

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 425

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES
FOR CERTAIN INSTALLMENT AND SHORT-TERM INSTALLMENT LOANS;
AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE NEW MEXICO SMALL
LOAN ACT OF 1955 AND THE NEW MEXICO BANK INSTALLMENT LOAN ACT
OF 1959.

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

.199391.6

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

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. No provision of law prescribing maximum rates of
5 interest that may be charged in any transaction shall apply to
6 a transaction in which a corporation is a debtor, regardless of
7 the purpose for which the corporation was formed and regardless
8 of the fact that an individual is codebtor, endorser,
9 guarantor, surety or accommodation party. No corporation or
10 its codebtor, endorser, guarantor, surety or accommodation
11 party shall have a cause of action or affirmatively plead,
12 counterclaim, set off or set up the defense of usury in any
13 action to recover damages or enforce a remedy on any obligation
14 executed by the corporation, and no civil or criminal penalty
15 [~~which~~] that would otherwise be applicable except as provided
16 in Sections 30-43-1 through 30-43-5 NMSA 1978 shall apply on
17 any obligation executed by the corporation.

18 C. A lender may, in the case of business or
19 commercial loans for business or commercial purposes in the
20 amount of five hundred thousand dollars (\$500,000) or more,
21 take, receive, reserve or charge on any loan or discount made,
22 or upon any note, bill of exchange or other evidence of debt,
23 interest at a rate agreed to by the parties [~~even if the rate~~
24 ~~exceeds the rate set forth in Section 56-8-11 NMSA 1978~~].

25 D. In addition to the maximum interest or discount

.199391.6

underscored material = new
[bracketed material] = delete

1 [which] that a lender is permitted to charge by law, the lender
2 may charge, take, reserve or receive a premium or points in an
3 amount up to but not exceeding three percent of the face amount
4 of the loan on interim construction loans. The lender may
5 charge and require the borrower to pay the premium upon
6 execution of the loan agreement, whether the proceeds are
7 delivered to the borrower immediately or whether there are to
8 be obligatory or permissive future advances. The lender shall
9 not be required to refund this charge in the event of
10 prepayment of the obligation. For the purposes of this
11 section, ~~an~~ "interim construction loan" means a loan secured
12 by a first mortgage and used by the borrower primarily for
13 financing the construction of buildings, structures or
14 improvements on or to the real property on which the first
15 mortgage has been taken.

16 E. A lender may charge, take, reserve or receive
17 points or a premium on any loan secured by real property,
18 provided the points or premium together with the interest or
19 discount charged, taken, reserved or received do not exceed the
20 maximum interest or discount permitted by law. The lender
21 shall not be required to refund this charge in the event of
22 prepayment even if the prepayment would result in a higher
23 charge to the borrower than permitted by law.

24 F. Chapter 56, Article 8 NMSA 1978 does not apply
25 to loans made pursuant to the New Mexico Bank Installment Loan

.199391.6

underscored material = new
[bracketed material] = delete

1 Act of 1959 or the New Mexico Small Loan Act of 1955.

2 G. A loan in an amount less than or equal to two
3 thousand five hundred dollars (\$2,500) shall be made only
4 pursuant to the New Mexico Bank Installment Loan Act of 1959 or
5 the New Mexico Small Loan Act of 1955."

6 SECTION 2. Section 58-7-1 NMSA 1978 (being Laws 1959,
7 Chapter 327, Section 1) is amended to read:

8 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
9 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
10 Installment Loan Act of 1959"."

11 SECTION 3. Section 58-7-3 NMSA 1978 (being Laws 1995,
12 Chapter 190, Section 15) is amended to read:

13 "58-7-3. LOANS COVERED BY ACT.--

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

18 B. A loan in an amount less than or equal to two
19 thousand five hundred dollars (\$2,500) shall be made only
20 pursuant to the New Mexico Bank Installment Loan Act of 1959 or
21 the New Mexico Small Loan Act of 1955."

22 SECTION 4. Section 58-7-6 NMSA 1978 (being Laws 1959,
23 Chapter 327, Section 6, as amended) is amended to read:

24 "58-7-6. ADDITIONAL CHARGES.--

25 A. No additional amount shall be charged or

underscored material = new
[bracketed material] = delete

1 contracted for, directly or indirectly, on or in connection
2 with any such installment loan except as follows:

3 [A-] (1) delinquency charges not to exceed
4 [~~five cents (\$.05)~~] ten cents (\$.10) for each one dollar
5 (\$1.00) of each installment more than ten days in arrears,
6 provided that the total of delinquency charges on any such
7 installment shall not exceed [~~ten dollars (\$10.00)~~] twenty-five
8 dollars (\$25.00) and that only one delinquency charge shall be
9 made on any one installment regardless of the period during
10 which the installment remains unpaid;

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

22 [C-] (3) in the event that a borrower fails to
23 maintain in effect any insurance required in connection with a
24 loan transaction, the lender may purchase the required
25 insurance or lender's single interest insurance covering the

.199391.6

underscoring material = new
[bracketed material] = delete

1 lender's interest in the property, and the cost of [~~such~~] that
2 insurance shall be added to the loan and may accrue interest as
3 provided for [~~herein~~] in the New Mexico Bank Installment Loan
4 Act of 1959;

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

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

15 [~~F-~~] (6) the actual expenditures, including
16 reasonable [~~attorneys'~~] attorney fees, for legal process or
17 proceedings to collect any such installment loan; provided,
18 however, that no [~~attorneys'~~] attorney fees are permitted where
19 the loan is referred for collection to an attorney who is a
20 salaried employee of the holder of the contract;

21 [~~G-~~] (7) the actual cost of charges incurred
22 in making a real estate loan secured by a mortgage on real
23 estate, including but not limited to the charges for an
24 abstract of title, title examination, title insurance premiums,
25 property survey, appraisal fees, notary fees, preparation of

.199391.6

underscored material = new
[bracketed material] = delete

1 deeds, mortgages or other documents, escrow charges, credit
2 reports and filing and recording fees; [and

3 ~~H. a one-time charge of an amount not to exceed~~
4 ~~twenty-five dollars (\$25.00) in an installment loan repayable~~
5 ~~in two or more installments when the loan is made to a natural~~
6 ~~person primarily for personal, family or household purposes to~~
7 ~~help defray the actual costs of preparing truth-in-lending~~
8 ~~disclosure statements, equal credit opportunity disclosure~~
9 ~~statements and other disclosures required by federal law]~~

10 (8) a processing fee of not more than ten
11 percent of the principal amount of the loan, which fee is fully
12 earned and nonrefundable at the time a loan agreement is
13 executed;

14 (9) upon the execution of an installment loan,
15 the lender may impose a handling fee of not more than seven and
16 three-fourths percent of the initial principal amount of the
17 loan, calculated per each month for the scheduled term of the
18 loan; and

19 (10) if there are insufficient funds to pay a
20 check or other type of debit on the date of presentment by the
21 lender, a lender may charge a consumer a fee not to exceed
22 thirty-five dollars (\$35.00). Only one fee may be collected by
23 a lender on a check or debit authorization. A check or debit
24 authorization request shall not be presented to a financial
25 institution by a lender for payment more than one time unless

underscored material = new
[bracketed material] = delete

1 the consumer agrees in writing, after a check or other type of
2 debit has been dishonored, to one additional presentment or
3 deposit.

4 B. The charges permitted under this section may be
5 added to the balance due from the borrower."

6 SECTION 5. Section 58-7-7 NMSA 1978 (being Laws 1959,
7 Chapter 327, Section 8, as amended) is amended to read:

8 "58-7-7. RESTRICTIONS.--

9 A. No lender shall make a loan [~~under~~] pursuant to
10 the New Mexico Bank Installment Loan Act of 1959 to a borrower
11 who is also indebted to [~~such~~] that lender under the New Mexico
12 Small Loan Act of 1955 unless the loan made under the New
13 Mexico Small Loan Act of 1955 is paid and released at the time
14 the loan is made.

15 B. No lender shall make a loan pursuant to the New
16 Mexico Bank Installment Loan Act of 1959 if a loan has an
17 initial stated maturity of less than one hundred twenty days."

18 SECTION 6. A new section of the New Mexico Bank
19 Installment Loan Act of 1959 is enacted to read:

20 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
21 jurisdiction and authority regarding the terms and conditions
22 of loans to which the New Mexico Bank Installment Loan Act of
23 1959 is applicable, and counties, municipalities and other
24 political subdivisions of the state are preempted from any
25 regulation of terms and conditions of such loans by ordinance,

.199391.6

underscored material = new
[bracketed material] = delete

1 resolution or otherwise."

2 SECTION 7. Section 58-15-2 NMSA 1978 (being Laws 1955,
3 Chapter 128, Section 2, as amended) is amended to read:

4 "58-15-2. DEFINITIONS.--The following words and terms
5 when used in the New Mexico Small Loan Act of 1955 have the
6 following meanings unless the context clearly requires a
7 different meaning. The meaning ascribed to the singular form
8 applies also to the plural:

9 A. "consumer" means a person who enters into a loan
10 agreement and receives the loan proceeds in New Mexico;

11 B. "debit authorization" means an authorization
12 signed by a consumer to electronically transfer or withdraw
13 funds from the consumer's account for the specific purpose of
14 repaying a loan;

15 C. "department" or "division" means the financial
16 institutions division of the regulation and licensing
17 department;

18 D. "director" means the director of the division;

19 E. "installment loan" means a loan in an amount
20 less than or equal to two thousand five hundred dollars
21 (\$2,500) that is to be repaid in a minimum of [~~four~~] six
22 successive substantially equal payment amounts to pay off a
23 loan in its entirety with [~~a period of no~~] an initial stated
24 maturity of not less than [one hundred twenty] one hundred
25 eighty days to maturity. "Installment loan" does not mean a

.199391.6

underscoring material = new
~~[bracketed material] = delete~~

1 loan in which a licensee requires, as a condition of making the
2 loan, the use of postdated checks or debit authorizations for
3 repayment of that loan or a refund anticipation loan;

4 F. "license" means a permit issued under the
5 authority of the New Mexico Small Loan Act of 1955 to make
6 loans and collect charges therefor strictly in accordance with
7 the provisions of that act at a single place of business. It
8 shall constitute and shall be construed as a grant of a
9 revocable privilege only to be held and enjoyed subject to all
10 the conditions, restrictions and limitations contained in the
11 New Mexico Small Loan Act of 1955 and lawful regulations
12 promulgated by the director and not otherwise;

13 G. "licensee" means a person to whom one or more
14 licenses have been issued pursuant to the New Mexico Small Loan
15 Act of 1955 upon the person's written application electing to
16 become a licensee and consenting to exercise the privilege of a
17 licensee solely in conformity with the New Mexico Small Loan
18 Act of 1955 and the lawful regulations promulgated by the
19 director under that act and whose name appears on the face of
20 the license;

21 H. "payday loan" means a loan in which the licensee
22 accepts a personal check or debit authorization tendered by the
23 consumer and agrees in writing to defer presentment of that
24 check or use of the debit authorization until the consumer's
25 next payday or another date agreed to by the licensee and the

.199391.6

underscored material = new
[bracketed material] = delete

1 consumer and:

2 (1) includes any advance of money or
3 arrangement or extension of credit whereby the licensee, for a
4 fee, finance charge or other consideration:

5 (a) accepts a dated personal check or
6 debit authorization from a consumer for the specific purpose of
7 repaying a payday loan;

8 (b) agrees to hold a dated personal
9 check or debit authorization from a consumer for a period of
10 time prior to negotiating or depositing the personal check or
11 debit authorization; or

12 (c) pays to the consumer, credits to the
13 consumer's account or pays another person on behalf of the
14 consumer the amount of an instrument actually paid or to be
15 paid pursuant to the New Mexico Small Loan Act of 1955; but

16 (2) does not include:

17 (a) an overdraft product or service
18 offered by a banking corporation, savings and loan association
19 or credit union; and

20 (b) installment loans;

21 I. "payday loan product" means a payday loan or a
22 payment plan pursuant to Section 58-15-35 NMSA 1978;

23 J. "person" includes an individual, copartner,
24 association, trust, corporation and any other legal entity;

25 K. "refund anticipation loan" means a loan that is

underscored material = new
[bracketed material] = delete

1 secured by or that the creditor arranges or expects to be
2 repaid, directly or indirectly, from the proceeds of the
3 consumer's federal or state personal income tax refunds or tax
4 credits, including any sale, assignment or purchase of a tax
5 refund or tax credit at a discount or for a fee;

6 ~~[K-]~~ L. "renewed payday loan" means a loan in which
7 a consumer pays in cash the administrative fee payable under a
8 payday loan agreement and refinances all or part of the unpaid
9 principal balance of an existing payday loan with a new payday
10 loan from the same licensee. A "renewed payday loan" includes
11 a transaction in which a consumer pays off all or part of an
12 existing payday loan with the proceeds of a payday loan from
13 the same licensee; ~~[and]~~

14 M. "short-term installment loan" means a loan in an
15 amount less than or equal to two thousand five hundred dollars
16 (\$2,500) that is to be repaid in a minimum of three successive
17 substantially equal payment amounts to pay off a loan in its
18 entirety with an initial stated maturity of not less than
19 ninety days to maturity and less than one hundred eighty days
20 to maturity. "Short-term installment loan" does not mean a
21 loan in which a licensee requires, as a condition of making the
22 loan, the use of postdated checks or debit authorizations for
23 repayment of that loan or a refund anticipation loan; and

24 ~~[L-]~~ N. "simple interest" means a method of
25 calculating interest in which the amount of interest is

underscoring material = new
[bracketed material] = delete

1 calculated based on the annual interest rate disclosed in the
2 loan agreement and is computed only on the outstanding
3 principal balance of the loan."

4 SECTION 8. Section 58-15-3 NMSA 1978 (being Laws 1955,
5 Chapter 128, Section 3, as amended) is amended to read:

6 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--
7 PENALTY.--

8 A. A person shall not engage in the business of
9 lending in amounts of two thousand five hundred dollars
10 (\$2,500) or less for a loan without first having obtained a
11 license from the director. Nothing contained in this
12 subsection shall restrict or prohibit a licensee under the New
13 Mexico Small Loan Act of 1955 from making loans in any amount
14 under the New Mexico Bank Installment Loan Act of 1959 in
15 accordance with the provisions of Section 58-7-2 NMSA 1978.

16 B. Nothing in the New Mexico Small Loan Act of 1955
17 shall apply to a person making individual advances of two
18 thousand five hundred dollars (\$2,500) or less under a written
19 agreement providing for a total loan or line of credit in
20 excess of two thousand five hundred dollars (\$2,500).

21 C. A banking corporation, savings and loan
22 association or credit union operating under the laws of the
23 United States or of a state shall be exempt from the licensing
24 requirements of the New Mexico Small Loan Act of 1955, nor
25 shall that act apply to business transacted by any person under

.199391.6

underscoring material = new
[bracketed material] = delete

1 the authority of and as permitted by any such law nor to any
2 bona fide pawnbroking business transacted under a pawnbroker's
3 license nor to bona fide commercial loans made to dealers upon
4 personal property held for resale. Nothing contained in the
5 New Mexico Small Loan Act of 1955 shall be construed as
6 abridging the rights of any of those exempted from the
7 operations of that act from contracting for or receiving
8 interest or charges not in violation of an existing applicable
9 statute of this state.

10 D. The provisions of Subsection A of this section
11 apply to:

12 (1) a person who owns an interest, legal or
13 equitable, in the business or profits of a licensee and whose
14 name does not specifically appear on the face of the license,
15 except a stockholder in a corporate licensee; and

16 (2) a person who seeks to evade its
17 application by any device, subterfuge or pretense whatsoever,
18 including but not thereby limiting the generality of the
19 foregoing:

20 (a) the loan, forbearance, use or sale
21 of credit (as guarantor, surety, endorser, comaker or
22 otherwise), money, goods or things in action;

23 (b) the use of collateral or related
24 sales or purchases of goods or services or agreements to sell
25 or purchase, whether real or pretended;

.199391.6

underscored material = new
[bracketed material] = delete

1 (c) receiving or charging compensation
2 for goods or services, whether or not sold, delivered or
3 provided; and

4 (d) the real or pretended negotiation,
5 arrangement or procurement of a loan through any use or
6 activity of a third person, whether real or fictitious.

7 E. A person, copartnership, trust or a trustee or
8 beneficiary thereof or an association or corporation or a
9 member, officer, director, agent or employee thereof who
10 violates or participates in the violation of a provision of
11 Subsection A of this section is guilty of a petty misdemeanor
12 and upon conviction shall be sentenced pursuant to the
13 provisions of Subsection B of Section 31-19-1 NMSA 1978. A
14 contract or loan in the making or collection of which an act is
15 done that violates Subsection A or D of this section is void
16 and the lender has no right to collect, receive or retain any
17 principal, interest or charges whatsoever.

18 F. A loan in an amount less than or equal to two
19 thousand five hundred dollars (\$2,500) shall be made only
20 pursuant to the New Mexico Bank Installment Loan Act of 1959 or
21 the New Mexico Small Loan Act of 1955."

22 SECTION 9. Section 58-15-17 NMSA 1978 (being Laws 1955,
23 Chapter 128, Section 15, as amended) is amended to read:

24 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
25 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER

.199391.6

1 JUDGMENT AND INTEREST.--

2 A. Every licensee shall:

3 (1) at the time a loan is made within the
4 provisions of the New Mexico Small Loan Act of 1955, deliver to
5 the borrower or, if there are two or more borrowers on the same
6 obligation, to one of them, a statement in English or Spanish
7 as requested by the borrower, on which shall be printed a copy
8 of Section 58-15-14.1 NMSA 1978 and that discloses in clear and
9 distinct terms:

10 (a) the amount of the loan;

11 (b) the date the loan was made;

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

14 (d) the type of the security, if any,
15 for the loan;

16 (e) the name and address of the licensed
17 office;

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

20 (g) the amount of principal;

21 (h) the agreed rate of charge stated on
22 a percent per year basis and the amount in dollars and cents;

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

25 (j) other items allowable pursuant to

.199391.6

underscoring material = new
~~[bracketed material] = delete~~

1 that act, so stated as to clearly show the allocation of each
2 item included;

3 (2) for each payment made on account of any
4 such loan, give to the person making it a plain and complete
5 receipt specifying the date and amount of the payment, the
6 amount applied to interest and principal and the balance
7 unpaid. When payment is made in any other manner than by the
8 borrower in person, by an agent of the borrower or by check or
9 money order, the licensee shall mail the receipt to the
10 borrower's last known address or hold the receipt for delivery
11 upon request of the borrower. A copy of all receipts shall be
12 kept on file in the office of the licensee as a part of the
13 licensee's records; and

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

22 B. A licensee shall not take a note or promise to
23 pay that does not disclose the amount of the loan, a schedule
24 of payments, or a description thereof, and the agreed charge or
25 rate of charge or any instrument in which blanks are left to be

.199391.6

underscored material = new
[bracketed material] = delete

1 filled in after execution.

2 C. If judgment is obtained against a party on a
3 loan made pursuant to the provisions of the New Mexico Small
4 Loan Act of 1955, neither the judgment nor the loan shall
5 carry, from the date of the judgment, charges against a party
6 to the loan other than costs, attorney fees and post-judgment
7 interest as provided by law.

8 D. Any loan made under the provisions of the New
9 Mexico Small Loan Act of 1955 that is filed and approved as a
10 claim in any bankruptcy proceeding shall, from a date ninety
11 days subsequent to the date of adjudication, bear interest at
12 the rate of ten percent a year only. This limitation shall not
13 apply when the bankrupt is not discharged in bankruptcy or to
14 any obligation not dischargeable under the provisions of the
15 Bankruptcy Act presently in force or as hereafter amended.

16 E. No loan made under the provisions of the New
17 Mexico Small Loan Act of 1955 shall bear interest after ninety
18 days from the date of the death of the borrower in excess of a
19 rate of ten percent a year on the unpaid principal balance of
20 the loan.

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

25 G. No lender shall make a loan pursuant to the New

.199391.6

underscored material = new
[bracketed material] = delete

1 Mexico Small Loan Act of 1955 if a loan has an initial stated
2 maturity of less than ninety days, unless it is a payday loan.

3 H. No lender shall make a loan pursuant to the New
4 Mexico Small Loan Act of 1955 unless the loan is an installment
5 loan, short-term installment loan, payday loan or refund
6 anticipation loan."

7 SECTION 10. Section 58-15-19 NMSA 1978 (being Laws 1955,
8 Chapter 128, Section 17) is amended to read:

9 "58-15-19. LOANS UNDER OTHER LAWS.--Any licensee
10 [~~hereunder~~] may make loans in an amount in excess of two
11 thousand five hundred dollars (\$2,500) in accordance with and
12 not in violation of the general laws of this state governing
13 money and usury to any borrower not having a loan with the
14 lender under [~~this Act~~] the New Mexico Small Loan Act of 1955,
15 provided that no charge authorized to be made under the
16 provisions [~~hereof~~] of that act shall be made, collected or
17 received by the lender in connection with any such loan; and
18 provided further that any such loan shall not be converted into
19 a loan under [~~this~~] that act after once made or after it is
20 reduced to a sum less than the maximum [~~herein~~] provided for in
21 that act."

22 SECTION 11. Section 58-15-20 NMSA 1978 (being Laws 1955,
23 Chapter 128, Section 18, as amended) is amended to read:

24 "58-15-20. FEES AND COSTS.--

25 A. Notwithstanding any provision of the New Mexico

underscored material = new
[bracketed material] = delete

1 Small Loan Act of 1955, lawful fees, if any, actually and
2 necessarily paid out by the licensee to a public officer for
3 the filing, recording or releasing in a public office of an
4 instrument securing the loan may be charged to the borrower.

5 B. Notwithstanding any provision in a note or other
6 loan contract taken or received pursuant to the provisions of
7 the New Mexico Small Loan Act of 1955, attorney fees shall not
8 be charged or collected except when the note or other contract
9 has been submitted in good faith to an attorney for collection
10 and after diligent and good faith effort to collect on the part
11 of the licensee has failed.

12 C. Notary fees incident to the taking of a lien to
13 secure a small loan or releasing such a lien shall not be
14 charged or collected by a licensee, an officer, agent or
15 employee of a licensee or anyone within an office, room or
16 place of business in which a small loan office is conducted.

17 D. Delinquency fees shall not exceed [~~five cents~~
18 ~~(\$.05)~~] ten cents (\$.10) for each one dollar (\$1.00) of each
19 installment more than ten days in arrears; provided that the
20 total of delinquency charges on any such installment shall not
21 exceed [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00) and
22 that only one delinquency charge shall be made on any one
23 installment regardless of the period during which the
24 installment remains unpaid."

25 SECTION 12. A new section of the New Mexico Small Loan

.199391.6

underscored material = new
[bracketed material] = delete

1 Act of 1955 is enacted to read:

2 "[NEW MATERIAL] INSTALLMENT LOANS--PERMITTED CHARGES.--

3 A. Upon the execution of an installment loan, the
4 licensee may impose and collect a processing fee of not more
5 than ten percent of the principal amount of the loan, which fee
6 is fully earned and nonrefundable at the time a loan agreement
7 is executed.

8 B. Upon the execution of an installment loan, the
9 licensee may impose a handling fee of not more than seven and
10 three-fourths percent of the initial principal amount of the
11 loan, calculated per each month for the scheduled term of the
12 loan.

13 C. If there are insufficient funds to pay a check
14 or other type of debit on the date of presentment by the
15 licensee, a licensee may charge a consumer a fee not to exceed
16 thirty-five dollars (\$35.00). Only one fee may be collected by
17 a licensee on a check or debit authorization. A check or debit
18 authorization request shall not be presented to a financial
19 institution by a licensee for payment more than one time unless
20 the consumer agrees in writing, after a check or other type of
21 debit has been dishonored, to one additional presentment or
22 deposit.

23 D. A licensee shall not charge a consumer for fees,
24 interest or charges of any kind other than those permitted
25 pursuant to Subsections A, B and C of this section and Section

.199391.6

underscored material = new
[bracketed material] = delete

1 58-15-20 NMSA 1978."

2 SECTION 13. A new section of the New Mexico Small Loan
3 Act of 1955 is enacted to read:

4 "[NEW MATERIAL] SHORT-TERM INSTALLMENT LOANS--PERMITTED
5 CHARGES.--

6 A. Upon the execution of a short-term installment
7 loan, the licensee may impose and collect a processing fee of
8 not more than ten percent of the principal amount of the loan,
9 which fee is fully earned and nonrefundable at the time a loan
10 agreement is executed.

11 B. In addition to the processing fee set forth in
12 Subsection A of this section, a licensee shall only charge
13 simple interest on the amount of loan proceeds delivered to the
14 consumer in a short-term installment loan, subject to the
15 following conditions:

16 (1) the aggregate amount of principal,
17 interest and fees received by the licensee for a short-term
18 installment loan includes all principal, interest and fees
19 received on the loan, including principal, interest and fees
20 received after any renewals, refinance, extensions or default;

21 (2) unless a short-term installment loan is
22 repaid in full with cash, certified funds or a check or debit
23 having cleared the drawee institution, a short-term installment
24 loan remains outstanding as a renewal, refinance or extension
25 for the purpose of capping the total aggregate amount of

.199391.6

underscoring material = new
~~[bracketed material] = delete~~

1 principal, interest and fees paid by the borrower;

2 (3) once the licensee has received the cap of
3 the total aggregate amount of principal, interest and fees,
4 other than a processing fee, equal to two times the original
5 short-term installment loan agreement principal balance, the
6 short-term installment loan shall be deemed satisfied and
7 considered paid in full by the consumer;

8 (4) the cap of the total aggregate amount of
9 principal, interest and fees, other than a processing fee,
10 received by a licensee shall not exceed two times the amount of
11 the original short-term installment loan agreement principal
12 balance. The aggregate cap of two times the principal,
13 interest and fees, other than a processing fee, shall be
14 prorated by multiplying the number of days in the stated term
15 of the loan by fifty-five hundredths percent;

16 (5) the interest rate charged on the
17 outstanding balance of a short-term installment loan shall be
18 at a constant rate that is applicable throughout the initial
19 term of the short-term installment loan; and

20 (6) the interest rate charged on the
21 outstanding balance after initial maturity shall be capped at a
22 rate not greater than the interest rate charged during the
23 initial term of the short-term installment loan.

24 C. If there are insufficient funds to pay a check
25 or other type of debit on the date of presentment by the

.199391.6

underscored material = new
~~[bracketed material] = delete~~

1 licensee, a licensee may charge a consumer a fee not to exceed
2 thirty-five dollars (\$35.00). Only one fee may be collected by
3 a licensee on a check or debit authorization. A check or debit
4 authorization request shall not be presented to a financial
5 institution by a licensee for payment more than one time unless
6 the consumer agrees in writing, after a check or other type of
7 debit has been dishonored, to one additional presentment or
8 deposit."

9 SECTION 14. A new section of the New Mexico Small Loan
10 Act of 1955 is enacted to read:

11 "[NEW MATERIAL] PREEMPTION.--The state has exclusive
12 jurisdiction and authority regarding the terms and conditions
13 of permitted installment loans, short-term installment loans or
14 payday loans, and counties, municipalities and other political
15 subdivisions of the state are preempted from any regulation of
16 terms and conditions of permitted installment loans, short-term
17 installment loans or payday loans by ordinance, resolution or
18 otherwise."

19 SECTION 15. REPEAL.--Section 58-15-18 NMSA 1978 (being
20 Laws 1955, Chapter 128, Section 16, as amended) is repealed.

21 SECTION 16. APPLICABILITY.--The provisions of this act
22 shall apply to loans subject to the New Mexico Small Loan Act
23 of 1955 and the New Mexico Bank Installment Loan Act of 1959
24 executed on or after July 1, 2015.

25 SECTION 17. EFFECTIVE DATE.--The effective date of the
.199391.6

underscoring material = new
~~[bracketed material] = delete~~

1 provisions of this act is July 1, 2015.

2 - 25 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.199391.6