

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Wirth LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Regulation of Certain Loans SB 305

ANALYST C. Sanchez

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		+\$1.0	+\$1.0	+\$2.0	Recurring	General Fund

(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 305 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 2-6).
- Adds a definition for installment loan and pre-computed loan (page 2 lines 9 through 20).

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

- Adds a definition for debt-to-income ratio (page 5 lines 19 through 23).
- Amends the definition of installment loans to include loans with maturity dates of less than 120 days (page 6 lines 8 and 9).
- Deletes the words "in writing" (page 7 line 7).
- Adds a definition for pre-computed loan (page 8 lines 9 through 11).

- Requires that any loan of \$10,000.00 or less be made pursuant to the Small Loan Act (page 9 lines 4 through 14).
- Increases the amount for lines of credit from an excess of \$2,500 to an excess of \$10,000 (page 9 lines 15 through 21).
- A licensee may impose a fee to a customer to pay for the loan database as required by this Bill (page 19 lines 11 through 17).
- Sets maximum interest rate for loans \$10,000 or less to 36% plus prime rate and sets minimum maturity date based on loan amount (page 19 line 20 through page 21 line 20).
- Requires licensee to document the borrower's ability to repay a loan based on the borrower's debt-to-income ratio (page 20 line 25 through page 21 line 8).
- Amends the Small Loan Act to require 60 point bold type for the signage that is required to be displayed by a payday lender (page 23 lines 21 through 23).
- Amends the Small Loan Act to require licensees to input loan information into a database certified by the Director of the Financial Institutions Division (page 24 line 9 through page 27 line 14).
- Requires the Financial Institutions Division to compile on an aggregate basis an annual report (page 30 line 9 through page 32 line 12).
- Amends the Small Loan Act where a violation of the Small Loan Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act (page 32 lines 15 through 17).

## **FISCAL IMPLICATIONS**

According to the Regulation and Licensing Department (RLD), the minimal fiscal impact cannot be determined. The proposed amendment to the Small Loan Act will require any business that makes loans of \$10,000 or less to be licensed. Previously only lenders who made loans for \$2,500.00 or less were required to obtain a small loan license.

There is no appropriation contained in the Bill. The Small Loan Act NMSA 1978, Section 58-15-9 requires an annual examination to be performed for each licensed place of business. If it is the intent of the Bill to have all lenders who make loans of \$10,000 or less to be licensed, it cannot be determined how many more persons may need to obtain a small loan license.

## **SIGNIFICANT ISSUES**

According to the Attorney General's Office (AGO), SB 305 defines "installment loan" as a loan to be repaid in 4 successive equal payments paying off the loan totally in a period of no less than 4 months, (120 days) and "pre-computed loan" as an installment loan which the principal and the interest are computed and scheduled for payment over the life of the loan. Thus, under SB 305 loans covered by the NM Bank Installment Loan Act (NMBILA) are loans that are pre-computed and repayable in installments. These loans must be clearly identified as loans being made under the NMBILA. The definition of pre-computed loans is added to the NM Small Loan Act, NMSLA. SB 305 leaves the definition of payday loan practically intact deleting only that the lender must agree "in writing" to deferring presentment of post-dated check or pre-authorized debit.

According to the AGO, SB 305 requires a business making any loan of any amount to acquire a

license. A licensee is not prohibited from making pre-computed loans for any amount under the NMBILA however, if such loans are for \$10,000 or less, then the loans must be made under the New Mexico Small Loan Act, NMSLA. The lender is prohibited from using any device or agreement to charge more than allowed.

SB 305 addresses loans made elsewhere to a resident of New Mexico and changes the limit of loans of \$2,500 or less to loans of any amount. SB 305 limits the amount of charges imposed by loans made elsewhere other than in New Mexico to a resident of New Mexico. Striking the allowed charges under the money, interest and usury statute, which has no limits or cap, does this.

With respect to the consumers' right to enter into a repayment plan, SB 305 leaves that right intact and adds additional disclosure requirements by adding that the sign containing the disclosure as to the consumer's right to repayment must be displayed "prominently" and in a larger font- 60-point bold type.

According to the AGO, under SB 305, lenders are required to make an assessment of the borrowers debt-to-income ratio to determine whether the borrower is able to pay the loan and charges. The ability of the borrower to pay the loan must be reasonably documented.

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

HB 337 and HB 338 propose amendments to the Small Loan Act.

## **TECHNICAL ISSUES**

According to RLD, deleting the words "in writing" may be problematic. Deleting the words may force disputes to go to court as contractual terms are no longer documented in a written contract causing a "He said She said" situation.

Page 21 lines 1 through 8 requires licensees to document the borrower's ability to repay a loan based on the borrower's debt-to-income ratio. According to FID, there is no guidance as to what an acceptable debt-to-income ratio is.

## **OTHER SUBSTANTIVE ISSUES**

Loans made under the NMBILA are pre-computed loans repayable in installments.

Under SB 305, each loan transaction that is made under the NM Bank Installment Loan Act must be clearly identified that is being made pursuant to the NMBILA.

Loans in the principal amount of \$10,000 or less, which are not payday loans, made under the NM Small Loan Act are installment loans.

Thus, according to the AGO the alternative loans available to consumers under SB 305 are: payday loans under the NM Small Loan Act, \$10,000 or less installment loans under the Small Loan Act, and pre-computed in installment loans in any amount under the NM Bank Installment

Loan Act. The limitations of charges for payday loans are found in the Small Loan Act and SB 305 does not change those charges. Loans considered installment loans because their principal is \$10,000 or less and are made under the Small Loan Act will have a charge rate limit of prime rate plus 36% per year.

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

Small loans would remain available to consumers with no caps on interest, fees and charges for loans \$10,000.00 or less or other restrictions imposed by this bill.

Small loan lenders may continue to charge New Mexico consumers extremely high interest rates, sometimes more than 1000%.

CS/bym:mew