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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11
 LAST UPDATED 03/11/11

SPONSOR HBIC HB CS/337/aHJC

SHORT TITLE Fee & Term Limit on Loans; Requiring Database SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY11 | FY12 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The amendment exempts loans or loan products with an annual interest rate of one hundred seventy-five percent (175%) or less from being included in RLD's Annual Financial Institutions Report.

Synopsis of HBIC Substitute Bill

This bill amends the New Mexico Small Loan Act of 1955 (Small Loan Act).

Key amendments to the Small Loan Act:

- Requires small loan licensees to file an annual report to the Director of the Financial Institutions division (page 1 line 20 through page 4 line 22). The new annual report will not include information on payday loans.
- Licensees may be fined up to \$1,500.00 per day for failing to file a complete and accurate report after the 31st day of March (page 4 lines 6-12).
- Licensees who do not file a complete and accurate report by the 31st day of March will have their small loan license suspended (page 4 lines 13-16).
- Requires the Financial Institutions Division to post the annual payday loan report on its website (page 5 lines 14-16).

- Requires the Financial Institutions Division to compile by October 1 of each year the information submitted by the licensees and to post the information on its website (page 7 line 11 through page 9 line 6).

FISCAL IMPLICATIONS

No significant fiscal impact to the general fund is identified.

SIGNIFICANT ISSUES

According to the Regulation and Licensing Department (RLD), it is not clear if a fee can be charged for loans not made pursuant to the Small Loan Act. The amendment to the Small Loan Act only requires consumer loans of \$2,500.00 or less to be made under the Small Loan Act (page 8 lines 16-18) and not on all loans as required by the reporting requirements.

Page 2 line 7 states “the frequency of periodic payments”. According to the Financial Institutions Division (FID), it is not clear how this information is to be reported by the licensees in an aggregate manner as required (page 1 lines 22-25). For example frequency can be every 14 days, bi-monthly, monthly, etc.

Also, on Page 3 lines 1-2 states “the total number of loans for which the loan principal and accrued interest was not paid in full”. If this information is for loans during the year, loans that have not been paid off by December 31 will not have all the principal and interest paid in full. If it is charge off information that is to be reported, then the wording should be amended.

Page 3 lines 17-18 states “the percent of consumers who were new consumers”. This is problematic as small loan licensees have not been required to keep track of their customers to determine who is a new customer. Small loan companies may be fined for submitting an inaccurate report because they may report a customer as new in error.

ADMINISTRATIVE IMPLICATIONS

HB 337 statutorily clarifies New Mexico’s personal jurisdiction over lenders located outside the state who utilize the internet to reach potential customers by requiring these businesses to obtain a New Mexico license prior to offering to make small loans to New Mexico residents. According to the AGO, enforcement of this provision against businesses located outside the state could be difficult and expensive.

Increased oversight of licensees may be necessary to ensure proper enforcement both within the state and in foreign jurisdictions by the Regulation and Licensing Department.

OTHER SUBSTANTIVE ISSUES

According to the AGO, the bill needs to set minimum underwriting guidelines to include evaluation criteria to determine the consumer’s ability to repay the loan.

Also the bill should prohibit the rolling-over of these loans, and instead provide a mechanism, similar to the one provide under the Payday Loan Act, that permits an interest free extension of time to repay the loan. See NMSA 1978, § 58-15-35.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Small loan licensees will not have to compile and submit the information as required by this Bill to the Financial Institutions Division. The Financial Institutions Division will not have to compile information as required by this Bill.

CS/mew:bym:svb