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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/09  
 LAST UPDATED 03/04/09    HB 501/aHBIC/aHJC

SPONSOR Barreras

SHORT TITLE Loan Document Prepayment Disclosure    SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate See Below Minimal	Indeterminate See Below Minimal		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 501 removes the HBIC amendment that added that the provisions of this bill shall not apply to loans made by a banking corporation, savings and loan association or credit union operating under the laws of the United States.

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to HB 501 adds that the provisions of this bill shall not apply to loans made by a banking corporation, savings and loan association or credit union operating under the laws of the United States.

The amendment also changes the effective date of this bill from July 1, 2009 to October 1, 2009.

#### Synopsis of Original Bill

House Bill 501 creates a new section to Chapter 56, Article 8 which deals with money, interest, and usury. The new section will require that loan prepayment penalties must be disclosed in writing and provided to the borrower by the lender. The borrower shall acknowledge by signature in writing, both receipt of the disclosure document and acceptance of the provisions of

the prepayment penalty. Failure to obtain the signature of the borrower acknowledging these items results in the prepayment penalty becoming unenforceable by the lender or an assignee of the lender.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

The AGO provided the following:

H.B. 501 as it refers to loans or loan documents generally is in direct conflict with NMSA 1978, S 56-8-30 which states that no provision in a home loan, the evidence of indebtedness of a home loan, a real estate contract or an obligation secured by a real estate mortgage requiring a penalty or premium for prepayment of the balance of the indebtedness is enforceable.

HB 501 is also in conflict with the Small Loan Act 58-15-15.1 which states that no provision in a loan or the evidence of indebtedness of a loan made under the New Mexico Small Loan Act of 1955 requiring a penalty or premium for prepayment of the balance of the indebtedness is enforceable. Furthermore HB 501 is also in conflict with the Small Loan Act as it pertains to payday loans found at 58-15-32 (B) which states a person has a right to prepay a payday loan without penalty.

The bill also is in conflict with the Home Loan Protection Act's 58-21a-5 (O) which states that no creditor shall make a high-cost home loan that contains a provision that requires a penalty or premium for prepayment of the balance of the indebtedness.

The AGO notes that HB 501 is general in nature, on its face is in conflict with the above existing statutes. However, utilizing statutory interpretation analysis, when two statutes are in conflict and cannot be read harmoniously then a specific statute will take precedent over a general statute. In the instances above, the Small Loan Act's prohibitions on prepayment penalties would survive, as well as the prohibitions on mortgage prepayment penalties.

## **ADMINISTRATIVE IMPLICATIONS**

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

## **POSSIBLE QUESTIONS**

RLD be notes that Section 56-8-30 provides that no prepayment penalty is enforceable on home loans. Is it correct that the provisions of HB 501 will not apply to home loans but will apply to all other loans?