SENATE BILL 72

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

INTRODUCED BY
William P. Soules

AN ACT
RELATING TO LENDING; ENACTING NEW SECTIONS OF THE NEW MEXICO 
BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN 
ACT OF 1955; IMPOSING A CAP ON INTEREST RATES; VOIDING 
CONTRACTS THAT EXCEED THE INTEREST RATE CAP; REPEALING A 
SECTION OF 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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postponement of the right to receive money or credit except at
the rates permitted in Sections 56-8-1 through 56-8-21 NMSA
1978.

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

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

D. Any contract for the extension of credit entered
into after July 1, 2015 having a rate of interest in excess of
the maximum lawful rate shall be void as to principal and
interest.

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

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

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

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

D.] H. In addition to the maximum interest or discount [which] that a lender is permitted to charge by law, the lender may charge, take, reserve or receive a premium or points in an amount up to but not exceeding three percent of the face amount of the loan on interim construction loans;
provided that the total amount does not exceed the maximum lawful rate of interest as provided in Subsections B through F of this section. The lender may charge and require the borrower to pay the premium upon execution of the loan agreement, whether the proceeds are delivered to the borrower immediately or whether there are to be obligatory or permissive future advances. The lender shall not be required to refund this charge in the event of prepayment of the obligation. For the purposes of this section, [an] "interim construction loan" means a loan secured by a first mortgage and used by the borrower primarily for financing the construction of buildings, structures or improvements on or to the real property on which the first mortgage has been taken.

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

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

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

B. Any contract for the extension of credit entered into after July 1, 2015 having a rate of interest in excess of the maximum lawful rate shall be void as to principal and interest."

SECTION 3. Section 58-7-1 NMSA 1978 (being Laws 1959, Chapter 327, Section 1) is amended to read:

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

SECTION 4. A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"[NEW MATERIAL] MAXIMUM INTEREST RATES--EXCEPTIONS.--

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

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

C. Any contract for the extension of credit entered
into after July 1, 2015 having a rate of interest in excess of
the maximum lawful rate shall be void as to principal and
interest.

D. The limitation on interest for the extension of
credit shall not apply to any federally insured depository
institutions or government-issued bonds.

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

SECTION 5. A new section of the New Mexico Small Loan Act
of 1955 is enacted to read:

"[NEW MATERIAL] MAXIMUM INTEREST RATES--EXCEPTIONS.--

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

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

C. Any contract for the extension of credit entered into after July 1, 2015 having a rate of interest in excess of the maximum lawful rate shall be void as to principal and interest.

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

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

SECTION 6. REPEAL.--Section 58-15-33 NMSA 1978 (being Laws 2007, Chapter 86, Section 15) is repealed.

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.