

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVJAO NATION COUNCIL

23RD Navajo Nation Council---First Year 2015

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND
NAABIK'ÍYÁTI'; SUPPORTING 52nd NEW MEXICO LEGISLATURE SENATE BILL
72, AND HOUSE BILLS 36, 24 RELATING TO LENDING BY ESTABLISHING A
MAXIMUM LAWFUL RATE CAP OF INTEREST CHARGED FOR A LOAN AT THIRTY-
SIX PERCENT PER YEAR

WHEREAS:

I. FINDINGS

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).
- B. All powers not delegated are reserved to the Navajo Nation Council. 2. N.N.C. § 102 (B).
- C. The Navajo Nation Council shall supervise all powers delegated. 2 N.N.C. § 102 (C).
- D. Navajo Nation Council has the authority to create laws, resolutions, and to make statements of policy pursuant to 2 N.N.C. § 164 (A).
- E. Statements of policy must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council. 2 N.N.C. § 164 (A).
- F. Statements of policy are written statements submitted to federal, state or local governments by a Navajo Nation official stating the official position of the Navajo Nation on proposed legislation or other action by that government. 2 N.N.C. § 100 (W).
- G. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a Navajo Nation Council standing committee 2 N.N.C. § 400 (A), (2012).

- H. HEHSC is empowered to recommend statements of policy regarding social services. 2 N.N.C. §§ 401(B)(1); (B)(6)(a) (2012).
- I. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to recommend resolutions to the Navajo Nation Council. 2 N.N.C. §§ 700 (A), 701 (A)(3) (2012).
- J. Both the HEHSC and Naabik'íyáti' Committee have concern for the high rates of interest charged to the Navajo people for small loans off the reservation.
- K. Three House Bills introduced in the 52nd New Mexico Legislature speak to the concerns in J above as they proffer amendments to cap interest rates for small loans at thirty-six percent.
- L. New Mexico Senator William P. Soules introduced Senate Bill 72. EXHIBIT A.
- M. New Mexico Representative Gail Chasey introduced House Bill 36. EXHIBIT B.
- N. New Mexico Representative Patricia Roybal Caballero introduced House Bill 24. EXHIBIT C.
- O. The three bills aim to impose caps on loans like payday loans and void out contracts made that exceed the caps.
- P. High interest payday loans with no caps on the interest take advantage of innocent unaware consumers in financial straits who have no other options but to enter into agreements for the loans.
- Q. Unfortunately, New Mexico currently has lax laws when it pertains to payday loan interest rates according to the Albuquerque Journal. EXHIBIT D.
- R. These predatory loans affect our Navajo people who are taken advantaged of.

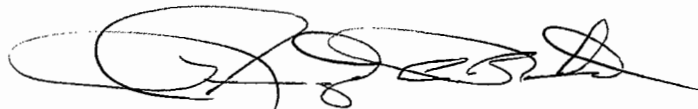
- S. Based on the foregoing, it is in the best interest of the Navajo Nation to support the 52nd New Mexico Legislature Senate Bill 72 and House Bills 36, 24 relating to lending by establishing a maximum lawful rate cap of interest charged for a loan at thirty-six percent per year.

II. NOW, THEREFORE BE IT RESOLVED:

- A. The Navajo Nation hereby expresses its support for the 52nd New Mexico Legislature Senate Bill 72 and House Bills 36, 24 relating to lending by establishing a maximum lawful rate cap of interest charged for a loan at thirty-six percent per year.
- B. The Navajo Nation hereby authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council, and their designees, to advocate for the support of the 52nd New Mexico Legislature Senate Bill 72 and House Bills 36, 24 relating to lending by establishing a maximum lawful rate cap of interest charged for a loan at thirty-six percent per year.
- C. The Navajo Nation hereby urges the New Mexico Legislature to address the concern of the Navajo Nation of New Mexico lending institutions taking and keeping personal documentation from Navajo people who apply for personal loans.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 18 in favor, 1 oppose, 0 Abstain this 19th Day of February, 2015.



Honorable LoRenzo C. Bates, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Tuchoney Slim, Jr.
Second: Honorable Jonathan Perry

1 SENATE BILL 72

2 52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

3 INTRODUCED BY

4 William P. Soules

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8
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10 AN ACT

11 RELATING TO LENDING; ENACTING NEW SECTIONS OF THE NEW MEXICO
12 BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN
13 ACT OF 1955; IMPOSING A CAP ON INTEREST RATES; VOIDING
14 CONTRACTS THAT EXCEED THE INTEREST RATE CAP; REPEALING A
15 SECTION OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 56-8-9 NMSA 1978 (being Laws 1957,
19 Chapter 209, Section 1, as amended) is amended to read:

20 "56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF
21 MAXIMUM RATES--DEFINITION.--

22 A. Unless otherwise provided by law, no person,
23 corporation or association, directly or indirectly, shall take,
24 reserve, receive or charge any interest, discount or other
25 advantage for the loan of money or credit or the forbearance or
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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. 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, 2015 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 30-
12 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 the
5 note, bill or other evidence of debt carries with it or which
6 has been agreed to be paid thereon. In case the greater rate
7 of interest has been paid, the person by whom it has been paid
8 or ~~[his]~~ the person's legal representatives may recover ~~[back]~~
9 by civil action twice the amount of the interest thus paid from
10 the person, corporation or association taking or receiving the
11 same; provided that such action is commenced within two ~~[+2]~~
12 years from the time the usurious transaction occurred.

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

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

19 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
20 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
21 Installment Loan Act of 1959".

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

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

25 A. Except as provided for in this section, the

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1 maximum lawful rate of interest charged or received for the
2 extension of credit shall not exceed thirty-six percent per
3 year.

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

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

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

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

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

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

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

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

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

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Soules ORIGINAL DATE 1/25/15
 LAST UPDATED _____ HB _____
 SHORT TITLE Loan Interest Rate Caps SB 72
 ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	(\$70.0-\$210.0)	(\$70.0-\$210.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		TBD	TBD		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB24

Relates to HB36

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Public Regulation Commission (PRC)

New Mexico Municipal League

SUMMARY

Synopsis of Bill

This bill amends the Bank Installment Loan Act and the Small Loan Act, imposes a cap on interest rates of thirty-six percent, voids contracts that exceed the interest rate cap, and repeals section 58-15-33 NMSA 1978 which states the permitted charges for payday loans.

FISCAL IMPLICATIONS

According to RLD, this bill would reduce the number of small loan licensees. There would be a reduction in license revenue of \$700 for every small loan licensee that does not renew their license. For every one hundred licensees that do not renew, the division would see a revenue reduction of \$70 thousand.

This bill would also have an impact on RLD's operating budget. RLD would recognize cost savings by having fewer licensees to inspect and by no longer have to maintain the payday loan database.

SIGNIFICANT ISSUES

RLD offers the following commentary:

Page 2, lines 8 through 11, contradicts the Home Loan Protection Act (HLPa) section 58-21A-3(M)(1)(d)(1-14), NMSA 1978 with regards to the inclusion of charges or fees incident to the extension of credit. The HLPa excludes from points and fees, specific fees that are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor.

Page 7, lines 18 and 19 repeal section 58-15-33, NMSA 1978, which states all the administrative fees allowed on payday loan products, effectively eliminating those products. However the bill leaves intact the remaining provisions of the Small Loan Act section 58-15-32, NMSA 1978, and sections 58-15-33 to 58-15-38, which are specific to payday loan products.

According to the New Mexico Municipal League, a poll conducted by the Public Policy Polling in January, 2014 shows that 86 percent of New Mexicans support interest rate caps of 36 percent or less.

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HOUSE BILL 36

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

INTRODUCED BY

Gail Chasey

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LENDING; ENACTING NEW SECTIONS OF THE NEW MEXICO
BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN
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"[NEW MATERIAL] MAXIMUM INTEREST RATES--EXCEPTIONS.--

A. Except as provided for in this section, the

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underscored material = new
[bracketed material] = delete

1 maximum lawful rate of interest charged or received for the
2 extension of credit shall not exceed thirty-six percent per
3 year.

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

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

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

15 E. In the event the United States prime lending
16 rate exceeds ten percent, the maximum lawful rate of interest
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FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 1/25/15
 LAST UPDATED _____ HB 36
 SHORT TITLE Loan Interest Rate Caps SB _____
 ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	(\$70-\$210)	(\$70-\$210)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

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Relates to HB24

Relates to SB72

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According to RLD, this bill would reduce the number of small loan licensees. There would be a reduction in license revenue of \$700 for every small loan licensee that does not renew their license. For every one hundred licensees that do not renew, the division would see a revenue reduction of \$70 thousand.

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HOUSE BILL 24

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

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
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1 apply to a transaction in which a corporation is a debtor,
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8 or ~~[his]~~ the person's legal representatives may recover ~~[back]~~
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12 years from the time the usurious transaction occurred.

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

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

19 "58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter
20 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank
21 Installment Loan Act of 1959".

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

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

25 A. Except as provided for in this section, the
197900.2

1 maximum lawful rate of interest charged or received for the
2 extension of credit shall not exceed thirty-six percent per
3 year.

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

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

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

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

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

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

23 A. Except as provided for in this section, the
24 maximum lawful rate of interest charged or received for the
25 extension of credit shall not exceed thirty-six percent per
197900.2

1 year.

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

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

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

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

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

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

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Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Roybal Caballero ORIGINAL DATE 1/25/15
 LAST UPDATED _____ HB 24
 SHORT TITLE Loan Interest Rate Caps SB _____
 ANALYST Elkins

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	(\$70.0-\$210.0)	(\$70.0-\$210.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		TBD	TBD		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB72

Relates to HB36

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Public Regulation Commission (PRC)

New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Bill

This bill amends the Bank Installment Loan Act and the Small Loan Act, imposes a cap on interest rates of thirty-six percent, voids contracts that exceed the interest rate cap, and repeals section 58-15-33 NMSA 1978 which states the permitted charges for payday loans.

FISCAL IMPLICATIONS

According to RLD, this bill would reduce the number of small loan licensees. There would be a reduction in license revenue of \$700 for every small loan licensee that does not renew their license. For every one hundred licensees that do not renew, the division would see a revenue reduction of \$70 thousand.

This bill would also have an impact on RLD's operating budget. RLD would recognize cost savings by having fewer licensees to inspect and no longer having to maintain the payday loan database.

SIGNIFICANT ISSUES

RLD offers the following commentary:

Page 2, lines 8 through 11, contradicts the Home Loan Protection Act (HLP) section 58-21A-3(M)(1)(d)(1-14), NMSA 1978 with regards to the inclusion of charges or fees incident to the extension of credit. The HLP excludes from points and fees, specific fees that are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor.

Page 7, lines 18 and 19 repeal section 58-15-33, NMSA 1978, which states all the administrative fees allowed on payday loan products, effectively eliminating those products. However the bill leaves intact the remaining provisions of the Small Loan Act section 58-15-32, NMSA 1978, and sections 58-15-33 to 58-15-38, which are specific to payday loan products.

According to the New Mexico Municipal League, a poll conducted by the Public Policy Polling in January, 2014 shows that 86 percent of New Mexicans support interest rate caps of 36 percent or less.

CE/aml

New Mexico urged to limit 'payday' loan rates

- A1
- ABQnews Seeker
- Education
- New Mexico News
- News

By Mike Bush / Journal Staff Writer

PUBLISHED: Friday, November 28, 2014 at 12:05 am



MARTIN: Encouraged by some developments

One of the worst things a person without the financial wherewithal to repay a loan can do is take out a so-called "payday" or "storefront" loan to buy Christmas gifts.

But, with the holidays here, and because it is so easy to get such loans, that's exactly what many low-income people are likely to do. Predatory lenders encourage the practice.

That's the message University of New Mexico law professor Nathalie Martin hopes to get out to would-be borrowers. She would also like to see interest rates capped statewide at 36 percent.

"I think it's getting a little more likely that the state Legislature will act," she said.

Martin – and others – are encouraged by a number of developments:

- In 2007, with broad bipartisan support, President Bush signed the Military Lending Act, placing a 36 percent limit on interest rates on loans to armed forces personnel. In September, with lenders seeking to circumvent the MLA, the Defense Department proposed new and stronger regulations to shore up the law.
- The cities of Albuquerque, Santa Fe, Alamogordo and Las Cruces, and Doña Ana County – and the New Mexico Municipal League and Association of Counties – have adopted resolutions supporting a 36 percent annual percentage rate cap.
- Eighteen states have imposed interest rate limits of 36 percent or lower, most of them in recent years.

In Georgia, it is now a crime to charge exorbitant interest on loans to people without the means to pay them back.

In 2007, New Mexico enacted a law capping interest rates on "payday" loans at 400 percent. Many of the lenders quickly changed the loan descriptions from "payday" to "installment," "title" or "signature" to get around the law.

But this past summer, the New Mexico Supreme Court, citing studies by Martin, held that "signature" loans issued by B&B Investment Group were "unconscionable." B&B's interest rates were 1,000 percent or higher.

High-interest lenders argue that they provide a much-needed source of funds for people who would not ordinarily qualify for loans, even those who are truly in need. One lender, Cash Store, in an ad typical for the industry promises borrowers that they can get "cash in hand in as little as 20 minutes during our regular business hours – no waiting overnight for the money you need" and boasts a loan approval rate of over 90 percent. It also offers "competitive terms and NO credit required. Be treated with respect by friendly store associates. Installment loans are a fast, easy way to get up to \$2,500."

Pushing a cap

Martin teaches commercial and consumer law. She also works in the law school's "live clinic," where she first came into contact with those she calls "real-life clients," people who had fallen into the trap of payday loans.

"I would never have thought in my wildest dreams that this was legal, interest rates of 500 percent, 1,000 percent or even higher," she said.

Martin is not alone in fighting sky-high interest rates and supporting a 36 percent cap.

Assistant Attorney General Karen Meyers of the Consumer Protection Division noted that it wasn't simply interest rates that the Supreme Court unanimously objected to as procedurally unconscionable in *New Mexico v. B&B Investment Group*.

The court also addressed the way the loans were marketed and the fact that B&B "aggressively pursued borrowers to get them to increase the principal of their loans," all of which constitutes a violation of law.

In another lawsuit from 2012, *New Mexico v. FastBucks*, the judge found the loans to be "Unfair or deceptive trade practices and unconscionable trade practices (which) are unlawful."

Long legal road

Both the B&B and Fastbucks cases were filed in 2009 and ultimately went to trial. The time period indicates the commitment of the Attorney General's Office and how long it takes a case to wend its way through the legal system.

Each of the cases dealt with one business entity, although they often do business under several names. B&B, for example, an Illinois company, operated as Cash Loans Now and American Cash Loans.

According to the president of B&B, James Bartlett, the company came to New Mexico to do business because "there was no usury cap" here.

Early this year, a survey by Public Policy Polling found that 86 percent of New Mexicans support capping interest at an annual rate of 36 percent. Many people think that is too high.

Meyers said predatory lending profits depend on repeat loans. Analysts estimate that the business only becomes profitable when customers have rolled over their loans four or five times.

‘Really heartbreaking’

“We have interviewed a lot of consumers,” she said. “It’s really heartbreaking.”

Steve Fischman, a former state senator and chairman of the New Mexico Fair Lending Coalition, said three-fourths of short-term borrowers in the state roll over loans into new loans, which is precisely what predatory lenders want.

“New Mexico is one of the worst states when it comes to such loans, because we have the weakest law,” he said.

The coalition is working with lawmakers to draft a bill that would impose the 36 percent cap. It is likely to come up in the next session. But the chances of passage, despite popular sentiment, are unknown.

The Legislature has failed to act in the past, Fischman said, largely because of the many paid lobbyists – including former lawmakers – working for the lenders. He described the Roundhouse back-slapping as “bipartisan corruption.”

The National Institute on Money in State Politics, a nonpartisan national archive of such donations, reports that, thus far this year, payday lenders have made 122 contributions totalling \$97,630 to state lawmakers.

Opponents of storefront loans say one way some lenders entice the poor into taking out loans is to cajole them with smiles and misinformation. Loan offices – often in lower-income neighborhoods – often become places for people to hang out and socialize. Agents behind the loan office desks pass themselves off as friends.

But, Fischman said, “A lot of people thought Bernie Madoff was their friend.”

Creating crises

The Pew Charitable Trust and the Center for Responsible Lending, acting independently, reported last year that the cost of the loans turn temporary financial shortfalls into long-term crises. After rolling their initial loans over, perhaps more than once, borrowers find that they’re paying up to 40 percent of their paychecks to repay the loans.

Prosperity Works, an Albuquerque-based nonprofit striving to improve financial circumstances for lower-income New Mexicans, is a strong supporter of the effort to cap loans.

President and CEO Ona Porter said one drawback of the short-term, high-interest loans is the effect they often have on individuals’ credit ratings. “And credit scores are now used as a primary screen for employment,” she said.

The loans do little, if anything, to boost the state's economy. A 2013 study by the Center for Community Economic Development found that, for every dollar spent on storefront loan fees, 24 cents is subtracted from economic activity.

UNM's Martin has conducted five studies related to high-cost lending practices. She firmly believes that low-income people are better off if they don't take out unlimited numbers of high-cost loans and that such forms of credit cause more harm than good.

"They are neither safe nor affordable," she said.