorization requests, transaction records or other data between intercept processors and acquirers and issuers through a shared system or network;

(18) "debit" means a transaction initiated by a cardholder that results in the debit to the cardholder's account, through use of a card or otherwise, and results in a claim for funds made by the acquirer or card acceptor against the issuer;

(19) "director" means the director of the financial institutions division of the regulation and licensing department;

(20) "electronic funds transfer" or "EFT" means a system designed to facilitate the exchange of monetary value via electronic media utilizing electronic or mechanical signals or impulses or a combination of electronic or mechanical impulses and audio, radio or microwave transmissions;

(21) "financial institution" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union or authorized branches of each of the foregoing;

(22) "in-state financial institutions" means a financial institution authorized to engage in and engaged in business in New Mexico and having its principal and main office within the state;

(23) "intercept processor" means any electronic data processor operating for a financial institution that passes transactions;

(24) "issuer" means a financial institution that issues cards or accepts transactions for a card, is the acceptor of a transaction and is typically, but not always, the entity that maintains the account relationship with the cardholder;

(25) "lobby or teller-line ATM" means any ATM located within the lobby of a financial institution, or in its teller line, access to which is available only during regular banking hours;

(26) "merchant" means a seller of goods or services, retailer or other person who, pursuant to an agreement with a financial institution, agrees to accept or causes its outlets to accept cards for EFT transactions when properly presented, is usually a card acceptor and is a seller of goods and services who is regularly and principally engaged in the business of selling, leasing or renting goods, selling or leasing services for any purpose or selling insurance, whether the business is a wholesale or retail business and whether the goods or services are for business, agricultural, personal, family or household purposes. "Merchant" includes a professional licensed by the state of New Mexico, but does not include financial institutions;

(27) "modem" is a contraction of "modulator-demodulator" and means a functional unit that enables digital data to be transmitted over analog transmission facilities such as telephone lines, radio or microwave transmissions;

(28) "network" means a computer-operated system of transmitting items and messages between ATM or POS terminals, intercept processor and financial institutions, and settling transactions between financial institutions, and includes without limitation, ATMs, POS terminals, all related computer hardware and software, modems, logos and service marks;

(29) "network manager" means the person managing the business of a network;

(30) "off-line" means not on-line;

(31) "off-premise ATM" means ATMs installed away from the building or lobby of a financial institution by a distance of not less than five hundred feet;

(32) "on-line" means a system in which all input data enters the computer at a financial institution, an intercept processor or the network from its point of origin and that is capable of transmitting information back to the point of origin after all input data is processed;

(33) "on-premise ATM" means an ATM that stands in or immediately adjacent to the financial institution's building, such as in the financial institution's lobby, through the wall or a drive-up ATM within five hundred feet of the financial institution's building;

(34) "person" means an individual, partnership, joint venture, corporation or other legal entity however organized;

(35) "personal identification number" or "PIN" means a series of numbers or letters selected for or by the cardholder and used by the cardholder as a code or password in conjunction with a card to perform a transaction;

(36) "point-of-sale or POS terminal" means an information processing device or machine, located upon the premises occupied by one or more merchants, through which transaction messages are initiated and electronically transmitted to an acquirer to effectuate a POS transaction and that accepts debit cards and credit cards;

(37) "POS transaction" means any of the following transactions undertaken at a POS terminal:

(a) purchases;

(b) purchases that include cash back to the cardholder;

(c) cash advances at POS terminals;

(d) returned item transaction message resulting in a credit to the cardholder's account;

(e) a credit;

(f) an authorization;

(g) chargebacks at POS terminals;

(h) card verification whereby the validity of a card is determined at POS terminals;

(i) balance inquiries at POS terminals; and

(j) force post financial advice at POS terminals whereby any other transaction authorized by an issuer-approved stand-in processor requires settlement resulting in a debit to the cardholder's account.

Nothing in this paragraph shall be construed to include credit card transactions;

(38) "purchase" means a transaction that, if approved, results in a debit transaction for the payment of goods and services or may include cash paid to the cardholder of some part of the amount of the transaction;

(39) "receipt" means a hard-copy description of a transaction:

(a) for the purposes of the Remote Financial Service Unit Act if the transaction is an ATM transaction, the receipt shall contain, at a minimum: 1) the date of the ATM transaction; 2) the amount of the ATM transaction, if any; 3) the account number; 4) the type of account accessed; 5) the location of the ATM used in the ATM transaction; 6) the identity of any party or account to which funds are transferred; and 7) the type of ATM transaction completed; and

(b) for the purposes of the Remote Financial Service Unit Act, if the transaction is a POS transaction, the receipt shall contain, at a minimum: 1) the date of the POS transaction; 2) the amount of the POS transaction, if any; 3) the account number; 4) the type of account accessed; 5) the merchant's name and location; and 6) the type of POS transaction completed;

(40) "returned item transaction message" means a credit message generated by the acquirer or by the merchant that returns the value of the returned item to the cardholder's account;

(41) "remote financial service unit" means a POS terminal or an ATM;

(42) "settlement" means the process by which funds are transferred between financial institutions, intercept processors or networks in the flow of a transaction or in the payment of fees associated with the transaction;

(43) "shared ATM or POS terminals" means ATM or POS terminals that are shared among financial institutions by formal agreement for the purposes of cardholder convenience, reduction of capital investment and marketing advantage;

(44) "single subscriber terminal" means any terminal or set of terminals used to connect a single customer of a financial institution to its financial institution through which EFT messages are sent and completed, other than transactions;

(45) "switch" means a routing mechanism and any device attached thereto that is necessary for the processing of a transaction used to communicate information and transactions among participating financial institutions or their intercept processors in a shared system or network;

(46) "transaction" means a collection of electronic messages concluded by:

(a) a debit to or a credit from an account;

(b) a balance inquiry;

(c) the consummation of a normal financial transaction; or

(d) a rejected attempt of any one of those matters provided in Subparagraphs (a) through (c) of this paragraph;

(47) "unauthorized use of the card of another" means the utilization of the card in or through a remote financial service unit to affect the balance of or obtain information concerning the account of the cardholder by a person other than the cardholder, which person does not have the permission of the cardholder for such use; and

(48) "unauthorized withdrawal from the account of another" means the debiting of or removal of funds from a cardholder's account, accomplished by means of the utilization of a remote financial service unit by a person other than the cardholder, which person does not have actual, implied or apparent authority for the debiting or removal and from which debiting or removal the cardholder receives no benefit.

B. (1) Any of the information provided pursuant to Subparagraphs (a) and (b) of Paragraph (39) of Subsection A of this section may be provided using codes, numbers or other uniform explanations so long as they are explained elsewhere on the receipt.

(2) No receipt shall be required in any transaction involving a negotiable instrument that will itself become a receipt.

C. Any term used in the Remote Financial Service Unit Act but not specifically defined shall have the meaning given to that term by the Uniform Commercial Code [55-1-101 to 55-9-508 NMSA 1978].

History: 1978 Comp., § 58-16-3, enacted by Laws 1990, ch. 123, § 3; 1991, ch. 120, § 7.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repealed former 58-16-3 NMSA 1978, as amended by Laws 1989, ch. 218, § 1, effective May 16, 1990. Laws 1990, ch. 123, § 3 enacted a new 58-16-3 NMSA 1978. For provisions of former section, see 1989 Cumulative Supplement.

The 1991 amendment, effective June 14, 1991, in Subsection A, in Paragraph (37), added the last sentence and, in Paragraph (39), twice substituted "the Remote Financial Service Unit Act" for "this Act"; and, in Subsection B, substituted "Paragraph (39) of Subsection A of this section" for "Paragraph 39" in Paragraph (1).

58-16-4. Restrictions on provision of financial services.

A. Nothing in the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978] shall be construed as authority for any person to provide financial services in a manner not otherwise permitted or restricted by applicable law nor as authority to enlarge upon the financial services that financial institutions are permitted by applicable law to perform.

B. Except as provided in Subsection F of Section 58-16-5 NMSA 1978, no provision of the Remote Financial Service Unit Act shall be construed to limit or otherwise control any debits or credits or other electronic funds transfers through a network or other system within the proprietary control of one or more merchants.

History: 1978 Comp., § 58-16-4, enacted by Laws 1990, ch. 123, § 4; 1991, ch. 120, § 8.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repealed former 58-16-4 NMSA 1978, as amended by Laws 1989, ch. 218, § 2, effective May 16, 1990. Laws 1990, ch. 123, § 4 enacted a new 58-16-4 NMSA 1978. For provisions of former section, see 1989 Cumulative Supplement.

The 1991 amendment, effective June 14, 1991, designated the existing section as Subsection A and added Subsection B.

58-16-5. Point-of-sale terminals.

A. Subject to the provisions of Subsection B of this section, a POS terminal may be used to perform internal business functions in addition to all functions defined as POS transactions.

B. In conjunction with the performance of any POS transaction, the transfer or deposit of funds to the account of a merchant or to an account held for the merchant, is prohibited unless the account is maintained in an in-state financial institution having its main office or manned branch in New Mexico.

C. A POS terminal shall not be operated to perform any POS transaction except pursuant to a written agreement between the merchant on whose premises the POS terminal is located and an in-state financial institution having its main office or manned branch office in New Mexico, unless otherwise permitted or restricted by applicable law.

D. A merchant may designate specific POS terminals on its premises at which only a limited number of particular POS transactions shall be performed.

E. The POS terminal shall be manned or operated by one or more individuals who are agents, servants or employees of the merchant upon whose premises the POS terminal is located, either alone, in cooperation with the cardholder or by the cardholder. Provided, however, that an employee of a financial institution may be stationed at or operate a POS terminal only for demonstration or training purposes or to verify its accuracy.

F. A merchant contracting for any financial service functions through a POS terminal shall make that POS terminal available to any other requesting in-state financial institution, to the extent that the financial institutions are permitted by law to engage in POS transactions. Provided, however, that the mandatory sharing of the POS terminal will be upon the same terms and conditions of the written agreement between the merchant and the financial institution originally initiating the written agreement. Provided further, that any financial institution requesting to share a POS terminal shall pay reasonable compensation to the originating financial institution as they shall agree.

G. At the end of each POS transaction, the POS terminal shall issue the cardholder who initiated the POS transaction a receipt.

History: 1978 Comp., § 58-16-5, enacted by Laws 1990, ch. 123, § 5.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-5 NMSA 1978, as amended by Laws 1985, ch. 231, § 2, effective May 16, 1990. Laws 1990, ch. 123, § 5 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-6. Use of automated teller machines.

A. An ATM may only be used to initiate and complete one or more ATM transactions.

B. Any lobby or teller-line ATM and any on-premises ATM, including the associated structures, shall be owned or leased by one in-state financial institution.

C. An off-premises ATM, excluding the associated structure, shall be owned or leased and operated by one or more in-state financial institutions. The off-premises ATM shall be unmanned, having no person stationed at the terminal to assist the cardholder in the operation of the ATM except for demonstration or training purposes or to verify its accuracy.

History: 1978 Comp., § 58-16-6, enacted by Laws 1990, ch. 123, § 6.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-6 NMSA 1978, as amended by Laws 1985, ch. 231, § 3, effective May 16, 1990. Laws 1990, ch. 123, § 6 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-7. POS terminal not considered a financial institution branch office.

A POS terminal installed and operated pursuant to the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978] is not a branch office of a financial institution and shall not be construed to be a branch office of a financial institution under New Mexico law. If any court of competent jurisdiction construes a POS terminal to be installed or installed under the authority of the Remote Financial Service Unit Act to be a branch office of a financial institution, the supervisory authority approving branch offices of financial institutions shall approve any application for a POS terminal to be installed or installed under the authority of the Remote Financial Service Unit Act without regard to capital requirements for a financial institution branch office and without regard to the convenience and necessity for a financial institution branch office or any other factors normally considered in granting or denying a financial institution branch office application.

History: 1978 Comp., § 58-16-7, enacted by Laws 1990, ch. 123, § 7.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-7 NMSA 1978, as enacted by Laws 1977, ch. 359, § 7, effective May 16, 1990. Laws 1990, ch. 123, § 7 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-8. Lobby or teller-line automated teller machines and on-premises automated teller machines not considered financial institutions.

No lobby or teller-line ATM or on-premises ATM shall be construed for any purpose to be a branch office of a financial institution under New Mexico law.

History: 1978 Comp., § 58-16-8, enacted by Laws 1990, ch. 123, § 8.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-8 NMSA 1978 as amended by Laws 1989, ch. 218, § 3, relating to off-premises unmanned terminal considered a financial institution branch office, effective May 16, 1990. Laws 1990, ch. 123, § 8 enacts the above section. For provisions of former section, see 1989 Cumulative Supplement. For present comparable provisions, see 58-16-9 NMSA 1978.

58-16-9. Off-premises ATM considered a financial institution branch office.

A. An off-premises ATM is a branch office of a financial institution. Subject to the limitations contained in the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978], in-state financial institutions are authorized to install one or more off-premises ATMs. Before installing or operating an off-premises ATM, the in-state financial institution shall first obtain the approval of the director to install and operate the off-premises ATM, which written approval shall not be withheld by the director unless good cause is shown. The director, in making this determination, shall take into account, but not by way of limitation, factors such as the financial history and condition of the applicant, the adequacy of its capital structure, its future earnings prospects and the general character of its management, the future earnings prospects of the off-premises ATM and the adequacy of any network, intercept processor or processing computer, if any. The director's approval shall not be given until the director has ascertained to his satisfaction that:

(1) the establishment of the off-premises ATM complies in all respects with all applicable requirements for a branch office of the particular financial institution making application, including but not limited to, geographic restrictions, if any;

(2) the proposed location is in the public interest; and

(3) the establishment of the off-premises ATM will meet the needs and promote the convenience of the area to be served by the ATM.

B. An investigation fee of two hundred dollars ($200) shall accompany each application for an off-premises ATM.

History: 1978 Comp., § 58-16-9, enacted by Laws 1990, ch. 123, § 9.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-9 NMSA 1978, as amended by Laws 1985, ch. 231, § 4, relating to restrictions on ownership or leasing, effective May 16, 1990. Laws 1990, ch. 123, § 9 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet. For present comparable provisions, see 58-16-11 NMSA 1978.

58-16-10. Notice to director.

Any financial institution desiring to utilize an off-premises ATM shall give the director written notice of its intention to do so in a form required by the director. The notice shall be delivered to the director not less than thirty days prior to the implementation of the off-premises ATM. The director may require any financial institution participating in the utilization of any off-premises ATM to file an annual report including such information as the director may deem necessary; provided, however, the director shall not require an in-state financial institution chartered under the laws of the United States to provide any greater information than it is required to provide its appropriate federal regulatory agency.

History: 1978 Comp., § 58-16-10, enacted by Laws 1990, ch. 123, § 10.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-10 NMSA 1978, as amended by Laws 1985, ch. 231, § 5, relating to limitation upon location, effective May 16, 1990. Laws 1990, ch. 123, § 10 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-10.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 123, § 18 repeals 58-16-10.1 NMSA 1978, as enacted by Laws 1985, ch. 231, § 6, relating to accessibility and advertising, effective May 16, 1990. For former provisions, see 1986 Replacement Pamphlet.

58-16-11. Inter-county restrictions.

A. Notwithstanding any provision to the contrary in the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978], no ATM shall be owned or leased by a person other than an in-state financial institution having its main office, a manned branch office or any other authorized branch in the county in which the ATM is located.

B. Notwithstanding any provision to the contrary in the Remote Financial Service Unit Act, no POS terminal shall be operated by any person other than a merchant or an in-state financial institution.

History: 1978 Comp., § 58-16-11, enacted by Laws 1990, ch. 123, § 11; 1991, ch. 120, § 9.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repealed former 58-16-11 NMSA 1978, as amended by Laws 1983, ch. 33, § 4, relating to notice to director, effective May 16, 1990. Laws 1990, ch. 123, § 11 enacted a new 58-16-11 NMSA 1978. For provisions of former section, see 1986 Replacement Pamphlet. For present comparable provisions, see 58-16-10 NMSA 1978.

The 1991 amendment, effective June 14, 1991, in Subsection B, substituted "operated by any person other than a merchant or an in-state financial institution" for "owned or leased by any person other than" and former Paragraphs (1) and (2), pertaining to ownership by financial institutions and merchants.

58-16-12. Networks.

A. Two or more financial institutions, separately or in combination with any other person, may establish one or more networks through which the financial institutions are interconnected for on-line data interchange.

B. Membership or participation by any financial institution in one network or other proprietary or shared EFT system shall not preclude membership or participation by the financial institution in any other network or other proprietary or shared EFT system.

C. A network may establish a shared on-line EFT system enabling financial institutions to participate in a data interchange connecting two or more financial institutions, acquirers, agent acquirers, card acceptors, intercept processors, issuers, ATMs and POS terminals. A network may enable any participant in said network to engage in any and all transactions. A network may establish, for its own account and as agent for its participants, clearing accounts as may be necessary to provide for the settlement of transactions.

D. Membership or participation in a network by a financial institution, merchant and intercept processor shall be evidenced by a written agreement setting forth the duties and obligations of the participants and the network. The written agreement may establish such performance standards, marketing standards, fee structure and cost recovery mechanisms as shall be agreed upon by and between the network and its participants, unless otherwise restricted by applicable state or federal law.

E. A network, through the network manager, may directly provide the services of a switch, or may contract with any other person for the services of the switch.

F. No network or other proprietary or shared system shall be required to obtain approval of the director to operate in New Mexico.

History: 1978 Comp., § 58-16-12, enacted by Laws 1990, ch. 123, § 12.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-12 NMSA 1978, as amended by Laws 1983, ch. 33, § 5, relating to confidentiality, effective May 16, 1990. Laws 1990, ch. 123, § 12 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet. For present comparable provisions, see 58-16-13 NMSA 1978.

58-16-13. Confidentiality.

A. Every merchant having a POS terminal on its premises and every financial institution contracting for use of or operating a remote financial service unit shall adopt and maintain safeguards to insure the safety of funds of any third party in situations where deposits are accepted or cash advances or withdrawals are made and to insure the safety of items and other information, which safeguards shall include security precautions consistent with the appropriate minimum security requirements specified by applicable federal or state law or by federal or state regulatory agencies having jurisdiction over the POS terminal or remote financial service unit.

B. A social security number shall not be used as a PIN or code to activate any remote financial service unit.

C. To protect the privacy of persons using remote financial service units, information concerning a cardholder's account that is received by or processed through such units shall be treated and used only in accordance with applicable law relating to the dissemination and disclosure of such information. Any person operating a POS terminal shall take such steps as are reasonably necessary to protect the confidentiality of any information received or obtained about a cardholder's account by any individual manning a POS terminal.

D. No person shall use or attempt to use a remote financial service unit for the purpose of obtaining any information concerning the account of a cardholder of a financial institution without prior approval of the cardholder, except where such information is reasonably necessary to complete or prevent the completion of or to reconstruct a transaction initiated through the remote financial service unit. No person shall obtain through the use of a remote financial service unit any information concerning the account of a cardholder other than that reasonably necessary to effect or prevent the transaction that the cardholder seeks to accomplish through its use or to reconstruct a transaction initiated through the remote financial service unit.

E. Any transaction shall include the issuance of a receipt to the cardholder. No receipt shall be required, however, in any transaction involving a negotiable instrument that shall itself become a receipt.

History: 1978 Comp., § 58-16-13, enacted by Laws 1990, ch. 123, § 13.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-13 NMSA 1978, as amended by Laws 1989, ch. 218, § 4, relating to issuance of remote financial service unit card, liability of holder of card, and limits of liability, effective May 16, 1990. Laws 1990, ch. 123, § 13 enacts the above section. For provisions of former section, see 1989 Cumulative Supplement. For present comparable provisions, see 58-16-14 NMSA 1978.

58-16-14. Issuance of card; liability of cardholder; limits of liability.

A. No card that will actuate a remote financial service unit shall be issued except in response to a request or application therefor. The prohibition does not apply to the issuance of a card in renewal of or in substitution for a card or as an adjunct to an established account.

B. A cardholder shall be liable for the unauthorized use of his card due to loss, theft or other action only if the card has been accepted by the cardholder and the unauthorized use occurs before the cardholder has notified the issuer that an unauthorized use has occurred or may occur as a result of the loss, theft or other action. If the cardholder fails to notify the issuer within two business days after learning of the loss, theft or unauthorized use of the card, the cardholder's liability shall not exceed the lesser of five hundred dollars ($500) or the sum of:

(1) fifty dollars ($50.00) or the amount of unauthorized EFT that occurs before the close of the two business days, whichever is less; and

(2) the amount of unauthorized EFT that the issuer establishes would not have occurred but for the failure of the cardholder to notify the issuer within two business days after the cardholder learns of the loss or theft of the card and that occur after the close of two business days and before notice to the issuer.

C. For the purposes of Subsection B of this section, a cardholder shall notify the issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the issuer with the pertinent information whether or not any particular officer, employee or agent of the issuer does in fact receive such information.

D. Except for losses due to the unauthorized use of the cardholder's card that are governed by the provisions of Subsection B of this section, no aggrieved cardholder shall be liable for the amount of any unauthorized withdrawal from the cardholder's account or any interest lost on the unauthorized amount withdrawn, if the financial institution is notified by the cardholder of the unauthorized withdrawal within the time period specified in Section 55-4-406 NMSA 1978 of the receipt by the cardholder of a statement from the financial institution listing such withdrawal, unless the cardholder by his negligence contributed to the unauthorized withdrawal.

History: 1978 Comp., § 58-16-14, enacted by Laws 1990, ch. 123, § 14.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-14 NMSA 1978, as enacted by Laws 1977, ch. 359, § 14, relating to financial institution customer's right to stop payment, effective May 16, 1990. Laws 1990, ch. 123, § 14 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-15. Civil liability.

A. A cardholder who is authorized to engage in transactions through or by means of remote financial service units may bring a civil action against a person violating the Remote Financial Service Unit Act [58-16-1 to 58-16-17 NMSA 1978] for an amount equal to the sum of any actual damages sustained by the cardholder. Upon adverse adjudication, the defendant shall be liable for actual damages or fifty dollars ($50.00), whichever is greater, together with court costs and reasonable attorneys' fees incurred by the plaintiff. The court may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further such violations of the Remote Financial Service Unit Act. If it appears to the court that the suit by the plaintiff was ill founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorneys' fees incurred by the defendant.

B. In the case of a class action, no minimum recovery for each member of the class shall be applicable and the total recovery in any such action is limited to the actual damages sustained by the members of the class but shall not exceed the lesser of one hundred thousand dollars ($100,000) or one percent of the net worth of the defendant.

History: 1978 Comp., § 58-16-15, enacted by Laws 1990, ch. 123, § 15.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-15 NMSA 1978, as enacted by Laws 1977, ch. 359, § 15, effective May 16, 1990. Laws 1990, ch. 123, § 15 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

58-16-16. Criminal penalty.

A. Any person who knowingly and willfully violates any of the provisions of Section 14 [58-16-14 NMSA 1978] of the Remote Financial Service Unit Act may be found guilty of a petty misdemeanor.

B. Any person who makes an unauthorized withdrawal from the account of another person with a financial institution, or who steals the card of another, or who makes an

unauthorized use of the card of another is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 58-16-16, enacted by Laws 1990, ch. 123, § 16.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-16 NMSA 1978, as amended by Laws 1989, ch. 218, § 5, effective May 16, 1990. Laws 1990, ch. 123, § 16 enacts the above section. For provisions of former section, see 1989 Cumulative Supplement.

58-16-17. Single subscriber terminals; exemption.

Single subscriber terminals shall be exempted from:

A. ownership limitations otherwise imposed on off-premises ATMs;

B. restricted geographic location;

C. consideration as a financial institution branch office; and

D. requirements for notice to the director.

History: 1978 Comp., § 58-16-17, enacted by Laws 1990, ch. 123, § 17.

Repeals and reenactments. - Laws 1990, ch. 123, § 18 repeals former 58-16-17 NMSA 1978, as enacted by Laws 1977, ch. 359, § 17, relating to examination with respect to any permitted financial service function, effective May 16, 1990. Laws 1990, ch. 123, § 17 enacts the above section. For provisions of former section, see 1986 Replacement Pamphlet.

58-16-18. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 123, § 18 repeals 58-16-18 NMSA 1978, as enacted by Laws 1983, ch. 33, § 7, relating to exemption of single subscriber terminals, effective May 16, 1990. For provisions of former section, see 1986 Replacement Pamphlet. For present comparable provisions, see 58-16-17 NMSA 1978.

ARTICLE 17
ENDOWED CARE OF CEMETERIES

58-17-1. Declaration of policy.

It is hereby declared to be necessary in the public interest that cemeteries, as hereinafter defined, advertising or selling "endowed care or perpetual care" in connection with the sale of cemetery lots or burial spaces be subject to sufficient regulation by the state to ensure the establishment of sound business practices necessary to furnish the endowment care or perpetual care guaranteed. The provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978] shall be liberally construed to carry out its purposes.

History: 1953 Comp., § 67-29-1, enacted by Laws 1961, ch. 156, § 1.

Cross-references. - As to regulation of municipal cemeteries, see 3-40-1 to 3-40-9 NMSA 1978.

Permission to invest trust funds in securities. - The state bank examiner (now the director of the financial institutions division of the regulation and licensing department) has the authority to require trustees of perpetual care cemetery trust funds to obtain his permission before investing the trust funds in certain securities. 1959-60 Op. Att'y Gen. No. 60-128.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries §§ 6, 20.

Duty to use proceeds of sale of cemetery lots for care, maintenance or improvement of cemetery as affected by statute, 124 A.L.R. 279.

Liability of cemetery in connection with conducting or supervising burial services, 42 A.L.R.4th 1059.

Dead bodies: liability for improper manner of reinterment, 53 A.L.R.4th 394.

14 C.J.S. Cemeteries §§ 3, 26, 27.

58-17-2. Short title.

This act [58-17-1 to 58-17-17 NMSA 1978] may be cited as the "Endowed Care Cemetery Act of 1961".

History: 1953 Comp., § 67-29-2, enacted by Laws 1961, ch. 156, § 2.

58-17-3. Definitions.

Words used in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; and oath includes affirmation. When used herein the following terms shall, unless the context otherwise indicates, have the following respective meanings:

the term "cemetery" is defined as a place dedicated to and used and intended to be used for the permanent interment of the human dead. It may be either a burial park, for earth interments, a mausoleum for vault or crypt interments, a crematory or crematory and columbarium for cinerary interments, or a combination of one or more of these;

the term "endowed or perpetual care cemetery" means a cemetery for the benefit of which an endowed care fund shall have been established;

the term "no endowed care cemetery" means a cemetery for the benefit of which no endowed care fund has been established;

the term "endowed care" means the general maintenance of the cemetery, including the cutting and trimming of lawn, shrubs and trees at reasonable intervals, keeping all places where interments have been made in proper order, keeping in repair the drains, waterlines, roads, buildings, fences and other structures consistent with a well-maintained cemetery; it shall also include overhead expenses necessary for such purposes, including maintenance of machinery, tools and equipment for such care, compensation of employees, payment of reasonable and necessary insurance premiums, reasonable payments for employees' pension and other benefit plans and the maintenance of necessary records of lot ownership, transfers and burials; and it shall include the administration of endowed care funds in those instances wherein those administering such funds fail or refuse to act;

"burial park" means a tract of land which has been dedicated to the purposes of and used, and intended to be used, for the interment of the human dead in graves;

"grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of the remains of a deceased person;

"mausoleum" means a structure or building of most durable and lasting fireproof construction used, or intended to be used, for the permanent interment in crypts and vaults therein of the remains of deceased persons;

"crypt" or "vault" as herein used means the chamber in a mausoleum of sufficient size to enter [inter] the uncremated remains of a deceased person;

"columbarium" means a structure or room or other space in a building or structure of most durable and lasting fireproof construction or a plot of earth, containing niches, used, or intended to be used, to contain cremated human remains;

"crematory" means a building or structure containing one or more furnaces used, or intended to be used, for the reduction of bodies of deceased persons for cremated remains;

"crematory and columbarium" means a building or structure of most durable and lasting fireproof construction containing both a crematory and columbarium, used, or intended

to be used, for the permanent interment therein by inurnment of the remains of deceased persons;

"niche" is a recess in a columbarium, used, or intended to be used, for the permanent interment of the cremated remains of one or more deceased persons;

"lot" or "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and shall apply with like effect to one, or more than one, adjoining grave; one, or more than one, adjoining crypts or vaults; or one, or more than one, adjoining niches;

"temporary receiving vault" as herein used means a vault in a structure of most durable and lasting construction used and intended to be used for the temporary deposit therein for a reasonable time only of the remains of a deceased person;

"interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial;

"cremation" as herein used means the interment of a body of a deceased person by reduction to cremated remains in a crematory;

"inurnment" means placing the cremated remains in an urn and permanently depositing the same in a niche;

"entombment" means the permanent interment of the remains of a deceased person in crypt or vault;

"remains" means the body of a deceased person;

"cremated remains" means remains of a deceased person after incineration in a cemetery [crematory];

"cemetery business", "cemetery businesses" and "cemetery purposes" are herein used interchangeably and shall mean any and all business and purposes requisite or necessary for or incident to establishing, maintaining, managing, operating, improving and conducting a cemetery and the interring of the human dead, and the care, preservation and embellishment of cemetery property;

the term "plot owner", "owner" or "lot proprietor" as used herein means any person in whose name a burial plot stands, as owner of the exclusive right of sepulture therein, in the office of the cemetery authority, or who holds from such authority, a conveyance of the exclusive rights of sepulture, or a certificate of ownership of the exclusive right to sepulture, in a particular lot, plot or space;

"cemetery authority" means any person, firm, corporation, trustee, partnership, association or joint venturers, owning, operating, controlling or managing the cemetery or holding lands for burial purposes;

"municipal cemetery" means a cemetery owned, operated, controlled or managed by any city, town, village, either incorporated or unincorporated, county or other political subdivision;

"fraternal cemetery" means a cemetery owned, operated, controlled or managed by any fraternal organization or auxiliary organizations thereof, in which the sale of burial space is restricted principally to its members;

"religious cemetery" means a cemetery owned, operated, controlled or managed by any recognized church, religious society, association or denomination, or by any cemetery authority or any corporation administering, or through which is administered the temporalities of any recognized church, religious society, association or denomination;

"care funds" as distinguished from receipts from annual charges or gifts for current or annual care, means any realty or personalty impressed with a trust by the terms of any gift, grant, contribution, payment, devise or bequest, or pursuant to contract, accepted by any cemetery authority owning, operating, controlling or managing a privately operated cemetery, or by any trustee or agent or custodian for the same, and the amounts set aside pursuant to the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978], and any income accumulated therefrom, where legally so directed by the terms of the transaction by [which] the principal was established.

History: 1953 Comp., § 67-29-3, enacted by Laws 1961, ch. 156, § 3.

Section in pari materia with criminal statute. - Section 30-12-12, regarding disturbing the remains of a third person, is in pari materia with this section and should be construed with reference to the definition of "cemetery" supplied by this section. 1987 Op. Att'y Gen. No. 87-31.

"Cemetery". - This section embraces the well-established notion that land must be set apart as a cemetery to qualify as a cemetery by definition. 1987 Op. Att'y Gen. No. 87-31.

58-17-4. Gifts and contributions; trust funds.

Any cemetery authority is hereby authorized and empowered to accept any gift, grant, contribution, payment, devise or bequest, or pursuant to contract, any sum of money, funds, securities or to contract, any sum of money, funds, securities or property of any kind, or the income or avails thereof, and to hold the same in trust in perpetuity for the care of its cemetery, or for the care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche in its cemetery; or for the special care of any lot, grave, crypt or niche or of any family mausoleum or memorial, marker,

or monument in its cemetery. No gift, grant, devise, bequest, payment or other contribution shall be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the gift, grant, devise, bequest, payment or other contribution. If any gift, grant, devise, bequest, payment or other contribution consists of nonincome producing property, the cemetery authority accepting it is authorized and empowered to sell such property and to invest the funds obtained in accordance with the provisions of the next succeeding paragraph.

The care funds shall be held intact and, unless otherwise restricted by the terms of the gift, grant, devise, bequest, contribution, payment, contract or other payment, the cemetery authority or the trustee of the care funds of the cemetery authority in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for any such trust, shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the cemetery authority or the trustee of the care funds of the cemetery authority is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, including specifically, but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages, which men of prudence, discretion and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, such authority or trustee is authorized to retain property properly acquired, without limitation as to time and without regard as to the suitability for original purpose. The care funds authorized by this section may be commingled with other trust funds received by such cemetery authority for the care of its cemetery or for the care or special care of any lot, grave, crypt, niche, marker or monument in its cemetery, whether received by gift, grant, devise, bequest, contribution, payment, contract or other conveyance heretofore or hereafter made to such cemetery authority. The net income only from the investment of such care funds shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested.

History: 1953 Comp., § 67-29-4, enacted by Laws 1961, ch. 156, § 4.

Section authorizes commingling of the care funds to be received under 58-17-6 NMSA 1978, with special care funds, gifts, bequests, contributions or other payments or property. State v. Collins, 80 N.M. 499, 458 P.2d 225 (1969).

Funds to be perpetual. - Bonds or a trust fund in the sum of $10,000 required under the former Perpetual Care Cemetery Act had to be perpetual in nature. 1959-60 Op. Att'y Gen. No. 60-232 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 C.J.S. Cemeteries § 9.

58-17-5. Loans by cemeteries.

Except upon written approval of the state bank examiner [director of the financial institutions division of the regulation and licensing department], no loan or investment of any care funds by any cemetery authority owning, operating, controlling or managing a cemetery, or by any trustee, shall be made:

A. to any officer, director or trustee of such cemetery authority, or to any firm, corporation, association or partnership in which any officer, director or trustee of such cemetery authority has a controlling interest;

B. on and in any real estate, or in any note, bond, mortgage or deed of trust in which any officer, director or trustee of such cemetery authority has any financial interest;

C. on or in any unproductive real estate or real estate outside of this state or in permanent improvements of the cemetery or any of its facilities, unless specifically authorized by the instrument whereby the principal fund was created, and no commission or brokerage fee for the purchase or sale of any property shall be paid in excess of that usual and customary at the time and in the locality where such purchase or sale is made, and all such commissions and brokerage fees shall be fully reported in the next annual statement of such cemetery authority or trustee.

History: 1953 Comp., § 67-29-5, enacted by Laws 1961, ch. 156, § 5.

Bracketed material. - Laws 1977, ch. 245, § 120 provided that all powers and duties of the state bank examiner, referred to in this section, be transferred to the director of the financial institutions division of the commerce and industry department, and that all statutory references to the state bank examiner be construed to mean the director of the financial institutions division. Laws 1983, ch. 297, § 33 abolishes the commerce and industry department and § 31 thereof provides that references to the financial institutions division of the commerce and industry department shall be construed as references to the financial institutions division of the regulation and licensing department, which is headed by a director. See 9-16-4 and 9-16-7 NMSA 1978 and notes thereto. The bracketed material was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 C.J.S. Cemeteries § 10.

58-17-6. Instrument regarding care to be furnished by cemetery authority.

Whenever a cemetery authority owning, operating, controlling or managing a cemetery accepts care funds, either in connection with the sale of a lot, grave, crypt or niche, or in pursuance of a contract, or whenever, as a condition precedent to the purchase of a lot, grave, crypt or niche, such cemetery authority requires the establishment of a care fund or a deposit in an already existing care fund, then such cemetery authority shall execute

and deliver to the person from whom received an instrument in writing which shall specifically state:

A. the nature and extent of the care to be furnished;

B. that such care shall be furnished only insofar as the net income derived from the amount deposited in trust will permit (the income from the amount so deposited, less necessary expenditures of administering the trust, shall be deemed the net income);

C. that the cemetery is operated as an endowed care cemetery, which means that an endowed care fund for its maintenance has been established in conformity with the laws of the state of New Mexico, and the definition of endowed care as appears in Section 58-17-3 NMSA 1978; and

D. that not less than the following amounts will be set aside and deposited in trust:

(1) for graves, twenty-five percent of the lot or land sales price, unless a lesser amount is approved by the director of the financial institutions division;

(2) for a crypt, vault or niche, ten percent of the sales price; and

(3) for the special care of any lot, grave, crypt or niche, or the family mausoleum, memorial, marker or monument, the full amount received.

Such setting aside and deposit shall be made by such cemetery authority not later than thirty days after the close of the month in which was received any payment from any source on the purchase price of each lot, grave, crypt, niche or vault, or any payment from any source for the general or special care of a lot, grave, crypt or niche or of a family mausoleum, memorial, marker or monument. If payments for the above are made in installments, only the applicable pro rata share of such payments shall be so deposited. Such amounts shall be held by the trustee of the care funds of such cemetery authority in trust in perpetuity for the specific purpose stated in the written instrument.

History: 1953 Comp., § 67-29-6, enacted by Laws 1961, ch. 156, § 6; 1981, ch. 192, § 1.

Deposit within 30 days after close of sale not required. - This section does not require a deposit of 25% of the sales price of a lot within 30 days after the close of the sale. State v. Collins, 80 N.M. 499, 458 P.2d 225 (1969)(decided prior to 1981 amendment).

State to prove required deposit not made following month final payment received. - This section states that not less than 25% of the lot or land sales price for graves will be deposited in the trust fund not later than 30 days after the close of the month in which the final payment was received. The state must prove beyond a reasonable doubt

that 25% of the sales price was not deposited in the fund prior to the termination of the 30-day period, and simply proving that no sums had been deposited in the fund for a limited period of months or years prior to the sale is insufficient. State v. Collins, 80 N.M. 499, 458 P.2d 225 (1969)(decided prior to 1981 amendment).

Failure to comply with time and amount requirements deemed crime. - Regardless of the condition of the trust account at any given moment, it is a crime to fail to deposit the amounts required and in the time required by this section, but these requirements can be met by deposits in advance of the closing of the sale. State v. Collins, 80 N.M. 499, 458 P.2d 225 (1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries §§ 6, 20.

Duty to use proceeds of sale of cemetery lots for care, maintenance or improvement of cemetery as affected by statute, 124 A.L.R. 279.

14 C.J.S. Cemeteries §§ 3, 26, 27.

58-17-7. Representations regarding care and maintenance to be furnished.

No cemetery authority, nor any agent, servant or employee of it, nor any other person, shall advertise, represent, guarantee, promise or contract that perpetual care, permanent care, perpetual or permanent maintenance, care forever, continuous care, eternal care, everlasting care, endowed care or any similar or equivalent care, or care for any number of years of any cemetery or of any lot, grave, crypt or niche, or of any family mausoleum, memorial, marker or monument, will be furnished until they have complied with the provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978].

History: 1953 Comp., § 67-29-7, enacted by Laws 1961, ch. 156, § 7.

58-17-8. Care funds not subject to tax.

The endowed care funds authorized herein and all sums paid therein or contributed thereto are, and each thereof are, hereby expressly permitted and shall be deemed to be for charitable and eleemosynary purposes. Such endowed care shall be deemed to be provisioned for the discharge of the duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disorder, reproach and desolation in the communities in which they are situated. The trust funds authorized herein and the income therefrom and any funds received under a contract to furnish care of burial space shall be exempt from taxation. No payment, gift, grant, bequest or other contribution for such general endowed care shall be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the

instruments creating such trust, nor shall said fund or any contribution thereto be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: 1953 Comp., § 67-29-8, enacted by Laws 1961, ch. 156, § 8.

58-17-9. Compliance with law required.

It is unlawful for any cemetery to hold out to the public or sell endowed care in connection with the sale of burial space until it has complied with the requirements of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978]. Endowed care cemeteries are hereby required to establish and maintain with a state or national bank or trust company doing business in the state an irrevocable trust fund, the income only of such fund to be available to the cemetery in the furnishing of endowed care. Provided, however, that when the cemetery authority shall certify to the state bank examiner [director of the financial institutions division of the regulation and licensing department] that the services of a state or national bank or trust company are not available, the cemetery may appoint as trustee one or more individuals, none of whom shall be an officer, director, representative, employee or relative of an officer, director or employee of the cemetery authority, which said trustee or trustees shall have all powers of investment as provided herein. The net income from the investment of care funds shall never be used for the improvement or embellishment of unsold property to be offered for sale.

In establishing its care funds the cemetery authority may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery, and if the cemetery originally sold cemetery lots without provision for endowed care, it shall have the right to accept deposits from such lot owners for the purpose of establishing endowed care on those lots, provided the deposits are disposed of in the same manner as regular care funds.

History: 1953 Comp., § 67-29-9, enacted by Laws 1961, ch. 156, § 9.

Bracketed material. - See same catchline in notes to 58-17-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries § 18.

Duty to use proceeds of sale of cemetery lots for care, maintenance or improvement of cemetery as affected by statute, 124 A.L.R. 279.

14 C.J.S. Cemeteries § 10.

58-17-10. Registration with director of the financial institutions division.

A. Every cemetery authority owning, operating, controlling or managing an endowed care cemetery shall register with the director of the financial institutions division by filing an annual registration statement upon forms furnished by the director which shall show as of the end of the preceding calendar year:

(1) the amount of the principal of the care funds held by the trustee of the care funds of the cemetery authority at the beginning of the year and in addition thereto all money or property received during the year:

(a) under and by virtue of the sale of a lot, grave, crypt or niche;

(b) under and by virtue of the terms of any contract authorized by law; or

(c) under and by virtue of any gift, grant, devise, bequest, payment or other contribution made either prior to or subsequent to the effective date of the Endowed Care Cemetery Act of 1961;

(2) the securities in which the care funds are invested and the cash on hand as of the date of the report;

(3) the income received from the care funds during the preceding calendar year; and

(4) the amount expended in furnishing endowed care during the preceding calendar year.

B. Where any of the care funds of a cemetery authority are held by a trustee, the annual registration statement filed by any cemetery authority shall contain a certificate signed by the trustee of the care funds of the cemetery authority certifying to the truthfulness of the statements in the report as to:

(1) the total amount of principal of the care funds held by the trustee;

(2) the securities in which the care funds are invested and the cash on hand as of the date of the report; and

(3) the income received from the care funds during the preceding calendar year.

Such statements shall be filed by the cemetery authority on or before March 15 of each calendar year in the office of the director. The registration statement shall be made under oath. Each registration statement shall be accompanied by a fee of fifty dollars ($50.00), and no registration statement shall be accepted by the director without the payment of the fee.

History: 1953 Comp., § 67-29-10, enacted by Laws 1961, ch. 156, § 10; 1973, ch. 113, § 1; 1981, ch. 192, § 2; 1987, ch. 292, § 5.

Compiler's note. - The phrase "effective date of the Endowed Care Cemetery Act of 1961", referred to in Subsection A(1)(c), means March 30, 1961, the effective date of Laws 1961, Chapter 156.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries §§ 5, 6.

14 C.J.S. Cemeteries §§ 3, 5, 10.

58-17-11. Deposit or bond of endowed care cemeteries.

Whenever a cemetery authority owning, operating, controlling or managing a cemetery is duly organized and desires to accept care funds authorized by the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978], it shall make an initial deposit to the care fund of twenty thousand dollars ($20,000), or in lieu thereof such cemetery authority may furnish a surety bond issued by a bonding company or insurance company authorized to do business in this state in the face amount of thirty thousand dollars ($30,000), and such bond shall run to the trustee for the benefit of the care funds held by such trustee. This bond shall be for the purpose of guaranteeing an accumulation of twenty thousand dollars ($20,000) in such care fund and also for the further purpose of assuring that the cemetery authority shall provide annual perpetual or endowment care in an amount equal to the annual reasonable return on a secured cash investment of twenty thousand dollars ($20,000) until twenty thousand dollars ($20,000) is accumulated in said care funds, and these shall be the conditions of such surety bond; provided, however, the liability of the principal and surety on the bond shall in no event exceed thirty thousand dollars ($30,000). Provided further, that whenever a cemetery authority which has made an initial deposit to the care fund demonstrates to the satisfaction of the director of the financial institutions division that more than twenty thousand dollars ($20,000) has been accumulated in the care fund, the cemetery authority may petition the director for an order allowing the cemetery authority to begin to withdraw its deposit from the care fund, so long as at least twenty thousand dollars ($20,000) always remains in the care fund.

History: 1953 Comp., § 67-29-11, enacted by Laws 1961, ch. 156, § 11; 1981, ch. 192, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries § 6.

14 C.J.S. Cemeteries § 10.

58-17-12. Display of signs.

Each cemetery authority authorized to accept care funds shall post in a conspicuous place at or near each entrance of the cemetery a clearly legible sign containing letters not less than six inches in height stating "Endowed Care Cemetery." Those cemeteries which furnish endowed care to some portions and no endowed care to other portions shall display appropriate signs of the same size letters designating which part is subject

to endowed care and which part is not. Cemeteries which do not furnish endowed care shall display a sign containing letters not less than six inches in height stating "No Endowed Care."

History: 1953 Comp., § 67-29-12, enacted by Laws 1961, ch. 156, § 12.

58-17-13. Enforcement of provisions of act by director of financial institutions division.

The duty of administering and enforcing the provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978] is hereby imposed on the director of the financial institutions division who shall approve all forms of contract for endowed care and shall have authority to subpoena witnesses, conduct hearings and investigations and issue such orders as are reasonably necessary to regulate endowed care cemeteries in the public interest.

A. The director shall examine the books of each endowed care cemetery at least once every year and shall also cause an examination to be made of each endowed care cemetery at least once every year to ensure that endowed care is actually being furnished in the manner required by law and by its contracts and to ensure that the provisions of Section 58-17-6 NMSA 1978 are followed. In lieu of the examination of the books, however, the director may require the cemetery authority to submit a certified audit prepared by a certified or registered public accountant, which audit shall cover in detail the information required in the annual registration statement required by law.

B. The cost of examining any cemetery authority and any endowed care cemetery shall be paid by the responsible authority, and it shall not exceed the actual cost of conducting such an examination.

C. If the director deems it necessary to hold a hearing pursuant to the power invested in him by the Endowed Care Cemetery Act of 1961, the hearing may be held in Santa Fe, New Mexico or at any other location within New Mexico designated by the director.

History: 1953 Comp., § 67-29-13, enacted by Laws 1961, ch. 156, § 13; 1973, ch. 113, § 2; 1981, ch. 192, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 17, 18.

58-17-14. Proceedings in case of law violations.

Whenever a cemetery authority refuses or neglects to make a required report, file an annual registration statement or willfully disobeys a valid order of the director of the financial institutions division or violates any provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978] or regulation of the director, or whenever it appears to the director from any report or examination that such cemetery authority has committed a violation of law or that the care funds have not been administered

properly or that it is unsafe or inexpedient for such cemetery authority or the trustee of the care funds of such cemetery authority to continue to administer such funds or that any officer of such cemetery authority or of the trustee of the care fund of such cemetery authority has abused his trust or has been guilty of misconduct in his official position injurious to such cemetery authority or that such cemetery authority has suffered as to its care funds a serious loss by larceny, embezzlement, burglary, repudiation or otherwise, the director may:

A. conduct an investigation or hold a hearing to investigate any allegations pertaining to violations of the provisions of the Endowed Care Cemetery Act of 1961;

B. issue any order in furtherance of the duty imposed on him by the Endowed Care Cemetery Act of 1961;

C. institute a lawsuit in the district court of the county where the responsible cemetery authority or cemetery is located to recover any amounts due to the endowed care funds; or

D. apply to the district court of the county where the responsible cemetery authority or cemetery is located for such other relief as may be consistent with the duty imposed on him by the Endowed Care Cemetery Act of 1961.

History: 1953 Comp., § 67-29-14, enacted by Laws 1961, ch. 156, § 14; 1973, ch. 113, § 3; 1981, ch. 192, § 5.

58-17-15. Disposition of care funds upon dissolution.

Where any cemetery authority owning, operating, controlling or managing a cemetery or any trustee for the same has accepted care funds within the meaning of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978], and dissolution is sought by such cemetery authority in any manner, by resolution of such cemetery authority, or the trustees thereof, notice shall be given to the state bank examiner [director of the financial institutions division of the regulation and licensing department] of such intentions to dissolve, and it is his duty to see that proper disposition shall be made of the care funds so held by or for the benefit of such cemetery authority, as provided by law, or in accordance with the trust provisions of any gift, grant, contribution, payment, devise or bequest or pursuant to any contracts whereby such funds were created. The state bank examiner [director] may apply to the court of competent jurisdiction for the appointment of any receiver, trustee, [or] successor in trust, or for direction of such court as to the proper disposition to be made of such care funds, to the end that the uses and purposes for which such trust or care funds were created may be accomplished.

History: 1953 Comp., § 67-29-15, enacted by Laws 1961, ch. 156, § 15.

Bracketed material. - See same catchline in notes to 58-17-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 14 Am. Jur. 2d Cemeteries § 21.

58-17-16. Violations; punishment.

A. Whoever violates any provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978] except as provided in Subsection B of this section, shall be guilty of a petty misdemeanor.

B. Whoever violates the provisions of a trust instrument by willfully failing to deposit to a cemetery's trust fund the amounts provided within the time provided by Section 58-17-6 NMSA 1978, or any greater amounts if the trust instrument provides for greater amounts to be deposited, is guilty of a fourth degree felony and shall be sentenced in accordance with the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978].

History: 1953 Comp., § 67-29-16, enacted by Laws 1961, ch. 156, § 16; 1981, ch. 192, § 6.

58-17-17. Exemption.

The provisions of the Endowed Care Cemetery Act of 1961 [58-17-1 to 58-17-17 NMSA 1978] shall not apply to municipal cemeteries, fraternal cemeteries, religious cemeteries or family burying grounds.

History: 1953 Comp., § 67-29-17, enacted by Laws 1961, ch. 156, § 17.

Severability clauses. - Laws 1961, ch. 156, § 18, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 18
MORTGAGE FINANCE AUTHORITY

58-18-1. Short title.

Chapter 58, Article 18 NMSA 1978 shall be known and may be cited as the "Mortgage Finance Authority Act".

History: 1953 Comp., § 13-9-1, enacted by Laws 1975, ch. 303, § 1; 1982, ch. 86, § 1.

Cross-references. - As to municipal housing, see 3-45-1 to 3-45-25 NMSA 1978.

As to urban development, see 3-46-1 to 3-46-45 NMSA 1978.

As to community development, see 3-60-1 to 3-60-37 NMSA 1978.

As to metropolitan redevelopment, see 3-60A-1 to 3-60A-48 NMSA 1978.

As to regional housing authorities, see 11-3-1 to 11-3-6 NMSA 1978.

As to the state housing authority, see 11-4-1 to 11-4-8 NMSA 1978.

As to utility supplements and assistance, see 27-6-1 to 27-6-16 NMSA 1978.

Authority not state agency. - The New Mexico mortgage finance authority created pursuant to this article is not a state agency. 1975 Op. Att'y Gen. No. 75-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 1 et seq.

58-18-2. Legislative findings; declaration of purpose.

A. The legislature hereby finds and declares that there exists in the state of New Mexico a serious shortage of decent, safe and sanitary residential housing available at prices and rentals within the financial means of persons and families of low income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas and is inimical to the health, safety, welfare and prosperity of all residents of the state.

B. The legislature hereby finds and determines that such shortage of residential housing causes overcrowding and congestion and exacerbates existing slum conditions which, in turn, contribute substantially and increasingly to the spread of disease and crime, impair economic values, necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety programs, fire and accident protection and other services, substantially impair or arrest the second growth of municipalities, aggravate traffic problems and promote juvenile delinquency and other social ills.

C. The legislature hereby finds and declares further that private enterprise unaided has not been able to produce the needed construction of decent, safe and sanitary residential housing at prices and rentals which persons and families of low income can afford or to achieve the urgently needed rehabilitation of much of their present housing. It is imperative that the supply of residential housing for persons and families of low income be increased substantially and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

D. It is found and declared that a major cause of this housing shortage is the lack of funds in private banking channels available for residential mortgages. Such lack of funds has contributed to drastic reductions in construction starts of new residential housing and has frustrated the sale and purchase of existing residential housing in the state.

E. It is further found and declared that the drastic reduction in residential construction starts and in residential rehabilitation projects associated with such shortages has caused a condition of substantial unemployment and underemployment in the construction industry which results in hardships to many individuals and families, wastes vital human resources, increases the public assistance burdens of the state and its municipalities, impairs the security of family life, impedes the economic and physical development of municipalities and adversely affects the welfare and prosperity of all the people of the state. A stable supply of adequate funds for residential mortgages is required to spur new housing starts and the rehabilitation of existing units in an orderly and sustained manner and thereby to reduce the hazards of unemployment and underemployment in the construction industry. The unaided operations of private enterprise have not met and cannot meet the need for a stable supply of adequate funds for residential mortgage financing.

F. The legislature hereby further finds and determines that to aid in remedying these conditions and to help alleviate the shortage of adequate housing, a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the New Mexico mortgage finance authority should be created with power to raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low income within the state. The legislature hereby finds and declares further that in accomplishing this purpose, the New Mexico mortgage finance authority is acting in all respects for the benefit of the people of the state in the performance of essential public functions and is serving a valid public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the enactment of the provisions hereinafter set forth is for a valid public purpose and is hereby so declared to be such as a matter of express legislative determination.

History: 1953 Comp., § 13-19-2, enacted by Laws 1975, ch. 303, § 2.

58-18-2.1. Multiple family dwellings; supplemental legislative findings and purpose.

The legislature finds and declares that there is a critical shortage of multiple family dwellings which provide decent, safe and sanitary residential housing at rentals which persons and families of low income can afford. It is further found and declared that private individuals, organizations and entities willing to undertake the construction of family dwellings are unable to obtain loans at sufficiently low interest rates to finance multiple family dwelling projects for persons and families of low income. Providing mortgage loans at below market interest rates for multiple family dwellings would increase substantially the availability of multiple family dwellings for occupancy by persons and families of low income and is expressly declared to be a valid public purpose and a corporate purpose which may be exercised by the authority.

History: 1978 Comp., § 58-18-2.1, enacted by Laws 1982, ch. 86, § 2.

58-18-3. Definitions.

As used in the Mortgage Finance Authority Act [this article]:

A. "authority" means the New Mexico mortgage finance authority;

B. "bonds" or "notes" means the bonds or bond anticipation notes, respectively, issued by the authority pursuant to the Mortgage Finance Authority Act;

C. "federal government" means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America;

D. "home improvement loan" means a loan to finance such alterations, repairs and improvements on or in connection with an existing residence as the authority may determine will substantially protect or improve the basic livability or energy efficiency of such residence, including without limitation the acquisition and installation of energy conservation building materials and solar energy equipment, provided that such loan is insured by the federal government or is secured by a guarantee or other form of insurance suitable, in the opinion of the authority, to provide adequate security to bondholders;

E. "mobile home" means a movable or portable housing structure, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, except that the definition does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property;

F. "mortgage" means a mortgage, mortgage deed, deed of trust or other instrument creating a first lien, or in the case of a home improvement loan, a first or inferior lien, subject only to such title exceptions as may be acceptable to the authority, on a fee interest in real property located within the state or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds the maturity day of the mortgage loan or an instrument creating a first lien on a mobile home;

G. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, building and loan association and any other lending institution; provided, the principal office of the mortgage lender is in New Mexico, and such mortgage lender is authorized to make mortgage loans in the state, and that such mortgage lender is FHA- and VA-approved;

H. "mortgage loan" means a financial obligation secured by a mortgage;

I. "municipality" means any county, city, town or village of the state;

J. "new mortgage loan" means a mortgage loan, including a home improvement loan, made by a mortgage lender to a person of low income to finance project costs and containing such terms and conditions as the authority may require by regulation;

K. "persons of low income" means persons and families within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to such locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the Mortgage Finance Authority Act, taking into consideration, without limitation, such factors as the following:

(1) the amount of the total income of such persons and families available for housing needs;

(2) the size of the family units;

(3) the cost and condition of housing facilities available;

(4) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing; and

(5) standards established by various programs of the federal government for determining eligibility based on income of such persons and families;

L. "project" means any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement or rehabilitation approved by the authority for the primary purpose of providing sanitary, decent and safe residential housing within the state for one or more persons of low income;

M. "project costs" means the sum total of all costs incurred in the development of a project which are approved by the authority as reasonable and necessary. Such costs may include, but are not necessarily limited to:

(1) the cost of acquiring real property and any buildings thereon, including payments for options, deposits or contracts to purchase properties;

(2) cost of site preparation, demolition and development;

(3) fees in connection with the planning, execution and financing of a project, such as those to the architects, engineers, attorneys, accountants and the authority;

(4) cost of studies, surveys, plans and permits, insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(5) cost of construction, remodeling, rehabilitation, reconstruction, home improvements, fixtures, furnishings and equipment for the project;

(6) cost of land improvements, including without limitation, landscaping and off-site improvements;

(7) expenses in connection with initial occupancy of a project;

(8) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, the developer;

(9) an allowance established by the authority for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(10) the cost of such other items, including tenant relocation if tenant relocation costs are not otherwise being provided for, indemnity and surety bonds, premiums on insurance and fees and expenses of trustees, depositaries and paying agents of the bonds and notes as the authority shall determine to be reasonable and necessary for the development of a project;

N. "real property" means all lands and franchises, including interests in land, space rights and air rights, and any and all interests in such property less than full title, such as easements, incorporeal hereditaments and every estate, interest or rights, legal or equitable, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by the liens;

O. "rehabilitation loan" means a qualified rehabilitation loan within the meaning of Section 103A of the Internal Revenue Code of 1954, as amended or renumbered;

P. "residential housing" means a specific work or improvement undertaken primarily to provide one or more dwelling accommodations, including without limitation mobile homes, for a person or persons of low income, including the acquisition, construction or rehabilitation of real property, buildings and improvements;

Q. "state" means the state of New Mexico; and

R. "state agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state.

History: 1953 Comp., § 13-19-3, enacted by Laws 1975, ch. 303, § 3; 1979, ch. 399, § 1; 1981, ch. 191, § 1; 1984, ch. 62, § 1.

Internal Revenue Code. - Section 103A of the Internal Revenue Code, referred to in Subsection O, appears as 26 U.S.C. § 103A.

58-18-3.1. Additional definitions; multiple-family dwellings.

As used in the Mortgage Finance Authority Act [this article]:

A. "FHA" means the federal housing administration;

B. "multiple-family dwelling project" means a residential housing unit project which is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least twenty-five percent of whom are persons and families of low income, including without limitation persons of low income who are elderly and handicapped as determined by the authority, and at least sixty percent of whom are persons and families of low or moderate income, provided that the percentage of low-income persons and families shall be at least the minimum required by federal tax law;

C. "project mortgage loan" means a mortgage loan made to a sponsor to finance during construction and on a permanent basis the project costs of a multiple-family dwelling project; and

D. "sponsor" means an individual, association, corporation, joint venture, partnership, limited partnership, trust or any combination thereof which has been approved by the authority as qualified to own and maintain a multiple-family dwelling project, maintains its principal office or a branch office in New Mexico and has agreed to subject itself to the regulatory powers of the authority and the jurisdiction of the courts of the state.

History: 1978 Comp., § 58-18-3.1, enacted by Laws 1982, ch. 86, § 3; 1983, ch. 310, § 1.

58-18-3.2. Secondary mortgage funds; additional definitions.

As used in the Mortgage Finance Authority Act [this article]:

A. "pass-through securities" means securities representing undivided ownership interests in a pool of mortgage loans; and

B. "secondary market facility" means a facility or mortgage-pooling corporation established by the authority for the purpose of the purchase, with private or public funds legally available therefor, of mortgage loans, mortgage-backed obligations, pass-through securities or interests therein.

History: 1978 Comp., § 58-18-3.2, enacted by Laws 1983, ch. 285, § 1.

58-18-4. Authority created.

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the "New Mexico mortgage finance authority" for the performance of essential public functions. The authority shall be composed of seven members. The director of the financial institutions division of the regulation and licensing department, state treasurer and attorney general shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint the other four members of the authority, who shall be residents of the state and shall not hold other public office. The four members of the authority appointed by the governor shall be appointed for terms of four years or less staggered so that the term of one member expires on January 1 of each year. Vacancies shall be filled by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment. Each member of the authority appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are, in writing, expressly waived. Each member of the authority appointed by the governor, before entering upon his duty, shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of the oath shall be filed in the office of the secretary of state. The governor shall designate a member of the authority to serve as chairman for a term which shall be coterminous with his then current term as a member of the authority. The authority shall annually elect one of its members as vice chairman. The authority shall also elect or appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person, and the authority shall fix the compensation of officers. Officers and employees of the authority are not subject to the Personnel Act. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper.

B. All members, officers, employees or agents exercising any voting power or discretionary authority shall be required to have a fiduciary bond in the amount of one million dollars ($1,000,000) for the faithful performance of their duties.

C. The executive director shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the members of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the authority and to give certificates under the official seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

D. Meetings of the authority shall be held at the call of the chairman or whenever three members so request in writing. A majority of members then in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority. No vacancy in the membership of the authority shall impair the rights of

a quorum to exercise all the rights and to perform all the duties of the authority. An ex-officio member from time to time may designate in writing another person to attend meetings of the authority and, to the same extent and with the same effect, act in his stead.

E. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the authority shall receive no compensation for their services, but the members of the authority, its officers and employees shall be paid allowed expenses if approved by the authority in accordance with policies adopted by the authority and approved by the Mortgage Finance Authority Act [this article] oversight committee.

F. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of any board, bureau, department or agency of the state except as specifically provided in the Mortgage Finance Authority Act. In order to effectuate the separation of the state from the authority, no use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to therein.

History: 1953 Comp., § 13-19-4, enacted by Laws 1975, ch. 303, § 4; 1985, ch. 232, § 1; 1987, ch. 57, § 1.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

Subsection B should be construed as requiring bonding prior to discharge of duties; if the bonding is to insure "faithful performance," then it would have to precede that performance. 1975 Op. Att'y Gen. No. 75-55.

58-18-5. Powers of the authority.

The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Mortgage Finance Authority Act [this article], including but without limiting the generality of the foregoing, the power:

A. to sue and be sued;

B. to have a seal and alter it at pleasure;

C. to make and alter bylaws for its organization and internal management;

D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;

F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;

G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;

H. to procure or require the procurement of a policy of group life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums therefor;

I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable and to pay any premiums therefor;

J. subject to any agreement with bondholders or noteholders:

(1) to renegotiate any mortgage loan or any loan to a mortgage lender in default;

(2) to waive any default or consent to the modification of the terms of any mortgage loan or any loan to a mortgage lender; and

(3) to commence, prosecute and enforce a judgment in any action or proceeding, including without limitation a foreclosure proceeding, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement; and in connection with any such proceeding, to bid for and purchase the property or acquire or take possession of it and, in such event, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and dispose of and otherwise deal with the property in such manner as the authority may deem advisable to protect its interests therein;

K. to make and execute contracts for the administration, servicing or collection of any mortgage loan and pay the reasonable value of services rendered to the authority pursuant to such contracts;

L. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of loans to mortgage lenders, the purchasing of mortgage loans and any other services rendered by the authority;

M. subject to any agreement with bondholders or noteholders, to sell any mortgage loans at public or private sale at such prices and on such terms as the authority shall determine;

N. to borrow money and to issue negotiable bonds and notes and to provide for the rights of the holders thereof;

O. to arrange for guarantees of its bonds, notes or other obligations by the federal government or by any private insurer and to pay any premiums therefor;

P. subject to any agreement with bondholders or noteholders, to invest money of the authority not required for immediate use, including proceeds from the sale of any bonds or notes:

(1) in obligations of any municipality or the state or the United States of America;

(2) in obligations the principal and interest of which are guaranteed by the state or the United States of America;

(3) in obligations of any corporation wholly owned by the United States of America;

(4) in obligations of any corporation sponsored by the United States of America which are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(5) in certificates of deposit or time deposits in banks qualified to do business in New Mexico, secured in such manner, if any, as the authority shall determine;

(6) in contracts for the purchase and sale of obligations of the type specified in Paragraph (1) of this subsection; or

(7) as otherwise provided in any trust indenture securing the issuance of the bonds;

Q. subject to any agreement with bondholders or noteholders, to purchase bonds or notes of the authority, which shall thereupon be canceled, at a price not exceeding:

(1) if the bonds or notes are then redeemable, the redemption price then applicable plus accrued interest to the date of purchase;

(2) if the bonds or notes are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption at the option of the authority plus accrued interest to the date of purchase; or

(3) if the bonds or notes are not redeemable prior to their respective maturities at the option of the authority, one hundred four percent of the principal amount thereof plus accrued interest to the date of purchase;

R. to make surveys and to monitor on a continuing basis the adequacy of the supply of:

(1) funds available in the private banking system in the state for residential mortgages; and

(2) adequate, safe and sanitary housing available to persons of low income in the state and various sections of the state;

S. to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under the Mortgage Finance Authority Act;

T. to employ architects, engineers, attorneys (other than and in addition to the attorney general of the state), accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

U. to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or from any other source and to comply, subject to the provisions of the Mortgage Finance Authority Act, with the terms and conditions thereof;

V. to maintain an office at such place in the state as it may determine;

W. subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by the president pro tempore of the senate and four members appointed by the speaker of the house, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act; and

X. to do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-5, enacted by Laws 1975, ch. 303, § 5; 1978, ch. 21, § 14; 1978, ch. 163, § 1; 1985, ch. 232, § 2.

58-18-5.1. Recompiled.

ANNOTATIONS

Recompilations. - This section, regarding the Mortgage Finance Authority Act oversight committee, was recompiled as 2-12-5 NMSA 1978.

58-18-5.2. Authority duties.

The mortgage finance authority shall make available to the Mortgage Finance Authority Act oversight committee all of its records and facilities upon written request.

History: 1978 Comp., § 58-18-5.2, enacted by Laws 1981, ch. 173, § 2.

Cross-references. - As to the Mortgage Finance Act oversight committee, see 2-12-5 NMSA 1978.

58-18-5.3. Authority; multiple-family dwellings.

In addition to the specific powers of the authority set forth in Section 58-18-5 NMSA 1978, the authority shall have the power to:

A. purchase or contract to purchase FHA insured multiple-family dwelling project mortgage loans from mortgage lenders or participate with mortgage lenders in FHA insured multiple-family dwelling mortgage project loans. The authority may purchase and contract to purchase project mortgage loans from mortgage lenders at such prices and upon such terms and conditions as the authority determines. The authority shall require as a condition of purchase of project mortgage loans from mortgage lenders that such project mortgage loans were originated by the mortgage lenders for the purpose of selling them to the authority. Each project mortgage loan purchased by the authority shall:

(1) be evidenced by a properly executed note or other evidence of indebtedness and be secured by a properly recorded FHA insured first mortgage;

(2) provide for payments sufficient to pay the project mortgage loan in full not later than the expiration of the useful life of the multiple-family dwelling project as determined by the authority; and

(3) not exceed such percentage of such project costs as the authority may determine;

B. make and contract to make loans to mortgage lenders on such terms and conditions as the authority determines, including without limitation requirements relating to collateral for such loans; provided the authority shall require as a condition of any such loan that the mortgage lender make a project mortgage loan or loans to sponsors in an aggregate principal amount at least equal to the amount of the loan received from the authority; and

C. otherwise provide funding for multiple-family dwelling project mortgage loans by purchasing or contracting to purchase such loans if the funding is provided pursuant to bonds which at time of issuance are rated AA or higher or a comparable designation by an independent nationally recognized bond rating service.

History: 1978 Comp., § 58-18-5.3, enacted by Laws 1982, ch. 86, § 4; 1987, ch. 58, § 1.

58-18-5.4. Duties of authority; multiple-family dwellings.

A. The authority shall require, as a condition of purchasing a multiple-family dwelling project mortgage loan, that the sponsor agree to comply with such requirements and to make such representations and warranties as the authority deems reasonably necessary to protect its interests in the project mortgage loan and the project, including the following:

(1) the multiple-family dwelling project and surrounding area shall be maintained in good repair;

(2) a reserve fund for repairs and replacements on the multiple-family dwelling project shall be established and maintained for the life of the project mortgage loan;

(3) the sponsor shall make all records and documents relating to the multiple-family dwelling project available to the authority and its agents at all reasonable times;

(4) the sponsor shall maintain its books and accounts in a manner satisfactory to the authority;

(5) the sponsor shall provide access to the authority and its agents at all reasonable times for the purpose of inspecting the multiple-family dwelling project;

(6) the sponsor shall file with the authority a copy of each report and schedule required to be filed with any provider of mortgage insurance or other security or liquidity enhancement for the mortgage loan or the authority's bonds or notes, the proceeds of which were used in whole or in part to acquire the project mortgage loan; annual financial and operating reports and any other reports the authority may determine to be necessary;

(7) the sponsor shall purchase and maintain an insurance policy insuring the project against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion in an amount not less than eighty percent of the replacement costs of the project, and the authority or its designee shall be named in the insurance policy as an additional named insured;

(8) the sponsor shall provide the authority with a market feasibility study, market-value appraisal, architectural design and outline specifications, tenant selection plans and any other documents the authority requires in determining whether to purchase the project mortgage loan;

(9) the sponsor shall maintain the project as a multiple-family dwelling project throughout the life of the project mortgage loan; and

(10) the sponsor shall comply with any other reasonable requirements the authority deems necessary to impose in the future.

B. The authority shall distribute available funds to qualified sponsors and mortgage lenders on an equitable basis using guidelines established to assure an even geographic allocation and taking into consideration the need for and economic feasibility of new housing in each area of the state, including the need for new housing to attract a new industry or plant or to provide housing in an economically depressed or low-income area.

C. Until July 1, 1995, in no event shall the authority distribute available funds for any multiple-family dwelling project proposed within an incorporated municipality with a population of two hundred thousand or more according to the last federal decennial census.

History: 1978 Comp., § 58-18-5.4, enacted by Laws 1982, ch. 86, § 5; 1990, ch. 118, § 1.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "with any provider of mortgage insurance or other security or liquidity enhancement for the mortgage loan or the authority's bonds or notes, the proceeds of which were used in whole or in part to acquire the project mortgage loan" for "the FHA" in Paragraph (6), inserted "or its designee" following "authority" in Paragraph (7), and inserted "market-value appraisal" following "feasibility study" in Paragraph (8); in Subsection B rewrote the provision following "to assure" which read "a geographic allocation and taking into consideration the need for new housing in an area to attract a new industry or plant"; and added Subsection C.

58-18-6. Loans to mortgage lenders.

A. The authority may make, and contract to make, loans to mortgage lenders on such terms and conditions as it shall determine, and all mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority an evidence of its indebtedness to the authority which shall constitute a general obligation of such mortgage lender and shall bear such date or dates, shall mature at such time or times, shall be subject to prepayment, and shall contain such other provisions consistent with this section, as the authority shall determine.

C. Notwithstanding any other provision of this section to the contrary, the interest rate or rates and other terms of loans to mortgage lenders made from the proceeds of any issue of bonds or notes of the authority shall be at least sufficient to assure the payment of said bonds or notes and the interest thereon as the same become due.

D. The authority shall require that loans to mortgage lenders made pursuant to this section shall be secured as to payment of both principal and interest by a pledge of

collateral security in such amounts as the authority shall determine to be necessary to assure the payment of such loans and the interest thereon as the same become due. Such collateral security shall consist of:

(1) obligations of or guaranteed by the United States of America;

(2) obligations of any of the following: bank for cooperatives, federal intermediate credit bank, federal home loan bank system, federal home loan mortgage corporation, export-import bank, federal land banks, federal national mortgage association or the government national mortgage association;

(3) obligations of any municipality or the state or any state agency;

(4) mortgages insured by the federal housing administration or guaranteed by the veterans administration and such other mortgages insured or guaranteed by the federal government or by a private insurer as to payment of principal and interest as shall be approved by the authority; or

(5) conventional mortgages approved by the authority.

E. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority located in the state and designated by the authority as custodian therefor. In the absence of such requirement, each mortgage lender shall enter into an agreement with the authority containing such provisions as the authority shall deem necessary to:

(1) adequately identify and maintain such collateral;

(2) service such collateral; and

(3) require the mortgage lender to hold such collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition thereof and the income therefrom.

The authority may also establish such additional requirements as it shall deem necessary with respect to the pledging, assigning, setting aside or holding of such collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom.

F. The authority shall require as a condition of each loan to a mortgage lender that such mortgage lender, within such period after receipt of the loan proceeds as the authority may prescribe by regulation, shall have entered into written commitments to make, and, within such period thereafter as the authority may prescribe by regulation, shall have disbursed such loan proceeds in new mortgage loans to persons of low income in an aggregate principal amount equal to the amount of such loan. Such new mortgage

loans shall have such terms and conditions as the authority may prescribe by regulation.

G. The authority shall require the submission to it by each mortgage lender to which the authority has made a loan evidence satisfactory to the authority of the making of new mortgage loans to persons of low income as required by this section, and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

H. The authority may require as a condition of any loans to mortgage lenders such representations and warranties as it shall determine to be necessary to secure such loans and carry out the purposes of this section.

I. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making of any new mortgage loans to persons of low income may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of any loan to any national banking association the consent of such association to the jurisdiction of courts of the state over any such proceeding. The authority may also require, as a condition of any loan to a mortgage lender, agreement by such mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority, and such penalties shall be recoverable at the suit of the authority.

J. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, the provisions hereof shall control.

K. Any loans made to mortgage lenders for the purpose of making new mortgage loans to be secured by a first lien on a mobile home shall come solely from the proceeds of a bond issue designated by the authority as a mobile home issue. And no proceeds of such a bond issue shall be used for any purpose other than for making loans to mortgage lenders for the purpose of making new mortgage loans to be secured by first liens on mobile homes or purchasing mortgages secured by first liens on mobile homes for the establishment of reserves to secure such bonds and for all other expenditures of the authority incident, or necessary or convenient, to carry out the purposes of the bond issue, including, but not limited to payment of the costs of issuance of the bond issue. This subsection shall not be construed to limit any authority in regard to new mortgage loans to be secured by a first lien on real estate on which is a foundation to which a mobile home is attached.

History: 1953 Comp., § 13-19-6, enacted by Laws 1975, ch. 303, § 6; 1978, ch. 163, § 2; 1979, ch. 399, § 2.

58-18-7. Purchase of mortgage loans.

A. The authority may purchase, and contract to purchase, mortgage loans from mortgage lenders at such prices and upon such terms and conditions as it shall determine; provided, however, that the authority shall not pay any premium for any mortgage loan except as such premium is realized from payments by the mortgagor. All mortgage lenders are authorized to sell mortgage loans to the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require as a condition of purchase of mortgage loans from mortgage lenders either:

(1) that such mortgage loans be existing mortgage loans owned by the mortgage lenders and that such mortgage lenders, within such period after receipt of the purchase price as the authority may prescribe by regulation, shall enter into written commitments to loan and, within such period thereafter as the authority may prescribe by regulation, shall loan an amount equal to the entire purchase price of such mortgage loans on new mortgage loans to persons of low income, which new mortgage loans shall have such terms and conditions as the authority may prescribe by regulation; or

(2) that such mortgage loans qualify as new mortgage loans to persons of low income and were originated by the mortgage lenders for the purpose of selling them to the authority.

C. The authority shall require the submission to it by each mortgage lender from which the authority has purchased mortgages evidence satisfactory to the authority of the making of new mortgage loans to persons of low income as required by this section and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

D. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making of any new mortgage loans to persons of low income may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of purchase of mortgage loans from any national banking association the consent of such association to the jurisdiction of courts of the state over any such proceeding. The authority may also require as a condition of the authority's purchase of mortgage loans from such mortgage lender, agreement by any mortgage lender, to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority, and such penalties shall be recoverable at the suit of the authority.

E. The authority may require as a condition of purchase of any mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

(1) the unpaid principal balance of the mortgage loan and the interest rate thereon have been accurately stated to the authority;

(2) the amount of the unpaid principal balance is justly due and owing;

(3) the mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest;

(4) the mortgage loan is evidenced by a bond or promissory note and a mortgage which has been properly recorded with the appropriate public official;

(5) the mortgage constitutes a valid first lien on the real property or mobile home described to the authority subject only to taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(6) the mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage;

(7) the improvements to mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in the state and providing fire and extended coverage in such amounts as the authority may prescribe by regulation; and

(8) the mortgage loan meets the prevailing investment quality standards for mortgage loans of that type in the state.

F. Each mortgage lender shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine.

G. The authority shall require the recording of an assignment of any mortgage loan purchase [purchased] by it from a mortgage lender. The authority shall not be required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority shall enter a contract to service such mortgage loan and account to the authority therefor.

H. In the event of the foreclosure of any mortgage purchased under the provisions of this section, such foreclosure shall not be made in the name of the state or the mortgage finance authority. The mortgage finance authority is hereby empowered to make appropriate arrangements for the foreclosure of such mortgages in the name of another party.

I. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, the provisions hereof shall control.

J. Any mortgages secured by first liens on mobile homes may be purchased by the authority only with proceeds of a bond issue designed by the authority as a mobile home issue. And no proceeds of such a bond issue shall be used for any purpose other than for making loans to mortgage lenders for the purpose of making new mortgage loans to be secured by first liens on mobile homes or for purchasing mortgages secured by first liens on mobile homes, for the establishment of reserves to secure such bonds and for all other expenditures of the authority incident, or necessary or convenient, to carry out the purposes of the bond issue, including but not limited to payment of the costs of issuance of the bond issue. This subsection shall not be construed to limit any authority in regard to new mortgage loans to be secured by first lien on real estate on which is a foundation to which a mobile home is attached.

History: 1953 Comp., § 13-19-7, enacted by Laws 1975, ch. 303, § 7; 1978, ch. 163, § 3; 1979, ch. 399, § 3.

58-18-7.1. Multiple family dwellings; sale of project mortgage loans.

All mortgage lenders are authorized to sell project mortgage loans to and to accept loans from the authority in accordance with the provisions of the Mortgage Finance Authority Act [this article] and the rules and regulations of the authority. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, the provisions of this section shall control.

History: 1978 Comp., § 58-18-7.1, enacted by Laws 1982, ch. 86, § 6.

58-18-7.2. Secondary market facility; findings and purposes; establishment.

A. The legislature finds and declares that it is necessary and in the public interest that the authority be authorized to create, operate, fund, administer and maintain a secondary market facility for home mortgages and to otherwise act as a conduit for public and private funds to provide an increased degree of liquidity for mortgage investments, thereby improving the distribution and availability of investment capital for use in mortgage investments in this state and promoting the economic well-being of the state through increased opportunity for employment, all of which are expressly declared to be valid public purposes and corporate purposes which may be exercised by the authority.

B. In connection with the establishment and implementation of a secondary market facility, the authority may purchase and contract to purchase mortgage loans, pass-through securities, obligations secured by mortgage loans, or revenues therefrom or

interests therein, from mortgage lenders at such prices and upon such terms and conditions as the authority shall determine. All mortgage lenders are authorized to sell mortgage loans, pass-through securities and such obligations to the secondary market facility in accordance with the provisions of this section and the rules and regulations of the authority.

C. To provide funding for the secondary market facility, the authority or the secondary market facility may enter into agreements to administer funds made available to the secondary market facility, at such prices and upon such terms and conditions as the authority shall determine, and may issue its bonds, notes, other obligations, pass-through securities and guarantees in the same manner and on the same terms and conditions as the authority may issue its bonds and notes pursuant to Section 58-18-11 NMSA 1978 or on such other terms and conditions as the authority shall determine. In no event shall any bonds, notes, other obligations, pass-through securities or guarantees constitute an obligation, either general or special, of the state or any political subdivision thereof or constitute pecuniary liability of the state or any political subdivision thereof.

D. The authority may waive, by such means as the authority deems appropriate, the exemption from federal income taxation of interest on the authority's bonds, notes or other securities provided by the Internal Revenue Code of 1954.

E. Notwithstanding any other provisions of the Mortgage Finance Authority Act [this article], the state shall have the power, out of funds legally available therefor, to purchase and to contract to purchase from the authority pass-through securities or participations therein and mortgage loans or participations therein.

History: 1978 Comp., § 58-18-7.2, enacted by Laws 1983, ch. 285, § 2.

Internal Revenue Code. - The Internal Revenue Code of 1954, referred to in Subsection D, appears as 26 U.S.C. § 1 et seq.

58-18-7.3. Rehabilitation loans and home improvement loans.

A. Any bond issue of the authority made for the purpose of providing bond proceeds to be used by the authority to purchase mortgage loans on single-family residential housing from mortgage lenders shall include provisions to reserve at least five percent of the bond proceeds available to purchase mortgage loans for the purchase of rehabilitation loans. Such reservation of bond proceeds may be terminated by the authority at any time after sixty days from the date of the closing of the sale of the bonds upon a determination by the authority that there is a lack of sufficient demand for the rehabilitation loans.

B. The authority shall develop a tax-exempt bond, a taxable bond or an authority-funded program for the financing of the purchase of home improvement loans from mortgage lenders or for loans to mortgage lenders to fund home improvement loans. Such a

home improvement loan program may be conducted in concert with any appropriation provided by the legislature to the state investment council for the purpose of developing and conducting a program of subsidizing the interest rates on home improvement loans to persons of low income.

History: 1978 Comp., § 58-18-7.3, enacted by Laws 1984, ch. 62, § 2; 1987, ch. 168, § 1.

Cross-references. - As to bonds and notes of the New Mexico mortgage finance authority, see 58-18-11 NMSA 1978.

58-18-8. Rules and regulations of the authority.

A. The authority shall adopt and may from time to time modify or repeal subject to prior approval by the oversight committee rules and regulations:

(1) for determining income levels for the classification of persons of low income (which may vary between different areas in the state and in accordance with the size of family unit); and

(2) for governing:

(a) the making of loans to mortgage lenders; and

(b) the purchase of mortgage loans, to implement the powers authorized and to achieve the purposes set forth in the Mortgage Finance Authority Act [this article].

B. The rules and regulations of the authority relating to the making of loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or the purchase of mortgage loans pursuant to Section 58-18-7 NMSA 1978 shall provide at least for the following:

(1) procedures for the submission by mortgage lenders to the authority of:

(a) requests for loans; and

(b) offers to sell mortgage loans;

(2) standards for allocating bond proceeds among mortgage lenders requesting loans from, or offering to sell mortgage loans to, the authority;

(3) standards for determining the principal amount to be loaned to each mortgage lender and the interest rate thereon;

(4) standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price thereof;

(5) qualifications or characteristics of:

(a) residential housing; and

(b) the purchasers thereof to be financed by new mortgage loans made in satisfaction of the requirements of Subsection F of Section 58-18-6 NMSA 1978 or Subsection B of Section 58-18-7 NMSA 1978, as the case may be;

(6) restrictions as to the interest rates to be allowed on such new mortgage loans and the return to be realized therefrom by mortgage lenders;

(7) requirements as to commitments and disbursements by mortgage lenders with respect to such new mortgage loans; and

(8) standards for mobile homes eligible for use as security.

C. The rules and regulations of the authority shall also provide for:

(1) schedules of any fees and charges to be imposed by the authority; and

(2) any other matters related to the duties and the exercise of the powers of the authority under the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-8, enacted by Laws 1975, ch. 303, § 8; 1979, ch. 399, § 4.

58-18-8.1. Rules and regulations of the authority; multiple family dwellings.

Prior to financing a multiple family dwelling project, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the purchase of project mortgage loans and the making of loans to mortgage lenders, which shall provide at least for the following:

A. procedures for the submission by mortgage lenders to the authority of:

(1) offers to sell project mortgage loans; or

(2) requests for loans;

B. standards for approving qualifications of sponsors and mortgage lenders;

C. standards for determining minimum equity requirements for sponsors and acceptable debt-to-equity ratios for sponsors;

D. methods for establishing uniform accounting systems for sponsors;

E. standards for approving costs of such projects; and

F. guidelines establishing reasonable geographic allocation procedures for multiple family dwelling project loans.

History: 1978 Comp., § 58-18-8.1, enacted by Laws 1982, ch. 86, § 7.

58-18-8.2. Rules and regulations of the authority; secondary market facility.

Prior to establishing a secondary market facility or issuing any pass-through security, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the operations of the secondary market facility and the issuance of pass-through securities, which shall provide for the following, to the extent that the secondary market facility proposes to engage in such activities:

A. procedures for submission by mortgage lenders to the authority of offers to sell:

(1) mortgage loans;

(2) pass-through securities; or

(3) obligations secured by mortgage loans or pledges of mortgage loan revenues;

B. standards for allocating available funds or guarantees among mortgage lenders through the secondary market facility;

C. qualifications or conditions relating to the reinvestment by mortgage lenders of the funds made available to mortgage lenders by the secondary market facility; and

D. characteristics of pass-through securities to be issued by the secondary market facility.

History: 1978 Comp., § 58-18-8.2, enacted by Laws 1983, ch. 285, § 3.

58-18-8.3. Rules and regulations of the authority; home improvement loan program.

Prior to implementing the home improvement loan program referred to in Subsection B of Section 58-18-7.3 NMSA 1978, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act [this article] oversight committee, rules and regulations governing the purchase of home improvement loans or loans to mortgage lenders to fund home improvement loans under the program, which shall provide at least for the following:

A. procedures for submission by mortgage lenders to the authority of offers to sell home improvement loans;

B. standards for approving qualifications of mortgage lenders;

C. standards for allocating bond proceeds or other authority funds among mortgage lenders offering to sell home improvement loans to the authority and among mortgage lenders receiving loans from the authority to fund home improvement loans;

D. qualifications or characteristics of:

(1) residential housing upon which a home improvement loan can be made;

(2) the types of home improvements that can be made with the proceeds of home improvement loans, except that the authority shall not permit the proceeds to be used for landscaping, lawn sprinkling systems, swimming pools, tennis courts, saunas or other recreational facilities; and

(3) the persons of low income who may apply for home improvement loans;

E. restrictions as to the interest rates to be allowed on home improvement loans and the fees and other profit to be realized by mortgage lenders; and

F. procedures for determining eligibility for any subsidies to be provided to persons of low income.

History: 1978 Comp., § 58-18-8.3, enacted by Laws 1984, ch. 62, § 3; 1987, ch. 168, § 2.

58-18-9. Required determinations of the authority.

The authority may not make loans to mortgage lenders pursuant to Section 6 [58-18-6 NMSA 1978] of the Mortgage Finance Authority Act or purchase mortgage loans pursuant to Section 7 [58-18-7 NMSA 1978] of that act until the authority first shall have determined:

A. that the supply of funds available in the private banking system in the state for residential mortgages is inadequate to meet the demand of persons of low income for residential mortgage financing; and

B. that such purchase of mortgages or making of loans by the authority, as the case may be, will alleviate such inadequate supply of residential mortgage money in the state's banking system.

History: 1953 Comp., § 13-19-9, enacted by Laws 1975, ch. 303, § 9.

58-18-9.1. Insurance; multiple-family dwellings.

The authority may finance or purchase multiple-family dwelling project mortgage loans which are fully insured by the FHA. If the federal insurance program allows the FHA to pay claims upon default of the mortgage payments by issuing debentures of the federal government, the authority shall fully insure any loss caused because of the discounted value of the debenture.

History: 1978 Comp., § 58-18-9.1, enacted by Laws 1982, ch. 86, § 8; 1983, ch. 310, § 2.

58-18-10. Planning, zoning and building laws.

A. All projects shall be subject to any applicable master plan, official map, zoning regulation, building code, housing ordinance and other laws and regulations governing land use or planning or construction of the municipality in which the project is or is to be located.

B. The authority shall provide a description of any multiple family dwelling project for which it proposes to finance a project mortgage loan to the local governing body of the municipality in which such multiple family dwelling project is or is to be located. The description shall include the proposed number and type of dwelling units and the location of the project. Unless the local governing body, by majority vote, shall disapprove such multiple family dwelling project within thirty days after receipt of the description, the authority may finance a project mortgage loan on such project.

History: 1953 Comp., § 13-19-10, enacted by Laws 1975, ch. 303, § 10; 1982, ch. 86, § 9.

58-18-11. Bonds and notes of the authority.

A. The authority may from time to time issue its negotiable bonds and notes in conformity with the applicable provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] in such principal amounts as, in the opinion of the authority, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, the payment of interest on bonds and notes of the authority, establishment of reserves to secure such bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as may otherwise be expressly provided by the authority, all bonds and notes issued by the authority shall be general obligations of the authority, secured by the full faith and credit of the authority and payable out of any money, assets or revenues of the authority, subject only to any agreement with bondholders or noteholders pledging any particular money, assets or revenues. In no event shall any bonds or notes constitute an obligation, either general or special, of the state or any political subdivision thereof or constitute or give rise to a pecuniary liability of the state or any political subdivision

thereof; nor shall the authority have the power to pledge the general credit or taxing power of the state or any political subdivision thereof or to make its debts payable out of any money except those [that] of the authority.

C. Bonds and notes shall be authorized by a resolution or resolutions of the authority adopted as provided by the Mortgage Finance Authority Act [this article]; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer or officers of the authority the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certificate of such authorized officer.

D. Such bonds shall:

(1) state on the face thereof that they:

(a) are payable both as to principal and interest solely out of the assets of the authority; and

(b) do not constitute an obligation, either general or special, of the state or any political subdivision thereof; and

(2) be:

(a) either registered, registered as to principal only or in coupon form;

(b) issued in such denominations as the authority may prescribe;

(c) fully negotiable instruments under the laws of the state;

(d) signed on behalf of the authority with the manual or facsimile signature of the chairman or vice chairman, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile thereof, and the coupons attached thereto shall be signed with the facsimile signature of such chairman or vice chairman;

(e) payable as to interest at such rate or rates and at such time or times as the authority may determine or provide;

(f) payable as to principal at such times over a period not to exceed thirty-five years from the date of issuance, at such place or places, and with such reserved rights of prior redemption, as the authority may prescribe;

(g) sold at such price or prices, at public or private sale, and in such manner as the authority may prescribe; and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale thereof; and

(h) shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with the Mortgage Finance Authority Act, as may be found to be necessary by the authority for the most advantageous sale thereof, which may include, but not be limited to, covenants with the holders of the bonds as to:

1) pledging or creating a lien, to the extent provided by such resolution or resolutions, on all or any part of any money or property of the authority or of any moneys held in trust or otherwise by others to secure the payment of such bonds;

2) otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the authority;

3) the setting aside of reserves or sinking funds and the regulation or disposition thereof;

4) limitations on the purpose to which the proceeds of sale of any issue of such bonds then or thereafter to be issued may be applied;

5) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds;

6) the procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

7) the creation of special funds into which any money of the authority may be deposited;

8) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed for the holders of any issue of bonds pursuant to Section 14 [58-18-14 NMSA 1978] of the Mortgage Finance Authority Act, in which event the provisions of Section 14 of that act authorizing appointment of a trustee by such holders of bonds shall not apply; or limiting or abrogating the right of the holders of bonds to appoint a trustee under Section 14 of that act or limiting the rights, duties and powers of such trustee;

9) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of such default, provided, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of the Mortgage Finance Authority Act; and

10) any other matters of like or different character, which in any way affect the security and protection of the bonds and the rights of the holders thereof.

E. The authority is authorized to issue its bonds for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such outstanding bonds. Until the proceeds of any bonds issued for the purpose of so refunding outstanding bonds shall be applied to the purchase or retirement of such outstanding bonds or the redemption of such outstanding bonds, such proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of Subsection P of Section 5 [58-18-5 NMSA 1978] of the Mortgage Finance Authority Act. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds to be so refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. All such bonds shall be issued and secured and shall be subject to the provisions of the Mortgage Finance Authority Act in the same manner and to the same extent as any other bonds issued pursuant to the Mortgage Finance Authority Act.

F. The authority is authorized to issue negotiable bond anticipation notes and may renew the same from time to time but the maximum maturity of such notes, including renewals thereof, shall not exceed ten years from the date of issue of such original notes. Such notes shall be payable from any money of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which such notes were issued. The notes may be issued for any corporate purpose of the authority. The notes shall be issued in the same manner as the bonds and such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Such notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the authority.

G. It is the intention of the legislature that any pledge of earnings, revenues or other moneys made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

H. Neither the members of the authority nor any person executing the bonds, notes or other obligations shall be liable personally on the bonds, notes or other obligations or be

subject to any personal liability or accountability by reason of the issuance thereof while acting in the scope of their authority.

History: 1953 Comp., § 13-19-11, enacted by Laws 1975, ch. 303, § 11.

Cross-references. - As to rehabilitation loans and home improvement loans, see 58-18-7.3 NMSA 1978.

58-18-11.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 46, § 13, effective March 4, 1988, repeals former 58-18-11.1 NMSA 1978, as enacted by Laws 1981, ch. 174, § 1, regarding tax exempt mortgage subsidy bond issuance. For provisions of former section, see 1986 Replacement Pamphlet.

58-18-11.2. Multiple-family dwellings; additional bonds and notes of the authority.

A. Bonds or notes issued in connection with the financing of multiple-family dwelling projects shall conform to the requirements of Section 58-18-11 NMSA 1978, except that bonds issued in connection with the financing of multiple-family dwelling projects may be payable as to principal over a period not to exceed forty-five years from the date of issuance.

B. The authority shall comply with the provisions of the federal Tax Equity and Fiscal Responsibility Act of 1982, shall hold public hearings in connection with the issuance of bonds or notes in connection with the financing of multiple-family dwelling projects and shall obtain the written approval of the governor of the state prior to the issuance of bonds or notes. The governor of the state is authorized to give such approval.

History: 1978 Comp., § 58-18-11.2, enacted by Laws 1982, ch. 86, § 10; 1983, ch. 310, § 3.

Tax Equity and Fiscal Responsibility Act. - The federal Tax Equity and Fiscal Responsibility Act of 1982, referred to in Subsection B, appears as provisions throughout 26 U.S.C.

58-18-11.3, 58-18-11.4. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 310, § 5, repeals 58-18-11.3 and 58-18-11.4 NMSA 1978, relating to termination of the authorization to issue bonds to finance multiple-family

dwelling projects and to the multiple-family sunset plan, respectively, effective April 7, 1983.

58-18-11.5. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 118, § 2 repeals 58-18-11.5 NMSA 1978, as amended by Laws 1987, ch. 54, § 1, relating to expiration of authorization to issue bond to finance multiple-family dwellings, effective May 16, 1990. For provisions of former section, see 1989 Cumulative Supplement.

58-18-12. Reserve funds.

A. The authority may create and establish one or more reserve funds to be known as debt service reserve funds and pay into any such reserve fund:

(1) any proceeds of the sale of bonds or notes to the extent provided in the resolution of the authority authorizing the issuance thereof;

(2) any money directed to be transferred by the authority to such debt service reserve fund; and

(3) any other money made available to the authority for the purposes of such fund from any other source or sources. The money held in or credited to any debt service reserve fund established under this subsection, except as hereinafter provided, shall be used solely for:

(a) the payment of the principal of bonds of the authority secured by such debt service reserve fund as the same mature;

(b) required payments to any sinking fund established for the amortization of such bonds (hereinafter referred to as "sinking fund payments");

(c) the purchase or redemption of such bonds;

(d) the payment of interest on such bonds; or

(e) the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity.

Money in any such debt service reserve fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount in such fund to less than the amount which the authority shall determine to be reasonably necessary for the purposes of such debt service reserve fund (hereinafter referred to as the "debt service reserve fund requirement"), except for the purpose of paying principal, premium and sinking fund

payments, if any, and interest on bonds secured by such debt service reserve fund for the payment of which other money of the authority is not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred to any other fund or account of the authority to the extent it does not reduce the amount in such debt service reserve fund below its debt service reserve fund requirement. Money in any debt service reserve fund not required for immediate use or disbursement may be invested in accordance with the provisions of Subsection P of Section 5 [58-18-5 NMSA 1978] of the Mortgage Finance Authority Act. If the authority shall create and establish one or more debt service reserve funds as herein provided, the authority shall not issue bonds at any time if the debt service reserve fund requirement of any such debt service reserve fund will exceed the amount in such debt service reserve fund at the time of issuance thereof, unless the authority, at the time of issuance of such bonds, shall deposit in such debt service reserve fund from the proceeds of the bonds to be issued or otherwise an amount which, together with the amount then in such debt service reserve fund, will be not less than its debt service reserve fund requirement.

In computing the amount in any debt service reserve fund for the purposes of this section, securities in which all or a portion of such debt service reserve fund are invested shall be valued at par or, if purchased at other than par, at their amortized value. For the purposes of this section, "amortized value" means, when used with respect to securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed since the date of such purchase; in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price; and in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

B. The authority may create and establish such other reserve funds as it shall deem advisable and necessary.

History: 1953 Comp., § 13-19-12, enacted by Laws 1975, ch. 303, § 12.

58-18-13. Notice or publication not required.

The internal revenue service shall be notified of the issuance of all bonds, notes and other obligations, but no other notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds or notes of the authority or to the making of any loans to mortgage lenders or to the purchase of mortgage loans pursuant to the provisions of the Mortgage Finance Authority Act [this article], except as specifically provided in that act.

History: 1953 Comp., § 13-19-13, enacted by Laws 1975, ch. 303, § 13.

58-18-14. Remedies of bondholders and noteholders.

A. In the event that the authority shall default in the payment of principal of or interest on any issue of bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of the Mortgage Finance Authority Act [this article], or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county in which the principal office of the authority is located, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

B. Such trustee may, and upon written request of the holders of twenty-five percent in aggregate principal amount of such issue of bonds or notes then outstanding shall, in his or its own name:

(1) enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders of such bonds or notes and to perform its duties under the Mortgage Finance Authority Act;

(2) bring suit upon such bonds or notes;

(3) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(4) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes; and

(5) declare all such bonds or notes due and payable and if all defaults shall be made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of such issue of bonds or notes then outstanding, to annul such declaration and its consequences.

C. Such trustee shall in addition to the foregoing have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

D. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state.

E. The district court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or

proceeding shall be laid in the county in which the principal office of the authority is located.

History: 1953 Comp., § 13-19-14, enacted by Laws 1975, ch. 303, § 14.

58-18-14.1. Multiple family dwellings; enforcement of agreement.

A. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making of any multiple family dwelling project mortgage loans to sponsors may be enforced by decree of any court of competent jurisdiction. The authority shall require as a condition of purchasing project mortgage loans from, or making a loan to, any national banking or federal savings and loan association the consent of such association to the jurisdiction of courts of the state over any such proceeding. The authority shall also require as a condition of the authority's purchasing project mortgage loans from, or making a loan to, any mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

B. Each mortgage lender shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty, and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority:

(1) repurchase the project mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine; or

(2) repay the then unpaid principal balance of the loan, together with interest accrued thereon and such penalties owed pursuant to Subsection A of this section.

History: 1978 Comp., § 58-18-14.1, enacted by Laws 1982, ch. 86, § 11.

58-18-15. State and municipalities not liable on bonds and notes.

The bonds, notes and other obligations of the authority shall not be a debt of the state or of any municipality, and neither the state nor any municipality shall be liable thereon.

History: 1953 Comp., § 13-19-15, enacted by Laws 1975, ch. 303, § 15.

58-18-16. Agreement of the state.

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Mortgage Finance Authority Act [this article] that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any

unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

History: 1953 Comp., § 13-19-16, enacted by Laws 1975, ch. 303, § 16.

58-18-17. Bonds and notes; legal investments for public officers and fiduciaries.

The bonds and notes of the authority are hereby made securities in which all insurance companies and associations and other persons carrying on insurance business, all banks, bank and trust companies, trust companies, private banks, savings banks, savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them.

History: 1953 Comp., § 13-19-17, enacted by Laws 1975, ch. 303, § 17.

58-18-18. Tax exemption.

A. It is hereby determined that the creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of the economy and that those purposes are public purposes. The authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the Mortgage Finance Authority Act [this article], and the state covenants with the purchasers and all subsequent holders and transferees of bonds and notes issued by the authority, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes of the authority issued pursuant to that act and the income therefrom shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.

B. The income and operations of the authority shall be exempt from taxation of every kind and nature, provided that the authority shall be obligated to pay all ad valorem taxes and special assessments. The authority shall pay any recording fee for instruments recorded by it or on its behalf but shall not be required to pay any transfer tax of any kind on account of instruments recorded by it or on its behalf.

History: 1953 Comp., § 13-19-18, enacted by Laws 1975, ch. 303, § 18; 1981, ch. 190, § 1; 1985, ch. 232, § 3.

58-18-19. No contribution by state or municipality.

Neither the state nor any municipality shall have the power to pay out of its general funds or otherwise contribute its money to the authority, nor may the state or any state agency purchase any bonds or notes of the authority, nor shall the state or any municipality have the power to make, or participate in the making of, loans to mortgage lenders or to purchase or participate in the purchase of, mortgage loans pursuant to the Mortgage Finance Authority Act [this article]. The making of all loans to mortgage lenders and the purchase of all mortgage loans by the authority shall be made out of the proceeds from the sale of bonds or notes issued by the authority pursuant to the Mortgage Finance Authority Act.

History: 1953 Comp., § 13-19-19, enacted by Laws 1975, ch. 303, § 19.

58-18-20. Money of the authority.

A. All money of the authority from whatever source derived, except as otherwise authorized or provided in the Mortgage Finance Authority Act [this article], shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank qualified to do business in New Mexico designated by the authority. The money in such accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of such money shall, if required by the authority, be secured in such manner as the authority may determine. The state auditor and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for such examination as determined by the state auditor.

B. The authority shall have power to contract with holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any money of the authority or of any money held in trust or otherwise for the payment of bonds or notes and to carry out the contract. Money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for such deposits.

C. Subject to the provisions of any contract with bondholders or noteholders, the authority shall prescribe a system of accounts.

D. The authority shall submit to the governor, the state auditor and the legislative finance committee, within thirty days of the receipt thereof by the authority, a copy of the report of every external examination of the books and accounts of the authority.

E. Money of the authority, including money held in trust or otherwise for the payment of bonds or notes, is not public money or state funds within the meaning of any law of the state relating to investment, deposit, security or expenditure of public money.

History: 1953 Comp., § 13-19-20, enacted by Laws 1975, ch. 303, § 20; 1985, ch. 232, § 4.

Cross-references. - As to the state auditor, see N.M. Const., art. V, § 1.

58-18-21. Limitation of liability.

Neither the members of the authority, nor any person or persons acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability resulting from carrying out any of the powers given in the Mortgage Finance Authority Act [this article].

History: 1953 Comp., § 13-19-21, enacted by Laws 1975, ch. 303, § 21.

58-18-22. Assistance by state officers and agencies.

All state officers and all state agencies may render such services to the authority within their respective functions as may be requested by the authority.

History: 1953 Comp., § 13-19-22, enacted by Laws 1975, ch. 303, § 22.

58-18-23. Court proceedings; preference; venue.

Any action or proceeding to which the authority or the people of the state may be a part in which any question arises as to the validity of the Mortgage Finance Authority Act [this article] shall be preferred over all other civil causes in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of that act in which he may be allowed to intervene. The venue of any such action or proceeding shall be laid in the county in which the principal office of the authority is located.

History: 1953 Comp., § 13-19-23, enacted by Laws 1975, ch. 303, § 23.

58-18-24. Corporate existence.

The authority and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the authority shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

History: 1953 Comp., § 13-19-24, enacted by Laws 1975, ch. 303, § 24.

58-18-25. Conflicts of interest; penalty.

A. If any member, officer or employee of the authority shall have an interest, either direct or indirect, in any contract to which the authority is or is to be a party or in any mortgage lender requesting a loan from, or offering to sell mortgage loans to, the authority, or in any sponsor requesting a project loan for a multiple family dwelling project, such interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having such interest shall not participate in any action by the authority with respect to such contract, mortgage lender or sponsor.

B. Nothing in this section shall be deemed or construed to limit the right of any member, officer or employee of the authority to:

(1) acquire an interest in bonds or notes of the authority; or

(2) have an interest in any banking institution in which the funds of the authority are or are to be deposited or which is or is to be acting as trustee or paying agent under any trust indenture to which the authority is a party.

C. Any person having a conflict of interest as defined in this section and participating in any transaction involving such conflict of interest or failing to notify the authority of such conflict shall be guilty of a misdemeanor.

History: 1953 Comp., § 13-19-25, enacted by Laws 1975, ch. 303, § 25; 1981, ch. 172, § 1; 1982, ch. 86, § 12.

Severability clauses. - Laws 1982, ch. 86, § 15, provides for the severability of the act if any part or application thereof is held invalid.

58-18-26. Cumulative authority.

The foregoing sections [58-18-1 to 58-18-25 NMSA 1978] of the Mortgage Finance Authority Act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, that the issuance of bonds or notes under the provisions of the Mortgage Finance Authority Act [this article] need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

History: 1953 Comp., § 13-19-26, enacted by Laws 1975, ch. 303, § 26.

58-18-27. Liberal interpretation.

The Mortgage Finance Authority Act [this article], being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History: 1953 Comp., § 13-19-27, enacted by Laws 1975, ch. 303, § 27.

Severability clauses. - Laws 1975, ch. 303, § 28, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 18A
MUNICIPAL MORTGAGE FINANCE

58-18A-1. Short title.

This act [58-18A-1 to 58-18A-12 NMSA 1978] may be cited as the "Municipal Mortgage Finance Act".

History: Laws 1979, ch. 381, § 1.

58-18A-2. Finding and declaration of necessity.

It is hereby declared that:

A. within the state there exists a shortage of funds available on reasonable terms and conditions for the making of mortgage loans to persons of low or moderate income which has resulted in a shortage of decent, safe and sanitary housing at prices which such persons can afford. This shortage constitutes a threat to the health, safety and welfare of the residents of the state, deprives the state of an adequate tax base and causes such persons to occupy overcrowded, congested dwelling accommodations, resulting in an increase in crime, threatening the health, welfare and safety of the residents of the state and impairing economic values;

B. an adequate supply of decent, safe and sanitary housing is essential to the promotion of increased productivity of the residents of the state's municipalities, to retaining existing industry and commercial activities near or within such municipalities and to attracting new industry and new commercial activities to such municipalities, thereby relieving conditions of unemployment;

C. the shortage of decent, safe and sanitary housing cannot be relieved except through the stimulation of the construction and rehabilitation of housing and the encouragement of individuals and private enterprise to undertake such construction and rehabilitation through the use of public financing;

D. it is necessary and desirable and in the public interest that the state's municipalities be authorized to issue revenue bonds to provide funds necessary to reduce the costs of financing the acquisition and purchase or the rehabilitation of decent, safe and sanitary housing by persons of low and moderate income;

E. the foregoing are hereby deemed and declared to be public purposes and functions pertaining to the government and affairs of the municipalities of the state.

History: Laws 1979, ch. 381, § 2.

58-18A-3. Definitions.

As used in the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978]:

A. "agreement" means a written agreement between two or more municipalities designating one of such municipalities as the "issuer" on behalf of the other participating municipality or municipalities, establishing the issuer's area of operations for purposes of the program and containing such other terms and conditions as the parties deem appropriate;

B. "area of operation" means, with respect to a municipality, the area within the boundaries of the planning and platting jurisdiction of the municipality, established in accordance with Section 3-19-5 NMSA 1978. Upon approval by the governing bodies of two or more municipalities, the area of operation of a municipality acting as an issuer pursuant to an agreement may be enlarged to include all or any part of the areas of operation of the other participating municipalities and such area of operation, as enlarged, shall be deemed the jurisdiction of the issuer for all purposes relating to the issuance of bonds under the law of this state;

C. "available net proceeds" means that portion of the proceeds of bonds issued pursuant to the provisions of the Municipal Mortgage Finance Act available to purchase mortgage loans after deducting any costs related to issuance of bonds and amounts apportioned to capitalized interest, reserves or sinking funds;

D. "bonds" means the single-family mortgage revenue bonds and notes authorized under the Municipal Mortgage Finance Act and includes any other evidence of indebtedness issued hereunder;

E. "municipality" means any incorporated city, town or village, or incorporated county, whether incorporated under a general act, a special act or a special charter;

F. "existing mortgage loan" means a loan to finance the purchase of a single-family residence in the issuer's area of operation occupied or intended to be occupied by the mortgagor as the mortgagor's primary place of residence and secured by a mortgage made by a mortgage lender prior to the date the mortgage lender submitted an application to participate in the issuer's program;

G. "family" means a person or a group of persons consisting of, but not limited to, the head of a household, the spouse, if any, and children or other dependents, if any, who are allowable as personal exemptions for federal income tax purposes;

H. "FHA" means the federal housing administration;

I. "FHLMC" means the federal home loan mortgage corporation;

J. "FNMA" means the federal national mortgage association;

K. "forward commitment mortgage loan" means a loan:

(1) secured by a mortgage;

(2) made to a person of low or moderate income to finance the acquisition or rehabilitation of a single family residence in the issuer's area of operation, occupied or intended to be occupied by the mortgagor as the mortgagor's primary place of residence;

(3) the commitment for which was made by the mortgage lender after the date the mortgage lender submitted an application to participate in the issuer's program; and

(4) which shall not include a loan the proceeds of which are used, directly or indirectly, to refinance an existing permanent mortgage loan or loans for the present mortgagor, unless the primary purpose of such forward commitment mortgage loan is to finance the rehabilitation of such single family residence;

L. "governing body" means the city council, the city commission, the board of trustees, the county council or the town council of an issuer;

M. "issuer" means a municipality which has undertaken to issue bonds pursuant to the provisions of the Municipal Mortgage Finance Act;

N. "mortgage" means a deed of trust, mortgage deed, mortgage or other instrument creating a first lien subject to such title exceptions as may be acceptable to the issuer, on either:

(1) a fee interest in real property located within the issuer's area of operation; or

(2) a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds the maturity of the loan secured thereby;

O. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, building and loan association and any other financial institution, provided such mortgage lender:

(1) is qualified to do business in New Mexico;

(2) operates a business location within the issuer's area of operations which services loans made within the area; and

(3) is approved as an FNMA or FHLMC seller and servicer;

P. "mortgage loan" means:

(1) an existing mortgage loan; or

(2) a forward commitment mortgage loan;

Q. "mortgage purchase agreement" means a written agreement between a mortgage lender and an issuer providing for the purchase by the issuer of mortgage loans originated by the mortgage lender provided that a mortgage purchase agreement shall:

(1) not permit one person or family to obtain or assume more than one forward commitment mortgage loan or reinvestment mortgage made pursuant to any one issue of bonds; and

(2) prohibit the assumption of any forward commitment mortgage loan or reinvestment mortgage loan by any person other than a person of low or moderate income as determined by the issuer for a period of two years from the date of such mortgage;

R. "person of low or moderate income" means a person or family which lacks the amount of income, as determined by the issuer undertaking the program, necessary to the purchase, without financial assistance, of decent, safe and sanitary housing. Provided that the amount of the combined annualized income of the mortgagor and the mortgagor's spouse shall be an amount not to exceed thirty-four thousand dollars ($34,000), as conclusively determined by the mortgage lender in the normal course of its lending activities, upon mortgagor certification, provided such determination is made in accordance with FNMA or FHLMC credit underwriting standards. Each issuer shall establish uniform criteria and rules and regulations to identify the persons of low or moderate income within its area of operation and the determination of the issuer is conclusive;

S. "program" means a mortgage purchase program of an issuer undertaken pursuant to the provisions of the Municipal Mortgage Finance Act;

T. "rehabilitation" or "rehabilitate" means substantial renovation or reconstruction, including an increase in living area, of an existing single family residence necessary to put such single family residence in decent, safe and sanitary condition or to cause such single family residence to comply with applicable building codes, and shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction;

U. "reinvestment mortgage loan" means a loan:

(1) secured by a mortgage;

(2) made to a person of low or moderate income to finance the acquisition or rehabilitation of a single family residence in the issuer's area of operation occupied or intended to be occupied by the mortgagor as the mortgagor's primary place of residence;

(3) the commitment for which is made by the mortgage lender after the date the mortgage lender submits an application to sell existing mortgage loans to the issuer;

(4) made in satisfaction of the obligation of the mortgage lender under a mortgage purchase agreement; and

(5) which shall not include:

(a) a forward commitment mortgage loan; or

(b) a loan the proceeds of which are used, directly or indirectly, to refinance an existing permanent mortgage loan or loans for the present mortgagor, unless the primary purpose of such reinvestment mortgage loan is to finance the rehabilitation of such single family residence;

V. "servicer" means the mortgage lender or its designee servicer which has executed a servicing agreement with an issuer;

W. "servicing agreement" means a written agreement between an issuer and a servicer providing for the servicing of mortgage loans secured by the issuer;

X. "single family residence" means real estate or an interest therein upon which is located or is to be located or constructed a structure or structures, including condominiums, to be used as a residence for one to four families, provided that the owner or owners of such structure or structures occupy such residence, or at least one unit of a structure containing two to four family units, as their principal residence;

Y. "state" means the state of New Mexico; and

Z. "VA" means the veterans administration.

History: Laws 1979, ch. 381, § 3; 1981, ch. 181, § 1.

58-18A-4. Powers.

A. In addition to powers which a municipality now has pursuant to the laws of the state, every municipality shall, within its area of operation, have all powers necessary or

desirable to accomplish the purposes of the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978], including but not limited to, the following:

(1) to purchase and to enter into commitments to purchase mortgage loans from mortgage lenders upon such terms and conditions as it shall determine, to make and execute contracts with mortgage lenders and servicers for the origination, purchase and servicing of mortgage loans and to pay the reasonable value of services rendered under those contracts;

(2) to make loans to any mortgage lender for the purpose of enabling such lender to make reinvestment mortgage loans;

(3) to establish such standards and requirements applicable to the purchase and servicing of mortgage loans as it deems necessary or desirable to achieve the purposes of the Municipal Mortgage Finance Act including, but not limited to, the terms and conditions upon which mortgage lenders will be permitted to participate in the program; the criteria for allocating among mortgage lenders funds available to purchase mortgage loans; the terms and conditions upon which mortgage lenders selling existing mortgage loans or obtaining a loan pursuant to Paragraph (2) of this subsection will be required to reinvest the proceeds from such sale or loan in reinvestment mortgage loans; the yield on mortgage loans to be purchased; standards of eligibility of mortgagors; restrictions on return to mortgage lenders and servicers; administration of the program; the types and coverage of insurance required with respect to the mortgage loans, the property securing the mortgage loans and the bonds; and such other matters as shall be deemed appropriate by the issuer;

(4) to establish criteria for the eligibility of mortgage lenders and servicers to participate in the program and to require such evidence of ability to meet such criteria as it deems appropriate;

(5) to issue its bonds to defray the costs of the program including, without limitation, the costs of purchasing mortgage loans; the establishment of reasonable reserves; printing, legal and accounting fees; the costs of market, economic and other related studies and surveys; the fees of rating agencies, trustees, paying agents and other custodians; the costs of insurance premiums; the costs of administering the program; and other costs reasonably related to the program;

(6) to pledge revenues and receipts derived from the mortgage loans purchased by the issuer and other revenues and receipts derived from the program, in whole or in part, to the payment of bonds;

(7) to issue its bonds to refund, in whole or in part at any time and from time to time, bonds theretofore issued by it pursuant to the Municipal Mortgage Finance Act; and

(8) to exercise all powers necessary or appropriate to the implementation and administration of the program including, but not limited to, the power to contract with

others for the rendering of services in the implementation and administration of the program.

B. The following provisions in forward commitment mortgage loans and reinvestment mortgage loans are enforceable:

(1) provisions requiring a penalty or premium for the prepayment of all or a portion of the balance of the indebtedness; or

(2) provisions permitting or requiring an acceleration of the payment of an indebtedness due in the event of a transfer of all or any part of the mortgagor's interest to a person other than an eligible buyer as defined in a mortgage purchase agreement.

History: Laws 1979, ch. 381, § 4; 1981, ch. 181, § 2.

58-18A-5. Agreement establishing area of operation of issuer.

A. For the purposes of the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978], two or more municipalities may enter into an agreement designating one such municipality as issuer and establishing as the area of operation of the issuer the combined areas of operation of such participating municipalities or any portion thereof. The agreement shall be approved by the governing body of each such municipality and shall contain provisions:

(1) defining the area of operation of the issuer;

(2) providing a method for allocating available net proceeds among the areas of operation of participating municipalities and providing for the reallocation to the other participating municipalities of all or any portion of such funds not utilized to purchase mortgage loans within a stated period of time;

(3) providing for the approval by the governing body of each participating municipality of the issuance, by the issuer, of each series of bonds and of the forms of documents prepared in connection therewith; and

(4) containing such covenants as may be agreed upon by the participating municipalities.

B. No municipality which is a party to an agreement may issue bonds pursuant to the Municipal Mortgage Finance Act except as permitted by the terms of the agreement.

C. No issuer, whether or not such issuer shall be comprised of more than one municipality pursuant to an agreement, may issue bonds pursuant to the Municipal Mortgage Finance Act until at least seventy-five percent of available net proceeds in its area [of] operation have been disbursed to purchase mortgage loans.

History: Laws 1979, ch. 381, § 5.

58-18A-6. Bonds.

A. Bonds of an issuer issued pursuant to the terms of the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] shall be authorized by ordinance of its governing body and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration provisions, contain such terms, covenants or conditions, be subject to such terms of redemption, with or without premium, and be executed in such manner as such ordinance or a trust indenture authorized to be entered into pursuant to such ordinance, may provide.

B. Any such ordinance shall set forth a finding and declaration:

(1) of the public purpose therefor; and

(2) that the ordinance is adopted pursuant to the Municipal Mortgage Finance Act, which finding and declaration shall be conclusive evidence of the existence and sufficiency of the public purpose and the power to carry out and give effect to such public purpose.

C. The bonds may be sold at public or private sale, in such manner and upon such terms as may be authorized by the governing body of the issuer. Pending the preparation of definitive bonds, interim receipts or certificates in such form and with such provisions as may be provided in the ordinance or a trust indenture authorized to be entered into pursuant to the ordinance may be issued to the purchaser or purchasers of the bonds.

D. Bonds issued pursuant to the Municipal Mortgage Finance Act shall be limited obligations of the issuer and shall be payable solely from payments and receipts received with respect to mortgage loans and the property securing such mortgage loans. The bonds shall not constitute an indebtedness of the issuer or any participating municipality within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law relating to the authorization, issuance or sale of bonds.

E. In case any of the public officials of the issuer whose signatures appear on any bonds or coupons issued pursuant to the Municipal Mortgage Finance Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery.

History: Laws 1979, ch. 381, § 6.

58-18A-7. Provisions of bonds and trust indentures.

A. The principal of an interest of any bonds issued pursuant to the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] may be secured by and payable from a pledge of the revenues and receipts derived from the mortgage loans and property securing the mortgage loans and the revenues and receipts otherwise derived from the program, and the issuer may provide in the ordinance or a trust indenture authorized to be entered into pursuant to the ordinance authorizing the issuance of bonds, for the subsequent issuance of additional bonds to be equally and ratably secured by such pledge. The ordinance or trust indenture may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limitation, provisions relating to:

(1) the sound and economical application or [of] bond proceeds to the purposes of the program;

(2) the receipt and collection of revenues;

(3) the maintenance of insurance with respect to the mortgage loans, the property securing the mortgage loans and the bonds in reasonable amounts and the disposition of the proceeds thereof;

(4) the terms and yields of mortgage loans;

(5) the creation and maintenance of adequate reserves;

(6) the investment of funds;

(7) the rights and remedies of bondholders and any indenture trustee in the event of default; and

(8) such other provisions as the issuer deems necessary or desirable.

B. The issuer shall not have the power to obligate itself except with respect to the application of the revenues of the program and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

History: Laws 1979, ch. 381, § 7.

58-18A-8. Residential mortgage revenue bonds; legal investments; security; negotiability.

The state and all public officers, municipal corporations, political subdivisions and public bodies, all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance

associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, money or other funds belonging to them or within their control in any bonds or other obligations issued pursuant to the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978], and such bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state; it being the purpose of that act to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit for the purchase of any authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in that act shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

History: Laws 1979, ch. 381, § 8.

58-18A-9. Power supplemental.

The powers conferred by the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] shall be in addition and supplemental to the powers conferred by any other law.

History: Laws 1979, ch. 381, § 9.

58-18A-10. Investment of funds.

The issuer, or any trustee or custodian on behalf of the issuer, may invest any funds held by it as provided in the ordinance authorizing the issuance of the bonds or a trust indenture executed pursuant thereto.

History: Laws 1979, ch. 381, § 10.

58-18A-11. Exemption from taxation.

The bonds authorized by the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] and the income from the bonds shall be exempt from all taxation by the state or any political subdivision thereof, subject to the provisions of the Banking and Financial Corporations Tax Act.

History: Laws 1979, ch. 381, § 11.

Banking and Financial Corporations Tax Act. - The Banking and Financial Corporations Tax Act, referred to in this section, was compiled as 7-6-1 NMSA 1978 et seq., and was repealed by Laws 1981, ch. 37, § 97. For present provisions, see the Corporate Income and Franchise Tax Act, 7-2A-1 NMSA 1978 et seq.

58-18A-12. Liberal interpretation.

The provisions of the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] shall be liberally construed in order to effectively carry out the purposes of that act.

History: Laws 1979, ch. 381, § 12.

Severability clauses. - Laws 1979, ch. 381, § 13, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 19
MOTOR VEHICLE SALES FINANCE

58-19-1. Short title.

This act may be cited as the "Motor Vehicle Sales Finance Act".

History: 1953 Comp., § 50-15-1, enacted by Laws 1959, ch. 204, § 1.

Meaning of "this act". - The term "this act," referred to in this section, refers to Laws 1959, ch. 204, the provisions of which are presently compiled as 58-19-1 to 58-19-7, 58-19-9, 58-19-10, 58-19-11 and 58-19-12 NMSA 1978.

58-19-2. Definitions.

As used in the Motor Vehicle Sales Finance Act:

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

B. "retail buyer" or "buyer" means a person who buys a motor vehicle primarily for personal, family or household purposes from a retail seller and who executes a retail installment contract in connection therewith;

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

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

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

F. "retail installment contract" or "contract" means an agreement, entered into in this state or made subject to the laws of this state, pursuant to which the title to or a lien upon the motor vehicle which is the subject matter of a retail installment transaction is retained or taken by a retail seller from a retail buyer as security for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become or has the option of becoming the owner of the motor vehicle upon full compliance with the provisions of the contract;

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

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

I. "finance charge" means the amount agreed upon between the buyer and the seller, as limited in the Motor Vehicle Sales Finance Act, to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price;

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

K. "sales finance company" means a person engaged in whole or in part in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, small loan licensee, industrial bank or investment company, if so engaged; the term also includes a retail

seller engaged in whole or in part in the business of creating and holding retail installment contracts which exceed a total aggregate outstanding indebtedness of one hundred thousand dollars ($100,000);

L. "director" means the director of the financial institutions division of the regulation and licensing department; and

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

History: 1953 Comp., § 50-15-2, enacted by Laws 1959, ch. 204, § 2; 1975, ch. 274, § 1; 1979, ch. 388, § 1; 1983, ch. 10, § 1; 1983, ch. 315, § 3; 1984, ch. 16, § 1.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Section applicable only to land, and not water, "motor vehicles". - Applying the rule of "the last antecedent" to Subsection A, the phrase "all vehicles new or used, with any power other than muscular" must be read in relation to the words going before. The legislature intended this section to apply only to "motor vehicles" designed to move over land rather than water. 1961-62 Op. Att'y Gen. No. 61-47.

Road construction equipment not considered "vehicle". - Road construction equipment such as power shovels and earth moving equipment is not a "vehicle" within the meaning of Subsection A, and the financing of such equipment is not subject to the provisions of this article. 1959-60 Op. Att'y Gen. No. 59-62.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction of statutes regulating form and contents of motor vehicle installment sales contracts, 14 A.L.R.3d 330, 46 A.L.R. Fed. 657.

58-19-3. Licensing of sales finance companies required; denial of license; provision for out-of-state licenses.

A. No person shall engage in the business of a sales finance company in this state without a license therefor as provided in the Motor Vehicle Sales Finance Act; provided, however, that a state or national bank authorized to do business in this state shall not be required to obtain a license under that act but shall comply with all of its other provisions.

B. The application for a license shall be in writing, under oath and in the form prescribed by the director. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; and such other pertinent information as the director may require.

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

D. Each license shall specify the location of the office or branch, and the license shall be conspicuously displayed in the office or branch. In case a location is changed, the director shall endorse the change of location on the license upon payment to the director by the licensee of a duplicate license fee of twenty-five dollars ($25.00).

E. Upon the filing of an application and the payment of the fee, the director shall issue to the applicant a license to engage in the business of a sales finance company under and in accordance with the provisions of the Motor Vehicle Sales Finance Act for a period which shall expire on December 31 next following the date of its issuance. The license shall not be transferable or assignable. No licensee shall transact any business provided for by the Motor Vehicle Sales Finance Act under any other name.

F. The director shall deny a license under the Motor Vehicle Sales Finance Act if he finds that:

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

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

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

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

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

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

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

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

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

History: 1953 Comp., § 50-15-3, enacted by Laws 1959, ch. 204, § 3; 1979, ch. 388, § 2; 1987, ch. 292, § 6; 1987, ch. 298, § 6; 1989, ch. 209, § 11.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 1 to 15.

53 C.J.S. Licenses § 7.

58-19-4. Suspension or revocation of licenses; renewal license denied.

A. Renewal of a license originally granted under the Motor Vehicle Sales Finance Act may be denied, or a license may be suspended or revoked by the director on any of the following grounds:

(1) material misstatement in application for license;

(2) willful failure to comply with any provision of that act relating to retail installment contracts;

(3) defrauding any retail buyer to the buyer's detriment while a licensee hereunder;

(4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars required to be stated or furnished to the retail buyer under that act; or

(5) during the course of examination, the licensee intentionally furnished the examiner or duly authorized representative with false or misleading information so as to prevent discovery of apparent violations of that act.

B. If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act in the conduct of the business under its license as would be cause for suspending or revoking a license to such person as an individual. Each licensee shall

be responsible for the acts of any of its employees while acting as its agent, if such licensee after actual knowledge of the acts retained the benefits, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

C. No license shall be denied, suspended or revoked except after hearing thereon. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by certified mail addressed to the principal place of business. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof, given after such entry, forwarded by certified mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.

D. Within thirty days after any such denial, suspension or revocation of a license, the person aggrieved may apply for a review thereof by an application to the district court of the county in which the applicant resides in accordance with the practice of the court. The court shall determine, de novo, all questions both of fact and of law touching upon the legality and reasonableness of the determination of the director, and shall render such judgment as shall be lawful and just.

E. The director shall publish a notice that a license has been revoked or suspended within thirty days after such revocation or suspension in a newspaper of general circulation in the county in which the licensee was doing business.

History: 1953 Comp., § 50-15-4, enacted by Laws 1959, ch. 204, § 4; 1979, ch. 388, § 3.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits § 58.

53 C.J.S. Licenses §§ 38, 39, 50 to 52, 54, 55, 57, 59, 60, 62.

58-19-5. Investigations; complaints; examinations; fees.

A. The director has the power to make such investigations as he deems necessary and, to the extent necessary for this purpose, may examine any licensee or any other person and has the power to compel the production of all relevant books, records, accounts and documents.

B. Any retail buyer having reason to believe that the Motor Vehicle Sales Finance Act relating to his retail installment contract has been violated may file with the director a

written complaint setting forth the details of the alleged violation; and the director, upon receipt of the complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved.

C. As a fee for conducting any examination or investigation pursuant to this section, a sales finance company shall pay to the director the costs of such examination or investigation, as determined by the director.

History: 1953 Comp., § 50-15-5, enacted by Laws 1959, ch. 204, § 5; 1979, ch. 388, § 4; 1987, ch. 292, § 7.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 256 to 276.

73 C.J.S. Public Administrative Law and Procedure §§ 76 to 86.

58-19-6. Powers of director.

The director shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pursuant to the provisions of the Motor Vehicle Sales Finance Act. The director shall have the power to administer oaths and affirmations to any person whose testimony is required.

If any person shall refuse to obey such subpoena, to give testimony or to produce evidence as required thereby, any judge of any district court of this state may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, for the witness to appear before the director to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of such court, the clerk shall issue process of subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place therein designated.

If any person served with a subpoena shall refuse to obey the same, to give testimony or to produce evidence as required thereby, the director may apply to any judge of the court issuing such subpoena for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, the answering of any question and the production of any evidence, that may be proper by a fine, not exceeding three hundred dollars ($300), or by imprisonment in the county jail, or by both fine and imprisonment, and to tax such witness with the costs of such proceeding.

History: 1953 Comp., § 50-15-6, enacted by Laws 1959, ch. 204, § 6; 1979, ch. 388, § 5.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 263 to 272.

73 C.J.S. Public Administrative Law and Procedure §§ 124, 132.

58-19-7. Retail installment contracts; requirements; prohibitions.

A. (1) A retail installment contract shall be in writing and shall be signed by both the buyer and the seller; it shall be completed as to all essential provisions prior to its signing by the buyer.

(2) The printed portion of the contract, other than instructions for completion, shall be in at least eight point type. The contract shall contain in a size equal to at least ten point bold type the following notice: "Notice to the Buyer: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.".

(3) The seller shall deliver to the buyer or mail to him at his address shown on the contract a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract; if such goods cannot be returned, the value thereof shall be paid by the seller. Any acknowledgment by the buyer or delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(4) Any such agreement shall contain immediately before the buyer's signature substantially the following notice printed or typed in a size equal to at least twelve point bold type as follows:

NOTICE TO BUYER

LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE.

B. The contract shall contain the following items:

(1) the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks;

(2) the cash sale price of the motor vehicle;

(3) the amount of the buyer's down payment and whether made in money or goods;

(4) the difference between items (2) and (3);

(5) the amount, if any, included for insurance and other benefits specifying the types of coverage and benefits;

(6) the amount of official fees;

(7) the principal balance, which is the sum of items (4), (5) and (6);

(8) the amount of the finance charge; and

(9) the time balance, which is the sum of items (7) and (8), payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or term thereof.

The above items need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

C. The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the department of insurance of the state corporation commission. If dual interest insurance on the motor vehicle is purchased by the holder, it shall within thirty days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, and in such case, the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

D. If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

E. The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days, in an amount not in excess of five percent of each installment or fifteen dollars ($15.00), whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of attorney's fees not exceeding fifteen percent of the amount due and payable under such contract, where such contract is referred for collection to any attorney not a salaried employee of the holder of the contract, plus the court costs.

F. A buyer may transfer his equity in the motor vehicle at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed twenty-five dollars ($25.00).

G. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after execution thereby except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgement, conforming to the requirements of Paragraph (3) of Subsection A of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided and of compliance with this section in any action or proceeding by or against the holder of the contract.

H. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

I. No provision in a retail installment contract relieving the seller from liability under any legal remedies which the buyer may have against the seller under the contract, or any separate instrument of similar import executed in connection therewith, shall be enforceable.

J. In the event that the seller or the holder of the retail installment contract repossesses a motor vehicle, the buyer shall be responsible and liable for any deficiency in accordance with Section 55-9-504 NMSA 1978.

History: 1953 Comp., § 50-15-7, enacted by Laws 1959, ch. 204, § 7; 1973, ch. 243, § 1; 1975, ch. 256, § 1; 1975, ch. 274, § 2; 1977, ch. 272, § 2; 1979, ch. 188, § 1; 1981, ch. 10, § 2; 1989, ch. 266, § 1.

Cross-references. - As to the allowance of a reasonable attorney fee for the debtor, if prevailing in a civil action pursuant to this section, see 39-2-2 NMSA 1978.

Authority to collect finance charges. - Persons licensed as sales finance companies are without any specific statutory authority under this article to collect any finance charges; because this could not have been what the legislature intended, one must find, in 56-8-11.1 NMSA 1978 (now repealed), the authority to collect finance charges. 1985 Op. Att'y Gen. No. 85-01.

Effect of seller's failure to sign contract and deliver unit. - Where the plaintiffs signed a contract agreeing to buy a mobile home from the defendant, which contract was neither dated nor signed by the latter, paying a down payment toward the purchase price, and shortly after the mobile home arrived from the factory, the plaintiffs went to the defendant's place of business to see it, and either at this point or on a second visit, discovering that it was not as ordered in several particulars, asked for a refund of their down payment under this article, they had a right to rescind the contract and receive a refund of the payments they had made, since the contract was not signed by the seller and the unit was never delivered to the buyers. White v. Singleton, 88 N.M. 262, 539 P.2d 1024 (Ct. App. 1975).

Agreement compromising right to rescission and refund void. - An alleged compromise agreement whereby the plaintiffs who refused to accept the mobile home they ordered allowed the defendant to retain their down payment as a credit on another purchase, where the plaintiffs had a right under Subsection A(3) to rescission and refund, was unenforceable and void, because the effect of the alleged compromise amounted to an attempted waiver of the plaintiffs' rights, in violation of 58-19-12 NMSA 1978, and because of the general rule that transactions in violation of a statute prescribing penalties, such as those in 58-19-11A NMSA 1978, are void. White v. Singleton, 88 N.M. 262, 539 P.2d 1024 (Ct. App. 1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction of statutes regulating form and contents of motor vehicle installment sales contracts, 14 A.L.R.3d 330, 46 A.L.R. Fed. 657.

58-19-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 263, § 4, repeals 58-19-8 NMSA 1978, relating to the finance charge limitation, effective July 1, 1981.

Compiler's note. - Laws 1981, ch. 263, § 6, revived 58-19-8 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repeals Laws 1981, ch. 263, § 6, effective June 30, 1983.

58-19-9. Credit upon anticipation of payments.

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances, beginning one month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract (commonly referred to as the rule of 78S [78's]). If the charge as so computed is less than twenty-five dollars ($25.00), then a maximum charge of twenty-five dollars ($25.00) and no more may be retained. Where the amount of credit is less than one dollar ($1.00), no refund need be made.

History: 1953 Comp., § 50-15-9, enacted by Laws 1959, ch. 204, § 9.

58-19-10. Refinancing retail installment contract.

The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or defer payment or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed at the discretion of the holder, under either of the following optional methods of computation at the rates indicated as follows:

OPTION 1. In the event one or more installments are extended, deferred or restated, the holder may compute an extension charge on the amount of the installment payment or payments or part thereof which is extended, for the period of time for which each payment, or part thereof is extended, deferred or restated, at the following rates on contracts originally in the respective classification of motor vehicles set forth in Section 8A of this act:

Class 1 ..... 1 percent per month
Class 2 ..... 1 1/2 percent per month
Class 3 and 4 ..... 2 percent per month

Such extension charges may be computed on the basis of a full month for any fractional month period in excess of ten days.

OPTION 2. In the event the unpaid time balance of the contract is extended, deferred, renewed or restated, the holder may compute a refinance charge on such amount by adding to the unpaid time balance the cost for insurance and other benefits

incidental to the refinancing plus any accrued delinquency and collection charges, and deducting any refund which may be due the buyer by prepayment pursuant to Section 9 [58-19-9 NMSA 1978] of the Motor Vehicle Sales Finance Act, at the rate of the finance charge specified in Section 8A of this act and by reclassifying the motor vehicle by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act governing minimum finance charges and acquisition costs under the refund schedule shall not apply in calculating refinance charges on the contract renewed under this method of computation.

History: 1953 Comp., § 50-15-10, enacted by Laws 1959, ch. 204, § 10.

Compiler's note. - "Section 8A of this act," referred to in the introductory paragraph of OPTION 1 and in the first sentence in OPTION 2, was compiled as 58-19-8A NMSA 1978 and was repealed by Laws 1981, ch. 263, § 4.

Meaning of "this act". - See 58-19-1 NMSA 1978 and notes thereto.

58-19-10.1. Loan to refinance motor vehicle sale.

Any transaction in the form of a loan, other than a retail installment contract, is not subject to the provisions of the Motor Vehicle Sales Finance Act, even though all or a portion of the proceeds of such transaction in the form of a loan are applied to the unpaid balance of a retail installment contract.

History: 1978 Comp., § 58-19-10.1, enacted by Laws 1981, ch. 182, § 1.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

58-19-11. Penalty.

A. Any person who shall willfully violate any provision of the Motor Vehicle Sales Finance Act, or engage in the business of a sales finance company in this state without a license therefor as provided in this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars ($500).

B. A willful violation of any of the provisions of Section 7 [58-19-7 NMSA 1978] or 8 of this act by any person or individual shall bar recovery of the finance charge, delinquency and collection or other charges whatsoever by the owner or holder of the retail installment contract involved.

History: 1953 Comp., § 50-15-11, enacted by Laws 1959, ch. 204, § 11.

Compiler's note. - The term "Section . . . 8 of this act," referred to in Subsection B, was compiled as 58-19-8 NMSA 1978 and was repealed by Laws 1981, ch. 263, § 4.

Meaning of "this act". - See 58-19-1 NMSA 1978 and notes thereto.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

Transactions violating section void. - An alleged compromise agreement whereby the plaintiffs who refused to accept the mobile home they ordered allowed the defendant to retain their down payment as a credit on another purchase, where the plaintiffs had a right under 58-19-7A(3) NMSA 1978 to rescission and refund, was unenforceable and void, because the effect of the alleged compromise amounted to an attempted waiver of the plaintiffs' rights, in violation of 58-19-12 NMSA 1978, and because of the general rule that transactions in violation of a statute prescribing penalties, such as those in Subsection A, are void. White v. Singleton, 88 N.M. 262, 539 P.2d 1024 (Ct. App. 1975).

58-19-12. Waiver.

Any waiver of the provisions of this act shall be unenforceable and void.

History: 1953 Comp., § 50-15-12, enacted by Laws 1959, ch. 204, § 12.

Saving clauses. - Laws 1959, ch. 204, § 14, provides that the act does not apply to contracts in effect prior to its effective date.

Severability clauses. - Laws 1959, ch. 204, § 13, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". - See 58-19-1 NMSA 1978 and notes thereto.

Compromise amounting to attempted waiver void. - An alleged compromise agreement whereby the plaintiffs who refused to accept the mobile home they ordered allowed the defendant to retain their down payment as a credit on another purchase, where the plaintiffs had a right under 58-19-7A(3) NMSA 1978 to rescission and refund, was unenforceable and void, because the effect of the alleged compromise amounted to an attempted waiver of the plaintiffs' rights, in violation of this section, and because of the general rule that transactions in violation of a statute prescribing penalties, such as those in 58-19-11A NMSA 1978, are void. White v. Singleton, 88 N.M. 262, 539 P.2d 1024 (Ct. App. 1975).

58-19-13. Creditor compliance with federal regulation deemed compliance with this act.

Any creditor engaging in transactions subject to the provisions of the Motor Vehicle Sales Finance Act who complies with the provisions of 15 United States Code Sections

1601 through 1665, and the regulations promulgated pursuant thereto, shall be deemed to have complied with applicable disclosure provisions of the Motor Vehicle Sales Finance Act.

History: 1953 Comp., § 50-15-13, enacted by Laws 1975, ch. 274, § 3.

Motor Vehicle Sales Finance Act. - See 58-19-1 NMSA 1978 and notes thereto.

58-19-14. Validity of assignment of contracts.

Any sales finance company may purchase or acquire, or agree to purchase or acquire, from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

History: 1978 Comp., § 58-19-14, enacted by Laws 1983, ch. 99, § 1.

ARTICLE 20
BUSINESS OF SELLING NEGOTIABLE CHECKS, DRAFTS AND MONEY ORDERS

58-20-1. Business of selling negotiable checks, drafts and money orders regulated.

A. Any bank, insured building and loan association, credit union, telegraph company, governmental agency or instrumentality or railway express agency engaged in interstate commerce may directly engage in the business of selling, issuing or registering checks or money orders. Trust companies and commercial banks may engage in such business through agents who shall not be deemed to be branches of the banks. No person other than the foregoing shall engage in such business directly or indirectly without first obtaining a license and having a current license from the director of the financial institutions division of the regulation and licensing department.

B. Each application for a license to sell, issue or register checks or money orders in this state shall be made in writing and under oath to the director of the financial institutions division of the regulation and licensing department and shall include:

(1) the full name and business address of the applicant;

(2) a financial statement of the applicant as of the end of the last fiscal year for which an annual statement has, in accordance with normal accounting practice, been prepared, certified by a certified public accountant or a registered public accountant;

(3) letters of recommendation from the banks with which the applicant does business; and

(4) any other pertinent data that the director may require by regulation.

C. Each application for a license shall be accompanied by an investigation fee of one hundred fifty dollars ($150). An additional investigation fee of twenty-five dollars ($25.00) for each agent of a licensee shall accompany the license application. If the license is granted, the investigation fee shall be applied to the license fee for the first year. No investigation fee shall be refunded.

D. Each approved applicant shall furnish a corporate surety bond in the penal sum of ten thousand dollars ($10,000) and an additional principal sum of five thousand dollars ($5,000) for each location within the state at which checks or money orders of the licensee are issued or sold; provided, however, no licensee shall be required to furnish a bond in excess of two hundred thousand dollars ($200,000) for the faithful performance of the acts of the licensee and those of its agents as provided in this section. Each application for a license or for the renewal of a license shall be accompanied by a list of the locations, including agencies, at which the applicant engages in the business of issuing or selling checks or money orders. The bond shall be conditioned upon the obligor's faithfully conforming to and abiding by the provisions of this section, honestly and faithfully applying all funds received and performing all obligations issued and sold under this section and paying to the state and to any person entitled thereto all money that becomes due and owing to the state or to the person under the provisions of this section because of any checks or money orders issued or sold in this state by the licensee or his agent or employee. The bond shall remain in force until canceled by the surety, which cancellation may be had only upon thirty days' written notice to the director of the financial institutions division of the regulation and licensing department. Cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period. In lieu of the corporate surety bonds or of any portion of the principal thereof as required by this section, the applicant may deposit with the director or with such banks or national banks in this state as the applicant may designate, and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States, or of this state or of a city, county, town, village, school district or instrumentality of this state or guaranteed by this state, or certificates of deposit issued by state or national banks in New Mexico, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the director, to substitute other securities for those

deposited and shall be required so to do on written order of the director made for good cause shown.

E. Upon the filing of the application, the payment of the investigation fee and the approval by the director of the financial institutions division of the regulation and licensing department of the bond, the director shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant. If the director finds that the applicant has a minimum net worth of one hundred thousand dollars ($100,000) and other factors and qualities meet the requirements of this section and warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community, the director shall issue to the applicant a license to sell and issue checks and money orders subject to the provisions of this section.

F. Upon the filing of the application for an agent of a licensee to sell or issue checks or money orders accompanied by the bond and agent fee, a permit shall be issued by the director of the financial institutions division of the regulations and licensing department for a certain designated agent at a certain designated place of business.

G. The renewal license fee for a licensee shall be one hundred fifty dollars ($150), and the renewal license fee for each agent of a licensee shall be twenty-five dollars ($25.00). An application for license renewal shall be filed with the director of the financial institutions division of the regulation and licensing department on or before February 28 of each year, on forms designated by the director. The director shall charge and collect from an applicant a fee of ten dollars ($10.00) per day for late filings of renewal applications or three hundred dollars ($300), whichever is less. Only one late charge shall be applied per license application, regardless of the number of agents or persons or entities covered by the application.

H. Each licensee shall keep full and complete records of all checks or money orders issued, of funds on hand and of all outstanding checks or money orders and shall file a statement correctly reflecting its net worth as of the close of its most recent fiscal year for which an annual statement has, in accordance with normal accounting practice, been prepared, the statement to be certified to by a certified public accountant or a registered public accountant satisfactory to the director of the financial institutions division of the regulation and licensing department, along with the application for renewal of license.

I. The director of the financial institutions division of the regulation and licensing department may at any time examine all the books, records, papers, assets and liabilities of every kind of any licensee to determine its financial condition and business methods. The licensee shall pay a fee of one hundred fifty dollars ($150) a day or any portion thereof for the conduct of the examination.

J. The director of the financial institutions division of the regulation and licensing department may at any time revoke a license on any ground on which he might refuse to grant a license or for failure to pay an annual fee or for the violation of any provision of this section. No license shall be denied or revoked except on ten days' notice to the applicant or licensee. Upon receipt of notice, the applicant or licensee may, within five days of its receipt, make written demand for a hearing at his cost. The director shall thereafter with reasonable promptness hear and determine the matter, and his decision shall be subject to judicial review in accordance with Section 58-1-45 NMSA 1978.

K. Whoever violates any provision of this section or any rule or regulation established pursuant to this section shall be punished by a fine of not more than one hundred dollars ($100) for each day during which a violation continues.

History: 1953 Comp., § 48-22-74, enacted by Laws 1965, ch. 293, § 1; 1975, ch. 330, § 37; 1983, ch. 54, § 1; 1987, ch. 292, § 8; 1989, ch. 209, § 12; 1991, ch. 66, § 1.

The 1991 amendment, effective July 1, 1991, inserted "of the regulation and licensing department" following "division" throughout the section; in Subsection B, inserted "of the financial institutions division of the regulation and licensing department" in the introductory paragraph and deleted "of the financial institutions division" following "director" in Paragraph (4); inserted the second sentence in Subsection C; rewrote Subsection G, which read "The annual license fee for a licensee shall be one hundred fifty dollars ($150), and shall accompany the application for renewal, and the annual license fee for each agent of a licensee shall be twenty-five dollars ($25.00) and shall accompany the application for an agent's permit or an application for the renewal of same"; and made minor stylistic changes in Paragraph (4) of Subsection B and in Subsection K.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks §§ 10, 17 to 19, 308 to 310, 545.

9 C.J.S. Banks and Banking §§ 4 to 9, 162, 165, 173, 330.

ARTICLE 21
MORTGAGE LOAN COMPANIES AND LOAN BROKERS

58-21-1. Short title.

Chapter 58, Article 21 NMSA 1978 may be cited as the "Mortgage Loan Company and Loan Broker Act".

History: Laws 1983, ch. 86, § 1; 1989, ch. 209, § 13.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Vendor and purchaser: recovery for increased mortgage interest costs where vendor fails or refuses to convey, 28 A.L.R.4th 1078.

58-21-2. Definitions.

As used in the Mortgage Loan Company and Loan Broker Act [this article]:

A. "affiliate" means any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "division" means the financial institutions division of the regulation and licensing department;

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

D. "loan broker" means any person who acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan, or both;

E. "mortgage loan" means any loan secured by a mortgage, deed of trust or other lien on real or personal property;

F. "mortgage loan company" means any person who, directly or indirectly:

(1) holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien or mortgage on real or personal property;

(2) holds himself out as being able to serve as an agent for any person who has money to lend, which loan is or will be secured by a lien or mortgage on real or personal property; or

(3) holds himself out as being able to make loans secured by liens or mortgages on real or personal property; and

G. "person" means an individual, corporation, partnership, association, joint-stock company, trust where the interests of the beneficiaries are evidenced by a security, unincorporated organization, government or political subdivision of a government.

History: Laws 1983, ch. 86, § 2; 1985, ch. 73, § 1.

58-21-3. Registration certificate required.

It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company or loan broker without first filing an

application with the director and obtaining a registration certificate under the Mortgage Loan Company and Loan Broker Act [this article], unless such person is exempt from the provisions of the Mortgage Loan Company and Loan Broker Act under the provisions of Section 6 [58-21-6 NMSA 1978] of that act.

History: Laws 1983, ch. 86, § 3.

58-21-4. Application for registration or renewal.

Each application for registration or renewal as a mortgage loan company or loan broker shall be filed in writing with the director, shall be verified and shall contain the following:

A. the name of the applicant and of each of the applicant's affiliates, engaged in the business of a loan broker or a mortgage loan company, and the name under which the applicant will conduct business in New Mexico, together with the articles of incorporation or articles of partnership;

B. the location of the applicant's principal office and of each branch office in New Mexico;

C. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director or manager, specifying the capacity and title of each;

D. a certified financial statement of the applicant, and if the applicant is a corporation, the statement must be prepared by an independent certified public accountant or registered public accountant;

E. the length of time the applicant has been engaged in business in other jurisdictions;

F. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress against the applicant or any director, officer, employee or affiliate of the applicant;

G. the registration fee; and

H. such other information and documentation as the director may require.

History: Laws 1983, ch. 86, § 4; 1985, ch. 73, § 2.

58-21-5. Registration fees; duration of registration.

A. Applicants shall, at the time of application, pay to the division four hundred dollars ($400) for initial registration and three hundred dollars ($300) for each renewal registration.

B. A registration shall continue for a period of twelve months from the date of registration. Each registrant shall submit a renewal application at least thirty days before the expiration of his existing registration.

C. Persons claiming exemption pursuant to Subsection H of Section 58-21-6 NMSA 1978 shall, at the time of such claim, pay to the division three hundred dollars ($300).

History: Laws 1983, ch. 86, § 5; 1987, ch. 292, § 9; 1989, ch. 209, § 14.

58-21-6. Persons exempt from registration.

The following persons shall be exempt from all provisions of the Mortgage Loan Company and Loan Broker Act [this article]:

A. banks, trust companies, savings and loan associations, credit unions, consumer finance companies, insurance companies or real estate investment trusts as defined in 26 U.S.C. Sec. 856;

B. an attorney licensed to practice law in New Mexico who is not principally engaged in the business of negotiating loans secured by real or personal property, when such person renders services in the course of his practice as an attorney at law;

C. a New Mexico-licensed real estate broker rendering service in the performance of his duties as a real estate broker who obtains financing for a real estate transaction involving an actual bona fide sale of real estate or real estate contract handled by such broker and who receives only the customary real estate broker's commission in connection with the transaction;

D. any person doing any act under order of any court;

E. any person making or acquiring a mortgage loan with his own funds for his own investment without the intent to resell the mortgage loan;

F. the United States of America, state of New Mexico or any of their branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions;

G. a company which is licensed as a small business investment company under the Small Business Investment Act of 1958; and

H. any person doing business in New Mexico who has as one of his principal purposes the brokering, making or originating of loans secured by real estate mortgages and who does not place or sell more than ten percent of such loans to persons other than institutional investors. For purposes of this subsection, an institutional investor is:

(1) any person exempt from the provisions of the Mortgage Loan Company and Loan Broker Act pursuant to Subsection A of this section;

(2) the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, the New Mexico mortgage finance authority and any other entity which is an instrumentality of or sponsored by the federal government or the state of New Mexico, and any successors to any of the foregoing, or the state itself; and

(3) any other person who in the twelve months immediately preceding any such transaction has acquired real estate mortgage loans in an aggregate principal amount equal to at least twenty-five million dollars ($25,000,000).

For the purposes of this subsection, a loan shall be considered placed or sold if all or a major part of the loan indebtedness, as evidenced by the delivery of the loan note itself or a certificate of loan participation, is sold directly to such institutional investor or is included in a pass-through certificate, collateralized mortgage obligation or similar instrument issued by such institutional investor.

In order to claim the exemption provided by this subsection, a mortgage loan company or loan broker must certify to the director, on a form acceptable to the director, on or before the later of June 30, 1985, or thirty days after the person first transacts business in New Mexico as a mortgage loan company or loan broker, that such person qualifies for the exemption. The director may require the person to identify on the certification form the institutional investors to whom the person brokers or sells its real estate mortgage loans. The director may require any person to recertify for this exemption in January of each calendar year, beginning with January, 1986 or at any other time as may be prescribed by rule or regulation.

Notwithstanding the foregoing, no person may rely in any calendar year on the exemption provided by this subsection if, during such calendar year, such person makes a loan secured by a real estate mortgage on the borrower's principal residence, the annual percentage rate computed in accordance with federal truth-in-lending laws on which exceeds twice the highest reported yield during the preceding four weeks from the date the loan disclosure statement is signed, as reported by the federal reserve system for the United States treasury securities calculated at thirty-year constant maturity.

History: Laws 1983, ch. 86, § 6; 1984, ch. 15, § 1; 1985, ch. 73, § 3.

Small Business Investment Act. - The federal Small Business Investment Act of 1958, referred to in Subsection G, appears as 15 U.S.C. § 661 et seq.

58-21-7. Surety bond.

A. Each mortgage loan company or loan broker shall post and maintain with the director a corporate surety bond in the amount of twenty-five thousand dollars ($25,000). Every bond shall provide for suit thereon by any person who has a cause of action under the Mortgage Loan Company and Loan Broker Act [this article]. In no event shall the total liability of the surety to all persons, cumulative or otherwise, exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three years after the act upon which it is based.

B. The bond shall be in substantially the form as the director prescribes.

History: Laws 1983, ch. 86, § 7.

58-21-8. Denial, suspension or revocation of registration.

The director may deny, suspend or revoke any registration when the applicant or registrant, or any director, officer, employee or affiliate of the applicant or registrant:

A. lacks a good business reputation;

B. has violated any provision of the Mortgage Loan Company and Loan Broker Act [this article];

C. charges, collects or receives fees for procuring, negotiating or securing any loan in excess of the amounts allowed by the Mortgage Loan Company and Loan Broker Act or by regulations issued by the director;

D. has committed fraud in connection with any transaction subject to the Mortgage Loan Company and Loan Broker Act;

E. has made any misrepresentations or false statements to or concealed any essential or material fact from any person in the course of the loan broker or mortgage loan company business;

F. has knowingly made or caused to be made any false representation of material fact or has suppressed or withheld from the director any information which the applicant or registrant possesses and which if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Mortgage Loan Company and Loan Broker Act;

G. has violated any provisions of any New Mexico statute relating to escrow agents or escrow companies;

H. has refused to permit an examination by the director of his books and records or has refused or failed, within a reasonable time, to furnish any information or make any report

that may be required by the director under the provisions of the Mortgage Loan Company and Loan Broker Act; or

I. has been convicted of a felony or any misdemeanor involving moral turpitude; subject, however, to the provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978].

History: Laws 1983, ch. 86, § 8; 1985, ch. 73, § 4.

58-21-9. Powers and duties of director.

The director shall exercise general supervision and control over mortgage loan companies and loan brokers doing business in New Mexico. In addition to the other duties imposed on him by law, the director shall:

A. make reasonable rules and regulations as may be necessary for the implementation of the Mortgage Loan Company and Loan Broker Act [this article]; provided that such rules and regulations shall be subject to the judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

B. conduct such investigations as may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act; and

C. conduct examinations, investigations and hearings in addition to those specifically provided for by law as may be necessary and proper to the efficient administration of the Mortgage Loan Company and Loan Broker Act.

History: Laws 1983, ch. 86, § 9.

58-21-10. Subpoenas, oaths and examination of witnesses; penalties.

A. In the conduct of any examination, investigation or hearing, the director may:

(1) compel the attendance of any person or obtain any documents by subpoena;

(2) administer oaths; and

(3) examine any person under oath concerning the business of any person subject to the provisions of the Mortgage Loan Company and Loan Broker Act [this article] and in connection therewith require the production of any books, records or papers relevant to the inquiry.

B. In case of refusal to obey a subpoena issued to any person, the district court of the first judicial district of Santa Fe county, upon application by the director, may issue to

the person an order requiring him to appear before the director or the staff member designated by the director, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

History: Laws 1983, ch. 86, § 10.

58-21-11. Keeping of records and filing of reports.

Every mortgage loan company and loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data and other records as the director by rule prescribes. All records so required shall be preserved for six years. Every mortgage loan company and loan broker shall file financial reports as the director by rule prescribes. If the information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, the registrant shall file a correcting amendment within thirty days.

History: Laws 1983, ch. 86, § 11.

58-21-12. Examination of records.

All the records required to be maintained by the Mortgage Loan Company and Loan Broker Act [this article] are subject to annual examinations by representatives of the director, within or without New Mexico, together with such special or other examinations as the director deems necessary or appropriate in the public interest or for the protection of investors. The mortgage loan company or loan broker so examined shall pay a fee for each such examination at the rate of one hundred fifty dollars ($150) per day, or fraction thereof, for each authorized representative engaged in the examination. If the examination is conducted outside the state, the actual cost of travel for the examiners shall also be reimbursed to the state by the mortgage loan company or loan broker so examined.

History: Laws 1983, ch. 86, § 12; 1987, ch. 292, § 10.

58-21-13. Public inspection of applications.

Applications for registration or renewal and all papers, documents, reports and other written instruments filed with the director under the Mortgage Loan Company and Loan Broker Act [this article] are public documents and open to public inspection except for files on investigations relating to violations of that act, which investigations do not culminate, or have not yet culminated, in administrative, civil or criminal action.

History: Laws 1983, ch. 86, § 13.

58-21-14. Notice of proposed order of suspension, revocation or denial of registration; hearing.

A. Notice of any proposed order of suspension, revocation or denial of registration of any mortgage loan company or loan broker, together with the grounds therefor, shall be given in writing, served personally or sent by certified mail to the person affected.

B. The mortgage loan company or loan broker, upon application, is entitled to a hearing; but if no such application is made within ten days after the receipt of or refusal to accept such notice, the director shall enter a final order.

History: Laws 1983, ch. 86, § 14.

58-21-15. Investigations by director; injunctions.

A. When the director has reason to believe that a mortgage loan company or loan broker is conducting its business in violation of the Mortgage Loan Company and Loan Broker Act [this article] or that any person is engaging in the mortgage loan company or loan broker business without being registered under the provisions of the Mortgage Loan Company and Loan Broker Act, unless exempt therefrom under the provisions of Section 6 [58-21-6 NMSA 1978] of that act, he may make such an investigation as he deems necessary.

B. When the director finds upon sufficient evidence that any mortgage loan company or loan broker has engaged in or is about to engage in any act or practice in violation of the Mortgage Loan Company and Loan Broker Act, the director may:

(1) refer the evidence concerning alleged violations of the Mortgage Loan Company and Loan Broker Act to the appropriate district attorney, or to the attorney general, who may, with or without such reference, institute the appropriate criminal proceedings under the Mortgage Loan Company and Loan Broker Act; and

(2) summarily order the mortgage loan company or loan broker to cease and desist from such act or practice or apply to any district court having venue to enjoin the act or practice and to enforce compliance with the Mortgage Loan Company and Loan Broker Act or both. If the director applies to the court for relief, upon proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted, a receiver or conservator may be appointed for the defendant or defendant's assets and the court may provide such other equitable relief as it may deem appropriate. The court shall not require the director to post a bond.

History: Laws 1983, ch. 86, § 15.

58-21-16. Review of order of director.

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court of the first judicial district of Santa Fe county by filing in court, within thirty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served upon the director, and, thereupon, the director shall certify and file in court a copy of the filing and evidence upon which the order was entered. The findings of the director as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the director and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper, the director may modify his findings and order by reason of the additional evidence together with any modified or new findings or order.

B. The commencement of the proceedings under Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order.

History: Laws 1983, ch. 86, § 16.

58-21-17. Escrow services.

Any registrant under the Mortgage Loan Company and Loan Broker Act [this article] who also performs any acts that are within the scope of activities regulated by any statutes of the state relating to escrow agents shall also comply with all provisions of those statutes and registration under the Mortgage Loan Company and Loan Broker Act shall not serve to relieve the registrant from compliance with the provisions of such other statutes.

History: Laws 1983, ch. 86, § 17.

58-21-18. Prohibited charges.

In connection with any loan originated, brokered, negotiated or made by a registrant under the Mortgage Loan Company and Loan Broker Act [this article], no charges other than interest shall be made, except the following:

A. the actual and reasonable expenditures for an abstract of title, title examination, title insurance premiums, property survey, appraisal fees, notary fees, preparation of deeds, mortgages or other documents, credit reports and filing and recording fees;

B. broker's fees not in excess of six percent of the principal amount of the loan;

C. a one-time charge of an amount not to exceed fifteen dollars ($15.00) when the loan is made to a natural person, primarily for personal, family or household purposes, to help defray the actual cost of preparing truth-in-lending disclosure statements, equal credit opportunity disclosure statements and other disclosures required by law; and

D. such other fees as the director by regulation may permit.

History: Laws 1983, ch. 86, § 18; 1984, ch. 15, § 2.

58-21-19. Prohibited withholding and escrowing of loan proceeds; disclosure; penalty.

In connection with any loan originated, brokered, negotiated or made by a registrant under, and which loan is subject to, the Mortgage Loan Company and Loan Broker Act [this article]:

A. the loan shall not require or provide for the withholding or escrowing of any portion of the loan proceeds to cover any future payments, whether principal or interest or both, to the mortgagee or obligee of such loan;

B. the loan agreement shall not require or provide for the withholding or escrowing of any portion of the loan proceeds to cover any payments to be made in the future on any prior encumbrance or lien, except for a reasonable amount to be applied toward the next annual payment of property taxes;

C. prepaid interest in the nature of points, regardless of how characterized, shall not be charged; and

D. at least three business days prior to closing a loan, the registrant shall provide to the borrower disclosure in accordance with the provisions of Section 56-8-11.2 NMSA 1978. Any registrant who fails to comply with the disclosure requirements or who provides information which is substantially incorrect as to the rate or charge shall forfeit all interest, charges or other advantage for the loan to the borrower.

History: Laws 1983, ch. 86, § 19; 1984, ch. 15, § 3.

Compiler's note. - Section 56-8-11.2 NMSA 1978, referred to in the first sentence in Subsection D, was repealed in 1991.

58-21-20. False statement unlawful.

It is unlawful for any person to make or cause to be made in any document filed with the director in any proceedings under the Mortgage Loan Company and Loan Broker Act [this article] any statement which is at the time and in the light of the circumstances under which it is made false or misleading in any material respect.

History: Laws 1983, ch. 86, § 20.

58-21-21. Fraud unlawful.

It is unlawful for any mortgage company or loan broker in connection with the origination, brokering or making of any mortgage loan, directly or indirectly, to:

A. employ any device, scheme or artifice to defraud; or

B. engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

History: Laws 1983, ch. 86, § 21.

58-21-22. Penalties.

Any person who violates Sections 3, 18, 19 or 21 [58-21-3, 58-21-18, 58-21-19 or 58-21-21 NMSA 1978] of the Mortgage Loan Company and Loan Broker Act or who violates Section 20 [58-21-20 NMSA 1978] of that act knowing the statement to be false or misleading in any material respect, shall be guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978].

History: Laws 1983, ch. 86, § 22.

58-21-23. Filing and destruction of documents.

A document is filed when it is received by the director. The director may permit the destruction of any document filed under the Mortgage Loan Company and Loan Broker Act [this article] with the division or the director after:

A. six years from the date of filing documents; or

B. the reproduction of documents by photograph or microphotograph of a permanent nature.

History: Laws 1983, ch. 86, § 23.

58-21-24. Effect on existing mortgage loan companies or loan brokers.

Any mortgage loan company or loan broker engaged in activities covered by the Mortgage Loan Company and Loan Broker Act [this article] for a period of at least ninety days prior to the effective date of that act shall have thirty days from the effective date of the Mortgage Loan Company and Loan Broker Act in which to file a proper and complete application for a registration certificate together with the bond required by Section 7 [58-21-7 NMSA 1978] of that act and the required fee. During the thirty-day period and until the director acts on the application, the applicant shall be entitled to

operate without a registration certificate but shall otherwise comply with all other provisions of the Mortgage Loan Company and Loan Broker Act.

History: Laws 1983, ch. 86, § 24.

58-21-25. No impairment of other remedies.

The Mortgage Loan Company and Loan Broker Act [this article] is not intended to impair any remedies available to injured parties under other statutes or under common law.

History: Laws 1983, ch. 86, § 25.

58-21-26. Exemption from authority of secretary of commerce and industry [superintendent of regulation and licensing].

The responsibilities and authority of the director under the Mortgage Loan Company and Loan Broker Act [this article] are explicitly exempted from the authority of the secretary of commerce and industry [superintendent of regulation and licensing] as set forth in Subsection B of Section 9-2-5 NMSA 1978.

History: Laws 1983, ch. 86, § 26.

Bracketed material. - Laws 1983, ch. 297, § 33, repeals 9-2-5 NMSA 1978, referred to in this section, thereby abolishing the department of commerce and industry, the head of which was the secretary of commerce and industry, referred to in the catchline and in this section. Laws 1983, ch. 297, § 20, establishes the regulation and licensing department, one of the divisions of which is the financial institutions division. The chief executive and administrative officer of the regulation and licensing department is the superintendent of regulation and licensing. See 9-16-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Severability clauses. - Laws 1983, ch. 86, § 27, provides for the severability of the act if any part or application thereof is held invalid.

58-21-27. Mortgage servicing; servicing entity to have office or agent for servicing purposes in New Mexico.

Any business, organization or similar entity which services single unit residential mortgages on New Mexico real property shall either maintain its principal office, a branch office or an agent in New Mexico for the purpose of providing information, including but not limited to, providing answers to inquiries from mortgagors or their designated agents pertaining to data about their mortgage. Response to the mortgagor's inquiry shall be made within ten working days from the date of inquiry.

History: Laws 1987, ch. 343, § 1.

Maintaining a post office box in New Mexico is not sufficient for the purpose of maintaining "an agent" in New Mexico pursuant to this section. 1987 Op. Att'y Gen. No. 87-40.

ARTICLE 22
ESCROW COMPANIES

58-22-1. Short title.

This act [58-22-1 to 58-22-33 NMSA 1978] may be cited as the "Escrow Company Act".

History: Laws 1983, ch. 135, § 1.

Law reviews. - For annual survey of New Mexico insurance law, 19 N.M.L. Rev. 717 (1990).

58-22-2. Purpose.

It is the intent of the legislature that the large and growing escrow industry be supervised and regulated by the financial institutions division of the commerce and industry department [regulation and licensing department] in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection.

History: Laws 1983, ch. 135, § 2.

Bracketed material. - Laws 1983, ch. 297, § 33 abolishes the commerce and industry department, referred to in this section. Section 31 of that act provides that references to the financial institutions division of the commerce and industry department shall be construed as references to the financial institutions division of the regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto. The bracketed material was not enacted by the legislature and is not part of the law.

Fidelity bond purchase. - The language of this section leaves no room for doubt that the purchase of the fidelity bond required by 58-22-10 NMSA 1978 inures to the benefit and protection of the public. Anchor Equities, Ltd. v. Pacific Coast Am., 105 N.M. 751, 737 P.2d 532 (1987).

58-22-3. Definitions.

As used in the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978]:

A. "director" means the director of the division;

B. "division" means the financial institutions division of the commerce and industry department [regulation and licensing department];

C. "escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of such property, delivers any written instrument, money, evidence of title to real or personal property or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence of title or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee or bailor or to any of his agents or employees, pursuant to the written escrow instructions;

D. "escrow company" means any person engaged in the business of receiving escrows for deposit or delivery for compensation who is required to be licensed under the Escrow Company Act;

E. "licensee" means a person holding a valid license as an escrow agent; and

F. "person" means an individual, cooperative, association, company, firm, partnership, corporation or other legal entity.

History: Laws 1983, ch. 135, § 3.

Bracketed material. - See same catchline in notes to 58-22-2 NMSA 1978.

58-22-4. Exempt persons and transactions.

The Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] shall not apply to:

A. banks, trust companies, savings banks, savings and loan associations, credit unions, insurance companies not actively engaged in business as escrow companies or mortgage loan companies who have applied for and received an exemption pursuant to the Mortgage Loan Company and Loan Broker Act [Chapter 58, Article 21 NMSA 1978];

B. a person licensed to practice law in this state who is not actively engaged in business as an escrow company;

C. a person who is not actively engaged in business as an escrow company and whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;

D. any broker licensed by the New Mexico real estate commission while performing acts in the course of or incidental to a single real estate transaction and in which the broker is performing an act for which a real estate license is required; provided, however, that

any such acts which constitute escrow activity shall not exceed a period of ninety days. Trust accounts of a broker licensed by the New Mexico real estate commission shall not be escrow accounts within the meaning of the Escrow Company Act;

E. a company licensed as a small business investment company pursuant to the Small Business Investment Act of 1958;

F. any person acting under court order; or

G. the United States or the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state, their agencies, instrumentalities and institutions.

History: Laws 1983, ch. 135, § 4; 1989, ch. 209, § 15.

Small Business Investment Act. - The federal Small Business Investment Act of 1958, referred to in Subsection E, appears as 15 U.S.C. § 661 et seq.

58-22-5. Exemption or exception; burden of proof.

In any proceeding under the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978], the burden of proving an exemption or exception from a definition is upon the person claiming it.

History: Laws 1983, ch. 135, § 5.

58-22-6. Director; duties and powers.

The director shall exercise general supervision and control over escrow companies doing business in New Mexico. In addition to the other duties imposed upon him by law, the powers and duties of the director are to:

A. make reasonable rules and regulations as may be necessary to effectuate the purposes of the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978];

B. conduct investigations as may be necessary to determine whether any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Escrow Company Act; and

C. conduct examinations, investigations and hearings in addition to those specifically provided for by law as may be necessary and proper to the efficient administration of the Escrow Company Act.

History: Laws 1983, ch. 135, § 6.

58-22-7. License required.

No person shall engage in business as an escrow company unless that person is licensed by the director as an escrow company.

History: Laws 1983, ch. 135, § 7.

58-22-8. Application for license.

Applications for a license as an escrow company shall be in writing and in such form as is prescribed by the director and shall be accompanied by such information and documentation as is required by law. The application shall set forth:

A. the names and addresses of any incorporators, directors, officers, partners, owners and managers of the escrow company;

B. an itemized statement of the estimated receipts and expenditures of the proposed first year of operations;

C. the experience and qualifications of those persons proposed to act as officers and managers;

D. in the case of a corporation, a certified copy of the articles of incorporation and bylaws; and

E. such additional information as the director may require.

History: Laws 1983, ch. 135, § 8.

58-22-9. Annual renewal of license.

Each licensee shall renew its license for each of its offices annually by filing an application for renewal with the director on or before June 1 of each year, accompanied by the appropriate fees. The application for renewal shall be on such form and shall contain such information as the director by regulation shall prescribe which shall establish that the licensee has continued to maintain necessary qualifications as an escrow agent. If such application for renewal is timely and properly filed and the necessary qualifications are being maintained, the renewal of the license shall be effective on July 1 following the filing of the application and shall be evidenced by an appropriate license issued as of that date.

History: Laws 1983, ch. 135, § 9.

58-22-10. Cash or surety bond or employee dishonesty bond required.

A. All employees of an escrow company and all other persons who have access to money or negotiable securities held in trust by the escrow company or in the possession of the escrow company in the regular discharge of their duties or persons who draw checks upon the escrow company or upon the trust funds of the escrow company in the regular discharge of their duties, before entering upon their duties and throughout the entire term of their office and employment and any subsequent term thereof, shall be covered by an employee dishonesty bond insuring the escrow company against loss of money or negotiable securities. The minimum amount of the bond shall be one hundred thousand dollars ($100,000) and shall be executed and acknowledged by a corporation that is licensed by the superintendent of insurance to transact the business of fidelity and surety insurance. The bonds shall be in a form acceptable to the director and shall be filed in the director's office.

B. In the event that an escrow company is unable to obtain an employee dishonesty bond that covers all persons who have access to money or negotiable securities held in trust by or in the possession of the escrow company, such persons shall be covered by a cash or surety bond obtained by the escrow company in the amount of fifty thousand dollars ($50,000) running to the people of the state of New Mexico. The surety bond shall be issued by a corporate surety company authorized by the superintendent of insurance to write surety bonds in this state and shall be in a form devised by the director.

C. The provisions of Subsections A and B of this section shall not apply to:

(1) a licensed escrow company after three years of licensure; or

(2) an escrow company whose application for licensure is submitted on or before December 31, 1990, and that for at least three years immediately prior to licensure actually engaged in servicing at least five hundred accounts in escrow activities as a person exempted under the provisions of Subsection C of Section 58-22-4 NMSA 1978.

History: Laws 1983, ch. 135, § 10; 1986, ch. 21, § 1; 1987, ch. 120, § 1; 1990, ch. 47, § 1.

The 1990 amendment, effective May 16, 1990, in Subsection B, substituted "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" and made a minor stylistic change in the first sentence and rewrote Subsection C which read "The provisions of Subsections A and B of this section shall apply only to a newly licensed escrow company for a period not to exceed the first three years of licensure".

Purpose is to benefit public. - The language of 58-22-2 NMSA 1978 leaves no room for doubt that the purchase of the fidelity bond required by this section inures to the benefit and protection of the public. Anchor Equities, Ltd. v. Pacific Coast Am., 105 N.M. 751, 737 P.2d 532 (1987).

Actions against insurers. - This section, mandating that all escrow companies be "covered by an employee dishonesty bond insuring the escrow company against loss of money or negotiable securities," does not specifically allow a direct action against an insurer; nevertheless, the language of the section does not in any way negate the joinder of the insuring company as a defendant, and the policy behind the statute, i.e., protection of the public, clearly supports a direct action against an insurer by a third person placing funds in an escrow company's trust account that have allegedly been misappropriated by the owner and sole employee of the escrow company. Anchor Equities, Ltd. v. Pacific Coast Am., 105 N.M. 751, 737 P.2d 532 (1987).

Law reviews. - For annual survey of New Mexico insurance law, 19 N.M.L. Rev. 717 (1990).

58-22-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 21, § 2 repeals former 58-22-11 NMSA 1978, as enacted by Laws 1983, ch. 135, § 11, relating to escrow company insurance coverage for professional liability or errors and omissions, effective February 21, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

58-22-12. Issuance of license.

Upon receiving and filing the application and bond coverage specified in the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] and upon a showing by the applicant of compliance with all requirements of the Escrow Company Act and any rules and regulations promulgated under that act, the director shall grant and issue a license.

History: Laws 1983, ch. 135, § 12; 1987, ch. 120, § 2.

58-22-13. Action on bond; limitation.

No action shall be brought upon any bond required pursuant to Section 10 [58-22-10 NMSA 1978] of the Escrow Company Act or insurance coverage required pursuant to Section 11 [58-22-11 NMSA 1978] of that act after the expiration of three years from the accrual of the cause of action.

History: Laws 1983, ch. 135, § 13.

Compiler's note. - Section 11 of the Escrow Company Act, referred to in this section, was compiled as 58-22-11 NMSA 1978, before being repealed by Laws 1986, ch. 21, § 2.

58-22-14. New bond required; effect of failure to file new bond.

Upon any recovery in an action on a bond required pursuant to Section 10 [58-22-10 NMSA 1978] of the Escrow Company Act, the licensee shall file a new bond. Failure to file a new bond within ten days of the recovery on a bond or within ten days after notification by the director that a new bond is required constitutes sufficient ground for action by the director under Subsection B of Section 27 [58-22-27 NMSA 1978] of the Escrow Company Act.

History: Laws 1983, ch. 135, § 14.

58-22-15. Grounds for denying a license.

The director may deny an escrow company's application for initial licensing or renewal if:

A. the applicant has ever had an escrow company license revoked for cause;

B. the applicant was a partner, owner, officer, director, trustee, manager or principal stockholder of any partnership, corporation or unincorporated association whose escrow company license has been revoked for cause;

C. the applicant has any owner, officer, director or principal stockholder who has had an escrow company license revoked for cause;

D. the director has knowledge that the applicant or a partner, owner, officer, director, trustee or principal stockholder of the applicant has been convicted of fraud, embezzlement or any crime involving moral turpitude pursuant to the laws of New Mexico or has been adjudged disqualified for employment as an escrow company pursuant to the provisions of the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978];

E. there is no officer or manager possessing necessary escrow experience to be stationed in the proposed business location;

F. any false statement of a material fact has been made in application for licensure; or

G. the applicant or any officer, owner, partner, director or incorporator of the applicant has violated any provision of the Escrow Company Act or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

For the purposes of Subsection D of this section, the director is authorized to acquire arrest record information from a law enforcement agency pursuant to Section 29-10-5 NMSA 1978.

History: Laws 1983, ch. 135, § 15; 1987, ch. 120, § 3.

58-22-16. Transferability.

An escrow agent license is not transferable or assignable. The provisions of this section apply to the change of ownership of any licensed escrow company, including the change of control over any corporation licensed as an escrow company. For purposes of this section, "change of control" means the transfer of twenty-five percent or more of the outstanding voting stock of the corporation.

History: Laws 1983, ch. 135, § 16; 1987, ch. 120, § 4.

58-22-17. Keeping of records; examination.

A. Every licensee shall make and keep such accounts, correspondence, memoranda, papers, books, data and other records as the director by regulation prescribes. All records so required shall be preserved for six years after the termination of the account unless the director by regulation prescribes otherwise for particular types of records.

B. All the records required to be maintained by the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] are subject to annual examinations by the director, within or without the state of New Mexico, together with such special or other examinations as the director deems necessary or appropriate in the public interest or for the protection of investors. The licensee so examined shall pay a fee for the examination at the rate of one hundred fifty dollars ($150) per day, or fraction of a day, for each authorized representative engaged in the examination; provided that the total fee for such examination shall not exceed seven hundred dollars ($700). If it is necessary for the examination to be conducted outside the state, the actual cost of travel for the examiners shall be reimbursed to the state by the licensee so examined.

History: Laws 1983, ch. 135, § 17; 1987, ch. 292, § 11.

58-22-18. Statement of account.

Within fourteen days of a written request made by a party to the escrow agreement, each licensee shall provide a full statement of the escrow account, setting forth credits to principal and interest for the period and other information requested.

History: Laws 1983, ch. 135, § 18.

58-22-19. Public inspection of applications.

Applications for registration or renewals and all papers, documents, reports and other written instruments filed with the director under the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] are public documents and open to public inspection except for files on investigations relating to violations of the Escrow Company Act, which investigations have not culminated in administrative, civil or criminal action.

History: Laws 1983, ch. 135, § 19.

58-22-20. Bank deposit required; maintenance of trust accounts.

All money received in escrow prior to disbursement shall be deposited in a trust account maintained in a bank, savings and loan association or credit union located in New Mexico. Such trust accounts shall be maintained separately from those required for operation of the licensee and funds belonging to the licensee. All such money received in escrow may be commingled in one or more trust accounts, provided such funds are separately identifiable to the respective recipients under the escrow agreements.

History: Laws 1983, ch. 135, § 20.

58-22-21. Attachment.

Funds received pursuant to escrow or trust funds are not subject to execution or attachment in any claim against the licensee.

History: Laws 1983, ch. 135, § 21.

58-22-21.1. Suit to recover trust funds; attorney's fees authorized.

An escrow agent, in any action brought against a party to the escrow to recover trust funds disbursed by the escrow agent to or for the benefit of the party, or in reliance upon a check or draft issued by the party which is subsequently dishonored by the drawee, may recover, in addition to the amount so disbursed, a reasonable amount as attorney's fees and costs. Pending litigation, an escrow agent may retain possession of all escrowed documents until directed otherwise by a court of competent jurisdiction.

History: 1978 Comp., § 58-22-21.1, enacted by Laws 1985, ch. 219, § 1.

58-22-22. Removal.

A licensee's business shall not be removed from the premises or address shown on the license without thirty days prior written notice to the director and to the customers of the escrow company.

History: Laws 1983, ch. 135, § 22.

58-22-23. Additional business office locations.

Licensees under the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] shall be entitled to establish additional business office locations by compliance with all of the following:

A. filing with the director notice of the intended address; and

B. a showing that there will be an officer or manager possessing necessary escrow experience stationed in the proposed additional business location; and

C. payment of a branch fee to the director.

History: Laws 1983, ch. 135, § 23; 1989, ch. 209, § 16.

58-22-24. Fees.

The director shall charge and collect the following fees:

A. an original license fee for an escrow company of four hundred dollars ($400) for the first office or location;

B. an annual license renewal fee for an escrow company of two hundred dollars ($200) and a delinquency fee of ten dollars ($10.00) per day for each day of delinquency beyond the date required for payment of the licensee's renewal fee;

C. a fee of fifty dollars ($50.00) for each person claiming an exemption from the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] pursuant to Section 58-22-4 NMSA 1978;

D. an original branch license fee for an escrow company branch of two hundred dollars ($200) for each office or location in addition to the first office or location; and

E. an annual license renewal fee for an escrow company branch of two hundred dollars ($200) for each office or location in addition to the first office or location.

History: Laws 1983, ch. 135, § 24; 1987, ch. 292, § 12; 1989, ch. 209, § 17.

58-22-25. Limit on fees for servicing loans or contracts of sale.

For servicing loans or contracts of sale, a licensee may charge fees based on the amount of the outstanding loan balance, provided that a licensee shall not charge, collect or receive in excess of one percent per year on the outstanding loan balance as that balance exists as of the date of the loan or sales contract or, for subsequent yearly periods, as that balance exists on the respective annual anniversary dates of the loan or sales contract. In the alternative, a licensee may charge, collect and receive fees based on the number and amount of disbursements made pursuant to the escrow instructions and may charge set-up, close-out and other fees, so long as any such fees are reasonable.

History: Laws 1983, ch. 135, § 25.

58-22-26. Unauthorized business practices.

A. Unauthorized business practices of escrow agents include but are not limited to the following:

(1) issuing, circulating or publishing any advertisement by any means of communication or making use of or circulating any written materials indicating that a person is in the escrow business when that person is not a licensed escrow company;

(2) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or amended or supplemental escrow instruction, or permitting any person to make any addition to, deletion from or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion or alteration is signed or initialed by all persons who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion or alteration;

(3) failing to faithfully carry out the escrow services pursuant to the written escrow instructions, unless amended by the written agreement of all parties to the escrow agreement;

(4) accepting any escrow transaction that requires or has required the prepayment, deduction or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if such payments are not due and payable to the mortgagee or obligee at the time the escrow is established, except for payments to be made on property taxes for the current year or for the next annual premium on hazard insurance;

(5) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

(6) failing to distribute funds pursuant to escrow instructions promptly, but in no event later than five days from the final payment as defined in Section 55-4-213 NMSA 1978.

B. Any licensee who commits an unauthorized business practice is subject to the revocation or suspension of his license or to other sanctions imposed by the director as provided in the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978].

History: Laws 1983, ch. 135, § 26.

58-22-26.1. Right to rely upon written instructions; conflicting demands upon escrow agent; right to interplead; custody of documents; attorney's fees authorized.

If two or more parties to an escrow make conflicting demands upon the escrow agent regarding the performance of its duties, then the escrow agent may, at its election, hold any money or documents which are the subject of the conflicting demands until it receives mutual instructions resolving the conflict in writing and signed by all parties to the escrow, or until a civil action has been finally concluded in a court of competent

jurisdiction determining the rights of all parties to the escrow. In any civil action commenced to resolve the conflicting demands of the parties to the escrow, the escrow agent may recover a reasonable amount as attorney's fees and costs.

History: 1978 Comp., § 58-22-26.1, enacted by Laws 1985, ch. 219, § 2.

58-22-27. Investigations by director; desist order; injunctions; fees.

A. The director may investigate, upon complaint or otherwise, when it appears that an escrow company is conducting its business in an unsafe and injurious manner or in violation of the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] or the regulations promulgated pursuant to that act, or when it appears that any person is engaging in the escrow company business without being registered under the provisions of that act.

B. Whenever it appears to the director, upon sufficient ground or evidence satisfactory to the director, that any escrow company has engaged or is about to engage in any act or practice in violation of the Escrow Company Act or any rule, regulation or order pursuant to that act, or the assets or capital of any escrow company are impaired or the escrow company's affairs are in an unsafe condition, the director may summarily order the escrow company to cease and desist from that act or practice, or the director may apply to the district court of the first judicial district of Santa Fe county to enjoin the act or practice and to enforce compliance with the Escrow Company Act or for any other appropriate equitable relief. Upon a proper showing, a temporary restraining order, followed by a preliminary injunction and a permanent injunction, shall be granted, a receiver may be appointed for the defendant or defendant's assets and the license may be canceled, and such additional or other equitable remedies may be provided as the court deems necessary and appropriate. The court shall not require the director to post a bond.

C. Whenever an investigation pursuant to Subsection A of this section becomes necessary, and that investigation reveals that an escrow company is conducting its business in an unsafe and injurious manner or in violation of the Escrow Company Act or the regulations promulgated pursuant to that act, or that any person is engaging in the escrow company business without being registered under the provisions of that act, the escrow company or person investigated shall pay to the director an investigation fee at the rate of one hundred fifty dollars ($150) per day or fraction of a day for each authorized representative engaged in the investigation.

History: Laws 1983, ch. 135, § 27; 1987, ch. 292, § 13.

58-22-28. Subpoenas, oaths and examinations of witness; penalty.

A. In the conduct of any examination, investigation or hearing, the director may:

(1) compel the attendance of any person or obtain any documents by subpoena;

(2) administer oaths; and

(3) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] and in connection therewith require the production of any books, records or papers relevant to the inquiry.

B. Where any person has refused to obey a subpoena issued to the director, the district court of the first judicial district of Santa Fe county or other district court having proper venue, upon application by the director, may issue to the person an order requiring him to appear before the director or the staff member designated by the director, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

History: Laws 1983, ch. 135, § 28.

58-22-28.1. Violation of the Escrow Company Act; penalty.

Any person who violates Section 58-22-7, 58-22-20 or 58-22-26 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be sentenced as provided for in the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978].

History: 1978 Comp., § 58-22-28.1, enacted by Laws 1987, ch. 120, § 5.

58-22-29. Review of order of director.

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court of the first judicial district of Santa Fe county by filing in court, within thirty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the director, and the director shall certify and file in court a copy of the filing and evidence upon which the order was entered. The findings of the director as to the facts, if supported by competent, material and substantial evidence, are conclusive.

B. The commencement of proceedings under Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order.

History: Laws 1983, ch. 135, § 29.

58-22-30. Exemption from authority of secretary of commerce and industry [superintendent of regulation and licensing].

The responsibilities and authority of the director of the financial institutions division under the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] are hereby explicitly

exempted from the authority of the secretary of commerce and industry [superintendent of regulation and licensing] as set forth in Subsection B of Section 9-2-5 NMSA 1978.

History: Laws 1983, ch. 135, § 30.

Bracketed material. - Laws 1983, ch. 297, § 33 repeals 9-2-5 NMSA 1978, referred to in this section, thereby abolishing the department of commerce and industry, the head of which was secretary of commerce and industry, referred to in the catchline and in this section. Laws 1983, ch. 297, § 20, establishes the regulation and licensing department, one of the divisions of which is the financial institutions division. The chief executive and administrative officer of the regulation and licensing department is the superintendent of regulation and licensing. See 9-16-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

58-22-31. Effect on persons currently engaged in escrow company business.

Any person engaged in the escrow company business in the state for a period of at least ninety days prior to the effective date of the Escrow Company Act shall have thirty days from that date in which to file a proper and complete application for a license together with the required bonds pursuant to Section 10 [58-22-10 NMSA 1978] of the Escrow Company Act and evidence of insurance coverage pursuant to Section 11 [58-22-11 NMSA 1978] of that act and to pay all required fees; provided that such applicant shall not be required to meet the condition specified in Subsection B of Section 8 [58-22-8 NMSA 1978] of the Escrow Company Act. During that thirty-day period and until the director acts on the application, the person shall be entitled to operate without a license but shall otherwise comply with all other provisions of that act [58-22-1 to 58-22-33 NMSA 1978].

History: Laws 1983, ch. 135, § 31.

58-22-32. Status of preexisting escrows.

Nothing contained in the Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] shall be so construed as to impair or affect the obligation of any escrow agreement that was lawfully entered into prior to the effective date of that act.

History: Laws 1983, ch. 135, § 32.

Compiler's note. - Laws 1983, ch. 135, § 35 makes the Escrow Company Act effective on July 1, 1983.

58-22-33. No impairment of other remedies.

The Escrow Company Act [58-22-1 to 58-22-33 NMSA 1978] is not intended to impair any remedies available to injured parties under other statutes or under the common law.

History: Laws 1983, ch. 135, § 33.

Severability clauses. - Laws 1983, ch. 135, § 34, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 23
HOSPITAL EQUIPMENT LOANS

58-23-1. Short title.

This act may be cited as the "Hospital Equipment Loan Act".

History: Laws 1983, ch. 290, § 1.

Meaning of "this act". - The phrase "this act", referred to in this section, means Laws 1983, ch. 290, which appears as 58-23-1 to 58-23-32 NMSA 1978, except for 58-23-16.1, which was not enacted as part of that act.

58-23-2. Legislative findings.

The legislature finds that:

A. the delivery of high-quality health care in New Mexico has in recent years become increasingly dependent upon sophisticated equipment at a time when the acquisition and financing of equipment by health-care providers has become increasingly expensive;

B. the increased costs of financing modern equipment by New Mexico health-care providers is necessarily passed on to patients receiving medical care from the health-care providers, resulting in higher medical bills, increased health insurance premiums and higher medicare and medicaid payments;

C. the problems relating to the delivery of health care cannot be remedied solely through the operation of private enterprise or efforts by individual communities, but can be alleviated through the creation of a program to facilitate and enable the investment of private capital for the purpose of financing health-related equipment at interest rates lower than those available in the conventional credit markets;

D. the creation of a program to coordinate and cooperate with health-care providers and local communities is essential to alleviating the problematic conditions relating to the provision of health care and is in the public interest; and

E. alleviating these conditions by the encouragement of private investment is a public purpose and a beneficial use for which money provided by the sale of revenue bonds may be borrowed, expended, advanced, loaned and granted.

History: Laws 1983, ch. 290, § 2.

58-23-3. Definitions.

As used in the Hospital Equipment Loan Act:

A. "board" means the board of directors of the council;

B. "bonds" means bonds, notes, interim certificates, bond anticipation notes or other evidences of indebtedness of the council issued pursuant to the Hospital Equipment Loan Act, including refunding bonds;

C. "cost" as applied to health-related equipment means any and all costs of equipment, including but not limited to the following:

(1) all direct or indirect costs of the acquisition, including repair, restoration, reconditioning, financing and refinancing or installation of the health-related equipment;

(2) the cost of any property interest in the health-related equipment, including an option to purchase or a lease-hold interest;

(3) the cost of architectural, engineering, planning, drafting, legal and any incidental or related services necessary for acquisition of the health-related equipment;

(4) the cost of all financing charges and interest accrued prior to the acquisition or refinancing of the health-related equipment for a maximum of two years after or prior to such acquisition or refinancing;

(5) all direct and indirect costs incurred in connection with the financing of the health-related equipment, including out-of-pocket expenses; the cost of financing; legal, accounting, financial, advisory and consulting expenses; the cost of any policy of insurance; the cost of printing, engraving and reproduction services; and costs associated with any trust indenture; and

(6) any costs incurred by the council for the administration of any program for the purchase, sale or lease of or the making of loans for health-related equipment to any participating health-care provider;

D. "council" means the New Mexico hospital equipment loan council;

E. "health facility" means any entity providing health-related services which is licensed by the health and environment department [department of health] and all customary and necessary supporting services;

F. "health-related equipment" means any real or personal property, instrument, service or operational necessity which is found and determined by the council to be needed, directly or indirectly, for medical care, treatment or research or other equipment as otherwise might be needed to operate the health facility;

G. "participating health facility" means a public or private nonprofit or for profit corporation, association, foundation, trust, cooperative, agency or other person or organization which operates or proposes to operate a health facility in New Mexico and contracts with the council for the financing or refinancing of the lease or acquisition of health-related equipment. Public, district, county, city, county-municipal or other municipal hospitals and hospitals affiliated with an institution of higher education in New Mexico are participating health-care facilities; and

H. "program" means the New Mexico hospital equipment loan program created by the Hospital Equipment Loan Act and administered by the council.

History: Laws 1983, ch. 290, § 3; 1986, ch. 60, § 5; 1987, ch. 49, § 1.

Bracketed material. - The bracketed material in Subsection E was inserted by the compiler as Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, and enacted a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-4. Reserved.

ANNOTATIONS

Compiler's note. - Laws 1983, ch. 290, which enacted this article, contained no § 4.

58-23-5. Council; created; members; qualifications; board.

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico hospital equipment loan council for the performance of essential public functions".

B. The council shall be governed by a board of directors consisting of five members. The governor, with the advice and consent of the senate, shall appoint the members of the board.

C. Each member of the board shall be a resident of the state, and in addition:

(1) two members shall be officers or directors of financial institutions located in New Mexico;

(2) two members shall be officers or directors of a health facility located in New Mexico. Such members shall have been employed for a total of five years as officers or directors of any health facility;

(3) one member shall be appointed from and represent the public and shall not be directly or indirectly affiliated with any health facility; and

(4) no more than three members shall be of the same political party.

D. The council shall be separate and apart from the state and shall not be subject to the supervision or control of any board, bureau, department or agency of the state except as specifically provided in the Hospital Equipment Loan Act. In order to effectuate the separation of the state from the council, no use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the council unless the council is specifically referred to therein.

History: Laws 1983, ch. 290, § 5; 1986, ch. 60, § 6; 1987, ch. 49, § 2.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-6. Council; board of directors; terms and conditions of service.

A. The members of the board shall be appointed for staggered terms of four or fewer years each so that the term of at least one member expires on January 1 of each year. Each member shall hold office for the term of his appointment and until his successor has been appointed and qualified. Any member is eligible for reappointment.

B. Each member of the board shall be removed for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the same are expressly waived in writing.

History: Laws 1983, ch. 290, § 6.

58-23-7. Board; expenses.

The members of the board shall receive no compensation for their services but shall receive reimbursement for actual and necessary expenses at the same rate and basis as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1983, ch. 290, § 7.

58-23-8. Board; quorum.

A majority of the members of the board then serving shall constitute a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. No vacancy in the membership of the council shall impair the right of a quorum to exercise all rights and perform all duties of the loan program.

History: Laws 1983, ch. 290, § 8.

58-23-9. Meetings of the board.

The board shall meet at least annually and may meet more often as required by the business of the council.

History: Laws 1983, ch. 290, § 9.

58-23-10. Board; bonding requirements.

At the time of the issuance of any bonds pursuant to the Hospital Equipment Loan Act, each member of the board shall execute a surety bond in the sum of twenty-five thousand dollars ($25,000). To the extent any member of the board is already required by state law to provide a surety bond, that member need not obtain another bond as long as the bond required by state law is in at least the sum specified in this section and covers the member's activities for the council. In lieu of such bonds, the chairman of the board may execute a blanket fidelity bond covering each member and the employees of the council. Each fidelity bond shall be conditioned upon the faithful performance of the duties of the respective office of the member or the employee and shall be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bonds, each member and employee shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be borne by the council.

History: Laws 1983, ch. 290, § 10.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-11. Powers.

The council is granted all powers necessary and appropriate to carry out and effectuate its public and corporate purposes, including but not limited to the following powers:

A. to adopt, amend and repeal bylaws, rules and regulations to effectuate the purposes of the Hospital Equipment Loan Act;

B. to sue and be sued in its own name;

C. to have an official seal and alter it at will;

D. to maintain an office within the state;

E. to make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers under the Hospital Equipment Loan Act;

F. to employ architects, engineers, attorneys, inspectors, accountants and health-care and financial experts and such other advisors, consultants, agents and other employees as may be necessary, and to fix their compensation;

G. to procure insurance against any loss in connection with its property and other assets, including surety bonds in such amounts and from such insurers as it may deem advisable;

H. to procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States, to secure payment:

(1) on a loan, lease or purchase payment owed by a participating health facility to the council; and

(2) of any bonds issued by the council, including the power to pay the premium on any such insurance or guarantee;

I. to procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the council or to secure the payment of any loan, lease or purchase payment owed by a participating health facility to the council, including the power to pay the cost of obtaining such letter of credit;

J. to receive and accept from any source contributions, gifts or grants of money, property, labor or other things of value to be held, used and applied to carry out the purposes of the Hospital Equipment Loan Act, subject to the conditions upon which the grants, gifts or contributions are made;

K. to provide or cause to be provided by a participating health facility, by acquisition, lease, fabrication, repair, restoration, reconditioning, refinancing or installation, health-related equipment to be located within a health facility in this state;

L. to lease as lessor health-related equipment upon such terms and conditions as the council may deem advisable and as are not in conflict with the provisions of the Hospital Equipment Loan Act;

M. to sell for installment payments or otherwise, to option or contract for sale and to convey all or any part of health-related equipment upon such terms and conditions as the council may deem advisable and as are not in conflict with the provisions of the Hospital Equipment Loan Act;

N. to make contracts and incur liabilities, borrow money at such rates of interest as the council may determine, issue its bonds in accordance with the provisions of the Hospital Equipment Loan Act and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises and income or as otherwise provided in the Hospital Equipment Loan Act;

O. to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing for the cost of health-related equipment, including the retiring of any outstanding obligations or advances issued and the reimbursement for the cost of any health-related equipment purchased within twelve months immediately preceding the date of the bond issue, made or given by any participating health facility for the cost of health-related equipment and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the council may deem advisable and as are not in conflict with the provisions of the Hospital Equipment Loan Act. Loans may be made to participating health facilities or to any bank, savings and loan association or other entity which will, directly or indirectly, provide to participating health facilities such financing, refinancing or reimbursement of the cost of health-related equipment;

P. to invest and reinvest its funds and to take and hold property as security for the investment of such funds as provided in the Hospital Equipment Loan Act;

Q. to purchase, lease or otherwise acquire health-related equipment or any interest therein, as the purposes of the council require;

R. to sell, convey, mortgage, pledge, assign, lease, exchange, transfer and otherwise dispose of or encumber all or any part of its property and assets;

S. to the extent permitted under its contract with the holders of bonds of the council, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest or any other term of any loan, loan note, loan note commitment, lease or agreement of any kind to which the council is a party;

T. to sell at public or private sale any loan or other obligation held by the council;

U. to refuse to make loans or enter into leases for health-related equipment when not in the best interest of the program; and

V. to do any other act necessary or convenient to the exercise of the powers granted by the Hospital Equipment Loan Act or reasonably implied from it.

History: Laws 1983, ch. 290, § 11.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-12. Council; duties.

The council shall have the following duties:

A. to invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivisions thereof, the unsecured promissory notes or other obligations of state and national banking associations and other entities having an investment grade rating or as otherwise provided by the trust indenture or bond resolution securing the issuance of the bonds;

B. to collect fees and charges as the council determines to be reasonable in connection with its loans, leases, sales, advances, insurance, commitments and servicing; and

C. to cooperate with and exchange services, personnel and information with any federal, state or local governmental agency.

History: Laws 1983, ch. 290, § 12; 1987, ch. 49, § 3.

58-23-13. Lease and loan agreements with participating health-care providers; insurance; loan and lease payments.

In addition to its other powers and duties, the council is specifically authorized to initiate a program of financing, refinancing or reimbursing the cost of health-related equipment to be operated by participating health facilities. In this regard, the council is authorized to exercise the following powers:

A. to establish eligibility standards for participating health facilities;

B. to enter into an agreement with any entity securing the payment of bonds pursuant to Subsections H and I of Section 11 of the [58-23-11 NMSA 1978] of the Hospital Equipment Loan Act, authorizing that entity to approve the participating health-care providers that can finance or refinance health-related equipment with proceeds from the bond issue secured by that entity and to approve any banks, savings and loan associations or other entities to which the council may loan its funds to finance, refinance or reimburse, directly or indirectly, the cost of health-related equipment for participating health facilities;

C. to lease to a participating health facility specific items of health-related equipment upon such terms and conditions as the council may deem proper or to purchase any or all of the health-related equipment to which the lease applies;

D. to lend to a participating health facility or a bank, savings and loan association or other entity to finance, refinance or reimburse, directly or indirectly, the cost of health-related equipment to a participating health facility upon a secured or unsecured promissory note evidencing such loan upon such terms and conditions as the council may deem proper;

E. to sell or otherwise dispose of unneeded health-related equipment under conditions as determined by the council;

F. to maintain, repair, replace and otherwise improve any health-related equipment owned by the council;

G. to obtain or aid in obtaining property insurance on all health-related equipment owned or financed by the council; and

H. to enter into any agreement, contract or other instrument with respect to any insurance, guarantee or letter of credit, accepting payment in the event of default by a participating health facility, and to assign any such insurance, guarantee or letter of credit as security for bonds issued by the council.

History: Laws 1983, ch. 290, § 13.

58-23-14. Optional powers.

Prior to the exercise of any of the powers conferred by Section 13 [58-23-13 NMSA 1978] of the Hospital Equipment Loan Act, the council may:

A. require that the lease or installment purchase contract or loan agreement involved be insured by a loan insurer, be guaranteed by a loan guarantor or be secured by a letter of credit; or

B. require any other type of security from the participating health facilities or banks, savings and loan associations or other entities that it deems reasonable and necessary.

History: Laws 1983, ch. 290, § 14.

58-23-15. Issuance of bonds.

The council is authorized to issue, sell and deliver its bonds, in accordance with the terms of the Hospital Equipment Loan Act, for the purpose of paying for or making loans to participating health facilities, banks, savings and loan associations and other entities for the financing or refinancing of all or any part of the cost of health-related equipment and any other purposes authorized by the Hospital Equipment Loan Act. In addition, the council has the power to issue from time to time bonds to renew or to pay bonds, including any interest, and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds and to issue bonds partly to refund outstanding

bonds and partly for another of its purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded or may be exchanged for the bonds to be refunded.

History: Laws 1983, ch. 290, § 15.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-16. Terms of payment and sale of bonds.

A. The bonds shall be dated, shall bear interest at such rate or rates, fixed or variable, shall mature at such time or times not exceeding twenty years, or not to exceed thirty years if the council determines bonds are necessary in connection with the acquisition, lease, fabrication, repair, restoration, reconditioning, refinancing or installation of real property, from their date and may be made redeemable prior to maturity at such price or prices and upon terms and conditions determined by the council. In cases where any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of and payment for such bonds, that signature or facsimile is valid and sufficient for all purposes the same as if the officer had remained in office until delivery and payment. The bonds may be issued in coupon or in fully registered form or both or may be payable to a specific person, as the council may determine, and provision may be made for the registration of any coupon bonds as to principal or as to both principal and interest, for the conversion of coupon bonds into fully registered bonds without coupons and for the conversion into coupon bonds of any fully registered bonds without coupons. The duty of conversion may be imposed upon a trustee in a trust agreement.

B. The principal of, redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the council to finance or refinance in whole or in part health-related equipment, revenues derived from operating health-related equipment, including insurance proceeds, or any other revenues provided by a participating health-care provider or a bank, savings and loan association or other entity to which a loan is made.

C. The council shall sell the bonds at such price or prices as it shall determine at public or private sale.

History: Laws 1983, ch. 290, § 16; 1986, ch. 60, § 7.

58-23-16.1. Interest rates; refunding; approval by council; findings.

Bonds issued under the Hospital Equipment Loan Act [58-23-1 to 58-23-16 and 58-23-17 to 58-23-32 NMSA 1978] are not subject to any limitations on interest rates or net effective interest rates or interest rate approval requirements contained in any other laws of the state, provided that:

A. the bond resolution or other instruments under which such bonds are issued shall contain findings by the council that any fixed rate or rates of interest or discount on the bonds or, in the case of a variable rate or rates of interest, that the maximum rate or method of determining the maximum rate and that the maximum net effective interest rate on the bonds are reasonable under existing or anticipated bond market conditions and necessary and advisable for the marketing and sale of the bonds. The bond resolution or other instruments under which such bonds are issued declare that the council has considered all relevant information and data in making its findings. The findings and declarations in the bond resolution or other instruments under which such bonds are issued shall constitute conclusive authority for the council to issue the bonds within the interest rate limitations set forth in the bond resolution, and no additional approval of any department, board or other officer of the state or any other official approval is required; and

B. any bonds issued pursuant to the Hospital Equipment Loan Act to renew, fund or refund any prior issue of bonds, in whole or in part, may be issued notwithstanding the provisions of any other laws of the state; provided that the bond resolution or other instruments under which such bonds are issued shall contain findings that the issuance of such bonds is necessary or advisable and the amount of such bonds which it is deemed necessary and advisable to issue. The determination of necessity or advisability contained in the bond resolution or other instruments under which such bonds are issued shall constitute conclusive authority for the council to issue any such renewal, funding or refunding bonds, and no additional approval of any department, board or other officer of the state or any official approval is required.

History: 1978 Comp., § 58-23-16.1, enacted by Laws 1986, ch. 60, § 8; 1987, ch. 49, § 4.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-17. Use of bond proceeds.

The proceeds of the bonds of each issue shall not be used other than to pay, renew or refund bonds or to pay all or part of the cost of financing, refinancing or reimbursing health-related equipment or to make loans to participating health facilities, banks, savings and loan associations or other entities in order to directly or indirectly finance, refinance or reimburse the cost of the health-related equipment for which such bonds have been authorized. At the option of the council, the proceeds of each issue may be deposited to a reserve fund for the bonds; provided that the council shall be paid, out of money from the proceeds of the sale and delivery of its bonds, the council's out-of-pocket expenses and costs in connection with the issuance, sale and delivery of such bonds.

History: Laws 1983, ch. 290, § 17.

58-23-18. Bonds secured by trust indenture.

The bonds may be secured by a trust indenture between the council and a corporate trustee which may be either a bank having the power of a trust company or a trust company. Such trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the council in relation to the exercise of its powers and the custody and use of the money. The council may provide by the trust indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust indenture or other depository and for disbursement with safeguards as the council determines are necessary.

History: Laws 1983, ch. 290, § 18.

58-23-19. Security for payment of bonds.

Any bond resolution or related trust agreement, trust indenture, indenture of mortgage or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

A. pledging or assigning the revenues generated by the health-related equipment or pledging or assigning the notes and mortgage, lease or other security given by the participating health facilities, banks, savings and loan associations or other entities receiving loans with respect to which such bonds are to be issued or other specified revenues or property of the council;

B. the rentals, fees, interest and other amounts to be charged by the council, the schedule of principal payments and the sums to be raised in each year thereby and the use, investment and disposition of such sums;

C. setting aside any reserves of sinking funds and the regulation, investment and disposition thereof;

D. limitations on the use of the health-related equipment;

E. limitations on the purpose for which the proceeds of sale of any issue or bonds may be applied;

F. limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, other bonds;

G. the refunding of outstanding bonds;

H. the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given and restrictions on the individual rights of action by bondholders;

I. acts or omissions which shall constitute a default in the duties of the authority to holders of its bonds, and rights of the holders in the event of default;

J. limitation of the liability of a participating health facility only for the amount of its obligation to the council; and

K. any other matters relating to the bonds which the council deems desirable.

In addition to the provisions set forth in this section, bonds of the council may be secured by and payable from a pooling of leases or of notes and mortgages or other security instruments whereby the council may assign its rights, as lessor, and pledge rents under two or more leases of health-related equipment with two or more participating health facilities, as lessees, or assign its rights as payee or secured party and pledge the revenues under two or more notes and loan agreements from two or more participating health facilities, banks, savings and loan associations or other entities upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued.

History: Laws 1983, ch. 290, § 19.

58-23-20. General obligation bonds; payment and security.

Except as may otherwise be provided by the council, every issue of its bonds is a general obligation of the council payable solely out of any revenue or money of the council, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant, contribution or guarantee from the federal government or any corporation, association, institution or person or a pledge of any money, income or revenue of the council from any source.

History: Laws 1983, ch. 290, § 20.

58-23-21. Bonds; no obligation of state.

No bonds issued by the council under the Hospital Equipment Loan Act [58-23-1 to 58-23-16 and 58-23-17 to 58-23-32 NMSA 1978] shall constitute a debt, liability or general obligation of this state or a pledge of the faith and credit of this state, but shall be payable solely as provided by Section 58-23-19 NMSA 1978. Each bond issued under the Hospital Equipment Loan Act shall contain on its face a statement that neither the faith and credit nor the taxing power of this state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond.

History: Laws 1983, ch. 290, § 21; 1987, ch. 49, § 5.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-22. Council; pledge; recording of lien not required.

Any pledge made by the council shall be valid and binding from the time when the pledge is made. The revenue, money or properties pledged and later received by the council shall immediately be subject to the lien of such pledge without any further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the program, irrespective of whether the parties have notice thereof.

History: Laws 1983, ch. 290, § 22.

58-23-23. Purchase of bonds; cancellation; purchase price.

The council, subject to existing agreements with bondholders, has the power to purchase bonds of the council out of any funds available for that purpose, which may thereupon be canceled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the applicable redemption price plus accrued interest to the next interest payment date thereon.

History: Laws 1983, ch. 290, § 23; 1987, ch. 49, § 6.

58-23-24. Bonds; negotiable instruments.

Whether or not the bonds are in the form and character of negotiable instruments, the bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

History: Laws 1983, ch. 290, § 24.

58-23-25. Council members; limitation on personal liability.

Neither the members of the council nor any other person executing the bonds issued under the Hospital Equipment Loan Act shall be subject to personal liability in connection with issuance of the bonds.

History: Laws 1983, ch. 290, § 25.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-26. Deposit of money.

All money of the council, except as otherwise authorized or provided in the Hospital Equipment Loan Act [58-23-1 to 58-23-16 and 58-23-17 to 58-23-32 NMSA 1978] or in a bond resolution, trust agreement or other instrument under which bonds are issued, shall be deposited as soon as practical in a separate account or accounts in banks or

trust companies organized under the laws of this state or in national banking associations. All deposits of money shall, if required by the council, be secured in such a manner as the council determines to be prudent. Banks or trust companies are authorized to give security for the deposits of the council.

History: Laws 1983, ch. 290, § 26; 1987, ch. 49, § 7.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-27. Bondholders; pledge; agreement of the state.

The state pledges and agrees with the holder of any bonds issued under the Hospital Equipment Loan Act that the state will not alter the rights vested in the council to fulfill the terms of any agreements made with the bondholders or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders are fully met and discharged. The council is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

History: Laws 1983, ch. 290, § 27.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-28. Council expenses; liability of state or political subdivision prohibited.

All expenses incurred by the council in carrying out the provisions of the Hospital Equipment Loan Act shall be payable solely from funds provided under that act.

History: Laws 1983, ch. 290, § 28.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-29. Exemption from taxation; assets to state upon dissolution.

All property acquired or held by the council under the Hospital Equipment Loan Act [58-23-1 to 58-23-16 and 58-23-17 to 58-23-32 NMSA 1978], income therefrom and bonds issued under the Hospital Equipment Loan Act, plus the interest payable and income derived from the bonds, shall be exempt from taxation by the state or any subdivision thereof. Upon dissolution of the council, its assets, after payment of its indebtedness, shall inure to the benefit of the state.

History: Laws 1983, ch. 290, § 29; 1987, ch. 49, § 8.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-30. Bonds; legal investments.

The bonds issued under the authority of the Hospital Equipment Loan Act shall be legal investments in which all public officers or public bodies of this state, insurance companies, banks and savings and loan associations, organized under the laws of this state, may invest funds.

History: Laws 1983, ch. 290, § 30.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

58-23-31. Loan program; annual report; contents; audit.

The council shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor and to the legislative finance committee. Each member of the legislature may receive a copy of such report by requesting a copy from the chairman of the council. Each report shall set forth a complete operating and financial statement for the council during the fiscal year.

History: Laws 1983, ch. 290, § 31.

58-23-32. Liberal construction.

The Hospital Equipment Loan Act shall be liberally construed to accomplish its purposes.

History: Laws 1983, ch. 290, § 32.

Hospital Equipment Loan Act. - See 58-23-1 NMSA 1978 and notes thereto.

ARTICLE 24
INDUSTRIAL AND AGRICULTURAL FINANCE AUTHORITY

58-24-1. Short title.

Sections 1 through 23 [58-24-1 to 58-24-23 NMSA 1978] of this act may be cited as the "Industrial and Agricultural Finance Authority Act".

History: Laws 1983, ch. 300, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Eminent domain: industrial park or similar development as public use justifying condemnation of private property, 62 A.L.R.4th 1183.

58-24-2. Legislative findings; declaration of purpose.

A. The legislature hereby finds and declares that:

(1) the high cost and lack of availability of industrial loans for small- and medium-sized businesses make it difficult for many of these industrial and agricultural enterprises in New Mexico to hold or increase their present employment levels, and, as a result of the continuing increase in construction costs and other expenses, the state suffers from structural economic weaknesses which contribute to chronic unemployment and underemployment;

(2) the lack of gainful employment puts added pressure on the state's social programs and increases the cost of unemployment compensation to the existing enterprises of the state;

(3) the availability of financial assistance and suitable facilities is an important inducement to industrial, commercial and agricultural enterprises to remain and locate within the state; and

(4) it is an important function of government to increase opportunities for gainful employment and improved living conditions, assist in promoting a balanced and productive economy, encourage the flow of private capital for investment in productive enterprises and otherwise improve the prosperity, health and general welfare of the inhabitants of the state.

B. The legislature further finds and determines that:

(1) the establishment of an industrial and agricultural finance authority for the purpose of carrying out the powers granted in the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] is necessary to encourage and promote the provisions of productive facilities in areas of the state, especially in areas of high unemployment, where such facilities are needed to meet the aforesaid needs; and

(2) the advantages of this program to the general public would include an increase in the gainful employment of the citizens; a decrease in social services and unemployment compensation costs; an increase in the tax base of the state; an increase in the inventory of industrial, commercial and agricultural sites and modern industrial, commercial and agricultural buildings suitable to house new or expanding industrial, commercial and agricultural enterprises; and the expansion, reclamation or renovation of existing buildings to house new or expanding industrial, commercial and agricultural enterprises.

C. It is therefore expressly declared that the provisions of the Industrial and Agricultural Finance Authority Act and the powers conferred therein on the authority constitute a needed program in the public interest and serve a necessary and valid public purpose.

History: Laws 1983, ch. 300, § 2.

58-24-3. Definitions.

As used in the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978]:

A. "authority" means the New Mexico industrial and agricultural finance authority created by the Industrial and Agricultural Finance Authority Act;

B. "board" means the board of directors of the authority;

C. "bond" means any bond, note, debenture, interim certificate, grant and revenue anticipation note or any other evidence of indebtedness authorized to be issued by the authority pursuant to the Industrial and Agricultural Finance Authority Act;

D. "lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, mortgage company, credit union, small business investment company or any other institution authorized to originate and service loans within the state;

E. "lender loan" means a loan agreement or federally insured or collateralized deposit agreement with a lender which provides for the authority to loan or deposit the proceeds derived from the issuance of bonds pursuant to the Industrial and Agricultural Finance Authority Act to or with a lender and which provides for the repayment of such loan or deposit by the lender. Such agreement may provide for the loan or deposit to be evidenced by one or more notes, debentures, bonds or other secured or unsecured debt or certificate of deposit obligations of the lender, delivered to the authority or to the trustee under the indenture securing the bonds;

F. "loan" means a lender loan or a project loan;

G. "loan insurer" or "loan guarantor" means an agency, department, administration or instrumentality, corporate or otherwise, of the United States government, any private mortgage insurance company or any other public or private agency which insures or guarantees loans;

H. "project" or "facility" means any work or undertaking, whether new construction, acquisition of existing buildings or structures, remodeling, improvement or rehabilitation, approved by the authority as being conducive to industrial, commercial or agricultural development and shall include buildings, docks, improvements, additions, extensions, replacements, lands and interests in land, franchises, machinery, equipment,

furnishings, landscaping, utilities, roadways, pollution control facilities, waste disposal facilities and other facilities necessary or desirable in connection with any industrial, commercial or agricultural enterprise;

I. "project loan" means a loan agreement which provides for the authority or a lender with which the authority has contracted to loan the proceeds derived from the issuance of bonds pursuant to the Industrial and Agricultural Finance Authority Act to a sponsor to be used to pay the cost of a project or facility and which provides for the repayment of such loan by the sponsor. Such agreement may provide for the loan to be evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of the sponsor, delivered to the authority or to the trustee under the indenture securing the bonds; and

J. "sponsor" means any person who is or will be the owner or operator of a project which is proposed to be financed by the authority.

History: Laws 1983, ch. 300, § 3.

58-24-4. Authority created; directors; quorum; conflicts; compensation.

A. There is created a public body politic and corporate to be known as the "New Mexico industrial and agricultural finance authority." The authority is hereby constituted a public instrumentality, and the exercise by the authority of the powers conferred by the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] shall be deemed to be the performance of an essential governmental function. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of any board, bureau, department or agency of the state except as specifically provided in the Industrial and Agricultural Finance Authority Act.

B. The authority shall be governed and its corporate powers exercised by a board of directors consisting of seven members. The secretary of commerce and industry [superintendent of regulation and licensing], the director of the New Mexico department of agriculture and the director of the financial institutions division of the commerce and industry department [regulation and licensing department] shall be ex officio members of the board with voting privileges. The governor, with the advice and consent of the senate, shall appoint the other four directors, who shall be residents of the state, at least one of whom shall have a knowledge of industrial and commercial activity in the state and at least one of whom shall have a knowledge of agricultural activity in the state. The four directors of the board appointed by the governor shall be appointed for terms of four years or less, staggered so that the term of not more than one director expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the board shall be eligible for reappointment. Each member of the board appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty. Each member of the board appointed by the governor before entering upon his duty shall take an oath

of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the secretary of state. The governor shall designate a member of the board to serve as chairman for a term as such which shall be coterminous with his then current term as a member of the board. The board shall annually elect one of its members as vice chairman. The board shall also elect or appoint, and prescribe the duties of, such other officers, who need not be members, as the board deems necessary or advisable, including an executive director and a secretary, who may be the same person, and the board shall fix the compensation of officers. The board may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper. Officers and employees of the authority shall not be subject to the Personnel Act.

C. The executive director shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the authority board. The secretary of the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents and papers filed with the board, the minute book or journal of the board and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the board and to give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the board may rely upon the certificates.

D. Meetings of the board shall be held at the call of the chairman or whenever three members shall so request in writing. A majority of members then in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the board. No vacancy in the membership of the board shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the board. An ex officio member from time to time may designate in writing another person to attend meetings of the board and, to the same extent and with the same effect, act in his stead.

E. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the board shall receive no compensation for their services, but the members of the board appointed by the governor shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1983, ch. 300, § 4.

Bracketed material. - The commerce and industry department referred to in the second sentence in Subsection B, was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the financial institutions division. Laws 1983, ch. 297, § 31, provides that all references in law to the financial institutions division of the commerce and industry department shall be construed to be references to the same division within the

regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto. The bracketed material was not enacted by the legislature and is not part of the law.

The office of the secretary of commerce and industry, referred to in the second sentence in Subsection B, was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the financial institutions division, and Laws 1983, ch. 297, § 21, creates the office of the superintendent of regulation and licensing. See 9-16-4 and 9-16-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

58-24-5. Powers of the authority.

The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978], including, but without limiting the generality of the foregoing, the power:

A. to sue and be sued;

B. to have a seal and alter the same at pleasure;

C. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;

D. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;

E. to make loans and contract to make loans, and to purchase and contract to purchase loans;

F. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any loan, in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable, and to pay any premiums therefor;

G. subject to any agreement with bondholders;

(1) to renegotiate any loan or agreement;

(2) to waive any default or consent to the modification of the terms of any loan or agreement; and

(3) to commence, prosecute and enforce a judgment in any action or proceeding, including without limitation a foreclosure proceeding, to protect or enforce any right conferred upon it by law, loan agreement, contract or other agreement; and in connection with any such proceeding, to bid for and purchase the property or acquire or take possession thereof and, in such event, complete, administer, pay the principal of and interest on any obligations incurred in connection with such property and dispose of and otherwise deal with such property in such manner as the board may deem advisable to protect the authority's interests therein;

H. to make and execute contracts for the origination, administration, servicing or collection of any loan and pay the reasonable value of services rendered to the authority pursuant to such contracts;

I. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of loans, the purchasing of loans, and any other services rendered by the authority;

J. subject to any agreement with bondholders, to sell any loan at public or private sale and at such price or prices and on such terms as the board shall determine;

K. to borrow money and to issue bonds and to provide for the rights of the holders thereof;

L. to arrange for insurance or guarantees of its bonds by the federal government or by any private insurer and to pay any premiums therefor;

M. subject to any agreement with bondholders, to invest money of the authority not required for immediate use, including proceeds from the sale of any bonds:

(1) in obligations of any municipality or the state or the United States;

(2) in obligations the principal and interest of which are guaranteed by the state or the United States;

(3) in obligations of any corporation wholly owned by the United States;

(4) in obligations of any corporation sponsored by the United States which are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(5) in certificates of deposit or time deposits in banks whose deposits are insured by the federal deposit insurance corporation or in savings and loan associations whose deposits are insured by the federal savings and loan insurance corporation, secured in such manner, if any, as the authority shall determine;

(6) in contracts for the purchase and sale of obligations of the type specified in Paragraphs (1) through (5) of this subsection; or

(7) as otherwise provided in any trust indenture securing the issuance of the bonds;

N. subject to any agreement with bondholders, to purchase bonds or notes of the authority, which may thereupon be canceled;

O. to make surveys and to monitor on a continuing basis the adequacy of the supply of funds available in the private banking system in the state for industrial, commercial and agricultural loans;

P. to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under the Industrial and Agricultural Finance Authority Act;

Q. to employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

R. to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or from any other source, and to comply, subject to the provisions of the Industrial and Agricultural Finance Authority Act, with the terms and conditions thereof;

S. to maintain an office at such place or places in the state as it may determine;

T. subject to any agreement with bondholders, to make, alter or repeal such bylaws, rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978];

U. to waive, by such means as the authority deems appropriate, the exemption from federal income taxation of interest on the authority's bonds provided by the Internal Revenue Code of 1954 or any other federal statute providing a similar exemption; and

V. to do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the Industrial and Agricultural Finance Authority Act.

History: Laws 1983, ch. 300, § 5.

Internal Revenue Code. - The Internal Revenue Code of 1954, referred to in Subsection U, appears as 26 U.S.C. § 1 et seq.

58-24-6. Authority; loans.

A. The authority may:

(1) make, and undertake commitments to make, lender loans and project loans under terms and conditions requiring the proceeds thereof to be used to finance an industrial, commercial or agricultural project or facility. Project loan commitments and project loans shall be originated through and serviced by a lender; and

(2) invest in, purchase or make commitments to invest in or purchase, or take assignments or make commitments to take assignments of, project loans made by lenders to finance an industrial, commercial or agricultural project or facility.

B. Prior to exercising any of the powers authorized in Subsection A of this section, the authority shall require the lender to certify and agree that:

(1) the project loan is, or, if the project loan has not yet been made, will be at the time of making, in all respects a prudent investment; and

(2) such lender will use the proceeds of the lender loan, or the sale or assignments of a project loan, within a reasonable period of time to make project loans; or, if such lender has made a commitment to make project loans on the basis of a commitment from the authority to purchase such project loans, such lender will make and sell the project loans to the authority within a reasonable period of time.

C. Prior to exercising any of the powers under Subsection A of this section, the authority may, but is not obligated to, require any type of security, insurance or guarantee that it deems reasonable and necessary.

History: Laws 1983, ch. 300, § 6.

58-24-7. Combining loans; advising sponsors and municipalities.

A. The authority may combine for the purposes of a single offering of bonds more than one project.

B. The authority shall inform a sponsor of a project or facility in appropriate cases of available federal programs to guarantee or otherwise assist in financing certain types of activities and shall assist sponsors in such cases in implementing such programs through commercial and investment bankers.

C. When the authority receives a written inquiry from a potential sponsor of a project or facility, the authority shall promptly notify in writing the governing body of the municipality and county where such project is proposed to be located, or, if such project is proposed to be located within a county but outside the boundaries of any municipality, the authority shall promptly notify in writing the board of county commissioners of that county.

D. Unless the governing body of the municipality or the board of county commissioners of the county in which the project is proposed to be located disapproves the proposed project within sixty days after the receipt of the written notice, the authority may finance the project, except that bonds issued for agricultural projects shall not be subject to this subsection.

History: Laws 1983, ch. 300, § 7.

58-24-8. Rules and regulations of the board.

A. Subject to prior approval of the industrial and agricultural finance authority oversight committee the board shall adopt and may from time to time modify or repeal rules and regulations:

(1) for determining criteria for the classification and setting of priorities of commercial or agricultural industries in need of development, improvement or rehabilitation, which criteria may vary between different areas in the state and in accordance with the possible employment benefits; and

(2) for governing:

(a) the making of project loans;

(b) the making of lender loans; and

(c) the purchase of project loans,

to implement the powers authorized and to achieve the purposes set forth in the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978].

B. The rules and regulations of the board relating to the making of lender or project loans or the purchase of project loans shall provide at least for the following:

(1) procedures for the submission by lenders to the board of:

(a) requests for loans; and

(b) offers to sell loans;

(2) written standards for allocating bond proceeds among lenders requesting lender loans from, or offering to sell project loans to, the authority;

(3) qualifications or characteristics of:

(a) commercial, industrial or agricultural facilities; and

(b) the sponsors or owners thereof; and

(4) requirements as to commitments and disbursements by lenders with respect to project loans.

History: Laws 1983, ch. 300, § 8.

58-24-9. Required determinations of the authority.

The authority may not issue bonds until the board has determined that:

A. the funds available in the private banking system in the state for project loans are inadequate to meet the demand; and

B. the issuance of the bonds will alleviate such inadequacy.

History: Laws 1983, ch. 300, § 9.

58-24-10. Planning, zoning and building laws.

All projects and facilities shall be subject to any applicable master plan, official map, zoning regulation, building code, ordinance and other laws and regulations governing land use or planning or construction of the municipality or county in which the project or facility is or is to be located.

History: Laws 1983, ch. 300, § 10.

58-24-11. Bonds and notes of the authority.

A. The authority may from time to time issue its bonds and notes in such principal amounts as, in the opinion of the board, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, the payment of interest on bonds and notes of the authority, the establishment of reserves to secure such bonds and notes, and all other expenditures of the authority incident and necessary or convenient to carry out its corporate purposes and powers.

B. Except as may otherwise be expressly provided by the board, all bonds and notes issued by the authority shall be general obligations of the authority, secured by the full faith and credit of the authority and payable out of any money, assets or revenues of the authority, subject only to any agreement with bondholders or noteholders pledging any particular money, assets or revenues. In no event shall any bonds or notes constitute an obligation, either general or special, of the state or any political subdivision thereof or constitute or give rise to a pecuniary liability of the state or any political subdivision thereof; nor shall the authority have the power to pledge the general credit or taxing power of the state or any political subdivision thereof or to make its debts payable out of any money except that of the authority.

C. Bonds and notes shall be authorized by a resolution of the authority adopted as provided by the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978]; provided that any such resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certificate of such authorized officer.

D. Such bonds shall:

(1) state on the face thereof that they do not constitute an obligation, either general or special, of the state or any political subdivision thereof; and

(2) be:

(a) either registered as to principal and interest, registered as to principal only or in coupon form;

(b) issued in such denominations as the board may prescribe;

(c) fully negotiable instruments under the laws of the state;

(d) signed on behalf of the authority with the manual or facsimile signature of the chairman or vice chairman, attested by the manual or facsimile signature of the secretary and have impressed or imprinted thereon the seal of the authority or a facsimile thereof, and the coupons attached thereto shall be signed with the facsimile signature of such chairman or vice chairman;

(e) payable as to interest at such rate or rates and at such time or times as the authority may determine or provide;

(f) payable as to principal at such times over such period, at such place or places and with such reserved rights of prior redemption as the authority may prescribe;

(g) sold at such price or prices, at public or private sale, and in such manner as the authority may prescribe; and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale thereof; and

(h) issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with the Industrial and Agricultural Finance Authority Act, as may be found to be necessary by the authority for the most advantageous sale thereof, which may include, but not necessarily be limited to, covenants with the holders of the bonds as to:

1) pledging or creating a lien, to the extent provided by such resolution, on all or any part of any money or property of the authority or of any money held in trust or otherwise by others to secure the payment of such bonds;

2) otherwise providing for the custody, collection, securing, investment and payment of any money of or due the authority;

3) the setting aside of reserves or sinking funds and the regulation or disposition thereof;

4) limitations on the purpose to which the proceeds of sale of any issue of such bonds then or thereafter to be issued may be applied;

5) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds;

6) the procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

7) the creation of special funds into which any money of the authority may be deposited;

8) vesting in a trustee such properties, rights, powers and duties in trust as the board may determine;

9) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of such default, provided that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of the Industrial and Agricultural Finance Authority Act; and

10) any other matters of like or different character which in any way affect the security and protection of the bonds and the rights of the holders thereof.

E. The authority is authorized to issue its bonds for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such outstanding bonds. Until the proceeds of any bonds issued for the purpose of so refunding outstanding bonds shall be applied to the purchase or retirement of such outstanding bonds or the redemption of such outstanding bonds, such proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of Subsection M of Section 5 [58-24-5 NMSA 1978] of the Industrial and Agricultural Finance Authority Act. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the board, also be applied to the payment of the outstanding bonds to be so refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out,

any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. All such bonds shall be issued and secured and shall be subject to the provisions of the Industrial and Agricultural Finance Authority Act in the same manner and to the same extent as any other bonds issued pursuant to the Industrial and Agricultural Finance Authority Act.

F. The authority is authorized to issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of such notes, including renewals thereof, shall not exceed ten years from the date of issue of such original notes. Such notes shall be payable from any money of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which such notes were issued. The notes may be issued for any corporate purpose of the authority. All such notes shall be issued and secured and shall be subject to the provisions of the Industrial and Agricultural Finance Authority Act in the same manner and to the same extent as bonds issued pursuant to the Industrial and Agricultural Finance Authority Act.

G. It is the intention of the legislature that any pledge of assets, earnings, revenues or other money made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

H. Neither the members of the board nor any person executing the bonds, notes or other obligations shall be liable personally on the bonds, notes or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof while acting in the scope of their authority.

History: Laws 1983, ch. 300, § 11.

58-24-12. Notice; public hearing; approval.

If and to the extent deemed necessary by the authority to comply with the provisions of Section 103(k) of the Internal Revenue Code of 1954, the authority shall hold public hearings in connection with the issuance of bonds or notes and shall obtain the written approval of the governor of the state prior to the issuance of bonds or notes. The governor of the state is authorized to give such approval, but such approval shall not give rise to any pecuniary liability with respect to the bonds or notes on the part of the state. The internal revenue service shall be notified of the issuance of all bonds or notes. Except for the foregoing, no other notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance,

sale or delivery of any bonds or notes of the authority or to the making of any lender loans or the purchase or making of project loans pursuant to the provisions of the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978].

History: Laws 1983, ch. 300, § 12.

Internal Revenue Code. - Section 103(k) of the Internal Revenue Code of 1954, referred to in the first sentence, appears as 26 U.S.C. § 103(k).

58-24-13. Remedies of bondholders and noteholders.

Any holder of bonds or notes issued pursuant to the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] or a trustee under a trust agreement or trust indenture entered into pursuant to that act, except to the extent that his rights are restricted by any bond resolution, may protect and enforce, by any suitable form of legal proceedings, any rights under the laws of this state or granted by the bond resolution. Such rights include the right to compel the performance of all duties of the authority required by the Industrial and Agricultural Finance Authority Act or the bond resolution and to enjoin unlawful activities.

History: Laws 1983, ch. 300, § 13.

58-24-14. State, county and municipalities not liable on bonds and notes.

The bonds, notes and other obligations of the authority shall not be a debt of the state or of any county or municipality, and neither the state nor any county or municipality shall be liable thereon.

History: Laws 1983, ch. 300, § 14.

58-24-15. Agreement of the state.

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

History: Laws, 1983, ch. 300, § 15.

58-24-16. Bonds and notes; legal investments for public officers and fiduciaries.

The bonds and notes of the authority are hereby made securities in which all insurance companies and associations and other persons carrying on insurance business, all banks, bank and trust companies, trust companies, private banks, savings banks, savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them.

History: Laws 1983, ch. 300, § 16.

58-24-17. Tax exemption.

A. It is hereby determined that the creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of the economy, and that these purposes are public purposes and the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978], and the state covenants with the purchasers and all subsequent holders and transferees of bonds and notes issued by the authority, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes of the authority issued pursuant to that act and the income therefrom shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

B. The property, income and operations of the authority shall be exempt from taxation of every kind and nature.

History: Laws 1983, ch. 300, § 17.

58-24-18. Limitation of liability.

Neither the members of the board nor any person acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability resulting from carrying out any of the powers given in the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978].

History: Laws 1983, ch. 300, § 18.

58-24-19. Assistance by state officers and agencies.

All state officers and all state agencies may render such services to the authority within their respective functions as may be requested by the authority.

History: Laws 1983, ch. 300, § 19.

58-24-20. Court proceedings; preference; venue.

Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] shall be preferred over all other civil cases in all courts of the state and shall be heard and determined in preference to all other civil business pending therein irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of the Industrial and Agricultural Finance Authority Act in which he may be allowed to intervene. The venue of any such action or proceeding or any other action or proceeding against the authority shall be laid in the county in which the principal office of the authority is located.

History: Laws 1983, ch. 300, § 20.

58-24-21. Corporate existence.

The authority and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the authority shall have bonds, notes and other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

History: Laws 1983, ch. 300, § 21.

58-24-22. Conflicts of interest.

A. If any member, officer or employee of the board shall have an interest, either direct or indirect, in any contract to which the authority is or is to be a party or in any lender requesting a loan from or offering to sell loans to the authority, such interest shall be disclosed to the board in writing and shall be set forth in the minutes of the board. The member, officer or employee having such interest shall not participate in any action by the board with respect to such contract or lender.

B. Nothing in this section shall be deemed or construed to limit the right of any member, officer or employee of the authority to:

(1) acquire an interest in bonds or notes of the authority; or

(2) have an interest in any banking institution in which the funds of the authority are or are to be deposited or which is or is to be acting as trustee or paying agent under any trust indenture to which the authority is a party.

History: Laws 1983, ch. 300, § 22.

58-24-23. Cumulative authority.

The foregoing sections [58-24-1 to 58-24-22 NMSA 1978] of the Industrial and Agricultural Finance Authority Act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds or notes under the provisions of the Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978] need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

History: Laws 1983, ch. 300, § 23.

58-24-24. Liberal interpretation.

The Industrial and Agricultural Finance Authority Act [58-24-1 to 58-24-23 NMSA 1978], being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History: Laws 1983, ch. 300, § 27.

Severability clauses. - Laws 1983, ch. 300, § 28, provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 25
EMPLOYMENT REFERENCES

58-25-1. Financial institutions; reference.

A. A financial institution may provide a written employment reference in response to the request of another financial institution for that information if a copy of that reference is mailed to the last known address of the applicant for employment. A financial institution shall not be liable in a civil action for providing an employment reference in accordance with the requirements of this section unless there is proof by clear and convincing evidence that the information in that reference is false and that the financial institution had actual knowledge of its falsity.

B. As used in this section:

(1) "employment reference" means a written statement of the involvement or suspected involvement by the applicant for employment in a theft, embezzlement, misappropriation or violation of financial institution's laws or regulations which has been reported to federal authorities pursuant to federal financial institution's regulations; and

(2) "financial institution" means a New Mexico bank, savings and loan association or credit union or an employee of that bank, savings and loan association or credit union.

History: Laws 1987, ch. 195, § 1.

ARTICLE 26
INTERSTATE DEPOSITORY INSTITUTIONS

58-26-1. Short title.

This act [58-26-1 to 58-26-8 NMSA 1978] may be cited as the "Interstate Depository Institutions Act".

History: Laws 1988, ch. 5, § 1.

58-26-2. Purpose of act.

The purpose of the Interstate Depository Institutions Act [58-26-1 to 58-26-8 NMSA 1978] is to attract capital to New Mexico through interstate acquisitions and mergers of financial institutions to enhance economic development for the benefit of all New Mexicans. At the same time, the legislature encourages any such mergers or acquisitions to provide for local management discretion so that consumers may deal directly with lenders who understand their financial circumstances and needs.

The Interstate Depository Institutions Act is designed to encourage aggressive, spirited competition in the financial arenas to offer lower interest rates, increased capital availability, cooperative risk-taking by lenders and competition in the financial market place. The legislature has as its goal the availability of financial resources to all its citizens no matter their race, color, creed, national origin or geographic location within the state.

History: Laws 1988, ch. 5, § 2.

58-26-3. Definitions.

As used in the Interstate Depository Institutions Act [58-26-1 to 58-26-8 NMSA 1978]:

A. "bank" means:

(1) an insured bank as defined in Section 3(h) of the Federal Deposit Insurance Act; or

(2) any institution that is eligible to make application to become an insured bank pursuant to Section 5 of the Federal Deposit Insurance Act excepting and excluding an institution created or incorporated under the federal Edge Act (Federal Reserve Banks);

B. "control" means the power, directly or indirectly, to either direct or exercise a controlling influence over the management or policies of a depository institution or a holding company, elect a majority of the directors of a depository institution or a holding company, or vote twenty-five percent or more of any class of voting securities of a depository institution or a holding company;

C. "depository institution" means any bank or savings institution;

D. "director" means the director of the financial institutions division of the regulation and licensing department;

E. "domestic depository institution" means a depository institution whose home office is located in New Mexico and whose operations are principally conducted in New Mexico;

F. "domestic holding company" means a holding company whose subsidiary depository institutions' operations are principally conducted in New Mexico;

G. "financial institution" means any depository institution or credit union;

H. "holding company" means any person, other than an individual, that has the power, to control a depository institution;

I. "interstate acquisition" means any transaction pursuant to which an out-of-state depository institution or an out-of-state holding company acquires control of, merges with or acquires all or substantially all of the assets of a domestic depository institution or domestic holding company;

J. "out-of-state depository institution" means any depository institution whose home office is located in a state other than New Mexico or whose operations are principally conducted in a state other than New Mexico;

K. "out-of-state holding company" means a holding company whose subsidiary depository institutions' operations are principally conducted in a state other than New Mexico;

L. "operations are principally conducted" means the state where the largest percentage of the aggregate deposits of a depository institution or of all depository institution subsidiaries of a holding company are held; and

M. "savings institution" means a state or federal savings and loan association, state or federal savings bank, building and loan, savings and loan or homestead association or

cooperative bank, the accounts of which are insured by the federal savings and loan insurance corporation.

History: Laws 1988, ch. 5, § 3.

Federal Deposit Insurance Act. - Sections 3(h) and 5 of the Federal Deposit Insurance Act, referred to in Subsections A(1) and A(2), appear as 12 U.S.C. §§ 1813(h) and 1815 respectively.

Edge Act (Federal Reserve Banks). - The Edge Act (Federal Reserve Banks), referred to in Subsection A(2), appears as 12 U.S.C. §§ 611 to 631.

58-26-4. Interstate acquisitions permitted.

Notwithstanding the provisions of Section 58-5-11 NMSA 1978 restricting interstate acquisition:

A. interstate acquisitions of domestic depository institutions that are savings institutions or domestic holding companies whose subsidiary depository institutions are savings institutions are permitted by out-of-state depository institutions and out-of-state holding companies effective January l, 1989; provided, however, until July 1, 1992, if a domestic depository institution is to be so acquired, such acquired institution shall have been continuously operated for at least five years, or if a domestic holding company is to be so acquired, at least one of its subsidiary depository institutions shall have been continuously operated for at least five years;

B. interstate acquisitions of domestic depository institutions that are banks or domestic holding companies whose subsidiary depository institutions are banks are permitted by out-of-state depository institutions and out-of-state holding companies; provided, however, until July 1, 1992, if a domestic depository institution is to be so acquired, such acquired institution shall have been continuously operated for at least five years, or if a domestic holding company is to be so acquired, at least one of its subsidiary depository institutions shall have been continuously operated for at least five years; and

C. an interstate acquisition pursuant to this section may not otherwise be contrary to law and shall not result in undue concentration of deposits totaling forty percent or more of the total deposits in all financial institutions in New Mexico.

History: Laws 1988, ch. 5, § 4; 1989, ch. 16, § 1.

58-26-5. Interstate acquisitions; notice.

At least ninety days prior to any interstate acquisition permitted by the Interstate Depository Institutions Act [58-26-1 to 58-26-8 NMSA 1978], the out-of-state depository institution or out-of-state holding company seeking to make an interstate acquisition shall file a notice of intent to make an interstate acquisition with the director. The

director shall promulgate the form for such notice. Unless the shareholders of the domestic depository institution or domestic holding company sought to be accquired [acquired] have approved the interstate acquisition as required by applicable law, the director shall immediately notify any domestic depository institution or domestic holding company sought to be acquired in an interstate acquisition of the filing of any such notice and shall provide a copy of the notice to such domestic depository institution or domestic holding company.

History: Laws 1988, ch. 5, § 5.

58-26-6. Formation of new depository institutions.

Until July 1, 1992, no out-of-state depository institution or out-of-state holding company may form a new depository institution in New Mexico. After July 1, 1992, an out-of-state depository institution or out-of-state holding company may form a new depository institution in New Mexico, provided that the new depository institution has a minimum capital stock structure of at least seven million five hundred thousand dollars ($7,500,000), inclusive of common capital and surplus and undivided profits.

History: Laws 1988, ch. 5, § 6.

58-26-7. Regulation.

Nothing contained in the Interstate Depository Institutions Act [58-26-1 to 58-26-8 NMSA 1978] shall be construed to alter, amend or otherwise affect the powers and duties of the director as established by law.

History: Laws 1988, ch. 5, § 7.

58-26-8. Existing law.

Nothing in the Interstate Depository Institutions Act [58-26-1 to 58-26-8 NMSA 1978] shall be construed to modify or repeal the financial institution branching laws of this state or the provisions of Section 58-5-11 NMSA 1978.

History: Laws 1988, ch. 5, § 8.

ARTICLE 27
BORDER DEVELOPMENT

58-27-1. Short title.

Sections 1 through 25 [58-27-1 to 58-27-25 NMSA 1978] of this act may be cited as the "Border Development Act".

History: Laws 1991, ch. 131, § 1.

Cross-references. - As to additional powers conferred on counties with respect to projects, see 4-59-4 NMSA 1978.

As to the duties and general powers of the secretary of economic development and tourism, see 9-15-6 NMSA 1978.

For New Mexico trade promotion, see 9-15-28 NMSA 1978 et seq.

For New Mexico Border Act, see ch. 12, art. 13 NMSA 1978.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-2. Legislative purpose.

By enacting the Border Development Act [58-27-1 to 58-27-25 NMSA 1978], it is the purpose of the legislature to:

A. encourage and foster development of the state, its cities and counties by developing port facilities at international ports of entry;

B. actively promote and assist public and private sectors' infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state while resolving transportation and logistical problems that may arise as ports of entry develop; and

C. create the statutory framework that will enable the state to design, finance, construct, equip and operate port facilities necessary to ensure the timely, planned and efficient development of the border area between New Mexico and the Mexican state of Chihuahua.

History: Laws 1991, ch. 131, § 2.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-3. Definitions.

As used in the Border Development Act [58-27-1 to 58-27-25 NMSA 1978]:

A. "authority" means the border authority;

B. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

C. "project" means any land or building or both, or other improvements to land or buildings acquired as a part of a port of entry or to aid commerce in connection therewith, and all real and personal property deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of the following:

(1) a port of entry and other facilities to be leased by the United States department of commerce or by any other agency or entity of the United States;

(2) any industry for the manufacturing, processing or assembling of any agricultural or manufactured product;

(3) a railroad switching yard or airport;

(4) any commercial or business enterprise engaged in storing, warehousing, distributing or selling products of agriculture, mining or related industries not including facilities designed for the sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone; and

(5) any business in which all or part of the activities of the business involve supplying services to the general public or to governmental agencies or to a specific industry or customer, not including establishments primarily engaged in the sale of goods or commodities at retail; and

D. "property" means any land, improvements to the land, buildings and any improvements to the buildings, machinery and equipment of any kind necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project.

History: Laws 1991, ch. 131, § 3.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-4. Border authority created; membership.

A. The "border authority" is created. The authority is a state agency as defined in Section 6-3-1 NMSA 1978. It shall be subject to the same laws, regulations and administrative and budgetary controls that apply to a department in the executive branch of state government created pursuant to the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978] including but not limited to the Audit Act [12-6-1 to 12-6-14 NMSA 1978], the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978], the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and the Public Records Act [14-3-1 to 14-3-16 NMSA 1978].

B. The authority shall consist of thirteen voting members, six ex officio and seven appointed. Additionally, based upon the recommendations of the voting members, there shall be an unlimited number of nonvoting advisory members. Except for those members serving ex officio, all members shall be appointed by the governor.

C. The seven voting members appointed by the governor shall be citizens of the state and at least one of those members shall be appointed from and reside in each of the following counties: Dona Ana, Hidalgo and Luna. The voting members appointed by the governor shall be confirmed by the senate.

D. The following state officials shall serve as ex officio voting members of the authority:

(1) lieutenant governor;

(2) attorney general;

(3) state treasurer;

(4) state auditor;

(5) secretary of economic development and tourism; and

(6) secretary of highway and transportation.

E. Each member of the state's congressional delegation, the president pro tempore of the senate and the speaker of the house of representatives, shall be honorary ex officio nonvoting advisors to the authority. Any congressional member, the president pro tempore or the speaker may name a designee to represent that advisor to the authority.

F. The seven voting members of the authority appointed by the governor shall serve for terms of four years except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and three members for four years.

History: Laws 1991, ch. 131, § 4.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-5. Authority; members and advisors compensation.

Members and advisors to the border authority, whether voting or nonvoting, shall be reimbursed for expenses in accordance with those provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] that apply to nonsalaried public officers unless a different provision of that act applies to a specific member, in which case that

member shall be paid under the applicable provision. Members and advisors shall receive no other compensation, perquisite or allowance for serving as a member of or advisor to the authority.

History: Laws 1991, ch. 131, § 5.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-6. Officers of the authority.

The governor shall appoint the chairman of the authority from among his appointees. Authority members shall elect any other officers from the membership that the authority determines appropriate.

History: Laws 1991, ch. 131, § 6.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-7. Executive committee of the authority.

The chairman and four other authority voting members appointed by him shall constitute the border authority executive committee. The committee shall have such powers and duties as delegated to it by the authority. The executive director of the authority shall be a nonvoting member of the executive committee.

History: Laws 1991, ch. 131, § 7.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-8. Vacancies on authority.

If a vacancy occurs among the appointed voting members of the authority, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member's term expires, he shall continue to serve until he is reappointed or another person is appointed to replace him.

History: Laws 1991, ch. 131, § 8.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-9. Meetings and records of the authority.

A. The authority shall meet at the call of the chairman and shall meet in regular session at least once every three months.

B. The authority shall maintain written minutes of all meetings of the authority. It shall maintain such other records as would be appropriate for a public governmental entity to maintain, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act [12-6-1 to 12-6-14 NMSA 1978].

History: Laws 1991, ch. 131, § 9.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-10. Powers and duties of authority.

A. The authority may:

(1) advise the governor and his staff on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

(2) subject to the provisions of the Border Development Act [58-27-1 to 58-27-25 NMSA 1978], initiate, develop, acquire, own, construct, and maintain border development projects;

(3) create programs to expand economic opportunities beyond the New Mexico-Chihuahua border area to other areas of the state;

(4) create avenues of communication between New Mexico and Chihuahua and the republic of Mexico concerning economic development, trade and commerce, transportation and industrial affairs;

(5) promote legislation that will further the goals of the authority and development of the border region;

(6) produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) actively recruit industries and establish programs that will result in the location and relocation of new industries in the state;

(8) coordinate and expedite the involvement of the executive department's border area efforts; and

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable to secure port-of-entry approval by the United States and the Mexican government and other appropriate governmental agencies.

B. The authority may also:

(1) solicit and accept federal, state, local and private funds for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt regulations governing the manner in which its business shall be transacted and the manner in which the powers of the authority shall be exercised and its duties performed; and

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions including filing all necessary documents and follow-up of such filings with appropriate agencies.

History: Laws 1991, ch. 131, § 10.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-11. Additional powers of the authority.

A. Subject to prior approval by the state board of finance, the authority shall have the following powers:

(1) to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within the state;

(2) to sell, lease or otherwise dispose of any or all of its projects upon such terms and conditions as the authority may deem advisable and not in conflict with the provisions of the Border Development Act [58-27-1 to 58-27-25 NMSA 1978];

(3) to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction or purchase, or both, any project, and to secure the payment of such bonds as provided in the Border Development Act. The authority shall not have the power to operate any project as a business or in any manner except as lessor thereof; and

(4) to refinance one or more projects.

B. The authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance or addition to any real or personal property owned by anyone other than the authority.

History: Laws 1991, ch. 131, § 11.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-12. Authority staff contracts.

A. The authority shall hire an executive director who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently.

B. The authority may contract with any other competent private or public organization to assist in the fulfillment of its duties.

History: Laws 1991, ch. 131, § 12.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-13. Location of authority.

The authority shall be located in the New Mexico-Chihuahua border area.

History: Laws 1991, ch. 131, § 13.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-14. Authority fees and charges.

Under such terms and conditions as may be prescribed by law, the authority may fix, alter, charge and collect tolls, fees, rentals and may impose any other charges for the use of, or for services rendered by any authority facility. All tolls, fees, rents and other charges imposed by the authority and all grants, gifts and bequests received by the authority shall be deposited in the border authority fund.

History: Laws 1991, ch. 131, § 14.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-15. Border authority; bonding authority; power to issue revenue bonds.

A. The authority may act as an issuing authority for the purposes of the New Mexico Private Activity Bond Act [6-20-1 to 6-20-11 NMSA 1978].

B. The authority may issue revenue bonds for authority projects. Revenue bonds so issued may be considered appropriate investments for the severance tax permanent fund or collateral for the deposit of public funds if the bonds are rated not less than "A" by a national rating service and both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by an agency of the United States government or by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service. All bonds issued by the authority are legal and authorized investments for banks, trust companies, savings and loan associations and insurance companies.

C. The authority may pay from the bond proceeds all expenses, attorneys' fees, engineering fees and architects' fees and premiums and commissions which the authority may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

History: Laws 1991, ch. 131, § 15.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-16. Border authority revenue bonds; terms.

Authority revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals as may be determined by the authority;

B. may be subject to prior redemption at the authority's option at such time and upon such terms and conditions with or without the payment of such premium as may be provided by resolution of the authority;

C. may mature at any time not exceeding thirty years after the date of issuance;

D. may be serial in form and maturity or may consist of one or more bonds payable at one time or in installments or may be in such other form as may be determined by the authority;

E. may be registered or bearer form either as to principal or interest or both;

F. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

G. may be sold at public or negotiated sale.

History: Laws 1991, ch. 131, § 16.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-17. Border authority revenue bonds not general obligations; authorization; authentication.

A. Revenue bonds or refunding revenue bonds issued as authorized in the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] are:

(1) not obligations of the state, any agency of the state or the authority; and

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the proper pledged revenues and that the bondholders may not look to any other fund for the payment of the interest and principal of the bond.

B. Revenue or refunding bonds may be authorized by resolution of the authority, which resolution shall be approved by a majority of the voting members of the authority and by the state board of finance.

C. The bonds shall be executed by the chairman and secretary of the authority and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the authority. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the chairman of the authority.

History: Laws 1991, ch. 131, § 17.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-18. Security for bonds.

The principal of and interest on any bonds issued pursuant to the provisions of the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] shall be secured by a pledge of the revenues out of which such bonds shall be made payable, may be secured by a mortgage covering all or any part of the project from which the revenues so pledged may be derived, and may be secured by a pledge of the lease of such project. The resolution of the authority under which such bonds are authorized to be issued or any such mortgage may contain any agreement and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by such proceedings or mortgage, the terms to be incorporated in the lease of such project, the maintenance and insurance of such project, the creation and

maintenance of special funds from the revenues from such project, and the rights and remedies available in the event of default to the bondholders or to the trustee under a mortgage, all as the authority shall deem advisable and not in conflict with the provisions of the Border Development Act; provided, however, that in making any such agreements or provisions the authority shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon the state general credit or against the state taxing powers. The resolution authorizing any bonds and any mortgage securing such bonds may set forth the procedure and remedies in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement. No breach of any agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing powers.

History: Laws 1991, ch. 131, § 18.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-19. Requirements respecting resolution and lease.

A. Prior to approving a resolution for the issuance of bonds for any project, the authority shall determine and find the following in the resolution approving the issuance of such bonds:

(1) the principal and interest of the bonds to be issued will be fully and unconditionally guaranteed by a lease agreement executed by an agency of the United States government, by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service or by an irrevocable letter of credit issued by a financial institution or insurance company rated not less than "AA" by a national rating service;

(2) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance such project; and

(3) the amount necessary to be paid each year into any reserve funds that the governing body may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project. Unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. The determinations and findings of the authority required to be made by this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

C. Prior to the issuance of such bonds, the authority shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the authority of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(1) pay the principal of and interest on the bonds issued to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of a project; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

History: Laws 1991, ch. 131, § 19.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-20. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then the balance of the proceeds shall be applied to the payment of the principal of or the interest on the bonds, and provided, further, that any portion of the proceeds from the sale of the bonds or any accrued interest and premium received in any such sale may, in the event the money will not be needed or cannot be effectively used to the advantage of the authority for the purposes provided herein, be invested in short term, interest-bearing securities if such investment will not interfere with the use of the funds for the primary purpose of the project. The cost of acquiring any project shall be deemed to include the following:

A. the actual cost of construction of any part of a project that may be constructed, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site and all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on those bonds for a reasonable time prior to construction, during construction and not exceeding six months after completion of construction.

History: Laws 1991, ch. 131, § 20.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-21. Border authority revenue bonds; refunding authorization.

A. The authority may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of outstanding authority revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of those purposes.

B. The authority may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues which may be pledged to an original issue of bonds.

C. Bonds for refunding and bonds for any purpose permitted by the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] may be issued separately or issued in combination in one series or more.

History: Laws 1991, ch. 131, § 21.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-22. Border authority refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] shall be authorized by resolution of the authority. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called

prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond which is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, which possesses and is exercising trust powers and which is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Border Development Act is in no manner responsible for the application of the proceeds thereof by the authority or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the authority subject to the limitations in this section and Section 26 [23] [58-27-23 NMSA 1978] of the Border Development Act.

History: Laws 1991, ch. 131, § 22.

Bracketed material. - The bracketed reference to § 23 of the Border Development Act was inserted in Subsection D by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-23. Refunding border authority revenue bonds; terms.

Authority refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the authority in the resolution;

B. may be subject to prior redemption at the authority's option at such time or times and upon such terms and conditions with or without the payment of premium or premiums as may be provided by the resolution;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other forms as may be determined by the authority; and

D. shall be exchanged for the bonds and any mature unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

History: Laws 1991, ch. 131, § 23.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-24. Exemption from taxation.

Bonds authorized pursuant to the Border Development Act [58-27-1 to 58-27-25 NMSA 1978] and the income from those bonds, all mortgages or other security instruments executed as security for those bonds, all lease agreements made pursuant to the provisions hereof and revenue derived from any lease or sale by the authority shall be exempt from all taxation by the state of New Mexico or any subdivision thereof.

History: Laws 1991, ch. 131, § 24.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.

58-27-25. Fund created.

The "border authority fund" is created in the state treasury. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Border Authority Act [Border Development Act] [58-27-1 to 58-27-25 NMSA 1978]. The fund shall not revert at the end of a fiscal year. Any tolls, fees, rents or other charges imposed by the authority in excess of those collected for an approved project may be expended only as appropriated and in accordance with a budget approved by the budget division of the department of finance and administration. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the authority or his designee for the purpose of paying the cost of activities conducted pursuant to the Border Development Act [58-27-1 to 58-27-25 NMSA 1978], provided that, in the event the position of executive director is vacant, vouchers may be signed by the chairman of the authority.

History: Laws 1991, ch. 131, § 25.

Bracketed material. - The bracketed reference to the Border Development Act was inserted in the second sentence by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

Emergency clauses. - Laws 1991, ch. 131, § 26 makes the Border Development Act effective immediately. Approved April 3, 1991.