

1 SENATE BILL 472

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Joseph Cervantes

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10 AN ACT

11 RELATING TO CONSUMER PROTECTIONS; PROHIBITING CERTAIN LENDERS  
12 FROM REFUSING TO PROVIDE BORROWERS WITH OUTSTANDING BALANCE  
13 INFORMATION; PROHIBITING CERTAIN LENDERS FROM CHARGING A  
14 PENALTY, CHARGE OR FEE TO OBTAIN OUTSTANDING BALANCE  
15 INFORMATION.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 58-7-6 NMSA 1978 (being Laws 1959,  
19 Chapter 327, Section 6, as amended) is amended to read:

20 "58-7-6. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--

21 A. No amount, other than the total finance charge,  
22 calculated pursuant to Subsections D, E and F of Section 58-7-7  
23 NMSA 1978, which consists solely of interest and a fully earned  
24 processing fee not to exceed the lesser of two hundred dollars  
25 (\$200) or ten percent of the principal, shall be charged or

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1 contracted for, directly or indirectly, on or in connection  
2 with a precomputed loan transaction except as follows:

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

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

21 (3) in the event that a borrower fails to  
22 maintain in effect any insurance required in connection with a  
23 loan transaction, the lender may purchase the required  
24 insurance or lender's single interest insurance covering the  
25 lender's interest in the property, and the cost of that

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1 insurance shall be added to the loan and may accrue interest as  
2 provided for in the New Mexico Bank Installment Loan Act of  
3 1959;

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

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

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

24 (7) the actual cost of charges incurred in  
25 making a real estate loan secured by a mortgage on real estate,

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1 including the charges for an abstract of title, title  
2 examination, title insurance premiums, property survey,  
3 appraisal fees, notary fees, preparation of deeds, mortgages or  
4 other documents, escrow charges, credit reports and filing and  
5 recording fees.

6 B. No lender shall refuse to provide a borrower  
7 with a quote of the outstanding balance of a loan or charge a  
8 borrower a penalty, charge or fee to obtain a quote of the  
9 outstanding balance of a loan.

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

17 [~~G.~~] D. The charges permitted under this section  
18 may be added to the balance due from the borrower."

19 SECTION 2. Section 58-15-15.1 NMSA 1978 (being Laws 1980,  
20 Chapter 73, Section 3) is amended to read:

21 "58-15-15.1. NO PREPAYMENT PENALTY ON SMALL LOANS--  
22 OUTSTANDING BALANCE.--

23 A. No provision in a loan or the evidence of  
24 indebtedness of a loan made under the New Mexico Small Loan Act  
25 of 1955 requiring a penalty or premium for prepayment of the

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1 balance of the indebtedness is enforceable.

2 B. No licensee shall refuse to provide a consumer  
3 with a quote of the outstanding balance of a loan or charge a  
4 consumer a penalty, charge or fee to obtain a quote of the  
5 outstanding balance of a loan."

6 SECTION 3. Section 58-19-7 NMSA 1978 (being Laws 1959,  
7 Chapter 204, Section 7, as amended) is amended to read:

8 "58-19-7. RETAIL INSTALLMENT CONTRACTS--REQUIREMENTS--  
9 PROHIBITIONS.--

10 A. A retail installment contract shall be in  
11 writing and shall be signed by both the buyer and the seller;  
12 it shall be completed as to all essential provisions prior to  
13 its signing by the buyer.

14 B. The printed portion of the contract, other than  
15 instructions for completion, shall be in at least eight-point  
16 type. The contract shall contain in a size equal to at least  
17 ten-point bold type the following notice: "Notice to the  
18 Buyer: 1. Do not sign this contract before you read it or if  
19 it contains any blank spaces. 2. You are entitled to an exact  
20 copy of the contract you sign."

21 C. The seller shall deliver to the buyer or mail to  
22 the buyer at the buyer's address shown on the contract a copy  
23 of the contract signed by the seller. Until the seller does  
24 so, a buyer who has not received delivery of the motor vehicle  
25 shall have the right to rescind the buyer's agreement and to

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1 receive a refund of all payments made and return of all goods  
2 traded in to the seller on account of or in contemplation of  
3 the contract; if such goods cannot be returned, the value  
4 thereof shall be paid by the seller. Any acknowledgment by the  
5 buyer or delivery of a copy of the contract shall be in a size  
6 equal to at least ten-point bold type and, if contained in the  
7 contract, shall appear directly above the buyer's signature.

8 D. Any such agreement shall contain immediately  
9 before the buyer's signature substantially the following notice  
10 printed or typed in a size equal to at least twelve-point bold  
11 type as follows:

12 "NOTICE TO BUYER

13 LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO  
14 OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH  
15 THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE,  
16 YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE."

17 E. The contract shall contain the following items:

18 (1) the names of the seller and the buyer, the  
19 place of business of the seller, the residence or place of  
20 business of the buyer as specified by the buyer and a  
21 description of the motor vehicle, including its make, year  
22 model, model and identification numbers or marks;

23 (2) the cash sale price of the motor vehicle;

24 (3) the amount of the buyer's down payment and  
25 whether made in money or goods;

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1 (4) the difference between items in Paragraphs  
2 (2) and (3) of this subsection;

3 (5) the amount, if any, included for insurance  
4 and other benefits, specifying the types of coverage and  
5 benefits, and if it is the case, including as a benefit amounts  
6 paid or to be paid by the seller pursuant to agreement with the  
7 buyer to discharge a security interest, lien or lease interest  
8 on property traded in;

9 (6) the amount of official fees;

10 (7) the principal balance, which is the sum of  
11 items in Paragraphs (4), (5) and (6) of this subsection;

12 (8) the amount of the finance charge; and

13 (9) the time balance, which is the sum of  
14 items in Paragraphs (7) and (8) of this subsection, payable in  
15 installments by the buyer to the seller, the number of  
16 installments, the amount of each installment and the due date  
17 or term thereof.

18 The above items need not be stated in the sequence or  
19 order set forth, and additional items may be included to  
20 explain the calculations involved in determining the stated  
21 time balance to be paid by the buyer.

22 F. The amount, if any, included for insurance,  
23 which may be purchased by the holder of the retail installment  
24 contract, shall not exceed the applicable premiums chargeable  
25 in accordance with the rates filed with the office of

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1 superintendent of insurance. If dual interest insurance on the  
2 motor vehicle is purchased by the holder, it shall, within  
3 thirty days after execution of the retail installment contract,  
4 send or cause to be sent to the buyer a policy or policies or  
5 certificate of insurance written by an insurance company  
6 authorized to do business in this state, clearly setting forth  
7 the amount of the premium, the kind or kinds of insurance, the  
8 coverages and all the terms, exceptions, limitations,  
9 restrictions and conditions of the contract or contracts of  
10 insurance. The buyer shall have the privilege of purchasing  
11 such insurance from an agent or broker of the buyer's own  
12 selection and of selecting an insurance company acceptable to  
13 the holder, and in such case, the inclusion of the insurance  
14 premium in the retail installment contract shall be optional  
15 with the seller.

16 G. If any insurance is canceled or the premium  
17 adjusted, any refund of the insurance premium received by the  
18 holder shall be credited to the final maturing installments of  
19 the contract except to the extent applied toward payment for  
20 similar insurance protecting the interests of the buyer and the  
21 holder or either of them.

22 H. The holder may, if the contract or refinancing  
23 agreement so provides, collect a delinquency and collection  
24 charge on each installment in default for a period not less  
25 than ten days, in an amount not in excess of five percent of

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1 each installment or fifteen dollars (\$15.00), whichever is  
2 less. In addition to such delinquency and collection charge,  
3 the contract may provide for the payment of attorney fees not  
4 exceeding fifteen percent of the amount due and payable under  
5 such contract, where such contract is referred for collection  
6 to any attorney not a salaried employee of the holder of the  
7 contract, plus the court costs.

8 I. A buyer may transfer the buyer's equity in the  
9 motor vehicle at any time to another person upon agreement by  
10 the holder, but in such event, the holder of the contract shall  
11 be entitled to a transfer of equity fee, which shall not exceed  
12 twenty-five dollars (\$25.00).

13 J. No retail installment contract shall be signed  
14 by any party thereto when it contains blank spaces to be filled  
15 in after execution, except that if delivery of the motor  
16 vehicle is not made at the time of the execution of the  
17 contract, the identifying numbers or marks of the motor vehicle  
18 or similar information and the due date of the first  
19 installment may be inserted in the contract after its  
20 execution. The buyer's written acknowledgement, conforming to  
21 the requirements of Subsection C of this section, of delivery  
22 of a copy of a contract shall be conclusive proof of such  
23 delivery, that the contract when signed did not contain any  
24 blank spaces except as herein provided and of compliance with  
25 this section in any action or proceeding by or against the

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1 holder of the contract.

2 K. Upon written request from the buyer, the holder  
3 of a retail installment contract shall give or forward to the  
4 buyer a written statement of the dates and amounts of payments  
5 made and the total amount unpaid under such contract. A buyer  
6 shall be given a written receipt for any payment when made in  
7 cash.

8 L. No provision in a retail installment contract  
9 relieving the seller from liability under any legal remedies  
10 that the buyer may have against the seller under the contract,  
11 or any separate instrument of similar import executed in  
12 connection therewith, shall be enforceable.

13 M. In the event that the seller or the holder of  
14 the retail installment contract repossesses a motor vehicle,  
15 the buyer shall be responsible and liable for any deficiency in  
16 accordance with Section 55-9-608 NMSA 1978.

17 N. No holder shall refuse to provide a buyer with a  
18 quote of the outstanding balance of a retail installment  
19 contract or charge a borrower a penalty, charge or fee to  
20 obtain a quote of the outstanding balance of a retail  
21 installment contract."

22 SECTION 4. Section 58-21A-4 NMSA 1978 (being Laws 2003,  
23 Chapter 436, Section 4, as amended) is amended to read:

24 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING  
25 HOME LOANS.--

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1           A. No creditor shall finance, directly or  
2 indirectly, credit life, credit disability, credit unemployment  
3 or credit property insurance, or any other life or health  
4 insurance, or any payments directly or indirectly for any debt  
5 cancellation or suspension agreement or contract; provided that  
6 nothing in this subsection prohibits the payment or receipt of  
7 insurance premiums or debt cancellation or suspension fees  
8 calculated on the unpaid balance of a home loan and paid on a  
9 monthly basis.

10           B. No creditor shall knowingly and intentionally  
11 engage in the unfair act or practice of flipping a home loan.  
12 As used in this subsection, "flipping a home loan" means the  
13 making of a home loan to a borrower that refinances an existing  
14 home loan when the new loan does not have reasonable, tangible  
15 net benefit to the borrower considering all of the  
16 circumstances, including the terms of both the new and  
17 refinanced loans, the cost of the new loan and the borrower's  
18 circumstances.

19           C. No creditor shall make a home loan without  
20 documenting and considering the borrower's reasonable ability  
21 to repay that loan pursuant to its terms. The borrower's  
22 ability to repay shall be demonstrated through reasonably  
23 reliable documentation that may include payroll receipts, tax  
24 returns, bank records, asset and credit evaluations, mortgage  
25 payment history or other similar reliable documentation. The

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1 provisions of this subsection shall not apply to a home loan  
2 originated pursuant to a government streamline program or a  
3 streamline program administered by a government-sponsored  
4 enterprise, to a reverse mortgage insured as part of a  
5 government program or to loss mitigation activities of a home  
6 loan servicer or lender with which the borrower has a current  
7 relationship, so long as each of these exceptions, as  
8 applicable, provides the borrower with a reasonable, tangible  
9 net benefit.

10 D. No creditor shall make a home loan without  
11 determining the borrower's reasonable ability to pay the costs  
12 set forth in this subsection. In the case of an adjustable  
13 rate home loan, the reasonable ability to pay shall be  
14 determined based on a fully indexed rate and repayment schedule  
15 that achieves full amortization over the life of the home loan.  
16 The costs, as applicable, to be used in determining the  
17 borrower's reasonable ability to pay include principal,  
18 interest, real estate taxes, property insurance, property  
19 assessments, mortgage insurance premiums and other scheduled  
20 long-term monthly debt payments.

21 E. No creditor shall make or originate an  
22 adjustable rate home loan in which caps on payment increases  
23 may be less than that necessary to reduce principal and  
24 amortize the loan over the entire term of the loan regardless  
25 of interest rate adjustments resulting in negative

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1 amortization.

2 F. No creditor shall make or originate a home loan  
3 that includes terms under which more than two periodic payments  
4 required under the loan are consolidated and paid in advance  
5 from the loan proceeds provided to the borrower.

6 G. No creditor shall pay a contractor under a home-  
7 improvement contract from the proceeds of a home loan unless:

8 (1) the creditor is presented with a signed  
9 and dated completion certificate showing that the home  
10 improvements have been completed; or

11 (2) the instrument is payable jointly to the  
12 borrower and the contractor, or at the election of the  
13 borrower, through a third-party escrow agent in accordance with  
14 terms established in a written agreement signed by the  
15 borrower, the creditor and the contractor prior to the  
16 disbursement.

17 H. No creditor shall charge a borrower any fees or  
18 other charges, other than those that are bona fide, reasonable  
19 and actual, to modify, renew, extend or amend a home loan.

20 I. No creditor shall charge a borrower more than  
21 seventy-five dollars (\$75.00) to defer any payment due under  
22 the terms of a home loan.

23 J. No creditor shall recommend or encourage default  
24 on an existing loan or other debt prior to and in connection  
25 with the closing or planned closing of a home loan that

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1 refinances all or any portion of the existing loan or debt.

2 K. No creditor shall make a home loan that provides  
3 for a late payment fee except as follows:

4 (1) the late payment fee shall not be in  
5 excess of five percent of the amount of the payment past due;

6 (2) the late payment fee shall only be  
7 assessed for a payment past due for fifteen days or more;

8 (3) the late payment fee shall not be imposed  
9 more than once with respect to a single late payment, and no  
10 late payment fee shall be charged with respect to a subsequent  
11 payment that would have been a full payment but for the  
12 previous default or the imposition of the previous late payment  
13 fee;

14 (4) no late payment fee shall be charged  
15 unless the creditor notifies the borrower within forty-five  
16 days following the date the payment was due that a late payment  
17 fee has been imposed for a particular late payment. A late  
18 payment fee that the creditor has collected shall be reimbursed  
19 if the borrower presents proof of having made a timely payment;  
20 and

21 (5) a creditor shall treat each payment as  
22 posted on the same business day as it was received by the  
23 creditor, servicer, creditor's agent for making payments or at  
24 the address provided to the borrower by the creditor, servicer  
25 or creditor's agent for making payments.

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1           L. No creditor shall make a home loan that contains  
2 a provision that permits the creditor, in its sole discretion,  
3 to accelerate the indebtedness; provided that this provision  
4 does not prohibit acceleration of a loan in good faith due to a  
5 borrower's failure to abide by the material terms of the loan.

6           M. No creditor shall make or originate a home loan  
7 that contains a provision that requires a penalty or premium  
8 for prepayment of the balance or any portion of the principal  
9 of the indebtedness.

10           N. No creditor shall refuse to provide a borrower  
11 with a quote of the outstanding balance of a loan or charge a  
12 borrower a penalty, charge or fee to obtain a quote of the  
13 outstanding balance of a loan.

14           [~~N.~~] O. No creditor shall make or originate a home  
15 loan that includes or uses one or more of the following lending  
16 practices:

17                   (1) making a home loan primarily based upon  
18 the foreclosure or liquidation value of the borrower's  
19 collateral rather than on the borrower's ability to repay the  
20 home loan according to its terms;

21                   (2) making or originating an adjustable rate  
22 home loan, except a home equity line of credit, where the  
23 interest rate and payment may change more frequently than once  
24 every six months during the term of the loan;

25                   (3) making an adjustable rate home loan,

1 except a home equity line of credit, where:

2 (a) the initial interest rate may be  
3 increased by more than two percent for loans with initial  
4 periods less than five years and six percent for loans with  
5 initial periods greater than or equal to five years;

6 (b) a periodic interest rate may be  
7 increased by more than one percent every six months; and

8 (c) a lifetime interest rate cap is more  
9 than six percent over the initial rate;

10 (4) advertising terms of home loans, including  
11 interest rates, margins, discount points, fees, commissions or  
12 other material facts, including limitations on the home loans,  
13 unless the creditor is able to make the advertised home loans  
14 available to a reasonable number of qualified applicants;

15 (5) misrepresenting a borrower's credit  
16 rating;

17 (6) misrepresenting, inflating or fabricating,  
18 or encouraging a borrower to misrepresent, inflate or  
19 fabricate, the source or amount of a borrower's actual income  
20 or assets, other than allowable grossed-up income not to exceed  
21 the twenty-five percent per agency guidelines established by  
22 rule by the director, in the application or underwriting  
23 process of a home loan; and

24 (7) making a home loan with an eighty percent  
25 or higher loan-to-value ratio for an owner-occupied residence

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1 if the creditor has failed to establish an escrow account for  
2 the payment of real estate taxes and property insurance."

3 SECTION 5. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2023.

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