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HOUSE BILL 84

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Patricia Roybal Caballero

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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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, 2016 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 is a debtor,  
2 regardless of the purpose for which the corporation was formed  
3 and regardless of the fact that an individual is codebtor,  
4 endorser, guarantor, surety or accommodation party. No  
5 corporation or its codebtor, endorser, guarantor, surety or  
6 accommodation party shall have a cause of action or  
7 affirmatively plead, counterclaim, set off or set up the  
8 defense of usury in any action to recover damages or enforce a  
9 remedy on any obligation executed by the corporation, and no  
10 civil or criminal penalty ~~[which]~~ that would otherwise be  
11 applicable except as provided in Sections 30-43-1 through  
12 30-43-5 NMSA 1978 shall apply on any obligation executed by the  
13 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 even if the rate~~  
20 ~~exceeds the rate set forth in Section 56-8-11 NMSA 1978.~~

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

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

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

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

25 "56-8-13. PENALTIES AND FORFEITURES.--

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1           A. The taking, receiving, reserving or charging of  
2 a rate of interest greater than allowed by [~~this act~~] Section  
3 56-8-9 NMSA 1978, when knowingly done, shall be deemed a  
4 forfeiture of the entire amount of such interest [~~which~~] that  
5 the note, bill or other evidence of debt carries with it or  
6 [~~which~~] that has been agreed to be paid thereon. In case the  
7 greater rate of interest has been paid, the person by whom it  
8 has been paid or [~~his~~] the person's legal representatives may  
9 recover [~~back~~] by civil action twice the amount of the interest  
10 thus paid from the person, corporation or association taking or  
11 receiving the same; provided that such action is commenced  
12 within two [~~(2)~~] years from the time the usurious transaction  
13 occurred.

14           B. Any contract for the extension of credit entered  
15 into after July 1, 2016 having a rate of interest in excess of  
16 the maximum lawful rate shall be void as to principal and  
17 interest."

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

20           "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter  
21 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank  
22 Installment Loan Act of 1959"."

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

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

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

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

9           C. Any contract for the extension of credit entered  
10 into after July 1, 2016 having a rate of interest in excess of  
11 the maximum lawful rate shall be void as to principal and  
12 interest.

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

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

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

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

24           A. Except as provided for in this section, the  
25 maximum lawful rate of interest charged or received for the

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1 extension of credit shall not exceed thirty-six percent per  
2 year.

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

7 C. Any contract for the extension of credit entered  
8 into after July 1, 2016 having a rate of interest in excess of  
9 the maximum lawful rate shall be void as to principal and  
10 interest.

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

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

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

21 SECTION 7. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2016.