

HOUSE BILL 386

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

INTRODUCED BY

Susan K. Herrera and Christine Chandler and Andrea Romero and
Joanne J. Ferrary and Patricia Roybal Caballero

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.

.212087.1

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

underscored material = new
[bracketed material] = delete

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

5 C. 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 unless the loan is
8 repayable in a minimum of four substantially equal installment
9 payments of principal and interest.

10 D. No lender, other than a federally insured
11 depository institution, shall make a loan pursuant to the New
12 Mexico Bank Installment Loan Act of 1959 that has an annual
13 percentage rate greater than [~~one hundred seventy-five percent~~]
14 thirty-six percent, calculated pursuant to 12 CFR Part 1026,
15 known as "Regulation Z".

16 E. The provisions of Subsections B and C of this
17 section shall not apply to refund anticipation loans. As used
18 in this subsection, "refund anticipation loan" means a loan
19 that is secured by or that the creditor arranges or expects to
20 be repaid, directly or indirectly, from the proceeds of the
21 consumer's federal or state personal income tax refunds or tax
22 credits, including any sale, assignment or purchase of a tax
23 refund or tax credit at a discount or for a fee."

24 SECTION 2. Section 58-15-17 NMSA 1978 (being Laws 1955,
25 Chapter 128, Section 15, as amended) is amended to read:

.212087.1

1 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--
2 INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT
3 AND INTEREST.--

4 A. Every licensee shall:

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

- 12 (a) the amount of the loan;
13 (b) the date the loan was made;
14 (c) a schedule or a description of the
15 payments;
16 (d) the type of the security, if any,
17 for the loan;
18 (e) the name and address of the licensed
19 office;
20 (f) the name of the person primarily
21 obligated for the loan;
22 (g) the amount of principal;
23 (h) the annual interest rate as
24 disclosed pursuant to 12 CFR Part 1026, known as "Regulation
25 Z", and the amount in dollars and cents;

.212087.1

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

1 (i) all other disclosures required
2 pursuant to state and federal law; and

3 (j) other items allowable pursuant to
4 that act, so stated as to clearly show the allocation of each
5 item included;

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

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

25 B. A licensee shall not take a note or promise to

.212087.1

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

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

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

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

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

25 F. No loan made under the provisions of the New

.212087.1

underscored material = new
[bracketed material] = delete

1 Mexico Small Loan Act of 1955 shall bear interest after twelve
2 months from the date of maturity of the loan in excess of ten
3 percent a year upon the unpaid principal balance of the loan.

4 G. No lender shall make a loan pursuant to the New
5 Mexico Small Loan Act of 1955 if a loan has an initial stated
6 maturity of less than one hundred twenty days unless the loan
7 is a refund anticipation loan.

8 H. No lender shall make a loan pursuant to the New
9 Mexico Small Loan Act of 1955 unless the loan is an installment
10 loan or a refund anticipation loan.

11 I. No lender shall make a loan pursuant to the New
12 Mexico Small Loan Act of 1955, other than a refund anticipation
13 loan, unless the loan is repayable in a minimum of four
14 substantially equal installment payments of principal and
15 interest.

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

21 SECTION 3. APPLICABILITY.--The provisions of this act
22 apply to loans subject to the New Mexico Small Loan Act of 1955
23 and the New Mexico Bank Installment Loan Act of 1959 executed
24 on or after July 1, 2019.

25 SECTION 4. EFFECTIVE DATE.--The effective date of the

.212087.1

underscoring material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2019.

2 - 7 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25