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HOUSE BILL 78

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO LENDING; IMPOSING A CAP ON INTEREST RATES; VOIDING
CONTRACTS THAT EXCEED THE INTEREST RATE CAP; 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 56-8-9 NMSA 1978 (being Laws 1957,
Chapter 209, Section 1, as amended) is amended to read:

"56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
MAXIMUM RATES--DEFINITION.--

A. Unless otherwise provided by law, no person,
corporation or association, directly or indirectly, shall take,
reserve, receive or charge any interest, discount or other
advantage for the loan of money or credit or the forbearance or
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1 postponement of the right to receive money or credit except at
2 the rates permitted in Sections 56-8-1 through 56-8-21 NMSA
3 1978.

4 B. Except as provided for in this section, the
5 maximum lawful rate of interest charged or received for the
6 extension of credit shall not exceed thirty-six percent per
7 year.

8 C. The calculation of interest shall include any
9 periodic or nonperiodic interest, any periodic or nonperiodic
10 finance charge, any ancillary products or services and any
11 other charges or fees incident to the extension of credit.

12 D. Any contract for the extension of credit entered
13 into after July 1, 2022 having a rate of interest in excess of
14 the maximum lawful rate shall be void as to principal and
15 interest.

16 E. The limitation on interest for the extension of
17 credit shall not apply to any federally insured depository
18 institution or government-issued bonds.

19 F. In the event the United States prime lending
20 rate exceeds ten percent, the maximum lawful rate of interest
21 charged or received may exceed thirty-six percent per year but
22 shall not exceed thirty percentage points in excess of the
23 United States prime lending rate.

24 ~~[B.]~~ G. No provision of law prescribing maximum
25 rates of interest that may be charged in any transaction shall

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1 apply to a transaction in which a corporation, limited
2 liability corporation or other business entity is a debtor,
3 regardless of the purpose for which the corporation was formed
4 and regardless of the fact that an individual is codebtor,
5 endorser, guarantor, surety or accommodation party. No
6 corporation or its codebtor, endorser, guarantor, surety or
7 accommodation party shall have a cause of action or
8 affirmatively plead, counterclaim, set off or set up the
9 defense of usury in any action to recover damages or enforce a
10 remedy on any obligation executed by the corporation, and no
11 civil or criminal penalty that would otherwise be applicable
12 except as provided in Sections 30-43-1 through 30-43-5 NMSA
13 1978 shall apply on any obligation executed by the corporation.

14 ~~[G. A lender may, in the case of business or~~
15 ~~commercial loans for business or commercial purposes in the~~
16 ~~amount of five hundred thousand dollars (\$500,000) or more,~~
17 ~~take, receive, reserve or charge on any loan or discount made,~~
18 ~~or upon any note, bill of exchange or other evidence of debt,~~
19 ~~interest at a rate agreed to by the parties.~~

20 ~~D.]~~ H. In addition to the maximum interest or
21 discount that a lender is permitted to charge by law, the
22 lender may charge, take, reserve or receive a premium or points
23 in an amount up to but not exceeding three percent of the face
24 amount of the loan on interim construction loans; provided that
25 the total amount does not exceed the maximum lawful rate of

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1 interest as provided in Subsections B through F of this
2 section. The lender may charge and require the borrower to pay
3 the premium upon execution of the loan agreement, whether the
4 proceeds are delivered to the borrower immediately or whether
5 there are to be obligatory or permissive future advances. The
6 lender shall not be required to refund this charge in the event
7 of prepayment of the obligation. For the purposes of this
8 section, "interim construction loan" means a loan secured by a
9 first mortgage and used by the borrower primarily for financing
10 the construction of buildings, structures or improvements on or
11 to the real property on which the first mortgage has been
12 taken.

13 ~~[E.]~~ I. A lender may charge, take, reserve or
14 receive points or a premium on any loan secured by real
15 property; provided the points or premium together with the
16 interest or discount charged, taken, reserved or received do
17 not exceed the maximum interest ~~[or discount permitted by law.~~
18 ~~The lender shall not be required to refund this charge in the~~
19 ~~event of prepayment even if the prepayment would result in a~~
20 ~~higher charge to the borrower than permitted by law] as~~
21 provided in Subsections B through F of this section.

22 ~~[F.]~~ J. A loan in an amount equal to five thousand
23 dollars (\$5,000) or less shall be made only pursuant to the New
24 Mexico Bank Installment Loan Act of 1959 or the New Mexico
25 Small Loan Act of 1955."

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1 SECTION 2. Section 56-8-13 NMSA 1978 (being Laws 1957,
2 Chapter 209, Section 4) is amended to read:

3 "56-8-13. PENALTIES AND FORFEITURES.--

4 A. The taking, receiving, reserving or charging of
5 a rate of interest greater than allowed by [~~this act~~] Section
6 56-8-9 NMSA 1978, when knowingly done, shall be deemed a
7 forfeiture of the entire amount of such interest [~~which~~] that
8 the note, bill or other evidence of debt carries with it or
9 which has been agreed to be paid thereon. In case the greater
10 rate of interest has been paid, the person by whom it has been
11 paid or [~~his~~] the person's legal representatives may recover
12 [~~back~~] by civil action twice the amount of the interest thus
13 paid from the person, corporation or association taking or
14 receiving the same; provided that such action is commenced
15 within two [~~(2)~~] years from the time the usurious transaction
16 occurred.

17 B. Any contract for the extension of credit entered
18 into after July 1, 2022 having a rate of interest in excess of
19 the maximum lawful rate shall be void as to principal and
20 interest."

21 SECTION 3. Section 58-7-7 NMSA 1978 (being Laws 1959,
22 Chapter 327, Section 8, as amended) is amended to read:

23 "58-7-7. RESTRICTIONS.--

24 A. No lender shall make a loan pursuant to the New
25 Mexico Bank Installment Loan Act of 1959 to a borrower who is
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1 also indebted to that lender pursuant to the New Mexico Small
2 Loan Act of 1955 unless the loan made pursuant to the New
3 Mexico Small Loan Act of 1955 is paid and released at the time
4 the loan is made.

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

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

14 D. No lender, other than a federally insured
15 depository institution, shall make a loan pursuant to the New
16 Mexico Bank Installment Loan Act of 1959 that has an annual
17 percentage rate greater than [~~one hundred seventy-five~~] thirty-
18 six percent, calculated pursuant to 12 CFR Part 1026, known as
19 "Regulation Z", except as provided in Subsection I of this
20 section.

21 E. The provisions of Subsections B and C of this
22 section shall not apply to refund anticipation loans. As used
23 in this subsection, "refund anticipation loan" means a loan
24 that is secured by or that the creditor arranges or expects to
25 be repaid, directly or indirectly, from the proceeds of the

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1 consumer's federal or state personal income tax refunds or tax
2 credits, including any sale, assignment or purchase of a tax
3 refund or tax credit at a discount or for a fee.

4 F. Except as provided by Section 58-7-3.2 NMSA
5 1978, any rollover, renewal, refinance or modification of an
6 existing loan agreement with a lender, except a modification
7 without any additional cost to the consumer, shall constitute a
8 new loan and shall require new disclosures pursuant to the
9 federal Truth in Lending Act.

10 G. Any contract for the extension of credit entered
11 into after July 1, 2022 having a rate of interest in excess of
12 the maximum lawful rate shall be void as to principal and
13 interest.

14 H. The limitation on interest for the extension of
15 credit shall not apply to any federally insured depository
16 institution or government-issued bonds.

17 I. In the event the United States prime lending
18 rate exceeds ten percent, the maximum lawful rate of interest
19 charged or received may exceed thirty-six percent per year but
20 shall not exceed thirty percentage points in excess of the
21 United States prime lending rate."

22 SECTION 4. Section 58-15-10.1 NMSA 1978 (being Laws 2011,
23 Chapter 105, Section 1, as amended) is amended to read:

24 "58-15-10.1. LICENSEE REPORTING REQUIREMENTS--
25 PENALTIES.--

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1 A. Licensees shall file with the director each year
2 reports containing at least the following information for the
3 preceding calendar year ending December 31 in an aggregated,
4 nonidentifying consumer manner as specified below:

5 (1) a description of each loan product offered
6 by the licensee, including:

7 (a) whether the loan product was secured
8 or unsecured;

9 (b) whether the loan product was made
10 pursuant to the New Mexico Small Loan Act of 1955 or the New
11 Mexico Bank Installment Loan Act of 1959;

12 (c) the total dollar amount of principal
13 loaned for that product;

14 (d) the percentage of the total dollar
15 amount of all principal for that product that was repaid; and

16 (e) the total number of individual
17 borrowers who took out this type of loan product;

18 (2) the total number of loan transactions
19 entered into for each loan product in the following amounts:

20 (a) five hundred dollars (\$500) or less;

21 (b) five hundred one dollars (\$501) to
22 one thousand dollars (\$1,000);

23 (c) one thousand one dollars (\$1,001) to
24 three thousand dollars (\$3,000); and

25 (d) three thousand one dollars (\$3,001)

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1 to five thousand dollars (\$5,000);

2 (3) for each loan product, the number of loans
3 made and the total dollar amount of interest and fees charged
4 on the contracts for loans made within the following categories
5 of annual percentage rate calculated pursuant to 12 CFR Part
6 1026, known as "Regulation Z":

7 (a) less than or equal to [~~thirty-six~~]
8 ten percent;

9 (b) more than [~~thirty-six~~] ten percent
10 through [~~one hundred~~] eighteen percent;

11 (c) more than [~~one hundred~~] eighteen
12 percent through [~~one hundred fifty~~] thirty-six percent; and

13 (d) more than [~~one hundred fifty percent~~
14 ~~through one hundred seventy-five~~] thirty-six percent;

15 (4) for each loan product, the following
16 aggregate amounts of fees and interest:

17 (a) a list of each fee charged by the
18 lender and a description of each fee product or type, including
19 fees charged for loan origination and credit insurance;

20 (b) the total dollar amount of each fee
21 product charged by the lender and paid by the borrower; and

22 (c) the total dollar amount of interest
23 charged by the lender and paid by the borrower;

24 (5) for each loan product:

25 (a) the number of loans for which the

1 original term of the loan was: 1) less than one hundred twenty
2 days; 2) between one hundred twenty days and three hundred
3 sixty-five days; 3) between three hundred sixty-five days and
4 seven hundred thirty-one days; 4) between seven hundred thirty-
5 one days and five years; and 5) longer than five years;

6 (b) for each item set forth in
7 Subparagraph (a) of this paragraph, the average actual
8 repayment time for the given loan product and loan term; and

9 (c) for each item set forth in
10 Subparagraph (a) of this paragraph, the number of loans for
11 which payments were due: 1) every two weeks; 2) every four
12 weeks; and 3) monthly;

13 (6) the number of borrowers who took out one
14 or two loans with the lender in the previous calendar year, and
15 the percentage of all borrowers who took out one or two loans
16 with the lender in the previous calendar year;

17 (7) the number of borrowers who took out three
18 or more loans with the lender in the previous calendar year,
19 and the percentage of all borrowers who took out three or more
20 loans with the lender in the previous calendar year;

21 (8) for each loan product, the number of loans
22 that have been repaid in full without an extension, renewal,
23 refinance, rollover or new loan within thirty days of repaying
24 that loan, and for each loan product, the percentage of all
25 borrowers who have repaid their loans in full without an

1 extension, renewal, refinance, rollover or new loan within
2 thirty days of repaying that loan;

3 (9) for each loan product, the number of
4 borrowers who extended, renewed, refinanced or rolled over
5 their loans prior to or at the same time as paying their loan
6 balance in full, or took out a new loan within thirty days of
7 repaying that loan, and for each loan product, the percentage
8 of all borrowers who extended, renewed, refinanced or rolled
9 over their loans prior to or at the same time as paying the
10 loan balance in full, or took out a new loan within thirty days
11 of repaying that loan;

12 (10) for each loan product, the total number
13 of loans for which a late payment fee was charged and the
14 percentage of the total loans for which a late payment fee was
15 charged;

16 (11) for each loan product, the total number
17 of loans for which a late payment fee was charged more than
18 once over the term of the contract, and the percentage of the
19 total loans for which a late payment fee was charged more than
20 once over the term of the contract;

21 (12) for each loan product, the number of
22 loans for which a borrower has defaulted on a loan, and for
23 each loan product, the percentage of total loans of that
24 product for which the borrower has defaulted on a loan;

25 (13) for each loan product, the dollar amount

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1 of loan principal and accrued interest that was charged-off or
2 written-off, and the number of borrowers for which the lender
3 charged-off or wrote-off loan principal and accrued interest;

4 (14) the number of loans and percentage of all
5 borrowers the lender filed action against for default;

6 (15) the total number of loans secured by a
7 motor vehicle and the number of those loans for which the motor
8 vehicle was repossessed;

9 (16) the total number of loans secured by
10 non-motor vehicle personal property and the number of those
11 loans for which the non-motor vehicle personal property was
12 repossessed;

13 (17) the total number and percentage of
14 borrowers of all loan products whose sources of income, as
15 provided by borrowers in the loan origination process, included
16 a means-tested public benefit as defined by 8 U.S.C. Section
17 1613(c);

18 (18) the total number and percentage of
19 borrowers of all loan products who are aged sixty-five or
20 older;

21 (19) the total number of loans of all loan
22 products that were made to borrowers in each county in New
23 Mexico; and

24 (20) the percentage of all borrowers who took
25 out a refund anticipation loan who were eligible for a federal

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1 earned income tax credit.

2 B. The reports required pursuant to Subsection A of
3 this section shall be submitted to the director on or before
4 the fifteenth day of April each year.

5 C. The reports required pursuant to Subsection A of
6 this section shall be accompanied by a sworn statement by the
7 licensee under penalty of perjury that the report is complete
8 and accurate.

9 D. A licensee that fails to timely submit complete
10 and accurate reports as required pursuant to Subsection A of
11 this section on or before the fifteenth day of April may:

12 (1) be fined an amount not to exceed one
13 thousand five hundred dollars (\$1,500) per day for each day
14 after the fifteenth day of April, a complete and accurate
15 report is not filed; and

16 (2) have a license required pursuant to the
17 New Mexico Small Loan Act of 1955 suspended pursuant to Section
18 58-15-8 NMSA 1978."

19 SECTION 5. Section 58-15-17 NMSA 1978 (being Laws 1955,
20 Chapter 128, Section 15, as amended) is amended to read:

21 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
22 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
23 AND INTEREST.--

24 A. Every licensee shall:

25 (1) at the time a consumer becomes

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1 contractually obligated on a loan pursuant to the New Mexico
2 Small Loan Act of 1955, deliver to the borrower or, if there
3 are two or more borrowers on the same obligation, to one of
4 them, a statement on which shall be printed a copy of Section
5 58-15-14.1 NMSA 1978 and which shall disclose in clear and
6 distinct terms:

- 7 (a) the amount of the loan;
- 8 (b) the date the loan was made;
- 9 (c) a schedule or a description of the
10 payments;
- 11 (d) the type of the security, if any,
12 for the loan;
- 13 (e) the name and address of the
14 licensee;
- 15 (f) the name of the person primarily
16 obligated for the loan;
- 17 (g) the amount of principal;
- 18 (h) the annual percentage rate as
19 disclosed pursuant to 12 CFR Part 1026, known as "Regulation
20 Z", and the amount in dollars and cents;
- 21 (i) all other disclosures required
22 pursuant to state and federal law; and
- 23 (j) the charge for any other item
24 allowable and included pursuant to the New Mexico Small Loan
25 Act of 1955, so stated as to clearly show the allocation of

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1 each item included;

2 (2) for each payment made on account of a
3 loan, give to the person making the payment a plain and
4 complete receipt specifying the date and amount of the payment,
5 the amount applied to interest and principal and the balance
6 unpaid. When payment is made in any other manner than by the
7 borrower in person, by an agent of the borrower or by check or
8 money order, the licensee shall mail the receipt to the
9 borrower's last known address or retain and deliver the receipt
10 upon request of the borrower. A licensee may deliver the
11 receipt electronically to the borrower via text message or
12 email, if requested to do so in writing by the borrower. A
13 borrower may withdraw authorization for electronic delivery of
14 receipts in writing at any time. A licensee shall not require
15 a borrower to receive receipts electronically. The licensee
16 shall maintain a copy of each receipt in the office of the
17 licensee as a part of the licensee's records; and

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

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1 B. A licensee shall not take a note or promise to
2 pay that does not disclose the amount of the loan, a schedule
3 of payments, or a description thereof, and the agreed charge or
4 rate of charge or any instrument in which blanks are left to be
5 filled in after execution.

6 C. A judgment against a party on a loan made
7 pursuant to the New Mexico Small Loan Act of 1955 shall not
8 include, and the loan shall not include, from the date of the
9 judgment, charges against a party to the loan other than costs,
10 attorney fees and post-judgment interest as provided by law.

11 D. A loan made pursuant to the New Mexico Small
12 Loan Act of 1955 that is filed and approved as a claim in any
13 bankruptcy proceeding shall bear interest at the rate of ten
14 percent per year beginning on the ninetieth day following the
15 date of adjudication. This limitation shall not apply when the
16 bankrupt is not discharged in bankruptcy or to any obligation
17 not dischargeable under the provisions of the United States
18 Bankruptcy Code presently in force.

19 E. A loan made pursuant to the provisions of the
20 New Mexico Small Loan Act of 1955 shall not bear interest in
21 excess of ten percent per year on the unpaid principal balance
22 of a loan after ninety days following the date of the death of
23 the borrower.

24 F. A loan made pursuant to the New Mexico Small
25 Loan Act of 1955 shall not bear interest in excess of ten

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1 percent per year upon the unpaid principal balance of the loan
2 after twelve months following the date of maturity of the loan.

3 G. A lender shall not make a loan pursuant to the
4 New Mexico Small Loan Act of 1955 if a loan has an initial
5 stated maturity of less than one hundred twenty days unless the
6 loan is a refund anticipation loan.

7 H. A lender shall not make a loan pursuant to the
8 New Mexico Small Loan Act of 1955 unless the loan is an
9 installment loan or a refund anticipation loan.

10 I. A lender shall not make a loan pursuant to the
11 New Mexico Small Loan Act of 1955, other than a refund
12 anticipation loan, unless the loan is repayable in a minimum of
13 four substantially equal installment payments of principal and
14 interest.

15 J. A lender shall not make a loan pursuant to the
16 New Mexico Small Loan Act of 1955 that has an annual percentage
17 rate greater than [~~one hundred seventy-five~~] thirty-six
18 percent, calculated pursuant to 12 CFR Part 1026, known as
19 "Regulation Z", except as provided in Subsection O of this
20 section.

21 K. Upon request from the borrower, all lenders
22 licensed pursuant to the New Mexico Small Loan Act of 1955
23 shall give or forward to the borrower copies of all loan
24 agreements concerning that borrower, a copy of all receipts
25 maintained in that borrower's loan file and a written statement

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1 of that borrower's loan history, including all fees charged,
2 amortization schedules, that borrower's payment history,
3 including the dates and amounts of payments made, and the total
4 amount unpaid pursuant to each contract. All lenders shall
5 retain for seven years from the date of loan file origination
6 or loan payoff, whichever is the later, the documentation
7 specified in this subsection.

8 L. Any rollover, renewal, refinance or modification
9 of an existing loan agreement with a licensee, except a
10 modification without any additional cost to the borrower, shall
11 constitute a new loan and shall require new disclosures
12 pursuant to the federal Truth in Lending Act.

13 M. Any contract for the extension of credit entered
14 into after July 1, 2022 having a rate of interest in excess of
15 the maximum lawful rate shall be void as to principal and
16 interest.

17 N. The limitation on interest for the extension of
18 credit shall not apply to any federally insured depository
19 institution or government-issued bonds.

20 O. In the event the United States prime lending
21 rate exceeds ten percent, the maximum lawful rate of interest
22 charged or received may exceed thirty-six percent per year but
23 shall not exceed thirty percentage points in excess of the
24 United States prime lending rate."

25 SECTION 6. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2022.

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