HOUSE BILL 386

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY
Susan K. Herrera and Christine Chandler and Andrea Romero and
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AN ACT
RELATING TO FINANCIAL INSTITUTIONS; LOWERING THE MAXIMUM ANNUAL PERCENTAGE RATE FOR LOANS PURSUANT TO THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955.

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

SECTION 1. Section 58-7-7 NMSA 1978 (being Laws 1959, Chapter 327, Section 8, as amended) is amended to read:

"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 under the New Mexico Small Loan Act of 1955 unless the loan made under the New Mexico Small Loan Act of 1955 is paid and released at the time the loan is made.

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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 an annual percentage rate greater than [one hundred seventy-five percent to thirty-six percent], calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

E. 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."

SECTION 2. Section 58-15-17 NMSA 1978 (being Laws 1955, Chapter 128, Section 15, as amended) is amended to read:
"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 loan is made within the
provisions of 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 in English or Spanish,
as required by federal law, on which shall be printed a copy of
Section 58-15-14.1 NMSA 1978 and that discloses 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 licensed
office;

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

(g) the amount of principal;

(h) the annual interest 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) other items allowable pursuant to that act, so stated as to clearly show the allocation of each item included;

(2) for each payment made on account of any such loan, give to the person making it a plain and complete receipt specifying the date and amount of the payment, the amount applied to interest and principal and the balance unpaid. When payment is made in any other manner than by the borrower in person, 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 hold the receipt for delivery upon request of the borrower. A copy of all receipts shall be kept on file in the office of the licensee as a part of the licensee's records; and

(3) upon payment of the loan in full, mark plainly every note and promise to pay signed by any obligor with the word "paid" or "canceled" and promptly file or record a release of any mortgage if the 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. If judgment is obtained against a party on a
loan made pursuant to the provisions of the New Mexico Small
Loan Act of 1955, neither the judgment nor the loan shall
carry, 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. Any loan made under the provisions of the New
Mexico Small Loan Act of 1955 that is filed and approved as a
claim in any bankruptcy proceeding shall, from a date ninety
days subsequent to the date of adjudication, bear interest at
the rate of ten percent a year only. This limitation shall not
apply when the bankrupt is not discharged in bankruptcy or to
any obligation not dischargeable under the provisions of the
United States Bankruptcy Code presently in force or as
hereafter amended.

E. No loan made under the provisions of the New
Mexico Small Loan Act of 1955 shall bear interest 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.

F. No loan made under the provisions of the New
Mexico Small Loan Act of 1955 shall bear interest after twelve months from the date of maturity of the loan in excess of ten percent a year upon the unpaid principal balance of the loan.

G. No lender shall 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. No lender shall 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. No lender shall 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. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 that has an annual percentage rate greater than [one hundred seventy-five percent] thirty-six percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

SECTION 3. APPLICABILITY.--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 executed on or after July 1, 2019.

SECTION 4. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2019.

- 7 -