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## FISCAL IMPACT REPORT

SPONSOR Duhigg LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 1/29/2023  
BILL \_\_\_\_\_  
SHORT TITLE Wrongful Foreclosure Protection Act NUMBER Senate Bill 46  
ANALYST Gray

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Mortgage Finance Authority (MFA)

New Mexico Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of Senate Bill 46

Senate Bill 46 contemplates creating the Wrongful Foreclosure Protection Act to add new protections for homeowners with a mortgage facing foreclosure. It adds requirements for foreclosure complaints, prohibits some conduct from a lender, and provides civil remedies. The bill provides for the potential recovery of:

- Actual damages;
- Additional statutory damages of \$5,000 or 10 percent of the amount of the loan, judgement, or lien, whichever is higher per each violation;
- Possible punitive damages; and,
- Costs and attorney fees.

SB46 states actions arising “solely from acts or omissions that occurred prior to the effective date of this 2023 act” may not be brought pursuant to the new act.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

Residential foreclosure cases make up a small portion of all civil cases. An increase in such cases is unlikely to have a fiscal impact.

## **SIGNIFICANT ISSUES**

Some of the disclosures required under SB46 are duplicative of current court rules. The rules of civil procedure for the District Courts provide for some, but not all of the disclosures required in SB46. In particular NMRA 1-003.3 and required form 4-227 are implicated.

Finally, the prohibitions in SB46 in proposed § 58-21C-4, mirror many practices currently prohibited by the federal Fair Debt Collection Practices Act.

## **TECHNICAL ISSUES**

The definition of “home loan” in SB46 differs from the definition under the Home Loan Protection Act (HLPAct). The HLPAct “home loan” definition excludes reverse mortgage transactions and bridge loans while SB46 includes reverse mortgage transactions and does not address bridge loans. SB46 states that in the event of a conflict between the Act and the HLPAct, that the HLPAct “shall control”, it is suggested that a consistent use of the “home loan” definition in both acts.

BG/al