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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/18/11

SPONSOR Sanchez, B. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Enact "Amend NM Bank Installment Loan Act" SB 299

ANALYST Kleats

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI		NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 299 amends the Bank Installment Loan Act and the Small Loan Act to require all loans of \$2,500 or less be made under the Small Loan Act. SB 299 also requires the implementation of a database for the reporting of small loan information.

SB 299 amends the Installment Loan Act so that only pre-computed loans may be made under that Act.

SB 299 makes several key amendments to the Small Loan Act by adding a definition for consumer loan and requiring that any consumer loan of \$2,500.00 or less be made pursuant to the Small Loan Act.

SB 299 makes further amendments to the Small Loan Act concerning the implementation of a database. The bill would require small loan licensees to input loan information to a loan database certified by the Director of the Regulation and Licensing Department's Financial Institutions Division (FID). SB 299 allows a licensee to impose a fee to a consumer to pay for the consumer loan database as required by the bill.

SB 299 would require the FID to publish the annual report regarding payday loans on the division's website and submit that report to the legislature. The FID would also be required to compile a new annual report of all loans made pursuant to the Small Loan Act other than Payday loans.

### **FISCAL IMPLICATIONS**

SB 299 carries no appropriations. Regulation and Licensing Department expects no change in revenue because SB 299 should not impact the number of small loan licensees. SB 299 results in no fiscal impact.

### **SIGNIFICANT ISSUES**

According to AGO analysis, SB 299 closes an existing loophole which allows high-cost installment lenders to skirt the 2007 payday loan reform provisions of the Small Loan Act by extending the amortization periods on the loan products they offer.

### **ADMINISTRATIVE IMPLICATIONS**

RLD expects the administrative impact on its Financial Institutions Division to be minimal because small loan licensees will be paying the expense of the database. SB 299 allows small loan licensees to pass on this cost to the consumers by imposing a fee.

### **TECHNICAL ISSUES**

RLD analysis provides several substantial technical issues. The LFC considers RLD's concerns valid and important to the discussion. The section containing these concerns has been included below in its entirety:

There appears to be conflicting parts in the Bill. The amendment to the Small Loan Act (page 8 lines 14-16) requires that loans made for \$2,500.00 or less be made under the Small Loan Act. It is not clear if the fee for the database (page 11 line 21 through page 12 line 1) can be charged for loans made under the Bank Installment Loan Act or other lending Acts as one of the loan data requirements is to input information for loans greater than \$2,500.00 (page 15 lines 8-18). Also it is not clear whether the information to be inputted into the database is for consumer loans only or for all loans made by a small loan licensee other than payday loans (page 14 lines 15 through page 16 lines 7 and pages 16 line 10 through page 19 lines 21). If all loans are to be inputted into a database, the Bill does not address a fee for loans that are not consumer loans.

There appears to be a conflict in the information to be compiled by the Financial Institutions Division. Page 15 lines 5-7 appears to be requiring individual loan information instead of aggregate loan information.

Page 16 lines 5-7 states "(9) the number of loans made to renew existing accounts, the number of loans made to former customers and the number of loans made to new customers." Installment loans are generally "refinanced" and not "renewed". There should be a date specified when small loan licensees should begin to track "former"

customers. Since there is no current database, small loan licensees may not be able to accurately identify all “former” customers.

Page 17 lines 14-16 states “(b) whether the loan is a new loan, a renewal of an existing loan or an extension of an existing loan;” Installment loans are generally “refinanced” and not “renewed”.

The Regulation and Licensing Department’s Financial Institutions Division is not aware of any companies currently providing database services that would meet the specific requirements of the Bill.

If no database services currently exist that would meet the specific requirements of SB 299, the stipulation on page 16, lines 19 through 23, that the director certify one or more database reporting services by November 1, 2011 may be an impossible requirement. SB 299 provides no material support for RLD’s FID to either maintain such a database themselves or to collaborate with private entities in the creation of the database.

### **ALTERNATIVES**

The AGO provided the alternative of a straight usury cap on the interest rates that can be charged on consumer loans. This alternative would effectively eliminate the current loophole by providing equal treatment for all loans.

A straight usury cap may promote economic inefficiency, however. The financial markets reach equilibrium interest rates through competitive mechanisms. Although predatory lending does present a real and severe problem, a usury cap for interest rates cannot be guaranteed to regulate the market for small loans without creating unnecessary inefficiencies; the regulatory mechanisms expanded by SB 299 might be more desirable than a usury cap.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AGO notes SB 299 closes a loophole from the 2007 payday loan reform provisions of the Small Loan Act. Not enacting this bill would allow high-cost installment lenders to continue to circumvent the consumer protections of payday loan reform.

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