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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/09

SPONSOR P. Lundstrom LAST UPDATED _____ HB 558

SHORT TITLE Payday Loan Disclosure SB _____

ANALYST Sanchez, C

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Finance and Administration (DFA)
 Regulation and Licensing Department (RLD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

HB 558 amends the **New Mexico Bank Installment Loan Act of 1959**, (NMBILA) and the **New Mexico Small Loan Act of 1955**, (NMSLA), essentially redefining and expanding the different types of loans that can be made under these two acts and establishing the applicability of each of these statutes to the type of loan.

HB 558 proposes to:

- (1) Limit the applicability of NMBILA to precomputed loans payable in installments and for loans of more than \$10,000. This would be the new definition of installment loans;
- (2) Change the definition of “payday loan” by deleting the requirement that the lender’s agreement to defer presentment of check or use of the debit authorization be in writing; and
- (3) Create a new type of loan and set a schedule of interest rate and period of repayment for “consumer loans”, which are neither payday loans nor installment loans.

HB 558 leaves intact the schedule of fees for payday loans and makes no fee provisions for installment loans for \$10,000 or more under the NMBILA.

HB 558 also adds two new sections to NM Small Loan Act and repeals one section. HB 558 adds a new sub-section providing that a licensee is prohibited from using a devise or agreement that would have the effect of charging more than lender would otherwise be able to charge by law. HB 558 adds a new section, section 58-15-20.1 and sets a schedule of maximum interest rates that can be charged and the minimum period of time to repay consumer loans. Finally, HB 558 repeals Section 58-15-19 of the NMSLA which deals with making of loans under the general laws of money and usury.

FISCAL IMPLICATIONS

According to the Financial Institutions Division, the fiscal impact cannot be determined. The amendment to the Small Loan Act (page 7 line 25-page 8 lines 3) requires anyone who makes loans for \$10,000.00 or less for any purpose to be licensed. Previously only lenders who made loans for \$2,500.00 or less were required to obtain a license.

There is no appropriation contained in the Bill. The Small Loan Act section 58-15-9 NMSA 1978 requires an annual examination to be performed for each licensed place of business. If it is the intent of the Bill to have all types of lenders who makes loans of \$10,000.00 or less to be licensed, it cannot be determined how many more persons may need to obtain a license. Without an appropriation for the Financial Institutions Division to hire examiners, the Financial Institutions Division may not be able to meet its annual examinations for all licensed locations.

SIGNIFICANT ISSUES

Amendments to the NMBILA:

- NMBILA presently provides that NMBILA applies to both precomputed loans payable in installments or other loans that are clearly identified on the loan documents as being made under the NMBILA. HB 558 amends Section 58-7-3 NMSA making applicable only to loans precomputed and payable in installments.
- HB 558 makes a second amendment in Section 58-7-9(H) to maintain the consistency of the previous amendment proposing then to have the loans made under NMBILA to be only precomputed loans. Furthermore, these loans must be clearly identified on the loan documents that the loan is being made under the NMBILA.

Amendments to the NMSLA:

- HB 558 creates a new type of loan which are referred to, but not specifically defined, as “consumer loans” by adding a new section 58-15-20.1. In other words, loans with the charge and payment period characteristics outlined in the new section 58-15-20.1 are NOT installment loans, rather they will be considered “consumer loans” or loans issued under the NMSLA. Installment loans as defined in the NMSLA would now be loans of more than \$10,000 that are to be repaid in a minimum of four successive substantially equal payment amounts to be paid off in its entirety within a period of less than 120 days to maturity.
- HB 558 also amends the definition of payday loan by deleting the present requirement that the consumer agree in writing to defer presentment of the check used as collateral or to use the debit authorization. In short, a payday loan under the amended NMSLA need not be in writing.
- HB 558 amends section 58-15-3 of the NMSLA- Applicability of Act—Exceptions--Evasion--Penalty--
First, HB 558 increases the amount of the loans from \$2,500 or less to \$10,000 or less. Second, a licensee under the NMSLA is not restricted nor prohibited from making loans in ANY amount under the NMBILA. However, loans made for \$10,000 or less must be made under the NMSLA. The present language allows for a licensee to make loans of any amount under the NMBILA. Under HB 558, lenders will be limited to make loans under the NMBILA for amounts of \$10,000 or more because loans for \$10,000 or less must be made under the provisions of the NMSLA.
Third, Section 58-15-3(B) provides that the NMSLA does not apply to individual advances of \$2,500 or less under a written agreement providing for a total loan or line of credit in excess of \$2,500. HB 558 leaves the substantive provisions of Section 58-15-3(B) intact except that it increases the amount to \$10,000 or less.
- HB 558 adds a new subsection 58-15-3(F) which provides the prohibition to use a devise or agreement to charge more than allowed by law.
- HB 558 amends Sections 58-15-9, 58-15-12, and 58-15-21 of the NMSLA by changing the loan amount from \$2,500 or less to \$10,000 or less.
- HB 558 adds a new section to the SLA. Section 58-15-20.1 provides the following schedule of interest rates according to the principal amount of the loan:
 - For loans with a principal amount of \$2,500 or less the interest rate can be no greater than 90 per annum;
 - For loans greater than \$2,500 but not greater than \$5,000 the interest rate can be no greater than 60 per annum; and
 - For loans with a principal amount greater than \$5,000 but not greater than \$10,000, the interest rate can be no greater than 36 per annum.

Further, this new section provides a one-time administrative fee of \$15 dollars *per transaction* to a maximum of \$60 of administrative fees in a 12-month period. Any other interest charges or fees are not permitted for loans made of \$10,000 or less.

Finally, this new section provides for repayment of loans in installments in substantially equal monthly payments for the following minimum loan periods:

- 60 days for a loan with a principal amount of \$2,500 or less;
- 90 days for a loan with a principal amount greater than \$2,500 but not greater than \$5,000; and
- 120 days for a loan with a principal amount greater than \$5,000 but not greater than \$10,000.

The provisions of this new section do not apply to payday loans.

- HB 558 amends Section 58-15-24 of the NMSLA—Loan Made Elsewhere: Presently Section 58-15-24 provides that no loan of \$2,500 or less made outside the State of NM to a resident of NM which charges more than the general laws of NM governing money, interest and usury is enforceable. HB 558 proposes that no loan of \$10,000 or less made outside of the state with greater charges than permitted by the “laws of New Mexico” is unenforceable.
- HB 558 amends Section 58-15-36 by requiring lenders to wait the required 10 days after borrower fully pays a previous outstanding loan. “Loans” means any other loans and not limited to payday loans as the law reads now.
- HB 558 amends 58-15-38 NMSA by requiring prominent display of a sign at least sixty-point bold type explaining the borrower’s right to a repayment plan in both the English and the Spanish languages.
- HB 558 REPEALS section 58-15-19 NMSA of the NMSLA—Loans under Other Laws.

Section 58-15-19 presently provides that a lender cannot charge, collect or receive the charges authorized by the NMSLA in connection with a loan made by the lender to a borrower who does not have a loan with the lender under the NMSLA and when such a loan is made in accordance to the general laws of NM governing interest and usury. Also, once such loan is made, the loan cannot be converted into a loan under the NMSLA nor after the loan is reduced to a sum \$2,500 or less. The effect of the repeal may be inconsequential given the above-described amendments proposed by HB 558.

RELATIONSHIP

SB 331 contains many of same proposed amendments to NMSLA and NMBILA. SB 331, however, provides lower maximum interest rate charges and does not provide for an administrative fee.

OTHER SUBSTANTIVE ISSUES

According to the AGO, HB558 provides a schedule of maximum charges in terms of interest rate and a minimum period of time to pay loan, which are the two major factors determining the cost of credit to borrowers. Furthermore, HB 558 sets a decreasing interest rate and a minimum period to repay the loan providing borrowers a longer period of time to pay larger loans. However, HB 558 imposes, in addition to interest charge, an administrative fee of \$15 dollars per transaction. Thus, the interest per annum is not the total cost of credit to the borrower. The effect of the administrative fee, however, will have a decreasing effect on cost as the loan amount increases. Nevertheless, the true cost of credit to borrowers will be under any circumstance higher than the set interest per annum limits.

According to the AGO, HB 558 does not specifically address whether “consumer loans” may be rolled-over or refinanced by the same lender. However, since HB 558 allows up to \$60 of administrative fees within a 12-month period, HB 558 implicitly allows consumer loans to be rolled-over four times within a 12-month period.

Cost of Credit to Borrower

Assume a loan in the principal amount of \$300. The per annum interest rate is 90% payable in 60 days. What is the cost of credit to the consumer?

If we multiply \$300 by .90, it is equal to \$270.00. Then if we divide the \$270 by 365 days in a year, the result is .739 dollars charge per day. We finally multiply .739 times the days the loan reaches maturity, which is 60 days, that equals to \$44.38.

To this amount we add the \$15.00 administrative fee for a total of \$59.38 which is the total and real cost of credit to the borrower.

$\$300 \times .9 = \270 ; $\$270/365 = \0.739 , which is the charge per day; $\$0.739 \times 60 = \44.38 ; $\$44.38 + \$15 = 59.38$. The effective annual percentage rate of this amount which includes the administrative fee is 120%. The result is found when we calculate the formula in the reverse.

Cost of Credit to Borrower per \$100 Borrowed

When the loan principal is \$100 under HB 558 then the cost of credit is as follows:

$\$100 \text{ times } .90 = \90 ; $\$90/365 = \0.246 , charge per day; $\$0.246 \text{ times } 60 \text{ days of maturity of the loan equals } \14.79 . However, since we have to add the administrative fee then the cost to the borrower will be \$29.79. The effective annual percentage rate here is 181%.

To compare the cost of credit of a consumer loan with a payday loan, we calculate with a loan in the principal amount of \$100 since the administrative fee is the only charge that is allowed for payday loans at \$15.50 for each \$100 borrowed:

$\$15.50/14 \text{ days of maturity of the loan equals the charge per day which is } \$1.107 \text{ times } 365 \text{ days of the year equals } 404\%$.

The difference in effective interest rate between a payday loan and a “consumer loan” as proposed by HB558 is that the borrower is given a longer time to pay in a consumer loan. That is, the borrower has minimum of 60 days to pay the loan while the borrower typically has a period of his or her payday loan which lenders have calculated to be 14 days.

However, under the NMSLA a payday loan cannot be rolled-over and if the borrower does not or cannot pay by the 14th day, the borrower has the right to a repayment plan of a minimum of 130 additional days without additional charges. The result of this extended time to pay reduces the effective annual percentage rate to approximately 39%. $\$15.50/144 \text{ days}, [14 + 130 \text{ days}]$ times 365 days of the year equals 39% A.P.R.

ALTERNATIVES

According to the AGO, the charges proposed by HB 558 continue to be high. The cost to the borrower is higher under a “consumer loan” than a payday loan if the borrower asserts its right to enter into a payment plan.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Lenders would continue to charge various amounts of interest rates per annum. A payday loan can result in higher charges if the borrowers pay on time. However, if borrowers are unable to pay by the date of maturity, the NMSLA requires lenders to provide borrowers the right to a repayment plan, an extended time of 130 minimum, reducing the charges percentage wise. Alternatively, when installment loans are offered with no set schedule of charges lenders charge various interest rates, which can be even higher than those proposed by HB 558.

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