

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
LAST UPDATED 02/03/12 **HB** _____

SPONSOR Leavell

SHORT TITLE Financial Licensee Annual Reporting **SB** 143

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		(Minimal)	(Minimal)		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 143 amends Section 58-15-10.1, which regulates licensee reporting requirements for Small Business Loan businesses. SB 143 will contract the reporting requirements by no longer requiring certain information in the annual reporting disclosures to Financial Institutions Division (FID). No longer required are information on: fees, frequency of periodic payments, terms of the loans, any other standard conditions of the loan product, the total amount of principal loaned, and the percent of consumer who were new.

SB 143 takes out the mandatory fines not to exceed \$1,500 per day after March 31 when accurate reports are not filed. SB 143 also allows the licensee to certify no loans were made during the reporting period.

SB 143 also makes all licensee information confidential.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for the updating, distributing and documentating of statutory changes, but this bill will clarify and eliminate some reporting requirements and should result in a slight savings in FID staff time.

SIGNIFICANT ISSUES

The AGO provided the following:

SB 143's contraction of reporting requirements may not meet federal law and regulations which govern such loans. For instance, Regulation Z, issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.), and whose stated purpose is to promote the informed use of consumer credit by requiring disclosures about its term and cost. The contraction of information contained in SB 143 is substantial and may impact FID's ability to regulate properly. For instance, the deletion of all fees raises substantial concern about adequate disclosures to the FID and does not meet certainly the spirit of Regulation Z, if not its mandates.

Consumer protection also may be impacted with the changes in fines and confidentiality provisions. The current fines of \$1,500 per day for failure to file an accurate report have been a strong tool for FID to enforce the reporting requirements. Making those fines optional may make enforcement of reporting requirements more difficult.

Further, the strictly confidential wording leaves no leeway when disclosure might be necessary.

This bill does not expressly allow for disclosure when the Financial Institutions Division itself may need to discipline a licensee. The confidentiality wording may be too strong here to meet the consumer protection mandates of the Small Loan Business Act, Section 58-15-1 et seq.

RLD offered the following comments:

This bill clarifies the reporting requirement of small loan licensees who make loans with an annual percentage rate (APR) greater than 175% as defined by Regulation Z, excluding payday loans. The annual reporting requirement for small loan licensees was created by HB 337 in the 2011 Legislative session. This bill clarifies items to be reported by licensees and deletes problematic reporting requirements.

This bill, for example, eliminates the need to report the percent of consumers who were new consumers. This is currently a problem as small loan licensees have not been required to keep track of their customers to determine who is a new customer. Small loan companies shall be fined and have their license suspended for submitting an inaccurate report because they may report a customer as new in error.

In spite of the comments from the AGO, RLD supports the provision that allows the director to use discretion as to whether to fine and suspend a small loan licensee rather than an automatic fine and suspension for a late or inaccurate report.

RLD believes the reporting requirement currently in statute negatively affects all small loan licensees. They believe SB 143 will alleviate some of the reporting requirements placed on licensees.

ADMINISTRATIVE IMPLICATIONS

By simplifying the reporting requirements, FID might see a minimal savings of time regulating Small Business Loan businesses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

RLD points out small loan licensees will be fined and have their license suspended for not complying with the reporting requirements created by HB 337 in the 2011 regular legislative session even if they have made a good faith effort to comply. The reporting requirements is new for all parties, therefore, it is anticipated that there will be errors on some reports. If the bill is enacted, it will clarify the reporting requirements for the licensees, therefore, decreasing the possibility of errors. The bill will also allow the Director of the FID to use discretion as to whether to fine and suspend a licensee for an inaccurate or late report. Small loan licensees who make a good faith effort to comply will not have their license automatically suspended and accessed an automatic fine.

DW/lj