



REGULATORY ALERT

Small Loan Reporting and Disclosure Changes (HB 132)

New Mexico Small Loan Act of 1955 (*§58-15-1 NMSA 1978*)

New Mexico Bank Installment Loan Act of 1959 (*§58-7-1- NMSA 1978*)

During the 2022 legislative session, the New Mexico legislature passed significant changes to the Small Loan Act (SLA) and the Bank Installment Loan Act (BILA). On March 1, 2022, the Act was signed into law by Governor Michelle Lujan-Grisham, with an effective date of January 1, 2023. The changes include:

- Broadening of the definition of “installment loan” to include loans up to \$10,000 and increasing to the maximum loan amount that requires licensing from \$5,000 to \$10,000.
- Reducing the maximum allowed Annual Percentage Rate (APR) for regulated loans made under both acts from 175 percent (calculated in terms of 12 CFR Part 1026, known as “Regulation Z”), to 36 percent, calculated in terms of Regulation Z plus any other charge, fee, or premium for ancillary product or service sold “in connection with or concurrent with the extension of credit”.
- Making an exception to the 36 percent rate cap for loans up to \$500; exclusion in the calculation of APR of a fee not to exceed five percent of the loan’s principal, and not to be imposed on any borrower more than once during a twelve-month period.
- Allowing the APR to exceed 36 percent with equal increases to those in the prime rate of interest when the latter exceeds ten percent for three consecutive months. Conversely, the maximum APR returns to the maximum allowed 36 percent when the prime rate of interest falls below 10 percent for three consecutive months.



- Adding the category of loans between \$5,001 and \$10,000 to the annual FID reporting requirements pertaining to the total number of loan transactions made in a calendar year.
- Substituting the reporting categories for the number of loans and interest and fees charged, from the current subcategories of APR from zero through 175 percent, with the categories of APR less than or equal to 10 percent; more than 10 percent through 18 percent; more than 18 percent through 36 percent; and more than 36 percent.
- Broadening of the definition of “installment loan” to loans that are payable: “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”.
 - Optional reporting of the loans in the above bullet to a consumer reporting agency.
- Adding the obligation for lenders reporting to a consumer reporting agency, of both “positive and negative performance by the borrower.”
- Redefining the term “consumer” to mean “a person who resides in New Mexico or who enters into a loan agreement in New Mexico”.
- Defining the of prime rate of interest as “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”.
- Broadening applicability of the acts to include:
 - making loans disguised as a personal property sale and leaseback transaction;
 - disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services;
 - 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.

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