# CHAPTER 58
# Financial Institutions and Regulations

# ARTICLE 1
# Banking Generally

## 58-1-1. Short title.

Chapter 58, Articles 1, 2 through 6 and 8 NMSA 1978 may be cited as the "Banking Act".

**History:** 1953 Comp., § 48-22-1, enacted by Laws 1963, ch. 305, § 1; 1997, ch. 23, § 1.

**ANNOTATIONS**

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

For disposition of unclaimed property, *see* Chapter 7, Article 8A NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, rewrote the section.

**No due process violation by former banking act.** — Former State Banking Act (Laws 1915, ch. 67, now repealed) did not violate due process of law where it prohibited engaging in banking business to all except those organized under its provisions.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*, 1956-NMSC-099, 62 N.M. 61, 304 P.2d 582.

**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*, 1956-NMSC-099, 62 N.M. 61, 304 P.2d 582.

**Reason for enactment of statute containing special provisions for incorporation of banks.** *First Thrift & Loan Ass'n v. State ex rel. Robinson*, 1956-NMSC-099, 62 N.M. 61, 304 P.2d 582.

**Banks chartered under Banking Act are limited to powers expressly conferred** by the act. 1979 Op. Att'y Gen. No. 79-06.

**Banking Act does not authorize issuance of preferred stock** to raise equity capital. 1979 Op. Att'y Gen. No. 79-06.

**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 § 36.

## 58-1-2. Definitions of banks.

As used in the Banking Act [Chapter 58, Articles 1, 2 to 6 and 8 NMSA 1978]:

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.

## ANNOTATIONS

**Cross references.** — For public depositories, *see* 6-10-15 NMSA 1978.

For 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.

For 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), *see* 12 U.S.C. §§ 1813(h) and 1815, respectively.

For Sections 25 and 25a of the Federal Reserve Act referred to in Subsection A(3), *see* 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 Op. Att'y Gen. No. 57-22 (rendered under prior law).

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 Section 58-14-1 NMSA 1978 et seq. 1957 Op. Att'y Gen. No. 57-22 (rendered 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 § 3.

## 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.

**ANNOTATIONS**

**Cross references.** — For Sections 3(h) and 5 of the Federal Deposit Insurance Act referred to in this section, *see* 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. "allowances for loan and lease losses" means the difference between:

(1) the balance of the valuation reserve on the date of the most recent federal financial institutions examination council report of condition or income plus additions to the reserve charged to operations since that date; and

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

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

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

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

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

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

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

(4) other amounts transferred from undivided profits;

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

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

H. "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 NMSA 1978. 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, that are adjoining the county or counties in which that Indian reservation or pueblo is located;

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

J. "cumulative voting" means, in all elections of directors, each shareholder shall have the right to vote the number of shares owned by the shareholder 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 the shareholder's shares, shall equal or to distribute them on the same principle among as many candidates as the shareholder 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 the shareholder, 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;

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

L. "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;

M. "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;

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

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

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

Q. "legal tender" means coins and currency;

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

S. "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;

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

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

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

(2) meets the requirements of Subparagraph (b) of Paragraph (2) of Subsection DD of this section or other requirements adopted by the division;

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

W. "mortgage servicing rights" means the rights owned by the bank to service for a fee mortgage loans that are owned by others;

X. "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 chair of the board of directors, the chair 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;

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

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

AA. "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;

BB. "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;

CC. "state corporation commission" means the secretary of state; and

DD. "surplus" or "unimpaired surplus fund":

(1) means:

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

(b) purchased mortgage servicing rights;

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

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

(2) is subject to the following limitations:

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

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

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

**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; 1999, ch. 213, § 1; 2013, ch. 75, § 16.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, defined "state corporation commission" to mean the secretary of state; and added Subsection CC.

**The 1999 amendment,** effective June 18, 1999, added present Subsections B, D, E, O, R, S through W, Y, and CC and deleted former Subsections Q and R, which defined "lessee" and "lessor", respectively, and redesignated subsections accordingly; and made a minor stylistic change in Subsection H.

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

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

## 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking § 7.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

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

9 C.J.S. Banks and Banking §§ 147 et seq., 211 et seq.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking §§ 280, 281, 327.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

**Cross references.** — For the taxation and revenue department, *see* 9-11-1 NMSA 1978.

**Statutory duty.** — Section 58-1-7 NMSA 1978 establishes a mandatory statutory procedure with respect to the handling of adverse claims to deposits. As a result, it supplies a basis for the existence of a statutory duty. *Alcantar v. Sanchez*, 2011-NMCA-073, 150 N.M. 146, 257 P.3d 966.

**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*, 1985-NMCA-031, 104 N.M. 55, 716 P.2d 246, cert. denied, 103 N.M. 798, 715 P.2d 71 (1986).

**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 §§ 280, 328 et seq., 337, 341, 351, 357, 358, 405.

## 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking § 310.

## 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.

**ANNOTATIONS**

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

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

9 C.J.S. Banks and Banking §§ 445 et seq., 486.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For director of financial institutions, *see* 9-16-4 NMSA 1978.

**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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**Cross references.** — For proof of valid power of attorney, *see* 45-5-502 NMSA 1978.

For the Uniform Statutory Power of Attorney Act, *see* 45-5-601 NMSA 1978.

**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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**Cross references.** — For appointment of personal representative of an estate, *see* 45-3-103 NMSA 1978.

**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, § 79.

## 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.

**ANNOTATIONS**

**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, 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.

**ANNOTATIONS**

**Compiler's notes.** — The Uniform Disposition of Unclaimed Property Act, referred to in Subsection B, was compiled as Chapter 7, Article 8 NMSA 1978 before being repealed in 1997. For present law, *see* Uniform Unclaimed Property Act, 7-8A-1 NMSA 1978.

**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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For director of financial institutions, *see* 9-16-4 NMSA 1978

**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 §§ 230, 231.

## 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking §§ 8, 9.

## 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking §§ 271, 287, 289.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Federal Reserve Act referred to in Subsection A, *see* 12 U.S.C. § 221 et seq.

**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 §§ 23, 740 et seq.

## 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 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 that bank and the lending bank or of its obligation subordinate to deposits.

C. As used in this subsection, "improved farm land" means any land used for crop or livestock production. A 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 to be constructed or in the process of construction in an amount that when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, upon the 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 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 director, on a leasehold under a lease that does not expire for at least ten years beyond the maturity date of both and a state bank may purchase or sell obligations so secured in whole or in part. The amount of any such loan made shall not exceed sixty-six and two-thirds percent of the appraised value if the real estate is unimproved; eighty percent of the appraised value if the real estate is improved farmland or is improved by off-site improvements such as streets, water, sewers or other utilities; seventy-five percent of the appraised value if the real estate is in the process of being improved by a building to be constructed or in the process of construction; or ninety percent of the appraised value if the real estate is improved by a building. 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 that 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 this subsection shall not prevent the renewal or extension of loans and shall not apply to real estate loans that are guaranteed or insured by the United States or an agency thereof or by a state or agency or instrumentality thereof; and

(2) loans that 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 that 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. Where the collateral for a loan consists partly of real estate and partly 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. In no event shall a loan be considered as a real estate loan where there is a valid and binding agreement that is entered into by a financially responsible lender or other party directly with the bank that is either 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 the loan the full amount of the loan to be made by the bank upon the security of real estate. 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 the bank paid in and unimpaired plus twenty percent of the amount of its unimpaired surplus fund.

D. A state bank may make real estate loans secured by liens upon forest tracts that are properly managed in all respects. The loans shall be in the form of an obligation secured by mortgage, trust deed or other such instrument, and a state bank may purchase or sell 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. 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 a 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 year. 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 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 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 is being constructed, at the option of each state bank that may have an interest in the loan. 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 pursuant to provisions of 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 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 loans secured by an assignment of rents under a lease and

where 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 federal 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 that subsequently comply with those 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 the bank may invest in real estate loans.

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

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

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

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

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

J. Loans made pursuant to this section shall be subject to such conditions and limitations as the director 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; 1997, ch. 23, § 2; 1998, ch. 40, § 1; 1999, ch. 213, § 2.

## ANNOTATIONS

**Cross references.** — For the federal Small Business Act referenced in Subsection G, *see* 15 U.S.C. § 631 et seq.

**Bracketed material.** — The bracketed word "contains" in Subsection I was inserted by the compiler and is not part of the law.

**The 1999 amendment,** effective June 18, 1999, in Subsection C, added the first sentence, inserted "on a leasehold under a lease that does not expire for at least ten years beyond the maturity date of both" in the third sentence and "farmland or is improved" in the fourth sentence; and made minor stylistic changes.

**The 1998 amendment,** effective May 20, 1998, in Subsections C and D, substituted "A" for "Any"; deleted "heretofore made" following "of loans" in Paragraph C(1); in Paragraph C(2), deleted "security" preceding "and partly", deleted "either" following "other party", and inserted "either" in the third sentence; deleted "or obligations" preceding "secured by mortgage" in Subsection D; deleted "provided that" following "in the loan" in Subsection E; substituted "pursuant to provisions of" for "under" near the beginning of Subsection F; added Subsection I and redesignated former Subsection I as Subsection J; and made minor stylistic changes throughout the section.

**The 1997 amendment,** effective July 1, 1997, deleted "of stock of a holding company of which the bank is a part" following "security of its own stock" in Subsection B, substituted "director" for "commissioner on a leasehold under a lease which does not expire for at least ten years beyond maturity date of the loan" in the second sentence of Subsection C, substituted "eighty percent of the appraised value" for "seventy-five percent of the appraised value" in the third sentence of Subsection C, deleted "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" from the beginning of the second sentence in Paragraph C(2), rewrote Subsection G so as to delete the (1) and (2) designations and the references thereto, substituted "director" for "commissioner" in Subsection I, and made stylistic changes throughout the section.

**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.

Construction and application of 18 USCS § 215, punishing receipt or offering of commissions or gifts by or to bank officer for procuring loans, 114 A.L.R. Fed. 487.

9 C.J.S. Banks and Banking §§ 460 et seq., 466.

**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.

## 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 that 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 that 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.

F. A state bank may make an investment or conduct an activity the director determines is a part of or is incidental to the business of banking notwithstanding any provision to the contrary in the Banking Act.

**History:** 1953 Comp., § 48-22-22, enacted by Laws 1963, ch. 305, § 22; 1975, ch. 330, § 15; 1988, ch. 22, § 1; 1997, ch. 23, § 3.

## ANNOTATIONS

**The 1997 amendment,** effective July 1, 1997, added Subsection F and made minor stylistic changes in Paragraphs A(1) and (5).

**Federal acts.** — The Federal Farm Loan Act and the federal Farm Credit Act of 1933 appeared as 12 U.S.C. § 641 et seq.; those provisions were repealed or superseded in 1971. Current comparable provisions are 12 U.S.C. § 2001 et seq.

**State chartered banks and savings and loan associations are permitted to invest in mutual funds.** 1987 Op. Att'y Gen. No. 87-04.

**Mutual funds may not be pledged as collateral for depositions of public funds.** 1987 Op. Att'y Gen. No. 87-04.

**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.

**ANNOTATIONS**

**Cross references.** — For letters of credit, *see* Chapter 55, Article 5 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 §§ 204, 219, 238 et seq., 405.

## 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 the obligations so acquired that are held by the state bank will exceed:

(1) sixty 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) thirty-five 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 the 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 the 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 the 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 the 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; 1999, ch. 213, § 3; 2005, ch. 90, § 1.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, changes the percentage in Subsection A(2) of capital and surplus for obligations of the same obligor from twenty percent to thirty-five percent.

**The 1999 amendment,** effective June 18, 1999, substituted "sixty percent" for "thirty percent" at the beginning of Paragraph A(1) and made minor stylistic changes.

**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 § 639.

## 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 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, real estate shall be sold within five years or such 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.

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

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

**History:** 1953 Comp., § 48-22-25, enacted by Laws 1963, ch. 305, § 25; 1975, ch. 330, § 17; 1989, ch. 209, § 3; 1999, ch. 213, § 4.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, deleted "additional" preceding "period" in Subsection A and "longer" preceding "period" in the second sentence in Subsection B; added Subsections E and F; and made minor stylistic changes.

**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 § 242.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

9 C.J.S. Banks and Banking § 237.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For director of financial institutions, *see* 9-16-4 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 243.

## 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.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For director of financial institutions, *see* 9-16-4 NMSA 1978.

**Purpose of section** is to provide restrictions on the accumulation of debt capital by a banking institution. 1979 Op. Att'y Gen. No. 79-06.

**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. 79-06.

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. 79-06.

**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 Section 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 Section 6-10-36 NMSA 1978. 1966 Op. Att'y Gen. No. 66-39 (rendered under prior law).

**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 § 240.

## 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.

**ANNOTATIONS**

**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 § 243.

## 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 indorser [endorser] of any security instrument or obligation.

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

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 corporation as guarantor or surety, 34 A.L.R.2d 290.

## 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.

**ANNOTATIONS**

**Cross references.** — For appointment of director, *see* 9-16-6B(10), 9-16-7 NMSA 1978.

**Compiler's notes.** — 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 § 10 et seq.

## 58-1-33. Oath of secrecy; surety bonds.

The director and all officers and employees of the division shall, before entering upon the discharge of their duties, in addition to any oath required by the constitution of New Mexico, 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. All employees of the division shall be covered under the surety bond provided pursuant to the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

**History:** 1953 Comp., § 48-22-32, enacted by Laws 1963, ch. 305, § 32; 1995, ch. 190, § 7.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, rewrote this section to the extent that a detailed comparison is impracticable.

**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 § 103.

## 58-1-34. Powers of director.

A. In addition to other powers conferred by law, the director has 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 property protection of depositors in the affected institution;

(2) authorize a state bank to:

(a) participate in a public agency 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;

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

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

(3) order the holder of shares in a bank to refrain from voting the shares on any matter if he finds that an 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 pursuant to that act, 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 pursuant to that act or to cease engaging in any unsound banking practice.

B. The 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 pursuant to Subsection A of this section, violates the Banking Act or a lawful regulation or order issued pursuant to that act 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 director under the authority of this section. The notice shall specify the time and place of the hearing.

D. The director has 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 director may determine to be necessary and appropriate for the protection of depositors and the public.

E. The director has 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 duty imposed upon or a power vested in the director. These powers shall be enforced by the district court of the district in which the hearing is held.

F. The 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 pursuant to that act to any person, property or state of facts. The order shall bind the 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 director, but the refusal to issue a declaratory order shall be reviewable.

G. No person shall be subjected to any civil or criminal liability for any act or ommission [omission] to act in good faith in reliance upon an existing order, regulation or definition of the 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; 1999, ch. 213, § 5.

**ANNOTATIONS**

**Cross references.** — For examination of federal reserve banks, *see* 58-5-10 NMSA 1978.

For director of financial institutions, *see* 9-16-4 NMSA 1978.

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

For Residential Home Loan Act, *see* 56-8-22 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 1999 amendment,** effective June 18, 1999, substituted "director" for "commissioner" throughout the section; in Paragraph A(2) substituted "insured depository institutions" for "banks" in Subparagraph (b) and added Subparagraph (c); and made minor stylistic changes.

**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 §§ 8, 9.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

9 C.J.S. Banks and Banking § 10 et seq.

## 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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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 [public regulation 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 insofar 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Cross references.** — For director of financial institutions, *see* 9-16-4 NMSA 1978.

For penalty for misdemeanor, *see* 31-18-13 and 31-19-1 NMSA 1978.

**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 §§ 10 et seq., 31.

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

A. The director has 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 it 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 provisions 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 director in accordance with the provisions of this section requires to be retained permanently.

D. All other bank records shall be retained for such periods as the director in accordance with the provisions of this section prescribes.

E. The director 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 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 director deems 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 provisions of this section for retention of records of its class and shall thereafter be under no duty to produce that record in any action or proceeding.

G. Any state bank may cause any or all records at any time in its custody to be converted into electronic images or be reproduced by the microphotographic process, and an image or reproduction has the same force and effect as the original and may 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 apply to all banks doing business in this state.

**History:** 1953 Comp., § 48-22-33.5, enacted by Laws 1975, ch. 330, § 23; 1999, ch. 213, § 6.

**ANNOTATIONS**

**Cross references.** — For meaning of director, *see* 58-1-3 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, substituted "director" for "commissioner" throughout the section; inserted "converted into electronic images or be" and "an image or" in Subsection G; and made minor stylistic changes.

**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 §§ 27, 116.

## 58-1-40. Reports of condition; 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 that 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. 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. 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; 1995, ch. 190, § 8.

**ANNOTATIONS**

**Cross references.** — For meaning of director, *see* 58–1–3 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, deleted "publication" following "condition" in the section heading, substituted "that" for "which" in the first sentence, deleted "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" from the end of the fourth sentence, deleted the former fifth sentence which read, "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", and deleted "but no such special report or any summary of the report shall be required to be published" from the end of the fifth sentence.

**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 §§ 27, 122 et seq., 227 et seq., 481.

## 58-1-41. Supervision fees.

A. 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. |

B. 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 division one hundred dollars ($100) for every day of its delinquency.

C. The director may proscribe lower supervision fees by regulation. In determining the amounts of the lower fees, the director may use criteria other than total assets of banks.

**History:** Laws 1985, ch. 30, § 1; 1989, ch. 209, § 5; 1997, ch. 23, § 4.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, deleted "financial institutions" preceding "division" in the second sentence of Subsection B, and added Subsection C.

**Prior History.** — In 1985, former section 58-1-41 NMSA 1978 was repealed and re-enacted by Laws 1985, Chapter 3, Section 1. For prior history, see 1953 Comp., § 48-22-33.7, enacted by Laws 1975, ch. 330, § 25.

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

9 C.J.S. Banks and Banking § 10 et seq.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 10 et seq.

## 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. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 213, § 10 repeals 58-1-42 NMSA 1978, as enacted by Laws 1975, ch. 330, § 26, relating to fees for filing reports and certificates, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 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 [public regulation 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**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 § 478.

## 58-1-45. Court review.

Any person aggrieved and directly affected by an order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 48-22-34, enacted by Laws 1963, ch. 305, § 34; 1998, ch. 55, § 52; 1999, ch. 265, § 55.

**ANNOTATIONS**

**Cross references.** — For procedures governing statutory appeals from administration decisions or orders, *see* Rule 1-074 NMRA.

**Compiler's notes.** — For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote this section.

**Rejection of application for permission to file corporate papers appealable.** — Appellee's rejection of appellants' application under Section 48-22-45 NMSA 1978 (now Section 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 (now public regulation commission) and obtaining the certificate of authority under Section 48-22-49 (now Section 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*, 1968-NMSC-044, 79 N.M. 1, 438 P.2d 885.

## 58-1-46. Examinations and reports.

A. The director shall examine the condition of each state bank at least once in each twelve-month period. A report of examination shall be sent to the board of directors of the organization examined.

B. A bank may be examined within each eighteen-month period if:

(1) the bank has total assets of less than two hundred fifty million dollars ($250,000,000);

(2) the bank is well-capitalized;

(3) when the bank was most recently examined, it was found to be well-managed, and its composite condition was found to be outstanding; or for a bank that has total assets of not more than one hundred million dollars ($100,000,000), it was found to be outstanding or good;

(4) the bank is not subject to a formal enforcement proceeding or order; and

(5) no person acquired control of the bank during the twelve-month period in which an examination would be required but for this subsection.

C. Whenever the 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; 1995, ch. 190, § 9.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "director" for "commissioner" and "twelve-month period" for "calendar year" in Subsection A, added Subsection B, redesignated former Subsection B as Subsection C, and substituted "director" for "commissioner" in Subsection C.

**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 § 10 et seq.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For meaning of director, *see* 58-1-3 NMSA 1978.

For commerce and industry department, *see* 58-1-32 NMSA 1978.

## 58-1-48. Records of division.

Information from the records of the division shall be revealed only with the consent of the director. The records of the division are not public records. Any examination reports, financial information contained in applications for charters or files on investigations relating to violations of the Banking Act that do not or have not yet culminated in administrative, civil or criminal action are confidential and may be released only by order of a court of competent jurisdiction.

**History:** 1978 Comp., § 58-1-48, enacted by Laws 1995, ch. 190, § 10.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1995, ch. 190 § 10, repeals former section 58-1-48 NMSA 1978, as enacted by Laws 1963, ch. 305, § 37, and enacts the above section, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 §§ 8, 9.

## 58-1-52. Incorporators.

A state bank may be organized by five or more individual incorporators or a bank holding company 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; 1997, ch. 23, § 5.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, inserted "or a bank holding company" in the first sentence.

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

9 C.J.S. Banks and Banking § 33.

## 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.

**ANNOTATIONS**

**Cross references.** — For fiduciary or custodian depositing securities in clearing corporation, *see* 46-1-12 NMSA 1978.

**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*, 1931-NMSC-023, 35 N.M. 408, 299 P. 1075.

**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*, 1931-NMSC-023, 35 N.M. 408, 299 P. 1075 (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 §§ 230, 231.

## 58-1-54. Powers of director and of state banks.

In addition to other powers provided for the director and for state banks in the Banking Act notwithstanding any other provision of laws, the director may grant to state banks any of the powers and authority that national banks or federally chartered or insured depository institutions are or may be authorized, empowered, permitted or otherwise allowed to exercise. As used in this section and in Section 58-1-34 NMSA 1978, "federally chartered or insured depository institution" means a bank, savings bank, savings and loan association or credit union.

**History:** 1953 Comp., § 48-22-42.1, enacted by Laws 1973, ch. 130, § 1; 1997, ch. 23, § 6; 1999, ch. 213, § 7.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, in the first sentence substituted "any other provision of laws" for "anything to the contrary in that act", inserted "or federally chartered or insured depository institutions", and made a minor stylistic change; and added the second sentence.

**The 1997 amendment,** effective July 1, 1997, substituted "director" for "commissioner of banking" in the section heading and near the beginning of the section, substituted "director may grant" for "commissioner of banking may adopt such rules and regulations as he deems necessary and proper, granting" near the middle of the section, substituted "may be authorized" for "may hereafter be authorized" and deleted "under federal statutes, rules or regulations" following "allowed to exercise" at the end of the section.

**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. 79-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 10 et seq.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effect when authorized capital stock fully subscribed.** — When 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*, 1917-NMSC-053, 23 N.M. 146, 167 P. 276, distinguished in *American Hosp. & Life Ins. Co. v. Kunkel*, 1962-NMSC-167, 71 N.M. 164, 376 P.2d 956.

**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. 79-06.

**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 § 48 et seq.

## 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 [repealed];

(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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The New Mexico Securities Act of 1986 was repealed by Laws 2009, ch. 82, § 703, effective January 1, 2010. For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

**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 §§ 15 et seq., 21.

## 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 [public regulation 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**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.

**Corporation organized under general corporation laws ousted from banking.** — Since the 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*, 1956-NMSC-099, 62 N.M. 61, 304 P.2d 582.

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*, 1956-NMSC-099, 62 N.M. 61, 304 P.2d 582.

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

9 C.J.S. Banks and Banking § 36.

## 58-1-58. Determination on application for permission to file with the corporation commission [public regulation commission]

A. When an application for permission to file with the corporation commission [public regulation 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 propspective [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 [public regulation commission], he shall endorse his approval on the articles of incorporation.

D. The corporation commission [public regulation 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Cross references.** — For meaning of director, *see* 58-1-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 36.

## 58-1-59. Subscription calls.

A. Immediately after the filing of the articles of incorporation with the corporation commission [public regulation 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

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

Construction and effect of constitutional or statutory provisions precluding issuance of corporate stock in consideration of promissory notes, 78 A.L.R.2d 834.

9 C.J.S. Banks and Banking §§ 52, 53.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

9 C.J.S. Banks and Banking §§ 47, 98.

## 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 [public regulation 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 authroity [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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

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

9 C.J.S. Banks and Banking § 36.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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

9 C.J.S. Banks and Banking § 33.

## 58-1-63. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 12, § 3 repeals 58-1-63 NMSA 1978, being Laws 1963, ch. 305, § 51, relating to county with branch bank, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

**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 1322.

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 §§ 56 et seq., 63, 66.

## 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 and at least one director shall be a resident of New Mexico. A director who becomes disqualified shall forthwith resign the director's office, but, upon removal of the disqualification, the director shall be

eligible for election. A director who is disqualified may be removed by the board 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 the director's 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 until the next meeting of the stockholders. The director of the division may designate a director to fill a vacancy that 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 the director's 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. A member of the board 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 at any time, but removal shall not prejudice any rights that the officer 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; 1993, ch. 210, § 1; 1997, ch. 23, § 7; 2017, ch. 111, § 1.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, reduced the required number of directors on the board of directors of a state bank that must be residents of New Mexico; in Subsection A, after "United States and", deleted "two-thirds" and added "at least one director", after "shall be", deleted "residents" and added "a resident", after "of", deleted "the state" and added "New Mexico", deleted "Any" and added "A", after "resign", deleted "his" and added "the director's", after "disqualification", deleted "he" and added "the director", and after "on the ground of", deleted "his" and added "the director's"; in Subsection E, after "a motion for", deleted "his" and added "the director's"; and in Subsection F, after "any rights that", deleted "he" and added "the officer".

**The 1997 amendment,** effective July 1, 1997, deleted the former fourth sentence in Subsection A relating to directors having ownership of stock of the book value of at least $1,000, and deleted "of directors" following "the board" in Subsections A, D and F.

**The 1993 amendment,** effective June 18, 1993, deleted "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" at the end of the third sentence of Subsection A, and made stylistic changes in Subsections A and D.

**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 president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission, 10 A.L.R.2d 701.

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.

Authority of officer or agent to bind corporation as guarantor or surety, 34 A.L.R.2d 290.

Authority of agent to indorse and transfer, 37 A.L.R.2d 453.

Construction, application and effect of constitutional provisions or statutes relating to cumulative voting of stock for bank directors, 43 A.L.R.2d 1322.

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.

Standard of liability applicable to action against directors or officers of failed depository institution pursuant to 12 USCS § 1821(k), 125 A.L.R. Fed. 435.

9 C.J.S. Banks and Banking §§ 97, 99, 100, 104, 105.

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

A. The board of directors shall meet at least once each calendar quarter. The director may, at his discretion, require more frequent meetings. The director of the division, a board member or an executive officer may call a special meeting. A majority of the board 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 quarterly, the following transactions that have occurred since the last review:

(1) each loan, advance, discount, overdraft and purchase or sale of a security that 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 that exceeds the amount specified in Paragraph (1) of this subsection or with the increase will exceed it and every purchase or sale of a security that, together with other such transactions in the security during the preceding three months, involves that 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 division promptly. The board 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 division. The examination shall be conducted in accordance with generally accepted auditing procedures or in accordance with regulations of the director of the division.

D. In lieu of the director's examination required by Subsection C of this section, the board of directors of a state bank may submit to the director of the 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 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 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 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 all action taken since the previous meeting of the board. The board 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 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; 1995, ch. 190, § 11.

**ANNOTATIONS**

**Cross references.** — For meaning of director of the division, *see* 58-1-3, 9-16-4 and 9-16-7 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "each calendar quarter" for "every month" at the end of the first sentence, added the second sentence, substituted "board member" for "director" in the third sentence, substituted "quarterly" for "monthly" in the introductory paragraph of Subsection B; in Paragraph (2) of Subsection B, substituted "that exceeds the amount specified in Paragraph (1) of this subsection" for "which exceed this amount", "three" for "two" and made minor stylistic changes; and substituted "director of the division" for "director of the financial institutions division" and "board" for "board of directors" throughout the section.

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

9 C.J.S. Banks and Banking § 98.

## 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 ommission [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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For surety companies, *see* Chapter 46, Article 6 NMSA 1978.

**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 § 102.

## 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.

**ANNOTATIONS**

**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 § 60.

## 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.

**ANNOTATIONS**

**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 §§ 48 et seq., 60.

## 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.

### ANNOTATIONS

**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 § 650.

## 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.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking §§ 49, 50, 616.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For Uniform Unclaimed Property Act (1995), *see* 7-8A-30 NMSA 1978 NMSA 1978.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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 § 163 et seq.

## 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.

## ANNOTATIONS

**Cross references.** — For 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 section heading and throughout the section; inserted "or bank stipulation" near the beginning of Subsection A; and made minor stylistic changes throughout the section.

**"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*, 1926-NMSC-007, 31 N.M. 404, 247 P. 275.

**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*, 1934-NMSC-008, 39 N.M. 206, 43 P.2d 1055.

**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*, 1934-NMSC-008, 39 N.M. 206, 43 P.2d 1055.

**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.*, 1917-NMSC-060, 23 N.M. 282, 168 P. 526.

**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*, 1935-NMSC-038, 39 N.M. 206, 43 P.2d 1055.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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 in absence of contract or statute fixing amount, 57 A.L.R.3d 475.

When is national bank's transaction "in contemplation" of insolvency, so as to be void under 12 USC § 91, 109 A.L.R. Fed. 247.

9 C.J.S. Banks and Banking § 169.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 155 et seq.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For Uniform Unclaimed Property Act (1995), *see* 7-8A-30 NMSA 1978.

**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*, 1929-NMSC-100, 34 N.M. 443, 283 P. 900; *Clapp v. Smith*, 1916-NMSC-048, 22 N.M. 153, 159 P. 523; *Maddison v. Bryan*, 1926-NMSC-007, 31 N.M. 404, 247 P. 275.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341 (decided under former law).

**Statute 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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1922-NMSC-011, 27 N.M. 651, 204 P. 68.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1916-NMSC-048, 22 N.M. 153, 159 P. 523.

**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*, 1926-NMSC-007, 31 N.M. 404, 247 P. 275.

**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*, 1934-NMSC-008, 38 N.M. 164, 29 P.2d 341.

**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*, 1935-NMSC-038, 39 N.M. 206, 43 P.2d 1055.

**Distribution of assets of insolvent state bank** is governed by general incorporation laws. *State v. Bank of Magdalena*, 1928-NMSC-048, 33 N.M. 473, 270 P. 881, distinguished, *State v. State Bank*, 1934-NMSC-046, 38 N.M. 338, 32 P.2d 1017 (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*, 1928-NMSC-048, 33 N.M. 473, 270 P. 881, distinguished, *State v. State Bank*, 1934-NMSC-046, 38 N.M. 338, 32 P.2d 1017 (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*, 1917-NMSC-047, 22 N.M. 661, 167 P. 3, 1918A L.R.A. 394, distinguished, *State v. People's Sav. Bank & Trust Co.*, 1917-NMSC-060, 23 N.M. 282, 168 P. 526.

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.*, 1917-NMSC-060, 23 N.M. 282, 168 P. 526 (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 § 184.

## 58-1-76. Unauthorized conduct of banking business.

It is unlawful for any unauthorized person to engage in the business of holding deposits or to represent that he is or is acting for a bank or to use an artificial or corporate name that 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; 1997, ch. 23, § 8.

**ANNOTATIONS**

**The 1997 amendment,** effective July 1, 1997, substituted "holding deposits or" for "receiving deposits, discounting evidences of indebtedness or receiving money for transmission," and substituted "that" for "which" preceding "purports".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 25.

9 C.J.S. Banks and Banking §§ 19, 748.

## 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.

**ANNOTATIONS**

**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*, 1927-NMSC-004, 32 N.M. 158, 252 P. 1002.

**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.*, 1935-NMSC-084, 39 N.M. 545, 51 P.2d 607 (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*, 1927-NMSC-004, 32 N.M. 158, 252 P. 1002.

**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 § 740 et seq.

## 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.

**ANNOTATIONS**

**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*, 1978-NMCA-024, 91 N.M. 624, 578 P.2d 325, cert. denied, 91 N.M. 610, 577 P.2d 1256.

**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*, 1926-NMSC-049, 32 N.M. 17, 250 P. 634 (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 §§ 107, 113, 115, 121.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 §§ 117, 119, 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking §§ 107, 113, 115, 121, 734, 735.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 §§ 736, 737.

## 58-1-82. Reimbursement for fines and penalties.

A. 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:

(1) in the settlement of a bank's own liability or in connection with the acquisition of property against which a judgment is a lien;

(2) if provided in its articles of incorporation, a bank may indemnify its directors, officers and employees for expenses, fines, penalties and judgments reasonably incurred in actions to which the directors, officers or employees are parties or potential parties by reason of the performance of their official duties. The provisions of this paragraph shall not allow the indemnification of directors, officers or employees of a bank against expenses, penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency, which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual in the form of payments to the bank; and

(3) if provided in its articles of incorporation, a bank may acquire and pay the premiums for insurance covering the liability of its directors, officers or employees, except that the provisions of this paragraph shall exclude insurance coverage for a formal order assessing civil money penalties against a bank director, officer or employee.

B. In accordance with his supervisory responsibilities, the director may, in his discretion, review the threat to bank safety and soundness posed by any indemnification or proposed indemnification of directors, officers or employees by a bank or for the consistency of any such indemnification with the standards adopted by that bank in its articles of incorporation. Based upon this review, the director may direct a prospective modification of a specific indemnification by a bank through appropriate administrative action.

**History:** 1978 Comp., § 58-1-82, enacted by Laws 1995, ch. 190, § 12.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1995, ch. 190, § 12, repeals former section 58-1-82 NMSA 1978, as enacted by Laws 1963, ch. 305, § 70, relating to unlawful payment of penalties and judgments against others including directors and officers, and enacts the above section, effective June 16, 1995. For provisions of former section, see 1991 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking §§ 8, 9.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 476.

9 C.J.S. Banks and Banking §§ 8, 9.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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 § 31.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Severability clauses.** — Laws 1963, ch. 305, § 76, 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. —** 9 C.J.S. Banks and Banking § 478.

# ARTICLE 1A
# Consumer Credit Banks

## 58-1A-1. Short title.

This act [58-1A-1 to 58-1A-8 NMSA 1978] may be cited as the "Consumer Credit Bank Act".

**History:** Laws 1993, ch. 11, § 1.

## 58-1A-2. Definitions.

As used in the Consumer Credit Bank Act:

A. "consumer credit bank" means a national bank located in the state or a bank organized pursuant to the laws of this state that has those powers and limitations provided for pursuant to the Consumer Credit Bank Act;

B. "credit card" means an arrangement or loan agreement under which a domestic bank or consumer credit bank gives a borrower the privilege of using a credit card or other credit confirmation or device of any type in transactions out of which debt is created by:

(1) the domestic bank or consumer credit bank honoring a draft or similar order for the payment of money created, authorized, issued or accepted by the borrower; or

(2) the domestic bank or consumer credit bank paying or agreeing to pay the borrower's obligation;

C. "credit card account" means an arrangement between a domestic bank or consumer credit bank and a borrower for the creation of debt pursuant to a credit card and under which:

(1) the domestic bank or consumer credit bank may permit the borrower to create either revolving or nonrevolving debt from time to time;

(2) the unpaid balance of principal of the created debt and the loan, finance or other appropriate charges are debited to the account;

(3) a loan finance charge is computed or an interest rate is imposed upon the outstanding debt balances of the borrower's account from time to time; and

(4) a domestic bank or consumer credit bank is to render bills or statements to the borrower at regular intervals stating the amount that is payable by and due from the borrower on a specified date stated in the bill or statement or, at the option of the borrower but subject to the terms and conditions of the credit card account, stating that the amount may be paid by the borrower in installments;

D. "director" means the director of the financial institutions division of the regulation and licensing department;

E. "domestic bank" means a bank having its principal place of business in this state and chartered under the laws of this state or the United States;

F. except as used in Subsection H of this section, "foreign bank" means a bank chartered under the laws of the United States, any state other than New Mexico or the District of Columbia that has its principal place of business outside of New Mexico;

G. "holding company" means a corporation that controls a domestic, foreign or international bank; and

H. "international bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate of any company which engages in the business of banking organized under those laws. "International bank" includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

**History:** Laws 1993, ch. 11, § 2; 1995, ch. 33, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, added "except as used in Subsection H of this section" at the beginning of Subsection F, inserted "or international" in Subsection G, and added Subsection H.

## 58-1A-3. Organization of consumer credit bank.

With the approval of the director, a domestic bank, foreign bank, international bank or holding company may organize, own and control a consumer credit bank in accordance with the following terms and conditions:

A. in connection with the application to organize or to own and control a consumer credit bank, the applicant shall pay to the director a filing fee of six thousand dollars ($6,000) and a nonrefundable investigation fee of one thousand dollars ($1,000);

B. the shares of a consumer credit bank shall be owned solely by a domestic bank, foreign bank, international bank or holding company;

C. a consumer credit bank shall accept deposits only at a single location in this state;

D. a consumer credit bank shall maintain capital stock and paid-in surplus of not less than two million dollars ($2,000,000);

E. a consumer credit bank may engage in the business of soliciting, processing and making loans pursuant to credit card accounts and conducting other necessarily

incidental activities, including the taking of a security interest in any property to secure a loan;

F. a consumer credit bank may accept deposits only of one hundred thousand dollars ($100,000) or more and only from affiliates of the consumer credit bank or from persons having their principal place of business or residence outside New Mexico; but the limitation provided pursuant to this subsection shall not apply to deposits made for the purpose of security taken pursuant to Subsection E of this section;

G. a consumer credit bank shall, prior to commencing business, obtain and thereafter maintain insurance of its deposits by the federal deposit insurance corporation;

H. a consumer credit bank may not engage in the business of making commercial loans, but may issue credit cards and create credit card accounts for commercial customers;

I. a consumer credit bank shall provide the following services in this state:

(1) the initial distribution of credit cards or other devices, or both, designed and effective to access credit card accounts;

(2) the preparation of periodic statements of amounts due under credit card accounts; and

(3) the maintenance of financial records reflecting the status of credit card accounts from time to time; and

J. the affairs of a consumer credit bank shall be managed by a board of directors that shall exercise the consumer credit bank's powers and be responsible for the discharge of the consumer credit bank's duties. The number of directors, which shall not be fewer than three or more than twenty-five, shall be fixed by the bylaws. At least three-fourths of the directors shall be United States citizens.

**History:** Laws 1993, ch. 11, § 3; 1995, ch. 33, § 2; 1997, ch. 23, § 9.

## ANNOTATIONS

**The 1997 amendment,** effective July 1, 1997, substituted $2,000,000 for $4,000,000 in Subsection D, deleted former Subsection I relating to the minimum number of employees a consumer credit bank should have located in the state, redesignated former Subsections J and K as Subsections I and J, inserted "consumer credit" preceding "bank's" twice in the first sentence of Subsection J and made minor stylistic changes in the second sentence.

**The 1995 amendment,** effective June 16, 1995, inserted "international bank" in the introductory paragraph and in Subsection B, substituted "shall" for "must" near the beginning of Subsection G, and added Subsection K.

## 58-1A-4. Domestic banks; exemption.

A domestic bank shall not be required to establish a consumer credit bank to issue credit cards and create credit card accounts.

**History:** Laws 1993, ch. 11, § 4.

## 58-1A-5. Credit card account; terms and conditions.

A credit card account between a domestic bank or consumer credit bank and a borrower, wherever the borrower's place of residence, shall be governed solely by the laws of New Mexico and federal law, where applicable. Unless otherwise expressly agreed in writing by the parties, a credit card account between a consumer credit bank and a borrower shall be governed by the provisions of Sections 56-8-1 through 56-8-30 NMSA 1978. A domestic bank or consumer credit bank may, as provided in the written agreement governing the credit card account, modify the terms or conditions of the credit card account upon prior written notice of the modification as specified by credit card account agreement or by the federal Truth in Lending Act.

**History:** Laws 1993, ch. 11, § 5; 1995, ch. 33, § 3.

**ANNOTATIONS**

**Cross references.** — For the federal Truth in Lending Act, *see* 15 U.S.C. § 1601 et seq.

**The 1995 amendment,** effective June 16, 1995, added the language beginning "a credit card account" at the end of the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 A.L.R. Fed. 193.

## 58-1A-6. Regulation of consumer credit banks.

A. A consumer credit bank organized under the laws of New Mexico shall be subject to the supervision, regulation and examination of the director.

B. The director shall adopt and promulgate rules and regulations implementing the provisions of the Consumer Credit Bank Act, including provisions for the formation and organization of a consumer credit bank.

**History:** Laws 1993, ch. 11, § 6; 1995, ch. 33, § 4.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, added the language beginning "including provisions" at the end of Subsection B.

## 58-1A-7. Supervision fees.

A. Each consumer credit bank shall annually pay to the director a supervision fee, calculated on the basis of total assets as of December 31 of the immediately previous year:

| Total assets (000): | | | Assessment: | |
|---|---|---|---|---|
| Over | But not over | This amount | Plus | Of excess over (000) |
| 0 | 200,000 | 7,500 | 0.0000250 | 100,000 |
| 200,000 | 500,000 | 10,000 | 0.0006667 | 200,000 |
| 500,000 | 1,000,000 | 30,000 | 0.0000500 | 500,000 |
| 1,000,000 | 2,000,000 | 55,000 | 0.0000400 | 1,000,000 |
| 2,000,000 | | 95,000 | 0.0000300 | 2,000,000 |

B. The fee shall be paid on or before March 1 of each year. For failure to pay the supervisor fee when due unless excused for cause by the director, the consumer credit bank shall pay to the financial institutions division of the regulation and licensing department one hundred dollars ($100) for each day of delinquency.

C. The director shall examine the condition of the consumer credit bank. A report of examination shall be sent to the board of directors of the consumer credit bank.

**History:** Laws 1993, ch. 11, § 7; 1995, ch. 33, § 5.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, rewrote Subsection A to substitute the provisions for calculation of the supervision fee on the basis of total assets for a fee of $7,500; redesignated the former third and fourth sentences of Subsection A as Subsection B and former Subsection B as Subsection C; and, in Subsection C, deleted "of the financial institutions division of the regulation and licensing department" following "director" in the first sentence and deleted the former third sentence relating to the fee for each consumer credit bank examination.

## 58-1A-8. Applicability.

A consumer credit bank shall be subject to the laws governing financial institutions except when the rights, powers, privileges or provisions of those laws are inconsistent with the rights, powers, privileges, provisions or limitations of the Consumer Credit Bank Act, in which case the latter shall control.

**History:** Laws 1993, ch. 11, § 8.

**ANNOTATIONS**

**Severability clauses.** — Laws 1993, ch. 11, § 9 provides for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 1B
# Interstate Bank Acquisitions

## 58-1B-1. Short title.

Sections 1 through 12 [58-1B-1 to 58-1B-11 NMSA 1978] of this act may be cited as the "Interstate Bank Acquisition Act".

**History:** Laws 1996, ch. 2, § 1.

**ANNOTATIONS**

**Cross references.** — For the Interstate Bank Branching Act, *see* 58-1C-1 NMSA 1978.

For permitted interstate acquisitions, *see* 58-26-4 NMSA 1978.

## 58-1B-2. Definitions.

As used in the Interstate Bank Acquisition Act:

A. "acquire" means:

(1) for a company to merge or consolidate with a bank holding company;

(2) for a company to assume direct or indirect ownership or control of:

(a) more than twenty-five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to the acquisition;

(b) more than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to the acquisition; or

(c) all or substantially all of the assets of a bank holding company or a bank; or

(3) for a company to take any other action that results in the direct or indirect acquisition by the company of control of a bank holding company or a bank;

B. "affiliate" means that term as defined in 12 U.S.C.A. Section 371c(b);

C. "bank" means that term as defined in 12 U.S.C.A. Section 1841(c);

D. "bank holding company" means that term as defined in 12 U.S.C.A. Section 1841(a) and includes a New Mexico bank holding company, an out-of-state bank holding company and a foreign bank holding company;

E. "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, 12 U.S.C.A. Section 1841 et seq.;

F. "bank supervisory agency" means:

(1) an agency of another state with primary responsibility for chartering and supervising banks; and

(2) the office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies;

G. "branch" means that term as defined in Subsection C of Section 58-5-2 NMSA 1978;

H. "company" means that term as defined in 12 U.S.C.A. Section 1841(b);

I. "control" means that term as defined in 12 U.S.C.A. Section 1841(a)(2);

J. "deposit" means that term as defined in 12 U.S.C.A. Section 1813(l);

K. "depository institution" means an institution defined as an "insured depository institution" in 12 U.S.C.A. Sections 1813(c)(2) and (c)(3);

L. "director" means the director of the financial institutions division of the regulation and licensing department;

M. "foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States or a territory or possession of the United States;

N. "home state regulator" means, with respect to an out-of-state bank holding company, the primary bank supervisory agency of the state in which the company maintains its principal place of business;

O. "New Mexico bank" means a bank that is:

(1) organized under the laws of this state; or

(2) organized under federal law and having its principal place of business in this state;

P. "New Mexico bank holding company" means a bank holding company that:

(1) had its principal place of business in this state on July 1, 1966 or the date on which it became a bank holding company, whichever is later; and

(2) is not controlled by an out-of-state bank holding company;

Q. "New Mexico state bank" means a bank chartered by the state of New Mexico;

R. "out-of-state bank holding company" means a bank holding company that is not a New Mexico bank holding company;

S. "principal place of business" of a bank holding company means the state in which the largest percentage of the total deposits of its bank subsidiaries was deposited on the later of July 1, 1966 or the date on which the company became a bank holding company;

T. "state" means the District of Columbia or a state, territory or possession of the United States; and

U. "subsidiary" means that term as defined in 12 U.S.C.A. Section 1841(d).

**History:** Laws 1996, ch. 2, § 2.

## 58-1B-3. Purpose and intent of act.

The purpose of the Interstate Bank Acquisition Act is to establish the conditions under which a company may acquire a New Mexico bank or a New Mexico bank holding company. In enacting it the legislature intends to avoid discrimination against out-of-state bank holding companies or foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act.

**History:** Laws 1996, ch. 2, § 3.

**ANNOTATIONS**

**Cross references.** — For Section 3(d) of the Bank Holding Company Act, *see* 12 U.S.C. § 1842(d).

## 58-1B-4. Permitted acquisitions.

A. Except as provided in Subsection B of this section, a company may not acquire a New Mexico state bank or a New Mexico bank holding company without the prior approval of the director unless federal law expressly permits the acquisition without that approval.

B. The prohibition of Subsection A of this section does not apply if the acquisition is made:

(1) solely for the purpose of facilitating an acquisition otherwise permitted pursuant to the Interstate Bank Acquisition Act;

(2) in a transaction arranged by the director or another bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) in a transaction in which a bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

C. In a transaction for which the director's approval is not required under this section, the acquiring company shall give written notice to the director at least ninety days before the effective date of the acquisition unless a shorter period of notice is required under applicable federal law.

**History:** Laws 1996, ch. 2, § 4.

**ANNOTATIONS**

**Cross references.** — For permitted interstate acquisitions, *see* 58-26-4 NMSA 1978.

## 58-1B-5. Required application; forms.

A. A company that proposes to make an acquisition pursuant to the Interstate Bank Acquisition Act shall:

(1) file with the director a copy of the application that the company has filed with the responsible federal bank supervisory agency and any additional information prescribed by the director; and

(2) pay to the director any application fee prescribed by the director.

B. As long as they are consistent with the effective discharge of the director's responsibilities, the application and reporting forms established pursuant to the Interstate Bank Acquisition Act shall conform to those established for the same purposes by the board of governors of the federal reserve system pursuant to the Bank Holding Company Act.

**History:** Laws 1996, ch. 2, § 5.

**ANNOTATIONS**

**Cross references.** — For the Bank Holding Company Act, *see* Subsection E of 58-1B-2 NMSA 1978.

## 58-1B-6. Standards for approval.

A. In deciding whether to approve an application for a proposed acquisition pursuant to the Interstate Bank Acquisition Act, the director shall consider whether the acquisition may:

(1) be detrimental to the safety and soundness of the New Mexico state bank or the New Mexico bank holding company to be acquired;

(2) result in a substantial reduction of competition in this state; or

(3) have a significantly adverse effect on the convenience and needs of a community in this state served by the New Mexico state bank or the New Mexico bank holding company to be acquired.

B. Except as otherwise expressly provided in this section, the director shall not approve an acquisition pursuant to the Interstate Bank Acquisition Act if upon effecting the transaction it would result in the applicant, including a depository institution affiliated with the applicant, holding an undue concentration of deposits totaling forty percent or more of the total deposits in all depository institutions in New Mexico.

C. The director may adopt a regulation establishing a procedure authorizing the waiver of the limitation on deposit concentration set forth in Subsection B of this section to prevent the insolvency or closing of a New Mexico state bank.

D. The director shall not approve an application for an acquisition pursuant to the Interstate Bank Acquisition Act unless either the New Mexico bank to be acquired, or at least one New Mexico bank subsidiary of the bank holding company to be acquired, has as of the proposed date of acquisition been in existence and in continuous operation under an active charter for a period of at least five years, except that the director may approve an application for an acquisition of a consumer credit bank chartered pursuant

to the Consumer Credit Bank Act [58-1A-1 to 58-1A-8 NMSA 1978] even though the consumer credit bank has not been in continuous operation under an active charter for a period of at least five years.

**History:** Laws 1996, ch. 2, § 6.

## 58-1B-7. Procedures relating to applications.

A. The director shall approve or disapprove an application for acquisition pursuant to the Interstate Bank Acquisition Act within ninety days after receipt of a completed application unless the director requests additional information from the applicant following receipt of a completed application in which case the time limit for decision by the director is the later of:

(1) the date set forth in this subsection; or

(2) thirty days after the director's receipt of the requested additional information.

B. The director may hold a public hearing in connection with an application if a significant issue of law or fact has been raised with respect to the proposed acquisition.

C. If the director holds a public hearing in connection with an application, the time limit specified in Subsection A of this section shall be extended to thirty days after the conclusion of the public hearing.

D. An application is deemed approved if the director takes no action on the application within the time limits specified in this section.

**History:** Laws 1996, ch. 2, § 7.

## 58-1B-8. Reports; examinations.

A. To the extent specified by the director by regulation, order or written request, each bank holding company that directly or indirectly controls a New Mexico state bank or a New Mexico bank holding company, or the home state regulator of the company, shall submit to the director copies of each financial report filed by the company with any bank supervisory agency within fifteen days after the report is filed with the agency unless the report is one the disclosure of which is prohibited by federal or state law.

B. To the extent disclosure is permitted by state or federal law, a bank holding company that controls a New Mexico state bank or a New Mexico bank holding company, or the home state regulator of the controlling bank holding company, shall provide the director copies of any reports of examination of that bank holding company or of the New Mexico bank holding company.

C. The director may examine a New Mexico bank holding company whenever the director has reason to believe that the company is not being operated in compliance with the laws of this state or in accordance with safe and sound banking practices. The provisions of Section 58-1-46 NMSA 1978 shall apply to the examination.

**History:** Laws 1996, ch. 2, § 8.

## 58-1B-9. Agency activities.

A. If it complies with the requirements of this section, a New Mexico state bank may agree to act as an agent for any affiliated bank depository institution to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations and perform other services for which it has received the prior approval of the director.

B. A New Mexico state bank that proposes to enter into an agency agreement pursuant to this section shall file with the director, at least thirty days before the effective date of the agreement:

(1) a notice of intention to enter into an agency agreement with an affiliated depository institution;

(2) a description of the services proposed to be performed under the agency agreement; and

(3) a copy of the agency agreement.

C. If any proposed service is not specifically designated in Subsection A of this section and has not been approved previously in a regulation issued by the director, the director shall decide, within thirty days after receipt of the notice required by Subsection B of this section, whether to approve the offering of the service. If the director requests additional information after reviewing the notice, the time limit for the director's decision is thirty days after receiving the additional information. In deciding whether to approve a proposed service, the director shall consider whether the service would be consistent with state and federal law and the safety and soundness of the principal and agent institutions. The New Mexico state bank shall give appropriate notice to the public of each approval.

D. Any proposed service offered pursuant to Subsection C of this section is deemed approved if the director takes no action after receiving the notice required by Subsection B of this section within the time limits specified in Subsection C of this section.

E. A New Mexico state bank may not pursuant to an agency agreement:

(1) conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) have an agent conduct any activity that the bank as principal would be prohibited from conducting under applicable state or federal law.

F. The director may order a New Mexico state bank or any other depository institution that is subject to the director's enforcement powers to cease acting as an agent or principal under an agency agreement with an affiliated depository institution if the director finds the provisions of the agency agreement or the actions of the parties pursuant to it to be inconsistent with safe and sound banking practices.

G. A New Mexico state bank acting as an agent for an affiliated depository institution in accordance with this section is not a branch bank of that institution.

**History:** Laws 1996, ch. 2, § 9.

## 58-1B-10. Authority to issue regulations; cooperative agreements; fees.

To carry out the purposes of the Interstate Bank Acquisition Act, the director may:

A. adopt regulations;

B. enter into cooperative, coordinating or information-sharing agreements with a bank supervisory agency or an organization affiliated with or representing a bank supervisory agency;

C. accept a report of examination or investigation by a bank supervisory agency having concurrent jurisdiction over a New Mexico state bank or a bank holding company that controls a New Mexico state bank in lieu of conducting an examination or investigation of the bank or bank holding company;

D. enter into a sole source contract pursuant to Section 13-1-126 NMSA 1978 with a bank supervisory agency having concurrent jurisdiction over a New Mexico state bank or a bank holding company that controls a New Mexico state bank to engage the services of that agency's examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to that agency at a reasonable rate of compensation;

E. conduct joint examinations or joint enforcement actions with a bank supervisory agency having concurrent jurisdiction over a New Mexico state bank or a bank holding company that controls a New Mexico state bank, but if the examination or enforcement action involves an out-of-state bank holding company, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters;

F. conduct examinations and enforcement actions of a New Mexico state bank or a New Mexico bank holding company that controls a New Mexico state bank if the director determines that the action is necessary to carry out the director's responsibilities pursuant to the Interstate Bank Acquisition Act or to enforce compliance with the laws of this state; and

G. include in regulations adopted provisions for:

(1) the assessment of supervisory and examination fees to be paid by New Mexico banks and New Mexico bank holding companies in connection with the director's performance of his duties; and

(2) sharing of fees assessed pursuant to Paragraph (1) of this subsection with a bank supervisory agency or an organization affiliated with or representing a bank supervisory agency in accordance with an agreement between it and the director.

**History:** Laws 1996, ch. 2, § 10.

## 58-1B-11. Enforcement.

The director may enforce the provisions of the Interstate Bank Acquisition Act by an action for injunctive relief in the district court of Santa Fe county. The director shall give notice promptly to the home state regulator of any action commenced by the director against an out-of-state bank holding company and, to the extent practicable, shall consult and cooperate with that regulator in pursuing and resolving the enforcement action.

**History:** Laws 1996, ch. 2, § 11.

**ANNOTATIONS**

**Severability clauses.** — Laws 1996, ch. 2, § 12 provides that if any part of the Interstate Bank Acquisition Act is held invalid or to be superseded, the remainder or its application to other situations or persons shall not be affected.

# ARTICLE 1C
# Interstate Bank Branching

## 58-1C-1. Short title.

Sections 14 through 27 [58-1C-1 to 58-1C-13 NMSA 1978] of this act may be cited as the "Interstate Bank Branching Act".

**History:** Laws 1996, ch. 2, § 14.

**ANNOTATIONS**

**Cross references.** — For the Interstate Bank Acquisition Act, *see* Chapter 58, Article 1B NMSA 1978.

## 58-1C-2. Purpose.

The purpose of the Interstate Bank Branching Act is to permit interstate bank branching by merger pursuant to the provisions of the federal Regle-Neal Interstate Banking and Branching Efficiency Act of 1994, P.L. 103-328.

**History:** Laws 1996, ch. 2, § 15.

**ANNOTATIONS**

**Compiler's notes.** — The Regle-Neal Interstate Banking and Branching Efficiency Act primarily amended several sections throughout Title 12 of the United States Code.

## 58-1C-3. Definitions.

As used in the Interstate Bank Branching Act:

A. "bank" means that term as defined in 12 U.S.C.A. Section 1813(h), but "bank" does not include any "foreign bank" as defined in 12 U.S.C.A. Section 3101(7), unless the foreign bank is organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands and its deposits are insured by the federal deposit insurance corporation;

B. "bank holding company" means that term as defined in 12 U.S.C.A. Section 1841(a)(1);

C. "bank supervisory agency" means:

(1) an agency of another state with primary responsibility for chartering and supervising banks; and

(2) the office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies;

D. "branch" means that term as defined in Subsection C of Section 58-5-2 NMSA 1978;

E. "control" means that term as defined in 12 U.S.C.A. Section 1841(a)(2);

F. "director" means the director of the financial institutions division of the regulation and licensing department;

G. "home state" means:

(1) with respect to a state bank, the state in which the bank is chartered;

(2) with respect to a national bank, the state in which the main office of the bank is located; and

(3) with respect to a foreign bank, the state determined to be the home state of the foreign bank pursuant to 12 U.S.C.A. Section 3103(c);

H. "home state regulator" means the bank supervisory agency of the state in which an out-of-state state bank is chartered;

I. "host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

J. "insured depository institution" means that term as defined in 12 U.S.C.A. Section 1813(c)(2);

K. "interstate merger transaction" means:

(1) the merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) the purchase of all or substantially all of the assets and branches of a bank whose home state is different from the home state of the acquiring bank;

L. "main office" means the office declared by a bank to its chartering bank supervisory agency to be its main office;

M. "New Mexico bank" means a bank whose home state is New Mexico;

N. "New Mexico state bank" means a bank chartered under the laws of New Mexico;

O. "out-of-state bank" means a bank whose home state is a state other than New Mexico;

P. "out-of-state state bank" means a bank chartered under the laws of any state other than New Mexico;

Q. "resulting bank" means a bank that has resulted from an interstate merger transaction under the Interstate Bank Branching Act; and

R. "state" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands or the Northern Mariana Islands.

**History:** Laws 1996, ch. 2, § 16.

## 58-1C-4. Authority of state banks to establish interstate branches by merger.

A. If it obtains the prior approval of the director, a New Mexico state bank may establish, maintain and operate one or more branches in a state other than New Mexico pursuant to an interstate merger transaction in which the New Mexico state bank is the resulting bank.

B. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant New Mexico state bank shall file the documents and information required by Subsections A and B of Section 58-4-4 NMSA 1978 and pay a fee in an amount that shall be prescribed by the director by rule.

C. The director shall approve the interstate merger transaction and the operation of branches outside of New Mexico by the New Mexico state bank if he finds that:

(1) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank;

(2) any new officers and directors of the resulting bank are qualified by character, experience and financial responsibility to direct and manage the resulting bank; and

(3) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest.

D. The interstate merger transaction may be effected only after the applicant has received the director's written approval.

**History:** Laws 1996, ch. 2, § 17.

**ANNOTATIONS**

**Cross references.** — For merger and consolidation of banks, *see* Chapter 58, Article 4 NMSA 1978.

## 58-1C-5. Interstate merger transactions and branching permitted.

A. One or more New Mexico banks may enter into an interstate merger transaction with one or more out-of-state banks pursuant to the Interstate Bank Branching Act, and an out-of-state bank resulting from the transaction may maintain and operate as branches in New Mexico the former New Mexico banks that participated in the transaction if the conditions and filing requirements of that act are met.

B. Except as otherwise expressly provided in this subsection, an interstate merger transaction is not permitted pursuant to the Interstate Bank Branching Act if, upon effecting the transaction, the resulting bank, including all insured depository institutions that would be affiliates, as defined in 12 U.S.C.A. Section 1841(k), of the resulting bank, would result in an undue concentration of deposits totaling forty percent or more of the total deposits in all depository institutions in New Mexico. The director may by regulation adopt a procedure to waive the foregoing prohibition to prevent the insolvency or closing of a New Mexico state bank.

C. An interstate merger transaction resulting in the acquisition by an out-of-state bank of a New Mexico bank is not permitted pursuant to the Interstate Bank Branching Act, unless the New Mexico bank on the date of the acquisition has been in continuous operation under an active charter for a period of at least five years.

**History:** Laws 1996, ch. 2, § 18.

## 58-1C-6. De novo branching and acquisition of individual branches not permitted.

Interstate branching, either de novo or by acquisition of one or more branches, not involving all or substantially all of the assets and branches of a New Mexico bank is prohibited.

**History:** Laws 1996, ch. 2, § 19.

## 58-1C-7. Notice and filing requirements.

An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a New Mexico state bank shall notify the director of the proposed merger no later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency. The out-of-state bank shall submit a copy of that application to the director and pay a fee in an amount that the director shall prescribe by regulation. Any New Mexico state bank that is a party to the interstate merger transaction shall comply with all applicable state and federal laws.

**History:** Laws 1996, ch. 2, § 20.

## 58-1C-8. Condition for interstate merger prior to June 1, 1997.

An interstate merger transaction prior to June 1, 1997 resulting in a New Mexico branch of an out-of-state bank shall not be consummated and any out-of-state bank resulting from such a merger shall not operate a branch in New Mexico, unless the director first:

A. finds that the laws of the home state of each out-of-state bank involved in the interstate merger transaction permit New Mexico state banks, under substantially the same terms and conditions as are set forth in the Interstate Bank Branching Act, to acquire banks and establish and maintain branches in that state by means of interstate merger transactions;

B. concludes that the resulting out-of-state bank has complied with all applicable requirements of New Mexico law and has agreed in writing to comply with the laws of this state applicable to its operation of branches in New Mexico; and

C. certifies to the federal bank supervisory agency having authority to approve the interstate merger transaction that the conditions and requirements of the Interstate Bank Branching Act have been met.

**History:** Laws 1996, ch. 2, § 21.

## 58-1C-9. Powers; additional branches.

A. An out-of-state state bank with branches in New Mexico authorized pursuant to the Interstate Bank Branching Act may conduct any activities at its branches that are authorized pursuant to the laws of this state for New Mexico state banks.

B. A New Mexico state bank may conduct any activities at any branch outside New Mexico that are permissible for a bank chartered by the host state where the branch is located.

C. An out-of-state bank that has acquired branches in New Mexico under the Interstate Bank Branching Act may establish or acquire additional branches in New Mexico to the same extent that any New Mexico bank may establish or acquire a branch in New Mexico pursuant to applicable federal and state law.

**History:** Laws 1996, ch. 2, § 22.

## 58-1C-10. Examinations; periodic reports; cooperative agreements; assessment of fees.

A. To the extent consistent with Subsection C of this section, the director may make examinations of any branch established and maintained in this state by an out-of-state

state bank pursuant to the Interstate Bank Branching Act as the director deems necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of Section 58-1-46 NMSA 1978 shall apply to the examinations.

B. The director may prescribe requirements for periodic reports concerning an out-of-state bank that operates a branch in New Mexico pursuant to the Interstate Bank Branching Act. The required reports shall be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Reporting requirements prescribed by the director pursuant to this subsection shall be:

(1) consistent with the reporting requirements applicable to New Mexico state banks; and

(2) appropriate for the purpose of enabling the director to carry out his responsibilities under the Interstate Bank Branching Act.

C. The director may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in New Mexico of an out-of-state state bank, or any branch of a New Mexico state bank in any host state, and the director may accept the parties' reports of examination and reports of investigation in lieu of conducting his own examinations or investigations.

D. The director may enter into a sole source contract pursuant to Section 13-1-126 NMSA 1978 with a bank supervisory agency having concurrent jurisdiction over a New Mexico state bank or an out-of-state state bank operating branches in this state pursuant to the Interstate Bank Branching Act to engage the services of the agency's examiners or to provide the services of the director's examiners to the agency.

E. The director may conduct joint examinations or participate in joint enforcement actions with a bank supervisory agency having concurrent jurisdiction over any branch in New Mexico of an out-of-state state bank or any branch of a New Mexico state bank in any host state. The director may take the actions independently if the director deems the actions necessary or appropriate to carry out his responsibilities under the Interstate Bank Branching Act or to ensure compliance with the laws of this state, but, in the case of an out-of-state state bank, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

F. An out-of-state state bank that maintains branches in this state may be assessed and shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the director. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank

supervisory agencies in accordance with agreements between those entities and the director.

**History:** Laws 1996, ch. 2, § 23.

## 58-1C-11. Enforcement.

If the director determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of the laws of this state, is not reasonably meeting the credit needs of the community served or is being operated in an unsafe and unsound manner, the director may take the same enforcement actions he could take if the branch were a New Mexico state bank. The director shall give notice promptly to the home state regulator of an enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

**History:** Laws 1996, ch. 2, § 24.

## 58-1C-12. Regulations.

The director may adopt regulations necessary or appropriate to implement the provisions of the Interstate Bank Branching Act.

**History:** Laws 1996, ch. 2, § 25.

## 58-1C-13. Notice of subsequent merger and other transactions.

An out-of-state state bank that has established and maintains a branch in this state pursuant to the Interstate Bank Branching Act shall give at least thirty days prior written notice or, in the case of an emergency transaction, shorter notice consistent with applicable state or federal law to the director of any merger, consolidation or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank if the result of the transaction would require an application to be filed pursuant to the federal Change in Bank Control Act of 1978, 12 U.S.C.A. Section 1817(j) or the federal Bank Holding Company Act of 1956, 12 U.S.C.A. Section 1841 et seq.

**History:** Laws 1996, ch. 2, § 26.

**ANNOTATIONS**

**Severability clauses.** — Laws 1996, ch. 2, § 27 provides that if any part of the Interstate Branch Banking Act is held invalid or to be superseded, the remainder or its application to other situations or persons shall not be affected.

# 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking § 2.

## 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.

**ANNOTATIONS**

**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 § 650.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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.

**Cross references.** — For possession of and title to assets of closed banks, *see* 58-2-7 NMSA 1978.

**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 § 651.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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 § 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 §§ 203, 209, 210, 405.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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 § 18.

9 C.J.S. Banks and Banking § 650.

## 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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**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 § 651.

## 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.

**ANNOTATIONS**

**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 § 654.

# 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.

**ANNOTATIONS**

**National banks in New Mexico are subject to this section.** — National banks are subject to the laws of a state in respect of their affairs, unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as federal agencies, or conflict with the paramount law of the United States. 1960 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 § 264.

## 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.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 265.

## 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.

# ARTICLE 4
# Merger and Consolidation of Banks

## 58-4-1. Additional definitions.

As used in this article, unless the context otherwise requires:

A. "association" includes a state or federal savings and loan association unless limited by use of the words "state" or "federal";

B. "converting bank" means a bank converting from a state bank to a national bank or the reverse;

C. "merger" includes consolidation;

D. "merging bank" means a party to a merger;

E. "resulting bank" means the bank resulting from a merger or conversion; and

F. "dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this article.

**History:** 1941 Comp., § 50-1901, enacted by Laws 1951, ch. 37, § 1; 1953 Comp., § 48-13-1; Laws 1993, ch. 210, § 2.

**ANNOTATIONS**

**Cross references.** — For the Interstate Bank Branching Act, *see* 58-1C-1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "article" for "title" in the introductory language and Subsection F, added present Subsection A, redesignated former Subsections A through E as present Subsections B through F, inserted "bank" following "state" in Subsection B, and made a stylistic change.

**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 §§ 158 et seq., 495, 570, 571.

## 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.

**ANNOTATIONS**

**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 § 570.

## 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.

**ANNOTATIONS**

**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 §§ 158 et seq., 570.

## 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.

## ANNOTATIONS

**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 § 128.

## 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.

**ANNOTATIONS**

**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 § 158 et seq.

## 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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**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 §§ 570, 571.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 28.

9 C.J.S. Banks and Banking § 158 et seq.

## 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.

**ANNOTATIONS**

**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 § 158 et seq.

## 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.

## ANNOTATIONS

**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 § 158 et seq.

## 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.

**ANNOTATIONS**

**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 § 128.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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 § 128.

## 58-4-13. Conversion of savings association to a state bank.

A. Any association may convert to a state bank pursuant to this section. A mutual association shall first convert to a stock association before applying for conversion to a state bank. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank that has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the director of the division.

B. Any association, upon a majority vote of its board of directors, may apply to the director of the division for permission to convert to a bank and for certification of appropriate articles of incorporation and bylaws to effect the conversion.

C. The association shall submit a plan of conversion as a part of the application to the director of the division. The director may recommend approval of the plan of conversion with or without amendment. The director shall recommend approval of the plan of conversion if upon examination and investigation he finds that:

(1) the resulting bank will operate in a safe, sound and prudent manner with adequate capital, liquidity and earning prospects;

(2) the directors, officers and other managerial officials of the association are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;

(3) the interest of the depositors, the creditors and the public generally will not be jeopardized by the proposed conversion; and

(4) the proposed name will not mislead the public as to the character or purpose of the resulting bank, and the proposed name is not the same as one already adopted or appropriated by an existing bank in this state or so similar as to be likely to mislead the public.

D. The director of the division may promulgate rules to govern conversion undertaken pursuant to this section. The requirements for a converting association shall be no more stringent than those provided by rule or regulation applicable to other federal-deposit-insurance-corporation insured commercial banks. The requirements for a converting association shall be no less stringent than those provided by rule or regulation applicable to other federal-deposit-insurance-corporation insured commercial banks, except as may be allowed during transition periods permitted by this section.

E. In the event the director of the division fails to promulgate rules, the conditions to be met for approval of the application for conversion shall include the following:

(1) the applicant's general condition shall reflect adequate capital, liquidity, reserves, earning and asset composition necessary for safe and sound operation of the resulting bank;

(2) the management and the board of directors shall be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association to a bank;

(3) the director of the division shall determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area; and

(4) within a reasonable time after the effective date of the conversion, the resulting bank shall divest itself of all assets and liabilities that do not conform to state banking law or rules. The length of this transition period shall be determined by the director of the division and shall be specified when the application for conversion is approved.

F. In evaluating each of the conditions described in Subsection E of this section, the director of the division shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of New Mexico banks of similar asset size.

G. If the director of the division approves the plan of conversion, then the association shall submit the plan to the stockholders. After approval of the plan of conversion, the director shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

H. After lawful notice to the stockholders of the association and full and fair disclosure of the plan of conversion, the plan shall be approved by a majority of the total votes that stockholders of the association are eligible and entitled to cast. Stockholders may vote in person or by proxy. Following the vote of the stockholders, the association shall file with the director of the division the results of the vote certified by an appropriate officer of the association. The director shall then approve the requested conversion, and the association shall file with the state corporation commission [public regulation commission] articles of incorporation with the certificate of the approval of the director attached. The conversion of the association to a bank shall be effective upon this filing.

I. The director of the division may authorize the resulting bank to:

(1) wind up any activities legally engaged in by the association at the time of conversion but not permitted to state banks; and

(2) retain for a transitional period any assets and deposit liabilities legally held by the association at the effective date of the conversion that may not be held by state banks.

J. Upon conversion of an association to a bank, the legal existence of the association does not terminate, and the resulting bank is a continuation of the

association. The conversion shall be a mere change in identity, form or organization. All rights, liabilities, obligations, interest and relations of whatever kind of the association shall continue and remain in the resulting bank. Except as may be authorized during a transitional period by the director of the division, a bank resulting from the conversion of an association shall have only those rights, powers and duties that are authorized for banks by law. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not taken place.

K. As used in this section, "conversion" includes:

(1) a transaction in which a state bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association; and

(2) any other transaction that results in a change of identity of an association to a state bank.

**History:** 1978 Comp., § 58-4-13, enacted by Laws 1993, ch. 210, § 3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

# ARTICLE 5
# Organization and Management

## 58-5-1. Board of directors; oaths.

A. A board member, when initially elected, shall take an oath that:

(1) he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the 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 stock is not hypothecated or in any way pledged as security for any loan or debt.

B. The oath, subscribed by the board member making it and certified by the notary public before whom it was taken, shall be immediately transmitted to the director of the 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; 1995, ch. 190, § 13.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted the introductory sentence in Subsection A for "A director, when selected, shall take an oath that", substituted "the" for "such" preceding "bank" in Paragraph (1) of Subsection A, substituted "stock" for "same" preceding "is not hypothecated" in Paragraph (2) of Subsection A, and substituted "The oath, subscribed by the board member" for "Such oath, subscribed by the director" and "director of the division" for "director of the financial institutions division" in Subsection B.

**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 § 103.

## 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 and each application to relocate a branch or main office. The director may waive the investigation fee, at his discretion,

when a branch or main office is relocating in the immediate vicinity of its present location.

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; 1995, ch. 190, § 14.

## ANNOTATIONS

**The 1995 amendment,** effective June 16, 1995, added "and each application to relocate a branch or main office. The director may waive the investigation fee, at his discretion, when a branch or main office is relocating in the immediate vicinity of its present location" at the end of Paragraph (2) of Subsection A.

**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.

**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.*, 1976-NMCA-034, 89 N.M. 179, 548 P.2d 459.

**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.

**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 §§ 45, 46.

## 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.

**ANNOTATIONS**

**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 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 §§ 45, 46.

## 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 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.

**ANNOTATIONS**

**Compiler's notes.** — 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 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 §§ 45, 46.

## 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.

**ANNOTATIONS**

**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 § 232.

## 58-5-7. Legal holidays for banks.

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

New Year's Day ..... January 1

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

President's Day ..... 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

Indigenous Peoples' 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 [Chapter 58, Article 16 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; 1 981, ch. 42, § 1; 1991, ch. 75, § 1; 1999, ch. 213, § 8; 2019, ch. 123, § 4.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, in Subsection A, after "3rd Monday in January", deleted "Washington's Birthday" and added "President's Day", and after "1st Monday in September", deleted "Columbus" and added "Indigenous Peoples'".

**The 1999 amendment,** effective June 18, 1999, in the introductory language of Subsection A substituted "may" for "shall" and updated a section reference.

**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.

**ANNOTATIONS**

**Compiler's notes.** — 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."

**Cross references.** — For the Federal Reserve Act, *see* 12 U.S.C. § 221.

**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 § 661.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the Federal Reserve Act, *see* 12 U.S.C. § 221.

**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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking § 652.

## 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, 58-6-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 213, § 10 repeals 58-6-1 and 58-6-2 NMSA 1978, being Laws 1945, ch. 122, §§ 1 and 2, as amended, relating to power to make loans guaranteed under Servicemen's Readjustment Act, which had been repealed in 1958 by P.L. No. 85-857, and minors' eligibility for such loans, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Cross references.** — For Student Loan Act, *see* 21-21-1 NMSA 1978.

For Medical Student Loan for Service Act, *see* 21-2-1 NMSA 1978.

## 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.

**ANNOTATIONS**

**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.

9 C.J.S. Banks and Banking § 604.

## 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.

**History:** Laws 1990, ch. 45, § 1; 1999, ch. 213, § 9.

**ANNOTATIONS**

**The 1999 amendment,** effective June 18, 1999, deleted "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" from the end of Subsection B.

# ARTICLE 7
# Installment Loans

## 58-7-1. Short title.

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

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

**ANNOTATIONS**

**The 2017 amendment,** effective January 1, 2018, changed "This act shall be known" to "Chapter 58, Article 7 NMSA 1978 may be cited".

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**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.

Construction and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-894) prohibiting extortionate credit transactions, 106 A.L.R. Fed. 33.

## 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 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For the Motor Vehicle Sales Finance Act, *see* 58-19-1 NMSA 1978.

**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.

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 A.L.R. Fed. 193.

9 C.J.S. Banks and Banking §§ 8, 9.

## 58-7-3. Loans covered by act.

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

B. A loan in an amount equal to ten thousand dollars ($10,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955 [Chapter 58, Article 15 NMSA 1978]. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be identified in the loan documents as being made pursuant to that act.

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

**History:** 1978 Comp., § 58-7-3, enacted by Laws 1995, ch. 190, § 15; 2017, ch. 110, § 3; 2019, ch. 201, § 1; 2022, ch. 23, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1995, ch. 190, § 15, repealed former section 58-7-3 NMSA 1978, as amended by Laws 1975, ch. 252, § 1, and enacted a new section, effective June 16, 1995.

**The 2022 amendment,** effective January 1, 2023, raised the maximum dollar amount for loans that may be made pursuant to the Bank Installment Loan Act of 1959; and in Subsection B, after "an amount equal to", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2019 amendment,** effective January 1, 2020, provided that a loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be identified as such in the loan documents; in Subsection B, added "A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall be identified in the loan documents as being made pursuant to that act"; and in Subsection C, after "provisions", added "of Subsection B".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of Laws 2019, ch. 201 apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, provided that loans in the amount of five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955, and exempted federally insured depository institutions from the provisions of this section; added the subsection designation "A."; in Subsection A, after "installments", deleted "or" and added "and"; and added Subsections B and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 684.

9 C.J.S. Banks and Banking § 634.

## 58-7-3.1. Precomputed loan.

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

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

**ANNOTATIONS**

**The 2017 amendment,** effective January 1, 2018, required that interest charged on precomputed loan transactions be calculated on the assumption that all scheduled payments will be made when due; deleted "If the loan is" and added "In", and after "the interest charge", deleted "may" and added "shall".

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## 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.

## 58-7-3.3. Requirements for making and paying loans; incomplete instruments; limitations on charges after judgment and interest.

A. Every lender shall:

(1) at the time a consumer becomes contractually obligated on a precomputed loan transaction, deliver to the borrower or, if there are two or more borrowers on the same obligation, to one of the borrowers, a written statement on which shall be printed a copy of Section 58-7-3 NMSA 1978, and which shall disclose in clear and distinct terms:

(a) the amount of the loan;

(b) the date the loan was consummated;

(c) a schedule or a description of the payments;

(d) the type of the security, if any, securing the loan;

(e) the name and address of the lender;

(f) the name of the person primarily obligated for the loan;

(g) the amount of principal;

(h) the annual percentage rate as calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", and the amount of interest payable in dollars and cents;

(i) all other disclosures required pursuant to state and federal law; and

(j) the charge for any other item allowable and included pursuant to the New Mexico Bank Installment Loan Act of 1959 [Chapter 58, Article 15 NMSA 1978], stated so as to clearly show the allocation of each item included;

(2) for each payment made on account of a loan, give to the person making the payment 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 a payment is made in a manner other than by the borrower in person, by an agent of the borrower or by check or money order, the licensee shall mail the receipt to the borrower's last known address or retain and deliver the receipt upon request of the borrower. A licensee may deliver the receipt electronically to the borrower via text message or email, if requested to do so in writing by the borrower. A borrower may withdraw authorization for electronic delivery of receipts in writing at any time. A licensee shall not require a borrower to receive receipts electronically. The licensee shall maintain a copy of each receipt in the office of the licensee as a part of the licensee's records; and

(3) upon repayment of the loan in full, plainly mark every note and promise to pay signed by any borrower with the word "paid" or "canceled" and promptly file or record a release of any mortgage if the mortgage has been recorded, restore any pledge and cancel and return any note and any assignment given to the licensee. A licensee may mark and return a copy of the note, promise to pay or any assignment if the copy accurately reproduces the complete original.

B. A judgment obtained against a party on a loan made pursuant to the New Mexico Bank Installment Loan Act of 1959, shall not include, and the loan shall not include, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as provided by law.

C. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 that is filed and approved as a claim in any bankruptcy proceeding shall bear interest at the

rate of ten percent per year beginning on the ninetieth day following the date of adjudication. This limitation shall not apply when the bankrupt is not discharged in bankruptcy or to any obligation not dischargeable under the provisions of the United States Bankruptcy Code presently in force.

D. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall not bear interest in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower; provided that the deceased borrower is the sole obligor to the loan agreement.

E. A loan made pursuant to the New Mexico Bank Installment Loan Act of 1959 shall not bear interest in excess of ten percent per year upon the unpaid principal balance of the loan after twelve months following the date of maturity of the loan.

**History:** Laws 2019, ch. 201, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 201, § 18 made Laws 2019, ch. 201 effective January 1, 2020.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

## 58-7-3.4. Right of rescission.

All agreements for precomputed loan transactions shall include a provision granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender pursuant to the New Mexico Bank Installment Loan Act of 1959 [Chapter 58, Article 15 NMSA 1978] no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower.

**History:** Laws 2019, ch. 201, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 201, § 18 made Laws 2019, ch. 201 effective January 1, 2020.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

## 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 notes.** — 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**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. Permitted charges; limitation on presentment.

A. No amount, other than the total finance charge, calculated pursuant to Subsections D, E and F of Section 58-7-7 NMSA 1978, which consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars ($200) or ten percent of the principal, shall be charged or contracted for, directly or indirectly, on or in connection with a precomputed loan transaction except as follows:

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

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

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

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

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

(6) the actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect on a precomputed loan; provided, however, that no attorney fees are permitted where the loan is referred for collection to an attorney who is a salaried employee of the holder of the contract; and further provided that attorney fees shall not be charged or collected unless the note or other contract has been submitted to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed; and

(7) the actual cost of charges incurred in making a real estate loan secured by a mortgage on real estate, including the charges for an abstract of title, title examination, title insurance premiums, property survey, appraisal fees, notary fees,

preparation of deeds, mortgages or other documents, escrow charges, credit reports and filing and recording fees.

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

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

**History:** 1953 Comp., § 48-21-6, enacted by Laws 1959, ch. 327, § 6; 1975, ch. 252, § 4; 1977, ch. 362, § 1; 1983, ch. 96, § 3; 2017, ch. 110, § 5; 2019, ch. 201, § 2; 2022, ch. 23, § 2.

## ANNOTATIONS

**The 2022 amendment,** effective January 1, 2023, provided that the total finance charge shall be calculated pursuant to NMSA 1978, § 58-7-7(D) through § 58-7-7(F); and in Subsection A, in the introductory clause, after "total finance charge", added "calculated pursuant to Subsections D, E and F of Section 58-7-7 NMSA 1978", and in Paragraph A(6), after "has been submitted", deleted "in good faith".

**The 2019 amendment,** effective January 1, 2020, limited the collection of certain charges related to attorney fees for legal process or proceedings to collect on a precomputed loan; in Subsection A, after "in connection with", deleted "any such installment loan" and added "a precomputed loan transaction", in Paragraph A(1), after "arrears", added "may be charged", in Paragraph A(6), after "proceedings to collect", deleted "any such installment" and added "on a precomputed", and after "contract, and", added "further provided that attorney fees shall not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed; and"; and in Subsection B, after "more than one time", added "per payment due".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of Laws 2019, ch. 201 apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, allowed finance charges on installment loans and placed a limit on the amount of the finance charge, removed a twenty-five dollar ($25.00) maximum charge for defraying the costs of disclosure statements from the list of permitted charges on installment loans, and placed a limit on the number of times a lender may present to a financial institution a check or debit authorization request for payment when there are insufficient funds to pay a check or

other type of debit; in the section heading, deleted "Additional" and added "Permitted", and added "limitation on presentment"; added new subsection designation "A." and redesignated former Subsections A through G as Paragraphs A(1) through A(7), respectively; in Subsection A, in the introductory clause, after "No", deleted "additional", and after "amount", added "other than the total finance charge, which consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars ($200) or ten percent of the principal", in Paragraph A(2), changed two occurrences of "must" to "shall", in Paragraph A(3), after "as provided for", deleted "herein" and added "in the New Mexico Bank Installment Loan Act of 1959", and in Paragraph A(7), after "including", deleted "but not limited to", and after "recording fees", deleted "and"; deleted former Subsection H, which provided for a one-time permitted charge for defraying the costs of disclosure statements; and added a new Subsection B and designated the last sentence of the section as Subsection C.

**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. 87-08.

**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.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCA § 1605(a)) or applicable regulations, 154 A.L.R. Fed. 431.

## 58-7-7. Restrictions.

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

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

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

D. No lender, other than a federally insured depository institution, shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 that has a permitted annual percentage rate greater than thirty-six percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", this subsection and Subsections E and F of this section; provided that the calculation of the permitted annual percentage rate shall:

(1) include finance charges as defined in 12 CFR Part 1026, known as "Regulation Z", charges for any ancillary product or service sold or any fee charged in connection or concurrent with the extension of credit, any credit insurance premium or fee and any charge for single premium credit insurance or any other fee related to insurance;

(2) include any charge as provided in Paragraph (1) of this subsection even if that charge would be excluded from the calculation of finance charges pursuant to Regulation Z;

(3) not include any amount paid to a public official in relation to the extension of credit, including fees to record liens;

(4) not include a fee on a loan of five hundred dollars ($500) or less; provided further that the fee shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than one time per twelve-month period; and

(5) follow the rules established for calculating the disclosed annual percentage rate for credit transactions pursuant to Regulation Z based on the charges set forth in Paragraphs (1) and (4) of this subsection.

E. Nothing in Subsection D of this section shall permit the imposition of fees, interest or charges of any kind not otherwise permitted by the New Mexico Bank Installment Loan Act of 1959.

F. If the prime rate of interest exceeds ten percent for three consecutive months, then during the month following the third consecutive month in which prime exceeded ten percent, the maximum allowable permitted annual percentage rate set forth in this section shall increase to thirty-six percent plus each percentage point or fraction of a percentage point by which the prime rate of interest exceeded ten percent in the most recent month. When the prime rate of interest falls below ten percent for three

consecutive months, the maximum allowable permitted annual percentage rate shall return to thirty-six percent.

G. The director of the financial institutions division of the regulation and licensing department shall post a notice on the division's website within ten days after the provisions of Subsection F of this section become applicable. The notice shall state the date on which any increase or decrease in the maximum allowable permitted annual percentage rate is effective.

H. The maximum allowable permitted annual percentage rate for a loan to a consumer shall be determined as of the date that the loan is made.

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

J. Except as provided by Section 58-7-3.2 NMSA 1978, any rollover, renewal, refinance or modification of an existing loan agreement with a lender, except a modification without any additional cost to the consumer, shall constitute a new loan and shall require new disclosures pursuant to the federal Truth in Lending Act.

**History:** 1953 Comp., § 48-21-8, enacted by Laws 1959, ch. 327, § 8; 1961, ch. 215, § 2; 1967, ch. 106, § 2; 2017, ch. 110, § 6; 2019, ch. 201, § 3; 2022, ch. 23, § 3.

## ANNOTATIONS

**Cross references.** — For the federal Truth in Lending Act, *see* 15 U.S.C. § 1601 et seq.

**The 2022 amendment,** effective January 1, 2023, reduced the annual percentage rate for loans made under the Bank Installment Loan Act of 1959 from one hundred seventy-five percent to thirty-six percent, calculated pursuant to the federal regulation known as Regulation Z and as otherwise provided in this section, prohibited a fee on loans of five hundred dollars or less and limited fee amounts to five percent of the total principal of the loan, allowed for the interest rate on loans to exceed thirty-six percent when the prime loan rate exceeds ten percent for three consecutive months and to revert to thirty-six percent if the prime rate falls below ten percent for three consecutive months, and required the director of the financial institutions division of the regulation and licensing department to publish when lenders may contractually increase or must decrease interest rates based on the history of the prime lending rate; in Subsection D, in the introductory clause, after "New Mexico Bank Installment Loan Act of 1959 that has", deleted "an" and added "a permitted", and after "annual percentage rate greater than", deleted "one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026,

known as 'Regulation Z'" and added "thirty-six percent, calculated pursuant to 12 CFR Part 1026, known as 'Regulation Z', this subsection and Subsections E and F of this section; provided that the calculation of the permitted annual percentage rate shall", and added Paragraphs D(1) through D(5); and added new Subsections E through H and redesignated former Subsections E and F as Subsections I and J, respectively.

**The 2019 amendment,** effective January 1, 2020, added Subsection F.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, provided additional restrictions on installment loans, made federally insured depository institutions exempt from the new provisions, made tax refund anticipation loans exempt from the provisions of new Subsections B and C, and defined "tax refund anticipation loans"; added new subsection designation "A."; in Subsection A, after "made under the", added "New Mexico"; and added Subsections B through E.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 684.

9 C.J.S. Banks and Banking § 243.

## 58-7-8. Penalties and forfeitures.

A. Any person willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100) or more than five thousand dollars ($5,000) or imprisoned for not more than six months or both, in the discretion of the court. A contract or loan in the making or collection of which an act is done that violates Section 58-7-6 or 58-7-7 NMSA 1978 is void and the lender has no right to collect, receive or retain any interest or charges whatsoever. A lender may not collect the principal of a loan if the lender has violated Subsection A of Section 58-15-3 NMSA 1978, or knowingly violated the provisions of Section 58-7-6 or 58-7-7 NMSA 1978.

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

C. A violation of a provision of the New Mexico Bank Installment Loan Act of 1959 that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act.

**History:** 1953 Comp., § 48-21-9, enacted by Laws 1959, ch. 327, § 9; 2017, ch. 110, § 7; 2019, ch. 201, § 4.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, provided penalties for violations of certain provisions of the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955, and provided that certain violations of the New Mexico Bank Installment Loan Act of 1959 are also actionable pursuant to the Unfair Practices Act; in Subsection A, added "A contract or loan in the making or collection of which an act is done that violates Section 58-7-6 or 58-7-7 NMSA 1978 is void and the lender has no right to collect, receive or retain any interest or charges whatsoever. A lender may not collect the principal of a loan if the lender has violated Subsection A of Section 58-15-3 NMSA 1978, or knowingly violated the provisions of Section 58-7-6 or 58-7-7 NMSA 1978."; and in Subsection C, after "1959", deleted "which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made" and added "that", and after "trade practice", added "or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, provided that certain violations of the provisions of the New Mexico Bank Installment Loan Act of 1959 constitute unfair or deceptive trade practices pursuant to the Unfair Practices Act; and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 31.

## 58-7-9. Construction; definitions.

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

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

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

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

(1) "consumer" means a person who resides in New Mexico or who enters into a loan agreement in New Mexico;

(2) "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers:

(a) public record information; or

(b) credit account information from persons who furnish that information regularly and in the ordinary course of business;

(3) "debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from the consumer's account for the specific purpose of repaying a loan;

(4) "make a loan" means to originate a new loan agreement or to make any change to the terms of an existing loan agreement, including the principal amount financed, the annual percentage rate, finance charge, fees or payment schedule;

(5) "month" means one-twelfth of a year;

(6) "person" includes an individual, copartner, association, trust, corporation and any other legal entity;

(7) "prime rate of interest" means the bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the preceding month; and

(8) "year" means three hundred sixty-five days.

E. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial

institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.

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

**History:** 1953 Comp., § 48-21-10, enacted by Laws 1959, ch. 327, § 10; 1975, ch. 252, § 5; 1977, ch. 245, § 118; 1983, ch. 96, § 4; 1995, ch. 190, § 16; 2003, ch. 436, § 15; 2017, ch. 110, § 8; 2019, ch. 201, § 5; 2022, ch. 23, § 4.

## ANNOTATIONS

**Cross references.** — For procedures governing statutory appeals from administrative decisions or orders, *see* Rule 1-074 NMRA.

**Compiler's notes.** — For scope of review of the district court, *see Zamora v. Village of Ruidoso Downs*, 1995-NMSC-072, 120 N.M. 778, 907 P.2d 182.

**The 2022 amendment,** effective January 1, 2023, revised the definition of "consumer", and defined "debit authorization" and "prime rate", as used in the New Mexico Bank Installment Loan Act of 1959; in Subsection D, Paragraph D(1), after "a person who", added "resides in New Mexico or who", and after "loan agreement in New Mexico", deleted "Bank Installment Loan Act of 1959", added a new Paragraph D(3) and redesignated former Paragraphs D(3) through D(5) as Paragraphs D(4) through D(6), respectively, and added a new Paragraph D(7) and redesignated former Paragraph D(6) as Paragraph D(8).

**The 2019 amendment,** effective January 1, 2020, defined "consumer", "make a loan", and "person" as used in the New Mexico Bank Installment Loan Act of 1959; in Subsection D, deleted former Paragraphs D(1) and D(2), added new Paragraph D(1) and redesignated former Paragraph D(3) as Paragraph D(2), and added new Paragraphs D(3) through D(6).

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, removed a provision exempting certain transactions from the provisions of the New Mexico Bank Installment Loan Act of 1959, removed a provision that required certain loans to be clearly identified on the loan

documents as being made under the New Mexico Bank Installment Loan Act of 1959, and defined "consumer reporting agency"; deleted former Subsection B and redesignated former Subsections C through G as Subsections B through F, respectively; in Subsection D, added Paragraph D(3); and deleted former Subsection H.

**The 2003 amendment,** effective June 20, 2003, inserted Subsection D and redesignated the remaining subsections accordingly; and deleted former Paragraph E(3), concerning the definition of a "day".

**The 1995 amendment,** effective June 16, 1995, deleted former Paragraphs (4), (5) and (6) of Subsection D defining "credit card plan", "cardholder", and "card issuer", substituted "regulation and licensing department" for "commerce and industry department" in Subsections E and F, substituted "director" for "commissioner" in Subsection E, and made minor stylistic changes throughout the section.

**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 §§ 8, 9.

## 58-7-10. Reporting of credit required.

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

**History:** Laws 2017, ch. 110, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 110, § 27 made Laws 2017, ch. 110, § 9 effective January 1, 2018.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## 58-7-11. Preemption.

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

**History:** Laws 2017, ch. 110, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 110, § 27 made Laws 2017, ch. 110, § 10 effective January 1, 2018.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

# 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.

**ANNOTATIONS**

**Cross references.** — For the National Housing Act, *see* 12 U.S.C. § 1701.

**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 §§ 461, 462.

## 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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

# ARTICLE 9
# Trust Companies

## 58-9-1. Short title.

Chapter 58, Article 9 NMSA 1978 may be cited as the "Trust Company Act".

**History:** 1953 Comp., § 48-24-1, enacted by Laws 1973, ch. 191, § 1; 2013, ch. 88, § 1; 2013, ch. 97, § 1.

**ANNOTATIONS**

**Cross references.** — For the Banking Act, *see* 58-1-1 NMSA 1978.

For fiduciaries, see Chapter 46 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, added the NMSA chapter and article for the Trust Company Act; and at the beginning of the sentence, deleted "Sections 1 through 13 of this act" and added "Chapter 58, Article 9 NMSA 1978".

Laws 2013, ch. 88, § 1, and Laws 2013, ch. 97, § 1, both effective June 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 97, § 1. *See* 12-1-8 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, Sections 58-9-1 to 58-9-13 NMSA 1978. 1987 Op. Att'y Gen. No. 87-06.

**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. 87-06.

**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. "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 pursuant to the Trust Company Act to engage in trust business;

E. "fiduciary" means executor, administrator, conservator or trustee;

F. "nonprofit corporation" means a nonprofit corporation as defined in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] that was formed and is operating a pooled trust in compliance with the requirements of 42 U.S.C. 1396p(d)(4) to provide trust services for individuals who are disabled, and the nonprofit corporation is not otherwise engaged in the trust business. As used in this subsection, "disabled" has the meaning set forth in 42 U.S.C. 1382c(a)(3); and

G. "division" means the financial institutions division of the regulation and licensing department.

**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; 2018, ch. 64, § 1.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, revised certain definitions and defined "division" as used in the Trust Company Act; in Subsection A, deleted "'commissioner' or" preceding "'director'"; in Subsection D, after "authority issued", deleted "under the provisions of" and added "pursuant to"; in Subsection F, after "Nonprofit Corporation Act that", deleted "is funded by or contracts with a federal, state, county or other governmental entity" and added "was formed and is operating a pooled trust in

compliance with the requirements of 42 U.S.C. 1396p(d)(4)", and after "provide trust services", added the remainder of the subsection; and added Subsection G.

**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.

**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 [Chapter 58, Article 9 NMSA 1978], 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.

## 58-9-4. Certificate required; compliance with state and federal law; separation of trust fund and investments.

A. No person, legal entity or corporation shall engage in the trust business without first obtaining a certificate from the director; 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 pursuant to Section 58-10-35 NMSA 1978 may engage in trust business to the extent permitted in that section without obtaining a certificate under the Trust Company Act.

B. A trust company shall conduct such business in compliance with all state and federal laws, and all rules promulgated pursuant to those laws, including the Trust Company Act, the Uniform Probate Code [Chapter 45 NMSA 1978], the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] and the Uniform Trust Code [Chapter 46A NMSA 1978].

C. A trust company shall keep all trust funds and investments separate and apart from the assets of the trust company, and all investments made by the trust company as a fiduciary shall be designated so that the trust or estate to which such investment belongs is clearly identified.

**History:** 1953 Comp., § 48-24-4, enacted by Laws 1973, ch. 191, § 4; 1975, ch. 236, § 2; 1979, ch. 190, § 3; 2018, ch. 64, § 2.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided additional requirements for companies engaged in trust business; in the catchline, added "compliance with state and federal law; separation of trust fund and investments"; added subsection designation "(A)"; in Subsection A, after "obtaining a certificate from the", deleted "commissioner" and added "director", after "custodian" deleted "under the provisions of" and added "pursuant to"; and added Subsections B and C.

**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 § 15 et seq.

## 58-9-5. Application for certificate; fee.

A. An application for a certificate shall be in writing, in such form as the director prescribes, verified under oath and supported by such information, data and records as the director may require.

B. Each application for a certificate shall be accompanied by an application fee of one thousand dollars ($1,000), made payable to the division. No portion of the application fee shall be refunded.

C. An application for a certificate shall be accompanied by an oath sworn by each proposed member of the board of directors of the trust company stating that the board member will diligently and honestly administer the affairs of the trust company and will not knowingly violate or knowingly permit to be violated any state or federal laws or any rules promulgated pursuant to those laws, including the Trust Company Act, the Uniform Probate Code [Chapter 45 NMSA 1978], the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] or the Uniform Trust Code [Chapter 46A NMSA 1978]. The oath shall be in such form as the director prescribes and shall be certified by a notary public.

D. On and after July 1, 2018, any board member newly elected or appointed to the board of directors of a trust company certified under the Trust Company Act shall, immediately upon election to the board, swear and cause to be transferred to the director the oath of a trust company board member as set forth in Subsection C of this section.

**History:** 1953 Comp., § 48-24-5, enacted by Laws 1973, ch. 191, § 5; 2013, ch. 88, § 2; 2013, ch. 97, § 2; 2018, ch. 64, § 3.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided additional requirements, including an oath by each member of the board of directors, to be included in an application for a certificate to engage in trust business; in Subsection B, after "made payable to the", deleted "financial institutions", and after "division", deleted "of the regulation and licensing department"; and added Subsections C and D.

**The 2013 amendment,** effective June 14, 2013, increased the application fee; in Subsection A, after ‘in such form as the", deleted "commissioner" and added "director" and after "records as the", deleted "commissioner" and added "director"; and in Subsection B, in the first sentence, after "application fee of", deleted "five hundred dollars ($500)" and added "one thousand dollars ($1,000)", and after "payable to the", deleted "financial institutions division of the regulation and licensing department".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 15 et seq.

## 58-9-6. Minimum capital.

A. A certificate shall not be issued to an applicant for certification pursuant to the Trust Company Act having capital of less than five hundred thousand dollars ($500,000).

B. 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; 2013, ch. 88, § 3; 2013, ch. 97, § 3; 2018, ch. 64, § 4.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, revised the minimum capital requirement, removed language related to a past deadline, and made stylistic changes; added subsection designations "A." and "B."; in Subsection A, after "an applicant", added "for certification pursuant to the Trust Company Act", after "having", deleted "a paid up", and after "($500,000)", deleted "All trust companies that have been issued certificates pursuant to the Trust Company Act as of December 31, 2012 shall meet the increased paid-up capital requirement of five hundred thousand dollars ($500,000) on or before December 31, 2017."

**The 2013 amendment,** effective June 14, 2013, increased the minimum required paid-up capital; in the first sentence, after "capital of not less than", deleted "one hundred fifty thousand dollars ($150,000)" and added "five hundred thousand dollars ($500,000)"; and added the second sentence.

**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 § 629.

## 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. Fidelity bond; insurance required; evidence of financial responsibility required.

A. No corporation shall obtain a certificate without securing and filing with the director a fidelity bond in the following amounts:

| Trust Assets Managed by a Fiduciary | Fidelity Bond Amounts |
|---|---|

| | |
|---|---|
| $3,000,000 or less | $500,000 |
| More than $3,000,000 but not more than $15,000,000 | $750,000 |
| More than $15,000,000 but not more than $25,000,000 | $1,000,000 |
| More than $25,000,000 but not more than $50,000,000 | $1,500,000 |
| More than $50,000,000 but not more than $75,000,000 | $2,000,000 |
| More than $75,000,000 but not more than $100,000,000 | $2,750,000 |
| More than $100,000,000 but not more than $500,000,000 | $3,500,000 |
| More than $500,000,000 but not more than $1,000,000,000 | $5,000,000 |
| More than $1,000,000,000 but not more than $2,000,000,000 | $6,000,000 |
| More than $2,000,000,000 | $6,000,000 plus $1,000,000 for every $1,000,000,000 000 over $2,000,000,000,000. |

B. A trust company shall file a signed copy of its fidelity bond with the director, and the fidelity bond shall remain a part of the division's records.

C. Every fidelity bond filed with the director by a trust company pursuant to Subsection A of this section shall contain a provision prohibiting the bond company from canceling such fidelity bond for failure to pay the premium unless the bond company files a written notice with the director at least ten days before canceling the fidelity bond. Every fidelity bond filed with the director by a trust company pursuant to Subsection A of this section shall contain a provision prohibiting the bond company from canceling such fidelity bond for any other reason unless the bond company files a written notice with the director at least thirty days before canceling the fidelity bond.

D. Except as provided in Subsection E of this section, a fidelity bond secured and filed pursuant to this section shall contain a deductible clause not to exceed fifteen percent of the face amount of the fidelity bond.

E. A trust company may submit a written request to the director for approval of a fidelity bond with a deductible clause in excess of fifteen percent of the face amount of the bond. Such written request must be submitted not less than ninety days prior to the expiration of any fidelity bond for the trust company previously filed with the director. If the director has not issued written approval for the trust company to secure and file a fidelity bond with a deductible clause in excess of fifteen percent within thirty days of the

expiration of the trust company's prior fidelity bond, the request of the trust company shall be deemed denied.

F. On or before March 1 of each year beginning with the year 2019, every trust company shall increase or adjust its fidelity bond to an amount equal to the amount required pursuant to Subsection A of this section.

G. The fidelity bond required by this section shall be for the benefit of:

(1) any person damaged by an act or acts of a trust company or its directors, officers or employees as a result of a violation of the provisions of, or any rule promulgated pursuant to, the Trust Company Act, the Uniform Probate Code [Chapter 45 NMSA 1978], the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] or the Uniform Trust Code [Chapter 46A NMSA 1978];

(2) any person damaged by the negligence, fraud or embezzlement of a trust company or its directors, officers or employees; or

(3) any person damaged by any other breach of trust of any trust company.

H. The amount of a fidelity bond required by this section may be reduced by the director for nonprofit corporations that have otherwise established financial responsibility to the director's satisfaction.

I. A reduction in the amount of a required fidelity bond approved by the director pursuant to Subsection H of this section shall be reviewed by the director on an annual basis, at which time the reduction may be terminated upon ninety days' written notice by the director to the nonprofit corporation.

J. The director shall revoke the certificate of any trust company that fails to maintain a bond or to otherwise supply evidence of financial responsibility as required by this section.

K. The board of directors of a trust company shall acquire suitable insurance to protect the trust company against burglary, robbery, forgery, theft, fraud, embezzlement and other similar insurable losses to which the trust company may be exposed in the operation of the trust company.

L. The board of directors of a trust company shall procure errors and omissions insurance of at least five hundred thousand dollars ($500,000).

M. At least once each year, the board of directors of a trust company shall review the insurance coverage as set forth in Subsections K and L of this section to determine the adequacy of coverage in relation to the exposure of the trust company. The minimum amount of insurance required pursuant to this section does not automatically represent adequate insurance coverage in relation to the exposure. The actions of the

board of directors shall be recorded in the minutes of the board. Immediately after procuring the insurance as required by Subsections K and L of this section, the board of directors shall file copies of the insurance policies with the director.

N. The director may revoke the certificate of any trust company that fails to maintain insurance as required by Subsections K and L of this section.

O. A trust company may be determined by the director to have demonstrated a lack of financial responsibility when any of the following nonexclusive conditions exist:

(1) the actual cash market value of the trust company's assets is less than its liabilities; or

(2) the trust company fails to pay, in the manner commonly accepted by business practices, its obligations when due.

P. A trust company may be determined by the director to be in an unsafe and unsound condition when any one of the following nonexclusive conditions exist:

(1) the trust company fails to safely manage its operations;

(2) the trust company fails to provide services to its trust customers pursuant to the trust company's fiduciary duty; or

(3) the trust company fails to manage and monitor its operational and financial risks.

**History:** 1953 Comp., § 48-24-7, enacted by Laws 1973, ch. 191, § 7; 2018, ch. 64, § 5.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided additional requirements for fidelity bonds, provided a new fidelity bond amount schedule, and required trust companies to be adequately insured; in the catchline, added "Fidelity bond; insurance required"; in Subsection A, after "filing with the", deleted "commissioner" and added "director", after the next occurrence of "a", deleted "surety" and added "fidelity", after "bond", deleted "or otherwise establishing to the commissioner’s satisfaction such corporation’s financial responsibility" and added the remainder of the subsection; deleted former Subsections B and C, added new Subsections B through E and redesignated former Subsection D as Subsection F; in Subsection F, after "On or before", deleted "the first day of", after "March", added "1", after "beginning with the year", deleted "1974" and added "2019", after "shall increase", added "or adjust", after "its", deleted "surety" and added "fidelity", after "bond", deleted "if financial responsibility is not otherwise established to the commissioner’s satisfaction", after "an amount equal to", deleted "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" and added the amount required pursuant to Subsection A of this section"; deleted former Subsection E and redesignated former Subsection F as Subsection G; in Subsection G, in the introductory clause, after "The", deleted "surety" and added "fidelity", after "bond", deleted "or evidence of financial responsibility", in Paragraph G(1), after "any person damaged", added "by an act or acts of a trust company or its directors, officers or employees", after "or any", deleted "regulation or", and after "Trust Company Act", added "the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code", in Paragraph G(2), deleted "certified" preceding "trust", and at the end of the paragraph, deleted "and" and added "or", and in Paragraph G(3), deleted "certified" preceding "trust"; added Subsections H and I and redesignated former Subsection G as Subsection J; in Subsection J, after "The", deleted "commissioner" and added "director"; and added Subsections K through P.

## 58-9-8. Procedure for granting or denying certificate.

A. Upon the filing of an application for a certificate, the director shall make or cause to be made a careful investigation and examination and shall issue a certificate if the director finds:

(1) that the persons who will serve as directors or officers, 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 is consistent with their responsibilities and duties as fiduciaries; for nonprofit corporations, any 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 may consider and inquire into such other facts and circumstances bearing on the proposed trust company and its relation to its locality as in the director's opinion may be relevant.

C. The certificate may be granted or denied without hearing, but the director 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; 2018, ch. 64, § 6.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, required that any employee responsible for trust management for a nonprofit corporation be qualified to be a fiduciary, and made technical changes; in Subsection A, in the introductory clause, after "director", deleted "of the financial institutions division", in Paragraph A(1), after each occurrence of "directors or officers", deleted "other than directors and officers of nonprofit corporations", after "duties as fiduciaries", deleted "except that", and after "for nonprofit corporations", deleted "the" and added "any"; in Subsection B, after "The director", deleted "of the financial institutions division"; and in Subsection C, after "but the director", deleted "of the financial institutions division".

**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 § 15 et seq.

## 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 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. 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 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.

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; 1997, ch. 160, § 1.

**ANNOTATIONS**

**The 1997 amendment,** effective June 20, 1997, deleted "of the financial institutions division" in Subsections B and C, deleted Paragraph D(2) which read "located in the same county in which the principal office is located", and made related stylistic changes.

**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 may:

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 the director deems 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 rule the Trust Company Act; in making orders and rules 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. obtain restraining orders and injunctions to prevent violation of and enforce compliance with the Trust Company Act, and orders and rules promulgated pursuant to the Trust Company Act, the Uniform Probate Code [Chapter 45 NMSA 1978], the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] and the Uniform Trust Code [Chapter 46A NMSA 1978];

E. order any person or trust company to cease violating the Trust Company Act, orders and rules promulgated pursuant to the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code, or to cease engaging in breaches of trust. A copy of such orders shall be mailed to each director of the trust company involved;

F. suspend, after notice and hearing, any officer or director, or any employee of a nonprofit corporation, for fraud, embezzlement or failure to comply with the Trust Company Act or orders or rules promulgated pursuant to the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code; and

G. 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; 2018, ch. 64, § 7.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided the director of the financial institutions division the authority to act when examination of a trust company reveals violations of the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code; in the introductory clause, after "the director", deleted "of the financial institutions division has power to" and added "may"; in

Subsection C, after "implement by order and", deleted "regulation" and added "rule", after the next occurrence of "the", deleted "provisions of the", after "Trust Company", deleted "and" and added the remainder of the subsection; added a new subsection designation "D." and redesignated former Subsections D through F as Subsections E through G, respectively; in Subsection D, after "enforce compliance with the", added "Trust Company Act, and", after "orders and", deleted "regulations issued" and added "rules promulgated", after "pursuant to the", deleted "provisions of the", and after "Trust Company Act", deleted "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" and added "the Uniform Probate Code, the Uniform Prudent Investor Act and the Uniform Trust Code"; in Subsection E, after "cease violating", added "the Trust Company Act", after "orders and", deleted "regulations issued" and added "rules promulgated", after "pursuant to the", deleted "provisions of the", after "Trust Company Act,", added "the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code"; and in Subsection F, after "failure to comply with", added "the Trust Company Act or", after "orders or", deleted "regulations issued" and added "rules promulgated", after "the Trust Company Act", deleted "or any provision of that act" and added "the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code".

**The 1991 amendment,** effective June 14, 1991, substituted "director" for "commissioner" in the section heading 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.

## 58-9-10. Impairment of capital; unsafe conditions; receivership.

A. If it appears to the director that the capital of a trust company is either reduced or impaired below the minimum capital requirements set forth in Section 58-9-6 NMSA 1978, except for nonprofit corporations, the director shall order the company to make good any deficit 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.

B. If the deficiency in capital has not been made good 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 have a receiver appointed for the liquidation or rehabilitation of the company. The expense of the receivership shall be paid out of the assets of the trust company.

C. The director may investigate, upon complaint or otherwise, if it appears that a trust company is conducting business in an unsafe, unsound, financially irresponsible or injurious manner or in violation of the Trust Company Act, or the rules promulgated pursuant to that act, the Uniform Probate Code [Chapter 45 NMSA 1978], the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] or the Uniform Trust Code

[Chapter 46A NMSA 1978], or when it appears that any person is engaging in trust business without being certified pursuant to the Trust Company Act.

D. If it appears upon sufficient ground or evidence satisfactory to the director that a trust company has engaged in or is about to engage in any act or practice in violation of the Trust Company Act, or any rule or order pursuant to that act, or the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code, to the extent that the security of the assets and trust accounts or the protection of persons utilizing the trust services have been or may be jeopardized, the director may summarily order the trust 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 trust company in engaging in the act or practice and to enforce compliance with the Trust Company Act, the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code, or for any other appropriate equitable relief. Upon a proper showing, if a temporary restraining order, a preliminary injunction or a permanent injunction is granted, a receiver may be appointed for the defendant or defendant's assets, and the certification of the trust company may be canceled and such additional or other equitable remedies may be provided as the court deems appropriate. The director shall not be required to post a bond.

E. If an investigation pursuant to Subsection C of this section reveals that a trust company is conducting business in an unsafe, unsound or injurious manner, or in violation of the Trust Company Act or rules promulgated pursuant to that act, the Uniform Probate Code, the Uniform Prudent Investor Act or the Uniform Trust Code, or that any person is engaging in trust business without being certified pursuant to the Trust Company Act, the trust 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:** 1953 Comp., § 48-24-10, enacted by Laws 1973, ch. 191, § 10; 1991, ch. 250, § 6; 2013, ch. 88, § 4; 2013, ch. 97, § 4; 2018, ch. 64, § 9.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, provided additional power and authority to the director of the financial institutions division to protect the security of assets and trust accounts and to protect persons utilizing trust services, clarified existing powers of the director, and provided for investigation fees to be assessed against any trust company that is found to be conducting business in violation of relevant rules or New Mexico law; added new subsection designations "A." and "B."; in Subsection A, after "reduced or impaired below", deleted "five hundred thousand dollars ($500,000)" and added "the minimum capital requirements set forth in Section 58-9-6 NMSA 1978", after "nonprofit corporations", deleted "or the affairs of the company are in an unsound condition", and after "make good any deficit", deleted "or to remedy the unsafe conditions of its affairs"; in Subsection B, after "has not been made good", deleted "and the unsafe condition remedied"; and added Subsections C through E.

**The 2013 amendment,** effective July 1, 2017, increased the minimum required paid-up capital; and in the first sentence, after "impaired below", deleted "one hundred fifty thousand dollars ($150,000)" and added "five hundred thousand dollars ($500,000)".

**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 § 629.

## 58-9-11. Discontinuing business; reorganization; continuing jurisdiction.

A. 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 continue to be subject to the Trust Company Act for so long as it acts as a fiduciary with respect to any trust business previously undertaken.

B. A trust company seeking to relinquish its certificate by liquidation shall file an application for dissolution with the director. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a liquidation. The plan of dissolution shall provide for the discharge or assumption of all the trust company's known and unknown claims and liabilities and for the transfer of all its responsibilities as a trustee to a successor trustee or trustees. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents or information as the director may require demonstrating how assets and liabilities will be disposed of, the timetable for effecting disposition of the assets and liabilities and the trust company's proposal for addressing any claims that are asserted after the dissolution has been completed. The director shall examine the application for completeness and compliance with the requirements of this section, the business entity laws applicable to the required type of dissolution and applicable rules. The director may conduct a special examination of the trust company for purposes of evaluating the application.

C. A trust company seeking to reorganize, including any change in ownership of the corporation of ten percent or greater, shall file an application for reorganization with the director. The application shall include a comprehensive plan for reorganization setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a reorganization. The plan of reorganization shall provide for the assumption of all the

trust company's known and unknown claims and liabilities and for the transfer of all its responsibilities as a trustee to a successor trustee or trustees. Additionally, the application for reorganization shall include other evidence, certifications, affidavits, documents or information as the director may require demonstrating how assets and liabilities will be treated and the trust company's proposal for addressing any claims that are asserted after the reorganization has been completed. The director shall examine the application for completeness and compliance with the requirements of this section, the business entity laws applicable to the required type of reorganization and applicable rules. The director may conduct a special examination of the trust company for purposes of evaluating the application.

**History:** 1953 Comp., § 48-24-11, enacted by Laws 1973, ch. 191, § 11; 2018, ch. 64, § 10.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, required any certified trust company seeking to cease doing business or to seeking to reorganize the trust company to submit filings with the financial institutions division detailing all aspects of the proposed shutdown or reorganization, provided that a trust company seeking to cease business operations or to reorganize shall be subject to a full examination by the financial institutions division, and made stylistic changes; in the catchline, added "reorganization"; and added new subsection designation "A.", and added Subsections B and C.

## 58-9-12. Penalty for noncompliance.

A. It is unlawful for any corporation to carry on or conduct a trust company business or to advertise or hold itself out 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 are 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.

B. Any person refusing or obstructing access to the director to any books, records or papers, refusing to furnish required information or hindering a full examination of the books, accounts, papers or finances of a trust company is 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.

**History:** 1953 Comp., § 48-24-12, enacted by Laws 1973, ch. 191, § 12; 2018, ch. 64, § 11.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided penalties for hindering or obstructing an examination of any trust company records or papers or for refusing to furnish required information of a trust company; added subsection designation "A."; in Subsection A, after "It", deleted "shall be" and added "is", after "violating this section", deleted "shall be" and added "are", and after "exceeding one year or both", deleted "such fine and imprisonment"; and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 31.

## 58-9-13. Repealed.

**History:** 1953 Comp., § 48-24-13, enacted by Laws 1973, ch. 191, § 13; repealed by Laws 2018, ch. 64, § 12.

**ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 64, § 12 repealed 58-9-13 NMSA 1978, as enacted by Laws 1973, ch. 191, § 13, relating to effect on existing corporations, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOnesource.com*.

## 58-9-14. Appeals.

A. A person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The commencement of proceedings pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order.

**History:** Laws 2018, ch. 64, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 64, § 13 made Laws 2018, ch. 64, § 8 effective July 1, 2018.

# ARTICLE 10
# Savings and Loan Associations

## 58-10-1. Short title.

This act [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] may be cited as the "Savings and Loan Act".

**History:** 1953 Comp., § 48-15-45, enacted by Laws 1967, ch. 61, § 1.

**ANNOTATIONS**

**Compiler's notes.** — 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.

**Cross references.** — For the Corporate Income Tax Act, *see* 7-2A-1 NMSA 1978.

For disposition of unclaimed property, *see* Chapter 7, Article 8A NMSA 1978.

For 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.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Promissory estoppel of lending institution based on promise to lend money, 18 A.L.R.5th 307.

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 that 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, assuming or obligated upon a loan in which an association has an interest or owning property that secures a loan in which an association has an interest;

F. "savings account" means that part of the savings liability of an association that 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. "state corporation commission" means the secretary of state;

K. "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 regulation and licensing department or the director of the financial institutions division if the position is vacant;

L. "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;

M. "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

N. "net worth" means the sum of all reserve accounts, undivided profits, surplus, capital stock and any other notwithdrawable accounts.

**History:** 1953 Comp., § 48-15-46, enacted by Laws 1967, ch. 61, § 2; 1977, ch. 245, § 36; 2013, ch. 75, § 17.

## ANNOTATIONS

**Cross references.** — For the financial institutions division, *see* 9-16-4 NMSA 1978.

For the federal Home Owners Loan Act of 1933, *see* 12 U.S.C. § 1461 et seq.

**The 2013 amendment,** effective July 1, 2013, defined "state corporation commission" to mean the secretary of state; added Subsection J; and in Subsection K, after "division of the", deleted "commerce and industry" and added "regulation and licensing".

**Special reserves included in net worth.** — The special reserves provided for in Section 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 (overruled by 1982 Op. Att'y Gen. No. 82-19).

**Special reserves.** — Net worth of a savings and loan association as defined by Section 58-10-2 NMSA 1978 does not include special reserves established pursuant to Section 58-10-28 NMSA 1978, 1982 Op. Att'y Gen. No.82-19.

**Net worth does not include 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.

**ANNOTATIONS**

**Compiler's notes.** — For 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 § 7.

9 C.J.S. Banks and Banking §§ 631, 633; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**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 § 240.

## 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.

**ANNOTATIONS**

**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 § 54; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective 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 § 629; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 456.

9 C.J.S. Banks and Banking § 603.

## 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 Account |
|---|---|
| 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 456.

9 C.J.S. Banks and Banking § 23.

## 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.

## ANNOTATIONS

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective 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 § 629.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

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

9 C.J.S. Banks and Banking § 236; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking § 33.

## 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 [public regulation commission] and retain a copy as a permanent file of his office. Upon acceptance and approval by the state corporation commission [public regulation 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Charter authorizes operation only of described institution.** — When 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.

**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 § 33.

## 58-10-13. Refusal of charter application; appeal.

A. Whenever the supervisor is unable to make the findings required by Section 58-10-12 NMSA 1978, 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 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 48-15-57, enacted by Laws 1967, ch. 61, § 13; 1998, ch. 55, § 53; 1999, ch. 265, § 56.

**ANNOTATIONS**

**Cross references.** — For service of summons, *see* Rule 1-004 NMRA.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

**The 1998 amendment,** effective September 1, 1998, in Subsection A, substituted "58-10-12 NMSA 1978" for "12 of the Savings and Loan Act"; rewrote Subsection B; and deleted Subsection C.

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

9 C.J.S. Banks and Banking § 33.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 826, 829, 830.

9 C.J.S. Banks and Banking § 166 et seq.

## 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 [public regulation commission].

**History:** 1953 Comp., § 48-15-59, enacted by Laws 1967, ch. 61, § 15.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Cross references.** — For 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 § 26.

9 C.J.S. Banks and Banking § 627; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Subsection B 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*, 1973-NMSC-100, 85 N.M. 621, 515 P.2d 140.

**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 § 42; 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

*See* 58-1-32 NMSA 1978 and notes thereto.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**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*, 1973-NMSC-100, 85 N.M. 621, 515 P.2d 140.

**"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*, 1973-NMSC-100, 85 N.M. 621, 515 P.2d 140.

**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*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

**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.

**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 §§ 45, 46.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 17.

9 C.J.S. Banks and Banking § 605.

## 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.

**ANNOTATIONS**

**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 § 604; 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 20 to 26.

9 C.J.S. Banks and Banking § 98.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 99, 104, 105; 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.

**ANNOTATIONS**

**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 §§ 97, 98; 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 424.

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

9 C.J.S. Banks and Banking § 102; 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, 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 66; 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.

**ANNOTATIONS**

**Cross references.** — For requirement of confidentiality by the supervisor, *see* 58-10-74 NMSA 1978.

For audits and examinations by the supervisor, *see* 58-10-76, 58-10-77 NMSA 1978.

For 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 §§ 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 § 79.

## 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.

**ANNOTATIONS**

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

9 C.J.S. Banks and Banking §§ 8, 9.

## 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.

**ANNOTATIONS**

**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 §§ 288, 290, 292, 301, 302, 303, 305, 306, 313, 336, 341.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Special reserves.** — Net worth of a savings and loan association as defined by Section 58-10-2 NMSA 1978 does not include special reserves established pursuant to Section 58-10-28 NMSA 1978, 1982 Op. Att'y Gen. No.82-19.

**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 Section 58-10-2 NMSA 1978. 1968 Op. Att'y Gen. No. 68-56 (overruled by 1982 Op. Att'y Gen. No. 82-19).

**Reserves are an appropriation or a segregation of surplus.** 1968 Op. Att'y Gen. No. 68-56 (overruled by 1982 Op. Att'y Gen. No. 82-19).

**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 § 402.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 18.

9 C.J.S. Banks and Banking § 737.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 237.

9 C.J.S. Banks and Banking § 27.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 289, 290.

9 C.J.S. Banks and Banking § 604; 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.

**ANNOTATIONS**

**Cross references.** — For the New Mexico general corporation laws, *see* Chapter 53 NMSA 1978.

**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 §§ 230, 231; 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 9 C.J.S. Banks and Banking §§ 665, 749 et seq.; 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.

**ANNOTATIONS**

**Cross references.** — For Section 401(d) and 408(a) of the Internal Revenue Code of 1954, *see* 26 U.S.C. §§ 401(d) and 408(a).

**Cross references.** — For 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 §§ 220 to 231.

9 C.J.S. Banks and Banking § 671; 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.

**ANNOTATIONS**

**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 § 606.

## 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.

**ANNOTATIONS**

**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 § 606; 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 282 to 284.

9 C.J.S. Banks and Banking § 606.

## 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 certificate 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 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.

Award of attorney's fees under § 130 (a) of Truth in Lending Act (15 USCS § 1640 (a)), 140 A.L.R. Fed. 557.

9 C.J.S. Banks and Banking § 606; 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.

**ANNOTATIONS**

**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 §§ 470, 611, 613; 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.

**ANNOTATIONS**

**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 §§ 461, 462.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 420.

9 C.J.S. Banks and Banking § 605.

## 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.

**ANNOTATIONS**

**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 § 466.

## 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.

**ANNOTATIONS**

**Cross references.** — For the legal disability of minors being removed when borrowing money for educational purposes, *see* 58-6-3 NMSA 1978.

For the Motor Vehicle Sales Finance Act, *see* 58-19-1 NMSA 1978.

For 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 §§ 279 to 284.

9 C.J.S. Banks and Banking § 606; 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.

## ANNOTATIONS

**Cross references.** — For definition of "service corporation", *see* 58-10-2I NMSA 1978.

For municipal housing bonds being legal investments, *see* 3-45-24 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**State chartered banks and savings and loan associations are permitted to invest in mutual funds.** 1987 Op. Att'y Gen. No. 87-04.

**Mutual funds may not be pledged as collateral for deposits of public funds.** 1987 Op. Att'y Gen. No. 87-04.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 296.

9 C.J.S. Banks and Banking § 606.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 279 to 284.

9 C.J.S. Banks and Banking § 237; 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.

**ANNOTATIONS**

**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 Section 58-10-47 NMSA 1978, or any other section of the Savings and Loan Act except for Section 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 § 237; 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 102.

9 C.J.S. Banks and Banking § 740 et seq.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 102.

9 C.J.S. Banks and Banking § 740 et seq.

## 58-10-50. Powers and privileges of association.

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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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*, 1987-NMCA-123, 106 N.M. 555, 746 P.2d 661, cert. denied, 106 N.M. 439, 744 P.2d 912.

**State chartered banks and savings and loan associations are permitted to invest in mutual funds.** 1987 Op. Att'y Gen. No. 87-04.

**Mutual funds may not be pledged as collateral for deposits of public funds.** 1987 Op. Att'y Gen. No. 87-04.

**Section controls limitations in Section 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 Section 58-10-17 NMSA 1978 and accords primacy to this section. Thus, notwithstanding the limitations expressed by Section 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.

**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 §§ 669, 670; 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 7.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 61, § 101 made the Savings and Loan Act effective July 1, 1967.

**Cross references.** — For 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 § 230.

9 C.J.S. Banks and Banking §§ 671, 749 et seq.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**Compiler's notes.** — For scope of review of the district court, see Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 4.

9 C.J.S. Banks and Banking § 609.

## 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.

**ANNOTATIONS**

**Cross references.** — For withdrawals from savings accounts, *see* 58-10-63 NMSA 1978.

**Cross references.** — For 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 § 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.

9 C.J.S. Banks and Banking § 605.

## 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.

**ANNOTATIONS**

**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 § 740 et seq.

## 58-10-57. Transfer of savings accounts.

Savings accounts are transferrable [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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 10 Am. Jur. 2d Banks § 531.

9 C.J.S. Banks and Banking § 279.

## 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.

**ANNOTATIONS**

**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 §§ 417, 418, 424, 434, 435, 437, 438.

## 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.

**ANNOTATIONS**

**Cross references.** — For the age of majority and exceptions thereto, *see* 28-6-1 NMSA 1978.

**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.

**ANNOTATIONS**

**Cross references.** — For the Uniform Statutory Power of Attorney Act, *see* 45-5-601 NMSA 1978.

For proof of valid power of attorney, *see* 45-5-502 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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.

## 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.

**ANNOTATIONS**

**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 cancelled. 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.

**ANNOTATIONS**

**Cross references.** — For pledges of savings accounts in joint tenancy, *see* 58-10-61 NMSA 1978.

## 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.

## 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.

## 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.

### ANNOTATIONS

**Cross references.** — For dividends on permanent capital stock, *see* 58-10-69 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For definition of loss reserves, *see* 58-10-2D NMSA 1978.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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 Section 58-10-47 NMSA 1978, or any other section of the Savings and Loan Act except for Section 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 §§ 186, 193, 216.

9 C.J.S. Banks and Banking § 23; 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.

**ANNOTATIONS**

**Cross references.** — For 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.

**Capital stock building and loan association could pay quarterly dividends** on its various classes of shares. 1962 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 § 603; 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.

**ANNOTATIONS**

**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 § 466.

## 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 [regulation and licensing 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1983, ch. 297, § 33 abolished the commerce and industries department. See 9-16-4 NMSA 1978 for the financial institutions division.

**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 § 10 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For appeals from the supervisor's orders or decisions, *see* 58-10-84B and 58-10-92 NMSA 1978.

For service of summons, *see* Rule 1-004 NMRA.

For 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 §§ 17, 21, 26.

9 C.J.S. Banks and Banking §§ 131, 139.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 10 to 19.

9 C.J.S. Banks and Banking §§ 131, 139.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

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

9 C.J.S. Banks and Banking §§ 270, 283.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For records and access to them generally, *see* 58-10-25, 58-10-26 NMSA 1978.

For subpoena for production of documentary evidence, *see* Rule 1-045 NMRA.

For 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 §§ 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 § 15 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For definition of service corporation, *see* 58-10-2I NMSA 1978.

For 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 §§ 216, 266.

9 C.J.S. Banks and Banking § 15 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 §§ 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 §§ 652, 665.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 216.

9 C.J.S. Banks and Banking § 15 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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 § 71.

Construction, application and effect of constitutional provisions or statutes relating to cumulative voting of stock for bank directors, 43 A.L.R.2d 1322.

9 C.J.S. Banks and Banking § 66.

## 58-10-83. Emergency power of supervisor.

Notwithstanding the procedures set forth in Sections 71, 78 and 79 [58-10-72, 58-10-80, 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.

**ANNOTATIONS**

**Compiler's notes.** — Meaning of "this act" means the provisions of the Savings and Loan Act that were enacted by Laws 1967, ch. 61, § 1-101. See also notes to 58-10-1 NMSA 1978.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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*, 1987-NMCA-123, 106 N.M. 555, 746 P.2d 661, cert. denied, 106 N.M. 439, 744 P.2d 912.

**Setting forth basis in writing prior to promulgation.** — Paragraph B of Section 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*, 1987-NMCA-123, 106 N.M. 555, 746 P.2d 661, cert. denied, 106 N.M. 439, 744 P.2d 912.

## 58-10-84. When order is final; appeal.

A. If a hearing has been held in regard to an order made pursuant to Section 58-10-80 or 58-10-81 NMSA 1978 and the supervisor's order is continued either in its original form or a modified form, the order is final when the supervisor enters his decision in the record of the hearing 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 as required in Section 58-10-13 NMSA 1978. Any party aggrieved by the decision of the supervisor after hearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 48-15-125, enacted by Laws 1967, ch. 61, § 81; 1998, ch. 55, § 54; 1999, ch. 265, § 57.

**ANNOTATIONS**

**Cross references.** — For procedure for appeal, *see* 58-10-92 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

**The 1998 amendment,** effective September 1, 1998, in Subsection A, substituted "pursuant to Section 58-10-80 or 58-10-81 NMSA 1978" for "under Sections 78 or 79 of the Savings and Loan Act", inserted "his decision" and deleted "his decision" following "hearing"; in Subsection B, inserted "as", substituted "58-10-13 NMSA 1978" for "13 of the Savings and Loan Act" and substituted "pursuant to the provisions of Section 12-8A-1 NMSA 1978" for "in the county in which the party resides or in which its principal office is located".

## 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.

### ANNOTATIONS

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For meetings and voting generally, *see* 58-10-24 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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.

## 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.

### ANNOTATIONS

**Cross references.** — For dissolution of corporation generally, *see* 53-16-1 to 53-16-24 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**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. 1956 Op. Att'y Gen. No. 56-6482.

## 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.

**ANNOTATIONS**

**Cross references.** — For securities generally, *see* Chapter 58, Article 13B NMSA 1978.

For investment securities, *see* Chapter 55, Article 8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 61, § 101, made the Savings and Loan Act effective on July 1, 1967.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 1967, ch. 61, § 101, made the Savings and Loan Act effective on July 1, 1967.

**Money placed in a savings and loan association is not called a deposit.** 1968 Op. Att'y Gen. No. 68-19.

## 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 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.

**ANNOTATIONS**

**Cross references.** — For when order is final, *see* 58-10-84 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

**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 (Section 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*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

**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 Section 58-10-17A NMSA 1978. *De Vargas Sav. & Loan Ass'n v. Campbell*, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

## 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.

**ANNOTATIONS**

**Cross references.** — For the penalty for a fourth degree felony, *see* 31-18-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For the penalty for a fourth degree felony, *see* 31-18-15 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For the penalty for a fourth degree felony, *see* 31-18-15 NMSA 1978.

For 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 § 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 §§ 270, 283.

## 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 [public regulation 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

**Cross references.** — For the federal Home Owners Loan Act of 1933, *see* 12 U.S.C. § 1461.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

**Effective dates.** — Laws 1967, ch. 61, § 101, made 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 §§ 275, 282.

9 C.J.S. Banks and Banking §§ 495, 669, 670; 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.

**ANNOTATIONS**

**Cross references.** — For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For permanent capital stock, *see* 58-10-4 NMSA 1978.

For conversion of an association into a federal association, *see* 58-10-98 NMSA 1978.

For meaning of "supervisor", *see* 58-10-2J NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For licensing of foreign corporations, *see* N.M. Const., art. XI, § 6.

For 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 Section 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 §§ 28, 29, 30; 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**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.

## 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.

**ANNOTATIONS**

**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 §§ 611, 613, 618.

## 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.

**ANNOTATIONS**

**Cross references.** — For 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.

**ANNOTATIONS**

**Cross references.** — For the appointment of personal representatives, *see* 45-1-101 NMSA.

For the Uniform Statutory Form Power of Attorney Act, *see* 45-5-601 NMSA 1978.

**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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**Cross references.** — For the age of majority and exceptions thereto, *see* 28-6-1 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.

**ANNOTATIONS**

**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.

**ANNOTATIONS**

**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 (1995), 7-8A-30 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler 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.

**ANNOTATIONS**

**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 §§ 107, 113, 115, 121.

# ARTICLE 11
# Credit Unions

## 58-11-1. Short title.

Chapter 58, Article 11 NMSA 1978 may be cited as the "Credit Union Act".

**History:** Laws 1987, ch. 311, § 1; 1997, ch. 195, § 1.

**ANNOTATIONS**

**Cross references.** — For credit union share insurance corporations, *see* Chapter 58 Article 12 NMSA 1978.

For 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.

**The 1997 amendment,** effective July 1, 1997, substituted "Chapter 58, Article 11 NMSA 1978" for "Section 1 through 65 of this act" and substituted "Credit Union Act" for "Credit Union Regulatory Act".

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of Credit Union Regulation Act, 58-11-1 to 58-11-65 NMSA 1978, on July 1, 1997.

**Large credit union is a "public figure" within the law of libel** when the credit union has suspended the payments of dividends and circulates data to its members indicating that it has experienced management and investment problems. *Coronado Credit Union v. KOAT Television, Inc.*, 1982-NMCA-176, 99 N.M. 233, 656 P.2d 896 (decided under prior law).

**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. 1982 Op. Att'y Gen. No. 82-03.

**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.

As used in the Credit Union Act:

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 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 who is responsible for the management of the credit union as provided in the bylaws of the credit union and includes the chief executive officer, the president, a vice president, the credit union manager, an assistant manager or a person who is assigned and performs the management 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" means those persons related by blood or marriage as well as stepchildren, foster children and adopted children or persons who live in the same residence and maintain a single economic unit;

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 that 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. 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. "primary share account" means a share account that a credit union's bylaws designate as conferring voting rights;

P. "risk assets" means all assets of the credit union except those exempted by the director by regulation;

Q. "service facility" means any building, machine or device, whether mechanical, electronic or otherwise, that is operated or maintained, in whole or in part, to provide services to members; and

R. "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 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; 1997, ch. 195, § 2; 2003, ch. 28, § 1.

## ANNOTATIONS

**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.

**Cross references.** — For Section 208(a)(1) of the Federal Credit Union Act referred to in Subsection O(14), *see* 12 U.S.C. § 1788(a)(1).

**The 2003 amendment,** effective June 20, 2003, in Subsection I, inserted "stepchildren," preceding "foster" and inserted "children" following "foster" near the middle and added "or persons who live in the same residence and maintain a single economic unit" at the end; deleted the second sentence in Subsection L which read "Each member may own only one membership share."; added present Subsection O and redesignated the subsequent subsections accordingly; and deleted "and voting rights" following "share account confers membership" near the middle of the second sentence of Subsection R.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in the introductory paragraph and in Subsection C, substituted "who is responsible for the management" for "other than a member of the board of directors who performs duties in the management" in Subsection G, rewrote Subsection O, added Subsection P, redesignated former Subsection P as Subsection Q, and made minor stylistic changes throughout the section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**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).

## 58-11-3. Supervision and regulation.

A. The director shall be responsible for the supervision and regulation of credit unions organized under the Credit Union Act 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, J, L or M of this section.

C. The director may prescribe rules or regulations to implement any provision of the Credit Union 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 a rule or regulation, the director shall give written notice to all credit unions affected by the terms and general contents of a proposed rule or regulation. The director may hold a public hearing to consider whether to adopt a proposed rule or regulation. If within twenty days after the notice is given at least two credit unions request a public hearing, it shall be held to consider whether to adopt the proposed rule or regulation. The director shall conduct any hearing held to consider a proposed rule or regulation.

D. The director may require a credit union to establish or activate the use of membership shares when it is deemed necessary for the safety and soundness of that credit union.

E. 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.

F. 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.

G. 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.

H. Whenever the director makes the determination to remove any board member, executive officer or committee member from office or to prohibit any further participation by the person 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.

I. 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.

J. 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 the order on the party

suspended, it shall remain in force 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.

K. 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.

L. If it appears that any credit union has willfully violated the Credit Union 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 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 the 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.

M. 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; 1997, ch. 195, § 3.

## ANNOTATIONS

**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 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsections A, C, in the introductory paragraph of Subsection L, and in Paragraph L(1); in Subsection C, added the fourth sentence, rewrote the fifth sentence and added the sixth sentence, added Subsection D, redesignated former Subsections D to L as Subsections E to M, and made stylistic changes throughout the section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**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".

**Scope of the conservatorship.** — The scope of the conservatorship is limited by Subsection L(1) (now M(1)) to possession, control, and conservation of credit-union-related assets and interests. *State v. Montoya*, 1993-NMCA-097, 116 N.M. 297, 861 P.2d 978, cert. denied, 116 N.M. 364, 862 P.2d 1223.

**Warrantless search of credit union proper.** — Although the warrantless search was not part of a regular inspection program, federal common law supported the search of a credit union in the context in which it was made, i.e., as part of a seizure of business records when the business was being taken over pursuant to statutory authority. *State v. Montoya*, 1993-NMCA-097, 116 N.M. 297, 861 P.2d 978, cert. denied, 116 N.M. 364, 862 P.2d 1223.

**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. 82-03 (rendered under prior law).

In the case of an application because of a common association, it would appear that the commissioner (now director) 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 (now director) 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. 82-03 (rendered under prior law).

## 58-11-4. Appeal rights and court review.

Any person aggrieved or directly affected by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1987, ch. 311, § 4; 1999, ch. 265, § 58.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 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 enacted a new section.

**Cross references.** — For procedures governing appeals from administrative decisions and orders, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.3d 182 (1995).

**The 1999 amendment,** effective July 1, 1999, rewrote the section, which formerly read: "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".

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-5. Examinations; supervision fees.

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 — | | | |
|---|---|---|---|---|---|
| Over | But Not Over | This Amount | Plus | Per | Of Excess Over |
| -0- | 49,999 | 400.00 | | | |
| 50,000 | 100,000 | 400.00 | 1.7227 | 1,000 | 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 |

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. The director may prescribe lower supervision fees by regulation and in determining those fees, he may use criteria other than the total assets of the credit union paying the fee.

E. If at any time the director deems it necessary to examine a credit union more than once in any calendar year and if the credit union is determined to have violated the Credit Union Act or other state laws or federal laws or regulations, 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; 1997, ch. 195, § 4.

**ANNOTATIONS**

**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 1997 amendment,** effective July 1, 1997, deleted "plus one hundred dollars ($100) for each branch office in operation" following the table of fees in Subsection D, added the last sentence of Subsection D, and inserted "and if the credit union is determined to have violated the Credit Union Act or other state laws or federal laws or regulations" in Subsection E.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1991 amendment,** effective July 1, 1991, in the second sentence of Subsection A, inserted "executive".

**Scope of examination.** — This section limits the scope of the examination to credit-union-related materials and limits the discretion of the inspecting officials to that extent as well. *State v. Montoya*, 1993-NMCA-097, 116 N.M. 297, 861 P.2d 978, cert. denied, 116 N.M. 364, 862 P.2d 1223.

**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.

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 record or any credit union record retrieved in perceptible form from an electronic record maintained pursuant to the provisions of the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] shall be admissible as evidence of transaction with the credit union.

**History:** Laws 1987, ch. 311, § 6; 2003, ch. 28, § 2.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, substituted "record of any credit union record retrieved in perceptible form from an electronic record maintained pursuant to the provisions of the Uniform Electronic Transactions Act" for "records" near the middle of Subsection C.

**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.

A. Credit unions shall report to the director quarterly on or before January 30, April 30, July 30 and October 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; 2003, ch. 28, § 3.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, substituted "quarterly on or before January 30, April 30, July 30 and October 30" for "semiannually on or before July 30 and January 30" near the middle of Subsection A.

## 58-11-8. Records of the division.

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.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**Director has supervisory control over credit unions** and may revoke or suspend charters after hearing for a violation of any of the provisions of Section 58-11-1 NMSA 1978 et seq. 1960 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.

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 Act; 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; 1997, ch. 195, § 5.

**ANNOTATIONS**

**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 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act".

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1991 amendment,** effective July 1, 1991, inserted "executive" and substituted "attorney or employee" for "or attorney".

## 58-11-10. Formation of credit union.

A. Any seven or more residents of this state of legal age that share the common bond referred to in Section 58-11-21 NMSA 1978 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;

(3) the names and addresses of the organizers; and

(4) that each member shall subscribe to one share of the credit union.

C. The organizers shall prepare, adopt and execute in duplicate bylaws consistent with the Credit Union Act 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 Act and the director 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 58-11-48 NMSA 1978 will be met.

F. The following provisions apply to issuance and denial of certificate:

(1) if the director issues a certificate of approval, the director 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 secretary of state; and

(2) if the director denies a certificate of approval, the director shall notify the organizers and set forth reasons for the denial. The organizers may appeal the director's 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 58-11-48 NMSA 1978.

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; 1997, ch. 195, § 6; 2013, ch. 75, § 18.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-10 NMSA 1978, as amended by Laws 1975, ch. 344, § 10, relating to meetings and fiscal year, effective June 19, 1987, and enacted a new section.

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2013 amendment,** effective July 1, 2013, required the director to file the articles of organization with the secretary of state; and in Paragraph (1) of Subsection F, after "articles of organization with the", deleted "state corporation commission" and added "secretary of state".

**The 1997 amendment,** effective July 1, 1997, substituted "Section 58-11-21 NMSA 1978" for "Section 21 of the Credit Union Regulatory Act" in Subsection A, deleted "the number of shares subscribed to by each" at the end of Paragraph B(3), added Paragraph B(4), substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsection C and in the second sentence of Subsection E, substituted "Section 58-11-48 NMSA 1978" for "Section 48 of the Credit Union Regulatory Act" in Paragraph E(3) and Subsection G, substituted "provisions" for "providers" in the introductory paragraph of Subsection F, substituted "organizers" for "incorporators" in the second sentence of Paragraph F(2), and made a minor stylistic change at the end of Paragraph B(2).

**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.

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 Act, 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; 1997, ch. 195, § 7.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-11 NMSA 1978, as amended by Laws 1975, ch. 344, § 11, relating to elections, effective June 19, 1987, and enacted a new section.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in the first sentence.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-12. Amendments.

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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-12 NMSA 1978, as amended by Laws 1975, ch. 344, § 12, relating to directors and officers, effective June 19, 1987, and enacted the present section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-13. Use of name exclusive.

A. The name of every credit union organized under or subject to the Credit Union Act 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 Act, the Federal Credit Union Act or a credit union authorized to do business in this state under Section 58-11-16 NMSA 1978, 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 is 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; 1997, ch. 195, § 8.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-13 NMSA 1978, as amended by Laws 1975, ch. 344, § 13, relating to credit committee, effective June 19, 1987, and enacted the present section.

**Cross references.** — For the Federal Credit Union Act, *see* 12 U.S.C. § 1751.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsections A and B, substituted "Section 58-11-16 NMSA 1978" for "Section 16 of the Credit Union Regulatory Act" in Subsection B, and substituted "is" for "constitutes" in Subsection C.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-14. Service facilities.

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 provide services through service facilities.

C. A credit union may individually or in conjunction with other credit unions or other financial organizations operate or maintain automated terminals or other service facilities.

**History:** Laws 1987, ch. 311, § 14; 1997, ch. 195, § 9.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-14 NMSA 1978, as amended by Laws 1975, ch. 344, § 14, relating to supervisory committee, effective June 19, 1987, and enacted a new section.

**The 1997 amendment,** effective July 1, 1997, substituted "Service" for "Office" in the section heading, rewrote Subsection B, and made stylistic changes throughout Subsection C.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-15. Fiscal year.

The fiscal year of each credit union organized under or subject to the Credit Union Act shall end on the last day of December.

**History:** Laws 1987, ch. 311, § 15; 1997, ch. 195, § 10.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-15 NMSA 1978, as amended by Laws 1973, ch. 65, § 5, relating to capital, effective June 19, 1987, and enacted a new section.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act".

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-16. Out-of-state credit unions; approval to conduct business; director's duties and powers.

A. An out-of-state credit union organized pursuant to 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.

B. Before granting approval for an out-of-state credit union to conduct business in New Mexico, the director shall determine that the out-of-state credit union:

(1) is organized pursuant to laws similar to those provided in the Credit Union Act;

(2) is financially solvent;

(3) is examined and supervised by a regulatory agency of the state or territory in which it is organized;

(4) meets share and deposit insurance requirements comparable to those provided in Section 58-11-48 NMSA 1978; and

(5) establishes a need to conduct business in this state to adequately serve its members in this state.

C. The director may:

(1) revoke the approval granted to an out-of-state credit union to conduct business in New Mexico if the director determines that:

(a) the credit union no longer meets the requirements as provided in Subsection B of this section;

(b) the credit union has violated a law of this state or a rule issued by the director;

(c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;

(d) permitting the credit union to continue to conduct business in New Mexico is likely to have a substantial adverse impact on financial, economic or other interests of the residents of the state; or

(e) the credit union is prohibited from conducting business in the state or territory in which it is organized;

(2) cooperate with credit union regulators in other states or territories and share with those regulators pertinent information received pursuant to the provisions of the Credit Union Act;

(3) adopt rules for the periodic examination and investigation of the affairs of an out-of-state credit union conducting business in New Mexico. The costs associated with the examination or investigation shall be borne by the out-of-state credit union that is the subject of the examination or investigation; or

(4) enter into agreements with the regulators of out-of-state credit unions to identify laws and rules applicable to branches of out-of-state credit unions conducting business in New Mexico, or enter into agreements with credit union regulators in other states or territories to identify laws and rules applicable to credit unions organized in New Mexico pursuant to the Credit Union Act that are conducting business in out-of-state locations. The agreements provided for in this section may include, but are not limited to, agreements concerning corporate governance and operational matters, and the rules regarding the manner in which examination, supervision and application processes shall be coordinated with the regulators.

D. An out-of-state credit union conducting business in New Mexico shall:

(1) comply with the provisions of the Credit Union Act, rules issued pursuant to that act and all other applicable state laws; and

(2) designate and maintain an agent for service of process in New Mexico.

**History:** Laws 1987, ch. 311, § 16; 1997, ch. 195, § 11; 2003, ch. 28, § 4.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-16 NMSA 1978, as amended by Laws 1975, ch. 344, § 15, relating to minors, effective June 19, 1987, and enacted a new section.

**The 2003 amendment,** effective June 20, 2003, added "Approval to conduct business - Director's duties and powers" to the section heading; inserted present Subsections C and D; and rewrote the rest of the section to such an extent that a detailed comparison is impacticable.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsection A.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-17. Doing business outside this state.

A credit union organized under or subject to the Credit Union Act 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 it necessary to conduct an examination of the out-of-state office of a credit union, the actual expenses of the examination shall be paid by the credit union examined if the director determines it has violated the provisions of the Credit Union Act or other state laws or federal laws or regulations.

**History:** Laws 1987, ch. 311, § 17; 1997, ch. 195, § 12.

**ANNOTATIONS**

**Compiler's notes.** — For prior law, see the laws that were repealed by Laws 1981, ch. 263, §4.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in the first sentence, added "if the director determines it has violated the provisions of the Credit Union Act or other state laws or federal laws or regulations" at the end of the second sentence, and made stylistic changes throughout the second sentence.

## 58-11-18. Powers of credit unions.

In addition to the powers authorized elsewhere in the Credit Union Act, 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 shall 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 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;

K. act as fiscal agent and receive payments on deposit accounts from a governmental unit;

L. sell or offer to sell insurance to the same extent allowed by law to other state chartered lending institutions; and

M. provide services to persons within the credit union's field of membership, including electronic funds transfers and the sale and negotiation of instruments, including money orders, traveler's checks and stored value cards.

**History:** Laws 1987, ch. 311, § 18; 1997, ch. 195, § 13; 2003, ch. 28, § 5.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-18 NMSA 1978, as amended by Laws 1975, ch. 344, § 16, relating to power to borrow, effective June 19, 1987, and enacted a new section.

**Cross references.** — For the Federal Credit Union Act, *see* 12 U.S.C. § 1751.

**The 2003 amendment,** effective June 20, 2003, added Subsection M.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in the introductory paragraph and in Subsection I, added Subsection L, and made minor stylistic changes in Subsections F, J and K.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-19. Incidental powers.

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 its bylaws.

**History:** Laws 1987, ch. 311, § 19; 1997, ch. 195, § 14.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-19 NMSA 1978, as amended by Laws 1975, ch. 344, § 17, relating to loans, effective June 19, 1987, and enacted a new section.

**The 1997 amendment,** effective July 1, 1997, substituted "its bylaws" for "the bylaws" at the end of the section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-20. Advantageous federal powers.

In addition to other powers provided for the director and for credit unions organized under or subject to the Credit Union Act 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; 1997, ch. 195, § 15.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-20 NMSA 1978, as amended by Laws 1975, ch. 344, § 18, relating to reserves, effective June 19, 1987, and enacted a new section.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act".

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-21. Membership.

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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-21 NMSA 1978, as amended by Laws 1975, ch. 344, § 3, relating to special reserve, effective June 19, 1987, and enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-22. Central credit unions.

Central credit unions may be organized under the Credit Union Act, 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 that 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; 1997, ch. 195, § 16.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsection A and made a minor stylistic change in Subsection B.

**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.

Any credit union organized under or subject to the Credit Union Act 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; 1997, ch. 195, § 17.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealeds 58-11-23 NMSA 1978, as amended by Laws 1975, ch. 344, § 21, relating to withdrawal, effective June 19, 1987, and enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act".

## 58-11-24. Member eligibility.

Members who cease to be eligible for membership in a credit union for reasons other than expulsion may be permitted to retain their membership in the credit union, subject to any restrictions which may be established by the bylaws.

**History:** Laws 1987, ch. 311, § 24; 1997, ch. 195, § 18.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, inserted "in a credit union for reasons other than expulsion" near the beginning of the section, substituted "bylaws" for "board of directors" at the end of the section and made a minor stylistic change.

## 58-11-25. Liability of members.

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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-25 NMSA 1978, as amended by Laws 1975, ch. 344, § 23, relating to conversion, effective June 19, 1987, and enacted the present section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-26. Meetings of members.

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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 58-11-26 NMSA 1978, as amended by Laws 1975, ch. 344, § 24, relating to merger, effective June 19, 1987, and enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-27. Direction of affairs.

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. A supervisory committee shall consist of an odd number of members, as provided in the bylaws, but not less than three or more than seven in number. The bylaws shall specify the length of the terms of the committee members and whether membership of the supervisory committee shall be by annual election or appointment by the board of directors.

C. The board of directors may delegate any or all of its authority to extend credit, including the determination of interest rates, to one or more committees or an executive officer, provided such person is not a member of the board. A committee may consist of one or more members.

**History:** Laws 1987, ch. 311, § 27; 1997, ch. 195, § 19; 2003, ch. 28, § 6.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 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 enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, rewrote Subsection B to such an extent that a detailed comparison is impacticable.

**The 1997 amendment,** effective July 1, 1997, rewrote Subsections B and C.

## 58-11-28. Record of officials.

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.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**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.

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 supervisory committee shall fill all vacancies in its own membership as they occur. If all of the supervisory committee positions become vacant at any one time, the board of directors shall fill all vacancies, and those appointed members may serve until the next election. The board shall fill vacancies occurring on all other committees.

**History:** Laws 1987, ch. 311, § 29; 1997, ch. 195, § 20.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 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 enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, deleted a former third sentence which read: "The board shall also fill vacancies in the credit committee, if any."; in the fourth sentence, inserted "supervisory" preceding "committee" and added "and those appointed members may serve until the next election" at the end; and added the fifth sentence.

## 58-11-30. Compensation of officials.

No board or committee member may be compensated for services performed in the regular course of duties pertaining to that board or committee position. Notwithstanding any provision of the Credit Union Act to the contrary, board or committee members may be compensated for those services provided to the credit union while temporarily serving in an additional capacity other than as a board or committee member. Reasonable life, accident and similar insurance protection shall not be considered compensation to a board or committee member. Board and committee members may be reimbursed for reasonable and necessary expenses incidental to the performance of official business of the credit union, provided such expenses are documented.

**History:** Laws 1987, ch. 311, § 30; 1991, ch. 51, § 7; 1997, ch. 195, § 21; 2003, ch. 28, § 7.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, deleted "health" following "Reasonable life," near the middle of the section; and deleted "that" following "provided" near the end of the section.

**The 1997 amendment,** effective July 1, 1997, added "performed in the regular course of duties pertaining to that board or committee position" at the end of the first sentence, added the second sentence, added "to a board or committee member" at the end of the third sentence, and made a minor stylistic change in the first sentence.

**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.

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, the pecuniary interest of his parents, children or siblings or spouses of any of those individuals 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; 1997, ch. 195, § 22.

**ANNOTATIONS**

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, inserted "the pecuniary interest of his parents, children or siblings or spouses of any of those individuals" near the middle of the section.

**The 1991 amendment,** effective July 1, 1991, inserted "executive" near the beginning and "the" preceding "pecuniary".

## 58-11-32. Officers.

A. At an organizational 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 employ, elect or appoint an executive officer of the credit union who shall be responsible for credit union operations. The executive officer may be a member of the board of directors if not receiving paid compensation as executive officer, but may not be an officer of the board of directors. The executive officer will serve at the pleasure of the board of directors.

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 Act, 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; 1997, ch. 195, § 23.

### ANNOTATIONS

**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.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, made a minor stylistic change in Subsection A, rewrote Subsection D, and substituted "Credit Union Act" for "Credit Union Regulatory Act" in Subsection F.

**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.

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. In addition to all other powers authorized in the Credit Union Act, the board of directors may:

A. limit the dollar amount of share and deposit accounts which may be owned by a member, provided such limitations shall equally apply to all members; and

B. authorize the credit union to contribute funds to any nonprofit civic, charitable, educational, research or service organization.

**History:** Laws 1987, ch. 311, § 33; 1997, ch. 195, § 24.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 311 repealed 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 enacted a new section.

Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, added the last sentence in the introductory language and added Subsections A and B.

## 58-11-34. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 41 repealed 58-11-34 NMSA 1978, as enacted by Laws 1987, ch. 311, § 34, relating to the appointment of credit union executive committees by the board of directors, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

## 58-11-35. Meetings of board members.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-36. Duties of board members.

A. The board of directors shall:

(1) 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 may appeal the denial to the board, and the person shall be informed of that right of appeal in writing by the credit union;

(2) authorize and require the purchase of adequate fidelity coverage as it determines to be necessary for the board members, committee members, executive officers or employees of the credit union, with documentation made available to the director about who is covered;

(3) authorize and determine from time to time the interest rates that shall be charged on extensions of credit to members and authorize any interest refunds on extensions of credit under the conditions the board prescribes; provided that the board may delegate that authority to the chief executive officer and a committee with the requirement that any exercise of that authority shall be reported to the board at the next monthly board meeting;

(4) establish written policies with respect to the terms and conditions for granting loans and the extension of credit, including the maximum amount that may be provided to any one member;

(5) declare dividends on share accounts and membership shares in the manner and form as provided in the bylaws, which dividends shall not exceed the credit union's net earnings, including undivided earnings; provided that the board may delegate that authority, except with regard to an account that the credit union designates as a member's primary share account, to the chief executive officer and a committee, with the requirement that any exercise of that authority shall be reported to the board of directors at the next board meeting;

(6) 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;

(7) authorize the employment of persons to carry on the business of the credit union and establish the compensation of the executive officer;

(8) approve an annual operating budget for the credit union;

(9) authorize the conveyance of property;

(10) authorize the designation of depositories for the operating funds of the credit union;

(11) appoint any committees deemed necessary; and

(12) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with the Credit Union Act and not specifically reserved by the bylaws to the members.

B. Any member of the supervisory committee or of any other committee established for the purposes of extending credit may be temporarily suspended or removed by the board of directors, by a two-thirds vote of the board of directors at a meeting in which a quorum is present, for failure to perform those duties in accordance with the Credit Union Act, the articles of organization or the bylaws and for no other reason. The 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.

**History:** Laws 1987, ch. 311, § 36; 1991, ch. 51, § 10; 1997, ch. 195, § 25; 2003, ch. 28, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, added "provided that the board may delegate that authority to the chief executive officer and a committee with the requirement that any exercise of that authority shall be reported to the board at the next monthly board meeting" at the end of Subsection A(3); and added "provided that the board may delegate that authority, except with regard to an account that the credit union designates as a member's primary share account, to the chief executive officer and a committee, with the requirement that any exercise of that authority shall be reported to the board of directors at the next board meeting" at the end of Subsection A(5).

**The 1997 amendment,** effective July 1, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

**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. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 41 repealed 58-11-37 NMSA 1978, as amended by Laws 1991, ch. 51, § 11, relating to the duties and responsibilities of credit union credit committees, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

## 58-11-38. Supervisory committee.

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 make the report available to the director, and a summary of the report shall be presented 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 in accordance with standards established by the director.

C. The supervisory committee by a two-thirds vote of the entire committee may in its sole discretion suspend a person authorized to extend credit if the person is not a paid employee of the credit union and shall report the action to the board of directors for appropriate action. Paid employees of the credit union that are authorized to extend credit may be suspended for any reason but only by the executive officer of the credit union.

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. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation or potential violation of the Credit Union 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; 1997, ch. 195, § 26.

### ANNOTATIONS

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "and make the report available to the director, and a summary of the report shall be presented" for "and to the division, and a summary of the report" following "board of directors" in the second sentence of Subsection A, added "in accordance with standards established by the director" at the end of Subsection B, rewrote Subsection C, deleted Subsection E relating to the suspension or removal of any member of the supervisory committee, redesignated former Subsection F as Subsection E and, in the first sentence of Subsection E, substituted "violation or potential violation of the Credit Union Act" for "violation of the Credit Union Regulatory Act" preceding "the credit union's articles".

**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.

A. The bylaws of a credit union may 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 extension of credit.

**History:** Laws 1987, ch. 311, § 39; 1997, ch. 195, § 27.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "may" for "shall" in Subsection A and substituted "any extension of credit" for "any loan" at the end of Subsection D.

## 58-11-40. Dividends and interest.

A. Periodically, 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; 1997, ch. 195, § 28.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Periodically" for "At intervals and for periods, the board of directors may authorize" at the beginning of Subsection A.

## 58-11-41. Withdrawals.

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.

**ANNOTATIONS**

**Laws 1997, ch. 195, § 42** repeals Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-42. Accounts of minors.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-43. Joint accounts.

A. A member may designate any person to own a share account or deposit account 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 also 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; 1997, ch. 195, § 29.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, in Subsection A, deleted "with him" following "deposit account" and inserted "also" preceding "a member in his".

## 58-11-44. Trust accounts.

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 credit union member, 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; 1997, ch. 195, § 30.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "credit union member" for "in his own right" in Subsection B.

**The 1991 amendment,** effective July 1, 1991, substituted "or all" for "of all" in Subsection C.

## 58-11-45. Payable-on-death accounts.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-46. Liens.

A credit union shall have a lien on the membership shares, share accounts and deposit accounts and accumulated dividends and interest of a member's individual, joint or trust account for any sum owed the credit union from that member or for any extension of credit 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 board of directors or any person or committee to which it has delegated

the authority to extend credit 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; 1997, ch. 195, § 31.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, in the first sentence, substituted "member's" for "member in his" preceding "individual" and substituted "any extension of credit" for "any loan" preceding "endorsed", and, in the third sentence, substituted "The board of directors or any person or committee to which it has delegated the authority to extend credit" for "The credit committee, credit manager or loan officer".

## 58-11-47. Dormant accounts.

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 (1995), 7-8A-30 NMSA 1978].

**History:** Laws 1987, ch. 311, § 47.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-48. Share and deposit insurance.

A. Before the organizers of a credit union submit the organizational documents to the director under Section 58-11-10 NMSA 1978, they shall apply for insurance of share accounts and deposit accounts by the national credit union administration's 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 that has been denied or has lost its commitment for that insurance or that 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; 1997, ch. 195, § 32.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Section 58-11-10 NMSA 1978" for "Section 10 of the Credit Union Regulatory Act" in the first sentence of Subsection A and made minor stylistic changes in Subsections A and B.

## 58-11-49. Loan policies.

A. A credit union may extend credit to members for such purposes and upon such conditions as the bylaws may provide.

B. The interest rates on extensions of credit shall be authorized and determined by the board of directors or any person or committee to which it has delegated that authority.

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 an extension of credit and every approved extension of credit shall be made in writing or in such other manner as permitted or required by law in a standard format consistent with the extension of credit policies approved by the board of directors.

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 as determined by the director.

F. Security, within the meaning of the Credit Union Act, 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 policies established by the board of directors pursuant to Section 58-11-36 NMSA 1978.

G. A member may receive an extension of credit in installments or in one sum and may pay the whole or any part on any day on which the office of the credit union is open for business.

H. Upon written application by a member, the board of directors or any person or committee to which it has delegated authority to extend credit may approve a self-replenishing line of credit, and 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 policy governing extensions of credit.

I. A credit union may participate in extensions of credit to credit union members jointly with other credit unions or other financial organizations pursuant to written policies established by the board of directors.

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 an extension of credit to any of its executive officers, board members and members of its supervisory and other committees; provided that:

(1) the extension of credit complies with all lawful requirements under the Credit Union Act with respect to loans to other members, is not on terms more favorable than those extended to other borrowers and is in compliance with loan policies established by the board for other borrowers;

(2) the following provisions have been met:

(a) the extension of credit is approved by the board of directors or any person or committee to which it has delegated authority to extend credit; 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; and

(3) if the aggregate extension of credit to the applicant, including the extension applied for and excluding share or deposit secured loans, exceeds the limits set for the total asset size of the credit union as provided in this paragraph, the extension of credit shall be submitted to the board of directors for approval. The board shall require, at a minimum, a completed loan application and a detailed current financial statement of the applicant; provided that submission to the board of directors of an application of an executive officer shall only be required for an applicant serving the credit union as chief executive officer, chief operating officer, chief financial officer or chief lending supervisor. The set limits for the total asset size of the credit union are as follows:

| Credit Union Total Assets | Aggregate Credit Exceeding |
|---|---|
| less than $5,000,000 | $20,000 |
| $5,000,000 - $10,000,000 | $30,000 |
| $10,000,001 - $50,000,000 | $40,000 |
| $50,000,001 or greater | $50,000. |

L. A credit union may permit executive officers, board members and members of its committees to act as co-makers, guarantors or endorsers of extensions of credit to other members, subject to the requirements of Subsection K of this section.

**History:** Laws 1987, ch. 311, § 49; 1991, ch. 51, § 14; 1997, ch. 195, § 33; 2003, ch. 28, § 9.

## ANNOTATIONS

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, inserted "or in such other manner as permitted or required by law" following "made in writing" near the middle of Subsection D; deleted "A credit union which originates such an extension shall retain an interest of at least ten percent of the face amount of the extension of credit" at the end of Subsection I; and rewrote Paragraph K(3) to such an extent that a detailed comparison is impracticable.

**The 1997 amendment,** effective July 1, 1997, substituted "extension of credit" for "loan", "extensions of credit" for "loans" and made other related and stylistic changes throughout the section, rewrote Subsections B and D, added "as determined by the director" at the end of Subsection E, substituted "Credit Union Act" for "Credit Union Regulatory Act" near the beginning of the first sentence of Subsection F and near the beginning of Paragraph K(1), substituted "the board of directors or any person or committee to which it has delegated authority to extend credit" for "credit committee, credit manager or loan officer" in the first sentence of Subsection H, in Subsection K, substituted "other committees" for "credit committees" in the introductory language, added "is in compliance with loan policies established by the board for other borrowers"

at the end of Paragraph (1), rewrote Subparagraph (2)(a), and added Paragraph (3), and, in Subsection L, deleted "supervisory and credit" preceding "committees".

**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".

## 58-11-50. Insurance for members.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-51. Liability and fidelity insurance for officials and employees.

A credit union shall, unless otherwise specified by the director, purchase and maintain liability and fidelity insurance coverage on behalf of a 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; 2003, ch. 28, § 10.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, in the section heading, inserted "and fidelity" following "Liability" and inserted "and employees" at the end; in the first sentence in the section text, substituted "shall, unless otherwise specified by the director" for "may" near the beginning, inserted "liability and fidelity" following "purchase and maintain" near the beginning and inserted "coverage" following "insurance" near the middle.

**The 1991 amendment,** effective July 1, 1991, inserted "committee member, executive" twice near the beginning of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Who is an "Executive Officer" of insured within meaning of liability insurance policy, 1 A.L.R.5th 132.

Validity, construction, and effect of "regulatory exclusion" in directors' and officers' liability insurance policy, 21 A.L.R.5th 292.

## 58-11-52. Group purchasing.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-53. Money-type instruments.

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 other persons within the credit union's field of membership and in connection with the providing of services through service facilities, including 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; 1997, ch. 195, § 34; 2003, ch. 28, § 11.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, inserted "other persons within the credit union's field of membership and in connection with" following "for its members and" near the middle of the section.

**The 1997 amendment,** effective July 1, 1997, inserted "service facilities, including" preceding "automated terminal" in the first sentence.

**The 1991 amendment,** effective July 1, 1991, in the first sentence inserted "for its members".

## 58-11-54. Retirement accounts.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-55. Trust authority.

A credit union may accept, administer and execute trusts pursuant to prior approval by the director.

**History:** Laws 1987, ch. 311, § 55.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-56. Investments.

A. Funds not required to satisfy member demands for extensions of credit may be invested in:

(1) 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;

(2) securities, obligations or other instruments of this state or any political subdivision of this state;

(3) deposits or other accounts of state or federally chartered financial institutions, the accounts of which are insured by an agency of the United States;

(4) loans or extensions of credit 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 administration's share insurance fund;

(5) deposits in, loans to or shares of any federal reserve bank or of any central liquidity facility established under federal law;

(6) shares, stocks, loans or extensions of credit to or other obligations of any organization, corporation or association providing services that are associated with the general purposes of the credit union or that engage 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;

(7) 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;

(8) 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;

(9) common trusts or mutual funds whose investment portfolios consist of mortgages, securities and obligations and bonds of the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association and other government-sponsored enterprises;

(10) other investments, or in amounts in excess of the thresholds listed in this section, as approved by the director in written application; and

(11) activities that the director determines are a part of or incidental to the operations of a credit union notwithstanding any provision to the contrary in the Credit Union Act.

B. Credit unions with minimum undivided earnings of one million dollars ($1,000,000) and with capital in excess of seven and one-half percent after required

reserves may also invest funds not required to satisfy member demands for extensions of credit. The aggregate of a credit union's investments as provided in this subsection shall not exceed ten percent of the credit union's undivided earnings. Such investments may only be in or through:

(1) common trusts or mutual funds whose investment portfolios consist of the bonds or other obligations of insured financial institutions organized pursuant to the laws of another state or the United States, or corporations organized in any state, the District of Columbia, the commonwealth of Puerto Rico or the territories organized by congress; provided that the investment portfolios are representative of a recognized broadly traded bond index, as defined in the credit union's board-approved investment policy, and provided that the portfolios shall be limited to such bonds and other obligations having maturities of less than fifteen years with an average weighted life not to exceed seven years and being rated among the three highest ratings established by one or more national rating services; and

(2) common trusts or mutual funds whose investment portfolios consist of the stock of corporations organized in any state, the District of Columbia, the commonwealth of Puerto Rico or the territories organized by congress, provided that the investment portfolios of such common trusts or mutual funds are representative of a recognized broadly traded stock index as defined in the credit union's board-approved investment policy.

**History:** Laws 1987, ch. 311, § 56; 1991, ch. 51, § 17; 1997, ch. 195, § 35; 2003, ch. 28, § 12.

## ANNOTATIONS

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, redesignated the first paragraph of the section as Subsection A and redesignated former A through H as present Paragraphs A(1) through A(8); added Paragraphs A(9) and A(10); redesignated Subsection I as Paragraph A(11) and deleted "investments or" from the beginning; and added Subsection B.

**The 1997 amendment,** effective July 1, 1997, substituted "member demands for extensions of credit" for "member loan demands in the introductory paragraph, inserted "or extensions of credit" in Subsections D and F, inserted "administration's" preceding "share insurance" in Subsection D, added Subsection I, and made minor stylistic changes in Subsections G and H.

**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. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 28, § 15 repeals 58-11-57 NMSA 1978, being Laws 1987, ch. 311, § 57, as amended, relating to reserve requirements, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.* For present similar provisions, *see* 58-11-57.1 NMSA 1978.

## 58-11-57.1. Capitalization and reserves.

A. A credit union shall maintain a well-capitalized status as determined by the director.

B. A credit union shall set aside and maintain such reserves as may be required by the insurer of its share accounts and deposit accounts.

**History:** Laws 2003, ch. 28, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 28, contains no effective date provision, but, pursuant to N.M. Const., art IV, § 23, is effective on June 20, 2003, 90 days after adjournment of the legislature.

## 58-11-58. Dissolution.

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 of liquidation to the members, the chairman of the board or executive officer 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 to liquidate the credit union. Within ten days after the members act on the question of liquidation, the chairman of the board or executive officer 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 58-11-3 NMSA 1978.

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; 1997, ch. 195, § 37.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "executive officer" for "president" in the first and third sentences in Subsection C, substituted "Section 58-11-3 NMSA 1978" for "Section 3 of the Credit Union Regulatory Act" at the end of Subsection G, and made a minor stylistic change in Subsection C.

## 58-11-59. Merger of credit unions.

A. A credit union organized under or subject to the Credit Union Act 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 credit union 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 that 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 that 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; 1997, ch. 195, § 38.

## ANNOTATIONS

Repeals. — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" near the beginning of Subsection A and made stylistic changes in Subsections B and I.

**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.

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, the requirements provided for in the Credit Union Act and other requirements determined by the director, and file proof of such compliance with the director.

C. A bank, savings and loan company or other financial institution that is not a credit union may be converted to a credit union organized pursuant to the Credit Union Act. To effect such a conversion, the converting financial institution shall file proof of compliance with all of the requirements of the jurisdiction under which it was originally organized, the provisions of the Credit Union Act and other requirements determined by the director.

D. A credit union organized pursuant to the Credit Union Act may be converted to a bank, savings and loan company or other financial institution. To effect such a conversion, the converting credit union shall comply with all the requirements of the jurisdiction in which it will be organized, including any rules issued by the appropriate regulating agency and other requirements determined by the director.

**History:** Laws 1987, ch. 311, § 60; 2003, ch. 28, § 13.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 2003 amendment,** effective June 20, 2003, added "the requirements provided for in the Credit Union Act and other requirements determined by the director," following "was originally organized," near the end of Subsection B; and added Subsections C and D.

## 58-11-61. Taxation.

A. A credit union organized under or subject to the Credit Union Act 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 granted by this section.

**History:** Laws 1987, ch. 311, § 61; 1997, ch. 195, § 39.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**The 1997 amendment,** effective July 1, 1997, substituted "Credit Union Act" for "Credit Union Regulatory Act" near the beginning of Subsection A and substituted "granted by this section" for "hereby granted" at the end of Subsection C.

## 58-11-62. Criminal liability.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**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.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

## 58-11-64. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 28, § 15 repeals 58-11-64 NMSA 1978, being Laws 1987, ch. 311, § 64, as amended, relating to payment from the account of a deceased member, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 58-11-65. False affidavit; penalty.

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.

**ANNOTATIONS**

**Repeals.** — Laws 1997, ch. 195, § 42 repealed Laws 1987, ch. 311, § 68, which had provided for the repeal of this section on July 1, 1997.

**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.

**Convictions under this section and for fraud improper.** — Conviction under this section and under Section 30-16-6 NMSA 1978 for fraud over $2,500 violated defendant's double jeopardy rights. *State v. Montoya*, 1993-NMCA-097, 116 N.M. 297, 861 P.2d 978, cert. denied, 116 N.M. 364, 862 P.2d 1223.

# 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.

## 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.

**ANNOTATIONS**

**Cross references.** — For proof of valid power of attorney, *see* 45-5-502 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For the age of majority, *see* 28-6-1 NMSA 1978.

## 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 [Uniform Probate Code, 45-1-101 NMSA 1978].

**History:** Laws 1991, ch. 51, § 24.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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.

## 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 [Uniform Unclaimed Property Act (1995), 7-8A-30 NMSA 1978], they shall be disposed of as provided in that act.

**History:** Laws 1991, ch. 51, § 26.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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 of Section 58-11-3 NMSA 1978 of the Credit Union Regulatory Act [Credit Union 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 [Uniform Unclaimed Property Act (1995), 7-8A-30 NMSA 1978].

**History:** Laws 1991, ch. 51, § 27.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

# 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.

**ANNOTATIONS**

**Cross references.** — For credit unions, *see* Chapter 58, Article 11 NMSA 1978.

## 58-12-2. Definitions.

As used in the Credit Union Share Insurance Corporation Act:

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 the operation of the corporation;

G. "fund" means the share insurance fund; and

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.

**ANNOTATIONS**

**Compiler's notes.** — 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 the Credit Union Act [Chapter 58, Article 11 NMSA 1978] or under other substantially similar state laws may, subject to the prior approval of the director, form a corporation under the Credit Union Share Insurance Corporation Act 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 that become members. Each of the credit unions participating in the formation of the corporation shall execute articles of incorporation therefor, which shall be submitted for filing to the secretary of state with a filing fee of five dollars ($5.00) after the articles of incorporation have been approved by the director. 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 director.

**History:** 1953 Comp., § 48-19A-3, enacted by Laws 1973, ch. 114, § 3; 1979, ch. 95, § 2; 2013, ch. 75, § 19.

**ANNOTATIONS**

**Cross references.** — For meaning of "commissioner", *see* 58-12-2C NMSA 1978 and notes thereto.

**The 2013 amendment,** effective July 1, 2013, required that articles of incorporation of credit unions be filed with the secretary of state; in the first sentence, after "provisions of", deleted "Sections 58-11-1 through 58-11-33 NMSA 1978" and added "the Credit Union Act"; deleted "commissioner " and added "director" throughout the section; in the second sentence, after "filing to the", deleted "state corporation commission" and added "secretary of state" and after "five dollars ($5.00) after", delete "same has" and added "the articles of incorporation have".

## 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.

**ANNOTATIONS**

**Cross references.** — For service of process upon the secretary of state, *see* 38-1-5 NMSA 1978.

## 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.

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.

**ANNOTATIONS**

**Cross references.** — For 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 directors 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.

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 causes 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.

**ANNOTATIONS**

**Cross references.** — For 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.

**ANNOTATIONS**

**Cross references.** — For 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 or its 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 interest of the sound and effective operation of the corporation, the board, by a 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 of 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 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 (1995), 7-8A-1 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

**Cross references.** — For 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 the supervisory agency, which hearing shall be held within thirty days of such notice. The board and the commissioner or the 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, 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.

**ANNOTATIONS**

**Cross references.** — For 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.

**ANNOTATIONS**

**Cross references.** — For 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 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.

**ANNOTATIONS**

**Cross references.** — For 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.

**ANNOTATIONS**

**Cross references.** — For 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 (Repealed.)

## 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.

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 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.

# 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.

**ANNOTATIONS**

**Cross references.** — For rules promulgated pursuant to the Model State Commodity Code, *see* 12.12.1.9 NMAC.

## 58-13A-2. Definitions.

As used in the Model State Commodity Code:

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.

**ANNOTATIONS**

**Cross references.** — For the federal Commodity Exchange Act, *see* 7 U.S.C. § 1.

**Effective dates.** — The effective date of the Model State Commodity Code, 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.

**ANNOTATIONS**

**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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Commodity Exchange Act, *see* 7 U.S.C. § 1.

For the federal Investment Company Act of 1940, *see* U.S.C. § 80a-1.

## 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.

**ANNOTATIONS**

**Cross references.** — For the federal Commodity Exchange Act, *see* 7 U.S.C. § 1.

## 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 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, 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 shall impair, derogate or otherwise affect the authority or powers of the director under the Securities Act of New Mexico [repealed] or the application of any provision thereof to any person or transaction subject thereto.

**History:** Laws 1985, ch. 163, § 9.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The Securities Act of New Mexico was repealed by Laws 1986, Chapter 7. For present comparable provisions, see the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13A-10. Purpose.

The Model State Commodity Code 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 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 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 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 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

**Cross references.** — For sentencing for felonies, *see* 31-18-15 NMSA 1978.

## 58-13A-15. Administration.

A. The Model State Commodity Code 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 [Chapter 14, Article 3 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 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.

**ANNOTATIONS**

**Cross references.** — For the federal Commodity Exchange Act, *see* 7 U.S.C. § 1.

For the federal Securities Exchange Act of 1934, *see* U.S.C. § 78a.

## 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, 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 [Chapter 14, Article 4 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 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.

**ANNOTATIONS**

**Cross references.** — For service of process in the district court, *see* Rule 1-004 NMRA and civil forms 4-206, 4-209 and 4-209A NMRA.

## 58-13A-19. Scope of the code.

A. (1) Sections 3, 6 and 7 [58-13A-3, 58-13A-6, 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 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 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 district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to 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.

**History:** Laws 1985, ch. 163, § 21; 1998, ch. 55, § 55; 1999, ch. 265, § 59.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

**The 1998 amendment,** effective September 1, 1998, rewrote this section.

## 58-13A-22. Pleading exemptions.

It shall not be necessary to negate any of the exemptions of the Model State Commodity Code 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 (Repealed.)

## 58-13B-1. Repealed.

**History:** Laws 1986, ch. 7, § 1; 2003, ch. 247, § 1; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-1 NMSA 1978, as enacted by Laws 1986, ch. 7, § 1, relating to the short title of the New Mexico Securities Act of 1986, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-2. Repealed.

**History:** Laws 1986, ch. 7, § 2; 1993, ch. 280, § 79; 1997, ch. 156, § 1; 1999, ch. 30, § 1; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-1 NMSA 1978, as enacted by Laws 1986, ch. 7, § 2, relating to definitions of the New Mexico Securities Act of 1986, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-3. Repealed.

**History:** Laws 1986, ch. 7, § 3; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-3 NMSA 1978, as enacted by Laws 1986, ch. 7, § 3, relating to broker-dealer and sales representative licensing, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-4. Repealed.

**History:** Laws 1986, ch. 7, § 4; 1989, ch. 176, § 1; repealed by Laws 2009, ch. 82, § 703

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-4 NMSA 1978, as enacted by Laws 1986, ch. 7, § 4, relating to exempt broker-dealers and sales representatives, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-5. Repealed.

**History:** Laws 1986, ch. 7, § 5; 1997, ch. 156, § 2; 1999, ch. 30, § 2; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-5 NMSA 1978, as enacted by Laws 1986, ch. 7, § 5, relating to investment adviser and investment adviser representative licensing, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-6. Repealed.

**History:** Laws 1986, ch. 7, § 6; 1997, ch. 156, § 3; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-6 NMSA 1978, as enacted by Laws 1986, ch. 7, § 6, relating to exempt investment advisers and investment adviser representatives, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-7. Repealed.

**History:** Laws 1986, ch. 7, § 7; 1997, ch. 156, § 4; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-7 NMSA 1978, as enacted by Laws 1986, ch. 7, § 7, relating to proof of exemption, effective January 1, 2010. For

provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-8. Repealed.

**History:** Laws 1986, ch. 7, § 8; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-8 NMSA 1978, as enacted by Laws 1986, ch. 7, § 8, relating to applications for licensing, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-9. Repealed.

**History:** Laws 1986, ch. 7, § 9; 2003, ch. 247, § 2; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-9 NMSA 1978, as enacted by Laws 1986, ch. 7, § 9, relating to annual registration fees, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-10. Repealed.

**History:** Laws 1986, ch. 7, § 10; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-10 NMSA 1978, as enacted by Laws 1986, ch. 7, § 10, relating to examination requirements, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-11. Repealed.

**History:** Laws 1986, ch. 7, § 11; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-11 NMSA 1978, as enacted by Laws 1986, ch. 7, § 11, relating to licensing, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-12. Repealed.

**History:** Laws 1986, ch. 7, § 12; 2004, ch. 79, § 1; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-12 NMSA 1978, as enacted by Laws 1986, ch. 7, § 12, relating to annual report and fee, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-13. Repealed.

**History:** Laws 1986, ch. 7, § 13; 1997, ch. 156, § 5; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-13 NMSA 1978, as enacted by Laws 1986, ch. 7, § 13, relating to post-licensing requirements, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-14. Repealed.

**History:** Laws 1986, ch. 7, § 14; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-14 NMSA 1978, as enacted by Laws 1986, ch. 7, § 14, relating to licensing of successor firms, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-15. Repealed.

**History:** Laws 1986, ch. 7, § 15; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-15 NMSA 1978, as enacted by Laws 1986, ch. 7, § 15, relating to inspection power, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-16. Repealed.

**History:** Laws 1986, ch. 7, § 16; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-16 NMSA 1978, as enacted by Laws 1986, ch. 7, § 16, relating to grounds for denial, revocation and suspension, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-17. Repealed.

**History:** Laws 1986, ch. 7, § 17; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-17 NMSA 1978, as enacted by Laws 1986, ch. 7, § 17, relating to denial, suspension or revocation on grounds of lack of qualification, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-18. Repealed.

**History:** Laws 1986, ch. 7, § 18; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-18 NMSA 1978, as enacted by Laws 1986, ch. 7, § 18, relating to application withdrawals, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.*

For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-19. Repealed.

**History:** Laws 1986, ch. 7, § 19; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-19 NMSA 1978, as enacted by Laws 1986, ch. 7, § 19, relating to custody of clients' securities and funds, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-20. Repealed.

**History:** Laws 1986, ch. 7, § 20; 1997, ch. 156, § 6; Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-20 NMSA 1978, as enacted by Laws 1986, ch. 7, § 20, relating to registration requirements, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-21. Repealed.

**History:** Laws 1986, ch. 7, § 21; 1999, ch. 30, § 3; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-21 NMSA 1978, as enacted by Laws 1986, ch. 7, § 21, relating to registration by filing, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-22. Repealed.

**History:** Laws 1986, ch. 7, § 22; 1989, ch. 176, § 2; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-22 NMSA 1978, as enacted by Laws 1986, ch. 7, § 22, relating to registration by coordination, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-23. Repealed.

**History:** Laws 1986, ch. 7, § 23; 1989, ch. 176, § 3; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-23 NMSA 1978, as enacted by Laws 1986, ch. 7, § 23, relating to registration by qualification, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-24. Repealed.

**History:** Laws 1986, ch. 7, § 24; 1996, ch. 69, § 1; 1997, ch. 156, § 7; 1998, ch. 33, § 1; 1999, ch. 30, § 4; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-24 NMSA 1978, as enacted by Laws 1986, ch. 7, § 24, relating to provisions applicable to registration generally, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-25. Repealed.

**History:** Laws 1986, ch. 7, § 25; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-25 NMSA 1978, as enacted by Laws 1986, ch. 7, § 25, relating to denial, suspension and revocation of registration, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-26. Repealed.

**History:** Laws 1986, ch. 7, § 26; 1989, ch. 176, § 4; 1999, ch. 30, § 5; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-26 NMSA 1978, as enacted by Laws 1986, ch. 7, § 26, relating to exempt securities, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-27. Repealed.

**History:** Laws 1986, ch. 7, § 27; 1989, ch. 176, § 5; 1993, ch. 280, § 80; 1993, ch. 323, § 1; 1998, ch. 104, § 2; 1999, ch. 30, § 6; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-27 NMSA 1978, as enacted by Laws 1986, ch. 7, § 27, relating to exempt transactions, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-28. Repealed.

**History:** Laws 1986, ch. 7, § 28; 1989, ch. 176, § 6; 1997, ch. 156, § 8; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-28 NMSA 1978, as enacted by Laws 1986, ch. 7, § 28, relating to provisions applicable to exemptions generally, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-29. Repealed.

**History:** Laws 1986, ch. 7, § 29; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-29 NMSA 1978, as enacted by Laws 1986, ch. 7, § 29, relating to filing of sales and advertising literature, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-30. Repealed.

**History:** Laws 1986, ch. 7, § 30; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-30 NMSA 1978, as enacted by Laws 1986, ch. 7, § 30, relating to offers, sales and purchases, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-31. Repealed.

**History:** Laws 1986, ch. 7, § 31; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-31 NMSA 1978, as enacted by Laws 1986, ch. 7, § 31, relating to market manipulation, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-32. Repealed.

**History:** Laws 1986, ch. 7, § 32; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-32 NMSA 1978, as enacted by Laws 1986, ch. 7, § 32, relating to inside information, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-33. Repealed.

**History:** Laws 1986, ch. 7, § 33; 1999, ch. 30, § 7; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-33 NMSA 1978, as enacted by Laws 1986, ch. 7, § 33, relating to prohibited transactions by investment advisers and investment adviser representatives, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-34. Repealed.

**History:** Laws 1986, ch. 7, § 34; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-34 NMSA 1978, as enacted by Laws 1986, ch. 7, § 34, relating to misleading filings, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-35. Repealed.

**History:** Laws 1986, ch. 7, § 35; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-35 NMSA 1978, as enacted by Laws 1986, ch. 7, § 35, relating to unlawful representations concerning licensing, registration or exemption, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-36. Repealed.

**History:** Laws 1986, ch. 7, § 36; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-36 NMSA 1978, as enacted by Laws 1986, ch. 7, § 36, relating to investigations and subpoena power, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on

*NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-37. Repealed.

**History:** Laws 1986, ch. 7, § 37; 1993, ch. 323, § 2; Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-37 NMSA 1978, as enacted by Laws 1986, ch. 7, § 37, relating to enforcement, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-38. Repealed.

**History:** Laws 1986, ch. 7, § 38; 1993, ch. 323, § 3; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-38 NMSA 1978, as enacted by Laws 1986, ch. 7, § 38, relating to power of court to grant relief, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-39. Repealed.

**History:** Laws 1986, ch. 7, § 39; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-39 NMSA 1978, as enacted by Laws 1986, ch. 7, § 39, relating to criminal penalties, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-40. Repealed.

**History:** Laws 1986, ch. 7, § 40; 1989, ch. 176, § 7; 1993, ch. 323, § 4; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-40 NMSA 1978, as enacted by Laws 1986, ch. 7, § 40, relating to civil liability, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-41. Repealed.

**History:** Laws 1986, ch. 7, § 41; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-41 NMSA 1978, as enacted by Laws 1986, ch. 7, § 41, relating to civil statute of limitations, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-42. Repealed.

**History:** Laws 1986, ch. 7, § 42; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-42 NMSA 1978, as enacted by Laws 1986, ch. 7, § 42, relating to rescission and settlement offers, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-43. Repealed.

**History:** Laws 1986, ch. 7, § 43; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-43 NMSA 1978, as enacted by Laws 1986, ch. 7, § 43, relating to general liability provisions, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-44. Repealed.

**History:** Laws 1986, ch. 7, § 44; 1987, ch. 298, § 4; 1989, ch. 176, § 8; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-44 NMSA 1978, as enacted by Laws 1986, ch. 7, § 44, relating to administration of act, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-45. Repealed.

**History:** Laws 1986, ch. 7, § 45; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-45 NMSA 1978, as enacted by Laws 1986, ch. 7, § 45, relating to prohibitions on use of information, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-46. Repealed.

**History:** Laws 1986, ch. 7, § 46; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-46 NMSA 1978, as enacted by Laws 1986, ch. 7, § 46, relating to public information confidentiality, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-47. Repealed.

**History:** Laws 1986, ch. 7, § 47; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-47 NMSA 1978, as enacted by Laws 1986, ch. 7, § 47, relating to cooperation with other agencies, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-48. Repealed.

**History:** Laws 1986, ch. 7, § 48; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-48 NMSA 1978, as enacted by Laws 1986, ch. 7, § 48, relating to rules, forms and orders, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-49. Repealed.

**History:** Laws 1986, ch. 7, § 49; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-49 NMSA 1978, as enacted by Laws 1986, ch. 7, § 49, relating to good faith reliance, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-50. Repealed.

**History:** Laws 1986, ch. 7, § 50; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-50 NMSA 1978, as enacted by Laws 1986, ch. 7, § 50, relating to consent to service of process, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-51. Repealed.

**History:** Laws 1986, ch. 7, § 51; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-51 NMSA 1978, as enacted by Laws 1986, ch. 7, § 51, relating to interpretative opinions, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For

present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-52. Repealed.

**History:** Laws 1986, ch. 7, § 52; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-52 NMSA 1978, as enacted by Laws 1986, ch. 7, § 52, relating to administrative files and records, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-53. Repealed.

**History:** Laws 1986, ch. 7, § 53; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-53 NMSA 1978, as enacted by Laws 1986, ch. 7, § 53, relating to administrative proceedings, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-54. Repealed.

**History:** Laws 1986, ch. 7, § 54; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-54 NMSA 1978, as enacted by Laws 1986, ch. 7, § 54, relating to scope of act, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-55. Repealed.

**History:** Laws 1986, ch. 7, § 55; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-55 NMSA 1978, as enacted by Laws 1986, ch. 7, § 55, relating to contract provisions, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-56. Repealed.

**History:** Laws 1986, ch. 7, § 56; 1998, ch. 55, § 56; 1999, ch. 265, § 60; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-56 NMSA 1978, as enacted by Laws 1986, ch. 7, § 56, relating to judicial review of orders, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

## 58-13B-57. Repealed.

**History:** 1978 Comp., § 58-13B-57, enacted by Laws 1989, ch. 176, § 9; repealed by Laws 2009, ch. 82, § 703.

**ANNOTATIONS**

**Repeals.** — Laws 2009, ch. 82, § 703 repealed 58-13B-57 NMSA 1978, as enacted by Laws 1986, ch. 7, § 57, relating to the securities education and training fund, effective January 1, 2010. For provisions of the former section, *see* the 2009 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

# ARTICLE 13C
# New Mexico Uniform Securities

# ARTICLE 1
# General Provisions

## 58-13C-101. Short title.

Sections 101 through 701 [58-13C-101 to 58-13C-701 NMSA 1978] of this act may be cited as the "New Mexico Uniform Securities Act".

**History:** Laws 2009, ch. 82, § 101.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For disposition of unclaimed property, *see* 7-8A-30 NMSA 1978.

For 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 NMRA.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**Purpose of Act.** — The Securities Act, as a whole, has remedial purpose. It is comprehensive. Its extensive regulatory and administrative provisions are aimed at protecting investors against unfair, deceptive and fraudulent practices in the sale of securities. *State v. Kirby*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772, cert. denied, 133 N.M. 727, 69 P.3d 237.

**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 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).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulation - State § 1 et seq.

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.

Defense of ignorance of untruth or omission in civil action under § 12(2) of Securities Act of 1933 (15 USC § 771(2)), 109 A.L.R. Fed. 444.

"Bespeaks caution" doctrine under federal securities laws, 130 A.L.R. Fed 119.

## 58-13C-102. Definitions.

As used in the New Mexico Uniform Securities Act, unless the context otherwise requires:

A. "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities, but a partner, officer or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. "Agent" does not include an individual excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

B. "bank" means:

(1) a banking institution organized pursuant to the laws of the United States;

(2) a member bank of the federal reserve system;

(3) any other banking institution, whether incorporated or not, doing business pursuant to the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks pursuant to the authority of the comptroller of the currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a) and that is supervised and examined by a state or federal agency having supervision over banks and that is not operated for the purpose of evading the New Mexico Uniform Securities Act; and

(4) a receiver, conservator or other liquidating agent of any institution or firm included in Paragraph (1), (2) or (3) of this subsection;

C. "broker-dealer" means a 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) an agent;

(2) an issuer;

(3) a bank or savings institution described in Paragraph (2) of Subsection D of this section if its activities as a broker-dealer are limited to those specified in Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x) and (xi), if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the federal Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions described in Subsection 3(a)(4)(E) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

(4) an international banking institution; or

(5) a person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

D. "depository institution" means:

(1) a bank; or

(2) a savings institution, trust company, credit union or similar institution that is organized or chartered pursuant to the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law, or a receiver, conservator or other liquidating agent of such institutions or entities. "Depository institution" does not include:

(a) an insurance company or other organization primarily engaged in the business of insurance;

(b) a Morris plan bank; or

(c) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2), or any successor federal statute;

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, which for purposes of administering the provisions of the New Mexico Uniform Securities Act and conducting investigations of violations of that act shall be considered a law enforcement agency;

G. "federal covered investment adviser" means a person registered pursuant to the federal Investment Advisers Act of 1940;

H. "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security pursuant to Section 18(b) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that section;

I. "filing" means the receipt pursuant to the New Mexico Uniform Securities Act of a record by the director, or a designee of the director, in a form and format designated by the director;

J. "fraud", "deceit" and "defraud" are not limited to common law deceit;

K. "guaranteed" means guaranteed as to payment of all principal and all interest;

L. "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(1) a depository institution or international banking institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the federal Investment Company Act of 1940;

(5) a broker-dealer registered pursuant to the federal Securities Exchange Act of 1934;

(6) an employee pension, profit-sharing or benefit plan if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered pursuant to the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration pursuant to the federal Investment Advisers Act of 1940, an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a depository institution or an insurance company;

(7) a plan established and maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered pursuant to the federal Securities

Exchange Act of 1934, an investment adviser registered or exempt from registration pursuant to the federal Investment Advisers Act of 1940, an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a depository institution or an insurance company;

(8) a trust, if it has total assets in excess of ten million dollars ($10,000,000), its trustee is a depository institution and its participants are exclusively plans of the types identified in Paragraph (6) or (7) of this subsection, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(9) an organization described in Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars ($10,000,000);

(10) a small business investment company licensed by the small business administration pursuant to Section 301(c) of the federal Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars ($10,000,000);

(11) a private business development company as defined in Section 202(a)(22) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of ten million dollars ($10,000,000);

(12) a federal covered investment adviser acting for its own account;

(13) a "qualified institutional buyer", as defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H), adopted pursuant to the federal Securities Act of 1933 (17 C.F.R. 230.144A);

(14) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6) adopted pursuant to the federal Securities Exchange Act of 1934;

(15) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars ($10,000,000) not organized for the specific purpose of evading the New Mexico Uniform Securities Act; or

(16) any other person specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

M. "insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner or a similar official or agency of a state;

N. "insured" means insured as to payment of all principal and all interest;

O. "international banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration pursuant to the federal Securities Act of 1933;

P. "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

(1) an investment adviser representative;

(2) a lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(3) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(4) a publisher, employee or columnist of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation or an owner operator, producer or employee of a cable, radio or television network, station or production facility, if, in either case:

(a) the financial or business news or advice is contained in a publication or broadcast disseminated to the general public; and

(b) the content does not consist of rendering advice on the basis of the specific investment situation of each client;

(5) a federal covered investment adviser;

(6) a bank or a savings institution described in Paragraph (2) of Subsection D of this section; or

(7) any other person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

Q. "investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who

makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervises employees who perform any of the foregoing. "Investment adviser representative" does not include an individual who:

(1) performs only clerical or ministerial acts;

(2) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(3) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in New Mexico, as "place of business" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:

(a) an investment adviser representative, as "investment adviser representative" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

(b) not a supervised person as "supervised person" is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(4) is excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

R. "issuer" means a person that issues or proposes to issue a security, subject to the following:

(1) the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

(2) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate; and

(3) the issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production pursuant to a lease, right or royalty is the owner

of an interest in the lease or in payments out of production pursuant to a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

S. "legal rate of interest" means the rate of interest set by Subsection A of Section 56-8-4 NMSA 1978 or its successor statutes;

T. "nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;

U. "offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. "Offer to purchase" does not include a tender offer that is subject to Section 14(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

V. "person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity;

W. "place of business" of a broker-dealer, an investment adviser or a federal covered investment adviser means:

(1) an office at which the broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients; or

(2) a location that is held out to the general public as a location at which the broker-dealer, investment adviser or federal covered investment adviser provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients;

X. "predecessor act" means the New Mexico Securities Act of 1986 [repealed];

Y. "price amendment" means the amendment to a registration statement filed pursuant to the federal Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed pursuant to that act that 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;

Z. "principal place of business" of a broker-dealer, investment adviser or federal covered investment adviser means the executive office of the broker-dealer, investment adviser or federal covered investment adviser from which the officers, partners or managers of the broker-dealer, investment adviser or federal covered investment

adviser direct, control and coordinate the activities of the broker-dealer, investment adviser or federal covered investment adviser;

AA. "record", except in the phrases "of record", "official record" and "public record", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

BB. "sale" includes every contract of sale, contract to sell or disposition of a security or interest in a security for value, and "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. Both terms include:

(1) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(2) a gift of assessable stock involving an offer and sale; and

(3) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

CC. "securities and exchange commission" means the United States securities and exchange commission;

DD. "security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a 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":

(1) includes both a certificated and an uncertificated security;

(2) does not include an insurance or endowment policy or annuity contract pursuant to which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(3) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the federal Employee Retirement Income Security Act of 1974;

(4) 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;

(5) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this paragraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party or other investors;

(6) includes any interest in a limited partnership or a limited liability company; and

(7) includes as an investment contract an investment in a viatical settlement or similar agreement;

EE. "self-regulatory organization" means a national securities exchange registered pursuant to the federal Securities Exchange Act of 1934, a national securities association of broker-dealers registered pursuant to that act, a clearing agency registered pursuant to that act or the municipal securities rulemaking board established pursuant to that act;

FF."sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach or logically associate with the record an electronic symbol, sound or process;

GG. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

HH. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security; who participates or has a direct or indirect participation in any undertaking; or who participates or has a participation in the direct or indirect underwriting of any undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, "issuer" includes 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 2009, ch. 82, § 102.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The New Mexico Securities Act of 1986 was repealed by Laws 2009, ch. 82, § 703, effective January 1, 2010. For present comparable provisions, *see* the New Mexico Uniform Securities Act, 58-13C-101 to 58-13C-701 NMSA 1978.

**Cross references.** — For the securities division, *see* 9-16-4 NMSA 1978.

For 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 of terms used in securities offenses, *see* UJI 14-4301 NMRA et seq.

## I. GENERAL CONSIDERATION

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**The federal investment contract test** in the definition of "security" in the federal Securities Act of 1933 is not an element of the definition of the term "security" as defined in the New Mexico Securities Act of 1986, Section 58-13B-1 NMSA 1978 et seq., and the jury is not required to apply the investment contract test in security violations cases. *State v. Soutar*, 2012-NMCA-024, 272 P.3d 154 (decided under prior law).

**Security defined.** — Where defendant was charged with violations of the New Mexico Securities Act of 1986, Section 58-13B-1 NMSA 1978 et seq., for selling interests in a limited liability company; defendant's proposed instruction to define "security" did not actually define the term, but identified the circumstances under which a limited liability company constitutes a security; focused not on the meaning of "security"; but on the meaning of "common enterprise"; and required the jury to apply the federal investment contract test in the definition of "security" in the federal Securities Act of 1933, the court did not err in denying defendant's requested instruction. *State v. Soutar*, 2012-NMCA-024, 272 P.3d 154 (decided under prior law).

**Investment contract defined.** — UJI 14-4310 NMRA defining "investment contract" as one in which the profits must be garnered "primarily" by a third party is a correct statement of the law. *State v. Danek*, 1994-NMSC-071, 118 N.M. 8, 878 P.2d 326.

## II. DECISIONS UNDER FORMER LAW.

**Compiler's notes.** — Some of the cases below were decided under former § 58-13-2 NMSA 1978, which was repealed by Laws 1986, ch. 7, § 59.

**"Security" not narrowly applied.** — Neither federal statutory definition nor state definition of "security" should be given narrow application. *State v. Sheets*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**"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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**Provisions not unconstitutionally vague.** — Subsection V (now DD) of this section, when read in conjunction with Section 58-13B-30 NMSA 1978 (now 58-13C-501 NMSA 1978), does not fail to provide fair and adequate warning to persons of ordinary intelligence that the conduct of the type engaged in by the defendant was criminally proscribed. *State v. Ramos*, 1993-NMCA-089, 116 N.M. 123, 860 P.2d 765, cert. denied, 115 N.M. 795, 858 P.2d 1274.

**Definition of "security" not unconstitutionally overbroad.** — The definition of "security" under Subsection V (now DD) does not lack sufficient specificity nor results in being so broad as to not bear any logical link to the legislative objective of promoting the general welfare, so as to render that provision unconstitutionally overbroad. *State v. Ramos*, 1993-NMCA-089, 116 N.M. 123, 860 P.2d 765, cert. denied, 115 N.M. 795, 858 P.2d 1274.

**Definition of "security" does include commercial notes.** *State v. Sheets*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**"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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**"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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, cert. quashed,

104 N.M. 702, 726 P.2d 856, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, cert. quashed, 104 N.M. 702, 726 P.2d 856, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, cert. quashed, 104 N.M. 702, 726 P.2d 856, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**Subsection H (now see Subsection DD) 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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**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). *N.M. Potash & Chem. Co. v. Independent Potash & Chem. Co.*, 115 F.2d 544 (10th Cir. 1940).

**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.

**Chief of securities bureau regulates variable annuities.** — Variable annuities are subject to regulation by the commissioner of securities (now director of securities division) rather than by the superintendent of insurance inasmuch as they are not "insurance" within the meaning of former 58-1-1, 1953 Comp. (now Section 59A-1-5 NMSA 1978), but rather are "securities" within the meaning of this section. 1960 Op. Att'y Gen. No. 60-137.

**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. —** 69A Am. Jur. 2d Securities Regulations - State § 52 et seq.

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.

What gives rise to right of recession under state blue-sky laws, 52 A.L.R. 5th 491.

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.

What is "investment contract" within meaning of § 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)), both defining term "security" as including investment contract, 134 A.L.R. Fed. 289.

## 58-13C-103. References to federal statutes.

As used in the New Mexico Uniform Securities Act, "Securities Act of 1933" (15 U.S.C. Section 77a, et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a, et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79, et seq.),

"Investment Company Act of 1940" (15 U.S.C. Section 80a-1, et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1, et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001, et seq.), "National Housing Act" (12 U.S.C. Section 1701, et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1, et seq.), "Internal Revenue Code of 1986" (26 U.S.C. Section 1, et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa, et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661, et seq.) and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001, et seq.) mean those statutes and the rules and regulations adopted pursuant to those statutes as in effect on the date of enactment of the New Mexico Uniform Securities Act, or as later amended.

**History:** Laws 2009, ch. 82, § 103.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-104. References to federal agencies.

A reference in the New Mexico Uniform Securities Act to an agency or department of the United States is also a reference to a successor agency or department.

**History:** Laws 2009, ch. 82, § 104.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For the federal Securities Exchange Act of 1934, *see* 15 U.S.C. § 78a.

## 58-13C-105. Electronic records and signatures.

The New Mexico Uniform Securities Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). The New Mexico Uniform Securities Act authorizes the filing of records and signatures, when specified by provisions of the New Mexico Uniform Securities Act or by a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, in a manner consistent with Section 104(a) of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7004(a)).

**History:** Laws 2009, ch. 82, § 105.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

# ARTICLE 2
# Exemptions from Registration of Securities

## 58-13C-201. Exempt securities.

The following securities are exempt from the requirements of Sections 301 [58-13C-301 NMSA 1978] through 306 [58-13C-306 NMSA 1978] of the New Mexico Uniform Securities Act and, unless otherwise noted, Section 504 [58-13C-504 NMSA 1978] of that act:

A. a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted pursuant to the federal Securities Act of 1933, issued, insured or guaranteed by the United States, by a state, by a political subdivision of a state, by a public authority, agency or instrumentality of one or more states, including the New Mexico mortgage finance authority, by a political subdivision of one or more states or by a person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress or a certificate of deposit for any of the foregoing; but this exemption does not include a security issued by a New Mexico governmental entity, payable solely from the revenues of a nongovernmental commercial or industrial 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, E or G of this section. For purposes of this subsection, a nongovernmental commercial or industrial enterprise does not include the financing of student loans or single-family residential mortgage loans;

B. a security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

C. a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(1) an international banking institution;

(2) a banking institution organized pursuant to the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share

accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks pursuant to the authority of the comptroller of currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a);

(3) 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 pursuant to 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; or

(4) any other depository institution, unless by rule or order the director proceeds pursuant to Section 204 [58-13C-204 NMSA 1978] of the New Mexico Uniform Securities Act;

D. a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to transact insurance in New Mexico pursuant to the New Mexico Insurance Code [Chapter 59A NMSA 1978];

E. a security issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company that is:

(1) regulated in respect to its rates and charges by the United States or a state;

(2) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada or a Canadian province or territory; or

(3) a public utility holding company registered pursuant to the federal Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

F. a federal covered security specified in Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted pursuant to that provision or a security listed or approved for listing on another securities market specified by rule pursuant to the New Mexico Uniform Securities Act; a put or a call option contract, a warrant or a subscription right on or with respect to such securities; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered pursuant to the federal Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange or a facility of a national securities association registered pursuant to the federal Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission

pursuant to Section 9(b) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

G. a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company pursuant to Section 3(c)(10)(B) of the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person, a rule may be adopted pursuant to the New Mexico Uniform Securities Act limiting the availability of this exemption by classifying securities, persons and transactions, imposing different requirements for different classes, specifying with respect to Paragraph (2) of this subsection the scope of the exemption and the grounds for denial or suspension and requiring an issuer:

(1) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the director does not disallow the exemption within the period established by the rule;

(2) to file a request for exemption authorization for which a rule pursuant to the New Mexico Uniform Securities Act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of the New Mexico Uniform Securities Act and grounds for denial or suspension of the exemption; or

(3) to register pursuant to Section 304 [58-13C-304 NMSA 1978] of the New Mexico Uniform Securities Act;

H. a member's or owner's 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 pursuant to the cooperative laws of a state, but not a member's or owner's interest, retention certificate or like security sold to persons other than bona fide members of the cooperative; and

I. a certificate of participation in a real property lease or an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt pursuant to this section or would be a federal covered security pursuant to Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

**History:** Laws 2009, ch. 82, § 201.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For the New Mexico mortgage finance authority, *see* 58-18-4 NMSA 1978.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**Former Subsection A exempted inter-tribal Indian council bonds from registration.** — Any bond issued by the inter-tribal Indian council as authorized under former Section 28-12-1 NMSA 1978 was exempt from registration under the State Securities Act by virtue of the provisions of Subsection A of former Section 58-13-29 NMSA 1978. 1969 Op. Att'y Gen. No. 69-32 (decided under former law).

**"Commercial paper".** — "Commercial paper," as used in Subsection H of former Section 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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (decided under former law).

**Not same meaning as used in U.C.C.** — "Commercial paper," in Subsection H of former Section 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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (decided under former law).

**Obligation to pay cash within nine months of date of issuance** in Subsection H of former Section 58-13-29 NMSA 1978 meant an obligation for payment in full within nine months of the date of issuance. *State v. Sheets*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (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 (rendered 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).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulation - State § 131 et seq.

Exempted securities under § 3(a)(2)-3(a)(8) of Securities Act of 1933 (15 USCS §§ 77c(a)(2)-77c(a)(8)), 119 A.L.R. Fed. 259.

## 58-13C-202. Exempt transactions.

The following transactions are exempt from the requirements of Sections 301 [58-13C-301 NMSA 1978] through 306 [58-13C-306 NMSA 1978] of the New Mexico Uniform Securities Act and, unless otherwise noted, Section 504 [58-13C-504 NMSA 1978] of that act:

A. an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

B. a nonissuer transaction by or through a broker-dealer registered, or exempt from registration pursuant to the New Mexico Uniform Securities Act [58-13C-101 NMSA 1978], and a resale transaction by a sponsor of a unit investment trust registered pursuant to the federal Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the date of the transaction:

(1) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership and the issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(2) the security is sold at a price reasonably related to its current market price;

(3) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(4) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or a record filed with the securities and exchange commission that is publicly available contains:

(a) a description of the business and operations of the issuer;

(b) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(c) an audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(5) any one of the following requirements is met:

(a) the issuer of the security has a class of equity securities listed on a national securities exchange registered pursuant to the federal Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;

(b) the issuer of the security is a unit investment trust registered pursuant to the federal Investment Company Act of 1940;

(c) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(d) the issuer of the security has total assets of at least two million dollars ($2,000,000) based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

C. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in a security or the American depository receipt representing such security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

D. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in an outstanding security if the guarantor of the security is required to file reports with the securities and exchange commission pursuant to the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and is current in such reporting;

E. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in a security that:

(1) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(2) has a fixed maturity or a fixed interest or dividend if:

(a) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years in the payment of principal, interest or dividends on the security;

(b) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; and

(c) the transaction complies with any additional requirements that the director may by rule impose as a condition of this exemption;

F. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act effecting an unsolicited order or offer to purchase;

G. a nonissuer transaction executed by a bona fide pledgee without the purpose of evading the New Mexico Uniform Securities Act;

H. a nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

I. a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the director after a hearing;

J. a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

K. a transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

(1) the note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(2) a general solicitation or general advertisement of the transaction is not made; and

(3) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered pursuant to the New Mexico Uniform Securities Act as a broker-dealer or as an agent;

L. a transaction by an executor, personal representative or administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

M. a sale or offer to sell to:

(1) an institutional investor;

(2) a federal covered investment adviser; or

(3) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

N. a sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

(1) there are not more than ten purchasers who are New Mexico residents, other than purchasers designated in Subsection M of this section during any twelve consecutive months;

(2) no general solicitation or general advertising is used in connection with the offer to sell or the sale of the securities; and

(3) no commission or other remuneration is paid or given, directly or indirectly, to a person other than a broker-dealer registered or not required to be registered pursuant to the New Mexico Uniform Securities Act or an agent registered pursuant to that act for soliciting a prospective purchaser in New Mexico, and either:

(a) the seller reasonably believes that all of the purchasers in New Mexico are purchasing for investment; or

(b) immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by fifty or fewer beneficial owners and the transaction is part of an aggregate offering that does not exceed one million dollars ($1,000,000) during any twelve consecutive months; but the director, by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further condition this exemption or may waive one or more of the conditions of this subsection;

O. a transaction pursuant to an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in New Mexico;

P. an offer to sell, but not a sale, of a security not exempt from registration pursuant to the federal Securities Act of 1933 if:

(1) a registration or offering statement or similar record as required pursuant to the federal Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 (17 C.F.R. 230.165) adopted pursuant to the federal Securities Act of 1933; and

(2) a stop order of which the offeror is aware has not been issued against the offeror by the director or the securities and exchange commission and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

Q. an offer to sell, but not a sale, of a security exempt from registration pursuant to the federal Securities Act of 1933 if:

(1) a registration statement has been filed pursuant to the New Mexico Uniform Securities Act, but is not effective;

(2) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the director pursuant to the New Mexico Uniform Securities Act; and

(3) a stop order of which the offeror is aware has not been issued by the director pursuant to the New Mexico Uniform Securities Act and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending;

R. 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 or conversion to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

S. a rescission offer, sale or purchase pursuant to Section 510 [58-13C-510 NMSA 1978] of the New Mexico Uniform Securities Act;

T. an offer or sale of a security to a person not a resident of New Mexico and not present in New Mexico if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade the New Mexico Uniform Securities Act;

U. employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued pursuant to a compensatory benefit plan or compensation contract, contained in a record established by the issuer, its parents, its majority-owned subsidiaries or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

(1) bona fide directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(2) family members who acquire such securities from those persons through gifts or domestic relations orders;

(3) former employees, directors, general partners, trustees, officers, consultants and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(4) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

V. a transaction involving:

(1) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;

(2) 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 such exchange and partly for cash; or

(3) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 (17 C.F.R. 230.162) adopted pursuant to the federal Securities Act of 1933;

W. a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued pursuant to that act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, or is a

security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with Subsection B of Section 604 [58-13C-604 NMSA 1978] of the New Mexico Uniform Securities Act, the director, by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, may revoke the designation of a securities exchange pursuant to this subsection if the director finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

X. the issuance and offer and sale of securities by any issuer if:

(1) the issuer's principal office or principal place of business or a majority of its employees or assets are located in New Mexico;

(2) more than one-half of the proceeds from the offering shall be used by the issuer in operations of the issuer in New Mexico;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in New Mexico except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(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 two million five hundred thousand dollars ($2,500,000); 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 that by reason of prior misconduct will not be eligible to utilize this exemption. The issuance and offer and sale of securities pursuant to this subsection shall be subject to Subsection A of Section 504 of the New Mexico Uniform Securities Act;

Y. the issuance and offer and sale of securities by any issuer if:

(1) the total number of security holders 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 New Mexico except to broker-dealers and sales representatives registered pursuant to the New Mexico Uniform Securities Act. 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 Section 203 [58-13C-203 NMSA 1978] of the New Mexico Uniform Securities Act shall not be deemed a condition of this exemption;

Z. any offer or sale of a preorganization certificate or subscription if:

(1) when such sale or offer is made by an agent, the agent is registered pursuant to the New Mexico Uniform Securities Act. No commission shall be paid to an agent not registered 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;

AA. a transaction:

(1) involving the offer to sell or the 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 the 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 shall 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) involving the offer to sell or the 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 pursuant to 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; and

(3) 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 that 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;

BB. 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, limited liability company, 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 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, limited liability company, 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

CC. 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, provided that:

(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 registered pursuant to the New Mexico Uniform Securities Act. No commission shall be paid to an agent not registered pursuant to that act.

For the purposes of this subsection, "an entity principally operating in New Mexico" means a corporation or limited liability company organized pursuant to the law of New Mexico, a corporation in which a majority in interest of the shareholders are residents of New Mexico, a limited liability company in which a majority in interest of the members are residents of New Mexico, any form of partnership in which a majority in interest of the partners are residents of New Mexico, a trust in which a majority in interest of the beneficiaries are residents of New Mexico or a sole proprietorship in which the owner is a resident of New Mexico.

**History:** Laws 2009, ch. 82, § 202.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**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.*, 1964-NMSC-176, 74 N.M. 430, 394 P.2d 274 (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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**"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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992; *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (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*, 1986-NMCA-136, 105 N.M. 366, 732 P.2d 1389, cert. denied, 105 N.M. 290, 731 P.2d 1334, *modifying State v. Sheets*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (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*, 1986-NMCA-136, 105 N.M. 366, 732 P.2d 1389, cert. denied, 105 N.M. 290, 731 P.2d 1334 (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. —** 69A Am. Jur. 2d Securities Regulation - State § 138 et seq.

Sales as "isolated" or "successive," or the like, under state securities acts, 1 A.L.R.3d 614.

## 58-13C-203. Additional exemptions and waivers.

A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may exempt a security, transaction or offer; a rule pursuant to the New Mexico Uniform Securities Act may exempt a class of securities, transactions or offers from any or all of the requirements of Sections 301 [58-13C-301 NMSA 1978] through 306 [58-13C-306 NMSA 1978] and 504 [58-13C-504 NMSA 1978] of that act; and an order pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, any or all of the conditions for an exemption or offer pursuant to Sections 201 [58-13C-201 NMSA 1978] and 202 [58-13C-202 NMSA 1978] of that act. The director may by rule require notice of filing for any exemption contained in Section 201 or 202 of the New Mexico Uniform Securities Act 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 Y of Section 202 of that act.

**History:** Laws 2009, ch. 82, § 203.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-204. Denial, suspension, revocation, condition or limitation of exemptions.

A. Except with respect to a federal covered security or a transaction involving a federal covered security, an order pursuant to the New Mexico Uniform Securities Act may deny, suspend application of, condition, limit or revoke an exemption created pursuant to Paragraph (4) of Subsection C of Section 201 [58-13C-201 NMSA 1978] of that act, Subsection G or H of Section 201 of that act or Section 202 [58-13C-202 NMSA 1978] of that act or an exemption or waiver created pursuant to Section 203 [58-13C-203 NMSA 1978] of that act with respect to a specific security, transaction or offer. An order pursuant to this section may be issued only pursuant to the procedures set forth in Subsection D of Section 306 [58-13C-306 NMSA 1978] or Section 604 [58-13C-604 NMSA 1978] of the New Mexico Uniform Securities Act and only prospectively.

B. A person does not violate Section 301 [58-13C-301 NMSA 1978], 303 [58-13C-303 NMSA 1978] through 306 [58-13C-306 NMSA 1978], 504 [58-13C-504 NMSA 1978] or 510 [58-13C-510 NMSA 1978] of the New Mexico Uniform Securities Act by an offer to sell, offer to purchase, sale or purchase effected after the entry of an order issued pursuant to this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

**History:** Laws 2009, ch. 82, § 204.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**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. —** 69A Am. Jur. 2d Securities Regulation - State § 65 et seq.

# ARTICLE 3
# Registration of Securities and Notice Filing of Federal Covered Securities

## 58-13C-301. Securities registration requirement.

It is unlawful for a person to offer or sell a security in New Mexico unless:

A. the security is a federal covered security;

B. the security, transaction or offer is exempted from registration pursuant to Sections 201 [58-13C-201 NMSA 1978] through 203 [58-13C-203 NMSA 1978] of the New Mexico Uniform Securities Act; or

C. the security is registered pursuant to the New Mexico Uniform Securities Act.

**History:** Laws 2009, ch. 82, § 301.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For uniform jury instructions for offenses under this section, *see* UJI 14-4301 NMRA et seq.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**Exempt transaction as an element of the sale of unregistered securities.** — Where defendant was charged with selling unregistered securities in violation of Section 58-13B-20 NMSA 1978 of the New Mexico Securities Act of 1986 for selling interests in a limited liability company; defendant proposed instructions that required the jury to acquit defendant if the jury found that defendant sold securities in the course of exempt transactions; and the issue of exemption was never raised at trial, the trial court did not err in denying defendant's instructions. *State v. Soutar*, 2012-NMCA-024, 272 P.3d 154 (decided under prior law).

**This section is not a defense to securities fraud.** *State v. Hornbeck*, 2008-NMCA-039, 143 N.M. 562, 178 P.3d 847.

**Knowledge not requisite for conviction for violation of this section.** — The wording of former Section 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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (decided under former law).

**Scienter is not element of crime** of offering to sell or selling unregistered securities. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (decided under former law).

**Offer or sale of an unregistered security is a general intent crime.** — Where defendant was charged with one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000, one count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where, at trial, defendant tendered jury instructions that added the term "purposefully" or "willfully" to the instructions for securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent, and where the district court denied defendant's specific intent jury instructions and provided the jury with a general criminal intent instruction for the securities offenses, the district court did not err in refusing defendant's instructions, because securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent only require that the state prove a defendant acted with general criminal intent. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**Reliance on attorney's advice is not defense** to the crime of selling or offering to sell unregistered securities. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (decided under former law).

**"Sale".** — Former Section 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 Section 58-13-4 NMSA 1978. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (decided under former law).

**Fourth-degree felony.** — Because a violation of Subsection A of former Section 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 Section 31-18-13C NMSA 1978. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (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. —** 69A Am. Jur. 2d Securities Regulation - State §§ 74 et seq., 102, 232.

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.

## 58-13C-302. Notice filing.

A. With respect to a federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt pursuant to Sections 201 [58-13C-201 NMSA 1978] through 203 [58-13C-203 NMSA 1978] of the New Mexico Uniform Securities Act, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the filing of any or all of the following records:

(1) before the initial offer of a federal covered security in New Mexico, all records that are part of a federal registration statement filed with the securities and exchange commission pursuant to the federal Securities Act of 1933 and a consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of the New Mexico Uniform Securities Act signed by the issuer and the payment of a fee of five hundred twenty-five dollars ($525) for all investment companies other than a unit investment trust or two hundred dollars ($200) for a unit investment trust; and

(2) after the initial offer of the federal covered security in New Mexico, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission pursuant to the federal Securities Act of 1933.

B. A notice filing pursuant to Subsection A of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order pursuant to the New Mexico Uniform Securities Act to be filed and by paying a renewal fee of five hundred twenty-five dollars ($525) for all investment companies other than a unit investment trust or two hundred dollars ($200) for a unit investment trust. A previously filed consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

C. With respect to a security that is a federal covered security pursuant to Section 18(b)(4)(D) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), including Rule 506 of Regulation D (17 C.F.R. 230.506), a rule pursuant to the New Mexico Uniform Securities Act may require a notice filing by or on behalf of an issuer to

include a copy of Form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act signed by the issuer not later than fifteen days after the first sale of the federal covered security in New Mexico and the payment of a fee of three hundred fifty dollars ($350) and the payment of a fee in an amount up to one thousand fifty dollars ($1,050) as specified by the director by rule for any late filing.

D. Except with respect to a federal security pursuant to Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the director finds that there is a failure to comply with a notice or fee requirement of this section, the director may issue a stop order suspending the offer and sale of a federal covered security in New Mexico. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the director.

**History:** Laws 2009, ch. 82, § 302.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-303. Securities registration by coordination.

A. A security for which a registration statement has been filed pursuant to the federal Securities Act of 1933 in connection with the same offering may be registered by coordination pursuant to this section.

B. A registration statement and accompanying records pursuant to this section must contain or be accompanied by the following records in addition to the information specified in Section 305 [58-13C-305 NMSA 1978] of the New Mexico Uniform Securities Act and a consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of that act:

(1) a copy of the latest form of prospectus filed pursuant to the federal Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security that is required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(3) copies of any other information or any other records filed by the issuer pursuant to the federal Securities Act of 1933 requested by the director; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

C. A registration statement pursuant to this section becomes effective simultaneously with or subsequent to the federal registration statement when all of the following conditions are satisfied:

(1) a stop order pursuant to Subsection D of this section or Section 306 [58-13C-306 NMSA 1978] of the New Mexico Uniform Securities Act or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer pursuant to Section 306 of the New Mexico Uniform Securities Act; and

(2) the registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

D. The registrant shall promptly notify the director in a record of the date when the federal registration statement becomes effective and of the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the director may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The director shall promptly notify the registrant of an order by telegram, telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

E. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the director, the registration statement is automatically effective pursuant to the New Mexico Uniform Securities Act when all the conditions are satisfied or waived. If the registrant notifies the director of the date when the federal registration statement is expected to become effective, the director shall promptly notify the registrant by telegram, telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the director intends the institution of a proceeding pursuant to Section 306 of the New Mexico Uniform Securities Act. The notice by the director does not preclude the institution of such a proceeding.

**History:** Laws 2009, ch. 82, § 303.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For the federal Securities Act of 1933, *see* 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. —** 69A Am. Jur. 2d Securities Regulation - State § 98 et seq.

## 58-13C-304. Securities registration by qualification.

A. A security may be registered by qualification pursuant to this section.

B. A registration statement pursuant to this section shall contain the information or records specified in Section 305 [58-13C-305 NMSA 1978] of the New Mexico Uniform Securities Act, a consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of that act and, if required by rule adopted pursuant to that act, the following information or records:

(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 properties 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 each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before 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 of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by Paragraph (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve

months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in Paragraph (2) of this subsection other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in Paragraph (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's 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 of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 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 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 of value, for which the issuer or any subsidiary has issued its securities within the previous 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 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 on 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 each underwriter and each 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 any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a 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 any persons that have received commissions in connection with the acquisition and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in Paragraph (2), (4), (5), (6) or (8) of this subsection and by any person that holds or will hold ten percent or more in the aggregate of those options;

(11) the dates of, parties to and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets and any litigation, action or proceeding known to be contemplated by governmental authorities;

(13) 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 and any solicitation of interest used in compliance with Paragraph (2) of Subsection Q of Section 202 [58-13C-202 NMSA 1978] of the New Mexico Uniform Securities Act;

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the

person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flow for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. A registration statement pursuant to this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending pursuant to Section 306 [58-13C-306 NMSA 1978] of the New Mexico Uniform Securities Act;

(2) the director has not issued an order pursuant to Section 306 of the New Mexico Uniform Securities Act delaying effectiveness; or

(3) the applicant or registrant has not requested that effectiveness be delayed.

D. The director may delay effectiveness once for not more than ninety days if the director determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The director may also delay effectiveness for a further period of not more than thirty days if the director determines that the delay is necessary or appropriate.

E. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration pursuant to this section that a prospectus containing a specified part of the information or record specified in Subsection B of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, 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 that is offering

part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

**History:** Laws 2009, ch. 82, § 304.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**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. —** 69A Am. Jur. 2d Securities Regulation - State §§ 80, 101 et seq.

Construction and effect of § 12 of the Securities Act of 1933 (15 U.S.C. § 77l) relating to civil liabilities arising in connection with prospectus and communications in selling of securities, 50 A.L.R.2d 1228, 106 A.L.R. Fed. 753, 110 A.L.R. Fed. 97.

## 58-13C-305. Securities registration filings.

A. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made or a broker-dealer registered pursuant to the New Mexico Uniform Securities Act.

B. 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 New Mexico, but not less than five hundred twenty-five dollars ($525) nor more than two thousand five hundred dollars ($2,500) or five hundred twenty-five dollars ($525) if the person is an issuer or a person acting on behalf of an issuer and is claiming an exemption from the registration requirements of federal law regarding small company offerings under Rule 504 of Regulation D (17 C.F.R. 230.504). If a registration statement is withdrawn before the effective date or a preeffective stop order is issued

pursuant to Section 306 [58-13C-306 NMSA 1978] of the New Mexico Uniform Securities Act, the director shall retain the fee set forth in this subsection.

C. A registration statement filed pursuant to Section 303 [58-13C-303 NMSA 1978] or 304 [58-13C-304 NMSA 1978] of the New Mexico Uniform Securities Act shall specify:

(1) the amount of securities to be offered in New Mexico;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission or a court.

D. A record filed pursuant to the New Mexico Uniform Securities Act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

E. In the case of a nonissuer distribution, information or a record may not be required pursuant to Subsection I of this section or Section 304 of the New Mexico Uniform Securities Act, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

F. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in New Mexico be impounded until the issuer receives a specified amount from the sale of the security either in New Mexico or elsewhere. The conditions of any escrow or impoundment required pursuant to this subsection may be established by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, but the director shall not reject a depository institution solely because of its location in another state.

G. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration that a security registered pursuant to that act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed pursuant to that act or preserved for a period specified by the rule or order, which shall not be longer than five years.

H. Except while a stop order is in effect pursuant to Section 306 of the New Mexico Uniform Securities Act, a registration statement is effective for one year after its

effective date, or for any longer period designated in an order pursuant to that act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered pursuant to the New Mexico Uniform Securities Act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the director.

I. While a registration statement is effective, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

J. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the director so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay an additional registration fee of 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, unless the maximum filing fee has been paid. If the maximum filing fee was paid at the time of filing the original registration statement, no additional filing fee is required to be paid with the amendment. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

**History:** Laws 2009, ch. 82, § 305.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**Knowledge not requisite for conviction for violation of this section.** — The wording of former Section 58-13-43A NMSA 1978 shows that knowledge that an item was a security was not a requisite for a conviction for violating former Section 58-13-4 NMSA

1978. *State v. Sheets*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992 (decided under former law).

**Scienter is not element of crime** of offering to sell or selling unregistered securities. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (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*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (decided under former law).

**"Sale".** — Former Section 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 Section 58-13-4 NMSA 1978. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (decided under former law).

**Fourth-degree felony.** — Because a violation of Subsection A of former Section 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 Section 31-18-13C NMSA 1978. *State v. Shafer*, 1985-NMCA-018, 102 N.M. 629, 698 P.2d 902, cert. denied, 102 N.M. 613, 698 P.2d 886 (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. —** 69A Am. Jur. 2d Securities Regulation - State §§ 74 et seq., 102, 232.

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.

## 58-13C-306. Denial, suspension and revocation of securities 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 before the effective date in the case of an order denying effectiveness, an amendment pursuant to Subsection J of Section 305 [58-13C-305 NMSA 1978] of the New Mexico Uniform Securities Act as of its effective date or a report pursuant to Subsection I of Section 305 of that act, is incomplete in a 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 Uniform Securities Act or a rule adopted or order issued pursuant to that act or a condition imposed pursuant to that act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; 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 by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued pursuant to any federal, foreign or state law other than the New Mexico Uniform Securities Act applicable to the offering, but the director shall not institute a proceeding against an effective registration statement pursuant to this paragraph more than one year after the date of the order or injunction on which it is based, and the director shall not issue an order pursuant to this paragraph on the basis of an order or injunction issued pursuant to the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order pursuant to this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered pursuant to Section 303 [58-13C-303 NMSA 1978] of the New Mexico Uniform Securities Act, there has been a failure to comply with the undertaking required by Paragraph (4) of Subsection B of Section 303 of that act;

(6) the applicant or registrant has not paid the filing fee, but the director shall void the order if the deficiency is corrected; or

(7) the offering:

(a) will work or tend to work a fraud upon purchasers or would so operate;

(b) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations or unreasonable amounts or kinds of options; or

(c) is being made on terms that are unfair, unjust or inequitable.

B. To the extent practicable, the director by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act shall publish standards that provide notice of conduct that violates Paragraph (7) of Subsection A of this section.

C. The director shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the director when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

D. The director may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the director shall promptly notify each person specified in Subsection E of this section that the order has been issued, the reasons for the revocation, denial, postponement or suspension and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the director within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

E. If a hearing is requested or ordered, such hearing shall be conducted pursuant to Subsection B of Section 604 [58-13C-604 NMSA 1978] of the New Mexico Uniform Securities Act. A stop order shall not be issued pursuant to this section, except in accordance with Subsection D of this section, without:

(1) appropriate 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) findings of fact and conclusions of law in a record.

F. The director shall modify or vacate a stop order entered pursuant to this section if the director finds that the conditions that prompted entry have changed or that it is otherwise in the public interest or for the protection of investors.

**History:** Laws 2009, ch. 82, § 306.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Securities bureau not constitutionally precluded from issuing sales permits.** — N.M. Const., art. XI, § 6 (now repealed), 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.

**Corporation commission (now public regulation commission) not authorized to issue permits.** — With the repeal of 48-18-18, 1953 Comp., the authority of the corporation commission (now public regulation commission) to issue permits for the sale of securities was cancelled. 1981 Op. Att'y Gen. No. 81-20.

Nothing in former Section 58-13-37 NMSA 1978 suggested that the authority of the corporation commission (now public regulation 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. —** 69A Am. Jur. 2d Securities Regulation - State § 112 et seq.

Persons liable for false registration statement under § 11 of Securities Act of 1933 (15 USCS § 77k), 114 A.L.R. Fed. 551.

## 58-13C-307. Waiver and modification.

The director may waive or modify, in whole or in part, any or all of the requirements of Sections 302 [58-13C-302 NMSA 1978] and 303 [58-13C-303 NMSA 1978] of the New Mexico Uniform Securities Act and Subsection B of Section 304 [58-13C-304 NMSA 1978] of that act or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Subsection I of Section 305 [58-13C-305 NMSA 1978] of that act.

**History:** Laws 2009, ch. 82, § 307.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

# ARTICLE 4
# Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers

## 58-13C-401. Broker-dealer registration requirement and exemptions.

A. It is unlawful for a person to transact business in New Mexico as a broker-dealer unless the person is registered pursuant to the New Mexico Uniform Securities Act as a broker-dealer or is exempt from registration as a broker-dealer pursuant to Subsection B or D of this section.

B. The following persons are exempt from the registration requirement of Subsection A of this section:

(1) a broker-dealer without a place of business in New Mexico if its only transactions effected in New Mexico are with:

(a) the issuer of the securities involved in the transactions;

(b) a broker-dealer registered as a broker-dealer pursuant to the New Mexico Uniform Securities Act or not required to be registered as a broker-dealer pursuant to that act;

(c) an institutional investor;

(d) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(e) a bona fide preexisting customer whose principal place of residence is not in New Mexico and the person is registered as a broker-dealer pursuant to the federal Securities Exchange Act of 1934 or not required to be registered pursuant to that act and is registered pursuant to the securities act of the state in which the customer maintains a principal place of residence;

(f) a bona fide preexisting customer whose principal place of residence is in New Mexico but was not present in New Mexico when the customer relationship was established, if: 1) the broker-dealer is registered pursuant to the federal Securities Exchange Act of 1934 or not required to be registered or licensed pursuant to that act

and is registered pursuant to the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and 2) within forty-five days after the customer's first transaction in New Mexico, the person files an application for registration as a broker-dealer in New Mexico and no further transactions are effected more than forty-five days after the date on which the application is filed. Only unsolicited transactions are permitted pursuant to this subparagraph; or

(g) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation or the office of thrift supervision.

C. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing or selling securities in New Mexico, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in New Mexico if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order pursuant to the New Mexico Uniform Securities Act may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

D. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in New Mexico to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(a) an individual from Canada or other foreign jurisdiction who is temporarily present in New Mexico and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(b) an individual from Canada or other foreign jurisdiction who is present in New Mexico and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(c) an individual who is present in New Mexico, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently a resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt pursuant to this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in New Mexico as permitted for a broker-dealer described in Paragraph (1) of this subsection.

**History:** Laws 2009, ch. 82, § 401.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Securities Act does not require registration of persons who sell exempt securities.** 1969 Op. Att'y Gen. No. 69-97.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulation - State §§ 52 et seq., 231.

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.

## 58-13C-402. Agent registration requirement and exemptions.

A. It is unlawful for an individual to transact business in New Mexico as an agent unless the individual is registered pursuant to the New Mexico Uniform Securities Act as an agent or is exempt from registration as an agent pursuant to Subsection B of this section.

B. The following individuals are exempt from the registration requirement of Subsection A of this section:

(1) an individual who represents a broker-dealer in effecting transactions in New Mexico limited to those described in Section 15(h)(2) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78(h)(2));

(2) an individual who represents a broker-dealer that is exempt pursuant to Subsection B or D of Section 401 [58-13C-401 NMSA 1978] of the New Mexico Uniform Securities Act;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents a broker-dealer registered in New Mexico pursuant to Subsection A of Section 401 of the New Mexico Uniform Securities Act or exempt from registration pursuant to Subsection B of Section 401 of that act in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(5) an individual who represents an issuer in connection with the purchase by the issuer of the issuer's own securities;

(6) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(7) any other individual exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered pursuant to the New Mexico Uniform Securities Act or an issuer that is offering, selling or purchasing its securities in New Mexico. The registration of an agent is only effective with respect to transactions effected as an employee or agent on behalf of the broker-dealer or issuer for whom the agent is registered.

D. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in New Mexico, to employ or associate with an agent who transacts business in New Mexico on behalf of broker-dealers or issuers unless the agent is registered pursuant to Subsection A of this section or exempt from registration pursuant to Subsection B of this section.

E. An individual shall not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order pursuant to the New Mexico Uniform Securities Act.

**History:** Laws 2009, ch. 82, § 402.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**The sale of a security by an unlicensed agent is a general intent crime.** — Where defendant was charged with one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000, one count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where, at trial, defendant tendered jury instructions that added the term "purposefully" or "willfully" to the instructions for securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent, and where the district court denied defendant's specific intent jury instructions and provided the jury with a general criminal intent instruction for the securities offenses, the district court did not err in refusing defendant's instructions, because securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent only require that the state prove a defendant acted with general criminal intent. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**The district court was not required to instruct the jury on the legal definitions of "effect" and "agent".** — Where defendant was convicted of sale of a security by an unlicensed agent, and where defendant argued that the district court's failure to instruct the jury on the definitions of "effect" and agent" for sale of a security by an unlicensed agent allowed the jury to convict him for appropriate conduct or conduct that was only tangential to the transaction, the district court's failure to instruct the jury on the definitions of "effect" and "agent" did not amount to fundamental error because under NMSA 1978, § 58-13C-402(A), an individual who represents an issuer with an offer or sale of a security is not exempt from the registration requirement if the individual is compensated, and in this case, there was evidence that defendant was compensated after each investment he brought in and he knew that he would be compensated whether as a finder, agent, consultant or on commission. There was no reason to define "effect" or "agent" for the jury. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**Securities Act does not require registration of persons who sell exempt securities.** 1969 Op. Att'y Gen. No. 69-97.

## 58-13C-403. Investment adviser registration requirement and exemptions.

A. It is unlawful for a person to transact business in New Mexico as an investment adviser unless the person is registered pursuant to the New Mexico Uniform Securities Act as an investment adviser or is exempt from registration as an investment adviser pursuant to Subsection B of this section.

B. The following persons are exempt from the registration requirement of Subsection A of this section:

(1) a person without a place of business in New Mexico that is registered pursuant to the securities act of the state in which the person has its principal place of business if its only clients in New Mexico are:

(a) federal covered investment advisers, investment advisers registered pursuant to the New Mexico Uniform Securities Act or broker-dealers registered pursuant to that act;

(b) institutional investors;

(c) bona fide preexisting clients whose principal places of residence are not in New Mexico if the investment adviser is registered pursuant to the securities act of the state in which the clients maintain principal places of residence; or

(d) any other client exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) a person without a place of business in New Mexico if the person has had, during the preceding twelve months, not more than five clients that are residents in New Mexico in addition to those specified pursuant to Paragraph (1) of this subsection; or

(3) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in New Mexico if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser or broker-dealer by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from the investment adviser and for good cause, the director, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

D. It is unlawful for an investment adviser to employ or associate with an individual required to be registered pursuant to the New Mexico Uniform Securities Act as an investment adviser representative who transacts business in New Mexico on behalf of the investment adviser unless the individual is registered pursuant to Subsection A of Section 404 [58-13C-404 NMSA 1978] of the New Mexico Uniform Securities Act or is exempt from registration pursuant to Subsection B of Section 404 of that act.

**History:** Laws 2009, ch. 82, § 403.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-404. Investment adviser representative registration requirement and exemptions.

A. It is unlawful for an individual to transact business in New Mexico as an investment adviser representative unless the individual is registered pursuant to the New Mexico Uniform Securities Act as an investment adviser representative or is exempt from registration as an investment adviser.

B. The following individuals are exempt from the registration requirement of Subsection A of this section:

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration pursuant to Subsection B of Section 403 [58-13C-403 NMSA 1978] of the New Mexico Uniform Securities Act or a federal covered investment adviser that is excluded from the notice filing requirements of Section 405 [58-13C-405 NMSA 1978] of that act; and

(2) any other individual exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered pursuant to the New Mexico Uniform Securities Act or a federal covered investment adviser that has made or is required to make a notice filing under that act.

D. The registration of an investment adviser representative is only effective with respect to transactions effected or advice rendered as an employee or agent on behalf of the investment adviser for whom the investment adviser representative is registered.

E. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

F. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in New Mexico on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory

organization. Upon request from an investment adviser or a federal covered investment adviser and for good cause, the director, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the investment adviser or the federal covered investment adviser.

G. An investment adviser registered pursuant to the New Mexico Uniform Securities Act, a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act or a broker-dealer registered pursuant to that act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act or a broker-dealer registered pursuant to that act with which the individual is employed or associated as an investment adviser representative, subject to such conditions as the director may impose by rule or by order.

**History:** Laws 2009, ch. 82, § 404.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-405. Federal covered investment adviser notice filing requirement.

A. Except with respect to a federal covered investment adviser described in Subsection B of this section, it is unlawful for a federal covered investment adviser to transact business in New Mexico as a federal covered investment adviser unless the federal covered investment adviser complies with Subsection C of this section.

B. The following federal covered investment advisers are not required to comply with Subsection C of this section:

(1) a federal covered investment adviser without a place of business in New Mexico if its only clients in New Mexico are:

(a) federal covered investment advisers, investment advisers registered pursuant to the New Mexico Uniform Securities Act and broker-dealers registered pursuant to that act;

(b) institutional investors;

(c) bona fide preexisting clients whose principal places of residence are not in New Mexico; or

(d) other clients specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) a federal covered investment adviser without a place of business in New Mexico if the person has had, during the preceding twelve months, not more than five clients that are residents in New Mexico in addition to those specified pursuant to Paragraph (1) of this subsection; and

(3) any other person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. A person acting as a federal covered investment adviser not excluded pursuant to Subsection B of this section shall file a notice, a consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of the New Mexico Uniform Securities Act and such records as have been filed with the securities and exchange commission pursuant to the federal Investment Advisers Act of 1940 required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act and pay the fees specified in Subsection E of Section 410 [58-13C-410 NMSA 1978] of that act.

D. The notice pursuant to Subsection C of this section becomes effective upon its filing.

**History:** Laws 2009, ch. 82, § 405.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-406. Registration by broker-dealer, agent, investment adviser and investment adviser representative.

A. A person shall register as a broker-dealer, agent, investment adviser or investment adviser representative by filing an application and a consent to service of process complying with Section 611 [58-13C-611 NMSA 1978] of the New Mexico Uniform Securities Act and paying the fee specified in Section 410 [58-13C-410 NMSA 1978] of that act and any reasonable fees charged by the designee of the director for processing the filing. The application shall contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the director, any other financial or other information or record that the director determines is appropriate.

B. If the information or record contained in an application filed pursuant to Subsection A of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

C. If an order is not in effect or a proceeding is not pending pursuant to Section 412 [58-13C-412 NMSA 1978] of the New Mexico Uniform Securities Act, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

D. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect pursuant to Section 412 of the New Mexico Uniform Securities Act, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued pursuant to that act by paying the fee specified in Section 410 of that act and by paying costs charged by the designee of the director for processing the filings.

E. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may impose such other conditions, not inconsistent with the federal National Securities Markets Improvement Act of 1996. An order issued pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

**History:** Laws 2009, ch. 82, § 406.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-407. Succession and change in registration of broker-dealer or investment adviser.

A. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 401 [58-13C-401 NMSA 1978] or 403 [58-13C-403 NMSA 1978] of the New Mexico Uniform Securities Act or a notice pursuant to Section 405 [58-13C-405 NMSA 1978] of that act for the unexpired portion of the current registration or notice filing.

B. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of the New Mexico Uniform Securities Act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered pursuant to the New Mexico Uniform Securities Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

C. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

D. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

**History:** Laws 2009, ch. 82, § 407.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.

A. If an agent registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered pursuant to that act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser or federal covered investment adviser shall promptly file a notice of termination.

B. If an agent registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with a broker-dealer registered pursuant to that act and begins employment by or association with another broker-dealer registered pursuant to that act; or if an investment adviser representative registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with an investment adviser registered pursuant to that act or a federal covered investment

adviser that has filed a notice pursuant to Section 405 [58-13C-405 NMSA 1978] of that act and begins employment by or association with another investment adviser registered pursuant to that act or a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act then, upon the filing by or on behalf of the registrant, within thirty days after the filing of notice of termination pursuant to Subsection A of this section, of an application for registration that complies with the requirement of Subsection A of Section 406 [58-13C-406 NMSA 1978] of that act and payment of the filing fee required pursuant to Section 410 [58-13C-410 NMSA 1978] of that act, the registration of the agent or investment adviser representative is immediately effective as of the date of the completed filing if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months.

C. The director may prevent the effectiveness of a transfer of an agent or investment adviser representative pursuant to Subsection B of this section based on the public interest and the protection of investors.

D. If the director determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or cannot reasonably be located, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the registration be canceled or terminated or the application denied. The director may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**History:** Laws 2009, ch. 82, § 408.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-409. Withdrawal of registration of broker-dealer, agent, investment adviser and investment adviser representative.

Withdrawal of registration by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. The director may institute a revocation or suspension proceeding pursuant to Section 412

[58-13C-412 NMSA 1978] of the New Mexico Uniform Securities Act within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**History:** Laws 2009, ch. 82, § 409.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-410. Filing fees.

A. A person shall pay a fee of three hundred dollars ($300) when initially filing an application for registration as a broker-dealer and when filing a renewal of registration as a broker-dealer.

B. The fee for an individual shall be fifty dollars ($50.00) when filing an application for registration as an agent, when filing a renewal of registration as an agent and when filing for a change of registration as an agent.

C. A person shall pay a fee of three hundred dollars ($300) when filing an application for registration as an investment adviser and when filing a renewal of registration as an investment adviser.

D. The fee for an individual shall be fifty dollars ($50.00) when filing an application for registration as an investment adviser representative, when filing a renewal of registration as an investment adviser representative and when filing a change of registration as an investment adviser representative.

E. A federal covered investment adviser required to file a notice pursuant to Section 405 [58-13C-405 NMSA 1978] of the New Mexico Uniform Securities Act shall pay an initial fee of three hundred dollars ($300) and an annual fee of three hundred dollars ($300).

F. A person required to pay a filing or notice fee pursuant to this section may transmit the fee through or to a designee as a rule or order provides pursuant to the New Mexico Uniform Securities Act.

G. An investment adviser representative who is registered as an agent pursuant to Section 402 [58-13C-402 NMSA 1978] of the New Mexico Uniform Securities Act and who represents a person that is both registered as a broker-dealer pursuant to Section 401 [58-13C-401 NMSA 1978] of that act and registered as an investment adviser pursuant to Section 403 [58-13C-403 NMSA 1978] of that act or required as a federal covered investment adviser to make a notice filing pursuant to Section 405 [58-13C-405

NMSA 1978] of that act is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

H. If an application made pursuant to Subsection A, B, C, D or E of this section is denied or withdrawn, the director shall retain any fees paid.

**History:** Laws 2009, ch. 82, § 410.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-411. Post-registration requirements.

A. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish minimum financial requirements for broker-dealers registered or required to be registered pursuant to the New Mexico Uniform Securities Act and investment advisers registered or required to be registered pursuant to the New Mexico Uniform Securities Act.

B. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act shall file such financial reports as are required by a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. If the information contained in a record filed pursuant to this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

C. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act shall make and maintain the accounts, correspondence, memoranda, papers, books and other records required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) broker-dealer records required to be maintained pursuant to Paragraph (1) of this subsection may be maintained in any form of data storage acceptable pursuant

to Section 17(a) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the director; and

(3) investment adviser records required to be maintained pursuant to Paragraph (1) of this subsection may be maintained in any form of data storage required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

D. The records of a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and of an investment adviser registered or required to be registered pursuant to that act are subject to such reasonable periodic, special or other audits or inspections by a representative of the director, within or without New Mexico, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection pursuant to this subsection.

E. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed two million dollars ($2,000,000). The director may determine the requirements of the insurance, bond or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered pursuant to the New Mexico Uniform Securities Act whose net capital exceeds, or of an investment adviser registered pursuant to that act whose minimum financial requirements exceed, the amounts required by rule or order pursuant to that act. The insurance, bond or other satisfactory form of security shall permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in Paragraph (2) of Subsection J of Section 509 [58-13C-509 NMSA 1978] of the New Mexico Uniform Securities Act.

F. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer, and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may prohibit, limit or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

G. With respect to an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act, a rule adopted or order issued pursuant to that act may require that information or other records be furnished or disseminated to clients or prospective clients in New Mexico as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

H. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require an individual registered pursuant to Section 402 [58-13C-402 NMSA 1978] or 404 [58-13C-404 NMSA 1978] of that act to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization, or, in the absence of such a program, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require continuing education for an individual registered pursuant to Section 404 of that act.

**History:** Laws 2009, ch. 82, § 411.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-412. Denial, revocation, suspension, withdrawal, restriction, condition or limitation of registration.

A. If the director finds that the order is in the public interest and that Subsection C of this section authorizes the action, an order issued pursuant to the New Mexico Uniform Securities Act may postpone, deny, suspend or revoke any registration, limit the investment advisory activities that an applicant or registered person may perform in New Mexico or bar an applicant or registered person or a person who is a partner, officer or director or a person occupying a similar status or performing a similar function for an applicant or registered person from association with a registered broker-dealer or investment adviser or a federal covered investment adviser.

B. If the director finds that the order is in the public interest and Subsection C of this section authorizes the action, an order pursuant to the New Mexico Uniform Securities Act may censure or impose a bar on a registrant. If the director finds that the order is in the public interest and Paragraph (1), (2), (4), (5), (6), (8), (9), (10), (12) or (13) of Subsection C of this section authorizes the action, the director may also impose a civil penalty on a registrant in an amount not to exceed ten thousand dollars ($10,000) for each violation.

C. A person may be disciplined pursuant to Subsection A or B of this section, or both, if the person, or in the case of a broker-dealer or investment adviser, a partner, officer, director or a person having a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for registration in New Mexico pursuant to the New Mexico Uniform Securities Act or the predecessor act within the previous ten years that, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or the predecessor act within the previous ten years;

(3) has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or an option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the director pursuant to the New Mexico Uniform Securities Act or the predecessor act, a state, the securities and exchange commission or the United States from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(a) the securities, depository institution, insurance or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative;

(b) the securities regulator of a state or by the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(c) the securities and exchange commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(d) a court adjudicating a United States postal service fraud order;

(e) the insurance regulator of a state denying, suspending or revoking registration as an insurance agent; or

(f) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person willfully violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940 or the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law pursuant to which a business involving investments, franchises, insurance, banking or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the director shall not enter an order against an applicant or registrant pursuant to this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the director from conducting an audit or inspection pursuant to Subsection D of Section 411 [58-13C-411 NMSA 1978] of the New Mexico Uniform Securities Act or refuses access to a registrant's office to conduct an audit or inspection pursuant to Subsection D of Section 411 of that act;

(9) has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and while under that person's supervision committed a violation of the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to that act or the predecessor act within the previous ten years;

(10) has not paid the proper filing fee within thirty days after having been notified by the director of a deficiency, but the director shall vacate an order pursuant to this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten years:

(a) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction pursuant to which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(b) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(c) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating pursuant to the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the securities and exchange commission or issued pursuant to the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten years; or

(14) is not qualified on the basis of factors such as training, experience and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this paragraph if the individual has successfully completed all examinations required by Subsection D of this section. The director may require an applicant for registration pursuant to Section 402 [58-13C-402 NMSA 1978] or 404 [58-13C-404 NMSA 1978] of the New Mexico Uniform Securities Act who has not been registered in a state within the two years preceding the filing of an application in New Mexico to successfully complete an examination.

D. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, an examination as to an individual and a rule adopted pursuant to that act may waive, in whole or in part, an examination as to a class of individuals if the director determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

E. The director may postpone, suspend or deny an application summarily; restrict, condition, limit or suspend a registration; or censure, bar or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the director shall promptly notify each person subject to the order that the order has been issued, the reasons for the action and that within fifteen days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

F. If a hearing is requested or ordered, such hearing shall be conducted pursuant to Subsection B of Section 604 [58-13C-604 NMSA 1978] of the New Mexico Uniform

Securities Act. An order shall not be issued pursuant to this section, except in accordance with Subsection E of this section, without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

G. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the director pursuant to Subsection A or B of this section, or both, to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline pursuant to this section.

H. The director shall not institute a proceeding pursuant to Subsection A or B of this section based solely on material facts actually known by the director unless an investigation or the proceeding is instituted within one year after the director actually acquires knowledge of the material facts.

**History:** Laws 2009, ch. 82, § 412.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

# ARTICLE 5
# Fraud and Liabilities

## 58-13C-501. Securities fraud.

It is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly:

A. to employ a device, scheme or artifice to defraud;

B. to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances pursuant to which it is made, not misleading; or

C. to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

**History:** Laws 2009, ch. 82, § 501.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**The renewal or rollover of an existing promissory note** constitutes an offer to sell, a sale, an offer to purchase or a purchase of a security. *State v. Collins*, 2007-NMCA-106, 142 N.M. 419, 166 P.3d 480, cert. denied, 2007-NMCERT-008, 142 N.M. 434, 166 P.3d 1088.

**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*, 1983-NMCA-109, 101 N.M. 616, 686 P.2d 958, *rev'd on other grounds*, 1984-NMSC-007, 101 N.M. 32, 677 P.2d 1068 (decided under former law).

**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*, 1986-NMCA-015, 104 N.M. 23, 715 P.2d 471.

This offense does not require proof of the same elements of general fraud, as general fraud is defined under Section 30-16-6 NMSA 1978. *State v. Shade*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**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.*, 1974-NMCA-109, 86 N.M. 735, 527 P.2d 498, cert. denied, 86 N.M. 730, 527 P.2d 493 (decided under former law).

Under the former law, embodied in Section 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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92.

**Securities fraud is a general intent crime.** — Where defendant was charged with one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000, one

count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where, at trial, defendant tendered jury instructions that added the term "purposefully" or "willfully" to the instructions for securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent, and where the district court denied defendant's specific intent jury instructions and provided the jury with a general criminal intent instruction for the securities offenses, the district court did not err in refusing defendant's instructions, because securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent only require that the state prove a defendant acted with general criminal intent. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**Securities fraud instruction did not amount to fundamental error.** — Where defendant was convicted of one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000, one count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where defendant claimed that his conviction for securities fraud was legally insufficient because the jury instruction allowed him to be convicted for his co-defendant's omissions and the jury instruction should require an affirmative fiduciary duty to exist for a defendant to be convicted of securities fraud based upon omissions, defendant's claim was without merit, because this section does not require an affirmative duty to disclose information to commit securities fraud, and defendant's jury was instructed that each charge should be considered separately for each defendant. The jury is presumed to follow the court's limiting instructions. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**Sufficient evidence to prove securities fraud beyond a reasonable doubt.** — Where defendant was charged with one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000, one count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where defendant claimed that the state failed to show that he knew he would be compensated from investments, and therefore, substantial evidence did not support his conviction for securities fraud, there was sufficient evidence to support the jury's finding that defendant acted with criminal intent where the state presented evidence that defendant received immediate payments after inducing investment, that defendant likely induced more investments than he originally indicated or admitted, and defendant knew he would be compensated after each investment he found. Moreover, defendant also failed to disclose that he would be compensated if certain victims invested, and he misrepresented his own personal investment and minimum amount required to invest to purposefully increase the victims' investments *State v. Hixon*, 2023-NMCA-048, cert. denied.

**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.*, 1974-NMCA-109, 86 N.M. 735, 527 P.2d 498, cert. denied, 86 N.M. 730, 527 P.2d 493 (decided under former law).

**Sufficient evidence to establish requisite fraudulent intent.** *State v. Gardner*, 1985-NMCA-084, 103 N.M. 320, 706 P.2d 862, cert. denied, 103 N.M. 287, 705 P.2d 1138 (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*, 1986-NMCA-072, 104 N.M. 710, 726 P.2d 864, *overruled on other grounds by State v. Olguin*, 1994-NMCA-050, 118 N.M. 91, 879 P.2d 92 (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).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulations - State § 193 et seq.

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.

Who may be liable in actions under § 12(2) of Securities Act of 1933 (15 USCS § 77l(2)), on basis of false or misleading statement in prospectus or oral communication, 106 A.L.R. Fed. 753.

## 58-13C-502. Prohibited conduct in providing investment advice.

A. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) to employ a device, scheme or artifice to defraud another person; or

(2) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

B. A rule adopted pursuant to the New Mexico Uniform Securities Act may define an act, practice or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive or manipulative and may prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices and courses of business defined as fraudulent, deceptive or manipulative.

C. A rule adopted pursuant to the New Mexico Uniform Securities Act may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

**History:** Laws 2009, ch. 82, § 502.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**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*, 1983-NMCA-109, 101 N.M. 616, 686 P.2d 958, *rev'd on other grounds*, 1984-NMSC-007, 101 N.M. 32, 677 P.2d 1068 (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.*, 1974-NMCA-109, 86 N.M. 735, 527 P.2d 498, cert. denied, 86 N.M. 730, 527 P.2d 493 (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.*, 1974-NMCA-109, 86 N.M. 735, 527 P.2d 498, cert. denied, 86 N.M. 730, 527 P.2d 493 (decided under former law).

**Sufficient evidence to establish requisite fraudulent intent.** *State v. Gardner*, 1985-NMCA-084, 103 N.M. 320, 706 P.2d 862, cert. denied, 103 N.M. 287, 705 P.2d 1138 (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. —** 69A Am. Jur. 2d Securities Regulations - State § 193 et seq.

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.

Scienter requirement in actions under antifraud provision of Investment Advisers Act (15 USCS § 80b-6), 133 A.L.R. Fed. 549.

## 58-13C-503. Evidentiary burden.

A. In a civil action or administrative proceeding pursuant to the New Mexico Uniform Securities Act, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the claim.

B. In a criminal proceeding pursuant to the New Mexico Uniform Securities Act, a person claiming an exemption, exception, preemption or exclusion has the burden of going forward with evidence of the claim.

**History:** Laws 2009, ch. 82, § 503.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-504. Filing of sales and advertising literature.

A. Except as otherwise provided in Subsection B of this section, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature or other advertising record relating to a security or investment advice addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser.

B. This section does not apply to sales and advertising literature specified in Subsection A of this section that relates to a federal covered security or a federal covered investment adviser or that the director determines by rule or order to be excluded from the requirements of Subsection A of this section.

**History:** Laws 2009, ch. 82, § 504.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**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. —** 69A Am. Jur. 2d Securities Regulation - State § 80.

Construction and effect of § 12 of the Securities Act of 1933 (15 U.S.C. § 77l) relating to civil liabilities arising in connection with prospectus and communications in selling of securities, 50 A.L.R.2d 1228, 106 A.L.R. Fed. 753, 110 A.L.R. Fed. 97.

## 58-13C-505. Misleading filings.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed pursuant to the New Mexico Uniform Securities Act, a statement that, at the time and in the light of the circumstances pursuant to which it is made, is false or misleading in a material respect or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances pursuant to which it was made, not false or misleading.

**History:** Laws 2009, ch. 82, § 505.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulations - State § 113.

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.

What constitutes "willfulness" for purposes of criminal provisions of federal securities laws, 136 A.L.R. Fed. 457.

## 58-13C-506. Misrepresentations concerning registration or exemption.

The filing of an application for registration, a registration statement, a notice filing pursuant to the New Mexico Uniform Securities Act, the registration of a person, the notice filing by a person or the registration of a security pursuant to that act does not constitute a finding by the director that a record filed pursuant to the New Mexico Uniform Securities Act is true, complete and not misleading. The filing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the director has passed upon the merits or qualifications of, or recommended or given approval to, a person, security or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client or prospective customer or client a representation inconsistent with this section.

**History:** Laws 2009, ch. 82, § 506.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-507. Qualified immunity.

A broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative for defamation relating to a statement that is contained in a record required by the director, or designee of the director, the securities and exchange commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**History:** Laws 2009, ch. 82, § 507.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Double jeopardy.** — Criminal prosecutions under the Securities Act, following administratively imposed civil penalties under that Act, do not place defendants in double jeopardy under N.M. Const., art. II, § 15, or under Section 30-1-10 NMSA 1978. *State v. Kirby*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772, cert. denied, 133 N.M. 771, 69 P.3d 237.

## 58-13C-508. Criminal penalties.

A. A person who willfully violates Section 501 [58-13C-501 NMSA 1978] or 502 [58-13C-502 NMSA 1978] of the New Mexico Uniform Securities Act is guilty of a third degree felony and, upon conviction, shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is three years.

B. A person who willfully violates Section 505 [58-13C-505 NMSA 1978] of the New Mexico Uniform Securities Act knowing the statement made to be false or misleading in a material respect is guilty of a third degree felony and, upon conviction, shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is three years.

C. No criminal penalties apply to violations of Section 504 [58-13C-504 NMSA 1978] of the New Mexico Uniform Securities Act or the notice filing requirements of Section 302 [58-13C-302 NMSA 1978] or 405 [58-13C-405 NMSA 1978] of that act.

D. Except as provided in Subsections A through C of this section, a person who willfully violates any provision of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act is guilty of a fourth degree felony and, upon conviction, shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than eighteen months, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is eighteen months.

E. An individual convicted of violating a rule or order pursuant to the New Mexico Uniform Securities Act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

F. For the purposes of this section, "willfully" means purposely or intentionally committing the act or making the omission and does not require an intent to violate the law or knowledge that the act or omission is unlawful.

G. Each offense shall constitute a separate offense, and a prosecution for any one of such offenses shall not bar prosecution or conviction for any other offenses.

H. All persons convicted of criminal violations of the New Mexico Uniform Securities Act shall be sentenced in accordance with the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] or its successor statute.

I. No indictment or information may be brought pursuant to this section more than five years after the alleged violation.

J. The attorney general or the proper district attorney, with or without a referral from the director, may institute criminal proceedings pursuant to the New Mexico Uniform Securities Act. The attorney general or district attorney may request assistance from the director or employees of the division. When so requested by the director, the attorney general shall commission as a special assistant attorney general any attorney employed by the director or contracted with by the director and approved by the attorney general to assist the director in carrying out the director's duties, including providing legal advice and prosecuting offenders.

K. The New Mexico Uniform Securities Act does not limit the power of New Mexico to punish a person for conduct that constitutes a crime pursuant to other laws of New Mexico.

**History:** Laws 2009, ch. 82, § 508.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For uniform jury instructions for securities offenses, *see* UJI 14-4301 NMRA et seq.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**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*, 1980-NMCA-041, 94 N.M. 356, 610 P.2d 760, cert. denied, 94 N.M. 675, 615 P.2d 992.

**Securities offenses are general intent crimes.** — Where defendant was charged with one count of fraud over $20,000, one count of conspiracy to commit fraud over $20,000,

one count of securities fraud, one count of sale of a security by an unlicensed agent and one count of offer or sale of an unregistered security, and where, at trial, defendant tendered jury instructions that added the term "purposefully" or "willfully" to the instructions for securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent, and where the district court denied defendant's specific intent jury instructions and provided the jury with a general criminal intent instruction for the securities offenses, the district court did not err in refusing defendant's instructions, because securities fraud, sale of an unregistered security, and sale of a security by an unlicensed agent only require that the state prove a defendant acted with general criminal intent. *State v. Hixon*, 2023-NMCA-048, cert. denied.

**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. —** 69A Am. Jur. 2d Securities Regulation - State § 235 et seq.

## 58-13C-509. Civil liability.

A. Enforcement of civil liability pursuant to this section is subject to the federal Securities Litigation Uniform Standards Act of 1998 (P.L. 105-353, 112 Stat. 3227, et seq.).

B. A person is liable to the purchaser if the person sells a security in violation of Section 301 [58-13C-301 NMSA 1978] of the New Mexico Uniform Securities Act or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action pursuant to this subsection is governed by the following:

(1) the purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in Paragraph (3) of this subsection;

(2) the tender referred to in Paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in Paragraph (3) of this subsection; and

(3) actual damages in an action arising pursuant to this subsection 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 interest from the date of the purchase, costs and reasonable attorney fees determined by the court.

C. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. An action pursuant to this subsection is governed by the following:

(1) the seller may maintain an action to recover the security, and any income received on the security, costs and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in Paragraph (3) of this subsection;

(2) the tender referred to in Paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in Paragraph (3) of this subsection; and

(3) actual damages in an action arising pursuant to this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest from the date of the sale of the security, costs and reasonable attorney fees determined by the court.

D. A person acting as a broker-dealer or agent that sells or buys a security in violation of Subsection A of Section 401 [58-13C-401 NMSA 1978] of the New Mexico Uniform Securities Act, Subsection A of Section 402 [58-13C-402 NMSA 1978] of that act or Section 506 [58-13C-506 NMSA 1978] of that act is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in Paragraphs (1) through (3) of Subsection B of this section, or, if a seller, for a remedy as specified in Paragraphs (1) through (3) of Subsection C of this section.

E. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Subsection A of Section 403 [58-13C-403 NMSA 1978] of the New Mexico Uniform Securities Act, Subsection A of Section 404 [58-13C-404 NMSA 1978] of that act or Section 506 [58-13C-506 NMSA 1978] of that act is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs and reasonable attorney fees determined by the court.

F. A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme or artifice to

defraud the other person or engages in an act, practice or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action pursuant to this subsection is governed by the following:

(1) the person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct; and

(2) this subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

G. The following persons are liable jointly and severally with and to the same extent as persons liable pursuant to Subsections B through F of this section:

(1) a person that directly or indirectly controls a person liable pursuant to Subsections B through F of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer or director of a person liable pursuant to Subsections B through F of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable pursuant to Subsections B through F of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser or investment adviser representative that materially aids the conduct giving rise to the liability pursuant to Subsections B through F of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

H. A person liable pursuant to this section has a right of contribution as in cases of contract against any other person liable pursuant to this section for the same conduct.

I. A cause of action pursuant to this section survives the death of an individual who might have been a plaintiff or defendant.

J. A person shall not obtain relief unless the suit is brought:

(1) within two years after discovery of the violation or after discovery should have been made by the exercise of reasonable diligence; and

(2) within five years after the act or transaction constituting the violation.

K. A person that has made, or has engaged in the performance of, a contract in violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, or that has acquired a purported right pursuant to the contract with knowledge of conduct by reason of which its making or performance was in violation of the New Mexico Uniform Securities Act, may not base an action on the contract.

L. A condition, stipulation or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with the New Mexico Uniform Securities Act, or a rule adopted or order issued pursuant to that act, is void.

M. The rights and remedies provided by the New Mexico Uniform Securities Act are in addition to any other rights or remedies that may exist, but that act does not create a cause of action not specified in this section or Subsection E of Section 411 [58-13C-411 NMSA 1978] of that act.

**History:** Laws 2009, ch. 82, § 509.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cases under prior law.** — The pre-2010 cases below were decided under the former New Mexico Securities Act of 1986, Chapter 58, Article 13B. Due to the similarities between the two laws, the case annotations have been retained and included as annotations to the New Mexico Uniform Securities Act.

**Purpose of section.** — As opposed to Section 58-13B-39 (now Section 58-13C-508), NMSA 1978, which provides for criminal penalties, the legislative purpose in enacting the civil penalty in this section was that the civil penalty constitute an integral part of an overall remedial regulatory and administrative scheme to protect the public. *State v. Kirby*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772, cert. denied, 133 N.M. 727, 69 P.3d 237.

**Civil penalty in Securities Act is more remedial than punitive** in its effect. While the civil penalty may by its nature have effects of deterrence and punishment, those effects

are incidental to and do not override the penalty's primarily remedial purpose. *State v. Kirby*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772, cert. denied, 133 N.M. 771, 69 P.3d 237.

**Double jeopardy.** — Criminal prosecutions under the Securities Act, following administratively imposed civil penalties under that Act, do not place defendants in double jeopardy under N.M. Const., art. II, § 15, or under Section 30-1-10 NMSA 1978. *State v. Kirby*, 2003-NMCA-074, 133 N.M. 782, 70 P.3d 772, cert. denied, 133 N.M. 771, 69 P.3d 237.

**"Materially aids" construed for purposes of joint and several liability.** — Where plaintiff brought an action under the New Mexico Uniform Securities Act against executives of a company in which he invested, their employee, and employee's brother, arising out of allegations they made knowingly false representations to convince plaintiff to invest in the company and then absconded with plaintiff's investment money, and where plaintiff moved for partial summary judgment on the employee's and his brother's joint and several liability for the executives' and employee's alleged securities violations on the basis that the employee "materially aided" the executives in the alleged securities violations and that the brother "material aided" the employee, the district court granted the motion for partial summary judgment, because the undisputed facts establish that the employee was instrumental in securing plaintiff's $750,000 investment and that plaintiff would not have invested in the company were it not for the employee's and his brother's solicitations; the undisputed facts establish that the employee and his brother "materially aided" the executives in their alleged violations as that term is used in, 58-13C-509 NMSA 1978. *Peters v. Frontiere*, 688 F.Supp.3d 1014 (D. N.M. 2023).

**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.*, 1974-NMCA-109, 86 N.M. 735, 527 P.2d 498, cert. denied, 86 N.M. 730, 527 P.2d 493 (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).

**Agent of seller of unregistered securities.** — There was substantial evidence in the record to support the trial court's determination that defendant was a salesman or agent

of a seller of an unregistered security. *Segal v. Goodman*, 1993-NMSC-018, 115 N.M. 349, 851 P.2d 471(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. —** 69A Am. Jur. 2d Securities Regulation - State § 166 et seq.

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.

What gives rise to right of recession under state blue-sky laws, 52 A.L.R. 5th 491.

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.

Who may be liable in civil action, under § 12(1) of Securities Act of 1933 (15 USCS § 77l(1)), for selling or offering securities for sale in violation of registration or prospectus provisions of Act - post-Pinter cases, 105 A.L.R. Fed. 725.

Who may be liable in actions under § 12(2) of Securities Act of 1933 (15 USCS § 77l(2)), on basis of false or misleading statement in prospectus or oral communication, 106 A.L.R. Fed. 753.

Conduct creating civil liability, under § 12(2) of Securities Act of 1933 (15 USC § 77l(2)), based on misrepresentations in or omissions from prospectus or oral communication regarding sale of security, 112 A.L.R. Fed. 387.

Persons entitled to relief under civil liability provisions of § 12 of Securities Act of 1933 (15 USC § 77l), 113 A.L.R. Fed. 575.

Standard of liability in private actions under § 14(a) of Securities Exchange Act of 1934 (15 USCS § 78n(a)) and SEC rules thereunder, 125 A.L.R. Fed. 377.

What constitutes "willfulness" for purposes of criminal provisions of federal securities laws, 136 A.L.R. Fed. 457.

## 58-13C-510. Rescission offers.

A purchaser, seller or recipient of investment advice shall not maintain an action pursuant to Section 509 [58-13C-509 NMSA 1978] of the New Mexico Uniform Securities Act if:

A. the purchaser, seller or recipient of investment advice receives in a record, before the action is instituted:

(1) an offer stating the respect in which liability pursuant to Section 509 of the New Mexico Uniform Securities Act may have arisen and fairly advising the purchaser, seller or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by the New Mexico Uniform Securities Act to be furnished to that person at the time of the purchase, sale or investment advice;

(2) if the basis for relief pursuant to this section may have been a violation of Subsection B of Section 509 of the New Mexico Uniform Securities Act, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an 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 interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) if the basis for relief pursuant to this section may have been a violation of Subsection C of Section 509 of the New Mexico Uniform Securities Act, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(4) if the basis for relief pursuant to this section may have been a violation of Subsection D of Section 509 of the New Mexico Uniform Securities Act; and if the customer is a purchaser, an offer to pay as specified in Paragraph (2) of this subsection;

or, if the customer is a seller, an offer to tender or to pay as specified in Paragraph (3) of this subsection;

(5) if the basis for relief pursuant to this section may have been a violation of Subsection E of Section 509 of the New Mexico Uniform Securities Act, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(6) if the basis for relief pursuant to this section may have been a violation of Subsection F of Section 509 of the New Mexico Uniform Securities Act, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct and interest at the legal rate of interest from the date of the violation causing the loss;

B. the offer pursuant to Subsection A of this section states that the offer must be accepted by the purchaser at any time within a specified period of not less than thirty days, or such shorter or longer period as the director by order prescribes, and contains such other terms and conditions, if any, as the director specifies;

C the offer pursuant to Subsection A of this section is delivered to the purchaser, seller or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller or recipient of investment advice;

D. the purchaser, seller or recipient of investment advice timely accepts the offer made pursuant to Subsections A through C of this section in a record; and

E. the offer made and accepted in compliance with Subsections A through D of this section is paid in accordance with the terms of the offer; or

F. the purchaser, seller or recipient of investment advice receives an offer in compliance with Subsections A through C of this section but fails to accept the offer in a record within the period specified in the offer.

**History:** Laws 2009, ch. 82, § 510.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

# ARTICLE 6
# Administration and Judicial Review

## 58-13C-601. Administration.

A. The director shall administer the New Mexico Uniform Securities Act. The director shall be appointed by the superintendent of regulation and licensing subject to confirmation by the senate. The director shall be chosen solely on the basis of fitness to perform the duties of the office and shall have a minimum of five years relevant experience in the securities or finance field, relevant education and demonstrable knowledge of securities laws and regulations. The division is 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 pursuant to the Personnel Act [Chapter 10, Article 9 NMSA 1978] and assign duties to employees necessary to assist the director in the director's duties, and the director may, with the approval of the superintendent of regulation and licensing, appoint commissioned peace officers who shall have the powers of police officers for the purpose of investigating and enforcing the provisions of the New Mexico Uniform Securities Act. Such peace officers shall comply with the certification provisions of Section 29-7-6 NMSA 1978.

B. The director may by rule impose fees as necessary for examination, claims of exemption, requests for advisory opinions and other miscellaneous filings for which no fees are specified elsewhere in the New Mexico Uniform Securities Act and may also require payment of reasonable costs of investigation resulting from enforcement actions taken pursuant to Section 602 [58-13C-602 NMSA 1978], 603 [58-13C-603 NMSA 1978] or 604 [58-13C-604 NMSA 1978] of that act.

C. It is unlawful for the director or an officer, employee or designee of the director to use for personal benefit or the benefit of others records or other information obtained by or filed with the director that are not public pursuant to Subsection B of Section 607 [58-13C-607 NMSA 1978] of the New Mexico Uniform Securities Act. The New Mexico Uniform Securities Act does not authorize the director or an officer, employee or designee of the director to disclose the record or information, except in accordance with Section 602 of that act, Subsection C of Section 607 of that act or Section 608 [58-13C-608 NMSA 1978] of that act.

D. Except as stated in the New Mexico Uniform Securities Act, that act does not create or diminish a privilege or exemption that exists at common law, by statute or by rule or otherwise.

E. The director may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the director may collaborate with public and nonprofit organizations with an interest in investor education. The director may accept a grant or donation to the securities enforcement and investor education fund established in Subsection F of this section from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does

not authorize the director to require participation or monetary contributions of a registrant in an investor education program.

F. The "securities enforcement and investor education fund" is created as a nonreverting fund in the state treasury to provide money for the purposes specified in Subsections E and G of this section. The division may establish and adopt rules as required to administer the fund. The securities enforcement and investor education fund shall be administered by the division. The fund shall consist of:

(1) five dollars ($5.00) of each fee collected from registrants pursuant to Subsections B and D of Section 410 [58-13C-410 NMSA 1978] of the New Mexico Uniform Securities Act;

(2) all or any portion of civil penalties, costs of investigation and other administrative assessments collected by the division through enforcement actions pursuant to the New Mexico Uniform Securities Act;

(3) appropriations, grants or donations to the fund; and

(4) income from investment of the fund.

G. Money in the securities enforcement and investor education fund shall be appropriated by the legislature to the division and shall be used for consumer education and training in matters concerning securities laws and investment issues; education and training of investigative and prosecutorial staff of the division; and costs incurred for the investigation and prosecution of civil and criminal violations of the New Mexico Uniform Securities Act, including expert and other consultant fees, witness fees, deposition costs and travel and training expenses. Money shall be disbursed from the fund only on warrant of the secretary of finance and administration upon vouchers signed by the director or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2009, ch. 82, § 601.

**ANNOTATIONS**

**Temporary provisions.** — Laws 2009, ch. 82, § 702 provided that on January 1, 2010, all money in the securities education and training fund shall be transferred to the securities enforcement and investor education fund.

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-602. Investigations and subpoenas.

A. The director may:

(1) conduct public or private investigations within or outside of New Mexico that the director considers necessary or appropriate to determine whether a person has violated, is violating or is about to violate the New Mexico Uniform Securities Act, or a rule adopted or order issued pursuant to that act, or to aid in the enforcement of the New Mexico Uniform Securities Act or in the adoption of rules and forms pursuant to that act;

(2) require or permit a person to testify, file a statement or produce a record, under oath or otherwise as the director determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding or an investigation pursuant to or a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act if the director determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation pursuant to the New Mexico Uniform Securities Act, the director or the director's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements and require the production of any records that the director considers relevant or material to the investigation.

C. If a person does not appear or refuses to testify, file a statement, produce records or otherwise does not obey a subpoena as required by the director pursuant to the New Mexico Uniform Securities Act, the director may apply to the district court of Santa Fe county or other appropriate district court or to a court of another state, a federal court or a court of a foreign jurisdiction, or the director may refer the matter to the attorney general or the proper district attorney to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the director;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty of not more than ten thousand dollars ($10,000) for each violation; and

(7) grant any other necessary or appropriate relief.

D. This section does not preclude a person from applying to the appropriate district court or a court of another state for relief from a request to appear, testify, file a statement, produce records or obey a subpoena.

E. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence or obeying a subpoena of the director pursuant to the New Mexico Uniform Securities Act or in an action or proceeding instituted by the director pursuant to that act on the grounds that the required testimony, statement, record or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty or forfeiture. If the individual refuses to testify, file a statement or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the director may apply to the district court of Santa Fe county or other appropriate district court or to a court of another state, a federal court or a court of a foreign jurisdiction to compel the testimony, the filing of the statement, the production of the record or the giving of other evidence. The testimony, record or other evidence compelled pursuant to such an order shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

F. At the request of the securities regulator of another state or a foreign jurisdiction, the director may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The director may provide the assistance by using the authority to investigate and the powers conferred by this section as the director determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of the New Mexico Uniform Securities Act or other law of New Mexico if occurring in New Mexico. In deciding whether to provide the assistance, the director may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the director on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of New Mexico; and the availability of resources and employees of the director to carry out the request for assistance.

**History:** Laws 2009, ch. 82, § 602.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**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).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulations - State §§ 156, 164.

Civil liability of one making false or fraudulent return of process, 31 A.L.R.3d 1393.

Investigative authority of administrative agencies in state regulation of securities, 58 A.L.R.5th 293.

## 58-13C-603. Civil enforcement.

A. If the director believes that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act or that a person has, is or is about to engage in an act, practice or course of business that materially aids a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, the director may maintain an action to enjoin the act, practice or course of business and to enforce compliance with the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act.

B. In an action pursuant to this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(a) an asset freeze, accounting, writ of attachment, writ of general or specific execution and appointment of a receiver or conservator, that may be the director, for the defendant or the defendant's assets;

(b) ordering the director to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents and profits; to collect debts; and to acquire and dispose of property;

(c) imposing a civil penalty of up to ten thousand dollars ($10,000) for each violation;

(d) an order of rescission, restitution or disgorgement directed to a person that has engaged in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or the predecessor act;

(e) ordering the payment of prejudgment and postjudgment interest; and

(f) ordering the payment of litigation expenses of the director; and

(3) order such other relief as the court considers appropriate.

C. If a person violates a provision of the New Mexico Uniform Securities Act and the violation is directed toward, targets or is committed against a person who, at the time of the violation, is sixty-two years of age or older, the court, in addition to any other civil penalties provided for pursuant to the New Mexico Uniform Securities Act or a rule issued pursuant to that act, may impose an additional civil penalty not to exceed ten thousand dollars ($10,000) for each violation.

D. The director shall not be required to post a bond in an action or proceeding pursuant to the New Mexico Uniform Securities Act.

**History:** Laws 2009, ch. 82, § 603.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-604. Administrative enforcement.

A. If the director determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act or that a person has materially aided, is materially aiding or is about to materially aid an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, the director may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice or course of business or to take other action necessary or appropriate to comply with the New Mexico Uniform Securities Act;

(2) issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer pursuant to Subparagraph (d) or (f) of Paragraph (1) of Subsection B of Section 401 [58-13B-401 NMSA 1978] [of] the New Mexico Uniform Securities Act or an investment adviser pursuant to Subparagraph (c) of Paragraph (1) of Subsection B of Section 403 [58-13B-403 NMSA 1978] of that act; or

(3) issue an order pursuant to Section 204 [58-13B-204 NMSA 1978] of the New Mexico Uniform Securities Act.

B. For any administrative proceeding authorized by the New Mexico Uniform Securities Act, including proceedings related to notices and orders pursuant to Section 204 of that act, Subsection E of Section 306 [58-13C-306 NMSA 1978] of that act,

Subsection F of Section 412 [58-13C-412 NMSA 1978] of that act or Subsection A of this section:

(1) the director may commence an administrative proceeding 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 and without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but shall be in a record;

(2) upon entry of a notice of intent or summary order, the director shall promptly notify in a record all parties against whom action is taken or contemplated that the notice or summary order has been entered and the reasons for the notice or summary order. The director shall send 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 file with the director a request in a record for a hearing. The director shall set the matter for hearing no more than sixty nor less than fifteen days from receipt of the request for hearing and shall promptly notify the parties of the time and place for hearing;

(3) the director, whether or not a request in a record for hearing is received from any interested party, may set the matter down for hearing on the director's own motion;

(4) the director may by order take the action contemplated in the notice of intent or make a summary order final:

(a) fifteen days after the parties against whom action is taken or contemplated receive notice of the right to request a hearing if those parties fail to request a hearing; or

(b) one day following the date set for a hearing requested by a party if the party fails to appear at the hearing;

(5) 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 the order until final determination;

(6) for the purpose of conducting any hearing pursuant to this section, the director shall have the power to call any party to testify under oath at such hearing to require the attendance of witnesses and 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 the director's own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. At the director's option or when state law or

court rules require such process, the subpoena may be directed to the sheriff or other law enforcement agency in the county where such witness resides;

(7) a party entitled to a hearing pursuant to this section may appear on the party's 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;

(8) upon making a request in a record 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 that the other party will or may introduce in evidence at the hearing;

(9) the director shall pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious;

(10) 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 shall be possessed of such additional qualifications as the director may require. The director may direct the hearing officer to submit to the director a report setting forth in a record 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; and

(11) a final order or order after hearing shall include entry of findings of fact and conclusions of law in a record.

C. In a final order pursuant to Subsection B of this section, the director may impose a civil penalty of up to ten thousand dollars ($10,000) for each violation. For purposes of determining the amount of a civil penalty imposed pursuant to this subsection, the director shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the New Mexico Uniform Securities Act or a rule or order of the director pursuant to that act, the number of persons adversely affected by the conduct and the resources of the person committing the violation.

D. If a person violates a provision of the New Mexico Uniform Securities Act and the violation is directed toward, targets or is committed against a person who, at the time of the violation, is sixty-two years of age or older, the director, in addition to any other administrative penalties provided for pursuant to the New Mexico Uniform Securities Act

or a rule issued pursuant to that act, may impose an additional administrative penalty not to exceed ten thousand dollars ($10,000) for each violation.

E. In a final order, the director may charge the actual cost of an investigation or proceeding for a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act.

F. If a petition for judicial review of a final order is not filed in accordance with Section 609 [58-13C-609 NMSA 1978] of the New Mexico Uniform Securities Act, the director may file a certified copy of the final order with the clerk of the appropriate district court. The order so filed has the same effect as a judgment of the court and may be recorded, enforced or satisfied in the same manner as a judgment of the court.

G. If a person does not comply with an order pursuant to this section, the director may petition the district court of Santa Fe county or other appropriate district court or a court of another state, a federal court or a court of a foreign jurisdiction to enforce the order. The court shall not require the director to post a bond in an action or proceeding pursuant to this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than ten thousand dollars ($10,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**History:** Laws 2009, ch. 82, § 604.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-605. Rules, forms, orders, interpretative opinions and hearings.

A. The director may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out the New Mexico Uniform Securities Act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports and other records;

(2) by rule, define terms, whether or not used in the New Mexico Uniform Securities Act, but those definitions shall not be inconsistent with that act; and

(3) by rule, classify securities, persons and transactions and adopt different requirements for different classes.

B. Pursuant to the New Mexico Uniform Securities Act, a rule or form shall not be adopted or amended, or an order issued or amended, unless the director finds that the rule, form, order or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by the New Mexico Uniform Securities Act. In adopting a rule, the director may use the director's own experience, technical competence, specialized knowledge and judgment. In adopting, amending and repealing rules and forms, Section 608 [58-13C-608 NMSA 1978] of the New Mexico Uniform Securities Act applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports and other records, including the adoption of uniform rules, forms and procedures.

C. Subject to Section 15(h) of the federal Securities Exchange Act and Section 222 of the federal Investment Advisers Act of 1940, the director may require that a financial statement filed pursuant to the New Mexico Uniform Securities Act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish:

(1) subject to Section 15(h) of the federal Securities Exchange Act and Section 222 of the federal Investment Advisors Act of 1940, the form and content of financial statements required pursuant to the New Mexico Uniform Securities Act;

(2) whether unconsolidated financial statements shall be filed; and

(3) whether required financial statements shall be audited by an independent certified public accountant.

D. The director may provide interpretative opinions or issue determinations that the director will not institute a proceeding or an action pursuant to the New Mexico Uniform Securities Act against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with that act. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish a reasonable charge for interpretative opinions or determinations that the director will not institute an action or a proceeding.

E. A civil or administrative penalty pursuant to the New Mexico Uniform Securities Act shall not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing that conduct conforms to a rule, form or order of the director pursuant to the New Mexico Uniform Securities Act.

F. A hearing in an administrative proceeding pursuant to the New Mexico Uniform Securities Act shall be conducted in public unless the director for good cause consistent with that act determines that the hearing will not be so conducted.

**History:** Laws 2009, ch. 82, § 605.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**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.

For securities rules filed by the director, *see* 12.11.1.1 NMAC.

**Corporation commission's (now public regulation 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.

**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. —** 69A Am. Jur. 2d Securities Regulation - State § 153.

Judicial review of securities and exchange commission orders and rules under § 25 of Securities Exchange Act of 1934 (15 USC § 78y), 113 A.L.R. Fed. 123.

## 58-13C-606. Administrative files and opinions.

A. The director shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective pursuant to the New Mexico Uniform Securities Act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued pursuant to the New Mexico Uniform Securities Act or the predecessor act; and interpretative opinions or no action determinations issued pursuant to the New Mexico Uniform Securities Act.

B. The director shall make all rules, forms, interpretative opinions and orders available to the public.

C. The director shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted pursuant to the New Mexico Uniform Securities Act may establish a reasonable

charge for furnishing the record or certification. A copy of the record certified or a certificate by the director of a record's nonexistence is prima facie evidence of a record or its nonexistence.

**History:** Laws 2009, ch. 82, § 606.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For filing of rules and regulations with the records center, *see* 14-4-3 NMSA 1978.

**Corporation commission's (now public regulation 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. —** Investigative authority of administrative agencies in state regulation of securities, 58 A.L.R.5th 293.

69A Am. Jur. 2d Securities Regulation - State § 153.

## 58-13C-607. Public records; confidentiality.

A. Except as otherwise provided in Subsection B of this section, records obtained by the director or filed pursuant to the New Mexico Uniform Securities Act, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination.

B. The following records are not public records and are not available for public examination pursuant to Subsection A of this section:

(1) a record obtained by the director in connection with an audit or inspection pursuant to Subsection D of Section 411 [58-13C-411 NMSA 1978] of the New Mexico Uniform Securities Act or an investigation pursuant to Section 602 [58-13C-602 NMSA 1978] of that act, except that information that is introduced at a hearing constitutes public information unless otherwise ordered by the director;

(2) a part of a record filed in connection with a registration statement pursuant to Sections 301 [58-13C-301 NMSA 1978] and 303 [58-13C-303 NMSA 1978] through 305 [58-13C-305 NMSA 1978] of the New Mexico Uniform Securities Act or a record pursuant to Subsection D of Section 411 of that act that contains trade secrets or

confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the director or filed pursuant to the New Mexico Uniform Securities Act and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in Subsection A of Section 608 [58-13C-608 NMSA 1978] of the New Mexico Uniform Securities Act; and

(5) any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed.

C. If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in Subsection A of Section 608 of the New Mexico Uniform Securities Act, the director may disclose a record obtained in connection with an audit or inspection pursuant to Subsection D of Section 411 of that act or a record obtained in connection with an investigation pursuant to Section 602 [58-13C-602 NMSA 1978] of that act.

**History:** Laws 2009, ch. 82, § 607.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Investigative authority of administrative agencies in state regulation of securities, 58 A.L.R.5th 293.

## 58-13C-608. Uniformity and cooperation with other agencies.

A. The director may, in the director's discretion, cooperate, coordinate, consult and, subject to Section 607 [58-13C-607 NMSA 1978] of the New Mexico Uniform Securities Act, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states and foreign governments.

B. In cooperating, coordinating, consulting and sharing records and information pursuant to this section and in acting by rule, order or waiver pursuant to the New Mexico Uniform Securities Act, the director shall, in the director's discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

C. The cooperation, coordination, consultation and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings pursuant to the New Mexico Uniform Securities Act and for records required or allowed to be maintained pursuant to that act;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations pursuant to Sections 301 [58-13C-301 NMSA 1978] and 401 [58-13C-401 NMSA 1978] through 404 [58-13C-404 NMSA 1978] of the New Mexico Uniform Securities Act and exemptions pursuant to Section 203 [58-13C-203 NMSA 1978] of that act;

(8) sharing and exchanging records, subject to Section 607 [58-13C-607 NMSA 1978] of the New Mexico Uniform Securities Act;

(9) formulating rules, statements of policy, guidelines, forms and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

**History:** Laws 2009, ch. 82, § 608.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For the federal commodity futures trading commission, *see* 7 U.S.C. § 4a.

For the federal securities and exchange commission, *see* 15 U.S.C. § 78d.

For the federal securities investor protection corporation, *see* 15 U.S.C. § 78ccc.

## 58-13C-609. Judicial review.

A. A final order issued by the director pursuant to the New Mexico Uniform Securities Act is subject to judicial review in accordance with the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order or rule, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

**History:** Laws 2009, ch. 82, § 609.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Corporation commission (now public regulation commission) not authorized to issue sales permit.** — The authority of the corporation commission (now public regulation 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 (now public regulation commission) to issue a permit which had been approved by the chief

pursuant to former Section 58-13-10 NMSA 1978. Unless an aggrieved party appealed, the corporation commission (now public regulation 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. —** 69A Am. Jur. 2d Securities Regulation - State § 163.

## 58-13C-610. Jurisdiction.

A. Sections 301 [58-13C-301 NMSA 1978] and 302 [58-13C-302 NMSA 1978] of the New Mexico Uniform Securities Act, Subsection A of Section 401 [58-13C-401 NMSA 1978] of that act, Subsection A of Section 402 [58-13C-402 NMSA 1978] of that act, Subsection A of Section 403 [58-13C-403 NMSA 1978] of that act, Subsection A of Section 404 [58-13C-404 NMSA 1978] of that act and Sections 501 [58-13C-501 NMSA 1978], 506 [58-13C-506 NMSA 1978], 509 [58-13C-509 NMSA 1978] and 510 [58-13C-510 NMSA 1978] of that act do not apply to a person that sells or offers to sell a security, unless the offer to sell or the sale is made in New Mexico or the offer to purchase or the purchase is made and accepted in New Mexico.

B. Subsection A of Section 401 of the New Mexico Uniform Securities Act, Subsection A of Section 402 of that act, Subsection A of Section 403 of that act, Subsection A of Section 404 of that act and Sections 501, 506, 509 and 510 of that act do not apply to a person that purchases or offers to purchase a security, unless the offer to purchase or the purchase is made in New Mexico or the offer to sell or the sale is made and accepted in New Mexico.

C. For the purpose of this section, an offer to sell or to purchase a security is made in New Mexico, whether or not either party is then present in New Mexico, if the offer:

(1) originates from within New Mexico; or

(2) is directed by the offeror to a place in New Mexico and received at the place to which it is directed.

D. For the purpose of this section, an offer to purchase or to sell is accepted in New Mexico, whether or not either party is then present in New Mexico, if the acceptance:

(1) is communicated to the offeror in New Mexico and the offeree reasonably believes the offeror to be present in New Mexico and the acceptance is received at the place in New Mexico to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside New Mexico.

E. An offer to sell or to purchase is not made in New Mexico when a publisher circulates or there is circulated on the publisher's behalf in New Mexico a bona fide newspaper or other publication of general, regular and paid circulation that is not published in New Mexico, or that is published in New Mexico but has had more than two-thirds of its circulation outside New Mexico during the previous twelve months or when a radio or television program or other electronic communication, except specifically addressed electronic mail or messaging, originating outside New Mexico is received in New Mexico. A radio or television program or other electronic communication is considered as having originated in New Mexico if either the broadcast studio or the originating source of transmission is located in New Mexico, unless:

(1) the program or communication is syndicated and distributed from outside New Mexico for redistribution to the general public in New Mexico;

(2) the program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside New Mexico for redistribution to the general public in New Mexico;

(3) the program or communication is an electronic communication that originates outside New Mexico and is captured for redistribution to the general public in New Mexico by a community antenna or cable, radio, cable television or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in New Mexico, but that is not intended for distribution to the general public in New Mexico.

F. Subsection A of Section 403 of the New Mexico Uniform Securities Act, Subsection A of Section 404 of that act, Subsection A of Section 405 [58-13C-405 NMSA 1978] of that act and Sections 502 [58-13C-502 NMSA 1978], 505 [58-13C-505 NMSA 1978] and 506 [58-13C-506 NMSA 1978] of that act apply to a person if the person engages in an act, practice or course of business instrumental in effecting prohibited or actionable conduct in New Mexico, whether or not either party is then present in New Mexico.

**History:** Laws 2009, ch. 82, § 610.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

## 58-13C-611. Service of process.

A. A consent to service of process complying with this section shall be signed and filed in the form required by a rule or order pursuant to the New Mexico Uniform Securities Act. A consent appointing the director as the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative pursuant to the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

B. If a person, including a nonresident of New Mexico, engages in an act, practice or course of business prohibited or made actionable by the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act and the person has not filed a consent to service of process pursuant to Subsection A of this section, the act, practice or course of business constitutes the appointment of the director as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

C. Service pursuant to Subsection A or B of this section may be made by providing a copy of the process to the office of the director, but it is not effective unless:

(1) the plaintiff, which may be the director, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the director in a proceeding before the director, allows.

D. Service pursuant to Subsection C of this section may be used in a proceeding before the director or by the director in a civil action in which the director is the moving party.

E. If process is served pursuant to Subsection C of this section, the court, or the director in a proceeding before the director, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**History:** Laws 2009, ch. 82, § 611.

## ANNOTATIONS

**Severability.** — Laws 2009, ch. 82, § 612 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

**Cross references.** — For service of process in the district court, *see* Rule 1-004 NMRA and comments.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 69A Am. Jur. 2d Securities Regulation - State § 221 et seq.

# ARTICLE 7
# Transition

## 58-13C-701. Application of act to existing proceedings and existing rights and duties.

A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of the New Mexico Uniform Securities Act or may be instituted on the basis of conduct occurring before the effective date of the New Mexico Uniform Securities Act, but a civil action shall not be maintained to enforce any liability pursuant to the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of the New Mexico Uniform Securities Act, whichever is earlier

B. All effective registrations pursuant to the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations and conditions imposed on the registrations pursuant to the predecessor act remain in effect while they would have remained in effect if the New Mexico Uniform Securities Act had not been enacted. They are considered to have been filed, issued or imposed pursuant to the New Mexico Uniform Securities Act, but are exclusively governed by the predecessor act.

C. The predecessor act exclusively applies to an offer or sale made within one year after the effective date of the New Mexico Uniform Securities Act pursuant to an offering made in good faith before the effective date of the New Mexico Uniform Securities Act on the basis of an exemption available pursuant to the predecessor act.

**History:** Laws 2009, ch. 82, § 701.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 82, § 704 made the New Mexico Uniform Securities Act effective January 1, 2010.

# ARTICLE 13D
# Protecting Vulnerable Adults from Financial Exploitation

## 58-13D-1. Short title.

This act [58-13D-1 to 58-13D-8 NMSA 1978] may be cited as the "Protecting Vulnerable Adults from Financial Exploitation Act".

**History:** Laws 2017, ch. 106, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 1 effective July 1, 2017.

## 58-13D-2. Definitions.

As used in the Protecting Vulnerable Adults from Financial Exploitation Act:

A. "agencies" means the securities division of the regulation and licensing department and the adult protective services division of the aging and long-term services department;

B. "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities, but a partner, officer or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. "Agent" does not include an individual excluded by rule adopted pursuant to the New Mexico Uniform Securities Act [58-13C-101 to 58-13C-701 NMSA 1978];

C. "broker-dealer" means a 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) an agent;

(2) an issuer;

(3) a bank or savings institution if:

(a) its activities as a broker-dealer are limited to those specified in: 1) Subsections 3(a)(4)(B)(i) through (vi) and (viii) through (ix) of the federal Securities Exchange Act of 1934, and they are unsolicited transactions; 2) Subsection 3(a)(5)(B) of that act; or 3) Subsection 3(a)(5)(C) of that act; or

(b) the bank satisfies the conditions described in Subsection 3(a)(4)(E) of the federal Securities Exchange Act of 1934;

(4) an international banking institution; or

(5) a person excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

D. "eligible adult" means:

(1) a person sixty-five years of age or older; or

(2) an incapacitated person who is eighteen years of age or older;

E. "financial exploitation" means:

(1) the wrongful or unauthorized taking, withholding, appropriation or use of money, assets or property of an eligible adult; or

(2) any act or omission taken by a person, including through the use of a power of attorney, guardianship or conservatorship of an eligible adult, to:

(a) obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property; or

(b) convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property;

F. "incapacitated person" means a person with a mental, physical or developmental condition that substantially impairs the person's ability to provide adequately for the person's own care or protection;

G. "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial

planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

(1) an investment adviser representative;

(2) a lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(3) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(4) a publisher, employee or columnist of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation or an owner operator, producer or employee of a cable, radio or television network, station or production facility, if, in either case:

(a) the financial or business news or advice is contained in a publication or broadcast disseminated to the general public; and

(b) the content does not consist of rendering advice on the basis of the specific investment situation of each client;

(5) a federal covered investment adviser;

(6) a bank or a savings institution; or

(7) any other person excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

H. "investment adviser representative" means an individual employed by or associated with a New Mexico investment adviser or federal covered investment adviser and who makes recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervises employees who perform any of the foregoing. "Investment adviser representative" does not include an individual who:

(1) performs only clerical or ministerial acts;

(2) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(3) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in New Mexico, as "place of business" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940 and is:

(a) an investment adviser representative, as "investment adviser representative" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940; or

(b) not a supervised person as "supervised person" is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940; or

(4) is excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

I. "issuer" means a person that issues or proposes to issue a security, subject to the following:

(1) the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

(2) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate; and

(3) the issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production pursuant to a lease, right or royalty is the owner of an interest in the lease or in payments out of production pursuant to a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

J. "qualified individual" means an agent, investment adviser representative or person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser; and

K. "savings institution" means an institution organized or chartered pursuant to the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or

share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law, or a receiver, conservator or other liquidating agent of such institutions or entities. "Savings institution" does not include:

(1) an insurance company or other organization primarily engaged in the business of insurance;

(2) a Morris plan bank; or

(3) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act or any successor federal statute.

**History:** Laws 2017, ch. 106, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 2 effective July 1, 2017.

**Cross references.** — For the federal Securities Exchange Act of 1934, *see* 15 U.S.C. § 78a et seq.

For Section 203 of the federal Investment Advisers Act of 1940, *see* 15 U.S.C.S. § 80b-3.

For the Federal Deposit Insurance Act, *see* 12 U.S.C.S. § 1811 et seq.

## 58-13D-3. Third-party and agency disclosure.

A. If a broker-dealer, investment adviser or qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, a broker-dealer, investment adviser or qualified individual:

(1) shall promptly notify the agencies;

(2) shall attempt to notify a third-party previously designated by the eligible adult; and

(3) may attempt to notify a third-party that is not designated but is reasonably associated with the eligible adult.

B. Disclosure shall not be made to a designated third-party that is at the time of disclosure suspected of financial exploitation or other abuse of the eligible adult.

**History:** Laws 2017, ch. 106, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 3 effective July 1, 2017.

## 58-13D-4. Immunity for disclosures.

A broker-dealer, investment adviser or qualified individual who, in exercising reasonable care, complies with Section 3 [58-13D-3 NMSA 1978] of the Protecting Vulnerable Adults from Financial Exploitation Act and has completed the training required pursuant to Section 7 [58-13D-7 NMSA 1978] of that act shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

**History:** Laws 2017, ch. 106, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 4 effective July 1, 2017.

## 58-13D-5. Delaying disbursements or transactions.

A. A broker-dealer or investment adviser may delay a disbursement or transaction from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker-dealer, investment adviser or qualified individual reasonably believes, after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation, that the requested disbursement or transaction may result in financial exploitation of an eligible adult; and

(2) the broker-dealer or investment adviser:

(a) immediately, but in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(b) immediately, but in no event more than two business days after the requested disbursement or transaction, notifies the agencies; and

(c) provides, upon a request by the securities division of the regulation and licensing department, a status report of the internal review required pursuant to Paragraph (1) of this subsection.

B. Any delay of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the broker-dealer or investment adviser that the disbursement or transaction will not result in financial exploitation of the eligible adult; or

(2) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction unless otherwise terminated or extended by either of the agencies or an order of a court of competent jurisdiction.

C. A court of competent jurisdiction may enter an order extending the delay of the disbursement or transaction or may order other protective relief based on the petition of the director of the securities division of the regulation and licensing department, the director of the adult protective services division of the aging and long-term services department, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.

**History:** Laws 2017, ch. 106, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 5 effective July 1, 2017.

## 58-13D-6. Immunity for delaying disbursements or transactions.

A broker-dealer or investment adviser that, in exercising reasonable care, complies with Section 5 [58-13D-5 NMSA 1978] of the Protecting Vulnerable Adults from Financial Exploitation Act and has completed the training required pursuant to Section 7 [58-13D-7 NMSA 1978] of that act, shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section.

**History:** Laws 2017, ch. 106, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 6 effective July 1, 2017.

## 58-13D-7. Training.

A. The director of the securities division of the regulation and licensing department shall promulgate, by rule, training guidelines or a standardized training curriculum that broker-dealers and investment advisers may use. A broker-dealer or investment adviser may develop the broker-dealer's or investment adviser's own training as approved by the director. The training required by this section may include indicators of financial exploitation of an eligible adult and the process for reporting suspected financial exploitation both internally and to the agencies.

B. A broker-dealer or investment adviser shall provide training concerning the financial exploitation of eligible adults to its employees who are required to be registered in New Mexico as agents or investment adviser representatives and who have contact with eligible adults and access to account information on a regular basis and as part of their job.

**History:** Laws 2017, ch. 106, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 7 effective July 1, 2017.

## 58-13D-8. Records.

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the agencies and to law enforcement, either as part of a referral to the agencies, as part of a referral to law enforcement or upon request of the agencies or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available pursuant to this section shall not be considered a public record as defined in Subsection G of Section 14-2-6 NMSA 1978. Nothing in this provision shall limit or otherwise impede the authority of the director of the securities division of the regulation and licensing department to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

**History:** Laws 2017, ch. 106, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 106, § 9 made Laws 2017, ch. 106, § 8 effective July 1, 2017.

# ARTICLE 14
# Installment Savings and Investment Certificates (Repealed.)

## 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.

# 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 the 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

**Compiler's notes.** — The term "this act" means Laws 1955, ch. 128, §§ 1 to 29 that are presently compiled as 58-15-1 to 58-15-3, 58-15-6 to 58-15-13 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*, 1947-NMSC-075, 52 N.M. 1, 189 P.2d 87.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 1, 9, 11, 12, 13, 23, 51, 52.

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 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:

A. "consumer" means a person who resides in New Mexico or who enters into a loan agreement in New Mexico;

B. "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers:

(1) public record information; or

(2) credit account information from persons who furnish that information regularly and in the ordinary course of business;

C. "debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from the consumer's account for the specific purpose of repaying a loan;

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

E. "director" means the director of the division;

F. "installment loan" means a loan that is not a refund anticipation loan and is in an amount less than or equal to ten thousand dollars ($10,000) that is to be repaid:

(1) in a minimum of four substantially equal payments of principal and interest to pay off a loan in its entirety with an initial stated maturity of not less than one hundred twenty days to maturity; or

(2) in any number of payments and with any initial stated days to maturity that bears no finance charge as disclosed pursuant to 12 CFR Part 1026, known as

"Regulation Z", and with respect to which no other fees or charges of any kind are imposed at any time;

G. "license" means 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 that act at a single place of business. It shall constitute and shall be construed as a grant of a revocable 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 and not otherwise;

H. "licensee" means a person to whom one or more licenses have been issued pursuant to the New Mexico Small Loan Act of 1955 upon the person's 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 under that act and whose name appears on the face of the license;

I. "make a loan" means to originate a new loan agreement or to make any change to the terms of an existing loan agreement, including the principal amount financed, the annual percentage rate, finance charge, fees or payment schedule;

J. "person" includes an individual, copartner, association, trust, corporation and any other legal entity;

K. "prime rate of interest" means the bank prime loan rate published by the board of governors of the federal reserve system on the last business day of the preceding month;

L. "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee; and

M. "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual percentage rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan.

**History:** 1953 Comp., § 48-17-31, enacted by Laws 1955, ch. 128, § 2; 1977, ch. 245, § 60; 2007, ch. 86, § 2; 2017, ch. 110, § 11; 2019, ch. 201, § 8; 2022, ch. 23, § 5.

## ANNOTATIONS

**The 2022 amendment,** effective January 1, 2023, revised the definition of "installment loan", and defined "prime rate of interest", as used in the New Mexico Small Loan Act of 1955; in Subsection F, after "means a loan", deleted "in an amount less than or equal to five thousand dollars ($5,000) that is to be repaid in a minimum of four substantially

equal payments of principal and interest to pay off a loan in its entirety with an initial stated maturity of not less than one hundred twenty days to maturity. 'Installment loan' does not mean a refund anticipation loan" and added "that is not a refund anticipation loan and is in an amount less than or equal to ten thousand dollars ($10,000) that is to be repaid", and added Paragraphs F(1) and F(2); and added a new Subsection K and redesignated former Subsections K and L as Subsections L and M, respectively.

**The 2019 amendment,** effective January 1, 2020, defined "make a loan" and revised the definition of "consumer" as used in the New Mexico Small Loan Act of 1955; in Subsection A, after "person", added "who resides in New Mexico or", and after "agreement", deleted "and receives the loan proceeds"; added a new Subsection I and redesignated former Subsections I through K as Subsection J through L, respectively; and in Subsection L, after "annual", deleted "interest" and added "percentage".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, defined "consumer reporting agency", "installment loan", and "refund anticipation loan" as used in the New Mexico Small Loan Act of 1955, and removed the definitions of certain terms; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection D, deleted "'department' or"; deleted former Subsection E, which defined "installment loan"; added a new Subsection F and redesignated former Subsections F and G as Subsections G and H, respectively; deleted former Subsections H and I, which defined "payday loan" and "payday loan product", respectively, and redesignated former Subsection J as Subsection I; added a new Subsection J; and deleted former Subsection K and redesignated former Subsection L as Subsection K.

**The 2007 amendment,** effective November 1, 2007, added the definitions of "consumer", "debit authorization", "installment loan", "payday loan", "payday loan product", "renewed payday loan", and "simple interest".

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-15-3. Applicability of act; exemptions; evasions; penalty.

A. A person shall not engage in the business of lending in amounts of ten thousand dollars ($10,000) or less for a loan 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 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 [Chapter 58, Article 7 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 ten thousand dollars ($10,000) or less under a written agreement providing for a total loan or line of credit in excess of ten thousand dollars ($10,000).

C. A banking corporation, savings and loan association or credit union operating under the laws of the United States or of a state shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor shall that act apply to business transacted by any 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 an existing applicable statute of this state.

D. The provisions of Subsection A of this section apply to:

(1) a person who owns an interest, legal or equitable, in the business or profits of a licensee and whose name does not specifically appear on the face of the license, except a stockholder in a corporate licensee;

(2) a person who seeks to evade its application by any device, subterfuge or pretense whatsoever, including but not thereby limiting the generality of the foregoing:

(a) the loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, goods or things in action;

(b) the use of collateral or related sales or purchases of goods or services or agreements to sell or purchase, whether real or pretended;

(c) receiving or charging compensation for goods or services, whether or not sold, delivered or provided;

(d) 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) making loans disguised as a personal property sale and leaseback transaction;

(f) disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; and

(g) making, offering, assisting or arranging a debtor to obtain a loan with a greater rate of interest, consideration or charge than is permitted by Chapter 58 NMSA

1978 through any method, including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state; and

(3) if the loan exceeds the rate permitted by Chapter 58 NMSA 1978, a person purporting to act as an agent, service provider or in another capacity for another entity that is exempt from the New Mexico Small Loan Act of 1955, if, among other things:

(a) the person holds, acquires or maintains, directly or indirectly, the predominant economic interest in the loan;

(b) the person markets, brokers, arranges or facilitates the loan and holds the right, requirement or first right of refusal to purchase loans, receivables or interests in the loans; or

(c) the totality of the circumstances indicate that the person is the lender and the transaction is structured to evade the requirements of the New Mexico Small Loan Act of 1955. In deciding whether the totality of the circumstances indicate that the person is a lender and a transaction is structured to evade the requirements of the New Mexico Small Loan Act of 1955, all relevant factors may be considered, including where the person: 1) indemnifies, insures or protects an exempt entity for any costs or risks related to the loan; 2) predominantly designs, controls or operates the loan program; or 3) purports to act as an agent, service provider or in another capacity for an exempt entity while acting directly as a lender in other states.

E. A person, copartnership, trust or a trustee or beneficiary thereof or an association or corporation or a member, officer, director, agent or employee thereof who violates or participates in the violation of a provision of Subsection A of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978. A contract or loan in the making or collection of which an act is done that violates Subsection A or D of this section or Section 58-15-17 or 58-15-20 NMSA 1978 is void and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever.

F. A loan in an amount equal to ten thousand dollars ($10,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

G. A violation of a provision of the New Mexico Small Loan Act of 1955 that constitutes either an unfair or deceptive trade practice or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable pursuant to the Unfair Practices Act.

**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; 1993, ch. 210, § 4; 2007, ch. 86, § 3; 2017, ch. 110, § 12; 2019, ch. 201, § 9; 2022, ch. 23, § 6.

## ANNOTATIONS

**The 2022 amendment,** effective January 1, 2023, revised certain applicability provisions of the New Mexico Small Loan Act of 1955; in Subsection A, after "lending in amounts of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)"; in Subsection B, after "individual advances of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)", and after "in excess of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)"; in Subsection D, Paragraph D(2), added Subparagraphs D(2)(e) through D(2)(g), and added Paragraph D(3); and in Subsection F, after "an amount equal to", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2019 amendment,** effective January 1, 2020, provided penalties for violations of the certain provisions of the New Mexico Small Loan Act of 1955, and provided that certain violations of the New Mexico Small Loan Act of 1955 are also actionable pursuant to the Unfair Practices Act; in Subsection E, after "of this section", added "or Section 58-15-17 or 58-15-20 NMSA 1978"; and in Subsection G, after "1955", deleted "which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made" and added "that", after "constitutes", added "either", after "trade practice", added "or an unconscionable trade practice pursuant to Section 57-12-2 NMSA 1978 is actionable".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, revised certain criteria requiring persons who are engaged in the business of lending to obtain a license from the director of the financial institutions division of the regulation and licensing department, revised the amount of certain loans that are exempt from the provisions of the New Mexico Small Loan Act of 1955, provided that loans in the amount of five thousand dollars ($5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955, and provided that certain violations of the provisions of the New Mexico Small Loan Act of 1955 constitute unfair or deceptive trade practices pursuant to the Unfair Practices Act; in Subsections A and B, changed "two thousand five hundred dollars ($2,500)" to "five thousand dollars ($5,000)"; and added Subsections F and G.

**The 2007 amendment,** effective November 1, 2007, amended Subsection B to delete the former condition that loan contracts with a line of credit in excess of $2,500 be secured by a pledge of real estate.

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 1993 amendment,** effective June 18, 1993, in Subsection E, substituted the language following "Subsection A of this section" in the first sentence for "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" and made a stylistic change.

**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 Mgmt. Co. v. Packs' Auto Sales*, 1950-NMSC-001, 54 N.M. 64, 213 P.2d 433.

**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*, 1976-NMCA-069, 89 N.M. 389, 552 P.2d 1237.

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*, 1976-NMCA-069, 89 N.M. 389, 552 P.2d 1237.

**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. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 14 et seq., 24, 25.

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 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 be 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers § 14 et seq.

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.

B. An 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 all additional information required by the director that may be relevant or, in the opinion of the director, helpful in conducting the investigation.

C. Failure to comply with the director's requirement for supplemental information or the willful furnishing of false information is sufficient grounds for denial of license.

D. False or misleading information willfully and intentionally furnished to the director prior to the issuance of any license is grounds 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.

E. 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.

F. In the event the director finds that:

(1) 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) 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) 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; the director shall enter an order granting the application, file the director's findings and, upon payment of the license fee of five hundred dollars ($500), issue and deliver a license to the applicant.

G. If the director does not make the findings enumerated in Subsection F of this section, the director shall enter an order denying the application, notify the applicant of the denial and retain the application fee. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy to the applicant.

H. A written application for license renewal shall be filed on or before March 31 of each year, and thereupon the director shall investigate the facts and review the files of examinations of the applicant made by the director's office and of complaints filed by borrowers, if any. The director shall deliver a renewal license to the applicant if the director finds that:

(1) 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) 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) 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.

I. If the director does not make the findings enumerated in Subsection H of this section, the director 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 the director's contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall produce 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, the director shall issue the renewal license. If the director finds that the complaints of violations or other grounds are well-founded, the director shall enter an order denying the renewal application and 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, the director shall prepare written findings and shall 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.

J. In connection with the determination of fitness and character of an applicant pursuant to the provisions of 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.

K. 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. In the event that the application for annual renewal of the license is delinquent, the licensee shall also pay a delinquency fee of ten dollars ($10.00) per day for each day the licensee is delinquent in filing the application for renewal.

L. In addition to the fees provided for in Subsection K of this section, 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 an additional fee for the period covered by the

license the sum of two hundred dollars ($200), which fee shall be deposited into the financial literacy fund.

M. A licensee by accepting a license that is issued or renewed or by continuing to operate a 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; 1993, ch. 210, § 5; 2007, ch. 86, § 4; 2017, ch. 110, § 13.

## ANNOTATIONS

**Cross references.** — For exemption of banks, saving and loan associations, and credit unions from licensing requirement, *see* 58-15-3 NMSA 1978.

**The 2017 amendment,** effective January 1, 2018, provided for an additional two hundred dollar ($200) annual license fee to be paid by the licensee of each licensed office and to be deposited into the financial literacy fund; and added a new Subsection L and redesignated the succeeding subsection accordingly.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**The 2007 amendment,** effective November 1, 2007, simplifies the language and organization of this section.

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, deleted language relating to the procedure for application for a license under the New Mexico Small Loan Act of 1955 and made a stylistic change; substituted "March 31" for "May 1" in Subsection D; added the last sentence to Subsection G; and made stylistic changes throughout the section.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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 Exm'r*, 1966-NMSC-070, 76 N.M. 191, 413 P.2d 471.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 8, 14 et seq., 24, 25.

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, 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.

**ANNOTATIONS**

**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. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers § 14 et seq.

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 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 7, 14 et seq.

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 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 8, 14 et seq., 24, 25.

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 the director's authorized representative shall make an examination of the place of business of each licensee and 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 as the director may deem necessary. The licensee shall pay to the director for such annual examination a fee of two hundred dollars ($200).

B. 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.

C. 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 the

director's 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 processing 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 who the director has reasonable cause to believe is violating any provision of the New Mexico Small Loan Act of 1955, whether the person claims to be within the authority or beyond the scope of that act.

D. For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or licenses issued by a 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 ten thousand dollars ($10,000) or less.

E. 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.

F. For the purposes of this section, the director or the director's 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 the person 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 licensee's business and the party 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. The 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.

G. 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.

H. The director has the power to administer oaths, certify official acts and records of the director's office, issue subpoenas for witnesses in the name of and under the seal of the director's office and compel the production of papers, books, accounts and documents. The director shall issue subpoenas at the instance of any party to a hearing before the division upon payment of a fee of two dollars fifty cents ($2.50) for each subpoena so issued.

I. 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 by law for the taking of depositions or submission of written interrogatories in civil actions pending in the district courts of this state.

J. Each witness who appears before the director by the director's 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 the witness' testimony is material.

K. Whenever the director has reasonable cause to believe that a person is violating a provision of the New Mexico Small Loan Act of 1955, the director 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 the receiver 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; 2007, ch. 86, § 5; 2017, ch. 110, § 14; 2022, ch. 23, § 7.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, in Subsection D, after "Section 58-15-3 NMSA 1978 as to any loans of" deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2017 amendment,** effective January 1, 2018, revised the criteria for certain small loan lenders who are subject to investigation under the New Mexico Small Loan Act of 1955 and are presumed to be engaged in the business governed by the New Mexico Small Loan Act of 1955; and in Subsection D, after "as to any loans of", deleted "two thousand five hundred dollars ($2,500)" and added "five thousand dollars ($5,000)".

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**The 2007 amendment,** effective November 1, 2007, makes any person who represents a willingness to make loan transactions subject to investigation under the New Mexico Small Loan Act.

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 11, 12, 13.

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 the business such books, accounts and records in accordance with sound accounting practices that will enable the director to determine whether the licensee is complying with the provisions of the New Mexico Small Loan Act of 1955 and with the orders and regulations lawfully made by the director pursuant to the provisions of that act. Each licensee shall preserve the books, accounts and records for at least two years after making the final entry on a loan recorded therein.

B. Each licensee shall, annually on or before March 31, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by the licensee within the state pursuant to the provisions of the New Mexico Small Loan Act of 1955. The report shall be made under oath and shall be in the form prescribed by the director. A summary of the 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 a license is in effect, the director may, upon written notice, require a 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 the licensee, additional information as to ownership of any office; operation of any office; books, records, files and papers; and affiliation or relationship with any other person, firm, trust, association or corporation as, in the opinion of the director, may be helpful in the discharge of the director's official duties.

D. False or misleading information willfully furnished to the director by a licensee in an annual report or pursuant to a notice or requirement of the director is sufficient grounds for suspension and revocation of license in accordance with the procedures for suspension or revocation of license set forth in the New Mexico Small Loan Act of 1955.

**History:** 1953 Comp., § 48-17-39, enacted by Laws 1955, ch. 128, § 10; 1977, ch. 245, § 67; 1993, ch. 210, § 6; 2007, ch. 86, § 6.

## ANNOTATIONS

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective November 1, 2007, makes minor grammar revisions to the section.

**The 1993 amendment,** effective June 18, 1993, substituted "March 31" for "the first day of February" in Subsection B and made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 7, 23.

58 C.J.S. Money Lenders §§ 3, 4.

## 58-15-10.1. Licensee reporting requirements; penalties.

A. Licensees shall file with the director each year reports containing at least the following information for the preceding calendar year ending December 31 in an aggregated, nonidentifying consumer manner as specified below:

(1) a description of each loan product offered by the licensee, including:

(a) whether the loan product was secured or unsecured;

(b) whether the loan product was made pursuant to the New Mexico Small Loan Act of 1955 or the New Mexico Bank Installment Loan Act of 1959 [Chapter 58, Article 7 NMSA 1978];

(c) the total dollar amount of principal loaned for that product;

(d) the percentage of the total dollar amount of all principal for that product that was repaid; and

(e) the total number of individual borrowers who took out this type of loan product;

(2) the total number of loan transactions entered into for each loan product in the following amounts:

(a) five hundred dollars ($500) or less;

(b) five hundred one dollars ($501) to one thousand dollars ($1,000);

(c) one thousand one dollars ($1,001) to three thousand dollars ($3,000);

(d) three thousand one dollars ($3,001) to five thousand dollars ($5,000); and

(e) five thousand one dollars ($5,001) to ten thousand dollars ($10,000);

(3) for each loan product, the number of loans made and the total dollar amount of interest and fees charged on the contracts for loans made within the following categories of annual percentage rate calculated pursuant to 12 CFR Part 1026, known as "Regulation Z":

(a) less than or equal to ten percent;

(b) more than ten percent through eighteen percent;

(c) more than eighteen percent through thirty-six percent; and

(d) more than thirty-six percent;

(4) for each loan product, the following aggregate amounts of fees and interest:

(a) a list of each fee charged by the lender and a description of each fee product or type, including fees charged for loan origination and credit insurance;

(b) the total dollar amount of each fee product charged by the lender and paid by the borrower; and

(c) the total dollar amount of interest charged by the lender and paid by the borrower;

(5) for each loan product:

(a) the number of loans for which the original term of the loan was: 1) less than one hundred twenty days; 2) between one hundred twenty days and three hundred sixty-five days; 3) between three hundred sixty-five days and seven hundred thirty-one days; 4) between seven hundred thirty-one days and five years; and 5) longer than five years;

(b) for each item set forth in Subparagraph (a) of this paragraph, the average actual repayment time for the given loan product and loan term; and

(c) for each item set forth in Subparagraph (a) of this paragraph, the number of loans for which payments were due: 1) every two weeks; 2) every four weeks; and 3) monthly;

(6) the number of borrowers who took out one or two loans with the lender in the previous calendar year, and the percentage of all borrowers who took out one or two loans with the lender in the previous calendar year;

(7) the number of borrowers who took out three or more loans with the lender in the previous calendar year, and the percentage of all borrowers who took out three or more loans with the lender in the previous calendar year;

(8) for each loan product, the number of loans that have been repaid in full without an extension, renewal, refinance, rollover or new loan within thirty days of repaying that loan, and for each loan product, the percentage of all borrowers who have repaid their loans in full without an extension, renewal, refinance, rollover or new loan within thirty days of repaying that loan;

(9) for each loan product, the number of borrowers who extended, renewed, refinanced or rolled over their loans prior to or at the same time as paying their loan balance in full, or took out a new loan within thirty days of repaying that loan, and for each loan product, the percentage of all borrowers who extended, renewed, refinanced or rolled over their loans prior to or at the same time as paying the loan balance in full, or took out a new loan within thirty days of repaying that loan;

(10) for each loan product, the total number of loans for which a late payment fee was charged and the percentage of the total loans for which a late payment fee was charged;

(11) for each loan product, the total number of loans for which a late payment fee was charged more than once over the term of the contract, and the percentage of the total loans for which a late payment fee was charged more than once over the term of the contract;

(12) for each loan product, the number of loans for which a borrower has defaulted on a loan, and for each loan product, the percentage of total loans of that product for which the borrower has defaulted on a loan;

(13) for each loan product, the dollar amount of loan principal and accrued interest that was charged-off or written-off, and the number of borrowers for which the lender charged-off or wrote-off loan principal and accrued interest;

(14) the number of loans and percentage of all borrowers the lender filed action against for default;

(15) the total number of loans secured by a motor vehicle and the number of those loans for which the motor vehicle was repossessed;

(16) the total number of loans secured by non-motor vehicle personal property and the number of those loans for which the non-motor vehicle personal property was repossessed;

(17) the total number and percentage of borrowers of all loan products whose sources of income, as provided by borrowers in the loan origination process, included a means-tested public benefit as defined by 8 U.S.C. Section 1613(c);

(18) the total number and percentage of borrowers of all loan products who are aged sixty-five or older;

(19) the total number of loans of all loan products that were made to borrowers in each county in New Mexico; and

(20) the percentage of all borrowers who took out a refund anticipation loan who were eligible for a federal earned income tax credit.

B. The reports required pursuant to Subsection A of this section shall be submitted to the director on or before the fifteenth day of April each year.

C. The reports required pursuant to Subsection A of this section shall be accompanied by a sworn statement by the licensee under penalty of perjury that the report is complete and accurate.

D. A licensee that fails to timely submit complete and accurate reports as required pursuant to Subsection A of this section on or before the fifteenth day of April may:

(1) be fined an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day after the fifteenth day of April, a complete and accurate report is not filed; and

(2) have a license required pursuant to the New Mexico Small Loan Act of 1955 suspended pursuant to Section 58-15-8 NMSA 1978.

**History:** Laws 2011, ch. 105, § 1; 2013, ch. 221, § 1; 2017, ch. 110, § 15; 2019, ch. 201, § 10; 2022, ch. 23, § 8.

## ANNOTATIONS

**The 2022 amendment,** effective January 1, 2023, modified reporting requirements for licensees; in Subsection A, Paragraph A(2), added Subparagraph A(2)(e), in Paragraph A(3), Subparagraph A(3)(a), after "less than or equal to", deleted "thirty-six" and added "ten", in Subparagraph A(3)(b), after "more than", deleted "thirty-six" and added "ten", and after "percent through", deleted "one hundred" and added "eighteen", in Subparagraph A(3)(c), after "more than", deleted "one hundred" and added "eighteen", and after "percent through", deleted "one hundred fifty" and added "thirty-six", and in Subparagraph A(3)(d), deleted "more than one hundred fifty percent through one hundred seventy-five percent" and added "more than thirty-six percent".

**The 2019 amendment,** effective January 1, 2020, expanded lender reporting requirements; in Subsection A, after "each year", deleted "a report" and added "reports", after "calendar year", added "ending December 31", and after "consumer manner", added "as specified below", deleted former Paragraphs A(1) through A(5) and added new Paragraphs A(1) through A(20); and in Subsection D, after "this section", added "on or before the fifteenth day of April", and in Paragraph D(2), after "NMSA 1978" deleted "if a complete and accurate report has not been filed by the fifteenth day of April".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, revised the information required to be in a licensee’s annual report under the New Mexico Small Loan Act of 1955,

changed the date by when the report must be filed with the director of the financial institutions division of the regulation and licensing department, and changed the date when penalties may begin to accrue for failing to timely submit an annual report; in Subsection A, deleted former Paragraphs A(1) through A(14), which related to information that was required to be in a licensee's annual report, and added new Paragraphs A(1) through A(5); in Subsection B, after "before the", deleted "thirty-first day of March" and added "fifteenth day of April"; in Subsection D, Paragraph D(1), after "day after the", deleted "thirty-first day of March" and added "fifteenth day of April", and in Paragraph D(2), after "been filed by the", deleted "thirty-first day of March" and added "fifteenth day of April"; and deleted former Subsection E.

**The 2013 amendment,** effective June 14, 2013, provided for discretionary penalties; and in Subsection D, in the introductory sentence; after "of this section", deleted "shall" and added "may".

## 58-15-10.2. Reporting of credit required.

A. For each installment loan issued pursuant to Paragraph (1) of Subsection F of Section 58-15-2 NMSA 1978 and refund anticipation loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

B. For each installment loan issued pursuant to Paragraph (2) of Subsection F of Section 58-15-2 NMSA 1978, a lender may report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms.

C. Any lender making a report to a consumer reporting agency pursuant to this section shall report both positive and negative performance by the borrower.

**History:** Laws 2017, ch. 110, § 21; 2022, ch. 23, § 9.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, provided that a lender shall report to a consumer reporting agency the terms of installment loans that fall under § 58-15-2(F)(2) NMSA 1978 and may report the borrower's performance pursuant to those terms, and if reported, the lender must report both positive and negative performance by the borrower; in Subsection A, after "installment loan", added "issued pursuant to Paragraph (1) of Subsection F of Section 58-15-2 NMSA 1978"; and added Subsections B and C.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## 58-15-11. Regulations and orders; certified copies.

A. The director has authority to make reasonable regulations and orders for the administration and enforcement of the New Mexico Small Loan Act of 1955 and is expressly authorized to make regulations and orders governing the conduct of all licensees' 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 the 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, referenced to the section 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 that 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 of the order.

B. The director is expressly authorized to make regulations and orders, in accordance with the provisions of Subsection A of this section, governing the conduct of licensees in making loans to consumers. Such regulations may address, consistent with the provisions of Sections 58-15-32 through 58-15-38 NMSA 1978, all aspects of loans to consumers and shall specifically address:

(1) the cost of loans, including fees and interest rates;

(2) the terms of loans, including amount, length, renewals, rescission, payments and security;

(3) required disclosures to consumers;

(4) methods of collection on loans in default; and

(5) methods of verifying consumer eligibility for loans and licensee compliance with the New Mexico Small Loan Act of 1955 and regulations promulgated pursuant to that act.

C. On application of any person and payment of the cost thereof, the director shall furnish, under the director's seal and signed by the director or the director's deputy, a certified copy of any license, regulation or order. In any court or proceeding, the copy shall be prima facie evidence of the fact of the issuance of a license, regulation or order.

**History:** 1953 Comp., § 48-17-40, enacted by Laws 1955, ch. 128, § 11; 1977, ch. 245, § 68; 2007, ch. 86, § 7.

## ANNOTATIONS

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective November 1, 2007, adds Subsection B authorizing the director to issue regulations and orders governing all aspects of loans to consumers, including the cost and terms of loans, disclosures to consumers, methods of collection, and methods of verifying consumer eligibility for loans.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 58 C.J.S. Money Lenders § 2.

## 58-15-12. Advertising.

A licensee or other person subject to the New Mexico Small Loan Act of 1955 shall not advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast in any manner whatsoever a 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 ten thousand dollars ($10,000) 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 the director deems necessary to prevent misunderstanding 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 the director to prevent erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955.

**History:** 1953 Comp., § 48-17-41, enacted by Laws 1955, ch. 128, § 12; 1973, ch. 18, § 3; 1977, ch. 245, § 69; 2007, ch. 86, § 8; 2017, ch. 110, § 16; 2022, ch. 23, § 10.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, amended an existing provision that prohibited a licensee from advertising with regard to charges, terms or conditions of loans in the amount of five thousand dollars or less, increasing the loan amount to ten thousand dollars or less; and after "in the amount or of the value of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2017 amendment,** effective January 1, 2018, raised the loan amount in the provision prohibiting licensees from providing false, misleading or deceptive statements or representations with regard to charges, terms or conditions for loans; and after "or of the value of", deleted "two thousand five hundred dollars ($2,500)" and added "five thousand dollars ($5,000).

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**The 2007 amendment,** effective November 1, 2007, eliminated the former Subsection B requirement that a licensee display a schedule of rates of charges upon all classes of loans.

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**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 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers § 11 et seq.

58 C.J.S. Money Lenders § 5.

## 58-15-14. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1981, ch. 263, § 4, repealed 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 notes.** — Laws 1981, ch. 263, § 6, revived 58-15-14 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repealed Laws 1981, ch. 263, § 6, effective June 30, 1983.

## 58-15-14.1. Charges; method of computation.

The simple interest method shall be used for loans made under the New Mexico Small Loan Act of 1955. Interest charges shall not be paid, deducted or received in advance. Interest 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 that have accrued within sixty days on the prior loan. Such charges shall be computed on the basis of the number of days actually elapsed.

**History:** Laws 1983, ch. 95, § 2; 2007, ch. 86, § 9.

### ANNOTATIONS

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective November 1, 2007, requires the simple interest method for loans and eliminates the requirement that for purposes of computing charges, a month shall consist of thirty consecutive days and the rate of charge for each day shall be one-thirtieth of the monthly rate.

**Allowable charges for loans.** — Apart from interest charges on loans, only those fees described in Section 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.** 1962 Op. Att'y Gen. No. 62-44; 1962 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. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 7, 14 et seq., 38, 46 et seq.

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, 46 A.L.R. Fed. 657.

58 C.J.S. Money Lenders §§ 2, 3, 5, 6, 8.

## 58-15-15. Repealed.

**History:** 1953 Comp., § 48-17-43.1, enacted by Laws 1959, ch. 201, § 1; 1977, ch. 245, § 72; 1980, ch. 73, § 2; 2007, ch. 86, § 22.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 86, § 22 repeals 58-15-15 NMSA 1978, being Laws 1959, ch. 201, § 1, as amended, relating to the precomputation of charges, effective November 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 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 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.

**ANNOTATIONS**

**Compiler's notes.** — 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, repealed Laws 1980, ch. 73, § 5, effective July 1, 1981.

## 58-15-16. Loan insurance allowable; financing certain premiums prohibited.

A. It is unlawful for any person licensed under the New Mexico Small Loan Act of 1955, in connection with the making of a loan under that act:

(1) to sell life insurance other than a term policy or credit life insurance on the principal borrowers;

(2) 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;

(3) 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 the licensee's agent in any manner for a period of ninety days;

(4) after having made a loan, to finance any premium of any single-interest property insurance policy sold to the borrower by the licensee or the licensee's agent whereby the premium would be charged to the borrower in any manner. Nothing in this section shall preclude the sale and purchase of an insurance policy covering the dual interest of borrower and lien holder; or

(5) to sell property insurance on unsecured loans.

B. A lender may charge for only the actual cost of any insurance; provided that all insurance shall be written by a company licensed to operate within the state and at a rate not higher than those approved by the superintendent of insurance; and provided further that the lender shall not require any insurance to be written or provided by or through a particular agent, broker or insurer as a condition to making the loan, but shall, at the borrower's option, permit the insurance to be procured from any insurer or agent authorized by law to provide the insurance.

**History:** 1953 Comp., § 48-17-43.2, enacted by Laws 1969, ch. 58, § 1; 1977, ch. 272, § 1; 1979, ch. 367, § 1; 2019, ch. 201, § 11.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, provided that a lender may charge for only the actual cost of insurance the lender is allowed to sell under the Small Loan Act and that the insurance must be written by a company licensed to operate in New Mexico at a rate not higher than those approved by the superintendent of insurance; added new subsection designation "A." and redesignated former Subsections A through E as Paragraphs A(1) through A(5); and added Subsection B.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 51, 52.

58 C.J.S. Money Lenders §§ 2, 5.

## 58-15-17. Requirements for making and paying of loans; incomplete instruments; limitations on charges after judgment and interest.

A. Every licensee shall:

(1) at the time a consumer becomes contractually obligated on a loan pursuant to the New Mexico Small Loan Act of 1955, deliver to the borrower or, if there are two or more borrowers on the same obligation, to one of them, a statement on which shall be printed a copy of Section 58-15-14.1 NMSA 1978 and which shall disclose in clear and distinct terms:

(a) the amount of the loan;

(b) the date the loan was made;

(c) a schedule or a description of the payments;

(d) the type of the security, if any, for the loan;

(e) the name and address of the licensee;

(f) the name of the person primarily obligated for the loan;

(g) the amount of principal;

(h) the annual percentage rate as disclosed pursuant to 12 CFR Part 1026, known as "Regulation Z", and the amount in dollars and cents;

(i) all other disclosures required pursuant to state and federal law; and

(j) the charge for any other item allowable and included pursuant to the New Mexico Small Loan Act of 1955, so stated as to clearly show the allocation of each item included;

(2) for each payment made on account of a loan, give to the person making the payment 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, by an agent of the borrower or by check or money order, the licensee shall mail the receipt to the borrower's last known address or retain and deliver the receipt upon request of the borrower. A licensee may deliver the receipt electronically to the borrower via text

message or email, if requested to do so in writing by the borrower. A borrower may withdraw authorization for electronic delivery of receipts in writing at any time. A licensee shall not require a borrower to receive receipts electronically. The licensee shall maintain a copy of each receipt in the office of the licensee as a part of the licensee's records; and

(3) upon repayment of the loan in full, mark plainly every note and promise to pay signed by any borrower with the word "paid" or "canceled" and promptly file or record a release of any mortgage if the mortgage has been recorded, restore any pledge and cancel and return any note and any assignment given to the licensee. A licensee may mark and return a copy of the note, promise to pay or any assignment if the copy accurately reproduces the complete original.

B. A licensee shall not take a note or promise to pay that does not disclose the amount of the loan, a schedule of payments, or a description thereof, and the agreed charge or rate of charge or any instrument in which blanks are left to be filled in after execution.

C. A judgment against a party on a loan made pursuant to the New Mexico Small Loan Act of 1955 shall not include, and the loan shall not include, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as provided by law.

D. A loan made pursuant to the New Mexico Small Loan Act of 1955 that is filed and approved as a claim in any bankruptcy proceeding shall bear interest at the rate of ten percent per year beginning on the ninetieth day following the date of adjudication. This limitation shall not apply when the bankrupt is not discharged in bankruptcy or to any obligation not dischargeable under the provisions of the United States Bankruptcy Code presently in force.

E. A loan made pursuant to the provisions of the New Mexico Small Loan Act of 1955 shall not bear interest in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower.

F. A loan made pursuant to the New Mexico Small Loan Act of 1955 shall not bear interest in excess of ten percent per year upon the unpaid principal balance of the loan after twelve months following the date of maturity of the loan.

G. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days unless the loan is a refund anticipation loan.

H. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is an installment loan or a refund anticipation loan.

I. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955, other than a refund anticipation loan, unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

J. A lender shall not make a loan pursuant to the New Mexico Small Loan Act of 1955 that has a permitted annual percentage rate greater than thirty-six percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z", this subsection and Subsections K and L of this section; provided that the calculation of the permitted annual percentage rate shall:

(1) include finance charges as defined in 12 CFR Part 1026, known as "Regulation Z", charges for any ancillary product or service sold or any fee charged in connection or concurrent with the extension of credit, any credit insurance premium or fee and any charge for single premium credit insurance or any other fee related to insurance;

(2) include any charge as provided in Paragraph (1) of this subsection even if that charge would be excluded from the calculation of finance charges pursuant to Regulation Z;

(3) not include any amount paid to a public official in relation to the extension of credit, including fees to record liens;

(4) not include a fee on a loan of five hundred dollars ($500) or less; provided further that the fee shall not exceed five percent of the total principal of the loan and shall not be imposed on any borrower more than one time per twelve-month period; and

(5) follow the rules established for calculating the disclosed annual percentage rate for credit transactions pursuant to Regulation Z based on the charges set forth in Paragraphs (1) and (4) of this subsection.

K. Nothing in Subsection J of this section shall permit the imposition of fees, interest or charges of any kind not otherwise permitted by the New Mexico Small Loan Act of 1955.

L. If the prime rate of interest exceeds ten percent for three consecutive months, then during the month following the third consecutive month in which prime exceeded ten percent, the maximum allowable permitted annual percentage rate set forth in this section shall increase to thirty-six percent plus each percentage point or fraction of a percentage point by which the prime rate of interest exceeded ten percent in the most recent month. When the prime rate of interest falls below ten percent for three consecutive months, the maximum allowable permitted annual percentage rate shall return to thirty-six percent.

M. The director of the division shall post a notice on the division's website within ten days after the provisions of Subsection L of this section become applicable. The notice

shall state the date on which any increase or decrease in the maximum allowable permitted annual percentage rate is effective.

N. The maximum allowable permitted annual percentage rate for a loan to a consumer shall be determined as of the date that the loan is made.

O. Upon request from the borrower, all lenders licensed pursuant to the New Mexico Small Loan Act of 1955 shall give or forward to the borrower copies of all loan agreements concerning that borrower, a copy of all receipts maintained in that borrower's loan file and a written statement of that borrower's loan history, including all fees charged, amortization schedules, that borrower's payment history, including the dates and amounts of payments made, and the total amount unpaid pursuant to each contract. All lenders shall retain for seven years from the date of loan file origination or loan payoff, whichever is the later, the documentation specified in this subsection.

P. Any rollover, renewal, refinance or modification of an existing loan agreement with a licensee, except a modification without any additional cost to the borrower, shall constitute a new loan and shall require new disclosures pursuant to the federal Truth in Lending Act.

**History:** 1953 Comp., § 48-17-44, enacted by Laws 1955, ch. 128, § 15; 1996, ch. 50, § 1; 2007, ch. 86, § 10; 2017, ch. 110, § 17; 2019, ch. 201, § 12; 2022, ch. 23, § 11.

## ANNOTATIONS

**Cross references.** — For the federal Truth in Lending Act, *see* 15 U.S.C. § 1601 et seq.

**The 2022 amendment,** effective January 1, 2023, reduced the annual percentage rate for loans made under the New Mexico Small Loan Act of 1955 from one hundred seventy-five percent to thirty-six percent, calculated pursuant to the federal regulation known as Regulation Z and as otherwise provided in this section, prohibited a fee on loans of five hundred dollars or less and limited fee amounts to five percent of the total principal of the loan, allowed for the interest rate on loans to exceed thirty-six percent when the prime loan rate exceeds ten percent for three consecutive months and to revert to thirty-six percent if the prime rate falls below ten percent for three consecutive months, and required the director of the financial institutions division of the regulation and licensing department to publish when lenders may contractually increase or must decrease interest rates based on the history of the prime lending rate; in Subsection J, after "New Mexico Small Loan Act of 1955 that has", deleted "an" and added "a permitted", and after "annual percentage rate greater than", deleted "one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as 'Regulation Z'" and added "thirty-six percent, calculated pursuant to 12 CFR Part 1026, known as 'Regulation Z', this subsection and Subsections K and L of this section; provided that the calculation of the permitted annual percentage rate shall", and added Paragraphs

J(1) through J(5); and added new Subsections K through N and redesignated former Subsections K and L as Subsections O and P, respectively.

**The 2019 amendment,** effective January 1, 2020, required lenders to disclose certain charges, provided for the issuance of an electronic receipt for loan payments at the option of the borrower, provided that a loan filed and approved as a claim in a bankruptcy proceeding shall bear interest at the rate of ten percent, provided the annual interest on the unpaid principal balance of a loan after the death of the borrower and after twelve months following the loan's maturity date is limited to ten percent, provided that on request from the borrower, a lender shall provide the borrower with copies of loan agreements and related documents, and the lender shall retain loan documentation for seven years, and expanded disclosure requirements; in Subsection A, Subparagraph A(1)(j), deleted "other items allowable pursuant to that act" and added "the charge for any other item allowable and included pursuant to the New Mexico Small Loan Act of 1955", in Paragraph A(2), after "last known address or", deleted "hold the receipt for delivery" and added "retain and deliver the receipt", deleted "A copy of all receipts shall be kept on file" and added "A licensee may deliver the receipt electronically to the borrower via text message or email, if requested to do so in writing by the borrower. A borrower may withdraw authorization for electronic delivery of receipts in writing at any time. A licensee shall not require a borrower to receive receipts electronically. The licensee shall maintain a copy of each receipt"; in Subsection D, after "bankruptcy proceeding shall", deleted "from a date ninety days subsequent to the" and added "bear interest at the rate of ten percent per year beginning on the ninetieth day following the", and after "adjudication", deleted "bear interest at the rate of ten percent a year only"; in Subsection E, deleted "No" and added "A", after "1955 shall", added "not", after "bear interest", deleted "after ninety days from the date of the death of the borrower in excess of a rate of ten percent a year on the unpaid principal balance of the loan" and added "in excess of ten percent per year on the unpaid principal balance of a loan after ninety days following the date of the death of the borrower"; in Subsection F, deleted "No" and added "A", after "1955 shall", added "not", after "bear interest", added "in excess of ten percent per year upon the unpaid principal balance of the loan", and after "maturity of the loan", deleted "in excess of ten percent a year upon the unpaid principal balance of the loan"; in Subsections G through J, deleted "No" and added "A", after "shall", added "not"; and added Subsections K and L.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, clarified that federal law requires every licensee to deliver to a borrower a statement in English or Spanish containing certain information regarding the loan, included the annual interest rate to the list of information that must be contained in the statement that licensees are required to provide to a borrower, placed additional restrictions on making certain installment loans, and made tax refund anticipation loans exempt from these provisions; in Subsection A,

Paragraph A(1), in the introductory clause, after "English or Spanish, as", deleted "requested by the borrower" and added "required by federal law", in Subparagraph A(1)(h), after the first occurrence of "the", deleted "agreed rate of charge stated on a percent per year basis" and added "annual interest rate as disclosed pursuant to 12 CFR Part 1026, known as 'Regulation Z'"; in Subsection D, after "the provisions of the", added "United States", and after "Bankruptcy", deleted "Act" and added "Code"; and added Subsections G through J.

**The 2007 amendment,** effective November 1, 2007, requires that a licensee deliver a disclosure statement in Spanish if requested by the borrower and that the disclosure statement include all disclosures required by state or federal law and prohibits a judgment or loan from carrying charges other than costs, attorney fees and post-judgment interest as provided by law after a judgment is entered.

**Severability clause.** — Laws 2007, ch. 86, § 23 provided that if any part or application of the act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 1996 amendment,** effective May 15, 1996, added the section heading, in Paragraph A(3) deleted "filed or" in the first sentence and rewrote the last sentence, and made stylistic changes throughout the section.

**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. 1962 Op. Att'y Gen. No. 62-50 (overruled 1970 Op. Att'y Gen. No. 70-78).

**When 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. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 6, 7, 38, 46 et seq.

58 C.J.S. Money Lenders §§ 2 to 8.

## 58-15-18. Repealed.

**History:** 1953 Comp., § 48-17-45, enacted by Laws 1955, ch. 128, § 16; 1977, ch. 245, § 73; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-18 NMSA 1978, as enacted by Laws 1955, ch. 128, § 16, relating to lenders' exchange, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**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. 1962 Op. Att'y Gen. No. 62-50.

**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. 1962 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 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.

A. Notwithstanding any provision of the New Mexico Small Loan Act of 1955, lawful fees, if any, actually and necessarily paid out by the licensee to a public officer for the filing, recording or releasing in a public office of an instrument securing the loan may be charged to the borrower.

B. Notwithstanding any provision in a note or other loan contract taken or received under the New Mexico Small Loan Act of 1955, attorney fees shall not be charged or collected unless the note or other contract has been submitted in good faith to an attorney for collection who is not a salaried employee of the holder of the contract, after the licensee has made a diligent and good faith effort to collect and has failed.

C. Notary fees incident to the taking of a lien to secure a small loan or releasing such a lien shall not be charged or collected by a licensee, an officer, agent or employee of a licensee or anyone within an office, room or place of business in which a small loan office is conducted.

D. Delinquency fees shall not 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.

**History:** 1953 Comp., § 48-17-47, enacted by Laws 1955, ch. 128, § 18; 2007, ch. 86, § 11; 2019, ch. 201, § 13.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, provided that attorney fees shall not be charged to a borrower in connection with collection efforts, unless the loan contract has been submitted to an attorney for collection who is not a salaried employee of the holder of the contract; in Subsection B, after "attorney for collection", deleted "and" and added "who is not a salaried employee of the holder of the contract", after "after", added "the licensee has made a", and after "effort to collect", deleted "on the part of the licensee" and added "and".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2007 amendment,** effective November 1, 2007, deletes Subsection (C) relating to court costs and enacts a new Subsection D that provides that only one delinquency charge may be made on any one installment and that delinquency fees shall not exceed five cents for each dollar of each installment more than ten days in arrears, but not to exceed a total of $10.00.

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Allowable charges for loans.** — Apart from interest charges on loans, only the fees described in 58-15-20 NMSA 1978 may be charged for loans under the Small Loan Act. 1985 Op. Att'y Gen. No. 85-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 14 et seq., 26 et seq., 53.

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.

## 58-15-20.1. Installment loans; refund anticipation loans; insufficient funds; permitted charges.

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

B. A licensee shall not charge a consumer for fees, interest or charges of any kind other than those permitted pursuant to Sections 58-15-16, 58-15-17 and 58-15-20 NMSA 1978.

**History:** Laws 2017, ch. 110, § 20; 2019, ch. 201, § 14.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, clarified that when there are insufficient funds to pay a check, a licensee may not present a check to a financial institution more than one time per payment due; and in Subsection A, after "more than one time", added "per payment due".

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

## 58-15-21. What constitutes loan of money; wage purchases.

The payment of ten thousand dollars ($10,000) 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, be deemed a loan of money secured by such sale, assignment or order. The amount by which compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon the loan from the date of payment to the date the 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; 2017, ch. 110, § 18; 2022, ch. 23, § 12.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, raised the maximum dollar amount for loans that may be made pursuant to the New Mexico Small Loan Act of 1955; and after "The payment of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2017 amendment,** effective January 1, 2018, changed the loan amount in the definition of what constitutes a "loan of money" for the purpose of regulation under the New Mexico Small Loan Act of 1955; and after "The payment of", deleted "two thousand five hundred dollars ($2,500)" and added "five thousand dollars ($5,000)".

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 2, 3.

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.

**ANNOTATIONS**

**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 violation by a licensee or by an officer, manager, director, trustee, executive or employee directly engaged in operating a small loan office under the provisions of the New Mexico Small Loan Act of 1955 of any usury statute of this state within an office, room or place of business in which the making of loans as a licensee is solicited or engaged or in association or conjunction therewith is grounds for suspension and revocation of license in accordance with the applicable procedures set forth in that act.

**History:** 1953 Comp., § 48-17-50, enacted by Laws 1955, ch. 128, § 21; 2007, ch. 86, § 12.

**ANNOTATIONS**

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective November 1, 2007, clarifies the language of this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 46, 47, 48.

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 ten thousand dollars ($10,000) 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 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 a loan in this state is subject to the provisions of the New Mexico Small Loan Act of 1955. 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; 2017, ch. 110, § 19; 2022, ch. 23, § 13.

**ANNOTATIONS**

**The 2022 amendment,** effective January 1, 2023, amended an existing provision that prohibited the enforcement of loans in the amount of five thousand dollars or less that provided for a greater rate of interest than is permitted by the laws of New Mexico, increasing the loan amount to ten thousand dollars or less; and after "in the amount or of the value of", deleted "five thousand dollars ($5,000)" and added "ten thousand dollars ($10,000)".

**The 2017 amendment,** effective January 1, 2018, changed the loan amount in the criteria for certain unenforceable loans made outside the state to a resident of New Mexico and that do not comply with the general laws of New Mexico; and after "the value", deleted "two thousand five hundred dollars ($2,500)" and added "five thousand dollars ($5,000)", after the second occurrence of "New Mexico", deleted "presently", and after "loan in this state", deleted "shall be" and added "is".

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 11, 12, 13, 24, 25.

## 58-15-25. Review.

Any licensee or any person aggrieved by any act or order of the director pursuant to the New Mexico Small Loan Act of 1995 may file and appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 48-17-52, enacted by Laws 1955, ch. 128, § 23; 1977, ch. 245, § 74; 1998, ch. 55, § 57; 1999, ch. 265, § 61.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote this section.

**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*, 1966-NMSC-012, 75 N.M. 780, 411 P.2d 755.

## 58-15-26. Status of preexisting licensees.

Notwithstanding the repeal thereof by the New Mexico Small Loan Act of 1955, 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.

**ANNOTATIONS**

**Compiler's notes.** — 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. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers § 11 et seq.

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.

**ANNOTATIONS**

**Compiler's notes.** — For meaning of "this act", see notes 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.

**ANNOTATIONS**

**Compiler's notes.** — For meaning of "this act", see notes following 58-15-1 NMSA 1978.

Laws 1947, ch. 174, referred to in this section, were 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 26 et seq., 53.

## 58-15-30. Penalties; general.

Any person, copartnership, trust, association or corporation and the several members, beneficiaries, officers, directors, agents and employees thereof who violate or participate in the violation of any provision of the New Mexico Small Loan Act of 1955 are guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) or by imprisonment of not more than six months or both in the discretion of the court.

**History:** 1953 Comp., § 48-17-57, enacted by Laws 1955, ch. 128, § 28; 2007, ch. 86, § 13.

**ANNOTATIONS**

**Compiler's notes.** — For meaning of "this act", see notes following 58-15-1 NMSA 1978.

**Severability clause.** — Laws 2007, ch. 86, § 23 provides that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective November 1, 2007, increases the penalty to not less than $500 and not more than $1,000 or imprisonment of not more than six months for a violation of the New Mexico Small Loan Act.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 53A Am. Jur. 2d Money Lenders and Pawnbrokers §§ 46, 47, 48.

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.

**ANNOTATIONS**

**Severability clauses.** — Laws 1955, ch. 128, § 31, provides for the severability of the act if any part or application thereof is held invalid.

## 58-15-32. Repealed.

**History:** Laws 2007, ch. 86, § 14; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-32 NMSA 1978, as enacted by Laws 2007, ch. 86, § 14, relating to requirements for payday loans, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-33. Repealed.

**History:** Laws 2007, ch. 86, § 15; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-33 NMSA 1978, as enacted by Laws 2007, ch. 86, § 15, relating to payday loan products, permitted charges, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-34. Repealed.

**History:** Laws 2007, ch. 86, § 16; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-34 NMSA 1978, as enacted by Laws 2007, ch. 86, § 16, relating to payday loan products, prohibited acts, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-35. Repealed.

**History:** Laws 2007, ch. 86, § 17; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-35 NMSA 1978, as enacted by Laws 2007, ch. 86, § 17, relating to payday loans, payment plans, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-36. Repealed.

**History:** Laws 2007, ch. 86, § 18; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-36 NMSA 1978, as enacted by Laws 2007, ch. 86, § 18, relating to payday loans, waiting period, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-37. Repealed.

**History:** Laws 2007, ch. 86, § 19; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-37 NMSA 1978, as enacted by Laws 2007, ch. 86, § 19, relating to payday loans, verification, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-38. Repealed.

**History:** Laws 2007, ch. 86, § 20; repealed by Laws 2017, ch. 110, § 25.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 110, § 25 repealed 58-15-38 NMSA 1978, as enacted by Laws 2007, ch. 86, § 20, relating to required disclosures when making payday loans, required signage, effective January 1, 2018. For provisions of former section, *see* the 2017 NMSA on *NMOneSource.com.*

## 58-15-39. Duties of division.

A. The division shall:

(1) maintain a list of licensees, which list shall be available to interested persons and the public; and

(2) establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee.

B. The division shall compile from reports filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an annual report by July 1 of each year containing data regarding loans entered into by licensees, which data shall be aggregated for all licensees and non-identifiable by licensee. Annual reports shall be made available to interested parties and the general public and published on the division's website. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding calendar year, including each of the specific categories of information set forth in Subsection A of Section 58-15-10.1 NMSA 1978.

C. The division shall, in cooperation with the office of the attorney general, develop and implement curriculum for a financial literacy program with elements that shall

include a basic understanding of budgets, checking and savings accounts, credit and interest and considerations in deciding how and when to use financial services, including installment loans and refund anticipation loans. The financial literacy program developed pursuant to this subsection may be implemented through the adult basic education division of the higher education department and nonprofit public interest organizations.

**History:** Laws 2007, ch. 86, § 21; 2011, ch. 105, § 2; 2013, ch. 221, § 2; 2017, ch. 110, § 23; 2019, ch. 201, § 15.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, required the annual report compiled by the financial institutions division from reports filed by licensees reflect non-identifying consumer data from each of the specific categories of information required for licensee reports; in Subsection B, after "all licensees", added "and nonidentifiable by licensee", after "including", added "each of the specific categories of information set forth in Subsection A of Section 58-15-10.1 NMSA 1978", and deleted Paragraphs B(1) through B(5).

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

**The 2017 amendment,** effective January 1, 2018, revised the duties of the financial institutions division of the regulation and licensing department; deleted former Subsection B, which required the division to provide an annual report to the legislature, and redesignated former Subsection C as Subsection B; in Subsection B, in the introductory language, after "annual report by", deleted "October" and added "July", after "containing data regarding", deleted "only loans exceeding an annual interest rate of one hundred seventy-five percent as disclosed pursuant to 12 C.F.R 226, known as ‘Regulation Z’, entered into in the preceding calendar year on an aggregate basis. Excluded from the reporting requirements of this subsection are payday loan products or loans or loan products with an annual interest rate of one hundred seventy-five percent or less as disclosed pursuant to 12 C.F.R. 226, known as ‘Regulation Z’, entered into in the preceding calendar year on an aggregate basis" and added "loans entered into by licensees, which data shall be aggregated for all licensees", and deleted former Paragraphs B(1) through B(11) and added new Paragraphs B(1) through B(5); and added Subsection C.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

**The 2013 amendment,** effective June 14, 2013, clarified the information about licensees that the division is required to report; and in Subsection C, in the first

sentence, after "Section", deleted "1 of this 2011 act" and added "58-15-10.1 NMSA 1978", after "each year containing", deleted "at a minimum", after "data regarding", deleted "all" and added "only", and after "regarding only loans", deleted "other than" and added "exceeding an annual interest rate of one hundred seventy-five percent as disclosed pursuant to 12 C.F.R. 226, known as ‘Regulation Z’, entered into in the preceding calendar year on an aggregate basis"; and in the second sentence, added "Excluded from the reporting requirements of this subsection are".

**The 2011 amendment,** effective June 17, 2011, in Subsection B, required the division to publish its annual reports of payday loans on the division’s web site and added Subsection C to require the division to prepare annual reports of all loans, except pay day loans and loans with an annual interest rate of one hundred seventy-five percent or less as disclosed pursuant to Regulation Z, that include certain specified information and to publish the annual reports on the division’s website.

## 58-15-40. Financial literacy fund.

The "financial literacy fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and fees received pursuant to Subsection L of Section 58-15-5 NMSA 1978. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the regulation and licensing department for the purposes of developing and implementing financial literacy programs as provided for in Subsection C of Section 58-15-39 NMSA 1978. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing.

**History:** Laws 2017, ch. 110, § 22.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 110, § 27 made Laws 2017, ch. 110, § 22 effective January 1, 2018.

**Applicability.** — Laws 2017, ch. 110, §26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## 58-15-41. Preemption.

The state has exclusive jurisdiction and authority regarding the terms and conditions of permitted installment loans and refund anticipation loans, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of permitted installment loans and refund anticipation loans by ordinance, resolution or otherwise.

**History:** Laws 2017, ch. 110, § 24.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 110, § 27 made Laws 2017, ch. 110, § 24 effective January 1, 2018.

**Applicability.** — Laws 2017, ch. 110, § 26 provided that the provisions of Laws 2017, ch. 110 shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## 58-15-42. Right of rescission.

All loan agreements shall include a provision granting the borrower the right to rescind the transaction by returning in cash, or through certified funds, one hundred percent of the amount advanced by the lender under the New Mexico Small Loan Act of 1955 no later than the close of business New Mexico time or, if the loan was made online, no later than midnight New Mexico time on the first day of business conducted by the lender following the date of execution of the loan agreement. If a borrower exercises the right of rescission pursuant to this section, no fee for the rescinded transaction shall be charged to the borrower, and the lender shall not charge or impose on the borrower a fee for exercising the right of rescission pursuant to this section. If a borrower exercises the right of rescission pursuant to this section, any fee collected by the lender shall be returned in full to the borrower.

**History:** Laws 2019, ch. 201, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 201, § 18 made Laws 2019, ch. 201 effective January 1, 2020.

**Applicability.** — Laws 2019, ch. 201, § 17 provided that the provisions of this act apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 that are executed on or after January 1, 2020.

# ARTICLE 16
# Remote Financial Service Units

## 58-16-1. Short title.

Chapter 58, Article 16 NMSA 1978 may be cited as the "Remote Financial Service Unit Act".

**History:** 1953 Comp., § 48-25-1, enacted by Laws 1977, ch. 359, § 1; 1978 Comp., § 58-16-1; repealed and reenacted by Laws 1990, ch. 123, § 1; 1996, ch. 2, § 28.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**The 1996 amendment,** effective June 1, 1996, substituted "Chapter 58, Article 16 NMSA 1978" for "This act".

## 58-16-2. Purpose of act.

The purposes of the Remote Financial Service Unit Act 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:** 1953 Comp., § 45-25-2 enacted by Laws 1977, ch. 359, § 2; repealed and reenacted by Laws 1990, ch. 123, § 2.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 58-16-3. Definitions.

A. As used in the Remote Financial Service Unit Act:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution or with a state agency, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share draft, public assistance benefit 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 or by a state agency 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, a credit card identifying a cardholder who has established a pre-approved credit line with the issuer of the credit card or an EBT card issued to a recipient of public assistance benefits;

(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 benefit transfer" or "EBT" means a system administered by a state agency designed to provide a public assistance benefit or other benefit of money value provided by a state agency through POS terminals;

(21) "electronic benefit transfer card" or "EBT card" means a plastic card or any other access device issued by a state agency to a cardholder that enables the cardholder to have access to and process transactions against one or more public assistance benefit accounts or other benefit accounts;

(22) "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;

(23) "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;

(24) "in-state financial institution" means a financial institution authorized to engage in and engaged in business in New Mexico and having its main office or a staffed branch within the state;

(25) "intercept processor" means any electronic data processor operating for a financial institution that passes transactions;

(26) "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;

(27) "lobby ATM" 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;

(28) "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;

(29) "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;

(30) "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;

(31) "network manager" means the person managing the business of a network;

(32) "off-line" means not on-line;

(33) "off-premises ATM" means ATMs installed away from the building or lobby of a financial institution by a distance of not less than five hundred feet;

(34) "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 and requires a personal identification number;

(35) "on-premises 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;

(36) "person" means an individual, partnership, joint venture, corporation or other legal entity however organized;

(37) "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;

(38) "point-of-sale terminal" 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, credit cards and EBT cards;

(39) "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;

(40) "public assistance benefit" means a benefit of monetary value available from various state and federal public benefit programs administered through or enforced by a state agency;

(41) "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;

(42) "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;

(43) "remote financial service unit" means a POS terminal or an ATM;

(44) "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;

(45) "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;

(46) "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;

(47) "single subscriber terminal" means any terminal or set of terminals used to connect a single customer of a financial institution to his financial institution through which EFT messages are sent and completed, other than transactions;

(48) "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;

(49) "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;

(50) "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

(51) "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. Any of the information provided pursuant to Subparagraphs (a) and (b) of Paragraph (42) 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.

C. No receipt shall be required in any transaction involving a negotiable instrument that will itself become a receipt.

D. 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 [Chapter 55 NMSA 1978].

**History:** 1953 Comp., § 45-25-3 enacted by Laws 1977, ch. 359, § 3; 1989, ch. 218, § 1; repealed and reenacted by Laws 1990, ch. 123, § 3; 1991, ch. 120, § 7; 1996, ch. 2, § 29; 1999, ch. 83, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**The 1999 amendment,** effective July 1, 1999, in Subsection A, in Paragraph (1), inserted "or with a state agency" and "public assistance benefit", in Paragraph (9), inserted "or by a state agency" and added the language beginning "or an EBT card" to the end, added Paragraphs (20), (21), and (40) and redesignated the subsequent paragraphs accordingly, in Paragraph (34), added "and requires a personal identification number" at the end, in Paragraph (38), inserted "terminal" and added "and EBT cards" at the end; in Subsection B, deleted the Paragraph (1) designation and updated the paragraph references; redesignated former Paragraph B(2) as Subsection C; redesignated former Subsection C as Subsection D; and made minor stylistic changes.

**The 1996 amendment,** effective June 1, 1996, in Subsection A, substituted "main office or a staffed branch" for "principal and main office" in Paragraph (22), added Paragraph (40), deleted former Paragraph (41) which defined "remote financial service unit", and redesignated former Paragraph (40) as Paragraph (41).

**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 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:** 1953 Comp., § 48-25-4, enacted by Laws 1977, ch. 359, § 4; 1989, ch. 218, § 2; repealed and reenacted by Laws 1990, ch. 123, § 4; 1991, ch. 120, § 8.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**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:** 1953 Comp., § 48-25-5, enacted by Laws 1977, ch. 359, § 5; 1985, ch. 231, § 2; repealed and reenacted by Laws 1990, ch. 123, § 5.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 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:** 1953 Comp., § 48-25-6 as enacted by Laws 1977, ch. 359, § 6; 1985, ch. 231, § 3; repealed and reenacted by Laws 1990, ch. 123, § 6.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 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 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:** 1953 Comp., § 48-25-7 as enacted by Laws 1977, ch. 359, § 7; repealed and reenacted by Laws 1990, ch. 123, § 7.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 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:** 1953 Comp., § 48-25-8, enacted by Laws 1977, ch. 359, § 8; 1989, ch. 218, §3; repealed and reenacted by Laws 1990, ch. 123, § 8.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 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 [this article], 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 four hundred dollars ($400) shall accompany each application for an off-premises ATM.

**History:** 1953 Comp., § 48-25-9, enacted by Laws 1977, ch. 359, § 9; 1985, ch. 231, § 4; repealed and reenacted by Laws 1990, ch. 123, § 9; 1993, ch. 210, § 7.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**The 1993 amendment,** effective June 18, 1993, substituted "four hundred dollars ($400)" for "two hundred dollars ($200)" in Subsection B.

## 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:** 1953 Comp., § 48-25-11, enacted by Laws 1977, ch. 359, § 11; 1978 Comp., § 58-16-11, repealed, reenacted and recompiled as § 58-16-10 by Laws 1990, ch. 123, § 10.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 58-16-10.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 123, § 18 repealed 58-16-10.1 NMSA 1978, as enacted by Laws 1985, ch. 231, § 6, relating to accessibility and advertising, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA 1978 on *NMOneSource.com.*

## 58-16-11. Restrictions on owning, leasing and operating.

A. Notwithstanding any provision to the contrary in the Remote Financial Service Unit Act, no ATM shall be owned or leased by a person other than an in-state financial institution.

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; 1995, ch. 190, § 17; 1996, ch. 2, § 30.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**The 1996 amendment,** effective June 1, 1996, rewrote the section heading, deleted "having its main office, a manned branch office or any other authorized branch in the county in which the ATM is located" from the end of Subsection A, and deleted Subsection C relating to owning and operating off-premises ATM machines.

**The 1995 amendment,** effective June 16, 1995, added Subsection C.

**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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

# 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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 58-16-14.1. Transaction fee.

A. A financial institution may charge a reasonable foreign transaction fee for use of an automated teller machine if the fee is disclosed:

(1) on a sign posted on the automated teller machine or in clear view of the customer while viewing the machine; or

(2) electronically during the course of the transaction in a manner that permits a customer to cancel the transaction without incurring the foreign transaction fee.

B. For the purpose of this section, "foreign transaction fee" means a fee charged for the use of an automated teller machine to a noncustomer of the financial institution that owns the machine.

**History:** 1978 Comp., § 58-16-14.1, enacted by Laws 1995, ch. 190, § 18.

## 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 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repealed the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

**Debit card theft.** — Unlike Section 30-16-33 NMSA 1978, this section contemplates prosecution specifically for the unauthorized use of a debit card. Unlike the fraudulent use of a credit card, the fraudulent use of a debit card has immediate consequences for the victim as it causes the victim’s checking account to be debited immediately. The separate penalty provisions of these statutes establishes that the legislature intended to punish violations of RFSUA differently than violations of Section 30-16-33 NMSA 1978. *State v. Castillo*, 2011-NMCA-046, 149 N.M. 536, 252 P.3d 760, cert. denied, 2011-NMCERT-004.

## 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1990, ch. 123, § 18 repeals the Remote Financial Service Unit Act, as enacted by Laws 1977, ch. 359, §§ 1 to 17 and enacted a new Remote Financial Service Unit Act, effective May 16, 1990.

## 58-16-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 123, § 18 repealed 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* the 1989 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 58-16-17 NMSA 1978.

# ARTICLE 17
# Endowed Care of Cemeteries

## 58-17-1. Declaration of policy.

It is declared to be necessary in the public interest that cemeteries 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 endowed care or perpetual care guaranteed. The provisions of the Endowed Care Cemetery Act [Chapter 58, Article 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; 2001, ch. 149, § 1.

**ANNOTATIONS**

**Cross references.** — For regulation of municipal cemeteries, *see* 3-40-1 to 3-40-9 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, substituted "endowed" for "endowment" at the end of the first sentence, deleted "of 1961" following "the Endowed Care Cemetery Act" and made stylistic changes throughout the section.

**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. 1960 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.

Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums, 54 A.L.R.5th 681.

14 C.J.S. Cemeteries §§ 3, 26, 27.

## 58-17-2. Short title.

Chapter 58, Article 17 NMSA 1978 may be cited as the "Endowed Care Cemetery Act".

**History:** 1953 Comp., § 67-29-2, enacted by Laws 1961, ch. 156, § 2; 2001, ch. 149, § 2.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "Chapter 58, Article 17 NMSA 1978" for "This act" and deleted "of 1961" following "the Endowed Care Cemetery Act".

## 58-17-3. Definitions.

As used in the Endowed Care Cemetery Act:

A. "affiliate" means a corporation that is related to another corporation by shareholdings or other means of control and includes a subsidiary, parent or sibling corporation;

B. "burial park" means a tract of land that has been dedicated to the purposes of and used, and intended to be used, for the interment of remains in graves;

C. "care funds" means realty or personalty impressed with a trust by the terms of a gift, grant, contribution, payment, devise, bequest or contract, and income accumulated therefrom where legally so directed by the terms of the transaction by which the principal was established;

D. "cemetery" means a place dedicated to and used and intended to be used for the permanent interment of remains;

E. "cemetery authority" means a person that owns, operates, controls or manages a cemetery or holds lands for burial purposes;

F. "columbarium" means a structure or space in a structure used, or intended to be used, to contain cremated remains;

G. "cremated remains" means remains after incineration in a crematory;

H. "cremation" means the irreversible process of reducing remains to bone fragments through intense heat and evaporation in a specifically designed furnace or retort and includes a mechanical or thermal process whereby the bone fragments are pulverized, or otherwise further reduced in size or quantity;

I. "crematory" means a structure of most durable and lasting fireproof construction containing one or more specifically designed furnaces or retorts, used, or intended to be used, for cremation of remains;

J. "crypt" means the chamber in a mausoleum of sufficient size to entomb the remains;

K. "depository institution" means an insured bank, thrift institution or credit union;

L. "director" means the director of the financial institutions division of the regulation and licensing department;

M. "endowed care" means the general maintenance of the cemetery area dedicated to endowed care, including the cutting and trimming of lawns, 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; "endowed care" includes overhead expenses necessary for the foregoing purposes, including maintenance of machinery, tools and equipment, compensation of employees for the performance of duties related to endowed care, including reasonable payments for employees' pension and other benefit plans, payment of reasonable and necessary insurance premiums, the maintenance of necessary records of lot ownership, transfers and burials and the administration of care funds in those instances where those administering the funds fail or refuse to act;

N. "endowed or perpetual care cemetery" means a cemetery or that designated portion of a cemetery for the benefit of which a care fund is established;

O. "entombment" means the permanent interment of remains in a crypt or vault;

P. "fraternal cemetery" means a cemetery owned, operated, controlled or managed by any fraternal organization or its auxiliary organizations, in which the sale of burial space is restricted principally to its members;

Q. "grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of remains;

R. "interment" means the permanent disposition of the remains by inurnment, entombment or burial;

S. "inurnment" means placing cremated remains in an urn;

T. "lot", "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 of the remains of one or more deceased persons and includes adjoining graves, adjoining crypts or adjoining niches;

U. "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 of remains;

V. "municipal cemetery" means a cemetery owned, operated, controlled or managed by a incorporated or unincorporated political subdivision;

W. "niche" means a recess in a columbarium used, or intended to be used, for the permanent interment of cremated remains;

X. "no endowed care cemetery" means a cemetery for the benefit of which no care fund has been established;

Y. "plot owner", "owner" or "lot proprietor" means a person in whose name a burial plot is recorded in the office of the cemetery authority as owner of the exclusive right of burial, or who holds from the authority a conveyance of the exclusive rights of burial or a certificate of ownership of the exclusive right of burial;

Z. "religious cemetery" means a cemetery owned, operated, controlled or managed by a recognized church, religious society, association or denomination, or by a cemetery authority or a corporation administering, or through which is administered the secular matters of a recognized church, religious society, association or denomination;

AA. "remains" means the body of a deceased person; and

BB. "vault" means a container that is designed for placement in a grave space around a casket or urn.

**History:** 1953 Comp., § 67-29-3, enacted by Laws 1961, ch. 156, § 3; repealed and reenacted by Laws 2001, ch. 149, § 3.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 2001, ch. 149, § 3 repeals 58-17-3 NMSA 1978, as enacted by Laws 1961, ch. 156, § 3, and enacts the above section, effective July 1, 2001.

**Section in pari materia with criminal statute.** — Section 30-12-12, regarding disturbing the remains of a third person (now disturbing a marked burial ground), 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; care funds; trust funds.

A. A cemetery authority is authorized and empowered to accept care funds and hold them in trust in perpetuity for the care of its cemetery; for the care of any lot, grave, crypt or niche in its cemetery; 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. Creation of care funds shall not be invalid by reason of any indefiniteness or uncertainty as to the beneficiary designated in the instrument creating the funds. If care funds accepted by a cemetery authority include nonincome producing property, the authority may sell that property and invest the funds obtained in accordance with the provisions of this section.

B. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing care funds, the cemetery authority or trustee of the funds shall exercise the judgment and care under the circumstances then prevailing that 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 this standard, the cemetery authority or the trustee of the care funds is authorized to acquire and retain every kind of property and every kind of investment that men of prudence, discretion and intelligence acquire or retain for their own account. Within the limitations of this standard, the cemetery 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.

C. Care funds may be commingled with other trust funds received by the 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 made to the cemetery authority. The net income only from the investment of the 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.

D. With the prior written approval of the director, care funds may be commingled with trust funds of other cemetery authorities received by those authorities pursuant to this section. Net income only from the investment of those care funds shall be allocated to each cemetery authority and used for the purposes specified in the transaction by which the principal was established in the proportion that each authority's contribution bears to the entire sum invested.

**History:** 1953 Comp., § 67-29-4, enacted by Laws 1961, ch. 156, § 4; 2001, ch. 149, § 4.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, inserted the Subsection designations; in Subsection A, substituted the term "care funds" for the list of terms describing gifts to the cemetery authority throughout the subsection; in Subsection B, deleted "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" from the beginning of the subsection, substituted "care funds, the cemetery authority or trustee of the funds shall" for "property for any such trust shall", deleted "real, personal or mixed" following "every kind of property", deleted "including specifically, but without limiting the generality of the foregoing, bonds, debentures and other corporate obligations, stocks, preferred or common, and real estate mortgages" preceding "men of prudence" in the second sentence; and added Subsection D.

**Section authorizes commingling** of the care funds to be received under Section 58-17-6 NMSA 1978, with special care funds, gifts, bequests, contributions or other payments or property. *State v. Collins*, 1969-NMSC-104, 80 N.M. 499, 458 P.2d 225.

**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. 1960 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 director, no loan or investment of care funds accepted by a cemetery authority shall be made:

A. to any officer, director or trustee of the cemetery authority or to any person in which any officer, director or trustee of the cemetery authority has a controlling interest;

B. on or in real estate or in a note, bond, mortgage or deed of trust in which any officer, director or trustee of the cemetery authority has any financial interest; or

C. on or in any unproductive real estate or real estate outside this state or permanent improvements of the cemetery or any of its facilities unless specifically authorized by the instrument by which the principal fund was created. No commission or brokerage fee for the purchase or sale of property shall be paid in excess of that usual and customary at the time and in the locality where the purchase or sale is made, and all commissions and brokerage fees shall be fully reported in the next annual statement of the cemetery authority or trustee.

**History:** 1953 Comp., § 67-29-5, enacted by Laws 1961, ch. 156, § 5; 2001, ch. 149, § 5.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, in the introductory language, substituted "director" for "state bank examiner", substituted "no loan or investment of care funds accepted by a cemetery authority shall be made" for "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"; and substituted "person" for "firm, corporation, association or partnership" in Subsection A.

**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.

If a cemetery authority accepts care funds, either in connection with the sale of a lot, grave, crypt or niche or in pursuance of a contract, or if, as a condition precedent to the purchase of a lot, grave, crypt or niche, the cemetery authority requires the establishment of a care fund or a deposit in an already existing care fund, the cemetery authority shall execute and deliver to the person from whom it receives care funds an instrument in writing that shall specifically state:

A. the nature and extent of the care to be furnished;

B. that the care shall be furnished only insofar as the net income derived from the amount deposited in trust will permit, and that the income from the amount so deposited less necessary expenditures of administering the trust constitutes net income;

C. that the cemetery is operated as an endowed care cemetery, which means that a care fund for its maintenance has been established in conformity with the Endowed Care Cemetery Act and the definition of endowed care in that act; 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;

(2) for a crypt 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.

E. The setting aside and deposit pursuant to Subsection D of this section shall be made by the cemetery authority not later than thirty days after the close of the month in which a payment was received from any source on the purchase price of each lot, grave, crypt or niche or a payment was received 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 are made in installments, only the applicable pro rata share of the payments shall be deposited. Amounts deposited shall be held by the trustee of the care funds of the 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; 2001, ch. 149, § 6.

## ANNOTATIONS

**The 2001 amendment,** effective July 1, 2001, in the undesignated paragraph, deleted "owning, operating, controlling or managing a cemetery" preceding "accepts care funs", substituted "it receives care funds" for "received"; in Subsection B, inserted "and that" preceding "income", substituted "constitutes" for "shall be deemed the"; in Subsection C, substituted "a care fund" for "an endowed care fund", "Endowed Care Cemetery Act" for "laws of the state of New Mexico" and "in that act" for "as it appears in Section 58-17-3 NMSA 1978"; in Subsection D, deleted "of the financial institutions division" from the end of Paragraph (1), deleted "vault" following "crypt" in Paragraph (2); and in Subsection E, inserted "pursuant to Subsection D of this section", and deleted "vault" following "niche".

**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*, 1969-NMSC-104, 80 N.M. 499, 458 P.2d 225 (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*, 1969-NMSC-104, 80 N.M. 499, 458 P.2d 225 (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*, 1969-NMSC-104, 80 N.M. 499, 458 P.2d 225.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 14 Am. Jur. 2d Cemeteries §§ 9, 26.

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.

A cemetery authority, agent, servant or employee of it or another person shall not 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 he has complied with the provisions of the Endowed Care Cemetery Act.

**History:** 1953 Comp., § 67-29-7, enacted by Laws 1961, ch. 156, § 7; 2001, ch. 149, § 7.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, deleted "of 1961" following "Endowed Care Cemetery Act" and made stylistic changes throughout the section.

## 58-17-8. Care funds not subject to tax.

The care funds authorized in the Endowed Care Cemetery Act and all sums paid into those funds or contributed to those funds are expressly permitted and are for charitable and eleemosynary purposes. Care funds are provided for the discharge of the

duty due from the person contributing to those funds to the persons interred and to be interred in the cemetery and likewise are 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 care funds authorized in the Endowed Care Cemetery Act and the income from those funds and 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 general endowed care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust nor shall care funds or a contribution to them 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; 2001, ch. 149, § 8.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "in the Endowed Care Cemetery Act" for "herein" in two places; deleted "endowed" preceding "care funds" in two places; and made stylistic changes throughout the section.

## 58-17-9. Compliance with law required.

A. It is unlawful for a 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. Endowed care cemeteries shall establish and maintain with a state or federally chartered depository institution or trust company doing business in the state an irrevocable trust fund, the income only of that fund to be available to the cemetery in the furnishing of endowed care. Provided, however, that when the cemetery authority certifies to the director that the services of a state or federally chartered depository institution 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 trustee shall have all powers of investment as provided in this section. Endowed care cemeteries may pool their care funds pursuant to Subsection D of Section 58-17-4 NMSA 1978 as approved by the director upon request by the cemeteries. 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.

B. 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 those lot owners for the purpose of establishing endowed care on those lots, provided that 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; 2001, ch. 149, § 9.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, inserted Subsection designations A and B; in Subsection A, substituted "federally chartered depository institution" for "national bank" in the second and third sentences, substituted "director" for "state bank examiner" in the third sentence, and inserted the fourth sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 14 Am. Jur. 2d Cemeteries § 24.

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.

A. After the initial registration a cemetery authority shall register with the director 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;

(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. If any of the care funds of a cemetery authority are held by a trustee, the annual registration statement filed by a 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.

C. Annual registration statements shall be filed by the cemetery authority on or before June 30 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 the director shall not accept a registration statement unless it is accompanied by the payment of the fee.

D. The director shall charge and collect a fee of ten dollars ($10.00) per day for late filings of registration statements up to a maximum of three hundred dollars ($300). This late charge shall also apply when the cemetery authority is required by the director to revise a registration by a specified date and fails to file the revised registration on or before that date.

**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; 2001, ch. 149, § 10.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "effective date of the Endowed Care Cemetery Act", referred to in Subsection A(1)(c), means March 30, 1961, the effective date of Laws 1961, Chapter 156.

**The 2001 amendment,** effective July 1, 2001, deleted "of the financial institutions division" from the end of the section heading; in Subsection A, substituted "After the initial registration a cemetery authority shall" for "Every cemetery authority owning, operating, controlling or managing an endowed care cemetery shall", deleted "of the financial institutions division" following "the director"; in Subsection C, substituted "Annual registration" for "Such", "June 30" for "March 15"; and added Subsection D.

**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.

If a cemetery authority is duly organized and desires to accept care funds authorized by the Endowed Care Cemetery Act, it shall make an initial deposit to the care fund of twenty-five thousand dollars ($25,000). In lieu of the initial deposit, the 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-five thousand dollars ($35,000), and the bond shall run to the trustee for the benefit of the care funds held by the trustee. This bond shall be for the purpose of guaranteeing an accumulation of twenty-five thousand dollars ($25,000) in the care fund and also for the purpose of assuring that the cemetery authority shall provide annual endowed care in an amount equal to the annual reasonable return on a secured cash investment of twenty-five thousand dollars ($25,000) until that amount is accumulated in the care funds, and these shall be the conditions of the surety bond; provided, however, the liability of the principal and surety on the bond shall in no event exceed thirty-five thousand dollars ($35,000). Provided further that whenever a cemetery authority which has made an initial deposit to the care fund demonstrates to the satisfaction of the director that more than twenty-five thousand dollars ($25,000) 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-five thousand dollars ($25,000) always remains in the care fund.

**History:** 1953 Comp., § 67-29-11, enacted by Laws 1961, ch. 156, § 11; 1981, ch. 192, § 3; 2001, ch. 149, § 11.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, increased all dollar amounts in the section by five thousand; and in the third sentence, substituted "annual endowed care" for "annual perpetual or endowment care".

**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.

A 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 that 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 that 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; 2001, ch. 149, § 12.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, made stylistic changes throughout the section.

## 58-17-13. Enforcement of provisions of act by director.

A. The duty of administering and enforcing the provisions of the Endowed Care Cemetery Act is imposed on the director, who shall approve all forms of contract for endowed care and shall have authority to subpoena witnesses, conduct hearings and investigations and issue orders reasonably necessary to regulate endowed care cemeteries in the public interest.

B. At the same time the registration statement is due, the director shall require the cemetery authority to submit an audit prepared by a certified public accountant. The audit shall cover in detail the information required in the annual registration statement required by law. In addition, the director may examine each endowed care cemetery to ensure that endowed care is being furnished in the manner required by law.

C. 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.

D. If the director deems it necessary to hold a hearing pursuant to the power vested in him by the Endowed Care Cemetery Act, the hearing may be held in Santa Fe, New Mexico or at any other location within New Mexico designated by the director.

E. 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 Endowed Care Cemetery Act and in connection therewith require the production of any books, records or papers relevant to the inquiry.

F. In case of refusal to obey a subpoena issued to any person, the district court of the first judicial district for 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:** 1953 Comp., § 67-29-13, enacted by Laws 1961, ch. 156, § 13; 1973, ch. 113, § 2; 1981, ch. 192, § 4; 2001, ch. 149, § 13.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, deleted "of financial institutions division" from the end of the section heading; inserted the Subsection A designation and deleted "of the financial institutions division" following "director" in that subsection; deleted former Subsection A, requiring the director to examine the books of each endowed care cemetery, or have an audit made in lieu thereof; and added present Subsections B, E and F and redesignated the remaining subsections accordingly.

## 58-17-14. Proceedings in case of law violations.

If a cemetery authority refuses or neglects to make a required report or to file an annual registration statement or willfully disobeys a valid order of the director or violates any provisions of the Endowed Care Cemetery Act or rule of the director, or if it appears to the director from any report or examination that a cemetery authority has committed a violation of law, that the care funds have not been administered properly or that it is unsafe or inexpedient for the cemetery authority or the trustee of the care funds of the cemetery authority to continue to administer those funds or that any officer of the cemetery authority or of the trustee of the care fund of the cemetery authority has abused his trust or has been guilty of misconduct in his official position injurious to the cemetery authority or that the 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;

B. issue any order in furtherance of the duty imposed on him by the Endowed Care Cemetery Act;

C. institute a lawsuit in the district court of the first judicial district for Santa Fe county to recover any amounts due to the care funds; or

D. apply to the district court of the first judicial district for Santa Fe county for other relief consistent with the duty imposed on him by the Endowed Care Cemetery Act.

**History:** 1953 Comp., § 67-29-14, enacted by Laws 1961, ch. 156, § 14; 1973, ch. 113, § 3; 1981, ch. 192, § 5; 2001, ch. 149, § 14.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, deleted "of the financial institutions division" following "director" in the first sentence of the undesignated paragraph; in

Subsections C and D, substituted "the first judicial district for Santa Fe county" for "the county where the responsible cemetery authority or cemetery is located", and in Subsection C, deleted "endowed" preceding "care funds".

## 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 cemetery authority has accepted care funds pursuant to the Endowed Care Cemetery Act and dissolution is sought by the cemetery authority in any manner, by resolution of the cemetery authority or the trustees of the cemetery authority, notice shall be given to the director of the intentions to dissolve. It is the director's duty to see that proper disposition is made of the care funds held by or for the benefit of the 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 the funds were created. The director may apply to the district court for the appointment of any receiver, trustee or successor in trust or for direction of the court as to the proper disposition to be made of the care funds, to the end that the uses and purposes for which the trust or care funds were created may be accomplished.

**History:** 1953 Comp., § 67-29-15, enacted by Laws 1961, ch. 156, § 15; 2001, ch. 149, § 15.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "director" for "state bank examiner" in two places, and substituted "district court" for "court of competent jurisdiction".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 14 Am. Jur. 2d Cemeteries § 27.

## 58-17-16. Violations; punishment.

Whoever violates any provision of the Endowed Care Cemetery Act, fails to establish an irrevocable trust fund, encroaches upon the principal of an irrevocable trust, refuses to cooperate in an examination or investigation or 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 provisions of Section 31-18-15 NMSA 1978.

**History:** 1953 Comp., § 67-29-16, enacted by Laws 1961, ch. 156, § 16; 1981, ch. 192, § 6; 1993, ch. 210, § 8; 2001, ch. 149, § 16.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, deleted the Subsection A and B designations and "of 1961, except as provided in Subsection B of this section, is guilty of a petty misdemeanor. Whoever" following "the Endowed Care Cemetery Act"; and substituted "provisions of Section 31-18-15 NMSA 1978" for "Criminal Sentencing Act" at the end of the subsection.

**The 1993 amendment,** effective June 18, 1993, made stylistic changes in Subsection A and inserted "fails to establish an irrevocable trust fund, encroaches upon the principal of an irrevocable trust, refuses to cooperate in an examination or investigation or" in Subsection B.

## 58-17-17. Exemption.

The provisions of the Endowed Care Cemetery Act do not apply to municipal cemeteries, fraternal cemeteries, religious cemeteries or family burial grounds that provide burial only for members.

**History:** 1953 Comp., § 67-29-17, enacted by Laws 1961, ch. 156, § 17; 2001, ch. 149, § 17.

**ANNOTATIONS**

**The 2001 amendment,** effective July 1, 2001, substituted "family burial grounds that provide burial only for members" for "family burying grounds".

## 58-17-18. Establishing a cemetery authority.

A. A person establishing or acquiring a cemetery subject to the Endowed Care Cemetery Act shall file an initial registration with the director that contains the following information:

(1) a detailed financial statement of the proposed owners;

(2) a current credit report of the person establishing or acquiring the cemetery and a resume for each principal;

(3) the full name and address of the registrant, if an individual; of every member, if the registrant is a partnership or an association; of every officer, if the registrant is a corporation; and of any person owning ten percent or more of the cemetery;

(4) a plot plan that identifies the endowed care sections of the cemetery and all plans for future expansion of the cemetery;

(5) a copy of the form of contracts or instruments to be used in the sales of endowed care lots, graves, crypts or niches;

(6) proof of ability to make the initial deposit or secure a surety bond as required by Section 58-17-11 NMSA 1978;

(7) a registration fee in the amount of fifty dollars ($50.00); and

(8) any other information requested by the director.

B. Failure to submit the information specified in Subsection A of this section shall result in the denial of the registration to sell endowed care. Until a registration to operate a cemetery is approved by the director, a person establishing or acquiring a cemetery authority shall not advertise, represent, guarantee, promise or contract that perpetual care, endowed care or any similar care will be furnished.

**History:** Laws 2001, ch. 149, § 18.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 149, § 22 makes the act effective July 1, 2001.

## 58-17-19. Transfer of ownership.

A. An endowed care cemetery's registration is not transferable. When any cemetery authority subject to the provisions of the Endowed Care Cemetery Act is transferred, the person acquiring the cemetery shall register with the director as required by Section 58-17-18 NMSA 1978.

B. A transfer of ownership cannot take place and no endowed care can be sold until the director has approved the registration required by Subsection A of this section.

**History:** Laws 2001, ch. 149, § 19.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 149, § 22 makes the act effective July 1, 2001.

## 58-17-20. Denial, suspension or revocation of registration.

A. The director may deny, suspend or revoke any registration if the registrant, or any director, officer, employee or affiliate of the registrant:

(1) lacks a good business reputation;

(2) has violated any provision of the Endowed Care Cemetery Act;

(3) has committed fraud in connection with any transaction subject to the Endowed Care Cemetery Act;

(4) has made any misrepresentations or false statements to or concealed any essential or material fact from any person in the course of the cemetery business;

(5) has knowingly made or caused to be made any false representation of material fact or has suppressed or withheld from the director any information that the applicant or registrant possesses and that if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Endowed Care Cemetery Act;

(6) 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, make any report or attend a hearing that may be required by the director under the provisions of the Endowed Care Cemetery Act;

(7) has not completed the annual registration requirements or paid the registration fee; or

(8) 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].

B. If the director decides that action resulting in the denial, suspension or revocation of a registration is warranted, the director shall notify the registrant or cemetery authority in writing of the reasons for the refusal and shall advise the registrant or cemetery authority of the right to a hearing before a final decision on the registration is made.

**History:** Laws 2001, ch. 149, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 149, § 22 makes the act effective July 1, 2001.

## 58-17-21. Judicial review.

A person aggrieved by the decision of the director in the enforcement of the Endowed Care Cemetery Act may obtain judicial review pursuant to Section 39-3-1.1 NMSA 1978.

**History:** Laws 2001, ch. 149, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 149, § 22 makes the act effective July 1, 2001.

# 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.

**ANNOTATIONS**

**Cross references.** — For municipal housing, *see* Chapter 3, Article 45 NMSA 1978.

For urban development, *see* Chapter 3, Article 46 NMSA 1978.

For community development, *see* Chapter 3, Article 60 NMSA 1978.

For metropolitan redevelopment, *see* Chapter 3, Article 60A NMSA 1978.

For regional housing authorities, *see* Chapter 11, Article 3A NMSA 1978.

For the state housing authority, *see* Chapter 11 Article 4 NMSA 1978.

For utility supplements and assistance, *see* Chapter 27 Article 6 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 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 or moderate 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 finds and determines that the 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 growth of municipalities, aggravate traffic problems and promote juvenile delinquency and other social ills.

C. The legislature 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 that persons and families of low or moderate 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 or moderate 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 affordable residential mortgages. This 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 housing 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 affordable 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 affordable residential mortgage financing.

F. The legislature further finds and determines that for the purposes of remedying these conditions, helping to alleviate the shortage of adequate housing and encouraging and providing the financing for the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low or moderate income within the state, 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 and public investors, to make funds available for such purposes, to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes and to assist, administer, finance or service housing programs for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities. The legislature finds and declares further that in accomplishing these

purposes, 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 set forth in the Mortgage Finance Authority Act is for a valid public purpose and is declared to be such as a matter of express legislative determination.

**History:** 1953 Comp., § 13-19-2, enacted by Laws 1975, ch. 303, § 2; 1995, ch. 9, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "or moderate" preceding "income" in the first sentences of Subsections A and C; inserted "affordable" preceding "residential" in the first sentence of Subsection D and in two places in Subsection E; rewrote Subsection F; and made minor stylistic changes throughout the section.

## 58-18-2.1. Multiple-family, transitional and congregate dwellings; supplemental legislative findings and purpose.

The legislature finds and declares that there is a critical shortage of multiple-family, transitional and congregate dwellings that provide decent, safe and sanitary residential housing at rentals that persons and families of low or moderate income can afford. It is further found and declared that private individuals, organizations and entities willing to undertake the construction of multiple-family, transitional and congregate dwellings are unable to obtain loans at sufficiently low interest rates to finance multiple-family, transitional and congregate dwelling projects for persons and families of low or moderate income. Providing mortgage loans at below-market interest rates for multiple-family, transitional and congregate dwellings would increase substantially the availability of multiple-family, transitional and congregate dwellings for occupancy by persons and families of low or moderate income and is expressly declared to be a valid public purpose and a corporate purpose that may be exercised by the authority.

**History:** 1978 Comp., § 58-18-2.1, enacted by Laws 1982, ch. 86, § 2; 1995, ch. 9, § 2.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "transitional and congregate" preceding "dwellings" and "or moderate" preceding "income" and made minor stylistic changes throughout the section.

## 58-18-3. Definitions.

As used in the Mortgage Finance Authority Act:

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 of the United States of America;

D. "FHA" means the federal housing administration;

E. "FHLMC" means the federal home loan mortgage corporation;

F. "FNMA" means the federal national mortgage association;

G. "home improvement loan" means a mortgage loan to finance those alterations, repairs and improvements on or in connection with an existing residence that the authority determines will substantially protect or improve the basic livability or energy efficiency of the residence;

H. "mobile home" means a movable or portable housing structure, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence; it 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 "mobile home" does not include recreational vehicles, or modular or premanufactured homes built to Uniform Building Code standards and designed to be permanently affixed to real property;

I. "mortgage" means a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the authority, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home;

J. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the mortgage lender maintains an office in New Mexico, is authorized to make mortgage loans in the state and is approved by the authority and either the FHA, VA, FNMA or FHLMC;

K. "mortgage loan" means a financial obligation secured by a mortgage;

L. "municipality" means a county, city, town or village of the state;

M. "new mortgage loan" means a mortgage loan made by a mortgage lender to a person of low or moderate income to finance project costs and containing terms and conditions required by rule of the authority;

N. "persons of low or moderate 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 their 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 the following factors:

(1) the total income of those 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 those 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 those persons and families;

O. "project" means a 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, safe and affordable residential housing within the state for one or more persons of low or moderate income;

P. "project costs" means the total of all costs incurred in the development of a project that is approved by the authority as reasonable and necessary; "project costs" may include:

(1) the cost of acquiring real property and improvements located on the property, including payments for options, deposits or contracts to purchase real property;

(2) cost of site preparation, demolition and development;

(3) fees in connection with the planning, execution and financing of a project;

(4) 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 both on and off site;

(7) expenses in connection with initial occupancy of a project;

(8) reasonable profit and risk fees to the general contractor in addition to the job overhead and, if applicable, to the developer;

(9) allowances 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 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 that the authority determines to be reasonable and necessary for the development of a project;

Q. "real property" means land, space rights, air rights and tangible, intangible, legal and equitable interests in land;

R. "rehabilitation loan" means a qualified rehabilitation loan within the meaning of Section 143(k)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

S. "residential housing" means the acquisition, construction or rehabilitation of real property, buildings and improvements undertaken primarily to provide one or more dwelling accommodations for persons of low or moderate income;

T. "state" means New Mexico;

U. "state, local, federal or tribal agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state or of a local, federal or tribal government; and

V. "VA" means the veterans affairs department.

**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; 1995, ch. 9, § 3; 1999, ch. 11, § 1.

## ANNOTATIONS

**Cross references.** — For Section 143 of the Internal Revenue Code, *see* 26 U.S.C. § 143.

**The 1999 amendment,** effective June 18, 1999, rewrote the definition of "mortgage lender", which read: " 'mortgage lender' means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the principal office of the mortgage lender is in New Mexico and the mortgage lender is authorized to make mortgage loans in the state and that the mortgage lender is approved by the authority and either the FHA, VA, FNMA or FHLMC", and clarified other definitions.

**The 1995 amendment,** effective June 16, 1995, added Subsections D through F and redesignated the remaining subsections accordingly; deleted a proviso at the end of Subsection G relating to security for a loan; in Subsection I, deleted "first" preceding "lien" in two places, deleted "or in the case of a home improvement loan, a first or inferior lien" following "creating a lien", and inserted "or is renewable at the option of the lessee until after"; in Subsection J, inserted "credit union" and substituted "the mortgage lender is approved by the authority and either the FHA, VA, FNMA or FHLMC" for "such mortgage lender is FHA - and VA - approved"; added "including a project mortgage loan" at the end of Subsection K; inserted "or moderate" preceding "income" in Subsections M, N, O, and S; inserted "and affordable" in Subsection O; in Subsection R, substituted "Section 143(k)(5) of the Internal Revenue Code of 1986" for "Section 103A of the Internal Revenue Code of 1954" and added "or any successor provision" at the end; inserted "single-family, multiple-family, transitional and congregate dwellings" in Subsection S; inserted "local, federal or tribal" and "or of such local, federal or tribal government" in Subsection U; added Subsection V; and made stylistic changes throughout the section.

## 58-18-3.1. Additional definitions; multiple-family dwellings, transitional and congregate housing facilities.

As used in the Mortgage Finance Authority Act:

A. "multiple-family dwelling project" means residential housing that 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 sixty percent of whom are persons and families of low or moderate income, including without limitation persons of low or moderate income who are elderly and who have a disability as determined by the authority, provided that the percentage of low-income persons and families shall be at least the minimum required by federal tax law;

B. "transitional housing facility" means residential housing that is designed for temporary or transitional occupancy by persons or families of low or moderate income or special needs;

C. "congregate housing facility" means residential housing designed for occupancy by more than four persons or families of low or moderate income living independently of each other. The facility may contain group dining, recreational, health care or other

communal facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping and bathing facilities;

D. "project mortgage loan" means a mortgage loan made to a sponsor to finance project costs of a multiple-family dwelling or transitional or congregate housing facility; and

E. "sponsor" means an individual, association, corporation, joint venture, partnership, limited partnership, trust or any combination thereof that has been approved by the authority as qualified to own and maintain a multiple-family dwelling or transitional or congregate housing facility in New Mexico, 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; 1995, ch. 9, § 4; 2007, ch. 46, § 47.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, amends the section to make non-substantive language changes.

**The 1995 amendment,** effective June 16, 1995, added "transitional and congregate housing facilities" in the section heading; deleted former Subsection A defining "FHA" and redesignated former Subsection B as Subsection A; added Subsections B and C and redesignated former Subsections C and D as Subsections D and E; in Subsection A, substituted "sixty percent" for "twenty-five percent", inserted "or moderate" in two places, and deleted "provided that the percentage of low income persons and families shall be at least the minimum required by federal tax law" at the end; deleted "during construction and on a permanent basis the" following "sponsor to finance" in Subsection D; inserted "transitional or congregate housing" in Subsections D and E; and made minor stylistic changes throughout the section.

## 58-18-3.2. Secondary mortgage funds; additional definitions.

As used in the Mortgage Finance Authority Act:

A. "pass-through securities" means securities representing undivided ownership interests in a pool of mortgage loans; and

B. "secondary market facility" means a corporation, trust or other form of legal entity 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; 1995, ch. 9, § 5.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "facility or mortgage pooling" preceding "corporation" and inserted "trust or other form of legal entity" in Subsection B.

## 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 lieutenant governor, 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 appointment 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 duty, shall take an oath of office to administer the duties of the 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 chair for a term that shall be coterminous with the chair's then current term as a member of the authority. The authority shall annually elect one of its members as vice chair. The authority shall also elect or appoint and prescribe the duties of 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. The authority shall fix the compensation of officers. Officers and employees of the authority are not subject to the Personnel Act [Chapter 10, Article 9 NMSA 1978]. The authority may delegate to one or more of its members, officers, employees or agents the powers and duties 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, the cost of which shall be proper expense of the authority.

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. The secretary shall have authority to make copies 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 chair or whenever three members so request in writing. A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority. A vacancy in the membership of the authority shall not 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 the member's 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 not receive 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 oversight committee.

F. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of a board, bureau, department or agency of the state except as specifically provided in the Mortgage Finance Authority Act. To effectuate the separation of the state from the authority, the use of the terms "state agency" or "instrumentality" in any other law of the state shall not be deemed to refer to the authority unless the authority is specifically named.

**History:** 1953 Comp., § 13-19-4, enacted by Laws 1975, ch. 303, § 4; 1985, ch. 232, § 1; 1987, ch. 57, § 1; 1995, ch. 9, § 6; 2003, ch. 17, § 1.

## ANNOTATIONS

**Cross references.** — For the Mortgage Finance Authority Act oversight committee, *see* 2-12-5 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, in Subsection A, substituted "lieutenant governor" for "director of the financial institutions division of the regulation and licensing department" near the beginning of the third sentence, and inserted "appointment by" following "Vacancies shall be filled by" near the beginning of the sixth sentence; substituted "make copies" for "cause copies to be made" near the beginning of the third sentence of Subsection C; deleted "In order" at the beginning of the second sentence of

Subsection F; and substituted "named" for "referred to therein" at the end of the second sentence of Subsection F.

**The 1995 amendment,** effective June 16, 1995, added the language beginning "the cost of which" at the end of Subsection B and made a minor stylistic change.

**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, 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 or individual 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 for the policy;

I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in amounts and from insurers, including the federal government, that the authority deems necessary or desirable; to procure liability insurance covering its members, officers and employees for acts performed within the scope of their authority as members, officers or employees; and to pay any premiums for insurance procured;

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 otherwise exercise all powers with respect to its mortgage loans and loans to mortgage lenders that any private creditor may exercise under applicable law; 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 operate or 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 mortgage loans, 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 bonds and notes that may be negotiable and to provide for the rights of the holders thereof;

O. to arrange for guarantees or other security, liquidity or credit enhancements in connection with its bonds, notes or other obligations by the federal government or by any private insurer or other provider 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 that 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 the manner, if any, as the authority shall determine;

(6) in contracts for the purchase and sale of obligations of the types specified in this subsection; or

(7) as otherwise provided in any trust indenture or a resolution authorizing the issuance of the bonds or notes;

Q. subject to any agreement with bondholders or noteholders, to purchase bonds or notes of the authority at the price as may be determined by the authority or to authorize third persons to purchase bonds or notes of the authority; bonds or notes so purchased shall be canceled or resold, as determined by the authority;

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 affordable residential mortgages; and

(2) adequate, safe and sanitary housing available to persons of low or moderate 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 of representatives, 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;

X. to make, purchase, guarantee, service and administer mortgage loans for residential housing for the purposes set forth in the Mortgage Finance Authority Act where private banking channels and private enterprise, unaided, have not, cannot or are unwilling to make, purchase, guarantee, service or administer the loans;

Y. to act as trustee and administer the land title trust fund created pursuant to Section 58-28-3 NMSA 1978;

Z. to act as trustee and administrator pursuant to the Low-Income Housing Trust Act [58-18B-1 to 58-18B-11 NMSA 1978];

AA. to act as trustee and statewide administrator of the New Mexico housing trust fund pursuant to and to receive funds under the New Mexico Housing Trust Fund Act [58-18C-1 to 58-18C-9 NMSA 1978];

BB. to act as a governmental entity or a qualifying grantee or as an intermediary for a governmental entity or a qualifying grantee pursuant to the Affordable Housing Act [Chapter 6, Article 27 NMSA 1978]; and

CC. 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; 1995, ch. 9, § 7; 2003, ch. 304, § 1; 2005, ch. 105, § 10.

## ANNOTATIONS

**The 2005 amendment,** effective July 1, 2005, adds Subsections AA and BB to authorize the finance authority to act as trustee and statewide administrator of the housing trust fund and to receive funds under the Housing Trust Fund Act and to act as a governmental entity, qualifying grantee, intermediary for a governmental entity or a qualifying grantee under the Affordable Housing Act.

**The 2003 amendment,** effective June 20, 2003, substituted "for the policy" for "therefor" at the end of Subsection H; in Subsection I, substituted "that the authority deems" for "deem" near the middle, and substituted "for insurance procured" for "therefor" at the

end; added present Subsections Y and Z and redesignated former Subsection Y as present Subsection AA.

**The 1995 amendment,** effective June 16, 1995, inserted "or individual" in Subsection H; inserted the provision for procurement of liability insurance in Subsection I; added the language beginning "and otherwise exercise" at the end of Paragraph J(2); substituted "mortgage loans" for "loans to mortgage lenders" in Subsection L; substituted "guarantees or other security, liquidity or credit enhancements in connection with" for "guarantees of" and inserted "or other provider" in Subsection O; substituted "or a resolution authorizing the issuance of the bonds or notes" for "securing the issuance of the bonds" in Paragraph P(7); rewrote Subsection Q; inserted "affordable" in Paragraph R(1); inserted "or moderate" in Paragraph R(2); added Subsection X; redesignated former Subsection X as Subsection Y; and made minor stylistic changes throughout the section.

## 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 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; 1995, ch. 9, § 8.

**ANNOTATIONS**

**Cross references.** — For the Mortgage Finance Act oversight committee, *see* 2-12-5 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "The authority" for "The mortgage finance authority" at the beginning of the section.

## 58-18-5.3. Authority; multiple-family dwellings, transitional and congregate housing facilities.

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. subject to the limitations of Subsection X of Section 58-18-5 NMSA 1978, make project mortgage loans or purchase or contract to purchase project mortgage loans from mortgage lenders or participate with mortgage lenders in project mortgage loans at prices and upon terms and conditions as the authority determines. Each project mortgage loan made or 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 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 or transitional or congregate housing facility 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 project mortgage loans, including the issuance of bonds or notes in private placements or public offerings. Any bonds or notes issued in a public offering for any purpose authorized by this section shall, at the time of issuance, be rated in at least the third highest rating category 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; 1995, ch. 9, § 9.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, added "transitional and congregate housing facilities" in the section heading and rewrote Subsections A and C.

## 58-18-5.4. Duties of authority; multiple-family dwellings, transitional and congregate housing facilities.

A. The authority shall require, as a condition of making or purchasing a project mortgage loan, that the sponsor agree to comply with the requirements and to make the representations and warranties as the authority deems reasonably necessary to protect its interests in the project mortgage loan and the multiple-family dwelling project or transitional or congregate housing facility, including the following:

(1) the multiple-family dwelling project or transitional or congregate housing facility and surrounding area shall be maintained in good repair;

(2) a reserve fund for repairs and replacements on the multiple-family dwelling project or transitional or congregate housing facility 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 or transitional or congregate housing facility 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 or transitional or congregate housing facility;

(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) unless otherwise exempt under any other law of the state or any political subdivision of the state, all ad valorem, gross receipts and any other taxes imposed on the land or improvements for which a multiple-family dwelling project mortgage loan is being provided shall apply;

(10) the sponsor shall maintain the project as a multiple-family dwelling project or transitional or congregate housing facility throughout the life of the project mortgage loan; and

(11) 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 that take into consideration geographic allocation and economic feasibility of affordable housing throughout 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.

**History:** 1978 Comp., § 58-18-5.4, enacted by Laws 1982, ch. 86, § 5; 1990, ch. 118, § 1; 1994, ch. 47, § 1; 1995, ch. 9, § 10.

## ANNOTATIONS

**Cross references.** — For the Municipal Housing Law, *see* 3-45-1 NMSA 1978 et seq.

For the Urban Development Law, *see* 3-46-1 NMSA 1978 et seq.

For the Community Development Law, *see* 3-60-1 NMSA 1978 et seq.

For Regional Housing Law, *see* Chapter 11, Article 3A NMSA 1978.

For the Low Income Utility Assistance Act, *see* 27-6-11 NMSA 1978 et seq.

**The 1995 amendment,** effective June 16, 1995, in Subsection A, substituted "making or purchasing a project" for "purchasing a multiple-family dwelling project" near the beginning and "multiple-family dwelling project or transitional or congregate housing facility" for "project" near the end; inserted "or transitional or congregate housing facility" in Paragraphs A(1), A(2), A(3), A(5), and A(10); substituted "that take into consideration geographic allocation and economic feasibility of affordable housing throughout" for "established to assure an even geographic allocation and taking into consideration the need for an economic feasibility of new housing in each area of" near the middle of Subsection B; and made minor stylistic changes throughout the section.

**The 1994 amendment,** effective May 18, 1994, inserted Paragraph A(9), and redesignated former Paragraphs A(9) and A(10) as A(10) and A(11); and deleted former Subsection C, relating to distribution of funds prior to July 1, 1995.

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Suability, and liability, for torts, of public housing authority, 61 A.L.R.2d 1246.

Validity and construction of statute or ordinance providing for repair or destruction of a residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

What constitutes "blighted area" within urban renewal and redevelopment statutes, 45 A.L.R.3d 1096.

Substantive issues relative to rent levels and termination of benefits under United States Housing Act of 1937 (42 USCS §§ 1437 et seq.), 77 A.L.R. Fed. 884.

## 58-18-5.5. Additional powers of authority; authority designated as single state housing authority; application for and receipt of federal funds; administration of housing programs.

In addition to the powers granted the authority pursuant to Sections 58-18-5 and 58-18-5.3 NMSA 1978, the authority:

A. is designated as the state housing authority for all purposes;

B. shall make application for federal housing funds and programs;

C. shall administer federal and state housing programs and federal tax credit provisions associated with those programs;

D. shall receive and expend funds pursuant to applicable federal housing laws, federal housing regulations, the provisions of the Mortgage Finance Authority Act and regulations adopted pursuant to that act;

E. shall administer the following housing programs that were previously transferred to it by executive order, the provisions of which are ratified:

(1) the federal HOME program;

(2) the federal low-income housing tax credit program;

(3) the federal emergency shelter grant programs;

(4) the state homeless program;

(5) the federal and state weatherization programs and that part of the low-income home energy assistance program authorized for weatherization; and

(6) the state safe water program;

F. shall assist with technical consultation in connection with housing components of the community service block grant and community development block grant programs that are administered by the human services department [health care authority department] and the department of finance and administration, respectively; and

G. shall not receive direct appropriations of state funds from the legislature, and, if a program for which the authority is granted the power and has the duty to administer involves the appropriation or expenditure of state funds, the authority is granted specific power to enter into a joint powers agreement with the department of finance and administration pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

**History:** Laws 1998, ch. 63, § 6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Cross references.** — For the Municipal Housing Law, *see* 3-45-1 NMSA 1978 et seq.

For the Urban Development Law, *see* 3-46-1 NMSA 1978 et seq.

For the Community Development Law, *see* 3-60-1 NMSA 1978 et seq.

For Regional Housing Law, *see* Chapter 11, Article 3A NMSA 1978.

For Low Income Utility Assistance Act, *see* 27-6-11 NMSA 1978.

For the Gasoline and Home Heating Relief Fund, *see* 6-4-25 NMSA 1978.

**Effective dates.** — Laws 1998, ch. 63, § 8 makes the act effective on July 1, 1998.

**Statewide housing authority.** — Section 58-18-5.5 NMSA 1978 designates the mortgage finance authority as the single state housing authority in New Mexico with statewide jurisdiction and prohibits out-of-state public housing authorities and their instrumentalities from acting as public housing authorities within New Mexico. 2012 Op. Att'y Gen. No. 12-02.

## 58-18-5.6. Duties; behavioral health.

The authority shall:

A. appoint a representative to both the behavioral health planning council and the interagency behavioral health purchasing collaborative; and

B. ensure that any behavioral health services, including mental health and substance abuse services, and any housing provided for consumers of those services, that are provided, contracted for or approved by the authority are in compliance with requirements of Section 9-7-6.4 NMSA 1978.

**History:** Laws 2004, ch. 46, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2004, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

## 58-18-6. Loans to mortgage lenders.

A. The authority may make and contract to make loans to mortgage lenders on terms and conditions as it determines, 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 that shall constitute either a general or limited obligation of the mortgage lender, as determined by the authority, 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 determines.

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 the bonds or notes and the interest thereon as they 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 determines to be necessary to assure the payment of the loans and the interest thereon as they become due.

E. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority and designated by the authority as custodian. In the absence of this requirement, each mortgage lender shall enter into an agreement with the authority containing such provisions as the authority deems necessary to:

(1) adequately identify and maintain the collateral;

(2) service the collateral; and

(3) require the mortgage lender to hold the 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 deems necessary with respect to the pledging, assigning, setting aside or holding of 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 single-family loan to a mortgage lender that the mortgage lender, within a period that the authority may prescribe, shall have entered into written commitments to make and, within a period that the authority may prescribe, shall have disbursed the loan proceeds in new single-family mortgage loans to persons of low or moderate income in an aggregate principal amount equal to the amount of the loan. The new single-family mortgage loans shall have terms and conditions as the authority may prescribe.

G. The authority shall require the submission to it by each mortgage lender to which the authority has made a single-family mortgage loan evidence satisfactory to the authority of the making of new single-family mortgage loans to persons of low or moderate 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 determines to be necessary to secure the 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 or servicing of any new mortgage loans 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 the 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 the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to 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, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control.

**History:** 1953 Comp., § 13-19-6, enacted by Laws 1975, ch. 303, § 6; 1978, ch. 163, § 2; 1979, ch. 399, § 2; 1995, ch. 9, § 11.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted former Paragraph D(1) through D(5) enumerating types of collateral security; deleted "located in the state" following "authority" in the first sentence of Subsection E; inserted "single-family" and "or moderate" throughout Subsections F and G; in Subsection I, inserted "or servicing" and deleted "to persons of low income" after "new mortgage loans" in the first sentence and deleted "and such penalties shall be recoverable at the suit of the authority" at the end of the subsection; inserted "which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act" in Subsection J; deleted former Subsection K relating to loans to mortgage lenders for making new mortgage loans cured by first liens on mobile homes; and made minor stylistic changes throughout the section.

## 58-18-7. Purchase of mortgage loans.

A. The authority may purchase and contract to purchase mortgage loans at the prices and upon the terms and conditions as it determines. 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 single-family mortgage loans from mortgage lenders either:

(1) that the single-family mortgage loans be existing mortgage loans owned by the mortgage lenders and that the mortgage lenders, within the period after receipt of the purchase price as the authority may prescribe shall enter into written commitments to loan and, within such period thereafter as the authority may prescribe, shall loan an amount equal to the entire purchase price of the mortgage loans on new mortgage loans to persons of low or moderate income, which new mortgage loans shall have such terms and conditions as the authority may prescribe; or

(2) that the single-family mortgage loans qualify as new mortgage loans to persons of low or moderate 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 a single-family mortgage loan evidence satisfactory to the authority of the making of new mortgage loans to persons of low or moderate 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 or servicing of any mortgage loans 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 the association to the jurisdiction of courts of the state over any proceeding. The authority may also require, as a condition of the authority's purchase of mortgage loans from, or servicing of mortgages by a 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.

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 that has been properly recorded with the appropriate public official;

(5) the mortgage constitutes a valid 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 that 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 is 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 proves 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. The authority may also require, as a condition of the authority's purchase of mortgage loans from the mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for any misrepresentation or breach of warranty.

G. The authority shall require the recording of an assignment of any mortgage loan purchased by it from a mortgage lender. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority enters, or the mortgage lender's approved designee enters, a contract to service the 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, the foreclosure shall not be made in the name of the state. The authority is empowered to make appropriate arrangements for the foreclosure of such mortgages in the name of the authority or 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, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control.

**History:** 1953 Comp., § 13-19-7, enacted by Laws 1975, ch. 303, § 7; 1978, ch. 163, § 3; 1979, ch. 399, § 3; 1995, ch. 9, § 12.

## ANNOTATIONS

**The 1995 amendment,** effective June 16, 1995, substituted the language beginning "at the prices" for "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" at the end of the first sentence of Subsection A; in Subsection B, inserted "single-family" in three places, deleted "by regulation" after "prescribe" in two places, and inserted "or moderate" in two places; substituted "a single-family mortgage loan" for "mortgages" and inserted "or moderate" near the middle of Subsection C; in Subsection D, substituted "making or servicing of any mortgage loans" for "making of any new mortgage loans to persons of low income" in the first sentence, inserted "or servicing of mortgages by a" near the middle and deleted "and such penalties shall be recoverable at the suit of the authority" at the end of the second sentence; added the second sentence in Subsection F; inserted "or the mortgage lender's approved designee enters" in the second sentence of Subsection G; in Subsection H, deleted "or the mortgage finance authority at the end of the first sentence and deleted "mortgage finance" preceding "authority" and inserted "the authority or" in the second sentence; inserted "which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act" in Subsection I; deleted former Subsection J relating to

mortgages secured by first liens on mobile homes; and made stylistic changes throughout the section.

## 58-18-7.1. 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 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, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control.

**History:** 1978 Comp., § 58-18-7.1, enacted by Laws 1982, ch. 86, § 6; 1995, ch. 9, § 13.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "Multiple family dwellings" at the beginning of the section heading and inserted "which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act" in the second sentence.

## 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 mortgage loans 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 that may be exercised by the authority.

B. In connection with the establishment and implementation of a secondary market facility, the authority may issue pass-through securities and may purchase and contract to purchase mortgage loans, pass-through securities, obligations secured by mortgage loans, or revenues therefrom or interests therein, at the prices and upon the 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. Notwithstanding any other provisions of the Mortgage Finance Authority Act, 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; 1995, ch. 9, § 14.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "mortgage loans" for "home mortgages" near the beginning of Subsection A; inserted "may issue pass-through securities and" and deleted "from mortgage lenders" preceding "at the prices" in the first sentence of Subsection B; deleted former Subsection D relating to waiver of the exemption from federal income tax of interest on the authority bonds, notes or other securities; redesignated former Subsection E as Subsection D; and made minor stylistic changes throughout the section.

## 58-18-7.3. Rehabilitation loans and home improvement loans.

The authority may develop a tax-exempt bond, a taxable bond or an authority-funded program for the financing of home improvement or rehabilitation loans. Such a home improvement or rehabilitation loan program may be conducted in concert with any appropriation provided by the legislature for the purpose of developing and conducting a program of subsidizing the interest rates on home improvement or rehabilitation loans to persons of low or moderate income.

**History:** 1978 Comp., § 58-18-7.3, enacted by Laws 1984, ch. 62, § 2; 1987, ch. 168, § 1; 1995, ch. 9, § 15.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted former Subsection A relating to the reservation of bond proceeds for the purchase of rehabilitation loans; substituted the language beginning "of home improvement" for "of the purchase of home improvement loans from mortgage lenders or for loans to mortgage lenders to fund home

improvement loans" at the end of the first sentence; inserted "or rehabilitation" in two places and "or moderate" near the end; deleted "to the state investment council" following "by the legislature"; and made stylistic changes throughout the section.

## 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 Mortgage Finance Authority Act oversight committee, rules and regulations:

(1) for determining income levels for the classification of persons of low or moderate 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.

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 of residential housing 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 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 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; 1995, ch. 9, § 16.

**ANNOTATIONS**

**Cross references.** — For the Mortgage Finance Authority Act oversight committee, *see* 2-12-5 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, inserted "Mortgage Finance Authority Act" in the introductory paragraph of Subsection A, inserted "or moderate" in Paragraph A(1), and made a stylistic change.

## 58-18-8.1. Rules and regulations of the authority; multiple-family dwellings, transitional and congregate housing facilities.

Prior to financing a multiple-family dwelling project or transitional or congregate housing facility, 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 finance project mortgage loans, 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 project mortgage loans.

**History:** 1978 Comp., § 58-18-8.1, enacted by Laws 1982, ch. 86, § 7; 1995, ch. 9, § 17.

**ANNOTATIONS**

**Cross references.** — For the Mortgage Finance Authority Act oversight committee, *see* 2-12-5 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, in the introductory paragraph, inserted "or transitional or congregate housing facility" near the beginning and substituted "to finance project mortgage loans" for "to mortgage lenders" near the end; and substituted "project mortgage loans" for "multiple family dwelling project loans" at the end of subsection F.

## 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 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 may be made;

(2) the types of home improvements that may 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 or moderate 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 or moderate income.

**History:** 1978 Comp., § 58-18-8.3, enacted by Laws 1984, ch. 62, § 3; 1987, ch. 168, § 2; 1995, ch. 9, § 18.

**ANNOTATIONS**

**Cross references.** — For the Mortgage Finance Authority Act oversight committee, *see* 2-12-5 NMSA 1978.

**Compiler's notes.** — The reference to Subsection B of 58-18-7.3 NMSA 1978 in the introductory language should now be a reference to 58-18-7.3 NMSA 1978 since the 1995 amendment to that section deleted Subsection A.

**The 1995 amendment,** effective June 16, 1995, substituted "may be made" for "can be made" in Paragraphs D(1) and D(2) and inserted "or moderate" in Paragraph D(3) and Subsection F.

## 58-18-9. Required determinations of the authority.

The authority shall not make loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or purchase mortgage loans pursuant to Section 58-18-7 NMSA 1978 until the authority has 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 or moderate income for residential mortgage financing; and

B. that the purchase of mortgages or making of loans by the authority will alleviate the 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; 1995, ch. 9, § 19.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, in the introductory paragraph, substituted "shall not make" for "may not make" and substituted "Section 58-18-6 NMSA 1978" and "Section 58-18-7 NMSA 1978" for "Section 6 of the Mortgage Finance Authority Act" and "Section 7 of that act", respectively, inserted "or moderate" near the end of Subsection A, and made stylistic changes throughout the section.

## 58-18-9.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 9, § 37 repeals 58-18-9.1 NMSA 1978, as amended by Laws 1983, ch. 310, § 2, relating to the authority's financing or purchase of multiple-family dwelling project mortgage loans insured by the SHA, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 58-18-10. Planning, zoning and building laws.

A. All multiple-family dwelling projects and transitional and congregate housing facilities 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 or transitional or congregate housing facility for which it proposes to finance a project mortgage loan to the local governing body of the municipality in which the multiple-family dwelling project or transitional or congregate housing facility 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, disapproves the multiple-family dwelling project or transitional or congregate housing facility within thirty days after receipt of the description, the authority may finance a project mortgage loan on the project.

**History:** 1953 Comp., § 13-19-10, enacted by Laws 1975, ch. 303, § 10; 1982, ch. 86, § 9; 1995, ch. 9, § 20.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "All multiple-family dwelling projects and transitional and congregate housing facilities" for "all projects" at the beginning of Subsection A, inserted "or transitional or congregate housing facility" in three places in Subsection B, and made minor stylistic changes throughout the section.

## 58-18-11. Bonds and notes of the authority.

A. The authority may from time to time issue its bonds and notes in the principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achieving its corporate purposes, the payment of principal and of premium, if any, and interest on bonds and notes of the authority, establishment of reserves to secure the 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 of the state or constitute or give rise to a pecuniary liability of the state or any political subdivision of the state; nor shall the authority have the power to pledge the general credit or taxing power of the state or any political subdivision of the state or to make its debts payable out of any money except that of the authority.

C. Bonds and notes shall be authorized by resolutions of the authority adopted as provided by the Mortgage Finance Authority Act; 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 or specify the manner of fixing the details of any such issues of bonds or notes by an appropriate certificate of the authorized officer.

D. The bonds shall:

(1) state on their face 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 of the state; 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 unless otherwise determined by the authority;

(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, shall have impressed or imprinted on them the seal of the authority or a facsimile of the seal, and any coupons attached to them shall be signed with the facsimile signature of the 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 forty-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 that it deems necessary or advantageous in connection with the issuance and sale of the bonds; 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 the payment, not inconsistent with the Mortgage Finance Authority Act, as may be found to be necessary by the authority for the most advantageous sale of the bonds, 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 a 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 the 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 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 the properties, rights, powers and duties in trust as the authority may determine that may include any or all of the rights, powers and duties of the trustee appointed pursuant to Section 58-18-14 NMSA 1978 for the holders of any bonds issued by the authority in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply; or limiting or abrogating the right of the holders of bonds to appoint a trustee under Section 58-18-14 NMSA 1978 or limiting the rights, duties and powers of the trustee; 9) defining the acts or omissions to act that 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 default, provided that the 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 that in any way affect the security and protection of the bonds and the rights of the holders of bonds.

E. The authority is authorized to issue its bonds or notes for the purpose of refunding any bonds or notes of the authority or of any issuer under the Municipal Mortgage Finance Act [58-18A-1 to 58-18A-12 NMSA 1978] or under any other authorizing act then outstanding, including the payment of any redemption premiums thereon and any interest accrued to or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of any bonds or notes issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of the outstanding bonds or notes or the redemption of the outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of Subsection P of Section 58-18-5 NMSA 1978. 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 or notes to be 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 the 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 bonds or notes 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 or notes issued pursuant to the Mortgage Finance Authority Act.

F. The authority is authorized to issue bond anticipation notes and may renew them from time to time, but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. The notes may 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 the 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 the notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, that the bonds or a bond resolution of the authority may contain. The 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 for bondholders in the Mortgage Finance Authority Act. The 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 assets made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other assets so pledged and thereafter received by the authority shall immediately be subject to the lien of the 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 the parties have notice of the claims. The resolution or any other instrument by which a pledge is created need not be filed or 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; 1995, ch. 9, § 21.

## ANNOTATIONS

**Cross references.** — For rehabilitation loans and home improvement loans, *see* 58-18-7.3 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "bonds and notes in the principal amounts" for "negotiable bonds and notes in conformity with the applicable provisions of the Uniform Commercial Code in such principal amounts" and inserted "principal and of premium if any, and" in Subsection A; inserted "or specify the manner of fixing" near the end of Subsection C; added "unless otherwise determined by the authority" at the end of Subparagraph D(2)(d); substituted "forty-five years" for "thirty-five years" in Subparagraph D(2)(f); substituted "appointed pursuant to Section 58-18-14 NMSA 1978 for the holders of any bonds issued by the authority in which event the provisions of that section" for "appointed for the holders of any issue of bonds pursuant to Section 14 of the Mortgage Finance Authority Act in which event the provisions of section 14 of that act" and "Section 58-18-14 NMSA 1978" for "Section 14 of that act" in Subparagraph D(2)(h); in Subsection E, inserted "or notes" following "bonds" throughout, inserted "or of any issuer under the Municipal Mortgage Finance Act or under any other authorizing act" in the first sentence, and substituted "Section 58-18-5 NMSA 1978" for "Section 5 of the Mortgage Finance Authority Act" in the second sentence; in Subsection G, substituted "assets" for "moneys" and "money" in the first sentence and inserted "filed or" in the second sentence; and made stylistic changes throughout the section.

## 58-18-11.1 to 58-18-11.5. 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.

Laws 1995, ch. 9, § 37 repeals 58-18-11.2 NMSA 1978, as amended by Laws 1983, ch. 310, § 3, relating to bonds or notes issued in connection with financing of multiple-family dwelling projects, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

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.

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* the 1989 NMSA 1978 on *NMOneSource.com.*

## 58-18-12. Reserve funds.

A. The authority may create and establish one or more reserve funds.

B. The authority may create and establish other reserve funds as it deems advisable and necessary.

**History:** 1953 Comp., § 13-19-12, enacted by Laws 1975, ch. 303, § 12; 1995, ch. 9, § 22.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted former provisions of Subsection A relating to debt service reserve funds and made stylistic changes in Subsection B.

## 58-18-13. Notice or publication not required.

No 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, notes or other obligations of the authority pursuant to the provisions of the Mortgage Finance Authority Act, except as specifically provided in that act.

**History:** 1953 Comp., § 13-19-13, enacted by Laws 1975, ch. 303, § 13; 1995, ch. 9, § 23.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "The internal revenue service shall be notified of the issuance of all bonds, notes and other obligations" at the beginning, substituted "notes or other obligations of the authority" for "notes of the authority or to the making of any loans to mortgage lenders or to the purchase of mortgage loans", and made related stylistic changes.

## 58-18-14. Remedies of bondholders and noteholders.

Except to the extent this section conflicts with a term or condition of any trust indenture or note, bondholders and noteholders shall have the following remedies:

A. in the event that the authority defaults in the payment of principal of or interest on any issue of bonds or notes after it becomes due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or in the event that the authority fails or refuses to comply with the provisions of the Mortgage Finance Authority Act or defaults 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 the issue then outstanding, by one or more 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 the bonds or notes for the purposes provided in this section;

B. a trustee may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the 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 the bonds or notes and to perform its duties under the Mortgage Finance Authority Act;

(2) bring suit upon the 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 the bonds or notes;

(4) by action or suit, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the bonds or notes; and

(5) declare all such bonds or notes due and payable and, if all defaults are made good, then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences;

C. a trustee shall, in addition to the provisions of Subsection B of this section, have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this section 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; and

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; 1995, ch. 9, § 24.

## ANNOTATIONS

**The 1995 amendment,** effective June 16, 1995, added the introductory language and made numerous stylistic changes.

## 58-18-14.1. Project mortgage loans; 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 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 the 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 proves 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 the penalties owed pursuant to Subsection A of this section.

**History:** 1978 Comp., § 58-18-14.1, enacted by Laws 1982, ch. 86, § 11; 1995, ch. 9, § 25.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "Project mortgage loans" for "Multiple family dwellings" in the section heading, deleted "multiple-family dwelling" preceding "project mortgage loans" in Subsection A, and made stylistic changes throughout the section.

## 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, notes, other obligations, pass-through securities or guarantees issued under the Mortgage Finance Authority Act that the state will not limit or alter the rights vested in the authority or any secondary market facility to fulfill the terms of any agreements made with the holders of the bonds, notes, other obligations, pass-through securities or guarantees or in any way impair the rights and remedies of the holders of the bonds, notes, other obligations, pass-through securities or guarantees until the bonds, notes, other obligations, pass-through securities or guarantees 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 the holders of the bonds, notes, other obligations, pass-through securities or guarantees, are fully met and discharged. The authority or any secondary market facility is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds, notes, other obligations, pass-through securities or guarantees.

**History:** 1953 Comp., § 13-19-16, enacted by Laws 1975, ch. 303, § 16; 1995, ch. 9, § 26.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "other obligations, pass-through securities or guarantees" throughout the section, inserted "or any secondary market facility" near the beginning of the first sentence and in the second sentence, and made stylistic changes throughout the section.

## 58-18-17. Bonds, notes and other obligations; legal investments for public officers and fiduciaries.

The bonds, notes, other obligations, pass-through securities and guarantees of the authority or any secondary market facility are 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 who are or may 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; 1995, ch. 9, § 27.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "Bonds, notes and other obligations" for "Bonds and notes" in the section heading, inserted "other obligations,

pass-through securities and guarantees" and "or any secondary market facility" near the beginning, and made stylistic changes throughout the section.

## 58-18-18. Tax exemption.

A. It is 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, 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 and any secondary market facility 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 and any secondary market facility 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; 1995, ch. 9, § 28.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "and any secondary market facility" in two places in Subsection B and made a stylistic change.

## 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. Notwithstanding the foregoing, neither the state nor any municipality shall be prohibited from appropriating its money to or in aid of the authority's programs or the beneficiaries of any program to the extent otherwise permitted by law.

**History:** 1953 Comp., § 13-19-19, enacted by Laws 1975, ch. 303, § 19; 1995, ch. 9, § 29.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, rewrote the second sentence which read: "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".

## 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, shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank 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 and any secondary market facility shall have power to contract with holders of any of its bonds, notes, other obligations, pass-through securities or guarantees as to the custody, collection, securing, investment and payment of any money of the authority or any secondary market facility of any money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees and to carry out the contract. Money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees or in any way to secure bonds, notes, other obligations, pass-through securities or guarantees 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 deposits.

C. Subject to the provisions of any contract with bondholders, noteholders, or holders of other obligations, pass-through securities or guarantees, the authority and any secondary market facility 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 and any secondary market facility, including money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees 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 and, subject to any agreement with bondholders and any limitations imposed by the

Mortgage Finance Authority Act, may be used by the authority in any manner necessary or appropriate in carrying out the powers given in the Mortgage Finance Authority Act.

**History:** 1953 Comp., § 13-19-20, enacted by Laws 1975, ch. 303, § 20; 1985, ch. 232, § 4; 1995, ch. 9, § 30.

**ANNOTATIONS**

**Cross references.** — For Low-Income Housing Trust Act, *see* 58-18B-1 to 58-18B-11 NMSA 1978.

For the state auditor, *see* N.M. Const., art. V, § 1.

**The 1995 amendment,** effective June 16, 1995, deleted "qualified to do business in New Mexico" following "in a bank" in the first sentence of Subsection A; inserted "any secondary market facility" and "other obligations, pass-through securities or guarantees" throughout Subsections B, C, and E; added the language beginning "and, subject to any agreement" at the end of Subsection E; and made stylistic changes throughout the section.

## 58-18-21. Limitation of liability.

Neither the members of the authority nor any person acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority.

**History:** 1953 Comp., § 13-19-21, enacted by Laws 1975, ch. 303, § 21; 1995, ch. 9, § 31.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "for any action taken or omitted within that scope of authority" for "resulting from carrying out any of the powers given in the Mortgage Finance Authority Act" and made a stylistic change.

## 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 party in which any question arises as to the validity of the Mortgage Finance Authority

Act 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 in the courts 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 action or proceeding to which the authority or the people of the state are a party 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; 1995, ch. 9, § 32.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "to which the authority or the people of the state are a party" in the third sentence and made stylistic changes throughout the section.

## 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 has bonds, notes, other obligations or pass-through securities or guarantees outstanding unless adequate provision has been made for the satisfaction or 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; 1995, ch. 9, § 33.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "or pass-through securities or guarantees" and "satisfaction or" and made stylistic changes in the first sentence.

## 58-18-25. Conflicts of interest; penalty.

A. If any member, officer or employee of the authority has an interest, either direct or indirect, in any contract to which the authority or any secondary market facility 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 any secondary market facility or in any sponsor requesting a project mortgage loan, the 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 the interest shall not participate in any action by the authority or any secondary market facility with respect to the 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, notes, other obligations, pass-through securities or guarantees of the authority or any secondary market facility; or

(2) have an interest in any banking institution in which the funds of the authority are or are to be deposited or that is or is to be acting as trustee or paying agent under any trust instrument 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 the conflict of interest or failing to notify the authority of the conflict is 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; 1995, ch. 9, § 34.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "or any secondary market facility" throughout the section; substituted "a project mortgage loan" for "a project loan for a multiple-family dwelling project" in the first sentence of Subsection A; inserted "other obligations, pass-through securities or guarantees" in Paragraph B(1); substituted "trust instrument" for "trust indenture" in Paragraph B(2); and made stylistic changes throughout the section.

## 58-18-26. Cumulative authority.

The Mortgage Finance Authority Act shall be deemed to provide an additional and alternative method for the doing of the things authorized by that act, 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, notes, other obligations, pass-through securities or guarantees under the provisions of the Mortgage Finance Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds, notes, other obligations, pass-through securities or guarantees.

**History:** 1953 Comp., § 13-19-26, enacted by Laws 1975, ch. 303, § 26; 1995, ch. 9, § 35.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "other obligations, pass-through securities or guarantees" in two places and made stylistic changes.

## 58-18-27. Liberal interpretation.

The Mortgage Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

**History:** 1953 Comp., § 13-19-27, enacted by Laws 1975, ch. 303, § 27; 1995, ch. 9, § 36.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "effect its purposes" for "effect the purposes thereof" at the end.

# 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:

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, 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, 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.

**ANNOTATIONS**

**Compiler's note.** — The bracketed word "of" was added by the compiler and is not part of the law.

## 58-18A-6. Bonds.

A. Bonds of an issuer issued pursuant to the terms of the Municipal Mortgage Finance Act 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 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, 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 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 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.

**ANNOTATIONS**

**Compiler's notes.** — 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.

## 58-18A-12. Liberal interpretation.

The provisions of the Municipal Mortgage Finance Act shall be liberally construed in order to effectively carry out the purposes of that act.

**History:** Laws 1979, ch. 381, § 12.

**ANNOTATIONS**

**Severability clauses.** — Laws 1979, ch. 381, § 13, provides for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 18B
# Low-Income Housing Trust

## 58-18B-1. Short title.

This act [58-18B-1 to 58-18B-11 NMSA 1978] may be cited as the "Low-Income Housing Trust Act".

**History:** Laws 1994, ch. 146, § 1.

## 58-18B-2. Legislative findings.

The legislature finds that:

A. current economic conditions, federal housing policies and declining resources at the federal, state and local levels affect adversely the ability of low-income persons to obtain safe, decent and affordable housing;

B. it is in the public interest to establish a continuously renewable resource to be known as the New Mexico low-income housing trust program to assist low-income citizens in meeting their basic housing needs; and

C. the program described in Subsection B of this section should, whenever feasible, be implemented through assistance in the form of loans or grants.

**History:** Laws 1994, ch. 146, § 2.

## 58-18B-3. Definitions.

As used in the Low-Income Housing Trust Act:

A. "appropriate financial institution service charges and fees" means those service charges and fees that a financial institution charges its customers on demand deposit accounts;

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

C. "escrow closing agent" means an escrow agent other than a title company that acts in the normal course of business as the agent of the seller and buyer of real estate for the purpose of consummating a sale, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, realtors' commissions, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

D. "escrow servicing agent" means a person who in the normal course of business collects and disburses funds received from real estate-related financing instruments on behalf of a lender or borrower;

E. "first-time home buyer" means:

(1) an individual or the individual's spouse who has not owned a home other than a manufactured home during the three-year period prior to the purchase of a home; or

(2) an individual who is a displaced homemaker or a single parent;

F. "fund" means the land title trust fund created pursuant to the provisions of the Land Title Trust Fund Act [58-28-1 to 58-28-8 NMSA 1978];

G. "low-income persons" means a household consisting of a single individual or a family or unrelated individuals living together when the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development and as adjusted for family size, or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

H. "person" means an individual or any other legal entity;

I. "property manager" means a person who acts in the normal course of business as the agent for the owner of real property for the purpose of property rental, leasing and management; and

J. "trustee" means the New Mexico mortgage finance authority.

**History:** Laws 1994, ch. 146, § 3; 1997, ch. 118, § 9; 1999, ch. 41, § 1; 2003, ch. 304, § 2.

**ANNOTATIONS**

**Cross references.** — For provisions pertaining to the New Mexico mortgage finance authority, *see* 58-18-1 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, added Subsection J.

**The 1999 amendment,** effective July 1, 1999, deleted "but not limited to" following "including" in the introductory language of Subsection C, and in Subsection F substituted "land title trust" for "low-income housing trust" and "Land Title Trust Fund Act" for "Low-Income Housing Trust Act".

**The 1997 amendment,** effective April 9, 1997, substituted "other than a title" for "or insurer or title insurance" in Subsection C.

## 58-18B-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 41, § 8 repeals 58-18B-4 NMSA 1978, as enacted by Laws 1994, ch. 146, § 9, relating to the creation of the low-income housing trust fund, effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 58-18B-5. Trust accounts; escrow accounts; special accounts; pooled interest-bearing accounts; disposition of earned interest on certain accounts.

A. Every real estate broker who maintains a trust or escrow account as required pursuant to the provisions of Paragraph (8) of Subsection A of Section 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. Every escrow closing agent that maintains a trust account or escrow account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a pooled interest-bearing escrow account and shall deposit all customer funds into that account, except for funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

C. The interest earned on customer funds deposited in a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section, net of any appropriate financial institution service charges and fees, shall be remitted monthly or quarterly from the financial institution in which the account is maintained to the fund. The account agreement between the depositor and the financial institution shall expressly provide for the required remittance of interest.

D. The provisions of this section do not relieve a real estate broker or escrow closing agent from any obligations under other laws to safeguard and account for funds in a pooled interest-bearing account.

E. The pooled interest-bearing escrow accounts authorized to be established pursuant to the provisions of this section shall be interest-bearing demand accounts from which withdrawals and transfers can be made without delay, subject only to any notice period the depository institution is required to observe by law or rule.

F. The trustee shall adopt rules to carry out the provisions of the Low-Income Housing Trust Act.

G. A person establishing and maintaining a pooled interest-bearing escrow account required by the provisions of Subsection A or B of this section is not required to make disclosure to a person whose funds are placed in the account of the disposition of interest earned on the account.

H. An escrow servicing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

I. A property manager shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

J. Real estate brokers and escrow closing agents shall enroll and instruct participating financial institutions on how to establish a pooled interest-bearing escrow account and how to authorize remittance of accrued interest less service charges to the fund.

K. A real estate broker or an escrow closing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section if no financial institution in the community where the broker or agent maintains his principal place of business provides or offers that type of account.

**History:** Laws 1994, ch. 146, § 10; 1999, ch. 41, § 2; 2003, ch. 304, § 3.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, in Subsection A, inserted "Paragraph (8) of" following "the provisions of" and substituted "A" for "H" following "Subsection"; substituted "rule" for "regulation" at the end of Subsection E; and substituted "trustee" for "director of the division" following "The" in Subsection F.

**The 1999 amendment,** effective July 1, 1999, substituted "provisions" for "requirements" in the first sentence of Subsection C, substituted "authorized" for "required" in Subsection E, deleted former Subsection F, relating to the New Mexico real estate commission adopting and promulgating regulations regarding procedures and forms to be used in establishing and operating the accounts required pursuant to the provisions of Subsection A, and requiring the director of the division to do the same regarding accounts required pursuant to the provisions of Subsection B, and added Subsection F.

## 58-18B-6. Pooled interest-bearing escrow accounts authorized to be made available; computation of interest; reports.

A. Any depository institution regulated by the division that maintains trust or escrow accounts for customers may establish and make available pooled interest-bearing accounts. Interest on a pooled interest-bearing account shall be computed on the daily collected balance of the account or as otherwise computed in accordance with the institution's standard accounting practices.

B. Any depository institution participating in the program and making a remittance of interest to the fund pursuant to the provisions of Section 58-18B-5 NMSA 1978 shall, at the time of remittance, transmit a report to the trustee showing:

(1) the name of the account holder for whom the remittance is sent;

(2) the rate of interest used to compute the earned interest;

(3) the amount, if any, of appropriate financial institution service charges and fees deducted; and

(4) the account balance as of the ending date of the reporting period.

C. Remittances to the fund shall be made at least quarterly, no later than the tenth day of the month.

D. A copy of the report required to be made pursuant to the provisions of Subsection B of this section shall be sent to the person in whose name the account is maintained.

**History:** Laws 1994, ch. 146, § 11; 1999, ch. 41, § 3.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, in the introductory language in Subsection B deleted "low-income housing trust" following "interest to the", updated statutory references, and substituted "trustee" for "trust"; and deleted "low-income housing trust" following "Remittances to the" in Subsection C.

## 58-18B-7. Use of money from fund.

Money from the fund and other sources shall be used in accordance with the provisions of the Land Title Trust Fund Act [58-28-1 to 58-28-8 NMSA 1978].

**History:** Laws 1994, ch. 146, § 12; 1999, ch. 41, § 4.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "from fund" for "for loans and grant projects to provide housing; eligible activities" in the catchline, and rewrote the

section, which formerly related to money from the fund and other sources which could be used to finance loans or grant projects to provide housing for low-income persons and listed activities eligible for assistance from the fund.

## 58-18B-8, 58-18B-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 41, § 8 repeals 58-18B-8 and 58-18B-9 NMSA 1978, as enacted by Laws 1994, ch. 146, §§ 13 and 14, relating to organizations eligible to receive assistance from the trust under the Low-Income Housing Trust Act and to money from the fund being used to provide preconstruction technical assistance to eligible recipients seeking to construct, rehabilitate or finance housing-related services for low-income persons, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

## 58-18B-10. Conflict with federal requirements.

If any part of the Low-Income Housing Trust Act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the Low-Income Housing Trust Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

**History:** Laws 1994, ch. 146, § 15.

## 58-18B-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 41, § 8 repeals 58-18B-11 NMSA 1978, as enacted by Laws 1994, ch. 146, § 16, relating to money from the fund being used to match federal, local or private money for projects authorized under the Low-Income Housing Trust Act, effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

# ARTICLE 18C
# New Mexico Housing Trust Fund

## 58-18C-1. Short title.

Sections 1 through 9 of this act [58-18C-1 to 58-18C-9 NMSA 1978] may be cited as the "New Mexico Housing Trust Fund Act".

**History:** Laws 2005, ch. 105, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 105, § 11 makes the act effective July 1, 2005.

## 58-18C-2. Purpose.

The purpose of the New Mexico Housing Trust Fund Act is to provide flexible funding for housing initiatives in order to produce and preserve significant housing investment in the state.

**History:** Laws 2005, ch. 105, § 2; 2021, ch. 24, § 1.

**ANNOTATIONS**

**The 2021 amendment,** effective April 5, 2021, expanded the purpose of the New Mexico housing trust fund act to include the preservation of housing; after "to produce", added "and preserve", and after "significant", deleted "additional".

## 58-18C-3. Definitions.

As used in the New Mexico Housing Trust Fund Act:

A. "affordable housing" means residential housing primarily for persons or households of low or moderate income;

B. "authority" means the New Mexico mortgage finance authority;

C. "committee" means the New Mexico housing trust fund advisory committee;

D. "fund" means the New Mexico housing trust fund;

E. "persons of low or moderate income" means persons and households within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build and preserve an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the New Mexico Housing Trust Fund Act, taking into consideration, without limitation, such factors as defined under that act; and

F. "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.

**History:** Laws 2005, ch. 105, § 3; 2021, ch. 24, § 2.

**ANNOTATIONS**

**The 2021 amendment,** effective April 5, 2021, revised the definition of "persons of low or moderate income" to conform to the inclusion of preservation of housing in the expanded purpose of the New Mexico Housing Trust Fund Act; and in Subsection E, after "to build", added "and preserve".

## 58-18C-4. New Mexico housing trust fund created.

A. The "New Mexico housing trust fund" is created in the authority. The fund shall consist of all distributions, appropriations and other allocations made to the fund. Earnings of the fund shall be credited to the fund, and unexpended and unencumbered balances in the fund shall not revert to any other fund except as provided in Subsection D of this section. The authority shall be the trustee for the fund, and the state investment council shall be the investment agent for the fund. The fund may consist of such subaccounts as the authority deems necessary to carry out the purpose of the fund.

B. The fund shall consist of revenue from the following recurring sources:

(1) appropriations and transfers from the general fund;

(2) proceeds of severance tax bonds issued pursuant to Section 1 [7-27-49 NMSA 1978] of this 2022 act and any payments of principal of and interest on loans for projects funded by the proceeds of those bonds;

(3) any other money appropriated or distributed to the fund; or

(4) any private contributions to the fund.

C. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the New Mexico Housing Trust Fund Act [58-18C-1 to 58-18C-9 NMSA 1978]. The authority shall prioritize expending or encumbering balances in the fund from payments of principal of and interest on loans for projects funded by the proceeds of severance tax bonds prior to expending or encumbering any proceeds from more recently issued bonds.

D. The authority shall monitor and ensure proper reversions of severance tax bond proceeds as required by Section 1 of this 2022 act.

**History:** Laws 2005, ch. 105, § 4; 2022, ch. 38, § 2.

**ANNOTATIONS**

**The 2022 amendment,** effective May 18, 2022, required the New Mexico Mortgage Finance Authority to prioritize expending or encumbering certain balances in the New Mexico housing trust fund; in Subsection A, after "appropriations", added "and other allocations", after "shall not revert to any other fund", added "except as provided in Subsection D of this section", and after "shall be the investment agent for the fund", added "The fund may consist of such subaccounts as the authority deems necessary to carry out the purpose of the fund."; in Subsection B, added a new Paragraph B(2) and redesignated former Paragraphs B(2) and B(3) as Paragraphs B(3) and B(4), respectively; in Subsection C, added "The authority shall prioritize expending or encumbering balances in the fund from payments of principal of and interest on loans for projects funded by the proceeds of severance tax bonds prior to expending or encumbering any proceeds from more recently issued bonds"; and added Subsection D.

## 58-18C-5. Advisory committee created.

A. The "New Mexico housing trust fund advisory committee" is created. The committee shall consist of the following nine members, who shall represent geographically the state, affordable housing advocates and practitioners:

(1) three public members appointed by the governor;

(2) three public members appointed by the president pro tempore of the senate; and

(3) three public members appointed by the speaker of the house of representatives.

B. Members of the committee shall be appointed for two-year terms and shall be eligible for reappointment. Vacancies shall be filled by the appropriate appointing authority.

C. The committee shall be advisory to the authority and shall be subject to oversight by the Mortgage Finance Authority Act oversight committee.

D. The committee shall review all project applications or program guidelines and make recommendations to the authority for funding them. The committee shall not be involved in or advisory to the authority in matters relating to the investment of the fund.

E. The committee shall adopt rules regarding:

(1) the time, place and procedures of committee meetings; and

(2) the procedures for the review of and standards for recommending applications or program guidelines for loans or grant projects.

**History:** Laws 2005, ch. 105, § 5; 2021, ch. 24, § 3.

**ANNOTATIONS**

**The 2021 amendment,** effective April 5, 2021, required the New Mexico housing trust fund advisory committee to review all program guidelines and adopt rules regarding program guidelines; in Subsection D, after "applications", added "or program guidelines"; and in Subsection E, Paragraph E(2), after "applications", added "or program guidelines".

## 58-18C-6. Award of funds; accountability.

A. Trust funds shall be awarded either on a competitive basis or based on need as determined by the authority. The authority's staff shall work with the committee to develop an application and applicant scoring mechanism or program guidelines that encourage applicants to develop solutions that are responsive to local needs and are consistent with sound housing policy.

B. The authority's governing body shall be responsible for ensuring that on an overall basis the total funds awarded for housing activities attract at least three times as much funding from other sources.

**History:** Laws 2005, ch. 105, § 6; 2021, ch. 24, § 4.

**ANNOTATIONS**

**The 2021 amendment,** effective April 5, 2021, authorized trust funds to be awarded based on need as determined by the New Mexico mortgage finance authority, permitted the New Mexico mortgage finance authority to work with the New Mexico housing trust fund advisory committee to develop program guidelines; in Subsection A, after "awarded", added "either", after "competitive basis", added "or based on need as determined by the authority, and after "scoring mechanism", added "or program guidelines"; and in Subsection B, after "ensuring that on an", deleted "annual" and added "overall".

## 58-18C-7. Use of funds; eligible activities.

Money from the fund and matching funds from other sources may be used to finance in whole or in part any loans or grant projects that will provide affordable housing. Money from the fund may also be used to reimburse the authority for actual expenses

incurred in administering the fund in an amount not to exceed five percent of total funds disbursed from the fund.

**History:** Laws 2005, ch. 105, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 105, § 11 makes the act effective July 1, 2005.

## 58-18C-8. Conflict with federal requirements.

If any part of the New Mexico Housing Trust Fund Act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the New Mexico Housing Trust Fund Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

**History:** Laws 2005, ch. 105, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 105, § 11 makes the act effective July 1, 2005.

## 58-18C-9. Matching funds.

Money from the fund may be used to match federal, local or private money to be used for projects authorized under the New Mexico Housing Trust Fund Act.

**History:** Laws 2005, ch. 105, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 105, § 11 makes the act effective July 1, 2005.

# ARTICLE 19
# Motor Vehicle Sales Finance

## 58-19-1. Short title.

Chapter 58, Article 19 NMSA 1978 may be cited as the "Motor Vehicle Sales Finance Act".

**History:** 1953 Comp., § 50-15-1, enacted by Laws 1959, ch. 204, § 1; 2001, ch. 123, § 1.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, substituted "Chapter 58, Article 19 NMSA 1978" for "This act".

## 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 that 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 that 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 that 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 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 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 that 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 or a duly authorized agent designated by the director;

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; and

N. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry.

**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; 2001, ch. 123, § 2; 2019, ch. 144, § 1.

**ANNOTATIONS**

**Cross references.** — For the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, *see* 12 USC §§ 5101 to 5116.

**The 2019 amendment,** effective July 1, 2019, defined "nationwide multistate licensing system and registry" and revised the definition of "director" as used in the Motor Vehicle Sales Finance Act; in Subsection L, after "department", added "or a duly authorized agent designated by the director"; and added Subsection N.

**The 2001 amendment,** effective June 15, 2001, deleted "as limited in the Motor Vehicle Sales Finance Act" preceding "to be added to" in Subsection I.

**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 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 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. A person shall not engage in the business of a sales finance company in this state without a license 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. 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. Applicants for a license issued pursuant to the Motor Vehicle Sales Finance Act shall apply using a form prescribed by the director. Information required on the form shall be set forth by rule, instruction or procedure of the director, and may be changed or updated as necessary by the director in order to carry out the purposes of the Motor Vehicle Sales Finance Act.

F. The director may establish relationships or contracts with the nationwide multistate licensing system and registry or other entities designated by the nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licenses issued pursuant to the Motor Vehicle Sales Finance Act.

G. In an application for a license issued pursuant to the Motor Vehicle Sales Finance Act, the applicant shall, at a minimum, furnish to the nationwide multistate licensing system and registry information concerning the applicant's identity, including:

(1) the applicant's personal history and experience in a form prescribed by the nationwide multistate licensing system and registry; and

(2) authorization for the nationwide multistate licensing system and registry and the director to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction regarding the applicant.

H. The director may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information provided pursuant to Paragraphs (1) and (2) of Subsection G of this section to and from any source as deemed appropriate by the director.

I. 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 that shall expire on December 31 next following the date of its issuance. The license shall not be transferable or assignable. A licensee shall not transact any business provided for by the Motor Vehicle Sales Finance Act under any other name.

J. The director shall deny a license under the Motor Vehicle Sales Finance Act if the director 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, the director shall immediately notify the applicant in writing setting forth the reasons for denial.

K. 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 that 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; 2019, ch. 144, § 2.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, revised certain licensing procedures for the licensing of sales finance companies, and provided for the director of the financial institutions division of the regulation and licensing department to utilize the nationwide multistate licensing system and registry to receive and process applications for licenses; in Subsection D, after "office or branch", deleted "and the license shall be conspicuously

displayed in the office or branch"; and added new Subsections E through H and redesignated former Subsections E through G as Subsections I through K, respectively.

**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; appeals.

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 under that act;

(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 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 the person as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent, if the 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. 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 the 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 a license shall recite the grounds upon which the order 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 the entry, forwarded by certified mail to the licensee at his 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 by the licensee.

D. A person aggrieved by the denial, suspension or revocation of a license may file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. The director shall publish a notice that a license has been revoked or suspended within thirty days after the 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; 1998, ch. 55, § 58; 1999, ch. 265, § 62.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

**The 1998 amendment,** effective September 1, 1998, in the section heading, inserted "; appeals"; in Subparagraph A(3), substituted "under that act" for "hereunder"; in Subsection C, deleted "thereon" following "hearing"; deleted Subsection D, inserted a new Subsection D and made minor stylistic changes throughout the section.

**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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 2 Am. Jur. 2d Administrative Law § 122 et seq.

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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 2 Am. Jur. 2d Administrative Law § 261 et seq.

73 C.J.S. Public Administrative Law and Procedure §§ 124, 132.

## 58-19-7. Retail installment contracts; requirements; prohibitions.

A. 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.

B. 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.".

C. The seller shall deliver to the buyer or mail to the buyer at the buyer's 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 the buyer's 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.

D. 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.".

E. 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 in Paragraphs (2) and (3) of this subsection;

(5) the amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits, and if it is the case, including as a benefit amounts paid or to be paid by the seller pursuant to agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(6) the amount of official fees;

(7) the principal balance, which is the sum of items in Paragraphs (4), (5) and (6) of this subsection;

(8) the amount of the finance charge; and

(9) the time balance, which is the sum of items in Paragraphs (7) and (8) of this subsection, 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.

F. 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 office of superintendent of insurance. 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 the buyer's 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.

G. 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.

H. 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 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.

I. A buyer may transfer the buyer's 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).

J. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after execution, 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 Subsection C 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.

K. 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.

L. No provision in a retail installment contract relieving the seller from liability under any legal remedies that the buyer may have against the seller under the contract, or any separate instrument of similar import executed in connection therewith, shall be enforceable.

M. 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 55-9-608 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; 2001, ch. 123, § 3; 2013, ch. 74, § 7.

## ANNOTATIONS

**Cross references.** — For 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.

**The 2013 amendment,** effective March 29, 2013, prohibited the amount for insurance from exceeding the rates filed with the superintendent of insurance; and in Subsection F, in the first sentence, after "filed with the", added "office of superintendent of" and after "insurance", deleted "division of the public regulation commission"; in Subsection J, after "the requirements of", deleted "A" and added "C"; and in Subsection M, after "Section", deleted "55-9-504" and added "55-9-608".

**The 2001 amendment,** effective June 15, 2001, inserted the language beginning "and if it is the case" in Paragraph B(5); and substituted "insurance division of the public regulation commission" for "department of insurance of the state corporation commission" in Subsection C.

**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*, 1975-NMCA-104, 88 N.M. 262, 539 P.2d 1024.

**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 Section 58-19-12 NMSA 1978, and because of the general rule that transactions in violation of a statute prescribing penalties, such as those in Section 58-19-11A NMSA 1978, are void. *White v. Singleton*, 1975-NMCA-104, 88 N.M. 262, 539 P.2d 1024.

**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 Section 56-8-11.1 NMSA 1978 (now repealed), the authority to collect finance charges. 1985 Op. Att'y Gen. No. 85-01.

**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, repealed 58-19-8 NMSA 1978, relating to the finance charge limitation, effective July 1, 1981.

**Compiler's notes.** — Laws 1981, ch. 263, § 6, revived 58-19-8 NMSA 1978, effective July 1, 1983.

Laws 1983, ch. 44, § 1, repealed 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.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — "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.

## 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.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — 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.

**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 Section 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 Section 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*, 1975-NMCA-104, 88 N.M. 262, 539 P.2d 1024.

## 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.

**ANNOTATIONS**

**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.

**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 Section 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 Section 58-19-11A NMSA 1978, are void. *White v. Singleton*, 1975-NMCA-104, 88 N.M. 262, 539 P.2d 1024.

## 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.

## 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 (Repealed.)

## 58-20-1. Repealed.

**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; repealed by Laws 2016, ch. 88, § 1006.

**ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 88, § 1006 repealed 58-20-1 NMSA 1978, as enacted by Laws 1965, ch. 293, § 1, relating to business of selling negotiable checks, drafts and money orders regulated, effective July 1, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 21
# Mortgage Loan Companies

## 58-21-1. Short title.

Chapter 58, Article 21 NMSA 1978 may be cited as the "Mortgage Loan Company Act".

**History:** Laws 1983, ch. 86, § 1; 1989, ch. 209, § 13; 2009, ch. 122, § 25.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**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 Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "branch office" means any location, including a divisional office, separate from the principal place of business of the mortgage loan company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan company;

C. "closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

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

E. "director" means the director of the financial institutions division of the regulation and licensing department;

F. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence;

G. "individual" means a natural person;

H. "lender" means a person or government agency making a mortgage loan;

I. "mortgage loan company" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(1) accepts an application for a mortgage loan; negotiates terms for a mortgage loan; or solicits, processes, originates, brokers or makes mortgage loans for others;

(2) offers to:

(a) accept an application for a mortgage loan;

(b) negotiate terms for a mortgage loan; or

(c) solicit, process, originate, broker or make mortgage loans for others; or

(3) closes mortgage loans that may be in the mortgage loan company's own name with funds provided by others and that are assigned to the mortgage lenders providing the funding of such loans;

J. "mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined;

K. "net loan funds" means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent;

L. "person" means a natural person, corporation, company, limited liability company, partnership or association;

M. "qualified manager" means an individual, designated by a mortgage loan company, responsible for the activities of the licensed mortgage loan company's office, divisional office or branch office in conducting the business of that mortgage loan company's office, divisional office or branch office and who meets requirements as specified by the director; and

N. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing mortgage loan.

**History:** Laws 1983, ch. 86, § 2; 1985, ch. 73, § 1; 2001, ch. 251, § 1; 2001, ch. 264, § 1; 2005, ch. 191, § 1; 2007, ch. 224, § 1; 2009, ch. 122, § 26.

## ANNOTATIONS

**Cross references.** — For the financial institutions division of the regulation and licensing department, *see* 9-16-4 NMSA 1978.

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; added Subsection B; deleted former Subsection E, which defined "dwelling"; added Subsections F, G, I, J, L and M; deleted former Subsection G, which defined “loan broker"; and deleted former Subsection I, which defined "mortgage loan company".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective July 1, 2007, added Subsection J.

**The 2005 amendment,** effective January 1, 2006, added the definition of "closing agent" in Subsection B to mean a person that acts in a fiduciary capacity for a seller and buyer of real property for the purpose of consummating a sale of real property and added the definition of "lender" in Subsection F to mean a person or government agency that makes mortgage loans.

**The 2001 amendment,** effective July 1, 2001, added Subsection D and redesignating the remaining Subsections accordingly; rewrote Subsection F, which formerly read "'mortgage loan' means any loan secured by a mortgage, deed of trust or other lien on real or personal property"; in Subsection G, substituted "a mortgage loan" for "a loan which will be secured by a lien or mortgage on real or personal property" in Paragraph (1); substituted "who makes mortgage loans" for "who has money to lend, which loan is or will be secured by a lien or mortgage on real or personal property" in Paragraph (2); substituted "make mortgage loans" for "make loans secured by liens or mortgages on real or personal property"; and deleted former Subsection G, which defined "person".

**Loan servicer with authority may enforce a promissory note.** — In a foreclosure action, where evidence established that Fannie Mae was the owner of the mortgage loan and plaintiff bank was the loan servicer, and where plaintiff provided evidence that on the day it filed its complaint for foreclosure, it was in possession of the original promissory note, which had been indorsed in blank a few days after it was executed by defendant homeowner, plaintiff, as the holder of the promissory note, was among the entities authorized by statute to enforce the note, notwithstanding the fact that it did not own the note. *Los Alamos Nat'l Bank v. Velasquez*, 2019-NMCA-040, cert. denied.

## 58-21-3. License required; qualified manager.

A. It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company without first filing an application with the director, meeting requirements established by the director and obtaining a license under the Mortgage Loan Company Act.

B. A mortgage loan company shall designate at least one qualified manager who shall:

(1) obtain and maintain a mortgage loan originator license and unique identifier number pursuant to the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 to 58-21B-24 NMSA 1978]; and

(2) have not less than two years verifiable experience as a principal, partner, officer, director, manager, processor or underwriter of a mortgage loan company or a mortgage loan originator or have equivalent lending experience in a related business during the four years immediately preceding the time of application.

C. A qualified manager shall serve as a qualified manager for only one mortgage loan company.

**History:** Laws 1983, ch. 86, § 3; 2001, ch. 251, § 2; 2001, ch. 264, § 2; 2009, ch. 122, § 27.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; in Subsection A, after "mortgage loan company", deleted "or loan broker"; after "with the director", added "meeting requirements established by the director"; after "obtaining a", deleted "registration certificate" and added "license"; and added Subsections B and C.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective January 31, 2002, deleted "unless such person is exempt from the provisions of the Mortgage Loan Company and Loan Broker Act under the provisions of Section 6 of that act" from the end of the section.

## 58-21-4. Application for license or renewal.

Each application for a license or license renewal as a mortgage loan company shall be filed in writing with the director, shall meet requirements established by the director and shall contain the following:

A. the applicant's name, the name of designated qualified managers, the New Mexico mortgage loan originator license number and national mortgage licensing system unique identifier number of each designated qualified manager and the name and location of every mortgage loan company office, divisional office or branch office that will be supervised by that qualified manager;

B. the name of the applicant and of each of the applicant's affiliates, engaged in the business of 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;

C. the location of the applicant's principal office and of each branch office doing business in New Mexico;

D. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director, manager or affiliate, specifying the capacity and title of each;

E. a financial statement of the applicant verified by a principal of the applicant;

F. the length of time the applicant has been engaged in the mortgage business in New Mexico and other jurisdictions;

G. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress, against the applicant or a principal, partner, director, officer, trustee, manager, employee or affiliate of the applicant;

H. the license fee; and

I. such other information and documentation as the director may require.

**History:** Laws 1983, ch. 86, § 4; 1985, ch. 73, § 2; 2001, ch. 251, § 3; 2001, ch. 264, § 3; 2009, ch. 122, § 28.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, in the first paragraph, changed "registration" to "license"; after "mortgage loan company", deleted "or loan broker"; after "director, shall", deleted "be verified" and added "meet requirements established by the director"; added Subsection A; in Subsection B, after "business of", deleted "a loan broker or"; in Subsection C, after "branch office"; added "doing business"; in Subsection D, after "manager", added "or affiliate"; in Subsection F, after "engaged in", added "the mortgage" and after "business in", added "New Mexico and"; in Subsection G, after "applicant or a", added "principal, partner" and after "officer", added "trustee, manager," and in Subsection H, changed "registration" to "license".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, rewrote Subsection D, which formerly read "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".

## 58-21-5. License fees; duration of license.

A. A license shall expire on December 31 each year. Each licensee shall submit a renewal application on or before November 1 each year.

B. The director shall establish by rule fees that shall be sufficient to cover the costs of administering the Mortgage Loan Company Act. These fees may include:

(1) an original and renewal license fee paid by each licensee;

(2) an application fee to cover the costs of processing applications;

(3) an examination and investigation fee for all licensees; and

(4) late fees, license amendment fees, supervisory fees, divisional office fees, branch office fees and any other fees associated with the costs of administering the Mortgage Loan Company Act.

C. A mortgage loan company shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the Mortgage Loan Company Act occurred or when the mortgage loan company provides a remedy satisfactory to the complainant and the director and no order of the director is issued.

D. The following fees shall be deposited into the general fund:

(1) original license fees;

(2) license renewal fees;

(3) examination fees;

(4) investigation fees;

(5) late fees; and

(6) license amendment fees.

E. The following fees shall be deposited into the mortgage regulatory fund:

(1) application fees;

(2) divisional office fees;

(3) branch office fees; and

(4) supervisory fees.

**History:** Laws 1983, ch. 86, § 5; 1987, ch. 292, § 9; 1989, ch. 209, § 14; 1993, ch. 210, § 9; 2001, ch. 251, § 4; 2001, ch. 264, § 4; 2009, ch. 122, § 29.

## ANNOTATIONS

**The 2009 amendment,** effective July 31, 2009, deleted former Subsection A, which provided for an initial license fee of $400 and a renewal fee of $300 and late fees; in Subsection A, changed "registration" to "license"; deleted language which provided that a registration continued for a period of twelve months and that a renewal application shall be filed at least thirty days before the expiration of the existing registration; deleted

former Subsection C, which provided for a replacement license fee of $50; and added Subsections B through E.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, deleted former Subsection C that provided fees for those persons claiming an exemption pursuant to Subsection H of Section 58-21-6 NMSA 1978, which was deleted by Laws 2001, ch. 264, § 5, effective January 1, 2002; and added a new Subsection C.

**The 1993 amendment,** effective June 18, 1993, added the second sentences in Subsections A and C.

## 58-21-6. Persons exempt from licensing.

The following persons shall be exempt from all provisions of the Mortgage Loan Company Act:

A. banks, trust companies, savings and loan associations, credit unions, insurance companies or real estate investment trusts as defined in 26 U.S.C.A. 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 that person renders services in the course of the person's practice as an attorney;

C. a New Mexico-licensed real estate broker rendering service in the performance of that person's 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 the broker and who receives only the customary real estate broker's commission in connection with the transaction;

D. a person doing an act under order of a court;

E. an individual making a single mortgage loan in a calendar year with the individual's own funds for the individual's 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; and

G. a company licensed as a small business investment company under the federal Small Business Investment Act of 1958.

**History:** Laws 1983, ch. 86, § 6; 1984, ch. 15, § 1; 1985, ch. 73, § 3; 2001, ch. 251, § 5; 2001, ch. 264, § 5; 2003, ch. 436, § 16; 2009, ch. 122, § 30.

**ANNOTATIONS**

**Cross references.** — For the federal Small Business Investment Act of 1958, *see* 15 U.S.C. § 661.

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2003 amendment,** effective June 20, 2003, deleted "consumer finance companies" following "credit unions" in Subsection A.

**The 2001 amendment,** effective January 31, 2002, deleted Subsection H, which exempted 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 from the Mortgage Loan Company and Loan Broker Act, and defined institutional investors.

**Incidental contacts not "transacting business in state".** — A foreign loan brokerage firm's incidental contacts with New Mexico necessary to communicate with its New Mexico client were too remote to constitute "transacting business in this state." Also, the fact that the firm chose to sue its client to recover its commission in a New Mexico court did not in and of itself constitute "transacting business in this state." *V.P. Clarence Co. v. Colgate*, 1993-NMSC-022, 115 N.M. 471, 853 P.2d 722.

## 58-21-7. Surety bond.

A. Each mortgage loan company shall post and maintain with the director a corporate surety bond.

B. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars ($50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensee, as follows:

(1) zero dollars ($0.00) to three million dollars ($3,000,000), a surety bond of fifty thousand dollars ($50,000);

(2) more than three million dollars ($3,000,000) and less than ten million dollars ($10,000,000), a surety bond of one hundred thousand dollars ($100,000); and

(3) ten million dollars ($10,000,000) or more, a surety bond of one hundred fifty thousand dollars ($150,000).

C. Every bond shall provide for suit thereon by any person who has a cause of action under the Mortgage Loan Company Act.

D. The bond shall be in substantially the form as the director prescribes.

E. When an action is commenced on a licensee's bond, the director may require the filing of a new bond.

F. Immediately upon recovery upon any action on a bond, the licensee shall file a new bond.

**History:** Laws 1983, ch. 86, § 7; 2009, ch. 122, § 31.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, in Subsection A, after "mortgage loan company", deleted "or loan broker" and after "bond", deleted "in the amount of twenty-five thousand dollars ($25,000)"; added Subsections B, E and F; and in Subsection C, deleted the last sentence which limited the liability of the surety to the amount of the bond and provided for a three-year statute of limitation.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-8. Violations.

The director may deny, suspend or revoke any license or impose other penalties when the applicant or licensee, or a principal, partner, director, officer, trustee, manager, employee or affiliate of the applicant or licensee:

A. lacks a good business reputation;

B. has violated a provision of the Mortgage Loan Company Act;

C. charges, collects or receives fees for procuring, negotiating or securing a loan in excess of the amounts allowed by the Mortgage Loan Company Act or by rules promulgated pursuant to that act;

D. has committed fraud in connection with a transaction subject to the Mortgage Loan Company Act;

E. has made a misrepresentation or false statement to or concealed an essential or material fact from a person in the course of the mortgage loan company business;

F. has knowingly made or caused to be made a false representation of material fact or has suppressed or withheld from the director information that the applicant or licensee possesses and that, if submitted by that person, would have rendered the applicant or licensee ineligible to be licensed pursuant to the Mortgage Loan Company 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 or investigation by the director of that person's books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company Act;

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];

J. appears to be conducting business in a manner that is injurious to persons;

K. conducts any business covered by the Mortgage Loan Company Act without holding a valid license as required by that act;

L. knowingly assists or aids and abets any person in the conduct of business covered by the Mortgage Loan Company Act without a valid license as required pursuant to that act;

M. hires or engages the services of a mortgage loan originator who is not licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

N. makes a mortgage loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a

current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

O. makes a mortgage loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

**History:** Laws 1983, ch. 86, § 8; 1985, ch. 73, § 4; 2001, ch. 251, § 6; 2001, ch. 264, § 6; 2009, ch. 122, § 32.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; in the first paragraph, after "revoke any", deleted "registration" and added "license or impose other penalties", and after "applicant or", deleted "registrant" and added "license", "principal, partner" and "trustee, manager"; and added Subsections K through O.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, substituted "or by rules promulgated pursuant to that act" for "regulations issued by the director" in Subsection C; and added Subsection J.

## 58-21-9. Powers and duties of director.

A. The director shall exercise general supervision and control over mortgage loan companies doing business in New Mexico. In addition to the other duties imposed on the director by law, the director shall:

(1) make reasonable rules necessary for the implementation of the Mortgage Loan Company Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company Act.

B. The director may conduct an investigation upon complaint when it appears that a mortgage loan company is conducting business in a manner injurious to persons or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978.

**History:** Laws 1983, ch. 86, § 9; 1993, ch. 210, § 10; 2001, ch. 251, § 7; 2001, ch. 264, § 7; 2009, ch. 122, § 33.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, substituted "promulgated rules" for "such rules and regulations" in Paragraph A(1); in Subsection B, substituted "injurious to persons" for "injurious to consumers or brokers" and updated the internal reference.

**The 1993 amendment,** effective June 18, 1993, added the Subsection A designation, redesignated former Subsections A through C as present Subsections A(1) through A(3), and added Subsection B.

## 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 Act 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 the person 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; 2009, ch. 122, § 34.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-11. Keeping of records.

Every mortgage loan company and loan broker shall make and keep those 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.

**History:** Laws 1983, ch. 86, § 11; 2001, ch. 251, § 8; 2001, ch. 264, § 8.

**ANNOTATIONS**

**2001 amendments.** — Identical amendments to this section were enacted by Laws 2001, ch 251, § 8 and Laws 2001, ch. 264, § 8, both effective July 1, 2001, deleting "and filing of reports" from the section heading; and deleting the last two sentences, which provided for the filing of financial reports and the correction of those reports if necessary. The section is set out as amended by Laws 2001, ch. 264, § 8. See 12-1-8 NMSA 1978.

## 58-21-12. Examination of records.

All the records required to be maintained by the Mortgage Loan Company Act are subject to examinations or investigations by representatives of the director within or without New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. If the examination or investigation is conducted outside the state, the actual cost of travel for the examiners shall be reimbursed to the state by the mortgage loan company so examined or investigated.

**History:** Laws 1983, ch. 86, § 12; 1987, ch. 292, § 10; 2001, ch. 251, § 9; 2001, ch. 264, § 9; 2009, ch. 122, § 35.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; deleted the second sentence which provided that a mortgage loan company or loan broker shall pay a fee for the examination at the rate of $300 per day for each representative engaged in the examination; in the last sentence, after "examination", added "or investigation"; after "mortgage loan company", deleted "or loan broker" and after "examined", added "or investigated".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, substituted "examinations or investigations" for "annual examinations"; deleted "together with such special or other examinations" following "New Mexico" and increased the examination fee from $150 to $300.

## 58-21-13. Public inspection of applications.

Applications for licensing or a license renewal and all papers, documents, reports and other written instruments filed with the director under the Mortgage Loan Company Act are public documents and open to public inspection except for files of ongoing examinations and 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; 2009, ch. 122, § 36.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; after "Applications for", deleted ”registration" and added "licensing or a license"; and after "files" added "of ongoing examinations and".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-14. Notice of contemplated action; hearings.

A. When the director contemplates taking any action specified in Section 58-21-8 NMSA 1978 and Paragraphs (1) through (7) of Subsection A of Section 58-21-28 NMSA 1978, the director shall serve upon the licensee a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence; and

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the director and containing a request for a hearing, the director will take the contemplated action.

B. If the licensee does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensee mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensee of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action.

**History:** Laws 1983, ch. 86, § 14; 2009, ch. 122, § 37.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, deleted former Subsection A, which required notice of any proposed order of suspension, revocation or denial of registration; deleted former Subsection B, which provided that a mortgage loan company and a loan broker were entitled to a hearing on application; and added Subsections A through C.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-15. Investigations by director.

A. The director may make any public or private investigation, within or outside of this state, as the director finds necessary to determine whether a person has violated or is about to violate the Mortgage Loan Company Act 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 Mortgage Loan Company Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit.

**History:** Laws 1983, ch. 86, § 15; 2001, ch. 251, § 10; 2001, ch. 264, § 10; 2009, ch. 122, § 38.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, deleted "injunctions" from the section heading; rewrote Subsection A; deleted Subsection B, which gave the director power to investigate a mortgage loan company or loan broker and, if seeing that they are in violation of the Mortgage Loan Company and Loan Broker Act, to begin criminal proceedings, to give a cease and desist order or apply to any district court having venue to enjoin the act or practice and to enforce compliance; and added present Subsection B.

## 58-21-16. Review of order of director.

A. Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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; 1998, ch. 55, § 59; 1999, ch. 265, § 63.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

**The 1998 amendment,** effective September 1, 1998, rewrote Subsection A.

## 58-21-17. Escrow services.

Any licensee under the Mortgage Loan Company Act 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 the issuance of a license under the Mortgage Loan Company Act shall not serve to relieve the licensee from compliance with the provisions of such other statutes.

**History:** Laws 1983, ch. 86, § 17; 2009, ch. 122, § 39.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act",

changed "registrant" to "licensee"; and after "those statutes, and", deleted "registration", and added "the issuance of a license".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-18. Permissible charges.

In connection with any loan originated, brokered, negotiated or made by a licensee pursuant to the Mortgage Loan Company Act, a mortgage loan company shall not collect, charge or receive broker fees in excess of six percent of the principal amount of the loan. A licensee may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by applicable state or federal laws.

**History:** Laws 1983, ch. 86, § 18; 1984, ch. 15, § 2; 2001, ch. 251, § 11; 2001, ch. 264, § 11; 2009, ch. 122, § 40.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act", changed "registrant" to "licensee"; after "Act, a", deleted "broker may" and added "mortgage loan company shall".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, substituted "Permissible" for "Prohibited" in the section heading; and rewrote the section, which formerly stated that no charges other than interest could be made, except for specific exceptions.

## 58-21-19. Compliance with federal and state law.

In connection with any loan originated, brokered, negotiated or made by a licensee pursuant to the Mortgage Loan Company Act, a licensee shall comply with:

A. applicable federal or state laws;

B. the provisions of the Home Loan Protection Act; and

C. the provisions of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 to 58-21B-24 NMSA 1978].

**History:** Laws 1983, ch. 86, § 19; 1984, ch. 15, § 3; 2001, ch. 251, § 12; 2001, ch. 264, § 12; 2003, ch. 436, § 17; 2009, ch. 122, § 41.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act", changed "registrant" to "licensee"; in Subsection A, after "applicable federal", deleted "consumer lending" and added "or state"; and added Subsection C.

**Severability.** — Laws 2003, ch. 436, § 18, effective June 20, 2003, provides for the severability of the act if any part or application is held invalid.

Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2003 amendment,** effective June 20, 2003, inserted the Subsection A designation and added Subsection B.

**The 2001 amendment,** effective July 1, 2001, rewrote the section heading, which formerly read "Prohibited withholding and escrowing of loan proceeds; disclosure; penalty"; deleted Subsections A to D, which prohibited withholding or escrowing of loan proceeds for certain purposes, prohibited prepaid interest in the nature of points, and required the applicant to supply a disclosure; and inserted "registrants shall comply with applicable federal consumer lending laws".

## 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 Act any statement that is at the time and in the light of the circumstances under which it is made false or misleading in any respect.

**History:** Laws 1983, ch. 86, § 20; 2009, ch. 122, § 42.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act" and after "misleading in any", deleted "material".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-21. Fraud unlawful.

It is unlawful for any mortgage loan company in connection with the origination, brokering, negotiating 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 that operates or would operate as a fraud or deceit upon any person.

**History:** Laws 1983, ch. 86, § 21; 2009, ch. 122, § 43.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, in the first sentence, after "mortgage", added "loan"; after "company", deleted "or loan broker" and after "brokering", added "negotiating".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-22. Penalties.

A person who violates Section 58-21-18, 58-21-19, 58-21-20 or 58-21-21 NMSA 1978, knowing the statement to be false or misleading in any respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-15 NMSA 1978. Civil and criminal penalties are in addition to any remedies available at common law.

**History:** Laws 1983, ch. 86, § 22; 2001, ch. 251, § 13; 2001, ch. 264, § 13; 2009, ch. 122, § 44.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, deleted Sections 58-21-3 and 58-21-20 NMSA 1978; added Section 58-21-20 NMSA 1978 and after "any", deleted "material".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, updated the internal references throughout the section; substituted "Section 31-18-15 NMSA 1978" for "the Criminal Sentencing Act"; and inserted "Civil and criminal penalties are in addition to any remedies available at common law.".

## 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 Act with the division or the director after six years from the date of filing documents.

**History:** Laws 1983, ch. 86, § 23; 2001, ch. 251, § 14; 2001, ch. 264, § 14; 2009, ch. 122, § 45.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2001 amendment,** effective July 1, 2001, deleted Subsection B, which formerly read "the production of documents by photograph or microphotograph of a permanent nature"; and deleted the Subsection A designation, which preceded "six years".

## 58-21-23.1. Repealed.

**History:** Laws 2005, ch. 191, § 2; repealed by Laws 2007, ch. 224, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 224, § 3 repeals 58-21-23.1 NMSA 1978, being Laws 2005, ch. 191, § 2, relating to execution of documentation for real estate transactions, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 58-21-23.2. Funding of real estate transactions; enforcement.

A. Unless the net loan funds necessary to complete a purchase of real property have been previously delivered to the seller or to the closing agent, a lender shall deliver the required net loan funds within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents, and shall:

(1) authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and release the proceeds of the real estate transaction in accordance with agreed upon escrow instructions;

(2) advise the closing agent of any funding conditions, as set forth in the lender's escrow instructions, that have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or

(3) advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instructions, specify the manner in which that documentation does not satisfy those instructions and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow.

B. In the event a lender does not comply with the requirements of Subsection A of this section, unreasonably refuses to approve the documentation necessary to complete a real estate action or unreasonably delays authorization of the recordation of closing documents and release of proceeds of a real estate transaction, the director of the division may, upon receipt of a complaint and in accordance with the procedures set forth in the Mortgage Loan Company Act, suspend or revoke any state registration or license issued to the lender for a period not to exceed one year.

**History:** Laws 2005, ch. 191, § 3; 2007, ch. 224, § 2; 2009, ch. 122, § 46.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2007 amendment,** effective July 1, 2007, provides that unless the net loan funds have been delivered to the seller or the closing agent, the lender shall deliver the net loan funds within two business days after the closing agent has fulfilled the closing agent’s duties, except for recordation of documents.

## 58-21-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 251, § 17 and Laws 2001, ch. 264, § 17 repeals 58-21-24 NMSA 1978, being Laws 1983, ch. 86, § 24, regarding the effect of the enactment of the Mortgage Loan Company and Loan Broker Act on existing mortgage loan companies or loan brokers, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

## 58-21-25. No impairment of other remedies.

The Mortgage Loan Company Act is not intended to impair any remedies available to injured parties under other statutes or under common law.

**History:** Laws 1983, ch. 86, § 25; 2009, ch. 122, § 47.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-26. Exemption from authority of superintendent of regulation and licensing.

The responsibilities and authority of the director under the Mortgage Loan Company Act are explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 86, § 26; 2009, ch. 122, § 48.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act", changed "secretary of commerce and industry" to "superintendent of regulation and licensing" and changed Section 9-2-5 NMSA to Section 9-16-6 NMSA 1978.

**Severability.** — Laws 1983, ch. 86, § 27, provides for the severability of the act if any part or application thereof is held invalid.

Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-27. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 251, § 17 and Laws 2001, ch. 264, § 17 repeals 58-21-27 NMSA 1978, being Laws 1987, ch. 343, § 1, requiring service entities who serve New Mexico customers to have an office or agent in New Mexico, and requiring a ten-day response time to customers' inquiries, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

## 58-21-28. Enforcement.

A. In order to ensure the effective supervision and enforcement of the Mortgage Loan Company Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of that act, rules issued pursuant to that act or order or directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of licensing pursuant to that act or rules issued pursuant to that act;

(3) order restitution against persons subject to that act for violations of that act;

(4) impose fines on persons subject to that act pursuant to Subsections B through D of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) deny the person's license application or suspend or revoke the person's license in New Mexico as a mortgage loan company;

(7) award damages to the injured party in double the amount of fees charged by the mortgage loan company for originating, brokering, negotiating or making a loan within the jurisdiction of that act;

(8) issue orders or directives pursuant to that act as follows:

(a) order or direct persons subject to that act to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(b) order or direct persons subject to that act to cease and desist any harmful activities or violations of that act, including immediate temporary orders to cease and desist; and

(c) enter immediate temporary orders to cease business under a license issued pursuant to the authority granted pursuant to that act if the director determines that such license was erroneously granted or the licensee is currently in violation of that act; and

(9) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable.

B. The director may impose a civil penalty on a mortgage loan company or person subject to the Mortgage Loan Company Act if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan company or person subject to that act has violated or failed to comply with any requirement of that act or any rule adopted by the director pursuant to that act or order issued pursuant to that act.

C. The maximum amount of penalty for each act or omission described in Section 58-21-8 NMSA 1978 shall be twenty-five thousand dollars ($25,000).

D. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

**History:** Laws 2001, ch. 251, § 15; 2001, ch. 264, § 15; 2009, ch. 122, § 49.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, deleted former Subsection A, which authorized the director to issue cease and desist orders; deleted Subsection B, which authorized the director to take various enforcement actions; and added Subsections A through D.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-29. Power of court to grant relief.

A. Upon a showing by the director that a person has or is about to violate the Mortgage Loan Company Act or any rule or order of the director under that act, the district court of the first judicial district for 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 twenty-five thousand dollars ($25,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(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. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-21-28 NMSA 1978 in connection with the transactions constituting violations of the Mortgage Loan Company Act.

C. The court shall not require the director to post bond in an action under this section.

**History:** Laws 2001, ch. 251, § 16; 2001, ch. 264, § 16; 2009, ch. 122, § 50.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, changed the name of the act from the "Mortgage Loan Company and Loan Broker Act" to the "Mortgage Loan Company Act"; and in Paragraph (2) of Subsection A, changed the maximum penalty from $5,000 to $25,000.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-30. Unlicensed activity.

A. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for the first offense is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. In the case of a first conviction pursuant to Subsection A of this section, the court may impose a deferred sentence pursuant to the provisions of Section 31-20-6 NMSA 1978.

C. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for a second or subsequent offense is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 2009, ch. 122, § 51.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 51 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-31. Licensee required disclosures.

A mortgage loan company shall, in addition to other disclosures required pursuant to other statutes or common law:

A. make all disclosures required by applicable federal and state laws;

B. provide a revised "good faith estimate" and a copy of the borrower's lock-in agreement to the borrower within three days of locking in the loan rate, pricing and terms;

C. make a full and fair disclosure of all facts within the knowledge of the mortgage loan company that are or may be material to the borrower's decision, rights or interests;

D. disclose at least two days prior to closing of the loan, in a manner that can be understood by a reasonable borrower, the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower;

E. clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule; and

F. enter into a signed contract with the borrower, as specified by the director by rule, that provides for mortgage loan rate float or rate lock-in. The borrower may choose to:

(1) rate float, which means that a loan rate has not been locked in and the borrower is responsible for instructing the mortgage loan company when to lock in the loan rate; or

(2) lock in a rate, which means the mortgage loan originator shall lock in a loan rate. The rate lock-in shall include the loan interest rate, pricing, terms, lock-in period and any fees required for an extension of the lock-in period.

**History:** Laws 2009, ch. 122, § 52.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 52 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21-32. Mortgage call reports.

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide multistate licensing system and registry may require.

**History:** Laws 2009, ch. 122, § 53; 2019, ch. 144, § 3.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

# ARTICLE 21A
# Home Loan Protection

## 58-21A-1. Short title.

Chapter 58, Article 21A NMSA 1978 may be cited as the "Home Loan Protection Act".

**History:** Laws 2003, ch. 436, § 1; 2009, ch. 122, § 54.

**ANNOTATIONS**

**Applicability.** — Laws 2003, ch. 436, § 19, effective June 20, 2003, provided that the provisions of the Home Loan Protection Act apply to all home loans made or entered into after January 1, 2004. Further, the effective date of the provisions of Section 10 of this act is July 1, 2003 and, on or after that date, no county or municipality shall enact or enforce any ordinance, resolution or rule regarding home loans that are subject to the Home Loan Protection Act or that, except for the delayed applicability date above, would otherwise be subject to that act.

**The 2009 amendment,** effective July 31, 2009, changed the reference to the act to the chapter and article of NMSA 1978.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21A-2. Findings.

The legislature finds that:

A. abusive mortgage lending has become an increasing problem in New Mexico, exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years;

B. one of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based;

C. the financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans; and

D. while the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with high costs and terms that are unnecessary to secure repayment of the loan.

**History:** Laws 2003, ch. 436, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

**Equity-based loan was not subject to the legislative findings set forth in the Home Loan Protection Act.** — Where plaintiff bank filed a complaint for foreclosure, alleging that defendant had defaulted on a "no document" loan taken out in 2003, approval of which depended on whether defendant's equity and credit score met certain guidelines, and where defendant argued that the equity-based loan was unenforceable as a matter of public policy, claiming that the Home Loan Protection Act (HLPA) 58-21A-1 to 58-21A-14 NMSA 1978, established New Mexico's public policy that equity-based loans were a form of abusive lending and unenforceable, the district did not err in granting summary judgment for plaintiff, because the HLPA did bring every loan within its purview; the legislature used the applicability date to clarify the class of home loans to

which the HLPA applies, thus explicitly narrowing the class to loans that were made or entered into after January 1, 2004. *Wells Fargo v. Graham*, 2023-NMCA-023.

**Bank did not have "unclean hands" in making equity-based loan.** — Where plaintiff bank filed a complaint for foreclosure, alleging that defendant had defaulted on a "no document" loan taken out in 2003, approval of which depended on whether defendant's equity and credit score met certain guidelines, and where defendant argued that the equity-based loan was unenforceable based on the equitable doctrine of unclean hands, claiming that by approving an equity-based loan with no investigation into defendant's assets and ability to pay, the bank's conduct was fraudulent, illegal or inequitable, the district did not err in granting summary judgment for plaintiff, because the undisputed facts before the district court created no material issue of fact to support equitable relief based on fraudulent, illegal or inequitable conduct by the bank in originating the 2003 loan; to the contrary, defendant's testimony demonstrated that he understood the terms of the loan and purposefully sought the loan because its equity-based terms were the only terms available to him in his financial situation. *Wells Fargo v. Graham*, 2023-NMCA-023.

## 58-21A-3. Definitions.

As used in the Home Loan Protection Act:

A. "adjustable rate home loan" means a home loan that has an initial interest rate that adjusts to a variable interest rate at the end of a specified initial period or subsequent periods of time during the remaining term of the home loan;

B. "affiliate" means a person that controls, is controlled by or is under common control with another person;

C. "bona fide discount points" means loan discount points that are knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the annual percentage rate otherwise applicable to the home loan; provided, however, that discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

(1) one and one-half percentage points for a home loan secured by a first lien; or

(2) three percentage points for a home loan secured by a junior lien;

D. "borrower" means a natural person obligated to repay a home loan, including a co-borrower, cosigner or guarantor;

E. "bridge loan" means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower with a maturity of less than eighteen months

that only requires the payment of interest until the entire unpaid balance is due and payable;

F. "conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

G. "conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

(1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or

(2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;

H. "creditor" means a person who regularly offers or makes a home loan;

I. "high-cost home loan" means a home loan in which:

(1) the contract rate exceeds the rates threshold; or

(2) the total points and fees exceed the total points and fees threshold;

J. "home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a bridge loan, where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association and where the loan is secured by:

(1) a mortgage or deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(a) designed principally for occupancy by one to four families; and

(b) that is or will be occupied by a borrower as the borrower's principal residence; or

(2) a security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal residence;

K. "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or, when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a

permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States department of housing and urban development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974. "Manufactured home" does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located;

L. "open-end loan" means a revolving debt that is secured by the equity in the borrower's home, including a home equity line of credit;

M. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing of a home loan, exclusive of any time-price differential due at closing on the loan proceeds, including:

(a) loan discount points or other discounts;

(b) loan fees, broker fees or similar charges; and

(c) fees for preparation of loan-related documents; but

(d) does not include fees for the following purposes, if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports; 3) title exam, title insurance, title closing or similar purposes; 4) escrow charges for future payments of taxes and insurance; 5) fees for notarizing deeds and other documents; 6) appraisals, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if the borrower has the right to select the attorney from an approved list or otherwise; 9) fire and hazard insurance and flood insurance premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met; 10) tax payment services; 11) surveys; 12) flood certification; 13) pest infestation and flood determination; and 14) federal housing administration upfront mortgage insurance, veterans administration funding fee, guaranteed rural housing loan guarantee fee or upfront premium private mortgage insurance at a percentage rate, as set by the director biannually, equal to the highest up-front government mortgage insurance percentage rate or United States department of veterans affairs funding fee percentage rate;

(2) all compensation, including yield spread premiums, paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(3) the cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor; and

(4) for open-end loans, the points and fees included in Paragraphs (1) through (3) of this subsection that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line;

N. "rate threshold" means:

(1) for a first lien mortgage home loan, an interest rate equal to seven percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made; and

(2) for a subordinate mortgage lien, an interest rate equal to nine percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made;

O. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a home loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing home loan;

P. "total points and fees" means the result obtained by subtracting the sum of the conventional prepayment penalties and the bona fide discount points paid from the sum of the points and fees, except that if the sum of the conventional prepayment penalties and the bona fide discount points paid exceeds two points, then only the amount that represents two points shall be subtracted; and

Q. "total points and fees threshold" means:

(1) for a home loan in which the total principal loan amount is twenty thousand dollars ($20,000) or more, an amount equal to five percent of the total principal loan amount; and

(2) for a home loan in which the total principal loan amount is less than twenty thousand dollars ($20,000), an amount equal to the lesser of one thousand dollars ($1,000) or eight percent of the total principal loan amount.

**History:** Laws 2003, ch. 436, § 3; 2009, ch. 122, § 55.

**ANNOTATIONS**

**Cross references.** — For the Federal National Manufactured Housing Construction and Safety Standards Act of 1974, *see* 42 USC 5401.

**The 2009 amendment,** effective July 31, 2009, added Subsection A; in Subsection H, after "regularly", added "offers or" and after "loan", deleted "and includes a loan broker"; added Subsection L; in Subparagraph (d) of Paragraph (1) of Subsection M, added Item 14); in Paragraph (2) of Subsection M, after "compensation", added "including yield spread premiums"; deleted former Paragraphs (3) and (4) of Subsection M, which included maximum prepayment fees or penalties; in Paragraph (1) of Subsection N, after "over the", deleted "weekly average"; and after "yield on", deleted "comparable United States"; and in Paragraphs (1) and (2) of Subsection N, after "securities" added "having comparable periods of maturity to the loan maturity as of"; and added Subsection O.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21A-4. Prohibited practices and provisions regarding home loans.

A. No creditor shall finance, directly or indirectly, credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, provided that nothing in this subsection prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis.

B. No creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a home loan. As used in this subsection, "flipping a home loan" means the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

C. No creditor shall make a home loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a home loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored

enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a home loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit.

D. No creditor shall make a home loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate home loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the home loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

E. No creditor shall make or originate an adjustable rate home loan in which caps on payment increases may be less than that necessary to reduce principal and amortize the loan over the entire term of the loan regardless of interest rate adjustments resulting in negative amortization.

F. No creditor shall make or originate a home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

G. No creditor shall pay a contractor under a home-improvement contract from the proceeds of a home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; or

(2) the instrument is payable jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor and the contractor prior to the disbursement.

H. No creditor shall charge a borrower any fees or other charges, other than those that are bona fide, reasonable and actual, to modify, renew, extend or amend a home loan.

I. No creditor shall charge a borrower more than seventy-five dollars ($75.00) to defer any payment due under the terms of a home loan.

J. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of the existing loan or debt.

K. No creditor shall make a home loan that provides for a late payment fee except as follows:

(1) the late payment fee shall not be in excess of five percent of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for fifteen days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment, and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee;

(4) no late payment fee shall be charged unless the creditor notifies the borrower within forty-five days following the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee that the creditor has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a creditor shall treat each payment as posted on the same business day as it was received by the creditor, servicer, creditor's agent for making payments or at the address provided to the borrower by the creditor, servicer or creditor's agent for making payments.

L. No creditor shall make a home loan that contains a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness, provided that this provision does not prohibit acceleration of a loan in good faith due to a borrower's failure to abide by the material terms of the loan.

M. No creditor shall make or originate a home loan that contains a provision that requires a penalty or premium for prepayment of the balance or any portion of the principal of the indebtedness.

N. No creditor shall make or originate a home loan that includes or uses one or more of the following lending practices:

(1) making a home loan primarily based upon the foreclosure or liquidation value of the borrower's collateral rather than on the borrower's ability to repay the home loan according to its terms;

(2) making or originating an adjustable rate home loan, except a home equity line of credit, where the interest rate and payment may change more frequently than once every six months during the term of the loan;

(3) making an adjustable rate home loan, except a home equity line of credit, where:

(a) the initial interest rate may be increased by more than two percent for loans with initial periods less than five years and six percent for loans with initial periods greater than or equal to five years;

(b) a periodic interest rate may be increased by more than one percent every six months; and

(c) a lifetime interest rate cap is more than six percent over the initial rate;

(4) advertising terms of home loans, including interest rates, margins, discount points, fees, commissions or other material facts, including limitations on the home loans, unless the creditor is able to make the advertised home loans available to a reasonable number of qualified applicants;

(5) misrepresenting a borrower's credit rating;

(6) misrepresenting, inflating or fabricating, or encouraging a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed the twenty-five percent per agency guidelines established by rule by the director, in the application or underwriting process of a home loan; and

(7) making a home loan with an eighty percent or higher loan-to-value ratio for an owner-occupied residence if the creditor has failed to establish an escrow account for the payment of real estate taxes and property insurance.

**History:** Laws 2003, ch. 436, § 4; 2009, ch. 122, § 56; 2021, ch. 82, § 1.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, amended the frequency and limits of adjustments permitted to be made to adjustable rate mortgages originated in New Mexico; and in Subsection N, Paragraph N(2), after "more frequently than", changed "annually" to "once every six months", and in Paragraph N(3), Subparagraph N(3)(b), after "increased by more than", changed "two percent" to "one percent every six months".

**The 2009 amendment,** effective July 31, 2009, in Subsection A, after "paid on a monthly basis", deleted the remainder of the sentence; and added Subsections C through N.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Act not preempted by federal law.** — The Home Loan Protection Act, Section 58-21A-1 NMSA 1978 et seq., is a state law of general applicability that is not preempted by federal law. *Bank of New York v. Romero*, 2014-NMSC-007, *rev'g* 2011-NMCA-110, 150 N.M. 769, 266 P.3d 638.

**Ability to repay.** — A lender must consider a borrower's ability to repay a home mortgage loan in determining whether the loan provides a reasonable, tangible net benefit as required by the Home Loan Protection Act, Section 58-21A-1 NMSA 1978 et seq. *Bank of New York v. Romero*, 2014-NMSC-007, *rev'g* 2011-NMCA-110, 150 N.M. 769, 266 P.3d 638.

**Reasonable, tangible net benefit standard.** — The reasonable, tangible new benefit standard of Subsection B of Section 58-21A-4 NMSA 1978 requires a finding that the benefit of making the home loan outweighs the costs associated with the loan. A lender must make a reasonable inquiry of the borrower that refinancing an existing home is in the borrower's interest. *Bank of N.Y. v. Romero*, 2011-NMCA-110, 150 N.M. 769, 266 P.3d 638, cert. granted, 2011-NMCERT-010.

**Refinancing loan did not constitute "flipping a home loan".** — Where defendants, who were in default on their home loan and in debt on credit card and other loan obligations wanted to refinance their home to repay their debts and to restock their clothing and music business; and defendants obtained a new home loan from plaintiff that allowed defendants to pay their existing home loan and credit card and other loan obligations and to restock their store, plaintiff did not engage in "flipping a home loan", because defendants received a reasonable, net tangible benefit from the new loan. *Bank of N.Y. v. Romero*, 2011-NMCA-110, 150 N.M. 769, 266 P.3d 638, cert. granted, 2011-NMCERT-010.

## 58-21A-5. Limitations and prohibited practices for high-cost home loans.

A. No creditor or mortgage loan originator making a high-cost home loan shall directly or indirectly finance any points or fees in excess of two percent of the principal loan amount.

B. No creditor shall make a high-cost home loan that contains a provision that increases the interest rate after default, provided that this provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

C. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

D. No creditor or mortgage loan originator shall make a high-cost home loan without first receiving certification from a third-party, nonprofit counselor approved by the United States department of housing and urban development, the New Mexico mortgage finance authority or the director of the financial institutions division of the regulation and licensing department that the borrower has received counseling on the advisability of the loan transaction.

E. A creditor or mortgage loan originator shall not make a high-cost home loan unless the creditor has given the following notice, or a substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING DEPARTMENT.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S

INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

**History:** Laws 2003, ch. 436, § 5; 2009, ch. 122, § 57.

**ANNOTATIONS**

**The 2009 amendment,** effective July 31, 2009, in Subsection A, after "creditor", added "or mortgage loan originator"; deleted former Subsections B, C, E, and H through O, which prohibited certain loans; in Subsection D, deleted "After April 1, 2004" at the beginning of the sentence and added "No"; and in Subsection E, after "creditor", added "or mortgage lain originator".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21A-6. Default; notice; right to cure.

A. Before an action is filed to foreclose or collect money due pursuant to a home loan or before other action is taken to seize or transfer ownership of property subject to a home loan, the creditor or creditor's assignee of the loan shall deliver to the borrower a notice of the right to cure the default informing the borrower of:

(1) the nature of the default;

(2) the borrower's right to cure the default by paying the sum of money required, provided that a creditor or assignee shall accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change within thirty days of the notice, due to the application of a daily interest rate or the addition of late fees, as allowed by the Home Loan Protection Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point within the thirty-day period;

(3) the date by which the borrower may cure the default to avoid a court action, acceleration and initiation of foreclosure or other action to seize the property, which date shall not be less than thirty days after the date the notice is delivered, and the name and address and telephone number of a person to whom the payment or tender shall be made;

(4) that if the borrower does not cure the default by the date specified, the creditor or assignee may file an action for money due or take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the property; and

(5) the name and address and the telephone number of a person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

B. If a creditor or assignee asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the home loan, the borrower, or anyone authorized to act on the borrower's behalf, may, at any time prior to the time title is transferred by means of foreclosure, by judicial proceeding and sale or otherwise, cure the default, and reinstate the home loan. Cure of the default shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, an acceleration of any obligation under the home loan arising from the default.

C. To cure a default under this section, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default, other than the fees specifically allowed by this subsection. The borrower shall not be liable for any attorney fees relating to the default that are incurred by the creditor or assignee prior to or during the thirty-day period set forth in Subsection A of this section, nor for any such fees in excess of one hundred dollars ($100) that are incurred by the creditor or assignee after the expiration of the thirty-day period but prior to the time the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate. After the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate, the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the creditor or assignee, based on a reasonable hourly rate and a reasonable number of hours.

D. If a default is cured prior to the initiation of any action to foreclose or to seize the residence, the creditor or assignee shall not institute a proceeding or other action for that default. If a default is cured after the initiation of any action, the creditor or assignee shall take such steps as are necessary to terminate the action.

E. A creditor or a creditor's assignee of a home loan that has the legal right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures provided by law. In such a proceeding, the borrower may assert the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on a violation of the Home Loan Protection Act, though no such claim or defense shall be deemed a compulsory counterclaim.

**History:** Laws 2003, ch. 436, § 6; 2009, ch. 122, § 58.

## ANNOTATIONS

**The 2009 amendment,** effective July 31, 2009, deleted former Subsection F, which provided that the act applied only to high-cost home loans at the time of origination.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 13, § 1 repeals 58-21A-7 NMSA 1978, being Laws 2003, ch. 436, § 7, effective February 27, 2004, relating to claims against certain sellers. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com.*

## 58-21A-8. Subterfuge prohibited.

No person shall, with the intent to avoid the application or provisions of the Home Loan Protection Act:

A. divide a loan transaction into separate parts;

B. structure a home loan transaction as an open-end loan when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or

C. perform any other subterfuge.

**History:** Laws 2003, ch. 436, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-9. Civil action.

A. A borrower harmed by a violation of the Home Loan Protection Act may bring a civil action to recover:

(1) actual damages, including consequential and incidental damages;

(2) statutory damages equal to two times the finance charge paid under the loan and forfeiture of the remaining interest under the loan;

(3) punitive damages, when the violation was malicious or reckless;

(4) costs and reasonable attorney fees; and

(5) injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with the Home Loan Protection Act.

B. The civil action and remedies provided in this section are not exclusive and are in addition to any other action or remedies available to a borrower under applicable law.

C. A creditor is not liable in an action brought pursuant to this section if:

(1) within thirty days of the home loan closing and prior to receiving any notice from the borrower of the violation, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan; or

(2) the violation was not intentional and resulted from a bona fide error in fact notwithstanding the maintenance of procedures reasonably adopted to avoid such errors and within sixty days of the loan closing and prior to receiving any notice from the borrower of the violation, the borrower is notified of the violation, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan.

**History:** Laws 2003, ch. 436, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-10. Preemption.

Counties and municipalities, including home rule counties and municipalities, are prohibited from enacting and enforcing ordinances, resolutions or rules regulating financial or lending activities or imposing reporting requirements or any other obligations upon creditors regarding home loans that are subject to the Home Loan Protection Act.

**History:** Laws 2003, ch. 436, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436, § 19 made this section effective July 1, 2003 and provided that on or after that date no county or municipality shall enact or enforce any ordinance, resolution, or rule regarding home loans that are subject to the Home Loan Protection Act or that, except for the delayed applicability date of the Act (January 1, 2004) would otherwise be subject to the act.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-11. Actions based on home loans.

A. Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor of the loan; provided that this subsection shall not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. A purchaser or assignee has exercised such due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit its purchase or acceptance of an assignment of any high-cost home loans;

(2) requires by contract that a seller or assignor of the home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(a) the seller or assignor will not sell or assign any high-cost home loans to the purchaser or assignee; or

(b) that such seller or assignor is the beneficiary of such a representation and warranty from a previous seller or assignor; and

(3) exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time thereafter intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loans; or

(4) satisfies the requirements in Paragraphs (1) and (2) of this subsection and establishes that a reasonable person exercising ordinary due diligence could not determine, based on the documentation required by the federal Truth in Lending Act and the itemization of the amount financed and other disclosure disbursements, that the loan was a high-cost home loan.

B. Notwithstanding any other law to the contrary, a borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of the home loan:

(1) within six years of the closing of a high-cost home loan, a violation of the Home Loan Protection Act in connection with the loan as an original action;

(2) at any time during the term of a high-cost home loan, any defense, claim or counterclaim, or action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, including but not limited to a violation of the Home Loan Protection Act, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default; or

(3) within three years of the closing of a home loan, a violation of Subsection B of Section 4 [58-21A-4 NMSA 1978] of the Home Loan Protection Act as a defense, claim or counterclaim or as an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default.

C. In an action, claim or counterclaim brought pursuant to Subsection B of this section, the borrower may recover only amounts required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs and reasonable attorney fees.

D. Nothing in this section shall limit the substantive rights, remedies or procedural rights available to a borrower against a creditor, assignee or holder that are otherwise provided by law.

**History:** Laws 2003, ch. 436, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-12. Application of Unfair Practices Act.

A violation of the Home Loan Protection Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978].

**History:** Laws 2003, ch. 436, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-13. Attorney general; enforcement of rules.

The financial institution division of the regulation and licensing department shall enforce the provisions of the Home Loan Protection Act and, after consulting with the attorney general and considering similar rules of the federal housing administration and the federal department of veterans affairs, shall adopt rules required pursuant to Subsection H of Section 5 [58-21A-5 NMSA 1978] of the Home Loan Protection Act and such other rules as are necessary to implement that act.

**History:** Laws 2003, ch. 436, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

## 58-21A-14. Liberal interpretation.

The Home Loan Protection Act shall be liberally construed to carry out its purpose.

**History:** Laws 2003, ch. 436, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 436 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 2003, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2003, ch. 436, § 19A made the Home Loan Protection Act applicable to all home loans made or entered into after January 1, 2004.

# ARTICLE 21B
# New Mexico Mortgage Loan Originator Licensing

## 58-21B-1. Short title.

Sections 1 through 24 [58-21B-1 to 58-21B-24 NMSA 1978] of this act may be cited as the "New Mexico Mortgage Loan Originator Licensing Act".

**History:** Laws 2009, ch. 122, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 1 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-2. Findings; purpose.

A. The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon New Mexico's consumers, New Mexico's economy, the neighborhoods and communities of New Mexico and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to New Mexico's residents. The legislature also finds that it is essential for the protection of the residents of New Mexico and the stability of New Mexico's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process.

B. The purpose of the New Mexico Mortgage Loan Originator Licensing Act is to protect consumers seeking mortgage loans.

**History:** Laws 2009, ch. 122, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 2 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-3. Definitions.

As used in the New Mexico Mortgage Loan Originator Licensing Act:

A. "clerical or support duties" may include, subsequent to the receipt of an application:

(1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

B. "depository institution" has the same meaning as the definition of depository institution in Section 3 of the Federal Deposit Insurance Act and includes any credit union;

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

D. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence;

E. "federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration and the federal deposit insurance corporation;

F. "immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and "immediate family member" includes a stepparent, a stepchild, a stepsibling and an adoptive relationship;

G. "individual" means a natural person;

H. "license" means a license issued pursuant to Section 58-21B-6 NMSA 1978;

I. "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and

instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act [Chapter 58, Article 21 NMSA 1978];

J. "mortgage loan company" means any person defined as such in the Mortgage Loan Company Act;

K. "mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;

(2) a person that only performs real estate brokerage activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and

(3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code;

L. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

M. "nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage;

N. "person" means a natural person, corporation, company, limited liability company, partnership or association;

O. "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and

(5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection;

P. "registered mortgage loan originator" means any individual who:

(1) meets the definition of mortgage loan originator and is an employee of:

(a) a depository institution;

(b) a subsidiary that is: 1) owned and controlled by a depository institution; and 2) regulated by a federal banking agency; or

(c) an institution regulated by the farm credit administration; and

(2) is registered with, and maintains a unique identifier through, the nationwide multistate licensing system and registry;

Q. "residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or is intended to be constructed a dwelling as so defined;

R. "residential real estate" means any real property located in New Mexico upon which is constructed or intended to be constructed a dwelling;

S. "servicer" means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing residential mortgage loan; and

T. "unique identifier" means a number or other identifier assigned by protocols established by the nationwide multistate licensing system and registry.

**History:** Laws 2009, ch. 122, § 3; 2019, ch. 144, § 4.

## ANNOTATIONS

**Cross references.** — For Sections 3 of the Federal Deposit Insurance Act, *see* 12 U.S.C. §§ 1813.

**2019 amendment,** effective July 1, 2019, defined "nationwide multistate licensing system and registry", and revised the definitions of certain terms as used in the New Mexico Mortgage Loan Originator Licensing Act; after "nationwide", deleted "mortgage" and added "multistate" throughout, in Subsection E, after "comptroller of the currency", deleted "the director of the office of thrift supervision"; in Subsection H, after "Section", deleted "6 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-6 NMSA 1978"; and in Subsection L, after "means a", deleted "mortgage", and after "mortgage regulators", deleted "for the licensing and registration of licensed mortgage loan originators" and added "pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-4. License and registration required to originate mortgage loans.

A. Unless specifically exempted from the New Mexico Mortgage Loan Originator Licensing Act pursuant to Subsection B of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in New Mexico without first obtaining and maintaining annually a license pursuant to that act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide multistate licensing system and registry. All new licenses and license renewals shall expire on December 31 of each year. All license renewal applications shall be submitted on or before November 1 of each year.

B. The following are exempt from the provisions of the New Mexico Mortgage Loan Originator Licensing Act:

(1) registered mortgage loan originators when acting for an entity defined in Subparagraphs (a) through (c) of Paragraph (1) of Subsection P of Section 58-21B-3 NMSA 1978;

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property; or

(4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator.

C. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license pursuant to Subsection A of this section. Each contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide multistate licensing system and registry.

D. A mortgage loan originator who is currently licensed in another state through the nationwide multistate licensing system and registry may be granted a temporary mortgage loan originator license valid for ninety days while the mortgage loan originator completes the education and testing requirements of the New Mexico Mortgage Loan Originator Licensing Act. The mortgage loan originator's current license in another state must be valid for more than ninety days beyond the date of application for a temporary license in order to receive a temporary license in New Mexico.

**History:** Laws 2009, ch. 122, § 4; 2019, ch. 144, § 5.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provision of the New Mexico Mortgage Loan Originator Licensing Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and in Subsection B, Paragraph B(1), after "Section", deleted "3 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-3 NMSA 1978".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-5. State license and registration application and issuance.

A. Applicants for a license shall apply in a form as prescribed by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

B. In order to fulfill the purposes of the New Mexico Mortgage Loan Originator Licensing Act, the director may establish relationships or contracts with the nationwide multistate licensing system and registry or other entities designated by the nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other individuals subject to that act.

C. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide multistate licensing system and registry information concerning the applicant's identity, including:

(1) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) personal history and experience in a form prescribed by the nationwide multistate licensing system and registry, including the submission of authorization for the nationwide multistate licensing system and registry and the director to obtain:

(a) an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

D. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of Paragraph (1) of Subsection C of this section and Subparagraph (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide multistate licensing system and registry as a channeling agent for requesting information from and distributing information to the federal department of justice or any governmental agency with mortgage industry oversight authority.

E. For the purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of Subparagraphs (a) and (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information to and from any source as directed by the director.

**History:** Laws 2009, ch. 122, § 5; 2019, ch. 144, § 6.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-6. Issuance of license.

The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

A. the applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a formal vacation of such revocation shall not be deemed a revocation;

B. the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court, not including a juvenile court:

(1) during the seven-year period preceding the date of the application for licensing and registration; or

(2) at any time preceding the date of application, if the felony involved an act of fraud or dishonesty, a breach of trust or money laundering; and

(3) provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection;

C. the applicant has demonstrated financial responsibility, good character and general fitness so as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of the New Mexico Mortgage Loan Originator Licensing Act. For the purposes of this subsection, an individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition. A determination that an individual has not shown financial responsibility may include but is not limited to:

(1) current outstanding judgments, except judgments solely as a result of medical expenses;

(2) current outstanding tax liens or other government liens and filings;

(3) foreclosures within the past three years; or

(4) a pattern of seriously delinquent accounts within the past three years;

D. the applicant has completed the pre-licensing education requirement set forth in Section 7 [58-21B-7 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act;

E. the applicant has passed a written test that meets the test requirement set forth in Section 8 [58-21B-8 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act; and

F. the applicant has met the surety bond requirements set forth in Section 17 [58-21B-17 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act.

**History:** Laws 2009, ch. 122, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 6 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-7. Pre-licensing education of mortgage loan originators.

A. In order to meet the pre-licensing education requirement referred to in Subsection D of Section 58-21B-6 NMSA 1978, an individual shall complete at least twenty hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) three hours of ethics, including instruction on fraud, consumer protection and fair lending issues;

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) three hours of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, pre-licensing education courses shall be reviewed and approved by the nationwide multistate licensing system and registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any pre-licensing education course, as approved by the nationwide multistate licensing system and registry, that is provided by the employer of the applicant or by an entity that is affiliated with the applicant by an agency contract, or by any subsidiary or affiliate of the employer or entity.

D. Pre-licensing education may be offered in a classroom, online or by any other means approved by the nationwide multistate licensing system and registry.

E. The pre-licensing education requirements approved by the nationwide multistate licensing system and registry in Paragraphs (1) through (4) of Subsection A of this

section for any state shall be accepted as credit toward completion of pre-licensing education requirements in New Mexico.

F. An individual previously licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act subsequent to the effective date of that act applying to be licensed again shall prove that the individual has completed all of the continuing education requirements for the year in which the license was last held.

**History:** Laws 2009, ch. 122, § 7; 2019, ch. 144, § 7.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provision of the New Mexico Mortgage Loan Originator Licensing Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and in Subsection A, in the introductory clause, after "Section", deleted "6 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-6 NMSA 1978".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-8. Testing of mortgage loan originators.

A. In order to meet the written test requirement referred to in Subsection E of Section 58-21B-6 NMSA 1978, an individual shall pass, in accordance with the standards established pursuant to this section, a qualified written test developed by the nationwide multistate licensing system and registry and administered by a test provider approved by the nationwide multistate licensing system and registry based upon reasonable standards.

B. A written test shall not be treated as a qualified written test for purposes of Subsection A of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) ethics;

(2) federal law and regulations pertaining to mortgage origination;

(3) New Mexico law and rules pertaining to mortgage origination; and

(4) federal and New Mexico law and regulations and rules, including those concerning fraud, consumer protection, the nontraditional mortgage product marketplace and fair lending issues.

C. Nothing in this section shall prohibit a test provider approved by the nationwide multistate licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or at the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

D. An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

E. An individual may retake a test two consecutive times, provided that each retake occurs at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

F. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

**History:** Laws 2009, ch. 122, § 8; 2019, ch. 144, § 8.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provision of the New Mexico Mortgage Loan Originator Licensing Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and in Subsection A, after "Section", deleted "6 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-6 NMSA 1978".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-9. Standards for license renewal.

A. The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) the mortgage loan originator continues to meet the minimum standards for license issuance pursuant to Section 58-21B-6 NMSA 1978;

(2) the mortgage loan originator has satisfied the annual continuing education requirements set forth in Section 58-21B-10 NMSA 1978; and

(3) the mortgage loan originator has paid all required fees for renewal of the license.

B. The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The director may adopt rules for the reinstatement of expired licenses consistent with the standards established by the nationwide multistate licensing system and registry.

**History:** Laws 2009, ch. 122, § 9; 2019, ch. 144, § 9.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided statutory citations for certain provision of the New Mexico Mortgage Loan Originator Licensing Act; in Subsection A, Paragraph A(1), after "Section", deleted "6 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-6 NMSA 1978", and in Paragraph A(2), after "Section", deleted "10 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-10 NMSA 1978"; and in Subsection B, after "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-10. Continuing education for mortgage loan originators.

A. In order to meet the annual continuing education requirements set forth in Paragraph (2) of Subsection A of Section 58-21B-9 NMSA 1978, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, including instruction on fraud, consumer protection and fair lending issues;

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) one hour of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, continuing education courses shall be reviewed and approved by the nationwide multistate licensing system and registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any education course, as approved by the nationwide multistate licensing system and registry, that is provided by the employer of

the mortgage loan originator or by an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

D. Continuing education may be offered in a classroom, online or by any other means approved by the nationwide multistate licensing system and registry.

E. A licensed mortgage loan originator:

(1) except for the provisions of Subsection B of Section 58-21B-9 NMSA 1978 and Subsection I of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

F. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.

G. An individual who has successfully completed the education requirements approved by the nationwide multistate licensing system and registry and as set forth in Subsection A of this section for any state shall be accepted as credit toward completion of continuing education requirements in New Mexico.

H. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

I. An individual who meets the requirements set forth in Paragraphs (1) and (3) of Subsection A of Section 58-21B-9 NMSA 1978 may make up any deficiency in continuing education as established by rule promulgated by the director.

**History:** Laws 2009, ch. 122, § 10; 2019, ch. 144, § 10.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provisions of the New Mexico Mortgage Loan Originator Licensing Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; in Subsection A, in the introductory clause, after "Section", deleted "9 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-9 NMSA 1978"; in Subsection E, Paragraph E(1), after "Section", deleted "9 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-9 NMSA 1978";

and in Subsection I, Paragraph E(1), after "Section", deleted "9 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-9 NMSA 1978".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-11. Authority to require license and to set fees.

A. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the nationwide multistate licensing system and registry. In order to carry out this requirement, the director may participate in the nationwide multistate licensing system and registry. For this purpose, the director may establish requirements as necessary, including:

(1) background checks for:

(a) criminal history through fingerprint or other databases;

(b) civil or administrative records;

(c) credit history; or

(d) any other information deemed necessary by the nationwide multistate licensing system and registry;

(2) payment of fees to apply for or renew licenses through the nationwide multistate licensing system and registry;

(3) setting or resetting as necessary renewal or reporting dates; and

(4) requirements for amending or surrendering a license or any other activities the director deems necessary for participation in the nationwide multistate licensing system and registry.

B. The director shall establish by rule fees sufficient to cover the costs of administering the New Mexico Mortgage Loan Originator Licensing Act. These fees may include:

(1) an original and renewal license fee paid by each licensed mortgage loan originator;

(2) an application fee to cover the costs of processing applications;

(3) an examination or investigation fee to cover the costs of any examination or investigation of the books and records of a licensed mortgage loan originator or other person subject to the New Mexico Mortgage Loan Originator Licensing Act; and

(4) late fees, license amendment fees and any other fees associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act.

C. Mortgage loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the New Mexico Mortgage Loan Originator Licensing Act occurred or when the mortgage loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All money, fees and penalties collected pursuant to the New Mexico Mortgage Loan Originator Licensing Act shall be deposited into the mortgage regulatory fund.

D. For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For individuals previously registered or licensed pursuant to the Mortgage Loan Company Act, the director may establish expedited review and licensing procedures.

**History:** Laws 2009, ch. 122, § 11; 2019, ch. 144, § 11.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and made a certain technical correction; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and in Subsection D, after "Mortgage Loan Company", deleted "and Loan Broker".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-12. Nationwide multistate licensing system and registry information challenge process.

The director shall establish rules whereby mortgage loan originators may challenge information entered into the nationwide multistate licensing system and registry by the director.

**History:** Laws 2009, ch. 122, § 12; 2019, ch. 144, § 12.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-13. Enforcement; violations; penalties.

A. In order to ensure the effective supervision and enforcement of the New Mexico Mortgage Loan Originator Licensing Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of the New Mexico Mortgage Loan Originator Licensing Act or rules issued pursuant to that act or an order or a directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensed mortgage loan originator:

(a) fails at any time to meet the requirements of Section 58-21B-6 or 58-21B-9 NMSA 1978; or

(b) withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) order restitution against mortgage loan originators for violations of that act;

(4) impose fines on mortgage loan originators pursuant to Subsections C through E of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) bar or suspend a mortgage loan originator from licensure in New Mexico as a mortgage loan originator; and

(7) issue orders or directives pursuant to the New Mexico Mortgage Loan Originator Licensing Act as follows:

(a) order or direct mortgage loan originators to cease and desist from conducting business, including issuing an immediate temporary order to cease and desist;

(b) order or direct mortgage loan originators to cease any harmful activities or violations of that act, including issuing an immediate temporary order to cease and desist; and

(c) enter immediate temporary orders to cease business pursuant to a license issued pursuant to the authority granted pursuant to Section 58-21B-4 NMSA 1978 if the director determines that the license was erroneously granted or the licensed mortgage loan originator is currently in violation of that act.

B. The director may initiate one or more of the actions set forth in Section 58-21B-15 NMSA 1978.

C. It is a violation of the New Mexico Mortgage Loan Originator Licensing Act for a mortgage loan originator to:

(1) directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) engage in any unfair or deceptive practice toward any person;

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

(6) conduct any business covered by the New Mexico Mortgage Loan Originator Licensing Act without holding a valid license as required pursuant to that act, or assist or aid and abet any person in the conduct of business pursuant to that act without a valid license as required pursuant to that act;

(7) fail to make disclosures as required by the New Mexico Mortgage Loan Originator Licensing Act and any other applicable state or federal law, including rules and regulations thereunder;

(8) fail to comply with the provisions of the New Mexico Mortgage Loan Originator Licensing Act or rules or regulations promulgated pursuant to that act, or fail to comply with any other state or federal law, including rules and regulations thereunder, applicable to any business authorized or conducted pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

(9) make, in any manner, a false or deceptive statement or representation, including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, engaging in bait-and-switch advertising;

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide multistate licensing system and registry or in connection with any investigation conducted by the director or another governmental agency;

(11) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property. Nothing in this paragraph shall be construed to prohibit a mortgage loan originator from asking the appraiser to consider additional appropriate property information or provide further detail, substantiation or explanation for the appraiser's value conclusion;

(12) collect, charge, attempt to collect or charge, or to use or propose any agreement purporting to collect or charge, any fee prohibited by the New Mexico Mortgage Loan Originator Licensing Act;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the director and the property insurer;

(14) fail to account truthfully for money belonging to a party to a residential mortgage loan transaction;

(15) engage in mortgage loan origination on behalf of more than one mortgage loan company;

(16) pay, receive or collect in whole or in part any commission, fee or other compensation for originating a mortgage loan in violation of the New Mexico Mortgage Loan Originator Licensing Act, including a mortgage loan originated by any unlicensed person other than an exempt person;

(17) charge or collect any fee, commission or rate of interest or make or originate any mortgage loan with terms or conditions or in a manner contrary to other applicable federal and state laws;

(18) advertise mortgage loans, including rates, margins, discounts, points, fees, commission or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants;

(19) coerce, extort, induce, bribe or intimidate or attempt to coerce, extort, induce, bribe or intimidate an appraiser to value property in excess of its fair market value;

(20) originate a mortgage loan that contains a pre-payment penalty;

(21) misrepresent a borrower's credit rating;

(22) misrepresent, inflate or fabricate, or encourage a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed twenty-five percent per current agency guidelines as set by the director, in the application or underwriting process for a residential mortgage loan;

(23) originate a residential mortgage loan when the terms of that loan are in violation of the Home Loan Protection Act;

(24) originate a residential mortgage loan that does not require documentation and consideration of the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this paragraph shall not apply to a residential mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

(25) originate a residential mortgage loan that does not require a determination of the borrower's reasonable ability to pay the costs set forth in this paragraph. In the case of an adjustable rate residential mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

D. The director may impose a civil penalty on a mortgage loan originator if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan originator has violated or failed to comply with any requirement of the New Mexico Mortgage Loan Originator Licensing Act or any rule promulgated by the director pursuant to that act or any order issued pursuant to authority of that act.

E. The maximum amount of penalty for each act or omission described in Subsection C of this section shall be twenty-five thousand dollars ($25,000).

F. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

**History:** Laws 2009, ch. 122, § 13; 2019, ch. 144, § 13.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided statutory citations for certain provision of the New Mexico Mortgage Loan Originator Licensing Act; in Subsection A, Paragraph A(2), after "Section", deleted "6 or 9 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-6 or 58-21B-9 NMSA 1978", and in Subparagraph A(7)(c), after "Section", deleted "4 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-4 NMSA 1978"; in Subsection B, after "Section", deleted "15 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-15 NMSA 1978"; and in Subsection C, in Paragraph C(10), after "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-14. Notice of contemplated action; hearings.

A. When the director contemplates taking any action specified in Paragraphs (1) through (6) of Subsection A or in Subsection D of Section 13 [58-21B-13 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act, the director shall serve upon the licensed mortgage loan originator a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence; and

(3) that unless the licensed mortgage loan originator within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the director containing a request for a hearing, the director will take the contemplated action.

B. If the licensed mortgage loan originator does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensed mortgage loan originator mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensed mortgage loan originator of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action.

**History:** Laws 2009, ch. 122, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 14 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-15. Power of the court to grant relief.

A. Upon a showing by the director that a person has or is about to violate the New Mexico Mortgage Loan Originator Licensing Act or any rule or order of the director pursuant to that act, the district court of the first judicial district 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 twenty-five thousand dollars ($25,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(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. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director pursuant to Section 13 [58-21B-13 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act in connection with the transactions constituting violations of that act.

C. The court shall not require the director to post bond in an action pursuant to this section.

**History:** Laws 2009, ch. 122, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 15 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-16. Unlicensed activity.

A. An individual who acts as a mortgage loan originator without being properly licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act is, for a first offense, guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Subsection A of Section 31-19-1 NMSA 1978.

B. In the case of a conviction pursuant to Subsection A of this section, the court may impose a deferred sentence in accordance with Section 31-20-6 NMSA 1978.

C. An individual who violates Subsection A of this section is, for a second or subsequent offense, guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 2009, ch. 122, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 4 effective July 31, 2010.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-17. Surety bond required.

A. Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event the mortgage loan originator is an employee or exclusive agent of a mortgage loan company subject to the Mortgage Loan Company Act, the surety bond of the mortgage loan company subject to that act may be used in lieu of the mortgage loan originator's surety bond requirement.

B. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in Subsection E of this section.

C. The surety bond shall be in a form as prescribed by the director.

D. The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

E. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars ($50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensed mortgage loan originator, as follows:

(1) zero dollars ($0.00) to three million dollars ($3,000,000), a surety bond of fifty thousand dollars ($50,000);

(2) more than three million dollars ($3,000,000) and less than ten million dollars ($10,000,000), a surety bond of one hundred thousand dollars ($100,000); and

(3) ten million dollars ($10,000,000) or more, a surety bond of one hundred fifty thousand dollars ($150,000).

F. Every bond shall provide for suit thereon by any person who has a cause of action pursuant to the New Mexico Mortgage Loan Originator Licensing Act.

G. When an action is commenced on a licensed mortgage loan originator's bond, the director may require the filing of a new bond.

H. Immediately upon recovery on any action on a bond, the licensed mortgage loan originator shall file a new bond.

**History:** Laws 2009, ch. 122, § 17.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 17 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-18. Confidentiality.

In order to promote more effective regulation and reduce regulatory burden through supervisory information-sharing, except as otherwise provided in Public Law 110-289, Section 1512, the requirements pursuant to any federal law or pursuant to the Inspection of Public Records Act regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Inspection of Public Records Act, and the director may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

**History:** Laws 2009, ch. 122, § 18; 2019, ch. 144, § 14.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-19. Powers and duties of director.

A. The director shall exercise general supervision and control over mortgage loan originators doing business in New Mexico.

B. In addition to the other duties imposed on the director by law, the director shall make reasonable rules necessary for the implementation of the New Mexico Mortgage Loan Originator Licensing Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978. In addition to any authority allowed pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the director may conduct investigations and examinations as follows:

(1) for the purposes of initial licensing, license renewal, license suspension, license revocation or termination or general or specific inquiry or investigation to determine compliance with the New Mexico Mortgage Loan Originator Licensing Act, the director shall have access to and may receive and use any books, accounts, records, files, documents, information or evidence, including:

(a) criminal, civil and administrative history information, including nonconviction data as specified in the Arrest Record Information Act [Chapter 29, Article 10 NMSA 1978];

(b) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(c) any other documents, information or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence;

(2) for the purposes of investigating violations or complaints arising pursuant to the New Mexico Mortgage Loan Originator Licensing Act, or for the purposes of examination, the director may review, investigate or examine any individual subject to that act as often as necessary in order to carry out the purposes of that act. The director may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena or order such persons to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry;

(3) each mortgage loan originator shall make available to the director upon request the books and records relating to the operations of the mortgage loan originator. The director shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors and agents of the mortgage loan originator concerning their business;

(4) each mortgage loan originator shall make or compile reports or prepare other information as directed by the director in order to carry out the purposes of this section, including:

(a) accounting compilations;

(b) information lists and data concerning loan transactions in a format prescribed by the director; and

(c) such other information deemed by the director to be necessary to carry out the purposes of this section;

(5) in making any examination or investigation authorized by the New Mexico Mortgage Loan Originator Licensing Act, the director may control access to any documents and records of the individual under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensed mortgage loan originator have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of the New Mexico Mortgage Loan Originator Licensing Act, the licensed mortgage loan originator or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs;

(6) in order to carry out the purposes of this section, the director may:

(a) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section;

(c) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the mortgage loan originator;

(d) accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(e) accept audit reports made by an independent certified public accountant for the mortgage loan originator in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the director;

(7) the authority of this section shall remain in effect whether such a licensed mortgage loan originator or individual subject to the New Mexico Mortgage Loan Originator Licensing Act acts or claims to act pursuant to any licensing or registration law of New Mexico or claims to act without such authority;

(8) no licensed mortgage loan originator or individual who is the subject an of investigation or examination pursuant to this section shall knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information; and

(9) applications for a license or a license renewal, and all papers, documents, reports and other written instruments filed with the director pursuant to the New Mexico Mortgage Loan Originator Licensing Act, are public documents and open to public inspection, except for files of ongoing examinations and 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 2009, ch. 122, § 19.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 19 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-20. Mortgage loan originator duties.

A. A mortgage loan originator shall, enter into a fiduciary relationship with the borrower. For the purposes of this subsection, "fiduciary relationship" is a relationship in which a mortgage loan originator shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care and diligence;

(4) act in good faith and engage in fair dealing in any transaction, practice or course of business regarding mortgage loans;

(5) direct, recommend and make reasonable efforts to secure a residential mortgage loan that is reasonably advantageous to the borrower, considering all of the circumstances, and has a net tangible benefit to the borrower;

(6) make a full and fair disclosure of all facts within the knowledge of the mortgage loan originator that are or may be material to the borrower's decision, rights or interests;

(7) disclose to the borrower the existence of all loans available to the mortgage loan originator, for which the borrower qualifies, that have terms that are as favorable or more favorable than those loans offered to the borrower by the mortgage loan originator;

(8) not steer the borrower to a loan or loans with terms that are clearly less favorable than those loans offered to the borrower by the mortgage loan originator; and

(9) maintain all information provided by the borrower or obtained regarding the borrower in strict confidence. However, the mortgage loan originator may disclose confidential information if required by law or rule or if the borrower authorizes the disclosure in writing in advance of the disclosure. Any such authorization shall specifically identify the nature of the information to be disclosed.

B. If not provided by the mortgage loan company, a mortgage loan originator shall, in addition to all other disclosures required by statute or common law:

(1) disclose at least two days prior to closing of the loan the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower; and

(2) clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule.

**History:** Laws 2009, ch. 122, § 20.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 20 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-21. Private right of action; damages; enforcement by attorney general.

A. Any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act may sue in district court. Upon a showing that that act is being or has been violated and a showing that the plaintiff has suffered injury, the court may award damages, punitive damages and injunctive relief and shall award the cost of the suit, including reasonable attorney fees.

B. Whenever the attorney general has reasonable belief that a person is using, has used or is about to use any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act and enforcement proceedings would be in the public interest, the attorney general may bring an action in the name of the state alleging violations of that act. An enforcement action by the attorney general may be

brought in the district court of the county in which the person that allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act resides or has its principal place of business, or in the district court in any county in which the person allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act. In any action filed by the attorney general pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in an action brought pursuant to this section.

C. The relief provided in this section is in addition to remedies otherwise available pursuant to common law or other New Mexico statutes.

**History:** Laws 2009, ch. 122, § 21.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 21 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-22. Mortgage call reports.

A mortgage loan originator shall submit to the nationwide multistate licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide multistate licensing system and registry may require.

**History:** Laws 2009, ch. 122, § 22; 2019, ch. 144, § 15.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-23. Report to nationwide multistate licensing system and registry.

Subject to state privacy laws, the director shall report regularly violations of the New Mexico Mortgage Loan Originator Licensing Act, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions set forth in Section 58-21B-18 NMSA 1978.

**History:** Laws 2009, ch.122, § 23; 2019, ch. 144, 16.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provision of the New Mexico Mortgage Loan Originator Licensing Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and after "Section", deleted "18 of the New Mexico Mortgage Loan Originator Licensing Act" and added "58-21B-18 NMSA 1978".

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 58-21B-24. Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or web sites, and on any other documents as established by rule or order of the director.

**History:** Laws 2009, ch. 122, § 24.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 122, § 61 made the provisions of Laws 2009, ch. 122, § 24 effective July 31, 2009.

**Severability.** — Laws 2009, ch. 122, § 60 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

# ARTICLE 22
# Escrow Companies

## 58-22-1. Short title.

Chapter 58, Article 22 NMSA 1978 may be cited as the "Escrow Company Act".

**History:** Laws 1983, ch. 135, § 1; 2015, ch. 135, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, changed the statutory reference for the Escrow Company Act from "This act" to "Chapter 58, Article 22 NMSA 1978".

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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.

**Fidelity bond purchase.** — The language of this section leaves no room for doubt that the purchase of the fidelity bond required by Section 58-22-10 NMSA 1978 inures to the benefit and protection of the public. *Anchor Equities, Ltd. v. Pacific Coast Am.*, 1987-NMSC-041, 105 N.M. 751, 737 P.2d 532.

## 58-22-3. Definitions.

As used in the Escrow Company Act:

A. "director" means the director of the division;

B. "division" means the financial institutions division of the 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 the 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 that person's 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; 2015, ch. 135, § 2.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the definition of division to mean the financial institutions division of the regulation and licensing department; in Subsection B, after "division of the", deleted "commerce and industry" and added "regulation and licensing"; and in Subsection C, after "encumbrance of", deleted "such" and added "the", and after "bailor or to any of", deleted "his" and added "that person’s".

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 58-22-4. Exempt persons and transactions.

The Escrow Company Act 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.

**ANNOTATIONS**

**Cross references.** — For the federal Small Business Investment Act of 1958, *see* 15 U.S.C. § 661.

## 58-22-5. Exemption or exception; burden of proof.

In any proceeding under the Escrow Company Act, 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;

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.

A. A 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 a form and shall contain such information as the director by rule shall prescribe, which information shall establish that the licensee has continued to maintain necessary qualifications as an escrow agent. If the 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.

B. A licensee shall submit with the renewal application:

(1) a copy of the escrow company's corporate federal and state income tax returns or, if the licensee is a sole proprietor, a copy of the escrow company's federal Schedule C as it relates to the escrow company for the immediate prior fiscal year or the year ending December 31 of the year immediately preceding the licensing year. The information contained in the federal and state income tax returns shall be confidential and shall not be a public record; and

(2) as required by accounting control rules promulgated by the division, a copy of reconciliations and corresponding bank statements for the three months immediately preceding the renewal application.

**History:** Laws 1983, ch. 135, § 9; 2015, ch. 135, § 3.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for additional requirements for renewal of an escrow agent’s license; deleted "Each" and designated the previously undesignated paragraph as Subsection A; in Subsection A, in the first sentence, added "A", and after "renewal shall be on", deleted "such" and added "a", in the second sentence, after "the director by", deleted "regulation" and added "rule", and after "prescribe, which", added "information", and in the third sentence, after "If", deleted "such" and added "the"; and added a new Subsection B.

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 58-22-10. Surety bond required.

An escrow company shall obtain a surety bond in the minimum amount of one hundred thousand dollars ($100,000) running to the people of the state of New Mexico, which bond 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.

**History:** Laws 1983, ch. 135, § 10; 1986, ch. 21, § 1; 1987, ch. 120, § 1; 1990, ch. 47, § 1; 2015, ch. 135, § 4.

## ANNOTATIONS

**Cross references.** — For official bonds of state officers and employees, *see* the Surety Bond Act, 10-2-13 NMSA 1978.

For the superintendent of insurance, *see* 8-9-9 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, amended the requirements for surety bonds that escrow companies are mandated to obtain; in the catchline, after the section number, deleted "cash or", after "surety bond", deleted "or employee dishonesty bond"; deleted the subsection designation for Subsection A; deleted the first sentence of former Subsection A, relating to "dishonesty bonds"; deleted "The minimum amount of the bond shall be one hundred thousand dollars ($100,000) and" from the second sentence of former Subsection A and added "An escrow company shall obtain a surety bond in the minimum amount of one hundred thousand dollars ($100,000) running to the people of the state of New Mexico, which bond"; and deleted Subsections B and C.

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

**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 Section 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.*, 1987-NMSC-041, 105 N.M. 751, 737 P.2d 532.

**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.*, 1987-NMSC-041, 105 N.M. 751, 737 P.2d 532.

## 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.

## 58-22-12. Issuance of license.

Upon receiving and filing the application and bond coverage specified in the Escrow Company Act 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.

**ANNOTATIONS**

**Compiler's notes.** — 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. For the purpose of this subsection, the division shall be considered a law enforcement agency and the director may acquire arrest record information from another law enforcement agency pursuant to Section 29-10-5 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.

**History:** Laws 1983, ch. 135, § 15; 1987, ch. 120, § 3; 2015, ch. 135, § 5.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided that the financial institutions division shall be considered a law enforcement agency and authorized the director of the financial institutions division to acquire arrest record information from other law enforcement agencies for purposes of licensing escrow companies; in Subsection D, added the last sentence; and in Subsection G, deleted "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.".

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 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 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.

A. Within fourteen days of a written request made by a party to the escrow agreement, a licensee shall provide a full statement of the escrow account, setting forth credits to principal and interest for the period and other information requested.

B. Within the ten-day period following a buyer depositing the final payment on an account, the licensee shall send a notice to the seller and the buyer of property, containing a final statement of account, which statement shall disclose at a minimum the following information:

(1) the names of the seller and the buyer on the account;

(2) the address or legal description of real property or a definitive description of the property if it is not real property;

(3) a statement that the account was paid in full;

(4) the amount of the final payment;

(5) the date that the final payment was deposited with the licensee; and

(6) the date that the final payment was or is expected to be disbursed by the licensee. Money shall be disbursed within five days of the money becoming available to the licensee.

C. A copy of the notice required by this section shall be retained by the licensee and shall be available for examination by the director pursuant to Section 58-22-17 NMSA 1978.

**History:** Laws 1983, ch. 135, § 18; 2015, ch. 135, § 6.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided additional requirements for escrow agents in providing notices of final statements on an account; designated the previously undesignated language in the section as Subsection A; in Subsection A, after "escrow agreement", deleted "each" and added "a"; and added new Subsections B and C.

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 58-22-19. Division documents exception to Inspection of Public Records Act.

Division examination reports, financial information contained in licensee applications and renewal applications and information on investigations relating to violations of the Escrow Company Act that do not result or have not yet resulted in administrative, civil or criminal action:

A. are not public records subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978];

B. may be disclosed only with the consent of the director; and

C. are not subject to subpoena.

**History:** Laws 1983, ch. 135, § 19; 2015, ch. 135, § 7.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided that certain financial institutions division documents are not public records subject to the Inspection of Public Records Act; deleted the former catchline "Public inspection of applications" and added the new language; deleted the language in the section in its entirety, which related to certain escrow documents open to public inspection, and added a new introductory sentence and new Subsections A through C.

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Low-Income Housing Trust Act, *see* 58-18B-1 NMSA 1978.

## 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 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 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.

**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 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 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 [Chapter 31, Article18 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 appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The commencement of proceedings pursuant to 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; 1998, ch. 55, § 60; 1999, ch. 265, § 64.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

**The 1998 amendment,** effective September 1, 1998, rewrote Subsection A and in Subsection B, substituted "pursuant to" for "under".

## 58-22-30. Exemption from authority of superintendent of regulation and licensing.

The responsibilities and authority of the director under the Escrow Company Act are hereby explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 135, § 30; 2015, ch. 135, § 8.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided that the director of the financial institutions division is exempt from the authority of the superintendent of regulation and licensing; in the catchline, after "authority of", deleted "secretary of commerce and industry" and added "superintendent of regulation and licensing"; at the beginning of the sentence, after "authority of the director", deleted "of the financial institutions division", after "authority of the", deleted "secretary of commerce and industry" and added "superintendent of regulation and licensing", and after "Section", deleted "9-2-5" and added "9-16-6".

**Temporary provisions.** — Laws 2015, ch. 135, § 9 provided that an escrow company licensed pursuant to the Escrow Company Act that, prior to the effective date of Laws 2015, ch. 135, §§ 1 to 8 (July 1, 2015), was not required to file a surety or other bond with the director of the financial institutions division of the regulation and licensing department shall have until January 1, 2016 to comply with the provisions of Section 58-22-10 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Section 58-22-11 NMSA 1978 was repealed in 1986.

## 58-22-32. Status of preexisting escrows.

Nothing contained in the Escrow Company Act 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.

**ANNOTATIONS**

**Compiler's notes.** — 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 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.

**ANNOTATIONS**

**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.

Chapter 58, Article 23 NMSA 1978 may be cited as the "Hospital Equipment Loan Act".

**History:** Laws 1983, ch. 290, § 1; 1992, ch. 41, § 6.

**ANNOTATIONS**

**The 1992 amendment,** effective May 20, 1992, substituted "Chapter 58, Article 23 NMSA 1978" for "This 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 person that:

(1) is licensed by the department of health to provide health-related services, assisted living support or long-term care;

(2) provides health-related research; or

(3) is properly accredited or certified and eligible to receive medicare or medicaid reimbursement for all or part of its activities providing mental health services, developmental disabilities services or related specialized support to or on behalf of persons or a defined group of persons;

F. "health-related equipment" means any real or personal property, instrument, service or operational necessity that 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 that 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; 2002, ch. 25, § 6.

## ANNOTATIONS

**The 2002 amendment,** effective May 15, 2002, substituted "person that" for "entity providing health-related services which" in Subsection E; added the paragraph E(1) designation; in Paragraph E(1) deleted "health and environment department and all customary and necessary supporting services" and substituted the present language;

added Paragraphs E(2) and E(3); and made minor stylistic changes in Subsections F and G.

## 58-23-4. Additional definitions.

As used in the Hospital Equipment Loan Act in connection with refinancing, renewing, funding, refunding or paying any bonds, "bonds" also means any bond, note, certificate or other evidence of indebtedness previously issued or incurred by any health facility, municipality, county, special hospital district or other political subdivision to refinance, finance or aid in financing property that would have constituted health-related equipment had it been originally financed by the council.

**History:** 1978 Comp., § 58-23-4, enacted by Laws 1992, ch. 41, § 7.

## 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, except that the council is a state agency and instrumentality for the purposes of Article 8, Section 3 of the constitution of New Mexico.

**History:** Laws 1983, ch. 290, § 5; 1986, ch. 60, § 6; 1987, ch. 49, § 2; 2006, ch. 90, § 2; 2006, ch. 92, § 2.

**ANNOTATIONS**

**2006 amendments.** — Laws 2006, ch. 90, § 2 and Laws 2006, ch. 92, § 2, effective May 17, 2006, enact identical amendments to 58-23-5 NMSA 1978 that provide in Subsection D that the council is a state agency or instrumentality for the purposes of Article 8 of the constitution of New Mexico. Pursuant to 12-1-8 NMSA 1978, this section is set out as amended by Laws 2006, ch. 92, §2.

**Applicability.** — Laws 2006, ch. 92, § 4 makes the provisions of this act applicable to property tax years beginning on or after January 1, 2006.

## 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.

## 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.

## 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 [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.

## 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 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.

## 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 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.

## 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.

## 58-23-26. Deposit of money.

All money of the council, except as otherwise authorized or provided in the Hospital Equipment Loan Act 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.

## 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.

## 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.

## 58-23-29. Exemption from taxation; assets to state upon dissolution.

A. All property acquired or held by the council under the Hospital Equipment Loan Act, 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.

B. All health-related equipment purchased, acquired, leased, financed or refinanced with the proceeds of bonds issued under the Hospital Equipment Loan Act is exempt from property taxation for as long as the participating health facility remains liable for any amount under any lease, loan or other agreement securing the bonds, but not to exceed thirty years from the date the bonds were issued for the health-related equipment.

**History:** Laws 1983, ch. 290, § 29; 1987, ch. 49, § 8; 2006, ch. 90, § 3; 2006, ch. 92, § 3.

**ANNOTATIONS**

**2006 amendments.** — Laws 2006, ch. 90, § 3 and Laws 2006, ch. 92, § 3, effective May 17, 2006, enact identical amendments to 58-23-29 NMSA 1978 that add Subsection B to provide a property tax exemption for health-related equipment. Pursuant to 12-1-8 NMSA 1978, this section is set out as amended by Laws 2006, ch. 92, §3.

**Applicability.** — Laws 2006, ch. 92, § 4 makes the provisions of this act applicable to property tax years beginning on or after January 1, 2006.

## 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.

## 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.

# 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.

**ANNOTATIONS**

**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 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:

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 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 [10-9-1 to 10-8-8 NMSA 1978].

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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

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 and 9-16-5 NMSA 1978.

## 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, 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;

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.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, now of 1986, *see* 26 U.S.C. § 1.

## 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 review by an interim committee designated by the New Mexico legislative council, 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.

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; 2003, ch. 223, § 2.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "review by an interim committee designated by the New Mexico legislative council" for "approval of the industrial and agricultural finance authority oversight committee" near the beginning of Subsection A.

## 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; 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.

**History:** Laws 1983, ch. 300, § 12.

**ANNOTATIONS**

**Cross references.** — For Section 103(k) of the Internal Revenue Code, now of 1986, *see* 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 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 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, 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.

**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 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 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, 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.

**ANNOTATIONS**

**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 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:

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.

**ANNOTATIONS**

**Cross references.** — For Sections 3(h) and 5 of the Federal Deposit Insurance Act, *see* 12 U.S.C. §§ 1813(h) and 1815 respectively.

For the Edge Act (Federal Reserve Banks), *see* 12 U.S.C. § 611.

## 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 1, 1989; provided, however, until July 1, 1992, if a domestic depository institution is to be so acquired, the 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

B. 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; 1996, ch. 2, § 13.

**ANNOTATIONS**

**Cross references.** — For the Interstate Bank Acquisition Act, *see* 58-1B-1 NMSA 1978.

For the Interstate Bank Branching Act, *see* 58-1C-1 NMSA 1978.

**The 1996 amendment,** effective June 1, 1996, deleted former Subsection B relating to interstate acquisitions of domestic depository institutions and redesignated former Subsection B as Subsection C.

## 58-26-5. Interstate acquisitions; notice.

At least ninety days prior to any interstate acquisition permitted by the Interstate Depository Institutions Act, 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 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 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.

Chapter 58, Article 27 NMSA 1978 may be cited as the "Border Development Act".

**History:** Laws 1991, ch. 131, § 1; 2009, ch. 44, § 1.

**ANNOTATIONS**

**Cross references.** — For additional powers conferred on counties with respect to projects, *see* 4-59-4 NMSA 1978.

For the duties and general powers of the secretary of economic development, *see* 9-15-6 NMSA 1978.

For New Mexico trade promotion, *see* 9-15-28 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, added the chapter and article reference to the act.

## 58-27-2. Legislative purpose.

By enacting the Border Development Act, 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.

## 58-27-3. Definitions.

As used in the Border Development Act:

A. "authority" means the border authority;

B. "financial assistance" means grants and loans provided for projects to a qualified entity on terms and conditions approved by the authority;

C. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

D. "port of entry" means an international port of entry in New Mexico at which customs services are provided by the United States customs and border protection;

E. "project" means any land or building or any other improvements acquired as a part of a port of entry or associated with a port of entry or to aid commerce in connection with a port of entry, including all real and personal property deemed necessary in connection therewith, whether or not now in existence. A project shall be suitable for use by, or for, one or more of the following:

(1) a port of entry, a foreign trade zone, an inspection station, an emergency response station or any other facilities to be used by any agency or entity of the United States government, by another qualified entity or by any other foreign international state;

(2) an industry for the manufacturing, processing or assembling of any agricultural, mining or manufactured product;

(3) a railroad switching yard, railroad station, bus terminal, airport or other passenger, commuter or mass transportation system or freight transportation system;

(4) a commercial business or other enterprise engaged in storing, warehousing, distributing or selling products of manufacturing, agriculture, mining or related industries, not including facilities designed for the distribution to the public of electricity or gas;

(5) an enterprise in which all or part of the activities of the enterprise involve supplying services to the general public or to governmental agencies or to a specific industry or customer;

(6) any industrial, commercial, agricultural, professional or other business enterprise seeking to occupy office space;

(7) infrastructure development involving acquiring, repairing, improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment, water utilities or solid waste disposal facilities, including acquiring rights of way or water rights;

(8) infrastructure development involving reconstructing, resurfacing, maintaining, repairing or improving existing alleys, streets, roads or bridges or laying off, opening, constructing or acquiring new alleys, streets, roads or bridges, including acquiring rights of way;

(9) any industry that involves any water distribution or irrigation system, including pumps, distribution lines, transmission lines, fences, dams and similar facilities and equipment, including acquiring rights of way; or

(10) fire protection services or equipment or police protection services or equipment;

F. "property" means land, improvements to the land, buildings and 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;

G. "qualified entity" means the state or one of its agencies, instrumentalities, institutions or political subdivisions or the United States or any corporation, department, instrumentality or agency of the federal government;

H. "bond" means any bonds, notes or other obligations; and

I. "bondholder" means a person who is the owner of a bond, regardless of whether the bond is registered.

**History:** Laws 1991, ch. 131, § 3; 1993, ch. 335, § 1; 1995, ch. 192, § 1; 2011, ch. 59, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, added definitions of "financial assistance" and "qualified entity" and included inspection stations, emergency response stations and solid waste disposal facilities to the list of suitable uses of a project.

**The 1995 amendment,** effective June 16, 1995, added subsection C and redesignated former Subsection C as Subsection D; in Subsection D, deleted "any enterprise engaged in the wholesale or retail distribution of water or the collection and the treatment of wastewater, water rights" following "building", and inserted "or associated with a port of entry", rewrote Paragraphs (1) to (5), and added Paragraphs (6) to (10); redesignated former Subsection D as Subsection E; and added Subsections F and G.

**The 1993 amendment,** effective April 8, 1993, in Subsection C, in the introductory language, deleted "or both" following "building", inserted "any enterprise engaged in the wholesale or retail distribution of water or the collection and the treatment of wastewater, water rights", substituted "any other improvements" for "other improvements to land or buildings" and, in Paragraph (4), inserted "manufacturing" and deleted "water" following "gas".

## 58-27-4. Border authority created; membership.

A. The "border authority" is created. The authority is a state agency and is administratively attached to the economic development department.

B. The authority consists of seven voting members, six of whom shall be appointed by the governor. No more than three of those appointed shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The voting members appointed by the governor shall be confirmed by the senate. The lieutenant governor shall serve as a nonvoting ex-officio member. The chair may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The six voting members of the authority appointed by the governor shall be citizens of the state and 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 two members for four years.

**History:** Laws 1991, ch. 131, § 4; 1995, ch. 192, § 2; 2003, ch. 123, § 1.

**ANNOTATIONS**

**Cross references.** — For the Procurement Code, *see* 13-1-28 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003 rewrote Subsection A to such an extent that a detailed comparison is impracticable; in Subsection B, inserted "of those appointed" following "more than three" near the beginning, deleted "department" following "economic development" near the middle and inserted "or the secretary's designee" at the end of the present third sentence.

**The 1995 amendment,** effective June 16, 1995, added the third sentence in Subsection A; in Subsection B, substituted "seven" for "thirteen", substituted the language beginning "six of whom" and ending "on authority matters" for "six ex officio and seven appointed", and deleted "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" following "on authority matters"; deleted former Subsections C, D and E relating to appointment of members and ex officio members; redesignated former Subsection F as Subsection C, and in Subsection C, substituted "six" for "seven", inserted "shall be citizens of the state and" following "governor", and substituted "two members for four years" for "three members for four years".

## 58-27-5. Authority; members' compensation.

Appointed voting members of the authority 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; 1995, ch. 192, § 3.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "Members and Advisors" following "Authority" in the section heading, and substituted "Appointed voting members of the authority" for "Members and advisors to the border authority whether voting or nonvoting" at the beginning of the section.

## 58-27-6. Officers of the authority.

The secretary of economic development shall serve as the chairman of the authority. Authority members shall elect any other officers from the membership that the authority determines appropriate.

**History:** Laws 1991, ch. 131, § 6; 1992, ch. 46, § 1; 1995, ch. 192, § 4.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "The secretary of economic development shall serve as the chairman of the authority" for "The governor shall appoint the chairman of the authority".

**The 1992 amendment,** effective May 20, 1992, deleted "from among his appointees" following "authority" at the end of the first sentence.

## 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.

## 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.

## 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.

## 58-27-10. Powers and duties of authority.

A. The authority shall:

(1) advise the governor and the governor's staff and the New Mexico finance authority oversight committee 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, 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;

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for projects or programs or to secure port-of-entry approval by the United States and the Mexican governments and other appropriate governmental agencies; and

(10) administer the border project fund and projects financed with expenditures from that fund pursuant to Section 58-27-25.1 NMSA 1978.

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other aid in any form for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions, including acquisition by purchase or gift of any real property necessary for port-of-entry facilities, acquisition by purchase, gift or construction of any facilities or other real or personal property necessary for a port of entry and filing all necessary documents and follow-up of such filings with appropriate agencies;

(4) as part of a port of entry, give or transfer real property, facilities and improvements owned by the authority to the United States government;

(5) acquire by construction, purchase, gift or lease projects that shall be located within the state;

(6) sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

(7) enter into agreements with the federal government for the operation, improvement and expansion of federal border facilities;

(8) enter into joint ventures, partnerships or other business relationships with qualified entities and private persons for the joint funding and operation of projects;

(9) issue revenue bonds and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and to secure the payment of the bonds or repayment of a loan;

(10) expend funds or incur debt for the improvement, maintenance, repair or addition to property owned by the authority, the state or the United States government; and

(11) refinance a project.

C. In exercising its authority, the authority shall not incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt.

**History:** Laws 1991, ch. 131, § 10; 1993, ch. 335, § 2; 1995, ch. 192, § 5; 2003, ch. 123, § 2; 2009, ch. 44, § 2; 2011, ch. 59, § 2.

**ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, required the authority to administer the border project fund and projects financed by the fund and permitted the authority to enter into agreements with the federal government to operate, improve and expand federal border facilities and into business relationships with qualified entities to fund and operate projects.

**The 2009 amendment,** effective June 19, 2009, added Paragraph (8) of Subsection B; and in Subparagraph C, deleted Paragraph (1) which prohibited the operation of a project as a business or in any manner except as lessor, and deleted Paragraph (3) which prohibited the expenditure of funds or incurring of debt for the benefit of property not owned by the authority.

**The 2003 amendment,** effective June 20, 2003 substituted "may" for "shall be authorized to also" following "The authority" at the beginning of Subsection B; substituted "rules" for "regulations" following "adopt" at the beginning of Subsection B(2); and added Subsections B(5) through B(8) and added Subsection C.

**The 1995 amendment,** effective June 16, 1995, substituted "shall" for "may" following "authority" in Subsection A, inserted ", and the New Mexico finance authority oversight committee" in Paragraph (1), and inserted "for projects, programs or" following "advisable" in Paragraph (9); in Subsection B, substituted "shall be authorized to" for "may", substituted "grants of funds, property, financial or other aid in any form" for "funds" in Paragraph (1), added the language beginning "acquisition by purchase" and ending "port of entry and" in Paragraph (3), and added Paragraph (4).

**The 1993 amendment,** effective April 8, 1993, substituted "governments" for "government" in Subsection A(9).

## 58-27-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 123, § 7 repeals 58-27-11 NMSA 1978, being Laws 1991, ch. 131, § 11, as amended, relating to the additional powers of the border authority, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 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 executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority.

C. The authority may contract with any other competent private or public organization or individual to assist in the fulfillment of its duties.

**History:** Laws 1991, ch. 131, § 12; 1995, ch. 192, § 7.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, added Subsection B, redesignated former Subsection B as Subsection C, and inserted "or individual" in Subsection C.

## 58-27-13. Location of authority.

The authority shall be located in the New Mexico-Chihuahua border area.

**History:** Laws 1991, ch. 131, § 13.

## 58-27-14. Authority fees and charges.

Unless prohibited by law, the authority may fix, alter, charge and collect tolls, fees or rentals and may impose any other charges for the use of or for services rendered by any authority facility, program or service.

**History:** Laws 1991, ch. 131, § 14; 1995, ch. 192, § 8; 2003, ch. 123, § 3.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003 substituted "Unless prohibited" for "Under such terms and conditions as may be prescribed" at the beginning of the section.

**The 1995 amendment,** effective June 16, 1995, inserted "or" between "fees" and "rentals", added "program or service" at the end of the first sentence, and deleted the former second sentence which read "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."

## 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 Private Activity Bond Act [6-20-1 to 6-20-11 NMSA 1978].

B. The authority may issue revenue bonds for authority projects. With the exception of the port of entry or foreign trade zone, the border authority shall not be authorized to issue bonds for projects for a qualified entity, as defined in Section 6-21-3 NMSA 1978. 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, premiums and commissions that the authority may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

**History:** Laws 1991, ch. 131, § 15; 1995, ch. 192, § 9.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "New Mexico" preceding "Private Activity Bond Act" in Subsection A, inserted the second sentence in Subsection B, and deleted "attorneys' fees, engineering fees, and architects' fees and" following "expenses" and substituted "that" for "which" following "commissions" in Subsection C.

## 58-27-16. Authority revenue bonds; terms.

A. Authority revenue bonds:

(1) may have interest, appreciated principal value or any part thereof payable at intervals determined by the authority;

(2) may be subject to prior redemption or mandatory redemption at the authority's option at the time and upon the terms and conditions with or without the payment of a premium as may be provided by resolution of the authority;

(3) may mature at any time not exceeding thirty years after the date of issuance;

(4) 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 determined by the authority;

(5) may be in registered or bearer form or in book entry form through the facilities of a securities depository either as to principal or interest or both;

(6) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that conforms to the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

(7) may be sold at public or negotiated sale.

B. Subject to the approval of the state board of finance, the authority may enter into other financial arrangements if it determines that the arrangements will assist the authority.

**History:** Laws 1991, ch. 131, § 16; 1995, ch. 192, § 11; 2003, ch. 123, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003 inserted "A." preceding "Authority revenue bonds" at the beginning of the section; redesignated former Subsections A through G as present Paragraphs A(1) through A(7); and inserted "B." preceding the former last paragraph in the section; and in present Subsection B, inserted "the authority" following "of finance" near the beginning, substituted "it" for "the authority" following "arrangements if" near the middle and deleted "in more effectively managing its interest costs or in more effectively managing its interest rate exposure" at the end.

**The 1995 amendment,** effective June 16, 1995, deleted "Border" preceding "Authority" in the section heading, added "or mandatory redemption" in Subsection B; inserted "in" preceding "registered" and "or in book entry form through the facilities of a securities depository" following "form" in Subsection E, substituted "conforms to" for "does not exceed the maximum rate premitted by" in Subsection F, and added Subsection H.

## 58-27-16.1. Authority loans; terms.

If the authority borrows money from a financial institution or other entity:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the principal amount of the loan shall not exceed the fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978]; and

D. the loan shall be subject to the approval of the state board of finance.

**History:** 1978 Comp., § 58-27-16.1, enacted by Laws 1993, ch. 335, § 4; 1995, ch. 192, § 12; 2003, ch. 123, § 5.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, purported to amend this section but made no change to the section.

**The 1995 amendment,** effective June 16, 1995, added "or other entity" at the end of the introductory language, deleted former Subsections C and D relating to a limitation on the maximum rate of interest and aquisition of property in fee simple, and redesignated former Subsections E and F as Subsections C and D.

## 58-27-16.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 192, § 22, repeals 58-27-16.2 NMSA 1978, as enacted by Laws 1993, ch. 335, § 9, providing for the use of proceeds from borrowed funds, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

## 58-27-16.3. Bonds secured by trust indenture.

The bonds may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the project revenues or other funds. The authority may provide in a trust indenture or otherwise for the payment of the proceeds of the bonds and the project revenue to the trustee under the trust indenture or other depository for disbursement with any safeguards the authority determines are necessary.

**History:** Laws 1995, ch. 192, § 10.

## 58-27-17. Authority revenue bonds and borrowed funds not general obligations; authorization; authentication.

A. Revenue bonds or refunding revenue bonds issued as authorized in the Border Development Act and other loans to the authority are:

(1) not general obligations of the state, any other agency of the state or of the authority; and

(2) payable only from the proper pledged revenues. Each bond or loan shall state that it is payable solely from the proper pledged revenues and that the bondholders or lenders may not look to any other fund for the payment of the interest and principal of the bond or the loan.

B. Revenue or refunding bonds or loans 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 or loans 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. Bonds, notes or other certificates of indebtedness of the authority 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; 1993, ch. 335, § 5; 1995, ch. 192, § 13.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, in Paragraph (1) of Subsection A, inserted "general" preceding "obligations" and deleted "general obligations" preceding "of the authority"; in Paragraph (2) of Subsection A, substituted "payable" for "collectible" and deleted "and" following the first "revenues".

**The 1993 amendment,** effective April 8, 1993, deleted "Border" preceding "Authority" and inserted "and borrowed funds" in the catchline; in Subsection A, inserted "and other loans to the authority" in the introductory language, "general obligations" in Paragraph (1), and "or loan", "or lenders", and "or the loan" in Paragraph (2); inserted "or loans" in Subsection B; and, in Subsection C, inserted "or loans" in the first sentence and substituted "Bonds, notes or other certificates of indebtedness of the authority" for "The bonds" in the second sentence.

## 58-27-18. Security for bonds, notes or certificates of indebtedness.

The principal of and interest on any bonds, notes or other certificates of indebtedness issued pursuant to the provisions of the Border Development Act shall be secured by a pledge of the revenues out of which the bonds shall be made payable, may be secured by a mortgage, deed of trust note or other certificate of indebtedness 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 any lease or installment sale agreement or other fees or revenues with respect to the project. The resolution of the authority under which bonds, notes or certificates of indebtedness are authorized to be issued or any mortgage, notes or certificates of indebtedness may contain any agreement and provisions customarily contained in instruments securing bonds, notes or certificates of indebtedness, including, without limiting the generality of the foregoing, provisions

respecting the fixing and collection of all revenues from any project covered by the proceedings or mortgage, the terms to be incorporated in any lease or installment sale agreement with respect to the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues with respect to the project and the rights and remedies available in the event of default to the bondholders, to the trustee under a mortgage, deed of trust or trust indenture or to a lender, all as the authority deems advisable and not in conflict with the provisions of the Border Development Act; provided, however, that in making the 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 from the project 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 the bonds, any note or other certificate of indebtedness may set forth the procedure and remedies in the event of default in payment of the principal of or the interest on the bond, note or certificate of indebtedness 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; 1993, ch. 335, § 6; 1995, ch. 192, § 14.

**ANNOTATIONS**

**Cross references.** — For the state board of finance, *see* 6-1-1 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, in the first sentence, inserted "deed of trust" and substituted "any lease or installment sale agreement or other fees or revenues with respect to" for "the lease or income of"; in the second sentence, substituted "any lease or installment sale agreement with respect to" for "the lease of", and added "deed of trust or trust indenture" following "under a mortgage"; and made minor stylistic changes throughout the section.

**The 1993 amendment,** effective April 8, 1993, inserted "notes or other certificates of indebtedness" in the catchline and throughout the section, inserted "or to a lender" in the second sentence, and made stylistic changes throughout the section.

## 58-27-19. Requirements respecting resolution and lease.

A. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find the following in the resolution approving the issuance of the bonds or the closing of the loan:

(1) if the resolution is for the issuance of bonds, the principal and interest of the bonds to be issued shall be fully secured by a lease agreement or installment sale agreement executed by an agency of the United States government, by a state or local public agency or institution, 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 chartered financial institution approved for this purpose by the state board of finance or by a bond insurance policy issued by an 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 or the loan proposed to be obtained to finance the 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 or the repayment of the loan and, in either case, the maintenance of the project. Unless the terms under which the project is to be leased or sold provide that the lessee or purchaser shall maintain the project and carry all proper insurance with respect to the project, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. If the resolution is for the issuance of bonds, 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 the bonds or the closing of the loan, the authority may 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 determinations and findings pursuant to provisions of Subsection A of this section, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the 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.

D. With prior approval of the state board of finance, the authority may borrow funds to purchase, lease, acquire or develop water rights, a water system or a wastewater collection and treatment system, provided the authority does not obligate itself or the state to any debt or obligation that cannot be paid from revenues derived from the project.

E. Upon prior approval of the state board of finance, the authority may obtain a commitment from a financial institution to borrow money; provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the

requirements of the Border Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan.

**History:** Laws 1991, ch. 131, § 19; 1993, ch. 335, § 7; 1995, ch. 192, § 15; 2003, ch. 123, § 6.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003 substituted "to the project" for "thereto" near the middle of Subsection A(3); and inserted "pursuant to provisions of Subsection A of this section" near the end of Subsection C.

**The 1995 amendment,** effective June 16, 1995, in Paragraph (1) of Subsection A, substituted "shall be fully secured by a lease agreement or installment sale agreement" for "will be fully and unconditionally guaranteed by a lease agreement", inserted "by any state or local public agency or institution" following "government", substituted "a chartered financial institution approved for this purpose by the state board of finance" for "a financial institution", and inserted "by a bond insurance policy issued by an" preceding "insurance company"; in Paragraph (3) of Subsection A, inserted "or sold" following "leased" and "or purchaser" following "lessee"; substituted "may lease" for "shall lease" in Subsection C; and rewrote Subsection D.

**The 1993 amendment,** effective April 8, 1993, in Subsection A, inserted "or the closing of a loan" twice, "if the resolution is for the issuance of bonds" at the beginning of Paragraph (1), "or the loan proposed to be obtained" in Paragraph (2), and "or the repayment of the loan and, in either case" in Paragraph (3), and made stylistic and related changes; inserted "If the resolution is for the issuance of bonds" at the beginning of Subsection B; in Subsection C, inserted "or the closing of the loan" in the introductory paragraph, and "or on the loan to be obtained" in Paragraph (1), and made a stylistic change; and added Subsections D and E.

## 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 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 are not 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, 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; 1995, ch. 192, § 16.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "are not" for "shall not be" following "such proceeds" in the introductory pargraph, and deleted "that may be constructed" following "project" in Subsection A.

## 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 may be issued separately or issued in combination in one series or more.

**History:** Laws 1991, ch. 131, § 21.

## 58-27-22. Authority refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the Border Development Act 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 that 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 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 authority 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. 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 in connection with which the authority 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 58-27-23 NMSA 1978.

**History:** Laws 1991, ch. 131, § 22; 1995, ch. 192, § 17.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, deleted "Border" at the beginning of the section heading; deleted "or times" following "time" in Subsection B; in Subsection C, substituted "authority" for "municipality", deleted "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 certificate of deposit" following "federal deposit insurance corporation", deleted "or dates" following "redemption date", and substituted "authority" for "municipality"; and made minor stylistic changes throughout the section.

## 58-27-23. Authority refunding 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 and upon such terms and conditions, with or without the payment of premiums, as may be provided by the resolution;

C. may be serial in form and maturity, may consist of a single bond payable in one or more installments, may be in both forms or may be in 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; 1995, ch. 192, § 18.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, substituted "Authority refunding revenue bonds" for "Refunding border authority revenue bonds" in the section heading; in Subsection B, deleted "or times" following "time" and "premium or" preceding "premiums"; and in Subsection C, deleted "or" following "maturity", inserted "may be in both forms" following "installments", and deleted "such" preceding "other forms".

## 58-27-24. Exemption from taxation.

Bonds authorized pursuant to the Border Development Act and the income from those bonds, all mortgages or other security instruments executed as security for those bonds, all lease and installment purchase agreements made pursuant to the provisions of that act and revenue derived from any lease or sale by the authority shall be exempt from all taxation by the state or any subdivision thereof.

**History:** Laws 1991, ch. 131, § 24; 1995, ch. 192, § 19.

**ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, inserted "and installment purchase" preceding "agreements", substituted "of that act" for "hereof", and deleted "of New Mexico" following "state".

## 58-27-25. Fund created.

A. The "border authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Border Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Except as provided in Subsections E and F of this section, money received by the authority shall be deposited in the border authority fund, including but not limited to:

(1) the proceeds of bonds issued by the authority or from any loan to the authority made pursuant to the Border Development Act;

(2) interest earned upon money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) lease or rental payments received by the authority from any project and distributed to the fund pursuant to Subsection F of this section;

(6) all other money received by the authority from any public or private source except that, if the public or private source expresses an intent that the money be used for projects pursuant to Section 58-27-25.1 NMSA 1978, then the money shall be deposited into the border project fund and not the border authority fund; and

(7) tolls, fees, rents or other charges imposed and collected by the authority and distributed to the fund pursuant to Subsection F of this section.

C. Disbursements from the border authority 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 the executive director's designee pursuant to the Border Development Act; provided that in the event the position of executive director is vacant, vouchers may be signed by the chair of the authority.

D. Earnings on the balance in the border authority fund shall be credited to the fund. In addition, in the event that the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on that money during the period commencing with the deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

E. All proceeds from issuing revenue bonds shall be placed in trust with a chartered bank to be dispersed by the trustee, pursuant to the terms set forth in the bonding resolution adopted by the authority.

F. Ten percent of the tolls, fees, rents, lease payments and other charges that are imposed, collected and received by the authority shall be deposited into the border project fund and the remaining ninety percent shall be deposited into the border authority fund; provided that the money deposited into the border authority fund shall be expended only as appropriated and in accordance with a budget approved by the state budget division of the department of finance and administration.

**History:** Laws 1991, ch. 131, § 25; 1993, ch. 335, § 8; 1995, ch. 192, § 20; 2011, ch. 59, § 3.

## ANNOTATIONS

**The 2011 amendment,** effective July 1, 2011, required that money received from public and private sources be deposited in the border project fund if the grantor of the funds intended that funds be used for projects pursuant to Section 58-27-25.1 NMSA 1978; eliminated the restriction that excess money collected by the authority be expended only as provided in an approved budget; and required that ten percent of money collected by the authority be deposited into the border project fund and that the remaining ninety percent be deposited into the border authority fund.

**The 1995 amendment,** effective June 16, 1995, added "Except as provided by Subsection E of this section" at the beginning and "border authority" near the beginning of Subsection B, inserted "and collected" following "imposed" in Paragraph (7) of Subsection B; in Subsection C, inserted "and collected" following the first "imposed", inserted "imposed and" preceding "collected for an approved project", inserted "and for all debt service and reserves for the bonds that financed the project", added "state" preceding "budget division" and "border authority" preceding "fund"; in Subsection D, inserted "border authority" preceding the first "fund", substituted "in the event that" for "when"; and added Subsection E.

**The 1993 amendment,** effective April 8, 1993, added Subsections B and D and the designations for Subsections A and C; in Subsection A, inserted the second sentence, substituted "Development" for "Authority" and added "Money in " at the beginning of the fourth sentence; and deleted "for the purpose of paying the cost of activities conducted" following "designee" in the second sentence of Subsection C.

## 58-27-25.1. Border project fund; created; purpose; expenditures.

A. The "border project fund" is created in the state treasury.

B. The border project fund shall consist of:

(1) payments of principal and interest on loans for projects;

(2) the portion of the tolls, fees, rents, lease payments or other charges imposed, collected and received by the authority and distributed to the fund pursuant to Subsection F of Section 58-27-25 NMSA 1978;

(3) money from public or private sources and deposited into the fund pursuant to Paragraph (6) of Subsection B of Section 58-27-25 NMSA 1978;

(4) money appropriated by the legislature or distributed or otherwise allocated to the fund;

(5) the proceeds of severance tax bonds appropriated to the fund for projects; and

(6) income from investment of the fund, which shall be credited to the border project fund.

C. Except for severance tax bond proceeds required to revert to the severance tax bonding fund, balances in the border project fund at the end of a fiscal year shall not revert to any other fund.

D. The border project fund may consist of subaccounts as determined to be necessary by the authority.

E. The border project fund is appropriated to the authority for the following purposes:

(1) providing financial assistance to qualified entities for projects;

(2) costs incurred in the operation of a port of entry or related project pursuant to a joint powers agreement entered into with the federal government; or

(3) costs incurred in the joint funding or operation of a project as part of a joint venture, partnership or other business relationship with a qualified entity or private person.

F. The authority may establish procedures and adopt rules as required to:

(1) administer the border project fund;

(2) originate financial assistance for projects selected by the authority; and

(3) govern the process through which qualified entities may apply for financial assistance from the border project fund.

**History:** 1978 Comp., § 58-27-25.1, enacted by Laws 2011, ch. 59, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 59, § 5 made Laws 2011, ch. 59, § 4 effective July 1, 2011.

## 58-27-26. New Mexico finance authority oversight committee; oversight powers and duties.

The New Mexico finance authority oversight committee shall serve as the oversight committee to the border authority. The New Mexico finance authority oversight committee shall:

A. monitor and oversee the operation of the border authority;

B. meet on a regular basis to receive and review reports from the border authority on implementation of the provisions of the Border Development Act and to review and approve regulations proposed for adoption pursuant to that act;

C. monitor and provide assistance and advice on the project financing program of the border authority;

D. oversee and monitor state and local government capital planning and financing and take testimony from state and local officials on border and port of entry capital needs;

E. provide advice and assistance to the border authority and cooperate with the executive branch of state government and local governments on planning, setting priorities for and financing of border and port of entry capital projects;

F. undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing border and port of entry capital financing in New Mexico; and

G. report its findings and recommendations, including recommended legislation or necessary changes, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year.

**History:** Laws 1995, ch. 192, § 21.

**ANNOTATIONS**

**Cross references.** — For New Mexico finance authority oversight committee, *see* 6-21-30 NMSA 1978.

# ARTICLE 28
# Land Title Trust Funds

## 58-28-1. Short title.

Sections 1 through 8 [58-28-1 to 58-28-8 NMSA 1978] of this act may be cited as the "Land Title Trust Fund Act".

**History:** Laws 1997, ch. 118, § 1.

**ANNOTATIONS**

**Cross references.** — For the Uniform Management of Institutional Funds Act, *see* 46-9-1 NMSA 1978.

**Emergency clauses.** — Laws 1997, ch. 118, § 11 makes the Land Title Trust Fund Act effective immediately. Approved April 9, 1997.

## 58-28-2. Definitions.

As used in the Land Title Trust Fund Act:

A. "committee" means the land title trust fund advisory committee;

B. "depository institution" means any bank, savings and loan association or credit union authorized by federal or state law to do business in New Mexico and insured by the federal deposit insurance corporation or the national credit union administration;

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

D. "eligible organization" means a nonprofit corporation whose primary purpose is to provide affordable housing and that is qualified for tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; a unit of state or local government dealing with housing; a local or regional housing authority or a tribal agency dealing with housing;

E. "fund" means the land title trust fund;

F. "low-income persons" means a household consisting of a single individual, a family or unrelated individuals living together if the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development, and as adjusted for family size or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

G. "pooled interest-bearing transaction account" means a trust or escrow account made available by a depository institution in the form of a negotiable order of withdrawal account, sweep account or other interest-bearing account;

H. "title company" means a title insurer or title insurance agent as defined in and regulated pursuant to the New Mexico Title Insurance Law [Chapter 59A, Article 30 NMSA 1978]; and

I. "trustee" means the New Mexico mortgage finance authority.

**History:** Laws 1997, ch. 118, § 2.

**ANNOTATIONS**

**Cross references.** — For Section 501(c)(3) of the federal Internal Revenue Code, *see* U.S.C. § 501(c)(3).

**Emergency clauses.** — Laws 1997, ch. 118, § 11 makes the Land Title Trust Fund Act effective immediately. Approved April 9, 1997.

## 58-28-3. Land title trust fund created.

The "land title trust fund" is created. The New Mexico mortgage finance authority shall be the trustee for the fund. The trustee shall deposit in the fund money received by it pursuant to the Low-Income Housing Trust Act [58-18B-1 to 58-18B-10 NMSA 1978].

**History:** Laws 1997, ch. 118, § 3; 1999, ch. 41, § 5.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, added the last sentence.

**Appropriations.** — Laws 1999, ch. 41, § 7, effective July 1, 1999, provides that on July 1, 1999, the balance in the low-income housing trust fund shall be transferred and deposited in the land title trust fund.

## 58-28-4. Trust accounts; escrow accounts; pooled interest-bearing transaction accounts; disposition of earned interest on certain accounts.

A. A title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico may maintain one or more pooled interest-bearing transaction accounts and may deposit customer funds into those accounts, except for funds required to be deposited into interest-bearing accounts or investments under instructions from one or more of the parties to a transaction that provide for the payment of interest to be earned on the deposited funds to a person other than the title company. A pooled interest-bearing transaction account established pursuant to the provisions of this section shall be maintained in the name of the title company, but the trustee shall be named and shown as the beneficial owner of the account income or interest. A title company maintaining one or more pooled interest-bearing transaction accounts shall not be paid or receive any interest earned on funds deposited in the accounts except for the purpose of remitting net earned interest to the trustee pursuant to the provisions of this section.

B. The interest earned on customer funds deposited in a pooled interest-bearing transaction account pursuant to the requirements of Subsection A of this section, net of any service charges and fees that a depository institution charges to regular, non-title company depositors and net of any reasonable charge for preparation and transmittal of any required report pursuant to the provisions of Subsection F of this section, shall be remitted monthly or quarterly either directly to the fund or to the title company for its remittance to the fund. Alternatively, the depository institution may credit the title company account with the net interest earned either monthly or quarterly. Interest accrued after deducting the allowable charges and fees shall be treated as interest earned by the trustee and reported as such by the depository institution.

C. The provisions of this section shall not change existing duties or obligations of a title company under other laws to safeguard and account for funds held for customers.

D. Funds in each pooled interest-bearing transaction account shall be subject to withdrawal upon request and without delay, subject only to the notice period the depository institution is required to observe by law or rule.

E. The rate of interest payable on a pooled interest-bearing transaction account shall not be less than the rate customarily paid by the depository institution to regular, non-title company depositors for similar accounts. Interest shall be computed in accordance with the depository institution's standard accounting practice. Higher rates offered by the depository institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the title company on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal, subject only to the notice period the depository institution is required to observe by law or rule.

F. A depository institution or title company making a remittance of interest to the fund shall at the time of the remittance transmit a report to the trustee for each account from which remittance is made showing:

(1) the name of the title company maintaining the account from which remittance is made;

(2) the rate of interest used to compute the earned interest and the amount of earned interest;

(3) the amount, if any, of depository institution service charges and fees deducted and any charge for the preparation and transmittal of the report; and

(4) the account balance as of the ending date of the reporting period.

G. If the depository institution remits to the title company or credits the title company account, it shall make the remittance or credit no later than ten days after the statement cutoff for that account. The title company shall remit to the fund and shall send the report with the remittance no later than thirty days after receipt of the remittance or credit by the depository institution.

H. Remittances to the fund shall be made at least quarterly, no later than ten days after the statement cutoff for that account if made by the depository institution and no later than thirty days after receipt of remittance or credit from the depository institution if made by the title company.

I. The trustee shall adopt and promulgate rules regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act and the Low-Income Housing Trust Act [58-18B-1 to 58-18B-10 NMSA 1978].

**History:** Laws 1997, ch. 118, § 4; 1999, ch. 41, § 6; 2003, ch. 304, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, substituted "rule" for "regulation" throughout the section; and in Subsection I, substituted "trustee" for "division" following "The" near the beginning and deleted "and regulations" following "promulgate rules" near the middle.

**The 1999 amendment,** effective July 1, 1999, added "and the Low-Income Housing Trust Act" at the end of Subsection I.

## 58-28-5. Use of money; eligible activities.

A. Money from the fund and other sources may be used to finance in whole or in part any loans or grant projects that will provide housing for low-income persons and for other uses specified in this section. Money deposited into the fund may be used annually as follows:

(1) no more than five percent of the fund shall be used for expenses of administering the fund;

(2) no less than twenty percent of the fund shall be invested in a permanent capital fund, the interest on which may be used for purposes specified in this section;

(3) no less than fifty percent of the fund shall be allocated to eligible organizations to make housing more accessible to low-income persons;

(4) no more than ten percent of the fund may be allocated for use to provide scholarships for New Mexico high school graduates and high school equivalency credential recipients at New Mexico public post-secondary educational institutions under a program approved by the trustee under the administration of a nonprofit statewide land title association; and

(5) the remaining balance may be allocated to eligible organizations for other housing-related programs for the benefit of the public as specifically approved by the trustee from time to time.

B. Money in the capital fund authorized in Paragraph (2) of Subsection A of this section may be invested in fully amortizing interest-bearing mortgages secured by real property in New Mexico, the interest on which may be used for purposes specified in this section.

**History:** Laws 1997, ch. 118, § 5; 2003, ch. 304, § 5; 2015, ch. 122, § 21.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, replaced "general equivalency diploma" with "high school equivalency credential" relating to scholarships from the land title trust fund; and in Paragraph (4) of Subsection A, after "the fund may be", deleted "allotted" and added "allocated", after "high school graduates and", deleted "general" and added "high school", and after "equivalency", deleted "diploma" and added "credential".

**The 2003 amendment,** effective June 20, 2003, redesignated the former undesignated paragraph as Subsection A and redesignated former Subsections A through C as present Paragraphs A(1) through A(3), inserted present Paragraph A(4), redesignated former Subsection D as present Paragraph A(5) and added present Subsection B; and substituted "five percent" for "seven percent" near the beginning of present Subsection A(1).

## 58-28-6. Conflict with federal requirements.

If any part of the Land Title Trust Fund Act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the Land Title Trust Fund Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

**History:** Laws 1997, ch. 118, § 6.

**ANNOTATIONS**

**Emergency clauses.** — Laws 1997, ch. 118, § 11 makes the Land Title Trust Fund Act effective immediately. Approved April 9, 1997.

## 58-28-7. Matching funds.

Money from the fund may be used to match federal, local or private money to be used for projects authorized under the Land Title Trust Fund Act.

**History:** Laws 1997, ch. 118, § 7.

**ANNOTATIONS**

**Emergency clauses.** — Laws 1997, ch. 118, § 11 makes the Land Title Trust Fund Act effective immediately. Approved April 9, 1997.

## 58-28-8. Land title trust fund advisory committee created; functions.

A. The "land title trust fund advisory committee" is created. The committee shall consist of seven persons:

(1) the chairman of the trustee or his designee, who shall serve as chairman of the committee;

(2) two representatives of the land title industry appointed by the governor;

(3) one representative of the banking industry and one representative of the real estate industry appointed by the president pro tempore of the senate; and

(4) one representative of the mortgage lending industry and one representative of the real estate industry appointed by the speaker of the house of representatives.

B. Of the first committee members appointed, two shall be appointed for terms of five years, two shall be appointed for terms of four years and two shall be appointed for terms of three years. Thereafter, appointed members shall be appointed for terms of five years. Members shall serve at the pleasure of their respective appointing authorities, and vacancies shall be filled by the appropriate appointing authority. Any member of the committee shall be eligible for reappointment.

C. The committee shall be advisory to the trustee and shall be subject to oversight by the Mortgage Finance Authority Act [Chapter 58, Article 18 NMSA 1978] oversight committee.

D. The committee shall review all project applications and make recommendations to the trustee for funding them. The committee shall not be involved in or advisory to the trustee in matters relating to the investment of the fund.

E. The committee shall adopt and promulgate rules and regulations regarding:

(1) the time, place and procedures of committee meetings;

(2) the procedures for the review of and standards for recommending applications for loans or grant projects; and

(3) the obligations of title companies pursuant to the provisions of the Land Title Trust Fund Act.

**History:** Laws 1997, ch. 118, § 8.

## ANNOTATIONS

**Emergency clauses.** — Laws 1997, ch. 118, § 11 makes the Land Title Trust Fund Act effective immediately. Approved April 9, 1997.

# ARTICLE 29
# Small Business Investment

## 58-29-1. Short title.

Chapter 58, Article 29 NMSA 1978 may be cited as the "Small Business Investment Act".

**History:** Laws 2000, ch. 97, § 3; 2003, ch. 399, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective April 8, 2003, substituted "Chapter 58, Article 29 NMSA 1978" for "Sections 3 through 8 of this act" at the beginning of the section.

## 58-29-2. Purposes.

The purposes of the Small Business Investment Act are to:

A. implement the provisions of Subsection D of Section 14 of Article 9 of the constitution of New Mexico to create new job opportunities by providing capital for land, buildings or infrastructure for facilities to support new or expanding businesses; and

B. otherwise make debt investments and equity investments to create new job opportunities to support new or expanding businesses in a manner consistent with the constitution of New Mexico.

**History:** Laws 2000, ch. 97, § 4; 2003, ch. 399, § 5.

**ANNOTATIONS**

**The 2003 amendment,** effective April 8, 2003, added the Subsection A designation, and in Subsection A inserted the reference to Subsection D of Section 14 Article 9 and inserted "capital for"; and added Subsection B.

## 58-29-3. Definitions.

As used in the Small Business Investment Act:

A. "board" means the corporation's board;

B. "cooperative agreement" means an agreement entered into by the corporation with a party that:

(1) has demonstrated the capability to provide business assistance to new and expanding businesses; and

(2) is primarily engaged or proposes to primarily engage in the business of providing business services and debt or equity capital to new and expanding businesses;

C. "corporation" means the small business investment corporation;

D. "debt investment" means direct or indirect loans or other debt obligations, the proceeds of which shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives of the state;

E. "equity investment" means direct or indirect ownership interests in New Mexico businesses, the proceeds of which investment shall be used to:

(1) support the acquisition or development of land, buildings or infrastructure;

(2) create job opportunities; or

(3) otherwise enhance the economic development objectives of the state;

F. "fund" means the small business investment corporation fund;

G. "New Mexico business" means a business with its principal office and a majority of its full-time employees located in New Mexico, including a sole proprietorship, partnership, limited partnership, limited liability company or corporation; and

H. "president" means the president of the corporation.

**History:** Laws 2000, ch. 97, § 5; 2003, ch. 399, § 6; 2004, ch. 57, § 2.

## ANNOTATIONS

**The 2004 amendment,** effective May 19, 2004, added new Subsection B, redesignated the following subsections and amended Subsection G to delete the requirement that a New Mexico business have eighty percent of its assets located in New Mexico and to make other minor revisions.

**The 2003 amendment,** effective April 8, 2003, added present Subsections C, D, E and F and redesignated former Subsection C as present Subsection G.

## 58-29-4. Small business investment corporation created; powers of the corporation.

A. The "small business investment corporation" is created as a nonprofit, independent, public corporation. The corporation may:

(1) sue and be sued in all actions arising out of any act or omission in connection with its business or affairs;

(2) enter into any contracts or obligations relating to the corporation that are authorized or permitted by law;

(3) cooperate with small business development centers, regional economic development districts and parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses;

(4) make investments that consider the enhancement of economic development objectives of the state as described in the Small Business Investment Act; and

(5) make, alter or repeal such rules with respect to the corporation's operations as are necessary to carry out its functions and duties in the administration of the Small Business Investment Act.

B. The corporation shall not be considered a state agency for any purpose. The corporation is exempted from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978] and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

C. Except as provided in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], the state shall not be liable for any obligations incurred by the corporation.

**History:** Laws 2000, ch. 97, § 6; 2001, ch. 316, § 1; 2003, ch. 399, § 7.

### ANNOTATIONS

**The 2003 amendment,** effective April 8, 2003, deleted "for the purpose of creating new job opportunities by making equity investments in land, buildings or infrastructure for facilities to support new or expanding businesses" following "public corporation" near the middle of Subsection A; deleted former Paragraphs A(1) and A(2), concerning equity investments and preferred stock, and redesignated the subsequent paragraphs accordingly; added "and parties that have demonstrated abilities and relationships in providing financial services to new and emerging businesses" following "economic development districts" at the end of present Paragraph A(3); added "as described in the Small Business Investment Act; and" following "objectives of the state" at the end of present Paragraph A(4); added present Paragraph A(5); and added "Except as provided in the Tort Claims Act," preceding "the state shall not" at the beginning of Subsection C.

**The 2001 amendment,** effective June 15, 2001, added the language beginning "or indebtedness" to the end of Subparagraph A(1)(a) and Paragraph A(2).

## 58-29-5. Corporation board of directors; appointment; powers.

A. The corporation shall be governed by the board. The corporation's board of directors shall consist of:

(1) the state treasurer or the state treasurer's designee; and

(2) six members appointed by the governor.

B. Each director shall hold office for the length of the director's term in office or until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the six public directors of the board who shall serve at the pleasure of the governor.

D. The governor's appointees to the board shall be public members who have general expertise in small business management, but they shall not be employed by or represent small businesses receiving equity investments from the corporation.

E. No two members of the board shall be employed by or represent the same company or institution.

F. The board shall annually elect a chair from among its members and shall elect those other officers it determines necessary for the performance of its duties.

G. The power to set the policies and procedures for the corporation is vested in the board. The board may perform all acts necessary or appropriate to exercise that power.

H. Public members of the board shall be reimbursed for attending meetings of the board as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

I. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Small Business Investment Act. The directors and the employees of the corporation are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the corporation or affairs relating to it.

J. The board shall conduct an annual audit of the books of accounts, funds and securities of the corporation to be made by a competent and independent firm of

certified public accountants. A copy of the audit report shall be filed with the president. The audit shall be open to the public for inspection.

**History:** Laws 2000, ch. 97, § 7; 2001, ch. 316, § 2; 2003, ch. 399, § 8; 2011, ch. 51, § 3.

**ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, removed the state investment officer as a member of the board of directors.

**The 2003 amendment,** effective April 8, 2003, deleted former Paragraphs A(3), A(4), and A(5), concerning membership of the board, and redesignated former Paragraph A(6) as present Paragraph A(3); rewrote present Paragraph A(3) to the extent that a detailed comparison is impracticable; in Subsection C substituted "six" for "initial four" following "of the senate, the" near the middle and substituted "who shall serve at the pleasure of the governor" for "and the full board shall then elect the president" following "directors of the board" at the end; and deleted former Subsections D and E, concerning initial appointments and terms and removal, and redesignated the subsequent subsections accordingly.

**The 2001 amendment,** effective June 15, 2001, deleted former Paragraph A(1) listing the president of the board; redesignated the subsequent paragraphs; added "or his designee" to the end of current Paragraphs 1 through 5; and inserted "as a non-voting member" to current Paragraph (5).

## 58-29-5.1. Permitted investments.

The corporation may:

A. make equity investments in New Mexico businesses, provided that:

(1) the investments are made pursuant to cooperative agreements;

(2) an equity investment in any one business may not exceed ten percent of the fund; provided, however, that the restrictions of this paragraph shall not apply to equity investments in entities that are parties to cooperative agreements, but shall apply to investments made by such entities pursuant to cooperative agreements; and

(3) the investments represent no more than forty-nine percent of the total equity capital of a business; provided, however, that the restrictions of this paragraph shall not apply to equity investments in entities that are parties to cooperative agreements, but shall apply to investments made by such entities pursuant to cooperative agreements; or

B. make debt investments in New Mexico businesses, provided that:

(1) the investments are made pursuant to cooperative agreements; and

(2) a debt investment in any one business may not exceed ten percent of the fund; provided, however, that the restrictions of this paragraph shall not apply to debt investments in entities that are parties to cooperative agreements, but shall apply to debt investments made by such entities pursuant to cooperative agreements.

**History:** Laws 2003, ch. 399, § 9; 2004, ch. 57, § 3.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, amended Subsections A and B to delete from Paragraph (1) of each subsection the requirement that parties demonstrate abilities and relationships in providing financial resources to emerging businesses and to add to Paragraphs (2) and (3) of Subsection A and Paragraph (2) of Subsection B "provided, however, that the restrictions of this paragraph shall not apply to equity investments in entities that are parties to cooperative agreements, but shall apply to investments made by such entities pursuant to cooperative agreements".

## 58-29-6. President; powers and duties.

A. The board shall select a president of the corporation from among its members. The corporation is under the administrative control of the president or a person selected by the board to administer the operations of the corporation. The board shall periodically review and appraise the investment strategy being followed, and the president shall report at least once a month to the board on investment results and related matters. The president shall:

(1) act for the corporation in collecting and disbursing money necessary to administer the corporation and conduct its business;

(2) sign contracts and incur obligations on behalf of the corporation;

(3) perform all acts necessary to exercise power, authority or jurisdiction over the corporation to discharge its functions and fulfill its responsibilities; and

(4) make investments pursuant to the Small Business Investment Act and upon approval of the board.

B. The president shall submit an annual report, independently audited in accordance with generally accepted procedures governing annual reports, by October 1 of each year to the governor, the legislative finance committee and any other appropriate legislative committee indicating the business done by the corporation during the previously completed fiscal year and containing a statement of the resources and liabilities of the corporation. The report shall include:

(1) the average rate of return enjoyed by the corporation on invested assets;

(2) recommendations concerning desired changes in the corporation to promote its prompt and efficient administration of policies and claims;

(3) recommendations to the legislature and the governor regarding the continued operation of the corporation; and

(4) any other information the president deems appropriate.

**History:** Laws 2000, ch. 97, § 8; 2001, ch. 316, § 3.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, in Subsection A, added the current first sentence; and the language beginning "or a person" to the end of the current second sentence.

## 58-29-7. Return to severance tax permanent fund.

Annually, no later than thirty days after the delivery of its annual report to the governor and the legislative finance committee, the corporation shall return to the severance tax permanent fund an amount equal to the net excess of funds held by the corporation. For purposes of this section, "net excess of funds" means the return on investments to the corporation in the amount of dividends and interest actually received plus any capital gains actually realized, less the operating expenses of the corporation and less amounts reasonably reserved for losses.

**History:** Laws 2003, ch. 399, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 399, § 11 makes the act effective on April 8, 2003.

# ARTICLE 30
# Individual Development Account

## 58-30-1. Short title.

Chapter 58, Article 30 NMSA 1978 may be cited as the "Individual Development Account Act".

**History:** Laws 2003, ch. 362, § 1; 2006, ch. 96, § 1; 2007, ch. 349, § 1.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changes the title of the act.

**The 2006 amendment,** effective July 1, 2006, changes the short title to Chapter 58, Article 30 of the NMSA 1978 and changes the name of the act from "Individual Development Account Act" to "Family Opportunity Accounts Act".

## 58-30-2. Definitions.

As used in the Individual Development Account Act:

A. "account owner" means the person in whose name an individual development account is originally established;

B. "allowable use" means a lawful use that complies with the provisions of the Individual Development Account Act, or rules adopted pursuant to that act;

C. "authorized financial institution" means a financial institution authorized by the office to hold and manage individual development accounts and reserve accounts;

D. "department" means the workforce solutions department;

E. "earned income" means wages from employment, payment in lieu of wages, income tax refunds, disability payments, tribal distributions, or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services;

F. "eligible individual" means a person who meets the criteria for opening an individual development account;

G. "financial institution" means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual development accounts, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration;

H. "indigent" means an individual who, taking into account present income, liquid assets and requirements for basic necessities of life for the individual and the individual's dependents, is unable to pay the costs of allowable uses as set forth in the Individual Development Account Act;

I. "individual development account" means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the provisions of the Individual Development Account Act;

J. "individual development account program" means a program approved by the department to establish and administer individual development accounts and reserve

accounts for eligible individuals and to provide financial capability training or financial coaching required by the department for account owners;

K. "matching funds" means money deposited in a reserve account to match the withdrawals for allowable uses from an individual development account according to a proportionate formula that complies with rules adopted by the secretary;

L. "nonprofit organization" means an instrumentality of the state or a local government or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation pursuant to Section 501(a) of that code;

M. "program administrator" means a nonprofit organization or tribe that is selected pursuant to the Individual Development Account Act to offer an individual development account program pursuant to a contract with the secretary;

N. "reserve account" means an account established pursuant to the Individual Development Account Act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner;

O. "secretary" means the secretary of workforce solutions; and

P. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

**History:** Laws 2003, ch. 362, § 2; 2005, ch. 111, § 15; 2006, ch. 96, § 2; 2007, ch. 349, § 2; 2019, ch. 225, § 3.

## ANNOTATIONS

**Cross references.** — For Section 501 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501.

**The 2019 amendment,** effective January 1, 2020, defined "department", "financial institution", "indigent" and "secretary", and revised and removed the definitions of certain terms, as used in the Individual Development Account Act; in Subsection B, after "means a", added "lawful"; in Subsection D, deleted "'director' means the director of the office" and added "'department' means the workforce solutions department"; in Subsection E, after "in lieu of wages,", added "income tax refunds"; added new Subsections G and H and redesignated former Subsections G and H as Subsections I and J, respectively; in Subsection J, after "provide financial", added "capability", and after "training", added "or financial coaching"; deleted former Subsections I and J; deleted former Subsection M and redesignated former Subsections N and O as Subsections M and N, respectively; and added a new Subsection O.

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, changes "Individual Development Account Act" to "Family Opportunity Accounts Act" in Subsections A, C, F and K (formerly Subsection J); changes "an individual development account" to "family opportunity account" in Subsection B; changes "Individual Development Account Act" to "Family Opportunity Accounts Act" in Subsection C; deletes "of workforce training and development" after "office"; adds Subsection G to define "family opportunity account"; adds Subsection H to define "family opportunity account program" and deletes former Subsection H, which defined "individual development account"; deletes former Subsection I, which defined "individual development account program"; adds Subsection J to define "indigent"; in Subsection N (formerly Subsection M), revises the definition of "program administrator"; and in Subsection O (formerly Subsection N), changes "Individual Development Account Act" to "Family Opportunity Accounts Act".

**The 2005 amendment,** effective April 4, 2005, defines "authorized financial institution" to mean a financial institution authorized by the office of workforce training and development to hold and manage accounts in Subsection C; defines "director" to mean the director of the office of workforce training and development in Subsection D; deletes the definition of "division" in former Subsection E; defines "individual development account program" to mean a program approved by the office of workforce training and development to establish and administer accounts in Subsection I; and defines "office" to mean the office of workforce training and development in Subsection L.

## 58-30-3. Individual development accounts.

An individual development account may be established for an eligible individual as part of an individual development account program if the written instrument creating the account sets forth the following:

A. the account owner is an eligible individual according to program requirements at the time the account is established;

B. the individual development account is established and maintained in an authorized financial institution;

C. deposits to an individual development account shall be made in accordance with the rules adopted pursuant to the Individual Development Account Act;

D. withdrawals from an individual development account shall only be made in accordance with the Individual Development Account Act for allowable uses;

E. the matching amount that will be deposited in the reserve account for each dollar deposited by the account owner in the individual development account; and

F. the financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses.

**History:** Laws 2003, ch. 362, § 3; 2006, ch. 96, § 3; 2007, ch. 349, § 3; 2019, ch. 225, § 4.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, provided that withdrawals from an individual development account shall only be made in accordance with the Individual Development Account Act for allowable uses; and in Subsection D, after "Act", deleted "and rules adopted pursuant to that act" and added "for allowable uses".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, in Subsection A: changes "individual development account" to "family opportunity account"; changes "Individual Development Account Act" to "Family Opportunity Accounts Act" in Paragraph (3); in Paragraph (4), deletes the former provision restricting withdrawals for allowable uses and adds the provision that withdrawals shall only be made in accordance with the act; adds Paragraph (5) to provide for matching funds in the reserve account; and adds Subsection B to provide that a family opportunity account shall be an individual development account.

## 58-30-4. Eligible individuals.

A. Except as set forth in Subsections B and C of this section, an eligible individual shall have earned income and shall be:

(1) eighteen years of age or older;

(2) a citizen, legal resident, refugee, asylee or person otherwise legally present in the United States at the time the person opens the person's individual development account;

(3) a resident of New Mexico; and

(4) an indigent.

B. A child in foster care is an eligible individual if the child is:

(1) fifteen years of age or older;

(2) an indigent;

(3) a citizen, a legal resident, a refugee or an asylee or is otherwise legally present in the United States at the time the person opens the person's individual development account; and

(4) a resident of New Mexico.

C. A child is an eligible individual if the child is:

(1) at least fifteen years of age and not more than eighteen years of age;

(2) a member of a family whose members are all indigents;

(3) a citizen, a legal resident, a refugee or an asylee or is otherwise legally present in the United States at the time the person opens the person's individual development account; and

(4) a resident of New Mexico.

**History:** Laws 2003, ch. 362, § 4; 2006, ch. 96, § 4; 2007, ch. 349, § 4; 2019, ch. 225, § 5.

**ANNOTATIONS**

**Cross references.** — For the definition of "indigent", *see* 58-30-2 NMSA 1978.

**The 2019 amendment,** effective January 1, 2020, included refugees, asylees, and others legally present in the United States as individuals eligible to participate in an individual development account program; in Subsection A, in Paragraph A(2), after "legal resident,", deleted "of" and added "refugee, asylee or person otherwise legally present in", and after "United States", added "at the time the person opens the person's individual development account"; in Subsection B, Paragraph B(3), after "legal resident,", deleted "of the United States" and added "a refugee or an asylee or is otherwise legally present in the United States at the time the person opens the person's individual development account", and in Subsection C, Paragraph C(3), after "legal resident", deleted "of the United States" and added "a refugee or an asylee or is otherwise legally present in the United States at the time the person opens the person's individual development account".

**The 2007 amendment,** effective July 1, 2007, changes the age of a child in foster care who is an eligible individual from sixteen to fifteen years of age and adds Subsection C.

**The 2006 amendment,** effective July 1, 2006, replaces the federal poverty guidelines with "indigent" and in Paragraph (2) of Subsection B, replaces the federal poverty guidelines with "indigent".

## 58-30-5. Responsibilities of the department.

A. The department shall adopt rules implementing the provisions of the Individual Development Account Act.

B. The secretary shall make an annual report each November to the governor and to the legislative finance committee.

C. The department shall use no more than five percent of the money appropriated to fund the Individual Development Account Act to administer that act, not including the costs of the program administrator.

D. A program administrator shall use no more than twelve percent of the funds allocated to the program administrator for implementation and administration of the program.

**History:** Laws 2003, ch. 362, § 5; 2005, ch. 111, § 16; 2006, ch. 96, § 5; 2007, ch. 349, § 5; 2019, ch. 225, § 6.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, established limits on administrative expenses available to a program administrator; in the heading, changed "office" to "department"; in Subsection C, after "administer that act", added "not including the costs of the program administrator"; and added Subsection D.

**The 2007 amendment,** effective July 1, 2007, changes the title of the act.

**The 2006 amendment,** effective July 1, 2006, in Subsection A, deletes the requirement that the director adopt rules by December 31 following the effective date of the act; in Subsection B, changes "an appropriate interim committee of the legislature" to "legislative finance committee"; and in Subsection C, changes "ten" to "five" and "Individual Development Account Act" to "Family Opportunity Accounts Act".

**The 2005 amendment,** effective April 4, 2005, changes references from the local government division to the office of workforce training and development.

## 58-30-6. Individual development account council.

A. The "individual development account council" is created. The council shall:

(1) provide oversight of the administration of the Individual Development Account Act;

(2) suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state; and

(3) obtain subject matter expertise through attendance at conferences and workshops related to proven and promising asset-building strategies.

B. The individual development account council shall meet at least two times in a calendar year to perform its duties.

C. The individual development account council shall consist of the lieutenant governor or the lieutenant governor's designee and eight members appointed by the governor to represent the state geographically; provided that the members shall include representatives of a participating financial institution, a philanthropic institution, a community college and a nonprofit workforce entrepreneurial training provider and at least one representative from a nonprofit or educational institution providing financial coaching within a service area containing fewer than twenty thousand persons, as shown by the most recent decennial census. The secretary or the secretary's designee shall serve as an ex-officio member of the council.

D. Appointed members of the individual development account council shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for attendance at required meetings and at authorized conferences and workshops and shall receive no other compensation, perquisite or allowance for their participation on the council.

E. The department shall provide adequate staff support and administrative services for the individual development account council.

**History:** Laws 2003, ch. 362, § 6; 2005, ch. 111, § 17; 2006, ch. 96, § 6; 2007, ch. 349, § 6; 2019, ch. 225, § 7.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, established qualifications for members of the individual development account council; in Subsection A, Paragraph A(3), after "related to", added "proven and promising"; and in Subsection C, after "geographically", added "provided that the members shall include representatives of a participating financial institution, a philanthropic institution, a community college and a nonprofit workforce entrepreneurial training provider and at least one representative from a nonprofit or educational institution providing financial coaching within a service area containing fewer than twenty thousand persons, as shown by the most recent decennial census".

**Laws 2003, ch. 375, § 2,** effective June 20, 2003, provides that there is created the "task force for financial independence", which shall function from the date of its appointment until December 1, 2004. The task force shall be composed of at least fifteen members and be chaired by the lieutenant governor. Members shall be appointed by the governor.

**The 2007 amendment,** effective July 1, 2007, changes the title of the act; changes "family opportunity account council" to "individual development account council"; adds Paragraph (3) of Subsection A; and provides that appointed members shall receive per diem and mileage for attendance at required meetings and authorized conferences and workshops.

**The 2006 amendment,** effective July 1, 2006, in Subsection A, deletes the creation of an advisory committee and creates the family opportunity accounts council; in Subsection A, changes "individual development account programs" to "Family Opportunity Accounts Act"; changes "advisory committee" to "family opportunity accounts council" in Subsections B, C and E; in Subsection B, deletes the provision that provided for the specific purpose of meetings; in Subsections C and D, changes "advisory committee" to "council"; and in Subsection D, deletes reference to members of the advisory committee who are account owners and adds the reference to appointed members of the family opportunity accounts council.

**The 2005 amendment,** effective April 4, 2005, changes the reference from the local government division to the office of workforce training and development.

## 58-30-7. Administration of individual development account programs.

A. An individual development account may be established for an eligible individual; provided that the money deposited in the account is expended for allowable uses for the account owner or the account owner's spouse or dependents unless otherwise approved by the program administrator.

B. An individual development account program shall be approved and monitored by the secretary for compliance with applicable law, the Individual Development Account Act and rules adopted pursuant to that act.

C. The program administrator shall establish a reserve account sufficient to meet the matching fund commitments made to all account owners participating in the individual development account program and shall report at least quarterly to each account owner the amount of money available in the reserve account for use by the program administrator to match withdrawals for allowable uses. The amount of state funds deposited in a reserve account during a calendar year to match deposits from any single account owner shall not exceed the higher of:

(1) two thousand dollars ($2,000); or

(2) an amount determined by rule; provided that the cumulative reserve account deposits shall total not less than one hundred twenty-five percent of the prior calendar year match to deposits beginning in the second year of the individual development account program; and further provided that the state shall match deposits

of every account owner dollar-for-dollar up to two thousand dollars ($2,000) in a calendar year.

D. The program administrator shall provide financial education, including financial coaching and other necessary guidance and electronic reminders to encourage deposits and to achieve goals of allowable uses by account owners, develop partnerships with financial institutions, distribute matching funds and manage the operations of an individual development account that is established within the program.

E. An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account.

F. More than one eligible individual per household may hold an individual development account.

G. An account owner shall complete a tested financial education program, including financial coaching, prior to the withdrawal of money from the account owner's individual development account for allowable uses unless written approval is obtained from the program administrator.

**History:** Laws 2003, ch. 362, § 7; 2005, ch. 111, § 18; 2006, ch. 96, § 7; 2007, ch. 349, § 7; 2019., ch. 225, § 8.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, established minimum state matching funds; in Subsection C, deleted "Notwithstanding any matching commitment otherwise required.", in Paragraph C(2), after "by rule", deleted "of the office" and added "provided that the cumulative reserve account deposits shall total not less than one hundred twenty-five percent of the prior calendar year match to deposits beginning in the second year of the individual development account program; and further provided that the state shall match deposits of every account owner dollar-for-dollar up to two thousand dollars ($2,000) in a calendar year"; in Subsection D, after "financial education", added "including financial coaching", after "necessary", deleted "training pertinent" and added "guidance and electronic reminders", after "to", added "encourage deposits and to achieve goals of", and after "financial institutions", deleted "develop" and added "distribute"; and in Subsection G, after "shall complete a", added "tested", after "financial education program", added "including financial coaching", and after "individual development account", added "for allowable uses".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, changes "individual development account" to "family opportunity account" in Subsections A through F; changes

"Individual Development Account Act" to "Family Opportunity Accounts Act" in Subsection B; changes "individual development account program" to "program administrator" in Subsections C and D; in Subsection C, provides a limitation on the amount of the deposit of state funds in a reserve account to match deposits from an account owner; and provides in Subsection G that the program administrator may permit withdrawal from an account before the owner completes a financial education program.

**The 2005 amendment,** effective April 4, 2005, changes the reference from the local government division to the office of workforce training and development.

## 58-30-8. Allowable uses; withdrawals from individual development accounts; forfeiture of matching funds from reserve account; loss of eligible individual status.

A. Allowable uses of the money withdrawn from an individual development account are limited to the following:

(1) expenses to attend an approved post- secondary or vocational educational institution, including payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence as defined in rules adopted pursuant to the Individual Development Account Act that is the first principal residence acquired or constructed by the account owner within the previous five years;

(3) costs of major home improvements or repairs on the home of the account owner;

(4) capitalization or costs to start or expand a business, including capital, plant, equipment, operational and inventory expenses, attorney and accountant fees and other costs normally associated with starting or expanding a business;

(5) acquisition or repair of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner; and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named beneficiary of the deceased or if the recipient is eligible to maintain the account, the account and matching funds designated for that account from a reserve account may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

B. Unless otherwise approved by the program administrator pursuant to the provisions of Subsection D of this section, account owners qualifying as eligible

individuals pursuant to the provisions of Subsection B or C of Section 58-30-4 NMSA 1978 shall not be permitted to withdraw money from an individual development account until such time as the account owners have completed a high school curriculum at a public or accredited private New Mexico high school or received a general educational development certificate.

C. Except as provided in Subsection D of this section, if an account owner withdraws money from an individual development account for a use other than an allowable use, the account owner forfeits a proportionate amount of matching funds from the reserve account, as set forth in the agreement between the program administrator and the account owner.

D. The program administrator may approve a withdrawal by an account owner from an individual development account to be used for a purpose other than an allowable use only for serious emergencies as specified in the rules adopted by the department. For such an approved withdrawal, the proportionate matching funds in the reserve account shall remain in the reserve account for twelve months following the withdrawal and, if an amount equal to the withdrawn money is redeposited in the individual development account within the twelve months, the matching funds shall again be available to match withdrawals for allowable uses.

E. At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's individual development account and deposited in another individual development account or a qualified tuition program, as defined in Section 529 of the Internal Revenue Code of 1986, established for an eligible individual who is the account owner's spouse or dependent.

**History:** Laws 2003, ch. 362, § 8; 2006, ch. 96, § 8; 2007, ch. 349, § 8; 2015, ch. 122, § 22; 2019, ch. 225, § 9.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, expanded the allowable uses for funds in individual development accounts; in Subsection A, Paragraph A(2), after "by the account owner", added "within the previous five years", and in Paragraph A(5), after "acquisition", added "or repair"; in Subsection B, after "high school or received a", deleted "high school equivalency credential" and added "general educational development certificate"; and in Subsection E, after "another individual development account", added "or a qualified tuition program, as defined in Section 529 of the Internal Revenue Code of 1986".

**The 2015 amendment,** effective July 1, 2015, replaced "general education development certificate" with "high school equivalency credential" relating to individual development accounts in the Individual Development Account Act; and in Subsection B,

after "high school or received a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act; changes "family opportunity account" to "individual development account"; and adds Subsection B.

**The 2006 amendment,** effective July 1, 2006, changes "individual development account" to "family opportunity account" and "Individual Development Account Act" to "Family Opportunity Accounts Act" in Subsection A; adds the exception provided in Subsection C at the beginning of Subsection B and deletes the former provision, which provided for forfeiture of matching funds; and in Subsection C, changes "director" to “office and adds the provision that provides for the retention of matching funds in the reserve account.

## 58-30-9. Approval of individual development account programs.

A. The department shall issue a request for proposals from nonprofit organizations or tribes interested in establishing an individual development account program. A proposal submitted in response to the request shall:

(1) describe the geographic area to be served and the potential individuals who will be assisted by the program;

(2) state the amount, if any, of requested distributions of state money from the individual development fund;

(3) describe the source and the amount of any private or other public funds, if any, that will be used to supplement the requested distributions from the individual development fund;

(4) state the amount, not to be less than one dollar ($1.00), that will be deposited in the reserve account for each dollar deposited in an individual development account;

(5) describe the expertise, experience and other qualifications of the proposer and its employees; and

(6) contain such other information as required in the request for proposals and rules of the secretary.

B. The secretary shall issue a request for proposals to determine if an interested nonprofit organization or tribe is eligible to be a program administrator, determine the legal sufficiency of submitted proposals, evaluate the proposals and, after consulting with the individual development account council, select the program administrators.

C. In selecting program administrators, the secretary shall:

(1) ensure that geographically diverse populations throughout New Mexico will be served by individual development account programs; and

(2) ensure that a substantial number of individual development accounts will serve families in which one or more children are living with their biological or adoptive mother or father, or with their legal guardian.

D. The secretary shall enter into contracts with the selected program administrators.

E. The secretary shall approve an individual development account program submitted by a program administrator before the program establishes individual development accounts or reserve accounts or provides services required by the Individual Development Account Act to eligible individuals.

F. An individual development account and a reserve account may be established only in an authorized financial institution.

G. The secretary shall monitor all individual development account programs to ensure that individual development accounts and reserve accounts are being operated according to the contract provisions, federal law, the provisions of the Individual Development Account Act and rules adopted pursuant to that act.

**History:** Laws 2003, ch. 362, § 9; 2005, ch. 111, § 19; 2006, ch. 96, § 9; 2007, ch. 349, § 9; 2019, ch. 225, § 10.

## ANNOTATIONS

**The 2019 amendment,** effective January 1, 2020, provided that the secretary of workforce solutions shall issue a request for proposals to determine if an interested nonprofit organization or tribe is eligible to be a program administrator, and replaced "director of the office of workforce training and development" with "secretary of workforce solutions"; replaced each occurrence of "director" with "secretary" throughout the section; and in Section B, after "secretary shall", added "issue a request for proposals to".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, in Subsection A, deletes the requirement for annual solicitations for proposals, changes "individual development account program" to "family opportunity accounts program" and adds Paragraphs (1) through (6) to provide for the content of proposals; in Subsection B, adds the provision that the director shall evaluate proposals and select the program administrators; deletes former Subsection C, which provided that administrators shall develop individual development

account programs; adds Subsection C to provide for the selection of administrators; adds Subsection D, to provide for contracts with administrators; in Subsections E (formerly Subsection D) and G (formerly Subsection F), changes "individual development account program" to "family opportunity accounts program", changes "individual development account" to "family opportunity account", and changes "Individual Development Account Act" to "Family Opportunity Accounts Act"; and in Subsection F, changes "individual development account" to "family opportunity account".

**The 2005 amendment,** effective April 4, 2005, changes the reference from the local government division to the office of workforce training and development.

## 58-30-10. Termination of individual development account programs.

A. An individual development account program shall be terminated if the:

(1) department determines that the program is not being operated pursuant to the provisions of the contract between the program administrator and the secretary, the Individual Development Account Act or rules adopted pursuant to that act;

(2) provider of the program no longer retains its status as a program administrator; or

(3) program administrator chooses to cease providing an individual development account program.

B. Upon termination of an individual development account program, the secretary shall administer the program until a qualified program administrator is selected to administer the program. If, after a reasonable period, the secretary is unable to identify and certify a program administrator to assume the authority to continue to operate a terminated individual development account program, money in a reserve account shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program.

**History:** Laws 2003, ch. 362, § 10; 2005, ch. 111, § 20; 2006, ch. 96, § 10; 2007, ch. 349, § 10; 2019, ch. 225, § 11.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, replaced "director of the office of workforce training and development" with "secretary of workforce solutions"; and replaced each occurrence of "director" with "secretary".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, in Subsections A and B, changes "individual development account" to "family opportunity account"; in Subsection A, deletes reference to the Individual Development Account Act and adds the provision requiring termination of programs; and in Subsection B, provides for administration of the program upon termination.

**The 2005 amendment,** effective April 4, 2005, changes the reference from the local government division to the office of workforce training and development.

## 58-30-11. Reporting.

A program administrator operating an individual development account program pursuant to the Individual Development Account Act shall report at least annually to the secretary, as set forth in the rules of the department. Individual account owners shall not be identified in the report. The report shall include:

A. the number of eligible individuals making contributions to individual development accounts;

B. the total money contributed to each individual development account and deposited into each reserve account;

C. the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the individual development account program;

D. the amounts withdrawn from individual development accounts identifying the allowable uses and uses other than allowable uses and the amounts withdrawn from reserve accounts;

E. the balances remaining in individual development accounts and reserve accounts; and

F. other information requested by the secretary to monitor the costs and outcomes of the individual development account program.

**History:** Laws 2003, ch. 362, § 11; 2005, ch. 111, § 21; 2006, ch. 96, § 11; 2007, ch. 349, § 11; 2019, ch. 225, § 12.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, replaced "director of the office of workforce training and development" with "secretary of workforce solutions"; and replaced each occurrence of "director" with "secretary".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, changes "individual development account program" to "family opportunity accounts program", changes "Individual Development Account Act" to "Family Opportunity Accounts Act" and changes "individual development account" to "family opportunity account" in Subsections A through F.

**The 2005 amendment,** effective April 4, 2005, changes the reference from the local government division to the office of workforce training and development.

## 58-30-12. Account funds disregarded for purposes of certain means-tested programs.

A. Money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners shall be disregarded for the purposes of determining eligibility for benefits and for determining benefit amounts pursuant to the New Mexico Works Act.

B. When determining eligibility for benefits and determining benefit amounts due under the supplemental nutrition assistance program, children's health insurance program, child care and development block grant and medicaid, the human services department [health care authority department] shall, pursuant to the authority granted by 7 USCA 2014 (d) and (g), disregard money deposited into an individual development account, interest earned on that account and interest and matching funds deposited in a reserve account for the benefit of the account owners.

C. Money withdrawn from an individual development account for a purpose other than an allowable use shall be counted as a resource for purposes of the New Mexico Works Act or medicaid unless the withdrawal is approved by the program administrator and an amount equal to the amount withdrawn is replaced within the twelve-month allowable time period pursuant to Subsection D of Section 58-30-8 NMSA 1978.

**History:** Laws 2003, ch. 362, § 12; 2006, ch. 96, § 12; 2007, ch. 349, § 12; 2019, ch. 225, § 13.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**The 2019 amendment,** effective January 1, 2020, listed the means-tested program for which account funds are disregarded for purposes of eligibility; in Subsection B, after "amounts due under the", deleted "food stamp program" and added "supplemental nutrition assistance program, children's health insurance program, child care and development block grant".

**The 2007 amendment,** effective July 1, 2007, changes "family opportunity account" to "individual development account".

**The 2006 amendment,** effective July 1, 2006, changes "individual development account program" to "family opportunity accounts program" in Subsections A through C; and in Subsection C, provides for the withdrawal of money if approved by the program administrator and the replacement of an amount equal to the withdrawal pursuant to Subsection C of Section 58-30-8 NMSA 1978.

## 58-30-13. Individual development fund created.

The "individual development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of carrying out the provisions of the Individual Development Account Act. Expenditures shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of workforce solutions or the secretary's designee.

**History:** Laws 2006, ch. 96, § 13; 2007, ch. 349, § 13; 2019, ch. 225, § 14.

**ANNOTATIONS**

**The 2019 amendment,** effective January 1, 2020, replaced "director of the office of workforce training and development" with "secretary of workforce solutions"; and replaced each occurrence of "director" with "secretary" and each occurrence of "office" with "department".

**The 2007 amendment,** effective July 1, 2007, changes the title of the act and changes the name of the fund from the "family opportunity fund" to the "individual development fund".

# ARTICLE 31
# Spaceport Development

## 58-31-1. Short title.

Chapter 58, Article 31 NMSA 1978 may be cited as the "Spaceport Development Act".

**History:** Laws 2005, ch. 128, § 1; 2018, ch. 61, § 2.

**ANNOTATIONS**

**Cross references.** — For gross receipts tax deduction for spaceport operations, *see* 7-9-54.2 NMSA 1978.

For gross receipts and compensating tax exemption for fuel for space vehicles, *see* 7-9-26.1 and 7-9-30 NMSA 1978.

**The 2018 amendment,** effective May 16, 2018, deleted "This act" and added "Chapter 58, Article 31 NMSA 1978".

## 58-31-2. Purpose.

The purpose of the Spaceport Development Act is to:

A. encourage and foster development of the state and its cities and counties by developing spaceport facilities in New Mexico;

B. actively promote and assist public and private sector infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state;

C. create the statutory framework that will enable the state to design, finance, construct, equip and operate spaceport facilities necessary to ensure the timely, planned and efficient development of a southwest regional spaceport; and

D. promote educational involvement in spaceport activities and education and training of the workforce to develop the skills needed for spaceport operations.

**History:** Laws 2005, ch. 128, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-3. Definitions.

As used in the Spaceport Development Act:

A. "authority" means the spaceport authority;

B. "project" means any land, building or other improvements acquired as part of a spaceport or associated with a spaceport or to aid commerce in connection with a spaceport and all real and personal property deemed necessary in connection with the spaceport;

C. "revenue" means municipal regional spaceport gross receipts tax and county regional spaceport gross receipts tax revenue received from a regional spaceport district, revenue generated by a project and any other legally available funds of the authority;

D. "space vehicle" means a vehicle capable of being flown in space or launching a payload into space; and

E. "spaceport" means a facility in New Mexico at which space vehicles may be launched or landed, including all facilities and support infrastructure related to launch, landing or payload processing.

**History:** Laws 2005, ch. 128, § 3; 2006, ch. 15, § 16.

**ANNOTATIONS**

**Cross references.** — For the municipal regional spaceport gross receipts tax, *see* 7-19D-15 NMSA 1978.

For the county regional spaceport gross receipts tax, *see* 7-20E-25 NMSA 1978.

**The 2006 amendment,** effective May 17, 2006, adds Subsection C to define revenue.

## 58-31-4. Spaceport authority created; membership.

A. The "spaceport authority" is created. The authority is a state agency and is administratively attached to the economic development department.

B. The authority shall consist of seven voting and two nonvoting members, six of whom shall be appointed by the governor with the consent of the senate; provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The lieutenant governor shall serve as a nonvoting ex-officio member. The executive director of the authority shall serve as a nonvoting member. The chair may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The members appointed by the governor shall be residents of the state and 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 two members for four years.

D. Appointed voting members of the authority shall be reimbursed for per diem and mileage in accordance with the 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.

E. The secretary of economic development or the secretary's designee shall serve as the chair of the authority. Authority members shall elect any other officers from the membership that the authority determines appropriate.

F. The chair, four other authority voting members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.

G. 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, the member shall continue to serve until the member is reappointed or another person is appointed and confirmed by the senate to replace the member.

H. The authority shall meet at the call of the chair and shall meet in regular session at least once every three months.

I. The authority shall maintain written minutes of all meetings of the authority and maintain other appropriate records, 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 2005, ch. 128, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-5. Authority powers and duties.

A. The authority shall:

(1) hire an executive director, who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently and shall direct the affairs and business of the authority, subject to the direction of the authority;

(2) be located within fifty miles of a southwest regional spaceport;

(3) advise the governor, the governor's staff and the New Mexico finance authority oversight committee [6-21-30 NMSA 1978] on methods, proposals, programs and initiatives involving a southwest regional spaceport that may further stimulate space-related business and employment opportunities in New Mexico;

(4) initiate, develop, acquire, own, construct, maintain and lease space-related projects;

(5) make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

(6) create programs to expand high-technology economic opportunities within New Mexico;

(7) create avenues of communication among federal government agencies, the space industry, users of space launch services and academia concerning space business;

(8) promote legislation that will further the goals of the authority and development of space business;

(9) oversee and fund production of promotional literature related to the authority's goals;

(10) identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information;

(11) coordinate and expedite the involvement of the state executive branch's space-related development efforts; and

(12) perform environmental, transportation, communication, land use and other technical studies necessary or advisable for projects and programs or to secure licensing by appropriate United States agencies.

B. The authority may:

(1) advise and cooperate with municipalities, counties, state agencies and organizations, appropriate federal agencies and organizations and other interested persons and groups;

(2) solicit and accept federal, state, local and private grants of funds or property and financial or other aid for the purpose of carrying out the provisions of the Spaceport Development Act;

(3) adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

(4) operate spaceport facilities, including acquisition of real property necessary for spaceport facilities and the filing of necessary documents with appropriate agencies;

(5) construct, purchase, accept donations of or lease projects located within the state;

(6) sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

(7) issue revenue bonds and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and of securing the payment of the bonds or repayment of a loan;

(8) enter into contracts with regional spaceport districts and issue bonds on behalf of regional spaceport districts for the purpose of financing the purchase, construction, renovation, equipping or furnishing of a regional spaceport or a spaceport-related project;

(9) refinance a project;

(10) contract with any competent private or public organization or individual to assist in the fulfillment of its duties;

(11) fix, alter, charge and collect tolls, fees or rentals and impose any other charges for the use of or for services rendered by any authority facility, program or service; and

(12) contract with regional spaceport districts to receive municipal spaceport gross receipts tax and county regional spaceport gross receipts tax revenues.

C. The authority shall not:

(1) incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or

(2) expend funds or incur debt for the improvement, maintenance, repair or addition to property unless it is owned by the authority, the state or a political subdivision of the state.

**History:** Laws 2005, ch. 128, § 5; 2006, ch. 15, § 17.

## ANNOTATIONS

**Cross references.** — For the Regional Spaceport District Act, *see* 5-15-1 NMSA 1978.

For the municipal regional spaceport gross receipts tax, *see* 7-19D-15 NMSA 1978.

For the county regional spaceport gross receipts tax, *see* 7-20E-25 NMSA 1978.

**The 2006 amendment,** effective May 17, 2006, adds Paragraph (8) of Subsection B to authorize the spaceport authority to enter into contracts and issue bonds for spaceports or spaceport-related projects; adds Paragraph (12) of Subsection B to authorize the spaceport authority to contract with regional spaceport district to receive spaceport gross receipt tax revenues; deletes the provision of former Paragraph (1) of Subsection C which prohibited the spaceport authority to operate a project as a business or in any manner except as lessor; and adds the provision in Paragraph (2) of Subsection C that the spaceport authority cannot expend funds or incur debt to improve, maintain, repair or add to property unless the property is owned by the spaceport authority, the state or a political subdivision of the state.

## 58-31-6. Spaceport authority; bonding authority; power to issue revenue bonds.

A. The authority may issue revenue bonds on its own behalf or on behalf of a regional spaceport district, for regional spaceport purposes and spaceport-related 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.

B. The authority may pay from the bond proceeds all expenses, premiums and commissions that the authority deems necessary or advantageous in connection with the authorization, sale and issuance of the bonds.

C. Authority revenue bonds:

(1) may have interest or appreciated principal value or any part thereof payable at intervals determined by the authority;

(2) may be subject to prior redemption or mandatory redemption at the authority's option at the time and upon such terms and conditions with or without the payment of a premium as may be provided by resolution of the authority;

(3) may mature at any time not exceeding twenty years after the date of issuance if secured by revenue from the county or municipal regional spaceport gross receipts tax or thirty years if secured by revenue from other sources;

(4) may be serial in form and maturity; consist of one or more bonds payable at one time or in installments; or may be in such other form as determined by the authority;

(5) may be in registered or bearer form or in book-entry form through facilities of a securities depository either as to principal or interest or both;

(6) shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that conforms to the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

(7) may be sold at public or negotiated sale.

D. Subject to the approval of the state board of finance, the authority may enter into other financial arrangements if it determines that the arrangements will assist the authority.

**History:** Laws 2005, ch. 128, § 6; 2006, ch. 15, § 18.

**ANNOTATIONS**

**Cross references.** — For the Regional Spaceport District Act, *see* 5-15-1 NMSA 1978.

**The 2006 amendment,** effective May 17, 2006, deletes the provision of former Subsection A which permitted the spaceport to act as an issuing authority for purposes of the Private Activity Bond Act; adds a provision in Subsection A (former Subsection B) to permit the spaceport authority to issue revenue bonds on its own behalf or on behalf of a regional spaceport district for regional spaceport purposes and spaceport-related projects; and in Paragraph (3) of Subsection C (former Subsection D) provides that authority revenue bonds may mature in twenty years if the bonds are secured by revenue from county or municipal regional spaceport gross receipt tax or thirty years if secured by revenue from other sources.

## 58-31-7. Authority loans; terms.

If the authority borrows money from a financial institution or other entity:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the principal amount of the loan shall not exceed fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978]; and

D. the loan shall be subject to approval of the state board of finance.

**History:** Laws 2005, ch. 128, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-8. Bonds secured by trust indenture.

The bonds issued by the authority may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the project revenues or other funds. The authority may provide in a trust indenture for the payment of the proceeds of the bonds and the project revenue to the trustee under the trust indenture or other depository for disbursement with any safeguards the authority determines are necessary.

**History:** Laws 2005, ch. 128, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-9. Authority revenue bonds; limitations; authorization; authentication.

A. Revenue bonds or refunding bonds issued pursuant to the Spaceport Development Act and other loans to the authority are:

(1) not general obligations of the state or any other agency of the state or of the authority; and

(2) payable only from properly pledged revenues and each bond or loan shall state that it is payable solely from the properly pledged revenues and that the

bondholders or lenders may not look to any other fund for the payment of the interest and principal of the bond or the loan.

B. Revenue or refunding bonds or loans may be authorized by resolution of the authority, which shall be approved by a majority of the voting members of the authority and by the state board of finance.

C. The bonds or loans shall be executed by the chair 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. Bonds, notes or other certificates of indebtedness of the authority 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 chair of the authority.

**History:** Laws 2005, ch. 128, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-10. Security for bonds, notes or certificates of indebtedness.

The principal of and interest on any bonds, notes or other certificates of indebtedness issued pursuant to the provisions of the Spaceport Development Act shall be secured by a pledge of the revenues out of which the bonds shall be made payable, may be secured by a mortgage, deed of trust note or other certificate of indebtedness covering all or part of the project from which the revenues so pledged may be derived, and may be secured by a pledge of any lease or installment sale agreement or other fees or revenues with respect to the project. The resolution of the authority under which bonds, notes, or other certificates of indebtedness are authorized to be issued or any mortgage, notes or certificates of indebtedness may contain any agreement and provisions customarily contained in instruments securing bonds, notes or certificates of indebtedness, including:

A. provisions respecting the fixing and collection of all revenues from any project covered by the proceedings or mortgage;

B. the terms to be incorporated in any lease or installment sale agreement with respect to the project;

C. the maintenance and insurance of the project; and

D. the creation and maintenance of special funds from the revenues with respect to the project and the rights and remedies available in the event of default to the

bondholders, to the trustee under a mortgage, deed of trust or trust indenture or to a lender, all as the authority deems advisable and not in conflict with the provisions of the Spaceport Development Act. In making the 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 from the project and shall not have the power to incur a pecuniary liability or charge upon the state general credit or against the state taxing powers. The resolution authorizing any bonds and any mortgage securing such bonds, any note or other certificate of indebtedness shall set forth the procedure and remedies in the event of default in payment of the principal of or the interest on the bond, note or certificate of indebtedness or in the performance of any agreement. A breach of any agreement shall not impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing powers.

**History:** Laws 2005, ch. 128, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-11. Requirements respecting resolution and lease.

A. A resolution for the issuance of bonds shall set forth the determinations and findings of the authority required by this section.

B. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find that:

(1) the resolution is for the issuance of bonds and the principal and interest of the bonds to be issued shall be fully secured by:

(a) a lease agreement or installment sale agreement executed by an agency of the United States government;

(b) a state or local public agency or institution;

(c) a corporation organized and operating within the United States;

(d) an irrevocable letter of credit issued by a chartered financial institution approved for this purpose by the state board of finance;

(e) a bond insurance policy issued by an insurance company rated not less than "AA" by a national rating service; or

(f) revenue received by the authority pursuant to a contract entered into by and between the authority and a regional spaceport district;

(2) revenues are available in an amount necessary in each year to pay the principal of and interest on the bonds proposed to be issued or the loan proposed to be obtained to finance the project; and

(3) revenues are available in an amount necessary to be paid each year into any reserve funds that the authority may deem advisable to establish in connection with the retirement of the proposed bonds or the repayment of the loan or the maintenance of the project.

C. Unless the terms under which the project is to be leased or sold provide that the lessee or purchaser shall maintain the project and carry all proper insurance with respect to the project, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

D. Prior to the issuance of the bonds or the closing of the loan, the authority may 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 pursuant to provisions of this section, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the project; and

(3) pay the costs of maintaining the project in good repair and keep it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

E. With prior approval of the state board of finance, the authority may borrow funds to purchase, lease, acquire or develop water rights, a water system, a wastewater collection and treatment system, a natural gas distribution system, an electrical distribution system or other infrastructure needed to support the project, provided that the authority does not obligate itself or the state to any debt or obligation that cannot be paid from funds derived from the project.

F. Upon prior approval of the state board of finance, the authority may obtain commitment from a financial institution to borrow money, provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the requirements of the Spaceport Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan.

**History:** Laws 2005, ch. 128, § 11; 2006, ch. 15, § 19.

**ANNOTATIONS**

**The 2006 amendment,** effective May 17, 2006, deletes the qualification in Subparagraph (c) of Paragraph (1) of Subsection B that authority bonds be secured by a corporation whose long term-term debt is rated not less that "A" by a national rating service; and adds Subparagraph (f) of Paragraph (1) of Subsection B to provide that authority bonds shall be secured by revenue received pursuant to a contract between the authority and a regional spaceport district.

## 58-31-12. Use of proceeds from sale of bonds.

A. The proceeds from the sale of any bonds issued pursuant to the Spaceport Development Act shall be applied only for the purpose for which the bonds were issued; provided that:

(1) any accrued interest and premiums received in any sale shall be applied to the payment of the principal of or the interest on the bonds sold;

(2) if for any reason any portion of such proceeds are not needed for the purpose for which the bonds were issued, the balance of the proceeds shall be applied to the payment of the principal of or the interest on the bonds; and

(3) 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 used effectively to the advantage of the authority for the purposes provided pursuant to the Spaceport Development Act, 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.

B. The cost of acquiring any project shall be deemed to include the following:

(1) the actual cost of construction of any part of a project, including architect, attorney and engineer fees;

(2) the purchase price of any part of a project that may be acquired by purchase;

(3) 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

(4) 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 2005, ch. 128, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-13. Spaceport 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:

(1) for the acceleration, deceleration or other modification of payment of such obligations, including, without limitation, any capitalization of any interest in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) of reducing interest costs or effecting other economies; or

(3) of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating to the bonds.

B. The authority may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues that may be pledged to an original issue of bonds.

C. Bonds for refunding and bonds for any purpose permitted by the Spaceport Development Act may be issued separately or issued in a combination of one series or more.

**History:** Laws 2005, ch. 128, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-14. Spaceport authority refunding bonds; escrow.

A. Refunding bonds issued pursuant to the Spaceport Development Act 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 pertaining thereto, except for any such bond that 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 provided in 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; provided that provision is duly and sufficiently made for payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium pertaining 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 that possesses and is exercising trust powers and that 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 pertaining 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, the principal thereof or both interest and principal as the authority 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 that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation. 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 to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the authority shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Spaceport Development Act is in no manner responsible for the application of the proceeds 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.

**History:** Laws 2005, ch. 128, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-15. Authority refunding revenue bonds; terms.

[The] authority [when] refunding revenue bonds:

A. may have interest or appreciated principal value payable at intervals or at maturity;

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 premiums;

C. may be serial in form and maturity;

D. may consist of a single bond payable in one or more installments; and

E. 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 that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978].

**History:** Laws 2005, ch. 128, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-16. Exemption from taxation.

Bonds authorized pursuant to the Spaceport Development Act and the income from those bonds, all mortgages or other security instruments executed as security for those bonds, all lease and installment purchase agreements made pursuant to the provisions of that act and revenue derived from any lease or sale by the authority shall be exempt from all taxation by the state or any subdivision thereof.

**History:** Laws 2005, ch. 128, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 128 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 17, 2005, 90 days after adjournment of the legislature.

## 58-31-17. Spaceport authority fund created.

A. The "spaceport authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Spaceport Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Except as provided in this section, money received by the authority shall be deposited in the fund, including, but not limited to:

(1) the proceeds of bonds issued by the authority or from a loan to the authority made pursuant to the Spaceport Development Act;

(2) interest earned upon money in the fund;

(3) property or securities acquired through the use of money belonging to the fund;

(4) all earnings of property or securities acquired pursuant to Paragraph (3) of this subsection;

(5) all lease or rental payments received from the authority from a project;

(6) all of the money received by the authority from a public or private source; and

(7) fees, rents or other charges imposed and collected by the authority.

C. Fees, rents or other charges imposed and collected by the authority in excess of those imposed and collected for an approved project and for all debt service and reserves for the bonds that financed the project may be expended only as appropriated pursuant to vouchers signed by the executive director of the authority or the director's designee pursuant to the Spaceport Development Act; provided that, in the event the position of executive director is vacant, vouchers may be signed by the chair of the authority.

D. Earnings on the balance in the fund shall be credited to the fund. In addition, in the event that the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on that money during the period commencing with the deposit in the state treasury until actual transfer of the money to the fund shall be credited to the fund.

E. All proceeds from issuing revenue bonds shall be placed in such funds as shall be established in the resolution of the authority authorizing the issuance of the bonds.

**History:** Laws 2005, ch. 128, § 17; 2006, ch. 15, § 20.

**ANNOTATIONS**

**Cross references.** — For the Regional Spaceport District Act, *see* 5-15-1 NMSA 1978.

**The 2006 amendment,** effective May 17, 2006, adds the provision in Paragraph (4) of Subsection B that earnings acquired pursuant to Paragraph (3) of Subsection B shall be deposited in the spaceport authority fund; and adds Subsection E to provide that proceeds from revenue bonds shall be placed in funds established by the authority authorizing the issuance of the bonds.

## 58-31-18. Information not subject to inspection.

A. The following information obtained by the authority is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]:

(1) proprietary technical or business information, or information that is related to the possible relocation, expansion or operations of its aerospace customers, for which it is demonstrated, based on specific factual evidence, that disclosure of the information would cause substantial competitive harm to the aerospace customer;

(2) trade secrets, as defined in Subsection D of Section 57-3A-2 NMSA 1978; and

(3) information that would compromise the physical security or cybersecurity of authority facilities or an aerospace customer of the authority.

B. The presence in a record of information that need not be disclosed pursuant to Subsection A of this section does not exempt the record from disclosure.

**History:** Laws 2018, ch. 61, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

# ARTICLE 32
# Uniform Money Services

# ARTICLE 1
# GENERAL PROVISIONS

## 58-32-101. Short title.

This act [58-32-101 to 58-32-1004 NMSA 1978] may be cited as the "Uniform Money Services Act".

**History:** Laws 2016, ch. 88, § 101.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

**Temporary provisions.** — Laws 2016, ch. 88, § 1005 provided that the director of the financial institutions division of the regulation and licensing department shall promulgate such rules as are necessary to transition licensees pursuant to 58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

## 58-32-102. Definitions.

As used in the Uniform Money Services Act:

A. "applicant" means a person that files an application for a license pursuant to the Uniform Money Services Act;

B. "authorized delegate" means a person that a licensee designates to provide money services on behalf of the licensee;

C. "bank" means an institution organized under federal or state law that:

(1) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(2) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than one hundred thousand dollars ($100,000) and does not engage in the business of making commercial loans;

D. "check cashing" means receiving compensation for taking payment instruments or stored value, other than traveler's checks, in exchange for money, payment instruments or stored value delivered to the person delivering the payment instrument or

stored value at the time and place of delivery without an agreement specifying when the person taking the payment instrument will present it for collection;

E. "control" means:

(1) ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(2) the power to elect, appoint, choose or otherwise designate, directly or indirectly, a majority of executive officers, managers, directors, trustees or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;

F. "currency exchange" means receipt of revenues from the exchange of money of one government for money of another government;

G. "director" means the director of the financial institutions division of the regulation and licensing department;

H. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

I. "executive officer" means a president, chair of the executive committee, chief financial officer, responsible individual or other individual who performs similar functions;

J. "internet-based money services business" means a business that provides money transmission, check cashing or currency exchange services to residents of New Mexico through the internet;

K. "licensee" means a person licensed pursuant to the Uniform Money Services Act;

L. "limited station" means private premises where a check casher is authorized to engage in check cashing solely for the employees of the particular employer or group of employers specified in the check casher's license application;

M. "mobile location" means a vehicle or a movable facility where check cashing occurs;

N. "monetary value" means a medium of exchange, whether or not redeemable in money;

O. "money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments;

P. "money services" means money transmission, check cashing or currency exchange;

Q. "money transmission" means selling or issuing payment instruments, stored value or receiving money or monetary value for transmission. "Money transmission" does not include the provision solely of delivery, online or telecommunications services or network access;

R. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

S. "outstanding", with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee;

T. "payment instrument" means a check, draft, money order, traveler's check or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit or instrument that is redeemable by the issuer in goods or services;

U. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

V. "record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

W. "responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in New Mexico;

X. "sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic sound, symbol or process;

Y. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

Z. "stored value" means monetary value that is evidenced by an electronic record;

AA. "unique identifier" means a number or other identifier assigned by protocols established by the nationwide multistate licensing system and registry; and

BB. "unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person that creates the likelihood of material loss, insolvency or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

**History:** Laws 2016, ch. 88, § 102; 2019, ch. 144, § 17.

**ANNOTATIONS**

**Cross references.** — For the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, *see* 12 USC §§ 5101 to 5116.

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry" as a defined term, and made conforming changes to the definition of "unique identifier", as used in the Uniform Money Services Act; in Subsection R, after "nationwide", deleted "mortgage" and added "multistate"; and in Subsection AA, after "nationwide", deleted "mortgage" and added "multistate".

## 58-32-103. Exclusions.

The Uniform Money Services Act does not apply to:

A. the United States or a department, agency or instrumentality thereof;

B. money transmission by the United States postal service or by a contractor on behalf of the United States postal service;

C. a state, county, city or any other governmental agency or governmental subdivision of a state;

D. a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act or corporation organized pursuant to the federal Edge Act;

E. electronic funds transfer of governmental benefits for a federal, state, county or governmental agency by a contractor on behalf of the United States or a department,

agency or instrumentality thereof, or a state or governmental subdivision, agency or instrumentality thereof;

F. a board of trade designated as a contract market pursuant to the federal Commodity Exchange Act or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

G. a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

H. a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

I. an operator of a payment system to the extent that it provides processing, clearing or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers or similar funds transfers;

J. a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

K. an attorney or title company that, in connection with a real property transaction, receives and disburses domestic currency or issues an escrow or trust fund check only on behalf of a party to the transaction;

L. a credit union regulated and insured by the national credit union association; or

M. any other person, transaction or class of persons or transactions exempted by the director's rule or any other person or transaction exempted by the director's order pursuant to a finding that the licensing of the person or transaction is not necessary to achieve the purposes of the Uniform Money Services Act.

**History:** Laws 2016, ch. 88, § 103.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

**Cross references.** — For the federal Bank Service Company Act, *see* 12 USC §§ 1861 to 1867.

For the federal Edge Act, *see* 12 USC § 632.

For the federal Commodity Exchange Act, *see* 7 USC § 1.

# ARTICLE 2
# MONEY TRANSMISSION LICENSES

## 58-32-201. License required.

A. A person shall not engage in the business of money transmission or advertise, solicit or hold itself out as providing money transmission unless the person:

(1) is licensed pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978] of the Uniform Money Services Act; or

(2) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 2 of the Uniform Money Services Act is not transferable or assignable.

**History:** Laws 2016, ch. 88, § 201.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

**Temporary provisions.** — Laws 2016, ch. 88, § 1005 provided that the director of the financial institutions division of the regulation and licensing department shall promulgate such rules as are necessary to transition licensees pursuant to 58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

## 58-32-202. Application for license.

A. A person applying for a license pursuant to Article 2 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in New Mexico;

(4) a list of the applicant's proposed authorized delegates and the locations in New Mexico where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions or other disciplinary action taken against the applicant in another state;

(6) information concerning any bankruptcy or receivership proceedings affecting the applicant;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the director reasonably requires with respect to the applicant.

B. In order to fulfill the purposes of the Uniform Money Services Act, the director may establish relationships or contracts with the nationwide multistate licensing system and registry or other entities designated by the nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to applicants or other individuals subject to that act.

C. In connection with an application for licensing pursuant to Article 2 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide multistate licensing system and registry the following information in a form and medium prescribed by the nationwide multistate licensing system and registry:

(1) the applicant's history and experience; and

(2) an authorization for the nationwide multistate licensing system and registry and the director to obtain:

(a) an independent credit report; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

D. If an applicant is a corporation, limited liability company, partnership or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses and the employment in the ten-year period next preceding the submission of the application of each executive officer, manager, director or person that has control of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director or person in control of the applicant has been involved in the ten-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission pursuant to Section 13 of the federal Securities Exchange Act of 1934;

(9) if the applicant is a wholly owned subsidiary of:

(a) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed pursuant to Section 13 of the federal Securities Exchange Act of 1934; or

(b) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) if the applicant has a registered agent in New Mexico, the name and address of the applicant's registered agent in New Mexico; and

(11) any other information the director reasonably requires with respect to the applicant.

E. A nonrefundable application fee of two thousand dollars ($2,000) and a nonrefundable license fee of two thousand dollars ($2,000) shall accompany an application for a license pursuant to Article 2 of the Uniform Money Services Act. The application shall also be accompanied by the surety bond or other security required by Section 58-32-203 NMSA 1978.

F. The director may waive one or more requirements of Subsection C or D of this section or permit an applicant to submit other information in lieu of the required information.

G. As used in this section, "material litigation" means litigation that, according to generally accepted accounting principles, is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders or similar records.

**History:** Laws 2016, ch. 88, § 202; 2019, ch. 144, § 18.

**ANNOTATIONS**

**Cross references.** — For the federal Securities Exchange Act of 1934, *see* USC § 78a.

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry", and provided the statutory citation for a provision of the Uniform Money Services Act; after each occurrence of "nationwide", deleted "mortgage" and added "multistate"; and in Subsection E, after "Section", deleted "203 of the Uniform Money Services Act" and added "58-32-203 NMSA 1978".

## 58-32-203. Security.

A. Except as otherwise provided in Subsection B of this section, a surety bond, letter of credit, or other similar security acceptable to the director shall accompany an application for a license pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978] of the Uniform Money Services Act. Except as otherwise provided in Subsections D and F of this section, the required security shall be in the amount of three hundred thousand dollars ($300,000) or an amount equal to one percent of the licensee's total yearly dollar

volume of money transmission business in this state or the applicant's projected total volume of business in this state for the first year of licensure, whichever is greater, up to a maximum of two million dollars ($2,000,000).

B. The security shall be in form and substance and from an issuer satisfactory to the director and payable to New Mexico for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

C. The aggregate liability on a surety bond shall not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond or the director may maintain an action on behalf of the claimant.

D. A surety bond shall cover claims for so long as the director specifies, but for at least five years after the licensee ceases to provide money services in New Mexico. However, the director may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in New Mexico is reduced. The director may permit a licensee to substitute another form of security acceptable to the director for the security effective at the time the licensee ceases to provide money services in New Mexico.

E. In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in form and substance and from an issuer prescribed by the director.

F. The director may increase the amount of security required to a maximum of five million dollars ($5,000,000) if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses or other relevant criteria.

**History:** Laws 2016, ch. 88, § 203.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-204. Issuance of license.

A. When an application is filed pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978] of the Uniform Money Services Act, the director shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The director may conduct an onsite investigation of the applicant, in New Mexico or in any other state or country, the reasonable cost of which the applicant shall pay. The director shall issue a license to an applicant pursuant to Article 2 of the

Uniform Money Services Act if the director finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Sections 202, 203 and 206 [58-32-202, 58-32-203, 58-32-206 NMSA 1978] of the Uniform Money Services Act; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

B. When an application for an original license pursuant to Article 2 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved; and

(b) the license takes effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

D. An applicant whose application is denied by the director pursuant to Article 2 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of the notice of the denial, and request a hearing.

**History:** Laws 2016, ch. 88, § 204.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-205. Renewal of license.

A. A license issued pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978] of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 2 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars ($1,000) and twenty-five dollars ($25.00) for each authorized

delegate before November 1 of each year or, if November 1 is not a business day, on the next business day.

B. A licensee pursuant to Article 2 of the Uniform Money Services Act shall submit a renewal report with the renewal fee, in a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number and monetary amount of payment instruments and stored value sold by the licensee in New Mexico that have not been included in a renewal report and the monetary amount of payment instruments and stored value currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in Sections 701 and 702 [58-32-701, 58-32-702 NMSA 1978] of the Uniform Money Services Act;

(5) proof that the licensee continues to maintain adequate security as required by Section 203 [58-32-203 NMSA 1978] of the Uniform Money Services Act; and

(6) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

C. If a licensee does not file a renewal report or pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension. The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee; and

(2) pays one hundred dollars ($100) for each day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

**History:** Laws 2016, ch. 88, § 205.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-206. Net worth.

A licensee pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978] of the Uniform Money Services Act shall maintain a net worth of at least the following amounts determined in accordance with generally accepted accounting principles:

A. for one to four locations of the licensee and authorized delegates in New Mexico, one hundred thousand dollars ($100,000); and

B. for five or more locations of the licensee and authorized delegates in New Mexico or for an internet-based money services business, five hundred thousand dollars ($500,000).

**History:** Laws 2016, ch. 88, § 206.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 3
# CHECK CASHING LICENSES

## 58-32-301. License required.

A. A person shall not engage in check cashing or advertise, solicit or hold itself out as providing check cashing for which the person receives at least two thousand five hundred dollars ($2,500) within a thirty-day period unless the person:

(1) is licensed pursuant to Article 3 of the Uniform Money Services Act;

(2) is licensed for money transmission pursuant to Article 2 of the Uniform Money Services Act;

(3) is licensed for currency exchange pursuant to Article 4 of the Uniform Money Services Act; or

(4) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 3 of the Uniform Money Services Act is not transferable or assignable.

**History:** Laws 2016, ch. 88, § 301; 2017, ch. 104, § 1.

**ANNOTATIONS**

**The 2017 amendment,** effective July 1, 2017, increased the threshold amount of revenue earned from check cashing services that requires a person to be licensed pursuant to the Uniform Money Services Act; and in Subsection A, deleted "five hundred dollars ($500)" and added "two thousand five hundred dollars ($2,500)".

**Temporary provisions.** — Laws 2016, ch. 88, § 1005 provided that the director of the financial institutions division of the regulation and licensing department shall promulgate such rules as are necessary to transition licensees pursuant to 58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

## 58-32-302. Application for license.

A. A person applying for a license pursuant to Article 3 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in New Mexico where the applicant proposes to engage in check cashing or currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the director reasonably requires with respect to the applicant, but not more than the director may require pursuant to Article 2 of the Uniform Money Services Act.

B. In connection with an application for licensing pursuant to Article 3 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide multistate licensing system and registry the following information in a form and medium prescribed by the nationwide multistate licensing system and registry:

(1) the applicant's history and experience; and

(2) an authorization for the nationwide multistate licensing system and registry and the director to obtain:

(a) an independent credit report; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

C. A nonrefundable application fee of two thousand dollars ($2,000) and a nonrefundable license fee of two thousand dollars ($2,000) shall accompany an application for a license pursuant to Article 3 of the Uniform Money Services Act.

**History:** Laws 2016, ch. 88, § 302; 2019, ch. 144, § 19.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

## 58-32-303. Issuance of license.

A. When an application is filed pursuant to Article 3 [58-32-301 to 58-32-304 NMSA 1978] of the Uniform Money Services Act, the director shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The director may conduct an onsite investigation of the applicant, in New Mexico or in any other state or country, the reasonable cost of which the applicant shall pay. The director shall issue a license to an applicant pursuant to Article 3 of the Uniform Money Services Act if the director finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 302 [58-32-302 NMSA 1978] of the Uniform Money Services Act; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in check cashing.

B. When an application for an original license pursuant to Article 3 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved; and

(b) the director shall issue the license, pursuant to Article 3 of the Uniform Money Services Act, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

D. An applicant whose application is denied by the director pursuant to Article 3 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of the notice of the denial, and request a hearing.

**History:** Laws 2016, ch. 88, § 303.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-304. Renewal of license.

A. A license issued pursuant to Article 3 [58-32-301 to 58-32-304 NMSA 1978] of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 3 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars ($1,000) before November 1 of each year or, if November 1 is not a business day, on the next business day.

B. A licensee pursuant to Article 3 of the Uniform Money Services Act shall submit a renewal report with the renewal fee in a record signed under penalty of perjury that shall

be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report; and

(2) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in check cashing or currency exchange, including limited stations and mobile locations.

C. If a licensee does not file a renewal report or pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension. The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee; and

(2) pays one hundred dollars ($100) for each day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

**History:** Laws 2016, ch. 88, § 304.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 4
# CURRENCY EXCHANGE LICENSES

## 58-32-401. License required.

A. A person shall not engage in currency exchange or advertise, solicit or hold itself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person:

(1) is licensed pursuant to Article 4 [58-32-401 to 58-32-404 NMSA 1978] of the Uniform Money Services Act;

(2) is licensed for money transmission pursuant to Article 2 [58-32-201 through 58-32-206 NMSA 1978] of the Uniform Money Services Act;

(3) is licensed for check cashing pursuant to Article 3 [58-32-301 to 58-32-304 NMSA 1978] of the Uniform Money Services Act; or

(4) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 4 of the Uniform Money Services Act is not transferable or assignable.

**History:** Laws 2016, ch. 88, § 401.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

**Temporary provisions.** — Laws 2016, ch. 88, § 1005 provided that the director of the financial institutions division of the regulation and licensing department shall promulgate such rules as are necessary to transition licensees pursuant to 58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

## 58-32-402. Application for license.

A. A person applying for a license pursuant to Article 4 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in New Mexico where the applicant proposes to engage in currency exchange or check cashing, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the director reasonably requires with respect to the applicant, but not more than the director may require pursuant to Article 2 of the Uniform Money Services Act.

B. In connection with an application for licensing pursuant to Article 4 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide multistate licensing system and registry the following information in a form and medium prescribed by the nationwide multistate licensing system and registry:

(1) the applicant's history and experience; and

(2) an authorization for the nationwide multistate licensing system and registry and the director to obtain:

(a) an independent credit report; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

C. A nonrefundable application fee of two thousand dollars ($2,000) and a nonrefundable license fee of two thousand dollars ($2,000) shall accompany an application for a license pursuant to Article 4 of the Uniform Money Services Act.

**History:** Laws 2016, ch. 88, § 402; 2019, ch. 144, § 20.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after each occurrence of "nationwide", deleted "mortgage" and added "multistate".

## 58-32-403. Issuance of license.

A. When an application is filed pursuant to Article 4 [58-32-401 to 58-32-404 NMSA 1978] of the Uniform Money Services Act, the director shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The director may conduct an onsite investigation of the applicant, in New Mexico or in any other state or country, the reasonable cost of which the applicant shall pay. The director shall issue a license to an applicant pursuant to Article 4 of the Uniform Money Services Act if the director finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 402 [58-32-402 NMSA 1978] of the Uniform Money Services Act; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

B. When an application for an original license pursuant to Article 4 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved; and

(b) the director shall issue the license, pursuant to Article 4 of the Uniform Money Services Act, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

D. An applicant whose application is denied a license by the director pursuant to Article 4 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of the notice of the denial, and request a hearing.

**History:** Laws 2016, ch. 88, § 403.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-404. Renewal of license.

A. A license issued pursuant to Article 4 [58-32-401 to 58-32-404 NMSA 1978] of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 4 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars ($1,000) before November 1 of each year or, if November 1 is not a business day, on the next business day.

B. A licensee pursuant to Article 4 of the Uniform Money Services Act shall submit a renewal report with the renewal fee in a record signed under penalty of perjury that shall

be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report; and

(2) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in currency exchange or check cashing, including limited stations and mobile locations.

C. If a licensee does not file a renewal report and pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension. The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee; and

(2) pays one hundred dollars ($100) for each day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

**History:** Laws 2016, ch. 88, § 404.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 5
# AUTHORIZED DELEGATES

## 58-32-501. Relationship between licensee and authorized delegate.

A. As used in this section, "remit" means:

(1) to make direct payments of money to a licensee or its representative authorized to receive money; or

(2) to deposit money in a bank in an account specified by the licensee.

B. A contract between a licensee and an authorized delegate shall require the authorized delegate to operate in full compliance with the Uniform Money Services Act. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with the Uniform Money Services Act.

C. For each authorized delegate, the licensee shall maintain records that demonstrate the licensee conducted a reasonable background investigation of each authorized delegate. A licensee shall preserve those records for at least five years after the authorized delegate's most recent designation by the licensee.

D. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

E. If a license is suspended or revoked or a licensee does not renew its license, the director shall notify all authorized delegates of the licensee whose names are in a record filed with the director of the suspension, revocation or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

F. An authorized delegate shall not provide money services outside the scope of activity permissible pursuant to the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage pursuant to Article 2 [58-32-201 to 58-32-206 NMSA 1978], 3 [58-32-301 to 58-32-304 NMSA 1978] or 4 [58-32-401 to 58-32-404 NMSA 1978] of the Uniform Money Services Act. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

G. An authorized delegate shall not use a subdelegate to conduct money services on behalf of a licensee.

H. Whenever a licensee first advises the director of the identity of a proposed delegate, the licensee shall pay a nonrefundable fee of twenty-five dollars ($25.00) for each proposed delegate.

**History:** Laws 2016, ch. 88, § 501.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-502. Unauthorized activity.

A person shall only act as a delegate for a licensee. A person that provides money services on behalf of a person not licensed pursuant to the Uniform Money Services Act

is considered to act in its own capacity and may be subject to civil and criminal penalties for providing money services without a license.

**History:** Laws 2016, ch. 88, § 502.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 6
# EXAMINATIONS; REPORTS; RECORDS

## 58-32-601. Authority to conduct examinations.

A. The director may conduct an annual examination of a licensee or of any of its authorized delegates upon forty-five days' notice in a record to the licensee.

B. The director may examine a licensee or its authorized delegate at any time, without notice, if the director has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act.

C. If the director concludes that an onsite examination is necessary pursuant to Subsection A of this section, in New Mexico or in any other state or country, the licensee shall pay the reasonable cost of the examination.

D. Information obtained during an examination pursuant to the Uniform Money Services Act may be disclosed only as provided in Section 607 [58-32-607 NMSA 1978] of that act.

**History:** Laws 2016, ch. 88, § 601.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-602. Cooperation.

The director may consult and cooperate with other state agencies, agencies of another state or of the United States or the nationwide multistate licensing system and registry in enforcing and administering the Uniform Money Services Act. They may jointly pursue examinations and take other official action that they are otherwise empowered to take.

**History:** Laws 2016, ch. 88, § 602; 2019, ch. 144, § 21.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and after "nationwide", deleted "mortgage" and added "multistate".

## 58-32-603. Reports.

A. A licensee shall file with the director a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director and that shall contain any material change in information provided in the licensee's application or the information provided by the licensee to the nationwide multistate licensing system and registry. The record shall be filed within fifteen business days after the licensee has reason to know of the change.

B. A licensee shall file with the director within forty-five days after the end of each fiscal quarter a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director and that shall contain a current list of all authorized delegates and locations in New Mexico where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

C. A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(1) the filing of a petition by or against the licensee pursuant to the United States Bankruptcy Code for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director or person in control of the licensee for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

D. The report required pursuant to Subsection C of this section shall be a record signed under penalty of perjury and in a form and in a medium prescribed by the director and shall describe the event requiring the report.

**History:** Laws 2016, ch. 88, § 603; 2019, ch. 144, § 22.

**ANNOTATIONS**

**Cross references.** — For the federal Bankruptcy Code, *see* 11 U.S.C. § 101 et seq.

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and in Subsection A, after "nationwide", deleted "mortgage" and added "multistate".

## 58-32-604. Change of control.

A. A licensee shall:

(1) give the director notice in a record signed under penalty of perjury in a form and in a medium prescribed by the director of a proposed change of control within fifteen days after learning of the proposed change of control;

(2) request approval by the director of the proposed change of control; and

(3) submit a nonrefundable fee of two thousand dollars ($2,000) with the notice.

B. After review of a request for approval pursuant to Subsection A of this section, the director may require the licensee to provide in a record signed under penalty of perjury in a form and in a medium prescribed by the director additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

C. The director shall approve a request for change of control pursuant to Subsection A of this section if, after investigation, the director determines that the person or group of persons requesting approval has the competence, experience, character and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

D. When an application for a change of control pursuant to Article 6 [58-32-601 to 58-32-607 NMSA 1978] of the Uniform Money Services Act is complete, the director shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the director shall approve or deny the request within one hundred twenty days after that date; or

(2) if the request is not approved or denied within one hundred twenty days after that date:

(a) the request is deemed approved; and

(b) the director shall permit the change of control, pursuant to this section, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

E. The director, by rule or order, may exempt a person from any of the requirements of Paragraphs (2) and (3) of Subsection A of this section if it is in the public interest to do so.

F. Subsection A of this section does not apply to a public offering of securities.

G. Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of Subsections A through C of this section.

**History:** Laws 2016, ch. 88, § 604.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-605. Records.

A. A licensee shall maintain the following records for determining its compliance with the Uniform Money Services Act for at least three years:

(1) a record of each payment instrument or stored-value obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value obligations;

(5) records of each payment instrument and stored-value obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the director reasonably requires by rule.

B. The items specified in Subsection A of this section may be maintained in writing, electronically or in any other form of record that is permitted by the director.

C. Records may be maintained outside New Mexico if they are made accessible to the director on seven business-days' notice that is sent in a record.

D. All records maintained by the licensee as required in Subsections A through C of this section are open to inspection by the director pursuant to Section 601 [58-32-601 NMSA 1978] of the Uniform Money Services Act.

**History:** Laws 2016, ch. 88, § 605.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-606. Money laundering reports.

A. A licensee and an authorized delegate shall file with the New Mexico attorney general all reports required by federal currency reporting, recordkeeping and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 et seq. (1994) or any successor law; and other federal and state laws pertaining to money laundering.

B. The timely filing of a complete and accurate report required under Subsection A of this section with the appropriate federal agency is compliance with the requirements of that subsection, unless the director notifies the licensee that the New Mexico attorney general has notified the director that reports of this type are not being regularly and comprehensively made available by the federal agency to the New Mexico attorney general.

C. In connection with each transaction that involves transmitting money in an amount of one thousand dollars ($1,000) or more, whether sending or receiving, a licensee or, for a transaction conducted through an authorized delegate, an authorized delegate, shall retain a record of each of the following:

(1) the name and social security or taxpayer identification number, if any, of the individual presenting the transaction and of the person and the entity on whose behalf the transaction is to be effected;

(2) the type and number of the customer's verified photographic identification as described in 31 Code of Federal Regulations Section 1010.312 or any successor regulations;

(3) the customer's current occupation;

(4) the customer's current residential address; and

(5) the customer's signature.

D. The provisions of Subsection C of this section shall not apply to transactions by which a licensee's customer is making a bill payment to:

(1) a commercial creditor pursuant to a contract between the licensee and the commercial creditor; or

(2) a utility company.

**History:** Laws 2016, ch. 88, § 606.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-607. Confidentiality.

A. Except as otherwise provided in Subsection B of this section, all information or reports obtained by the director from an applicant, licensee or authorized delegate and all information contained in or related to examination, investigation, operating or condition reports prepared by, on behalf of or for the use of the director, or financial statements, balance sheets or authorized delegate information, are confidential and are not subject to disclosure pursuant to the Public Records Act [Chapter 14, Article 3 NMSA 1978] or any similar law.

B. The director may disclose information not otherwise subject to disclosure pursuant to Subsection A of this section to representatives of state or federal agencies who promise in a record signed under penalty of perjury in a form and in a medium prescribed by the director that they will maintain the confidentiality of the information or if the director finds that the release is reasonably necessary for the protection of the public and is in the interests of justice and the licensee has been given not fewer than

ten days' notice in a record by the director of the director's intent to release the information.

C. This section does not prohibit the director from disclosing to the public a list of persons licensed pursuant to the Uniform Money Services Act or the aggregated financial data concerning those licensees.

**History:** Laws 2016, ch. 88, § 607.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 7
# PERMISSIBLE INVESTMENTS

## 58-32-701. Maintenance of permissible investments.

A. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored-value obligations issued or sold in all states and money transmitted from all states by the licensee.

B. The director, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The director by rule may prescribe or by order allow other types of investments that the director determines to have a safety substantially equivalent to other permissible investments.

C. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

**History:** Laws 2016, ch. 88, § 701.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-702. Types of permissible investments.

A. Except to the extent otherwise limited by the director pursuant to Section 701 [58-32-701 NMSA 1978] of the Uniform Money Services Act, the following investments are permissible pursuant to Section 701 of that act:

(1) cash, a certificate of deposit or senior debt obligation of an insured depository institution as defined in Section 3 of the Federal Deposit Insurance Act;

(2) a banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts that are not more than ten days past due or doubtful of collection if the aggregate amount of receivables pursuant to this paragraph does not exceed fifty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables pursuant to this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission pursuant to the federal Investment Company Act of 1940 and whose portfolio is restricted by the management company's investment policy to investments specified in Paragraphs (1) through (4) of this subsection.

B. The following investments are permissible pursuant to Section 701 of the Uniform Money Services Act, but only to the extent specified:

(1) an interest-bearing bill, note, bond or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments pursuant to this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange

commission pursuant to the federal Investment Company Act of 1940 and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than ten percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding pursuant to demand-borrowing agreements pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding pursuant to demand-borrowing agreements pursuant to this paragraph with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(4) any other investment the director designates, to the extent specified by the director.

C. The aggregate of investments pursuant to Subsection B of this section shall not exceed fifty percent of the total permissible investments of a licensee calculated in accordance with Section 701 of the Uniform Money Services Act.

**History:** Laws 2016, ch. 88, § 702.

**ANNOTATIONS**

**Cross references.** — For the Federal Deposit Insurance Act, *see* 12 USC § 1811 et seq.

For the Investment Company Act of 1940, *see* 15 U.S.C. § 80a-1 et seq.

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 8
# ENFORCEMENT

## 58-32-801. Suspension and revocation; receivership.

A. The director may suspend or revoke a license, place a licensee in receivership or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act;

(2) the licensee does not cooperate with an examination or investigation by the director;

(3) the licensee engages in fraud, intentional misrepresentation or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued pursuant to the Uniform Money Services Act, as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character or general fitness of the licensee, authorized delegate, person in control of a licensee or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations or makes a general assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the director issues and serves upon the licensee a final order, including a finding that the authorized delegate has violated the Uniform Money Services Act.

B. In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of the Uniform Money Services Act and the previous conduct of the person involved.

**History:** Laws 2016, ch. 88, § 801.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-802. Suspension and revocation of authorized delegates.

A. The director may issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

(1) the authorized delegate violated the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act;

(2) the authorized delegate did not cooperate with an examination or investigation by the director;

(3) the authorized delegate engaged in fraud, intentional misrepresentation or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

B. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of the Uniform Money Services Act or a rule adopted or order issued pursuant to that act and the previous conduct of the authorized delegate.

C. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the director.

**History:** Laws 2016, ch. 88, § 802.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-803. Orders to cease and desist.

A. If the director determines that a violation of the Uniform Money Services Act, or of a rule adopted or an order issued pursuant to that act, by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers or the public as a result of the violation, or causes insolvency or significant dissipation of assets of the licensee, the director may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

B. The director may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the director.

C. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 58-32-901 or 58-32-902 NMSA 1978.

D. A licensee or an authorized delegate that is served with an order to cease and desist may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding pursuant to Section 58-32-901 or 58-32-902 NMSA 1978.

E. An order to cease and desist expires unless the director commences an administrative proceeding pursuant to Section 58-32-901 or 58-32-902 NMSA 1978 within ten days after it is issued.

**History:** Laws 2016, ch. 88, § 803; 2019, ch. 75, § 1.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, made technical changes to certain provisions of the Uniform Money Services Act and changed "801 or 802 of the Uniform Money Services Act" to "58-32-901 or 58-32-902 NMSA 1978" throughout.

## 58-32-804. Consent orders.

The director may enter into a consent order at any time with a person to resolve a matter arising pursuant to the Uniform Money Services Act or a rule adopted or order issued pursuant to that act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act has been violated.

**History:** Laws 2016, ch. 88, § 804.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-805. Emergency orders.

A. The director may issue an emergency order, without prior notice and an opportunity for hearing, if the director finds that:

(1) the action, violation or condition that is the basis for the order:

(a) has caused or is likely to cause the insolvency of the licensee;

(b) has caused or is likely to cause the substantial dissipation of the licensee's assets or earnings;

(c) has seriously weakened or is likely to seriously weaken the condition of the licensee; or

(d) has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, a purchaser of the licensee's money services or the public; and

(2) immediate action is necessary to protect the interests of the licensee, a purchaser of the licensee's money services or the public.

B. In connection with and as directed by an emergency order, the director may secure the records and assets of a licensee or authorized delegate that relate to the licensee's money services business.

C. An emergency order shall:

(1) state the grounds on which the order is based;

(2) advise the person against whom the order is directed that the order takes effect immediately, and, to the extent applicable, require the person to immediately cease and desist from the conduct or violation that is the subject of the order or to take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation or as otherwise appropriate;

(3) be delivered by personal delivery or sent by certified mail, return receipt requested, to the person against whom the order is directed at the person's last known address; and

(4) include a notice that a person may request a hearing on the order by filing a written request for a hearing with the director not later than the fifteenth day after the date the order is delivered or mailed.

D. An emergency order takes effect as soon as the order is served on the person against whom the order is directed.

E. A licensee or authorized delegate against whom an emergency order is directed must submit a written certification to the director, signed by the licensee or authorized

delegate, and their principals and responsible individuals, as applicable, and each person named in the order, stating that each person has received a copy of and has read and understands the order.

F. Unless the director receives a written request for a hearing from a person against whom an emergency order is directed not later than the fifteenth day after the date the order is delivered or mailed, the order is final as to that person on the sixteenth day after the date the order is delivered or mailed.

G. A request for a hearing does not stay an emergency order.

H. A hearing on an emergency order takes precedence over any other matter pending before the director and must be held not later than the tenth day after the date the director receives the written request for hearing unless a hearing officer extends the period for good cause or the parties agree to a later hearing date.

I. A final emergency order may be appealed to the district court as provided in Section 39-3-1.1 NMSA 1978.

**History:** Laws 2016, ch. 88, § 805.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-806. Civil penalties.

The director may assess a civil penalty against a person that violates the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act in an amount not to exceed one thousand dollars ($1,000) per day for each day the violation is outstanding.

**History:** Laws 2016, ch. 88, § 806.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-807. Criminal penalties.

A. A person who intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained pursuant to the Uniform Money Services Act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a fourth degree felony.

B. A person who knowingly engages in an activity for which a license is required pursuant to the Uniform Money Services Act without being licensed pursuant to that act and who receives more than two thousand five hundred dollars ($2,500) in compensation within a thirty-day period from this activity is guilty of a fourth degree felony.

C. A person who knowingly engages in an activity for which a license is required pursuant to the Uniform Money Services Act without being licensed pursuant to that act and who receives two thousand five hundred dollars ($2,500) or less in compensation within a thirty-day period from this activity is guilty of a misdemeanor.

**History:** Laws 2016, ch. 88, § 807.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-808. Unlicensed persons.

A. If the director has reason to believe that a person has violated or is violating Section 201, 301 or 401 [58-32-201, 58-32-301, 58-32-401 NMSA 1978] of the Uniform Money Services Act, the director may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of Section 201, 301 or 401 of that act.

B. In an emergency, the director may petition the district court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

C. An order to cease and desist becomes effective upon service of it upon the person.

D. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 901 and 902 [58-32-901, 58-32-902 NMSA 1978] of the Uniform Money Services Act.

E. A person that is served with an order to cease and desist for violating Section 201, 301 or 401 of the Uniform Money Services Act may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding pursuant to Sections 901 and 902 of that act.

F. An order to cease and desist expires unless the director commences an administrative proceeding within ten days after it is issued.

**History:** Laws 2016, ch. 88, § 808.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 9
# ADMINISTRATIVE PROCEDURES

## 58-32-901. Powers of director.

A. The director may act on the director's own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with the Uniform Money Services Act, refer cases to the office of the attorney general or any other state agency or agency of another state or the United States and seek or provide remedies as provided in the Uniform Money Services Act.

B. The director may investigate and examine, in New Mexico or in any other state or country, by subpoena or otherwise, the activities, books, accounts and records of a person that provides or offers to provide money services, or a person to which a licensee has delegated its obligations pursuant to an agreement or the Uniform Money Services Act, to determine compliance with the Uniform Money Services Act. Information that identifies individuals who have agreements with the licensee shall not be disclosed to the public. In connection with the investigation, the director may:

(1) charge the person the reasonable expenses necessarily incurred to conduct the examination; and

(2) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated.

C. The director may enter into cooperative arrangements with other state agencies or agencies of another state or of the United States, or the nationwide multistate licensing system and registry, and may exchange with any of those entities information about a licensee, including information obtained during an examination of the licensee.

D. The director may bring an action to enforce the Uniform Money Services Act in New Mexico or in any other state or country.

E. The director may recover the reasonable expenses of enforcing the Uniform Money Services Act pursuant to Article 8 of that act, including nongovernmental attorney and expert witness fees based on the hours reasonably expended and the hourly rates for attorneys and expert witnesses of comparable experience in the community.

**History:** Laws 2016, ch. 88, § 901; 2019, ch. 144, § 23.

**ANNOTATIONS**

**The 2019 amendment,** effective July 1, 2019, replaced "nationwide mortgage licensing system and registry" with "nationwide multistate licensing system and registry"; and in Subsection C, after "nationwide", deleted "mortgage" and added "multistate".

## 58-32-902. Hearings.

Except as otherwise provided in Subsection C of Section 205 [58-32-205 NMSA 1978], Subsection C of Section 304 [58-32-304 NMSA 1978], Subsection C of Section 404 [58-32-404 NMSA 1978] and Sections 803, 805 and 808 [58-32-803, 58-32-805, 58-32-808 NMSA 1978]of the Uniform Money Services Act, the director shall not suspend or revoke a license, place a licensee in receivership, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate or assess a civil penalty without notice and an opportunity to be heard. The director shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

**History:** Laws 2016, ch. 88, § 902.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 10
# MISCELLANEOUS PROVISIONS

## 58-32-1001. Uniformity of application and construction.

In applying and construing the Uniform Money Services Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History:** Laws 2016, ch. 88, § 1001.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-1002. Rules.

The director may promulgate rules to administer and enforce the Uniform Money Services Act, including rules necessary or appropriate to:

A. implement and clarify the Uniform Money Services Act;

B. preserve and protect the safety and soundness of money services businesses;

C. protect the interests of purchasers of money services and of the public;

D. protect against drug trafficking, terrorist funding and money laundering, structuring or a related financial crime; and

E. recover the cost of administering and enforcing the Uniform Money Services Act and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations and other actions required to achieve the purposes of that act.

**History:** Laws 2016, ch. 88, § 1002.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-1003. Appointment of secretary of state as agent for service of process; forwarding of process; consent to jurisdiction.

A. A licensee, an authorized delegate or a person who knowingly engages in activities that are regulated by the Uniform Money Services Act and require a license, with or without filing an application or holding a license, is deemed to have:

(1) consented to the jurisdiction of the courts of this state over the licensee, authorized delegate or person for all actions arising pursuant to the Uniform Money Services Act;

(2) consented to the venue in New Mexico for all actions arising pursuant to the Uniform Money Services Act, as venue is provided pursuant to Chapter 38, Article 3 NMSA 1978, and to the convenient forum of the courts in any such venue; and

(3) appointed the secretary of state as the lawful agent of the licensee, authorized delegate or person for the purpose of accepting service of process in all actions arising pursuant to the Uniform Money Services Act.

B. Within three business days after service of process upon the secretary of state, the secretary of state shall transmit by certified mail copies of all lawful process accepted by the secretary of state as an agent to that person at the person's last known address. Service of process shall be deemed complete three business days after the secretary of state deposits the copies of the documents in the United States mail.

C. The provisions of this section are cumulative and do not diminish the provisions of any other law that:

(1) provide for the New Mexico courts to have jurisdiction over a person;

(2) provide for venue in New Mexico of any action; or

(3) provide for any other method of serving process upon a person.

**History:** Laws 2016, ch. 88, § 1003.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

## 58-32-1004. Money services regulatory fund; created; purpose; appropriation.

A. The "money services regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the regulation and licensing department. The fund shall consist of application, licensing, renewal, investigation and any other fees received that are associated with the costs of administering the Uniform Money Services Act and any money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the money services regulatory fund is subject to appropriation by the legislature to the financial institutions division of the regulation and licensing department to carry out the provisions of the Uniform Money Services Act.

C. Money shall be disbursed from the money services regulatory fund only on warrant of the secretary of finance and administration upon vouchers signed by the director of the financial institutions division or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2016, ch. 88, § 1004.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 88, § 1007 makes Laws 2016, ch. 88 effective January 1, 2017.

# ARTICLE 33
# New Mexico Work and Save

## 58-33-1. Short title.

Chapter 58, Article 33 NMSA 1978 may be cited as the "New Mexico Work and Save Act".

**History:** Laws 2020, ch. 7, § 1; 2021, ch. 46, § 1.

**ANNOTATIONS**

**Temporary provisions.** — Laws 2020, ch. 7, § 13 provided:

A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.

**The 2021 amendment,** effective June 18, 2021, deleted "This act" and added "Chapter 58, Article 33 NMSA 1978.

## 58-33-2. Definitions.

As used in the New Mexico Work and Save Act:

A. "board" means the New Mexico work and save board;

B. "board member" means a member of the board;

C. "covered employee" means a person who is at least eighteen years of age and who is employed by a covered employer, either full time or part time, or a person who is self-employed as a sole proprietor or an independent contractor; provided that "covered employee" does not include an employee:

(1) covered under the federal Railway Labor Act;

(2) on whose behalf an employer makes contributions to a multi-employer pension trust fund pursuant to the federal Taft-Hartley Act; or

(3) of federal, state or local governments or any agency, department, board, commission, institution or instrumentality of those governments;

D. "covered employer" means a person engaged in a business, industry, profession, trade, nonprofit or other enterprise with its primary place of business physically located in New Mexico, but does not include a federal, state or local government or any agency, department, board, commission, institution or instrumentality of those governments;

E. "default investment option" means a Roth individual retirement account with a target date fund investment and a default contribution rate established by the board;

F. "financial institution" means a duly licensed bank, savings and loan association, credit union, broker-dealer, asset manager, insurance company, mutual fund or other financial entity;

G. "financial service provider" means a financial or investment service provider that, if approved by the board as meeting the eligibility criteria, may administer and maintain one or more program participant investment accounts or one or more marketplace participant accounts for which the provider is a fiduciary;

H. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

I. "IRA" means an individual retirement account that conforms to the requirements of Section 408(a) of the Internal Revenue Code;

J. "marketplace participant" means a covered employer that establishes a plan through the New Mexico retirement plan marketplace or a covered employee who establishes an investment account through the New Mexico retirement plan marketplace;

K. "New Mexico retirement plan marketplace" means a board-approved web-based marketplace that facilitates access to retirement savings plans for private sector and nonprofit employers and employees, including multiple-employer plans;

L. "New Mexico work and save IRA program" means the retirement savings program, designed and implemented by the board, that facilitates payroll deductions of program participants in individual retirement accounts without any contributions from covered employers;

M. "New Mexico work and save platform" means the online digital service designed and implemented by the board to facilitate interaction among covered employers, covered employees, program participants, financial service providers and other users via the internet;

N. "participating employer" means a covered employer that provides payroll deductions for individual retirement accounts through the New Mexico work and save IRA program but that does not contribute to those accounts;

O. "program participant" means a covered employee who is contributing to an individual retirement account through the New Mexico work and save IRA program or has an individual retirement account balance through the New Mexico work and save IRA program;

P. "Roth individual retirement account" means a voluntary payroll deduction Roth individual retirement account that conforms to the requirements of Section 408A of the Internal Revenue Code; and

Q. "total fees and expenses" means all fees, costs and expenses, including administrative expenses, investment expenses of the New Mexico work and save IRA program, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs and other operating expenses.

**History:** Laws 2020, ch. 7, § 2; 2021, ch. 46, § 2.

**ANNOTATIONS**

**Cross references.** — For the federal Railway Labor Act, *see* 45 U.S.C. § 151 et seq.

For the federal Taft-Hartley Act, *see* 29 U.S.C. § 186.

For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2021 amendment,** effective June 18, 2021, defined "default investment option", "financial service provider", "IRA", "marketplace participant", "New Mexico work and save platform", and revised the definition of terms, as used in the New Mexico Work and Save Act; added a new Subsection E and redesignated former Subsection E as Subsection F; added a new Subsection G and redesignated former Subsection F as Subsection H; added new Subsections I and J and redesignated former Subsections G and H as Subsections K and L; in Subsection K, after "means a", added "board-approved", and after "web-based marketplace", deleted "for" and added "that facilitates access to"; in Subsection L, after "work and save", added "IRA program", after "savings program", added "designed and implemented by the board", after "that", deleted "invests" and added "facilitates", and after "participants in", deleted "Roth"; added a new Subsection M and redesignated former Subsections I through L as Subsections N through Q; after each occurrence of "New Mexico work and save", added "IRA program" throughout; in Subsection O, after "contributing to", deleted "a Roth" and added "an", and after "or has", deleted "a Roth" and added "an"; and in Subsection Q, after "annuitization costs and other", deleted "related miscellaneous costs" and added "operating expenses".

## 58-33-3. Board created; organization.

A. The "New Mexico work and save board" is created and is administratively attached to the office of the state treasurer. The office of the state treasurer shall provide administrative support for the board in carrying out its duties pursuant to the New Mexico Work and Save Act.

B. The board consists of the following voting members:

(1) two members appointed by the state treasurer as follows:

(a) one member who has skill, knowledge and experience in the field of retirement saving and investments; and

(b) one member who has skill, knowledge and experience in retirement investment products or retirement plan designs;

(2) three members appointed by the governor as follows:

(a) one member who is a representative of an association representing employees;

(b) one member who is a representative of small businesses; and

(c) one member who is a representative of the interests of program participants;

(3) two members appointed by the speaker of the house of representatives as follows:

(a) one member who is a representative of the interests of program participants; and

(b) one member who has skill, knowledge and experience in the field of retirement saving and investments; and

(4) two members appointed by the president pro tempore of the senate as follows:

(a) one member who is a representative of the interests of program participants; and

(b) one member who has skill, knowledge and experience in the field of retirement saving and investments.

C. A majority of the board constitutes a quorum. Action may be taken by the board upon an affirmative vote of the majority of members present at the meeting at which a

quorum is present. A vacancy in the membership of the board does not impair the right of a quorum to exercise the powers and duties of the board.

D. The appointing authorities shall appoint the first members of the board for staggered terms so that the state treasurer appoints one member for two years and one member for four years, the governor appoints two members for two years and one member for four years, the speaker of the house of representatives appoints one member for two years and one member for four years and the president pro tempore of the senate appoints one member for two years and one member for four years. Thereafter, members of the board shall be appointed for four-year terms.

E. A board member shall be eligible for reappointment, provided that a board member shall not serve more than three full terms, consecutive or otherwise. Members shall serve until their successors have been appointed. If there is a vacancy for any reason, the appointing authority shall appoint a qualified person to fill the unexpired term.

F. The appointing authority may remove a member of the board that it has appointed for neglect of a duty required by law, for incompetency, for malfeasance or for unprofessional conduct.

G. Board members shall receive no salary for their service as board members but shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2020, ch. 7, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2020, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2020, ch. 7, § 13 provided:

A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.

## 58-33-4. Board; scope of authority; powers and duties.

A. The board shall not directly or indirectly manage or maintain the funds or accounts of a program participant. The board shall contract with appropriate financial

service providers to manage and maintain the funds and accounts of a program participant.

B. In carrying out its duties to achieve the goals and objectives of the New Mexico Work and Save Act, the board shall:

(1) provide for the design, establishment and operation of the New Mexico work and save IRA program pursuant to the provisions of Section 58-33-9 NMSA 1978 and shall provide oversight and modify the program as necessary;

(2) provide for the design, establishment and operation of the New Mexico retirement plan marketplace pursuant to the provision of Section 58-33-8 NMSA 1978 and shall provide oversight and modify the marketplace as necessary;

(3) be covered against liability pursuant to the provisions of the Tort Claims Act and, in addition, shall evaluate the need for, and procure as needed:

(a) insurance against any and all loss in connection with the property, assets or activities of the New Mexico retirement plan marketplace or the New Mexico work and save IRA program; and

(b) insurance indemnifying each board member from personal loss or liability, including legal fees and expenses, resulting from a member's action or inaction as a board member other than in cases of gross negligence as determined by a final adjudication by a court of competent jurisdiction;

(4) elect a chair and other officers it deems necessary;

(5) meet as necessary to perform its duties;

(6) appoint an executive director, who shall be the chief administrative officer of the board; and

(7) review and revise board rules and processes as necessary in response to changes in applicable state and federal laws to ensure the objectives of the New Mexico Work and Save Act.

C. In the design and implementation of the New Mexico work and save IRA program or the New Mexico retirement plan marketplace, the board shall:

(1) act in accordance with best practices for retirement saving vehicles;

(2) encourage participation, saving, sound investment practices and appropriate selection of investment options, including any default investments;

(3) maximize simplicity and ease of administration for covered employers;

(4) minimize total costs, including by collective investment and economies of scale;

(5) require portability of benefits;

(6) avoid preemption of the New Mexico work and save IRA program by federal law;

(7) ensure that no assets of the New Mexico retirement plan marketplace or the New Mexico work and save IRA program are encumbered, expended or otherwise used for a purpose other than one specified in the New Mexico Work and Save Act;

(8) develop and implement an education and outreach plan to gain input and disseminate information regarding the New Mexico retirement plan marketplace, the New Mexico work and save IRA program and retirement savings in general, including timely information to covered employers regarding the applicable provisions of the New Mexico work and save IRA program;

(9) develop and implement an investment policy and designate appropriate default investments for the New Mexico work and save IRA program that include a mix of asset classes, including target date funds and index funds, that minimize program participant fees and total expenses;

(10) establish procedures for the timely and fair resolution of any disputes related to accounts or program operation; and

(11) perform other activities as are needed to further the purposes of the New Mexico Work and Save Act.

D. The board may:

(1) promulgate rules as necessary and appropriate to carry out the provisions of the New Mexico Work and Save Act consistent with the Internal Revenue Code and rules adopted in accordance with that code, including ensuring that the New Mexico work and save IRA program satisfies all criteria for favorable tax treatment and complies with all applicable federal and state laws;

(2) enter into contracts, agreements, memorandums of understanding or other arrangements with private or nonprofit entities or with this or any other state or their agencies or instrumentalities to operate or manage any part of the New Mexico work and save IRA program or the New Mexico retirement plan marketplace, including combining resources, investments or administrative functions;

(3) sue and be sued in its name;

(4) fix, revise and collect fees and other charges in connection with the New Mexico retirement plan marketplace or the New Mexico work and save IRA program;

(5) contract with private and public entities and professionals, technology entities or professionals, financial institutions, depositories, financial service providers, consultants, actuaries, attorneys, auditors, investment advisers, investment administrators, investment management firms, other investment firms, third party administrators and other professionals as may be appropriate or required;

(6) make and execute contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions granted the board by the New Mexico Work and Save Act; provided that the board may delegate that power to the executive director and may limit the scope of that delegation;

(7) invest and reinvest its funds in accordance with applicable state and federal law; and

(8) collaborate with and evaluate the role of financial service providers, advisors or other financial professionals and financial institutions, including those assisting and providing guidance to program participants.

**History:** Laws 2020, ch. 7, § 4; 2021, ch. 46, § 3.

## ANNOTATIONS

**Cross references.** — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**The 2021 amendment,** effective June 18, 2021, revised the duties of the New Mexico work and save board, provided that the New Mexico work and save board shall not directly or indirectly manage or maintain the funds or accounts of program participants, but will instead contract with appropriate financial service providers to manage and maintain the funds and accounts of program participants, provided that the board is covered against claims arising under the New Mexico Work and Save Act pursuant to the provisions of the Tort Claims Act, and authorized the board to procure other insurance for liability and indemnification as needed; in the section heading, after "Board", added "scope of authority"; in Subsection A, after "The board shall", added the remainder of the subsection; redesignated former Subsection B as Subsection D; in Subsection B, added "In carrying out its duties to achieve the goals and objectives of the New Mexico Work and Save Act, the board shall", added Paragraphs B(1) through B(3) and redesignated former Paragraphs A(1) through A(3) as Paragraphs B(4) through B(6), deleted former Paragraph A(4) and added Paragraph B(7); in Subsection C, added "In the design and implementation of the New Mexico work and save IRA program or the New Mexico retirement plan marketplace, the board shall" and redesignated former Subparagraphs A(5)(a) through A(5)(f) as Paragraphs C(1) through C(6), respectively, and redesignated former Paragraphs A(6) through A(9) as Paragraphs C(7) through C(10), respectively, after each occurrence of "New Mexico

work and save", added "IRA program" throughout, in Paragraph C(7), after "no assets of", added "the New Mexico retirement plan marketplace or the", in Paragraph C(8), after "covered employers regarding", added "the applicable provisions of the", and deleted former Paragraph A(10); and in Subsection D, Paragraph D(1), after "arrangements with", added "private or nonprofit entities or with", in Paragraph D(5), after "public", added "entities and professionals, technology entities or professionals", after "depositories", added "financial service providers", and after "professionals as may be", added "appropriate or", and in Paragraph D(8), after "role of financial", added "service providers".

**Temporary provisions.** — Laws 2021, ch. 46, § 11 provided that the New Mexico work and save board shall implement the New Mexico retirement plan marketplace and the New Mexico work and save IRA program on or before July 1, 2024.

## 58-33-5. Confidentiality of participant and account information; application of other laws.

A. Information obtained by the board that is proprietary or information about covered employees or participants in the New Mexico retirement plan marketplace is confidential and not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978].

B. Individual account information of New Mexico work and save program participants, including names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions and earnings, is confidential and shall be maintained as confidential:

(1) except to the extent necessary to administer New Mexico work and save in a manner consistent with the New Mexico Work and Save Act, the tax laws of this state and the Internal Revenue Code; or

(2) unless the person who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

**History:** Laws 2020, ch. 7, § 5.

**ANNOTATIONS**

**Cross references.** — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

**Effective dates.** — Laws 2020, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2020, ch. 7, § 13 provided:

A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.

## 58-33-6. Executive director; powers and duties.

A. The executive director of New Mexico work and save may:

(1) hire, fire and recommend to the board compensation for staff, as needed; and

(2) contract for legal, fiscal, investment and other expert advisors and service providers, none of whom shall be board members and all of whom shall serve at the pleasure of the board.

B. The executive director shall:

(1) oversee requests for proposals at the board's direction;

(2) develop and disseminate educational information and tools designed to improve financial literacy and educate program participants, covered employers, covered employees and other state residents about the benefits of saving for retirement and help them decide the level of participation and savings strategies that may be appropriate for them;

(3) if necessary, determine the eligibility of an employer or employee to participate in New Mexico work and save; and

(4) perform other duties as assigned by the board.

**History:** Laws 2020, ch. 7, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2020, ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2020, ch. 7, § 13 provided:

A. The New Mexico retirement plan marketplace shall be implemented no later than July 1, 2021.

B. New Mexico work and save shall be implemented so that covered employees may begin contributing to New Mexico work and save no later than January 1, 2022.

## 58-33-7. Board and board employee requirements and prohibitions; conflicts of interest.

A. Board members and employees of the board shall comply with the Gift Act [Chapter 10, Article 16B NMSA 1978], the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978], the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and any other applicable state or federal laws.

B. Board members and employees of the board shall not:

(1) directly or indirectly have any interest in an investment of the New Mexico work and save IRA program or in gains or profits accruing from that investment, other than as program participants;

(2) borrow New Mexico retirement plan marketplace or New Mexico work and save IRA program-related funds or deposits or access and use those funds or deposits for personal gain or as agents or partners of others; or

(3) become endorsers, sureties or obligors on investments made pursuant to the New Mexico Work and Save Act.

C. If a board member or employee of the board has an interest, either direct or indirect, in a contract to which the New Mexico retirement plan marketplace or the New Mexico work and save IRA program is or is to be a party, that interest shall be disclosed to the board in writing and shall be set forth in the minutes of the board. The board member or employee having that interest shall not participate in an action by the board with respect to that contract.

D. Board members and employees of the board shall act as fiduciaries with respect to the design, implementation and oversight of the New Mexico retirement plan marketplace and the New Mexico work and save IRA program, acting solely in the best interests of the program participants and for the exclusive purpose of providing benefits to program participants and administering the marketplace and the IRA program with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

**History:** Laws 2020, ch. 7, § 7; 2021, ch. 46, § 4.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, provided that the New Mexico work and save board and employees of the board shall act as fiduciaries with respect to the

design, implementation and oversight of the New Mexico retirement plan marketplace, required board members and employees of the board to comply with any applicable state or federal laws, prohibited board members and employees of the board from borrowing New Mexico retirement plan marketplace or New Mexico work and save IRA program funds, and required board members and employees of the board to disclose certain conflicts of interest; in Subsection A, after "Open Meetings Act", added "and any other applicable state or federal laws"; in Subsection B, Paragraph B(1), after "New Mexico work and save", added "IRA program", in Paragraph B(2), after "borrow", added "New Mexico retirement plan marketplace or", after "New Mexico work and", deleted "save-related" and added "save IRA program-related"; in Subsection C, after "a contract to which", added "the New Mexico retirement plan marketplace or the", and after "New Mexico work and save", added "IRA program"; and in Subsection D, after "with respect to the", added "design, implementation and oversight of the", after "New Mexico work and save", added "IRA program", and after "administering the", added "marketplace and the IRA".

## 58-33-8. New Mexico retirement plan marketplace.

A. The board shall provide for the design and implementation of the New Mexico retirement plan marketplace website. The New Mexico retirement plan marketplace will be hosted on and accessible online through the New Mexico work and save platform that provides covered employers and employees with access to financial service providers that have been approved by the board to administer and maintain marketplace participant investment accounts. In developing and implementing the New Mexico retirement plan marketplace, the board may work in concert with other states or private or nonprofit entities offering an online marketplace similar to the New Mexico retirement plan marketplace website.

B. In establishing the New Mexico retirement plan marketplace, the board shall:

(1) design the New Mexico retirement plan marketplace as a website accessible online through the New Mexico work and save platform to connect employers and individuals with retirement savings plans, ensuring that the design does not favor a particular kind of service provider or business model;

(2) establish requirements for financial service providers that participate in the marketplace and for plans offered on the marketplace;

(3) develop marketing, outreach and educational materials; and

(4) promote the benefits of retirement savings and financial literacy.

C. The board shall provide public notice of the process for inclusion on the New Mexico retirement plan marketplace website before the website becomes publicly available. The marketplace shall be available to the public before the board opens the New Mexico work and save IRA program for enrollment, and the marketplace website

address shall be included on any internet website posting or other materials regarding the New Mexico work and save IRA program. The board shall allow all financial service providers that meet the requirements established by the board to participate in the New Mexico retirement plan marketplace. In addition, the board shall not exclude, by policy or otherwise, a retirement plan or option within a plan that meets the requirements of the board and is otherwise allowed under federal or state law, including plan design options that are selected by the employer.

D. Participation in plans offered on the New Mexico retirement plan marketplace is voluntary for covered employers and employees; provided that an employer that offers a retirement plan through the New Mexico retirement plan marketplace may use automatic enrollment and automatic escalation of contributions but shall allow an employee opt-out option.

E. The New Mexico retirement plan marketplace may offer an array of private retirement plan options, including a:

(1) simple individual retirement-type plan;

(2) payroll deduction individual retirement-type plan;

(3) multiple-employer plan, if allowed under federal law; and

(4) plan described in Section 401(a) or 403(b) of the Internal Revenue Code.

F. The New Mexico retirement plan marketplace shall offer a financial literacy module for employers and employees.

G. The New Mexico retirement plan marketplace shall allow, but shall not require, the availability within approved plans of distribution options that provide income in retirement, including systematic withdrawal programs, guaranteed lifetime withdrawal benefits and annuities.

H. The board shall establish administrative fees for financial service providers that participate in the New Mexico retirement plan marketplace. The fees shall be sufficient to cover the actual cost of maintaining the New Mexico retirement plan marketplace.

**History:** Laws 2020, ch. 7, § 8; 2021, ch. 46, § 5.

## ANNOTATIONS

**Cross references.** — For Section 401(a) or 403(b) of the Internal Revenue Code, *see* 26 U.S.C. §§ 401(a) or 403(b).

**The 2021 amendment,** effective June 18, 2021, required the New Mexico work and save board to provide for the design and implementation of the New Mexico retirement

plan marketplace website; in Subsection A, added the first two sentences, and after "in concert with other states", added "or private or nonprofit entities"; in Subsection B, added "In establishing the New Mexico retirement plan marketplace", in Paragraph B(1), after "website", added "accessible online through the New Mexico work and save platform", in Paragraph B(3), after "marketing", added "outreach and educational"; in Subsection C, after each occurrence of "New Mexico work and save", added "IRA program"; and redesignated former Subsections E through I as Subsections D through H, respectively.

**Temporary provisions.** — Laws 2021, ch. 46, § 11 provided that the New Mexico work and save board shall implement the New Mexico retirement plan marketplace and the New Mexico work and save IRA program on or before July 1, 2024.

## 58-33-9. New Mexico work and save IRA program; created; implementation.

A. The New Mexico work and save IRA program developed by the board under the New Mexico Work and Save Act shall:

(1) facilitate the establishment of individual retirement accounts for program participants that are administered and managed by board-approved financial service providers;

(2) provide that a covered employer may voluntarily choose to participate in the New Mexico work and save IRA program;

(3) provide that a participating employer may automatically enroll its employees but shall allow its employees to opt out;

(4) allow covered employees to voluntarily contribute to an individual retirement account through automatic payroll deductions, if allowed pursuant to federal law;

(5) provide that the default investment option for program participants shall be a Roth individual retirement account with a target date fund investment and a default contribution rate established by the board by rule; provided that the board may establish a principal protection fund for initial savings up to an amount established by the board; and provided that a program participant may choose to stop participating altogether, choose a different investment from among the options available or choose to contribute at a higher or lower contribution rate, subject to the Roth individual retirement account contribution dollar limits applicable under the Internal Revenue Code;

(6) offer default escalation of contribution rates that can be increased or decreased by program participants within the limits allowed by the Internal Revenue Code;

(7) provide for direct deposit of contributions into one or more investments approved by the board;

(8) be professionally managed;

(9) not allow employer contributions by covered employers;

(10) ensure that each board-approved financial service provider submits a report on the status of each program participant's account to each program participant at least annually and provides annual reports to the board regarding the number of program participant accounts maintained by the financial service provider and the overall value of those accounts;

(11) when practicable, use existing employer and public infrastructure to facilitate contributions, recordkeeping and outreach and use pooled or collective investment arrangements;

(12) provide that each program participant owns the contributions to and earnings on amounts contributed to the participant's account under the New Mexico work and save IRA program and that the state, the board and covered employers have no proprietary interest, whether legal or equitable, in those contributions or earnings;

(13) not impose any duties on employers pursuant to the federal Employee Retirement Income Security Act of 1974; and

(14) keep total fees and expenses below one percent of the funds invested by a program participant in the New Mexico work and save IRA program.

B. The board shall ensure that the New Mexico work and save IRA program is financially self-sustaining no later than five years after the date that it is fully implemented.

C. If a covered employer knowingly or intentionally fails to transmit a payroll deduction contribution to the New Mexico work and save IRA program on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the covered employer's assets, but not later than the fifteenth day of the month following the month in which the covered employee's contribution amounts are withheld from the covered employee's paycheck, the failure to remit those contributions on a timely basis shall be subject to the same sanctions as employer misappropriation of employee wage withholdings.

**History:** Laws 2020, ch. 7, § 9; 2021, ch. 46, § 6.

## ANNOTATIONS

**Cross references.** — For Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

For the federal Employee Retirement Income Security Act of 1974, *see* 29 U.S.C.S. § 1001 et seq.

**The 2021 amendment,** effective June 18, 2021, provided for the implementation of the New Mexico work and save IRA program; in the section heading, after "New Mexico work and save", added "IRA program"; in Subsection A, after "New Mexico work and save", added "IRA", added a new Paragraph A(1) and redesignated former Paragraphs A(1) through A(13) as Paragraphs A(2) through A(14), respectively, in Paragraph A(4), after "contribute to", deleted "a Roth", in Paragraph A(7), after "approved by", deleted "New Mexico work and save" and added "the board", in Paragraph A(10), deleted "provide" and added "ensure that each board-approved financial service provider submits", after "annually", added "and provides annual reports to the board regarding the number of program participant accounts maintained by the financial service provider and the overall value of those accounts", and after the next occurrence of "New Mexico work and save", added "IRA program", and in Paragraph A(14), after "invested", added "by a program participant".

**Temporary provisions.** — Laws 2021, ch. 46, § 11 provided that the New Mexico work and save board shall implement the New Mexico retirement plan marketplace and the New Mexico work and save IRA program on or before July 1, 2024.

## 58-33-10. Policies and procedures for the New Mexico work and save IRA program.

The board shall promulgate rules to implement the New Mexico work and save IRA program that:

A. establish the processes by which a covered employer may choose to voluntarily enroll in the New Mexico work and save IRA program and become a participating employer;

B. establish the processes for program participants to enroll in and contribute to New Mexico work and save IRA program payroll deduction individual retirement accounts, including elections by covered employees, withholding by participating employers of program participants' payroll deduction contributions from wages and remittance for deposit to the program participants' individual retirement accounts and voluntary enrollment and contributions by self-employed persons;

C. establish the processes for withdrawals, rollovers, conversions and direct transfers from individual retirement accounts in the interest of facilitating portability and maximization of benefits;

D. establish processes governing the distribution of funds from the New Mexico work and save IRA program; and

E. require education of and outreach to covered employers, covered employees and the public regarding the New Mexico work and save IRA program. The rules shall specify the content, frequency, timing and means of required disclosures from the New Mexico work and save IRA program to covered employees, covered employers, program participants and participating employers and other interested parties. These disclosures shall include:

(1) the benefits associated with tax-favored retirement saving;

(2) the potential advantages and disadvantages associated with contributing to individual retirement accounts through the New Mexico work and save IRA program;

(3) the eligibility rules for individual retirement accounts;

(4) that the program participant is solely responsible for determining whether and, if so, how much the program participant is eligible to contribute on a tax-favored basis to an individual retirement account;

(5) the penalty for excess contributions to individual retirement accounts and the method of correcting excess contributions;

(6) instructions for enrolling, making elections to contribute or to decline to contribute and making elections regarding contribution rates, types of individual retirement accounts and investments;

(7) instructions for implementing and for changing the elections;

(8) the potential availability of a program participant's tax credit, including the eligibility conditions for the credit and instructions on how to claim it;

(9) statements that the New Mexico work and save IRA program, the board, board members or board employees, a covered employer or the state does not offer tax, investment or other financial advice, and that the program participant should contact appropriate professional advisors, and that only the program participant is liable for decisions the program participant makes in relation to the New Mexico work and save IRA program;

(10) statements that payroll deduction individual retirement accounts are not intended to be employer-sponsored retirement plans and that the New Mexico work and save IRA program is not an employer-sponsored retirement plan;

(11) the potential implications of account balances in the New Mexico work and save IRA program for the application of asset limits under certain public assistance programs;

(12) that the program participant is solely responsible for investment performance, including market gains and losses, and that individual retirement accounts and rates of return are not guaranteed by the New Mexico work and save IRA program, the board, individual board members, board employees, covered employers or the state or any of its officers or employees;

(13) additional information and tools designed to promote financial literacy and capability, which may take the form of links to or explanations of how to obtain such information; and

(14) how to obtain additional information about the New Mexico work and save IRA program.

**History:** Laws 2020, ch. 7, § 10; 2021, ch. 46, § 7.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, after each occurrence of New Mexico work and save", added "IRA program".

**Temporary provisions.** — Laws 2021, ch. 46, § 11 provided that the New Mexico work and save board shall implement the New Mexico retirement plan marketplace and the New Mexico work and save IRA program on or before July 1, 2024.

## 58-33-11. Protection for covered employers.

A. The New Mexico work and save IRA program is not an employer-sponsored plan. A covered employer does not bear responsibility for:

(1) the decision by a covered employee to participate or not to participate in the New Mexico work and save IRA program;

(2) the performance of a specific savings option selection made by a program participant and facilitated through the New Mexico work and save IRA program;

(3) investment decisions made by a program participant;

(4) the administration, investment, investment returns or investment performance of an IRA savings option facilitated through the New Mexico work and save IRA program, including interest rate or other rate of return on a contribution or individual retirement account balance;

(5) the design or administration of the New Mexico work and save IRA program or the benefits paid to or the earnings or losses of program participants;

(6) a program participant's awareness of or compliance with the conditions and other provisions of the tax laws that determine which persons are eligible to make tax-favored contributions to individual retirement accounts, in what amount and in what time frame and manner; or

(7) loss, failure to realize gain or other adverse consequences, including adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits incurred by a program participant as a result of participating in the New Mexico work and save IRA program.

B. No covered employer shall be or shall be considered to be a fiduciary under the New Mexico work and save IRA program.

**History:** Laws 2020, ch. 7, § 11; 2021, ch. 46, § 8.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, clarified that covered employees are not responsible for the performance of a specific savings option selection made by a program participant and facilitated through the New Mexico work and save IRA program; after each occurrence of "New Mexico work and save", added "IRA program" throughout; in Subsection A, Paragraph A(1), after "the decision", added "by a covered employee", in Paragraph A(2), added "the performance of", after "specific", and deleted "election under" and added "savings option selection made by a program participant and facilitated through the", in Paragraph A(4), after "performance of", added "an IRA savings option facilitated through the", and after "contribution or", deleted "Roth", and in Paragraph A(5), after "paid to", added "or the earnings or losses of".

## 58-33-11.1. Board and state not guarantors.

The board, each board member and the state shall not guarantee any rate of return or interest rate on any contribution made by a New Mexico work and save IRA program participant or New Mexico retirement plan marketplace participant.

**History:** Laws 2021, ch. 46, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## 58-33-12. Annual report.

The board shall prepare an annual report on the operation of the New Mexico work and save IRA program and the New Mexico retirement plan marketplace and shall

provide the report to the governor, the state treasurer and appropriate legislative interim committees and shall make the report available to all program participants, participating employers and the general public.

**History:** Laws 2020, ch. 7, § 12; 2021, ch. 46, § 9.

## ANNOTATIONS

**The 2021 amendment,** effective June 18, 2021, required the New Mexico work and save board to prepare an annual report on the operation of the New Mexico work and save IRA program and the New Mexico retirement plan marketplace, to provide the report to the governor, the state treasurer and appropriate legislative interim committees, and to make the report available to program participants, participating employers and the general public; and after "New Mexico work and save", added "IRA program and the New Mexico retirement plan marketplace and shall provide the report", and after "interim committees and", deleted "made" and added "shall make the report".