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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11

SPONSOR Lundstrom LAST UPDATED \_\_\_\_\_ HB 338

SHORT TITLE Fee & Term Limits on Car Title Loans 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

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

### SUMMARY

#### Synopsis of Bill

House Bill 338 amends the New Mexico Bank Installment Loan Act of 1959 (Installment Loan Act) and the New Mexico Small Loan Act of 1955 (Small Loan Act).

#### Key amendment to the Installment Loan Act:

- Amends the Installment Loan Act so that only pre-computed loans may be made under that Act (page 2 lines 1-5).

#### Key amendments to the Small Loan Act:

- Requires that any loan of \$2,500.00 or less be made pursuant to the Small Loan Act (page 4 lines 23-25).
- Adds wording that clarifies that internet lenders making loans of \$2,500.00 or less are subject to the provisions of the Small Loan Act (page 6 lines 17-18).
- Sets maximum interest rate for loans secured by a motor vehicle certificate to 21% plus prime rate and allows for an administrative fee not to exceed \$15.00 (page 7 line 13 through page 8 lines 1-4).
- Clarifies allowable fees for loans of \$2,500.00 or less (page 8 lines 5-10).
- Sets the minimum maturity date for loans of \$2,500 or less secured by a motor

vehicle certificate. Also requires repayment to be at least three substantially equal payments with the final payment due upon loan maturity.

### **FISCAL IMPLICATIONS**

No significant fiscal impact to the general fund is identified.

### **SIGNIFICANT ISSUES**

HB 338 principally adds a new section to the New Mexico Small Loan Act to include regulation of car title loans. The new section would cap the amount of interest that can be charged consumers borrowing \$2,500 or less and securing the loan with a vehicle title, to the U.S. prime rate of interest plus twenty-one percent and limit administrative fees to \$15.00 or less. Further, the new section would prohibit licensees from making more than one loan at a time to a consumer. HB 338 also requires that title loans made under the New Mexico Small Loan Act to be repaid over a minimum of ninety days in at least three substantially equal payments with the final payment due upon maturity of the loan.

HB 338 amends the New Mexico Small Loan Act prohibiting the use of a device or agreement that would have the effect of changing or collecting more fees, charges or interest than allowed by law by entering into a different type of transaction with the consumer.

Further, HB 338 amends the New Mexico Small Loan Act by extending the licensing requirement under the Small Loan Act to internet lenders if the lenders are offering loans of \$2,500 or less to New Mexico residents.

This bill repeals Section 58-15-19 of the Small Loan Act pertaining to Loans Under Other Laws.

### **ADMINISTRATIVE IMPLICATIONS**

HB 338 statutorily extends 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 particularly 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.

### **TECHNICAL ISSUES**

The amendments to the Small Loan Act reference the words "consumer loan" (page 6 line 17, page 7 line 25). According to RLD, there is no definition of a "consumer loan" in the Small Loan Act. There is currently a definition for "consumer".

Page 7 lines 22-23 states "and shall not make more than one loan at a time to a consumer". According to RLD, it is not clear if the restriction is only for loans secured by a motor vehicle certificate or for all loans to a consumer.

According to the AGO, section 5(A) of the bill defining how interest rates are determined is unclear and ambiguous as to when the interest rate is to take effect.

The AGO proposes rewriting the amendment to read:

“ . . .that is secured by a motor vehicle certificate of title, shall not charge a stated contract rate of interest for the term of the loan in excess of the United States prime rate of interest . . .”

### **OTHER SUBSTANTIVE ISSUES**

Car title loans are considered to be predatory with one of the biggest issues being the high interest rates charged and the over-securitization of the loan. In most instances, title loans do not require a credit check and consumers only need to provide minimal income verification. Because of the high interest rates, fees, minimal underwriting requirements and the ability of the lenders to repeatedly roll over the loans month after month, consumers are placed at an increased risk of suffering further financial hardship or falling prey to a hopeless cycle of debt if they fail to make their scheduled payments and their vehicle is repossessed. Therefore, the need for lenders to consider the borrower’s ability to repay the loan should be mandated in order to protect consumers from the improvident extension of credit and from risking the loss their primary mode of transportation.

According to the AGO, HB 338 attempts to limit the fees and interests that title lenders may charge, but the bill permits the rolling-over of title loans. Permitting the rolling-over of the original loan or subsequent roll-over title loans could result in additional fees being charged and an increase in the contracted interest rate paid by consumers. By not prohibiting the rolling over of title loans, lenders are permitted to exacerbate the consumer’s already difficult financial situation.

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

Status Quo

CS/mew