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## FISCAL IMPACT REPORT

**SPONSOR** SJC **ORIGINAL DATE** 03/01/21 **LAST UPDATED** 03/18/21 **HB** CS/SB66/aHCEDC/  
**SHORT TITLE** Permitted Percentage Rates For Loans **SB** aHJC/aHF1#1  
**ANALYST** Hanika-Ortiz

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
TRD/FID	(Indeterminate)	(Indeterminate)	Recurring	Regulatory Fund
TRD/FID	(Indeterminate)	(Indeterminate)	Recurring	Financial Literacy Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

### SUMMARY

#### Synopsis of HF1 Amendment #1

The House floor #1 amendment to Senate Judiciary Committee substitute for Senate Bill 66 as twice amended, strikes most provisions in the HJC amendment except for annual processing fees permitted and extending the date to implement the act to July 1, 2022. The amendment also allows a maximum annual percentage rate of 99 percent for loans of \$1,100 or less, provided that the loans shall not have a term longer than 24 months, and shall not be refinanced by the lender.

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Judiciary Committee substitute for Senate Bill 66 as amended, provides that the finance charge solely consists of interest and a processing fee of \$200 or 10 percent of the principal, charged no more than once per individual consumer within a twelve-month period; and adds new subsections for borrower's denied loans at 36 percent or less, to allow loans up to 99 percent. These loans, however, must first be approved by FID who must consider costs and risks to the lender. Furthermore, the FID-approved loans may

not be made for a term greater than 24 months, accrue certain charges or interest, be recoverable through wage garnishment, be eligible for refinancing unless under certain conditions, or be subject to underwriting (but subject to credit reporting); and must provide clear disclosure.

Under the applicability sections of both acts, the amendment strikes proposed language covering certain marketing and predatory lending strategies and persons working for exempted entities.

Finally, the amendment states the effective date of the provisions of this act is July 1, 2022.

#### Synopsis of HCEDC Amendment

The House Commerce and Economic Development Committee amendment to Senate Judiciary Committee substitute for Senate Bill 66 clarifies that the permitted annual percentage rate includes finance charges as defined in 12 CFR Part 1026, known as “Regulation Z.”

#### Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 66 amends the Bank Installment Loan Act (BILA) and Small Loan Act (SLA) by reducing the maximum annual percentage rate (APR) allowable for loans from 175 percent to 36 percent, or possibly higher if the prime rate is above 10 percent for three months. The substitute also proposes increasing the maximum covered loan amount from \$5 thousand to \$10 thousand. Finally, the bill proposes expanding the definition of persons/entities subject to the BILA and SLA and changes to the calculation of the APR.

The bill tasks the Financial Institutions Division (FID) with posting a notice on its website within 10 days of the date any increase or decrease in the maximum allowable permitted APR is effective.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

RLD reports SB66/SJCS will result in reduced fee revenue if the number of loan companies licensed or the number of loans made decline. Based on experience from 2017 (when the maximum APR for small loans was last decreased) it is reasonable to conclude there will be reduction in the number of licensed small loan companies in New Mexico if this bill is enacted.

FID currently licenses lenders making loans within the provisions set forth in the SLA. License renewal fees are a minimum \$500 plus 75 cents per \$1,000 of loans outstanding as of December 31 of the preceding year. Licensees are also assessed a \$200 exam fee and a \$200 fee to finance financial literacy programs in New Mexico. Any negative fiscal impact will depend on any decrease in the number of licensees and the value of loans made by the remaining licensees.

There may also be an impact on court resources from its participation in determining whether a person is a “lender” and a transaction is structured to evade the requirements of the SLA.

## **SIGNIFICANT ISSUES**

According to RLD, the proposed APR calculation and disclosure changes for both BILA and SLA, as proposed in this bill, would create a conflict of law between the BILA/SLA and federal law, 12 CFR Part 1026 – Truth in Lending (Regulation Z), concerning the definition and required disclosure of the APR, by requiring inclusion and disclosure of certain fees in the BILA/SLA version of the APR that are not included in the federal Regulation Z APR calculation.

To avoid this conflict, RLD suggests requiring both the current Regulation Z APR disclosure and a second calculation titled other than “APR” to demonstrate the total annual percentage cost of financing, including other products and/or fees not covered under Regulation Z. *See* amendment.

RLD also noted SB66/SJCS expands people subject to licensing to include a person who, by a “totality of circumstances,” is a lender and the transaction is structured to evade the requirements of the SLA. Going further, it indicates this decision would be made by the courts. This wording may create confusion concerning who may initiate an investigation or legal action, as well as confusion as to the proper notice, hearing, and appeal process to be followed in the event action against a person for an alleged violation of the SLA licensure requirement is undertaken.

The SLA specifies the duties of the director of FID in the event the director seeks to deny, revoke, suspend, or impose other administrative action on a licensee. RLD explained the SLA requires the issuance of an order by the director on such matters (in most cases following a written notice and hearing) and provides a statutory right to appeal such order to the district court for judicial review. However, the SLA also provides for a misdemeanor criminal charge to be brought for a violation of the SLA and provides that certain types of violations of the SLA that also constitute violations of the Unfair Practices Act (UPA) may be pursued under the UPA. As drafted, the language of SB66/SJCS does not clarify the entity authorized to initiate review or pursue action under this section, or what legal process will lead to the matter being brought before the court.

An alternative to the possible confusion as stated above, RLD believes, may be to specify that the director of FID will determine whether the “totality of the circumstances” indicate the person is a lender and a transaction is structured to evade requirements of the SLA, and the director will issue the final order on the matter, subject to review through the standard judicial review process.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Similar to House Bill 99, which makes the same changes to the maximum APR allowed under the BILA and SLA.

Relates to Senate Bill 269 in that the definition of “installment loan” is extended to include loans with any number of payments that bear no finance charge as disclosed pursuant to Regulation Z, and exempts those loans from the mandatory credit reporting.

## **TECHNICAL ISSUES**

RLD further explained that the calculation of the APR is based on an annual payback period. Therefore, a loan under the current SLA/BILA with a repayment period of 4 months (the minimum allowable term) and the current maximum APR of 175 percent would equate to an

interest rate of approximately 57.5 percent, assuming that no other fees are charged. Under SB66/SJCS, a loan with a repayment period of 4 months and a maximum APR of 36 percent would be limited to an interest rate of approximately 11.8 percent, again assuming that no other fees are charged.

Similarly, the prime rate as defined in the bill, is also based on an annual payback period. So for each percentage point increase in the prime rate, the corresponding APR increase on a 120-day loan would be calculated at 3 percent. Under the bill, the allowable increase of APR based on percentage of prime rate over 10 percent does not take into account any payback period other than one year, which is the only time that rate and APR are aligned (without consideration of fees).

## **ALTERNATIVES**

RLD recommends allowing the director of FID to determine whether circumstances indicate a person is a lender and a transaction is structured to evade requirements of the SLA.

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

New Mexico will continue an APR cap of 175 percent and maximum loan amount of \$5,000.

## **AMENDMENTS**

Require both the current Regulation Z APR disclosure and a second calculation (utilizing the criteria in Section 3, beginning at page 6, line 6, and continuing through line 24; and Section 8, at page 26, line 20 - 21; and Section 11, beginning at page 36, beginning at line 12, and continuing through page 37, to the end of line 6) that would be titled other than “APR” to demonstrate the total annual percentage cost of financing, including product/fees not covered under Regulation Z.

AHO/rl/sb/al/rl