

- Amends Section 58-15-39 of the Small Loan Act to provide that aggregated data regarding loans compiled for FID’s annual report shall be “non-identifiable by licensee.”

Synopsis of Original Bill

The House Judiciary Committee substitute for the House Commerce and Economic Development Committee substitute for House Bill 150 enacts changes to the New Mexico Bank Installment Loan Act (1959), Chapter 58, Article 7, NMSA 1978, and the New Mexico Small Loan Act (1955), Chapter 58, Article 15, NMSA 1978, (Small Loan Act). The bill adds definitions expands violations deemed to be in violation of the Unfair Practices Act expands lender reporting requirements clarifies loan insurance requirements expands disclosure requirements limits interest and other charges; grants rights of rescission; and provides for penalties.

Substantial amendments made by HB150 include the following:

Bank Installment Loan Act

Section 1 amends Section 58-7-3 to provide that a loan made pursuant to the Bank Installment Loan Act shall be identified as such in the loan documents.

Section 2 amends Section 58-7-6 to provide that attorney fees shall not be charged to a borrower in connection with collection efforts, unless the loan contract “has been submitted in good faith to an attorney for collection after the lender has made a diligent and good faith effort to collect and has failed.”

Section 3 amends Section 58-7-7 to provide that, except as otherwise provided in the Bank Installment Loan Act, any rollover, renewal, refinance or modification of an existing loan agreement shall constitute a new loan and require new disclosures pursuant to the federal Truth in Lending Act.

Section 4 amends Section 58-7-8 to provide:

- an act done in the making of a loan that violates Section 58-7-6, which specifies permissible charges, or Section 58-7-7, which specifies restrictions on loans, including annual percentage rate limits, renders the loan void and precludes the lender from collecting or retaining any charges.
- a lender may not collect the loan principal if the lender violates Section 58-15-3(A), which requires a license to engage in the business of making loans of less than \$5,000, or knowingly violates Section 58-7-6 or Section 58-7-7.
- a violation of the Bank Installment Loan Act that constitutes an unfair, deceptive or unconscionable trade practice is a violation of the Unfair Practices Act.

Section 5 amends Section 58-7-9 to add definitions of “consumer,” “make a loan,” and “person” (which includes an individual, trust, corporation, or any other legal entity).

Section 6 enacts a new section of the Bank Installment Loan Act that:

- sets out the requirements for lenders, including required disclosures to the borrower at the time a loan is made; the issuance of a receipt for each payment made on a loan, including an electronic receipt at the option of the borrower; and procedures for cancelling a note

and promise to pay on repayment of a loan.

- provides that a loan filed and approved as a claim in a bankruptcy proceeding shall bear interest at the rate of 10 percent.
- limits to 10 percent the annual interest on the unpaid principal balance of a loan after the death of the borrower and after twelve months following the loan's maturity date.

Section 7 enacts a new section of the Bank Installment Loan Act to provide for a right of rescission. Under this provision, the borrower may rescind the transaction by paying 100 percent of the loan back within a day after the loan is executed. The lender is not allowed to charge any fee to the borrower for exercising the right of rescission.

Small Loan Act

Section 8 amends the definition of “consumer” in Section 58-15-2 of the Small Loan Act to cover a person who resides or enters into a loan agreement in New Mexico and adds a definition of “make a loan.”

Section 9 amends Section 58-15-3 to provide:

- an act done in the making of a loan that violates Section 58-15-17, which includes required disclosures to borrowers and restrictions on loans, or Section 58-15-20, which specifies permissible charges, renders the loan void and precludes the lender from collecting or retaining principal, interest and other charges.
- a violation of the Small Loan Act that constitutes an unfair, deceptive or unconscionable trade practice is a violation of the Unfair Practices Act.

Section 10 makes significant amendments to Section 58-15-10.1(A), which governs licensee reporting requirements. The changes require licensees to file annual reports with the Financial Institutions Division of RLD that provide detailed information, including, for each loan product offered, the dollar amount of interest and fees charged and the number of loans repaid in full, charged a late payment, or defaulted on; number of borrowers whose source of income was public benefits; and number of borrowers who are age 65 and older.

Section 11 amends Section 58-15-16 to provide that a lender may charge for only the actual cost of insurance the lender is allowed to sell under the Small Loan Act and that the insurance must be written by a company licensed to operate in New Mexico at a rate not higher than those approved by the superintendent of insurance.

Section 12 amends Section 58-15-17 to provide:

- for the issuance of an electronic receipt for loan payments at the option of the borrower.
- that a loan filed and approved as a claim in a bankruptcy proceeding shall bear interest at the rate of 10 percent;
- the annual interest on the unpaid principal balance of a loan after the death of the borrower and after twelve months following the loan's maturity date is limited to 10 percent;
- on request from the borrower, licensed lenders shall provide the borrower with copies of loan agreements and related documents, and shall retain loan documentation for seven years; and
- any rollover, renewal, refinance, or modification of an existing loan agreement with a

licensee shall constitute a new loan and require new disclosures under the Truth in Lending Act.

Section 13 amends Section 58-15-20 to specify that attorney fees shall not be charged to a borrower in connection with collection efforts, unless the loan contract has been submitted to an attorney for collection “who is not a salaried employee of the holder of the contract.”

Section 14 amends Section 58-15-20.1(A) to clarify that when there are insufficient funds to pay a check, a licensee may not present a check to a financial institution more than one time “per payment due.”

Section 15 amends Section 58-15-39 to require the annual report compiled by the Financial Institutions Division of RLD (FID) from reports filed by licensees reflect nonidentifying consumer data from each of the specific categories of information required for licensee reports under Section 58-15-10.1(A), as amended by Section 10 of HB 150.

Section 16 adds a new subsection to the Small Loan Act that provides the same right to rescission as that added to the Bank Installment Loan Act by Section 7 of the bill, as described above.

The effective date of HB150 is January 1, 2020.

FISCAL IMPLICATIONS

RLD notes that HB 150 contains no appropriation. To fulfill the annual reporting requirements included within HB 150, RLD states that it would be necessary for FID to expend more staff time and resources to gather and verify the data received and then compile that data into an understandable and useful report. FID’s current staff resources would be severely taxed to manually handle the contemplated volume and complexity of data collection and reporting. To adequately handle the data collection, verification and compilation, it may be necessary for FID to have developed a new reporting system and database. FID currently has no data collection or database system capable of dealing with this volume of data.

SIGNIFICANT ISSUES

NMAG states HB150 significantly amends the requirements for lenders under the Small Loan Act and Bank Installment Loan Act. In particular, NMAG points out HB150:

- greatly increases the Small Loan Act’s reporting requirements;
- creates a right of rescission for borrowers in which they can pay the loan back in full – within one business day of its execution – without any penalty or fee;
- limits lenders to charging the actual cost of loan insurance and limits their ability to choose the carrier for such insurance; and
- provides that any rollover, renewal, or refinance of a loan constitutes a new loan that triggers all the reporting requirements under the Truth in Lending Act.

RLD states that the HJC substitute HB150 raises the following issues:

- Section 1 adds language to Section 58-7-3(B) of the Bank Installment Loan Act to

require loans made pursuant to the Act to be identified as such on the loan agreement. This added language is unnecessary since it essentially repeats language in Subsection A of Section 58-7-3 stating that any loan made pursuant to the Act must be clearly identified as being made under the Act.

- Section 8 amends the definition of “consumer” for purposes of the Small Loan Act to include “a person who resides in New Mexico or who enters into a loan agreement in New Mexico.” This definition may conflict with similar laws in jurisdictions outside of New Mexico because it suggests that a loan obtained by a New Mexico resident is covered even if it is obtained out-of-state. For example, a New Mexico resident could physically enter a neighboring state to obtain a small loan. That loan would be subject to the governing law or regulation of the neighboring state; FID would have no jurisdiction over that specific loan or the lender originating the loan. RLD also suggests that the definition be amended to include language pertaining to loans obtained over the internet.

- Section 10’s amendments to Section 58-15-10.1’s licensee reporting requirements require licensees to report the total number and percentage of borrowers over the age of sixty-five. Neither the Small Loan Act nor the Bank Installment Loan Act require lenders to obtain this information upon the execution of a loan, so licensees may or may not have obtained the information from borrowers in the past.

- Sections 3 and 12 of the bill add provisions to the Bank Installment Loan Act and the Small Loan Act requiring licensees to originate a new loan agreement upon any “rollover, renewal, refinance or modification of an existing loan agreement.” These provisions could potentially harm a borrower in the event of hardship such as the recent federal government shutdown. Licensees would not be able to provide “skip a payment” or other workout arrangements to prevent a default with the borrower. This might lead to negative reporting to consumer reporting agencies and cause unnecessary harm to the borrower.

ADMINISTRATIVE IMPLICATIONS

See discussion above under Fiscal Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

HB22 Lower Small & Installment Loan APR
HB375 Decrease Maximum APR for Small Loans
HB386 Installment & Small Loan Maximum Interest
SB550 Loan & Check Charges
SB567 Small & Installment Loan Changes

Conflicts with:

SB567, which amends the same statutory provisions, except Sections 58-15-20.1 & 58-15-39
SB550, which also amends Section 58-7-6 NMSA 1978
HB22, HB375 & HB386, which also amend Sections 58-7-7 & 58-15-17

TECHNICAL ISSUES

Section 4(A) of the HJC substitute amends Section 58-7-8(A) of the Bank Installment Loan Act to provide that a lender may not collect the principal of a loan if the lender has violated Section 58-15-3(A) of the Small Loan Act. Section 58-15-3(A) prohibits a person from engaging in the business of lending in amounts of \$5,000 or less without a license. The amendment to Section 58-7-8(A) appears unnecessary because Section 58-15-3(E) of the Small Loan Act already provides that an act done in the making of a loan that violates Section 58-15-3(A) renders the loan void and precludes the lender from collecting or retaining principal, interest or other charges.

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