

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 81

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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 pursuant to the New Mexico Small
Loan Act of 1955 unless the loan made pursuant to the New
Mexico Small Loan Act of 1955 is paid and released at the time
the loan is made.

.215742.1

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~~] thirty-
14 six percent, calculated pursuant to 12 CFR Part 1026, known as
15 "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 F. Except as provided by Section 58-7-3.2 NMSA
25 1978, any rollover, renewal, refinance or modification of an

.215742.1

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

1 existing loan agreement with a lender, except a modification
2 without any additional cost to the consumer, shall constitute a
3 new loan and shall require new disclosures pursuant to the
4 federal Truth in Lending Act."

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

7 "58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF
8 LOANS--INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER
9 JUDGMENT AND INTEREST.--

10 A. Every licensee shall:

11 (1) at the time a consumer becomes
12 contractually obligated on a loan pursuant to the New Mexico
13 Small Loan Act of 1955, deliver to the borrower or, if there
14 are two or more borrowers on the same obligation, to one of
15 them, a statement on which shall be printed a copy of Section
16 58-15-14.1 NMSA 1978 and which shall disclose in clear and
17 distinct terms:

- 18 (a) the amount of the loan;
19 (b) the date the loan was made;
20 (c) a schedule or a description of the
21 payments;
22 (d) the type of the security, if any,
23 for the loan;
24 (e) the name and address of the
25 licensee;

.215742.1

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

1 (f) the name of the person primarily
2 obligated for the loan;

3 (g) the amount of principal;

4 (h) the annual percentage rate as
5 disclosed pursuant to 12 CFR Part 1026, known as "Regulation
6 Z", and the amount in dollars and cents;

7 (i) all other disclosures required
8 pursuant to state and federal law; and

9 (j) the charge for any other item
10 allowable and included pursuant to the New Mexico Small Loan
11 Act of 1955, so stated as to clearly show the allocation of
12 each item included;

13 (2) for each payment made on account of a
14 loan, give to the person making the payment a plain and
15 complete receipt specifying the date and amount of the payment,
16 the amount applied to interest and principal and the balance
17 unpaid. When payment is made in any other manner than by the
18 borrower in person, by an agent of the borrower or by check or
19 money order, the licensee shall mail the receipt to the
20 borrower's last known address or retain and deliver the receipt
21 upon request of the borrower. A licensee may deliver the
22 receipt electronically to the borrower via text message or
23 email, if requested to do so in writing by the borrower. A
24 borrower may withdraw authorization for electronic delivery of
25 receipts in writing at any time. A licensee shall not require

.215742.1

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

1 a borrower to receive receipts electronically. The licensee
2 shall maintain a copy of each receipt in the office of the
3 licensee as a part of the licensee's records; and

4 (3) upon repayment of the loan in full, mark
5 plainly every note and promise to pay signed by any borrower
6 with the word "paid" or "canceled" and promptly file or record
7 a release of any mortgage if the mortgage has been recorded,
8 restore any pledge and cancel and return any note and any
9 assignment given to the licensee. A licensee may mark and
10 return a copy of the note, promise to pay or any assignment if
11 the copy accurately reproduces the complete original.

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

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

22 D. A loan made pursuant to the New Mexico Small
23 Loan Act of 1955 that is filed and approved as a claim in any
24 bankruptcy proceeding shall bear interest at the rate of ten
25 percent per year beginning on the ninetieth day following the

.215742.1

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

1 date of adjudication. This limitation shall not apply when the
2 bankrupt is not discharged in bankruptcy or to any obligation
3 not dischargeable under the provisions of the United States
4 Bankruptcy Code presently in force.

5 E. A loan made pursuant to the provisions of the
6 New Mexico Small Loan Act of 1955 shall not bear interest in
7 excess of ten percent per year on the unpaid principal balance
8 of a loan after ninety days following the date of the death of
9 the borrower.

10 F. A loan made pursuant to the New Mexico Small
11 Loan Act of 1955 shall not bear interest in excess of ten
12 percent per year upon the unpaid principal balance of the loan
13 after twelve months following the date of maturity of the loan.

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

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

21 I. A lender shall not make a loan pursuant to the
22 New Mexico Small Loan Act of 1955, other than a refund
23 anticipation loan, unless the loan is repayable in a minimum of
24 four substantially equal installment payments of principal and
25 interest.

.215742.1

underscored material = new
[bracketed material] = delete

1 J. A lender shall not make a loan pursuant to the
2 New Mexico Small Loan Act of 1955 that has an annual percentage
3 rate greater than [~~one hundred seventy-five~~] thirty-six
4 percent, calculated pursuant to 12 CFR Part 1026, known as
5 "Regulation Z".

6 K. Upon request from the borrower, all lenders
7 licensed pursuant to the New Mexico Small Loan Act of 1955
8 shall give or forward to the borrower copies of all loan
9 agreements concerning that borrower, a copy of all receipts
10 maintained in that borrower's loan file and a written statement
11 of that borrower's loan history, including all fees charged,
12 amortization schedules, that borrower's payment history,
13 including the dates and amounts of payments made, and the total
14 amount unpaid pursuant to each contract. All lenders shall
15 retain for seven years from the date of loan file origination
16 or loan payoff, whichever is the later, the documentation
17 specified in this subsection.

18 L. Any rollover, renewal, refinance or modification
19 of an existing loan agreement with a licensee, except a
20 modification without any additional cost to the borrower, shall
21 constitute a new loan and shall require new disclosures
22 pursuant to the Truth in Lending Act."

23 **SECTION 3. APPLICABILITY.**--The provisions of this act
24 apply to loans subject to the New Mexico Small Loan Act of 1955
25 and the New Mexico Bank Installment Loan Act of 1959 executed

.215742.1

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

1 on or after July 1, 2020.

2 SECTION 4. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2020.

4 - 8 -

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25